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TESTIMONY BEFORE SENATE RESOURCES COMMITTEE 1977-1978 (NOTEBOOK)

Mary Singelton - ARCO

except for '74

Sole purpose of taxation - to fund budgets
needs of State as determ. by leg

Seim '69

O&D has spent 12 B dev. the field
& building TAPS
Has paid 2 B in royalties, bonuses
+ taxes & all kinds

9,000 corp. (profit types)
- fed. income tax 36,000
ind - - 200 M

Fish
Timber
Hard rock mining

Sales Tax
Property Tax - State
Severance Tax -

Cook Inlet - negative until a couple yrs ago
2% of total revenues for State
Marginal field - Royalties
Employment

Sustaining role - other dimensions
other developments

4/24/78

Marc Singletary

Petro-chemical – marginal

Gas line – Gas conditioning plant –
1 Bil

Arco, et al not interested in financing

Taken only 1 factor in investment climate

Crawford Thomas
8½ yrs. City Council & Calif. Tax Bd
Non-unitary for another
Unitary, for 1 purpose

Legal difficulty in changing from multi-state part act

Income earned – multi state tax act
Entire tax owed in income tax

Changes in multi-state tax act must be through tax administrator.

"Separate accounting is dead"
– according to Crawford Thomas

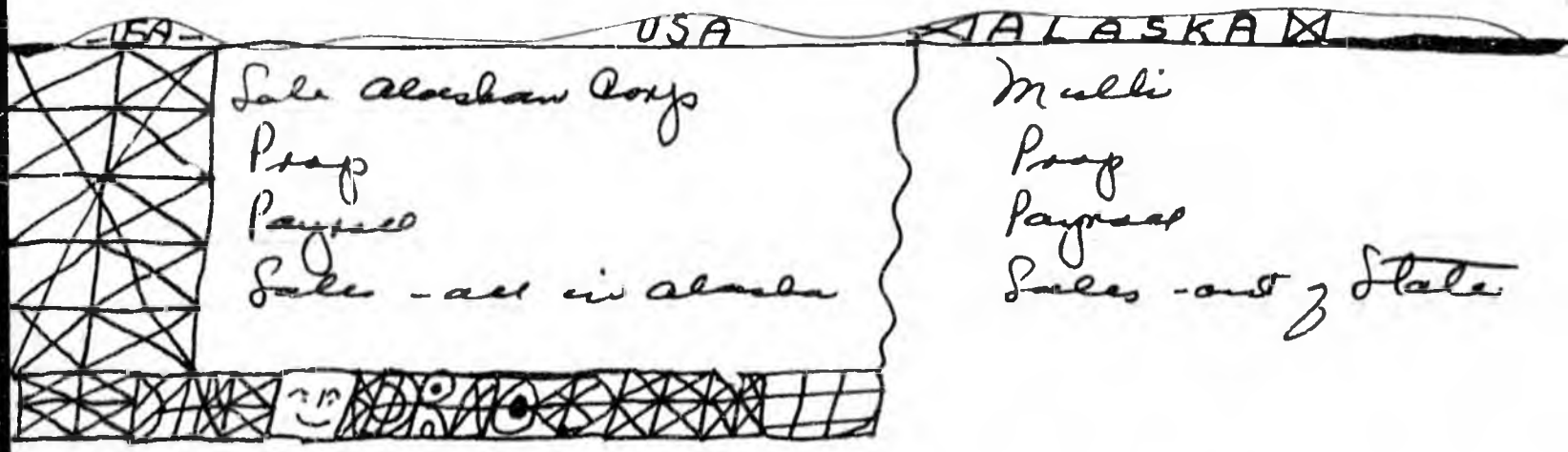
2/24/78

Local 9.4 Prof. Gary Boren
O & G lawer? St. Louis, ~~University~~ no
Wash. University of law
Intangible drilling cost
if not new - taken as a capitalized asset

Property - Payroll - Sales
on on
PRUDHOE BAY | ALASKA
accountaweights to Sales

Multi - State Tax Pact

Reorganize Multi - State rather than new method



Unitary Theory - one business
formula

Questions

Administration of Separate Accounting

Kust p. 34 "In practice separate accounting is impossible to administer and determine"

Lipton "[Hale] Pedrick stands as a monument by Hale"
"Now, its been said that this separate accounting is impossible to administer.... As I mentioned before there are two states that actually utilize separate accounting, if they can do it, we can do it, it can be done, it can be."

Equity of the Situation

Lennon p. 1 The current method ... "provides equality amongst taxpayers"

Lipton "I put it to you that you cannot through your present income tax statute get an equitable burden of income taxation upon the companies operating here in Alaska, not through the apportionment method." Cites ex. in Anderson report of 4 major producers each with greatly different tax liabilities."

Revenues

Lennon p. 2 Separate Accounting "would free Alaska out of the multistate tax compact, would create tremendous audit problems for the Dept of Revenue, and might even result in a net revenue loss to the state." Why? Not explained any other further in his paper.

Not profit interest
Amerada Hess?

Growth report – Harry Dimas

"Treating us differently"
want to be treated like any other
corp. in the State of Alaska

Points in the ICC case
Olivers wants to FN to get in also

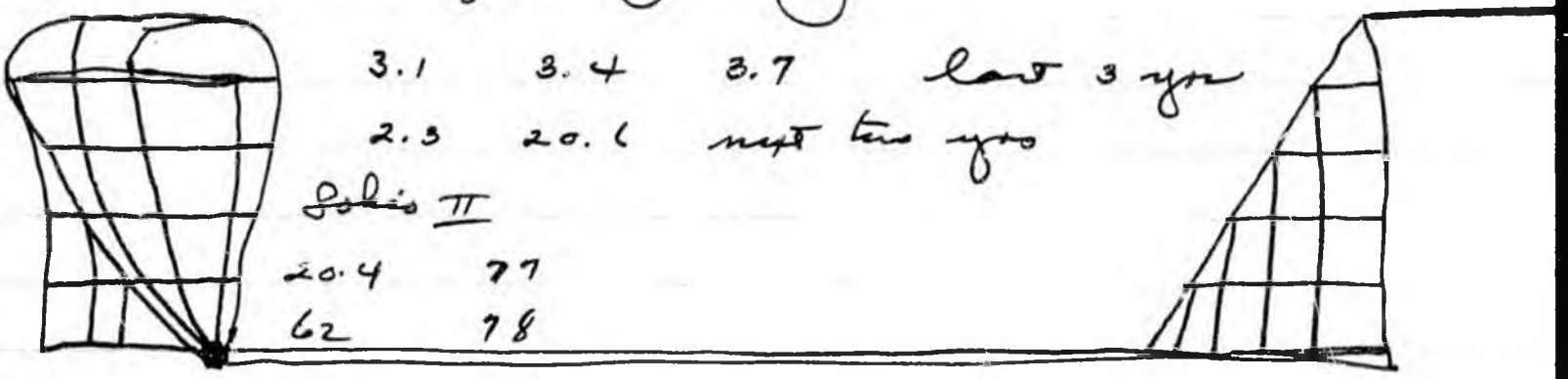
Texaco	6.40
Paddy-Sea	2.00
PanCan	1.00
	9.40

Devries normal business exp tax
jurisdiction

Jobs
Husky
Chevron
Texaco
Union
Amoco
4 or 5 others

Trying to borrow – tax jurisdiction making it different

Sterling Gallagher



Seeking to raise money – severance tax
income tax – traditional

John Messenger

Study – in Hannibal on 12 States

Same approx – ~~trades~~ Broader study

Oliver Leavitt

Timber tariffs much higher than anticipated

Gathering charges – sent in court

Need oil co. expertise to discover & develop
getting oil out & their ~~some~~ difficult

70,000 natives to share 70%

Reduction in value of native lands

Poor business climate

Harold Pomeroy – Kauai
"unconscious profit" – Thus take more
US News & World Report
collision course with inadvertency
viability in the future
Be careful about taking more
than industry to be able to go deeper
& ~~further~~ farther

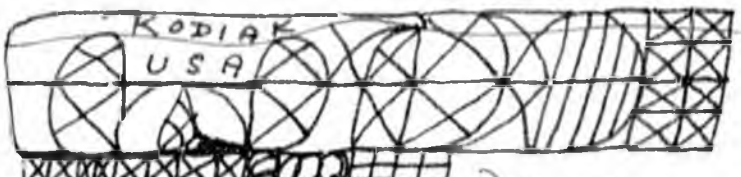
of 2x/98

Robert L. Moore
Arthur Andersen & Co.

(1) ~ ~ CI
(2) ~ ~ ~ ~ PB ~ ~ x8
(3) ~ ~ ~ ~ ~ ~

(1) Cook Inlet, Gas production,
Lisborne, Kapanich Fields

Gas - no price
cost & pipeline
Kapanich & Lisborne - undeveloped



What is actually net income
Moore - Source & income is a legal question

Legality & Bills

17. Amoco Production Co. v. Armhold, 213 Kan. 636, 518 P. 2d 453 (1974); Superior Oil Co. v. Franchise Tax Board, 60 Cal. 2d 406, 386 P. 2d 33 (1963); Honolulu Oil Corp v. Franchise Tax Board, 60 Cal 2d 416, 386 P. 2d 40 (1963).

18. Pierce, "The Uniform Division of Income for Tax purposes Act," 37 TAXES 747, 780 (1957).

19. Final Report, Committee on Tax Situs and Allocation, National Tax Association, 1951, published at pp. 456 et seq, Proceedings of the Forty-Fourth Annual Conference.

20. Interstate Taxation Act, Volume 2, p. 1767 (report of hearings on the Willis bill, H.R. 11798, 1966).

21. Hellerstein, "Allocation and Nexus in State Taxation of Interstate Business," 20 Tax Law Review 259, 275-276 (1965).

22. Congressional Record, Oct. 4, 1977, p. S16238.

23. 43 U.S.C.A. § 1333

24. Legal Ruling No. 366, CCH Cal. Tax Rptr. ¶205-026; Legal Ruling No. 396, op. cit. ¶205-519.

25. Tradesmans Nat. Bank v. Oklahoma Tax Comm., 309 U.S. 560(1940)

26. Complete Auto Transit Inc. v. Brady, _____ U.S. _____, 51 L. Ed. 2d 326 (1977)

27. See, e.g., remarks of Sen. Kennedy in Congressional Record, July 1, 1977, p. S11416

28. See, e.g., Note, "Multinational Corporations and Income Allocation Under Section 482 of the Internal Revenue Code," 89 Harv. L.R. 1202 (1976) in which the federal approach is unfavorably compared to the unitary approach used by California, Oregon, and Alaska.

29. Donald M. Drake Co. v. Dept. of Revenue, 236 Or. 26, 500 P. 2d 1041 (1972); Amoco Production Co. v. Armhold, fn. 6, supra

30. See cases cited at fn. 17, supra

TESTIMONY

OF

GARY I. BOREN

BEFORE THE

SENATE RESOURCES COMMITTEE

OF THE

ALASKA STATE LEGISLATURE

TESTIMONY

MADAM CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I AM GARY BOREN, PROFESSOR OF LAW AT WASHINGTON UNIVERSITY, IN ST. LOUIS, MISSOURI. I AM HERE ON BEHALF OF THE ALASKA OIL AND GAS ASSOCIATION, FOR WHICH I PREPARED A STUDY ON PROPOSED CHANGES IN THE MANNER IN WHICH THE STATE OF ALASKA TAXES THE INCOME OF CORPORATIONS THAT PRODUCE OIL AND GAS IN THE STATE. I UNDERSTAND THAT COPIES OF THAT STUDY HAVE BEEN MADE AVAILABLE TO THE MEMBERS OF THIS COMMITTEE.

I HAVE BEEN INTERESTED IN THE PROBLEMS OF STATE TAXATION OF CORPORATE INCOME FOR SOME TIME, AND HAVE WRITTEN A SERIES OF THREE ARTICLES ON THE SUBJECT, WHICH HAVE BEEN PUBLISHED IN VARIOUS LEGAL JOURNALS. THESE ARTICLES DEAL WITH THE WAY IN WHICH THE STATES DIVIDE THE INCOME OF A CORPORATION TO DETERMINE THE AMOUNT EACH STATE MAY TAX. IT IS THESE ARTICLES THAT PROVIDE MY QUALIFICATIONS FOR SPEAKING HERE ON THAT SUBJECT TODAY.

THE PROPOSAL WHICH THIS COMMITTEE IS NOW CONSIDERING WOULD CHANGE DRASTICALLY THE METHOD CURRENTLY IN USE IN ALASKA AND WHICH IS IN USE IN THE OVERWHELMING NUMBER OF OTHER STATES THAT TAX CORPORATE INCOME. IT IS THEREFORE APPROPRIATE TO INVESTIGATE THE MERITS OF THE REASONS GIVEN BY THOSE WHO ARE DISSATISFIED

WITH THE PRESENT SYSTEM. THE ULTIMATE CONCERN FOR THIS COMMITTEE AND THE LEGISLATURE IS WHETHER ALASKA IS GETTING ITS FAIR SHARE OF THE INCOME OF THE TAXPAYERS THAT PRODUCE OIL AND GAS IN THIS STATE. THOSE WHO BELIEVE THAT ALASKA IS NOT QUESTION THE VALIDITY OF BOTH OF THE COMPONENT PARTS OF THE SYSTEM NOW IN USE AS IT APPLIES TO THE OIL AND GAS INDUSTRY. THEY ATTACK THE METHOD OF DETERMINING THE TOTAL INCOME OF A TAXPAYER, AND THEY ALSO ATTACK THE METHOD BY WHICH ALASKA DETERMINES THE PORTION OF THE TOTAL INCOME THAT THE STATE MAY TAX.

THE UNDERLYING CLAIM OF THE PROPONANTS OF THE BILL BEFORE YOU AND OF THE BILL THAT PASSED THE HOUSE IS THAT LOCAL TAXPAYERS ARE PAYING A 9.4% EFFECTIVE RATE ON THEIR INCOME WHILE THE OIL AND GAS PRODUCERS PAY A SUBSTANTIALLY LOWER EFFECTIVE RATE ON THEIR INCOME. THAT IS A SERIOUS CHARGE, BUT AN INVESTIGATION OF THE REASONS FORWARDED TO BACK UP THAT CLAIM DEMONSTRATES THAT THE CHARGE IS UNFOUNDED. LOCAL TAXPAYERS DO NOT PAY A HIGHER EFFECTIVE RATE THAN THE OIL AND GAS INDUSTRY.

THOSE WHO PROPOSE A CHANGE RECOGNIZE, AS THEY MUST, THAT ALASKA MAY NOT TAX THE TOTAL INCOME OF A CORPORATION THAT HAS OPERATIONS IN OTHER STATES AND COUNTRIES. THE CONSTITUTION OF THE UNITED STATES PERMITS A STATE ONLY TO TAX THAT PORTION OF THE TOTAL INCOME THAT IS ATTRIBUTABLE TO THAT STATE. IF A CORPORATION HAS $100 OF INCOME FROM WORLDWIDE OPERATIONS, ALASKA MAY NOT APPLY ITS 9.4% RATE TO THAT TOTAL INCOME. THE PORTION OF

INCOME ATTRIBUTABLE TO ALASKA MUST FIRST BE DETERMINED. IT IS THE WAY IN WHICH THAT PORTION IS DETERMINED THAT IS IN DISPUTE.

THE METHOD CURRENTLY IN USE IN ALASKA BEGINS GENERALLY WITH THE TOTAL INCOME OF A CORPORATION AS REPORTED FOR PURPOSES OF THE FEDERAL INCOME TAX. THAT INCOME IS THEN DIVIDED BY A MATHEMATICAL FORMULA TO DETERMINE THE AMOUNT OF INCOME ATTRIBUTABLE TO ALASKA. THE FORMULA CONSISTS OF THREE FRACTIONS, THAT ARE CALLED FACTORS. THESE FRACTIONS ARE THE PROPORTIONS OF PROPERTY IN ALASKA TO PROPERTY WORLDWIDE, THE PROPORTIONS OF PAYROLL IN ALASKA TO PAYROLL WORLDWIDE, AND THE PROPORTION OF SALES IN ALASKA TO SALES WORLDWIDE. THE FRACTIONS ARE AVERAGED, AND THE AVERAGE FRACTION IS APPLIED TO TOTAL INCOME TO DETERMINE INCOME THAT MAY BE TAXED BY ALASKA. THIS INCOME IS THEN MULTIPLIED BY THE ALASKA TAX RATE TO GET THE AMOUNT OF TAX THAT IS PAID.

I WOULD LIKE TO DISCUSS FIRST THE TAXABLE BASE, FEDERAL TAXABLE INCOME. THE PROPOSAL BEFORE THE COMMITTEE WOULD DO AWAY WITH THIS AS THE WAY IN WHICH COMPUTATION OF THE INCOME FROM OIL AND GAS PRODUCTION AND PIPELINE TRANSPORTATION IN ALASKA BEGINS. THE OBJECTION MADE TO FEDERAL TAXABLE INCOME AS A STARTING POINT IS THAT IT IS "ERODED," FOR OIL AND GAS PRODUCERS; THAT IS, THAT IT DOES NOT REFLECT TRUE TOTAL INCOME FOR THESE TAXPAYERS. THE ARGUMENTS THAT HAVE BEEN MADE FOR THIS POSITION RELATE TO TWO ITEMS; THE IMMEDIATE DEDUCTION FOR INTANGIBLE DRILLING AND DEVELOPMENT COSTS, AN ITEM PECULIAR TO OIL AND GAS

PRODUCERS (ALTHOUGH THE MINING INDUSTRY GETS A SIMILAR IMMEDIATE DEDUCTION); AND THE CREDIT FOR FOREIGN TAXES PAID, AN ITEM AVAILABLE TO MULTINATIONALS UNDER THE FEDERAL INCOME TAX. TO THE EXTENT THAT OTHER ITEMS THAT AFFECT FEDERAL INCOME TAXES AND THROUGH ADOPTION OF THE FEDERAL SYSTEM ALSO AFFECT ALASKA TAXES ARE CONSIDERED EROSIONS, THE BENEFITS OF THOSE EROSIONS ARE SHARED BY ALL ALASKAN TAXPAYERS. THESE ITEMS, USUALLY DEDUCTIONS, THEN DO NOT AFFECT THE RELATIVE TAX BURDEN OF THE OIL AND GAS PRODUCERS AS COMPARED TO OTHER ALASKA TAXPAYERS.

THE DEDUCTION FOR INTANGIBLE DRILLING AND DEVELOPMENT EXPENDITURES PERMITS A TAXPAYER TO TAKE A CURRENT DEDUCTION FOR AN AMOUNT THAT WOULD OTHERWISE BE DEDUCTED OVER A PERIOD OF TIME. IF A CURRENT DEDUCTION WERE NOT PERMITTED, THE TAXPAYER WOULD CAPITALIZE THESE AMOUNTS AS PART OF THE COST OF THE OIL, AND WOULD RECOVER THESE AMOUNTS AS DEDUCTIONS WHEN THE OIL WAS LIFTED FROM THE GROUND AND SOLD. FOR EXAMPLE, IF A TAXPAYER INCURS $10 OF INTANGIBLE DRILLING AND DEVELOPMENT COSTS IN DRILLING A WELL, AND THE OIL IS PRODUCED IN EQUAL AMOUNTS OVER A 10 YEAR PERIOD, THE ALTERNATIVES ARE THESE. THE TAXPAYER MAY TAKE THE $10 AS A DEDUCTION IMMEDIATELY UNDER FEDERAL LAW. IF IT DID NOT, THE ALTERNATIVE FOR THE TAXPAYER WOULD BE TO TAKE A $1 DEDUCTION FOR EACH OF THE 10 YEARS OF PRODUCTION. THE TOTAL DEDUCTION IS THE SAME. TAKING THE DEDUCTION IMMEDIATELY MEANS THAT IT CANNOT BE TAKEN LATER. THE RESULT OF THE CURRENT DEDUCTION IS THAT THE STATE WILL GET ITS TAXES LATER THAN IT OTHERWISE WOULD. BUT THE STATE WILL GET THOSE TAXES.

THE AVAILABILITY OF THE CREDIT FOR FOREIGN TAXES PAID BY MULTINATIONALS APPEARS TO BE THE BASIS FOR THE POSITION TAKEN BY CONGRESSMAN VANIK OF OHIO THAT THE FEDERAL GOVERNMENT IS NOT GETTING ITS TOTAL TAXES FROM MULTINATIONAL CORPORATIONS. USING THE VANIK POSITION AS A STARTING POINT, IT HAS BEEN ARGUED THAT IF THE FEDERAL GOVERNMENT ISN'T GETTING ITS FAIR SHARE, THE STATE OF ALASKA, WHICH USES FEDERAL TAXABLE INCOME AS A STARTING POINT, MUST ALSO NOT BE GETTING ITS FAIR SHARE. REFUTATION OF THIS ARGUMENT REQUIRES AN EXPLANATION OF HOW THE FEDERAL CREDIT WORKS, AND INDEED JUST WHAT A CREDIT IS.

A CREDIT AGAINST TAXES COMES IN AT THE END OF THE PROCESS AFTER THE AMOUNT OF TAX IS DETERMINED. IT IS NOT TAKEN INTO ACCOUNT IN DETERMINING THE AMOUNT OF TAXABLE INCOME THE WAY A DEDUCTION IS. A TAXPAYER STARTS WITH ITS TOTAL TAXABLE RECEIPTS, REDUCES THAT AMOUNT BY THE PERMITTED DEDUCTIONS AND GETS ITS TAXABLE INCOME. TAXABLE INCOME IS MULTIPLIED BY THE APPROPRIATE RATE TO GET THE AMOUNT OF TAX DUE. THAT AMOUNT OF TAX IS THEN REDUCED DIRECTLY BY THE AMOUNT OF THE CREDIT ALLOWED. TO EMPHASIZE THE POINT, THE CREDIT FOR FOREIGN TAXES PAID IS NOT TAKEN INTO ACCOUNT IN COMPUTING THE AMOUNT OF FEDERAL TAXABLE INCOME -- THE CREDIT COMES INTO PLAY ONLY AFTER TAXABLE INCOME HAS BEEN DETERMINED. FOR EXAMPLE, ASSUME A MULTINATIONAL TAXPAYER WITH $150 OF WORLDWIDE RECEIPTS AND $50 OF DEDUCTIBLE EXPENSES. THE TAXPAYER HAS $100 OF TAXABLE INCOME. ASSUMING A FEDERAL INCOME TAX RATE OF 48%, THE TAX ON THE $100 IS $48.

IF THE TAXPAYER HAS PAID FOREIGN INCOME TAXES OF $25, IT IS PERMITTED TO REDUCE ITS TAXES OWED TO THE UNITED STATES BY THAT AMOUNT. THE RESULT WOULD BE THAT THE TAXPAYER WOULD ONLY PAY THE UNITED STATES $23. IT IS THAT $23 OF TAXES PAID IN RELATION TO THE $100 OF TAXABLE INCOME THAT GIVES RISE TO THE POSITION THAT THE FEDERAL GOVERNMENT IS NOT GETTING ITS FAIR SHARE OF THE TAXES FROM THESE TAXPAYERS.

THERE ARE REASONS FOR THE EXISTENCE OF THE FOREIGN TAX CREDIT. BUT THE ARGUMENTS FOR AND AGAINST IT ARE ABSOLUTELY IRRELEVANT TO THE QUESTION OF WHETHER FEDERAL TAXABLE INCOME IS AN APPROPRIATE STARTING POINT FOR COMPUTING ALASKA INCOME TAXES. THAT IS BECAUSE THE CREDIT DOES NOT ENTER INTO THE COMPUTATIONS OF ALASKA TAXABLE INCOME IN ANY WAY. ALASKA APPLIES ITS FORMULA TO FEDERAL TAXABLE INCOME BEFORE THE CREDIT IS TAKEN INTO ACCOUNT FOR FEDERAL PURPOSES. IN TERMS OF THE EXAMPLE GIVEN PREVIOUSLY, ALASKA STARTS WITH THE $100 OF TOTAL TAXABLE INCOME. IT DOES NOT REDUCE THAT INCOME BY THE CREDIT. NOR DOES IT GIVE ANY CREDIT OF ITS OWN FOR FOREIGN TAXES PAID. THE $25 OF FOREIGN INCOME TAXES PAID IS NEVER TAKEN INTO ACCOUNT BY ALASKA. ALASKA DOES NOT EVEN PERMIT IT TO BE TAKEN AS A DEDUCTION FROM INCOME. THUS, THOSE WHO ARGUE THAT BECAUSE THE FEDERAL GOVERNMENT IS GETTING LESS THAN HALF THE APPROPRIATE TAXES IN THE ABOVE EXAMPLE, THE STATE OF ALASKA MUST BE GETTING LESS THAN HALF OF THE 9.4% IT SHOULD GET, ARE SIMPLY IGNORING THE ABSOLUTE IRRELEVANCE OF THE FOREIGN TAX CREDIT TO ALASKA TAXES.

I AM NOT HERE TO TELL THIS COMMITTEE THAT THE FEDERAL METHOD FOR DETERMINING TAXABLE INCOME IS PERFECTION ITSELF. OF COURSE IT IS NOT. THE SYSTEM HAS SHORTCOMINGS AND IS THE SUBJECT OF CONSTANT DEBATE, AND OF CHANGE. I AM ONLY SAYING THAT THE SYSTEM IN USE DOES NOT PLACE THE OIL AND GAS MULTINATIONALS IN A FAVORED POSITION IN COMPARISON TO THOSE CORPORATIONS IN ALASKA THAT ENGAGE IN OTHER KINDS OF OPERATIONS.

THE SECOND OBJECTION TO THE WAY IN WHICH ALASKA DETERMINES THE AMOUNT OF INCOME IT MAY TAX RELATES TO THE FORMULA USED TO DIVIDE INCOME. THAT OBJECTION IS DIRECTLY REFLECTED IN THE BILL UNDER CONSIDERATION BY THIS COMMITTEE. IT WOULD SUBSTITUTE SEPARATE ACCOUNTING FOR THE USE OF A FORMULA AS THE PRINCIPAL METHOD BY WHICH INCOME IS ATTRIBUTED TO ALASKA FOR THE OIL AND GAS INDUSTRY. THE BILL THUS INDICATES A MISTRUST OF THE FORMULA AS APPROPRIATE TO THE TASK OF DIVIDING THE INCOME OF OIL AND GAS PRODUCERS.

WHAT IS A FORMULA AND WHY HAVE ITS VIRTUES WON SO MUCH ACCEPTANCE FOR THAT DEVICE? THE THEORY OF THE FORMULA IS THAT THE TOTAL INCOME OF A TAXPAYER WHOSE BUSINESS CROSSES STATE LINES IS THE RESULT OF THE CONTRIBUTION OF ACTIVITIES OR ITEMS IN ALL THE STATES THAT HAVE A CONNECTION TO THE INCOME. THE INCOME PRODUCED IN ANY ONE STATE IS MEASURED BY THE PROPORTIONS THAT THE ITEMS OCCURRING IN THAT STATE BEAR TO THE TOTAL OF THOSE ITEMS FOUND EVERYWHERE.

OF THE THREE FACTORS THAT MAKE UP THE FORMULA, PROPERTY, PAYROLL, AND SALES, TWO APPEAR TO BE NONCONTROVERSIAL. NO DISSATISFACTION HAS BEEN EXPRESSED WITH THE AMOUNTS OF PROPERTY AND PAYROLL THAT THE FORMULA USES. THE HIGH COSTS OF THESE ITEMS IN ALASKA MEANS THAT PAYROLL AND PROPERTY IN ALASKA ARE RELATIVELY HIGHER THAN IN MOST OTHER JURISDICTIONS. THE PRIMARY REASON FOR MISTRUST OF THE FORMULA AS IT APPLIES TO OIL AND GAS PRODUCERS IS THE SALES FACTOR. THE OBJECTION TO THE SALES FACTOR IS THAT IT THROWS INCOME OUT OF ALASKA INTO OTHER STATES, BECAUSE RELATIVELY SMALL AMOUNTS OF OIL AND GAS ARE CONSUMED IN ALASKA.

THE SALES FACTOR, OF COURSE, DOES NOT OCCUR IN ISOLATION. IT IS BALANCED BY THE PROPERTY AND PAYROLL FACTORS. THAT BALANCING IS INTENTIONAL. THE RESULT IS THAT NO ONE FACTOR HAS TOO LARGE AN INFLUENCE ON THE RESULT. THE HIGH CONCENTRATIONS OF PROPERTY AND PAYROLL IN THE PRODUCING STATES ARE COUNTERWEIGHTS TO THE INFLUENCE OF THE SALES FACTOR. FROM THE STANDPOINT OF THE MARKET STATES, THE SALES FACTOR BALANCES THE CONCENTRATIONS OF PAYROLL AND PROPERTY THAT OCCUR IN THE PRODUCING STATES. BY AVERAGING THE THREE FACTORS, DISTORTION CAUSED BY ANY ONE IS AVOIDED. BUT THE QUESTION IS RAISED AS TO WHETHER IT IS APPROPRIATE TO HAVE A SALES FACTOR IN ANY EVENT.

THE SALES FACTOR IS USED BY ALL STATES THAT HAVE AN APPORTIONMENT FORMULA WITH THE EXCEPTION OF WEST VIRGINIA. THE SALES FACTOR IS IN SUCH WIDESPREAD USE BECAUSE IT IS GENERALLY AGREED THAT IT IS SUCH

THE MARKET STATES, THE PLACE WHERE AN ITEM IS CONSUMED, HAVE A CLAIM TO A PORTION OF THE INCOME. THE EXISTENCE OF MARKETS IN OTHER STATES CLEARLY CONTRIBUTES TO THE INCOME DERIVED FROM OIL AND GAS OPERATIONS IN ALASKA. CONSIDER HOW MUCH INCOME THERE WOULD BE TO TAX IF ALL OF THE OIL AND GAS PRODUCED IN ALASKA HAD TO BE CONSUMED IN ALASKA FOR LACK OF ANY OTHER MARKET.

THE CONTRIBUTION OF THE MARKET TO TOTAL INCOME THAT IS REFLECTED BY INCLUDING A SALES FACTOR IN THE APPORTIONMENT FORMULA IS RECOGNIZED BY OTHER PRODUCING AND MANUFACTURING STATES. NOR HAS ANY SUFFICIENT REASON BEEN FORWARDED WHY A FORMULA DOES NOT WORK FOR THE OIL AND GAS INDUSTRY. IT HAS BEEN SAID THAT THE STATE OF ALASKA IS UNIQUE BECAUSE OF THE EXTENT TO WHICH IT MUST RELY ON THE OIL AND GAS INDUSTRY FOR ITS TAX BASE. IF THAT IS TRUE, IT NEVERTHELESS DOES NOT CHANGE THE AMOUNT OF INCOME OF THE OIL AND GAS PRODUCERS THAT HAS ITS SOURCE IN ALASKA. AND ONE MAY QUESTION THE PREMISE. MICHIGAN, WHICH IS HEAVILY DEPENDENT ON THE AUTOMOBILE INDUSTRY, DOES NOT SINGLE IT OUT FOR A SPECIAL, MORE BURDENSOME, TREATMENT. THE STATE OF ALASKA, OF COURSE, IS NOT BOUND BY WHAT OTHER STATES DO. BUT BEFORE DEPARTING FROM A SYSTEM THAT HAS BEEN ADOPTED IN SO MANY OTHER JURISDICTIONS, THE LEGISLATURE MIGHT WELL CONSIDER THAT THE USE OF THE FORMULA IN OTHER STATES MAY INDICATE THAT THERE ARE GOOD REASONS FOR RETAINING THE FORMULA IN ALASKA.

ANOTHER OBJECTION TO THE FORMULA NOW IN USE THAT HAS BEEN FORWARDED BY THOSE WHO SEEK A CHANGE, IS THAT SOME OTHER METHOD WOULD PRODUCE MORE TAXES FOR ALASKA. THAT IS TRUE. INDEED, IN ESSENCE, THE BILL BEFORE YOU IS A TAX INCREASE ON THE OIL AND GAS INDUSTRY. BUT IT IS NOT RESPONSIVE TO THE QUESTION AS TO WHETHER THE CURRENT SYSTEM, OR THE ALTERNATIVE PROPOSED, GIVES ALASKA ITS FAIR SHARE OF TAXES. IF, AS I AM TRYING TO SHOW, THE CURRENT SYSTEM IS FAIR, AN INCREASE IN INCOME TAXES, IF THAT IS WHAT THE LEGISLATURE WANTS DONE, OUGHT TO BE BORNE BY ALL CORPORATE INCOME TAXPAYERS.

I SHOULD LIKE TO TURN NOW TO THE MERITS OF THE ALTERNATIVE SYSTEM EMBODIED IN THE BILL BEING CONSIDERED BY THIS COMMITTEE. THE ARGUMENT MADE TO SUPPORT THAT BILL IS THAT SEPARATE ACCOUNTING, (OR THE VARIATION OF IT CONTAINED IN THE BILL), IS A MORE ACCURATE WAY OF DETERMINING THE INCOME ATTRIBUTABLE TO ALASKA THAN IS THE USE OF AN ARBITRARY FORMULA. THE ACCURACY CLAIMED FOR SEPARATE ACCOUNTING IS DEEMED TO BE SELF-APPARENT. THE DEVICE CONSIDERS WHAT ACTUALLY GOES ON IN THE STATE IN COMPUTING THE AMOUNT OF INCOME THE STATE SHOULD TAX. THAT IS THE REASON SEPARATE ACCOUNTING WAS FIRST USED. AND SEPARATE ACCOUNTING IS STILL USED, BUT IN A SUBSTANTIALLY DIMINISHED DEGREE.

YOU HAVE HEARD IN PRIOR TESTIMONY ABOUT THE CONSIDERABLE ADMINISTRATIVE DIFFICULTIES CONNECTED WITH SEPARATE ACCOUNTING. IT REQUIRES THE MAINTENANCE BY TAXPAYERS OF EXTENSIVE RECORDS [illegible]

NOT NEEDED FOR OTHER PURPOSES. AUDITS BY THE STATE WOULD BE MORE TIME CONSUMING AND HENCE MORE EXPENSIVE. THE BILL BEFORE YOU ATTEMPTS TO LIMIT THESE DIFFICULTIES, ALTHOUGH MANY REMAIN. IF THESE WERE THE ONLY REASONS AGAINST THE USE OF SEPARATE ACCOUNTING THE LEGISLATURE, AFTER WEIGHING THE EXTENT OF THE ADMINISTRATIVE BURDEN, MIGHT, OR MIGHT NOT, DECIDE THAT THE ACCURACY WAS WORTH THE TROUBLE. THAT WOULD BE FOR THE LEGISLATURE TO DETERMINE. BUT I WOULD LIKE TO DISCUSS THE UNDERLYING CLAIM, THE CLAIM THAT SEPARATE ACCOUNTING IS ACCURATE.

THE VIEW OF MOST OF THOSE WHO HAVE STUDIED THE ISSUE IS THAT SEPARATE ACCOUNTING IS NOT ACCURATE FOR BUSINESSES WHOSE OPERATIONS CROSS STATE LINES. BY FOCUSING ON WHAT GOES ON IN ONE STATE, IT IGNORES WHAT HAPPENS ELSEWHERE. BY CONSTRUCTING AN ARTIFICIAL BUSINESS THAT OPERATES ONLY IN ONE STATE, SEPARATE ACCOUNTING DISREGARDS THE REALITY OF THE BUSINESS BEING TAXED.

THE BILL BEFORE THIS COMMITTEE RECOGNIZES THIS LIMITATION. IT DOES NOT CALL FOR A COMPLETE SEPARATE ACCOUNTING. ONLY INCOME FROM OIL AND GAS PRODUCTION AND PIPELINE TRANSPORTATION IN ALASKA IS ACCOUNTED FOR SEPARATELY. ALL OTHER INCOME IS SUBJECTED TO FORMULARY APPORTIONMENT, AND THIS INCLUDES THE INCOME DERIVED FROM OIL AND GAS PRODUCTION AND PIPELINE TRANSPORTATION IN OTHER JURISDICTIONS. A TRUE SEPARATE ACCOUNTING WOULD NOT TAX PRODUCTION INCOME OUTSIDE ALASKA, NOR SEEK TO REACH ANY OTHER INCOME FROM OPERATIONS OUTSIDE ALASKA. THE

WORKINGS OF THIS BILL CAN ONLY LEAD TO THE SAME INCOME BEING TAXED TWICE, AND IN AN AMOUNT IN EXCESS OF THE DOUBLE TAXATION UNDER A TRUE SEPARATE ACCOUNTING. THAT REALITY ONLY UNDERSCORES THE UNDERLYING NATURE OF THE BILL. IT IS SIMPLY A WAY TO GET MORE TAX DOLLARS FROM THE OIL AND GAS PRODUCERS. IT IS NOT A REFORM.

THE ARTIFICIAL PROVISIONS OF THE BILL THAT CAUSE THE GREATEST DIFFICULTIES ARE THE WAY IN WHICH GROSS INCOME IS DETERMINED AND THE LIMIT ON THE DEDUCTIONS THAT ARE ALLOWED. TO USE PRODUCTION AS AN EXAMPLE, GROSS INCOME IS DETERMINED TO BE THE VALUE OF THE OIL AND GAS PRODUCED AS ESTABLISHED FOR PURPOSES OF THE SEVERANCE TAX. WITHOUT REFERENCE TO THE QUESTION WHETHER THAT VALUE IS ACCURATE AS A VALUE, I WOULD LIKE TO POINT OUT THAT THE BILL CONFUSES VALUE FOR PURPOSES OF A PROPERTY OR A SEVERANCE TAX WITH THE ISSUE OF THE SOURCES OF INCOME, WHICH IS THE QUESTION TO BE CONSIDERED IN DIVIDING INCOME AMONG THE STATES.

THE CONTRIBUTION OF OTHER STATES TO THE VALUE OF PROPERTY IS IRRELEVANT IN A PROPERTY TAX OR A SEVERANCE TAX. THOSE OTHER STATES CANNOT TAX THOSE VALUES. ONLY THE STATE IN WHICH THE PROPERTY IS LOCATED OR FROM WHOSE GROUND IT WAS SEVERED MAY DO SO. THE CONTRIBUTION OF OTHER STATES TO VALUE MAKE ALL THE DIFFERENCE IN AN INCOME TAX, BECAUSE THAT VALUE IS TRANSFORMED TO INCOME TO WHICH THOSE OTHER STATES HAVE A CLAIM. THE VALUE OF OIL AND GAS IN ALASKA IS INCREASED BECAUSE THE OIL AND GAS

WILL BE TRANSPORTED TO, AND EVENTUALLY SOLD IN, OTHER STATES. A PROPERTY TAX OR A SEVERANCE TAX IS STATIC. THE QUESTION IS VALUE IN ONE STATE AT ONE POINT IN TIME. AN INCOME TAX IS THE RESULT OF TRANSACTIONS, WHICH HERE CROSS STATE LINES.

BECAUSE OTHER STATES AGREE THAT THE USE OF A FORMULA IS APPROPRIATE FOR THE OIL AND GAS INDUSTRY, THEY WILL BE TAXING THE SAME VALUES ALASKA TAXES. IF THE PRESENT SYSTEM WERE WRONG, THERE EXISTS A MECHANISM FOR SOLVING ALASKA'S PERCEIVED PROBLEM WITHOUT SUBJECTING THE OIL AND GAS INDUSTRY TO MULTIPLE TAXATION. ALASKA IS A MEMBER OF THE MULTISTATE TAX COMPACT. THE ALASKA COMMISSIONER OF REVENUE IS AN OFFICER OF THE MULTISTATE TAX COMMISSION. HE, ON HIS OWN INITIATIVE, OR PERHAPS AT THE DIRECTION OF THE LEGISLATURE, COULD WORK WITHIN THAT BODY FOR THE ADOPTION OF UNIFORM REGULATIONS EMBODYING A NEW SYSTEM. ALASKA COULD PRESENT ITS POSITION ON THE APPROPRIATE METHOD OF DIVIDING INCOME OF OIL AND GAS PRODUCERS AND HAVE IT EVALUATED BY A GROUP COMPOSED OF THE TAX ADMINISTRATORS OF OTHER STATES. AND I RECOMMEND THAT PROCEDURE TO HIM.

THE ARTIFICIALITYOF THE BILL IS ALSO EVIDENCED BY ITS TREATMENT OF DEDUCTIONS. ONLY DIRECT EXPENSES OF EXPLORATION AND PRODUCTION, AND A LIMITED AMOUNT OF INTEREST EXPENSE ARE PERMITTED AS DEDUCTIONS FROM OIL AND GAS PRODUCTION INCOME AS DETERMINED FOR ALASKA. ALL OVERHEAD AND OTHER INDIRECT EXPENSES ARE DISALLOWED. THERE ARE, NEVERTHELESS, ACTUAL COSTS WITH A RELATIONSHIP TO

THE PRODUCTION OF OIL IN ALASKA. AGAIN, THE BILL RECOGNIZES INTERNALLY THE ARTIFICIAL NATURE OF THESE LIMITS. THOSE DEDUCTIONS DISALLOWED MAY BE TAKEN INTO ACCOUNT IN COMPUTING THE INCOME FROM OTHER OPERATIONS, AND THE NET INCOME FROM THESE COMPUTATIONS ARE SUBJECTED TO THE SPECIAL APPORTIONMENT FORMULA IN THE BILL. THE RESULT OF THIS IS THAT OVERHEAD AND OTHER INDIRECT EXPENSES RELATING TO PRODUCTION INCOME ARE ATTRIBUTED TO OTHER OPERATIONS THAT TAKE PLACE OUTSIDE THE STATE. ONLY A SMALL PROPORTION OF THOSE THAT WOULD OTHERWISE REDUCE INCOME IN ALASKA END UP AS EFFECTIVE DEDUCTIONS. WHAT YOU THEN WOULD HAVE IS SOMETHING PART WAY BETWEEN AN INCOME TAX AND A GROSS RECEIPTS TAX -- NEITHER FISH NOR FOWL -- BUT AT INCOME TAX RATES THAT FAR EXCEED RATES UNDER A GROSS RECEIPTS TAX.

I HOPE THAT I HAVE BEEN ABLE TO DEMONSTRATE FOR YOU THAT THE OIL AND GAS INDUSTRY IS NOT PAYING INCOME TAXES AT A LOWER EFFECTIVE RATE THAN LOCAL TAXPAYERS PAY, AND THAT THE ALTERNATIVE PROPOSED CREATES INEQUITY RATHER THAN ABOLISHING IT. BEFORE CLOSING, I WOULD LIKE TO RAISE BRIEFLY SOME OTHER ISSUES CONNECTED WITH THE BILL.

BEYOND THE INACCURACIES THAT RESULT FROM THE USE OF SEPARATE ACCOUNTING, THE BILL RAISES SEVERAL LEGAL QUESTIONS. THE UNITED STATES SUPREME COURT HAS RECENTLY RECOGNIZED THAT TAXES TAILORED FOR SPECIAL INDUSTRIES MAY VIOLATE THE COMMERCE CLAUSE. THE

VERY MAGNITUDE OF THE INCREASE IN TAXES OVER WHAT WOULD HAVE BEEN OWING IN A PRIOR YEAR HAS BEEN CONSIDERED OF SIGNIFICANCE BY THAT COURT IN DECIDING A QUESTION OF APPORTIONMENT UNDER A TAX ON THE ROLLING STOCK OF A RAILROAD. QUESTIONS HAVE ALSO BEEN RAISED ABOUT THE ABILITY OF THE STATE OF ALASKA TO CONTINUE ITS MEMBERSHIP IN THE MULTISTATE TAX COMMISSION. I WOULD NOT PRESUME TO ADVISE YOU ON HOW ANY OF THOSE QUESTIONS WOULD BE DECIDED. I CAN ONLY SAY THAT THE PROBLEMS ARE REAL ONES. THE UNCERTAINTIES THAT THEY RAISE ARE CERTAINLY APPROPRIATE FOR THE LEGISLATURE TO CONSIDER IN THE PROCESS OF REACHING A DECISION ON THIS BILL.

THE BILL BEFORE THIS COMMITTEE HAS A FLAW THAT GOES BEYOND THE INTERNAL DEFECTS OF THE PROPOSAL. THE BILL IS A STEP AWAY FROM THE GOAL OF UNIFORMITY THAT PROMPTED THE ENACTMENT OF THE UNIFORM DIVISION OF INCOME ACT AND THE ADOPTION OF THE MULTI-STATE TAX COMPACT BY THE STATE OF ALASKA. THE LEGISLATURE MAY DECIDE THAT UNIFORMITY WITH THE LAWS OF OTHER STATES, AND THE BENEFITS TO THE STATE AND TO TAXPAYERS THAT UNIFORMITY PROVIDES MUST BE SUBORDINATED TO OTHER INTERESTS OF THE STATE OF ALASKA. BUT THE BENEFITS OF UNIFORMITY DO DESERVE TO BE WEIGHED IN THE DECISION MAKING PROCESS. IN THAT BALANCE THE DIFFICULTIES OF SEPARATE ACCOUNTING, ITS INACCURACIES, AND THE DEFECTS OF THE BILL BEFORE THIS COMMITTEE, INCLUDING THE LEGAL QUESTIONS IT RAISES ALSO DESERVE CONSIDERATION. THE PRESENT SYSTEM OF DIVIDING CORPORATE INCOME HAS SERVED ALASKA WELL UP TO THIS POINT. ITS CONTINUED USE WOULD SERVE ALASKA WELL IN THE FUTURE.

GARY I. BOREN

Biographical Information

Education:

Bachelor of Arts, University of California, Los Angeles - 1957

Bachelor of Laws, University of California, Los Angeles - 1961

Member of the Order of the Coif
Note and Comment Editor, U.C.L.A. Law Review

Professional:

Professor of Law and Director of the Graduate Tax Program, Washington University School of Law, St. Louis, Missouri

Assistant Professor - 1967-1971
Associate Professor - 1971-1975
Professor - 1975-Present

Private practice, Los Angeles, California - 1961-1967

Member State Bar of California

Major Publications:

Equitable Apportionment: Administrative Discretion and Uniformity in the Division of Corporate Income for State Tax Purposes
49 So. Cal. L. Rev. 991 (1976)

Specific Allocation of Corporate Income in California: Some Problems in the Uniform Division of Income for Tax Purposes
30 TAX. L. REV. 607 (1975)

Separate Accounting in California and Uniformity in Apportioning Corporate Income
18 U.C.L.A. L. REV. 478 (1971)

Courses Taught:

*State and Local Taxation
*Federal Income Taxation
*Federal and Estate Gift Taxation
*Seminar in Tax Policy and Current Legislation
Seminar in Advanced Tax Research
Natural Resources

*Courses taught currently

STATEMENT

OF THE DOW CHEMICAL COMPANY

For the Hearing Conducted by the

Alaska Senate Resources Committee

Juneau, Alaska

March 18, 1977

By J. H. Davidson
Technical Advisor
Dow Chemical U.S.A.
Midland, Michigan

J.H. DAVIDSON

Mr. Chairman,

My name is John Davidson and I am a Technical Advisor in the Agricultural Products Department of Dow Chemical U.S.A. Since graduation from Michigan State University in 1937, I have been employed by Dow working in the area of research and development with agricultural chemicals, among them formulations of 2,4,5-trichlorophenoxyacetic acid (2,4,5-T) and 2,4-dichlorophenoxyacetic acid (2,4-D) which you are discussing today.

This statement expressing the position of The Dow Chemical Company regarding 2,4,5-T and 2,4-D concerns the registered uses for 2,4,5-T as given on the ESTERON 245 and ESTERON 99 Concentrate labels, copies of each are attached. These labels are registered by the United States Environmental Protection Agency as EPA Registration No. 464-205-AA and No. 464-201-AA.

The Dow Chemical Company believes that the federal EPA registration adequately covers the requirements for safe use of 2,4,5-T and 2,4-D and may be summarized in the following statements:

1. The 2,4,5-T and 2,4-D herbicide products presently registered comply with the provisions of the Federal Insecticide, Fungicide and Rodenticide Act as amended.

2. 2,4,5-T and 2,4-D herbicides will perform their intended function without unreasonable adverse effects on the environment.

3. When used in accordance with widespread and commonly recognized practice, 2,4,5-T and 2,4-D will not cause unreasonable adverse effects on the environment as defined by the Federal Insecticide, Fungicide and Rodenticide Act as amended.

4. The registrations of 2,4,5-T and 2,4-D containing herbicides should not be cancelled or any classification changed.

The prohibition of 2,4,5-T used around the home, recreation areas, on lakes, ponds and ditch banks is frequently cited as a reason for severely restricting its use in other areas. Clarification of this point by relating some of the background information may be of help.

Shortly before EPA became operative in April of 1970 a joint announcement by the Secretaries of Agriculture, Interior and Health Education and Welfare was issued suspending the use of 2,4,5-T around the home, recreation areas, on lakes, ponds, ditch banks and food crops. This was prompted primarily because 2,4,5-T was under investigation as an ingredient in a defoliant used in the Vietnam War. An objection was filed regarding suspension of 2,4,5-T on food crops but not for the use of 2,4,5-T around homes, recreation areas, on lakes, ponds, and ditch banks. At the time, these uses of 2,4,5-T were not considered important, and the benefits to be derived from questioning the suspension order apparently did not outweigh even the costs of opposing such an action. In addition, alternative and reasonably acceptable herbicides were available. Despite extensive investigation, no evidence has been developed that there is any hazard from the use of 2,4,5-T around the home, recreation areas, on lakes, ponds, ditch banks and food crops.

A brief discussion on the use of phenoxy herbicides is presented in the report entitled "Phenoxy Herbicides" recently prepared by the Council for Agricultural Science and Technology. A copy of this report is attached. The authors of this report are recognized experts in their respective fields. Several paragraphs from this report are pertinent to the issues covered in this statement and will be quoted here.

From the Summary.

The phenoxy herbicides are predominantly toxic to green plants and are much less toxic to mammals, birds, fish, reptiles, shellfish, insects, worms, fungi and bacteria. When properly used, they do not occur in soils and water at levels harmful to animals and microorganisms. They do not concentrate in food chains and do not persist from year to year in croplands. They are detectable only rarely in food and then only in insignificant amounts.

A highly poisonous kind of dioxin called TCDD is an unavoidable contaminant in commercial supplies of 2,4,5-T and silvex. The amount present in currently produced formulations of 2,4,5-T and silvex is not enough to alter the toxicological properties of these preparations or to endanger human health or to affect plants or animals in the environment.

The phenoxy herbicides are widely used because they are more efficient and usually less hazardous and less injurious to the environment than alternative methods. Use of these chemicals is estimated to reduce the cost of production of the crops on which they are used by about 5% and to reduce overall agricultural production costs in the United States by about 1%. Uses in forests and nonagricultural situations provide additional savings. If the phenoxys were no longer available, the cost of food, forest products, electric power, transportation and governmental services would be higher. These costs would be borne by consumers.

From the Residue Section, p. 17.

Residues of the phenoxy herbicides leached into the soil are bound to some extent by soil particles and are held in the upper part of the soil. They do not leach into water tables and contaminate wells and springs, nor do they move significantly into streams or to adjacent areas from surface runoff. However, wind or water erosion that carries major quantities of soil would also transport herbicide residues if any were present. The diluting effect of the soil is such that levels of the phenoxy herbicide in the root zone of plants are extremely low. Normally the levels are not sufficient to injure green plants or to affect non-green organisms such as bacteria, fungi, worms, insects and rodents.

The phenoxys are, without exception, subject to decomposition by various microorganisms that are universally present in soils. When applied to soils at typical agricultural rates, 2,4-D is usually decomposed in one to four weeks. MCPA requires about six weeks and 2,4,5-T about three months for essentially complete destruction. Silvex degradation is slightly slower than that of 2,4,5-T. Thus the phenoxy herbicides do not build up in the soil, and treatments can be applied to croplands year after without accumulation.

From the Dioxin Section, p. 19.

TCDD sprayed into waters rapidly disappears, evidently due to vapor distillation into the atmosphere and to decomposition by sunlight provided the waters contain small amounts of organic compounds. It is known that TCDD can bioaccumulate in algae, snails and fish. This property is of no practical interest, however, since there is no

substantial supply of the chemical in the environment subject to accumulation. Analyses reveal that accumulation in food-chain organisms is not a problem. Measurable levels of TCDD have not been found in herring gulls, sea lions, eagles, cormorants, butterfish, eels, chain pickerels and large bodies of fresh and salt water. It has not been possible to detect TCDD in American supplies of food and feed and in fish meal.

In order to assure appropriate quality assurance of 2,4,5-T herbicides as produced by The Dow Chemical Company certain analyses are made on each lot of product produced. In addition to certain routine analyses on 2,4,5-T and silvex an examination of each lot is made to assure compliance with the recommendation on 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD).

In the "Report of the Advisory Committee on 2,4,5-T to the Administrator of the Environmental Protection Agency" submitted in May of 1971, recommendations were included regarding quality control of the manufactured product. These included a limit of 0.1 ppm TCDD in all future production and the surveillance by the EPA of products on the market. The Dow Chemical Company analyzes each lot of product containing 2,4,5-T to be certain that it complies with this recommendation. To the best of my knowledge, EPA inspectors periodically collect samples from dealer shelves and retainer samples from the manufacturer for purposes of determining compliance with this recommendation.

In June of 1974 the United States Environmental Protection Agency withdrew the formal hearing on 2,4,5-T due to lack of data. Prior to this withdrawal several conferences were held by experts from United States Environmental Protection Agency, United States Department of Agriculture, Food and Drug Administration, Environmental Defense Fund, Dow and

others in which studies on toxicology, analytical methodology and environmental samples were discussed in detail. As a result of the information presented at these meetings and supplied in the preparation for the public hearing, the United States Environmental Protection Agency withdrew the intent to hold hearings on 2,4,5-T, silvex and herbicides potentially containing 2,3,7,8-tetrachlorodibenzo-p-dioxin and withdrew its cancellation of the registration of 2,4,5-T in rice fields, the only food crop use of significance. This notice of withdrawal was printed in the Federal Register, Vol. 39, No. 126, June 28, 1974. A copy is attached.

Registration requirements of the United States Environmental Protection Agency include information to support the safe use of these products when used according to label instructions. This safety information applies to humans, wildlife and livestock.

The U.S. Environmental Protection Agency has established the following maximum contaminant levels for the organic chemicals 2,4-D and silvex in community water systems:

2,4-D	0.1 milligrams per liter (ppm)
silvex	0.01 milligrams per liter (ppm)

See attached Federal Register December 24, 1975, p. 59571.

Formulations of 2,4,5-T and 2,4-D are registered for sale in all states and in all provinces of Canada.

We therefore oppose any additional restrictions on the use of 2,4-D or 2,4,5-T.

Respectfully submitted,

J. H. Davidson
Dow Chemical U.S.A.
Midland, Michigan

2,4,5-TRICHLOROPHENOXYACETIC ACID AND HERBICIDES POTENTIALLY CONTAINING TETRACHLORODIOXIN

Withdrawal of Cancellation and Withdrawal of Intent to Hold Hearings

Please take notice that pursuant to the authority vested in me by sections 6(b)(1) and 6(b)(2) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended, I hereby withdraw the order of cancellation of 2,4,5-Trichlorophenoxyacetic Acid (2,4,5-T) only insofar as it relates to rice dated August 6, 1971 (36 FR 14777, August 11, 1971) and I further withdraw (1) the notice of intent to hold hearing on all registered uses of 2,4,5-T dated July 19, 1973 (38 FR 19859–60, July 24, 1973) and (2) the notice of intent to hold hearing on all registered uses of herbicides derived from 2,4,5 Trichlorophenol, including Silvex and Erbon, dated May 10, 1974 (39 FR 17466, May 16, 1974). All suspensions of uses of 2,4,5-T remain in effect, and all cancellations of uses of 2,4,5-T for which a hearing was not requested similarly remain in effect. See also USDA–PRD, PR 70–11, April 20, 1970 and USDA–PRD, PR 70–13, May 1, 1970.

Accordingly, I hereby withdraw the proceedings initiated by the aforementioned Order and Notices (FIFRA Consolidated Docket No. 295) and the new proceeding (FIFRA Docket No. 302) initiated by the Notice dated May 10, 1974 (39 FR 17466, May 16, 1974).

I take these actions for the reasons given in the statement which accompanies this notice and without prejudice to the issuance of such orders or notices in the future if such issuance is warranted in the judgment of the appropriate officials of this Agency.

Dated: June 24, 1974.

JOHN QUARLES,
Acting Administrator.

[FR Doc.74–14920 Filed 6–27–74;8:45 am]

2,4,5-TRICHLOROPHENOXYACETIC ACID AND HERBICIDES POTENTIALLY CONTAINING TETRACHLORODIOXIN

Residue Monitoring Program

Concern over the use of 2,4,5-Trichlorophenoxyacetic Acid (2,4,5-T) in the United States initially arose when 2,4,5-T was used as a defoliant during the Vietnamese War. On August 6, 1971 this agency issued an order reaffirming cancellation of 2,4,5-T on food crops for human consumption (36 FR 14777, August 11, 1971), and on July 19, 1973 the Agency issued a notice of intent to hold hearing on all registered uses of 2,4,5-T (38 FR 19859–60, July 24, 1973) pursuant to section 6(b)(2) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended. A similar section 6(b)(2) notice of intent to hold hearing on all registered herbicides derived from 2,4,5-Trichlorophenol, including Silvex and Erbon, was issued on May 10, 1974 (39 FR 17466, May 16, 1974).

All herbicides derived from 2,4,5-Trichlorophenol, including 2,4,5-T, Silvex and Erbon, have the potential of containing tetrachlorodioxin (TCDD). As study of 2,4,5-T by this Agency continued, concern focused on the contaminant TCDD. By 1973 residue monitoring devices had been developed that appeared capable of monitoring TCDD in parts per trillion (ppt), the degree of sensitivity needed for measurement of TCDD in man and the human food chain. The 1973 notice specifically delayed the hearing on 2,4,5-T until April 1974 "to permit the Agency to complete an environmental and human monitoring project on the presence of the tetrachlorodioxin impurity found in 2,4,5-T and the extent to which the dioxin may adversely affect human and animal health." (38 FR 19860, July 24, 1973). The residue monitoring program was the only means available to determine if TCDD is bioaccumulating in man and the human food chain. Without the answer to the question of bioaccumulation, the danger of TCDD cannot be assessed.

As reported by attorneys of this Agency on March 21, 1974 in FIFRA Consolidated Docket No. 295, methodological problems have delayed the TCDD residue monitoring project. Since that date, the methodological problems have not been solved. Problems at first thought to relate only to human and rice samples now are found to relate to all samples. No date for completion of the TCDD residue monitoring can be given, and in fact, completion of the project by the Agency may be two or more years away.

Under the circumstances, it does not seem appropriate to continue administrative proceedings when the evidence which would largely determine the outcome of those proceedings remains scientifically unavailable. The Agency will continue its TCDD residue monitoring program and will take such further action as it deems appropriate once the results of the monitoring project are available.

Dated: June 24, 1974.

JOHN QUARLES,
Acting Administrator.

[FR Doc.74–14921 Filed 6–27–74;8:45 am]

WEDNESDAY, DECEMBER 24, 1975

VOLUME 40
NUMBER 248

PART IV:

ENVIRONMENTAL PROTECTION AGENCY

WATER PROGRAMS

National Interim Primary Drinking Water Regulations

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER D—WATER PROGRAMS

[FRL 464-7]

PART 141—NATIONAL INTERIM PRIMARY DRINKING WATER REGULATIONS

On March 14, 1975, the Environmental Protection Agency (EPA) proposed National Interim Primary Drinking Water Regulations pursuant to sections 1412, 1414, 1415, and 1450 of the Public Health Service Act ("the Act"), as amended by the Safe Drinking Water Act ("SDWA" Pub. L. 93-523), 40 FR 11990. EPA held public hearings on the proposed regulations in Boston, Chicago, San Francisco, and Washington during the month of April. Several thousand pages of comments on the proposed regulations were received and evaluated. In addition, the Agency has received comments and information on the proposed regulations from the National Drinking Water Advisory Council, the Secretary of Health, Education, and Welfare, and from numerous others during meetings with representatives of State agencies, public interest groups and others.

The regulations deal only with the basic legal requirements. Descriptive material will be provided in a guidance manual for use by public water systems and the States.

The purpose of this preamble to the final regulations is to summarize the most significant changes made in the proposed regulations as a result of comments received and the further consideration of available information. A more detailed discussion of the comments and of changes in the proposed regulations is attached as Appendix A.

Water Systems Covered

The Safe Drinking Water Act applies to each "public water system," which is defined in Section 1401(4) of the Act as "a system for the provision to the public of piped water for human consumption, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals." Privately owned as well as publicly owned systems are covered. Service "to the public" is interpreted by EPA to include factories and private housing developments. (See generally, House Report, pp. 16-17.)

The definition of "public water system" proposed in the Interim Primary Drinking Water Regulations sought to explain the meaning of the statutory reference to "regular" service. It was proposed to interpret this term as including service for as much as three months during the year. Because the proposed definition would have excluded many large campgrounds, lodges, and other public accommodations which serve large numbers of tourists but which are open for slightly less than three months each year, the definition in the final version covers systems serving an average of at least twenty-five individuals at least 60 days out of the year. The use of a minimum number of days rather than months also makes clear that a system may qualify as a public water system even if it is not open every day during a given month.

Once "public water system" has been defined, it is necessary to define the two major types of public water systems—those serving residents and those serving transients or intermittent users. The possible health effects of a contaminant in drinking water in many cases are quite different for a person drinking the water for a long period of time than for a person drinking the water only briefly or intermittently. Different regulatory considerations may in some cases apply to systems which serve residents as opposed to systems which serve transients or intermittent users. Accordingly, § 141.2(e) makes clear that all "public water systems" fall within either the category of "community water systems" or the category of "non-community water systems." To make clear which regulatory requirements apply to which type of system, the category covered is specifically indicated throughout the regulations.

The proposed regulations defined a "community water system" as "a public water system which serves a population of which 70 percent or greater are residents." Reliance in the proposed definition on the percentage of water system users who are residents would result in treating some fairly large resort communities with many year-round residents as non-community systems. Therefore, the definition of "community water system" has been changed to cover any system which serves at least 15 service connections used by year-round residents or serves at least 25 year-round residents.

Small Community Water Systems

Many community water systems in the country are quite small, since it is the intention of the Act to provide basically the same level of health protection to residents of small communities as to residents of large cities, and since a number of advanced water treatment techniques are made feasible only by economies of scale, the cost of compliance with the requirements of the Act may pose a serious problem for many small communities. The regulations seek to recognize the financial problems of small communities by requiring more realistic monitoring for systems serving fewer than 1,000 persons. Variances and exemptions authorized by the Act can also assist in dealing with economic problems of small community systems in appropriate cases, at least temporarily. EPA will provide technical assistance on effective treatment techniques which can be used by small systems.

These methods of dealing with the financial problems of some small community systems may not be sufficient in specific instances to make compliance with all applicable regulatory requirements feasible. EPA is commencing a study of potential problems faced by small community systems in meeting applicable requirements under the Act and these regulations, and, if necessary, will make additional adjustments in the Interim Primary Drinking Water Regulations prior to their effective date.

Non-Community Systems

"Non-community systems" are basically those systems which serve transients. They include hotels, motels, restaurants, campgrounds, service stations, and other public accommodations which have their own water system and which have at least 15 service connections or serve water to a daily average of at least 25 persons. Some schools, factories and churches are also included in this category. It is conservatively estimated that there are over 200,000 non-community water systems in the country. However, it should be recognized that while their number is large, they normally are not the principal source of water for the people they serve.

The regulations as proposed would have applied all maximum contaminant levels to non-community systems as well as to community systems. This approach failed to take into account the fact that the proposed maximum contaminant levels for organic chemicals and most inorganic chemicals were based on the potential health effects of long-term exposure. Those levels are not necessary to protect transients or intermittent users. Therefore, the final regulations provide that maximum contaminant levels for organic chemicals, and for inorganic chemicals other than nitrates, are not applicable to non-community systems. An exception was made for nitrates because they can have an adverse health effect on susceptible infants in a short period of time.

Even without monitoring for organic chemicals or most inorganic chemicals, in the initial stages of implementation of the drinking water regulations, monitoring results from tens of thousands of non-community systems could overwhelm laboratory capabilities and other resources. This could delay effective implementation of the regulations with respect to the community systems which provide the water which Americans drink every day. To avoid this result, non-community systems will be given two years after the effective date of the regulations to commence monitoring. In the meantime, non-community systems which already monitor their water are encouraged to continue to do so, and the States are encouraged to take appropriate measures to test or require monitoring for non-community systems that serve large numbers of people.

Of course, non-community systems which pose a threat to health should be dealt with as quickly as possible. The maximum contaminant levels applicable to non-community water systems therefore will take effect 18 months after promulgation, at the same time as levels applicable to community systems. Inspection and enforcement authority will apply to non-community systems at the same time as to community systems.

Sanitary Surveys

EPA encourages the States to conduct sanitary surveys on a systematic basis,

Sec.
141.22 Turbidity sampling and analytical requirements.
141.23 Inorganic chemical sampling and analytical requirements.
141.24 Organic chemical sampling and analytical requirements.
141.27 Alternative analytical techniques.
141.28 Approved laboratories.
141.29 Monitoring of consecutive public water systems.

Subpart D—Reporting, Public Notification, and Record-keeping

141.31 Reporting requirements.
141.32 Public notification of variances, exemptions, and non-compliance with regulations.
141.33 Record maintenance.

AUTHORITY: Secs. 1412, 1414, 1445, and 1450 of the Public Health Service Act, 88 Stat. 1660 (42 U.S.C. 300g-1, 300g-3, 300j-4, and 300j-9).

Subpart A—General

§ 141.1 Applicability.

This part establishes primary drinking water regulations pursuant to section 1412 of the Public Health Service Act, as amended by the Safe Drinking Water Act (Pub. L. 93-523); and related regulations applicable to public water systems.

§ 141.2 Definitions.

As used in this part, the term:

(a) "Act" means the Public Health Service Act, as amended by the Safe Drinking Water Act, Pub. L. 93-523.

(b) "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.

(c) "Maximum contaminant level" means the maximum permissible level of a contaminant in water which is delivered to the free flowing outlet of the ultimate user of a public water system, except in the case of turbidity where the maximum permissible level is measured at the point of entry to the distribution system. Contaminants added to the water under circumstances controlled by the user, except those resulting from corrosion of piping and plumbing caused by water quality, are excluded from this definition.

(d) "Person" means an individual, corporation, company, association, partnership, State, municipality, or Federal agency.

(e) "Public water system" means a system for the provision to the public of piped water for human consumption, if such system has at least fifteen service connections or regularly serves an average of at least twenty-five individuals daily at least 60 days out of the year. Such term includes (1) any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system, and (2) any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. A public water system is either a "community water system" or a "non-community water system."

(f) "Community water system" means a public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

(g) "Non-community water system" means a public water system that is not a community water system.

(h) "Sanitary survey" means an on-site review of the water source, facilities, equipment, operation and maintenance of a public water system for the purpose of evaluating the adequacy of such source, facilities, equipment, operation and maintenance for producing and distributing safe drinking water.

(i) "Standard sample" means the aliquot of finished drinking water that is examined for the presence of coliform bacteria.

(j) "State" means the agency of the State government which has jurisdiction over public water systems. During any period when a State does not have primary enforcement responsibility pursuant to Section 1413 of the Act, the term "State" means the Regional Administrator, U.S. Environmental Protection Agency.

(k) "Supplier of water" means any person who owns or operates a public water system.

§ 141.3 Coverage.

This part shall apply to each public water system, unless the public water system meets all of the following conditions:

(a) Consists only of distribution and storage facilities (and does not have any collection and treatment facilities);

(b) Obtains all of its water from, but is not owned or operated by, a public water system to which such regulations apply;

(c) Does not sell water to any person; and

(d) Is not a carrier which conveys passengers in interstate commerce.

§ 141.4 Variances and exemptions.

Variances or exemptions from certain provisions of these regulations may be granted pursuant to Sections 1415 and 1416 of the Act by the entity with primary enforcement responsibility. Provisions under Part 142, *National Interim Primary Drinking Water Regulations Implementation*—subpart E (Variances) and subpart F (Exemptions)—apply where EPA has primary enforcement responsibility.

§ 141.5 Siting requirements.

Before a person may enter into a financial commitment for or initiate construction of a new public water system or increase the capacity of an existing public water system, he shall notify the State and, to the extent practicable, avoid locating part or all of the new or expanded facility at a site which:

(a) Is subject to a significant risk from earthquakes, floods, fires or other disasters which could cause a breakdown of the public water system or a portion thereof; or

(b) Except for intake structures, is within the floodplain of a 100-year flood or is lower than any recorded high tide where appropriate records exist.

The U.S. Environmental Protection Agency will not seek to override land use decisions affecting public water systems siting which are made at the State or local government levels.

§ 141.6 Effective date.

The regulations set forth in this part shall take effect 18 months after the date of promulgation.

Subpart B—Maximum Contaminant Levels

§ 141.11 Maximum contaminant levels for inorganic chemicals.

(a) The maximum contaminant level for nitrate is applicable to both community water systems and non-community water systems. The levels for the other inorganic chemicals apply only to community water systems. Compliance with maximum contaminant levels for inorganic chemicals is calculated pursuant to § 141.23.

(b) The following are the maximum contaminant levels for inorganic chemicals other than fluoride:

Contaminant	*Level, milligrams per liter*
Arsenic	0.05
Barium	1.
Cadmium	0.010
Chromium	0.05
Lead	0.05
Mercury	0.002
Nitrate (as N)	10.
Selenium	0.01
Silver	0.05

(c) When the annual average of the maximum daily air temperatures for the location in which the community water system is situated is the following, the maximum contaminant levels for fluoride are:

Temperature Degrees Fahrenheit	Degrees Celsius	Level, milligrams per liter
53.7 and below	12.0 and below	2.4
53.8 to 58.3	12.1 to 14.6	2.2
58.4 to 63.8	14.7 to 17.6	2.0
63.9 to 70.6	17.7 to 21.4	1.8
70.7 to 79.2	21.5 to 26.2	1.6
79.3 to 90.5	26.3 to 32.5	1.4

§ 141.12 Maximum contaminant levels for organic chemicals.

The following are the maximum contaminant levels for organic chemicals. They apply only to community water systems. Compliance with maximum contaminant levels for organic chemicals is calculated pursuant to § 141.24.

	Level, milligrams per liter
(a) Chlorinated hydrocarbons:	
Endrin (1,2,3,4,10, 10-hexachloro-6,7-epoxy-1,4, 4a,5,6,7,8,8a-octahydro-1,4-endo, endo-5,8 - dimethano naphthalene).	0.0002
Lindane (1,2,3,4,5,6-hexachlorocyclohexane, gamma isomer).	0.004
Methoxychlor (1,1,1-Trichloro-2, 2 - bis [p-methoxyphenyl] ethane).	0.1
Toxaphene ($C_{10}H_{10}Cl_8$-Technical chlorinated camphene, 67-69 percent chlorine).	0.005

(b) Chlorophenoxys:	
2,4-D, (2,4-Dichlorophenoxyacetic acid)	0.1
2,4,5-TP Silvex (2,4,5-Trichlorophenoxypropionic acid)	0.01

§ 141.13 Maximum contaminant levels for turbidity.

The maximum contaminant levels for turbidity are applicable to both community water systems and non-community water systems using surface water sources in whole or in part. The maximum contaminant levels for turbidity in drinking water, measured at a representative entry point(s) to the distribution system, are:

(a) One turbidity unit (TU), as determined by a monthly average pursuant to § 141.22, except that five or fewer turbidity units may be allowed if the supplier of water can demonstrate to the State that the higher turbidity does not do any of the following:

(1) Interfere with disinfection;

(2) Prevent maintenance of an effective disinfectant agent throughout the distribution system; or

(3) Interfere with microbiological determinations.

(b) Five turbidity units based on an average for two consecutive days pursuant to § 141.22.

§ 141.14 Maximum microbiological contaminant levels.

The maximum contaminant levels for coliform bacteria, applicable to community water systems and non-community water systems, are as follows:

(a) When the membrane filter technique pursuant to § 141.21(a) is used, the number of coliform bacteria shall not exceed any of the following:

(1) One per 100 milliliters as the arithmetic mean of all samples examined per month pursuant to § 141.21 (b) or (c);

(2) Four per 100 milliliters in more than one sample when less than 20 are examined per month; or

(3) Four per 100 milliliters in more than five percent of the samples when 20 or more are examined per month.

(b) (1) When the fermentation tube method and 10 milliliter standard portions pursuant to § 141.21(a) are used, coliform bacteria shall not be present in any of the following:

(i) more than 10 percent of the portions in any month pursuant to § 141.21 (b) or (c);

(ii) three or more portions in more than one sample when less than 20 samples are examined per month; or

(iii) three or more portions in more than five percent of the samples when 20 or more samples are examined per month.

(2) When the fermentation tube method and 100 milliliter standard portions pursuant to § 141.21(a) are used, coliform bacteria shall not be present in any of the following:

(i) more than 60 percent of the portions in any month pursuant to § 141.21 (b) or (c);

(ii) five portions in more than one sample when less than five samples are examined per month; or

(iii) five portions in more than 20 percent of the samples when five or more samples are examined per month.

(c) For community or non-community systems that are required to sample at a rate of less than 4 per month, compliance with paragraphs (a), (b)(1), or (b)(2) of this section shall be based upon sampling during a 3 month period, except that, at the discretion of the State, compliance may be based upon sampling during a one-month period.

Subpart C—Monitoring and Analytical Requirements

§ 141.21 Microbiological contaminant sampling and analytical requirements.

(a) Suppliers of water for community water systems and non-community water systems shall analyze for coliform bacteria for the purpose of determining compliance with § 141.14. Analyses shall be conducted in accordance with the analytical recommendations set forth in "Standard Methods for the Examination of Water and Wastewater," American Public Health Association, 13th Edition, pp. 662–688, except that a standard sample size shall be employed. The standard sample used in the membrane filter procedure shall be 100 milliliters. The standard sample used in the 5 tube most probable number (MPN) procedure (fermentation tube method) shall be 5 times the standard portion. The standard portion is either 10 milliliters or 100 milliliters as described in § 141.14 (b) and (c). The samples shall be taken at points which are representative of the conditions within the distribution system.

(b) The supplier of water for a community water system shall take coliform density samples, at regular time intervals, and in number proportionate to the population served by the system. In no event shall the frequency be less than as set forth below:

Population served:	*Minimum number of samples per month*
25 to 1,000	1
1,001 to 2,500	2
2,501 to 3,300	3
3,301 to 4,100	4
4,101 to 4,900	5
4,901 to 5,800	6
5,801 to 6,700	7
6,701 to 7,600	8
7,601 to 8,500	9
8,501 to 9,400	10
9,401 to 10,300	11
10,301 to 11,100	12
11,101 to 12,000	13
12,001 to 12,900	14
12,901 to 13,700	15
13,701 to 14,600	16
14,601 to 15,500	17
15,501 to 16,300	18
16,301 to 17,200	19
17,201 to 18,100	20
18,101 to 18,900	21
18,901 to 19,800	22
19,801 to 20,700	23
20,701 to 21,500	24
21,501 to 22,300	25
22,301 to 23,200	26
23,201 to 24,000	27
24,001 to 24,900	28
24,901 to 25,000	29
25,001 to 28,000	30
28,501 to 33,000	35
33,001 to 37,000	40
37,001 to 41,000	45
41,001 to 46,000	50
46,001 to 50,000	55
50,001 to 54,000	60
54,001 to 59,000	65
59,001 to 64,000	70
64,001 to 70,000	75
70,001 to 76,000	80
76,001 to 83,000	85
83,001 to 90,000	90
90,001 to 96,000	95
96,001 to 111,000	100
111,001 to 130,000	110
130,001 to 160,000	120
160,001 to 190,000	130
190,001 to 220,000	140
220,001 to 250,000	150
250,001 to 290,000	160
290,001 to 320,000	170
320,001 to 360,000	180
360,001 to 410,000	190
410,001 to 450,000	200
450,001 to 500,000	210
500,001 to 550,000	220
550,001 to 600,000	230
600,001 to 660,000	240
660,001 to 720,000	250
720,001 to 780,000	260
780,001 to 840,000	270
840,001 to 910,000	280
910,001 to 970,000	290
970,001 to 1,050,000	300
1,050,001 to 1,140,000	310
1,140,001 to 1,230,000	320
1,230,001 to 1,320,000	330
1,320,001 to 1,420,000	340
1,420,001 to 1,520,000	350
1,520,001 to 1,630,000	360
1,630,001 to 1,730,000	370
1,730,001 to 1,850,000	380
1,850,001 to 1,970,000	390
1,970,001 to 2,060,000	400
2,060,001 to 2,270,000	410
2,270,001 to 2,510,000	420
2,510,001 to 2,750,000	430
2,750,001 to 3,020,000	440
3,020,001 to 3,320,000	450
3,320,001 to 3,620,000	460
3,620,001 to 3,960,000	470
3,960,001 to 4,310,000	480
4,310,001 to 4,690,000	490
4,690,001 or more	500

Based on a history of no coliform bacterial contamination and on a sanitary survey by the State showing the water system to be supplied solely by a protected ground water source and free of sanitary defects, a community water system serving 25 to 1,000 persons, with written permission from the State, may reduce this sampling frequency except that in no case shall it be reduced to less than one per quarter.

(c) The supplier of water for a non-community water system shall sample for coliform bacteria in each calendar quarter during which the system provides water to the public. Such sampling shall begin within two years after the effective date of this part. If the State, on the basis of a sanitary survey, determines that some other frequency is more appropriate, that frequency shall be the frequency required under these regulations. Such frequency shall be confirmed or changed on the basis of subsequent surveys.

(d) (1) When the coliform bacteria in a single sample exceed four per 100 milliliters (§ 141.14(a)), at least two consecutive daily check samples shall be collected and examined from the same sampling point. Additional check samples shall be collected daily, or at a frequency estab-

mental Protection Agency, Office of Technology Transfer, Washington, D.C. 20460, 1974.

(2) Barium—Atomic Absorption Method, "Standard Methods for the Examination of Water and Wastewater," 13th Edition, pp. 210–215, or "Methods for Chemical Analysis of Water and Wastes," pp. 97–98, Environmental Protection Agency, Office of Technology Transfer, Washington, D.C. 20460, 1974.

(3) Cadmium—Atomic Absorption Method, "Standard Methods for the Examination of Water and Wastewater," 13th Edition, pp. 210–215, or "Methods for Chemical Analysis of Water and Wastes," pp. 101–103, Environmental Protection Agency, Office of Technology Transfer, Washington, D.C. 20460, 1974.

(4) Chromium—Atomic Absorption Method, "Standard Methods for the Examination of Water and Wastewater," 13th Edition, pp. 210–215, or "Methods for Chemical Analysis of Water and Wastes," pp. 105–106, Environmental Protection Agency, Office of Technology Transfer, Washington, D.C. 20460, 1974.

(5) Lead—Atomic Absorption Method, "Standard Methods for the Examination of Water and Wastewater," 13th Edition, pp. 210–215, or "Methods for Chemical Analysis of Water and Wastes," pp. 112–113, Environmental Protection Agency, Office of Technology Transfer, Washington, D.C. 20460, 1974.

(6) Mercury—Flameless Atomic Absorption Method, "Methods for Chemical Analysis of Water and Wastes," pp. 118–126, Environmental Protection Agency, Office of Technology Transfer, Washington, D.C. 20460, 1974.

(7) Nitrate—Brucine Colorimetric Method, "Standard Methods for the Examination of Water and Wastewater," 13th Edition, pp. 461–464, or Cadmium Reduction Method, "Methods for Chemical Analysis of Water and Wastes," pp. 201–206, Environmental Protection Agency, Office of Technology Transfer, Washington, D.C. 20460, 1974.

(8) Selenium—Atomic Absorption Method, "Methods for Chemical Analysis of Water and Wastes," p. 115, Environmental Protection Agency, Office of Technology Transfer, Washington, D.C. 20460, 1974.

(9) Silver—Atomic Absorption Method, "Standard Methods for the Examination of Water and Wastewater", 13th Edition, pp. 210–215, or "Methods for Chemical Analysis of Water and Wastes", p. 146, Environmental Protection Agency, Office of Technology Transfer, Washington, D.C. 20460, 1974.

(10) Fluoride—Electrode Method, "Standard Methods for the Examination of Water and Wastewater", 13th Edition, pp. 172–174, or "Methods for Chemical Analysis of Water and Wastes," pp. 65–67, Environmental Protection Agency, Office of Technology Transfer, Washington, D.C. 20460, 1974, or Colorimetric Method with Preliminary Distillation, "Standard Methods for the Examination of Water and Wastewater," 13th Edition, pp. 171–172 and 174–176, or "Methods for Chemical Analysis of Water and Wastes," pp. 59–60, Environmental Protection Agency, Office of Technology Transfer, Washington, D.C. 20460, 1974.

§ 141.24 Organic chemical sampling and analytical requirements.

(a) An analysis of substances for the purpose of determining compliance with § 141.12 shall be made as follows:

(1) For all community water systems utilizing surface water sources, analyses shall be completed within one year following the effective date of this part. Samples analyzed shall be collected during the period of the year designated by the State as the period when contamination by pesticides is most likely to occur. These analyses shall be repeated at intervals specified by the State but in no event less frequently than at three year intervals.

(2) For community water systems utilizing only ground water sources, analyses shall be completed by those systems specified by the State.

(b) If the result of an analysis made pursuant to paragraph (a) of this section indicates that the level of any contaminant listed in § 141.12 exceeds the maximum contaminant level, the supplier of water shall report to the State within 7 days and initiate three additional analyses within one month.

(c) When the average of four analyses made pursuant to paragraph (b) of this section, rounded to the same number of significant figures as the maximum contaminant level for the substance in question, exceeds the maximum contaminant level, the supplier of water shall report to the State pursuant to § 141.31 and give notice to the public pursuant to § 141.32. Monitoring after public notification shall be at a frequency designated by the State and shall continue until the maximum contaminant level has not been exceeded in two successive samples or until a monitoring schedule as a condition to a variance, exemption or enforcement action shall become effective.

(d) For the initial analysis required by paragraph (a) (1) and (2) of this section, data for surface water acquired within one year prior to the effective date of this part and data for ground water acquired within three years prior to the effective date of this part may be substituted at the discretion of the State.

(e) Analyses made to determine compliance with § 141.12(a) shall be made in accordance with "Method for Organochlorine Pesticides in Industrial Effluents," MDQARL, Environmental Protection Agency, Cincinnati, Ohio, November 28, 1973.

(f) Analyses made to determine compliance with § 141.12(b) shall be conducted in accordance with "Methods for Chlorinated Phenoxy Acid Herbicides in Industrial Effluents," MDQARL, Environmental Protection Agency, Cincinnati, Ohio, November 28, 1973.

§ 141.27 Alternative analytical techniques.

With the written permission of the State, concurred in by the Administrator of the U.S. Environmental Protection Agency, an alternative analytical technique may be employed. An alternative technique shall be acceptable only if it is substantially equivalent to the prescribed test in both precision and accuracy as it relates to the determination of compliance with any maximum contaminant level. The use of the alternative analytical technique shall not decrease the frequency of monitoring required by this part.

§ 141.28 Approved laboratories.

For the purpose of determining compliance with § 141.21 through § 141.27, samples may be considered only if they have been analyzed by a laboratory approved by the State except that measurements for turbidity and free chlorine residual may be performed by any person acceptable to the State.

§ 141.29 Monitoring of consecutive public water systems.

When a public water system supplies water to one or more other public water systems, the State may modify the monitoring requirements imposed by this part to the extent that the interconnection of the sysems justifies treating them as a single system for monitoring purposes. Any modified monitoring shall be conducted pursuant to a schedule specified by the State and concurred in by the Administrator of the U.S. Environmental Protection Agency.

Subpart D—Reporting, Public Notification and Record Keeping

§ 141.31 Reporting requirements.

(a) Except where a shorter reporting period is specified in this part, the supplier of water shall report to the State within 40 days following a test, measurement or analysis required to be made by this part, the results of that test, measurement or analysis.

(b) The supplier of water shall report to the State within 48 hours the failure to comply with any primary drinking water regulation (including failure to comply with monitoring requirements) set forth in this part.

(c) The supplier of water is not required to report analytical results to the State in cases where a State laboratory performs the analysis and reports the results to the State office which would normally receive such notification from the supplier.

§ 141.32 Public notification.

(a) If a community water system fails to comply with an applicable maximum contaminant level established in Subpart B, fails to comply with an applicable testing procedure established in Subpart C of this part, is granted a variance or an exemption from an applicable maximum contaminant level, fails to comply with the requirements of any schedule prescribed pursuant to a variance or exemption, or fails to perform any monitoring required pursuant to Section 1445 (a) of the Act, the supplier of water shall notify persons served by the system of the failure or grant by inclusion of a notice in the first set of water bills of the system issued after the failure or grant

veys and the NAS study. CCE was initially used as a means of taste and odor control. As concern over adverse health effects of organic chemicals grew, CCE was turned to as a rough surrogate for organics to be used as a health-based standard rather than as an esthetic standard. Unfortunately, as more is learned about organic chemical pollution of drinking water, CCE looks less and less effective as a surrogate for harmful organics.

The principal difficulty with CCE is that it includes only about one-tenth of the total organic content of the volume of water sampled and it does not measure organic compounds of greatest concern, such as the volatile halomethanes. Thus, a high CCE test result does not necessarily mean that the water tested may pose a hazard to health, and a low CCE test result may be obtained from water with a high level of potentially harmful organic compounds. In short, there is no sound basis of correlation between CCE test results and the level of harmful organic chemicals in the water tested.

To establish a maximum contaminant level under these circumstances would almost certainly do more harm than good. It could give a false sense of security to persons served by systems which are within the established level and a false sense of alarm to persons served by systems which exceed the level. It also would divert resources and attention from efforts to find more effective ways of dealing with the organic chemical problem.

Total organic carbon (TOC) and chemical oxygen demand (COD) are surrogates that have been considered, but they have limitations also. TOC has the advantage of being quicker and cheaper (on a per sample basis) than CCE, but the availability of sensitive instruments for this measurement is questionable. More investigation of the significance of any TOC number as a health effects limit is also needed. COD is easily determined with readily available laboratory equipment, but COD is not limited to organic compounds, and besides a COD number also cannot be adequately related to health significance at this time.

EPA is diverting substantial resources to research into the health effects of specific organic chemicals and groups of organic chemicals. Also, it is expected that the study of the National Academy of Sciences will produce further data on health effects. However, in view of the significance of the potential health problem, it is not enough to wait for this additional health effects data. EPA therefore will undertake to identify one or more surrogate tests for organic chemicals or organic chemical groups, and will also study in depth the presence of specific organic chemicals in drinking water supplies. It is anticipated that this effort will result in the development of an additional MCL or MCL's for organic chemicals by amendment of the Interim Primary Drinking Water Regulations without having to wait for a more complete resolution of the organic chemicals question in the Revised Regulations.

Accordingly, EPA is adopting regulations on organic chemical monitoring, using the authority of Sections 1445 and 1450 of the Act. The regulations require that over 100 selected public water systems serving substantial populations collect samples of raw and treated water for submission to EPA for organics analysis. EPA will analyze the samples for a number of general organic parameters, including CCE, TOC (volatile and non-volatile), NVOC, Total Organic Chlorine (TOCl), ultraviolet absorbancy, and fluorescence. In addition, the water will be analyzed for 21 specific organic compounds. These laboratory analyses will be used to evaluate the extent and nature of organic chemical contamination of drinking water, to evaluate the validity of the general organic parameters as surrogates for measures of harmful organic chemicals, and to determine whether there is an adequate basis for establishing maximum contaminant levels for specific organics or groups of organics.

In addition, EPA is embarking on an intensive research program to find more definitive answers to the following four questions:

1. What are the effects of commonly occurring organic compounds on human health?

2. What analytical procedures should be used to monitor finished drinking water to assure that any primary drinking water regulations dealing with organics are met?

3. Because some of these organic compounds are formed during water treatment, what changes in treatment practices are required to minimize the formation of the compounds in treated water?

4. What treatment technology must be applied to reduce contaminant levels to the concentrations that may be specified in the regulations?

This research will involve health-effects and epidemiological studies, investigations of analytical methodology, and pilot plant and field studies of organic removal unit processes. Some phases of the research are to be completed by this fall, while much of the remainder is to be completed within the next calendar year.

As soon as sufficient information is derived from the monitoring program and related research, primary drinking water regulations will be amended so that the organic chemical problem can be dealt with without delay. The monitoring program will be completed within one year.

During the interim period while satisfactory MCL's for organic contamination in drinking water are being developed, EPA will act in specific cases where appropriate to deal with organic contamination. If the EPA monitoring program reveals serious specific cases of contamination, EPA will work with State and local authorities to identify the source and nature of the problem and to take remedial action. EPA will also aid the States in identifying additional community water supplies that require analysis.

2. Pesticides. Proposed § 141.13 contained MCL's for several organic pesticides. Most of the comments on § 141.13 (out of a total of 100) requested that the MCL's for pesticides either be raised or deleted entirely. There were two requests for inclusion of limits for 2,4,5-T, one request for an organophosphate insecticide limit, one for a limit on dioxin, and requests for limits for aldrin, dieldrin, DDT and chlorine (sic.) Other comments suggested that pesticide limits be restricted to emergencies or spills, or at least only to surface water during periods of pesticide use. There were also requests for research on carcinogenic risk and bioamplification.

These proposed pesticides levels were carefully considered by the Advisory Committee and have been reviewed in light of available data on the health effects of these pesticides and their incidence in drinking water supplies. The levels established are adequately supported by the authorities cited in the Statement of Basis and Purpose.

A limit for 2,4,5-T was tentatively proposed by the Advisory Committee but was deleted from the Committee's final report in 1973 on the grounds that EPA's ban on the use of 2,4,5-T for aquatic uses made a drinking water limit unnecessary. That ban has now been in effect for about five years, and it is highly unlikely that this herbicide exists in drinking water except perhaps in extremely rare cases in trace amounts. EPA is now investigating reports of 2,4,5-T in some waterways in Northern Louisiana, and will reconsider the desirability of an MCL for 2,4,5-T if new data indicate that the pesticide is appearing in drinking water supplies at a significant rate. Dioxin is a minor contaminant of 2,4,5-T, and the same basic considerations apply to it.

The desirability of an MCL for organophosphorus insecticides, which was recommended in 1973 by the Advisory Committee, was carefully considered by EPA. It was decided not to adopt such a level, because although these pesticides would pose a serious health risk if they were present at the consumer's tap, the fact is that there is no evidence that such pesticides reach the consumer's tap. This was discussed in the preamble to the proposed primary drinking water standards, at 40 FR 11992. As noted there, these pesticides reach water sources usually only by accident or indirectly, and their tendency to degrade rapidly apparently has prevented problems which might occur when they do reach drinking water sources. The principal threat from these pesticides is from accidental spills in water sources. The appropriate way to deal with such spills is by emergency action when they occur, not by periodic monitoring which would not catch the problem in time.

With respect to aldrin, dieldrin and DDT, EPA's national survey of the presence of these pesticides in drinking water supplies has not been completed. If the results of that survey indicate that those pesticides are present in a significant number of water supplies, an appropriate amendment of the Interim Primary Drinking Water Regulations will be proposed.

The proposed MCL's for chlordane, heptachlor, and heptachlor epoxide have been deleted because EPA is currently involved in suspension and cancellation hearings for these pesticides. MCL's will be reconsidered at a later date.

Current research on pesticides, including both surveys of their incidence in water supplies and their health effects, will be continued and expanded.

3. Monitoring Requirements. There were over 250 comments on § 141.24, dealing with monitoring for compliance with the MCL's for CCE and pesticides. However, most of these comments were more related to the merits of the MCL's than to the monitoring requirements. The CCE limit has been discussed above, and that discussion will not be repeated here.

A number of comments on § 141.24 suggested that monitoring requirements for pesticides be eliminated, or at least that the responsibility for such monitoring be assumed by EPA or the States rather than by public water system. Concern was expressed over the cost of monitoring for pesticides, and the absence of pesticides in public water systems in some areas.

EPA agrees that regular monitoring for pesticides is not needed for all public water systems using only ground water sources. Pesticides are rarely found in significant levels in ground water. Accordingly, the proposed § 141.24 has been amended to provide that for a system using only ground water, monitoring shall be required only when specified by the entity with primary enforcement responsibility. This will more reasonably limit monitoring for pesticides in systems using only ground water to those instances when the State or EPA has reason to suspect the possibility of contamination.

In the case of surface waters, the greater incidence of these pesticides requires monitoring across-the-board. For all community water systems using surface water sources for all or part of their water, monitoring for pesticides will be required within one year of the effective date of the regulations. This monitoring shall be repeated at intervals specified by the State and in no event less frequently than at three year intervals.

Section 1424 has also been amended to require that samples to be analyzed for pesticides must be collected during a period of the year designated by the entity with pri-

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DOW

ESTERON 245 HERBICIDE

Contains Propylene Glycol Butyl Ether Esters of 2,4,5-T • Acid Equivalent: 4 Pounds per Gallon

DIRECTIONS

ESTERON 245 herbicide is recommended for industrial vegetation control in forest areas; on right-of-ways, such as communication lines, electrical powerlines, pipelines, highways, and railroads; fence rows; and on rangelands and pastures. This herbicide controls herbaceous and woody plants including such 2,4-D resistant species as—ash, black gum, brambles, groundcherry, hawthorn, horsenettle, maple, mesquite, oak, osageorange, palmetto, poison ivy, prickly pear cactus, redbay, salmonberry, sweetgum, wild blackberry, wild rose, and certain species of Ribes. **Do not apply ESTERON 245 where spray drift may contact nearby 2,4,5-T susceptible crops or other desirable plants or may contaminate water intended for irrigation or domestic purposes. Read and follow all Use Precautions given on this label.**

PREPARING THE SPRAY

Use only diesel oil, No. 1 or No. 2 fuel oil or kerosene where oil is recommended in the spray mixture.

Oil Sprays: Add ESTERON 245 to the required amount of oil in the spray tank or mixing tank and mix thoroughly. This mixture can be made at any time before actual use and no separation will occur. Do not let any water, or oil-water mixture sprays get into the ESTERON 245 or into the finished mixture, as it may form a gel.

Water Sprays: Fill the spray tank about half full with clean water, add the required amount of ESTERON 245 and complete filling the tank. Mix thoroughly and continue agitation while spraying. **Caution: See NOTE in paragraph on Oil-Water Mixture Sprays.**

Oil-Water Mixture Sprays: When vigorous agitation is used, 1 gallon of ESTERON 245 will emulsify up to 10 gallons of oil in 100 gallons of spray mixture. First, premix the ESTERON 245 and oil in a separate container. Do not allow any water or mixtures containing water to get into the ESTERON 245 or the premix. Fill the spray tank about half full with water, then slowly add the premix with continuous agitation and complete filling the tank with water. In the premix is put in the tank without any water, the first water added may form a thick "invert" (water in oil) emulsion which will be hard to break. As an alternate procedure, the oil may be added after the ESTERON 245 is mixed in the water, but highly vigorous mechanical agitation is required and a poor emulsion may be formed. The premix method is preferred.

NOTE: ESTERON 245 in water or oil-water sprays forms an emulsion, not a solution, and separation may take place unless sprays are agitated continuously. Mechanical agitation is recommended.

INDUSTRIAL BRUSH AND WEED CONTROL INCLUDING FORESTRY USES

HIGH VOLUME SPRAYS

Foliage Treatment: For control of woody vegetation up to 8 feet tall, apply when foliage is well developed and plants are actively growing. Spraying during prolonged hot, dry weather or after leaves have lost their normal green color and vigor may not give satisfactory control. Use 3 to 4 quarts of ESTERON 245 in 100 gallons of water and apply as a full coverage spray. Usually 100 to 200 gallons per acre will be required, although dense stands of brush may require up to 400 gallons per acre. Completely wet all plant parts including leaves, stems and bark. Poison ivy, some brambles and many broadleaf weeds may be controlled using 2 quarts of ESTERON 245 in 100 gallons of water.

To control grasses as well as broadleaf weeds and woody plants on conifer forest planting sites, ESTERON 245 may be used in a tank mixture with DOWPON* grass herbicide. Consult label directions and precautions for DOWPON to determine recommended use of this product.

Basal Bark Treatment: Brush and small trees can be controlled by spraying the basal parts of brush stems and tree trunks to a height of 12 to 15 inches from the ground line. Use a solution of 3 gallons of ESTERON 245 in 100 gallons (1 pint in 4 gallons) of oil. With certain resistant species, 4 gallons of ESTERON 245 in 100 gallons (1 pint in 3 gallons) of oil, is effective. As only the basal portions of the brush are treated on a spot basis, the total amount sprayed per acre would not be expected to exceed 100 gallons. Knapsack or power equipment may be used, but complete wetting of the indicated area is necessary, particularly at the ground line. This means spraying until run-down or run-off to the ground line is noticeable. Old or rough bark is quites more spray than young or smooth bark. Low pressures are desirable. Apply at any time, including the winter months, except when snow, ice or water prevent spraying to the ground line. Often delayed response and killing can be expected.

Dormant Brush: Treat any time after brush is dormant and most of the foliage has dropped. Spray should be concentrated at the base of stems and in addition, the upper parts of the stems should be broadcast sprayed enough to wet them. Under rootsuckering species such as sumac, persimmon, sassafras and locust, also spray the ground area to control small root suckers that may not be readily visible. Mix 1½ gallons of ESTERON 245 in 100 gallons of oil. Brush of average density and 4 to 6 feet high may take up to 150 gallons of spray mixture per acre.

Stump Treatment: Where growth is more than 6 to 8 feet tall, cut it close to the ground and spray the freshly cut stumps and stubs with 3 gallons of ESTERON 245 in 100 gallons (1 pint in 4 gallons) of oil, mixed thoroughly. For more resistant species, use 4 gallons of ESTERON 245 in 100 gallons (1 pint in 3 gallons) of oil. Wet thoroughly all exposed bark, as well as cut surfaces. This means spraying until run-down or run-off to the ground line is noticeable. Old or rough bark requires more spray volume than young or smooth bark. Apply at any time, including the winter months, except when ice, snow or water prevent spraying to the ground line. Best results are obtained on freshly cut stumps two inches across or larger. Adequate coverage normally requires from 10 to 100 gallons per acre depending on density of stumps and stubs.

"Frill" Treatment: For large trees, make a singlehack girdle or "frill" of overlapping axe cuts completely around the tree as close to the ground as feasible. Spray the frill thoroughly using a mixture of 2 gallons of ESTERON 245 in 100 gallons (½ pint in 3 gallons) of oil.

Spot Foliage Treatment: Use ¼ pint of ESTERON 245 in 3 gallons of water and spray to wet all foliage, shoots, stems and bark without runoff.

LOW VOLUME SPRAYS

Apply low volume sprays containing ESTERON 245 when foliage is well developed and plants are actively growing. For best results on woody species, soil moisture should be sufficient to promote foliar growth. Spraying during prolonged hot, dry weather or after leaves have lost their normal green color and vigor may not give satisfactory control. Apply low volume sprays by air or ground equipment only when spray drift will not be a problem—note use precautions.

Right-of-Ways and Forest Site Preparation

Foliage Treatment: Use 1 to 3 gallons of ESTERON 245 in enough water to make 10 to 30 gallons of total spray per acre. If desired, oil can be added to the spray in accordance with directions for "Oil-Water Mixture Sprays" given under **PREPARING THE SPRAY.**

Use With TORDON 101 Mixture: ESTERON 245 may be used with TORDON® 101 Mixture herbicide in a tank mix combination spray applied by aircraft for improved control of root suckering species and other species often not adequately controlled with 2,4,5-T. Use 1 to 2½ gallons of ESTERON 245 Herbicide plus 1½ to 2½ gallons of TORDON 101 Mixture per acre by diluting with water to a total spray volume of 10 to 30 gallons per acre. Use the higher rates where resistant species such as red maple, sourwood, ash, oaks, hawthorn and cedar are prevalent and especially during unfavorable conditions for plant growth such as drought. Do not add oil or NORBAK® particulating agent to the spray. Aerial applications of the tank mixture should be made only with a helicopter mounted Microfoil applicator or an equipment system providing equivalent drift control.

Read the directions and all the Use Precautions on both labels before using this tank mix.

Note: Do not plant conifer seedlings on treated areas for at least 6 months after applying 2 gallons or more of TORDON 101 per acre in such a tank mix.

Basal Treatment Using Powered Knapsack Sprayer—Mix 1½ to 2 gallons of ESTERON 245 with fuel oil or kerosene to make 20 gallons of total spray solution. Apply with a portable knapsack mistblower to all sides of lower brush stems including the root collar. Good coverage at the root collar is essential for best results. Run mistblower at ¼ to ½ throttle for best spray delivery and coverage. For maximum drift control use a basal nozzle attachment and do not raise nozzle above the horizontal position.

Forest Conifer Release by Air or Ground Sprays

Oil Spray—Apply 2 to 3 quarts of ESTERON 245 in about 10 gallons of oil per acre to control undesired hardwoods in dormant Douglas fir, true fir, hemlock and spruce. Rates higher than 2 quarts may cause conifer injury. Do not use this spray on pines (note section below for pine recommendation). Apply **before** conifer bud break during late dormancy, usually February and March in the northwest. Application of this spray after conifer bud break can injure the conifers.

Water Spray—Apply 2 to 3 quarts of ESTERON 245 in 10 to 15 gallons of water per acre to control hardwood species in conifers including pines. Apply during the summer **after** the conifers cease spring growth and have "hardened off." Rates higher than 2 quarts may cause conifer injury.

Consult your State, Regional or Extension Forester for recommendations to fit local conditions.

RANGELAND AND PASTURES

RANGELAND—AIR APPLICATION FOR BRUSH CONTROL

Consult the Agricultural Experiment Station, your local Extension Service Weed or Range specialist for best time to treat and need for re-treatment in your area. Do not use from early boot to milk stage where grass seed production is desired.

Mesquite: Use 1 pint of ESTERON 245 plus ⅓ to 1 gallon of oil in enough water to make 4 gallons of total spray per acre. Apply 40 to 90 days after first leaves appear.

Sand Shinnery Oak: Use ⅓ to 1 quart of ESTERON 245 plus 1 gallon of oil in enough water to make 4 gallons of total spray per acre.

Post and Blackjack Oaks: Use 2 quarts of ESTERON 245 plus 1 gallon of oil in enough water to make 4 to 6 gallons of total spray per acre.

PASTURE—FOR BROADLEAF WEED CONTROL

Use 1 to 3 quarts of ESTERON 245 per acre by aircraft or ground equipment in the amount of water needed to obtain uniform application. Apply when weeds are in full leaf and after grass is well established. Do not apply on staloniferous grasses such as bent and bermuda or on forage legumes because these can be injured or killed. Do not apply on newly seeded areas, and do not use from early boot to milk stage where grass seed production is desired. **Note:** Do not graze dairy animals on treated areas within 6 weeks after application. Do not graze meat animals on treated areas within 2 weeks of slaughter.

USE PRECAUTIONS

AVOID CONTACT WITH 2,4,5-T SUSCEPTIBLE CROPS AND OTHER DESIRABLE BROADLEAF PLANTS—ESTERON 245 Herbicide is injurious to most broadleaf plants. Therefore, do not apply directly to or otherwise permit even minute amounts to contact cotton, grapes, tobacco, fruit trees, vegetables, flowers, ornamentals or other desirable plants susceptible to 2,4,5-T. Do not use in or near a greenhouse.

DO NOT APPLY IN THE VICINITY OF COTTON, GRAPES, TOBACCO, TOMATOES OR OTHER DESIRABLE 2,4,5-T SUSCEPTIBLE CROPS OR ORNAMENTAL PLANTS.

DO NOT SPRAY WHEN WIND IS BLOWING TOWARDS SUSCEPTIBLE CROPS OR ORNAMENTAL PLANTS

AVOID SPRAY DRIFT—Applications should be made only when there is no hazard from spray drift since very small quantities of the spray, which may not be visible, may severely injure susceptible crops during both growing and dormant periods. Use coarse sprays to minimize drift since, under adverse weather conditions, fine spray droplets may drift a mile or more. The spray thickening agent, NALCO-TROL[1], may be used with this product to aid in reducing spray drift. If used follow all use recommendations and precautions on the product label.

[1] NALCO-TROL—Trademark of NALCO Chemical Company

GROUND EQUIPMENT—With ground equipment, spray drift can be lessened by keeping the spray boom as low as possible; by applying 20 gallons or more of spray per acre; by using no more than 20 pounds spraying pressure with large droplet producing nozzle tips; by spraying when wind velocity is 8 miles per hour or less. Do not apply with hollow cone-type insecticide or other nozzles that produce a fine-droplet spray.

AERIAL APPLICATION—With aircraft, drift can be lessened by applying a coarse spray; by using no more than 20 pounds spray pressure at the nozzles, by using straight stream nozzles directed straight back; by using a spray boom no longer than ¾ the wing span of the aircraft; and by spraying only when wind velocity is less than 6 mph.

DO NOT APPLY BY AIRCRAFT WHEN AN AIR TEMPERATURE INVERSION EXISTS. Such a condition is characterized by little or no wind and with air temperature lower near the ground than at higher levels. The use of a continuous smoke column at or near site of application is suggested to indicate direction and velocity of air movement, and to indicate a temperature inversion by layering of the smoke.

At high temperatures (above 95°F) vapors from this product may injure susceptible plants growing nearby. Do not use in or near a greenhouse. Excessive amounts of this herbicide in the soil may temporarily inhibit seed germination or plant growth.

Do not use around the home, recreation areas or similar sites. Do not use on susceptible grasses, such as bent, except for spot spraying, nor on freshly seeded areas until grass has become well established. (Most legumes are usually damaged or killed).

This product is toxic to fish. Keep out of lakes, streams, and ponds. Do not apply where run-off is likely to occur. Do not contaminate water by cleaning of equipment or disposal of wastes.

Do not contaminate irrigation ditches or water used for irrigation or domestic purposes. This product can be stored in an unheated building but if exposed to subfreezing temperatures, should be warmed to at least 40°F and mixed thoroughly before using. Do not store near fertilizers, seeds, insecticides or fungicides. Do not reuse containers. To avoid injury to desirable plants, do not store, handle or apply other agricultural chemicals with the same containers or equipment used with ESTERON 245 except as specified on this label.

Rinse equipment and containers and dispose of waste by burying in non-crop lands away from water supplies. Containers should be disposed by punching holes in them and burying with waste or follow official local recommendations for container disposal.

Local conditions may affect the use of herbicides. Consult your State Agricultural Experiment Station or Extension Service weed specialist for advice in selecting treatments from this label to best fit local conditions. Be sure that use of this product conforms to all applicable regulations. Apply this product only as specified on this label.

NOTICE: Seller warrants that the product conforms to its chemical description and is reasonably fit for the purposes stated on the label when used in accordance with directions under normal conditions of use, but neither this warranty nor any other warranty of MERCHANTABILITY or FITNESS FOR A PARTICULAR PURPOSE express or implied, extends to the use of this product contrary to label instructions, or under abnormal conditions, or under conditions not reasonably foreseeable to seller, and buyer assumes the risk of any such use.

10586-049-5 P676

THE DOW CHEMICAL COMPANY
AND SUBSIDIARIES
MIDLAND, MICHIGAN 48640, USA ZÜRICH, SWITZERLAND HONG KONG, BCC
CORAL GABLES, FLORIDA 33134, USA SARNIA, ONTARIO, CANADA
* Trademark of THE DOW CHEMICAL COMPANY

DOW

SPECIMEN LABEL
REDUCED TO 75%

ESTERON* 99* CONCENTRATE

LOW-VOLATILE HERBICIDE

CONTAINS PROPYLENE GLYCOL BUTYL ETHER ESTERS OF 2,4-D
2,4-D Acid Equivalent: 4 pounds per gallon

For the Control of Many Broadleaf Weeds, Herbaceous Perennials and Woody Plants Susceptible to 2,4-D in Grass Pastures, Certain Crops and Non-Crop Areas.

ACTIVE INGREDIENT:
2,4-Dichlorophenoxyacetic Acid, Propylene Glycol Butyl Ether Esters 72.8%
INERT INGREDIENTS: 27.2%
2,4-D Acid Equivalent 44.9%—4 pounds per gallon
E.P.A. Registration No. 464-201-AA E.P.A. Est. 464-MI-1

AGRICULTURAL CHEMICAL

Do Not Ship or Store with Food, Feeds, or Clothing

PRECAUCION AL USUARIO: Si usted no lee inglés, no use este producto hasta que la etiqueta le haya sido explicada ampliamente.

TRANSLATION: (TO THE USER: If you cannot read English, do not use this product until the label has been fully explained to you.)

CAUTION

KEEP OUT OF REACH OF CHILDREN
HARMFUL IF SWALLOWED
MAY CAUSE IRRITATION
Avoid Contact with Eyes, Skin and Clothing

18.9 L / 5 GAL

86-1062 PRINTED IN U.S.A. IN APRIL, 1976.
REPLACES SPECIMEN LABEL 86-1062 PRINTED MARCH, 1976.
DISCARD PREVIOUS SPECIMEN LABELS.
REVISIONS INCLUDE: (1) CONTROL OF WILD GARLIC IN STUBBLE GRAIN FIELDS ADDED
(2) FOREST CONIFER RELEASE ADDED
(3) RESTRICTION ON USING CORN FODDER ADDED TO WEED CONTROL IN CORN.

ESTERON® 99® CONCENTRATE

SPECIMEN LABEL
(BACK)
REDUCED TO 75%

WEED LIST

ESTERON 99 Concentrate herbicide is recommended for control of numerous broadleaf weeds and certain 2,4-D susceptible woody plants without injury to most established grasses. Species controlled include the following, plus many others:

beggarticks • bitterweed • blueweed, Texas • broomweed • buckbrush • buckwheat, wild buckwheat, wild • burdock • burhead • carpetweed • catnip • chamisa • chicory • cocklebur • coffeeweed cornflower • coyotebrush • croton • dandelion • docks • dogfennel • elderberry • fanweed galinsoga • garlic, wild • goatsbeard • halogeton • hemp, wild • jewelweed • jimsonweed lambsquarter • loco, bigbend • mallow, Venice • manzanita • marsheider • milkvetch morningglory, annual • mustards • nettles • onion, wild • pennycress • pepperweed, field pigweed • plantains • poorjoe • rabbitbrush • radish, wild • ragweed • rape, wild • redstem sage, coastal • sagebrush, big • sagebrush, sand • salsify • sand shinnery oak • shepherdspurse • sicklepod • smartweed • sneezeweed, bitter • sowthistle, annual • spanishneedles • sumac • sunflower • sweetclover • tansymustard • tansyragwort • thistle, bull thistle, musk • thistle, Russian • tumbleweed • velvetleaf • vervains • vetch • water plantain willow • witchweed • wormwood • yellow rocket • yellow starthistle

USE DIRECTIONS

Apply ESTERON 99 Concentrate as water or oil spray during warm weather when weeds or brush are actively growing. Application under drought conditions often will give poor results. Use low spray pressure to minimize drift. On cropland and along roadsides, do not exceed 20 psi pressure. Apply enough spray volume to provide uniform coverage of weeds and brush, usually 5 to 20 gallons per acre by ground equipment and 3 to 5 gallons by aircraft. Higher gallonage may be used if desired to improve spray coverage. Generally, the lower dosages recommended on this label will be satisfactory for young, succulent growth of sensitive weed species. For less sensitive species and under conditions where control is more difficult, the higher dosages will be needed. For crop uses, do not mix with oil or other adjuvants unless specifically recommended on this label. Deep-rooted perennial weeds such as Canada thistle and field bindweed and many woody plants usually require repeated applications for maximum control. **Do not apply ESTERON 99 Concentrate where spray drift may contact nearby susceptible crops or other desirable plants or may contaminate water for irrigation or domestic use. Read and follow all Use Precautions given on this label.**

NOTE: If there are uncertainties concerning special local use situations or specific crop variety tolerances to 2,4-D, consult your State Agricultural Experiment Station or local Extension Service weed specialists for advice.

TO PREPARE THE SPRAY: (1) Fill the spray tank about half full with water, then add the required amount of ESTERON 99 Concentrate, with agitation, and finally the rest of the water. NOTE: ESTERON 99 Concentrate in water forms an emulsion which tends to separate unless the mixture is kept agitated. (2) If oil is added, first mix the ESTERON 99 Concentrate and the oil and then add this mixture to the water. However, with adequate agitation, the oil can be added after the ESTERON 99 Concentrate is mixed in the water. (3) If straight oil is used, a solution is formed and separation does not occur. Do not allow any water to get into the oil-herbicide mixture to avoid formation of an invert emulsion.

USE IN LIQUID NITROGEN FERTILIZER: ESTERON 99 Concentrate may be combined with liquid nitrogen fertilizer suitable for foliar application to accomplish weeding and feeding of corn, small grains or grass pastures in one operation. Use ESTERON 99 Concentrate in accordance with recommendations for these crops as given on this label. Use liquid fertilizer at rates recommended by supplier or Extension Service Specialist. Fill the spray tank about half full with the liquid fertilizer, then add the ESTERON 99 Concentrate with agitation and complete filling the tank with fertilizer. Apply immediately and continue agitation in the spray tank during application. Application during very cold weather (near freezing) is not advisable. Do not store the spray mixture.

WEED CONTROL IN SMALL GRAINS NOT UNDERSEEDED WITH A LEGUME: NOTE: Do not permit dairy animals or meat animals being finished for slaughter to forage or graze treated grain fields within 2 weeks after treatment.

Spring Wheat and Barley: Apply ½ to 1 pint per acre. Spray when grain is in full tiller stage (usually 4 to 8 inches tall) but before the boot stage and when weeds are small. Do not apply before the tiller stage nor from early boot to the dough stage. Higher rates, up to 2 pints per acre, may be needed to handle difficult weed problems in certain areas such as under dry conditions especially in western areas. **However, do not use unless possible crop injury will be acceptable.**

Winter Wheat and Rye: Apply ½ to ¾ pint per acre in the spring at the full tiller stage but before the early boot stage. For improved control of difficult weeds including wild garlic and wild onion, apply 1 to 2 pints per acre. Since these rates may injure the crop, do not use unless possible crop injury will be acceptable. For the high rates on spring wheat and barley as well as winter wheat and rye consult State Agricultural Experiment Station or Extension Service Weed Specialists for recommendations or suggestions to fit local conditions.

Spring Seeded Oats: Apply ½ pint per acre at the full tiller stage but before the early boot stage. Oats are less tolerant to 2,4-D than wheat or barley and are more likely to suffer some injury.

Fall Seeded Oats (Southern) Grown for Grain: Apply ½ to 1¼ pints per acre after full tillering but before the early boot stage. Some difficult weeds may require higher rates for maximum control but crop injury may result. Do not spray during or immediately following cold weather.

Preharvest Treatment: Apply 1 to 2 pints per acre when grains are in the hard dough stage to control large weeds that may interfere with harvest. Best results will be obtained when soil moisture is sufficient to cause succulent weed growth. **NOTE:** Do not feed treated straw to livestock.

WEED CONTROL IN CORN: Use one of the following three programs: **Preemergence:** Apply 1 to 2 quarts per acre to soil anytime after planting but before corn emerges. Do not use on light sandy soil. **Emergence:** Apply 1 pint per acre just as corn plants are breaking ground. **Postemergence:** After emergence of corn, use ½ pint per acre. Application of ¾ to 1 pint per acre may be needed for maximum control of some weeds but such rates are more likely to injure the corn. If corn is over 8 inches tall, use drop nozzles to keep the spray off the corn foliage as much as possible. Do not apply from the tasseling to dough stage. Do not use with oil, atrazine or other adjuvants. Crop injury is more likely to occur if corn is growing rapidly under high temperature and high soil moisture conditions. To reduce breakage of stalks from temporary brittleness caused by 2,4-D, delay cultivation for 8 to 10 days after treatment. Do not forage or feed corn fodder for 7 days following application. **NOTE:** Hybrids vary in response to 2,4-D and some are easily injured. Spray only varieties known to be tolerant to 2,4-D. Contact seed company or your Agricultural Experiment Station or Extension Service weed specialists for this information.

PREHARVEST CORN TREATMENT: After the hard dough or denting stage, apply 1 to 2 pints per acre by air or ground equipment to suppress perennial weeds, decrease weed seed production, and control tall weeds such as bindweed, cocklebur, dogbane, jimsonweed, ragweed, sunflower, velvetleaf and vines that interfere with harvesting. Do not forage or feed corn fodder for 7 days following application.

CONTROL OF WILD GARLIC IN STUBBLE GRAIN FIELDS: Following the harvest of small grain or corn, wild garlic often produces new fall growth. This should be sprayed with 2 to ½ quarts per acre of ESTERON 99 Concentrate. This is a useful practice as one part of a wild garlic control program. Do not forage for 7 days following application.

WEED CONTROL IN SORGHUM (MILO): Apply ½ pint per acre when sorghum is 5 to 15 inches tall. A higher rate of ¾ to 1 pint per acre may be needed to control some weeds but the chance for crop injury is likewise increased. Do not use with oil. Do not treat before the sorghum is 5 inches tall nor during the boot, flowering or early dough stages. If sorghum is taller than 8 inches, use drop nozzles to keep the spray off the foliage as much as possible. Temporary crop injury may occur under conditions of high soil moisture and high air temperatures. Varieties vary in tolerance to 2,4-D and some hybrids are quite sensitive. Spray only varieties known to be tolerant to 2,4-D. Contact seed company or your Agricultural Experiment Station or Extension Service weed specialists for this information.

GRASS SEED CROPS: Use 1 to 1½ pints per acre in the amount of water required for uniform application by air or ground equipment. Apply to established stands in spring from the tiller to early boot stage. Do not spray in boot stage. New spring seedings may be treated with the lower rate after the grasses have at least five leaves. Perennial weed regrowth may be treated in the fall.

WEED AND BRUSH CONTROL IN RANGELAND AND GRASS PASTURES: NOTE: Do not graze dairy animals on treated areas within 7 days after application. Do not use on bent grass, alfalfa, clover, or other legumes. Do not use on newly seeded areas until grass is well established. Do not use from early boot to milk stage where grass seed production is desired.

Bitterweed, Broomweed, Croton, Docks, Kochia, Marsheider, Musk thistle and Other Broadleaf Weeds: Use 2 quarts of ESTERON 99 Concentrate per acre in the amount of water needed for uniform application. If the weeds are young and growing actively, 1 quart per acre will provide control of some species. Deep-rooted perennial weeds may require repeated treatments in the same year or in subsequent years.

Wild Garlic and Wild Onion: Apply 2 to 3 quarts per acre, making three applications (fall-spring-fall or spring-fall-spring) starting in late fall or early spring.

Weed Control in Newly Sprigged Coastal Bermudagrass: Apply 1 to 2 quarts per acre preemergence and/or postemergence.

Sand Shinnery Oak and Sand Sagebrush: On the oak, use 1 quart in 5 gallons of oil or in 4 gallons of water plus 1 gallon of oil per acre. Apply by aircraft between May 15 and June 15. On the sagebrush, use 1 quart in 3 gallons of oil per acre and apply by aircraft when foliage is fully expanded and the brush is actively growing.

Big Sagebrush and Rabbitbrush: Use 2 to 3 quarts per acre in 2 to 3 gallons of oil or in 3 to 5 gallons of oil-water emulsion spray. For rabbitbrush, the 3 quart rate is usually required. Brush should be leafed out and growing actively when treated. Retreatment may be needed.

Chemise, Manzanita, Buckbrush, Coastal Sage, Coyotebrush and Certain Other Chaparral Species: Use 2 to 3 quarts per acre in 5 to 10 gallons of water. One gallon of fuel oil may be included in the spray mixture for added effectiveness. Make applications by aircraft or ground equipment to obtain uniform spray coverage. For effective control, the brush must be fully leafed out and growing actively when sprayed. Retreatment may be needed.

WOODY PLANT CONTROL IN NON-CROP AREAS: To control species susceptible to 2,4-D in rights-of-way, fencerows, roadsides, and along drainage ditchbanks, spray brush up to 6 to 8 feet tall after spring foliage is well developed, using 3 to 4 quarts of ESTERON 99 Concentrate in 100 gallons of water and wetting all parts of the brush including foliage, stems and bark. This may require up to 400 gallons of spray per acre for adequate coverage of solid stand of brush. Make application in such a way as to prevent drift of the spray off the area being treated. Spraying can be effective at any time up to 3 weeks before frost as long as soil moisture is sufficient for active growth of the brush. Control will be less effective in midsummer during hot dry weather when soil moisture is deficient and plants are not actively growing. Oil or wetting agent may be added to the spray, if needed for increased effectiveness.

FOREST CONIFER RELEASE: After northern conifers jack pine, red pine, black spruce, and white spruce cease growth and "harden off" in late summer, a spray of 1½ to 3 quarts of ESTERON 99 Concentrate in 8 to 25 gallons of water per acre may be applied by air to control certain competing hardwood species such as alder, aspen, birch, hazel and willow. Since this treatment may cause occasional conifer injury, do not use if such injury cannot be tolerated. Consult your regional or extension forester or state herbicide specialist for recommendations to fit local conditions.

WEED CONTROL IN NON-CROP AREAS SUCH AS LAWNS, GOLF COURSES, CEMETERIES, PARKS, AIRFIELDS, ROADSIDES, VACANT LOTS, DRAINAGE DITCH BANKS: Apply 1 to 3 quarts of ESTERON 99 Concentrate per acre in the amount of water needed for uniform application. Usually 2 quarts per acre provides good weed control under average conditions. Treat when weeds are young and growing well. Do not use on golf greens nor on dichondra or other broadleaf herbaceous ground covers. Do not use on creeping grasses such as bent and St. Augustine except for spot treating, nor on newly seeded turf until grass is well established.

Reseeding of treated areas should be delayed following treatment. With spring application, reseed in the fall; with fall application, reseed in the spring.

Legumes are usually damaged or killed so do not treat areas where the legumes are desired. Deep-rooted perennial weeds may require repeated treatments in the same season or in subsequent years.

TULE (BULRUSH) AND OTHER RUSHES: Mix 2 quarts of ESTERON 99 Concentrate and 1 gallon of diesel oil or kerosene, then add this mixture to 100 gallons of water. Spray to wet all foliage (400-800 gallons per acre). Addition of a wetting agent may be advisable. Apply in the spring during flower head emergence. Respray if needed when regrowth is 3 to 5 feet tall.

SPOT TREATMENT: To control broadleaf weeds in small non-cropland areas with a hand sprayer, use ¼ pint of ESTERON 99 Concentrate in 3 gallons of water and spray to thoroughly wet all weed foliage. Keep spray mixture agitated to prevent separation.

STORAGE: May be stored in unheated building.

MISCELLANEOUS USES: Low-Bush Blueberries: Contact Agricultural Sales, The Dow Chemical Company, P.O. Box 1706, Midland, Michigan 48640 for use directions.

USE PRECAUTIONS

AVOID CONTACT WITH 2,4-D SUSCEPTIBLE CROPS AND OTHER DESIRABLE BROADLEAF PLANTS: ESTERON 99 Concentrate herbicide is injurious to most broadleaf plants. Therefore, do not apply directly to or otherwise permit even minute amounts to contact cotton, grapes, tobacco, fruit trees, vegetables, flowers, ornamentals or other desirable plants susceptible to 2,4-D. Do not use in or near a greenhouse.

DO NOT APPLY IN THE VICINITY of COTTON, GRAPES, TOBACCO, TOMATOES OR OTHER DESIRABLE 2,4-D SUSCEPTIBLE CROPS or ORNAMENTAL PLANTS.

DO NOT SPRAY WHEN WIND IS BLOWING TOWARDS SUSCEPTIBLE CROPS OR ORNAMENTAL PLANTS.

AVOID SPRAY DRIFT: Applications should be made only when there is no hazard from spray drift since very small quantities of the spray, which may not be visible, may severely injure susceptible crops during both growing and dormant periods. Use coarse sprays to minimize drift since, under adverse weather conditions, fine spray droplets may drift a mile or more. The spray thickening agent, NALCO-TROL[1] may be used with this product to aid in reducing spray drift. If used follow all use recommendations and precautions on the product label.

[1] NALCO-TROL — Trademark of NALCO Chemical Company

GROUND EQUIPMENT: With ground equipment, spray drift can be lessened by keeping the spray boom as low as possible; by applying 20 gallons or more of spray per acre; by using no more than 20 pounds spraying pressure with large droplet producing nozzle tips; by spraying when wind velocity is low; and by stopping all spraying when wind exceeds 6 to 7 miles per hour. Do not apply with hollow cone-type insecticide or other nozzles that produce a fine-droplet spray.

AERIAL APPLICATION: With aircraft, drift can be lessened by applying a coarse spray; by using no more than 20 pounds spray pressure at the nozzles; by using straight stream nozzles directed straight back; by using a spray boom no longer than ¾ the wing span of the aircraft; and by spraying only when wind velocity is less than 6 mph.

DO NOT APPLY BY AIRCRAFT WHEN AN AIR TEMPERATURE INVERSION EXISTS. Such a condition is characterized by little or no wind and with air temperature lower near the ground than at higher levels. The use of a continuous smoke column at or near site of application is suggested to indicate direction and velocity of air movement, and to indicate a temperature inversion by layering of the smoke.

Violent windstorms may move soil particles. If 2,4-D is on soil particles and they are blown onto susceptible plants, visible symptoms may appear. Serious injury is unlikely. The hazard of movement of 2,4-D on dust is reduced if treated fields are irrigated or if rain occurs shortly after application.

At high temperatures (above 95°F) vapors from this product may injure susceptible plants growing nearby. Do not use in a greenhouse. Excessive amounts of this herbicide in the soil may temporarily inhibit seed germination or plant growth.

This product is toxic to fish. Keep out of lakes, streams, or ponds. Do not apply where runoff is likely to occur. Do not contaminate water by cleaning of equipment, or disposal of wastes. Do not contaminate irrigation ditches or water used for irrigation or domestic purposes.

To avoid injury to desirable plants, do not handle or apply other agricultural chemicals with the same equipment used for ESTERON 99 Concentrate except as specified on this label. This product can be stored in an unheated building but do not store near fertilizers, seeds, insecticides or fungicides. Do not reuse containers. Dispose of empty containers by punching holes in them and burying with waste in non-cropland away from water supplies or follow official local recommendations for container disposal.

Local conditions may affect the use of herbicides. Consult your State Agricultural Experiment Station or Extension Service weed specialists for advice in selecting treatments from this label to best fit local conditions. **Be sure that use of this product conforms to all applicable regulations. Apply this product only as specified on this label.**

MONEY BACK GUARANTEE

ESTERON 99 Concentrate herbicide is guaranteed by The Dow Chemical Company to the full extent of the purchase price:

1. **To give satisfactory control of weed and brush species listed on container when used as recommended.**
2. **To form a suitable spray mixture in any water fit for spray use.**
3. **To store satisfactorily at temperatures as low as −40°F.**

NOTICE: Seller warrants that the product conforms to its chemical description and is reasonably fit for the purposes stated on the label when used in accordance with directions under normal conditions of use, but neither this warranty nor any other warranty of MERCHANTABILITY or FITNESS FOR A PARTICULAR PURPOSE, express or implied, extends to the use of this product contrary to label instructions, or under abnormal conditions, or under conditions not reasonably foreseable to seller, and buyer assumes the risk of any such use.

10586-067-4 8476

When to Use: Apply during June and July when weed tops have emerged sufficiently above the blueberry stems to allow treatment of the weeds and not the blueberry plants. Apply only during the year before the first burn. To use this method of weed control, two-year burns should be extended to three years.

Caution: Do not allow the spray being applied to the cloth-covered drum to be directed onto the blueberries. Do not harvest-rake field during the herbicide treatment year or until a two-year interval thereafter.

MISCELLANEOUS: CONTROL OF WOODY WEEDS IN LOW-BUSH BLUEBERRY FIELDS IN MAINE: How to use: Mount a drum 8 to 10 feet long or some other suitable length, and 1½ to 2 feet in diameter on an axle such as an old hay rake frame. Cover the drum with water absorbent yet tough cloth which will resist rapid wear and tear. Draw the cloth-covered drum across the blueberry field and at the same time spray evenly onto the full length of the top of the cloth-covered drum a spray mixture made by diluting 1 quart of ESTERON 99 Concentrate in 50 gallons of water per acre. Have the drum mounted so that as it revolves on its axis it is high enough to miss most of the low bush blueberry stems, yet low enough to forcibly brush the spray-saturated cloth-covered drum against the higher woody weeds, principally sweet fern, wild cherry and poplar. Keep the cloth wet enough to provide top coverage of the weeds, yet not so wet as to allow runoff of the liquid which could cause injury to the blueberry plants.

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THE PHENOXY HERBICIDES

Council for

Agricultural Science and Technology

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FOREWORD

"The Phenoxy Herbicides" was developed to meet the need for an accurate, objective, and authoritative statement of the properties, uses, and effects of this important class of herbicides and the alternatives to their use. The report was prepared by a task force of seventeen scientists representing the states of Maryland, Alabama, Indiana, Wisconsin, Illinois, Missouri, Arkansas, Texas, Arizona, Oregon, and California. Subject-matter areas of the various scientists included agricultural economics, agricultural engineering, agronomy, botany, forestry, horticulture, pesticide chemistry, plant pathology, plant physiology, range science, toxicology, and weed science. The task force met in Denver from November 20 to 22 to prepare a draft of the report. The draft was subsequently revised by the chairman, returned to members of the task force and others for comment, revised again, edited, and reproduced for distribution.

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SUMMARY

The phenoxy herbicides, 2,4-D, 2,4,5-T, MCPA, silvex and related materials, are selective herbicides widely used in crop production and in the management of forests, ranges and industrial, urban and aquatic sites. These chemicals are related to naturally occurring plant growth regulators. They kill plants by causing malfunctions in growth processes. Broad-leaved plants are generally susceptible to the phenoxy herbicides, whereas most grasses, coniferous trees and certain legumes are relatively resistant.

The phenoxy herbicides are used to control broad-leaved weeds in wheat, barley, rice, oats, rye, corn, grain sorghums and certain legumes. Such uses increase yields, improve product quality and reduce production costs. The phenoxy herbicides are used in forests to suppress unwanted hardwood trees and brush, to reduce competition with conifers already established or to prepare sites for the regeneration of conifers. They are used on grazing lands to control unpalatable and noxious plants and to kill brush and small trees that reduce the productivity of pastures and ranges. 2,4-D and other phenoxys are used in canals, ponds, lakes and waterways to kill floating weeds such as water hyacinth, submerged weeds such as pondweeds, and emergent and shoreline plants such as cattails and willows. Industrial and urban uses include control of brush on utility and transportation rights of way, control of dandelions, plantains and other weeds in turf and suppression of ragweed, poison ivy and other plants of public health importance.

The principal hazard in the use of the phenoxys is to crops and other valuable plants either within the treated area or nearby. Treated crops and forest trees can be injured through accidental overdosing, improper timing of treatments, unusual weather conditions and other causes. Injury to nearby crops and ornamentals can result from drift of droplets or vapors of the spray. Such losses are largely preventable through the use of proper formulations and spray equipment and the exercise of good judgment.

The phenoxy herbicides are predominantly toxic to green plants and are much less toxic to mammals, birds, fish, reptiles, shellfish, insects, worms, fungi and bacteria. When properly used, they do not occur in soils and water at levels harmful to animals and microorganisms. They do not concentrate in food chains and do not persist from year to year in croplands. They are detectable only rarely in food and then only in insignificant amounts.

A highly poisonous kind of dioxin called TCDD is an unavoidable contaminant in commercial supplies of 2,4,5-T and silvex. The amount present in currently produced formulations of 2,4,5-T and silvex is not enough to alter the toxicological properties of these preparations or to endanger human health or to affect plants or animals in the environment.

The phenoxy herbicides are widely used because they are more efficient and usually less hazardous and less injurious to the environment than alternative methods. Use of these chemicals is estimated to reduce the cost of production of the crops on which they are used by about 5% and to reduce overall agricultural production costs in the United States by about 1%. Uses in forests and nonagricul-

tural situations provide additional savings. If the phenoxys were no longer available, the cost of food, forest products, electric power, transportation and governmental services would be higher. These costs would be borne by consumers.

INTRODUCTION

The phenoxy herbicides were discovered over thirty years ago, incidental to research on naturally occurring plant hormones. As the chemical nature of these substances became known, related compounds were synthesized and tested for effects on plant growth. Certain phenoxy acetic acids, including 2,4-D, were found to be plant growth regulators and in due course were discovered independently in the United States and Britain to be active herbicides capable of selectively killing many broad-leaved weeds in cereal grains, grasslands and coniferous forests. Further research led to the commercial use of several phenoxy herbicides, including 2,4-D, 2,4,5-T, MCPA and silvex. These pioneer accomplishments have now expanded into a world-wide effort by industry and public research agencies that has discovered a wide array of useful herbicides, most of which are chemically and functionally unrelated to the phenoxys.

Despite the development of many other herbicides, the phenoxys remain major tools in vegetation management. Although replaced by newer materials in some instances, the phenoxys continue to find additional and expanded uses, such that 2,4-D is currently in critically short supply in world commerce. An important development for the tropical nations has been the recent discovery that a wide range of weeds can be prevented in paddy rice by applying 2,4-D to the water three or four days after transplanting. This and other developments forecast expanded usefulness for 2,4-D and related chemicals in the management of such diverse resources as croplands, forests, ranges, waterways, industrial lands, public utility properties, wildlife habitats, urban parks, athletic fields and landscape plantings.

The phenoxy herbicides are weak acids that are only slightly soluble in water and petroleum oils. Although the acid is the active form, they are normally converted to water-soluble amines or oil-soluble esters for convenience in handling and application. These are mixed with other ingredients, such as solvents, emulsifiers, thickeners, and wetting agents, to make commercial formulations for specific uses. The amine forms are diluted with water and sprayed on foliage or injected undiluted into trees. Esters are sprayed as oil solutions or as emulsions with water. One class of amine salts of the phenoxys is soluble in oil rather than in water. The strength of commercial formulations is expressed in terms of the equivalent content of the parent acid. However, different products are not equally effective even on this basis. Esters generally have greater herbicidal activity than the amine forms but are more expensive. Esters may evaporate from foliage after application, releasing fumes that can move outside the treated area and cause injury to sensitive plants. This hazard can be reduced by the use of low-volatile esters, but these cost more than the high-volatile esters and are less effective as herbicides in some situations. There is no single best formulation for all purposes, and this is reflected in the availability of a wide variety of commercial products for a multitude of uses. Available products include mixtures of phenoxy herbicides and mixtures of these herbicides with unrelated herbicides, fertilizers and other materials.

Many phenoxy acids have herbicidal activity. They form a family of compounds that have similar chemical and biological properties but differ in details that affect their activity on individual plants, their cost and other characteristics. The ones presently used in the United States include 2,4-D, 2,4,5-T, MCPA, silvex, 2,4-DB, MCPB, dichloroprop, mecoprop, 2,4-DEP and erbon. 2,4-D is by far

the predominant compound. It is without equal in cost and effectiveness for routine control of most broad-leaved weeds in the presence of grasses. Other phenoxys find use only where they control weeds resistant to 2,4-D or where crops are less sensitive to them than to 2,4-D. In 1971 the amounts of 2,4-D, 2,4,5-T and silvex produced in the United States were, respectively, 45, 6 and 3 millions pounds, representing over 90 percent of all phenoxy production. MCPA, 2,4-DB, MCPB, dichloroprop and mecoprop have important but limited special uses. 2,4-DEP and erbon are chemicals closely related to 2,4-D and 2,4,5-T that act primarily through the soil. They are not extensively used.

Mixtures of 2,4-D and 2,4,5-T related to commercial brush killers were employed as "defoliants" in the war in Indochina, causing partisans in this conflict to denounce this use as "chemical warfare." It was claimed that, in addition to killing plants, the materials killed people, livestock and wild animals and caused human birth defects. These charges have been exhaustively investigated by scientists and argued emotionally in the press and elsewhere. The evidence is that in Southeast Asia, as elsewhere, these chemicals have little biological activity beyond their great effectiveness as herbicides, and that whatever environmental effects they have result from their action on vegetation. However, it is not the purpose of this report to renew this largely political controversy, but to take note that formulations, rates of application, methods of application and other factors differed greatly from accepted agricultural practice. Conclusions in the one instance, therefore, may not apply in the other.

HERBICIDAL PROPERTIES

The phenoxy herbicides are absorbed by plant foliage, roots and soft stem tissue. When applied as a drench in diesel oil, they can soak through the dry bark of trees and enter living tissues by this means. Once absorbed, the phenoxys move within the plant along the pathways that carry food and water. They tend to accumulate in the actively growing parts of roots and stems. As the herbicide distributes through the plant, the leaves and buds twist and curl, followed by malformed new growth of stems and leaves. Sensitive young plants may die in a few days. Hardy shrubs and trees may succumb only after weeks or months or may survive without evident injury.

The phenoxy herbicides appear to enter in an imperfect and uncontrolled way into the regulation of growth processes normally governed by the natural growth hormones. There is interference with cell division and enlargement, with food utilization and with a wide array of other vital processes. The exact mechanism of these actions is not known, and indeed the exact workings of natural plant growth regulators are equally obscure. Phenoxy herbicides are far more toxic to green plants than to animals because the kinds of materials that have growth regulating activity in plants do not act in the same way in animals.

The phenoxys in addition to their use as herbicides, also find limited use as plant growth regulators for crops. For example, they can be used to control the ripening of bananas. 2,4-D is sprayed on orange trees to increase fruit size and prevent fruit and leaf drop. Silvex is sprayed on apples to enhance coloring and prevent premature fruit drop. Although popularly miscalled "defoliants," the

phenoxys are, in fact, antidefoliants and act at low concentrations to prevent the shedding of leaves and fruit. They enhance blossom retention and increase fruit set. At low concentrations the phenoxys promote the rooting of cuttings and presumably could be used for this purpose in plant propagation. Although these are useful properties, the great toxicity of the phenoxy herbicides to plants limits their employment as purely plant growth regulators. Ordinarily such needs are met by other hormone derivatives that are less active as herbicides and are marketed specifically for plant regulatory purposes.

PRACTICAL USES

The phenoxy herbicides are used in land and water management wherever their particular selective properties coincide with the desired changes in vegetation. The most common uses are suppression of broad-leaved plants in the presence of grasses, conifers or certain legumes. The situations in which management objectives are served by this kind of selectivity are extraordinarily diverse, ranging from essentially wilderness areas to intensive urban horticulture. Each use is governed by the known response to the herbicide of each kind of plant present. Such general rules as "broad-leaved plants are susceptible while grasses and conifers are resistant" have important exceptions, and nothing short of thorough knowledge of the response of each kind of plant under prevailing conditions has made possible the effective use of these chemicals.

Herbicides are most useful when employed in coordination with other practices in vegetation management systems. The aim is to create conditions favorable to the crop, forest trees, range grasses and other preferred species and unfavorable to unwanted plants. The total set of manipulations constitutes the management system in each case. The phenoxy herbicides function in a wide variety of systems ranging from forest and wild-land management and cereal and forage production to industrial land uses. Management objectives are diverse, including primarily the production of food, forest products and other commodities and also the management of fish and game habitats, suppression of allergenic and poisonous plants, maintenance of navigable and recreational waterways and many others.

Cropland

Four-fifths of the total amount of phenoxy herbicides used in the United States is applied to cropland and rangeland. In 1971, 38 million pounds of these chemicals were used on food and feed crops. The principal crops treated are the grains, wheat, corn, barley, oats and rice. The usual treatment is with 2,4-D at a rate of less than one pound per acre.

The small grains are always infested to some extent with annual and perennial weeds that can be controlled by the phenoxy herbicides. If not controlled, these weeds reduce crop yield, interfere with harvesting and reduce grain quality. For example, wild garlic bulblets harvested with the wheat cause a garlic taste in flour milled from the grain, making it virtually worthless. 2,4-D is the principal herbicide used in this country for control of broad-leaved weeds in cereal grains. Approximately 27 million acres of these crops are treated with this compound annually. The recommended rate of application depends on the specific weed problem and crop resistance but generally ranges from 1/4 to 1 pound per acre. Under some conditions,

2,4-D is not adequately selective in the small grains, and it is common practice in such cases to use MCPA instead. Although MCPA is appreciably more expensive than 2,4-D, about 7 millions acres of small grains are treated with it annually. A substantial portion of the U.S. rice acreage also receives 2,4-D, 2,4,5-T or MCPA treatment for control of broad-leaved weeds. 2,4,5-T and silvex are often used in rice in the southern states, where curly indigo and other weeds resistant to 2,4-D and MCPA are widespread.

Few alternative practices are available for control of broad-leaved weeds in cereal grains. Mechanical and hand tillage following planting are hopelessly impractical. Of the other selective herbicides used for special weed problems in small grains, none can be considered as general substitutes for the phenoxys. For example, dicamba can be used to control some annual and perennial broad-leaved weeds in oats and wheat (not barley), but this material does not control weedy mustards and other important weeds. Moreover, dicamba is relatively toxic to small-seeded legumes and thus cannot be used in the central and eastern areas of the United States where small-seeded legumes are commonly intersown with small grains. Bromoxynil controls many annual broad-leaved weeds in small grains, but it is not effective against most perennials and cannot be used in winter grains and where small-seeded legumes are intersown. Present practice in some areas is to combine dicamba or bromoxynil at low rates with 2,4-D or MCPA to broaden the spectrum of weeds controlled. Dinoseb is another alternative herbicide which controls primarily annual broad-leaved weeds in small grains. It is not a translocated herbicide and is thus less effective on perennials than the phenoxys. There are essentially no alternatives to the phenoxy herbicides in rice production.

2,4-D is used to control broad-leaved weeds in corn and sorghum. This use has decreased since the introduction of the triazines and other effective preplant and preemergence herbicides that kill not only broad-leaved plants but weedy grasses as well. However, increased use of these newer herbicides has not been without problems. Deep-rooted perennial weeds are generally resistant to these materials, and their populations increase in the absence of periodic treatments with 2,4-D. Thus, 2,4-D continues to retain a place in corn and sorghum culture, with approximately 20 million acres of these crops being treated with 2,4-D annually. The rate of application ranges from 1/4 to 1/2 pound per acre. Dicamba is a partial alternative to 2,4-D; however, it does not control all of the species controlled by 2,4-D and is best used in mixtures with 2,4-D to extend the spectrum of weeds controlled.

Cultivation supplemented by hoeing is an alternative to 2,4-D in production of corn and sorghum. Indeed, cultivation is still widely practiced with these crops, either alone or in combination with herbicides. However, cultivation cannot remove weeds occurring directly in the crop row. It can provide partial weed control at low cost but must be supplemented with hand work at costs that are presently prohibitive.

MCPB and 2,4-DB can be used for control of broad-leaved weeds in legumes. MCPB and 2,4-DB are not themselves herbicides but are precursors of the herbicides, MCPA and 2,4-D, respectively. They can be safely used to control certain broad-leaved weeds in green peas, soybeans, peanuts and small-seeded forage legumes because these crops have less ability to convert them to MCPA and 2,4-D than do the

weeds. The total amount of MCPB and 2,4-DB used is small, but they make possible the control of certain yield-limiting weeds in important leguminous crops. In most instances, no other herbicide is equally effective for this purpose.

Alternatives to the use of 2,4-DB and MCPB in legumes are limited. Dinoseb can be used as a postemergence treatment on some small-seeded forage legumes, green peas and peanuts for control of broad-leaved annuals, but this material is less effective on perennials and cannot be used on late emerging weeds without risk of crop damage. Chloroxuron and bentazon are possible substitutes for postemergence control of broad-leaved annual weeds in soybeans; however, these herbicides are several times more costly than 2,4-DB. Cultivation after planting continues as a recognized weed control practice in the larger-seeded legumes grown as row crops, but this practice has the limitations described earlier for corn and sorghum.

Phenoxy herbicides are used to control susceptible weeds in such crops as apples, asparagus, blueberries, cranberries, flax, pears, potatoes, strawberries and sugarcane. Each crop has specific requirements for weed control, including in some instances special formulations and unusual methods of application. In orchards and vineyards the herbicide need not be truly selective since it can be applied selectively to the weeds and not to the trees and vines.

The diversity and versatility of the phenoxy herbicides also provide the agriculturist with many options for weed control around the farm in noncrop situations. Such uses are coordinated with preventive and cultural practices, such as proper seedbed preparation, to make up efficient production systems. Post harvest and preplanting tillage followed by careful seedbed preparation can weaken perennial weeds and provide clean ground for the new crops. The purpose of later phenoxy treatments is to control susceptible weeds which begin growth with the crop or later.

An important advantage of having a variety of herbicides and other practices is that it makes possible the alternation and rotation of control measures in successive years. When the same methods are used year after year, special populations of weeds tolerant to the conditions created build up. Rotations to different herbicides or to other crops, each with its particular herbicides and cultural methods, and the use of combinations of herbicides or combinations of herbicides with other methods are the stock-in-trade means of combatting weeds in croplands. Thus the phenoxys are not only production tools in the crops in which they are directly used but also in the crops that are produced in rotation with them.

Pastures and Ranges

Pastures and ranges are lands producing grasses or other forage plants that are harvested by grazing with domesticated animals. Pastures are grazing lands that are intensively managed, often by periodic cultivation, irrigation or rotation with crops. Rangelands are less intensively managed and are often arid or rough lands little altered from their natural state.

The central problem inherent in all grazing lands is the fact that livestock consume forage plants and leave weedy plants untouched and uninjured. The result is that valuable species are suppressed while unpalatable or noxious ones remain

undamaged and free to prosper under reduced competition. Thus, the very nature of grazing is to provide an overwhelming competitive advantage to weedy species. The advantage is so great that, in the absence of proper management, weeds come to predominate in nearly all situations, often to the nearly complete exclusion of forage species.

Weedy vegetation can be held in check to some extent and forage yield maintained by the proper timing and rotation of grazing and by avoiding excessive grazing. Pastures can be plowed and replanted. Ranges can be reseeded or seeded with improved species. Fertilizers can be applied and pests controlled. Such positive measures are useful and necessary for increasing forage production; however, effective management systems must sooner or later face up to the necessity of taking direct destructive action against weeds. Available methods for controlling pasture and range weeds include chemical and mechanical methods and fire.

The phenoxys are the principal herbicides used on grazing lands. Their low cost, high activity, suitability for low-volume application and ability to kill most broadleaved plants, including woody species such as mesquite and sagebrush, without injury to grasses and certain legumes, make them widely useful in pasture and range management. As early as 1951, 500,000 acres of rangelands were treated with 2,4-D and 2,4,5-T. By 1966, over 10 million pounds of phenoxy herbicides, largely 2,4-D, were being applied annually to privately owned pastures and rangelands in the 48 contiguous states, amounting to nearly one-fourth of the total domestic consumption of phenoxy herbicides at that time. In 1971, 7.9 million pounds of phenoxy herbicides were applied to privately owned pastures and rangelands. Again the largest amount used was 2,4-D applied to 6 million acres of land. Slightly less than 1 million pounds of 2,4,5-T was applied to 1.1 million acres of land, much of it for control of mesquite, a task for which this chemical is uniquely adapted.

At present, most of the 2,4-D used on grazing lands is being applied to pastures. Treatment in 1971 amounted to 5 million acres or approximately 5 percent of the present 100 million acres of pastures in the United States. Of the 530 million acres of rangeland, only about 2.1 million acres, amounting to 0.4 percent of the total, are treated with phenoxy herbicides each year. One reason for this difference is that pastures are treated annually and rangelands only every 6 to 10 years. Another factor is that woody plants on rangelands reach levels requiring treatment on only 150 to 200 million acres and are then treated only when returns justify the expenditure. Although treating rangelands with phenoxy herbicides often increases forage production several fold, the land may be so arid or otherwise unproductive that this level of increase is not enough to yield an adequate return on treatments costing as little as $3 per acre.

Alternatives to phenoxy herbicides are more limited on rangelands than on pastures. Economic constraints on rangelands are dictated by the inherently low productivity of these lands. Drastic treatment such as bulldozing, ripping, or rootplowing followed by seeding may cost six times as much as treatment with phenoxy herbicides. These procedures destroy existing forage and disturb the soil, making it susceptible to wind and water erosion. Such alternatives are attractive only on sites with high productive potential that can be revegetated quickly.

Before rangelands were managed as they are now, natural fires apparently were able to reduce brush and coarse weeds to levels that were in balance with forage species. Man has largely eliminated fire, presumably to prevent loss of forage

and to reduce the danger of wildfire. This, in part, accounts for a general increase in weeds on rangelands and suggests a reevaluation of our attitudes toward fire in range management. Fire on range and pasture lands is clearly an alternative to the use of phenoxy herbicides in some situations, particularly for brushlands. The smoke resulting from range or pasture burning, the destructive appearance of the fires, the difficulty of keeping fires from spreading and the hazard to wildlife are factors discouraging the use of burning and leading to the proliferation of laws restricting the employment of fire in range and pasture management.

Forests

Forests cover a full third of the United States, or 750 million acres. Two-thirds of this, 500 million acres, is productive enough to be managed for commercial timber. The remainder is either too low in productivity for timber, or has been withdrawn for other uses such as water yield, grazing, wildlife or recreation.

Three-fifths of the commercial timberland (about 300 million acres) is producing forest products at less than two-thirds of capacity due primarily to competing undesired vegetation. Over 100 million acres of this area is productive land that is supporting virtually no timber despite a history of high-value growth. These are the principal areas on which phenoxy herbicides, mostly 2,4-D, 2,4,5-T and silvex, are being used to help restore a desired forest cover.

The use of phenoxy herbicides in forestry, as elsewhere, is to discriminate between desired and undesired plants. In some cases, defective trees or undesired species have become dominant, whereas in others there are not enough trees to form a stand because of weed, brush or vine competition. In another, and less common, situation forests fail to regenerate because wildlife habitats have become altered in ways that support destructive populations of animals.

Traditional forestry methods emphasize hand-cutting for thinning and culling of forest stands. Such methods may be satisfactory and economically sound, particularly where cut material is utilized. However, high costs and the sheer magnitude of the problem on a nationwide basis make it evident that large-scale forest improvement simply will not be achieved by manual means. Herbicides are being used increasingly as a substitute for hand cutting.

The phenoxy herbicides are used for preparation of sites for tree establishment and release of preferred species from competing woody plants. Herbicides are applied by aircraft, by ground broadcast sprays and by treating individual trees. Rates of herbicide application for both aerial and ground broadcast treatments generally range from 2 to 4 pounds of 2,4,5-T or 2,4-D/2,4,5-T mixture per acre. Broadcast applications for conifer release are based on the greater resistance of the principal conifer species than of hardwoods to the phenoxys. Individual tree injections are made through spaced incisions around the trunk using about one milliliter of 2,4-D per cut. Limited use is also made of basal sprays and stem frills, with phenoxy herbicides being applied in oil solution to the bases of tree trunks or to cuts on the stems. Such treatments have lasting effects and usually need be used only once or twice in a 30- to 80-year forest rotation cycle. Many areas do not develop conditions requiring treatment; others, once initial conditions are corrected, should never need re-treatment if properly managed.

On forest land, as on cropland and rangeland, the phenoxys should be used in concert with other management practices and other herbicides to secure objectives beyond the simple suppression of unwanted plants. There are many alternative pro-

cedures for both timber stand improvement and complete rehabilitation. These employ both chemical and nonchemical procedures, including the option to take no action at all.

Culling and thinning may be accomplished by injecting organic arsenicals, picloram or dicamba. Injection does not expose other trees to the herbicide nor entail significant contamination of the general environment. However, costs generally favor use of the phenoxy herbicides, often by several dollars per acre.

Site preparation may be accomplished with picloram, dicamba and amitrole in place of, or in addition to, the phenoxys. These chemicals are relatively less selective among woody species than the phenoxys, and amitrole also kills grasses. Residues of picloram and dicamba are more persistent and active than are those of phenoxys. They can often be used effectively despite this problem, but at a cost of $10 to $40 per acre more than for site preparation based on the phenoxys. Generally, fewer problems are encountered with phenoxys than with substitutes. The use of other materials is usually warranted only when there is a need to control species resistant to the phenoxys.

Mechanical equipment can be used for forest weed control, but usually at greater cost and hazard. Power saws are more costly to operate in most circumstances than are injectors. Operator hazard from the use of saws is high, both directly from the equipment and indirectly from falling trees. Girdling requires much labor and entails a delay of a year or longer for weed trees to die. Bulldozers may be used to clear land for planting, and rolling choppers can incorporate brush and woody residues into soil. Such extreme methods are costly and disruptive to the soil, and they may lead to erosion and sedimentation in streams.

Fire is an important cultural tool that may be used independently or in conjunction with herbicides and mechanical methods. However, objectionable smoke and the difficulties of fire control restrict the use of fire. Herbicides are often used to desiccate vegetation, so that smoke is reduced, and to allow areas to be burned when adjacent areas are green and low in flammability.

The decision to make no treatment may be justified in some instances; however, such a decision is more often made through neglect rather than through planned action. Alterations to vegetation resulting from past malpractices are not automatically self-repairing. Trees and shrubs present on a site tend to remain dominant unless removed or killed. If forest composition is poor for any reason, it will likely remain poor. If game habitat is poor in such a stand, it will remain poor. Each selective removal of forest products will increase the proportion of undesirable growing stock. The effect of no treatment is therefore likely to persist indefinitely and to perpetuate the degradation of stands conditioned by past and present utilization practices.

Aquatic Habitats

Aquatic vegetation is present in all surface waters of reasonable quality. It is responsible for all food production in water and thus provides the nutritional basis for all aquatic life, ranging from microorganisms to game fish and water fowl. Under certain circumstances there is a buildup of overwhelming masses of aquatic weeds that may clog streams, lakes, reservoirs and canals, causing flooding, inter-

fering with the flow of irrigation and drainage water, restricting navigation, interfering with recreation, and impairing fish and wildlife habitats.

The growth forms of aquatic plants range from single-celled algae to floating mats of such flowering plants as alligatorweed and water hyacinth that completely cover the water surface. Submersed plants, such as the pondweeds, are rooted to the bottom and grow entirely under water. Others, such as cattails and bulrushes, are rooted to the bottom in shallow water and rise above the water surface.

Most of the many desirable attributes of water may be served at one time or another by the judicious use of herbicides. Domestic water reservoirs are often treated on a regular basis with copper salts to suppress algae, and in other situations various chemicals, including phenoxy herbicides, are added to the water or sprayed on floating or emergent vegetation.

2,4-D can be used at rates of 1 to 2 pounds per acre for control of water hyacinth and at rates up to 4 pounds for control of many other floating or emergent species. Alligatorweed is resistant to 2,4-D but may be controlled with silvex. 2,4-D is frequently used in the form of granules or pellets which, after being spread over the water surface, sink to the bottom to kill rooted submersed weeds. Silvex is similarly used to control weeds more resistant to 2,4-D. Both 2,4-D and silvex are put in water in liquid form at 1.5 to 2 ppm or 5 pounds per acre foot of water for control of some weeds. Bulrushes, cattails, water lilies and most shoreline and emergent weeds are controlled with oil-water emulsion of 2,4-D esters at rates of 4 to 6 pounds per acre.

There are some alternatives to phenoxy herbicides for chemical control of aquatic weeds. Diquat can be used to control water hyacinth, water lettuce and duckweed. Acrolein and aromatic solvents are effective for control of submersed weeds, but both are highly toxic to aquatic animals. Endothall, dichlobenil, diquat, and fenac are alternatives to the use of phenoxy herbicides for certain weeds and under some conditions. There are no suitable chemical alternatives to 2,4-D and silvex for control of most shoreline or emergent weeds. Mechanical alternatives include underwater cutters for rooted weeds and swath cutters for floating mats. Dredging, draglining, and underwater dragging of chains and other devices may be used on suitably accessible waterways. The cost of mechanical methods for control of water hyacinth ranges from $150 to $1600 per acre compared with $5 to $60 per acre for treatments with the phenoxy herbicides. Costs of more than $100 per acre may be expected with the use of alternative herbicides.

The most extensive use of phenoxy herbicides in aquatic environments is in the production of rice. In view of the worldwide importance of this most critical food crop, the use in rice culture may eventually become the most important use of these versatile herbicides. The uses in rice and in noncrop aquatic situations have much in common, including the existence of few economical alternative methods.

Industrial Lands

Industrial vegetation management is directed primarily at modifying plant cover so that it does not interfere with industrial operations. Effects on the general environment and on aesthetic values must also be considered. Management actions range from minor tree pruning, for protection of power lines and structures,

to the total suppression of all plants in such installations as railroad tracks, substations and storage yards. Industrial areas requiring total vegetation control are usually treated with soil sterilants rather than phenoxy herbicides. Industrial lands in the United States subject to management of plant cover are in excess of 50 million acres. This total includes nearly 4 million miles of highway, 200,000 miles of railroad and about 2 million miles of overhead electric lines, of which 300,000 miles are high-capacity circuits occupying 4 million acres.

Mos utility, highway and railroad rights-of-way are initially cleared by mechanical means, the cost of clearing in wooded areas varying widely with the nature of the terrain, labor costs and other factors. On power and communication line rights-of-way, subsequent control commonly entails the use of 2,4-D and 2,4,5-T. Newly constructed lines cleared with mechanical equipment often require two herbicide applications in succession to control sprouts; subsequent treatments are needed less frequently, depending upon the agressiveness of invading species. Maintenance operations may involve: (1) selective basal sprays of 2,4,5-T or 2,4-D/2,4,5-T esters at rates of 12 to 16 lb per 100 gallons of oil; (2) foliage or stem-foliage sprays of 2,4,5-T or 2,4-D/2,4,5-T mixtures in water applied with ground equipment at rates of 3 to 4 lb of chemical per 100 gallons of spray mixture; and (3) aircraft applications of 2,4,5-T or 2,4-D/2,4,5-T mixture at rates up to 12 lb per acre, often as invert emulsions or combined with a thickening agent to reduce spray drift. Other treatments include tree injections of the kind used in forests. Silvex and dichloroprop are used as foliage sprays at rates similar to those used with other phenoxy herbicides. These compounds kill certain species not controlled by 2,4-D and 2,4,5-T, but otherwise they affect a more limited spectrum of plants.

The preferred vegetation on highway and utility rights-of-way is usually grass and other short vegetation. The proper management of vegetation on roadsides is important to safety by providing adequate sight distances on curves and at junctions and intersections. Also, tall weeds can cause hazardous snowdrifts. Before the use of phenoxys, mowing, plowing, hand cutting and burning were about the only control methods available. 2,4-D, 2,4,5-T and other herbicides have eliminated the need for plowing, hand cutting and burning and also permit fewer mowings per year. Chemicals are particularly useful on steep slopes, wet areas and areas obstructed by guard rails and other structures and not accessible to mowing machines. The use of phenoxy herbicides on rights-of-way is sometimes restricted by the proximity of desirable vegetation susceptible to herbicide injury.

Alternative measures for utility rights-of-way maintenance include such chemicals as ammonium sulfamate, picloram, amitrole and dicamba. Ammonium sulfamate is effective for control of many woody plants. However, since it must be applied as high-volume sprays, it is not suited to helicopter applications. Ammonium sulfamate appears to be environmentally safe for wildlife and free of residue problems. Ammonium sulfamate kills grass and is thus not suitable for broadcast treatments where ground cover is wanted. Picloram is highly effective on many woody plants and can be applied as foliage sprays or to the soil in granular form. It is relatively persistent in the soil and must be used with due regard for this characteristic. Amitrole, dicamba and other foliar herbicides have important uses in industrial weed control, but unfortunately none of them duplicate the highly useful selectivity pattern of the phenoxy herbicides.

Alternative management systems on most rights-of-way in wooded areas are similar to those used in forestry and include: (1) periodic hand cutting, (2) mowing, and (3) mechanical clearing by plowing or bulldozing. Terrain limitations greatly restrict

the use of ground equipment as replacements for aerial applications which are currently used on more than 2.2 million acres of right-of-way annually.

Urban Lands

Urban vegetation is principally lawn and turf, supplemented with shade trees and shrubbery. The central management effort is directed toward maintaining high-quality, weed-free turf. There are 15 million acres of turf in the United States, of which one-tenth is golf courses and one-third is home lawns.

2,4-D, 2,4,5-T, silvex, MCPA and dichloroprop are used on turf to control dandelions, plantains, garlic, chickweed and other nongrass weeds. This is standard practice by the home owner, greenskeeper and park manager throughout the world. Other herbicides used in turf management include DCPA, benefin, bensulide, arsonates, siduron and others that control crabgrass and certain other annual grasses. DCPA and dicamba are effective also on selected annual grasses and some phenoxy-tolerant broad-leaved weeds. Dicamba is readily absorbed by roots from soil and can injure shrubs and shade trees by this means. The use of alternative herbicides to the exclusion of phenoxy herbicides would greatly reduce the control of broad-leaved weeds critical in turf management.

The phenoxy herbicides are also widely used in public health programs to suppress poison ivy and allergenic plants such as ragweed.

HAZARDS

All chemicals, including ordinary household materials and the common ingredients of foodstuffs, are to some extent hazardous to man and other living things. A chemical may be a fire hazard, stain clothing, cause the floor to be slippery when spilled, or be poisonous and cause illness or death. In the case of poisoning, the hazard is compounded of two variables: the inherent toxicity of the chemical and the degree of exposure to it. High toxicity with little exposure presents low hazard, whereas high exposure to materials that are not highly poisonous may have serious consequences.

The toxicity of the phenoxy herbicides is known with reasonable accuracy on hundreds of species of plants and animals under a variety of conditions. The levels of herbicide present in the environment as a result of normal use and under conditions representing possible misuse are also known for a wide variety of situations. These facts form the basis for the assessment of hazards resulting from the use of the phenoxy herbicides. The scientific data are exhaustive, comprising more than 35,000 scientific papers and technical reports over a 30-year period. The phenoxys are relatively old materials in terms of research and accumulated experience in their use. It is possible not only to assess risks projected on the basis of experimental data but also to confirm or deny these projections on the basis of hazards that have developed or failed to develop from a quarter-century of extensive use throughout the world.

The phenoxy herbicides are powerful plant killers, and the principal hazards from their use accrue from this fact. The hazard is almost entirely to plants. The danger is either from failures in selectivity, leading to injury of the crop or other valuable plants in the treated area, or from spray drift or the movement

of herbicide vapors, leading to injury of plants outside the treated area. There is a preponderance of evidence that the phenoxy herbicides are not significantly hazardous to animal life and microorganisms under normal conditions of use and indeed under conditions of substantial misuse. There may be injury to animals indirectly as a result of the changes in vegetation. This, however, is a consequence of the chosen vegetation management plan and not of the means taken to accomplish it.

Losses to crops due to failures in selectivity can result from overdosing due to mismeasurement of chemicals, poorly calibrated spray equipment, overlapping of spray swaths causing double coverage, and climatic variations that affect crop resistance. Rice, for example, is susceptible to 2,4-D injury at certain stages of growth, and many normally resistant plants are subject to injury during flowering and fruiting. Conifers are less resistant to the phenoxys when in rapid growth. Such injury is widely recognized by farmers and foresters throughout the world, and the means of preventing major losses are well known but, unfortunately, are not always practiced.

Spray Drift

The most serious hazard in the use of the phenoxy herbicides is drift of the chemical to nontarget vegetation during or after application. Phenoxy herbicides are extremely toxic to cotton and grapes. Beans, tomatoes, melons and many ornamental plants are also easily damaged. The hazard is related to the susceptibility of the plants, their stage of development and whether they are actively growing or not. Other factors are the distance from treated areas to susceptible plants, the amount of herbicide applied on a given day and the nature of the herbicide formulation used. The proportion of driftable small drops in the emitted spray and the height of the application (air or by ground) above the surface also affect spray drift. Wind velocity and direction and the degreee of turbulent mixing can greatly increase or decrease downwind transport and deposition of the spray in the susceptible crop area. Air temperature and humidity alter crop response and affect spray evaporation.

The herbicide can move as spray droplets, or it can evaporate and move as vapors. The ester forms of phenoxy herbicides can evaporate from droplets in the air or from plants and other surfaces after spraying. The vapors can then drift in the air to sensitive crops and other susceptible plants outside treated areas. This behavior is mainly a property of the high-volatile esters. Low-volatile esters are essentially free of this hazard except under conditions of very high temperatures and the close proximity of sensitive crops. In such events, the amine salt formulations provide still further protection against the hazard of spray drift.

Drift of herbicides as droplets can be greatly reduced by spraying the material in the form of larger and heavier droplets that tend to settle rapidly in the target area. Droplet size can be increased by using higher spray volume, lower pressures, coarse nozzles, nozzles of special design, or special systems for aircraft that give close control of droplet size. Thickening agents can be added to the spray mixture to cause it to form larger drops rather than fine particles.

Application machines and techniques have improved significantly in the past

few years. It is no longer necessary in hazardous situations to apply phenoxys with equipment and formulations not specifically designed to reduce drift. Although a larger number of smaller drops may be more effective, larger spray drops of 500 to 1500 microns settle rapidly and provide safer and, over the long run, more economical control.

With use of the best available technology, it is routinely possible to deposit 97 to 99 percent of the released spray within ordinary target areas by either aircraft or ground equipment. Although such precision is not without its measure of added cost, in hazardous situations the additional expense is clearly worthwhile. Even more effective means are being developed which will permit use of phenoxy herbicides with significantly less drift than possible with present methods.

In hazardous situations, phenoxy herbicides should be applied only when a positive and firm wind is blowing away from nearby susceptible crops. They should not be applied when a temperature inversion, or a warm layer of air, is overhead under 1500 ft elevation. Absence of wind or an inversion ceiling reduce turbulent mixing or ventilation and promote build-up of small drops and vapor in the air that can drift as a concentrated mass to sensitive crops.

A final means of protecting from drift is to recognize situations that are beyond normal protective measures and not spray at all. When highly susceptible crops such as cotton and grapes are grown within 3 to 5 miles of large-scale spray operations (over 100 acres per day), crop injury may occur despite normal precautions. Several states have regulations that apply to such situations. They forbid use of specified herbicides at certain times of the year and may require special permits for exceptionally hazardous uses, or they may allow application only under regulatory supervision.

It is an important factor in the detection and prevention of drift that the effect of the phenoxys on plants is not insidious. When plants are injured, the symptoms are pronounced and unmistakable, and indeed the symptoms often appear more serious at first than is ultimately the case. The pattern of injured vegetation in relation to the primary treatment is ordinarily such that the source of spray drift is readily apparent.

Toxicity

Toxicity is the degree that a substance is poisonous. It is commonly expressed as the lethal dose, or lethal concentration, to 50 percent of the test animals (LD_{50} or LC_{50}). Dose is usually stated in milligrams of chemical per kilogram of body weight (mg/kg). Concentration is expressed as parts per million (ppm) of toxicant in food, water or air.

The acute oral toxicity of a single dose of the phenoxy herbicides to mammals ranges from 100 mg/kg to 2000 mg/kg, depending upon the test animal and the particular chemical or formulation. The herbicides are absorbed after ingestion, transported via the plasma, concentrated in the kidneys and rapidly eliminated in the urine. For 2,4-D or 2,4,5-T, the acute oral LD_{50} is upwards of 300 mg/kg for rats, mice, guinea pigs, hamsters, rabbits, primates and various livestock and large game animals. This is equivalent to a dose of 3/4 ounce of chemical for a human weighing 164 pounds. The dog has lower capacity to excrete the phenoxys, and as a result these chemicals are about three times more toxic to dogs than to other test animals.

It is known that man excretes the phenoxy herbicides rapidly via the urine.

In long-term feeding trials, test animals tolerate doses of as much as 25 percent to as little as 0.4 percent of the acute oral LD_{50} fed daily on a continuing basis without ill effects. Signs of poisoning include loss of appetite, loss of weight, weakness, lack of coordination, alterations of the liver and other internal organs, and in some instances defective offspring. 2,4,5-T is known to be a teratogen (cause birth defects) when administered at high doses to mice under some circumstances. The same may be true for the other phenoxys as well, since presumably all biologically active chemicals can be shown to have this effect under some conditions of exposure. When gestating animals are poisoned by massive doses of any substance, effects on the developing offspring are inevitable.

The phenoxy herbicides are generally less toxic to birds than to mammals. The acute oral LD_{50} for 2,4-D and 2,4,5-T for poultry, mallards, pheasants, pigeons and quail ranges from 300 to 5000 mg/kg. The LC_{50} for these chemicals in feed for birds is upwards of 2500 ppm and is typically greater than 5000 ppm. The toxicity to fish is highly variable. LC_{50} values range from less than 1 ppm to more than 1000 ppm in water. These values are equivalent to treatments of 10 pounds to 10,000 pounds of phenoxy herbicide per acre in a pond 4 feet deep. Toxicity is largely associated with the ester and oil-soluble amine formulations. The water-soluble amine salts are to all intents nontoxic to fish. Oysters, crabs, mussels and a wide variety of other invertebrates are not directly affected by the phenoxy herbicides applied in lakes, ponds and estuaries for aquatic weed control. The phenoxys are essentially nontoxic to insects and related organisms and are not significantly fungicidal or bactericidal.

Residues

When the phenoxy herbicides are sprayed on vegetation, a residue of the herbicide is deposited on plant foliage, on soil, on fences, poles and structures, and often into surface waters. Of the herbicide deposits on leaves, some is absorbed into the living tissues, often killing the plant. The residue remaining in the tissues of dead plants is largely decomposed as the plant material rots; however, some is released into the soil. The herbicide remaining in surviving plants is broken down over a period of a few days to a few weeks. Forage from pastures and ranges treated with 2,4-D, 2,4,5-T, MCPA or silvex has initial residues in and on the plant material of about 100 ppm per pound of chemical applied per acre. Residues in and on forage rarely exceed 300 ppm, and this only on sparse vegetation from the heaviest allowable rates of use on grazing lands. Forage residues decline with a half-life of one to two weeks. Thus, within two to four weeks, levels have fallen into the range of one-half to one-sixteenth of the initial value.

Since domestic and wild grazing animals tolerate up to 2000 ppm of phenoxy herbicides continuously in feed and larger amounts for short periods, there is no hazard to animals from forage residue even from treatment of ranges and pastures at exaggerated rates. No residues appear in the milk of cows consuming rations containing up to 300 ppm of 2,4-D, MCPA or silvex and up to 30 ppm of 2,4,5-T. Thus residues could possibly appear in milk following grazing in areas treated with practical rates of 2,4,5-T. To guard against this, there are stipulated waiting periods for milking or slaughter of animals grazed on ranges and pastures treated with herbicides.

In monitoring programs, no residues of 2,4-D or silvex were detected by the U.S. Food and Drug Administration in 13,000 samples of milk and 12,000 samples of meat from market channels analyzed for these compounds from 1963 to 1969. Trace amounts of 2,4,5-T were found in several samples. About 12 percent of more than 8,000 samples of meat analyzed by F.D.A. over a three-year period were reported to contain an average of 0.02 ppm of MCPA in the fat. This finding, although of no health significance, is nevertheless perplexing since such residues cannot be experimentally induced in cattle and sheep from continuous feeding at rates up to 500 ppm of MCPA in the ration. Residues of the phenoxy herbicides are also occasionally detectable in plant products used as food, although at levels so low as to be of no medical interest.

Residues of the phenoxy herbicides leached into the soil are bound to some extent by soil particles and are held in the upper part of the soil. They do not leach into water tables and contaminate wells and springs, nor do they move significantly into streams or to adjacent areas from surface runoff. However, wind or water erosion that carries major quantities of soil would also transport herbicide residues if any were present. The diluting effect of the soil is such that levels of the phenoxy herbicide in the root zone of plants are extremely low. Normally the levels are not sufficient to injure green plants or to affect non-green organisms such as bacteria, fungi, worms, insects and rodents.

The phenoxys are, without exception, subject to decomposition by various microorganisms that are universally present in soils. When applied to soils at typical agricultural rates, 2,4-D is usually decomposed in one to four weeks. MCPA requires about six weeks and 2,4,5-T about three months for essentially complete destruction. Silvex degradation is slightly slower than that of 2,4,5-T. Thus the phenoxy herbicides do not build up in the soil, and treatments can be applied to croplands year after year without accumulation.

Detectable residues of the phenoxy herbicides do not appear in surface waters unless the chemicals are directly added to the water or fall there incidental to spraying of rice or shoreline and forest vegetation or unless the chemicals are added as a water treatment for the control of aquatic vegetation. In practice the greatest residues in streams and lakes resulting from range and forest uses are less than 0.1 ppm. The concentration in water from treatment of rice and the spraying of floating and emergent aquatic weeds rarely exceeds 0.1 ppm. Treatments equivalent to several parts per million of 2,4-D are used to control such submersed aquatic weeds as water milfoil. These are added as slow-release granules containing phenoxy esters or water-soluble amines. Rates and application practices are designed to keep water residues below the approved 0.1 ppm level.

Residues in running water are subject to dilution through stream flow, adsorption by bottom mud and decomposition by sunlight. The concentration in streams after forest and shoreline treatments usually falls below detectable levels in a few days. In shallow waters such as rice paddies or stagnant, swampy areas, residues are decomposed by microorganisms and destroyed by sunlight. Residues decline at about the same rate as in soils. The decomposition of the phenoxys is rapid in most waters. The rate is reduced only under conditions of oxygen deficiency.

Dioxin

A dioxin contaminant referred to as TCDD is formed in the manufacture of the

phenol used to make 2,4,5-T and silvex. The presence and significance of this impurity have become known only in recent years. 2,4,5-T formerly contained from 1 to 80 ppm of TCDD, concentrations sufficient to cause skin eruptions called chloracne in industrial workers. Although it has not been feasible to eliminate this contaminant entirely, present production methods are able to reduce the dioxin level to less than 0.1 ppm.

To have reduced to a fraction of one percent of its original content an impurity in a chemical already widely used and recognized as safe to the public would appear to be a sufficient solution of a routine problem. However, as more data were obtained, it became apparent that TCDD is one of the most toxic chemicals known. The hazard posed by the presence of a very very small amount of this very very toxic substance has therefore been of concern. As in other cases, the hazard must be evaluated in terms of toxicity and degree of exposure.

TCDD is toxic to laboratory animals at all stages of life, and it also causes birth defects. The acute oral LD_{50} ranges from 0.0006 mg/kg (0.6 µg/kg) in male guinea pigs to 115 µg/kg in rabbits. Dogs are less sensitive to TCDD than rabbits. Toxicity is about equal in the rabbit whether the compound is ingested or applied to the skin.

The effects are skin damage, liver damage, hemorrhage and reduced ability to cope with disease organisms. Death from a lethal dose is often delayed several weeks. Following ingestion by the rat, TCDD is absorbed from the gut, localized in the liver and fat, and eliminated largely via the feces but to some extent through the urine. A small amount is metabolized to harmless materials. About half of the ingested material is eliminated from the body in the first 17 days.

Birth defects develop when the chemical is administered during the time of pregnancy when foetal organs are forming. The effect is directly upon the developing pup rather than on the genetics of the mother. TCDD is more of a toxicant than a teratogen. It usually causes death rather than a wide range of abnormalities.

TCDD is from 5000 to 500,000 times more toxic to mammals than 2,4,5-T. The content of TCDD in commercial 2,4,5-T is less than one part in ten million. On this basis, a single toxic dose of TCDD would be contained in from 20 to 2,000 toxic doses of 2,4,5-T. Thus, the presence of 0.1 ppm of TCDD in 2,4,5-T does not contribute significantly to the toxicity of herbicidal preparations of 2,4,5-T.

For a person or animal to be poisoned with TCDD without first being poisoned with 2,4,5-T would require the existence of a mechanism in nature that would separate TCDD from 2,4,5-T, concentrate it and make it accessible for consumption in food or feed. Any postulated mechanism must recognize available facts about the environmental fate of dioxin.

The amount of TCDD distributed in the United States in 2,4,5-T is probably no more than eight ounces annually. This material is distributed over approximately five million acres at the rate of about 50 micrograms per acre, an amount equal to an acute lethal dose for a large animal, assuming it to be somewhat more sensitive to TCDD than the most susceptible known test animal. The material falling on the foliage is not absorbed appreciably by plants but gradually disappears from the leaves by decomposition due to the action of sunlight, evaporation into the atmosphere and washing from the leaves into the soil by rainfall. In addition to the

loss by degradation, it should be noted that losses from volatility and washing into the soil serve further to dilute rather than to concentrate the remaining residues.

Once in the soil, residues become firmly bound to soil particles and are not appreciably taken up by plants. The TCDD does not leach downward but remains localized in the surface soil. The concentration at this time is less than one part in 10 trillion, a dilution ratio equivalent to a distance of an inch in 200 million miles (roughly twice the distance to the sun). Microbial degradation then comes into play and decomposes the remaining chemical to basic materials over a period of probably a year or two.

TCDD sprayed into waters rapidly disappears, evidently due to vapor distillation into the atmosphere and to decomposition by sunlight provided the waters contain small amounts of organic compounds. It is known that TCDD can bioaccumulate in algae, snails and fish. This property is of no practical interest, however, since there is no substantial supply of the chemical in the environment subject to accumulation. Analyses reveal that accumulation in food-chain organisms is not a problem. Measurable levels of TCDD have not been found in herring gulls, sea lions, eagles, corcorants, butterfish, eels, chain pickerels and large bodies of fresh and salt water. It has not been possible to detect TCDD in American supplies of food and feed and in fish meal.

TCDD does indeed become set free from 2,4,5-T and silvex in the soil as a result of the more rapid decomposition of the herbicides. However, in the process the dioxin becomes diluted beyond any possibility of doing harm. Evaluating the hazard of TCDD in the environment is largely a problem of comprehending numerical values far removed from common experience. One is at first likely to be so overwhelmed by the enormity of the toxicity of the compound that he fails to comprehend the infinitesimal levels of exposure.

Present evidence indicates that the dioxin contaminant in 2,4,5-T and silvex is a matter of academic rather than practical interest. It is quite literally an academic problem in the sense that many questions remain unanswered about TCDD, and research should be continued until all aspects of the toxicity, occurrence and environmental fate of this chemical are thoroughly understood.

Socioeconomic Factors

The fact that phenoxy herbicides are widely used in cropland agriculture, on rangelands and pasture, on private forests and public forest watersheds, and in a variety of industrial and urban uses is ample evidence that they are efficient inputs into production processes relative to available alternatives. If these herbicides were not relatively efficient and inexpensive, they would not be in use.

There are alternatives to the use of phenoxy herbicides, but each would cost more to achieve the same objective. Alternatives are almost always available in production processes. The relevant questions are (1) how much do the alternatives cost; (2) who would pay the additional cost; and (3) why should the low-cost method be discarded in the first place?

This report has shown that, with proper application and with current standards of production, phenoxy herbicides do not have serious unintentional side effects.

Indeed, where control of weeds or woody plants is advantageous, these herbicides usually have less harmful side effects on the environment than alternative methods of control.

It is clear that reduced use of the phenoxy herbicides on farms would result in increased costs to consumers. Some producers would gain at the expense of others, hired agricultural labor might gain marginally and nonpaid farm family labor would likely lose. There would be both short-run gains and losses followed by long-run gains and losses. The net effect would be loss. The effects of restriction on forest and industrial uses have not been analyzed in detail. However, one effect would surely be increased prices of forest products. Costs to household users would be mostly increased trouble and labor.

The costs of a possible ban on all phenoxy herbicides on agricultural uses have been estimated[1/] in terms of the reduction in net U.S. farm and ranch income that would occur if alternative means of weed control were used to maintain current levels of agricultural output. The estimates were for the late 1960's, but the general conclusions would hold today. While both prices and input costs have risen, cost-price ratios have remained fairly constant. Therefore, results expressed as percentages or ratios should remain reasonably valid.

The estimates show that the costs of alternative weed control measures would total about 1 percent of the farm value of all crops and about 5 percent of the farm value of the crops actually affected. The percentages of the total increase in cost borne by individual crops would be: corn, 37; wheat, 17; rice, 3; other small grains, 10; grain sorghum, 4; pastures, 11; rangelands, 12; and other crops, 6. One cost would be about 20 million more man-hours of labor to maintain production.

If total output were to remain constant, the costs of such a ban would fall mostly on the producers of the affected crops in those areas of the nation where phenoxys had been used. Net farm income would not be reduced as greatly as gross farm income since farmers would naturally make their adjustments in fields and areas where control problems are the least. Consumers would not be affected under the assumption of constant total output. The demand for farm labor would rise, and farm wages could rise -- a gain to labor and a cost to farmers.

Although the assumption of constant output is useful for the purpose of estimating alternative control costs, the actual adjustments would be more complex. With increased production costs, farm output in the affected crops would tend to fall. One would expect a decline of less than 5 percent--probably 2 to 3 percent. Since the products involved are price inelastic, a decline in output would generate a more than proportional increase in price. Total revenue to farmers producing the affected crops would probably rise, and net income to these same farmers probably would fall--but by less than 5 percent. The price of farm labor might rise slightly; the prices of products to users would rise. Since most of the effects would be in feed-grain crops, much of the rise in consumer prices would probably be felt in prices of meat. Cattle feeders and range cattlemen would probably be affected

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1/ ERS and ARS Agricultural Economic Report No. 194, November 1970.

more than the crop producers themselves, since crop producers would be receiving higher crop prices and could make adjustments in their cropping practices and cropping patterns that would aid in maintaining farm income.

Different areas of the county would be affected in different ways. For example, there would be a rather severe income decline in the rice producing region of Louisiana, balanced by net income increases in the rice producing areas of California where growers are less dependent upon phenoxy herbicides.

All short-run adjustments end up as increases in prices of food, lumber, paper, and other commodities to consumers. The long-run effects of banning a particular management technique in crop, range and forest production are difficult to forecast. New technologies are developed to cope with changing situations, and managers shift from one technique to another to meet changing needs and to get the advantages of new ways of doing things. The costs of production using phenoxy herbicides cannot be forecast in comparison with the costs of new technology that might arise in the future.

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STATEMENT OF LARRY DINNEEN
ARCTIC SLOPE REGIONAL CORPORATION
BEFORE THE
SENATE RESOURCES COMMITTEE
STATE OF ALASKA
FEBRUARY 22, 1978

I am not here today to play the numbers game related to the corporate income tax legislation before your Committee. But I have a few points to make, based on my years of experience in developing business ventures in several states and working for the Arctic Slope Regional Corporation (ASRC) in Alaska.

The "bottom line" of my statement is this: the enactment of the separate accounting bill or the franchise bill -- or anything in between -- would be bad for Alaskans. Although the intent of both bills my be simply to extract more dollars out of the major oil corporations in Alaska, the effect will be damaging to ASRC, to some 70,000 Native Alaskans and to the future viability of the economy of the State of Alaska. First, I would like to call your attention to some of the specifics in the proposed legislation.

JUST THE OIL COMPANIES?

It is evident from some of the language in both bills that the intent is to exempt the Native Regional Corporations from the provisions of the bills. I believe that in either case, litigation could prove that Native Regional Corporations would not be exempt. This is especially true with regard to the separate accounting bill as the actual amending language in Section 2 relates directly to "income of any corporation derived in Alaska." Additionally, it appears

deductible costs would not include the costs of the consultants that we have had to hire in Seattle, Washington, D.C. and elsewhere to deal with the myriad of government problems that are facing us . and to ensure that we are getting the most expert advice on our business matters. Since the Committee is addressing the separate accounting bill in particular, we felt that it was important to bring out these two points.

But the major point is that we do not feel that it is in Alaska's interest --and particularly with respect to ASRC and other Native Regional Corporations -- to change the corporate income tax laws affecting the major oil companies or anyone else, particularly at this time in Alaska's history. Even if we were exempted ultimately from the language of the corporate income tax legislation, the effects of raising taxes on the oil industry in Alaska would be directly damaging to ASRC and thousands of other Alaskans. Although I will develop this point further in my testimony, I want to mention now that ASRC and other corporations are engaged in a great deal of contract work for the major oil companies. And, while no one expects the Prudhoe Bay companies to leave the State altogether, there is no doubt but that the amount of exploratory work going on in Alaska could and should be much higher. And with exploratory and development work comes jobs for Native Alaskans in the form of contract work. Yet this is only one important aspect of the tax issue that I would like to call to your attention.

THE BILLION BARREL OIL FIELDS PROBLEM

Last year, Revenue Commissioner Sterling Gallagher spoke about our problem to the Federal Energy Administration officials dealing with North Slope oil pricing in discussing the Lisburne and Kuparuk oil pools:

> "The Lisburne and Kuparuk pools are illustrative of the case for most-likely discoveries on Alaska Native lands selected under the Alaskan Native Claims Settlement Act. It is far more probable that any discoveries on Native lands will be in the 1 to 2 billion-barrel range like Lisburne-Kuparuk, than in the 8 to 10 billion-barrel range like the main Prudhoe pool." 1/

The problem for ASRC is that we need to raise capital in order to find these fields and we need oil company expertise both to find and develop them. But the future is not PRUDHOE-BAY SIZED FIELDS.

Costs in Alaska are extremely high, and there are many other places still left in the world -- including the North Sea -- where drilling operations are more profitable than they have been and especially will be in Alaska. The wellhead value, after subtracting transportation, etc, is only about $3 these days, and with smaller sized fields as the likely prospect for future discoveries, we can not afford to continue raising taxes on the oil industry without directly reducing the likelihood of finding and developing marginal fields. Needless to say, this is of some concern to ASRC in particular, but all 70,000 Natives are also directly affected...

1/ Statement of Commissioner Sterling Gallagher, Department of Revenue, State of Alaska to the Federal Energy Administraion Regarding Alaska North Slope Crude Oil Price and Entitlements Issues, Washington, D.C., March 21, 1977, p. 3.

ALASKA NATIVES: THE LOWERING OF EXPECTATIONS

With the enactment of the Alaska Native Claims Settlement Act, it was hoped that the Alaskan Native might at last be able to have more of what some have called The American Dream. More choices in terms of employment and lifestyle. And a strong economic base from which to build for their children and grandchildren.

But problems with the Federal Government have multiplied, causing long delays in land transfer and incredible costs. The importance of the D2 issue cannot be overstated. The threat to village lifestyles and subsistence living is very great. Yet few seem to realize that the State government is another direct threat.

If either of the corporate income tax bills were to pass, there would be an immediate effect, not only on the oil companies but also on every Native in Alaska. There would be an immediate reduction in the value of Native land to the Natives who have made their selections in large measure for resource value. All Natives are affected because of Section 7(i) of the Act which provides that 70% of the revenues received by an Native Corporation for hard rock minerals or oil and gas discovered on the Corporation's land will be shared with the other Corporations.

Thus, if ASRC cannot get a billion barrel field developed or more fields found, every other Native Corporation and its stockholders will also be adversely affected. Not to mention the adverse affect on the State of Alaska itself over the long term.

THE THIRD ALTERNATIVE

In conclusion, I would like to highlight a number of important points that Milton Lipton made in addressing this Committee on January 25th. First, despite any perceived "deficiency" in Alaska's corporate oil income tax laws, Lipton endorsed the Arthur Andersen study and stated that the figures are "revealing." Lipton also pointed out that the Legislature should note that "the deficiency in your corporate income tax receipts from the oil and gas producing industry is at least and probably more than made up by higher severance and ad valorem taxation which the Legislature has already imposed upon the industry."

Additionally, Lipton took a good bit of time expressing the importance of perceptions. He stated that the impression which the State of Alaska presents "may be even more important in discouraging investment than the fact of the tax burden per se." He spoke also about the dangers of giving the impression of having an "ad hoc taxing policy" which increases taxes year to year "dedicated to the budgetary needs, revenue deficiences, or whatever the case may be." As a businessman, not an economist, I have noted that the perception of Alaska as a good plce to invest is already poor.

And Lipton seriously presented what he called the Third Alternative: not to amend the income tax statute. It seems to me that the two corporate income tax bills may make more dollars and cents for the State in the near term but that it makes much more sense for Alaska at this point to stop changing the oil and gas tax laws.

Prudhoe Bay production will begin to decline in about eight years. Once a new field is discovered in Alaska, it takes about eight years to get it into production. We need much more exploration now and many more discoveries in the future to replace the income from Prudhoe Bay. A tax hike now could mean the loss of far greater revenues in the future for the State from the development of the remaining smaller fields. And we must face the fact that there probably will not be any more Prudhoe Bays in Alaska.

The Native interest in this matter is clearly the value of our land, revenue and jobs. But the importance of the perception of Alaska is important to all Alaskans. With billions of dollars of surplus revenues projected by the State for the future, we do have time. The passage of these bills would not just reduce oil companies' profitability. Either one would be damaging to the economic aspirations of all Alaskans and particularly Alaskan Natives.

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TRANSCRIPT OF TESTIMONY BEFORE

THE SENATE RESOURCES COMMITTEE

OF THE

ALASKA STATE LEGISLATURE

BY

RICHARD M. DONALDSON

VICE PRESIDENT FOR GOVERNMENT AND PUBLIC AFFAIRS

THE STANDARD OIL COMPANY (OHIO)

AT JUNEAU, ALASKA

ON FEBRUARY 10, 1978

CONCERNING PENDING OIL AND GAS INCOME TAX PROPOSALS

I am Dick Donaldson from Sohio and I'm glad to be back here. I should say that a couple of years ago when I first started appearing before this Legislature and indeed this Committee, I expressed the thought that we had come to the State of Alaska as a stranger but really with the hope of being engaged in business here for 25, 50, 100 years--who knows how long. In a sense those words are beginning to become prophetic. It might be worth reporting today that in almost every sense, we are now an Alaskan company. Some of you may have counted up that 75% to 80% of our assets as a whole company are here now, invested in this State, and given our merger with British Petroleum and a combination of those entities at the year's end, we now can say we have 700 plus employees who are residents of the State. Virtually all of our production of oil is here associated with Prudhoe Bay. And even though we have activities in twenty some states in the Lower 48 involving the manufacture, distribution and sales in different businesses, in terms of the lion's share of our business, we are Alaskan. I was also interested, I don't know whether I should say pleased, but interested at least, to see that the U.S. District Court here recently ruled that we are an Alaskan company. That puts the seal on it, if it was ever needed. And though we have not been an Alaskan company for long, we really are now, and personally

I'm kind of glad about it. I feel good about it. We've had a few problems, solved some, and others remain.

Your Committee has before it again a possible amendment changing Alaska's corporate income tax as applied to the oil and gas industry. In the last few days you've heard some thought provoking testimony, Milton Lipton's and gentlemen that you've heard this week and this afternoon. My purpose is not to rehash or go through what you already know. Last year, in March, I presented some rather extensive testimony on this subject. If you have interest in it, you'll find on pages 16 thru 23 of that testimony there were some remarks dealing with the legalities of the bills that you now have before the Legislature on income tax. Rather than repeat that, I simply want to call it to your attention and hope that someone will look at it again.

I would like to address what I think probably is the biggest problem in State revenues, and one which so far as I know the State of Alaska has really not begun to grapple with. It's probably one that affects each of us and all of us a lot more than anything else we are doing right now. It's interesting to me that Milton Lipton addressed this when he was here. In fact, he spoke of it several times. I read a

transcript of at least part of his remarks, and I thought I might begin by just picking up a couple of his points which introduce this subject. I have tried very hard not to take it out of context because he really was speaking of Alaska when he was saying this. These were his words:

> "First of all, what you see is a kind of ad hoc taxing policy, increasingly year after year dedicated to the budgetary needs, revenue deficiencies, or whatever the case may be."

And another point he said, and I quote:

> "I think it's true that insofar as the State's budgetary needs or revenue deficiencies always seem to be made up by oil industry taxation, this becomes a disabling and discouraging thing for industry. If it is perceived that this is the way in which the taxation proceeds in Alaska, that if there is a budgetary need or a revenue deficiency that almost without regard to (and there was a blank in the transcript) of taxation or the principle of taxation, the incremental revenue or budgetary needs will come from oil industry taxation. This cannot be a matter of indifference to companies that have their choice of operating any place," etc.

Concurrently in another brief comment and almost to the same effect, he again used the word "perception". That word jumped out of the page at me and I call it specifically to your attention. Mr. Lipton said this:

> "I think this is one of the things the Legislature surely will want to consider, that if the perception is that changes in the tax structure, as it is applied to the oil and gas industry, are regularly taken, largely with the view to budgetary needs or revenue deficiency, and hardly ever with the long view as to what is a reasonable tax regime for the State, then I think it creates impressions which may be even more important in discouraging investment than the fact of the tax burden per se."

Well, my own plain statement of the problem runs like this. I think it might help to etch out what I believe to be the principal facts bearing on it. First, the budgets in the State of Alaska and in local government here have grown steadily, substantially, and almost relentlessly over the last eight or nine years. The State budget itself quadrupled between 1970 and 1976. Likewise, the number of government employees has also grown over this period. The cost of people is the biggest part of any budget, any year, in any government today. Today the State and local government as a category in Alaska is the largest employer.

I don't know but you might want to find out how many of these people working for government here today are now supported by revenues from Alaskan resources have come from the outside. That might be an interesting perspective on

some of your own problems, not that it's good or bad, but you ought to know who is involved and where your resources are going.

A document called, "The Alaska Economic Forecast--1978", which was published on January 20, 1978 by the Institute of Social and Economic Research of the University of Alaska, has focused on State and local government employment in 1977. It reported that the total number of employees by government in the State went from 31,096 people up to 34,370 people. This was an increase last year, 1977, in one year alone, of over 3,200 people. When I read this it struck me: that's half as many people as the whole oil industry has working in the State right now, that much of an increase in one year!

On page nine of this Forecast there is this comment:

> "State and local government sector will again grow in 1978, mainly as a result of a growing state budget. Employment in the State and local government is forecast to rise about 7% over 1977."

Alaska's history, in my judgement, confirms again and again that your government's appetite to spend money is limited only by the amount available to spend, and not always by that. There is no indication that this trend over the last eight or

nine years here will change unless some serious thinking is done about it, and I believe right here in the Legislature. Even if the size of your government could begin to flatten out and not grow too fast, the size of your budgets is still going to grow just to support it in the future.

Thus, the first principal fact bearing on the State's basic problem is size and direction of its government.

The second principal fact is that today most of the cost of this government in Alaska is being funded by the oil industry, and so to speak, the State has gone back to the well a number of times in recent years. If you want to be plain about it, I would have to observe that the State is taxing and spending as if there was no bottom to Prudhoe Bay.

But Prudhoe Bay total production will be half done in eight to nine years and will gradually begin to decline in production as all oil fields do. I'm sure you remember as I do that it took eight or nine years from the time Prudhoe Bay was discovered to put it on stream where it is today. An interesting point: eight or nine years to get here, and eight or nine years of the fat level of production out ahead,

then the income and the production begin to decline. Frankly, if we found another Prudhoe Bay this afternoon, how long would it take to get through the applications, the permits, the approvals, the environmental impact statement, the litigation, some legislation that always seems to follow such projects, the design, the engineering, the drilling and construction, the whole works to put a major new field on stream? Seven, eight, nine, ten years? I don't know. Your numbers are probably just as good as mine.

Some have said it's not likely that another Prudhoe Bay will be found in Alaska. Maybe. It's probably something of a long shot. But even then, the question is when? I think a more realistic view is that there is a lot of resource potential here in oil and gas. There is a very good possibility of finding a number of smaller fields to fully offset that eventual decline of Prudhoe Bay's production. But you know, new fields are not usually found over night or in bunches, just when you may need them for oil production, or just when you may need them for State revenue purposes.

Another fact that bears on this is that it doesn't take very long today to count the drilling rigs that are doing exploratory work in Alaska. People have come here from other

parts of the world to look around and say, you know, this is only a small fraction of the exploratory work you might find going on elsewhere in the world where the resource potential is high.

So, taking these two principal facts, the growth of the State budgets and the present level of exploration here, let me tell you what I think the basic problem is that you face. No, let me say this, I think we both face it, it's a problem that we share.

On one hand you have got a large and growing government with a huge appetite for revenue. On the other hand you have got very little exploration going for you today to feed that appetite eight or nine years out when it's even hungrier, and when the Prudhoe production starts to decline, as it will. Out there is a revenue gap, and I don't believe the State has ever taken a hard look at it. It has always engaged in the wishful thinking that someone will find another Prudhoe Bay, or that somehow things will work out. Put it this way: if the oil industry wasn't here today to tax, you would have to increase the tax burden on all other Alaskan taxpayers, all of them, 200% or 300% just to support the government that you have going right now. It might be interesting to figure

that out. That's the kind of problem you have out ahead of you in this gap that I have been trying to describe, if you don't think about it today.

As a very practical matter, the principal source of the revenues the State will need to support its government and to sustain its economy, to sustain the jobs, the businesses, and the standard of living that most Alaskans enjoy today, will most likely have to come from some continuing, reasonable resource development in the State, and particularly development related to oil and gas. And that brings it back to us, the oil industry, whom you will eventually look to to do this job. You can't live with us, and you can't live without us!

It comes back to a couple of choices. Some will argue, well, let's tax the hell out of them and change the rules back when we've gone too far. I've heard that here occasionally in the last few years, but I think most Alaskans would agree that's a fairly shortsighted policy.

The other choice involves that matter of perception. Remember that word "perception" that Milton Lipton used. How will the companies in our industry perceive that they will be treated if they begin now to risk going out to find new oil and gas reserves in Alaska, whether it is a large one like

Prudhoe Bay or a number of smaller fields. If the size of the government and its budget are out of hand in the years ahead, a company can take very little comfort from the fact that it has an interest only in a small or medium sized field, and not a Prudhoe Bay. Its perception will be that it gets the tax bill, that government is a serious business risk here, and that it had better think seriously before undertaking that kind of risk.

At this point, you might like to consider a couple of other remarks that Milton Lipton made when he was here two weeks ago. He just didn't call the point of perception to your attention. What he also said was this, and again this is a quote:

> "From the first time we appeared before this Legislature to discuss taxes, we did not think from the beginning that your tax policy had to be uniquely constrained by the Cook Inlet experience. We did not think that the tax policy ought to be carried away by the exuberance of Prudhoe Bay. We thought your tax policies should be oriented pointing to a continuing incentive for the development of the potential oil and gas resources of the State."

Another point he had was a one liner, which I thought jumped right off the page:

"Because the industry is important to Alaska, no Legislature can be indifferent to the aggregate tax burden."

And then at several points in his testimony, he spoke about the importance of the continuity, of the stability of tax policy.

In different ways as he spoke to you this year, he was dredging up the points of perception and stability, and was really asking you to think about it because he couldn't decide things for you, nor can we. In this I think Mr. Lipton understands something about the State's needs. I know he understands the industry's needs because that's been the experience of his firm. He also understands the lead time necessary to get resource exploration and development going in the field and finally get production on stream.

The basic problem Alaska must face, its growing government, covering its costs, and keeping the State's economy going to support all the people who don't work for government, ties together the information that you've been receiving in pieces for the last two weeks. It makes clear the relevance of the Arthur Andersen work on total tax burden. Indeed, Mr. Lipton acknowledged the relevance when he said this:

"My first reading of the report suggests that it is a carefully prepared, highly useful document. I think it's been done in a highly professional manner. I think it is correct to say, as they conclude, that the aggregate burden of taxation on the oil and gas industry in Alaska is higher than in any of the other states."

It also shows the relevance of growing State budgets to the State's basic problem, the relevance of the growing numbers of State and local government employees, the relevance of growing State unemployment figures, and the relevance of the declining value in privately owned land with mineral potential as the aggregate tax burden increases.

I have some new information for you which I think you may be interested in. It also has relevance to the State's basic question. There's a man on my staff named Terry Schreiner. He looked into something that we were interested in this last week, and he gave me a brief report. I'd like to just read the summary of it. Terry said:

"I have looked at the drilling expenditures for oil and gas in Alaska for the years preceding Prudhoe Bay compared to more recent years. It shows that, although more money is being spent in Alaska for drilling, Alaska is getting a smaller proportion of the total drilling expenditures expended in the United States in recent years than it did in the years before Prudhoe Bay. For instance, in 1967 drilling expenditures in Alaska were (and I'll just

> round the numbers out, he has the exact figures here) $106 million or 4.62% of the total $2.2 billion spent in the whole United States. In 1976 the drilling expenditures in Alaska were $174 million or 2.34% of the total $7.4 billion spent in the United States. This loss of share of the drilling expenditures occurred in spite of the fact that in 1976, Alaska had drilling expenditures which were locked in because of the requirements of Prudhoe Bay. As a marketer of investment opportunities in oil and gas, Alaska is losing market share to the other states in the United States. The source of these figures are the 1967 and 1976 Joint Association Surveys put out by the American Petroleum Institute."

Terry's point is that your share of the work going on in drilling measured by expenditures ten years ago was a little over 4½% of the whole United States. Today, you are down to less than 2½%. The relevance of that to your basic problem, to your future revenue gap, seems to me fairly apparent.

But matters of relevance are not limited to numbers. I can think of some other people that you might want to invite to appear before your Committee, Madam Chairman, on this matter of perception--Mr. Lipton's word perception. One might be Don Simasko of Simasko Drilling. They are no longer working in Alaska. You might want to find out why, and what his perception is of your situation. The second might be a man named Tennessee Miller, who walked into these halls last year out of the blue, and upset some members of

this Legislature. He rattled a few cages. Now Tennessee Miller and I had never met before. He's a dirt pusher by trade. He builds roads, air strips, work pads and what not for the oil industry. His message last year was that he works when the oil industry works, and he wasn't working. At least three of his spreads were idle, and he didn't like it. Another point of perception.

A third and totally different perspective might come from a man named David Goodman, a managing partner of Morgan Stanley, investment bankers in New York. Mr. Goodman's credentials are obvious. He personally raised $5 billion of the money invested in Prudhoe Bay and TAPS, probably the Guiness indoor and outdoor record. Mr. Goodman has a perspective and a perception on how the investors who have the money needed here to do this work feel now and may feel about the questions that you are wrestling with.

Senator Ted Stevens is another one. I understand he'll be here shortly, I don't know the exact date, I think this coming Tuesday. In December he spoke before the OMAR Petrochemical Symposium in Anchorage, and he talked about this type of development here. One of his remarks was a point of perception which you may want to ask him about when he comes. He said:

> "Alaska's total taxes and royalties are now the highest among energy producing states. We are also, obviously, the most remote. If we want to develop and diversify our economy, we must provide the incentives to be competitive with more accessible states. If we want major capitalization from the private sector, we must provide a return on investment that makes their participation profitable. If we want long term cooperation from the Lower 48, we must provide their economic interests equitable treatment."

Another man that might give you some perception from quite a different quarter is a man who can talk a good deal about the proposed ALCAN Project. That's terribly important to the State of Alaska, and to most of the companies represented by people in this room. Sy Orlofsky is a man who works for Columbia Gas. I think he's a Senior Vice President. He has long experience in the gas industry, buying gas, shipping it and selling it. I first met him when he was a member of the Northwest Gas Project Study Group, and then knew him in the Arctic Gas project which has now been rolled into ALCAN. I think Sy's perception might be interesting to you. He won't tell you that permits will fall out of the sky, and that the money to do that project can be picked off the trees. He can give you about as hardheaded an appraisal as anyone I know of the probabilities and timing of that project that I think is critical to our industry and to the State of Alaska. I don't know that he can come, but I expect that if you extended him

an invitation, he would do it. He's just that kind of a man. His perception on that project could be extremely valuable to this Committee and the Legislature.

Another one is Jess Carr, an interesting man. I've not seen much of him personally, but I heard him speak in Anchorage in October. What he said that day was that jobs and resource development and Alaska's economic health go hand in hand. He raises that point of perception again and perhaps this Legislature might want to get some comments from him about it.

Still another perspective. You have a man named Bob Richards that most of you know. He is one of Alaska's top economists. Bob is always an optimist, but ask him what his 1979 case for Alaska is, first from an optimistic point of view, and then from a worst case point of view, and consider both as a matter of perception. And there are other witnesses you might call.

It seems to me that what you have right here on your Committee's table is this very basic problem that the State hasn't begun to deal with. It's a terrible problem. The appetite of government for revenue, the people's needs to

be met, and a very visible revenue gap out there that can only be met if you go to work today, right now, and try to fill it with the most likely source of revenue based on some reasonable resource development.

All of this sounds pretty negative, but I think that there is a positive side to it as well. The truth is that we need each other, and the sooner we recognize that, the better. Frankly, I would much rather come to Alaska as a partner and not as an opponent.

What can you do? I suggest six things. I have no monopoly on knowledge about the subject, but looking at it from the industry's perception, these are six things that I'd hope would be on somebody's list in the Alaskan government.

First, recognize that since 1968 with the various changes that had been made in the State's tax laws on oil and gas, the State has done a pretty good job of putting itself in a position to pay its bills as far as its government is concerned, and it will be in that position for the next eight, nine or ten years. Its back is not to the wall.

As a footnote to this first point, because there is always the question when you have an income tax bill before you, how does Alaska stack up against other states? If you will take a look at Exhibits II and X in the Arthur Andersen Report, you will see that the total income tax revenues from Prudhoe Bay and the pipeline to the State of Alaska under its own present law exceeds in gross revenues to the State what Prudhoe Bay and the pipeline would pay under the income tax laws of the other seven states compared in the Arthur Andersen Study. Said another way, the income tax law you already have on the books will produce more revenue than the other seven states compared. You've already got the winning combination, if that's the thing that you're worried about. When you are looking at the income tax legislation before you, the question is not tax deficiency and not a better law; it simply comes down to more money and nothing else.

But the first point of the six is to recognize that you can pay your government's bills comfortably, on your own projections, for the next eight or ten years.

The second point is this. Decide for yourself, if you are going to fill your gap by looking to more resource development and sensible development in the State. If that's your

judgement, then try to convince the industry that this type of longer run development is really important to the State from the standpoint of its own revenue position out there eight or ten years from now. Do something to convince the industry that short-term experimentation with your tax laws no longer makes sense. With the history of the last eight or ten years, you've got some persuading to do. I don't say this in an unfriendly way, but recognize that the industry in many ways may be in a "show me" posture. I think you can do it. Again, it's a point that so much needs your attention. That stability is a key if you are going to solve your basic problem.

Third, do the best job you can to manage the size and direction of your State and local government. If you can just hold even, you will have done a lot to help a fairly tough situation that's right out there a few years ahead of you.

Fourth, run your Permanent Fund on a businesslike basis. Draw as much as you can from the experience of private fund management. It's there if you seek it.

Fifth, before extending or implementing new or old regulation of industry, ask yourself, is it necessary? What does it really do for the State?

Sixth and from the standpoint of the majority of Alaskans who work for themselves or for companies here, recognize that a program of continuing resource development will undergird the State's economy for many, many years as it affects these people. You'll also have to recognize that resources can't be found and developed if you can't get to them. The current, and I would characterize it as a "non-leasing policy" in the State of Alaska does not solve this need. You obviously cannot have resource development if you can't get to the acreage. This is so whether it's onshore or offshore. If you set up a simple leasing program, like the gentleman said earlier this afternoon, stick to it, unless there is a very major reason for change. All of these things boil down to stability and make sense all around.

Finally, and this is a personal note, Sohio, and I think probably this is true of all the other companies in our industry working here, has no desire to run the State, not to run your government, and not to pre-empt it, but we sure would like to work here. I think this is consistent with what most of the people in Alaska want too. Your basic problem is there. You've got to face it sooner or later.

It's much better sooner, and I wish you well in that endeavor.

I brought you something that you may or may not want, but it might be useful to you because it deals with the perception point. This week I was in Washington to testify in the proceedings on the pipeline tariff before the Federal Energy Regulatory Commission. The subject of my testimony is a little embarrassing. It is a factual account from which counsel will argue that government at the federal and state level has become a major business risk. What I was asked to do, and what we did from a whole room full of documents that I set up sort of as a library in my department, is to summarize the history that we lived through in the five years that preceded the start-up of construction of the pipeline and a lot of work at Prudhoe Bay, in dealing with government, at the Federal level and here in Alaska, in terms of legislation, in terms of permit negotiation, and in terms of litigation. It is not written to offend anybody. It is a factual account and it occurred to me--this has been filed in Washington, but I have not formally given my testimony--that your Committee and any others that want it in the Legislature, might find that this is a useful reference. Some

members of the Legislature weren't here when a lot of this happened. I think we all need to have some feel of this prologue to wrestle with the basic problem I have been describing. Maybe it's nothing more than a souvenir, but if you'd like it, I offer it for your record and indicate that while it's probably not complete in every detail, it's not a bad summary of that period.

I brought you one other thing that I think I ought to give you because your Committee has dealt with the subject of Coastal Zone Management. Some of you worked very very hard in trying to get a model piece of legislation. I read it, and I thought on the face of the legislation it was a good piece of work. I want to confess to you that one of my other odd jobs in our industry right now is serving on a national committee of the American Petroleum Institute, called the National CZM Steering Committee. We have found that in the 34 states and several territories that are concerned with coastal zone management, government and public interest bodies of various sorts, generally self-appointed, have come up with the idea that they really don't want anything going on on their shoreline. If I had to say what their strategy is, it's this: if they can keep us on the beach, we can't go offshore to find

energy and bring it ashore. It's as simple as that. In some states you have well drawn laws as you have here in Alaska, but they are capable of being distorted one way or another. The purpose of this national committee is straightforward. It says look, national interest requires sensible development of energy. It requires attention to the environment, but you simply cannot lock up the shore. I think that this subject of coastal zone management is germane to your basic problem, since resource development onshore and offshore will have a lot to do with the economic health of Alaska in the years ahead. What I brought to you as another souvenir is a booklet that is just off the press that our national committee developed. In effect it sets forth what I think is a fairly balanced position, the viewpoint on the part of industry that all reasonable uses of coasts have to be considered. Its title is "A Shore for All Purposes". If you can't read all of it because you have so much to read, you'll see that there is an executive summary for legislators and executives inside the cover. I recommend it to you. I only have a few copies, but I just brought these for your Committee because I knew of your past interest.

Thank you very much. If you have questions, I would be happy to answer them.

Question: The first thing I wrote down here in my notes while I was listening to Dick was the point concerning the court decisions. A huge welcome to SOHIO as being an Alaskan citizen.

Answer: Thank you. This is my 49th trip to the 49th State.

Senator Huber: Professor Parkenson had written on it ....on this tax study about governments rising always to meet the available profits. I'm sure that Dick might even have discovered this separately.

Answer: You understand, Senator, I'm not trying to find fault. These are essentially observations. You come to a place and you just see this going on. We've known each other for a few years now, and I'm just telling it as it is.

Senator Huber: I really want to know, Dick, you said that all of the problems that the companies have in dealing with the tax policies, I get from you that it isn't just this jurisdiction, it's many other jurisdictions that the oil companies are in doing this. As the needs for taxes raise, it goes to the most logical places.

Answer: Let me respond to that. As a practical matter, you do see a similarity of problems in other states. There is a difference in Alaska which I will confess to, and that is the velocity of the problem. Decision here is notably faster. I don't mean that again in an offensive way, it just is an accelerating thing here.

Senator Huber: I don't think it is. Your problem seems to be parallel with another one. Your problem of the companies being able to interface with the taxes and how the burden builds. It seems to be like a man quite a few years ago in government stated. You probably want to comment on it. It is interesting that Franklin Delano Roosevelt said that you couldn't win an election in this country without the support of big oil, and you couldn't govern with it. So he was having trouble from that viewpoint; oil companies are having trouble from the viewpoint of being able to operate a business under the government's taxing policies.

Answer: That's why I said half seriously and half kidding, you can't live with us, and you can't live without us. Thank you.

TESTIMONY OF

COMMISSIONER STERLING GALLAGHER

BEFORE THE

RESOURCE COMMITTEE

OF THE

ALASKA STATE SENATE

February 22, 1978

STERLING GALLAGHER

MADAME CHAIRMAN AND MEMBERS OF THE SENATE RESOURCES COMMITTEE:

I WANT TO THANK YOU FOR GIVING ME THIS OPPORTUNITY TO TESTIFY TO YOU ON THIS IMPORTANT ISSUE OF INCOME TAXATION OF THE OIL INDUSTRY.

I HAVE TESTIFIED AT GREAT LENGTH LAST YEAR ON THE SPECIFICS OF THE INCOME TAX BILLS WHICH WERE BEFORE YOUR COMMITTEE, INCLUDING THE GOVERNOR'S FRANCHISE TAX BILL AND THE SEPARATE ACCOUNTING BILL WHICH IS NOW BEFORE YOU.

RATHER THAN REHASHING THOSE POINTS AND ARGUMENTS I WOULD LIKE TO SPEAK TO YOU ON WHAT I BELIEVE IS THE MOST IMPORTANT ISSUE - ESTABLISHING AN EFFECTIVE AND EQUITABLE INCOME TAX SYSTEM FOR THE OIL AND GAS INDUSTRY IN ALASKA.

BY EFFECTIVE, I MEAN A TAX SYSTEM WHICH IS FREE OF THE SPECIAL CORPORATE TAX LOOPHOLES AND WHICH IS ACCURATELY MEASURED BY ACTUAL BUSINESS ACTIVITY AND EARNINGS IN THE

STATE SO THAT EFFECTIVE TAX RATES APPROXIMATE STATUTORY TAX RATES ON INCOME PRODUCED IN THE STATE.

BY EQUITABLE, I MEAN A TAX SYSTEM WHICH PLACES MULTISTATE CORPORATIONS ON A PAR WITH LOCAL CORPORATIONS. THAT IS - MULTISTATE OIL CORPORATIONS MUST SHARE EQUALLY IN THE CORPORATE INCOME TAX PAYMENTS TO THE STATE BASED UPON THEIR EARNINGS AND ACTIVITIES WITHIN THE STATE.

UNTIL AN INCOME TAX SYSTEM WHICH IS BOTH EFFECTIVE AND EQUITABLE IS ADOPTED FOR THE OIL AND GAS INDUSTRY, I BELIEVE WE WILL HAVE TAX INSTABILITY. UNTIL THIS INEQUITY WITH THE INCOME TAX IS DEALT WITH ONCE AND FOR ALL THERE WILL BE CONTINUAL PRESSURE FOR CHANGE, AND IT WILL BE AN ISSUE BEFORE THE LEGISLATURE EVERY SINGLE YEAR UNTIL IT IS RESOLVED.

FOR SEVERAL YEARS NOW, THE LEGISLATURE'S OIL AND GAS CONSULTANTS, WALTER LEVY AND ASSOCIATES HAVE RECOMMENDED A REVAMPING OF THE CORPORATE INCOME TAX AS APPLIED TO THE OIL AND GAS

INDUSTRY. FOR THE LAST THREE YEARS SEVERAL BILLS HAVE BEEN INTRODUCED IN THE LEGISLATURE TO DEAL WITH THE INCOME TAX ISSUE. LAST YEAR BOTH THE DEPARTMENT OF REVENUE AND A SPECIAL SUBCOMMITTEE OF THE LEGISLATIVE COUNCIL MADE EXTENSIVE STUDIES OF ALASKA'S CORPORATE INCOME TAX AS APPLIED TO OIL AND GAS CORPORATIONS AND MADE SPECIFIC RECOMMENDATIONS TO REFORM THE INCOME TAX. I BELIEVE THAT THIS YEAR IS THE TIME TO FINALLY REFORM ALASKA'S CORPORATE INCOME TAX.

AS STATED BY THE DEPARTMENT AND OTHER SOURCES, THE OIL AND GAS INDUSTRY PAYS AN EFFECTIVE ALASKA INCOME TAX RATE OF BETWEEN 2 TO 3 PERCENT ON THEIR ALASKA INCOME. THIS RESULTS FROM TWO FACTORS - A SUBSTANTIALLY ERODED FEDERAL TAX BASE AND AN INAPPROPRIATE APPORTIONMENT FORMULA. THE COMBINATION OF THESE FACTORS THEN RESULT IN MULTISTATE OIL CORPORATIONS PAYING LESS TAX THAN THAT OF LOCAL CORPORATIONS ON THE SAME INCOME EARNED IN THE STATE.

THIS INEFFECTIVENESS OF OUR INCOME TAX IS EASILY DISPLAYED BY SIMPLY EXAMINING THE ACTUAL INCOME TAX PAYMENTS MADE BY

THE OIL INDUSTRY OVER THE PAST FEW YEARS AND LOOKING AT OUR PROJECTIONS OF FUTURE INCOME TAX COLLECTIONS.

FOR EXAMPLE, IT WASN'T UNTIL THE 1973 TAX YEAR THAT CORPORATE INCOME TAX PAYMENTS FROM THE OIL INDUSTRY FINALLY CREPT ABOVE THE $1 MILLION DOLLAR MARK. AND DURING THE LAST 3 YEARS OIL COMPANY INCOME TAX PAYMENTS HAVE TOTALED $2.1 MILLION, $3.7 MILLION AND $4.4 MILLION RESPECTIVELY. IN FACT, TOTAL CORPORATE INCOME TAX PAYMENTS OF THE OIL INDUSTRY FOR THE LAST SEVEN YEARS HAVE BEEN ONLY $13,108,000. THIS REPRESENTS 9.4 PERCENT OF APPROXIMATELY $140,510,000 IN TAXABLE INCOME OVER THE LAST SEVEN YEARS.

TO VIEW THIS TAXABLE INCOME REPORTED BY THE OIL INDUSTRY IN PERSPECTIVE YOU NEED ONLY MULTIPLY LAST YEAR'S OIL PRODUCTION FROM COOK INLET TIMES 50 PERCENT OF ITS AVERAGE WELLHEAD VALUE TO FIND THAT IT EXCEEDS THE TOTAL OIL COMPANY INCOME TAXED BY ALASKA FOR THE LAST SEVEN YEARS. IN FACT THE SEVEN YEARS OF REPORTABLE INCOME REPRESENTS A LITTLE LESS THAN .25 PER BARREL OF THE OIL PRODUCED FROM COOK INLET OVER THE SAME

SEVEN YEAR PERIOD. THESE REPORTED INCOME FIGURES DO NOT I BELIEVE REPRESENT THE NET INCOME EARNED NOR REFLECT THE ACTIVITIES IN ALASKA BY THESE COMPANIES DURING THIS PERIOD.

NOR IS THIS INEQUITABLE SITUATION LIKELY TO CHANGE MUCH IN FUTURE YEARS EVEN AS A RESULT OF THE HIGHER PROFITABLE PRUDHOE BAY PRODUCTION. BASED UPON ACTUAL TAX RETURN INFORMATION WE ARE ONLY ESTIMATING ADDITIONAL CORPORATE INCOME TAX REVENUES AS A RESULT OF PRUDHOE BAY PRODUCTION OVER THE NEXT TWO YEARS OF $2.3 MILLION AND $23.6 MILLION DOLLARS RESPECTIVELY. AGAIN THIS REPRESENTS ONLY A SLIGHT RETURN FROM THE SUBSTANTIAL INCOME EARNED AND ACTIVITIES TAKING PLACE IN THE STATE.

THIS INFORMATION IS IN MARKED CONTRAST TO THE PREDICTIONS OF LIKELY INCOME TAX REVENUES PROVIDED BY THE OIL INDUSTRY AND THEIR CONSULTANTS. FOR EXAMPLE, LAST YEAR IN SOHIO'S SUBMISSION #1, SOHIO ASSUMED CORPORATE INCOME TAX REVENUES TO THE STATE OF ALASKA OF $27.4 MILLION DOLLARS IN 1977 AND

$62 MILLION DOLLARS IN 1978 IF OIL WERE SOLD IN CALIFORNIA FOR $13 PER BARREL.

IN ADDITION, THE ARTHUR ANDERSON STUDY SHOWS ALASKA INCOME TAX REVENUES OF $1,747,100 OVER A 25 YEAR PERIOD OR AN AVERAGE OF $69,884,000 PER YEAR.

THESE REPRESENTATIONS OF INCOME TAX COLLECTIONS JUST DON'T MATCH THE PAST TAX RETURNS OF THE OIL INDUSTRY OR THE LIKELY RETURNS IN THE NEAR FUTURE.

AGAIN LET ME EMPHASIZE THAT WE NEED AN EFFECTIVE CORPORATE INCOME TAX. ONE THAT TRULY REFLECTS THE BUSINESS ACTIVITY AND INCOME EARNED IN THE STATE.

IN RESPONSE TO FACTS OF THE ACTUAL EFFECTIVE INCOME TAX RATES PAID BY THE OIL INDUSTRY YOU HAVE HEARD SUBSTANTIAL TESTIMONY BY THE OIL INDUSTRY CONSULTANTS JUSTIFYING THE RESULT OF LOW EFFECTIVE TAX RATES IN THE NAME OF UNIFORMITY.

I TOO BELIEVE THAT UNIFORMITY IS A LAUDABLE GOAL FOR THE STATES AND THAT IS WHY I AND MY DEPARTMENT ARE ACTIVE PARTICIPANTS IN THE MULTISTATE TAX PROGRAM OF THE MULTISTATE TAX COMMISSION. THIS DOES NOT MEAN, HOWEVER, THAT WE SHOULD BLINDLY MARCH IN LOCK STEP IN THE NAME OF UNIFORMITY AND IGNORE OUR RESPONSIBILITY OF PROVIDING AN EFFECTIVE AND EQUITABLE CORPORATE INCOME TAX SYSTEM. I BELIEVE THAT WE HAVE A DUTY TO INSURE THAT THE CORPORATE INCOME TAX SYSTEM RETURN TO THE STATE, TAX REVENUES WHICH ACCURATELY REFLECT THE BUSINESS ACTIVITY AND INCOME EARNED IN THE STATE EVEN IF THE INCOME IS EARNED BY CORPORATIONS THAT DO BUSINESS THROUGHOUT THE WORLD. THE ACTUAL INCOME TAX REVENUES RECEIVED TO DATE AND PROJECTIONS OF FUTURE INCOME TAX REVENUES DO NOT, I BELIEVE, REFLECT THE SUBSTANTIAL BUSINESS ACTIVITIES AND PROFITS EARNED IN ALASKA IN PAST YEARS AND THE FUTURE BY THESE MULTINATIONAL CORPORATIONS.

I DON'T THINK WE CAN TOLERATE ANY LONGER A CORPORATE INCOME TAX SYSTEM ON THE OIL INDUSTRY WHICH ALLOWS MULTINATIONAL CORPORATIONS TO AVOID TAXES ON SUBSTANTIAL EARNINGS BY TAKING ADVANTAGE OF ALL THE SPECIAL FEDERAL TAX AND ACCOUNTING DEVICES AND BY THE USE OF AN APPORTIONMENT FORMULA WHICH DOES NOT ACCURATELY REFLECT OIL INDUSTRY ACTIVITY IN THE STATE. IN ADDITION, I DON'T THINK WE CAN TOLERATE A SYSTEM WHICH BECAUSE OF THESE LOOPHOLES AND UNREPRESENTATIVE FORMULAS ALLOW LOCAL CORPORATIONS TO PAY HIGHER EFFECTIVE TAX RATES THAN MULTINATIONAL CORPORATIONS FROM LIKE ACTIVITIES.

I THEREFORE ASK FOR YOUR FAVORABLE CONSIDERATION OF AN EFFECTIVE AND EQUITABLE CORPORATE INCOME TAX FOR THE OIL AND GAS INDUSTRY. I BELIEVE THAT THE TAX BILL WHICH WE HAVE PROPOSED MEETS THIS CRITERIA.

THAT BILL WOULD HAVE ELIMINATED ALL THE CORPORATE LOOPHOLES THROUGH THE ADOPTION OF A BOOK INCOME DEFINITION OF TAXABLE INCOME. IT ALSO WOULD HAVE SOLVED THE PROBLEM OF THE

APPORTIONMENT FORMULA BY SUBSTITUTING AN EXTRACTION FACTOR FOR THE SALES FACTOR AND THEREBY PROVIDING A MORE ACCURATE MEASURE OF OIL INDUSTRY ACTIVITY AND INCOME IN THE STATE. I BELIEVE THAT THAT BILL WOULD FOR THE FIRST TIME PROVIDE BOTH AN EFFECTIVE AND EQUITABLE INCOME TAX FOR OIL AND GAS CORPORATIONS.

AS YOU KNOW, HOWEVER, I AM OPPOSED TO THE SPECIFIC BILL THAT IS BEFORE YOU SINCE I BELIEVE THAT IT COULD LEAVE US WITH JUST ANOTHER INEFFECTIVE INCOME TAX. I AM OPPOSED TO THIS BILL BECAUSE IT WOULD ALLOW ONE PART OF A BUSINESS TO CALCULATE ITS OWN TAX LIABILITY BASED UPON SUCH ITEMS AS INTERCOMPANY TRANSPORTATION CHARGES. THUS WE COULD POSSIBLY BE LEFT IN THE SAME SITUATION THAT WE FIND OURSELVES IN TODAY WITH SEVERANCE TAX AND ROYALTY COMPUTATIONS - THAT IS INCOME SUBSTANTIALLY REDUCED BY INFLATED TRANSPORTATION CHARGES.

THEREFORE, I WOULD ASK FOR YOUR FAVORABLE CONSIDERATION FOR THE APPROACH CONTAINED IN THE ORIGINAL HB 322 AND ESTABLISH AN EFFECTIVE INCOME TAX ON THE OIL AND GAS INDUSTRY.

INCOME TAX PAYMENTS
BY OIL AND GAS CORPORATIONS

1970-1976 Taxable Years

47 COMPANIES	1970	1971	1972	1973	1974	1975	1976	TOTAL
			(thousands)					
TOTAL	484,620	587,304	519,598	1,230,100	2,161,053	3,765,285	4,460,019	13,207,979

TESTIMONY OF RICHARD KILGORE
DIRECTOR OF RESEARCH FOR
W.J. LEVY CONSULTANTS

RICHARD KILGORE - I am trying hard not to take it as a reflection of my testimony that every time I testify fewer people seem to show up, but this is a Saturday morning and its not quite like the middle of the week. My opening remarks, if you recall, were, try to present some overview of the various types of taxation on the issues and principals of oil and gas taxation. My second testimony before Senate Resources, and in the afternoon before the two committees, tried to elaborate and sharpen the pros and cons in approaches to income taxation, that is the apportionment verses seperate and direct accounting. Now today, I would like to provide you with our comments on the specifics on the bills before you, and also take the opportunity to address some of the issues raised by other testimony you have heard. And I would like to start again with the income tax. Before I get to the specifics there, I would like to discuss very briefly, some of the broad questions raised by industry spokesmen, in which they say that any deviation from the present three factor proportionate formula raises the potential for double or multiple taxation. I think this point was realsed by every one of the oil campany spokesmen. I want to make it clear that if all states used the three factor proportionate formula only, then the total income of the companies is apportioned to all the states and the sum of the tax basis in the individual states will add up to the corporations total income, and the deviations,

either by different factors such as the (Eathen, Ainsworth approach?) as substituding abstraction or going to book income or going to some sort of seperate accounting approach does tend to work in the direction of raising the tax basis of states that do that and has the tendency of each of the states in their own approach to taxation identifying a tax base which when added up on total would be somewhat more than the total income of the corporatio I think there can be no denying this, taking either of these t o approaches, does raise the potential for double taxation. This is clear, but against this Alaska has to be concerned with how the apportionment works for the State itself, and how, not simply how the system works in broad for the companies and equidy for the companies, but how it works for the State of Alaska and what sort of income is thrown up for the State of Alaska, it can't ignore this either. The State, looking at its own situation, I think in many respects does have a unique situation to look at, in many respects Alaska is unique and the taxation of oil and gas in Alaska in itself is unique. As I don't really have to tell you, oil and gas is far in the way, the largest industry and will be the largest income producing industry in Alaska. Alaska also does not have other industry, much in the way of other industry other than oil and gas it does not have major, it does not have agriculture on any kind of major scale as do other states, so many other states with a broader economic base can afford to have apportionment formulas

which they work well for some industries, not so well though for others and so forth, they tend to more average out than certainly they would for the State of Alaska. Another unique feature of Alaska's situation is its oil and gas industry is largely extractive and transportation ends of the business, Alaska does not have major refineries as do other states such as California, Louisiana, and Texas. It does not have major mardeting because it has limited markets on it because of its limited population, so it does not have major investments in mardeting and alike as other states do. So without refining, without marketing, head offices are not located here and so on, it does not have many of tnese factors which in other states have helped the apportionment formula work for the states. That is where you have all of these other activities, one tends to have larger payrolls, there are larger numbers employed in these other functions tends to apportion income to those states. It does not have major sales within the state and so on. So this also makes Alaska's situation unique and as we have said many times, it tends ti make the three factor a-portionment formula not particulary effective for Alaska. So on the one hand, the industry's argument is certainly a legitimate one and they have every right to be concerned about totential for double taxation and I think, beyond that, the potential that if you adopt this sort of a system that other states may somehow follow you and if this happens to them they more and more run the risk that the sum of the tax basis in all the states exceed their own income and this is a very legitimate concern of theirs. On the other hand, you do have these unique features of the oil and gas industry in Alaska that I have just mentioned. This means that Alaska really has to weigh its own unique

circumstances against the violence done to the principal of uniformity and the potential for double taxation, if you alter your income tax, you must appreciate what you are doing and what you are doing to the companies, you have got to attempt to assess, at least broadly what it really does mean to the company it violates the principal clearly, but what does it mean in terms or dolars and cents of the potential for double taxation in those terms and I think in that respect, some of the questioning of Senator Croft yesterday was along those lines and I think you probably also should pursue this somewhat more. You have to admit what you are doing, it would work in this direction but you have to get some appreciation of exactly what that does to oil companies. And I think in that respect if you are looking at that, I think, it is relevent that the oil industry is not taxed in all states, there are some states that do not have a corporate income tax and I think it is also relevent that the tax rate in other states is often lower than it is in Alaska. So if you are looking at the double taxation issue, I think this is relevent because it bears on how much are they really hurt by this kind of double taxation fort of thing which other approaches imply. And I think you have also been concerned, to some extent, that what you do would set a precedent for other states and, this is a legitimate concern of the industry, I don't know any other situation, at least I can't think of any other situations which what you are doing would immediately trigger something by some other state, but still the potential for that happening is there. So I think its very important for you to appreciate that what is being said is correct, you have your own interest, and if you are going to go this approach, that you appreciate what you are doing and try to get some feel for what it really means to the

companies. Now I would like to move on to some specifics on the bills before you, the income tax bills, and I would like to start with Senate Bill 236, and House Bill 322. This is the so-called corporate franchise tax and it is a modified apportionment formula. Now, here we really don't have comments on the bill itself and the way its drafted, it is, as far as we can see, a well drafted bill, does what it is intended to do, and I think in the respect of this bill the questions we have on the bill really have to do with the effectiveness of the approach and not really the specifics in the bill. It seems to do what it intends to do and the question in mind is, how effective is the approach this bill is attempting to use, so I really won't have any line-by-line comments on that, but I will on H.B. 105, excuse me, S.B. 105, H.B. 145, somehow I seem to have misplaced that one. Yes, Senate Bill 105. I would first like to call attention to, on page 1, line 18, to the intent of this bill, the intent of the bill seems to be, have to do with the determination for tax liability on production and pipeline activities, it addresses itself to these activities and in fact, uses the work "activities", it is not a tax on an entity, its tax on activities, now this approach would presumably differ from a net proceeds approach which taxes income form well or field or this kind of thing. This is presumably looking at these particular activities, that is oil and gas production activities and oil and gas transportation activities. And this is what the intent states, but when I am going to come to later sections and discuss those, I think it looks to us as when you go into the sections of the bill, which involve the calculation of the tax it doesn't really seem to be consistent with the intent to tax activities which is stated in the beginning, and I will ella-

borate on that when I come to it. I would also point out on page 1, line 28, that when it comes to taxing oil and gas transportation, like pipeline, this bill refers only to crude oil or natural gas by pipeline, the wording of the bill very specifically excludes products pipelines in the state and you have a products pipeline coming on soon I believe, I don't know whether this was the intent of the bill, I just want to point it out to you but this particular piece of legislation specifically excludes products pipelines and I question whether this was deliberate or not, I think you ought to consider that. Moving on to page 2, line 24, these are the costs that could be deducted under this bill. It has costs, including the cost of gathering, gathering is used there. Now, the point I want to make on the use of the words "cost of Gathering" is that these costs of gathering may very well be beyond the well head. This is a bill which takes well head value as the income and starts deducting cost, gathering cost may be beyond the well head in which they don't, in this case if they are beyond the well head they do not go to build up the well head value, but in fact, rather serve to reduce the well head value, so in effect if you take this treatment of using gathering costs as a deduction and these gathering costs are beyond the well head, in fact what you are doing seems to be allowing a double deduction, double deduction.

QUESTION- Thinking that the tax is placed at well head, and these are beyond the well head so its a bouble deduction.

KILGORE - It is a double deduction, right, it could be a double deduction, in fact I don't know how it is going to work on Prudhoe Bay, but the gathering could in many areas trump lines that also are the gatherers, it could be in this case that Alyeska pipeline would be the gatherer and you would be taxing them under this bill then you would also be allowing against oil and gas production a gathering

charge or a gathering cost so I think you ought to, this is something that needs to be cleared up, if it is gathering, maybe it should very specifically say, "gathering before the well head" or something of this sort. Your wording should establish some kind of consillience between the value in the producing function and the value of the activities in the transportation function beyond that. My next comments are on page 3, line 1, again we are talking about expences that can be deducted when it talks about lease acquisitions payments on the well head, lease acquisition payments, property taxes paid before the production on the lease holds, so what we are talking about are lease acpuisition payment on the lease holds, now we are going to underscore on the lease hold. Now its not clear to us with this kind of wording whether this is ment to be restrictive so that the deduction for these kinds of costs are restricted to producing lease holds, or is this generally an applicable feature of the law, that is when we use a word on the lease hold does that mean we are confining deduction ofthose costs specifically to income from that lease hold or is it more generally deductable. This sort of problem I think runs all the way through here and this particular section looks to us as if it might be intended to be restricted, that is restrict the income against which these acquisition costs could be written. Especially if you look at this in the content of section 7, a little further below it appears to us that this may be the intent. And that same problem comes up on the same page 3, on line 9, where we have associated with a lease hold, another case we have "field" in this particular wording here and, I think in another section there's the use of the word "property". Now, if these different words are used in here, I think that it ought to be made clear that there

is a intended destinction amongst these various things, I am going to come later, to a more general approach to this, where one really wouldn't really need these kinds of words and this seems to imply to us that there is some destinction between these and therefore, there is some restriction against, restriction on what income various kins of catagories acrossed here can be written off. In general, the wording of this whole section here on deductions really seems to be closer to us to a net proceeds tax than it is what we would call a seperate accounting approach. The wording here would seem to imply that to us if it doesn't mean that I thank the wording ought to be changed, it ought to be very clear against which income you can deduct, your various expences. For example, it is not clear to us in the wording of this bill how a producer who has income, say in Prudhoe Bay, has made another oil discovery and he is in the process of developing that discovery, putting in producing wells and the like, it is not lear under this bill, to us, how he could handle those development costs, would be able to, if he had to capitalize it, could he start writing them off immediately against his Prudhoe Bay income or his other income, or would he have to capitalize those and wait to deduct some sort of, that capitalized cost until he had production from this other new field that he has, so its not clear to us what is really intended in this bill, is it really a seperate accounting approach or is it something closer to a net proceeds. This raises the question of what should be your basic approach. Now if what is intended here is really seperate accounting, under an income tax and not a seperate kind of tax as a net proceeds was, we would think a more appropriate way would be really, to consolidate all the exploration, development and production

revenues and costs anywhere in the State. That is one would take revenues where ever they were from oil production or production of oil and gas in the State, and then be allowed to deduct all expences having to do with the activity of exploring, development, producing oil and gas, and this ould mean allowing the expencing of dry wholes here agains income there or development costs, amortization of development costs as against your income elsewhere, and we think if this is really an income tax approach, this makes more since really than an attempt to narrowly link expenditures with producing income from specific fields, even if you then allow some sort of write-off for losses and so on. We think it makes more since to go a more consolidated approach and it does not appear to us that the working nearly does that. Moving on to page 3, down on line 24, this is where we get into the determination of pipeling transportation income, the first section of this has to do with pipelines that, operating solely in interstate commerce and in this case subject to ICC regulations. Now what the bill sets as taxible income under those situations is 8% comes from, ICC said that one can set tariffs no higher than that level which would result in a 8% return on valuation of the pipeline, thats where this comes from, and seems to be an attempt to get that income. Well, first of all there would appear to be a technical flaw if this is the intention of the bill, to tax from the basis of ICC income. If you may recall, the ICC 8% allowable return on pipeline valuation is 8% after tax, <u>that is after income taxes</u>, after the deduction of all income taxes, including federal income tax, therefore, if this tax were operative and you were taxing at 8% of the valuation of the pipeline, you would be taxing 8% of <u>after tax</u> income, not before tax, and I don't

think that was the intent of this bill. All your other sorts of taxes are always on before tax income, your present tax law starts with taxable income, federal taxable income, well, this is before the deduction of federal income taxes and this is after the deduction of federal income taxes, a very much smaller tax base, and I don't think your intent ever was to tax after the federal income tax was already deducted. So I think this was probably just a technical problem here I don't believe it was really an intent to tax after tax income rather than before tax, and if the intent is to really do this, that is tax assentually on a ICC basis this is what you would obviously have to do I think is to take 8% after tax, add back the federal income tax, gross it up to a pretax concept. Again I think this is just a technical matter, I don't think this was the intent.

SEN. HUBER - I think, I wish Chancy were here, I think it was their intent to tax it after, if that was their intent, would you have any comments that would apply to it?

KILGORE - Well, I don't really know what the prupose of it would be, your general principal of taxation in most cases for corporations taxes in states is to tax on a taxable income basis before deduction of federal income taxes. And it seems to me, you are kind of restricting yourself to roughly half what kind of tax base you normally would try to reach.

SEN. HUBER - If the intent was to tax after, would this have the effact of not allowing it to be put into the base in such a manner that it would decrease the value of the oil? In other words, the value of Alaska's oil would decreace by the transportation charges and the profits on the transportation. They may have been aiming at that particular item.

KILGORE - Sentor Huber, I don't see how it would work that way because no matter, what ever state taxes you impose on the pipeline I don't care whether they are on a before tax, after tax, or property or whatever basis, they are going to be a liable deducation under ICC rule making. Going to a lower base and taxing less will not, it will still be a deduction obviously, it will be a lower deduction, but if thats purely your aim, you can not tax them at all if you want to get the well haired by that, if thats what you really have in mind. I think this is, you can talk to the people who wrote this but I think this is an oversite. This is a technical matter, I want to point it out because I suspect it was not the intent, but we also feel that this method of taxation has problems anyway it is clearly tax on deemed income, it does not look at the actual revenue of the pipeline, it does not look at the individual costs incured by the pipeline, its deed, and it may very well not accord with the income actually earned by the pipeline. That is even if the pipeline, a Alyeska pipeline is setting tariffs in line with ICC rule making trying to get the maximum 8% there is no assurance in any one year that they will in fact earn 8% on valuation obviously, you don't know exactly what your costs are you don't know what the values are going to be and so forth, so what you do is set a tariff which would appear on a projected basis we will try to get your 8% valuation, there is no assurance from year to year that you may in fact earn income greater than 8% of valuation or less than 8% on valuation, there is just no knowg exactly what sort of results you will get, and so certainly the ICC itself does not intend that exactly 8% is earned every quarter every year and so on, its just an impossible thing, it just can't happen, infact if youlook at the ICC records,

you will see thats clearly the case, not every pipeline is earning exactly 8% from year to year. So we think the real problem with taxing on a deed basis an aproach which looks at the actual revenue and expenditures of the pipeline, one of the other whitnesses yeasterday asked if this was in fact legal to do it on a deen basis,we don't know the answer to that but it may very well be legal questions with this, there are also questions with equity, taxing in a dean basis rather than an actual basis.
Sen. Huber- it it possible then that they just intended to use the lower base so it would be effectivly about 4% insteat of 8%, is that possible
Kilgore- thats possible, that would be . .
Sen. Huber - cause I can see what they are trying to get to, if you have to tax these oil pipelines in accordance with persentage of interest, mobile oil pipelines all over the country areall worked into the company and you get that scrambled egg that you can't unscrambly, and I hhink they were problaly willing to take a smaller persentage right off of the interstate Alaska line at a point where tthey would get it ratherthan unscrambling that egg., I think thats the attempt.
KILGOR_- Senator Huber, it is my understanding that out of some underlegisltaion you passed in past session that the companies will be providing you withan accounting of Aleyeska pipeline, unscrambled from the rest of their pipeline oppgrations. That is my recolection, and the pipeline regulatory bill, this is one of the provision and one that was not taken out laterthat the companies will infact provide you withrevenues, costs for Aseyeska pipeline
HUBER- again, this wasn't something that I helped draft, but I believe you to know information is to be provided the mechanisms

in our income tax law for unscrambling it and getting to the income of the pipeline just from Alaska are considered to be unyielding or don't exist. I think that's where the egg scramble is. I think that's what we've got here. It just may help in you telling us how to do it. I wish Chancy was here again, as I say. Is he coming back Madam Chairman?

CHAIRMAN POLAND - No.

SENATOR HUBER - He won't be back this morning. I had counted on him being here, he said he was going to.

CHAIRMAN POLAND - He's at a finance meeting.

SENATOR HUBER - The reason is because the bills that he's talking about now by the subcommittee, Chancy and Greg are the people that can really help us on them, and they should be here.

CHAIRMAN POLAND - Well, don't tell me Senator Huber, tell him.

SENATOR HUBER - Well, I can't tell another Senator what to do, but I'd really counted on him being here. It's too late now. We could have Greg and we'd be getting more information.

CHAIRMAN POLAND - I don't know why Greg isn't here. Let's go on anyway.

RICHARD KILGORE - Well, some of the intent of this section, I think, becomes clearer when you get to later sections about the Alaska Pipeline. I would like to point out though, that this taxing on this basis of inter-state pipeline at the 8% also really doesn't give them much of any incentive, no incentive really to lower their tarrifs if they're really interested in doing it. What is being taxed at that full 8% and you go to a lower tarrif, you don't even get any income tax benefit for doing that, so I'd like to point that out.

SENATOR HUBER - And even if you taxed it at half of that, it would be the same kind of incentive situation.

RICHARD KILGORE - Yeah, there just is no incentive to do that. You're going to pay on that regardless of what you do, unless you go to the other section of the bill that follows a little further on, which appears to be an attempt to strengthen the Alaska Pipeline Commission. That's a section just a little bit further on. Now, we basically wonder whether this is really necessary that one would try to force people through your income tax legislation to accept rules and regulations, and so on, of the Alaska Pipeline Commission through an income tax approach. I think we should also point out that under this

bill if a company, pipeline company, wishes to set tarrifs, say, lower than what would give him 8% on valuation, in fact, he may very well want to set tarrifs along the line established by the Alaska Pipeline Commission, but he may not want to go as far as the section here that says that he has to abide by all the rules and regulations of the Alaska Pipeline Commission. He may not want to go that far, but he may be willing to set tarrifs along the lines that the Alaska Pipeline Commission feels are appropriate, and he'll still be taxed at the 8%. He has to go all the way in order to have his income calculated in another way along the lines of the Alaska Pipeline Commission, and we really question whether this is the proper vehicle for trying to strengthen the Commission. We think there's a question also on the bottom of Page 3, where there's no ICC valuation where companies engage at least partially in intra-state commerce, and then it talks about he can have his taxes assessed on the basis of the Alaska Pipeline Commission assessment of income, and it's not clear to us from the wording here whether, what this means. Does this mean the rules of the Alaska Pipeline Commission as applied to the total operations of this pipeline which is both an inter-state and intra-state commerce, or does it only mean that part of the business of the pipeline which is purely intra-state. I suspect the intent means all. The Alaska Pipeline Commission rules and assessments of income as applied to the total business of the pipeline, but it's not entirely clear to us that this section says that.

As I said before, when you come to Page 4, Line 14 where the election, there is an election, it may very well be that companies are willing to set tarrifs more in line with what Alaskan's deem are appropriate, but still be reluctant to subject themselves to all regulations and so forth, provisions of the Commission. A minor technical problem on Page 4, Line 21, where we're talking about taxation of gas pipelines, this has to do with income along procedures established by the Federal Power Commission. I think it would work out very well to say Federal Power Commission or Assessor because as you may know there are, President Carter has proposed a reorganization of our energy, various energy agencies in the United States, including a Department of Energy which would include in it the Federal Power Commission, so it may very well be subsumed under something else, so I think it should say that. Now, our feeling is that if you're going to go the separate accounting route, I think you ought to consider carefully, rather than these sort of provisions that appear here, a more straightforward kind of separate accounting approach for oil pipelines. As I said before, it is our understanding that all the revenues and costs of the Alyeska Pipeline will be made available to the State, that is they will not be hidden in all the other pipeline operations of the companies in the lower '48, which would hav been the case without your own provisions for them, but you will, it is our understanding, get the information, and it would seem to us a more straight-

forward approach to take these data and assess what the income is of the pipeline. One may want to take the information given and change depreciation rates or something of this sort. You may not want to use the same ones that the ICC does, as would be given to you by the companies, but you would have information to make a straight-forward accounting of the pipeline, if you desire to go the separate accounting route, and if you do, we would urge that you look carefully at that rather than these sorts of provisions here.

On Page 5 we have a section for the determination of income from other activities, that is from activities other than the oil and gas production and transportation, which you dealt with on the separate accounting basis, and what it amounts to is an apportionment formula for the rest of the income. Now, we think that the language here is really not clear either. There is talk about adjustment of factors to take out of the factors, say the payroll, etc., that are involved in the production and transportation section before which are separately accounted. One would take those out it says, but it doesn't really tell you whether they should be taken out of the numerator, or whether they would also be taken out of the denominator of the fractions used in the apportion system. We don't think it's clear. I think you could also raise a question as to what's intended here also, what you're going to do is exclude income that you tax otherwise in this bill before this on production and transportation,

but when you come to apportioning for other activities in Alaska, you appear to leave in the total income that gets apportioned, the total income of the company, you appear to leave in all their other production and transportation activities, so in attempting to get at, say, what refining income is here in the State, you're going to go through an apportionment formula which is also going to produce not only their refining activities elsewhere, but their production and transportation, and so on, and it's not entirely clear to us what exactly you really want to do under these circumstances. Presumably, if a company had no other activities in Alaska, that all their payrolls, properties, etc., were associated purely with the transportation and production functions, these fractions would be zero, and there would be no problem, but as long as there are other people involved in Alaska you would be apportioning, and I think you ought to conisder carefully what it is that you want to, how you want to try to do that.

We have down in Section 15, some provisions that have to do with the Department of Revenue providing estimates of tax costs of various kinds of deductions, and I think our only question there is the way the wording is, it's a very raw statement about the tax costs of various deductions. It would seem to mean you would have to come up with a tax cost of all kinds of categories of costs. I think what is meant is the tax costs of various special kinds of tax accounting. I don't think it really means that they want the tax cost

of such things as just plain operating costs, wages and so forth. I don't think that's the intent of this that one would want the tax cost of deducting payrolls, I mean because noone questions the deduction of payrolls.

CHAIRMAN POLAND - I'm sorry, but we've had a slight emergency, and we're going to take a ten minute break.

(MEETING RESUMED)

RICHARD KILGORE - I've been asked if I wouldn't state again what our problems were with the wording on the bottom of Page 5. This section calls for the Department of Revenue to rpovide a report, and in that report it asks for a report on itemized deductions by category, and the tax cost of these deductions. Now, I suspect what is not meant is all itemized deductions, that is, one would have the tax cost of allowing royalties as an expense, the tax cost of allowing payrolls as an expense. I don't think this is what they have in mind. Normally when you're talking about the tax costs of something, you're talking about what is the cost of treating various items in one way versus another way. That is in the case of intangible drilling costs, allowing them as a straight expense, or do you capitalize and advertise them over time, or if it's percentage depletion, what's the cost of this particular way of accounting, and normally one calculates tax cost for those things, not for

normal kinds of operating costs and so on that one has. I think that this should be defined a little bit more here, and the purpose of doing it too, also, I think should be defined, but I think what is meant is some special accounting procedures and so forth on tax cost of these, not all itemized deductions as is stated here.

Now, turning to Page 6, Line 3, talks about in this report for the Department of Revenue, a summary of each corporate tax return filed which shows income from the production of oil or natural gas, showing the total amount of oil and gas produced by or for each tax payer, the taxable income of the corporation from production as reported in accordance with and so on, and also the pipeline transportation. Now, we feel that this kind of a public report of income tax information could be especially threatening for the companies. We think it raises a lot of questions about laying out in the public record various kinds of information that would normally be considered confidential, and laying this out on the record, we think could have some impact on competitive situation of the industry. What it would do, is probably disclose the specifics of Prudhoe profitability. Everybody has an idea of what Prudhoe Bay profitability is, but this would probably lay it out on the line.

SENATOR HUBER - Is that bad, to have the profitability laid out on the line for once, so that we all know what we're

talking about?

RICHARD KILGORE - Well, I think from the standpoint of the companies, it is bad, and I think they have a ligitimate complaint about this because once this information is out, it's not only available for you people to assess, but it also would effect competitive relationships. That is it would throw up information which say companies in the position of negotiating for the purchase of Prudhoe Bay Oil would know alot about what their competitors' costs and so forth were, and this is the kind of information which is normally not available in those kinds of buying and selling relationships, and I think for those who are in the selling position, this is.....

SENATOR HUBER - Did you say for oil or for lease _____ so that I can relate it.

RICHARD KILGORE - This calls for the whole corporation as such. This would presumably show for any individual company its total profitability on oil and gas production in Alaska, but it's basically EXXON's and Prudhoe Bay's position obviously.

SENATOR HUBER - Richard, I'm trying to be constructive, but I'm having trouble, I can see where more data base being out, if the companies we're talking about between themselves

selling their leases for their property, maybe somebody wants to sell somebody a pig in a poke or something, so the data being out would be detrimental, but I think you said that in selling oil, rather than oil properties, and I wonder about that being it's a completely controlled market, how there would be any legitimate interest there.

RICHARD KILGORE - Well, it may not very well be a completely controlled market, we don't know how FEA, what they're going to do on Prudhoe Bay pricing and so on, but what the FEA does is always set ceiling prices, and there's a question of whether one can realize the ceiling prices. There may very well be a situation where major refineries in California who are not Prudhoe Bay producers will be bargaining for North Slope Crude, and trying to strike a bargain with a North Slope producer, and this price is not fixed, there will be a bargain on some of these prices, and you do something when you introduce information in the public record that the buyer has access to. He knows then more about the economics of the seller.

SENATOR HUBER - The future danger it might cause than, rather than the present because they're so tightly sewed up now.

RICHARD KILGORE - In fact there's a general proposition putting this kind of thing on the record does put out confidential information which is normally not made available in public,

which is internal to companies, and I think it changes the bargaining kind of situation to some extent, it just has to.

SENATOR HUBER - I'm happy to hear, Madam Chairman, that somebody thinks that something may go more than the free market place, because from listening to the radio this morning, I was afraid that everything about energy was going to get further from the free market place until the President comes right into my house and tells me what I can do inside of my home.

RICHARD KILGORE - Anyway, we see problems with making this kind of information available by company. I think, if you want information it might very well be possible for the Department of Revenue to combine information in such a way that wouldn't disclose individual company positions. I don't know, aggregating data by producing areas or something of this sort. I don't know, but giving you information that would be helpful without raising these kinds of disclosure problems. That really concludes my specific comments on this piece of legislation. In sum, I guess, what we're really saying is if you feel you want to go the separate accounting route, that you might very well consider some alternative to this, or some alternative provisions, and in the oil and gas producing area really thinking seriously about consolidation, the consolidated kind of thing where you would consolidate all the revenues

and deduct all costs in the State of Alaska rather than the provisions here, which seem to be closer to a net proceeds, and on the pipeline that you consider again a more simple straight forward direct taxation on the basis of the information that will be coming to the State on the Alyeska Pipeline.

SENATOR HUBER - Madam Chairman, while Dick is still in this 015, this is the area where I questioned industry yesterday, if you remember. Dick on the secrecy of these reports, do you think that Line 28, Page 5, under the 015, one of the things I read into this is I thought that was all inclusive, and maybe it isn't.

RICHARD KILGORE - Would you repeat that again, Senator.

SENATOR HUBER - Page 5, Line 28, under 015. We're talking about public reporting, which you were just talking about a moment ago. I took it to mean itemized deduction by category, and that these returns by category must run all the way through this, so that you aren't disclosing actual returns, but only by category.

RICHARD KILGORE - Well, I did not read it that way Senator Huber. I read this particular part of the report has to do with itemized deductions by category and tax cost, and then

I read on the next page, Line 2 of the next page, also included in the report shall be the summary of each corporate tax return. I didn't read by categories as part of that. These seem to be two separate parts of this report to me.

SENATOR HUBER - Greg was that meant to be in there so that that is by category rather than divolging the summary of an actual individual tax report?

GREG ERICKSON - Mr. Haggert drafted that particular portion of it, and it is my understanding that, subject to correction by him, is that each individual tax report and the summary by category.

SENATOR HUBER - In other words, the way I'm reading category is what you determine it to be? But the category goes over to the next pate too.

UNIDENTIFIED SPEAKER - No. There are two requirements. The intent when it was drafted, was that there be a general summary for all taxpayers under this piece of legislation by category. Then, in part B there would be for each taxpayer a summary of that taxpayer's tax due and paid, and so on, so that it would not be by category it would be by taxpayer in two parts of it.

RICHARD KILGORE - Okay, I would then like to turn to the severance tax. As I said in my general remarks, if you're interested in raising the severance tax, both of these bills that we're going to consider seem to in general follow our guidelines, and has to do with more the specifics of how each one of them works. We'll start with HB 144, SB 103. This bill does several things. One is it moves to lease averaging rather than wells in the calculation, and we think that makes an awful lot of sense from the administrative standpoint, and probably should be done even if you don't raise the severance tax, probably even amending your present severance tax would do that, and would make sense. Page 1, Line 11 of the bill moves the point of tax from the wellhead to a new point of production which is later defined.

SENATOR HUBER - How is this defined?

RICHARD KILGORE - It's defined back on Page 4, line 9, gross value at the point of production means for oil, the value of the oil at the point where it is metered or measured in a condition of pipeline quality on the premises of the lease or property from which it is recovered. So in come cases it would change the point of taxation from the wellhead to somewhere beyond up to a point where it was meter measured and made put in pipeline conditions, so it clearly, and this is pointed out by someone else, moves the point of taxation

and in a sense in certain situations it would tend to tax the transportation and upgrading of the crude oil. That's clearly the case.

SENATOR HUBER - I think it had another reason for being in there. I think it was on account of that Kenai deal to where if they transferred our royalty share portion that went into resale that they were subject to the APUC, and doing it this way, while they pushed their royalty share through our line, they were not subject to our APUC. There was quite a problem on that in Kenai, it happens to be in gas, but we're talking jointly here and I think this was done for the company's benefit.

RICHARD KILGORE - Well, I think also in Cook Inlet, as I understand it, there have been continuing disputes about questions of wellhead and where one taxes, and I think this is all intended to straighten this matter out by legislation. This is where it is, and we don't have to argue about backing out transportation or whatever, this is what they're talking about. This makes administration of it easier, clearly, I think that some of the testimony yesterday it was complained that there would be a cost to the companies in a sense that they wouldn't be taxed on transporting and upgrading. I think that if it's administratively easier and there is a cost, perhaps what you should do here is get a better idea of what you're really talking about in terms of cost and dollars and

cents. What is really the extra costs that companies would bear by doing this, or some idea. I think that's how you would have to assess that. Now lets look at the tax rates in this bill. I think you are all familiar with the fact that it adds higher well brackets and puts in these higher brackets at higher tax rates than exist in the present legislation, and it also lowers the tax rates, both the cents per barrel tax and the percentage tax for lower productivity wells. Now, just to give you a rough idea of what this does, and I'd like to just give you some numbers on how it would seem to us to effect, say, Prudhoe Bay, and then look at the Cook Inlet situation under this bill. All the numbers I'm going to use are ease of comperability for 27 gravity crude oil. Now, in Prudhoe Bay,' and I'm assuming for purposes of this calculation that the wellhead value on Prudhoe Bay is say $7.50 per barrel just as illustriative. Under the present tax for a 5,000 barrel a day well in Prudhoe Bay, and these figures are cents per barrel of gross production not of taxable production, but you still get an idea of the relative increase in the tax. The present tax for 5,000 barrel a day well at $7.50 is 49 and 1/2 cents per barrel of gross production. This tax for the same well, a 5,000 barrel a day well would raise the tax to 68.9 cents. That's about a 37% increase in taxation of a 5,000 barrel a day well in Prudhoe Bay. If you went to a 10,000 barrel a day well, the percentage increase and the tax is greater. As against

about 51 cents at the present time, this tax would raise it to about 80 cents, so on a very productive 10,000 barrel a day well at Prudhoe Bay, the increase there would be about 58%, increased through this tax over what you have today. The effective rate on gross barrels produced would go from about 7.8% on a 10,000 barrel a day well to about 12.2% under the new tax, so this is what it does to Prudhoe Bay, very significant increases. And the percentage as I gave you were really the effective rate on taxable barrels going from 7 8 to 12.2. So you are ending up on the very productive well, you end up with an average effective rate on taxable barrels of just under 12 and 1/2 percent in Louisiana. I think that's what was intended. So that's the impact it has on Cook Inlet, I mean on Prudhoe Bay. Now, lets look at Cook Inlet, and particularly the old oil because we've always been worried about effective taxation of old oil. Now, this bill does retain the cents per barrel feature that exists in the present bill, and it retains the cents per barrel feature with basically the same floor price as you have today. It works out for 27 gravity crude to about $6.10 today. So it retains that, but what it does at the same time is that it does lower the rates of taxation both percentage and the cents per barrel taxes in the lower well brackets, so despite the cents per barrel feature still being in there, it does lower taxes on low productivity wells below what they are today. I'll again give you some examples, and they'll

again be on the same basis as before. 27 gravity crude, and these are figures on a gross barrel basis. At the present time a 100 barrel a day well in Cook Inlet would be on the cents per barrel tax and it would pay 26.6 cents per barrel. This bill on a 100 barrel a day well would eliminate the tax. It would go to zero, and a very substantial gain for a 100 barrel per day well. For a 300 barrel a day well, would also pay under the present tax, 26.6 cents. Under this bill, under our calculations, it would drop that 26.6 to 14.2 cents per barrel. So you have about a 12 and 1/2 cent reduction for a 300 barrel a day well, and if you move up to a 500 barrel a day well, you still get a reduction. Under the present tax it would be 28.7 cents. Under SB 103 it would be 21.2. ' So even for a 500 barrel per day well, you're going down by about 7 and 1/2 cents per barrel, and in fact this new tax as compared with the present lowers the tax up to somewhere wells in the range of 1,000 to 2,000 barrels a day. Somewhere in that range, the new tax gets higher than the old tax, so it does provide very significant relief for low productivity wells.

SENATOR HUBER - Madam Chairman - the figures which we have in the committee they are open to him now, I think, I just wonder when he finishes there. If you have any dispute with those, I think that they confirmed his testimony.

RICHARD KILGORE - Yes Senator, we did do our own homework on this obviously, and we have had a chance to look at what legislative affairs has, and they coincide with what I'm testifying here.

SENATOR HUBER - I was wondering. It would help us a lot to know that they do or don't or if there are differences.

RICHARD KILGORE - No they don't they calculate the same way we do.

Now, so this bill does, I think, meet our objections really to the present taxation of old oil at Cook Inlet which has the high effective rates because of the cents per barrel feature. At least its present operation would reduce the tax substantially for low productivity wells, and we think that's a good feature of this bill. I should point out though, this bill does retain cents per barrel and it does retain escalation of that cents per barrel, so it is possible that under this bill we would again be back in the same problem that we have today. If the escalation manages to raise the cents per barrel tax high enough, we could be back in this problem again of taxing old oil in Cook Inlet at high prices, it's possible. The potential is still in this bill.

SENATOR HUBER - This evades it from present time, and we might have to look at it again in future years if we don't do something with cents per barrel.

RICHARD KILGORE - Yes, it may be back again.

SENATOR HUBER - Well, I'd sure look at it again, Madam Chairman, than I would to have Tom Fink for Governor.

RICHARD KILGORE - I think I was on record the first time I testified as saying that if you do retain a cents per barrel that perhaps what you do is at least consider no further escalation in cents per barrel, and perhaps that could be in this bill too. I don't know. I want to only point out that it could happen again. So that's basically what this tax does. It raises fairly significantly, the tax in Prudhoe Bay, but it does lower the tax considerably on low productivity old oil priced wells in Cook Inlet. It also has a severance tax for gas that is flaired, and a very substantial one, five times the rate. I think before you do this kind of thing and add such a tax, you ought to look very carefully at where gas is being flaired and why. There has been testimony yesterday about safety flairs and so on. I think you ought to look very carefully at what it is that you would be taxing and why the flairing is going on at the present time. Now, if what you're really trying to do is tell companies to find a use for this flaired

gas and find markets for it, I think that at the very least if there is gas being flaired now which you think you could find markets for, therefore you're going to try to compel people through this tax, somebody used the word incentive the other day, but you're compelling them through this tax that at least you ought to provide somebody with a grace period before they would pay this tax. That is, you wouldn't start right away. You would make it clear to them that they had certain time within which to find markets for this. You wouldn't penalize them in the meantime, but if you don't find gas for which it's logical to find markets, that you would say at some point in the future you're going to start paying a tax on this, so you had better get busy and look for markets. I don't think I.....

SENATOR HUBER - I think, Madam Chairman, that we should make sure in there. I think we should find out the required safety flair of no more than a certain amount except during an emergency blowout or something like that. The idea was, as long as it's economically unfeasible to take small amounts of gas and reinject them, the State loses its royalty share on it, and the nation loses the energy strictly because at a given space in time, using if you will excuse me, a cash discounting flow and everything else, that we determine its value and we say it's nothing, and what's nothing is moving down the pike another twenty or thirty years may be all we have, and Prudhoe Bay, in spite of an absolute no

flair restriction has been allowed to flair and everybody knows it. Somehow or other, it does have to be stopped, and if you make it so it isn't economically feasible to flair, then it becomes economically feasible to build a small compressor system for saving.

GEORGE SILIDES - Madam Chairman, I know that the flairing _____ as Huber pointed out, _____ that the flairing of course, and the word allowed is important, they get permission from the State, and we have to do something about the bill, that we don't have competition between the taxing department and the Department of Oil and Gas Conservation. They are the ones that give the permission, and you have to apply and you have to point out that it's being done with safety and so on. I don't think that the bill intended to penalize somebody for entering into a safety feature, and so am I correct Mr. Kilgore?

RICHARD KILGORE - I would assume that that's the intent. You'r not really interested in taxing gas.....

SENATOR HUBER - But that board still has the power and makes the exemptions and has been constantly making the exemptions, and it's a matter of record, both at Prudhoe Bay and elsewhere, they make the exemptions, they're legally made, but the product is gone, the resource is gone, it is flaired, and so at least putting in a fairly stiff recovery there, does at

least give us something off of our severance tax that went up in flair too.

GEORGE SILIDES - Madam Chairman, I might make another comment. I think that in view of the comments being made, we're going to have to look into the legality of being able to tax a safety feature.

SENATOR HUBER - No, we don't tax the safety feature. Let's not get crossways on that. We should put an exemption in here for the safety flair only, and somewhere we need to come up with a figure of what is the amount that may be flaired to date per well or per safety flair. We definitely shouldn't tax them on what is a safety requirement. But there isn't a provision. The gas that's being burned in significant, is not being burned in so called legal actual safety flairs. It's being flaired otherwise by legal permits by the board.

CHAIRMAN POLAND - I think we have to check with the Board as to why they are giving the tax.

SENATOR HUBER - That's why the Governor's bills has it in it. That's why committee's bills has had this for two years, and we should certainly, like Dick says, make sure that we don't tax the necessary safety flairs. I asked yesterday what

was, and they said a million cubic feet. That's a thousand MCF's a day. I'm not sure that that isn't considerably over what's needed to burn there in case, I need a good definition of a safety flair.

RICHARD KILGORE - I think also you might consider if you really feel the gas is being flaired that you don't want to be flaired other than as safety purposes or whatever, that's something you might consider as an alternative just tightening up your regulatory bill and your regulations rather than do it through a taxing approach.

SENATOR HUBER - We've done everything but tar and feather the board.

REPRESENTATIVE OSTERBACK - Madam Chairman, could anybody tell us how much gas they will be flairing at Prudhoe Bay? Anything that burns is energy. We're talking about we're running short of energy. Somebody talked about the railroad. If they took it in there, they could take out about a hundred tanks of gas a day, and they didn't think it would be enough to pack that out with flairing, and that would be an awful lot of energy, but most of us don't really know what this gas is with the flairing, but I know anything that burns is energy, and we're talking we're running out of energy. So I think there should be something done about it. Anything

that you can save as energy, you can sell. There's no problem in that.

RICHARD KILGORE - Well, I agree with you, if what we're really talking about is waste, then I think we should eliminate that. It is energy, and you're absolutely right, and I think you should look very carefully at what's going to happen at Prudhoe Bay, and how your regulatory people will handle it.

SENATOR HUBER - Might we, Madam Chairman, Al brought it up and it's very important. I think that it's understood that they have stopped flairing or are to stop flairing. It was only for that refinery that they flaired at Prudhoe Bay, and they didn't pump it back down the gas well even though they were drawing gas out to run the refinery because it would have cost more money than the gas was worth, so naturally the gas was worth nothing, so it wouldn't cost money to pump it back down into the ground. If it had a value of 20 cents an MCF, it would have been a lot cheaper to pump it back down into the ground, but just so that the record is straight, we aren't really looking for flairing at Prudhoe Bay, but if you will take a look at the Valdez terminal, you will find that we don't flair no more, but we've got three huge oxidizers there, and there's going to be a tremendous amount of energy unless the LPG's that are in that gas and the vapors that are in the gas at Valdez,

unless there's a plant built to recover those and use them which is not in the plan, it is going to effectively flair trillions of BTU's before Valdez is over with. That's because the plant and the tanks will not stand the pressure in the storage.

GEORGE SILIDES - Madam Chairman, I think the point is well made that something's got to be done about defining what is meant by safety gas, what is being wasted, and I think also that the bill had intended to address the bottom of the possible wasting of carbon dioxide. There was a considerable amount in this particular natural gas, and I suppose what we're getting to is that we have to do something about those things, either by definition or by amending the bill. I think this is a point that we're going to have to look into. I don't think we're going to get it solved right here.

SENATOR HUBER - I think they're willing, George, not to flair the carbon dioxide, but I'm not sure if they will get rid of it.

GEORGE SILIDES - It doesn't burn anyway, Senator.

CHAIRMAN POLAND - We'll be checking on this flairing part.

SENATOR HUBER - Well, it's important on both ends. I think that the bill needs to not penalize them, but by all means

should be retained in the bill, and we may of course have to put it in in some other places. I don't think this is going to effect it when it comes to the flairs in Valdez.

RICHARD KILGORE - I'd like to move on the the second severance tax bill, and that's HB 321, SB 238. Now, basically this tax changes the tax rate to 10%, but it also has a cents per barrel feature of 75 cents per barrel, so it has an effective floor price of $7.50, and it also has what _____ for an economic limit factor built into it, and I think Mr. Wilson yesterday did quite a good job explaining how the mechanics of this worked, and he also provided an example for you that I think was probably quite useful. Basically what the bill does is give you the first hundred barrels a day as an allowance for operating costs is what it amounts to, and wells producing more than 100 barrels a day, they pay then an increasing fraction of the 10% for the 75 cent tax is the way it works, and it's a continually increasing thing as well productivity moves above average well productivity moves above loo barrels a day. Very roughly, a 100 barrel a day well would pay no tax under this bill. A 200 barrel a day well would pay about 43% of the tax. It isn't 50% because as you might think by taking 100 to 200 because it's taxable barrels only that count. That is the 200 barrel a day doesn't produce 200 barrels that are entirely income to the company. Twelve and a half percent of those go to the State.

GEORGE SILIDES - Mr. Kilgore, it's 43%.

RICHARD KILGORE - It's 43%, 200 is 43% of either 10% of value or 75 cents a barrel depending on which it is.

GEORGE SILIDES - That's what I wanted you to say.

RICHARD KILGORE - For a 300 barrel a day well it would be 62% of these basic rates and on a 4,000 barrel a day well, it would be up to 89% of this. This is the way it works, and it amounts to a continuous function as against the step schedule that you have in your present legislation. As I said, it amounts to a continuous function and in principal we find it as kind of an appealing concept as against the step schedule. Now the other feature of it is that one can't apply for an economic limit factor greater than 100 barrels per day well average if you can prove it, and what you basically have to prove is that your operating costs that you require, out of pocket operating costs are greater than what you would get with 100 barrels of production per well. You would need more than this to recover your operating costs. Now, there appear to us to be a couple problems with how this actually works. First of all on Page 3 Line.....

SENATOR HUBER - Madam Chairman, I would note that we've got John Messenger here, too. This is the same problem that came

up yesterday in talking with the industries. We might want John to answer some of these.

RICHARD KILGORE - It has to do first of all with how costs are defined, and that starts on Page 3, Line 16, subsection C here, and as was pointed out in testimony yesterday, it is not clear that the cost category specifically allowed here really provide for all the kind of out of pocket expenses that a producer might have, and basically that's the concept that you're trying to get at, whatever is out of pocket expenses, and it's not clear to us that that is the case and some questions were raised yesterday and I think you ought to consider those too, but what I think is more important is that after calculating the costs here, you then have to determine how many barrels are necessary to recover, that is if more than the hundred that you are allowed anyway. Now the problem with it is that the way that the bill was written, you don't take your costs and divide through by the price of oil that you as a producer receive. That is your actual price, if you're an old oil producer and getting $5.00 per barrel, you don't divide through by $5.00 to see how many barrels you need to recover your costs, but you use another deemed price to do this, and the deemed price is acquisition, this is Page 3, Line 29, its acquisition costs CIF at westcoast refineries for imported oil of like quality and then you net this back to Alaska, so you're not doing it on the price you actually

receive, you're doing it on a deemed price that you may not be receiving, and it seems to us this causes problems.

SENATOR HUBER - Could we at this point if it's convenient, I wonder, Sterling isn't here, but John is and this was the question yesterday, I understood from the testimony by the State that as of starting in December or sometime like that that these wells that were in economic trouble shall we say, that these figures that you have put in here talking about _____ price are actually what's happened. They are now being allowed, these higher prices on the producer's share, but not upon the State's royalty share. The argument yesterday, and I think we're right into it again today, is whether we're just talking about a possible deemed price working it back from San Francisco or whether we're truly talking about what they're going to get, and the industry said no this was unfair that wasn't what they were going to get, so we're right at the nitty gritty, and. I think you can help us John.

RICHARD KILGORE - Perhaps, Senator, I'm going to give an example, maybe I ought to do this and then we can talk about it.

SENATOR HUBER - Okay, just so that John, he wasn't here yesterday, so he's alerted. My stand was or what I saw was that you fellows put this in here because that's actually

what the oil companies are getting, and so you were getting right to the nitty gritty, and they said no this is what they might give them, but I understood Sterling to say that this had actually started in December, and I don't think this was in testimony, I believe this was talking in the afterwards that it actually had started in December and the State had been denied that increase, but the producer's share had been allowed, so if that predicates it and as he goes on if you can straighten this out, it will help me a lot.

RICHARD KILGORE - I'd like to just give a little example of what we're talking about here. If we had an operating cost for a well or wells whatever the unit or something, and say $2,800 a day, and these were direct operating expenses defined properly however, and if you didn't get these revenue enough to do this, you would shut down. Now, if one looked at the foreign price and then netted back to Alaska, let's say you came up with $14 just to make the arithmetic easy, you came up with $14. Now in calculating your economic limit factor here, you would divide through by that, and that would give you $2,800 divided by $14 is 200 barrels a day. You're economic limit you could then justify is 200, rather than the 100 which you had presumed. That means you're getting more, but let's say that the producer only gets $5 a barrel for oil because he's receiving the old oil price in Cook Inlet. He doesn't bet $14, he gets $5. Well for him to actually recover the

$2,800 his total expenses at $5 he's actually receiving for his oil, his real economic limit factor is $2,800 divided by $5 or 560 barrels, so that in fact, his limit factor, that is the number of barrels he needs before he's got to shut down, because he doesn't make it out of pocket cost of 560 under this bill it appears to me, he would only get 200. I don't think it really gives you the results that you intend. The result that you intend is to provide relief for marginal wells. It doesn't appear to really serve the intended purpose.

SENATOR HUBER - That's at $5.61?

RICHARD KILGORE - That's at $5.00 even.

SENATOR HUBER - But doesn't this other deal work to raise that?

RICHARD KILGORE - Well, the other thing we're talking about is price relief under FEA regulations. I think that's really something different here. I'm addressing.....

SENATOR HUBER - That's not five dollar oil. You know, if we're talking about his economical limit on the well then we assume it to be $5.00 oil, but he is actually receiving $10.95 for it because it's below a certain economic limit

already established, then we're dealing with something that doesn't exist, and that's what I'm trying to get into this, and I thought that that was why the State had drafted it.

RICHARD KILGORE - Because it assumes that the Federal government will always bail out people, is what you're saying, other than royalty owners.

SENATOR HUBER - My information was, it didn't only assume, it was based on what was happening. Can you clarify that John?

JOHN MESSENGER - Let me just make a couple comments. I guess it's true that one position that we've taken on this bill that our taxes should not be based on the artificial price set by the Federal government, and the Federal government set a price of $5.00. Our position is that we shouldn't be content with the tax based on that artificial price, and that's why, one, we've set the cents per barrel floor, likewise when you're figuring the economic limit factor, again, we say the true economic limit is not how many barrel are produced at the artificial price, but the amount of barrels they would produce using the true value of that oil, pre-market oil. We should insure ourselves that so many cents to so many percent of that pre-market oil because that is our resource and we should get at least that percent out of it. Secondly, is that producers are

reaching their break even point which they will stop producing. There is a procedure by which they can make application to the FEA and get price relief and with that higher price they can produce longer, but the FEA has said that they will give price relief only to the producers, and not to royalty owners, so if a company is reaching its economic limit in Cook Inlet, and they go in for price relief, they are given that price relief. They will raise their price, but they will not raise that price in the terms of the amount of royalties which _____. So, it's two things, one is the tax rate and the economic limit factor should be based upon the true value of the oil, and secondly that producers are protected through FEA regulations, but the State is not.

SENATOR HUBER - Then I guess what he's saying is that if someone's going to shut down the production there, by it being below economic limit on $5.00 oil, the State is advocating that we put the monkey on the fed's back and say you did it, you set an artificial price, we're going to set our tax based on free market price, and if you want to save that resource, save that company, you can turn around and do likewise what's reasonable. I'd say it's what I call putting the monkey on the Fed's back. They caused the problem. I happen to be strongly in agreement with the State's stand on that, and compliment them for it because why should we throw away our royalty share and our

taxing ability because somebody forced an artificial price down our throut, and is forcing that same artificial price down the throat of the oil companies.

RICHARD KILGORE - Look, I'm going to address myself to the question of the artificial price, that's part of what I'm doing here, and I think the Commissioner took issue with earlier testimony I made when I said I thought this was a flaw in the thing, and it certainly was, I thought, a flaw in terms of its purpose of providing relief, and now I do understand why they do this which is another objective, than what appeared to be the intent of the bill, and I'm going to come back to the whole question of the artificial price. It's very clear they did this by design. I'd like to again, as you asked, talk about just very roughly what it does to Prudhoe Bay and then to Cook Inlet, and then discuss the consequences of that. Again, for Prudhoe Bay, looking at 5,000 and 10,000 barrel a day wells at Prudhoe Bay, this bill also raises taxes significantly on those wells as does the other bill, as does HB 321 that we looked at before, excuse me HB 144, that we looked at before, but it does not raise them as sharply as the other tax. If we take a 5,000 barrel a day well, I said that, and I'm not going to run through all the numbers here, I think, but that the other tax for a 5,000 barrel a day well raised the tax about 39% on a 5,000 barrel a day well. This tax would raise it about 29% it appears to us using the presumed hundred

barrel figure. The discrepancy between the two gets larger at very productive wells because of the steep rates near the end of the schedule in the other bill, and for a 10,000 barrel a day well, HB 144 raised it 58%, this would raise it about 27% on the very productive wells, so if it both increased taxes on Prudhoe Bay, clearly the one, HB 144 would increase them significantly.

SENATOR HUBER - That would be effective of what of 5 and 10.

RICHARD KILGORE - Okay, the effective rate would be very close to, on taxable barrels it would be very close to 10%. On 5,000, it would be 9.8% and 9.9% on the 10,000. It approaches 10%.

SENATOR HUBER - Just slightly under ten percent for a total maximum. Or fully 2 and 1/2 percent, a little over 2 and 1/2 percent below Louisiana. Using the Administration's bill.

RICHARD KILGORE - That's correct.

SENATOR HUBER - And it would be right at Louisiana with the other bill.

RICHARD KILGORE - Close to it. That's correct.

Now, let's look at what happens to the Cook Inlet old oil price here. This bill as the other one for a 100 barrel a day well eliminates the tax altogether. It does exactly the same thing, but what we find troublesome is that is you go to 300 barrel a day wells, these are the wells that we're concerned with because of their productivity and the old oil price they have to bare, they get the tax there doesn't go down, but it increases. It goes up from 26.6 cents on gross barrels to 40.6 cents. It goes up by 14 cents a barrel. This tax raises it that much. On a 500 barrel a day well, it raises it by about 13 and 1/2 cents, and on a 1,000 barrel a day well. I'm sorry 14 cents increase on a 300 barrel a day well, 22 cents on a five hundred barrel a day well, and 28 cents on a 1,000 barrel a day well. What I think are particularly disturbing are the increases on the lower productivity wells. A well as low as 300 barrels a day which we already have some concern for because of the effective rate on the old oil thing has actually a fairly substantial increase in its tax burden. As Commissioner Gallagher stated correctly, you get this result because of raising the floor price essentially. You are raising the floor price from $6.10 to $7.50 and you have higher tax rates at the same time, and it's deliberately designed to do this. Now, we really feel that this kind of goes against what we feel are good principals of severance taxation. What you're saying is the producer in Cook Inlet he received a relatively low old oil price established by

the Federal government. This in turn restricts his own profitability, but then the State adds to his burden by taxing him as if he received $7.50, and it seems to us that rather than help his producing situation, this only makes the situation worse. One of the reasons given for doing this is that the Federal government is following an unwise, or I think it was described as a foolish price policy. Now, this may or may not be the case. I'm not willing to pass a judgement on that, but they're, you should know that the Federal government does have reasons for doing this. It's not capricious, they do have reasons. They have concern over the effect. What they're concerned with is this, we've had a fantastic increase in the oil prices outside the United States by the OPEC nations and if one frees the oi., the old oil price, it will go up very, very sharply. It will, perhaps in some cases, close to triple in price and the people are concerned about the consequences of this. Rightly or wrongly, they are concerned about the inflationary impact on consumers. They're concerned about when _____ producers, because these are on old oil wells, wells production which is established at old costs and so on and therefore you have to question whether you want to give them huge increases in the price and windfalls. There is concern over that. So there are reasons, and you can argue one way or another, but there are reasons for this.

SENATOR HUBER - Would it be fair to say that those reasons are exactly on a par with the same reasons for having controlled gas prices as would be in inter-state commerce as well as setting a free-market price. It's the same principal in both cases.

RICHARD KILGORE - As deregulation of natural gas prices. Yes.

SENATOR HUBER - Deregulation of natural gas. Deregulation of petroleum would do the same thing, it would increase the price at the burner or the price at the gas tank as it comes in out of the nozel, but all of the other factors of pro and con are the same.

RICHARD KILGORE - Yes, that's right, and the concern is that if you let it go up to, and I really object to the word free-market price because we're not talking about free-market price, what we're talking about is it goes to a price administered by OPEC. That's what we're talking about going from price administered by the Federal government to a price administered by OPEC. This is by no means a free-market price. It's a market price, but one set by OPEC, and set by political reasons as much as for economic reasons.

SENATOR HUBER - Some of us are referring to free-market price though as to this free-market price that exists that we talk

about what the price would be if OPEC were not controling it. Some of us are talking about a true free-market price

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RICHARD KILGORE - Senator, I don't know what the price would be if OPEC were not controling it.

SENATOR HUBER - We don't know. We have projections just like we do on what Prudhoe Bay is going to cost.

RICHARD KILGORE - One the one hand, if OPEC did not exist one would certainly expect over time that the price would rise at some point in time to the level of alternative energy sources which are quite high in the $20 - $25 range. On the other hand, in the short run, you do have an overhang of surplus productive capacity in the world, and if there were no OPEC, and it were perfectly free market, there's no reason why the price couldn't drop to less than $1.00 per barrel, because that's what costs are in their surplus capacity. If there were truly competitive free market, one would have $1.00 a barrel oil or less because that's what the costs are in the middle east, less than that so but as time went on, and this surplus which overhangs the market now, and which would push it down, gets eaten up and it will, one would then have prices moving off in the other direction. I don't know what the price would be. But anyway, we're talking about not letting the price, the U.S.

government as a matter of policy, not letting it go to a price set outside its own borders by an orgnaization of petroleum exporting companies, and that's what we're talking about. It's the intent apparently of the Congress not to do this because basically the idea is concerned with price impacts, concerned with windfalls, and also that there's no way of assuring that the price that would be set by OPEC is an appropriate price for our internal markets for our own costs and so forth. There's no way of knowing whether they will set a price appropriate to our cost circumstances in the United States or a price that may be very much higher than people think it is now or maybe even a price lower. Not good enough for development of our domestic resources. So this is a matter of national policy and people can quarrel.

SENATOR HUBER - Feable minded or otherwise.....

RICHARD KILGORE - Well, I don't want to characterize it. I'm trying to give you a few of the reasons for doing this, and this is a matter of federal policy. Now, but even if it is a foolish policy, or at least if Alaska views it as one, or the people who did this legislation think it is, I think that you have to ask, if that is the case, still, why do you want to then punish producers for this price policy basically. They already suffer enough from it in terms of the revenues they receive, why do you want to go an

added step and raise their taxes because of this. I don't think it's reasonable to assume that if you do this you will force national policy to change by what you do in the way of taxation here in Alaska. That seems to be reasonable.

GEORGE SILIDES - Madam Chairman, may I ask a question?

In addition to your comment of being unable to force national policy, would you think that this kind of tax is counter-productive?

RICHARD KILGORE - I suppose it's possible, I don't really know the answer to that, but I suppose there are reasons that might want to lead one to that result, and if the FEA has procedures for relief of these kinds of situations , then it sees the State of Alaska in fact imposing higher and higher taxes on such low productivity wells. I don't know. It's not inconceivable that it would enter into their thinking in this matter. Rather than providing relief, it seems that the State of Alaska goes in the other direction in this situation.

SENATOR HUBER - George brought something up here. Isn't this the fact that it effects these 300 barrel wells just because of the total tax maximum that we pay and then how we apply the mechanics of the formula. They could for instance, modify, and the mathematics of it I would have

to find out from somebody else how, so that that point would hit, maybe, more on a five or six hundred barrel a day well and maybe give as much as 10.3% or 10.4% out of Prudhoe Bay instead of an even 10%, and the formula diddled with enough to change that point to where it would be correct. Couldn't that be done?

RICHARD KILGORE - Yes it could be. If you like the basic approach of the continuous formula .....

SENATOR HUBER - Apparently you do, and I do too, and we might consider, and George's question pointed up that we might consider something from being John Messender is here, that they might give us an alternative is that reasonable Madam Chairman?

CHAIRMAN POLAND - Well yes, except today we have Mr. Kilgore with us. He's leaving on a plane and we want to take advantage of this. We can bring this up.

SENATOR HUBER - I have considered this, Madam Chairman, to be a work session with him, and it's more valuable to me, the way we've been conducting it here today, than anything that we've had.

CHAIRMAN POLAND - Well fine. Let's give him a chance to get with it.

RICHARD KILGORE - Okay, we really are concerned with how this aspect works. There are two parts where Alaska is attempting to impose its own view of what the proper price policy should be, that is if they want the OPEC price. It comes on the floor, and it also comes as I said before in this calculation of the economic limit factor again. It enters in two places, and we have serious questions about this and what you really want to do. If the basic intent of the legislation is to provide relief that you don't go off in the other direction simply because you're unhappy with the prices because this throws all the burden on the producer, and then you're going exactly against what you really want to do, and you could have economic consequences to this.

I understand your concern with the prices that you get for your oil, and you'd rather get higher prices than lower prices, and that's fine, but the question is if the price is not set at a level that you think is appropriate then what do you do about it, and I guess, it's just bothersome to us that what you do about it is throw a burden back on a producer here. That's what you're doing about it, and that then goes against what we feel is an appropriate kind of severance tax because then you run into all the kind of economic problems with this gross tax and that's our concern, and we appreciate why you think in terms of floors and why you want to get an adequate value for your oil, and so forth,

and we understand why you do it, it's the consequences.

This tax also raises the tax on natural gas. If you'll recall our testimony before, we were always pointing out to you that if you did this you would have an impact on Alaskan consumers, that would flow through to Alaskan consumers. I noticed that there is another bill which is HB 329, SB 239 which is a residential fuel credit, and I presume that the intent of this is to mitigate to some extent the impact that raising the gas tax would have on Alaska. Consumers - we're not really in a position to know how adequately it does this because this has to do with what fuel bills really are in Anchorage and so on. We really don't have the information to calculate how adequately that does that, but obviously, you are concerned with that aspect to it, and the balance of the increase of course would be assessed against exports. I think that the other thing I should point out is that here you have in this not only an increase in the tax rate from 4% to 10%, but also introduce a floor price here, that is a minimum 6.4% per MCF, which is an effective floor price of 64 cents per MCF, and I think we have the same reservations here about this as you do on the oil side. If you have oil flowing, producers getting less than 64 cents, someone mentioned 42 cents the other day, but less than 64 cents, then you start to raise the effective rate of it, and I think we have the same problems with it here as we would anywhere else, and this

also has a gas flaired feature taxation, but it's only double, not five times, and all my comments on that go for this too.

SENATOR HUBER - That is in the equalization deal?

RICHARD KILGORE - No, it's in the severance tax, itself. There's a provision.

In the end, I'd like to talk a little bit about this whole question of the overall tax burden and how you assess it, the kind of questions that Senator Rader has been talking about, but I would first just like to make a few comments on the property tax bill, unless there are some other questions here on the severance tax.

CHAIRMAN POLAND - No. I was going to suggest that when you are finished on the bill, and before you kind of wrap up, that we take a five minute break.

RICHARD KILGORE - Okay, shall I just say a few things about the property tax. I have relatively limited comments here. HB 323, SB 237, now, this extends the property tax to some other areas as you know to refineries, gas plants, and also to marine transportation, and L & G liquifaction facilities, and so forth. So it extends the kinds of things that you would tax with your property tax. Now, the only real comments

that we have here are that for each of these areas that you're thinking of proposing a property tax on, you think carefully about where that tax will actually be borne. You're talking about taxing properties for crude oil production that largely obviously is borne by producers. They realize prices in the lower '48 that are set for them, and the tax you impose is a tax which they have to bare in terms of their own profitability, but that's not necessarily the case with each of these other areas that you are extending, and what I think you ought to think about what you are doing, because if you're looking at property taxes on refining in Alaska, we would expect that most of the refining capacity in Alaska for some time to come would be basically capacity oriented to supplying low markets so that the tax that you impose on those refineries presumably would over the long run be borne by Alaskan consumers. You're assessing a tax which goes to the treasury, but eventually that tax would have to be borne by consumers if the refineries are to operate properly. So you have to worry about the incidence of the tax. If you're looking at L & G facilities you have to worry again about the consequences of this and what will happen, and who will actually bare this. Will it be a cost that will simply be passed along because the facilities under an FPC jurisdiction will be passed along as probably may be the case. It's not clear that if it's L & G or export to foreign countries whether this would be the case. Who would bare it, it's not entirely clear.

GEORGE SILIDES - Would it not also have an effect on a decision as to whether to locate in Alaska.

RICHARD KILGORE - Yes, it could under certain circumstances. If it's a cost which basically the person thinking of putting in the facility has to bare himself because he hasn't got an automatic pass along or he can't pass along to Alaskan consumers, or he can't through his regulatory process, pass it along, then surely, it would be one of those tax entering into his decision as to whether to locate in Alaska. Noone can say whether this is the thing that would swing it in the balance, but obviously, it's part of the package of doing business, if it's a higher cost, it could have some effect, yes.

The last one is marine transportation, and there, well there's a question of legality, I guess, but we can't address ourselves to those, but it seems to me you might have some concern about this one too, because you already face a problem where you are concerned with the fact that your oil may have to move to quite distant markets, for example the U. S. gulf and the eastcoast, and you're very much rightly concerned about that long haul and those high transportation costs and what it may do to your wellhead value, and if you go this route of taxing marine transportation, you obviously add to the cost of transportation, I don't know how much would be thrown up by this tax, but you are in principal anyway

adding to the cost of transporting your oil which certainly works in the direction of lowering the value of your oil, so I think that you ought to consider this as well, as I say, in each case consider the consequences, but here you're putting an added cost on transportation and it may be small, but it certainly works in the direction of lowering your wellhead value. Basically that concludes my remarks on the specifics of the bill.

I would like to conclude with a few remarks about this old question of the total tax burden in Alaska. What fair share is, and at what point do you destroy incentives, undermine profitability and the like, and of course Senator Rader has been pressing a number of people for answers to this, but as he himself in asking the question admits, there obviously is no easy answer to this question. If there were, somebody would have given it, and I can't give you an easy answer. A number of things have been suggested, all of which make a certain amount of sense. What kind of activity is there in the State has been suggested. A number of people have suggested looking at the total tax burden in Alaska, relative to other states. I have a few comments on that aspect too. It clearly is important what the total tax burden is on the oil and gas industry, there's just no doubt about that and how it compares with other states. It certainly is not just the absolute amount of dollars being paid or dollars per

barrel of production being paid to the State. What really matters for the economics of the industry for their incentives to go in and so forth really are these aggrigate dollars or dollars per barrel things put into context of the profitability of the operation in the various states. This is what really counts in the end, not just the amount that one pays. If one is paying a high tax, but in a situation where profitability is very large it's one thing, if they're paying perhaps even a lower level of taxation in a situation where profitability is low can be another thing. So, you really have to put it in the context of profitability. This doesn't make it any easier to answer obviously because profitability is elusive and difficult to measure, but certainly one has to put it in this context, not just in the dollars themselves. And the second thought about it is, I think that although some people have said this, that the mix in which you get your taxes out of this total burden to your state and other states is really not irrelevant. Someone suggested that a dollar is a dollar, but this isn't really quite so it seems to me if you're looking at the burden of those dollars on people. If you have taxes that are realtively based or geared closely to income, that is income taxes in kind of a true income tax in a sense that it is directly trying to measure income, it's one thing if you collect it that way as against certain just gross taxes or property taxes and the like, because if you have taxes based on income, they have a different economic impact than gross taxes.

If you have a severance tax, it's not a matter of indifference how it comes. If you're collecting high severance taxes in Alaska because you have wells that are extremely productive and that's the way your tax is structured that's one thing, if you're just doing it flat out on everything that's another. So, that it's not just the total dollars, these dollars have different effects, and that high taxes in one circumstance where they're thrown up out of a total tax package that's more closely geared to income and costs and so forth may be less of a burden than in another case where you have somewhat lower taxes, but their generated by things that have nothing to do with profitability, and you have a low profitability situation, so that I think it isn't strictly the total, it is the mix and the types of taxes that you have also, that also matters, and to the extent that the closer these are geared to income, the better you really are. The second thought I have on this whole question is the State, I'm thinking in terms of the burden of its taxation also has to remember that it has a role not only as a taxing authortiy, but you also in this State, and this is different from other states, most other states anyway, you have also a role as a land owner, you have lots of land and you will have leased that land and you will be leasing more, and you have to realize that the higher and higher you put you. own taxes, this will have some effect on the kinds of terms that you're going to be able to get for your land. No matter how you lease it.

If you lease it on a bonus basis, the higher your taxes, the lower your bonus. If you go on a royalty bidding basis, the higher your taxes, you'll get lower royalty bids out of all that, or if you have a net carried interest or a net profit interest kind of leasing arrangement which you may turn to. Your profit people are willing to give you also _____ part of the taxes.

GEORGE SILIDES - This matter came up before in a different form, and the comment was made by the speaker was that not to be so terribly concerned because the competition in leasing would take care of that matter.

RICHARD KILDGOR - Well what I'm saying is that I think the competition in the leasing is going to reflect your taxation. That is, if you have higher taxes, I would expect in general you will get out of the competitive process when people are bidding for leases on whatever variable they're bidding, whether it be royalty or bonus or whatever, the amount of the tax that they will perceive you will take in the future will effect their bids, and they'll bid competitively and it will be reflected on how much money they're willing to offer you initially, or how much percentage of the thing they're willing to give you and so forth, so that your tax will effect the terms you're able to get on your own land.

REPRESENTATIVE OSTERBACK - I would like to ask a question. We listened to all this testimony, but we never came down yet with how much are we getting for our oil. And another question on leasing, it doesn't seem to make any difference, the bids I say that came out from the State or from outside the three mile limit seem to be about the same value they are bidding into the millions for off-shore leasing. What kind of a deal could you answer that on off-shore leasing? And the taxes, what kind of taxes are they paying? Are we going to get a benefit out of the off-shore leasing taxes?

RICHARD KILGORE - Well, on off-shore leases, where they're on Federal waters, you basically will not get the state severance tax from those barrels or MCF's of gas being produced out _____ there, and basically the tax that that oil in Federal waters will be subjected to is basically just the Federal income taxation, and you will not get severance or other kinds of tax revenues unless one's able to go through some franchise tax kind of thing. I just don't know whether that is legally possible for you to do that, but unless you can think of something ingenious of that sort, basically it will be just federal taxation on that, and the bids that would be received if you had comperable prospects on shore Alaska, lets say off shore but in Alaska waters similar prospects to something over the line in Federal waters, and you put these up for bonus bidding,

presumably what you would get since you have no severance tax on the offshore, you would presumably get higher bonus bids to the federal government, than you in Alaska would get for your exactly comperable prospects. I don't know if that answers the question or not.

REPRESENTATIVE OSTERBACK - One other thing, somebody brought up the other day that since we get 10%, or we pay 10% of the federal tax, I don't know, I know you know more about, would we be getting a share of the federal tax in the amount of 10%?

RICHARD KILGORE - Yes, to the extent you share in federal revenues and so on, yes you do get some share that way. That is correct, but the other thing is that as you know, there is some move afoot in the Congress to provide some sort of sharing of royalties and other income from offshore productions with the coastal states, and I would think that the State of Alaska should push very hard for this kind of thing, and I would also think that in the past this was probably not the kind of thing that the Congress would pass because there were relatively few states which would benefit from that basically Texas, Louisiana and California that would benefit from that kind of thing, that is sharing the revenues, some portion of the royalties and bonuses in the federal waters off their shores, but the situation seems

to be quite different today because we now are talking about exploration along basically the whole eastcoast of the United States, so there are an awful lot more states which potentially could benefit from this and presumably would support such a measure in Congress. There seems to be a lot more support for that kind of thing than before, and perhaps you will get something like this. I think there's a lot of merit in doing this from a national standpoint too, because as you know on the eastcoast there are all kinds of environmental opposition to this drilling and everything and bringing this oil ashore and everybody is up in arms about the environmental problems, well, I would think that if the states including my own where I live, New Jersey, really thought they had the prospect of getting some direct share of the income from oil and gas in federal waters offshore New Jersey, I think they would view the environmental matters somewhat differently, or at least be willing to look much more realistically at them and have greater support for this activity, so I think that this is something that Alaska should be looking for, and maybe it's another way you would be able to benefit, and if you were able to get some benefit, in that way some share of royalties, bonus income and so on from federal waters offshore Alaska, I think the amounts of money, I don't know what the share would be, I think the amounts of money that you would be getting would be very very much larger than any kind of fooling with apportionment factors

in that franchise bill to try to pick up something. We're talking about much larger potential amounts of money I would think.

REPRESENTATIVE OSTERBACK - Talking about the environmental conservation and everything, you're going to get a lot of static from fishermen, _____ coming out that the oil won't take Kachemak Bay for example. Now, Kachemak Bay, only produces about 6 million pounds of shrimp, but you come up towards the chain around Kodiak, what we do, that's just a drop in the bucket, and we're buying that back, so there's going to be a lot of static, say in the Bering Sea, is one of the richest crab, herring, shrimp, and out along the chain, so if there is no revenue for the State, then we're going to kill off our fisheries and there's going to be a lot of static coming from that on the offshore drilling, because you can see what happened in Kachemak Bay, which is just a small little thing, and we're going to pay I don't know how many million dollars to buy that back to save that fishery. And what I'm trying to get across, if we're not going to get no sharing off the offshore, there's going to be a big fight to try to stop it.

RICHARD KILGORE - Absolutely, because then you say what do you need it for, to get nothing whatsoever out of it. I don't want anything I say to be construed that I'm against environmental concerns, they obviously are very real, but

I think what you're saying is correct and this goes for other parts of the country too, if what you're talking about is development of Federal waters, and off your shore with the potential environmental problems from which you will suffer, and you get absolutely no benefit, then what do you need it for. In those circumstances one would take a very extreme, I think, position on viewing the environmental damages. That is, one would say, I don't care if the chances are one in a million, I don't want it because I don't get anything out of it anyway. If there's any chance whatsoever, let's just don't do it, because I don't gain anything anyway, but if you have something to gain from it, I think perhaps people may very well take a more realistic view of what the potential hazards are, what might happen, and with the odds have been happening and so forth, but if people are in the position where they have absolutely nothing to gain, and any possibility of something happening to their environment, that's really going to be against them.

REPRESENTATIVE OSTERBACK - One more, if I may. Take say a barrel of oil is worth what $12.00, $11.00, what? A barrel of fish is worth about $200.00. So what do we want?

RICHARD KILGORE - Sure, if you're going to destroy a valuable industry.....

GEORGE SILIDES - One of the things the administration has put forth through the federal government in my recollection is that, it is just that, and this is why they were hoping to hold off some of the offshore production was to submit a proposition to the Federal government on revenue sharing. I think you are familiar with that, and I think you touched on it. My recollection, and I ask this only for informational purposes as you know, it seems to me that we also suggested a two tier affair. I know you hate everything with two tiers in it, but in that all of the states were able to get a portion of the offshore revenues, so that you gain a broader base of support.

RICHARD KILGORE - Yes, and I think that's a sensible approach to this whole thing too. One can gain broader support where you have some approach as you're saying. Where you have everybody benefits to some extent, but those who are directly effected or so on, get some larger share.

I am saying that you do have this interrelation when you think about how high you put your taxes. There is this interrelation between what your taxing policy will be and how much you are raising taxes, and what you're going to get in terms of economic benefits when you lease lands, and that's very very clear, so to some extent you're taking one area through higher taxes and you give up in another through lower, whatever it is, bonuses and so on. So to some

extent they are offsetting, but of course at the same time you have to appreciate that while this is true on new leases for people under existing lease terms, obviously they can't change their contracts with you if you raise taxes, so if you raise taxes they are hurt. You also through your tax policy, obviously effect the value of lands or the value that one can get out of other landowners in the State, and of course the native corporations are obviously the ones who will be effected to the extent that you raise taxes and they make new arrangements on their lands, they will be effected, and they will get less in the way of.....

SENATOR HUBER - I wanted to just for a moment on that same subject to lead Dick back across the cannon ball range and the mud flats, and back to dry land for a minute on these leasing policies, and you were talking about bonus leasing when we got into this, and isn't it true that the price paid for a bonus lease whether it's offshore or onshore, mud flats or whatever, it is based upon what they're willing to pay for the price to gamble on what may be down there in a huge gamble and if we wanted to minimize what our tax would do on that, the minimum would be no tax, and other than that to have a tax that would have a minimum effect, would be a tax that was a percentage of a net profit, and if you had a percentage of net profit tax, that would be the kind of tax that would provide the minimum for losing money in your bonus, because they would all figure when they were bidding

that there would be no tax on anything that we don't get anything on and it will only be a maximum of this amount of exposure on the net when we do make, and if we don't make, we don't pay.

RICHARD KILGORE - That's correct, but that's assuming of course that the income tax that you have really is taxing what is real kind of income in Alaska. If you are on, as the gentleman from EXXON testified the other day, if you're on an apportionment formula, you may pay income tax anyway.

SENATOR HUBER - I didn't mean to lead you back into the net proceeds tax which you happened to design, but I'm thinking about any fair income tax that would.....

RICHARD KILGORE - The income tax works differently, that's right, in the sense when he factors it in and if it's true income tax, he only pays if he wins, so it does effect what he's willing to pay.

SENATOR HUBER - I just wanted to get it to where we actually, what kind of tax we've heard so much, so many times about how you discourage your front end money in bonus bidding, and in some cases, it's absolute milarkey, you don't do it at all, and there you hardly do any discouragement when you do it on a net profit basis. If you get a portion of that in there in a gross manner, you've got a problem.

RICHARD KILGORE - My only point here was to leave you with the idea that we do have an interrelation between the taxes and what you will get on your lands when you lease them, but you also will effect, of course, the value that other people get from their lands and _____ the native corporations.

Well in the end, this whole question of the relative tax burdens and the effects, and when do you have to_____ incentives, when do you discourage, obviously there are no easy answers as I said at the outset. There are many things you would obviously have to look at, and many of these have been suggested. One would obviously be an economic study of the industry, some of which have been done. Levels of activity would be another indicator of your total tax package, lease bids and so on, comparisons with other states and all these things are things that one would look to and try to assess how far you have gone in your taxation policy.

I think one of the really best safe courses, so one would really know where one is in this whole thing, even after you look at all these sort of measures, one of the best safeguards is probably to try to design taxes in your state that relate reasonably well to profitability. I think you run less of a risk if you do this. If you are able reasonably, or in some fasnion to relate them to profitability, then you're not going to impose a very big tax burden if the industry isn't

very profitable, and if it is very profitable, you tend to throw up higher taxes and you run less of a risk really that you end up imposing on reasonable taxes on people, and this probably in the end is one of your best safeguards to kind of keep those principals in mind which means taxes related either directly related to income or taxes sort of semi-related to income as the step schedule that you have or the continuous schedule as is proposed where you really impose high taxes only in circumstances that weem to indicate high profitability, that is high well productivity which tends to be associated with high profitability, so I think the more that you keep to these kind of principals, the less of a problem you're likely to have in terms of really going too far in your tax burden on the industry.

GEORGE SILIDES - I have questions on two matters which concern most of us. One of them I know particularly concerns Senator Huber also, and if I may I would like to ask them now. One is do you have any comment on wipping out all the industrial incentive taxes in the State.

RICHARD KILGORE - We really don't have a comment on that.

GEORGE SILIDES - And the other one then is something which was discussed back in 1973 when we had a bill before us to own part of the TAAPS line. Now we have some bills in front of us which concern the possibility of again acquiring

an equity interest in gas lines or other lines, and I wonder if you could comment on that, whether your position has changed or what it might be now.

SENATOR HUBER - George, would you _____ bills particularly is for an industrial incentive, or for a state sponsor corporation which would operate on its own under the so called industrial incentive type bonding 100% if you could expand your question .....

GEORGE SILIDES - Senator, yes, I was going to make it into two parts, one is just to get a general statement on the State being an equity owner, and secondly of course we have SB 251 which is Senator Huber's bill actually.

RICHARD KILGORE - I haven't seen the bill itself.

SENATOR HUBER - It establishes an authority Dick, and with all of the powers, 100% of the authority to build the gas line.

RICHARD KILGORE - Well, frankly I would prefer, if you don't mind kind of deferring an answer to this question, and give it a little more thought. I know we have in the past, I guess, generally kind of questioned states being involved in things of this sort, and I don't want to give a general answer.

SENATOR HUBER - I don't want to force it either, but the reason that you might give it some consideration when you go back home is that the bill is not this one that is just an idea of whether we do it next year. This particular bill is an either now or never type of thing because it is designed, the whole purpose of it is to supply the North Slope gas to the lower '48 at an economically feasible price to make the project feasible, so it don't have to be subsidized either by users or the government, and if with the FEA setup and everything is set up with the President's approval and everything, it's an either pass it, so it's a method or else it will not be a factor. It's kind of a forced thing but it's now or never. It's timely.

RICHARD KILGORE - Senator, there are a lot of ramifications and a lot of things to think through on this particular kind of thing. I would prefer rather than just giving it off the top of my head, if we did especially take a look at the bill in itself, think it through carefully, and either come back to you with a written response or on the occasion of our next visit be prepared to respond.

MEETING ADJOURNED.

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LEONARD E. KUST is a partner in the New York law firm of Cadwalader, Wickersham & Taft. He was formerly Vice President and General Tax Counsel of Westinghouse Electric Corporation with which he was associated from 1955 to 1970.

A native of Wisconsin, Mr. Kust is a graduate of the University of Wisconsin and the Harvard Law School. He is a member of the New York and Pennsylvania bars.

He is a past president of the Tax Institute of America, and of the Tax Executives Institute. Mr. Kust has served as Chairman of Governor Scranton's Committee on Tax Administration, Chairman of Task Forces for Governor Shafer's Tax Study and Revision Commission, and was a member of the Advisory Committee of the Commissioner of Internal Revenue. He has served on the Executive Committee of the National Tax Association, as a Director of the Chamber of Commerce of the United States, and as a member of the Taxation Committee. He is a member of the Tax Section of the American Bar Association, a member of the Council of the U.S.A. Branch of the International Fiscal Association, a member of the Advisory Board of Tax Management, and a member of the Advisory Board of the Tax Foundation.

Mr. Kust has written on a wide variety of tax issues, including "State Taxation of Income from Interstate Commerce: New Dimensions of an Old Problem", S.W. L.J. 1 (1960); "State Taxation of Interstate Sales", 46 Va. L. Rev. 1290 (1960); "Federal Tax Reform", the Tax Executive, Vol XIV, April, 1962; "Standards of Conduct for Tax Executives", the Tax Executive, Vol. XIV, July 1962; "A Reappraisal of Taxation of International Business Income", National Tax Association Proceedings, Annual Conference, 1966, p.154; "Alternatives for New Federal Revenues", Tax Review, Tax Foundation, Vol. XXXIV, No. 7, July, 1973.

TESTIMONY BEFORE THE
SENATE RESOURCES COMMITTEE
OF THE
ALASKA STATE LEGISLATURE

By

LEONARD E. KUST

February 10, 1978

Madame Chairman and members of the Committee:

I am LEONARD KUST, partner in the New York City law firm of Cadwalader, Wickersham & Taft. I have been retained by the Alaska Oil and Gas Association (AOGA) to study the present Alaska corporate income tax and the various proposals to change that tax pending before the Alaska Legislature. On December 9, 1977 I presented a 45 page paper to AOGA setting forth my views on these issues. This paper has, I understand, been made available to you and I offer a copy for inclusion in the record of these hearings.

Before I proceed further I think you are entitled to ask whether I have the credentials to presume to give you views which it is worth your time to listen to and consider. I have for this purpose prepared a resume of my past involvement in issues of state taxation of the income of multistate and multinational business. I would like to offer this

resume for the record and hand copies to members of the committee for their perusal, if they wish.

I understand that your major concern and the concern which the various bills under consideration are intended to address is that the current Alaska income tax fails to reach and effectively tax income derived from oil and gas production and transportation activity in Alaska and your concern that oil and gas corporations operating in Alaska are paying to Alaska significantly less than the statutory 9.4% tax rate on their income.

Let me remind you at the outset of what I am sure you are all aware. Under the United States Constitution Alaska cannot impose its tax of 9.4% on the entire income of corporations engaged in business in Alaska and elsewhere. Such a tax would insure multiple taxation by the states in which the corporation does business and be an unconstitutional burden on interstate commerce.

This constitutional limitation conforms with internationally recognized fundamental principles of tax jurisprudence. Where the activities of a business extend over two or more countries or states, all of the income from such business cannot be taxed by each of the countries or states.

Accordingly Alaska can impose a tax only on Alaska source income of corporations which operate in Alaska and elsewhere. Any tax which applies to income earned outside Alaska will not only result in multiple taxation but will also violate both the United States Constitution and the generally accepted principles of tax jurisprudence.

The problem, of course, is in determining the source of income. This is not a new problem. It is a problem which scholars, legislators, and tax administrators have struggled with over the years. In this modern era as corporations have expanded their interests throughout the country and in many cases the world the problem has become more acute. The states from the outset upon enacting corporation net income taxes beginning in 1911 strove to avoid imposing an unconstitutional burden on interstate commerce by taxing only a portion of the income of the interstate business. The development over the years has been in devising and refining the method by which to determine the portion of the total income of a multistate business which should be taxed by each state and the attainment of uniformity in the methods used by different states so as to subject to tax all, but not more than all, of the total income of multistate business.

The system which has developed has two elements:

(i) a tax base measured by a company's worldwide income determined by reference to Federal taxable income and (ii) a method of dividing this base through use of an apportionment formula.

Why a formula approach? Well, the states initially sought to determine the source of income by means of "separate accounting", that is, by constructing an income or loss statement for the activities of the business in the state as if it constituted an independent business dealing at arm's-length with the remainder of the business and the outside world. It was soon evident, however, that separate accounting was not reasonably feasible within the limits of administrative practicability. As a consequence, the so-called "Massachusetts formula" gained early and general acceptance, commencing in the 1920's, among tax administrators and business taxpayers as a reasonable alternative to separate accounting for determining the portion of the total income of multistate business which is taxable in each of the states in which it has activities. The Massachusett's three-factor formula apportions the income of a business to the taxing state on the basis of the average of three fractions:

(1) property within the state over total property,

(2) payroll within the state over total payroll,

and

(3) sales within the state over total sales.

It was recognized at the outset that multiple taxation of multistate business income arises not merely from failure to apportion reasonably but from disparity in methods of apportionment as well, even though each method by itself and applied universally might be reasonable. The National Tax Association began advocating uniformity in the method of apportionment as early as 1919. Ultimately, these and other efforts culminated in the Uniform Division of Income for Tax Purposes Act (UDITPA) adopted by the National Commissioners on Uniform State Laws in 1957. UDITPA incorporated the three-factor formula and, most notably, defined the numerator of the sales fraction, with respect to which the greatest divergence from uniformity had developed, as being sales having their destination, that is, delivered to customers, in the state.

The Multistate Tax Compact, of which Alaska is a member, inaugurated in 1966 to promote uniformity and thereby avert Federal legislation then under consideration to impose uniformity on the states, incorporates UDITPA.

The UDITPA formula is not without its flaws; clearly it is not perfect. Whether, in theory, a better formula can

be developed, I do not know. This particular formula rests on common sense which has survived years of practical application. Most importantly, this formula has been accepted by both taxpayers and state tax administrators.

I want to emphasize the general acceptance of the three factor UDITPA formula. Out of my experience serving as co-chairman in 1969-71 of a committee of state administrators and business representatives seeking to formalize a country-wide uniform system for division of income of multistate and multinational business by a combination of the Multistate Tax Compact and Federal legislation, I can report that there was at no time any disagreement among the state tax administrators and business representatives as to the validity of the three factor formula. It was accepted by all as the bedrock on which any system of uniform division of income must rest.

Out of a total of 44 states and the District of Columbia which impose a corporate net income tax, 40 provide for the three-factor formula, 25 by adoption of UDITPA or the Multistate Tax Compact and 15 by incorporation in their own tax statutes, four of the latter giving greater weight to the sales factor than to the property and payroll factors. Differences in the economies of the states as to whether primarily industrial, or commercial, or agricultural or extractive have not affected the general acceptance of the three-

factor formula as essentially fair and reasonable.

The major concern raised by the proposals under consideration by this Committee , and I will discuss the proposals more specifically in a few moments, is that they would seriously disrupt the uniformity which over the years the states and business have labored to achieve, and which, I believe, is essential to fair and effective taxation by the states of the income of multistate businesses. A few other states have begun to tinker with the formula for their own parochial interests. I deplore such action. If you really believe that the UDITPA formula is not reasonable with respect to the oil and gas industry as a whole, the solution is to proceed under Section 18 of UDITPA on a case by case basis or to approach other states and seek a new uniform method for division of the income of the industry. Unilateral action by Alaska or by any other state would generate multiple taxation and would threaten the framework that has developed for division of income among the states.

But beyond the question of uniformity, I believe that both HB 322 and SCS CSHB 322 and the impetus behind them are based on a fundamental fallacy. They are based on the assumption--and I stress assumption--that the "fair" share of income to be taxed by Alaska is

to be determined by changing the apportionment formula or by statutory "separate accounting" so as to approximate the income based on barrels of production in Alaska times the well-head price less costs and expenses incurred solely in Alaska. This is demonstrably not the "fair" share of income attributable to Alaska. Income is not merely the result of production. The creation of income requires both production and consumption. It is the demand created by the economies of the consumption states that converts the production into income. The consumption states have an undeniably legitimate claim to tax part of the income which is based on this price created by their demand. Would Alaska agree that only the states in which the goods are produced which are sold by Sears in Alaska can tax the income and Alaska cannot? Of course not. As the consumer state in this case it wants to and is entitled to and it does tax a portion of the income from production outside Alaska.

Thus, having read some of the prior testimony, I would take sharp issue with the confident assertion that Alaska's fair share of the income of the oil and gas industry is the well-head price less costs and expenses incurred in Alaska.

I would like to challenge Mr. Lipton and Professor Zeifman to present their arguments to the Multistate Tax Commission or to a meeting of the National Association of Tax Administrators in support of their proposals as appropriate uniform methods to be accepted by all states for division of the income of the oil and gas industry. I think it is reasonable to predict that neither of the proposals would be judged to be a fair and reasonable basis for uniform division of income among the states.

This committee and the Alaska legislature will ultimately decide what course to follow. It is your responsibility and your prerogative but I would like to suggest that your decision should be made against the broader framework which I have presented rather than the narrow perspective urged upon you in support of the proposals under consideration.

THE ZEIFMAN-AINSWORTH PROPOSALS

The proposals of Professors Zeifman and Ainsworth which are incorporated in H.B. 322 are based on these two premises: (i) that Alaska's tax base has been eroded through Federal tax subsidies and incentives which are unrelated to the definition of net income, and (ii) that the UDITPA apportionment formula unfairly reduces the amount of taxable income attributable to Alaska by corporations which export non-renewable petroleum resources from the state. Zeifman and Ainsworth recommend:

1. Adoption of a tax base measured by the greater of book income or Federal taxable income, and
2. Replacement of the destination-oriented sales factor with an "extraction factor".

Furthermore, they propose that these changes apply only to corporations with ordinary gross receipts in excess of $250,000,000, more than 50% of which is derived from production, transportation, refining, manufacturing, processing, distribution or retail sale of oil or gas or products derived from oil and gas.

I believe that Professors Zeifman and Ainsworth are mistaken both as to their premises and their recommended solutions.

The current Alaska income tax base is a corporation's Federal taxable income. That base includes the world-wide income of the corporation - not just United States source income. In determining Federal taxable income, Congress has allowed certain deductions which are not taken into account in determining the corporation's book income. These "tax subsidies", however, are for the most part available to all corporations, including corporations engaged in business solely in Alaska and multinational corporations engaged in various business activities in Alaska. It is unfair to single out the oil industry. If "tax subsidies" are to be eliminated they should be eliminated for all corporations.

Furthermore, with respect to the one Federal "tax subsidy" available solely to the oil and gas industry, a current deduction for intangible drilling costs, it is erroneous to charge that because drilling costs reduce Federal taxable income Alaska in using such income provides an incentive to drilling wells outside Alaska. Federal taxable income reflects not only deductions for the cost of wells drilled outside Alaska but also the income from such wells. It is not a one-way street. Alaska is no more providing an incentive for drilling outside Alaska than other states are providing an incentive for drilling in Alaska.

The Department of Revenue has cited Congressional studies by Congressmen Vanik of Ohio to support the Department's claim that adoption of the Federal tax base by Alaska results in an effective tax rate significantly less than 9.4%. Vanik's study measures Federal income tax due as a percentage of worldwide income. Obviously this comparison will result in an effective U.S. tax rate of less than 48% for companies engaged in foreign operations because the United States provides a credit against its tax on worldwide income for taxes paid to other countries. This is the necessary alternative to taxing only the income earned in the United States. Similarly, measuring taxes due to Alaska as a percentage of a corporation's total worldwide income will result in an effective tax rate of less than 9.4%. Both comparisons are meaningless, since neither the United States nor the State of Alaska intends or reasonably can impose its tax on the worldwide income of taxpayers without a foreign tax credit or without apportionment. It is primarily because of the division of income (by means of a foreign tax credit at the Federal level and formula apportionment at the state level), not determination of the tax base, that the effective rate on worldwide income is significantly less than the statutory rate. If 25% of the worldwide income of a company is earned in Alaska, obviously the effective rate of Alaska tax on worldwide income will be 2.35%.

The suggestion of Professors Zeifman and Ainsworth, which is incorporated in H.B. 322, that book income be used as

a tax base is unique. I am aware of no state with a tax base measured by book income, even as an alternative basis. Book income is an inappropriate tax base. Adoption of such a tax base would in effect delegate determination of income to the company's management and the accounting profession. If Alaska is not prepared to accept management's and their accountants' determination, it will have to develop an audit staff sufficient in size and skill to conduct its own audits. It will not be able to rely on the audit skills and extensive examinations of the Federal government or the Multistate Tax Compact.

Furthermore, book income not only reflects taxable income before tax subsidies but also many accounting and timing differences unrelated to Congressional tax policies, many of which reduce book income in comparision to taxable income. As an example, corporations are often entitled and even required for financial accounting purposes to set up reserves for certain estimated expenses or losses which are not deductible in determining Federal taxable income.

Finally, use of the higher of Federal taxable income or pre-tax book net income as a tax base, as is proposed in H.B. 322, will tax income without reduction for those expenses which are deducted in different years in determining book net income and Federal taxable income. For example, if book income

exceeds Federal taxable income because of current deduction for intangible drilling costs which are deferred for book purposes, and then Federal taxable income in a succeeding year exceeds book income because the deferred intangible drilling costs are then expensed for book purposes, the tax base will be determined without deduction for such costs at any time.

As to substitution of the extraction factor for the sales factor in the apportionment formula, it is my view that the UDITPA formula provides for fair and equitable division of income of oil and gas corporations between Alaska and the rest of the world and fairly reflects the extent of their activity in Alaska as compared to the rest of the world.

The destination sales factor cannot be regarded as allocating Alaska's share of income to other states but more properly as assuring to the market states a fair share of the taxable income base. Without the purchasing power and demand provided by the market states, there would be little if any income of oil and gas companies for Alaska to tax. The sales factor quite properly gives recognition to the contribution by the market states to the creation of the income tax base. Substitution of the extraction factor for the sales factor would ignore the contribution of the market state to the creation of income, just as would an origin-oriented sales factor

which was used for years by heavy manufacturing states for their parochial interest. Use of this factor was so short sighted that it drove business out of these states. States such as New York and Massachusetts have had to retreat so far that they have adopted double-weighted destination sales factors to attempt to convince businesses to stay or to return to their states.

Alaska may dismiss this experience as irrelevant since the oil is in Alaska and the oil business cannot go elsewhere. Only within limits is this so, but in any event Alaska cannot ignore applicable principles of fairness and of cooperative action among the states to avoid multiple taxation. Use of an extraction factor in Alaska when other states use a destination sales factor would obviously result in multiple taxation. Is it proper for Alaska to take deviant action and expect all the other states to conform their apportionment formulas to Alaska's in order to avoid multiple taxation? Is it appropriate for Alaska unilaterally to disrupt the progress the states have cooperatively been making toward uniformity in their apportionment formulas?

Professors Zeifman's and Ainsworth's proposal to replace the destination sales factor of the UDITPA formula with an origin-oriented extraction factor is based primarily on

ADDRESS TO SENATE RESOURCE COMMITTEE

SCSCSHB 322

(An Act Relating to the Alaska Net Income Tax)

Madame Chairman, members of the committee, my name is Oliver Leavitt. I am a resident of Barrow and serve as Director and Treasurer of the Arctic Slope Regional Corporation. I also am priviledged to serve on the Board of the Alaska Federation of Natives.

Two years ago I had the pleasure to appear before this committee and give testimony concerning a package of bills that collectively dealt with increases in existing taxes or imposed new taxes on oil and gas production in the state. At that time we argued against the imposition of new or additional taxes as unnecessary and counter-productive for the state and very harmful to the economic condition of the native regional corporations who had not sufficient time to generate a positive cash flow in connection with natural resource development.

While some may have heeded our testimony in 1976 since the proposals to enact new taxes were not adopted that session; a major increase in the severance tax passed and become law in the second session of the 9th Legislature or last year in 1977.

We are thankful that some of the more revolutionary and

POTENTIALLY DAMAGING TAX PROPOSALS WERE NOT ACTED UPON.

SINCE PASSAGE OF THE SEVERANCE TAX INCREASE LAST YEAR SEVERAL VERY IMPORTANT FACTORS HAVE SURFACED THAT AFFECT THE VALUE OF PRESENT AND PROBABLY FUTURE OIL PRODUCTION FROM THE NORTH SLOPE.

MOST SERIOUS IS THE CURRENT AND PROPOSED PERMANENT TAPS AND TANKER TARIFFS WHICH ARE ALMOST 4.00/BBL GREATER THAN WE ANTICIPATED IN 1976. OF COURSE, THE FINAL TARIFF IS NOT SETTLED BUT IT MOST CERTAINLY WILL BE GREATER THAN WE BELIEVED POSSIBLE AT THE TIME WE CALCULATED THE THEN WELLHEAD VALUE OF CRUDE.

THE OUTCOME OF A PENDING LAWSUIT - STATE OF ALASKA VS. AMARADA HESS CORPORATION, ET. AL. - COULD HAVE VERY SERIOUS ADVERSE AFFECTS ON THE FUTURE OF OIL AND GAS REVENUES THAT MAY BE GENERATED FROM ASRC LANDS - IF THE STATE WERE TO LOSE IN ITS ARGUMENT AGAINST DEDUCTIONS FOR FIELD GATHERING CHARGES.

IF THE TARIFFS AS PROPOSED BY OWNER COMPANIES OF ALYESKA PIPELINE SERVICE COMPANY ARE SUSTAINED AND IF ADDITIONAL CHARGES ARE ALLOWED TO MOVE OIL FROM THE WELLHEAD TO THE CUSTODY TRANSFER POINT, AND AN ADDITIONAL TARIFF TO BRING THE LIKELY SOURCE AREAS FOR ASRC CRUDE TO MARKET VIA TAPS OR SOME OTHER ALTERNATIVE MEANS IS ASSUMED - THE HIGHEST OPEC PRICE TODAY WOULD PROBABLY NET BACK CLOSE TO NOTHING AT THE WELLHEAD. AS YOU ARE AWARE BOTH ROYALTY AND NET PROFITS ARE

CALCULATED FROM WELLHEAD PRICE.

OF COURSE THESE ARE EXTREMES BUT THERE ARE NO ASSURANCES AT THIS TIME THAT CRUDE OIL PRODUCED FROM ASRC LANDS WILL COMMAND A PRICE THAT WILL ADEQUATELY COMPENSATE ASRC FOR EXTRACTION OF ITS RESOURCES.

ONE OF THE MOST SIGNIFICANT AREAS OF POTENTIAL REVENUE FOR ASRC AND HENCE THE OTHER REGIONS THAT WILL SHARE UNDER 7(i) OF ANSCA IS THE NET PROFITS PROVISIONS OF THE VARIOUS AGREEMENTS WE HAVE WITH SEVERAL MAJOR OIL COMPANIES.

THE NET PROFITS INTEREST IS CALCULATED ON THE COMPANY'S PROFIT PER BARREL BEFORE FEDERAL INCOME TAXES BUT AFTER DEDUCTIONS OF ALL OTHER COSTS INCLUDING STATE TAXES. THE LOWER THE PRE TAX (FEDERAL) PROFIT THE LESS THAT ASRC AND THE OTHER REGIONS WILL RECEIVE.

ANOTHER IMPORTANT MATTER WE THINK THE COMMITTEE SHOULD WEIGH IN CONSIDERING THE DIRECT AND INDIRECT IMPACT OF INCREASED TAXES IS THE AFFECT IT WILL HAVE ON FUTURE LAND TRANSACTIONS THAT MAY INVOLVE ASRC LANDS NOT SUBJECT TO ANY PRESENT AGREEMENT.

OF APPROXIMATELY 5 MILLION ACRES TO BE CONVEYED TO ASRC LESS THAN HALF IS SUBJECT TO EXISTING CONTRACTS.

WHILE WE BELIEVE THAT SOME OF THE LANDS UNDER LEASE ARE HIGHLY PROSPECTIVE FOR OIL AND GAS, WE HAVE FOUND NONE YET

AND UNTIL WE DO THERE REMAINS THE CONCERN THAT MAYBE NONE OF THE LANDS BEING EXPLORED HAVE ANY SUBSURFACE VALUE.

THE NECESSITY FOR THE SUBSURFACE RESOURCES TO PAY OFF IN FAVOR OF THE NATIVE REGIONAL CORPORATIONS IS SO OBVIOUS THAT I NEED NOT EVEN BRING IT UP.

WE ARE VERY CONCERNED THAT AN UNSTABLE TAX POLICY THAT CHANGES EACH YEAR WILL BE AN OBSTACLE IN MAKING NEW EXPLORATION CONTRACTS ON THE 50 PERCENT OF ASRC LANDS THAT ARE AVAILABLE FOR NEW DEALS.

IN SUMMARY WE THINK THAT THE UNCERTAINTY OF THE IMPACT OF PERMANENT TARIFFS AND OTHER DEDUCTIONS TO THE WELLHEAD VALUE OF CRUDE OIL AND GAS SHOULD BE ENOUGH OF A CAUTION SIGN TO THE LEGISLATURE TO GET ALL THE FACTS AND SEE WHERE THE STATE AND ALL OF ITS PEOPLE STAND BEFORE HASTILY ADOPTING ADDITIONAL TAXES ON INDUSTRY WHICH GO FAR BEYOND A COMPANY'S POCKET BOOK - THEY WILL AFFECT AN AWFUL LOT OF THE PERMANENT CITIZENS OF THIS STATE.

THANK YOU

MILTON LIPTON TESTIMONY
BEFORE THE JOINT RESOURCES COMMITTEES
January 25, 1978

MILTON LIPTON:

The comments that I would like to offer and then open up to your questions are based upon the draft for a bill that amends the leasing policy of the state. To begin with, I call your attention to a rather unique and I think a very progressive statement of the preamble which says that among the purposes of this is to maximize the state's share from profitable oil and gas production while minimizing revenue from unsuccessful exploration wells and from marginal economic oil and gas production. It is a most unusual approach for a state or a government that is leasing property to take....that is...what you are saying in effect is that you are not trying to maximize your revenues come oil or high water, but that you'll take your revenues from successful oil and gas exploration and you are prepared to forego under certain circumstances optimum revenues that you might have gotten from bonuses paid to the state where the venture was unsuccessful. I would think that the industry would look with great favor upon this as a principle of leasing, and as I said before, it's a most unusual thing to see a government proposing this itself.

A major change which is now being proposed in your leasing policy has to do with bidding methods and on page 4 of the proposed draft bill there are actually eight (8) different bidding methods itemized which would be available to the commissioner and from which he could select in any particular lease sale. The eight different bidding methods break down really into four different bid variables. The first is the very familiar front end bonus bid, and there are three (3) different ways this can be done.

The second is royalty bidding and there are two different ways the commissioner can do that. The third is bidding for a net profit interest to the state out of the proceeds of successful oil and gas exploration development and production. The fourth is bidding on the basis of work obligations, how much a company will commit itself to work obligations. As I said, the bonus bidding is the familiar one which as been used most commonly, I think, almost exclusively here in Alaska in which the blocks which are up for competitive bidding will go to that company that offers to the state the highest bonus, and then the terms of the lease specify certain fixed commitments on the part of the leasing company, in the past, it has been almost universally 12 1/2% royalty. Under this proposed legislation, if the commissioner can solicit competitive bidding on the basis of a front-end bonus but with one of three alternative sets of fixed commitments written into the lease. One is a straight royalty which shall not be less than 12 1/2%. Second is a sliding scale royalty, that is beginning initial production at one level and then moving upward. And the third is a combination of a fixed royalty and a net profit interest to the state where the fixed royalty shall not be less than 12 1/2% of the fixed profit, interest shall not be set by the commissioner at less than 30%. So in effect this deviates from your present practice only insofar as it gives the commissioner a choice of three different elements which he can write into the leases when he opens them up for competitive bidding on the basis of the bonus. The royalty bidding is quite different. Here the two alternatives are that the companies would bid competitively; offering, competing on the basis of a sliding scale royalty which cannot begin at less than 12 1/2% and which carries thereafter a fixed bonus. The bonus is fixed by the commissioner, the companies bid on what kind of a sliding scale royalty they are prepared to offer the state or alternatively there's a fixed bonus and they offer a

fixed royalty. They bid competitively on royalty not a sliding scale royalty, but one says I'll offer 12 1/2%, another one says I'll offer 15%, yet another one says I'll offer 18%..... A few words about royalty, competitive royalty bidding, in previous discussions with committees of this legislature we have argued that royalty bidding is not a preferred form of bidding, except under very exceptional circumstances. If, for example, you have semi-proven acreage where the volume of the oil to be found is reasonably calculable, and the risks are not that great, location of the oil in terms of distance from ports or whatever else is pretty well known because other production is close by, under those circumstances you might have royalty bidding. But under most circumstances we would feel that royalty bidding is not a preferred form of bidding. You remember from our discussion of severance tax that the nature of the royalty or of the severance tax is that it becomes a percentage of gross value. Taken off the top of the gross value without regard to what the profitability of the venture is and when companies don't have to pay a very large bonus, the bonus is fixed at a modest rate, everybody pays the same bonus bids, but competitively on the basis of the royalty there may be a tendency for companies in their exuberance to obtain the lease to push the royalty which they offer the state progressively higher, they don't know what their competitors are going to offer, so they stretch their bid in order to win the lease. And then subsequently it may turn out that this royalty to which they commit themselves and which must be paid on every barrel of production over the entire duration of the lease becomes a very burdensome one; it could lead to earlier abandonment. But this is particularly relevant, what I'm saying now in the context of paragraph "D" at the bottom of page 4, which says regulation shall be established for all bidding methods to allow reduction of royalty to compensate for these increasing costs in the later stages of production decline, to prolong the

economic life of the field. And then it goes on, it says that the commissioner cannot really abate the royalty before at least two years of production have transpired. But, I put it to you, that although discretion on the part of the commissioner to abate royalties is something which you had in your lease a long, long time ago in your leasing bill; although this may be good legislative practive and good administrative practice when fields are beginning to reach the end of their natural life and you would like to encourage the maintenance of production even if it means taking a lesser royalty; to have this in the statute at the time when companies are bidding competitively on the royalty and then there is a temptation to say, well, if we bid too high a royalty, we come running back to the commissioner and we ask for abatement of the royalty So, you put the state, you put the commissioner in a very bad hole and and you have perhaps without intending to, you encouraged the companies to bid not the highest royalty that they think they can afford to pay in light of their exploration expectations, but to over bid because when worse comes to worse they will go running back for abatement of royalty. So I would think that if you are going to maintain this feature in the leasing law which says that in order to encourage the continuation of marginal production there will be the possibility of abating royalty then you certainly, I think, want to consider very, very carefully whether you want to have among the options, under which the commissioner can lease, bidding competitively on royalty. The third alternative or the third form of competitive bidding is bidding a percentage of net profit to the state. What this means in effect is that the companies who are bidding competitively to obtain a lease will say to the state, well, your lease requires us to pay a fixed bonus so we all have to do that and in another version your lease requires us to pay a fixed bonus, plus no less than 12 1/2% royalty whatever the commissioner specifies. Now, each company

bids competitively by saying to the state that after we have paid the bonus and after we pay a royalty of 12 1/2% of gross well head value on every dollar of production, thereafter, each year we convey to the state a percentage of our net profits and the companies bid competitively; the company that commits itself to turning back to the state the largest percentage of net profits is the company that wins the lease. Net profits can be defined, they are not defined in the statute, and I think correctly not so. The commissioner before any lease sale where the bidding component or the bidding variable is net profit, tells all companies who are entering the bidding precisely how net profit will be computed. It does not have to be and, hopefully, will not be the same way net profit is computed for income tax purposes. It is a notional concept of net profit which says you start with this gross value or whatever it is and you subtract certain specified costs everyone knows precisely without too great argument or debate how the accounting will be done in the course of the year and relatively simple accounting can be mandated by the commissioner before the lease sale. We have felt for a long time that the net profit bidding variable is a particularly attractive one, both in the standpoint of industry and for the standpoint of whatever government it is that's putting up acreage for lease. Not necessarily to the exclusion to other possibilities, but under certain circumstances a very attractive approach. What it does is, it removes a great deal of the capital available for exploration from the front-end bonuses so that the money thats available goes to productive work instead of just to front-end bonus. Where there is highly successful exploration the lessor, State of Alaska in this case, can expect to have very, very substantial revenues from the lease quite apart from taxation or anything else. Revenue from the

lease as the percentage of net profits. You might even think of net profit as a royalty based upon net value instead of a royalty based upon gross value. Sometime it's referred to as a net royalty or a net profit carried interest. What it means in effect is that the State of Alaska takes on a very considerable proportion of the risks in the exploration game. It does get a bonus but the bonus is a small bonus fixed by the commissioner as being appropriate to this bidding variable. And it may get, say, a fixed royalty but after that the larger proportion of the income which the state might expect to receieve it would receive only if the lease proves to be a productive lease and how much the state gets depends upon how much oil or gas is found, what the value the oil or gas is, and how profitable the operation. So the state in a sense becomes a partner with the explorer in both the failures and the successes of the venture. But the state does not become a working partner, the state does not become an active partner, the state is not in the oil and gas business. The decision as to whether or not the exploration should take place, the competitive bidding on what the net profit conveyed to the state is... all of these are private decisions by private industry in a competitive environment. Then the final variable, and it is the eighth item among the alternatives available to the commissioner, is bidding on the basis of work commitments. And there in a sense, the commissioner says when the sale is being advertised, that there is going to be a fixed bonus, and there is going to be a stipulated royalty. Now the winner of this lease who is entitled to do the exploration is the company who commits the largest amount of money to exploration process. This kind of bidding, perhaps, would be utilized in very, very difficult environment areas where the state wants to be sure that all potentials of the acreage are really explored, where the costs of exploration may be very, very high and where in the absence of work commitments the companies may be inclined to back out too quickly in terms of the results of one

unsuccessful well or whatever the case might be and the state would like to get the best possible exploration of the prospects within the area put up for lease and therefore says to the companies, we will reduce your bonus commitments, we won't have a bidding on the basis of royalty, but we will allow you to bid on how much you are prepared to commit to the exploration of this acreage which the state is putting up for lease. Well, just a few comments, I've already indicated that I think, that we think, that gross royalty bidding except in rare circumstances, is not the most attractive form of competitive bidding, and particularly not if you are going to allow abatement of royalty under certain circumstances. Bonus bidding, net profit bidding, work bidding, each one a reasonable approach to competitve bidding depending upon the nature of the area which is up for lease; how the state, the commissioner, and his technical staff regard the potentials. So I think that by providing these alternatives, the state is in effect creating a reasonable basis for a leasing policy within Alaska. I wonder, however, whether it is necessary in legislation to itemize all eight possibilities, that is to say, a bonus bid with not less than a 12 1/2% royalty, or a bonus bid with a sliding scale royalty, or a bonus bid with not less than 12 1/2% royalty and not less than 30% net profit. There are many variations which are itemized here, and for example, a bonus bid with not less than 12 1/2% royalty, and not less than 30% net profit is hardly, I would suspect in most areas, is hardly going to get much competition in terms of the bonus. Why not less than 30% net profit? It seems to me that if you lay out in gross terms what the permissable bid variables are, bonus under certain circumstances royalty, perhaps net profit, work commitments, and then leave it to the commissioner as to the combination of variables and the minima for the fixed items he wants to put in there, how far can one anticipate in legislation itself, what combination of fixed commitments

should underlie the selection of a bid variable, like a bonus variable and I would think that perhaps it might be advisable for the legislature to consider presenting to the commissioner a greater option of more bidding variables and perhaps set certain minima, but not itemize them in the details which appear here. Now there is one other aspect of the bidding that I would like to refer to and it is an item that appears on page 9. It says lands which have been offered for lease within the previous five years, but which received no bids at public auction may at the discretion of the commissioner be immediately offered for lease under regulations promulgated in advance upon terms most advantageous to the state including leasing non-competitively. The commissioner shall utilize a sliding scale of royalty based upon such formuli as he determines to be equitable, but need not adhere to the rental schedule in subsection (k) of this act nor to the 57 (indesc.) acres per lease and so on. What I am calling your attention to is the option here avaiable to the commissioner where a lease that is offered for bidding has not been taken up very quickly, to put it back for lease including under noncompetitive circumstances. I think that this could open up some dangerous precedents. Particularly if it's offered too quickly. I mean that the fact that a lease is not taken up in competitive bidding does not mean that there is no oil and gas there, it does not mean that the prospects are not good for oil or gas, it means that given the state of the knowledge at that moment of time, given the way the industry perceives the attractiveness at the moment of time they have'nt been interested in bidding on it.. They had other things that were more attractive, whatever the case might be. But let some time go by before opening this up for leasing again and particularly under competitive conditions again, what may have been learned about the geology of the state in the interim period. The way in which

company perspectives may have changed for a lot different reasons, I don't know what the case may be, I think may lead to the ability to lease under more favorable terms rather than for the state to conclude that nobody wanted our lease, well, we would like to have it explored anyway, lets get it on the market as quickly as possible, even if under noncompetitive circumstances. I would strongly suggest that you hear from the department, as well as from me, and others about why there is a sense of urgency about leasing noncompetitively just because the lease has not been taken up. I pass to other aspects than the terms of bidding and leasing. On page 5, there is a very pregnant one line clause which says the commissioner is authorized to withhold acreage from leasing in a particular lease sale. Now again, for those of you who remember one of the first reports we made for the legislature on leasing policy many, many years ago, one of the things that was discussed was the advisability, under appropriate circumstances, of the state leasing less than the full acreage in which there might be industry interest. Now enough acreage has to be put up for lease so that the companies that win the leases have a reasonable aggregation of acreage to provide for viable production of oil or gas or whatever is discovered. It doesn't necessarily mean that everything within a particular area of prospective interest has to be put up for lease simultaneously, there is good reason particularly if the purpose is to maximize the states share from profitable oil and gas production and minimize revenue from unsuccessful exploration wells and from marginal production for the state to withhold a certain amount of acreage. Now the acreage which was withheld may be condemned as absolutely sterile if the exploration around it finds nothing, (indesc.) the state may have withheld may turn out to be condemned by the industry you will never be able to lease it in which case you will not have gotten any bonus revenue

or whatever the case may be. But on the other hand, if it is successful you may come up with a subsequent lease sale with a net profit bidding for example, which makes it very attractive to the state in terms of the income that they will receive. So I would think that this thing is that the commissioner is not only authorized, but subject only to circumstances which make it undesireable which in case the commissioner has to exercise his judgement, that he should in fact withhold acreage it should be a more positive thing. I wouldn't want to make it binding under all circumstances. discretion must lie (indesc.) some areas where it may not be feasible where whatever acreage is put up really has to encompass the most of the structure which is in interest. If it can be done, I think it would be advisable to do so. The next feature that I would like to touch on briefly has to do with the period of exploration and on page 6 the appropriate paragraph says that an oil and gas lease shall cover a reasonably compact area and be for a period of five years. And there is no provision here for extension of the exploration period except under specific circumstances if production is eminent or a well has to be completed or the property goes into unitization. What under normal circumstances is a 5 year exploration period. I would suggest that there should be provision for at least some reasonable extension of the exploration period particularly in a country as difficult to operate in as the State of Alaska, where the geology, the environment, the climate, the circumstances all make it impossible to conclude an ongoing exploration period precisely within the five years. A whole exploration season may be lost because of a combination of circumstances; because drilling equipment couldn't get out there, or at the end of one season the

seismic work never got completed and one has to wait for the proper time of the year to go back and finish it and one loses a year of exploration. I would think it would be advisable to allow an extension of the exploration period. If in the view of the commissioner, good faith has been exercised by the easing company in the previous 5 years. I think it does no violence to the interest of the state. But there is another very interest feature thats introduced here at the bottom of page 9, paragraph v, the state shall have the right to purchase not to exceed 16 2/3% by volume of the oil and gas produced pursuant to a lease, and it goes on. That is to say, the state is assuring itself that if it chooses, it can have as much as 1/6th of the oil or gas produced on the lease. Now included within that would be the states royalty oil and gas and the volume metric equivalent of whatever the state may get on a net profit share. But if those fall short of 2/3rds of the oil and gas the state has the right to buy at the market value at the field price enough to make up 2/3rds. There is no obligation on the state to do it, the state has the right to do it. I see a tremendous advantage of the state in this, I seen no great diadvantage to the industry in this if exercised judiciously. It could be unattractive to the industry if it is arbitrarily applied and particularly out of small production where the lease holder really needs a substantial volume of oil to provide the economics for his export out of the state for example, and taking away 1/6th of the volume of oil starts cutting things too narrow for him, then I would say that this could be a burden to any company who is undertaking the exploration and who successfully is doing the development. So I would think there ought to be at least some proviso where by the lease holder is protected against simply a determination to take 16 2/3rd

no matter what, and in particularly small areas where the increment if the state gets may matter very little to the state but may matter very much to the producing company. I think some kind of clause should be put in to provide the protection.

That's the sum of the remarks that I think I could make about the special features of this proposed bill and if there are any aspects of it that I touched on or things that I have not chosen to talk to that you would like to address yourself to, I'm at your mercy.

SENATOR POLAND I will ask you one question Mr. Lipton, and that is, have you felt for sometime that our leasing policy needed to be updated or overhauled?

MILTON LIPTON Well, I think that if only to broaden increase, the number of options available for leasing, yes, I think so. I think the traditional front end bonus bidding and there is a lot to be said for it under the proper circumstances, and, but for this to be the sole basis of competitive bidding, I think it places a burden in rank wildcat areas upon the industry which is unnecessary, that you have to put so much money that ought to be used constructively, pay out as a bonus and it puts the state in a position where in many rank wildcat areas what the state gets is miniscule in terms of bonuses compared to what may be the profitability. If you add up the sum total of bonuses received by the state from the producing areas of Prudhoe Bay, it is miniscule bonus income because the companies were bidding on rank wildcat areas at a time when even if they were

successful no one ever knew if it could be developed, tremendous volumes of oil had to be found and if prices had ever stayed at $3.00 per barrel it never woud have been produced you see, under those circumstances obviously the bonuses are very very little. Now, I think there is no great virtue in the state having competition on the basis of front end bonuses when the total amount of bonus income you may get, particularly in the less attractive areas of the state. What seemed to be the less atractive areas of the state will be very very little and may prove to be the most attractive producing areas after they are developed. So that if you minimize the front end bonus under certain circumstances and go to a net profit interest then you have a chance of sharing much more considerably in the profitability of successful ventures and without doing great violence to the incentives of the industry. Because no company is going to bid away such a large share of the net profits that it leaves them without the incentive of very very profitable operations on the remaining shares. Now it is something which I think can be equitable both to the state and to the company. So yes, I do think that the leasing warranted amendment if for no other reason than to introduce a greater variety of bidding variables without going mad with you know giving the commissioner so many options that the poor man will never no on what basis he can make a selection. But I think to introduce several other options is a major step forward.

Q: Senator Huber - Milt, can you tell me from industries viewpoint if we would do any harm to this bill, in particular, or good or otherwise, your comments in regards to us putting an Alaska hire clause into the leasing requiring Alaska hire based not upon our regulatory rights but upon our proprietary contract rights?

Lipton: Senator Huber, you know, you ask me from the standpoint of the industry you really should ask that of the industry, not of me, but I would give you a very quick impression and if you put an Alaska hire clause, in, what it

means to the industry depends really on what you intend by Alaska hire. I mean there, if the industry doesn't have sufficient flexibility to obtain competent people, whatever their origin, then I think it does harm to the industry. But if the way in which it is applied is sufficiently flexible then I suspect not only wouldn't the industry object, but the industry would be delighted. You know, I think the industry would like to make the maximum possible contribution to Alaska hire. But it must be a very difficult thing to administer, I suppose.

Q: Senator Huber - I apologize for asking the industry viewpoint. I was asking basically for the economics of the industries viewpoint.

Lipton - Well, as I said the economics are affected depending upon how this either contributes to, or intereferes with the efficiency of the industries exploration and producing operations.

Q: Senator Huber - I was referring to a particulary in the difference between our regulatory powers as a government and our proprietary rights as a contr ct maker in this particular case.

Lipton - Well Senator Huber, this suggests to me that if you are doing this as part of a contract rather than by regulation, does that mean it's going to be less flexible, because it is in the contract?

Q: Senator Huber - Madame Chairman, Mr. Lipton, the intention is to make it less flexible because we are presently finding that our leases do not contain this and that hiring is not being done from the North Slope from Alaska where it could be done when there is qualified people sitting on the benches. And we want something to get a handle on this, so that it is not going to be struck down by the Supreme Court saying that you cannot make

such a law we want to work on our proprietary rights being that is our oil that we are selling.

Lipton - Senator Huber, I find it very difficult to give you a responsive answer because if you say that there are qualified people sitting up there who are not being hired, now obviously that is bad and if you had it in the lease they would be hired. On the other hand, if the industry may interpret qualified people differently. I don't know it's very very, it's difficult to say. But if the whole idea is to make it a firmer obligation through the lease that is one thing. But if you make it a firmer obligation and there is no flexiblity then I think it could be very difficult.

Q: Senator Huber - Well Madame Chairman, I won't dwell on it but just one more short thing, so that you understand what I am talking about. When the industry on the North Slope makes a deal, with forinstance, a Hawaiian corporation to supply them with the personnel and to do the hiring for them and then the hiring is done in Houston Texas we become concerned when there is qualified Alaskans sittin on the bench. But if we have a handle, a way that we can get a handle on this, using our proprietary rights we should be doing it, or trying to find a way to do it when we know that we can't do it with our regulatory rights and that is why I wanted to get your expertise on this.

Senator Meland - Madame Chairman, I, has Mr. Lipton spoken to any type of questions about all the legislature or are we just talking about (inaudible). Because I did have some questions that were left over from Wednesday, but we can certainly wait on that and talk about this legislation before us.

Senator Poland - Well what we had though we would do is talk about this and when there are no more questions on this we will go to the royalty oil proposals and then throw it open for all types of questions.

Q: Senator Radar - There are many question Madame Chairman. I had two items that I would like to have Dr. Lipton comment on. One of them is the concept of limiting from 500,000 acres to 200,000 acres the amount that any one entity can hold in leased lands and that concept actually appears in several faces in the bill. I assume it is to prevent or to insure a competitive market here so that we don't end up with one company dominating the field. Comment on this and give us your observations on that and what problems and benefits might flow from that.

Lipton - I think there is great virute in limiting acerage holding by an individual company. On the other hand, I have no feel really, for whether 200,000 acres as an amendment to the 500,000 alternative is too little or not. I would strongly urge that in order to acheive the same purpose, that is, I think that two things are of value. Acerage limitation I think could go in there. I don't think it does violence, providing that it is not so narrow that in a sense very soon you start reducing the number of competitors and a company that is successful in a couple of lease sales and then suddenly finds itself barred from further competitive bidding for acerage. You defeat your own purpose if you do that. But I sense that the purpose of the legislature and certainly the interest of the state is that acerage shall not be held. The purpose of winning acerage under a lease is to get on with the business of exploration. And therefore I would suggest that whether there is competive bidding on work obligations is one of the options or not. I think there should be work obligations in every lease. The commissioner should in every lease stipulate minimum, not maximum work obligations. We are not trying to tell the companies how to conduct their exploration activities. But there should be certain minimum work commitments which the companies have to perform in order to hold that lease. Let them get on with the business of exploration. It does no violence to the purpose of the companies, unless they want to get in that bidding and then sit back and wait for

somebody else to do some work or they wanted to be sure they were represented in the area but they had other fish to fry elsewhere in the state or somewhere else. I think you have a five year duration of the lease and I have already suggested that you might be willing to extend it, if the companies really need it and they have been going about their business. On the other hand, there should be minimum work obligations in every lease there. I think also there is a certain virtue in putting a ceiling on the amount of acerage which a given corporate or individual can hold as a result of leasing from the State of Alaska. I certainly would not want you to cut that down so small that you lose the competitive bidding and the third, fourth and the fifth lease sale because one company has already not exhausted it's interest, not even exhausted it's dollars but has exhausted it's ability to hold acerage in the state.

Q: Senator Radar - Would you comment on the provision as to the lessee or permittee conducting any exploration for development or production of oil and gas, the state shall provide the commissioner access to all data obtained from such activities and shall provide copies of such specific data as the commissioner may request. I don't know whether that is intended to change the public disclosure of that information or whether there is still proprietary interests or not but what is your understanding of that provision and your comment? It is on the top of page ten. It starts on the second line.

Lipton - I assume that your statutes prevent public disclosure of this for some minimum period. What is it two years in Alaska. Two years, I think I believe. Two years by statute.

Q: Senator Radar - Cause I take it that the proposal here does not suggest that we alter that proprietary -

Lipton - I would hope not. I would hope not. I think the right to proprietary information for at least two years. For any company operating here considering the amount of money which goes into

exploration. I think that should be protected.

Q: Senator Radar - Well let me ask you this. Would that be true. I assume the reason for your statement is that a company therefore gets the value of it's own work product. But what if the state, for example, should for reasons unknown, at the time of exploration, should withhold in the leasing for a period of three years. Then under those circumstances we would have deprived the company of the value of it's own work product. I don't know how to avoid that but I can see a problem here and perhaps discretion should be available here. Although I am not certain as to the purpose of this particular section or what the discretion or the thrust of the discretion should be. Whether the purpose here basically is to give the state the right to deprive them of the work product, within two years or what?

Lipton - Well I don't know how you can set the period of confidentiality so that it conforms with the amount of, the lapse of time between one lease sale and another lease sale. I mean that is a pretty difficult thing to do. I don't think, see the point is the state has access to this information. It is just that the competitors don't have access to this information. And in that respect there is a certain value in extending the period of confidentiality to a reasonable period of time because the value of the information is not just for another lease sale in exactly the same area. There is an awful lot of information. It becomes valuable because one correlates it with what one knows from other wells elsewhere. One builds up ones geologic and geophyical knowledge as this stuff becomes public. So there is virtue in keeping it confidential for a reasonable length of time. But I don't know, one can't do it for too long a time or you deprive the industry as a whole of what is really basic knowledge necessary for it to advance. So there is some kind of a compromise has to be struck between the virtue of the confidentiality to the company doing the work and how important it is for the whole industry to know more and more about the State of Alaska.

Q: Senator Radar - Well let me ask you. You have suggested in a number of instances descretion in the commissioner. Do you think that in this particular instance that we should provide administrative descretion in perhaps, write in a minimum or maximum or something of that nature. Or do you think the two year -

Lipton - Senator Radar I don't think this is an area where the commissioner ought to have descretion. This is a protection which the legislature is going to give to an exploring company as they are taking the risks in putting it's money in. It depends upon the legislature to know exactly what it's protection is.

Q: Senator Radar - Well what if you wrote in a minimum of two years, an extension of that period of time before it was made public?

Lipton - Senator Radar, I don't know of any place where that exists. That of course doesn't mean that it's a bad idea. I don't know that it exists anywhere else. I am not familiar with it. I think normally two years is pretty ample time. Again I would certainly defer to the judgement of people in the administration you know they have alot more experience with what the circumstances up here in Alaska have been.

Q: Senator Huber - Madame Chairman, I would like to just ask Milton just one thing, one question that was raised here by Senator Radar and I would hope he would concur with me. Milton will you take a look into the matter that Senator Radar brought out to determine in your opinion how our laws stack up on this at this time and give us some kind of a report on it. I think I know and the question I would like to ask you would be if you thought that two years was the best period of time and compare this with our current law and give us another report.

Lipton - Yes. I would be pleased to.

Q: Senator Radar - Madame Chairman, perhaps if I might ask Dr. Lipton, he said he had no particular feel to the 200,000 acre limitation for single holdings. I might ask him if it is possible for you to develop a feel for that. At least give us your best judgementas to whether or not -

Lipton - Yes.

MILTON LIPTON'S COMMENTS ON ROYALTY OIL

Lipton - Obviously you are waiting to see whether and if so what kind of a royalty contract is going to emerge from the Royalty Board itself. In the absence of any specific proposal and certainly, there is very little purpose to comment on the versions of the proposals that were presented early on. They were in preliminary form and a great deal of negotiation has been taking place during the last several months. So all I can talk about is something which has to do with the way in which you would look at a royalty contract if it is presented to you. I think it is germain but not all that direct. First of all just let me say and I guess virtually all those studies that have been done come to pretty much the same conclusion. That if you consider a given facility to process petroleum feedstocks from Alaska, if the facility could be built in Alaska or were to be built closer to the markets, say in the lower 48 states, the identical facility in Alaska will cost more to build. There is very little question about that for alot of reasons. The facility will cost more if it is built here than if it is built there. Secondly, that if you look at the transportation costs, if the facility were in the lower 48 say a refinery, and the crude oil is transported from Alaska to the refining facility below, the transportation cost of moving that crude oil will be substantially less than the transportaion costs of moving the output of the facility in Alaska to the markets. Whether it is petroleum products or whether it is petrochemical fractions. Transportation costs will be very very considerably higher. So that when you contemplate the development of a refining petrochemical complex in Alaska based upon Alaskan feedstocks, one faces immediately this advantageous cost, both in construction and transportation. The basis question which anyone has to address himself to, whether it is someone who wants to contract for the use of the royalty oil or whether it's the legislature looking at his proposal, the basic question is, how do you offset this competitive disadvantage. How do you do it. And I put it to you, there are three ways in which it can be done. One if there

is something unique about the project. That is to say, the people have conjured up, have imagined, have created a concept which somehow is more favorable because it is in Alaska than it would be elsewhere. That is to say, partial use of products here, products going to various destinations elsewhere or a different combination of products, somewhere out of the product mix or out of the technology which creates that product mix you might be able to get an offset. Second of course is if the state gives a subsidy. That is to say there is a cost disadvantage here. Does the state want the other benefits of this kid of industralization, whether it is employment or whether it is a creation of a tax base or the value of the products have been increased, or whatever the reason. Is this a sufficient reason for the state to give a subsidy. The State could offset the competitive disadvantage. The third possibility is that everybody expects that the competitive disadvantage has been taken care of and there is no subsidy required. But in fact it has not been taken care of. That is to say after five years of development and construction and operations begin it suddenly turns out that the competitive disadvantage is still there. One hasn't offset them and then, where does one proceed from there. If the facility is completed the oil storage tanks nearby are beginning to receive Prudhoe Bay royalty oil, operations are about to begin and suddenly one finds out that the marketing of the products is more difficult than had been anticipated. The price obtainable for the product is less than had been anticipated. What is the recourse. Well, I suspect that the people who have undertaken to contract for the roylaty oil have made a very substantial investment will come to the state and say look this is something which is of interest to you. The state suddenly doesn't want a new industry here. To go by the boards what can be done and in a sense not an explicit subsidy but an implicit subsidy is built into the thinking about the project. I take a negative tack here because I start with the premise and unless we are persuaded differently we hold to this premise that here is a competitive disadvantage in this particular environment, looking ahead say to 1982 or 1983 when the products may come on the market, competitive disadvantage operating here in Alaska and therefore I would suggest for the legislature that they look at any contract which is presented

to them with a very very jaudiced eye. Now the environment will be changing and one of the things which we feel you must consider, is whether the environment for contracting for the sale of royalty oil is best at the present time or whether it will prove with the passage of time. That is to say, at the present time you face an over expansion of petrochemical capacity, world wide, in the United States, in Japan, in Europe, incoming capacity for various reasons over the next few years. If you look beyond 83, 84, 85, 86, the world oil environment begins to change . The surpluses of today will begin to be eliminated it will be shortages but it is going to get somewhat tighter and under those circumstances the advantage of an assured flow of feedstocks, royalty oil from the State of Alaska may be much more attractive than it is today where competitive pricing is more important than availability, because crude oil is everywhere available today. Now what I am saying in sum is, that if you look at the contract then with a jaundiced eye the benefits for the state and if there are no benefits for the state you don't even consider the contract. But if the presumed benefits for the state, the hopeful benefits for the state, are still surrounded by an awful lot of questions marks than I would think that you risk very little by saying no, let's postpone this commitment of royalty oil and let's keep looking further for how and when the optimum use of it can be done. Because one is committed you not only are unable to look beyond that to what may be better, but you also as they say face the risk that an implicit subsidy is built in to the operation. I guess my advice is look carefully, exercise vigorious judgement and you probably loose more by being precipitious and saying yes, than you risk by saying hold off and let's wait and see.

Q: Senator Radar - Dr. Lipton the argument has been made that it will take a certain amount of oil to amortize the investment for petrochemical or refining or something else, any kind of a break down process here or a creation of a local industry and if the longer we wait then the less oil we have to amortize that plant and the less feasible it becomes for the industry to enter, the new industry to enter, and the argument then further goes that

if that is the case and if your prediction is correct that a contract now which will really not be producing until perhaps 80 or 83 or perhaps even 85 very near the maximum production of the field, that now is the time to award the contract because of the lead time, to is necessary. If we wait until that market exists that the lead time added on to the market conditions which you predict, is such that we cannot expect Prudhoe Bay to build that industry.

Lipton - If the people, if the group with whom a proposed contract is negotiated and which is layed before are anticipating this by 1983, 84, 85, may very well be that the terms and conditions of the contract presented to you are sufficiently firm that you can look at it even with a jaundiced eye and say this is worth taking our chances on. What I am concerned about is that it will not be as yet. Now I am not suggesting that you wait until 1985, or 86 to commit royalty oil. But what I am saying is with a passage of a year or two years may firm up the judgment or bring forth a more concrete set of terms in a contract. I am not trying to prejudge what reaches you this session, all I am saying is look at it with a jaundiced view. Now if you wait two years you haven't consumed so much of the royalty oil patrimony that there is not enough left and also the, I would hate to think that the limit of the state's availability of it's own natural resources is it's 12 1/2% interest in the established reserves of Prudhoe Bay. The next oil discovery here the state will have access to 16 2/3% of the oil it is in your new leasing bill and there will be other discoveries here, there are already. So it is not as though if you don't do it now you are going to run out of oil in order to support that kind of a project. You wouldn't want to wait until half of Prudhoe Bay has been produced already, I am not suggesting that. But I don't think that a year or two is going to make that much difference in the total availability of the oil.

Q: Senator Huber - Is this the period now when we can ask questions that are not confined directly say to present petroleum royalty

leases or can I ask some questions about gas this time.

Senator Poland - You can. We weren't going to do too much about gas today, but you are certainly welcome to ask Mr. Lipton we will go into the question and anwer period now unless someone else has a specific -

Q: Senator Butrovich - Well, before John gets on to the gas, would it be alright if I could ask Mr. Lipton a couple of questions about this petrochemical bit and you say there a (inaudible) on the market as far as the products that such a plant would produce if there was a plant in Alaska. What do you think would happen if the oil line had gone down the highway as the proposed gas line is going. Do you suppose that all of that oil would be going down to the lower 48 without a petrochemical plant somewhere along the way.

Lipton - Oh yes. I am sure of it. I am sure of it. Yes. There is no great incentive now for the companies that control the other 87 1/2% of the production to put that crude oil into petrochemical facilities. As a matter of fact one of the major producers in Prudhoe Bay has just withdrawn in Texas in construction of a major ethylene operation. There is a lot of surplus capacity around today.

Q: Senator Butrovich - You are in effect saying virtually what the administration is saying, or maybe they are not saying maybe I am just reading their minds, as far as a petrochemical industry in Alaska.

Lipton - What I'm saying is, look, Alaska by all counts is not an obvious place to put a petrochemcial industry. It just isn't an obvious place to put a petrochemical industry. If you start initiating a petrochemical industry in Alaska you do it for a reason.

Now, one reason could be that the feedstocks are cheaper here in Alaska than somewhere else and that overcomes high construction costs and that overcomes high transportation costs. You go where the feedstocks are relatively low in cost. Well that's not true here. The feedstock is not low in cost here. That is the royalty oil is not low cost oil here as compared to what it would cost if it were transported by tanker to a different petrochemical location which is closer to markets and you don't have to pay high cost transportation to move the petrochemical intermediates you see. Alright. There is another reason for bringing a petrochemical industry to Alaska or some other location. That is to say, if there is a shortage of feedstocks and you can put a petrochemical facility in an area where because you put it there you get feedstocks which you couldn't get elsewhere. Then you go that route. That is to say if there is a shortage and the only way I can latch on to 150,000 barrels a day of Alaskan crude oil, I can't get it from the private producers in Prudhoe Bay because they have internal uses for it, it is highly competitive elsewhere. But if I come to Alaska by golly the State of Alaska will commit their royalty oil. Then there is a reason for doing it, that becomes a specific advantage. The access to the feedstock is a very valuable advantage. The trouble is we are not at that point yet. I don't think we are at that point yet. We are at the point now where feedstocks are readily available at highly competitive prices and where is the advantage of Alaska. Alaska is in the wrong place. Alaska will be in the right place when the tightness of crude oil around the world, the tightness of gas liquids around the world makes it very very attractive to negotiate with the State of Alaska and have access to the royalty oil. In other words, your royalty oil has a scarcity value where as today your royalty oil has no scarcity value and as a matter of fact suffers a cost, a price. It's going into a world where people are more concerned about price than they are about availability. When they are less concerned about price and more concerned about availability your royalty oil, your royalty gas, your liquids becomes very much more attractive. Now the question is where is this transition, how long is it going to take before the perception of

the attractiveness of it. I think that people who negotiating here are seeing it already. They are very anxious to tie up the sate's royalty oil, that's why they are here and they are struggling themselves to figure out how can we get assured access to the state's royalty oil that is going to be very valuable in the future and overcome what looked to be alot of these competitive disadvantages now. This is what they are working towards. They see it, that is why they want to be up here. Not because of the cost advantages.

Q: Senator Butrovich - Well, Mr. Lipton, you know we ship automobiles and television sets and everything else from Japan what is the situation forinstance in Japan as far as petrochemicals are concerned? Are the products from petrochemial plants do they have all they need? I hate to display my ignorance but I don't know.

Lipton - No, no. You are asking a question that is very difficult to answer. There are groups here that are trying to build a petrochemcial facility in Alaska who are trying to negotiate firm contracts for the sale of their petrochemicals in Japan. Now, I am going to give you a judgement, it is a judgement based upon our exposure and our experience and how we see things and when they come back with firm contracts from Japan I am going to look very very foolish. But, the way we see the eastern hemisphere petrochemical situation there is a very very substantial surplus. Japan has got a lot of capacity. Not only is there Japanese capacity in Japan but there is Japanese owned capacity or Japanese investment in capacity elsewhere in Southeast Asia. On top of that the Japanese who have always felt that they were at the mercy of foreign oil from other sources. They have no oil production whatsoever there. Virtually all the energy consumed in Japan is imported. Crude oil has got to be imported mostly from the middle east. The natural gas they have is imported as liquified natural gas and they are always worried about the assured availability of their feedstocks. Both the refining (inaudible) petrochemicals.

Now Saudi Arabia, Iraq, Iran are all anxious to develop petrochemical facilities for the same reason that Alaska wants to. But these are government owned operations now with huge oil reserves, and what they are saying is that if you will put your petrochemical facilities in our country you are assured of access to the feedstocks so the Japanese are negotiating with the Shah of Iran to build a big refinery petrochemical complex there. But you know it goes very slowly. It goes very slowly because the high cost of transportation of petrochemical products, intermediates and derivatives to the Japanese markets or the Southeast Asian markets is a stumbling block. This negotiation has been going on for years. What I am saying is that there is this surplus and I think it is going to be very very difficult to get the Japanese today to contract for the initial delivery for products in 1983 and to continue thereafter for 20 years thereafter. It is a devilishly difficult thing to do in this kind of an environment. If it can be done, I think it is magnificant. It is going to be very very difficult to get firm, oh, letters of intent galore. Yes, under proper circumstances competitive prices we shall be pleased under those circumstances to buy this that and the other. The letters of intent but a firm contract take or pay, I doubt it very much.

Q: Senator Butrovich - Madame Chairman, I hear what you are saying Mr. Lipton however, you did say that geography was against us and I couldn't agree more, but I also everything I read on the national economy has balance of trade. You can't read anything because some economist, some expert is saying that we correct the balance of trade all those little figures we look at in the paper every day are not going to include too much. I don't know whether they are right or wrong. We are in a position geographically to do something about balance of trade if it is practical and when you said that we were the victims of geography, that was an understatement. You realize that all traffic south from Alaska is empty traffic and all traffic north is loaded traffic and all raw products generated in Alaska, shipped to the South 48 and then shipped back to Alaska in finished product and

we pay for it. And of course I recognize that we are just talking about a drop in the bucket when we talk about Alaska consumption of those products but nevertheless I am not going to take out of my mind because if in fact there was a market that could take a great percentage of petrochemical products I am sure that the entire economy of our state would benefit. If we in turn didn't have to ship that stuff down south and then ship it back and pay the freight both ways on it which is in effect what we do now and it isn't confined to oil we do it with canned salmon and practically everything else that is generated in Alaska and it doesn't make living in Alaska any easier. We do it by saying that somewhere down the road in 10 years or 15 years we are going to correct it. It really doesn't satisfy me. I would want to hear alot of pro's and con's on the matter before I would be willing to endorse any move by the state to preclude alot more investigating even tho I would like an answer day after tomorrow. I am not convinced(inaudible) possibility. Senator I hope nothing I've said implied that it can't be done or it will not be done. I wasn't when I talked about the changing world on a whole I wasn't saying that you have to wait 10 to 12 years. I do feel though that it would be irresponsible of me to imply that all is right with the world because we would like it to be that way for all Alaska. Everything you've said about the cost of transportation back and forth about the adverse balance of trade the advantage for Alaska in having retained within Alaska some of the products based upon your natural resources and at the same time benefit from the export potential. All these things I think, this is the basis on which people are struggling to put the proper kind of contract together and I appreciate the efforts that are being done. But realistically if I am talking to you I must express what seems to be our evaluation of the circumstances of the time. Also I would caution you that even if you go to a major ethylene operation, in Alaska, you must ask yourself, the consumer of Alaska, the population of Alaska has very little use for ethylene and very little use for propylene. The question really is going

going to be what's the next step of manufacturer and which are the finished products because what your people want are either finished industrial or finished consumer products here. Some of the industrial petrochmecials which can be used in Alaska will cost alot less and some of the consumer products. The question is will you carry the process of transformation far enough in Alaska in order to do good for the Alaskan people. Now all of these things I think are what you want to look at. When you see a contract placed before you. But I think that out of a sense of desire or even a sense of frustration because things have gone so poorly for so long. I think for that reason I don't think one should close his eyes to question marks about a proposal that reaches you. I still think you should look at it very very carefully. On the other hand if you think all of these things are desirable, perhaps a certain amount of subsidization is not unwarranted by the state. That is a decision that you have to make and there may be alot of other benefits that make it well worth while for modest subsidization by the state.

Q: Senate Radar - Along the same line I remember when I first came to Alaska I got a haircut. I don't remember what I paid for it, maybe it was a dollar and a half but I was used to paying fifty cents or something like that. I ask the barber you know, suprised, and there was no sign, well why the high price of haircuts. Well it is the freight. The longer I live here the more truth I appreciate was in that. But we have always thought that forinstance everything, I doubt that there is a single thing in this room that is an Alaskan product. Everything here is shipped in, the only thing in this building that probably wasn't shipped in is the concrete, not even the concrete, the concrete itself was shipped in but there is a lock in sand and gravel in this whole building. And for everything that is shipped up here there is an empty van or capacity or something going back south to get another load. Which means that transportation costs in some sense as we have hoped that if what we were manufacturing here and again I think that

this is part of your statement depends upon the stage of manufacture in which we take it and whether or not we can use what are now empty facilities, in that I take it from what you say that we probably could not use the same type of facilities which brought the materials that made this building, the steel and everything here, I doubt that there is a single Alaska product in the building. Is it your thought that we really can't expect that to significantly change that problem which we are facing(inaudible).

Lipton - No, really all I am saying is that have a look at what is laid before you and see how it goes. Is it really what you want, and if the advantages are there, are there question marks. is there a never never land where you don't know where the state is going to come up on the balance and if that is the case all I am saying is, that I don't think that you risk losing everything if you are very very critical of the first thing that is laid in front of you. That is not the beginning and end of all possibilities for petrochemical development in Alaska. It may very well be Senator Butrovich, that the most advantageous basis for petrochemical operations in Alaska is not feedstocks derived from crude oil, but feedstocks derived from your natural gas. See that is another possibility, but that is a long way down the line. That can be a very long way down the line.

Q: Senator Meland - Senator Poland and to Dr. Lipton and this is probably something that's left over from last Wednesday when we were talking on the franchise tax. During the recess, I think that we had at that time, Senator Butrovich and I were discussing the taxes and not necessarily the tax on oil we were talking about the tax on fish also. I don't know if the friendship between Senator John and I, I know that he knows that I come from a location that has alot of seafood off it's shores and I know Senator John is very fond of seafood. But anyway we got to discussing canned salmon and there was a little song and I promise you Senator Poland that I won't sing the song. I am more of a bar

room singer than I am a courtroom type singer but I did remember some of the words and it went something like this and I scribbled them down and it says "I like humpback salmon little humpback salmon caught by a Sitka fisherman and I forget some of the words, but it still goes like this. I don't want a T-bone steak from a steer that is roped in Texas but give me fish and I don't give a damn if I do pay taxes." Now you know that is 35 years ago when I was singing this song and you know things have changed because we really do give a damn if we pay taxes. The question Dr. Lipton, I come from a small community compared to Anchorage, we are more a rural small town, rather than a large urban type. So it is not unusual that I spent alot of my time on main street talking to the same people day in and day out. The very simple question that you can probably answer it yes or no. But the question they ask me, they say Senator Meland now you are going to go over to Juneau pretty quick and I know you are going to be talking about taxes on the oil companies, can you tell me this, if the legislature sees fit to put an extra burden on the oil companies in taxation will that in turn mean that petroleum products that we buy will be increased to offset the extra taxation sort of thing. Well, the only answer that I can give them is that I don't think the oil companies are particularly benevolent in protecting society, they are to do business and to make money hopefully they do to have thousands and thousands of shareholders that hope that they do make money. Is this the case, we increase taxes but then does the consumer when he is buying his petroleum products eventually pay, that is the question, a very simple question.

Lipton - I will give you a simple answer. It is not complete. The answer is no. The answer is no.

Q: Senator Meland - Could you elaborate a little on that.

Lipton - The taxes paid by the oil and gas industry here in Alaska, advalorem taxes on their hardware, the severence tax on their production, the income tax on the profits they

make here. All of these things represent cost to the industry the same way other costs are. But the price at which that crude oil, which has been taxed by the State of Alaska, can enter a refinery, is not higher because of those taxes. They are cost to the industry, they effect the revenues of the state and the profits of the industry but there is no way in which a company producing crude oil in Alaska can get a higher price for a gallon of gasoline or a higher price for a gallon of number two oil, or a higher price for a barrel of heavy fuel oil, just because he has paid higher taxes here in Alaska. The Alaskan crude oil goes into refineries and has to compete with crude oil from other areas. It has no direct effect upon the prices paid -

Q: Senator Meland - Tell me this then. How do the large corporations and yesterday, we were talking about hundreds of millions of dollars and billions. Now I, with my high school education know that a billion is a thousand million. Am I right? I hope I am. Now of course until I read the Juneau empire I didn't know that a billion minutes ago Christ was still on earth. You know so it is mind boggling to alot of legislators, because most legislators come from all walks of life as you know. The figures that we use when we start talking about hundreds of millions and billions is enough to compound the most brillant minds of industry, commerce, banking or whatever you say. But do you mean to say that over a 25 year life of a field and so that the taxes are increased like a 25 billion or whatever it might be, I forget the figure I didn't, I have enough notes here, but I don't think I wrote that down. But nobody pays, you mean the companies just can drop that and still do business?

Lipton - No. If the burden of taxation is such that it begins to deprive the companies of the profits which are essential for their operations then the product will not be produced. All I am saying is and please don't interpret this as an argument in favor of higher taxation. I am trying to give you a very honest answer to a very straight forward question. Alaskan

taxation on crude oil production here in Alaska, cannot be passed on by the oil companies to their customers because they operate in the competitive environment, anymore than they are able to pass on to the customers of California who buy their gasoline and who buy their deisel oil, who buy their burning oil. They cannot pass on the run up in the cost of building the Alyeska pipeline from an original estimate of 800 million dollars to a final figure of close to, with interest, 10 billion dollars. They cannot recover that from the customers in California, because there are enough people who are willing to sell gasoline to the customers of California processed from crude oil from other areas so that they cannot raise their prices competitively. This is a real cost to the companies. They can't pass this back to the state. They can pass it forward to the consumer. It comes out of what otherwise would have been larger profits. The same thing is true with the taxation here. Now, there is an exception. The exception is your gas taxation. Where there are contracts for the sale of gas to consuming sections of the State of Alaska and those contracts specify that an increase in state taxation shall be passed on to the consumer, than the consumer pays higher prices for the gas. But where you are selling petroleum products in competitive markets where the products can be refined from Alaska crude or California crude or Indonesian crude or Saudi Arab crude you can't get a higher price from the gasoline manufactured from Alaskan crude because it is too much competition on the market.

Q: Senator Meland - But prices generally could rise.

Lipton - If all petroleum prices go up. If all petroleum cost go up, or all crude oil taxes go up, then sure the consumer has to pay more. But the taxes here is Alaska cannot effect gasoline prices in California.

Q: Senator Meland - I think I understand exactly what you are saying. Not just Alaska but generally, and generally in large companies doing business -

Lipton - If Alaska were an isolated entity. That is to say if the oil produced in Alaska were refined in Alaska and were sold in Alaska and you had sufficient capacity to do that and you had high transportation costs from outside then increases in your taxes could be passed on to Alaskan consumers. They pay more for their gasoline. You are going to keep raising the prices only so high as it finally pays to import gasoline from California and put a ceiling on it. But so long as you are operating in this kind of a competitive environment, I must give you that answer.

Q: Senator Meland - Thank you and thank you Senator Poland, sorry I took so much time.

Lipton - That poem was worth everything.

Q: Senator Huber - I can't possibly get the interest of this Committee with my question. So I am in a very non-competitive position shall we say. First I want to start with the where John Radar and Senator Butrovich were and that has to do with the timing of the royalty oil processing to petrochemicals refining in Alaska. As, and I get from you that you say not quite yet. I mean we got time in this area and my concern is that I thought on the oil that it looks like we are at the 11th hour and 55th minute and on the gas maybe we are even closer to the 12th hour. That is what I am worried about because my figures show that Prudhoe Bay will start declining in oil production in less than eight years from now and at that time it would probably be impossible to start a petrochemical or refining complex in the state when Prudhoe Bay field is declining in production. I don't know I think the lead time is some 3 to 5 years or something like that to get the refinery and petrochemical compex built here. Aren't we actually late instead of early? That is the first question. The second one goes into gas.

Lipton - If you say that Prudhoe Bay production is going to

start declining, in what did you say 8 years. I said 8 years because it is a 9.8 billion barrel (inaudible)

Lipton - And you don't think that in the 9th year there will be as much production moving through that pipeline as in the 8th year.

Q: Senator Huber - Yes I think there will but.

Lipton - Why?

Senator Huber - Our production starts declining and we have to drill more wells to hold the production up. The field is beyond it's half way point. Can somebody afford to build the complex after that.

Lipton - Suppose you have three other oil producing fields that are feeding that pipeline before the peak of Prudhoe Bay production is reached. Why is everything uniquely associated with Prudhoe Bay.

Q: Senator Huber - Madame Chairman, is there some indication of that. I noticed on most oil fields on the lower 48 and the rest of the world 4 years or 5 after the discovery is made and the initial amounts of the oil in the pool are announced as proven reserves that there is changes, either downgrades or upgrades. I noticed in Alaska now, where a number of years since 1969, almost 10 and we are still holding at almost no better than 9.8 billion barrels of recoverable oil there. This is quite noticable.

Lipton - Senator Huber having spoken negatively to the response to Senator Butrovich's questions let me be very very positive. There have been other oil discoveries on the North Slope and there are resevoirs in the Prudhoe area for which at the moment there are no immediate production plans. Indeed if it turns out that there is a substantial volume of added production off the North Slope and we always optimistically

assume that from 1980 on the movement of crude oil through the pipeline is going to be on the order of 2 million barrels a day. Because we don't believe that the Prudhoe Bay is the beginning and end of everything. But if there is two million barrels a day moving for a considerable period of time and if as indications now are, a good portion of the incremental portion of the oil is going to be heavy oil, that may lend itself much more advantageously as feedstock to petrochemical operations than using what is coming out of the Prudhoe Bay field at the present time. It may be more advantageous as a basis for feedstock than it is to export at the California markets. What I am saying is that I don't believe that this is really a last gasp for Alaska. Perhaps I am too optimistic, I don't know. But I am not even saying that you forgo at the present time contracts for the sale of royalty oil. All I am saying is be critical. Look at them carefully. Similarily, if use is going to made of your feedstocks from the state's royalty gas that may not come to for wish until 1984 or 1985, but planning is going to have to be done fairly soon. Because pipeline design and everything else which is involved will have to be initiated relatively soon. I am certainly not saying do nothing, just shuffle your feet. What I am saying is be cautious, be cautious. This is not that everything stands or falls on the basis of accepting as it is one particular contract, unless it is clearly advantageous.

Q: Senator Huber - I would like to pursue now, the natural gas. In the light of everything we have talked about on royalty oil, talking about natural gas and it's processing within the state at this time and I would like to revolve around the conditions that exist. The pipeline through Canada approved. The particulars of that being that the Canadians use the pipeline too and I believe that some of the other particulars are that the gas delivered to the lower 48 has to be at the 1,000 B.T.U. per M.C.S. level which is high methane and so forth. Do we have an opportunity in the natural gas to look later or are we going to lose our natural gas liquids and our C_2 faction, our ethene to production in Canada and don't we have a different set of circumstances

here that if we produce it in Alaska which is the United States that we have something towards the balance of trade here. As I understand it that if we send the gas through the pipeline into Canada, to the lower 48, the only thing that the Canadians have to deliver to the lower 48 is gas of the right B.T.U. per 1,000 o M.C.S.

Lipton - No. Not so, not so.

Q: Senator Huber - If then they take out the ethene and the other liquids at that point or whatever it may be, but do we have another chance not to plan our petrochemical industry based upon natural gas now.

Lipton - First a factual statement. The gas that moves through the pipeline, there will be proprietary ownership of that gas. The Canadians can't do anything to that gas unless the owner of that gas agrees to it. There is nothing in the pipeline treaty, there is nothing in the statutes of Canada which permits them, at their option, suddenly to take liquids out of gas owned by someone else. Now if the liquids are valuable the people who own the gas are most apt to strip the liquids out, either in California or in the Great Lakes area, at the end of the pipeline. They will allow the Canadians to do it if the Canadians can give them very very high value for it but it will be more valuable on the U.S. end than it will be in Canada. But that is a minor thing. The real question you've ask I think, and the answer to that is, that yes, there is potential value to Alaska of the liquids contained in the Prudhoe Bay stream. It could be very very valuable and unless you plan for the use of it in advance you may lose the opportunity to hold them here in the state. Now there are two things that are involved. One has to do with the liquids for the entire stream of gas 2 billion cubic feet a day, a very substantial volume of liquids. This the state can encourage the use internally. It can negotiate, but what's of immediate interest, I think, is that in the royalty gas, that this not completely elude the control of the state

and as I had occasion to say previously, there is in the state's royalty gas a volume of liquids perhaps somewhere in the range of 6 or 7 thousand barrels per day out of the state's royalty share of a 2 billion cubic foot per day gas flow. Now that at least the state ought to be exploring. In other words if one can't think big and accomplish that, at the very least one doesn't want to allow everything to escape and the royalty gas is one thing that the state not only ought to be paying attention to, but on that scale I would suspect that it is perfectly feasible. It may be feasible on a large scale and that is something that has to be explored. But if not at least maximum access to the state's royalty gas and if necessary what you put back into the pipeline for export to the lower 48 states is a leaner gas stream with the liquids that are valuable to you extracted, say in Fairbanks.

Q: Senator Huber - One small clarification point and when you are referring to natural gas liquids you are including everything below the C_1 faction, is that right?

Lipton - Yes, but I am not sure that they are all equally valuable. I mean ethane is used one way and propane and butanes are used quite a different way. If there is any natural gasoline that is a different story. Yes. That is what I am referring to.

Q: Senator Huber - I have been afraid that we may lose our ethane by definition because it is a dry gas that normally goes with the methane if it hasn't been extracted for commercial purposes, it's a perfectly suitable type like gas. I just want to make sure we are talking about natural gas. We are all of a sudden defining that. Madame Chairman, I wonder could I just defer to Senator Butrovich for a question.

Q: Senator Butrovich - Mr. Lipton you were saying that the plants would probably be set up in California or some place. Can you tell the Committee or at least tell me what is the royalty cost of moving dry gases compared to wet gases?

Lipton - I couldn't tell you off hand. An awful lot depends upon how tight the capacity of the gas line is. That is one thing I do know. If you have got alot of capacity in the gas line the difference in cost is immaterial. But if you are tight on capacity, the difference I couldn't tell you off hand. I just don't have it with me.

Q: Senator Butrovich - Do you say the difference in cost -

Lipton - If there is capacity in the line.

Q: Senator Butrovich - Well, of course I am speaking only of the line that would carry the gas down the Alcan.

Lipton - What I mean by capacity line is. A pipeline is designed for a certain maximum flow. At any particular time you may not be using the full capacity in other words (inaudible) If you are not running the line at maximum capacity, then I think it makes very little difference on how much or the pumpable liquids you have removed and how much you have left in the line.

Q: Senator Butrovich - I know nothing about that, but I have been lead to believe by other people that there is a great difference in cost in moving liquid gas as compared to dry gas.

Lipton - If you are losing the line of designed capacity, yes. I don't know off hand what the difference is, unfortunately.

Q: Senator Butrovich - Is there any place along the line that we could actually get that information.

Lipton - No problem, I will get in touch with my staff and I'll get you the answer.

Q: Senator Radar - Madame Chairman, I had a question along the same line if I might. We are being suggested, and I think it is the same line. That we should make a decision now on our

gas petrochemical industry so that there can be a design which is the most efficient a 7/8 design or an 8/8 design, a design which accomodates a line which would not operate at full capacity and therefore carry the liquids easily, or a line which would operate at full capacity and therefore more economic line and so on and so forth. It has been suggested at least to me by some people, that the decision to be made, should be made now, if the design of the Canadian pipeline is to begin now. Is that, how do you meet that kind of an argument or that presentation. Just comment on it.

Lipton - I think the immediate problem in design or at least before the design is too frozen is whether or not there are going to be facilities to off-take say a Fairbanks or wherever. This can be built into the design of the pipeline. Thereafter I don't think it is a matter of 7/8 or 8/8, the difference there implies that 12 1/2 % of the natural gas is taken out to be retained in Alaska. Now it is very difficult for me to conceive that Alaska is going to be able to use that full 1/8 of everything of the methane, the ethane, the propane, the butanes and everything else. That to me strikes me as an unlikely thing in view of your energy requirements even in terms of industrialization. What would you use that amount of methane for. Now you may have a methanol operation, that is a different story. Maybe you can conceive of the movement of the utilizing the methane for methanol operation. If this can be done, then sure it is going to effect the whole design of the pipeline, but the other possibility again , which I say that if the maximum can come to forlition at least the state shouldn't lose whatever it can get out of it and that is if you extract the liquids, not necessarily all the liquids you have a major extraction of the liquid component in the natural gas stream and you utilize that productively in the state the propanes, the butanes maybe even some of the methane and then pass on a leaner gas stream for export purposes you'll get the B.T.U. value of whatever you left there, even if you leave some of the ethane in you will get the B.T.U. value of the ethane, you will get the B.T.U. value of the

methane. But you have left for yourself the liquids which are more valuable per M.C.F. or per gallon than the B.T.U. value there and this is what you want to maximize on and that What I am really saying is that if one can design an optimum operation so that all of the state's royalty gas is upgraded in value within the state than that is the ideal case. But if you can acheive the ideal case I wouldn't want you to forgo something less than the ideal case which is that you utilize the higher value of the liquids that can be extracted even if you must sell everything else for B.T.U. value.

Q: Senator Radar - I am sure you said it but I am not sure I heard it. Again we are being asked to make a decision at this time, as soon as possible here, by the Alcan people on a design basis to tell them what we intend to do with what we can take out of that line and use in Alaska for petrochemical or otherwise and as I understand your answer is that we are going to have to tell Alcan or Northwest or whatever they call themselves that until we have a petrochemical industry we can't give you that information and that at this time we don't have one and therefore they will have to design a pipeline to carry what they anticipate to be the production of the Prudhoe Bay field.

Lipton - No. You don't have to have a petrochemical industry. If they're asking you now, how much of that gas are you going to retain in the State of Alaska, I don't think there is any earthly way in which you can answer them today. You have to pursue what the possibilities are for the utilization and if you are talking about taking all of the state's royalty gas. You can take it for several different reasons. One because you can use the B.T.U.'s right in the state that is you just burn it as gas. Or alternatively, that if you break that gas up, the components of the natural gas will have greater value in the state than the B.T.U. value of it. For example propane uses bottle gas to be used for heating, cooking things in the villages in place of a fantastically high price which is paid at the present time. This is very very valuable in the State

of Alaska tremendously valuable. If you could use a methane for a methanol operation for export operations this would increase the value over the pure B.T.U. value if you just let it into the pipeline stream. But you have to know reasonably well what you can use the different components of the natural gas for. Now the maximum, to say we are going to take the full 12 1/2 % of the natural gas and keep it here in Alaska to say that for the pipeline people before you know that you can do it, might put you in a position where later on there is no capacity, although I don't doubt, I don't believe that. 8/8 of 7/8 of what, of what level of gas production, of what level of gas production. The State of Alaska can have some option on capacity as well, you know, it is not that you are going to design it smaller because you are going to take the gas, there may be some prorating of gas. They are not going to design, the first day that gas flows through the pipeline there is not going to be an optimum utilization of the designed capacity. The state ought to have some option on some flexibility on how much of that pipeline capacity it is going to use, but above that what I am saying is that if you can't early on, come to a fixed conclusion as to how all of the gas is going to be used at least you should be planning for the utilization of the liquids out of the royalty gas stream. At the very least and couple that with a certain flexibility as to what can be done later on.

Q: Senator Radar - But how can we get that option. How do we get that option. How do we preserve that option in the future as I don't understand the regulatory scheme and the federal decisions that are being made.

Lipton - Well they really haven't been made. There aren't any. The trouble is there aren't any now they are in the process of being made.

Q: Senator Radar - Yes but aren't those being made in irrespective of this reservation that we are talking about and won't they be made , I have a hard time saying yes, I would like to keep this option open. Unless you are saying that we should

keep it open. I am wondering can we keep it open other than by telling whoever is designing the gasline that we are going to take it off or we are not going to take it off or we just say that we don't know.

Lipton - Well I think one of the things, the way I suppose that it has to proceed is that you discuss a certain flexibility for the state in terms of volumes and you say to the pipeline people that when they go into negotiation over all of the terms and conditions of construction from the regulatory standpoint this is something that has got to be taken into account. I mean after all the state has a tremendous economic interest in this thing and I don't think you can be pushed completely aside.

Q: Senator Radar - Well let me ask you, as I understand an argument you have right now involves taking off oil in Fairbanks and that is that the pipeline was designed to carry the full flow of the production North of Fairbanks, South of Fairbanks and that therefore when they take the gas off in Fairbanks, they should pay the rate of the complete tariff to Valdez because of the fact that the design is there, the pipeline is there, it is going and the lesser, the fuel savings on the pumping they are only carrying a lesser amount is insignificant, as I say that is under litigation. Perhaps you want to comment on that. But secondly, it has been suggested to us that if we don't want to same kind of an argument and pay the full tariff of gas from Fairbanks to Chicago or someplace else whatever you are going to figure to be the terminus that we have to at this time tell the pipeline people whoever they may be the regulatory agencies, that we are going to take it off or else they are going to ask us to share in that cost in that unused capacity or whatever it is if we don't and therefore the time is upon us as Senator Huber says that the argument is being made that we are at the 11th hour if we are to avoid that problem. Perhaps you could consider both of them, maybe they are not problems, I don't know.

Lipton - Let me address myself to the 11th hour first. If you are at the 11th hour, you see, and decisions have to be made

and you are capable of making decisions, you should do it. But one can be at the 11th hour and not be able to make the decision, as the philosopher said there is some questions to which there are no answers. I don't think you can allow yourself to be put in the position where you make a definitive decision when the basis for it isn't there. Let me back up to the crude oil pipeline thing, it is an interesting analogy. I remember very well the long and arduous debates which transpired before this legislature on the subject of the right of way leasing for the pipeline. Now the discussion of the pipeline putting in facilities for the off take of oil for the use in Alaska along that route, that was made very very clear in legislative debate, right down the line. There was never any question that this was the intention and this was made very very clear. So that in a sense the operators of the pipeline were not without prior knowledge of the fact that along the route of the pipeline there would be off take and if they knew no other location along the route where there would be off take the one obvious place was Fairbanks. It might have been elsewhere as well, but Fairbanks was a pretty obvious place. So this was not a matter of all of a sudden they were confronted with a completely unknown thing. Secondly as far as the tariff is concerned the pipeline is not operating at capacity now and it is not a matter of their being deprived of ability to put oil all the way through the pipeline in a sense and the amount of oil which unbalances their system for what is it 12,000 barrels a day being delivered to Fairbanks it doesn't look to me as though this is a, I want to prejudge what is in the administrative process and I am sure it is going to go up in the courts but it would take an awful lot of convincing that the only economical basis upon which they can operate that pipeline is to charge the same tariff from Prudhoe Bay to Fairbanks as they charge from Prudhoe Bay to Valdez. The design of the natural gasline the analogy is well taken and it means that you have to have as much forsight as possible but I don't know how you can presume to give an intelligent and definitive answer in advance. Much as one would like to, how does one do it and therefore I say one has to explore what degree of flexibility

is available to the state in terms of access to capacity and again when we talk about capacity what's going to be the design capacity of the line. Is it going to be 2 billion cubic feet per day or more. It is going to be more than that I think for ultimate deliverability. Now there may be times when the amount of gas which can be delivered into that pipeline, I say at 2 billion cubic feet a day can include or exclude the state's royalty gas, depending upon what the level of production is from the wells. In other words if you have without royalty gas, capacity to move 2 billion cubic feet a day without royalty gas then you could produce over 2 billion cubic feet a day of gas if the well facilities will permit it. You've got flexibility at that end also. I don't think that all of the onus of deterministically should rest just upon Alaska and it's royalty gas decision.

Q: Senator Radar - Well, are you suggesting that we could use our conservation authority as to limiting, or as to setting the level production of the conservation matter to assist our economic determinations here.

Lipton - No. I wasn't suggesting that at all. What I was suggesting is that there may be flexibility in total amount of gas that is available. In that case one of the (inaudible) is involving your designed capacity say from Prudhoe Bay to Fairbanks to perhaps take a somewhat larger than 2 billion cubic feet a day.

Q: Senator Radar - As I understand it you are saying that resevior mechanics would permit perhaps a 20% take off -

Lipton - It doesn't require 20% we are talking about 12 1/2/%.

Q: Senator Radar - Yes but perhaps as high as 20% or more flexibility automatically just as a matter of resevoir engineering.

Lipton - Not necessarily at any moment of time. That is again a matter of production experience. It may not be the same in the

early period. It may be different when you start going to cap gas and so on. The only thing I am saying is that the State should make as many decision as it can. It cannot be coarsed into making decisions without knowledge that is not there. Therefore in the absence of that one shoots for a much flexibility as possible in the negotiations.

Q: Senator Huber - I would like to continue just a little more now on the same line. I guess maybe starting from the back. As of today Mr. DeLong is down from Fairbanks. He gave the Fairbanks delegation copies of the suit that they are now in. I don't want to discuss the merits of that suit but the suit is with SOHIO and it is exactly what we are talking about. Because of prempting what they say is capacity in the line as far as Fairbanks they say that it should pay the same rate all the way through. Now my problem now is that if we get in the same position in the gas line because our indecision or our lack of action becomes procrastinstion aren't we setting up the same identical thing inspite of the fact that we have got a blueprint in front of us. Let me ask a question to show what I mean Madame Chairman. I don't know whether it is of you or Mr. Lipton or who. But Mr. Lipton I certainly would like to comment on it. If we were not procrastinating now and say we can't make the decision at this time what are we doing forinstance to look at Big Delta as the takeoff point for the state's royalty gas and at that point we consider the total use of it because we have the Javerscreek coal field and the two of them can be combined to use the entire methane flow from the manufacture of menthanol. It is a good open area there is no problem with air pollution or anything at this time, lots of air movement in the area and plenty of water, plenty of ground water, plenty of cooling. It would be a very good area for a petrochemical industry. Now, Madame Chairman, if we don't try to look at that in a way to move the product to market, we have an unused Haines pipeline there in and Southeastern certainly needs the economy from that. It is sittin there empty. It could be used just as easily to carry the products

out, liquid products, including methanol. Here is something that looks like it is synergestically available to us and a way to do it if we don't wait, but if we wait until that is planned capacity, has made it so that the gas transportation is going to cost us alot more money than we have decided that our product is forever going to be sent to a foreign country to do it and then sell it back to us or to the lower 48 without getting maximum use or even maximum benefits to the entire country not to mention Alaska. So if we aren't doing that now as (inaudible) unless somebody tells me. Have we got a project down by somebody to look into it. We haven't so when does our indecision, because we can't make a decision now, become procrastination, or is it going to straighten itself out. We need to do something. But what.

Senator Poland - I do know the state is having a study done on the liquids. Beyond that I don't know.

Senator Huber - I am just worried that we are studying it to death. Because if we aren't at the 11th hour and the 55th minute now or the 59th minute I don't know where we are. Mr. DeLong of North Pole Refineries seems to think so. He talked all during the lunch hour to the Fairbanks delegation in regards to this. He isn't just the only one I have told my other people that the Department of Natural Resources has not been interested in talking with us and that included the methanol story now for a number of years. These people come down here and they have spent their money before. They have told me that we are no longer interested in spending money by coming to Alaska and knocking on the door when the Department of Natural Resources will not even listen to what we have to say. They say we have got other plans, we are not interested. Yet if we are truly at the 11th hour or the 11th hour and the 59th minute we got here by our own indecision which is nothing but plain procrastination.

Senator Poland - Mr. Lipton we very much appreciate the time you have been able to spend with us now and to give you something to really work with before you come back to see us in the Spring.

Senator Meland - Madame Chairman could I, before you leave do you want the words to I like humpback salmon, I will give them to you.

Lipton - I would like that very much.

Senator Radar - The tune is even better than the words.

TESTIMONY OF MILTON LIPTON
BEFORE THE HOUSE/SENATE RESOURCES COMMITTEES
January 25, 1978

MILTON LIPTON: Let me just suggest very quickly the kind of topics that I would like to discuss with you and the things I will lay before you briefly before I subject myself to your questioning, because I think the committee is much more interested in addressing the questions to me. But very briefly, there are three things I thought I would discuss with you bearing upon the subject of the income tax legislation which is before you. The first thing is the income tax issue itself, why it is an issue, and what the alternatives are facing the legislature. The second is some discussion of the overall tax burden here in Alaska which is imposed upon the oil and gas industry producers, and then, third, a comparison of the bills that originated in the House and in the Senate, what the pros and cons of each would seem to be, what the implications of each are.

Well, then, on the subject of why the issue of amending the income tax, it seems to me that, by now, after years of discussion, there is rather general agreement that the present method by which the State of Alaska's corporate income tax is administered with respect to the oil and gas industry is deficient. I say generally agreement. We, of course, as consultants to the legislature have been saying this for some time. I believe that in the last session, when the submission on taxation was made by Sohio, it appeared as we have said before, that approximately 25% of the income from Prudhoe Bay operations, as estimated first by ourselves, then by Sohio, approximately 25% was actually allocated to the State of Alaska by the present method of apportionment. Now there is before you a submission on a comparative state tax burden study by Arthur Andersen.

I will say more about that in the context of the total burden of taxation. But it's interesting that in their own analysis, using their assumptions, that the net income from TAPS and Prudhoe Bay of the four companies that comprise the largest percentage participation, in both the producing operations and the transportation operations, over 25 years, according to their assumptions, and the assumptions are carefully spelled out, they estimate that the net income from production and TAPS transportation will aggregate about 37 billion dollars over the 25 years. Their own estimate of the income allocated to the State of Alaska by the present apportionment formula under your present income tax law, would be 16 billion dollars. That is to say, less than 50% of the income which they estimate to be generated in Alaska, would actually be allocated to Alaska. If you applied your income tax rate to their estimate of income generated by Prudhoe Bay production and TAPS transportation, the aggregate taxation that would accrue to Alaska would have been $3.5 billion dollars over 25 years. Under the allocation system they estimate that there will actually be paid to the state about $1.5 billion. So the deficiency, then, in the income tax statute as it is now applied to oil and gas, comes to about $2 billion dollars by their estimate. This is why I say there is now fairly general agreement that the application of the apportionment formula to an oil and gas producing industry in Alaska under the conditions that obtain here in Alaska results in this kind of a deficiency.

Now, there are alternatives which can be taken. One alternative is the approach that is embodied in the bill passed by the lower house here, which essentially redefines corporate income, which has to be allocated among the states....Alaska, and changes the apportionment

formula. This is one possible approach, and it is designed to yield higher corporate income tax payments from the oil and gas industry. A second approach is that of the bill that was before this committee of the Senate in the last session, and this involves separate accounting of oil and gas producing and transportation operations in Alaska to arrive at the income generated by those activities in Alaska to which there would be applied your regular, statutory corporate income tax... I'll return later on to discuss these two alternatives.

But there is a third alternative, and this alternative is that the Legislature may decide not to amend the income tax statute. This, in fact, is urged upon you by the industry, and the industry's position, I believe, is that the aggregate tax burden in Alaska is already the highest among the major oil producing states in the United States. By inference, this says that the deficiency in the income tax statute in the allocation of income to you, the deficiency in your corporate income tax receipts from the oil and gas producing industry is at least and probably more than made up by higher severance and ad valorem taxation which the Legislature has already imposed upon the industry. Now, this is not without relevance, I believe. It says something about the revenues that Alaska is already receiving; it has economic implications for the companies making up the oil industry both in Alaska and outside of Alaska, and therefore for the kind of decisions that they will be making. So I believe that there is a relevance for the Legislature in looking at it, and looking at it carefully, what the aggregate tax burden is, how it is built up, and what the implications are, and so I turn to that now.

I had this study by Arthur Andersen and Company only as long as it took me to fly from New York here; it's 12 hours from airport to airport so I had a fair amount of time to read this and other material, but I read it once and I must say that it all made the 12-hour trip pass very very quickly. What I say now about the study, I say tentatively but my first reading of the report suggests that it is a carefully prepared, highly useful document. I think it's been done in a highly profe sional manner and I don't believe that there is a real quarrel with what Arthur Andersen has done in any respect. One has to be careful in interpreting what the implications are, and I want to discuss those with you, but so far, insofar as they spell out what their assumptions are and how they built up their model, I think it is correct to say, as they conclude, that the aggregate burden of taxation on the oil and gas industry in Alaska is higher than in any of the other states. What does that mean? First of all, it's higher as measured by the technique used by Arthur Andersen; that is to say, they apply the statutes of other states to Alaska and to selected oil and gas operations in Alaska, that is to say to the Prudhoe Bay producing field with the model they constructed and the profitability of the Prudhoe Bay field for Sohio, British Petroleum, Exxon, and ARCO, and they applied it to TAPS and they measured what the presumed tax liability would be for these four participants for this Prudhoe Bay and TAPS operation and they said "What would have been the liability of those companies if in fact the California statutes applied here in Alaska, the Louisiana statutes applied here in Alaska, or the Texas statutes applied here in Alaska?" and their conclusion from one of their models, the simplest of the models, was that if the burden of taxation in Alaska

is 100%, then the California tax regime would lead to tax liability that would be 92% of Alaska's, eight percentage point difference; Louisiana's 85% of Alaska's. Well, absent Alaska, you get some interesting differentiations among the other states. If Alaska's not in the picture, California would be the highest, and Louisiana would have a tax burden only 93% of Alaska's, so there is always somebody who is at the top and there's a range of differentiation among them, but nonetheless I think the figures are revealing. More importantly, however, I think it raises several questions which you the Legislature must answer. The questions are easy to phrase; you must answer the questions. From the standpoint of a state perspective, oil and gas operations in Alaska differ very significantly from those in California, Louisiana, and Texas. First of all, oil operations in Alaska are very highly concentrated in production - production of oil and gas - and the transportation of oil and gas within the state, transportation related to the actual production. Highly concentrated in this respect. California, Louisiana, Texas have oil operations which are very much in balance. Production in each of the states, major producing states, but refining in all those states, major refining states, marketing, consumption of petroleum products in each of those states, all integrated operations of the companies operating there. So that, in effect, the way in which the taxation as applied to their industries is a reflection of the fact they have all aspects of oil industry operations reasonably balanced within their state. Secondly, each of these states has highly diversified economic and industrial activity. California, a major oil producing state, has important agricultural industries, important industrial activities, and important trade, service, and financial activities associated with all of that. Texas the same thing, an important

agricultural state, an important industrial state. Louisiana the same. What I'm saying, in effect, is that Alaska, or California, or Texas, or Louisiana, any state, conceives of its tax regime, what kind of taxes it levies, how it taxes various industries, and which specific tax it selects for different industries, especially extractive industries, must be related to the economic and industrial makeup of the state itself, and to say that Alaska has the highest burden of taxation is meaningful, but it must also be viewed in the context of what the economic and industrial composition of Alaska is also, and to say that the burden of taxation is to Louisiana taxes one of Alaska would be somewhat less is not to say the Louisiana legislators would have that complex of oil industry taxation if Louisiana looked like Alaska, or if California looked like Alaska. But these are questions which you yourself must judge, that the burden of taxation is meaningful, but it must also be construed and appreciated in the context of what the economic and industrial structure of your state is. Now, from the standpoint of the industry, whether the tax is unduly burdensome or not is not solely determined by whether the Alaskan taxes are higher than California's or Louisiana's or Texas', but whether they are so onerous that they militate against investment, particularly investment in exploration and development, and I put it to you that so far, there is in fact no indication that that's the case. Now, the Andersen study is uniquely oriented, as I said, to one aspect of oil and gas operations in Alaska, albeit the most important one at the present time, that is to say the Prudhoe Bay production and TAPS transportation, and I think their conclusions are highly relevant and I think meaningful in that respect. I would like to lay before you something which we had said from the first time we appeared before this Legislature to discuss taxes.

We did not think from the beginning that your tax policies had to be uniquely constrained by the Cook Inlet experience. We did not think that your tax policy ought to be carried away by the exhube nce of Prudhoe Bay. We thought your tax policies should be oriented pointing to a continuing incentive for the development of the potential oil and gas resources of the state. Now, what the Legislature has done over these years is to consider three different types of taxation imposed upon the oil industry which have different implications...For example, you have amended your severance tax over time. Now we've always said that one of the characteristics of the severance tax is that it's an impost on the gross revenue achieved from a producing operation, on the gross revenue, therefore it is not sensitive to the profitability of production, to differences in producing fields, and for that reason there has to be an almost natural ceiling of how much of the gross revenue you take away in the form of a severance tax before you start interfering with the incentives of industry to develop marginal fields. But this Legislature has also, in its wisdom, taken that into account, so that for some time now, you have had a severance tax which is graduated, and in a sense differentiates in the burden of severance taxation between fields which may have the same gross revenue but which have one of the highest peak rates of severance taxation among the oil producing states of the United States, one of the peak rates, that's the peak rate only for those producing operations where well producibility is very high. You have a uniquely low severance tax rate for those producing operations whose well productivity is very low; as a matter of fact you have what I believe no other states have, which is a complete abatement of severance taxation for marginal production in this state.

So that if you apply other states' taxation measures including severance taxation to what is the optimum circumstances of producibility at the present time in Alaska, wells that are producing on the average between 5 - 7,000 barrels a day, you turn out to be comparatively high, but if you carry this out for marginal operations in Cook Inlet excepting only insofar as the cents per barrel aggregates the problem that we talk about in a different context, you don't have onerously high severance taxes compared to other states. The income tax we've always suggested to you is the least onerous form of taxation insofar as it affects investment decisions by industry, because it doesn't impinge upon the margins. The income tax liability only goes up when profitability goes up. So there are qualifications to the way in which one must regard the simple statement that the total burden of taxation here in Alaska is already the highest. It is the highest if you compute it with the most productive operations in the state; it would not be so if you looked elsewhere. Nonetheless, I think it's true that insofar as the state's budgetary needs or revenue deficiencies are always seem to be made up by oil industry taxation, this becomes a disabling and discouraging thing for investment. If it is perceived that this is the way in which the taxation proceeds in Alaska, that if there is a budgetary need or a revenue deficiency that almost with regard to the continuity of taxation or the principle of taxation, the incremental revenue or budgetary needs will come from oil industry taxation. This can not be a matter of indifference to companies that have their choice of operating one place to another. And, if too frequently changes in taxation are dictated only by budgetary needs or revenue deficiencies, without regard for continuity in the tax regime of the state, then I think it can be disabling.

Now, nothing I said here should imply that Alaska ought to go ahead and amend its income tax. But neither does any of the evidence that I've seen that's placed before the legislature convincingly militate against review of the income tax, particularly if you choose seriously to consider amendment to the income tax which tries to offset the existing deficiency in your statute. If you do that, and you do it clearly in the context of the longer run tax treatment of the industry; for example, if it conduces to greater stability in your severance and ad valorem tax policy; that is to say if you amend the income tax to bring your income tax revenues more nearly into line with the actual income generated from oil and gas operations within the state, and if this, in the mind of the Legislature, is not just an addition to the aggregate load of tax revenues from oil and gas operations over the next 25 years, but is conducive to greater stability, that is to say otherwise it militates against what might have been alternatively increases in the cents per barrel tax, for example, then I think it could be a feature not only which increases the revenue for the state, but probably is more conducive and more constructive for the industry as a whole in terms of their ability to project the tax regime under which they operate. What I'm addressing myself to here now is not so much an aggregate increase over all the tax revenues from the oil industry - this is something you must decide, whether it's required, whether it should come - but the suggested amendments to the income tax as a constructive change in the overall panoply, the whole series of taxes which you impose on the oil industry.

Before I discuss the two specific bills before you, let me just say that, repeat an argument that you've heard, that any deviation from the commonly utilized apportionment formula will lead, for the companies

operating up here, to some form or another of double taxation; that is to say that they will be taxed on income earned up here in Alaska or apportioned to Alaska, and that if a formula or separate accounting is used that differs from what other states do, then in fact, one place or another, the companies will be paying taxation to two states on the same margin of oil and gas operation. It is cited, I'm sure you've seen this figure, that of the 44 states that have corporate income taxes, 40 use the formula. But of the 40, four of those 40 have themselves, in the infinite wisdom of their own legislatures, altered the formula. It's not the common formula that's used by all of them, 4 have altered the formula, New York, Florida, Massachusetts, Wisconsin, use sales as one of the factors in the formula, you know the property factor, the payroll factor. These four states still use the sales factor, but they've increased the weight of the sales factor to more than one-third, for reasons that their own legislatures considered to be appropriate to their own states, as I'll have occasion to mention, Oklahoma and Indiana use separate accounting for oil producing operations in their states under specified circumstances. And then in many of the states the definition of income which then is going to be apportioned by formula, differs from state to state. So there are variations already; there really isn't this unique uniformity which say that if Alaska deviates, it is outside of the fold. And as I said before, where there are these deviations, the selection of separate accounting, or in so many of these states, differences in the burden of taxation because California uses ad valorem taxation, has no severance tax, other states where they have severance taxes would not allow ad valorem tax, other states have combinations of them, some states don't even have corporate

income taxes. Where these differences occur obviously there are differences which are related to the economic and industrial structure of the state. I would like you to consider the things we're now going to say about income taxation in the context of the specific problem which you face here in Alaska, that you have a disproportionate amount of all oil and gas activity, largely focused on one function, which is the production of oil and gas and the related function of the pipeline transportation.

First, on the senate bill on separate accounting. What I'm going to try to do, again, is briefly discuss what I feel are the plusses and minuses, the advantages and disadvantages of the alternative approaches and you will bear with me if I'm repeating things which you have heard before. The issue has come up many times.....I would say that a major advantage of separate accounting is that it provides a direct determination of the income generated in Alaska by oil and gas producing operations. This is the function of separate accounting - to give you an independent estimate, independent determination, independent judgement, which means that when you tax that income under your corporate income statute, you are taxing the income which by definition, by calculation and by reporting has been generated by activities of the industry here in Alaska. This I say is a major attraction, advantage, a plus of separate accounting. I think there's another advantage for the state, not only in terms of the income tax itself; I think it provides meaningful data on the profitability of industry's producing and transportation operations here in the state which would be helpful and useful to the Legislature in its review of all oil and gas taxation. You would know something about this particular industry which is so important in your state and its profitability against which you can

review every aspect of taxation, not only the fact that you apply your income tax rates directly to income generated in the state. On the other hand, this is the negative aspect of it, I suppose. There are administrative difficulties. The administrative difficulties begin, of course, I think the greatest ones are probably the determination of expenses, the deductions, and depreciation, and the difficulties become particularly acute when the expenses or the expenditures represent transactions within a major corporation, that is to say, purchases by an Alaskan affiliate from an out-of-state affiliate which are the prices involved, the costs involved are they (IA) Why the problem of administration? It is said that companies can fool around with their tax returns when costs in Alaska are not actually out-of-pocket costs but payments due to other corporations. I have to assume, I don't know whether the Legislature agrees with it, I would have to assume that the personnel both of oil companies reporting tax accounts to the state of Alaska and the personnel of the revenue service here in Alaska auditing those accounts are all honorable gentlemen. I wouldn't assume that there's going to be malfeasance in the actual reporting. But the problem is more likely to be that where regulations laid down by the revenue department allow discretion on the part of the reporting company, they will, within the range of discretion permitted by the regulation, always choose those figures, those numbers, which minimize their tax burden in Alaska. Obviously they will do that. The question then is, to what extent can your regulations narrow the range of discretion and at least roll up a reasonable allocation of costs to the revenue and the gross profits generated here in Alaska. So far as TAPS is concerned, this is not a special problem here in Alaska, because TAPS is going to be

regulated elsewhere and the costs, their depreciation and the determination of profit of TAPS for better or for worse will fall under the jurisdiction of both the Federal government and the Alaska Pipeline Commission. But in any event, I would put it to you, that if the formula as now applied only yields 25% of the Sohio estimated..... only allocates 25% of taxable income to the State of Alaska, there is such a margin of advantage to be gained than improving upon the form of state corporate income taxation, that there could be considerable leeway for discretionary movements of costs back and forth before you are really disadvantaged; that is to say I believe that the administration can adequately be done and the margin of discretion not so great but that you would still have a major net advantage to the state. Now, it's been said that this separate accounting is impossible to administer. I've heard said that as a matter of fact there are representations and...(IA) before you that the quotation is impossible to administer and determine. As I mentioned before, there are two states that actually utilize separate accounting. For better or for worse, it can be done, it can be. There are problems there, but there can be adequate administration not too complicated and range of discretion may not be something you can entirely avoid, but within the range of advantage to the state. There's a second area, problem area of administration, however, that's worth very careful attention on your part and that's how do you arrive at the value of the oil before you start deducting the costs, depreciation charges, to arrive at the profit for a producing operation. How do you arrive at the value of the oil as the basis for calculating income? Well, you do it already. It has to be done now for purposes of royalty and production tax calculations. So for better or for worse,

you do have a valuation of your oil at the wellhead for which you can derive, through separate accounting, an estimate of the producing profits, the producing income. But what if the value of the oil at the wellhead is depressed by low prices obtained for your oil at the refineries in the lower 48 states to which it goes. What if that happens? If the price obtained in California, or in Texas or Louisiana, if these are depressed prices, then your wellhead values are also depressed, for royalty purposes, for severance tax purposes, and they will also be depressed for income tax purposes. Why depressed? U.S. regulations, which may depress, so long as we have price control, which may depress the netback value. California's surpluses would require higher transportation costs to move it to the Gulf. A lot of things can interfere with your obtaining as high a value as you think might be warranted at the Prudhoe Bay point of production. What can the state do about it? But the basic concept is whether you want to accept that or not. That is to say, if Alaska's income tax revenues are going to be related to the profitablility of production, and if the reality of operations are such that somehow the wellhead values are depressed by adverse marketing circumstances, whether it's by U.S. government fiat which sets price controls or whether it's California surpluses or whatever, this is a fact of life. Now, the separate accounting technique does in fact expose you to the uncertainties of the value of the oil produced. If the value of the oil produced in the future improves through a combination of circumstances including the virtual elimination of U.S. government price controls over the years ahead, increase in world oil prices, increasing tightness in world oil balances sometime in the 1980's, all these will work to the improvement in the value of your oil in its

markets, and also at the wellhead, and it will improve the profitability of the producing operation and this will be reflected in your corporate income tax revenues if you apply your statutory rate to a separate accounting of profitability. At a point in time when, as today, the value of a good portion of your oil is depressed by circumstances beyond the control either of the companies or the State of Alaska, this would give you lower corporate income tax revenues from separate accounting than would otherwise be the case. But now lower revenues than you would get under your present apportionment formula.

One of the arguments, one of the criteria which has always been stipulated as an important principle of taxation by the industry and I think considered by the Legislature also, is how equitable is the burden of taxation among taxpayers, how equitable is it among tax payers? I put it to you that you cannot through your present income tax statute get an equitable burden of income taxation upon the companies operating here in Alaska, not through the apportionment formula. You can get equitable burden of taxation through separate accounting, because in effect what you say is that we will tax each company 9.4% on what, on that company's profits or income generated here in Alaska, Under your present statute, the burden of corporate income taxation is very inequitable here in Alaska, very much so. Industry hasn't said much about it, but it is so and the best evidence of that is in the Andersen report itself, where again they have for the four major participants in Prudhoe Bay and in TAPS calculated both the profitability, the income of those four companies, according to their model, and what the tax liability of those four companies would be, it leads to some very astonishing results. For example, the Andersen estimates of Exxon and ARCO's profits from their parallel participations in Prudhoe Bay and in TAPS, is over

25 years of operation, 343. The tax liability, if it were proportionate to equities of these companies, they have the same equity, the tax liability would be $343 million over the 25 years, Exxon, $343 million, ARCO, $343 million. Applying the income tax liability under your present statutes, Andersen estimates that Exxon will pay $530 million taxes in the state of Alaska. ARCO will pay $208 million to the State of Alaska. Both with the same income from the producing and transportation operations, but with a tax liability that differs over 25 years by as much as $300 million. This is a corporate income tax statute that you have which not only is deficient in raising the corporate income tax revenue for the state proportionate to the profits generated in the state, but which produces an inequity such as this between two taxpayers who in Prudhoe Bay and TAPS would actually be earning approximately the same profitability on their operations.

Turning to the house bill, and I'm going to compare the two, one against the other in just a moment. If you turn to the house bill, there are three interesting, three features, which depart from the present statute. The first one is a change in the definition of the corporation's income which is going to be allocated. The second is a change in the formula which takes care of the allocation. And the third is a change in the definition of what goes into the formula which is at least by inference intended to bring with the tax regime of Alaska or expose to Alaska corporate income taxation a portion of the profitability of oil companies operating in the Federal offshore areas but serviced from Alaskan (IA). The change in the definition of corporate income that's going to be allocated is a simple one. It says in the bill that the income to which the apportionment formula will be applied will be either

book income as reported to stockholders by the corporation that's operating here in Alaska, that is to say its world-wide income as reported say in its annual report to stockholders certified by its own public accountants, or taxable income as reported to the Federal government or federal income taxation, whichever is the larger. There can be several reasons for moving from your present base of allocation to book or to federal. One is whether or not the Legislature believes that the definition of taxable income as laid down by the Federal government is the definition you want to accept. You heard the arguments in the last session of the Legislature that the Federal government, in defining taxable income for oil and gas operations, provides a whole series of possible tax advantages which in effect tend to reduce the taxable income on which the Federal tax is computed and you use that and reduce the taxable income which is allocated to Alaska. Well, this is a question for the Legislature to decide, whether or not the Federal concept of expensing of intangibles, which is probably the most important one, or accelerated depreciation, or whatever is involved should enter into tax base or into taxable income or not. These things could be changed, that is the basis of your present statute, if you want to say that companies can't expense intangibles, that they'll have to capitalize and depreciate intangibles for purposes of Alaskan computation. But the other reason, which I think is a more pragmatic one, is just taking one or the other, whichever is higher, gives you a higher base upon which to make your allocation. Very pragmatically, what it does is it increases the income of the corporation in the eyes of the revenue department of Alaska when it starts applying its allocation. It's just it would yield a higher total income for apportionment. Now, the change in the formula for apportionment involves the

elimination of the sales factor and its replacement by an extraction factor. As you've all heard, the sale factor militates against the apportionment of income to Alaska because the bulk of the oil and later on the gas produced in Alaska will not be sold in Alaska so you have relatively low sales in proportion to the profitability of the producing operation. And so you have small sales factor, and by averaging process, you have a small apportionment factor as a whole. If you substitute for sales extraction, you will then be taking into account the volume of oil produced here in Alaska in proportion to the corporation's total production of oil and gas.

Now, it looks on the face of it as though this approach is a cleaner approach from an administrative standpoint. Book value, as determined by the corporation, book income as determined by the corporation, without any reference to the Federal taxation or the Alaskan taxation or anything else. They're reporting what they think is the approporiate income to their stockholders, the State of Alaska takes that and, since most corporations will almost inevitably, not always, but most often show higher book income than Federal taxable income, it's a safe bet that if you have your choice of the best of either one from year to year, you're going to be increasing the whole thing. And you keep the formula except you change one factor. But I put it to you that I don't chink that the administration of either the income base or the formula is really as simple or clear cut as it seems. First of all, if we choose either book value or Federal tax--book income or Federal tax income, whichever is higher each year, this would be determined by your revenue department and it means looking behind the figures to a certain extent, there will be variations from year to year, back and forth adjustments, I submit there are a lot of difficulties which may

be involved. It will have to be monitored. I don't mean to exaggerate the difficulties, but neither do I think we should exaggerate the simplicity of administration. The extraction factor can cause very, very serious doubt. The volume of oil and gas produced in Alaska on a (I.A.) basis is probably fairly easy to estimate company by company. You go to the world-wide production of oil and gas by these companies, you are moving outside the regime of the U.S. and you're looking at oil production and increasing the gas production under institutional and governmental arrangements which not only vary fantastically from country to country, but are in a process of change over time. For example, if you went back 10 years when virtually all the production of major internationally integrated companies was under concessions, it was very easy to compute what their gross production of oil was and what their net production of oil was after a royalty sale. But now, concessions are increasingly disappearing, so the concept of equity oil is disappearing. You have production under work contracts, profit-sharing contracts, production-sharing contracts, joint-venture contracts, and the way the company is compensated, whether it be in dollars or in oil, and the definition of whether that oil is owned by the company or is lifted by the company in behalf of the national oil corporation and moved into international trade on behalf of the national corporation, these are fantastically difficult things to disentangle. And I suspect that when it comes to getting the denominator of this factor in your apportionment formula, oil and gas production in Alaska as a fraction of world-wide oil and gas production, there can be many difficulties. And the problems will have to be resolved, not just once, but almost year after year is the circumstances of operations in the different

companies in the world, the Middle East, and in the Far East, and in Latin America, and in Europe. The answer is that you've got a pragmatic approach in the house bill that I agree would...all of the revenue department calculations, would yield higher tax revenue; I suspect that you really don't know how much more it would yield. You don't know how much more because the effect of the change in the definition of taxable income and the change in the formula can only be obtained if you go back in history. If you look over the last 5 years, you know what the difference would have been in those past 5 years, but it's very difficult to know what it would have been over the next 5 years or the next 10 years. You've got a pragmatic approach which says we are raising the taxable income which we're going to allocate, we're going to improve the allocation formula, pragmatically we're pretty sure that is's going to yield higher income tax revenues from Alaska.

Now the third feature is the bringing into the numerator of the formula the property, payrolls, and extraction, the appropriate offshore figures if in a sense the servicing is from an Alaskan base, and if there is not obligation to another state, which says in effect that Alaska will have allocated to it a portion of the unitary corporate income world-wide allocated to Alaska, not only in proportion to the property paid on the extraction from the State of Alaska itself but also from Federal offshore areas which are proximate to Alaska and served from Alaskan bases. This is a straightforward concept the legalities of which I leave to the lawyers. You must decided in your wisdom whether or not you want to attempt this or not.

Well, I've tried to touch on the highlights of these alternatives. Now let me simplify by making the comparison and telling you what in my judgment are the most relevant differences between them.

First off, either one of them, if adopted by the Legislature, would increase substantially the state's corporate income tax revenue. Either one of them. I think there's an available estimate by how much the separate accounting would. I don't think one can get quite that close in the other case, in the case of the House Bill, but either one would increase substantially the state's income from the corporate income tax. Both of them, I think, involve complications of administration. I don't think either of them involve administrative complexities so great that that should be the reason for the Legislature to say, "No, we won't adopt the House Bill," or "No, we won't adopt the Senate Bill." There are administrative complications, but I don't believe that these are complications so great that that should be the decisive consideration in the mind of the Legislature. The revenue department could administer either one of them, and whatever the complications may be, there will be certain uncertainties and there will be costs of administration, but there could be an adequate degree of administration, I think, of either one of these bills. I don't think the choice between either one should rest upon administrative difficulty - you shouldn't reject them for administrative difficulty, accept one or the other because of less administrative difficulty.

The big advantage of separate accounting, as I said before, its unique advantage, is that it addresses itself directly to the income generated in Alaska. This is an important feature of the bill, and I think there's an advantage for the State of Alaska in taxing the income that is generated here and measured directly here. As I said, not only is the basis of your income tax, but also because it gives you a fix on the circumstances of the industry with respect to all forms of taxation.

Now the industry may fear that this leads inevitably to higher taxation in all directions. I submit that's not necessarily so. There are times when your direct approximation of industry profitability may cause this or successive Legislatures to go slowly on oil industry taxation when you have the realities in front of you. The purpose is not to get higher taxation, but it gives you a direct fix on what the profitability of the industry's operations are. In contrast, and this is a very important feature of the House Bill, and also of your present law incidentally, it largely, it largely isolates the income taxed in Alaska, and hence the Alaskan corporate income tax revenues, from what happens in Alaska. In other words, you're getting your share of the corporation's world-wide income. Now, if Alaskan profits go up, okay, their world-wide profits go up, but you get a very small share of that factor. But if Alaskan profits go down, therefore the corporation's world-wide profits go down, but not by a very big percentage, and what you get allocated to Alaska is what you get in your income tax revenues, is largely isolated from the impact of adverse events here in Alaska. Now, your present statute does that also, because you work with, again, with Federal taxable income allocated by formula, and in the House Bill, you work with book income as reported to stockholders, a change in the formula. You largely isolate your income tax revenue from what specifically happens to the profitability of Alaskan operations, because you're taking a share of world-wide, and you're taking it by a fixed formula. What happens in Alaska doesn't have that effect on the world-wide operation of many of these companies. Now, is this a plus or a minus in the eyes of the Legislature? That's for you to decide. From the standpoint of revenue, it isolates you. From the standpoint of a form of oil and gas industry taxation which has the least effect upon decision making, upon marginal

operation, and so on, the closer you get to true income when you tax it, the better you are off. But you sumit yourself to certain uncertainties. You take the plusses when profitability is higher, you suffer the minuses when profitability goes down, or does not go up as high as you would have liked it to have gone up, where your budget estimates anticipated it would go up. Separate accounting gives you your revenues on the direct taxation of the income generated here, or the estimate of it given the vagaries of all administration accounting. The feature of the House Bill is it largely isolates you from the specifics of Alaska's oil and gas profitability and the income generated directly here in Alaska. And of course the third distinction is that the House Bill could bring taxable income and income tax revenues to Alaska indirectly from off-shore operations, indirectly insofar as the offshore operations proximate to Alaska raise the total earnings of the corporation. and your formula is improved by getting their property and payrolls and production off-shore into your apportionment formula. It could give you indirectly both taxable income and income tax revenues from those operations. Again, the Legislature must decide whether this, from a standpoint of revenue, is attractive to the state of Alaska from the standpoint of relations with other states and with the Federal government, and attempt to extend the range of taxation of Alaska, whether this is something you prefer to do or not to do, but this again is a legislative choice.

Now, what I try to do in summary, as you consider these two bill, is to make these four points. One - either one of them will raise quite substantially the income tax revenue from the companies operating here in Alaska in production and transportation. The feature that stands out in separate accounting is it gives you a direct fix on the income generated by operations within the state. And that of course, I think, is of value

to the Legislature quite above the tax, knowing that. The feature of the House Bill is that it isolates you from the uncertainties of the income generated directly here in Alaska, gives you a share through apportionment, or through allocation, of the corporation operating here, a share of that corporations world-wide income. A fourth feature of the House Bill does not attempt to extend the jurisdiction of the Alaskan corporate tax regime to the offshore areas by a change in the numerator of three factors of your apportionment formula.

I've exhausted that particular material I wanted to call to your attention, and I hope I haven't exhausted your attention span. Now I'll place myself at your mercy and whatever questions you have.

QJESTIONS AND ANSWERS OF MILTON LIPTON

BEFORE THE HOUSE/SENATE RESOURCES COMMITTEES

January 25, 1978

Q. POLAND: I'm going to lead off with the first one, and it has nothing to do with income tax, because it's an issue that I know is going to come before us this session and that is the floor, cents per barrel.

LIPTON: The legislative history cents per barrel was introduced simultaneously with the step schedule of severence taxation at the last moment at the time when the legislature was most concerned that unanticipatedly high pipeline tariffs would depress wellhead values, resulting in lesser income than the state would like to put into its budget over I think it was a 2-year period when projections were being made in the cents per barrel being produced. Let me just say that from the revenue standpoint, it's a tremendous problem to the projections that the State has to make from time to time and what seek and what it's going to get from oil and gas operations. The establishment of the floor, it gives you assurance that whatever happens, this is the least that you're going to get. But it also says something that you don't say in any other aspect of your severence tax legislation, namely that the State abstracts itself from the realities of the environemnt in which the oil companies are operating, that come hell or high water, whether the industry, for whatever reason. is

able or not able to get the wellhead value on which the State's percent of wellhead value tax is calculated, the State would get at least that. It's clearcut as a revenue measure. It denies the principle of taxation which is built into the percent value. It says that the higher the producibility of the wells, the greater will be the tax imposed, percent of that gets higher; as your producibility goes down it gets lower. But let me just give you some facts on how it's operating today, the cents per barrel. Now the example that I'm going to give you is based upon restricted production because of the pipeline problem up at Prudhoe Bay, and we have used by our calculations what you're using, the assumption that average production per well is 5,000 barrels per day. This is under conditions of restricted production. Now, there are two cases which we've taken in order to illustrate the way in which it operates. We've taken what I would call a "best netback" case, which in effect is a close approximation to where a company such as ARCO would be producing, out of it's share of 5,000 barrel per day wells, and marketing it's oil in California, so that it gets a relatively favorable netback; that is to say when you're finished selling your oil at over $13/barrel to refineries in California, you pay your ocean transportation and your pipeline costs, you come up with a wellhead value of something slightly over $6.52. Now, under those circumstances, the severence tax liability of a company such as ARCO operating under those circumstances, is about the same whether they pay cents per barrel or percent of wellhead value. It comes out to around 62.6 or 62.7¢ per barrel. This is what they would pay in severence tax to the State of Alaska on the basis of it's production from the 5,000 barrel/day well. And that works out to about 9.6% of wellhead value, in either case; that is to say the break-even point, the point of indifference whether you're percent of wellhead value or cents per barrel is around, the break-even point is very close to $6.50,

and so they would paying 62.6-62.7¢, and that's about 9.6% of wellhead value. Now if you take the opposite extreme, take a comapny such as SOHIO, which is producing and selling it's oil in the most distant market, the US Gulf Coast, and you deduct very high ocean transportation costs, including trans-shipment to get through the Panama Canal, and you deduct it's pipeline tariff, and all of these are based upon the company's own pipeline tariffs, which they are in effect charging at the present time, then you get a netback value of something under $3.80. Over $6.50 to less than $3.80. So far as these two companies are concerned, these are realities of life. The one company, able to get it's oil at a good price in California with relatively low transportation costs having a netback of over $6.50; the other is equally a fact of life, the inability to market all of it's production with a very substantial volume of oil, a significant proportion of it's total, having to incur high transportation costs to the U.S. Gulf, and then netting back less than $3.80. It will pay exactly the same severence tax, 62.7¢. It will pay the same severence tax because the cents per barrel floor is operative. It will pay the same severence tax. That severence tax is 16.5% of it's wellhead value, which is actually higher because it's on a cents/barrel basis then the top of your range in your severence tax bill, which is 12.25% is escalating value % of wellhead value. So here you have the contrast between the implications for the State of Alaska and the implications for the producing companies. For the State of Alaska, the floor, the cents/barrel, provides guaranteed income a part, and the devil take the economic circumstances under which the company is operating, whereas, in the companies, they in effect, have to commit themselves to the severence tax liability, despite the fact it becomes a very large proportion of their wellhead value. I pointed this out

previously in the case of Cook Inlet, where the problem was not the ability to dispose of the oil with differences in netback values, where the problem was a distinction between upper tier oil and lower tier oil imposed upon the producers in Cook Inlet by the administration of price ceilings by the federal government, where your cents/barrel floor became very very onerous some of the particularly low profit operations in Cook Inlet, simply because the cents/barrel was an exaction from them for the purposes of your revenue, but became a very large percentage of what the value of their oil was at the wellhead by virute of federal tax regulations. Now, this is a dichotomy, you know, this is a dilemna that one can't get away with. If the state wants underpinning in terms of it's severence tax revenues and opts to do this by cents/barrel route, it inevitably is going to involve inequities and tax burdens upon certain producers either because of federal controls on the process they're allowed to sell it on, or because of the economic facts of life that only a certain proportation if the production has to go to a distant market at a relatively high cost themselves; which to a very considerable extent they absorb, although to the extent that it depresses their wellhead values, it affects your royalities, although not your severence tax revenues, so, this is a dilemna which you face, whether or not you will insist upon protection for the state's revenue, and the devil take the economic reality, or whether you go the other route. Now I suspect that there's always a compromise in the way in which these things are determined upon in the course of amending your regulation, and it certainly, I would think that the cents/barrel which you adopted in the last session of the legislature, that is to say the particular amendment to the severence tax bill which you enacted last session, was designed under normal circumstances not to impose onerous

cents/barrel taxation upon the company, that is, you had anticipated that a $6.50 wellhead value will obtain for most of the production on the North Slope, in which case the cents per barrel really is not onerous, because the companies were paying on a percent of wellhead value. So if your cents/barrel is geared to hurt a company only if the wellhead value falls below $6.50, and you don't anticipate it falling below $6.50. Oh, this was a kind of compromise, protection against what might go wrong. Well, a lot of things went wrong. Among the things that went wrong were things that were partly beyond control of the company. Namely the adverse economics of disposing of the Prudhoe Bay production beyond California. One of the other things that went wrong, not necessarily wrong but went counter to the expectations of the Legislature, was that the pipeline tariff posted by the companies and now applicable pending adjudication by the Department of Energy, the successor to the ICC, is a very high pipeline tariff. This tends to reduce the wellhead value. So partly the companies have in effect shifted wellhead value down, because of the profit of the pipeline, but partly it has to do with economic circumstances, the ability to market at a good market, the prices in California are not that different than in Gulf Coast, for competitive reasons, but that's a different story. Basically, the price that they have to compete against is not much different in California than in the Gulf of Mexico. The big difference is the difference in transportation costs and there is a difference of $2.50 in transportation costs gross, and probably somewhere between 70 - 80¢ net after taxes out of pocket to the companies to go all the way to the US Gulf Coast.

Q: Sumner: I believe that I heard you say this morning that if we keep foremost in

of mind the subject of future investment incentives in Alaska that we're going to have to weigh very carefully, even though we may want to restructure the tax structure here in Alaska, but as it relates to the aggregate of the total taxes that are being paid, I got an impression that you thought maybe we ought to think cautiously of how much we might increase in aggregate the taxes that are paid as it concerns the future investment incentives.

Lipton: I think that's right. I think that no industry can be indifferent and because the industry is important to Alaska, no legislature can be indifferent to the aggregate tax burden. I think that's quite a different thing from simply being overwhelmed by a statistic which says this industry is already paying, given our assumptions, somewhat, 5% more, five percentage points more than we would be paying in California. There's a shadow area between where tax burdens or expected tax burdens suddenly are going to affect industry investment incentives, particularly in the area of exploration. One thing you know, that the exploration dollar does not go automatically where the tax burden is least. The exploration dollar tends to go where the exploration prospects are best. You can surely shift it somewhere in this gray, shadowy area, where the tax burden get so overwhelming, or if there is somewhere the perception, and I think this is one of the things the Legislature surely will want to consider, that if the perception is that changes in the tax structure, as it is applied to the oil and gas industry, are regularly taken, largely with the view to budgetary needs or revenue deficiency, and hardly ever with the long view as to what is a reasonable tax regime for the state, then I think it creates impressions which may be even more important in discouraging investment than the fact of the tax burden per se. And this is why I think in all of our discussions with the legislature, we've

tried to emphasize that a balanced tax structure, in which each of the three elements, which are the income tax, the severence tax, and the ad valorem tax, have to be weighed somehow by a different criteria because they have different effects on the industry, but if it's balanced and if there's a concept of continuity over time, that under those circumstances we have not yet seen this legislature placing such extravagant burdens on the industry that if they had sufficient confidence in, you know, the trend over the future, that this would not discourage investment.

Q: Sumner: What is your guess to the liklihood of depressed oil prices in Alaska to resolve the oil activity throughout the rest of the world. Right now in terms of the efforts to increase or step-up production in many areas of the world and the West Coast surplus to some degree, do you see that as building on itself?

LIPTON: No. I don't think that there's anything in the nature of oil exploration world-wide. One has to have an incentive, and two, has to have a purpose. The incentive is the hoped-for profitability of the relatively high foreign oil prices. The purpose is to try to create the reserves, the expanded reserves that will meet world oil requirements in the future. If I may digress for just a moment, we're living in a strange circumstance. The productive capacity in the world today is considerably larger than world oil requirements. The reserves of the world today are really not very great compared to what future demand is going to be. We're facing a temporary surplus of collective capacity but a long run deficiency in the reserve base for oil, so the exploration is going to go on. I don't think there's any adverse effect on Alaska. I think the long run opportunities for marketing Alaskan oil in North America at prices that are attractive from the standpoint of the profitability

of exploration ventures, from the standpoint of the state's share of the economic value, the prospects down the line are terrific, and if the geologists of the company see the opportunities here, the exploration money will come.

Q: Sumner: I'm trying to determine what period of years might be involved in your projection there and weigh that against what is scheduled to be the peak production years, Prudhoe Bay for instances, which is right now of course one of the largest reserves in the state. You know, if it's ten years down the road, we won't be competitive, or we will have marketed the major part of this oil from that reserve. So does the long term picture look like three years, four years before improved or upturned pricing structure.

LIPTON: I don't think your prospects are all that adverse even at the present time. You're suffering a temporary disadvantage by virtue of several things, one, price control and two, the fact that your production is surplus to the ability or the willingness of California refiners to take that amount of your oil, and this will become aggravated next year when the production goes up substantially and the demand for all crude oil in California refineries is not going to be large, so that a larger portion of your oil is going to move beyond, but there will be in the interim, there'll be improvement in both world and US oil prices, world oil prices because of the level detemined by OPEC and US oil prices under whatever compromise on energy policy evolves.

Q: SUMNER: On the near and the long term?

Q: HUBER: Milton, would you go further into the relationship between cents/barrel in relation to vertically intergrated companies allocation to expenses and profits, sales, processing, production, transportation, such as possibly what would be the difference in situations with BP?SOHIO for instance if they have decided to take not the maximum in the transportation but to take

a minimum from the pipeline transportation and maximize their production profits.

LIPTON: Well, Senator Huber, you pick a difficult example. British Petroleum has a direct participation in the pipeline, so whatever the after-tax profitability of the pipeline operations are, for its undivided share of tax it accrues 100% of the profitability. Now, whatever the effect will be upon the wellhead value at Prudhoe Bay, therefore on the tax liabilities of Prudhoe Bay producers, therefore on the after-tax profits of Prudhoe Bay producers, affect British Petroleum only through it's partial ownership of SOHIO. What the net effect would be, I would assume without doing a great deal of number work, British Petroleum looks at 100% interest on the one hand and less than 100% interest through SOHIO's participation in Prudhoe Bay, would in a sense place greater weight on it's 100% equity which is the pipeline participation than on it's indirect participation in Prudhoe Bay. But you see, neither this company nor any other company has complete flexibility in how they operate. The tariff that British Petroleum set TAPS car set on the same basis as all the other operating companies; that is to say they chose to calculate a tariff based upon the old ICC 8% rate-making modified by the 7% consent decree with Department of Justice, and so they all use the same principles, they've got approximately the same tariffs depending upon their debt proportions and so on. British Petroleum behaved exactly the same way, and obviously, if it did behave the same way as the other companies, it was thinking in terms of what seemed, from their assumptions, to be an appropriate policy. I really don't know that there's so much difference among the companies. The other part of your question is a meaningful one. If you have integrated operations, and if in fact the

tax exposure of profits earned in one place or one function is different, in other words, if you earn the profits here you pay more taxes, therefore you like to have the profit somewhere else. If you earn the profits in production, you pay higher taxes, therefore you like to have the profits in transportation. This is true of any company that has the possibility of shifting through transferring pricing the profitability from production to (IA). But the companies don't have freedom here in terms of the pipeline. . . The issue of the pipeline tariff really I think should be divorced from the taxing policy of the legislature, at least at this moment in time because it's now at issue. First of all in the courts and certain legal respect, and more importantly, it's at issue before the Economic Regulatory Administration, Department of Energy, which is looking into both things, both what the capital base is for the de.. nation of tariffs, and two, what the proper rate of return ought to be. And this is now in adjudiction. And your own Alaska Pipeline Commission is seized with the issue of the tariff between Prudhoe Bay and Fairbanks. It's going through it's own administrative process, and if it turns out that in fact, the administrative decision upheld in the courts is that the pipeline tariff is too high you will get higher wellhead values and (IA) the companies whatever their predilection will be low side of profitibility and tax exposure, are going to have to follow suit.

Q: HUBER: I can recall the arguments when we put in the cents per barrel, and it was to protect the state, if I remember right, through revenues even if the oil would fall to zero wellhead value, and even if the allowed transportation should be extremely high. Coupled with that was the figures given to us many times that most oil pipelines were allowed to 8% maximum but the history of the ICC shows that they weren't, the prices were such that they weren't taking only 5%, 6%, 4.5%

of these figures and many others several times showed that most of ICC-controlled pipelines were not charging that maximum amount. Here we have the situtation that you brought up, SOHIO is paying 12.25% effectively because of the floor

LIPTON: (INTERRUPTS) (16.5)

Q: (continues) you said 16.5% effective, and yet every one of them is change and it seems like they have decided that the Alaska pipeline that the old proportion will be used, they will go for the maximum they can and I'd hate to see what it would be if we didn't have the lid of 8%. It looks like you've got a whole new ball game here.

LIPTON: Senator Huber, I think I do recall your reference to the past.

We have been rather vocal on this subject of ICC tariff regulations and pointed out the history of two things, one, that the 8% rate making rule was a monstrous rate-making rule because it had been adopted in an economic environment which no longer existed and the ICC for unfathomable reasons has never gone back and reviewed the 8% and the rate-making rule, and because of that, we raised the whole question of the effect upon netback values, wellhead values, and we strongly supported the establishment of the Alaska Pipeline Commission, which gives you your own avenue of administrative regulation. But you know, an interesting thing happened. All of a sudden the ICC came alive, and the ICC said that that old 8% rate-making rule is no good. We're going to go to a 10% rule. But you know the 10% rule yields much lower tariffs than the old 8% rule. The 8% rule was 8% after tax and after recovery of interest on total valuation. The 10% rule, and there's nothing magic about it, and I suspect that in the course of time the review of the whole issue will nmodify that too, but the whole point of the 10% rate-making rule is not to give a higher rate of return. What is said in effect was the 10% shall be the total return to capital; that is to say your interest charges,

which are such a fantastically large thing have to be covered by that 10% return of your capital, and this led to ICC-proposed tariffs which were $1.50 or so on the average below what the companies have posted. Now I suspect that the change in attitude of the ICC did not arise of a vaccum. It was a reflection of a long discussion on the implications of the rates that had taken place before your legislature over many years and argumentation over what the appropriate rates of return should be, what the appropriate rate base should be, and what the resulting tariff would be, and I think that at this stage of the game, from the standpoint of Alaska, not from the standpoint of the companies, there is reason to anticipate at least that there will be very very serious review of these pipeline rates. Now if it turns out that after all administrative review and after all judicial review, that the company tariffs stand, where are we left then? What's the judgement then? That everybody's wrong? The companies are wrong? The Department of Energy io wrong? The courts which uphold them are wrong? The Alaska Pipeline Commission hasn't been able to do anything. I doubt that that's the case. But if all of that does transpire, what then is the implication? Maybe the tariffs are not of out line. If it's done through all process, I don't think that's going to be the result. I think the strength of the Alaskan position is in everything which has transpired over the last few years, including the arguments about the rate base, the arguments about the rate of return, and everything else, I think this, I strongly believe that this is a judgment, a personal judgment, that you will have substantially lower tariffs on TAPS than were promulgated by the companies themselves.

LIPTON TESTIMONY

Q: HUBER: Just one final follow-up. It is within our responsibility, purvue as legislators for the State of Alaska's people to determine at what point do you say this is what we would do in fairness, or do you say if it isn't economically feasible to produce this oil at this time because of transportation problems, federal rules that are in many cases arbitrary assumptions, maybe we shouldn't get rid of this depletable well at this time. The cents per barrel tends to do that, what I'm talking about, rather than removing it entirely, or move the cents/barrel down to where we could bring more fairness to the companies as you say, what do we do with ...

LIPTON: Senator Huber, if you're talking about revenue per se, it's a persuasive argument. If the function is to provide an underpinning to state revenues, the cents/barrel does it. Now, the other question is what are the implications when you choose to buttress or underpin state revenues by doing this? First of all, what you see is a kind of ad hoc taxing policy, increasingly year after year dedicated to our budgetary needs, revenue deficiencies, or whatever the case may be. There are circumstances which may militate in that direction, if it's necessary, if the state faces a crisis. But you must always ask yourself, is this to be the principle of taxation that you'll follow in every legislative session, or are you willing to say that the state has an economic interest which is represented by, first of all, it's royalty claim in the lease, secondly by principles of taxation which have been evolved over sessions, and only under extreme situations do you start intruding unique revenue problems as the basis for change in the tax liability in one year or the next year or the third year. I have no argument against the necessity of doing so from time to time, when abnormal circumstances intrude. I do think that it

causes, the question is asked of me so many times, including just this session, where do you start adversely affecting corporate investment decisions, and I said thenand I still feel that you could with the burden of taxation do it, but more likely, the kind of changes in the burden of taxation really won't have that much effect, but if there is a perception that tax policy always is detemined with a kind of a unique view toward the budgetary exigencies and the revenue deficiencies of the moment, and there seems to eb no continually over time, that would have a very adverse effect.

Q: HUBER: By possibly reducing the floor, and I do hope that in some cases this might be a viable suggestion. I just can't get it with our responsibility that floor of 62.5 ¢ a barrel, for Alaskan oil now at least that's the floor on severence tax, and I can't see how that could be effective now when this same oil it's competing with throughout the world, other countries like Arabia, are taking $10.00 a barrel, we're taking too much at 62.5¢. I just wonder if we're making our discussions in the right range. We shouldn't be making off somewhere halfway in between somewhere instead of down below the bottom one.

LIPTON: I'll give you a very quick answer to that. Saudi Arabia in effect takes more than $10 a barrel for their oil. But let's assume that you'll be satisfied with a modest $10/barrel taxation on your oil. You take $10/barrel for your oil and the oil has to be sold in L.A in competition with Saudi Arabian oil, or $13/barrel. Now you have left $3/barrel to pay your transportation costs from L.A. to Valdez, never mind the profit on the pipeline, your pipeline costs from Valdez up to PrudhoeBay, the costs of producing the oil. $3 won't do that. That's why you can't get $10 for your oil and Saudi Arabia can

get $10 for it's oil. Furthermore, you are not a Saudi Arabia in Alaska. Let me be presumptious for a moment in addressing the Alaska Legislature. You are not a United States in Alaska either. You're living as part of a nation which also has a tax regime. The United States has all forms of taxation upon oil and gas operations, including your oil and gas operations here in Alaska. The United States has a policy with respect to development of energy resources, the pricing of energy resources, they may be unattractive in Alaska. They are largely tax regimes attractive to the oil companies, the price and policies are attractive to the, but never the less, it is our national policy and it seems to me that the State of Alaska in its perception of how it treats the oil industry, must do so as part of the United States talking about an oil industry which is also part of the United States.

Q: HUBER: It just seems like we've got about a 20 to 1 difference there, and I hate to get working below the one figure in figuring where we should come out when I have a feeling it's somewhere between the 1 and the 20 instead of below the zero line, below the 1 line. And I just can't relate it.

LIPTON: A, Senator here, let me put it this way. There are companies operating here in Alaska who are operating in the Middle East, and earning in the range from .15¢ to .21¢ a barrel for their producing operations. And it's a bonanza to them. A fantastic bonanza, ever so much profitable than any operation in Alaska. If they earn as a margin of after tax profit in Alaska $2 a barrel we couldn't come close to the profit ability of middle east operations. Look at the fantastic difference in investment that's involved. What's of interest is not just how many cents per barrel we take away after cost and taxes, but how much of an investment of that is necessary to do it. There's a tremendous difference. I'm not addressing myself again to the fact the industry could not

stand any increase in taxation here or it's too high now. This is a very difficult thing to arrive at and this is a thing the legislature always has to balance. But I don't think, this is my only point, I don't think that the criterian the legislature should use in deciding whether the taxes are too high, or whether in fact they should raise taxes on the oil industry here. That they should look at the government take or the taxation in foreign producing countries. It's completely irrelevent.

Q: HUBER: Could you tell us better and more direct how should Alaska get it's honest, true, fair share both as a property owner and as a taxing entity if we don't use comparative means. That I think is the level we set up.

LIPTON: You're comparing yourselves with other tax jurisdictions which are also state states in the United States. I mean this is one of the reasonable comparisons. And you look at one form of taxation which is a corporate income tax and try to get what is a, well, you've got a corporate income tax rate. The problem is that that rate is going to apply to too low an estimate income. You can correct that if you choose. You have a severence tax which has evolved over time, I think in a very healthy direction. You have increased the ceiling percent of well head value over time not to any onerous letters compared to other states. You reduced it at the other end. You tried to provide not only for the state's revenue under optimum circumstances, but for protection of larger industry operations under adverse circumstances. You loaded on ad valorem taxes at a very considerable extent, and you did that under the exigencies I think it's quite understandable that, in your judgement revenue needs which anticipated the flow of revenues. You chose an avenue which was to tax before profits were being generated. It happens alot of times. But I think this is the basis upon which you judge. You look first at the total tax burden, then you look at the individual parts, and how are

they in terms of the revenue for the state and what are the economic implications for the companies that have to operate under those taxes. Certainly you've never subscribed here to the opinion that you're aggregate taxation, or that individual aspects of taxation were so onerous that in a sense they are discouraging operations here is Alaska. There's no evidence that operations here in Alaska are discouraged. If there's been a lag in exploratory drilling there certainly hasn't been because of the tax regime. It's because of the problems of leasing, land selection.

Q: REP. MILLER: Just real quick, and I'm curious, name a few states that use separate accounting.

LIPTON: Louisiana and Oklahoma

Q: REP. OSTERBACK: Talking about the oil. Have you done any figuring on the gas? That's the next thing that's going to face us in our Committee, the well-head price on gas. Have you done anything on that.

LIPTON: No. This is a wide open subject, and I have nothing but pity for those individuals who must now wrestle with the problem of not only what, what the well-head price of Prudhoe Bay gas can be. Second, Question, what the well-head price of gas ought to be. Can be, ought to be, and third, is how to get at those things. This is an awesome problem. Just let me say that I think this is one thing which is again to the thinking of the legislature. We always said that your oil is a price taker. That is to say, the price at which your oil can be disposed of in the refining centers of the lower 48 states can never be determined by Alaska, the state of Alaska or Alaskan producers. You're price takers you've got to move into the refineries in competition with other forms of oil. Which is why any increase in real costs that are incurred, for example, the ultimate cost of the pipeline, they come out of the ultimate profitability of Alaskan operations and they come out of the state revenue. There's no way of getting away from that. This

is not quite true in the case of gas. In the case of gas things which happen here in Alaska have influenced what the price of that gas will be when it's delivered to lower 48 markets. For example, severence taxes can be passed on. Increases in cost can be passed on. The reason is that the barrel of oil that reaches the California refinery has to be refined in competition with a barrel of oil from somewhere else. And MCF gas which reaches the Great Lakes area from Alaska doesn't have the market and competition with the MCF of gas which comes up from Texas, or off shore Louisiana, because you've got rolled in pricing which is involved at different stages of the game. Both in the transmission pricing and the distribution gas companies. Now how that's going to be resolved over future years, it has to be resolved before the new gas pipeline is finally going to be brought before us. But it is quite possible that the well-head price of gas on the North Slope will turn out to be higher on the BTU basis than the well-head value of the oil. It's quite possible. In which case the utilization of that gas in Alaska may not be so effective. If that's the way it works out. Although the utilization of the liquids may be very attractive, but that's a different story. I'm sorry but this is kind of a long winded answer, but the answer is basically I don't know what the price is going to be, but there's a difference between the way the price of gas can be determined and the way the price of oil can be determined.

Q: BUTROVICH: At what point in time and has the Prudhoe Bay oil been felt by the National Energy picture?

LIPTON: On sure. I mean there's no two ways about it. You've got 800,000 barrels a day of American oil being produced here which would increase our imports by 800,000 barrels a day if we didn't have.

If you ask how important is that 800,000 barrels a day or 1.2 million barrels a day which hopefully you'll reach next year, or 2 million barrels a day that you may reach by 1980. It's very difficult to judge how important that is from the standpoint of national balances. You would just hate like hell not to have it.

Q: BUTROVICH: I was going to ask you if that is good. The overall effect.

LIPTON: I don't think there's any argument on the part of the producing companies that have to pay your taxes and the part of the State of Alaska that have revenues, and the part of the United States as a whole, which has the benefit of that oil, no question about it.

Q: BUTROVICH: Suppose it hadn't gone on stream until July 1, 1979.

LIPTON: We're importing more oil now. The interim volumes of oil would be available in 1979 and thereafter. I don't think it would be the decisive factor in the national interest. I don't think it would have a very major impact upon the companies, and probably the state of Alaska. The companies' cash flow in the state of Alaska is revenue, you know.

Q: BUTROVICH: Would you elaborate a little about the companies cash flow, I'm not that concerned about the state's revenues.

LIPTON: There's no question that from the standpoint of operating companies the invested proceeds over time there is in the best of circumstances a very considerable lag between the time the investment starts and the time the investment is completed the first production, the first pipeline really begins and then build up your revenues thereafter. The companies have to pay out the money for a long period of years and incur interest costs over the whole interim. The duration between outlay and income, let us say the cash flow, is a very vital consideration, no question about it. Which is one of the reasons

that in almost all instances the companies would look for the most expeditious possible development of a resource the earliest possible production. The cash flow is, you said something interesting about the workers of other companies than the government because the government

Q: BUTKOVICH: Pardon me. I didn't mean to say I was more concerned with the companies. I was more concerned with what effect it would have on the companies that's what I wanted to elaborate on. I'm more concerned about the state.

LIPTON: Yes. But your point, I was going to suggest that your comment really is a very meaningful comment in another context. For a profit making company the timing of it's outlays and it's income and it's cash flow, is extremely important to the continuity of it's operations because the dollar that's spent out can't be reemployed until it's returned in so for a company that would like to expand and continue to grandise it's profits. Cash flow is what provides the dynamics of it's operation. But for most governments the cost of waiting for income is really not as terrible as it is for companies. The cost of waiting if you have to put a discount factor or interest factor is bound to be lower for government, because for governments the governments are looking to a continous lead for revenues over the future. Now nobody wants to defer revenue too long, but the dollar of revenue deferred which becomes a dollar of revenue earned is going to play it's role in the budgetary balance wherever it takes place. The viability of government is not dependent upon the timing of cash flow really so much as it is for a profit making organization. That's one of the reasons, again we're talking about taxes. If you built a foreign producing operations, one of the forms that has

recently evolved is a production sharing contract. And you have a company that operates as a producer for a government oil entity and the nature of the production sharing contract is that the company will recover out of early production all of it's operating costs and what barrels of oil recover it's operating costs and relatively will quickly get enough barrels of oil to recover it's whole capital investment. Now after that shares go in increasing proportions say to government. For the company the amount that it's willing in negotiations to give to a foreign government will be the greater. The earlier the foreign government allows that company to get enough barrels of oil to recover it's costs. In other words, they will split more number of the government the earlier they can get back to themselves, because the cash flow is so important to them and the governments which recognize that are willing to do it, because they feel that the cash flow to the government is always going to be valuable in terms of their budgetary balances.

Q: RADAR: Mr. Lipton, the failure of Arthur Andersen to take into consideration the Cook Inlet production, is that considering amount of production. Does that significantly alter their conclusions here.

LIPTON: First of all I was not critical of Arthur Andersen for not doing this. They did what they were asked to do.

Q: RADAR: Yes, we are talking about a statewide policy here and ranking. What I'm saying is the failure of their application only to Prudhoe . . . What effect do you think it would have had, had they included Cook Inlet?

LIPTON: Senator, if all you did was to expand Cook Arthur Andersen model to include Cook Inlet as it is today, an extrapolation of the remaining reserves into a production profile for for Cook Inlet and apply the whole thing you'd have very little effect on the sum total. Because we're talking about close to 10 billion barrels of oil in Prudhoe Bay we're talking very

limited reserves, you know production now out of Cook Inlet is around 120,000 barrels a day which is projected with a (IA) overtime. Now I don't, the specific answer to your question is if the model had been designed to include all oil producing operations, all oil reserve discovered and available for development and production as they now exist in Alaska the effect upon the ranking would be very very small.

Q: RADAR: Would it be as much as 1%, maybe bringing 1 from 92 - 93 or something in that range?

LIPTON: I don't know. The answer is two-fold. The effect depends on two things. First of all upon the relative volumes. Now we know what that is. The relative volumes are overwhelmingly in the Prudhoe Bay direction. Plus the pipeline which is so much profitability and taxation involved in the pipeline. However, some of the greatest advantages the state gives under it's tax regime are given to Cook Inlet. I would not think it would make as much as 1 percentage point difference in the ranking producers.

Q: RADAR: In the future when we're in full production instead of limited production because of problems with the pipeline, full production Alaskan wells will move into higher bracket and Alaskan rating or ranking actually as compared to the next closest state would be further apart as the fields grow older and the fields produce less and less. Alaska's ranking would be closer to Louisianias' for example.

LIPTON: I'm not sure that I get the thrust of your question, and that is to say as you increase your production for example, if next year you average 7,000 barrels a day for a Prudhoe Bay well your cents per barrel goes up to 64.8¢. So your cents per barrel tax goes up. The chances are that your

average well-head value if the tariff remains the same will go down. The average well-head will go down, because a larger volume of the Prudhoe Bay production next year is going to have to move to the Gulf Coast and net back even lower. So if you're looking one year ahead then the incidence of taxation in Alaska will look worse than today. If the study were made just for one year, remember Arthur Andersen study is based upon a projection of 25 years. So if you are just doing it for next year as compared to this it will look less favorable. They've already done this for 25 years. That shouldn't have any effect upon their (IA) but let me just say something else. That if your tax regime remains as it is, abstract what may change, you have only to project reasonable increases in the well-head value because of what is happening to world oil prices and what's happening to government prices. Reasonable increases in well-head value and suddenly the tax burden becomes proportionately lower here in Alaska. Because increase in the value of the oil will go to a very considerable extent to the companies themselves. That is to say what's going to be the increase in the tax burden as the value of the oil goes up. Your ad valorem taxation really isn't going to increase very much. Your severence taxation will increase a little bit as you go through cents per barrel into percent of well-head value and by god, your state income tax revenue will hardly increase at all. Because you are under a formula an allocation formula. So as production increases in the future and as the value of Prudhoe oil goes up in the future the burden, the relative burden of Alaska taxation as things now stand becomes less.

Q: RADAR: I'm interested in your observation as to the statement we the federal government is going to expect Alaska to participate in the financing of an Alcan pipeline and the federal government in no circumstance is going to participate. I don't know that, and I understand that some federal people

will be up here in a couple of weeks to talk about that very thing. I'm a little bit uneasy as to what our posture is and what our maneuvering room is against what their maneuvering room is.

LIPTON: I recently returned form Alberta, Edmundton, where we are also consultants. The question of financing the gas line of course has been raised in Alberta as well as in the State of Alaska. I find it of double interest because while the pipelines were competing for authorization the promotors were very hush hush about requiring outside financing and everything. Once the competition was over and the realities begin to emerge and one begins to worry about who's going to do the financing and whether the province of Alberta should take an equity interest or whether the State of Alaska should lend money or whether the State of Alaska should in a sense guarantee the bonds so the rate of interest will be lower. I don't know how many different roles the state of Alaska can be cast. It's already been, with respect to the oil and gas industry, cast in the role of a soverign power. It's already cast in a role of a land owner, and now it's going to be cast in the role of a money lender. I just don't know the answer. This comes down in the end to very pragmatic consideration. What are the realities of financing as they are presented to you? What is the state's interest in pursuing this? How far should the state go?

Q: RADAR: What do you think promoted the Federal government to take the position that it was reasonable for the state to finance or participate in the financing but unreasonable for the federal government to participate.

LIPTON: That's what they said to the city of New York.

Q: RADAR: New York was asking for something, we're not asking for anything.

LIPTON: No. They're saying that these are problems internal to Alaska and we should not take the responsibility for it. That is a bad analogy. But this a subject

one can address themselves to a lot better after one knows what the real circumstances are. I don't know that the Federal government in the end will not play in some kind of a role in the financing of the gas line. An awful lot depends on the extent in which the federal government wants (1) the gasline built by a certain date, (2) is convinced that private financing either is not available, which is unlikely, but is available at onerous interest rates. Therefore what role should the government, any government whether it federal, state or provincial. I think it is a little too early because so far I suspect that what we are hearing are the protestations of the party of the first part. That is to say the people who are involved in the financing.

Q: RADAR: When do you expect when the federal government will reach an agreement on the price, set a price, April - May?

LIPTON: This Spring or early this Summer I would suspect it has to be done. Even if the least optimistic time schedule or authorization, financing, construction, design and construction of the gas line has been met, the pricing policy is basic to almost any other decision that can be made.

Q: RADAR: Well if they expect the state to participate, again I'm thinking about our session and our opportunity to address this problem. Do you think we are likely to have before us the facts that it takes to intelligently address this problem if we were to adjourn in June, what's your best estimate on that?

LIPTON: I would doubt very much if you'll have all the facts, but I think you may have, the first thing I think you have to listen to more than anything else is just what the facts along this line are going to be, what are now the alternatives to the companies involved in the construction line. How do they see their own alternatives. What is the Federal Government realistically thinking about. I don't think the Federal Government is

actually asking the state of Alaska to undertake any of the responsiblity, I'm sure of that at all. The Federal Government may be simply saying to the people building this pipeline, "Look, you go ahead. These are the authorizations - these are the rules of the game. Now you go where can in terms of equity in terms of debt capital and in terms of the government entities that are involved. Really, which is basically the state of Alaska, the Province of Alberta, the Federal government of Canada to a certain extent, even the problems of British Columbia. I doubt if you'll have all the facts, but you'll probably have alot more."

SUMMARY OF MILTON LIPTON TESTIMONY
BEFORE THE SENATE RESOURCES COMMITTEE
January 25, 1978

Prepared by REED STOOPS
Senate Resources Staff Assistant

Tax Deficiency

Milton Lipton initiated his presentation by illustrating a deficiency in Alaska's present corporate income tax statutes. According to the Andersen Report, the total net income accruing to the four major oil companies over a 25 year period from Prudhoe Bay production and TAPS transportation will be $37 billion. Current methods of apportionment would only subject $16 billion to state income tax. At a taxation rate of 9.4% that means $1.5 billion in income tax revenues under current law as opposed to $3.5 billion if the entire net profits were subject to state income tax.

Alternative Approaches

Three alternative approaches to correct the "deficiency" discussed were the oil and gas corporate franchise tax (CS HB 322) which redefines corporate income and changes the apportionment formula, a method of "separate accounting" (SCS CS HB 322) for the oil and gas industry, and maintenance of the status quo.

Andersen Report

He then offered the following comments on the Arthur Andersen Report, a comparative state tax burden study, prepared at the request of the Alaska Oil and Gas Association:

(1) The report is highly professional, accurate, and conclusions relevant "as measured by the technique used...". The Alaska tax burden is higher than the other seven states analyzed, but only as the tax law relates to Prudhoe Bay.

(2) The other states used in the comparison are different from Alaska in that the industry here is concentrated heavily in production and transportion and we lack the economic and industrial diversity present in the other states.

(3) Whether or not the tax is "unduly burdensome" to the industry is not solely determined by relative rates of taxation, but by whether the tax structure "militates against investment." "...so far, there is in fact no indication that this is the case."

Severance Tax

The income tax also should be placed in perspective amongst other types of taxation imposed by the state. The severance tax, applied to gross revenues from oil production, under current law is graduated and differentiates between fields with the same gross revenue but different producing characteristics. Therefore, Alaska has a high peak tax on highly productive wells, but also a uniquely low tax rate on marginal wells. As Prudhoe wells produce on the average of 5-7,000 barrels a day, the tax rate is high. On Cook Inlet, the tax rate is relatively low.

Continuity of Tax Policy

He notes that the income tax is the least "onerous" to the industry as it effects investments. But the state should guard against creating a perception that its tax policies on oil and gas are subject to continual change as our budgetary needs change. Continuity of the tax regime is very important to investment decisions by the industry. Therefore any change in the income tax should be done only in the context of a long term policy which creates greater stability in Alaska's severance and ad valorem tax policy.

Apportionment Deviation

Before comparing the House and Senate approaches, Lipton briefly discussed the argument that deviation from the current method of apportionment will lead to inequities or double taxation. Of 44 states with corporate income taxes, 4 already use variations of the standard apportionment formula, and 2 use forms of separate accounting. These deviations relate to differences in the economic and industrial structure of the states, as is true in Alaska.

Senate version (SCS CS HB 322)

Advantages

Separate Accounting

(1) Gives Alaska a direct determination of income generated by oil and gas operations by taking only revenue generated in state.

(2) Gives the state data on profitability of the industry useful in future review of oil and gas taxation policies.

(3) Will increase revenue to the state, especially where wellhead prices increase (Note: this may be an advantage or disadvantage with respect to the House version. Revenues may also decrease if wellhead prices decrease.)

(4) Should create greater equity amongst oil and gas taxpayers operating in Alaska, (Note: Andersen Report shows differing tax liabilities between Exxon and ARCO based on comparable revenues.).

Disadvantages

(1) Administration difficulties
  (a) determination of expenses allows for discretion by industry

  (b) determination of base value of oil before deductions. problems may be created by depressed prices caused by price control, marketability, etc.

House version (CS HB 322)

Advantages

(1) Changes definition of corporate income to include either book income (income reported to stockholder) or Federal taxable income, whichever is higher. Gives the state a higher base upon which to tax.

Redefinition of Apportionment

(2) Substitutes an extraction factor for the sales destination factor in the apportionment formula - will increase revenue to the state as a production factor is much higher than a sales factor in Alaska.

(3) Incorporates OCS into the formula when it is served by a land base in Alaska. (Note: possible legal complications).

(4) Revenues are somewhat isolated from conditions in Alaska as the tax is based partially on world-wide performance of the industry. (This may be an advantage or disadvantage depending upon future wellhead prices).

Disadvantages

(1) Administrative difficulties

(a) hard to ascertain world-wide production of oil when complex foreign contracts exist

(b) verification of book and federal taxable income reported by industry.

Major points in conclusion:

Summary Points

Either bill would increase the state's corporate income tax revenue.

Both bills involve administrative difficulties, but neither is insurmountable.

Separate accounting provides "a direct fix on income generated by operations within the state" and has value beyond the tax.

The House version isolates Alaska from uncertainties of income generated only in Alaska by sharing to a degree in world-wide profits. It also attempts to extend tax jurisdiction to Outer Continental Shelf development.

Question and answer session follows (refer to page 24)

TESTIMONY OF

HERMAN LOEB

DIRECTOR OF EXPLORATION ENVIRONMENTAL AFFAIRS

PENNZOIL COMPANY

STATE CAPITOL - STATE OF ALASKA

JUNEAU, ALASKA

February 10, 1978

Members of the Senate Resources Committee: My name is Herman Loeb. I am the Director of Exploration Environmental Affairs for the Pennzoil Company. I live in Houston, Texas.

At the very beginning, let me state that my remarks will not deal with the intricacies of your tax laws or pending legislation except in the most general sense. Instead, I would like to touch on Pennzoil's approach to exploration and factors that influence the spending of exploration dollars by the Company, and most particularly in the State of Alaska. The tax structure of the State is a vital part of this package and will influence the focus of exploration efforts of any company, large or small.

The Pennzoil Company is primarily a natural resources domestic exploration and production company. We are no stranger to the State of Alaska. We drilled two wildcats in 1967 and 1968 in the Lower Cook Inlet on State leases (Strichikoff Area), and in 1969 opened an exploration office in Anchorage. I have a personal stake in this dialogue because in 1969 I had the assignment of establishing the exploration office in Anchorage. We built a home, the whole bit, and were fortunate enough to be able to stay in the State until 1973.

As a working geologist, I rapidly became aware of the tremendous potential for oil & gas in the State. The number of undrilled, unexplored sedimentary basins was and still is unbelievable. I had worked older known geological areas in West Texas, the Rocky Mountains, South Texas, and South Louisiana where the idea of an undrilled basin was unheard of and didn't exist.

Pennzoil was not alone in its awareness of this oil & gas potential in the State. Many smaller exploration-minded companies

and independents were ready to move their people to Anchorage. This Committee knows the next verse---it is simply as it was--- the "land freeze". First, Udall, then Hickel, then Morton. Spice that with passage of the Native Claims Act, approval of the pipeline, and the eventual State selection process and you add up to almost a decade of problems. These factors made it impossible for the smaller companies to buy leases, drill wells, or operate.

Some with plans to come North delayed that decision and never came. We came early, but to my extreme personal regret, we left early also in 1973. My family and I hated to leave, but there was no place to make Pennzoil dollars multiply and no sound reason for management to keep an office in Anchorage.

Let me state at this point that there is extreme competition in the industry. We have been busy and successful in operations in the OCS in the Gulf of Mexico. We acquired our first leases in 1970, and to date we have production with our partners that produces approximately 70,000 BOPD and 1 billion cu. ft. of gas per day. We bid with major companies and against them. We like it--we think we can make a "better mouse trap" and we can play the exploration game. However, we must know the rules. It's impossible when the rules change and the tax structure is an integral, important part of the pre-game plan.

Elements of risk are vital in our shop when top management decisions as where to put its people and spend its revenue dollars are made. There is an inherent risk every time we drill a well; first, if we can drill the hole; then if we are fortunate enough to encounter hydrocarbons in commercial quantities; and finally, if we can complete successfully. The calculation of risks and the

overall evaluation of these factors are the heart of any successful exploration effort. The regional geology, the reservoirs, costs to operate, access to locations, availability of suppliers and material, competition both internal and external, and taxes comprise some of the key elements. A stable predictable tax system is necessary to properly evaluate rates of payout and capital requirements.

The most positive approach to a possible remedy to some of the State's revenue needs is to encourage additional exploration. The State could utilize another Prudhoe Bay. You need the smaller companies such as Pennzoil, as well as the larger companies, to drill some of your unexplored sedimentary basins.

The industry exploration dollars are going to be spent in areas where oil & gas leases are available, where lease schedules and terms are clearly defined, and where the elements of risk conducive to ascertainable planning for capital, equipment, and manpower are positive and most of all where a fair, equitable tax climate prevails. These factors we hope will be considered in your approach to tax legislation.

In closing, the industry will initially tend to go where it's wanted, and a stable, fair tax program would undoubtedly provide an impetus to further exploration in the State.

Again, we appreciate the opportunity for comment.

Statement of David S. Mace
Sohio Petroleum Company
before the
Senate Resources Committee
Alaska State Legislature
May 22, 1978

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3. Articles from Mineral Leasing as an Instrument of Public Policy, British Columbia Institute for Economic Policy Analysis, 1977:

   - Gregg K. Erickson, "Work Commitment Bidding"
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Statement of David S. Mace
Sohio Petroleum Company
before the
Senate Resources Committee
Alaska State Legislature
May 22, 1978

As Assistant General Manager, I am pleased to have the opportunity to present the views of Sohio Petroleum Company, a Division of Sohio Natural Resources Company, with respect to the House-passed version of H.B. 854.

We strongly feel that the oil and gas leasing bill merits thoughtful study, as its implementation will determine the State's ability to conduct an effective leasing program in the future. Since the industry's ability and willingness to participate in future lease sales will be determined by the manner in which future administrations administer the State's leasing bill, it is vitally important that the provisions contained therein give clear guidance to the Department of Natural Resources (DNR).

Although the House has significantly improved the bill as originally introduced, we feel that there are key provisions that should be further amended. Additionally, we strongly believe that further consideration should be given to the exclusion of several of the proposed bidding methods and to the general concept of experimentation in Alaska's leasing program.

Prior to describing the specific problems we see in H.B. 854, I should like to outline for you why we feel that Alaska should, particularly at this time, pay close attention to energy policy development in general and its leasing program in particular. To put it in a nutshell, world supplies of conventional oil and gas have shrunk and are narrowing rather quickly; the chances of finding another Prudhoe Bay-sized field--anywhere in the U.S.--are next to zero. Thus policy decisions affecting oil and gas are crucial if Alaska is to find and develop her remaining petroleum resources, thereby strengthening the future economic outlook for all Alaskans and the political/economic outlook for the United States.

PART I: AT THE CROSSROADS

THE IMPORTANCE OF OIL AND GAS POLICY DECISIONS

Global Prospects

The Workshop on Alternative Energy Strategies (WAES), a two-year international energy and economic project, directed by the Massachusetts Institute of Technology, recently released their final report which indicated that:

(1) All energy resources and conservation measures must be developed vigorously to meet total projected demand in the period 1985 - 2000; and

(2) Energy policy decisions made now will be the critical determinants as to whether or not sufficient incremental supplies will be available to meet demand in the years ahead.

In other words; according to the WAES Report:

> The years up to 1985 are critical ones...We are...on the threshhold of a critical decision period. We cannot afford to waste the years immediately ahead if we are to have any large-scale energy options available before the end of the century. The time for decisive action is now. 1/

In this environment, the importance of the Federal and State petroleum leasing programs affecting Alaska cannot and must not be underestimated. Whether or not Alaska's oil and gas resources can and will be developed will be an important factor not only for Alaska but also for the United States as a determinant in the future global energy, economic and political balance. The critical nature of energy decision-making at this time is further underscored by the following conclusions stated in the WAES Report:

1/ ENERGY:GLOBAL PROSPECTS, 1985-2000, Report of the Workshop on Alternative Energy Strategies, M.I.T. Professor Carroll L. Wilson, Project Director McGraw-Hill Book Company, San Francisco, 1977.

(1) The supply of oil will fail to meet increasing demand before the year 2000, most probably between 1985 and 1995...(p.3)

(2) Demand for energy will continue to grow even if governments adopt vigorous policies to conserve energy...(p. 4)

(3) The continued growth of energy demand requires that energy resources be developed with the utmost vigor...(p.4)

(4) Even if there are no governmental constraints on oil production, oil supply will meet demand only under the most optimistic assumptions about gross additions to reserves...(p.145)

(5) Possible constraints on oil production by members of OPEC are likely to cause oil supply to peak at the latest some-time around 1990 although lower production limits could bring this date forward into the early 1980's...(p.145)

(6) All the effort put into oil exploration around the world over the past one hundred years has only yielded 240 large oil fields...(p.123)

(7) With only a small chance of either discovering a new Middle East or discoveries in the Middle East as large as in the past, the past rate of genuine new discoveries can only be achieved if a large number of smaller producing areas are found. (p.122)

(8) Given lead times of 5-10 years or more for many projects, failure to make necessary near-term commitments or to resolve a variety of current restraints on production, or to develop future supplies may foreclose some options for 1985. (p.265)

(9) Failure to recognize the importance and validity of these findings and to take appropriate and timely action will almost certainly result in a world different from the one on which these projections have been based. (p.5)

(10) Failure to act could lead to substantially higher energy prices as the supply/demand imbalance becomes more apparent with the consequent frustration of the aspirations of the less developed countries. The major political and social difficulties that might arise could cause energy to become a focus for confrontation and conflict. (p.5)

(11) The longer the world delays facing this issue the more serious the outcome will be. Even with prompt action the margin between success and failure in the 1985-2000 period is slim. Time has become one of the most precious of our resources. (p.5) 2/ (Emphasis added)

2/ Ibid., pages as indicated above.

Another important point in the Report relates to the size of future oil fields. Worldwide, over 30,000 oil fields have been discovered, but about 75 percent of the oil lies within 240 large fields, each with over 500 million barrels of recoverable reserves. 3/

Out of the tens of thousands of producing oil fields in North America, there are only five fields that have recoverable reserves of more than 500 million barrels (Prudhoe Bay, which is new; and Elk Hills and Wilmington in California, and East Texas and Yates in Texas, all of which are old fields). Despite a great deal of exploration in North America, there has been no recent discoveries of fields more than 500 million barrels, except Prudhoe Bay. In other words, the probabilities of finding large new fields on the order of Prudhoe Bay has significantly diminished, not only globally, but also in the United States.

The WAES Report also makes clear that in certain environments, such as the North Sea, a 500 million barrel field is at the economic margin. 4/ Because of the particularly harsh environment in Alaska's North Slope, and elsewhere in the unexplored part of the State, a field that may contain even more than 500 million barrels of oil could be right on the edge of economic viability in Alaska, given the uniquely high costs and transportation difficulties.

While all of the above has critical implications both for the United States and Alaska, there are yet another set of reasons why we believe that the designing of the future oil and gas leasing program in Alaska deserves serious and careful consideration.

3/ Ibid., p. 123

4/ Ibid.

Alaskan Petroleum Outlook

In a sense, the State of Alaska is facing on a smaller scale some of the same problems described earlier on a global scale. Whereas world oil production may begin to decline in about seven years, Prudhoe Bay will begin to decline within the decade. This fact has important implications to all Alaskans and, in view of the revenue needs of the State, it would appear to be critically important for the State to ensure and encourage a steady, strong and ongoing oil and gas development program in Alaska. But the historic rate of genuine new discoveries can only be achieved worldwide if a large number of small producing areas are found. Likewise, the future of petroleum discoveries in Alaska will most probably involve smaller fields which will be more costly to develop.

As previously noted, the possibility of finding another Prudhoe Bay-sized field in Alaska--or anywhere--is extremely remote. Further, because of the very high costs of operating in much of Alaska, the size of a discovery must be larger here than it need be in other states to make the project economic. Even the Lisburne and Kuparuk oil pools, which according to State estimate range in potential from one to two billion barrels, may be marginally economic and typical of many future oil and/or gas finds in Alaska. All this tends to suggest that Alaska needs to pay closer attention to the development of her resource policy than a state like Louisiana, for example.

Some have argued that Alaska might be better off 'sitting on' her potential oil and gas resources and waiting for the world oil price to rise even further. Dr. Arlon Tussing, an Alaskan economist advisor to the Senate Energy Committee, considers this attitude, "simplistic" and "naive".

In real terms, world oil prices may stabilize as a result of a prolonged period of relatively low economic growth which would result in lower growth rates for energy consumption than is generally projected. Additionally, as global attention is increasingly focused on energy, the drive to conserve energy and to develop heavier oils, such as Athabascan tar sands, Rocky Mountain oil shale and Orinoco tar belt--and substitutes for conventional oil and gas--will increase. Again, to quote Dr. Tussing, "if you choose to 'sit on' your oil and the decision was wrong, the resultant imbalances could be serious."

A final serious consideration for Alaska relates to a realistic assessment of the future revenue needs of the State. Projections indicate that Alaska's revenue problems in future years require a significant expansion of petroleum exploration and development activity now so that new sources of revenue will be available as Prudhoe Bay declines. This is an especially critical consideration in view of the long lead times involved in exploration and production in the frontier areas of Alaska. In some areas, it can take a decade to find, prove up and begin to develop a field, and transportation problems can be enormously complex, causing further delays.

Implications

Being at the economic/energy crossroads globally -- and in Alaska -- would seem to suggest that it is of vital importance to the State to (1) carefully delineate its goals with respect to a new oil and gas leasing bill and (2) ensure that the proposed legislation, in its implementation, will achieve the desired goals outlined in the legislation. With this in mind, I would like to address some of the specific, critical problems we foresee if H.B. 854 were to be implemented in its current version. Additional, I would like to present some of the experts' views with respect to several broad issues raised by the draft legislation.

PART II: CRITICAL CONCERNS WITH H.B. 854

Bidding Methods - Experimentation

No one knows how beneficial experimentation in bidding methods will be. The U. S. Government tried royalty bidding on ten tracts in an October 1974 lease sale with questionable results. It appears that neither the industry participants nor government officials found the experiment to be particularly successful.

According to The Oil and Gas Journal, "operators say they doubt royalty bidding will ever surface again except in areas where production is almost certain or possibly in drainage-tract sales. Development of wildcat acreage can prove too costly on a royalty bid basis, despite the absence of high front-end expenditures normally budgeted under the traditional bonus-bid system." 5/

Similarly, Energy Secretary Schlesinger appeared to be disenchanted with the royalty bidding experience in Louisiana in that, in a letter to Interior Department Secretary Andrus, Schlesinger apparently stated that the Department of Energy has reservations about the effectiveness of the royalty method based on past experience in the Gulf of Mexico. It appears in fact that Schlesinger raised the same objections to the royalty system as had been raised by industry and formerly by officials in the Department of Interior, i.e., that royalty bidding leads to early abandonment of leases because declining production eventually makes the lease unprofitable under a high royalty arrangement.

5/ Mike Long, "Royalty-bidding experiment turns sour," Oil and Gas Journal, May 2, 1977, p.3[illegible].

Significantly, the Department of Energy and the Interior Department are considering the formation of a task force of experts to help analyze pros and cons of the various systems being proposed in the Federal legislation (which were largely copied in H.B. 854). Apparently, there is considerable disagreement between the two agencies as to the merit of the sliding scale royalty systems used in the last two lease sales, as well as to the efficacy of using other bidding methods. A key problem in forming a task force seems to be a dearth of real experts, however, in that few governments have undertaken experiments in bidding practices long enough or in a manner similar enough as that envisioned in the proposed Federal and State legislation, and to paraphrase Dr. Arlon Tussing's comments: scholarly, empirical analysis of the different bidding systems appears to be 'remarkably skimpy.'

One source document appears to be quite useful, however. Published by the British Columbia Institute for Economic Policy Analysis, Mineral Leasing as an Instrument of Public Policy, contains articles by an international and interdisciplinary group of economists, mining engineers, businessmen and industry consultants. In an introductory section, Dr. Mason Gaffney describes the report as "an outstanding contribution to a rapidly growing field of study."

Our greatest concern with the proposed legislation is reflected in many of the articles in the British Columbia Institute's report. The publication cites significant problems with many of the bidding systems proposed in H.B. 854. Since each new system is so experimental, the likelihood of the Alaska's experiments not succeeding is high. An additional concern is that it would be years before the success or lack of success with a given system can be determined.

An example of our concern relates to the use of royalty bidding. Dr. Arlon Tussing, Dr. Walter Meade and others (including now Energy Secretary Schlesinger) have raised objections to royalty bidding for a variety of reasons. In the Report, Professor Hayne E. Leland, University of California at Berkeley, echoes some of their concerns and ours:

> "Competitive bidding theory makes clear that undesirable consequences may follow from royalty or profit share bidding. If there are no bonus payments required, speculative bidding may lead to extremely high royalties or profit shares being bid, with development occuring only in the most favorable circumstances. This happens because firms have little or nothing to lose by bidding high and then failing to explore or develop..." 6/ (Emphasis added)

Gregg Erickson, a well-known Alaskan economist, in his article on "Work Commitment Bidding," suggests that the problems associated with royalty bidding are well known:

> "The problems created by royalty bidding, principally the premature shutdown effect and the potential for speculator induced misallocation of leases, have been well discussed in the literature. More importantly, they are well understood by persons influencing both public and private mineral resource policies". 7/ (Emphasis added)

Yet, it is not clear to us that royalty bidding problems are well understood by the officials who will guide the Department of Natural Resources in leasing decisions in the next few critical years or in the future.

A specific example of why we are concerned relates to the material prepared by the Department of Natural Resources to accompany H.B. 854, entitled "Two Views on Bidding Strategies." Not only are the numerous problems and dangers of royalty bidding (cited by Meade, Erickson and others in the University of British Columbia Report) not even mentioned,

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6/ Hayne Leland, "Comment," British Columbia Institute Report, p.60

7/ Gregg Erickson, "Work Commitment Bidding," Ibid., p.61.

but also, after three short descriptive phrases under the heading "Royalty Bid-Fixed Bonus," the Department of Natural Resources, with no further comment, analysis, or explanation, simply states: "The Beaufort Sale is an ideal candidate for a royalty bidding scheme." (Emphasis added)

We view such remarks by the State Administration with concern. As indicated previously, many who have taken the time to study the various proposed bidding methods in depth list extensive problems with various schemes for royalty bidding (see also Part 3) and, would hesitate to use royalty bidding schemes of any sort except in drainage sales or where there are known, proven reserves (as mentioned above in the Leland citation). The Beaufort Sea is believed to have a high potential for discovery, but, as in the Gulf of Alaska, the drilling of wells may result in no discoveries, or discoveries of marginal fields. No discoveries - with royalty bidding - means no income for the State of Alaska. And, as royalty bidding adds risk for the State, another quote from Leland is perhaps appropriate here:

> "Note that if the lessor is such that leasing forms a substantial fraction of its revenue (for example the State of Alaska), it may not be optimal to transfer risk from firms to the lessor. Thus, lease contracts which might be appropriate to the federal government may not be appropriate for regional governments". 8/ (Emphasis added)

Future administrations working with the proposed leasing statutes may have multiple choices of bidding methods available to them. We feel it important to stress that we concur both with Mason Gaffney and Gregg Erickson as to where the burden of justification of such decisions should lie, i.e., with those who would change the current system of cash bonus bidding. In this regard, we believe we are safe in assuming that Gregg Erickson's

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8/ Leland, op cit., p.60.

statement below with respect to the work commitment bidding system would apply to any new proposed bidding system:

> "The adoption of a work commitment bidding system implies a judgment that existing institutions for private exploration of public resources result in a suboptimal rate of resource development.
>
> Any argument for the adoption of such a system must first establish that this is in fact the case..." 9/

Similarly, though in a more general way, Mason Gaffney warns:

> "To serve his citizens best, the statesman should...resist the temptation to use his power to manipulate and control...on the too easy presumption that the market has no rationale or normative value of its own. Generations of economists have established that it has, and governments seeking to improve on it need face a certain burden of proof." 10/

One final point: The effects of the cash bonus bidding method, though not perfect, have been rigorously scrutinized, with over 20 years of experience as a basis for analysis. And, according to Professor Mead's extensive studies related to the results of 35 oil and gas lease sales during the period November 1954 to May 29, 1974, bonus bidding with a fixed royalty is effective:

> "On the basis of this evidence, we conclude that competitive bidding for oil and gas leases is sufficiently strong to protect the public interest in obtaining competitive values for its oil and gas resources. This conclusion is further supported by evidence presented above indicating an increase in the average number of bidders and a substantial increase in the average price bid per acre for oil and gas leases". 11/

Thus, it is our judgment that, although in certain, special circumstances, changes in the bidding approach may be advantagous to the State, several factors should be remembered. First, the State currently depends on the petroleum production, some for 70 percent of its revenue, most of which is from a field that will begin to decline in about seven years. New exploration in Alaska is vitally needed.

9/ Erickson, op cit., p.75.

10/ Gaffney, op cit., p.3.

11/ Mead, op cit., p.55.

Second, although oil companies by the nature of their business deal daily in risk and uncertainty, there is no question but that, to the extent the State can reduce uncertainty and foster confidence with regard to the use of new bidding systems, oil and gas exploration will be encouraged.

Third, because the new systems are experimental, we would suggest that the burden of proof for adopting a new system for any lease sale be placed on the Department of Natural Resources because the use of any new system involves greater risks and uncertainty not only for the companies but also for the State.

Lease Terms (a) and (z)

As currently proposed in H.B. 854 the lease stipulations include a normal lease life of five years duration; leases can only be prolonged to ten years in areas where environmental conditions severely restrict operations. It is our understanding from testimony given to the House Resources Committee by personnel of DNR that severely restrictive environmental conditions are interpreted to include moving ice zones in the Beaufort Sea, but not onshore conditions on the North Slope. As this latter area can only be explored by winter operations, a five year lease would only allow 1-2/3 years of exploration time. From a practical standpoint this is not sufficient, and such a restriction would make it physically impossible for an operator to explore a reasonable number of leases.

The cost of exploratory wells in environmentally difficult areas of Alaska, both onshore and offshore, can now be expected to exceed 10 million dollars and sometimes reach 20 million dollars per well. With such large amounts of money involved, exploratory wells are high risk ventures which must be very carefully planned to obtain the greatest return, not only in oil and gas discovered, but also in geological data obtained. Consequently, a company's exploratory program on Alaskan leases must be systematic and careful and can no longer follow the philosophy of "wildcatting." Such a logical approach cannot be rushed in its implementation, and the restriction of leases to a five year term would inevitably result in many leases not receiving the exploratory attention they might deserve. They would be relinquished without having been drilled, and would therefore diminish in value due to their apparent unimportance to the lessee with consequent loss to the State.

To counteract this situation, and allow operators to assess the true value of their landholdings, we are proposing that the normal term of a lease should be ten years, except in those areas where the Commissioner determines that environmental and economic restrictions on operations are not a factor. Since many of the future lease sales will be in hostile environmental areas, it is in the State's interest, we feel, to ensure that sufficient time is permitted for a proper evaluation of the lease areas.

Furthermore, we feel that the bill should specify that, prior to the lease sale, in the tract terms, the State will provide specific information related to provision (z), i.e., the percentages of oil and gas that the State intends to require for in-state use. Otherwise, it becomes impossible realistically to bid on the proposed tracts.

Joint Bidding - Its Effect on Competition (y)

Much has been said in recent years about the competitiveness or lack of competition in oil and gas exploration and development. Concern has risen particularly with respect to joint ventures in general and joint bidding in particular. Although the formation of joint venture groups for lease sale bidding facilitates ease of entry in high-risk ventures, and allows producers to spread their financial investments in an effort to minimize overall risks, the sheer numbers of joint ventures have been interpreted by some as 'fostering something other than competition'.

The two theories about the nature of joint bidding in Federal lease sales (collusive vs. risk-sharing purposes) have been tested by University of North Carolina Professor Edward Erickson and M.I.T. Professor Robert Spann. As they reported in testimony before the U.S. Senate Commerce Committee, the observed patterns of bidding partnerships are most consistent with the hypothesis that joint bidding is a means of risk-sharing, not collusion. 12/ Among the ways in which competition might be fostered rather than reduced by joint arrangements are the following:

Because risks are shared, the cost of capital per unit of supply increment is less, so that entry barriers are lowered in high risk ventures;

Because of joint agreements, smaller independents can and do form independent and successful groups for bidding purposes in Federal lease sales, as evidenced by data on successful bidders in the June 1973 Federal lease sale;

12/ In their study of the 1972 and 1973 Federal offshore lease sales, Erickson and Spann found that membership of bidding groups varies from year to year; market shares for members fluctuate from one year to the next; the most frequent bidding group is a combination of majors and smaller firms, but majors bid alone, as do smaller firms; single firm bids are frequently made by the largest firms, but other firms are also successful single firm bidders, and bidding groups which contain a large number of firms are predominantly composed of smaller firms. They also conclude that the incidence of joint bidding increased as the size of the firm decreased; there was a heavy incidence of joint bidding partnerships between unlike firms; smaller firms use joint bidding ventures as a vehicle for entry into offshore activity. "Competition in the Field Markets for New Natural Gas Supplies," Statement before the Senate Commerce Committee, November 8, 1973.

Because of the number of large and small producer combinations and the frequency with which new groups are formed with different members, producers are able to become involved in many projects so that competition is spread through many projects.

Since joint operating agreements also expressly provide for separate marketing of production from joint ventures, it would appear safe to conclude that risk-sharing through joint ventures need not make competition less intense. By facilitating ease of entry, joint ventures by domestic petroleum companies may indeed make competition more intense. 13/

The work of Professor Mead tends to underscore the findings of Erickson and Spann:

> "The most conclusive test of the workability of cash bonus bidding based on the United States record of OCS oil and gas lease sales is in terms of the rate of return on capital earned by the successful bidders. An analysis has been made on 184 offshore Louisiana oil and gas tracts leased in 1954 and 1955. Precise data are available on bonus payments, rental payments, oil and gas royalty payments, and production of oil and gas during the period from 1954 through 1967. Cost estimates were made for exploration, well drilling and equipment, and operation. Annual cost and annual wellhead values were discounted to obtain a net internal rate of return. The calculations indicate that these early OCS leases generated a 7.5 per cent before tax rate of return to the lessees. Given the fact that oil companies pay relative low U.S. income tax rates, the after tax rate of return would be only modestly lower than the 7.5 per cent before tax rate of return. This net yield clearly does not reflect monopoly power; it shows an excessive degree of competition". 14/ (Emphasis added).

In fact, two studies conducted under the auspices of the United States Geological Survey (both authored jointly by Dougherty of the University of Southern California and Lorenz of the U.S.G.S.) have indicated that the restriction of joint-bidding has failed to achieve its objectives in Federal OCS lease sales.

13/ In the last analysis, if the formation of such groups constituted monopoly power, one would expect to see some results where such groups are formed, e.g., a non-random bid price pattern in Federal lease sales.

14/ Mead, op. cit., p.55.

Major conclusions were:

1. The ban of joint-bidding by major oil companies may in fact have acted to broaden the overall influence of major companies in a given sale. The percentage of all bids and the number of bids per lease in which a major oil company was involved actually increased, which in turn may have increased the total amount of acreage in which major companies participated during this period.

2. When the U.S.G.S studies compared solo bids to joint-bids on given tracts, it was concluded that the joint-bidders tended to go after more highly sought-after leases and that they tended to bid higher on the average than sole-bidding competitors.

From a practical standpoint, allowing joint-bidding has important advantages to the State as well as to the industry, in terms of overall economic efficiency, environmental effects of exploration activity, and flexibility.

For example: Often, a given company may have a great deal of geologic and geophysical data in an area, but for one reason or another does not have the cash on hand to fully utilize its data in a competitive-bonus sale. In this kind of situation, it would make sense to join with another company that has the necessary investment capital and does not have the data.

If the two were unable to combine in partnership, a situation could develop where one company had to duplicate seismic and geologic information already held by the other company. Ironically, a situation would then develop where overall competition in the sale would be reduced, because one company with cash reserves would have expended part of its funds in gaining data, while the other company with information would be limited in participation

because of its cash limitations. Also, there would be the obvious environmental effect of the increased seismic and other activity, including, possibly, the drilling of wells, that would go along with the need to gain additional data.

In view of all of the above, it is very doubtful that joint bidding will adversely affect competition, and it is more likely to enhance competition and result in financial advantages to the State as well as oil companies. In this instance, the Federal Governments stance on restricting joint bidding appears to be counter-productive, and it is not in the State of Alaska's best interest to follow that lead.

Minimum Work Commitments (h)

The current language of H.B. 854 permits the Commissioner to impose a minimum work commitment on a lessee. The only reasons we can deduce for including the provision is to overcome the problems inherent in royalty and net profit bidding procedures. Both these methods inadvertently encourage a lessee to sit on a lease as long as possible without carrying out any work, because the lessee has no meaningful financial involvement in the lease. Consequently, under royalty or net profit bidding, the leaseholder will tend to prefer to 'sit on' the lease in the hope that neighboring leaseholders will, by their efforts, help indicate the true potential of the lease. Conversely, minumum work commitments are not necessary on leases won with a cash bonus bid because the lessee has an obvious financial incentive to produce a profit from his cash investment in the lease as soon as possible.

No responsible bidding company will bid on a lease which it thinks is devoid of prospects unless the bidding method imposes no appeciable risk or financial outlay to the company. Under these circumstances, i.e., when royalty or net profit bidding are used, the company has an inducement to try to obtain the acreage because of the slim chance that its assessment of the poor potential of the land is wrong. To prevent the company from doing nothing with this lease, the Commissioner has to impose a work commitment on it. But if the lessee views the lease prospects as negligible, the lessee will expend money for exploration only up to the amount equal to the work commitment imposed by the State.

The question arises: is this result in the State's best interest? Instead of obtaining maximum exploration on tracts with maximum potential,

the State, under royalty and net profits bidding, will encourage, through work commitments, capital outlays on tracts with minimum potential. And the capital outlays will most likely be a waste of dollars, producing no ultimate gain for the State.

If the cash bonus bidding system is not utilized on a particular lease, however, the level of fixed cash bonus imposed with the bidding system chosen can be made sufficiently large to ensure adequate and prompt exploration. Thus, we recommend that (h) be deleted from H.B. 854.

Data Acquisition by the State

While we understand the State's desire to know more about the potential oil and gas resources underlying State lands, we would reiterate what we and other companies have previously stated: obtaining more data from the companies does not necessarily put the State in a better position to evaluate potential resources. In fact the opposite could be true; government officials, looking at company data, might well understate the potential value of proposed lease acreage because of the general conservative nature of a government compared with, for example, the daringness of one Company geologist willing to stake his professional career on his interpretation of exploratory data. It could also be argued that the very nature of a large government agency makes it easier to hide errors of judgment whereas the company which decides to "go" on a project can hold specific employees more accountable for errors of judgment. But the most important fact to remember is that regardless of how much data the State may obtain, the State will never know what it does or does not have unless the State drills.

Since you may not wish to simply take a company's word for it, the following quotation is presented to underscore the importance of drilling as a means of obtaining useful information and to highlight the relative lack of usefulness of data without drilling. This excerpt is from the writings of an acknowledged expert in leasing policy, Professor Walter Meade, University of Southern California at Santa Barbara:

> "...while the technology for oil exploration prior to the drilling has been advanced in the last century, exploration is still subject to extemely high risk. Drilling is the only definitive test to determine the presence of oil or gas. Thus, bonus bids must be submitted by bidders and accepted or rejected by the government when neither the buyer nor the seller knows whether and in what quantities oil is present..." 15/ (Emphasis added)

15/ Mead, op. cit., p.51.

It would seem obvious, therefore, that if the companies -- with all their data and experience -- don't know at the time of a lease sale whether they've just spent millions for the right to put millions more into drilling potentially dry holes, then the government, with the same data, could hardly be better off. And having all the data of all the companies doesn't necessarily lower the risk of error for the government in that the view supported by most of the data of most of the companies (data that might suggest that "Tract 20" is worthless, for example) could be wrong.

Because more is not necessarily better in the exploration data game, many companies do in fact view data acquisition by the government as the first step which will inevitably lead -- and naturally extend to -- the establishment of government drilling corporations. And, as previously noted, Dr. Arlon Tussing does not view "governmental ownership of producing operations" as "the most effective way of accomplishing the social ends for which it is currently being advocated..." 16/

Additionally, Dale R. Jordan details some of the more severe problems of esblishing government drilling corporations:

> "...This article's purpose is not to examine the political repercussions that might occur when dry holes are drilled with public funds; however, we should examine some of the practical considerations involved in the operation of a public company which has an almost exclusive area within which to explore as a result of discouraging the private sector. For the government to discourage both the existing explorer and the entry of any new ones and to expect the public corporation to be able to fill this void suggests that the government is saying, "if the private companies do it, so can we."

16/ M. Crommelin and A. Thompson, "Introduction," Mineral Leasing as an Instrument of Public Policy, British Columbia Institute for Economic Policy Analysis, 1977, p.xvi.

Now remember that the private companies comprise all the oil and gas explorers working in the province and those contemplating doing so, given the right opportunities. All these companies have geological staffs, many of who will be geologists who devote most of their time over a considerable number of years entirely to the study of British Columbia's geology. The public corporation could not expect to have such an extensive source of expertise as that available in the free enterprise system. And so the public corporation would suffer from a reduction in the number of ideas generated.

It is not unusual in oil and gas exploration, with its inherent problem of scientific interpretation and evaluation of geological prospects, to find that one company will acquire a block of land, will explore it, and perhaps even drill on it before deciding the search is unsuccessful. The company will then return the land to its owner, the Crown. This does not mean that there are not any commercial hydrocarbons underlying this land; but rather that that particular company was unable to find them. To find these hydrocarbon deposits, a second, a third, or a fourth company should acquire this land, and, if this is done often enough, the hydrocarbon will be encountered, and production will follow. The problem with the public company being the only explorer in the province is that, unless it is fortunate enough to make the initial discovery, it is very doubtful whether there would be enough enthusiasm to have a second, third or perhaps even a fourth try at that particular prospect, with the result that the discovery would not be made. This is surely the worst thing that could happen and is probably the most damning argument against a public corporation moving into an area with an almost exclusive right to explore. 17/

17/ Dale R. Jordon, "Petroleum Leasing in British Columbia," Ibid., pp. 252-253

SUMMARY AND CONCLUSIONS

In summary, we would offer these observations and conclusions:

1. H.B.854, as currently drafted, would create a State leasing system containing many experimental procedures that are new and untried in Alaska. This may not be in the State's interest, because unusual leasing systems could lead to delays in petroleum development that could have serious consequences on future State revenues and Alaska's contribution toward U.S. energy needs.

2. The State's future revenue problems should not be underestimated. The State of Alaska may face an extremely serious revenue situation in the late 1980's as oil production from the Prudhoe Bay field begins to decline. The long lead-times needed to find and develop new Alaskan oil discoveries would indicate that exploration must expand rapidly on State lands to provide needed petroleum revenues for the future.

3. Alternative bidding systems proposed in H.B. 854, although also proposed in OCS legislation now pending in Congress, have not had extensive use in the U.S., nor in very many other places in the world. Experience with royalty bidding in Federal OCS sales has apparently been dissappointing, and the Federal government is giving serious attention to the use of alternate bidding systems.

4. The majority of academic literature that we have been able to find supports the thesis that the traditional bidding methods have worked well in the leasing of public lands for petroleum development. Academic experts also seem to agree that alternative bidding systems present serious problems, except when used in certain special situations.

5. The bill must be clarified where judgmental factors in its administration are critical to the success of the leasing program. The life span of a lease in years must be compatible with the extreme environmental and economic constraints placed on exploration activity in Alaska. To underestimate those constraints will result in unacceptably short lease terms, with a consequent reduction in exploratory work carried out on the leases. A decrease in exploration leads directly to a reduction in discoveries, production and State revenues.

6. Section (2) needs to be clarified in that, as currently drafted, the financing of exploration ventures based on a commitment of future production, would be impossible.

7. Work commitments are not as effective as higher bonus bids in encouraging prompt exploration of worthwhile leases, as work commitments, particularly in conjunction with royalty bidding schemes, work against the State's best interests in developing promising acreage.

PART III: ARTICLES ON LEASING

1. M.I.T. Professor John W. Devanney III, "How to Bid for Offshore Rights," Technology Review, February 1976, p. 44.

2. "Alberta, Canada: Exploratory Drilling Incentive System," The Landman, March 1978, pp. 18-20.

3. Articles from Mineral Leasing as an Instrument of Public Policy, British Columbia Institute for Economic Policy Analysis, 1977:

   - Gregg K. Erickson, "Work Commitment Bidding"
   - Dale R. Jordan, "Petroleum Leasing in British Columbia"
   - Walter J. Mead, "Cash Bonus Bidding for Mineral Resources"
   - Arlon R. Tussing, "The Role of Public Enterprise"

How to Bid for Offshore Rights

Several systems have been proposed to replace the present "bonus-bid" method of assigning leases on offshore oil prospects to developers. Of these, Professor John W. Devanney III of M.I.T. opts for "percentage-of-excess-profits" bids (*see p. 42*). Other proposed arrangements include work obligation permits and various forms of royalty bidding.

The Work Obligation Permit Plan

Under the work obligation permit plan, developers would submit exploratory and provisional drilling plans for a given tract. The government would choose the developer with the most aggressive, best-considered plan, and the developer would then be responsible for agreed-upon amounts of royalties and/or lease rentals. Under this system, used currently by the Norwegians and the British in the North Sea, the great bulk of any economic rent would be transferred to the developer, and a portion of this rent would be returned to the public in the form of corporate income taxes. Of the possible methods reviewed here, this is clearly the most favorable to the developer.

Administering this method to maximize national income depends on the skill and honesty of administrators. There are temptations for prospective developers to submit work plans which represent over-development of the resource so they will be judged the most aggressive, and administrators will have to be wise enough to recognize such over-development and refuse it. The decisions to be made in choosing the "best" work plan are necessarily judgemental, and they are an open invitation to the influence of special interests and even to corruption.

But beyond the possibilities of incompetency or corruption which may result in loss of national income is the basic fact that most of the economic rent goes to the developer. Professor Devanney concludes that work obligation permitting is clearly not desirable, from a nondeveloper point of view. Indeed, as soon as it became clear that economic rent was associated with North Sea oil, the British and Norwegians moved away from this practice.

Royalty Bidding

Royalty bidding involves competitive bidding on a share of the actual gross revenues — generally a percentage of market value — associated with the resource. This method has long been used in state sales of rights, and the federal government experimented with it in the Gulf of Mexico in 1974.

Compared with bonus bidding, royalty bidding transfers some of the risk prior to exploratory drilling from the developer to the public. This helps maintain competition among bidders, for large amounts of up-front capital are not necessary, and the need for large bidding combines disappears.

However, there are other problems. While the method could theoretically give most of the revenues from offshore oil to the public, it could also reduce the total size of the offshore oil pie. This is because the royalty bid, unlike the bonus bid, affects the developer's marginal expenses. For instance, if a developer overestimates production from a certain tract, he will freeze himself into a royalty bid that makes it unprofitable for him to develop the smaller, and thus more expensive, oil find that is actually made. He will refuse to develop it, and the national income will suffer. This risk may especially affect secondary and tertiary production from a tract; such oil will be more expensive than primary oil but still less costly than foreign crude.

Proponents of royalty bidding offer two possible resolutions of this dilemma — re-leasing and renegotiation. The former proposes that if a developer decides not to produce a tract he must turn it back to the government, with all equipment intact, and the government may lease the tract anew, presumably to a different developer at a lower royalty. This would discourage expensive techniques to enhance oil recovery, because the original leaseholder may choose merely to take out the flush production before releasing a tract back to the government. This will be costly to the public, since processes for secondary and tertiary recovery of oil must begin early in a field's life to be most effective. There is also the possibility of excessive administrative costs associated with the negotiations necessary for re-leasing.

Advocates of renegotiation propose that if a developer feels he cannot develop a field at his bid royalty, he should be able to present his evidence to the regulatory body which should be empowered to grant him a decrease if it finds his presentation viable. The obvious problems here are in the regulatory body's verification of the developer's data. The capital-intensiveness of offshore oil makes any estimate extremely sensitive to the cost of capital, and that information is often confidential.

Other potential problems introduced by renegotiation include temptations for developers to "goldplate" a project since additional expenses could come off the royalty — i.e., out of the public's pocket. A developer might deliberately bid high initially in order to obtain a tract, anticipating that he will renegotiate later; and he might go through a whole series of renegotiations as his costs for enhanced recovery techniques begin to appear.

Some have suggested a compromise between bonus bidding and royalty bidding, in which developers would enter a "high" fixed royalty plus a bonus bid of up-front payments. This would decrease the size of bonus bids and aid competition, say its advocates. Unfortunately, this presents the same can of worms as straight royalty bidding.

Installment bonus bidding has also been suggested. This means a developer would pay his bonus in three installments — immediately, after three years, and after five years. He could surrender the lease before the last two payments if things failed to work out. But this presents the same pie-reducing problems as royalty bidding; if a developer originally bid $600 million and after exploratory drilling found oil worth only $350 million, he would abandon the tract rather than pay the final installments even though national income would be increased by $350 million if the find were developed.

There are advantages, however, in installment bonus bidding. There is an automatic re-leasing provision, which could assure that tracts were re-opened for development; and the marginal costs of the oil are not affected, which means that the developer has incentives to invest early in enhanced recovery.

However, the massive amounts of up-front money involved in even a one-third installment payment of a bonus bid will probably still frighten away many bidders. And many bidders would increase their total bonus bids considerably, knowing that they could thus avoid paying additional installments.

ALBERTA, CANADA

Exploratory Drilling Incentive System

A report from Alberta Energy and Natural Resources states the exploratory drilling incentive principles adopted for wells spudded between Jan. 1, 1978 and March 31, 1981 were announced by the government last fall and will be defined in detail in the Exploratory Drilling Incentive Regulation, 1978 when it is issued in the near future.

This regulation, however, may not be available to industry prior to the commencement of the drilling activity it affects. Accordingly, the essential details respecting the forthcoming program are described herewith.

The department expects that the principles and details outlined here will be incorporated, without a change in meaning, into the 1978 Regulation. If, however, such a change does occur, the 1978 Regulation would, of course, take precedence.

(1) Commencement Date of the Forthcoming Program

As previously indicated, an incentive exploratory well in good standing will be

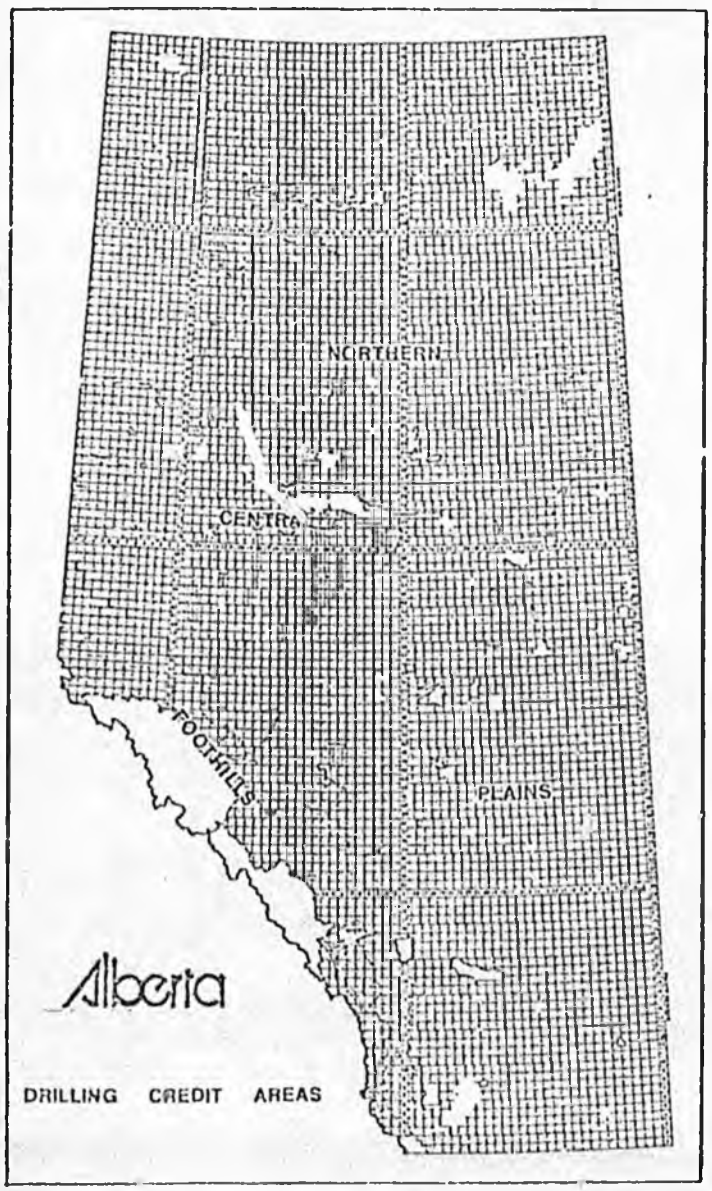


Figure 1

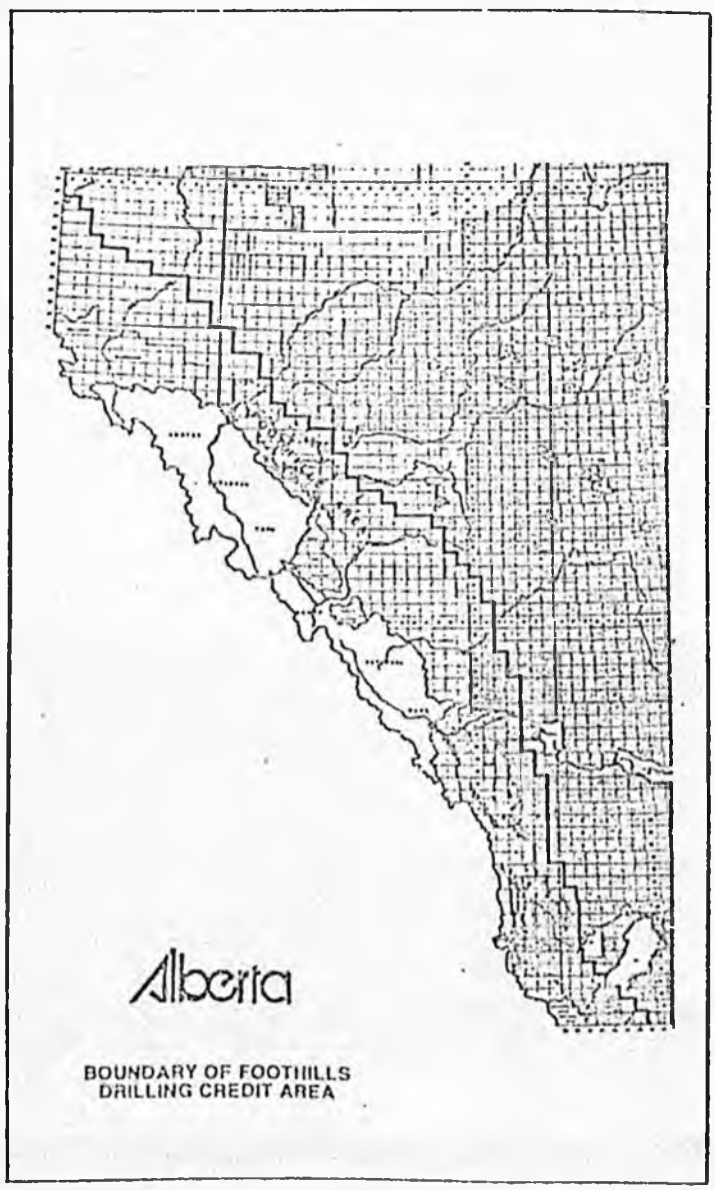


Figure 2

subject to the 1978 Regulation if it commences drilling on or after Jan. 1, 1978. This provision will not be affected if the licensing or certification date is before 1978.

(2) Drilling Credit Areas

Figure 1 shows the drilling credit areas as they will be defined under the 1978 Regulation. The Plains and Foothills Areas have not been changed. The subsisting Northern Area, however has been divided into the new Central and Northern Areas shown by the illustration. The boundary between the two new areas was defined by the Department on the basis of well cost data and topographic and access considerations.

Figure 2 is provided for the convenience of industry to depict the irregular eastern boundary of the Foothills Area. A similar map was issued by the Board in 1974.

(3) Drilling Credit Schedules

Drilling credits under the 1978 Regulation will be determined from Schedules F

SCHEDULE F

Applicable to the Class A Interval of an Incentive Exploratory Well that Commences Drilling on or after January 1, 1978

The Class A interval of an incentive exploratory well that commences drilling on or after January 1, 1978 shall be determined by the Board as the interval below the depth of 2,000 feet that

(i) has not been duplicated by a drilled and abandoned well within one and one-half miles

(ii) occurs more than 500 feet below the base of the deepest accumulation of crude oil or natural gas that in the opinion of the Board has been penetrated by another well within three miles, and

(iii) occurs immediately below the base of the member or formation containing the deepest oil sands deposit that in the opinion of the Board may underlie the location of the said incentive exploratory well.

Where neither (ii) nor (iii) above applies, the Class A interval shall be determined from the depth of 2,000 feet to the total depth of the said incentive exploratory well.

	Basis for Credit Plains Area		Basis for Credit Central Area		Basis for Credit, Northern and Foothills Areas	
Depth, Feet	Cumulative Dollars	Incremental $/Foot	Cumulative Dollars	Incremental $/Foot	Cumulative Dollars	Incremental $/Foot
2,000	0	20	0	30	0	40
3,000	20,000	18	30,000	25	40,000	35
4,000	38,000	18	55,000	25	75,000	40
5,000	56,000	20	80,000	25	115,000	35
6,000	76,000	24	105,000	35	150,000	35
7,000	100,000	30	140,000	40	185,000	50
8,000	130,000	40	180,000	50	235,000	65
9,000	170,000	55	230,000	70	300,000	80
10,000	225,000	75	300,000	90	380,000	100
11,000	300,000	100	390,000	110	480,000	120
12,000	400,000	110	500,000	160	600,000	180
13,000	510,000	160	660,000	200	780,000	210
14,000	670,000	210	860,000	240	990,000	260
15,000	880,000	280	1,100,000	350	1,250,000	350
16,000	1,160,000	340	1,450,000	400	1,600,000	425
17,000	1,500,000	500	1,850,000	550	2,025,000	575
18,000	2,000,000	500	2,400,000	550	2,600,000	575

Figure 3

SCHEDULE G

Applicable to the Class B Interval of an Incentive Exploratory Well that Commences Drilling on or after January 1, 1978

The Class B interval of an incentive exploratory well that commences drilling on or after January 1, 1978 shall be determined by the Board as the interval below the depth of 2,000 feet that

(i) has been duplicated by a drilled and abandoned well within one and one-half miles.

(ii) occurs more than 500 feet below the base of the deepest accumulation of crude oil or natural gas that in the opinion of the Board has been penetrated by another well within three miles, and

(iii) occurs immediately below the base of the member or formation containing the deepest oil sands deposit that in the opinion of the Board may underlie the location of the said incentive exploratory well.

Where neither (ii) nor (iii) above applies, the Class B interval shall be determined from the depth of 2,000 feet to the total depth of the said incentive exploratory well.

	Basic for Credit Plains Area		Basic for Credit Central Area		Basis for Credit, Northern and Foothills Areas	
Depth, Feet	Cumulative Dollars	Incremental $/Foot	Cumulative Dollars	Incremental $/Foot	Cumulative Dollars	Incremental $/Foot
2,000	0	15	0	20	0	28
3,000	15,000	14	20,000	20	28,000	29
4,000	29,000	14	40,000	20	57,000	29
5,000	43,000	14	59,000	19	86,000	24
6,000	57,000	18	74,000	26	110,000	30
7,000	75,000	25	105,000	30	140,000	40
8,000	100,000	30	135,000	40	180,000	45
9,000	130,000	40	175,000	50	225,000	60
10,000	170,000	55	225,000	65	285,000	75
11,000	225,000	65	290,000	90	360,000	95
12,000	290,000	90	380,000	120	455,000	125
13,000	380,000	120	500,000	150	580,000	155
14,000	500,000	160	650,000	180	735,000	190
15,000	660,000	210	830,000	270	925,000	275
16,000	870,000	270	1,100,000	300	1,200,000	310
17,000	1,140,000	360	1,400,000	400	1,510,000	420
18,000	1,500,000	360	1,800,000	400	1,930,000	420

Figure 4

and G *(Figures 3 and 4)*. The schedules reflect the government's decision to exclude the upper 2,000 feet from the forthcoming program, and to increase the credits for qualifying wells deeper than about 3,500 feet. For wells greater than 5,000 feet in depth, the increase is between approximately 25 and 45 percent, the difference being justified by the Department's comprehensive well cost study. An exception applies to the new Northern Area, for which credit increases at certain depths exceed 45 percent to correspond with Foothills credits.

(4) Royalty Exemptions

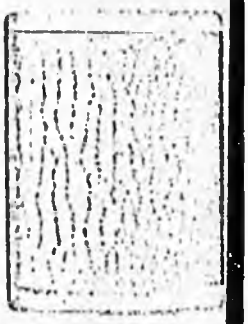
(4.1) Eligibility

Crude oil or gas production must originate from a Class A or Class B interval to qualify for a royalty exemption. Production from any source shallower than 2,000 feet will thus not qualify for royalty exemption under the 1978 Regulation. An exception to the foregoing exclusion is found under the following circumstances: If conventional crude oil is produced from a source shallower than 2,000 feet in the new Northern Area, and if the 2,000-foot interval would have qualified as Class A or Class B footage pursuant to the 1974 Regulations, the crude oil production will be eligible for the normal royalty exemption applicable to deeper production.

(4.2) Duration

The royalty exemptions authorized under the 1978 Regulation will apply to the initial 60 crude oil-producing months or the initial 12 gas-producing months at the well, commencing with the first month in which the crude oil or gas would otherwise be subject to royalty payment.

Additional details concerning these and other principles relating to the forthcoming program will be specified in the 1978 Regulation. If any questions arise after the 1978 Regulation is studied, they may be referred to J. R. Pow or F. Phillips of the Energy Resources Conservation Board, if they pertain to the certification of a well or the determination of its Class A or Class B interval, or to C. R. Smith or E. Saldanha of the Department, if they are concerned with establishing credit or granting royalty exemption. □



Work Commitment Bidding

GREGG K. ERICKSON

One result of the growing concern in the United States over energy matters has been an increased attention to public policies governing the development of Outer Continental Shelf (OCS) oil and gas resources. The institutional structure under which all such development has thus far taken place was established in 1953 by the Outer Continental Shelf Lands Act.[1] This unamended statute provides the Secretary of the Interior with authority to sell oil and gas leases to the public on the basis of cash or royalty bids offered at sealed bid auctions.

The practice of the United States government since the first such sale in 1954 has been to offer relatively small quantities of offshore acreage on an irregular basis, soliciting always cash rather than royalty rate bids. In recent years, the rate at which acreage has moved to market has been accelerating. However, the average per acre bonus received by the government has also increased, partially reflecting worldwide supply conditions. The fact that bids are received in sealed envelopes has resulted in the winning bid being two, three, or several times the amount of the next highest bid.

Among criticisms of present policy is the assertion that this method of lease allocation diverts undesirably large amounts of *front-end money* into the coffers of the government landowner, money that could, would, and should otherwise be used for development of the resource itself.[2] One possible remedy would involve implementation of the existing statutory authority to substitute royalty rate bids, with fixed and presumably low cash bonuses. The problems created by royalty bidding, principally the premature shutdown effect and the potential for speculator induced misallocation of leases, have been well discussed in the literature. More importantly, they are well understood by persons influencing both public and private mineral resource management policies.[3]

An alternative proposed remedy to this same perceived problem is less well understood. Based in part on the method of lease allocation used in the offshore areas of the United Kingdom, it would allocate exploitation rights to the firm that would commit itself to spending the greatest sum in developing the resource. Sealed bids would be solicited as under the present system, but instead of cash the bid variable would be the *work commitment*. Proponents of this system claim that it will divert money the government

landowner would otherwise receive via bonuses into exploration and development expenditures.[4] These additional increments of expenditure, it is further suggested, will increase future production to such an extent that the government landowner will be able to recoup the foregone bonus income in the form of the consequentially increased royalty and tax revenue. Ancillary benefits in the form of employment, resource self-sufficiency, and improved trade balances are also sometimes claimed or alluded to.

To an economist these arguments may not seem too persuasive. Nevertheless, no one appears to have devoted much effort to analyzing the economic implications of such a system, and certainly not in a form that would be comprehensive to the nonéconomist policy maker.[5] This is unfortunate not only because of the substantial public and private interests involved; the system has significant implications for minerals other than petroleum and in places other than the United States OCS. The purpose here is to provide such an analysis.

EVALUATION OF WORK COMMITMENT BIDDING

In evaluating something new the first step is usually to establish a standard against which it can be measured. In this context, the system of competitive cash bidding has long attracted economists concerned with the problem of natural resource allocation, not only as an ideal against which the performance of other systems might be measured, but as a practical and proven technique for bringing resources into productive employment.

Under an idealized competitive cash bidding arrangement, bidders determine the amount they can afford to offer for a mineral lease by a very simple process: they subtract their expected costs of extraction from their expected revenues. The resulting residual is the maximum the prospective bidder can offer for the tract without buying himself an expected loss. Competition, of course, implies that multiple firms will be preparing bids on each tract.

Assuming no uncertainty about the amount of oil to be found or the price that oil will eventually bring, and disregarding the time value of money, the firm with the lowest expected costs of extraction will be capable of submitting the highest, and thus the winning, bid. This is good from society's standpoint, since it means that the resource will be developed with the minimum expenditure of scarce goods and services. The resource's contribution to economic welfare will be greater than it would have been had the tract been awarded to any of the other, less efficient bidders.

Under a work commitment system each prospective bidder will be asking himself: What is the maximum amount I can promise to spend on the development of this tract and still expect to break even? Since any cash bonus

that would have been offered to acquire a tract under the traditional system is no longer necessary, the amount of that bonus may clearly be diverted to the work commitment without raising costs beyond the breakeven point. What is not quite so obvious, however, is that the amount a bidder will promise to spend under the commitment system will exceed the sum of the cash bonus and the amount that he would have allocated to development of the tract under the cash bonus system.

This follows from the fact that any additional increment of expenditure can almost always be spent in a way that will bring about some increase in output from the tract and a corresponding increase in revenue.

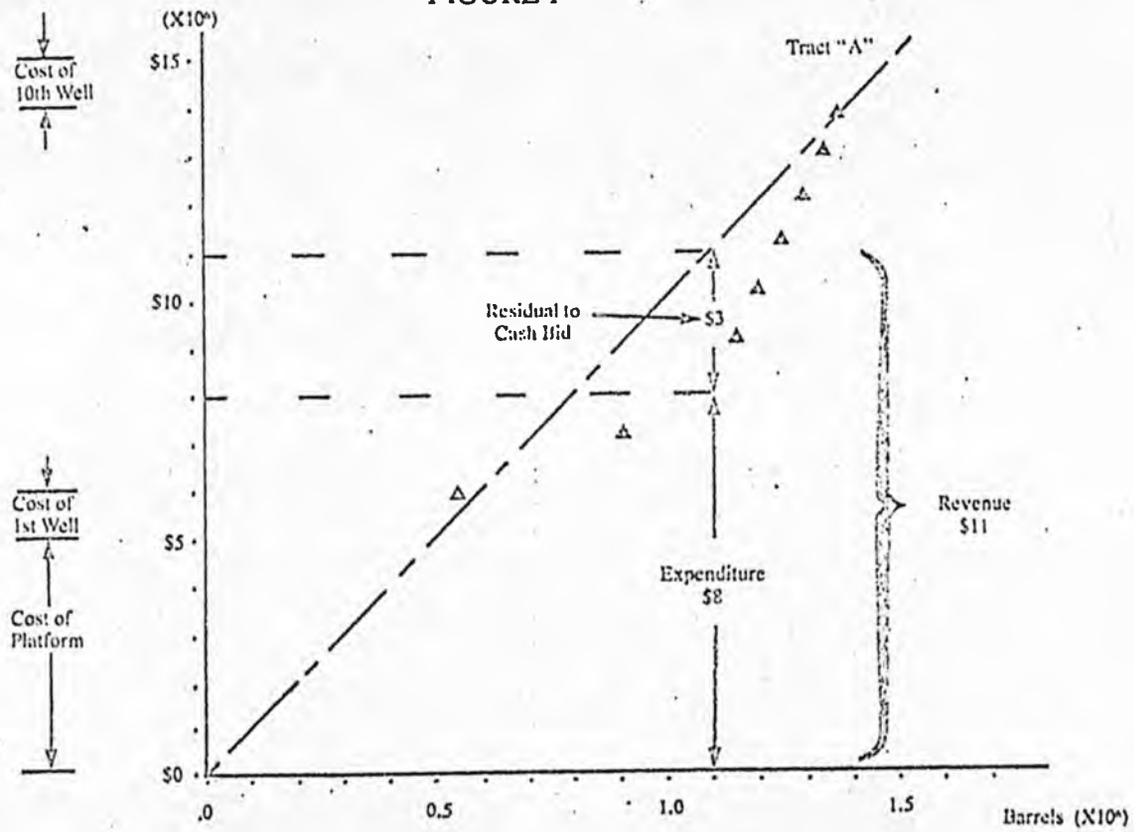
This is most easily demonstrated with a numerical example. Let us assume that a prospective bidder, in determining how much of a cash bonus he can offer for an oil and gas lease on a hypothetical tract A, has calculated the relationship between expenditures on development of the tract and expected production, and that the results of his calculations appear as plotted in Figure 1.

The vertical axis in this graph (and those that follow) measures dollars expended in the tract's development, dollars that we assume will be spent for construction of a platform and the drilling from it of wells. The horizontal scale measures the output that results from that expenditure, denominated in millions of barrels of oil. The relationship between those barrels of output and the revenue they bring their producer (at an assumed price of $10 per barrel) is shown, through appropriate choice of scales, by the dashed 45° straight line running upward to the right. By this means, the vertical scale can be used to show the value of output as well as the cost of production.

In Figure 1, the point closest to the origin indicates that with one platform and one well this operator would expend $6 million (vertical scale) producing an output of 550,000 barrels of oil, worth $5.5 million (determined by the intersection of the 45° line with a line drawn vertically from .55 million barrels). Moving upward and to the right, each subsequent point reflects seriatum the increases in expenditures and output resulting from the drilling of additional wells.

The general shape of the curve defined by these points is characteristic of situations where one major input to the productive process (in this case land) is held constant, while other inputs (in this case wells) are varied. The output curve originates at the lower left hand corner, but it rises vertically at first because the initial input of investment is unproductive: a platform and oil well costs a certain amount, and an expenditure of anything less than that threshold amount produces no oil. The cost of subsequent wells is assumed to be $1 million, no matter how many wells are drilled, creating a curve that looks like a staircase where each increment of cost (representing a new well) creates a new step. The fact that the staircase steepens as we move

FIGURE 1


(X10⁶)
$15
$10
$5
$0
Cost of 10th Well
Cost of 1st Well
Cost of Platform
Tract "A"
Residual to Cash Bid
$3
Expenditure $8
Revenue $11
.0
0.5
1.0
1.5
Barrels (X10⁶)

to the right is a reflection of the diminishing returns, in terms of oil produced, to each additional well drilled into the fixed geographic area encompassed by the lease.

Naturally the prospective bidder will be looking for the point on this output curve that puts his costs as far below the 45° line (his output-revenue function) as possible. As shown in Figure 1, the maximum cash bid this operator could afford to make on tract A (and still expect to break even) is $3 million, which—if he is the winner—would require him to drill three wells.

Consider now the situation this bidder would face were a work commitment bidding system adopted. The question that now confronts him is: How much can I spend (or how many wells can I drill) on tract A and still break even? The answer is clearly $14 million (representing nine wells), indicated on the right side of Figure 2 by the output curve for tract A.

If the bidder wins tract A under a work commitment system, his oil output will be 1.4 million barrels (Figure 2) as compared to the 1.1 million barrels (Figure 1) that he would have produced had he won the tract in a cash bonus sale.

If the success of a mineral resource management policy is measured by the physical quantities of the mineral educed from the earth, the work commitment bidding is clearly superior. A resource's contribution to economic welfare, however, is not its total output (whether measured in dollars or physical quantities) but is the residual left over when the costs of all inputs to the productive process (other than the resource itself) are subtracted from the value of the outputs. In the case of tract A this residual is maximized at $3 million, when the value of the inputs is $8 million. As the input expenditure is increased above this optimum point, the residual—the resource's potential contribution to economic welfare—is gradually dissipated until, at the point where the value of inputs reaches $14 million, there is no more residual left to be dissipated.

In this particular example, the increase in output that would result from a switch to work commitment bidding ($3 million) happens to equal the amount of the residual. This coincides with the fact that the expenditure of each additional $1 million above $8 million (three wells) contributes exactly $500,000 to revenue. If the incremental contribution of the fourth and succeeding wells were greater, for example $750,000, the slope of the output curve traced by these points would be flatter, as shown by the squares in Figure 3, and the increase in production from a switch to commitment bidding would be much greater. To put it another way, it would take twice as large an increase in expenditure to dissipate the $3 million residual.

FIGURE 2

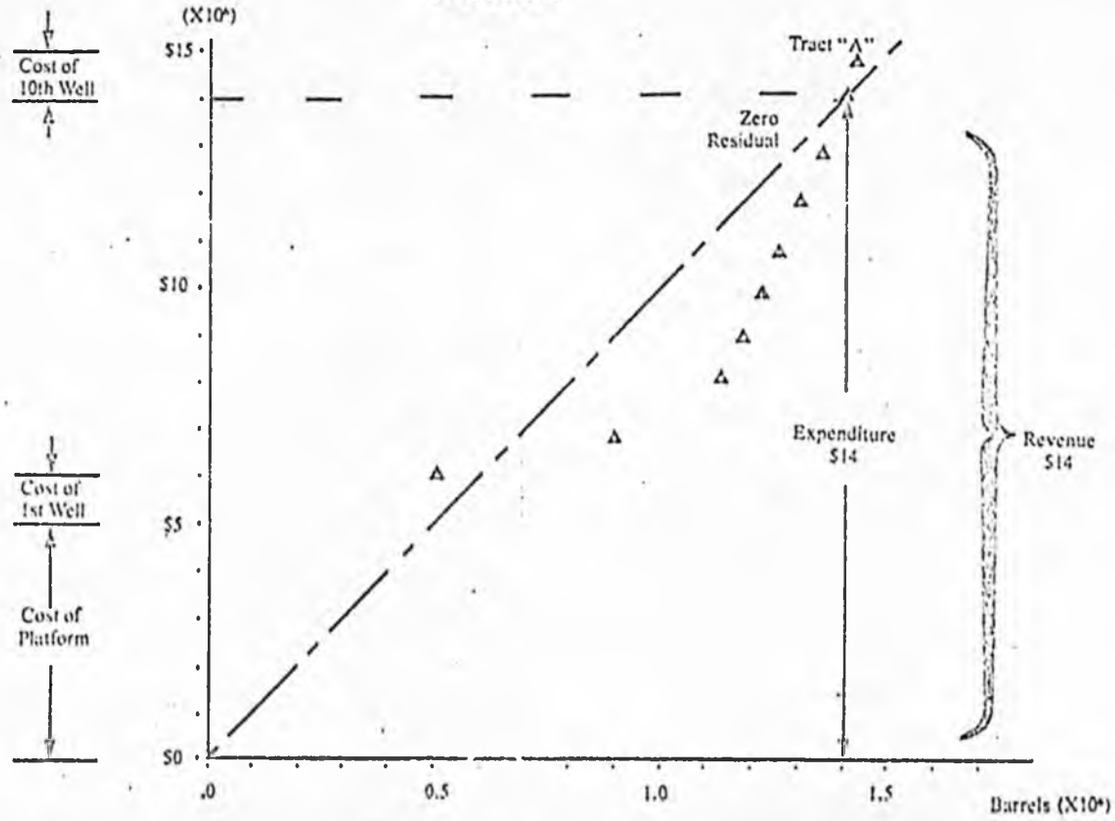
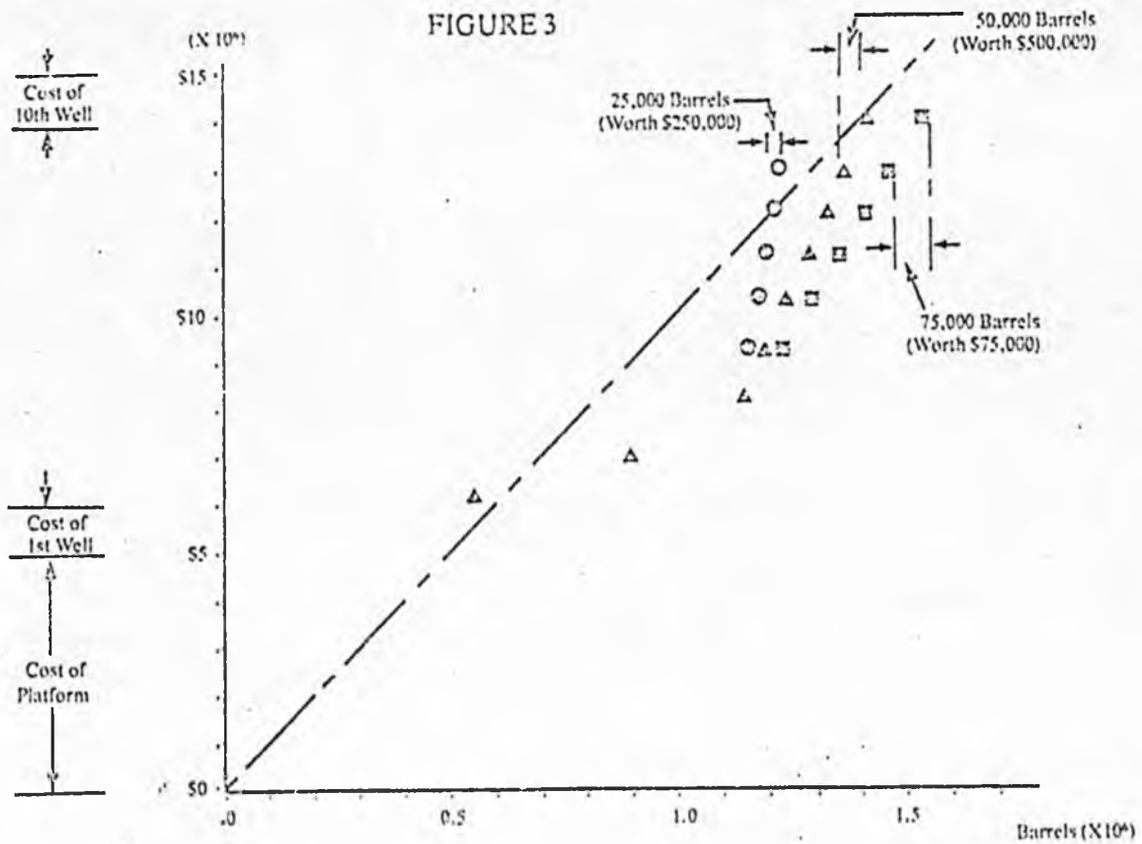

(X10⁶)
$15
$10
$5
$0
Cost of 10th Well
Cost of 1st Well
Cost of Platform
Tract "A"
Zero Residual
Expenditure $14
Revenue $14
.0
0.5
1.0
1.5
Barrels (X10⁶)

FIGURE 3


($ X 10⁶)
$15
$10
$5
$0
Cost of 10th Well
Cost of 1st Well
Cost of Platform
50,000 Barrels (Worth $500,000)
25,000 Barrels (Worth $250,000)
75,000 Barrels (Worth $75,000)
.0
0.5
1.0
1.5
Barrels (X10⁶)

On the other hand, a smaller incremental contribution to output and revenue by the fourth and succeeding wells (for example, an increase of only $250,000 in revenue for each $1 million well) would trace a steeper curve such as the one defined by the circles in Figure 3. The addition to revenue would clearly be less than the $3 million residual sacrificed to obtain it, which is another way of saying that the increase in production would be worth less than the bonus bid sacrificed to obtain it.

TRANSFERABILITY OF COMMITMENTS

Clearly the previously discussed simple work commitment bidding system results in more intensive development of the tract to which it is applied. Clear also is the fact that this effect is dependent on the characteristics of the tract to which it is applied, and in particular on the efficiency with which the successive increments of additional expenditures required under the commitment can be put to work to increase output.

One way to increase this efficiency is to allow an operator who assumes a work commitment in the course of acquiring a particular tract to fulfil that commitment through expenditures on a different tract or tracts.

For example, assume that a bidder has acquired both tract A and tract B as shown in Figure 4. If the work commitment assumed in order to acquire a tract must be fulfilled on that same tract, then his maximum commitment on A (Figure 2) is $14 million; and on B (as indicated in Figure 4 by the dashed lines) it is $8 million. Total output from the two tracts will be 2.2 million barrels.

TABLE 1

WORK COMMITMENT BIDDING

	Output (bbl's)	Revenue ($)	Expenditure ($)	Residual ($)
Tract A	1.4	14	14	0
Tract B	0.8	8	8	0
	2.2	22	22	0

Note: All figures in millions

If the operator is allowed to bid on the two tracts jointly or is otherwise permitted to shift a commitment made to acquire one to the other, then his total work commitment will rise to $24 million, with a corresponding increase in output. As shown in Figure 4, this is possible by operating tract A at the point on the output curve which produces the greatest residual and by transfering that residual, as an internal subsidy, to tract B, where, as indicated by the flatter slope of the output curve, it can be utilized more efficiently. The numbers are summarized in Table 2.

FIGURE 4

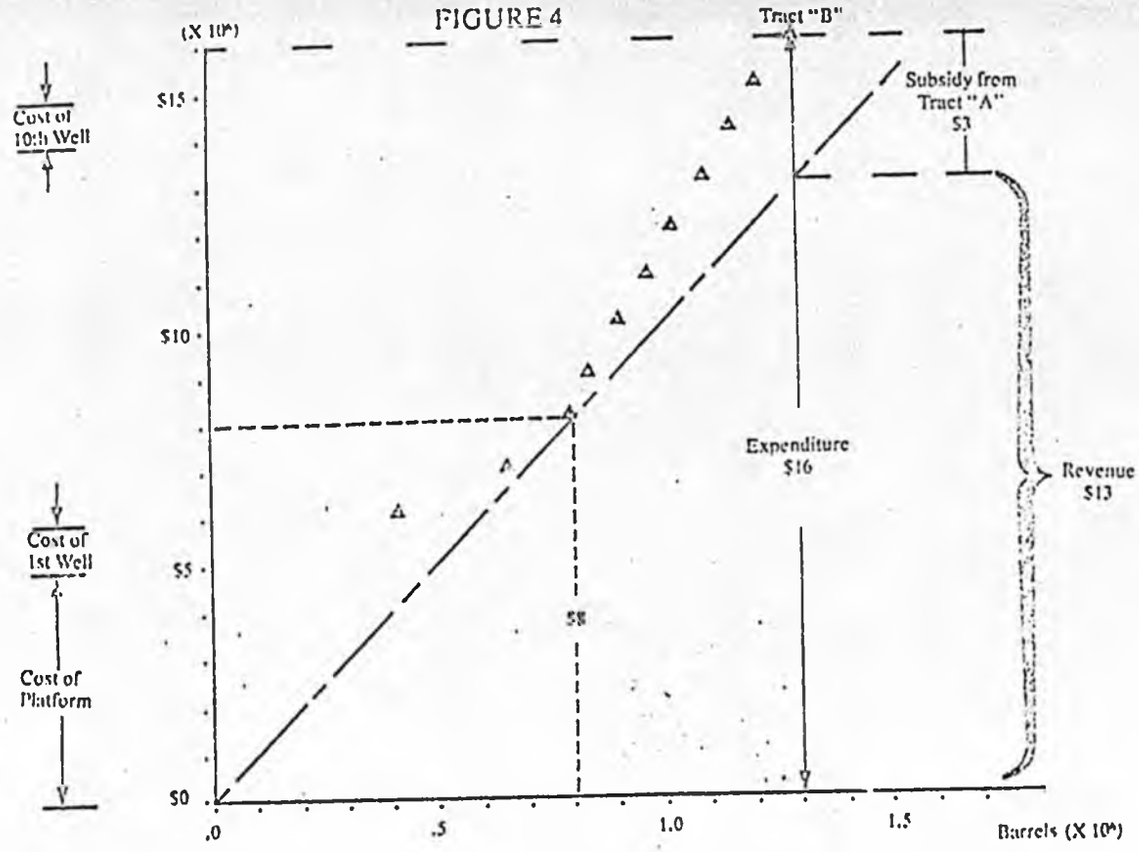

(X 10³)
Tract "B"
Subsidy from Tract "A" $3
$15
$10
$5
$0
Cost of 10th Well
Cost of 1st Well
Cost of Platform
Expenditure $16
Revenue $13
$8
.0
.5
1.0
1.5
Barrels (X 10⁶)

TABLE 2

WORK COMMITMENT BIDDING
(Internal Subsidy Allowed)

	Output (bbl's)	Revenue ($)	Expenditure ($)	Residual ($)
Tract A	1.1	11	8	3
Tract B	1.3	13	16	(3)
	2.4	24	24	0

Note: All figures in millions

EXTENT OF DEVELOPMENT

In the above examples work commitment bidding has been shown to result in a more intensive development of tracts than would be obtained under cash bidding arrangements. If commitment transfers are permitted among tracts, such a system will also bring about more extensive development.

Consider the output curve of tract C in Figure 5. Tract C is clearly something of a "dog," because there is no point at which the output function crosses the 45° "breakeven" line. Under cash bidding, tract C would elicit no interest at all; even if given away free, it would not be developed.

Under a work commitment system, however, tract C may very well be acquired and drilled. Assume that a firm has already acquired tracts A and B as a package with a work commitment of $24 million and that neither tract has yet been drilled. The firm is now offered tract C. How much of a work commitment can the firm offer for it?

The firm had previously planned to use the $3 million residual generated on tract A to internally subsidize tract B. If tract C is added to the inventory, the firm could apply to C $1.5 million of the internal subsidy that would have otherwise gone to tract B and thereby make the development of tract C a feasible proposition. The calculation is shown in Table 3.

TABLE 3

WORK COMMITMENT BIDDING
(Internal Subsidy Allowed)

	Output (bbl's)	Revenue ($)	Expenditure ($)	Residual ($)
Tract A	1.10	11.0	8.0	3.0
Tract B	1.05	10.5	12.0	(1.5)
Tract C	0.75	7.5	9.0	(1.5)
	2.90	29.0	29.0	0

Note: All figures in millions

commitments indicates that the last dollar of subsidy transferred is producing only 33 cents worth of additional oil, it may very well be that another source of oil development—for example, tar sand or oil shale—could be found that would give a better return.[6]

THE TIME FACTOR

To simplify the discussion of the work commitment system, the time dimension of both expenditures and income has thus far been ignored. Since a dollar in hand today is worth more than the promise of a dollar tomorrow, it has been assumed that all bidders have used a discounting mechanism to take account of the time value of money. Thus, they would reduce all amounts of both expenditure and income streams to their *present value*, that is, the lump sum that the bidder would be willing to receive or give in exchange for the specified income or expenditure stream.

If a work commitment system is to be implemented, it will be necessary to take careful account of the fact that a commitment fulfilled in the next year will have a very different impact on output from one of the same amount fulfilled ten years hence.

If the public is going to give up its bonus income to subsidize output, the time when that subsidy takes effect will presumably make some difference. Of course, some arbitrary time limit could be established for the fulfilment of commitments exactly as the United States government sets the five-year term on the OCS oil and gas leases it sells. If free exchanges of commitments are allowed, anyone who wished to distribute expenditures over a time frame incompatible with his commitments could simply enter the market and adjust his inventory of commitments accordingly.

Another way of handling the problem would be simply to apply some appropriate interest rate to every commitment assumed and specify that the amount of expenditure required under that commitment must increase by the amount of the compound interest accumulated in the period between the assumption of the commitment and its fulfilment.

CONCLUSION

The adoption of a work commitment bidding system implies a judgment that existing institutions for private exploitation of public resources result in a suboptimal rate of resource development.

Any argument for the adoption of such a system must first establish that this is in fact the case. Secondly, it must prove that the work commitment approach is the least costly method of achieving the desired higher rate of exploitation.[7]

FIGURE 6

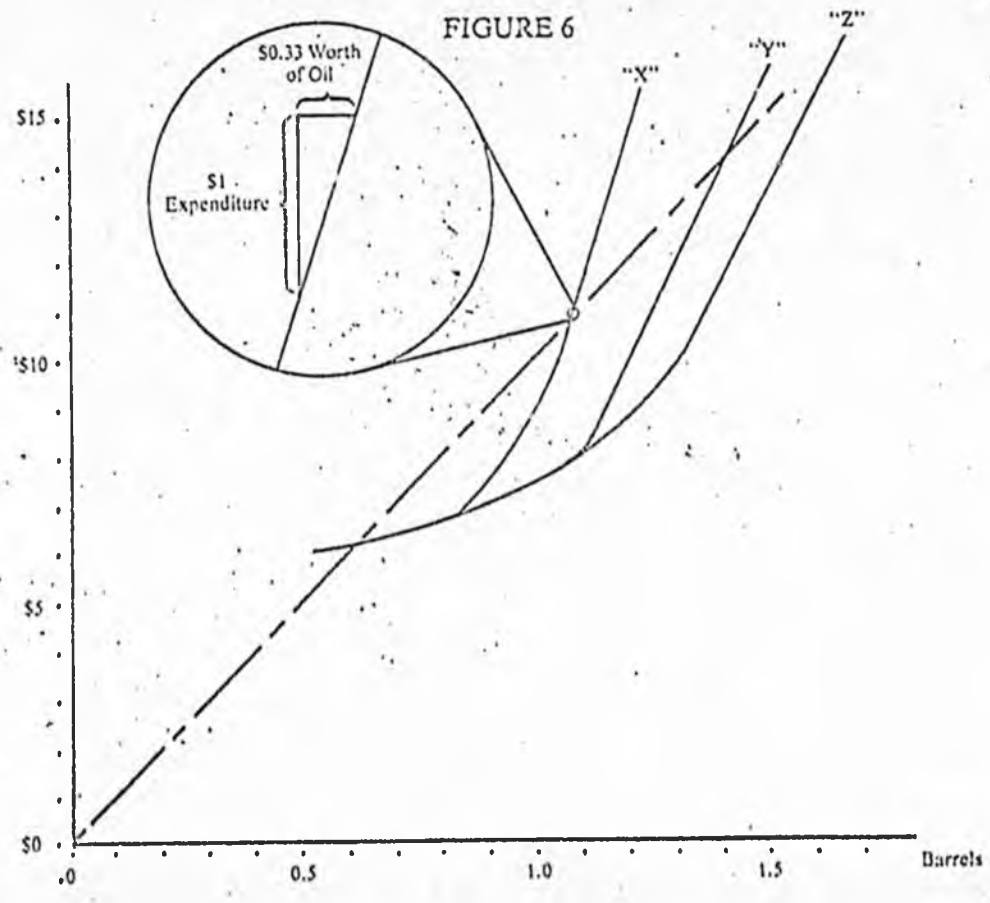
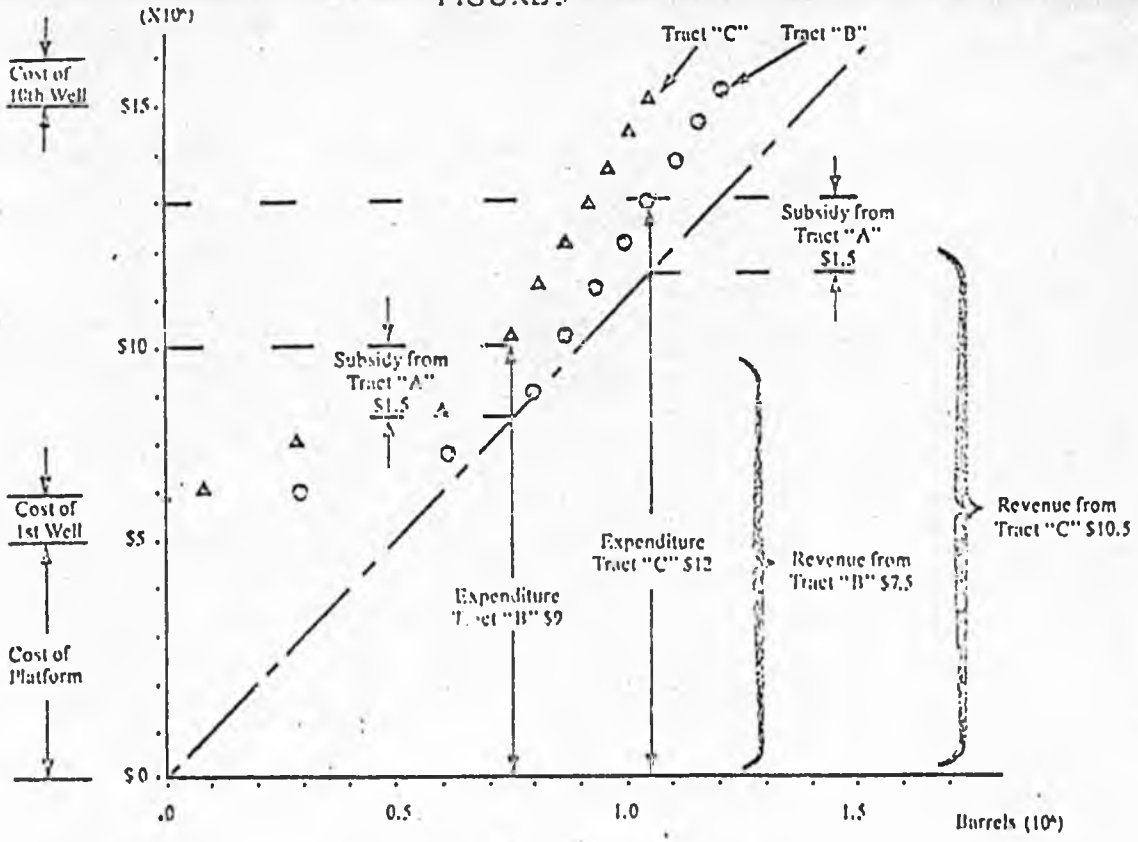


FIGURE 5


(10^6)
Tract "C"
Tract "B"
Cost of 10th Well
$15
Subsidy from Tract "A" $1.5
$10
Subsidy from Tract "A" $1.5
Cost of 1st Well
$5
Expenditure Tract "C" $12
Revenue from Tract "B" $7.5
Revenue from Tract "C" $10.5
Expenditure Tract "B" $9
Cost of Platform
$0
.0
0.5
1.0
1.5
Barrels (10^6)

Development of the three-tra package under the work commitment system will be feasible with a tot xpenditure of $29 million. Since he has already been committed to spe ag $24 million of this, in the course of acquiring tracts A and B, the ma imum commitment bid this operator can afford to make on tract C is $5 million.

Besides illustrating the mechanism through which commitment bidding induces more extensive resource development, the tract C example also indicates how the system (with interna subsidies allowed) may work to the advantage of the firms that can acquire the most tracts. Theoretically, a newcomer with no existing inventory of tracts would be unable to make any commitment bid on tract C.

A way of evading this problem would be to make the commitments transferable. This would allow operator Jones to legally assume the obligations to which operator Smith has committed himself in the course of acquiring tracts from the government. Presumably, operator Smith would pay Jones for the favour.

The prospective bidders in these examples have been endowed with the ability to foresee accurately and precisely the output curve associated with every tract. In practice this is not the case. If there is any characteristic that sets the exploration phase of the petroleum and mineral industries apart from other businesses, it is the everyday uncertainty with which its participants must learn to cope. It is perfectly possible, for example, that Smith might acquire tract C with a work commitment bid of $14 million on the mistaken belief that its output curve is that of tract A. After building a platform and drilling the first four wells, the true shape of the curve—and the firm's predicament—would reveal itself. The required $14 million expenditure applied to tract C would leave Smith with a net loss of about $4 million. If he could somehow shed $5 million of the $14 million commitment, Smith would be able to operate the tract with only four wells already drilled and thereby cut his losses to the more acceptable level of $1.5 million. Smith would be willing to pay up to $2.5 million in cash to unload the $6 million obligation, since that is the amount of his maximum additional loss if he can't get rid of it.

Any other operator who is facing or expects to face an output curve with a flatter slope than that faced by Smith will be able to make a mutually beneficial deal with him, since, for the other party, an additional expenditure of $5 million will bring in more than the maximum $2.5 million that Smith will be willing to pay.

Besides putting the small firm in a better position to compete and mitigating the problems of uncertainty for all firms, large and small, a system which allowed the free exchange of work commitments would have the further and more important advantage of maximizing the overall

efficiency with which work commitments are utilized. To the extent to which such a market was effective in bringing potential commitment offerers together with potential commitment takers, it would ensure that everyone would be operating at a point where a small increase in expenditure by one operator would produce no more and no less additional revenue than would the same increase applied to any other operator.

A minor but interesting benefit of a market in commitments would be the information it would provide concerning the efficiency with which the work commitment system is eliciting additional output.

This can be understood by applying the concept of the output curve (hitherto used in relation to individual tracts) to the entire universe of tracts being offered under the commitment bidding system. By combining all such tracts and treating them as a single entity, an overall output curve similar to Figure 6 can be drawn. Just as in the case of an individual tract, the point where the curve dips farthest below the 45° breakeven line will be the optimum operating point, the point which results in the resource's largest contribution to economic welfare. The distance between the breakeven line and the output curve at that point is the measure of that contribution, and it is equal to the income that would come to the government landowner were a competitive bidding system utilized. It is this residual—the difference between total revenues and total costs—that the public will be sacrificing to subsidize output.

The efficiency with which the subsidy provided by the work commitment system works to increase output will be a function of the output curve's shape to the right of the point where bonus income would be maximized. Three hypothetical configurations for this part of the curve are shown, and the difference this shape makes to the level of additional output educed by the sacrifice of the residual can be seen. The significance of the price at which commitments change hands will be determined by the slope of the output curve at the point where it intersects the 45° breakeven line. Curves Y and Z both cross at an angle which indicates that, at that point, $1 of expenditure produces $0.50 worth of additional output. In either situation the market price for assumption of a $1 million commitment would be $500,000. Curve X, however, crosses the line at a steeper slope (as shown in the inset), indicating that $1 of expenditure will produce $0.33 worth of additional output. If curve Z accurately represents the overall output curve, the market price for the assumption of a $1 million work commitment will be about $333,000.

From a policy standpoint these numbers, whatever they may be, have considerable significance since they can be used to compare the efficiency of the work commitment system in eliciting additional output with whatever other alternative policies may be available. For example, if the market for

In comparing various alternative ways of achieving higher output against the work commitment system, some important features of that system are certain to stand out. First, and probably most significant, is the simple fact that the work commitment system results in a subsidy. As such, the criteria for its evaluation should be no less stringent than those applied to a direct appropriation of public funds or a tax concession adopted for the same purpose.

Secondly, the cost of the subsidy conferred under the work commitment approach is impossible to determine *a priori* and difficult of determination after the fact. If there exists a "right" level of subsidy it will be mostly a matter of luck if the foregone public revenue happens to equal that amount. For similar reasons, the benefits of the subsidy in terms of the total increase in output, development, or whatever, are not amenable to accurate quantification. As a consequence, it is doubly difficult to evaluate the system's relative efficiency.

Finally, a properly designed work commitment system allocates the uncertain amount of the subsidy in a fashion that tends to squeeze the maximum additional output from every dollar of subsidy. It does this more or less automatically. This characteristic means that the transfer of resources occasioned by the subsidy needs no affirmative action on the part of policy makers—as does a direct appropriation of public funds—in order to be continued. This fact, however, combined with the intrinsic uncertainty concerning the subsidy's magnitude makes it easier for vested interests to perpetuate such a subsidy long after any real justification for it has passed.

Notes

1. *U.S. Statutes at Large*, vol. 67, p.345. Public Law 212 (August 7, 1953).
2. For an exposition of the conventional industry wisdom on this point, see "Terms for North Sea Oil," in *Petroleum Press Service* 40 (1973): 122-24.
3. In recent testimony before the Senate Interior Committee, industry representatives were unanimous in their opposition to royalty rate bidding. *Outer Continental Shelf Oil and Gas Developments, Hearings Before the Subcommittee on Minerals, Materials, and Fuels of the Committee on Interior and Insular Affairs* (United States Senate, 93rd Congress, Second Session: May 6,7,8,10,1974).

4. Arguments for the work commitment system are expounded in detail in I. White, D. Kash et al., *North Sea Oil and Gas: Implications for Future United States Development* (Norman: University of Oklahoma Press, 1973).

5. Kenneth Dam has touched on some of these matters, however, in "Oil and Gas Licensing in the North Sea", *Journal of Law and Economics* 8(October 1965) and "Pricing of North Sea Gas in Britain," *Journal of Law and Economics* 13 (April 1970). Dam recognizes the subsidy for what it is and concludes that it is unjustified.

6. If it is determined that only a portion of the residual should be applied as a subsidy, this could be accomplished by offering only a portion of the tracts on the commitments bid basis, but allowing the fulfilment of a commitment on any tract acquired from the government. Since the reduction in the subsidy will move the operating point to the left on the output curve (Figure 5) to a point at which its slope is flatter, the result will be a higher assumption price for commitments. The commonsense explanation is that the optimum amount of total expenditure will be reduced only slightly; but that acreage over which commitments that can be fulfilled by that expenditure will be reduced relatively more. Another alternative would be to combine the work commitment system with a royalty, net profits share, or other form of deferred rent collection. This is in fact the arrangement pertaining in the North Sea sector. If the government takes a very high net profit share, the amount of the subsidy will be substantially reduced.

7. There are certain circumstances where a work commitment system could result in no more extensive or intensive development. This would be the case if the commitment were devoted to an activity not contributing to output. For example, if a government awarded a mineral concession to the operator who promised to build the largest smelter, no increase in mine output would result (unless the location of the smelter made lower grade ores profitable to mine).

Petroleum Leasing in British Columbia

DALE R. JORDAN

FACTORS AFFECTING THE LEVEL OF EXPLORATION

From data published by the provincial department of mines and petroleum resources, it would seem that exploratory drilling in British Columbia in 1974 was in a static position and may even have been declining. There was a 22 per cent drop in the number of exploratory wells drilled in 1973 compared with 1972, and a corresponding drop in the footage drilled. This decline in activity appeared to be continuing into 1974, with drilling down 10 per cent in the first seven months. This apparent decline in exploration for oil and gas in British Columbia came at a time when the demand for oil and gas was high. Prices for oil and gas had increased dramatically, and considerable concern was being expressed over national self-sufficiency in all forms of energy supplies. By comparison, exploration activity in Alberta showed the opposite pattern. In Alberta, exploratory drilling in 1973 increased 50 per cent over 1972. Statistics published by the Daily Oil Bulletin showed that during the first several months of 1974 there was a further increase over the same period in 1973.

What caused the static or possible decline of exploratory drilling in British Columbia at this particular period of strong demand and high price? There are several answers, and formulated theoretical solutions must be viewed in the light of political judgment where governments demand a greater share of resource revenues. Certainly, the federal budget proposals in the spring of 1974 discouraged exploration for oil and gas in Canada; however, it would seem that provincial government policies were largely responsible for any discouragement felt by the oil and gas explorer.

In this article I attempt to set out some of the basic causes that contributed to the 1974 situation in British Columbia. These causes are identified and any suggested solutions are offered in the realization that there is a danger of oversimplifying complex problems and the possible effects of implementing partial solutions.

For any analysis to be meaningful, a proper perspective must be maintained. One of the overriding factors influencing the oil and gas explorer's decision making is the number of geological prospects. In British Columbia, the potential hydrocarbon-bearing portion is thought to be

restricted to the northeast part of the province. The western boundary of this 51,000 square miles is the Rocky Mountains. In 1974, an estimated 37 per cent of the oil and 18 per cent of the gas in this area had been found, leaving an estimated 0.82 billion barrels of oil and 47.56 trillion cubic feet of gas still to be discovered. Although there was considerable potential still remaining for the oil and gas explorer, the area was small compared to Alberta and Saskatchewan, and it was much smaller than the vast geological potential north of the 60th parallel.

Another factor that depressed the enthusiasm of the explorer was the apparent lack of multizone prospects. Drilling a well to test only one potential horizon increases the risk factor significantly.

Before leaving the subject of the province's hydrocarbon potential, it should be remembered that several basins existed, both offshore and in the interior, containing substantial deposits of sedimentary rock that have not been explored to any great extent. Generally, the known geology in these basins discouraged any extensive exploration. Possibly, the very expensive exploration needed in the basins required special consideration before their potential could be fully realized. This special consideration might take the form of a reduced royalty on any hydrocarbon discovered, or of a joint participation scheme whereby the British Columbia government might share in the risks involved.

Another factor to be taken into account by the oil and gas explorer when selecting his areas of interest is the access to those tracts that he feels have hydrocarbon potential. Again, British Columbia was at a disadvantage in 1974 when compared with Alberta and Saskatchewan. Access to this already restricted basin area was affected by muskeg conditions over much of the plains and by deep river valleys in the foothills. These conditions involve greater expense in conducting exploratory work, and the oil and gas explorer would often be confined to only a four-month work year, because of such terrestrial conditions. The problem of limited access presents a very real constraint on attracting the oil and gas explorer and is relevant when considering any changes in land tenure and revenue sharing.

Another important parameter in any deliberation affecting oil and gas exploration is the availability of funds for exploration.

As a general rule, funds generated from production are used to finance exploration. It seems that the risk factor employed by financial institutions effectively discourages the use of debt capital as a source of exploration funds. It is not uncommon to read that an oil and gas producer has arranged for a substantial loan, but this will nearly always be for a specific purpose related to the development of a new reservoir of oil or gas. The discovery of this reservoir would have been funded out of the company's cash flow.

When an oil or gas explorer's cash flow comes from production outside any particular province, then for money for exploration to flow into that province, that jurisidiction must have a framework of leasing and revenue sharing that can favourably compete with other areas also requiring exploration.

It would seem that cash flows from Canadian production will continue to be a major source of exploration funds. In the case of the integrated companies (those having refinery capacity), this will be true under almost any condition short of expropriation.

However, within this framework these funds will generally gravitate to where they can expect the greatest return. It may not be enough for a province to show that it will ensure that the successful explorer will receive a reasonable rate of return. It may well be that the successful criterion for increasing the level of exploratory drilling will be a division of revenues such that the oil and gas explorer will have a sufficient cash flow for an active exploration programme, as compared with other jurisidictions. The explorers who have a cash flow generated from production and the flexibility to determine the best place to reinvest these funds have the responsibility of ensuring that they can go to where they can expect to return the greatest profit.

The ability of the producer to channel cash flow from one jurisdiction to another depends largely upon the particular laws in force where the oil or gas is being produced. The provinces of Alberta and Saskatchewan tend to attempt to discourage the outward flow of funds generated from production in their particular provinces. In both provinces, this discouragement took the form of a high royalty, coupled with a drilling incentive programme, designed to encourage continued exploration.

In Saskatchewan, the mineral tax and the royalty surcharge took away from the producer all of the recent price increases and, in fact, returned to the producer a smaller amount per barrel than he was receiving prior to the price increases. As an inducement to continued exploration in Saskatchewan, an incentive programme was developed, whereby the producer was allowed to retain an additional 30¢ for every barrel produced, providing this money was used for drilling wells, for waterflood projects, research, and other specified purposes in Saskatchewan. This incentive had not been in effect long enough in 1974 to permit a complete analysis of its performance; however, it was really restricted to only those companies that already had production in Saskatchewan. A review of these companies shows that the producers with the majority of the production were the so-called Majors, which raised the question as to whether or not these Majors were prepared to continue to explore in Saskatchewan under any conditions. It is more probable that the exploration philosophy of the

Majors directed that they use their exploration funds searching for high reserve reservoirs (which generally means exploring outside Saskatchewan).

To encourage explorers who do not have production in Saskatchewan, the government provided an incentive credit of about 30 per cent of the costs of drilling exploration wells. This credit could then be used to reduce any royalty or mineral tax obligations that may accrue.

In Alberta, in 1974, there was also an incentive programme for exploration drilling. This incentive took the form of a credit which could be subsequently used to satisfy most of the cash obligations that may arise by virtue of the royalty obligation, rental payments and mineral taxes, and could also be used to purchase oil and gas leases. Credits established in Saskatchewan could not be used to purchase leases. The formula which determined the amount of credit that could be established for any particular exploration well was predicated upon the area of the province in which the well was located and the depth of the well. This formula was expected to return to the explorer by way of credit approximately one-third of his drilling costs.

The principal producers of crude oil in Alberta were much the same as in Saskatchewan—they were the Majors in the oil and gas industry. Again, as in Saskatchewan, it would seem that the interest of the Majors in continuing to explore in Alberta had become blunted, not because of any particular rules, but more through the apparent lack of sufficient high reserve potential which this type of company must search for.

In Alberta, in 1974 the royalty was structured to increase not only when the production increased but also when the price increased. Alberta had also adopted a new oil/old oil concept, whereby royalties were considerably reduced on what was termed new oil, which, of course, had the affect of increasing the producer's cash flow and encouraging the development expenditures. This old/new concept applied as well in the case of natural gas. Saskatchewan also had provision for a reduction in its mineral tax and royalty surcharge for new oil. This reduction was gradually phased out after a few years. Alberta, in 1974, had the lowest rate of royalty on oil and gas, received the highest price for its natural gas and had a price for crude oil equivalent to the other provinces, all of which means that in Alberta the producer of oil and gas received a higher rate of return and, consequently, had more money available to him for exploration purposes than the producer in Saskatchewan or British Columbia.

While the incentive programme adopted in Alberta and Saskatchewan offered encouragement to drill exploration wells, any analysis of the performance of a similar programme which might be suggested for the province of British Columbia must be coupled with the consideration of a lower royalty and subsequent higher cash flows to the producer.

This type of incentive can only be effective if the producer is also offered a return on his development expenditures that is competitive with other jurisdictions into which the oil and gas explorer is free to go.

Another source of money for drilling exploratory wells previously used in North America has been the drilling fund. The drilling fund usually takes the form of buying a number of shares in a limited partnership. The attraction to the investor apart from the possibility of participating in oil and gas discoveries, is the income tax feature in the United States which permits all intangible drilling expenses to be written off in the year that expenditures were made. This can be done without qualifying under any principal business rules, as prevails in Canada. It is this principal business rule that has to the present time precluded the tapping of a similar source of exploration funds in Canada.

It is estimated that between 250 and 400 million dollars are generated annually through the sale of shares in drilling funds in the United States. The United States government, in an attempt to encourage further exploration within its own borders, has chosen to reduce the amount that can be written off against income for income tax purposes when the funds are spent outside the United States. This move precipitated the drying up of exploration funds in Canada which previously came from this source.

Over the past few years other extractive industries, particularly mining, have been channelling considerable amounts of their cash flows into oil and gas exploration. These endeavours have usually taken the form of funding a subsidiary company. The continuation of this type of fund for the purposes of exploring for oil and gas will depend upon the success of the subsidiary companies and also upon the influence that mining taxes will have upon the parent companies' cash flows.

A few years ago it was quite popular for large United States gas utility companies to provide exploration funds on the basis that they would have first call on any gas produced and exported for sale to the United States. This source of exploration funds has also dried up almost completely as a result of decisions by the National Energy Board concerning the exporting of gas and, as a result of rulings by the Federal Power Commission in the United States, which have not allowed these utility companies to include these expenditures in their rate base. The Federal Power Commission looks upon this type of exploratory funding as a mortgage loan, rather than as a prepayment for gas, as the utility companies would prefer.

THE LEASING SYSTEM

The 1974 system of leasing in British Columbia will now be reviewed, and I will attempt to analyse its effectiveness in relation to the relatively small

hydrocarbon potential area, lack of access, difficult terrain, and exploration funds generally coming from cash flows.

The system of granting oil and gas rights on crown lands in British Columbia invoved in 1974 an exploration grant called a "permit," a subsidiary exploration grant called a "drilling reservation," and a development grant called a "lease."

Permits, which can involve upwards of 100,000 acres, could only be acquired through a competitive cash bidding system at sales which were usually held four times a year.

The permits were classified from A to D, depending upon their accessibility and the terrain conditions. The class D permits were for offshore areas. One purpose for classifying permits was to allow them, where the working conditions were difficult, to have a longer life than was otherwise provided.

Permit classification also determined the minimum amount of work the permit owner was obligated to spend in any year. These minimum work obligations were more stringent for the Class A permit, where access and terrain problems were minimal. The significance of this particular requirement was lost because, in order to conduct an equivalent amount of exploration, particularly drilling, the costs involved in the offshore areas far exceed those which would be expended on a class A type permit. The sections of the Petroleum and Natural Gas Act that governed the permit work obligations did not specify any specific exploration programme, but only that a certain amount of money be spent during each term of the permit. This obligation to spend money in exploring on a permit could be satisfied by grouping several permits together, so that expenditures incurred in exploring on any one permit would satisfy the work obligation of the grouped permits. This grouping provision is important because it allowed an explorer to acquire large tracts of land for a short period in order to conduct extensive geophysical exploration.

This obligation to spend money on exploring on a permit could also be satisfied by paying the money to the British Columbia Crown. This would seem to be about as negative a provision as one could imagine, assuming, of course, that the government of British Columbia was interested in ensuring that the companies holding permits were the ones prepared to actively explore. If the removal of this system would give rise to problems, as in the case of an explorer unable to work a permit through no fault of his own, then a far better system would be to provide a means where work obligations could be accumulated and satisfied in the following year.

Permits were valid for one year and could be renewed annually, for a period ranging from five to eight years, providing the company was not in default.

When a permit holder had expended the minimum amount of money exploring on a permit or group of permits or had paid the money to the government, he was entitled to convert the permit into leases. To do this the permit holder had to relinquish 50 per cent of the land back to the Crown. Land selected for conversion into leases could not be in a consolidated block, but had to be in a number of leases, which had to corner one another, or be separated by at least two units—approximately one mile. The maximum size of the lease was six units—approximately three miles square.

This system of exploratory permit and subsequent conversion of half of the land to lease on a chequerboard fashion was similar to that used in Saskatchewan and part of Alberta. The system probably had its beginning in Alberta. It was designed to ensure that when crude oil was discovered, the Crown would be returned some prospective areas which were subsequently sold. This system worked reasonably well, particularly in Alberta, where some substantial discoveries of crude oil were made during the existence of the exploration agreement. Unfortunately, in the vast number of cases a discovery was not made, and the chequerboard pattern for leases led to fragmentation of rights throughout the area formerly comprising the permit. This effect tended to discourage other explorers from entering the area, and this system of selecting leases also prompted the need for the drilling reservation, which generally covered that 50 per cent of the land returned to the Crown.

Seemingly, in those parts of the province having relatively easy terrestrial access and where the potential hydrocarbon-bearing formations were not too deep, this system of chequerboard leasing may be satisfactory. However, in areas where access is a major cost and where deep expensive drilling is required, it tended to discourage anyone other than the holder of the 50 per cent leases from entering the area to explore. Certainly in offshore areas where seabed drilling cost is many times greater than land drilling, this system of lease selection is most unsatisfactory.

Leases granted on crown land in British Columbia in 1974 had a primary term of ten years, renewable for further ten-year periods if particular circumstances existed which generally related to production.

The acquisition of leases in British Columbia was handled in 1974 in two separate ways. First was the way previously mentioned, which was the result of having a permit and then earning the right to acquire leases of 50 per cent of the land. The second was through the competitive cash bidding at one of the quarterly sales held by the British Columbia Crown.

There was no obligation at that time on the part of the lessee to drill a well during the initial term of the lease. A 1974 amendment to the Petroleum and Natural Gas Act, however, permitted the minister to forward a notice to

drill when he considered that development of the lease was not active enough. This amendment seemed to suggest that before the minister would consider sending a notice, there would, in fact, have been a discovery made on the lease. Thus, in sending the notice, the minister was merely requiring development drilling. It seemed most unlikely that the wording of this section would be interpreted such that the minister could require exploratory drilling on existing leases.

There was an apparent trend to shorten the term of leases, with Saskatchewan granting only five-year primary terms. However, in British Columbia the term of 10 years was not excessive when one considers the short period of four to five months when work can be done in the area of hydrocarbon potential. This is quite different from most of the areas in Alberta and Saskatchewan, where drilling and other geophysical operations can be conducted all the year round.

The government of British Columbia appeared to feel that a large number of leases were held by companies not particularly active in exploring in the province and that something should be done to discourage these holdings, so that lands could be offered to others who were prepared to explore. These feelings may have promoted some of the 1974 changes in the Petroleum and Natural Gas Act, whereby the rental on leases was increased from one dollar an acre to two dollars an acre. The effect of this change seemed likely to be the return to the Crown of some acreage which, under the previous rental of one dollar an acre per year, would have been retained by the lessee. However, one must assume that for the most part relinquished leases would be the least attractive, and leases with potential, even though the lessee was not prepared to conduct any immediate exploration programme, would be retained, and the two dollars an acre would be paid. The greatest effect that this rental of two dollars an acre per year seemed likely to have was to deter other explorers from entering the province. It is one thing to create a system designed to discourage excess holdings by companies not prepared to explore immediately, and quite another thing to expect these same rules to promote the entry of new companies and increase exploration activities.

The royalties on crude oil in British Columbia were essentially the highest in Canada in 1974. The rate was 40 per cent for a well producing 1,000 barrels a month and further escalated to about 58 per cent when the monthly production reached 10,000 barrels. It would seem that this royalty level, which directly affected the producer's cash flow, could only act as a deterrent to increasing the level of exploration in British Columbia much beyond its historical pattern of about fifty to sixty exploration wells a year. Other changes that may be made in regulations designed to encourage greater exploration activity will never perform to their full potential until

the producer's return is comparable with what he can obtain in other jurisdictions.

GOVERNMENT OPTIONS

We can now examine the options available to the British Columbia government in 1974. First, the government could maintain the existing regulations without change; or they could have stricter enforcement of the rules, further reducing cash flows to the producer, making it more difficult to operate; and thirdly, they could make changes designed to encourage greater exploration activity in the province. In each of these options it is assumed that some accommodation could be made between the provincial and federal authorities with regard to the revenue-sharing aspect. If it could not, then it would seem almost certain that exploration activity would decline, not only in British Columbia but also in the rest of Canada, and that even significant changes in the regulations would fail to act as an effective inducement to continued exploration.

In the first instance, if the government were to resist changes to its rules and to continue the existing level of royalty, it could expect to receive about the same amount of exploratory drilling as there has been in the past. This is evident from the sale in August 1974, where some 7.2 million dollars was paid for the right to acquire oil and gas permits, drilling reservations, and leases. This was certainly an indication that the oil industry was not prepared to write British Columbia off because of its high royalties and rather stringent regulations. There are several reasons for this. Companies have enjoyed a general increase in their cash flow, and in 1974 enough cash flow was available to pursue exploration in a province where the rates of royalty would reduce their return on invested capital as compared to other jurisdictions—for example, Alberta or the United States. The intensive competitiveness in the oil and gas industry distinguishes it from all other industries. Companies that have invested a great deal of time and money developing the geological potential of a particular area and have found that it fits their exploration parameters are prepared to offer a good deal of bonus money when this land becomes available through a competitive sale. Also, because a number of years usually elapses between acquiring an exploration permit and the development of and production from any discoveries, the economic climate may change such that what at one time is not attractive may become economic at the time of production.

If the government of British Columbia wished to discourage continued exploration by the existing oil and gas explorers and to discourage entry by newcomers, they could most effectively do this by again raising the rates of royalty and making the tenure of agreements shorter than they were. This

type of action would cause the companies exploring in the province and those contemplating doing so to restrain their activities; exploration would then stagnate.

Presumably, such action by the British Columbia government would not occur without consideration of these consequences and the recognition that a different vehicle should enter the void left by the existing explorers. This could take the form of a public company, such as the British Columbia Petroleum Corporation; alternatively, the government might feel that, given time, the major oil and gas producers, the fully integrated companies, may finish their exploration for high-reserve reservoirs in other parts of Canada and be prepared to return to British Columbia to look for the remaining reserves which they may need to supply their refineries.

To give any support to this latter proposition, one would have to presuppose that the exploration presently being carried on by the Majors in Canada in the Northwest Territories, in the Arctic Islands, and in the offshore areas of eastern Canada will be unsuccessful and that they will have to lower their sights, accept a lesser prospect, and return. This is very difficult to support, considering the successes already achieved in the Northwest Territories, particularly in the Delta, and in the Arctic Islands. Also, there is a vast geological potential remaining as assessed against the very few wells that have been drilled.

The supposition that a provincial public corporation could enter the exploration field and its endeavours be more beneficial to the province than the present system raises many questions about the corporation's practical efficiency and about the possible political repercussions. This article's purpose is not to examine the political repercussions that might occur when dry holes are drilled with public funds; however, we should examine some of the practical considerations involved in the operation of a public company which has an almost exclusive area within which to explore as a result of discouraging the private sector. For the government to discourage both the existing explorer and the entry of any new ones and to expect the public corporation to be able to fill this void suggests that the government is saying, "If the private companies do it, so can we." Now remember that the private companies comprise all the oil and gas explorers working in the province and those contemplating doing so, given the right opportunities. All these companies have geological staffs, many of whom will be geologists who devote most of their time over a considerable number of years entirely to the study of British Columbia's geology. The public corporation could not expect to have such an extensive source of expertise as that available in the free enterprise system. And so the public corporation would suffer from a reduction in the number of ideas generated.

It is not unusual in oil and gas exploration, with its inherent problem of

scientific interpretation and evaluation of geological prospects, to find that one company will acquire a block of land, will explore it, and perhaps even drill on it before deciding the search is unsuccessful. The company will then return the land to its owner, the Crown. This does not mean that there are not any commercial hydrocarbons underlying this land; but rather that that particular company was unable to find them. To find these hydrocarbon deposits, a second, a third, or a fourth company should acquire this land, and, if this is done often enough, the hydrocarbon will be encountered, and production will follow. The problem with the public company being the only explorer in the province is that, unless it is fortunate enough to make the initial discovery, it is very doubtful whether there would be enough enthusiasm to have a second, third, or perhaps even a fourth try at that particular prospect, with the result that the discovery would not be made. This is surely the worst thing that could happen and is probably the most damning argument against a public corporation moving into an area with an almost exclusive right to explore.[1]

If the British Columbia government wishes to increase the level of exploration in the province and so lead, hopefully, to a greater number of discoveries and a better position of self-sufficiency in their own requirements, there are several measures which could be taken to promote such a situation.

The first step that can and must be taken is to increase the cash flow to the producer and to assure the newcomer that if he makes a commercial discovery, he will receive a sufficient return to expand his exploration endeavours in the province. This action should take the form of restructuring the royalty on oil and probably renegotiating the contracts on gas existing between the producer and British Columbia Petroleum Corporation. The 1974 royalty rate on oil was determined by production at the wellhead, with the price not being a factor at all. This means that if the price paid to the producer for a barrel of crude oil should decrease from the present level, then the producer will suffer a decrease in his cash flow, thus his future available financing to continue exploration endeavours in British Columbia will be diminished. A preferred structure on royalty would take into account the possibility of a rising and falling price for the product so that the producer, out of whose cash flows exploratory drilling is carried out, would be the last one to suffer in the case of a decrease in price for both oil or gas. Probably this might best be accomplished by the producer selling his crude oil to the British Columbia Petroleum Corporation in the way gas is sold, but with a better pricing adjustment mechanism than that which exists with the gas contracts.

Another measure that should be taken would be a redesigning of the exploration agreement. This could be done to ensure that the holder could

only earn leases after he had conducted actual work on the permit or in the area within reasonable proximity, and that his earnings would be restricted to a consolidated block rather than come from a sprinkling of leases throughout the permit area. This feature alone would help to ensure exploration, because the permit holder must be satisfied that he is getting, at least in his mind, the right half of the permit under lease.

The manner of acquiring oil and gas rights should be reviewed. As mentioned previously, the only method of acquiring an exploration permit under the present rule is through a competitive cash bidding system usually held on a quarterly basis. There are probably several instances where an oil and gas explorer would have been quite prepared to drill wells in British Columbia if he could have acquired the land for a minimal amount rather than having to use money he would put into exploration to purchase land through the cash bidding system. The rentals and fees charged should be the same as in Alberta, if only to appear competitive in this particular area.

CONCLUSION

The exploration for oil and gas in British Columbia cannot be considered in isolation. The proportion of the reserves of oil and gas remaining to be discovered will depend upon the number of exploration dollars allocated to the task. British Columbia's competitive position for these exploration dollars will depend in large measure on its royalty and land tenure policies.

Cash Bonus Bidding for Mineral Resources

WALTER J. MEAD

Mineral leasing policy alternatives arise out of the fact that governments own mineral resources but, in general, do not engage in mineral resource recovery and processing. Hence, a need arises to transfer publicly owned resources to private enterprise at a price which will reflect the "fair market value" of the resource. The following analysis will, first, explore the problems to be solved by a bidding policy and, second, evaluate the cash bonus method of bidding for mineral leases.

THE PROBLEMS TO BE SOLVED

There are three problems which must be solved by any leasing system. First, the leasing system must as objectively as possible determine who or what firm is to be given the right to exploit publicly owned mineral resources. Second, a price must be determined which the lessee is to pay to the government for the right to recover mineral resoures held in trust for its citizens. Third, assuming that a nation wishes to economize on the use of its scarce resources and to maximize the standard of living of its citizens over time, the leasing system must result in an efficient method of production.

As a prerequisite to a discussion of mineral leasing alternatives there should be a clear statement of the goal(s) to be achieved. It is probably true that economists as a group have a preference for a single goal, declaring it to be one of economic efficiency. Natural resources available to any economy are scarce by definition. Achieving the highest possible standard of living requires that scarce resources be utilized with a maximum of efficiency. If resources are sold at a price below their true value, then the products into which they are converted may also be underpriced. If demand elasticities are less than zero, then the flow of resources into products and the flow of products within the current period will be excessive. Present overconsumption of products and resources will be at the expense of future consumption.

One way of achieving maximum economic efficiency is to price all resources at their "fair market value." Such pricing allows a government the opportunity of capturing the economic rent. Resources should be sold

for the difference between future revenues and costs, appropriately discounted to their present value. The economic principle relating prices, costs, and money flows at different points in time in order to estimate present value (PV) is shown in the following formulation:

$$PV = \sum_{i=0}^{n} \frac{P_iQ_i - C_i}{(1+r)^i}$$

P_iQ_i is the value of the gross income flow at different points in time, C_i represents associated costs, and r represents the interest rate at which future money flows are discounted to the present. The formula clearly shows that higher future prices will increase present values while higher future costs will lower present values. Further, the greater the uncertainty and risk associated with production, the smaller will be present value. Firms utilize some variation of this present value formula in calculating their individual bids. Estimates of the quantity of minerals recoverable from a given tract will, of course, vary widely from firm to firm.

If mineral leases are sold for less than the fair market value as indicated in the above formula, then resources may be used at an excessively rapid rate, and the public, as owners of the resource, will fail to receive their full economic rent. On the other hand, if mineral resources are sold at prices in excess of the fair market value then, in the long run, some operators will be forced out of business. Use of such mineral resources in the present period will be at a suboptimal rate and the public owners will receive more than their normal economic rents.

In the past, Canada apparently has transferred some of its mineral and timber resources through various negotiated transactions rather than by utilizing the auction market approach. Similarly, other foreign governments have traditionally taken the negotiated sale approach in entering into long term oil concessions.

There are major problems involved in the negotiated approach. The correct present value of natural resources is extremely difficult to ascertain. There is no objective test in advance of ultimate production that can indicate the precise present value of mineral resources. By their nature they must first be discovered. Their presence, quantity, and quality are in doubt. With the government as the seller, negotiating with a single buyer, traditional problems of bilateral monopoly are encountered. The seller is interested in maximizing price, while the buyer is interested in minimizing price. Given this uncertainty plus opposing objectives, the civil servant is placed in a difficult position.

A visitor to Canada is reluctant to criticize Canadian experience which has circumvented the market place. Fortunately there is abundant experience within the United States to indicate the shortcomings of the negotiated approach to pricing. We may formulate two general laws which

seem to govern when prices are determined or may be influenced by administrative judgement. First, the buyer will always complain. If the buyer believes that market prices can be reduced by protesting that they are too high, then complaints based on the argument that the operator cannot make a "fair profit" because prices are set too high could be endless. In the timber context, there are two cases where elaborate reports have been written protesting the high price of timber. One, presented by the Simpson Timber Company, protested against the high price of stumpage set by the United States forest service for the Shelton Sustained Yield Unit Agreement. Timber, in this case, is not sold at auction; its price is determined by the United States forest service. In the second case, the Edward Hines Lumber Company protested against the high cost of timber for its southeastern Oregon lumber mill. The timber was sold at an auction where competition was so weak that, in effect, it was sold at the administratively determined minimum price. By protesting, the company apparently felt that minimum prices could be reduced. In this instance, local community help was solicited on the grounds that if the company failed to make a fair profit, it would be forced to curtail operations. Under auction market procedures the government is relatively free from constant complaint and protest, because it is the impersonal market that determines the price rather than a civil servant. Under auction bidding procedures the buyers themselves set the price in competition with one another.

A second general law is that, where prices are set through administration, the government will always set prices short of the fair market value. A bureaucracy will rarely choose the path that makes its position unpleasant. Low prices are believed to generate less criticism and complaint than high prices. Where there is no auction market to test administrative judgement concerning the fair market value, we have no means to prove the second law. Sales of timber in the United States offer an opportunity to test the administratively determined price. Timber is sold by the forest service on the basis of an appraised fair market value, which becomes the minimum price acceptable to the government. Auction bidding begins at this price. In the four years from 1959 through 1962, competitive bidding for timber in the United States Douglas fir region produced an average high bid price that exceeded the forest service statement of fair market value (the appraised price) by 46 per cent.[1] In this case, the interests of the public were protected, at least in part, by reasonably effective competition. In the absence of this competitive check it is quite likely that the appraised prices would have been even lower. The shortcomings of the negotiated approach should lead to auction bidding wherever competition is possible.

CASH BONUS BIDDING

Before bidding can take place, a decision must be made between oral and

sealed bidding. Bidding in either form may start with a stated or unstated minimum acceptable price. In the case of timber sales in the United States, the minimum acceptable price is given by the appraised price, and most timber auctions are conducted under oral auction procedures. On the other hand, in the case of oil and gas leases conducted by the federal government in the United States, the minimum acceptable price is not published, and bidding is normally by sealed bidding procedures. The government retains the right to "reject any and all bids." After bids have been received, it determines whether or not the high bid was adequate.

The factors important in choosing between oral and sealed bidding methods are as follows:

a. Of prime importance is the extent of competition. If competition is weak, then sealed bidding with its element of uncertainty makes collusive arrangements more difficult to enforce. Under sealed bidding rules there is no second chance to bid at any given sale. In contrast, under oral bidding procedures, a collusive arrangement can be policed by the participants during bidding. Further, there is always doubt about how many bidders may appear at a given sale. In oral bidding where only one bidder is present, he will bid the minimum; whereas, in sealed bidding a bidder would probably offer an amount which he believes will win the sale under conditions of more than one bidder.
b. In the timber industry where fixed investments in milling facilities normally exist prior to sales, the buyer needs a means of ensuring access to specific raw materials and specific locations. Oral auction procedures provide this means through the opportunity to cast reaction bids. In contrast, in oil and gas bidding fixed investments are made after winning a sale, hence there is less need to protect one's position through the opportunity to react to the bids of others.
c. Where the severed resource is relatively immobile, as in the case of timber, it is of greater importance that a specific nearby sale be obtained; therefore the oral auction procedures are more appropriate. In the case of oil and gas, the severed resource is highly mobile, so obtaining a specific sale is of less importance. In this case sealed bidding is not disadvantageous.
d. Where the resource to be auctioned is not homogeneous, it may be necessary for a firm to obtain a specific sale. Where this is true, the opportunity to make more than one bid to protect one's need for a specific type of resource may be of great importance. Only oral bidding facilitates this subsequent bidding opportunity.
e. Financial planning often requires that a firm carefully limit its financial exposure. Where this is necessary, oral bidding offers greater control over a total resource financial commitment. In the case of sealed bidding,

firms may be unexpectedly successful and in the process win more sales than were desired or can be successfully financed. On the other hand, a firm's sealed bidding may be totally unsuccessful so that it becomes undercommitted. This shortcoming of sealed bidding may be corrected where resources may be freely transferred among interested buyers. This procedure is normally followed in the case of oil and gas leasing in the United States.

f. Oral bidding requires more on-the-spot decision making than does sealed bidding; therefore, oral bidding requires that a higher level of executive talent be present at the moment of the auction. In contrast, decisions made on the basis of a sealed bid offer no opportunity for subsequent action on the auction floor; therefore, the presence of expensive executive talent is not necessary.

g. The "free rider" is a problem for serious bidders under oral bidding conditions. A serious bidder will carefully examine the potential productivity of a proposed lease sale. This may, as in the case of minerals, require large investments. Under oral bidding conditions, a "free rider" can observe who is bidding, then, if he is confident that they have done their homework, he can continue to outbid them until they reach their maximum and he will win the sale. His purchase is therefore based on someone else's calculations and he, in turn, has saved the cost of the pre-exploration appraisal. Sealed bidding does not offer the free rider the same opportunity.

Once a decision has been made in favour of oral or sealed bidding, then a choice must be made on the object of bidding. A cash bonus bid is one alternative. Additional alternative bidding objects are shown in Table 1.[1]

Bonus bidding is the standard procedure used by the United States government in all of its Outer Continental Shelf (OCS) programmes. Using the present value formula given earlier, potential bidders presumably estimate the present value of the probable mineral recoverable from a tract of land. The formula provides for adequate recovery of capital and compensation for risk, uncertainty, and profit.

One strong advantage that can be claimed on behalf of a bonus system relative to royalty bidding is that it requires a lump sum payment and correspondingly modest royalty payments. Because royalty payments are due on each barrel of oil or unit of natural gas produced (or other mineral), such charges become part of the marginal cost. At the margin of production this is a transfer cost rather than a real social cost. Royalty bidding thus leads to premature abandonment of an oil or gas well. To the extent that royalty payments are required in addition to the cash bonus, there will be premature abandonment of the lease.

The disadvantages of bonus bidding are numerous. First, while the

technology for oil exploration prior to drilling has been advanced in the last century, exploration is still subject to extremely high risk. Drilling is the only definitive test to determine the presence of oil or gas. Thus, bonus bids must be submitted by bidders and accepted or rejected by the government when neither the buyer nor the seller knows whether and in what quantities oil is present. This places the seller in a position of accepting millions of dollars for nothing but the right to spend several more millions drilling potentially dry holes. In cases in which a rich oil field is found, returns to the lessee will be and must be very high.

Second, under current procedures a bonus must be paid when the bid is submitted. When the bonus bid is large, it will represent a very heavy cash drain to the bidder far in advance of any revenue which may be generated from the oil or gas produced from the lease. This significant *front-end loading* of capital costs effectively excludes a small operator from winning leases as a solo bidder, creating an additional barrier to entry into the oil and gas production market. To overcome this entry barrier, firms commonly form joint ventures and bid jointly for a lease.

Third, because the bonus is calculated on a present value basis, the government is forced to accept discount rates used by private enterprise. If private enterprise discount rates are unreasonably high from a social standpoint, then bonus payments to the government will be correspondingly low.

Possible variations of the bonus bidding form are shown in Table 1. The present United States system includes fixed royalty requirements (typically 12½ per cent or 16⅔ per cent of wellhead value). However, a bonus bid might be paired with a sliding scale royalty requirement, permitting the royalty rate to be reduced as a field declines in productivity. As the point of economic abandonment is approached, the royalty rate might be reduced substantially or even eliminated. This procedure would, in turn, eliminate a marginal cost of production that is not a real social cost, and it would permit continued production from a field until the real marginal costs equaled the marginal value of production. This is the optimum point for well abandonment from an economic point of view. If at the time that a bonus bid was submitted all bidders understood that the royalty rate would be reduced to zero under the conditions specified above, the present value of the lease would be increased by an amount equal to the present value of reduced future royalty payments. Thus a tradeoff would be effected from royalty payments to bonus payments. The principal impediment to a sliding scale lies in the difficulty of clearly identifying various points at which royalty rates would be reduced. The lessee would have an economic incentive to manage his production in such a way that minimization of royalty payments would be an operating objective, rather than economic efficiency.

TABLE I

ALTERNATIVE BIDDING FORMS

Bonus Bidding
- a. with a fixed royalty requirement
- b. with a sliding scale royalty requirement
- c. without a royalty
- d. with or without a rental payment
- e. with a profit share
- f. with delayed bonus payments

Royalty Bidding
- a. flat (nonvariable) royalty
- b. sliding scale royalty
- c. with a fixed bonus requirement or no bonus

Profit Share Bidding
- a. net profit or gross profit
- b. with fixed bonus requirement or no bonus
- c. with a royalty requirement or no royalty

Combination of Bonus and Royalty Bidding

Bidding on the Work Programme

The royalty problem, together with the administrative problem of reducing royalty rates under a sliding scale, might be avoided entirely by using a bonus bid without a royalty payment. However, this procedure would simply magnify all three of the problems associated with bonus bidding listed above.

Present procedures in the United States include modest rental charges payable between the points of sale and production. When production begins, rental payments cease and royalty payments take over. Rental payments in OCS oil and gas lease income are insignificant. In 1972, they amounted to 0.3 per cent of total revenue from such leases.[1] The rental requirement apparently was introduced to motivate the lessees toward early production. If they were of significant size, this result would in fact occur, because rents cease when production begins.

To overcome the front-end-loading problem, provision might be made for delayed payment of the bonus. The problem that would follow from this procedure is that in some cases where no minerals were found, lessees would elect a bankruptcy route. In this event, an unfair bidding situation would be created. Responsible firms in business on a perpetual basis would not follow a bankruptcy procedure and would, therefore, be at a bidding disadvantage with respect to others that contemplated bankruptcy in the event of a "dry hole."

A bill currently pending before the United States Congress provides for a 55 per cent fixed share of net profits in lieu of the existing fixed royalty payment accompanying the bonus bid. The winner would still be

determined on the basis of a cash bonus. A profit share payment would avoid the above problems associated with royalty payments. As a given lease approaches exhaustion and its point of economic abandonment, profits would also approach zero and payments would decline proportionately to zero. If the profit share was calculated on the basis of net accounting profits including fixed costs, then the profit share payment would decline to zero prior to the point of economic abandonment. The latter point is reached only when marginal cost (not total costs) equals the marginal revenue. There is nothing wrong with this system providing both parties understand how it works and bidders understand it at the time they submit their bonus bids. The proposed 55 per cent profit share is high and is likely to lead to inefficient operations. A profit share payment is approximately the same as an income tax on each well and is additional to the existing income tax. When the profit share payment is added to the existing income tax, a large part of the penalty for wasteful operations will have been shifted from the operator to the government. While a bonus bid paired with a fixed profit share payment has merit, a 55 per cent profit share added to normal income taxes is inappropriately high from an economic point of view.[4]

Some data are available to permit a partial evaluation of the effectiveness of bonus bidding with a fixed royalty. The United States experience with OCS bidding provides a record of thirty-five oil and gas lease sales during the period November 1954 to 29 May 1974. In addition, three sulphur lease sales and two salt lease sales have been conducted on the OCS. The record may be evaluated in terms of the number of bidders competing for each sale, the conditions of entry of new firms, the record of joint bidding, the extent of concentration among winning firms, the trend in price bid per acre, the resale record of tracts where the initial bid was refused by the seller, and the rate of return earned by the winning bidders. Data pertaining to OCS bidding as follows:

a. For oil and gas lease sales there has been an average of 3.6 bidders competing for each tract receiving bids. The trend from 1954 to date has been one of increasing bidder activity. From 1954 to 1966 the average number of bidders per tract was 2.7. From 1967 to date the average increased to 3.9. From the seller's point of view, even more bidders would be preferred. Given the fact of relatively few bidders, sealed bidding procedures would appear to be more appropriate than oral auction.
b. Entry into the oil and gas auction markets appears to be relatively free. In the first 1954 federal lease offshore from Louisiana, 199 tracts were offered. Ninety-seven of these tracts received 327 bids from 22

different firms, some of which bid in joint bidding combinations. From 1954 to 28 March 1974, an additional 110 firms won tracts as solo bidders or joint bidders with 1 or more other firms. Thus, in addition to the unsuccessful bidders who also perform a competitive function in the bidding process, there were 132 separate firms participating as winning bidders in thirty-three OCS lease sales.[5]

c. Entry by relatively small firms into OCS lease sale bidding is facilitated through joint bidding. Joint bidding by two or more firms each unable to bid solo has the effect of increasing competition. On the other hand, when two or more large firms fully able to bid separately combine to submit a single bid, the effect may be to reduce the number of competitors. However, if through joint bidding, even among large firms, a combination of, say, four firms bids more than four times as frequently as the individuals would have bid solo, then the effect of joint bidding can again be procompetitive.

d. The record shows some tendency toward concentrating winning OCS bids in relatively few hands; however, the extent of concentration also appears to be declining over time. For the nineteen oil and gas OCS lease sales which took place from 1954 through 1966, the eight largest buyers, sale by sale, purchased 85.5 per cent of the tracts. In the fourteen sales from 1967 to 28 March 1974, the percentage of total tracts purchased by the eight largest buyers declined to 62.0.[6]

Using the 184 leases issued in the 1954 and 1955 Louisiana oil and gas lease sales, a multiple regression analysis tested the proposition that firm size was positively related to the high bid by tract as the dependent variable. If large firms are able to outbid smaller firms, then one would expect a positive relationship. The regression analysis revealed no significant relationship between size class of firm (the eight big firms versus all others) and the amount of the winning bid. The same regression equation revealed that the high bid was also independent of whether firms bid jointly or solo. Further, the most significant independent variable related to high bid was number of bidders; the greater the number of bidders competing for any given tract, the higher will be the resulting winning bid. The total value of oil and gas production accumulated through 1967 was also positively related to the high bid. As one would expect the number of acres in the tract leased is also related to the high bid. Estimated water depth as a proxy for development cost was not significantly related to the high bid.[7]

e. Data on the average price bid per acre indicates that with the passage of time the effective high bid per acre has increased substantially. For the entire period 1954 through to 28 March 1974, the average high bid per acre amounted to $1,257.50. For the 1954-1966 period the average was

$301.71 per acre. This increased more than sevenfold to $2,219.90 per acre for the period beginning in 1967. This increase is only partially accounted for by higher crude oil prices. The average price of crude oil increased from $2.89/bbl. in the earlier period, to $3.69/bbl. in the later period. Even this increase would be offset by an unknown decrease in the probability of finding oil, and by increased costs of exploration and production.

f. Lease sales through 1 October 1964 show that of the 1,377 tracts receiving bids, seventy-eight high bid offers were rejected by the government. Subsequently, 26 of these tracts were reoffered and leases awarded. For these 26 tracts, the initial rejected high bid average amounted to $42.41 per acre. The subsequently accepted high bid on resale averaged $411.38. Thus, where bids were found to be inadequate and subsequently reoffered, competition increased bonus payments on these rejected tracts nearly tenfold.

g. The most conclusive test of the workability of cash bonus bidding based on the United States record of OCS oil and gas lease sales is in terms of the rate of return on capital earned by the successful bidders. An analysis has been made of 184 offshore Louisiana oil and gas tracts leased in 1954 and 1955. Precise data are available on bonus payments, rental payments, oil and gas royalty payments, and production of oil and gas during the period from 1954 through 1967. Cost estimates were made for exploration, well drilling and equipment, and operation. Annual cost and annual wellhead values were discounted to obtain a net internal rate of return. The calculations indicate that these early OCS leases generated a 7.5 per cent before tax rate of return to the lessees.[8] Given the fact that oil companies pay relatively low U.S. income tax rates, the after tax rate of return would be only modestly lower than the 7.5 per cent before tax rate of return. This net yield clearly does not reflect monopoly power; it shows an excessive degree of competition.

On the basis of this evidence we conclude that competitive bidding for oil and gas leases is sufficiently strong to protect the public interest in obtaining competitive values for its oil and gas resources. This conclusion is further supported by evidence presented above indicating an increase in the average number of bidders and a substantial increase in the average price bid per acre for oil and gas leases.

CONCLUSIONS

This article has examined the problems to be solved by any leasing system used to transfer publicly owned mineral resources to private firms for processing. The cash bonus bidding system has been used extensively in

the United States, particularly in the leasing of OCS mineral resources. That record has been examined in some detail. While cash bonus bidding embodies problems which have been identified, it also appears to be an economically efficient method of resource conveyance. The United States record indicates that competition has been effective, if not overly effective, in permitting the government to capture the full economic rent. In addition, bonus bidding avoids a major problem of a popular alternative, that of royalty bidding. It appears to be far superior to a negotiated approach in solving the three critical problems of resource leasing: selecting the operator, determining a fair market value, and creating a climate for efficient mineral resource recovery.

Notes

1. W. J. Mead and T.E. Hamilton, *Competition for Federal Timber in the Pacific Northwest—An Analysis of Forest Service and Bureau of Land Management Timber Sales* (U.S.D.A., Forest Service Research Paper PNW-64, 1968), p. 4.
2. For a more thorough discussion of the economic issues involved in oral auctions and sealed bidding, see W.J. Mead, "Natural Resource Disposal Policy-Oral Auctions versus Sealed Bids," *Natural Resources Journal* 7 (April 1967): 194-224.
3. U.S. Department of the Interior, Geological Survey, *Outer Continental Shelf Statistics* (June 1973), p. 43.
4. For a more thorough discussion of this point, see W.J. Mead, Testimony Presented before the United States Senate, Committee on Interior and Insular Affairs, Hearings 7 May 1974.
5. The data presented above from the OCS bidding record are from Susan M. Wilcox, "Entry and Joint Venture Bidding in the Offshore Petroleum Industry," (Ph.D. diss., University of California, Santa Barbara, 1975), p. 66.
6. Ibid.
7. The multiple regression equation is as follows:

$$Y = -9.5809 - \underset{(0.1513)}{0.2279}X_1 + \underset{(0.0111)}{0.0229}X_2 + \underset{(0.1701)}{0.1383}X_3 + \underset{(0.0544)}{0.1235}X_4 + \underset{(0.0253)}{0.408}X_5 + \underset{(0.0235)}{0.0357}X_6$$

where Y is the high bid and the unit of measure is $100,000, X_1 is the size class of the high bidder coded as 10 for instances where the high bidder is one of the big firms and as zero for all other firms, X_2 is the total value of all oil and gas production accumulated up to the end of 1967 and the unit of measure is $100,000, X_3 is the corporate structure of the high bidder coded as 10 for a joint venture and zero for a single firms, X_4 is the number of acres with a unit of measure in 100 acres, X_5 is the number of bidders per sale multiplied by 10, and X_6 is the estimated water depth. This equation accounts for 62 per cent of the total

variability in the high bonus bid. The standard error of estimate is shown in parentheses: see Nossaman-Waters, *Study of the Outer Continental Shelf Lands of the United States*, vol. 1(1968), p. 553.

8. Ibid., p. 56.

The Role of Public Enterprise

ARLON R. TUSSING

My remarks are, firstly, about the role of governmental enterprise generally and, secondly, about some of the considerations involved in using governmental enterprise to foster greater control by the citizens of Canada and British Columbia over their own mineral industries. My view is that governmental ownership of producing operations is not generally the most effective way of accomplishing the social ends for which it is currently being advocated in these industries. Nevertheless, I have a few suggestions how some of the major disadvantages of public enterprise with respect to efficiency and responsibility might be overcome.

Government owned enterprises in the English-speaking countries have seldom owed their existence to an anticapitalist ideology. It is, in fact, hard to detect any systematic difference in motive, organization, or operation between the national, state and provincial, or municipal enterprises established during the incumbency of labour, socialist, and agrarian radical parties and those implemented by Tories of various names and complexions.

Despite the vast amount of existing governmental enterprise today in capitalist countries, and despite the importance of socialist movements and socialist thought in the history of modern civilization, the scholarly literature on public enterprise is remarkably skimpy. Rigorous comparisons —theoretical or empirical—of the economic performance of governmental and private enterprises in the same industry are, to the extent I can determine, nonexistent.

GOVERNMENT OWNERSHIP

The case for government ownership of undeveloped land and natural resource stocks rests on a broader base than that for government ownership of producing enterprises. The intrinsic value of any resource in its natural state is the difference between the value of goods that can be produced from it and the cost (in terms of labour, capital, materials, and organization) required to produce those goods. The size of this residual is not the product

of any person's labour or enterprise; most of the economic value of an *in situ* resource and its appreciation over time result from such diffuse causes as the increase in population, the general advance of technology, the decline in real transport costs, or directly from governmental outlays on roads or geological mapping. On these grounds, it has become almost an axiom of distributive justice (however commonly violated) that the intrinsic value of natural resources should not be privately appropriated.

Other classical grounds for government ownership of natural resources are the desire to control external costs or capture external benefits of their exploitation, and the expected divergence of private capital costs from the social rate of time preference, which is said to result in too rapid (or too slow) development of the resource. I am skeptical about the universal applicability of the last of these arguments; who, indeed, knows what society's true discount rate should be, and why are politicians and civil servants expected to be more sensitive to it than to entrepreneurs? This reservation notwithstanding, I believe that a presumption in favour of government ownership of undeveloped land and resources is generally justified.

Turning to productive enterprise, however, there are three main economic rationales for government ownership in a capitalist society. First is the use of the state to establish or maintain productive activity that would not be profitable as private enterprise, but whose external benefits are deemed to justify a subsidy out of the public exchequer. A subsidy does not, of course, require state ownership, because either private or governmental enterprise could enjoy that subsidy. In either case, support could take the direct form of providing capital or operating expenses from the Treasury or the indirect form of tax exemptions and the use of public resources at less than their cost of fair market value. State ownership, however, may well make a subsidy more palatable to the public, because it does not conspicuously enrich (or appear to enrich) a few private entrepreneurs.

Within the category of public ownership as a vehicle for subsidization are the numerous instances of private enterprise socialized because of chronic insolvency or imminent liquidation, including the Canadian National Railways, most of the British Labour Party's nationalizations after World War II, and the recent takeover of rail passenger transportation by the United States government.

In other cases, the motive for government ownership has been the creation of "public goods," products (or by products) of an enterprise whose value a private owner could not expect to recover by market pricing. Examples of such externalities are flood control by hydropower projects and the promotion of literacy and national unification by the postal system.

Military necessity has been another justification for producing goods in state enterprises which might not meet the test of the private market.

Nineteenth-century America had government lead mines and arsenals and plantations for naval stores; the processing of nuclear fuels now remains a governmental activity on security grounds. Many public transportation and communications ventures were begun as defence projects in Alaska, the Yukon, and British Columbia: examples are the ALCAN highway and the White Alice communications system.

Second among the rationales for public enterprise is the perceived inability of private business, because of the great size or risk of the venture in question, to assemble sufficient capital. This tradition in North America began with state ventures in canal and rail development in the early nineteenth century, then extended to river control and irrigation projects, and continues into the present in enterprises like COMSAT and Panarctic Oils. In many of these cases, the proposed activity was expected to be self-sufficient in the long run, on the basis of the revenues from its product or service, but state initiative was seen as necessary to take advantage of scale economies or to overcome high risk threshholds.

The third circumstance seen to justify government ownership is possession by an enterprise of monopoly power and/or exceptionally rich natural resources, either of which can produce substantial "unearned profits" or rents. Government ownership is one means either of preventing monopoly exploitation of consumers (or monopsony exploitation of workers and sellers) or of collecting for the public treasury monopoly profits or resource rents that would otherwise be captured by the private owners.

Government takeover of profitable businesses has been rare in the English-speaking world. There have been a few instances of ideologically motivated nationalization, but it is instructive to note that these have often been reversed, as in the cases of the iron and steel industry in Britain and, more recently, the grain trade in India. The remaining cases have principally been those of utilities—grain elevators, street railways, water, electrical or telephone systems—which had a monopoly ("natural" or otherwise) in a local service area. In the last category it is often hard to distinguish between the instances where government took over to prevent private exploitation of monopoly power and those in which government saw a monopoly as an opportunity to exploit an assured source of revenue for itself.

There are, of course, a variety of cases which overlap two or all three of these categories. Economic development of a poor or sparsely settled region is often advanced as a justification for public enterprise in transport, communications, or electrical power. In these instances the premise is often that the region lacks capital or capital markets and only the state can mobilize resources on the desired scale. At the same time, the project is seen to encourage growth by its ability to widen markets or otherwise cut costs for commodity producing sectors of the regional economy. Once estab-

(including the National Energy Board) who place the highest priority on national self-sufficiency in one or another mineral resource tend to advance policies that *deter* investment, on the grounds that the beneficiary of current development tends to be the export market, at the cost of future diminished Canadian self-reliance. In this country, moreover, balance of payment effects are often used as part of a case *against* mineral development for export rather than in favour of it. In a world of floating exchange rates, however, one might question whether there is any relevance at all to the balance of payments problem in its usual sense. Finally, the impacts upon environmental quality and the dispersion of population are more likely to be regarded as external *costs* of mining than as *benefits* that justify the government's promotion of mining ventures that otherwise would not be self-supporting.

It is hard to make a respectable case that mining (including oil and gas production) creates beneficial *externalities* for the surrounding community, as distinct from the net value of the minerals produced, or the factor payments (wages, profit, rents, and taxes) which make up that value. The current Canadian interest in state enterprise in the mineral industries does not seem, in summary, to be a result of the belief that they are inevitably unprofitable under private enterprise. On the contrary, it rests in part upon the notion that mineral extraction can indeed be very profitable, and that unearned profits (rents) ought to be controlled and disbursed in socially approved ways. This attitude is sometimes experienced as a concern whether the people of the nation or of the province, who are the nominal owners of its natural resources, are receiving as high a return for the products of their land as they might. One issue is, in short, whether the state is effectively maximizing its revenues from disposal of minerals.

Where effective capital markets exist together with a large enough number of potential operators to create workable competition for resource rights, the government (as landlord and/or sovereign) is more likely to maximize its revenues if it does *not* engage in production. This conclusion does not presume that particular government owned entities are necessarily less enterprising and less effective in cost control than profit motivated private corporations. There may well be a bias against efficiency in most forms of state enterprise, if only because their owners (the public) and managers do not have a clearly defined standard of performance as private managers have in the imperative to maximize the present worth of their firms. But more importantly, by operating a productive enterprise in the extractive industries, the government loses the ability it would otherwise have as landowner to exploit the competition among potential private operators.

At oil and gas lease auctions in the United States, for example, the bid prices on a single tract may vary by a factor of two, ten, or even one

lished, moreover, such an enterprise may have a monopoly status, with the power to abuse or exploit that status, and seem thereby to demand public control or ownership.

Many governmental enterprises (and regulated utilities, which they resemble in important respects) combine subsidies for some activities with appropriation of monopoly rents or resource rents from others. A common practice in both regulated private firms and government enterprise in transportation, communications, and utilities is *cross-subsidization*, in which monopoly profits earned from one area, line of business, or class of customers are dissipated in subsidizing others that are deemed to be socially meritorious. Thus, airline and railroad tariffs on heavily travelled route segments typically exceed cost (including a "fair" return), while service on lower density segments is provided at a loss. Hydroprojects in the Western United States typically subsidize users of irrigation water from revenues earned by water sales to municipalities and industry and by sales of electric power. In Alaska, revenues from both state and federal timber sales are sacrificed to support otherwise uneconomic lumber and pulp mills.

Turning to the mineral industries of Western Canada, there is little evidence that suggests they need to be subsidized by formation of a public corporation or otherwise. The province of British Columbia does not have, for example, a great but decaying industry upon which the community depends both for energy and employment, as the British had in the coal mines of the 1940's.

The British Columbia-Yukon Chamber of Mines may occasionally assert that each mining job generates seven additional jobs in supporting industries, but there is no respectable analytical foundation for such a claim. Even if the extractive industries had such an employment multiplier, it does not necessarily follow that job creation *per se* is a benefit that deserves subsidization from the public purse, much less the creation of a government enterprise. New employment opportunities are a *net* benefit to the existing community only to the extent that they are filled by residents who would otherwise be unemployed or working at more poorly paid jobs. In an "open economy" like that of British Columbia or Alaska, there is no predictable relationship between local job creation and local unemployment, because new employment opportunity attracts immigrants who tend to offset the employment gain. Even if the new jobs directly created were reserved for long-time residents, displacement of residents from old to new jobs and their replacement by nonresidents can be expected to make overall unemployment rates relatively unresponsive to employment growth.[1]

National self-sufficiency in minerals and the earning or retention of foreign exchange are sometimes claimed as external benefits of mining that justify preferential treatment. In Canada, paradoxically, some of those

hundred. These variations reflect widely differing geological evaluations of the tract, exploration strategies, and capital and other costs. Thus each tract tends to be won by the bidder with the *most favourable combination of capital cost and expectations* among all the bidders regarding future product prices, the particular tract's recoverable reserves, and their development and lifting costs. The landlord (state or private) who operates on his own land, however, would have only one management team, one exploration strategy, one team of geologists and engineers, and one supply function for capital. Only by rare accident would the landlord's *actual* performance over the average of all his properties tend to be better than the *expectations* of the most optimistic bidder. If, therefore, he were to lease each tract to the highest bidder among the competing operators, he might anticipate receiving a greater net revenue on each property than he could expect from developing the property himself.

The foregoing prediction is implicitly supported by empirical studies of United States Outer Continental Shelf leasing by Walter Mead and others, who show that successful bidders on the average earn a discounted cash flow rate of return on lease acquisition costs substantially less than the oil industry's average rate of return on capital (see Mead's article, "Cash Bonus Bidding for Mineral Resources," contained in this volume).

The effective use of competition to optimize revenues does not dictate the use of a cash bonus bidding system for *all* minerals or even for petroleum under every circumstance. The degree of knowledge or uncertainty regarding the volume and value of minerals present and their cost of extraction, the relative weight of fixed and variable costs in total extraction costs, the number of potential competitors, and the relative preferences of the government and private operators for certain present income versus uncertain future income are all appropriate considerations in the choice of leasing or disposal systems and taxes on the mineral industries. These questions have been discussed elsewhere,[3] and other articles in this volume give close attention to the relative merits of location, leasing, and sale as systems for disposing of minerals; to royalties and severance taxes, and whether they should be reckoned on gross value or net profits; to bidding on cash bonuses, deferred bonuses, gross or net royalty rates; to the use of acreage rentals; to the optimum size and configuration of tracts; to the amount of geological information the landlord ought to obtain and publish before opening land for lease or disposal; and to the duration of the primary term of a lease or permit, its terms for renewal, and so on.

In summary, state enterprise in the business of developing and producing minerals is surely *one* way to capture and redistribute resource rents, but it is unlikely to be as effective a device for maximizing those rents as the combination of a leasing system that takes full advantage of competition

among private firms (considering the technology and institutional characteristics of each branch of the mining industry) and an appropriate tax system.

The most powerful cases for public enterprise in developing regions (like much of Western Canada and the Territories) relate to transport facilities which create external economies for other economic sectors, including mining. In these instances, both the first motive for socialization (the desire to subsidize) and the second (the need to overcome barriers of scale and risk) may justify investment by the government on projects into which private enterprise will not venture. Neither of these motives, however, creates a case for state enterprise in mineral extraction. Capital and enterprise for mineral exploration and development are plentiful and mobile. Specialized technical inputs, such as geophysical surveys, drilling, and heavy construction can be purchased on contract in a highly competitive market (so that great petroleum and mining companies carry out very few of these activities themselves). Capital sums in the hundreds of millions, or even billions of dollars can be mobilized privately, even without government guarantees, for projects like the Trans-Alaska pipeline, in remote regions.

Development of minerals, like the collection of revenues from their development, is likely to be more rapid and more efficient if it utilizes the diversity of skills, techniques, enterprise, and access to capital in the private economy and the competition between firms differently endowed in these respects. Nationalization or municipalization of producing operations, in my view, has an inevitable price—both in state revenues and in social efficiency—the payment of which must be justified on other grounds.

The hard core of Canadian interest in public enterprise today seems to stem not from a perceived shortage of capital and entrepreneurship (much less an ideological opposition to capitalistic enterprise as such), but from a perceived surplus of foreign capital and entrepreneurship. The problem, it seems, is to assure that mineral development (and, presumptively, related activities like oil refining or oil and gas transportation) are under the control of Canadians or the people of British Columbia, rather than great multinational (read United States) corporations.

It is probably not politic of me as an American to ask what practical difference the nationality of a company's owners or management makes as long as it is subject to the same laws (and obeys them) and pays its proper share of taxes. Foreign companies in Canada have often been berated for not paying enough taxes, but it was after all a *Canadian* decision, reflecting a long-standing Canadian developmental philosophy that the extractive industries should remain largely untaxed. The satisfactions and grievances of Americans regarding the major oil companies apply in the same way to

Mobil and Texaco, which are domestically controlled, as they do to Shell and Sohio, which are foreign controlled. I am afraid I don't see how any more in the way of real resources for Canadians could be squeezed from a government owned business than could be squeezed from American or Canadian owned private enterprise under a well designed leasing and tax system. Nevertheless, one billion American dollars invested in Canada is more conspicuous than one billion Canadian dollars invested in the United States, and the nationality of your managers and stockholders obviously does make a difference to many Canadians. (I must confess, also, that some Americans become hysterical about the very idea of the Arabs or Persians taking over United States businesses.)

Government enterprise is one way to "nationalize" the mineral industries, but it is not, of course, the *only* possible way to foster Canadian equity and enterprise. Stricter nationality criteria could well be applied to holders of claims and leases or of permits to build pipelines, concentrating plants, and refineries. Such policies raise the further question, however, whether there is in fact enough private equity capital and enterprise in Canada to effectively take the place of foreign equity and enterprise. This is an empirical question to which I do not have an answer. If the answer is negative, consideration must be given to the fact that establishing a government enterprise does not *create* any new Canadian resources. It only uses tax money or potential resource revenues to bid capital and talent away from some other employment in Canada. The cost of Canadianization (either by restrictive licensing of private industry or by government enterprise) may be minimal, however, if preferences for nationals result in bidding home significant amounts of Canadian capital and Canadian talent which would otherwise be employed in other countries. (Presumably the net effects of even these moves would have to take into consideration remittances that would otherwise flow back to Canada from investments abroad.)

Government capital need not be regarded strictly as a *substitute* for private capital, Canadian or foreign. In North America during the first half of the nineteenth century, and in almost every country at one time or another, state companies were used as a vehicle to *attract* foreign debt or equity capital, usually British, to ventures they would not otherwise consider. A government owned (or guaranteed) railroad company was often naively regarded by Lombard Street as a safe investment, while the promotions of unknown overseas entrepreneurs were viewed with little regard in the world's principal money market.

The use of government participation is still a major instrument for encouraging foreign investment in developing areas. Joint ventures between American, European, or Japanese private companies and governmental entities of the host country are common in almost all the extractive

industries and in many countries at different levels of economic development. Canada has at least one government enterprise created largely with this function in mind, Quebec's SOQUEM, whose activity consists mainly of joint ventures in mineral exploration with private companies. Petro Canada also *seems* to be interested in this kind of approach.

In addition to being a means by which domestic enterprise becomes a trustworthy borrower (or partner) of foreign capital, state enterprise can also be a means of offsetting a shortage of domestic equity and entrepreneurship. In this role, it has one advantage over promotion of domestic private enterprise through nationality restrictions on investment, management or licences: it avoids the spectre of open discrimination, which could lead to retaliation and might otherwise undermine trade and investment relationships that are beneficial to Canada. The nearly open border allows this country to draw on a much larger pool of capital, technology, and talent than it would with policies fostering autarky. Although this openness is a major element in the ambiguity and insecurity of Canada's national identity, its economic benefits to Canada are relatively greater than they are to the United States. (That is, its impact on the size of the resource pool available to Canada is greater than on the size of the pool available to the United States.) It is therefore a circumstance to be modified only carefully and selectively. Establishing a provincial oil company is one way of containing the side effects of a move in the direction of autarky in a single industry. Such a move might, in fact, limit these side effects even in the industry in question. Suppose the best candidate for executive officer for a British Columbia based oil company were a Texan; there might well be fewer misgivings about hiring him to work for the province than about his heading a subsidiary of an American private firm.

I will conclude this article with some suggestions for the structure and policy of public corporations in the mineral industry, suggestions aimed at combining some of the best features of government and private enterprise, rather than their worst.

First, before establishing a governmental enterprise, be clear what its purpose is to be, what the incentive for the management to accomplish that purpose will be, and, quite rigorously, what will be the measure of the enterprise's success. (I owe this first and most vital point to Milton Moore's critique of the draft of this article.)

Second, do not set up a monopoly. There is no surer formula for inefficiency and social irresponsibility. Economies of scale do exist in mining and petroleum exploration, but they are very small when compared to some other industries or relative to the opportunities for development in an area the size of British Columbia. In petroleum refining, the minimum efficient size of a refinery is probably about the size of the British Columbia

market for petroleum products, but if a new government owned refinery needs a monopoly or protectionist legislation to be profitable, it will almost certainly be a serious burden on consumers. Industries in which scale economies are narrow and where ingenuity and intuition are still crucial, as in mineral exploration or onshore oil and gas production, are probably not the most appropriate candidates for nationalization; but where it is determined to establish a state enterprise, consideration might be given to the establishment of more than one competing public enterprise.

Third, do not clothe the corporation in sovereign immunities. Such immunity can be, and often is, a cover for inefficiency, irresponsibility, and even lawlessness. The corporation should be suable; it should pay taxes or their equivalent (federal, provincial, and local); and it should be subject to environmental and safety laws and regulations and, above all, subject to the bankruptcy laws. Its operations should not be protected by any version of an official secrets act. There is no good reason why the directors, officers, and employees should be excused from the same civil and criminal liability for their actions to which their counterparts in private enterprise are subject.

I would urge hesitation even in providing guarantees for the corporation's debt. A public mining or oil corporation will be pursuing a line of business in which private enterprise regularly borrows money without such guarantees. The more intense scrutiny of bankers and underwriters toward a corporation whose debt must stand on its own merit might well save the corporation's owners—the public—more money than the small interest differential associated with government guarantees.

Fourth, give the public and the corporation's officers and staff a material interest in its success and its efficiency. The government need not hold all the shares but only a controlling interest, not necessarily even a majority. One block of shares (enough to elect at least one director) can be held in trust for the company's employees and voted by them. The remainder of the shares would be offered to the public; they would be voted by their owners and publicly traded. Not only would this provision broaden interest and participation in management, but the market price of publicly traded shares would be a continuing indicator of management performance and of the value of the government's equity. I see no compelling reason to restrict share ownership to residents; it might in fact be useful to encourage minority participation by major oil companies or mining companies. A residence requirement for shareholders, however, would reinforce symbolically the corporation's identity as a national or provincial instrument, and would, of course, limit remittance of dividends abroad.

Fifth, the corporation's policies should be responsive to public policy but not bend to every political wind. I would suggest that only a minority of the

government directors serve at the pleasure of the Cabinet and be regarded as spokesmen for its policies. The remaining directors representing the government's equity would be chosen indirectly for long and staggered terms.

Sixth, the corporation should be under pressure to pay dividends. A majority of the shares (and directors) should represent parties who have a material interest that the corporation *not* retain, reinvest, or dissipate all its earnings: private shareholders, the employees, and the members who serve at the pleasure of the Cabinet (who would presumably be responsive to the fiscal interest of the government). The influence of this group will be a constant corrective to tendencies of management, inside directors, and permanent directors toward complacency, empire building, pyramid building, or gold plating.

Seventh, maintain a clear distinction between the corporation and the government as landowner. The public enterprise should obtain resource rights on crown lands only in competition with other prospective operators. The corporation should not receive a concealed (and indeterminate) subsidy by access to resources at no charge or at a lower price than a competitor might offer. If it must have a preferent right, let it be at most a right to match the highest bidder.

A preferent right on the best offshore leases is a feature of the federal oil and gas corporation (FOGCO), proposed recently in the United States Congress. In view of the prices oil companies have been recently willing to spend in these lease sales, such a preference would guarantee that FOGCO would appear profitable, however incompetent its management, and that the federal treasury would lose billions of dollars in lease revenues.

Eighth, take advantage of the division of labour and competition. The corporation should not attempt to do for itself the things that even the greatest oil and mining companies contract out to others, such as seismic surveying, core drilling, well drilling, well logging, and construction. There is virtually no chance that a state corporation could improve on the performance of private firms in these exceedingly competitive areas.

In summary, I am generally skeptical of the case for public enterprise in the minerals industry but hopeful that such enterprises could be established free of many of their usual shortcomings, providing some thought is given to their purpose, organization, and standards of performance.

Notes

1. In a study aimed at projecting the employment impact of the Trans-Alaska pipeline, we found that *unemployment* in individual labour market areas was almost totally insensitive to the level of *employment*; that is, on a *net* basis, at least, new jobs in Alaska's petroleum and wood products industries and government were entirely filled by immigrants. [Arlon R. Tussing; George W. Rogers; and Victor Fischer, with Richard Nogg and Gregg Erickson, *The Alaska Pipeline Report: Alaska's Economy and Gas Industry Development and Impact of Building and Operating the Trans-Alaska Pipeline*, Institute of Social, Economic and Government Research Report no. 31 (Fairbanks: University of Alaska, 1971)].
2. Arlon R. Tussing and Gregg K. Erickson, *Mining and Public Policy in Alaska* (Fairbanks: Institute of Social, Economic and Government Research, University of Alaska, 1969).

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March 2, 1978

Ms. Kay Poland, Chairman
Senate Committee on Resources
Pouch V
State Capitol
Juneau, Alaska 99811

Dear Ms. Poland:

Enclosed are written copies of my testimony of February 24, 1978, to the Senate Committee on Resources.

Thank you for giving me the opportunity to testify before the Committee on February 8 and February 24.

A question raised by Senator Croft with respect to the income to be earned by the various companies after production and transportation of crude oil to the lower-48 states was not answered correctly. This crude oil merely supplants foreign crude oil and thus refining, marketing, etc., income as reported in the companies' 1976 financial statements and used in our study will be unchanged.

Very truly yours,

ARTHUR ANDERSEN & CO.

By Robert L. Moore
Robert L. Moore

Encl.

SENATE RESOURCES COMMITTEE

TESTIMONY OF ROBERT L. MOORE

FEBRUARY 24, 1978

My name is Robert L. Moore and I am a tax partner with Arthur Andersen & Co., Houston, Texas. The purpose of my testimony today is to respond to the testimony, questions, or comments of others (particularly the Alaska Department of Revenue's testimony and memorandum of February 22, 1978) concerning the Prudhoe Bay Field and Trans-Alaska Pipeline System Comparative State Tax Burden Study, dated January 16, 1978.

The three principal topics I shall address may be categorized as follows--(1) the scope and methodology of the Arthur Andersen & Co. study (study),(2) a study assuming the Prudhoe Bay Field (Prudhoe Bay) and Trans-Alaska Pipeline System (TAPS) were moved to each of the seven states in the study, and (3) a study of Alaska oil and gas tax laws assuming they were applied to each of the other seven states' facts.

SCOPE AND METHODOLOGY OF ARTHUR ANDERSEN & CO. STUDY

Cook Inlet area-

In my testimony presented February 8, 1978, the question of Cook Inlet's inclusion in the study was discussed. What was said then, and repeated now, was that Cook Inlet oil and gas is not a significant contributor to taxes under any states' system when compared to Prudhoe Bay and TAPS. The reasons are (1) the reserves, production, investment, net income, etc., i.e., facts used in measuring tax

burden, attributable to the Cook Inlet area, even though significant in and of themselves, are not significant when compared to those of Prudhoe Bay oil and TAPS, and (2) it is not clear what the relative tax burdens would be on Cook Inlet. Milton Lipton testified January 25, 1978, before this and the House Resource Committee (see page 44-45 of transcript of his testimony) that Cook Inlet was presently producing about 120,000 barrels a day, only about one-tenth of Prudhoe Bay's production. In addition, the Cook Inlet has been producing for about 17 years and does not have the remaining life of Prudhoe Bay nor does it have the net-income-producing capacity of Prudhoe Bay and TAPS.

With respect to tax computations, all significant state taxes must be included. To compare only Alaska severance tax to other states' severance tax is only part of the picture. Alaska severance tax is progressive vis-a-vis volume of production per well and thus, according to the Legislative Affairs Agency's January 31, 1978 memorandum, Alaska severance tax in Cook Inlet would rank only fourth among the states assessing a severance tax. Yet, other taxes are also progressive in nature--California assesses ad valorem tax on reserves (35-40% of total California taxes in the study), but only to the extent such tax exceeds the ad valorem tax on production hardware (even in Prudhoe Bay, the study found that such tax would be eliminated in the 13th (noninflated) and 14th (inflated) years). Thus, it is reasonable to assume that California would assess no or only a nominal reserves tax in the Cook Inlet area.

In addition, ad valorem tax on reserves and/or field hardware for New Mexico and Oklahoma, two states which would assess higher severance tax on Cook Inlet than Alaska according to the Legislative Affairs Agency's January 31, 1978 memorandum, are a small fraction (7% and 24%, respectively) of Alaska's ad valorem tax on such property. Louisiana, the third state which would assess more severance tax than Alaska according to that memorandum, would assess ad valorem tax of only about two-thirds of Alaska's.

In summary, any change in direction in the relative rankings of the states is uncertain but in any case would appear to be nominal. Mr. Lipton's testimony (page 45 of transcript) that the change in rankings, had Cook Inlet been added, would be less than one percent is probably accurate.

Pre-1977 tax burdens-

Obviously one must begin and end somewhere in preparing projections or studies such as this. We began with 1977--the year in which production began, the year the new Alaska severance tax was put into effect, and the year immediately preceding the year in which the proposals for income tax change were to be effective. We ended the study 25 years later when the bulk of proven reserves will have been produced.

However, even if years before 1977 were considered and additional sales or use tax of the other seven states were included, using the Department of Revenue's estimates the increase in tax would result in only a minor change (2.6 to 4.1 percent of Alaska's non-inflated tax) in the relative ranking of the states.

Also discussed in the Department of Revenue's memorandum is California ad valorem tax on reserves and production hardware. California assesses tax on reserves before production, but two limiting factors are apparent--(1) the value of reserves would be discounted substantially (30-40 percent before pipeline construction and 25-30 percent during construction) when they have no deliverability, and (2) as noted above, the reserves tax is not applied if the hardware tax exceeds it in amount. Consequently, the California reserves tax will probably not yield any significant increase in taxes, and possibly none at all.

Ad valorem tax on production hardware is generally assessed before production in the various states, but Alaska's overall tax rate (considering valuation, assessment rate, and tax rate) is higher than all states other than California.

Thus, with respect to pre-1977 tax burdens, it may be concluded that, had these taxes been considered, California would be closer to Alaska, but there would be little change in the ranking of the other states.

Other possibly productive areas-

Gas production from Prudhoe Bay was considered at the time of preparing the study, but data on gas was regarded as too speculative to yield meaningful tax results. Questions of cost of the pipeline and price of gas are still unresolved and probably will remain so for some time to come. The time for making meaningful projections with respect to gas production, transporation and sales in order to determine tax burden should be done at some time in the future when

more reliable data is available. These observations also hold true for the Kuparuk and Lisburne fields.

Moreover, since the severance tax is the primary source of Alaska's tax revenues (almost 50 percent) and since its rate (at the higher of 10% of wellhead value or 6.4¢/MCF) times the Economic Limit Factor (ELF) will probably be the highest (or among the highest) of the states, it does not appear that a significant impact on relative state rankings would occur if and when gas is considered. The gas severance tax rates are:

Alaska	10% or 6.4¢/MCF X ELF
California	None
Louisiana	7¢/MCF
New Mexico	4.69% + 5¢/MCF
Kansas	None
Wyoming	4.0%
Oklahoma	7.0%
Texas	7.5%

Assuming ELF is 80% (it was approximately 84.0% for oil in the study), at $1.00/MCF value of gas at the wellhead, Alaska's severance tax will exceed all except New Mexico's, a low-tax state. At a higher wellhead price (above $1.52/MCF), the Alaska severance tax will exceed all states' severance tax--even New Mexico's. At 75¢ or 50¢/MCF gas price, only Louisiana's and New Mexico's severance taxes exceed Alaska's. Also note that the Carter Administration has proposed a $1.75/MCF wellhead price for domestic interstate gas and that

intrastate gas is selling for about $2.00/MCF presently.

Alaska severance tax computations-

The annual versus 25-year computation yields only $82 million less tax, i.e., less than 1% of total tax attributable to Alaska.

Income tax calculations-

Timing differences-

Alaska's relative income tax burden has not been overstated. No timing differences, e.g., accelerated depreciation, deduction of intangible drilling costs, etc., were taken into account because over the 25-year period all or substantially all such timing differences will reverse for Alaska, United States, and worldwide. For example, the current deduction of intangible drilling costs will reduce income tax for year 1, but will result in higher income tax for following years. Consequently, no attempt was made to compute income tax based on such timing differences.

In addition, because of such timing differences (and 1977 being only a partial production year), the comparison of expected tax collections for a particular year, e.g., 1977 or 1978, with the study's total Alaska income tax divided by 25 is an incomplete analysis.

Apportionment to Alaska-

Worldwide income for each company for 1976 was added to the study's calculations of "Net income from Prudhoe Bay Field and TAPS (A + B)" to arrive at total income, which was apportioned to Alaska on Exhibit VIII(a) Noninflated (and Exhibit XVI(a) Inflated) pursuant to Alaska's apportionment formula. There is no misapplication

of Alaska income tax law. The calculation of Alaska income tax in the study is correct as computed.

Effective tax rates-

It has been asserted that the Alaska effective income tax rate using calculations of income and tax in the study is significantly less than Alaska's 9.4 percent statutory tax rate. To the contrary, Exhibit VIII(a) Noninflated (and Exhibit XVI(a) Inflated) portrays only the amount of income added to all other business of the various owners. It does not address itself to, or make a determination of, the question of source of income which is a determination made by law, not accounting. Such exhibits do not hold or determine that the income is Alaska income.

MOVE PRUDHOE BAY FIELD AND TAPS TO OTHER STATES

The prospect of moving Prudhoe Bay and TAPS to the other states was considered at the time of preparing the study and rejected because it was a departure from facts necessary to get a valid comparison, i.e., speculation would be necessary with respect to (1) price of oil; (2) costs and period of development and production; (3) costs and period of pipeline construction, etc. So many assumptions would have to be made that results could possibly vary depending on which, among reasonably supportable assumptions, were used.

For example, would domestic oil prices be used, and, if so, would "old" or "new" prices be applicable? What would Prudhoe Bay development cost be if it were located in, say, Texas? Would an oil pipeline

be necessary? How much would TAPS cost if it were located in, say, California? When would the field development and pipeline construction have been completed had it been located in, say, Kansas? What would operating expenses attributable to production be?

As a consequence, we do not believe that any such computation may be used as even a check on calculations dealing with existing facts and laws.

APPLY ALASKA TAX LAWS TO OTHER STATES' FACTS

The possibility of applying Alaska's tax laws to the other states' facts was also considered at the time of preparing the study and rejected because (1) it would be a departure from Alaska facts and (2) the job would be very time-consuming (and therefore expensive) in order for it to be done completely and properly. The approach taken is direct and to the point. It deals with existing facts and applies existing laws to such facts. To test the results of the study against different facts seems to be an extraneous exercise.

In addition, an enormous amount of data must be reviewed, assembled, and converted to meaningful tax data in order for ad valorem, severance, and income tax to be computed. Each of these states has thousands of wells and leases and thousands of owners. For example, to determine Alaska income tax for each state, it is necessary to know gross income and expenses for each state (all properties and all fields) which would be added to worldwide income (of all such companies, individuals, etc., operating in the state). To determine Louisiana or Oklahoma income tax, gross income and expense by well is necessary in order

to determine the depletion allowance. To determine Alaska severance tax, knowledge of all wells with more than 300 barrels/day production in each state is necessary. The job could probably be done by using estimates and total figures, but probably would not yield results close enough to actual facts that they would be a good test of the calculations made.

Lastly, at least with respect to the Alaska severance tax, a departure from Alaska facts may produce distorted results. Such tax is designed for high-volume (in excess of 300 barrels/day) wells, a generally required fact for Alaska operations, whereas low-volume wells can be and are operated profitably in the other seven states. Since the other states use a flat-rate severance tax, i.e., no adjustment is made for production volumes, low and high-volume profitable wells can be accommodated by such states' severance taxes, whereas the opposite (Alaska severance tax on other states' wells) is not true with respect to low-volume wells.

STATEMENT

OF

BRISTOL BAY NATIVE CORPORATION

February 9, 1978

Madam Chairman, my name is Donald F. Nielsen, a shareholder and Vice President of Bristol Bay Native Corporation.

We are opposed to S.B. 236 or any other proposal to establish an oil and gas corporate franchise tax. Under the terms of our agreement with a major oil company, if oil or gas is produced on our lands, we will share in the production and would become a producing oil company. The market for our production would be outside of Alaska. The figure in excess of $250,000,000 gross receipts may be of some protection in the immediate future; however, there is no assurance that if such a proposed bill becomes law that this figure could not be adjusted downward to fit any given corporation, nor does it take into account any future price increases.

As an Alaskan corporation, we do not feel we should be required to keep separate accounts and pay any different tax than any other normal Alaska corporation. Also, we feel the proposed franchise tax, if passed, could later be applied to other industires such as mining, all of which tends to discourage major investments and financing of any type of investments in Alaska. The same reasoning applies to any burdensome tax policies that that effect Alaska's investment climate. Thank you.

CITIES SERVICE MINERALS CORPORATION
A SUBSIDIARY OF CITIES SERVICE COMPANY
1016 WEST SIXTH AVENUE
ANCHORAGE, ALASKA 99501

DON STEVENS, PH.D.
DISTRICT GEOLOGIST

(907) 272-9441

March 17, 1977

Mr. Bill Bishop
Bristol Bay Native Corp.
445 East 5th Avenue
Anchorage, AK 99501

Dear Bill:

Mr. Ranspot and I want to thank you and the Bristol Bay Native Corporation staff for the courtesies extended during our meeting last week. We found our review of the Bear Creek Mining Data to be most interesting and, in fact, these data exceeded our expectations. Bear Creek Mining has done an excellent job in its investigation of porphyry type targets.

As I mentioned on the phone, we have had to decline entering into an exploration agreement with Bristol Bay Native Corporation for a number of reasons in spite of the excellent mineral potential indicated by the data reviewed.

Certainly one important reason for being very hesitant to engage in new minerals exploration programs has been the Hammond administration's attitude toward mining taxes. Not only are attempts being made to adversely change the present mining license tax but several comments by the administration have indicated that an additional severance tax bill is going to be introduced in the next session of the legislature. One needs only to look at what has happened to taxes on oil and gas production in the last ten years to believe that the same thing will happen to the mining industry. With the high capital costs and the high infrastructure costs in mine development in Alaska a high tax burden will simply eliminate any chance for development of a mining industry.

The attractiveness of possible mining operations on native corporation land is being outweighed by the ever more burdensome tax policies generated in Juneau.

Sincerely,

Donald L. Stevens

DLS:bh

CHARTS USED IN SUPPORT OF

TESTIMONY

BY:

W. Monte Taylor
Alaska Operations Manager
Exxon Company, U.S.A.
Anchorage, Alaska

To The

State of Alaska
Senate Resources Committee
February 10, 1978

KEY DISCUSSION TOPICS

- Continued development of its natural resources is important to Alaska.
- A reasonable tax climate is important to continued natural resources development.
- By any measure, the oil industry is already paying more than its equitable share of the operating costs of the State of Alaska.
- Any increase in taxes would be counterproductive to the state's best interests.

TAXATION FAIRNESS

Method of Measurements

Compensate for cost of state services.

Equity among taxpayers.

Comparison with other states.

Status of Oil Industry

Industry pays 67% of tax income. Does not require services approaching that level.

Industry pays more taxes as a percent of income than any other Alaska business.

Alaska has the highest tax burden of any of the major oil producing states.

TESTIMONY OF

W. MONTE TAYLOR

BEFORE SENATE RESOURCES COMMITTEE

FEBRUARY 10, 1978

JUNEAU, ALASKA

I am Monte Taylor, Alaska Operations Manager for Exxon Company, U.S.A. My purpose today will be to comment on the overall implications of the bill being considered by this committee. Exxon presented detailed testimony to this committee last year on this bill and other proposed tax legislation and I do not intend to repeat that prior testimony except to update and highlight some of the key points. I have distributed a handout package that will help illustrate some of the key points of my testimony. The first page outlines the areas that I would like to discuss. These are:

1. Continued development of Alaska's vast natural resources, including oil and gas, is important to the state, both as a direct revenue source and as a source of direct and indirect employment opportunities.

2. With Alaska's high operating and investment costs which are related to its location and harsh environment, a reasonable tax climate is an important factor in attracting future investments.

3. By any measure, the oil and gas industry is paying more than its equitable share of the cost of state government and will continue to do so under existing tax laws.

4. Any increase in taxes at the present time will act as a further disincentive to future development and will be conterproductive to Alaska's best interests.

I would like to discuss each of these points in more detail.

CONTINUED DEVELOPMENT IS IMPORTANT TO ALASKA

As most of you know, the USGS has predicted that up to 40% of the future potential for oil discovery in the United States is in Alaska and the offshore waters of the state. Also, there is remarkably large potential in coal, and in various other minerals as well as timber and fish. As has been correctly pointed out by the state and some of the media, Prudhoe Bay will not last forever. I believe it is extremely short-sighted to attempt to have the state's future be dependent on one major oil field. The obvious solution is to develop additional oil fields and our other resources. This, after all, is critical to the creation of future jobs in Alaska and an expanding economy for all Alaskans. The Trans-Alaska Pipeline is an extremely important asset to this state because it provides an outlet for potential future discoveries of oil on the North Slope that might not otherwise be economic to develop in this high-cost area. I also believe it is obvious that Alaska should make every effort to take advantage of its natural resource wealth in planning for the future.

I believe that most Alaskans and most of our legislators strongly support continued, orderly development of our natural resources.

A REASONABLE TAX CLIMATE IS IMPORTANT TO CONTINUED NATURAL RESOURCE DEVELOPMENT

Next I'd like to discuss the importance of a reasonable tax climate if the state is to attract the natural resource and other investments which will bring more jobs and a healthy future economy to Alaska. Aside from the presence of natural resources and their availability for exploration and development, the most important factors impacting investment decisions are operating and investment costs and the degree of uncertainty that exists in predicting future costs and revenues.

Higher Costs, whatever their source, have a significant impact on investment decisions. Higher costs for any business mean that higher revenues are needed to make an adequate return on investment. If the business cannot reasonably anticipate the necessary higher revenues, the investment won't be made. Taxes are, of course, one of the costs and higher taxes obviously translate into higher overall costs.

Alaska already has the highest operating and investment costs of any state due to its location and harsh environment. Any increase in oil industry taxes at this time will, of course, add to these already higher costs, thereby further increasing Alaska's cost disadvantage relative to other states.

Uncertainty about the future is another problem that a businessman faces in making investment decisions -- uncertainty about future volumes, future prices, future revenues, future costs, and future regulations. The more uncertainties that exist, the more difficult the investment decision and the less likely that the investment will be made. An objective of businessmen, therefore, is to limit the number of areas of uncertainty. In this regard the tax burden is normally a relatively predictable item. In most cases businessmen are able to predict a state's tax burdens with only limited uncertainty. This is possible

because the taxing jurisdictions in most states have adopted a broad policy and philosophy which contains two essential elements. First, that tax s should be increased only to meet budgetary needs. Secondly, that the tax burden placed on any group of taxpayers (i.e. business, industry, individuals, ect.) should be fair and equitable when compared to other groups.

A state which raises taxes during periods of current and forecast general fund surpluses and/or enacts frequent tax increases on one or more special groups of taxpayers cannot help but raise a caution flag for people who are considering investments. Those investors who are part of the special target groups will be concerned that the trend will continue. Those investors who may not be a part of the special target group will no doubt wonder whether they will be a special target in the future.

The difficult decision that this committee and the legislature faces in deciding whether to increase oil industry taxes in 1978 lies in their answer to a couple of key questions:

First, what is the current general fund balance and what is the balance forecast for the future based on predicted revenues and expenditures under current tax laws? Stated another way, does the state need to increase taxes now to cover forecast expenditures?

Facts to help you come to grips with this question are, I believe, readily available. Several long-range projections of state revenues and expenditures by the staffs of the administration and the legislature, the most recent of which was published in August, 1977 by the Legislative Affairs Agency, indicate very large general fund balances will accumulate in the future. The answer given by these studies is that new taxes are not needed. Therefore, I believe the most investors would view a decision to increase the overall level of taxes as an unfavorable signal -- a signal that I believe could hurt development of

natural resources and jobs in Alaska.

Since some legislators want to increase state revenue by taxation, even though available studies indicate sufficient revenue will be available to provide the needs of government, we believe it is appropriate to examine the tax burden borne by various taxpayers. Thus, the second question is: "Are the burdens borne by various taxpayer groups fair and equitable, or should some adjustments be made to reduce some burdens and increase others?"

I'd like to concentrate the rest of my remarks on information that may shed light on the second question dealing with fair tax burdens among taxpayers or more specifically, "Is the oil industry equitably taxed under today's tax laws?"

OIL INDUSTRY PAYING MORE THAN ITS EQUITABLE SHARE

Taxation fairness is a subjective term that means different things to different people, but I would like to discuss every reasonable measure of taxation fairness that I can think of or that has been discussed previously. The next chart lists these various measures and gives brief comments about the status of the industry's tax picture relative to that term.

The first and most obvious measure is, does the industry compensate the state for the services it requires and receives. With the industry funding 67% of the tax revenue, surely there is no argument that the industry requires services even approaching that level.

The second measure I listed was equity among taxpayers. It is obvious that the oil and gas industry pays more in total dollars than any other Alaskan industry. A search of the tax laws also reveals that with the special severance and state ad valorem tax, added to the corporate income tax and other taxes common

to all businesses, the petroleum industry taxes as a percentage of income are higher than those on any other Alaskan business. The highest special tax on other businesses is a 7% special net income tax on mining with an allowance for percentage depletion, which is, of course, considerably less than the severance tax of 11.4% of revenue, not to mention the ad valorem tax.

The third method of comparison is with other states having similar businesses and, of course, you have already heard that Alaska has the highest oil tax burden of any of the major oil-producing states. Interestingly, Alaska's current income tax on the industry is also the highest.

AN INCREASE WOULD BE COUNTERPRODUCTIVE

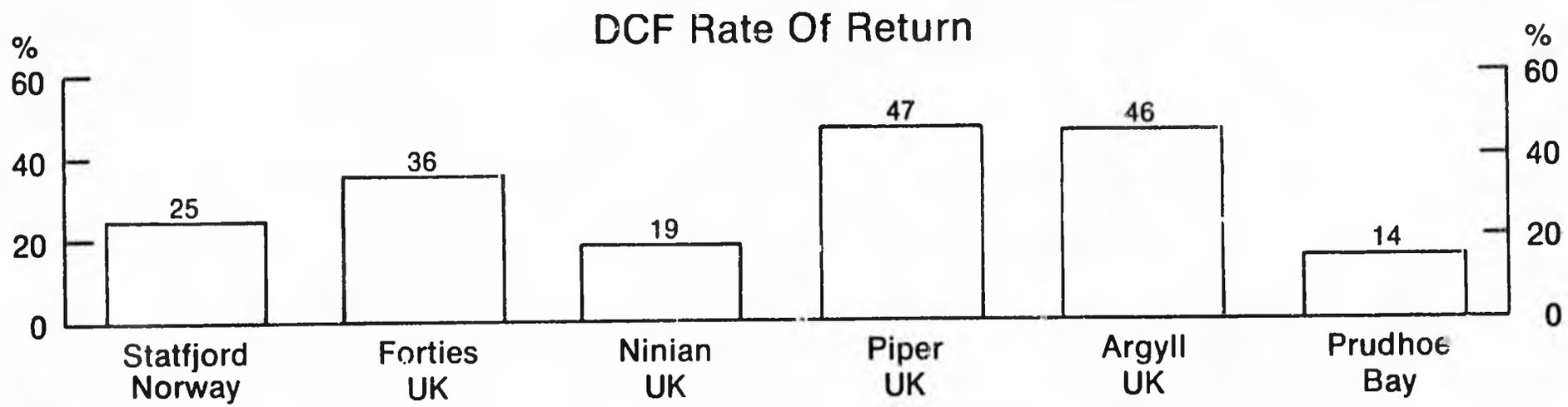
I believe that a careful study of the available facts will lead to the conclusions that 1) no new taxes of any type involving any group are needed, 2) that the petroleum industry by any measure is paying more than its equitable share of the state's tax burden, and 3) an increase in taxes on Alaska's most important industry would be counterproductive to the interest of Alaska. Alaska cannot afford the complacency suggested by some of waiting until some future date to consider developing its resources. Even with the advantages incurred by the existence of the TAPS pipeline, a new oil field on the North Slope of Alaska would take 7 to 9 years to develop and come on production. By about that time, Prudhoe Bay oil production will start to decline and state revenues from the oil production of that field will diminish. Hopefully, there will be a gas line by then; however, as you know there are many problems to be solved before that will happen.

The future of Alaska is dependent on development of its resources. If the tax structure, the unpredictability of future taxes, the high costs, or the lack of land keep just one oil field from being developed, it will result in the loss of many jobs for Alaskans, the loss of revenue to the state, a potential for underutilization of the Trans-Alaskan Pipeline, and less oil for the nation.

Exxon plans to be a part of the Alaskan business community for many, many years to come, not only as an owner of substantial assets related to current operations but, hopefully, as a developer of new oil and gas reserves which can help Alaska and which can help our nation reduce its dependence on foreign oil imports. We believe that many other businesses want to be a part of Alaska's future. But we believe, and hope you agree, that to make a fair and reasonable return on future Alaska investments, we need a stable business climate and a predictable tax system based on need, fairness, and equity.

Monte Taylor

Prudhoe Bay — North Sea Comparison



UNITED KINGDOM PETROLEUM TAXES

A. Corporation Tax Rate of 52%

B. Petroleum Revenue Tax (Calculated on an individual field basis)

1. 45% Rate

2. Deductible Against Corporation Tax

3. Not Effective Until After 175% Recovery of Capital Expenditures

4. First 20 000 B/D From Each Field is Exempt (Up to a Maximum of 73 Million Barrels)

20,000 per day for 10 yrs

5. Not Effective in Any Year Unless Adjusted Profits in That Year Exceed 30% of Capital Expenditures Accumulated Over the Life of the Field

6. Even if Adjusted Profits in a Year Exceed 30% of Capital Expenditures Accumulated Over the Life of the Field, the PRT From a Field is Limited to 80% of Such Excess

C. Corporate Income Tax Allows Immediate Recovery of Capital Investments

BEFORE THE SENATE RESOURCES COMMITTEE

TESTIMONY OF

CRAWFORD H. THOMAS

SCS for CS for HB 322

February 24, 1978

Madame Chairman and Members of the Senate Resources Committee:

My name is Crawford Thomas. I live in Sacramento, California. I have had a long association with state income taxation. I am now retired. Until my retirement in early 1974, I was Chief Counsel of the California Franchise Tax Board for eight and one-half years. The Franchise Tax Board administers the income tax in California.

I commenced working for the Board as an attorney in 1940. My entire time while I was associated with the Board was devoted to legal and administrative problems of state income taxation.

I estimate that about one-half of my time was spent on matters involving the taxation of the income of multistate businesses and the apportionment of such income.

I started my career in taxation at the time when the unitary concept, which you have heard discussed at some length, was first being seriously applied, although the concept had been recognized for some time. I participated in the extension of the unitary concept from its application to a single corporation to its

application to parent and subsidiaries, to foreign subsidiaries and, finally, to the so-called world-wide combinations. I understand that your state now uses essentially the system as is in effect in California.

I was heavily involved for several years in opposition to federal intervention in state income taxation, through the Willis bill and its successor bills.

I was involved with the Uniform Division of Income for Tax Purposes Act, from the time it was first being seriously considered by the states. I supervised the drafting of regulations under this act, which later became the basis of the regulations adopted by the Multistate Tax Commission. Alaska was one of the first states to adopt the Uniform Law for dividing income.

I was involved with the Multistate Tax Compact from the very birth of the Compact idea.

Some substantial portion of my time was spent reviewing and analyzing proposed tax legislation in the California legislature. A prime reason for this review was to spot problems in proposed bills. I have reviewed the bill before you and I have found what I believe to be some major problems. I would like to discuss these problems.

Under your present Alaska law and your administrative practice, an integrated oil business is treated as a unitary business and its Alaska income is determined to be that percentage of its total income, as determined by use of the standard apportionment formula of property, payroll and sales.

This method of apportionment is set forth in the Multistate Tax Compact which Alaska has adopted as its law.

This Compact has a higher status than an ordinary state law. It is a solemn covenant entered into by Alaska and some 18 other states, guaranteeing that taxpayers will be taxed in accordance with the terms of this Compact.

This bill does not amend the Multistate Tax Compact contained in your present law.

I doubt that having adopted the Compact, a state could unilaterally amend it, without violating the Compact and eliminating Alaska as a Compact state.

This bill starts out by saying that, notwithstanding the present law which provides that income shall be apportioned as provided in the Compact, the income of oil and gas production or transportation companies derived from Alaska shall be determined by separate accounting under the provisions of Sec. 18 of Article IV of the Compact.

I shall return to this Section 18 in a moment and at some length.

This bill thus segregates unitary oil and gas producing or transporting companies from other unitary companies and says oil and gas companies, alone, must use a separate accounting procedure. It thus treats these companies as conducting businesses in Alaska entirely separate and distinct from the rest of their world-wide completely integrated businesses.

Now, having totally discarded the unitary concept and use of the uniform formula for computing Alaska production or transporation income, the bill completely reverses itself and considers the out of state income, less the Alaska income, to be unitary income and apportions this by use of a two factor formula which uses only th property and payroll factors.

This treatment of a business as non-unitary for one purpose and unitary for another is completely inconsistent.

We now come to a very major problem, one that I believe has not been sufficiently called to your attention.

If my analysis is correct, then enactment of this bill will not change the present method of apportionment of oil companies. The reason is that in enacting the Compact you also enacted Article III, Section 1 of the Compact. This section provides

that a taxpayer may elect to apportion its income either under the state law, or under Article IV of the Compact which is the uniform apportionment law. By enacting and entering into the Compact, Alaska guarantees this option to its taxpayers to use the formula of property, payroll and sales.

If this bill is enacted as law, an oil company would have a very strong legal argument that it could exercise its option not to report under this law, but to report under the Compact and use the uniform apportionment formula rather than the method used in this bill.

I can find nothing in anything presented to you denying that this would be so.

This bill apparently seeks to eliminate the taxpayer's option by attempting to use Article IV, Section 18, of the Compact to force oil companies to apportion their income by separate accounting.

You will recall that Section 18 states that if the uniform formula does not fairly represent the extent of the taxpayer's business activity in the state, the tax administrator may require the use of separate accounting or a change in the formula.

Leaving aside for the moment the fact that under this bill the legislature and not the tax administrator is making the deter-

mination, I think we should look at this Section 18 in some depth.

Two years before Alaska adopted the Uniform Act for division of income now contained in the Compact, Professor Pierce of the University of Michigan, the drafter of the Uniform Act, published his article (35 Taxes 747 (1957)) stating that Section 18 should be employed sparingly and only to avoid situations which were unusual and where use of the uniform formula would create constitutional problems.

In other words, it was to take care of unforeseen situations unknown at the time the Act was drafted.

My personal knowledge, gained at meetings with state representatives to discuss the Uniform Act, is that the states were very wary of this section. It was felt that unless Section 18 was strictly interpreted, the Uniform Act could not achieve uniformity and could be rendered meaningless.

This strict interpretation has also been the interpretation of the states, including Alaska, forming the Multistate Tax Commission and entering into the Compact.

This strict interpretation is set forth in Regulation IV-18 of the regulations issued by the Multistate Tax Commission.

The first paragraph of the regulation merely restates the text of Section 18. The second paragraph is very important. I do not believe it has been brought to your attention.

That paragraph states:

> "Article IV, Sec. 18 permits a departure from the allocation and apportionment provisions of Article IV only in limited and specific cases."

Here, the attempt in the bill before you is not to apply it to limited and specific cases, but to an entire industry.

The paragraph of the regulation continues to read:

> "Article IV, Sec. 18 may be invoked only in specific cases where unusual fact situations (which ordinarily will be unique and nonrecurring) produce incongruous results under the apportionment provisions contained in Article IV."

There is nothing unusual about the fact situation concerning oil companies. Oil companies are not unusual. They have been around for years. For the same reason, it is not a "unique" situation as referred to in the regulation.

It is not nonrecurring, it is a permanent situation.

The results are not incongruous, that is, unfit or inappropriate. To the contrary, they are fit and appropriate for a unitary business. About 95% of the other states, including Alaska, so hold, as does the great weight of legal authority in this country.

Getting back to Section 18, it specifically says that the tax administrator shall make the determination to use a different method of apportionment. It does not give this authority to a legislature.

As the section is to be used only in specific and unusual cases, this is not only a sound requirement but a vital one.

Only the tax administrator is in a position to investigate specific cases, and only he can make a determination that the case falls within the intent of the section and the regulations.

The Oregon Supreme Court has twice decided that the burden of proof is on the party seeking to invoke Section 18, whether the party be the taxpayer or the State. (Donald M. Drake Co. v. Dept. of Revenue, 236 Ore. 26,500 P2d 1041; Coca-Cola Co. v. Dept. of Revenue, ___ Ore. __,___ P2d ____).

This major problem, as I see it, is that under the present facts, the administrator would have a very difficult time

meeting the burden of proof. The legislature could not. It would not only not be a party to the proceeding, but a mere legislative declaration that the formula does not fairly represent the extent of the business activities in the state is not proof.

The next major problem is that even if the proper party invoked Section 18, or if Alaska withdrew from the Compact and enacted a law requiring oil companies to allocate income by separate accounting, your revenue department, in either instance, would encounter extreme legal difficulties in putting the law into effect and enforcing it.

As others have testified at great length, the great weight of legal authority in this country is that integrated multistate companies such as these are unitary businesses.

I am not aware that you have been given any testimony or information that such companies are not unitary.

As others have also testified, if a business is unitary, the use of the formula is required to determine the income to be apportioned to the state.

I am not aware that you have been given any testimony or information that this is not so. Your revenue department has

consistently taken the position that this concept is correct. The department's position is a matter of public record.

The only support I have seen for the use of the separate accounting method comes from your consultant, Milton Lipton. Mr. Lipton has simply stated a conclusion that there is a deficiency in the present income tax structure and that separate accounting is the way to cure the deficiency, as it will produce more revenue from the oil companies. Mr. Lipton has avoided the vital question of whether the separate accounting method may, in fact, be used.

In the face of the problems I have just outlined, plus those matters addressed by such undisputed experts in their fields as Mr. Kust, Mr. Warren, and Professor Boren in their papers and testimony, it would seem to me that this committee should need more than the mere unsupported conclusion of Mr. Lipton that use of separate accounting rests on a firm legal foundation.

I am aware of Alaska's situation, that the oil is being extracted and revenues from this source will decline unless new fields are developed.

I am also aware that oil is a wasting asset and that Alaska may not have a highly diversified tax base.

If litigation should result from enactment of this bill, I think that a court would have no choice but to simply focus only on the question of whether the method used to determine income attributes to Alaska her share of the unitary income. I do not believe other matters should or would be considered by the court.

From the available material I have reviewed, it appears to me that Alaska's tax burden on oil companies is as high as that imposed by other states.

I am convinced that these companies are paying an effective rate of tax of 9.4%. They are paying a tax of 9.4% upon that portion of their income properly apportioned to Alaska.

For example, if the ABC Oil Company's total net income is $10 million and 10%, or $1 million, is apportioned to Alaska by the formula, then the ABC Company pays a tax of $94,000, or exactly 9.4% of its Alaska income.

To say, for example, that the effective rate of tax is only 4.7%, requires the assumption that $2 million rather than $1 million is the amount of income derived from Alaska sources.

Those that so argue rest their assumption upon the conclusion that Alaska income must be determined by a separate accounting method.

All the testimony you have received shows that such conclusion has no foundation and nothing has been offered in its support.

In going over these matters, I have several times noted the comment that Alaska is not taxing the value of the oil extracted. Such statements misconceive the purpose and function of an income tax. An income tax is not intended to tax the value of oil produced within a state or anything else produced therein.

It is intended to tax that portion of the income of the entire taxpayer entity properly apportioned to the state.

Using an income tax to tax the value of oil produced is simply using the wrong vehicle on the wrong road.

Crawford H. Thomas
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Age:	67
Education:	University of California University of California Hastings College of Law, LL.B. 1937
Experience:	Admitted to Califrnia Bar 1937
1937-1940	Associate attorney, Shelton, Gray & McWilliams, San Francisco. Corporation probate and tax law practice.
1940-1942	Junior and Assistant Tax Counsel, Office of Franchise Tax Commissioner, Sacramento. Legal work in connection with administration of Franchise Tax Act, Corporation Income Tax Act and Personal Income Tax Act.
1942-1946	Military service, including ordnance procurement, contract renegotiation and price redetermination, St. Louis Ordnance District. Legal Officer, Military Government, Japan.
1947-1965	Associate Tax Counsel, Franchise Tax Board. Experience in this position is outlined below.
1965-1973	Chief Counsel, Franchise Tax Board. Experience in this position is also outlined below.

Thirty years of my entire legal career has consisted in working with state franchise or income taxation. I commenced work with the Franchise Tax Commissioner in the year of the landmark decision in Butler Bros. v. McColgan, and have, so to speak, grown up with the unitary concept. I participated in the extension of this concept to parent and subsidiary corporations and use of the combined return, world wide combinations, and through all of the developments of the doctrine to its present form and use.

I have handled protested cases and hundreds of appeals involving every facet of this question, participated in all the California legislation, and assisted the attorney general in the preparation in all of the California court cases affirming or extending this doctrine. I estimate that close to a major portion of my time was spent on matters involving the unitary business.

In the eight and one half year period in which I was Chief Counsel of the Franchise Tax Board, I supervised all protests, appeals, litigation and legislation involving the unitary business. I participated in many studies and conferences with industry groups, including the oil industry. I was heavily involved in studies of, and opposition to, attempts by Congress to have federal intervention in the state tax field via the Willis bill and its successor bills. I participated in or supervised California's involvement in the affairs of the Multistate Tax Compact and Commission.

I have made many appearances before legislative committees, the Willis Committee, conferences of state tax administrators and tax executives, chambers of commerce and other groups concerned with state taxation.

My experience has given me an in depth knowledge of the problems faced by the state tax administrator and his legal counsel in the interpretation and enforcement of the unitary concept.

/

TESTIMONY

PRESENTED TO

ALASKA SENATE COMMITTEE ON NATURAL RESOURCES

JUNEAU, ALASKA

FEBRUARY 10, 1978

WILLIAM VAN ALEN, DISTRICT MANAGER

PLACD OIL COMPANY

ANCHORAGE, ALASKA

My name is Bill Van Alen and I am Alaska District Manager for Placid Oil Company. My family and I are 18-year residents of Alaska. I talk to you today both for myself and for my employer, Placid Oil Company, who has been in the energy and metallic materials exploration business in Alaska since opening our Anchorage office in 1966.

Placid Oil Company's main office is in Dallas, Texas, and we operate our energy minerals exploration programs in a number of areas in the lower 48; in Canada; and in the North Sea. We have conducted petroleum exploration activities in varying degrees throughout most of Alaska. Placid operated and participated in exploratory drilling projects in the Cook Inlet Basin, but none of the wells drilled on our leases so far have encountered commercial production. It was on the North Slope that Placid Oil Company, in joint partnership with Marathon, Getty, Amerada-Hess, Hunt, and Louisiana Land and Exploration Company, through the drilling of an 11,400 foot well, extended the defined limits of Prudhoe Bay Oil Reservoir.

That particular business venture in which we engaged contributed to an increase in America's petroleum energy reserves. Madam and Gentlemen, we must do everything we can to perpetuate similar searches for energy reserves in Alaska. I respectfully

advise you that proposed further increases in Alaska's corporate income taxes serve as a deterrent for continuing such searches. Alaska must do what it can to encourage energy mineral exploration, not discourage it. Things such as the discovery royalty are needed to encourage exploration. Why, for example, cancel the effect of a discovering company's reduced royalty by subsequently raising that company's income taxes?

It is Alaska's obligation to the nation to assure that a steady, orderly exploration program by industry be conducted in Alaska. It is critical that lands be made available for exploration and for permit procedures to not become so burdensome that they inhibit exploration. Thirdly, and the matter that should be of your concern in reviewing CSHB 322, the economic factors forecasted over the long term must be favorable. This includes the income tax picture. Predictions of perpetual increases in state taxes do not exactly encourage companies to engage in exploration programs in the state. Perpetually increasing income taxes and production taxes has the effect of discouraging energy businesses from investing in Alaska. How can a businessman effectively relate his initial investment to future income when encumbered with the prospect of an ever-increasing tax burden?

In oil operations, one undesirable aspect of having too heavy a tax load might be to reduce expenditures for secondary recovery procedures, thereby reducing total potential output from a

particular field. Reservoir characteristics commonly indicate that secondary recovery facilities should be installed early in the life of a field, but operators might be reluctant to make the financial outlays for their installation should the operator's future income picture be clouded by expectation of excessive taxes.

A steady, broad-based, continuous exploration program in the State would contribute toward reducing unemployment, which I understand is presently at about 13% of the total workforce in Alaska. Successful exploration projects would result in creating further employment possibilities for filling the jobs needed for developing the reserves. Accordingly, an indirect effect of tax increases on energy producers would be non-reduction of employment.

In order for me to obtain funds for exploration by Placid in Alaska, the projects have to compete with comparable projects available from other parts of the country. How, for instance, can I expect my company to participate in a project in Alaska when a project of equal geologic merit in Texas would incur only 60% of the taxes over the life of the field that the company would have to pay out of production from the Alaska project. The increase in income taxes proposed by SB 105 accordingly would induce a restraint on exploration in Alaska.

It is the obligation of the State of Alaska to do its part in contributing to easing America's negative balance of international trade. The key way for Americans to work toward reducing the amount of money we spend for petroleum coming from overseas is to maintain continuous exploration and production of domestic petroleum reserves. Alaska must encourage such sustained exploration in the 49th state. Imposing higher income taxes on companies working in Alaska has the opposite effect and restricts continuous exploration.

All in all, I sincerely urge you to incorporate a more global perspective in your thinking on CSHB 322. In so doing, I'm sure you will conclude that it would not be in Alaska's best interest to increase my company's income taxes any more.

I applaud each of you for your diligent work on Alaska's behalf here in the capital. Thank you sincerely for your attention.

William Van Alen

February 10, 1978

JOHN S. WARREN

Biographical information

Education:

Bachelor of Science in Law, University of Minnesota - 1943

Bachelor of Laws, University of California, Hastings College of Law - 1950

Professional:

Loeb and Loeb, Los Angeles, California - 1957 to present (partner 1960 to present)

Government positions:

Associate Tax Counsel, California Franchise Tax Board - 1951-1957

Consultant, California Department of Finance - 1962

Consultant, California Legislature, Senate Fact Finding Committee on Revenue and Taxation - 1964

Memberships:

State Bar of California

Committee on Taxation (1958-1962)
Committee on Property Sales and Local Taxes (1975-)
Chairman, Subcommittee on Occasional Sales (1976-)

Los Angeles County Bar Association, Tax Section:

Committee on Federal and California Death and Gift Taxes

American Bar Association, Section of Taxation, Committee on State and Local Taxes:

Subcommittee on Non-Federal Solutions to Interstate Tax Problems (1974)
Subcommittee on Important Developments (1975)
Vice Chairman, Subcommittee on Corporation Net Income Taxes (1976)

Articles:

"Sales of Depreciated Properties to Related Entities," 1959 Southern California Tax Institute

"The Unitary Concept in the Allocation of Income," 12 Hastings Law Journal 42 (with Frank M. Keesling)

"Selected Problems in California Corporation Taxes," 1962 Southern California Tax Institute 939

"Income Taxation of Testamentary Trusts,"
23 Journal of Taxation 278

"California Franchise Tax Allocation of Income of Unitary Business,"
1966 Southern California Tax Institute 529

"California's Uniform Division of Income for Tax Purposes Act,"
15 U.C.L.A. Law Review 156 (with Frank M. Keesling)

"Reform Act Changes in Pension and Profit Sharing Plans,"
1971 Southern California Tax Institute 137

Lecturer:

"Tax Problems of Closely Held Corporations and Their Shareholders"
California Continuing Education of the Bar, 1974

"Advising on California Taxes"
California Continuing Education of the Bar, 1975

"California State and Local Tax Rules Pertaining to the Entertainment Industry"
California CPA Foundation, 1974

Teacher:

Adjunct Professor of Law in State and Local Taxes,
Loyola University, School of Law
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EXECUTIVE SUMMARY OF POSITION PAPER

ON ALASKA OIL AND GAS TAXATION

By John Warren

Alaska's existing corporation income tax meets all of the generally recognized criteria of a modern and efficient state corporation income tax. It is simple and inexpensive to comply with and enforce, it provides equality among taxpayers, and it contains rules for the allocation of income that provide the best possible assurance against overtaxation or undertaxation of multi-state businesses. The several bills which the Legislature has had under consideration (H.B. 145 and 322, S.B. 105 and 202) are all changes for the worse as far as meeting these criteria is concerned.

If the Alaska tax base for oil companies were to become the greater of book income or federal taxable income (H.B. 322), the Department of Revenue auditors could no longer rely on federal audits. Rather, they would have to verify two sets of figures for each company. Because the financial accounting rules for determination of book income allow some leeway, the Department would have to adopt regulations to prevent manipulation of book income for tax avoidance purposes and to assure equality

among taxpayers. Furthermore, because income or expenses are often reportable in different years under federal income tax rules than they are under financial accounting rules, intricate adjustments would be necessary to avoid including the same item in the tax base for two years.

The changing of the formula for apportionment of income by substituting an origin sales factor ("extraction factor") for the destination sales factor used by most states (H.B. 322) will force Alaska to withdraw from the Multistate Tax Compact and will deprive the state of the benefits of the joint audit program of the Multistate Tax Commission. More importantly, the use of the extraction factor cannot be justified under the generally accepted principles for apportionment of the income of a unitary business.

Determining Alaska tax liabilities on the basis of separate accounting (H.B. 145, S.B. 105, and H.B. 322 as amended in the Senate) is an even more drastic departure from generally accepted principles of proper state tax policy. It would force Alaska out of the Multistate Tax Compact, would create horrendous audit problems for the Department of Revenue, and might even result in a net revenue loss to the state.

The analytical approaches of the Department of

Revenue and the several consultants who have been advising the Legislature leave much to be desired. They have created the impression that Alaska does not get as much tax revenue from the oil companies as it should because the present tax structure does not attribute to Alaska the net income actually earned in Alaska. They then attempt to persuade the state to turn its back on all of the principles of state taxation and multistate business that have been hammered out over the last century — principles that have been widely endorsed by the courts, by tax administrators of other states, and by tax scholars — and to adopt instead one of several new proposals. They have no difficulty in showing that these proposals would increase Alaska's tax collections, but they fail completely to show that they will come any closer to the ideal of taxing the "net income actually earned in Alaska," no more and no less. Alaska would be ill advised to warp its tax structure away from the tried and true principles simply to collect more taxes from one type of business.

restricted use

POSITION PAPER ON ALASKA OIL AND GAS TAXATION

By John S. Warren

I. THE PRESENT ALASKA CORPORATION INCOME TAX

The criteria of a modern and efficient state corporation income tax are that it should be simple and inexpensive to comply with and enforce, it should provide equality among taxpayers, and it should contain rules for the allocation of income that will provide the best possible assurance against overtaxation or undertaxation of multistate business. The present Alaska corporation income tax scores high on all of these points.

Because Alaska uses a tax base which is federal taxable income with only a few adjustments, the Alaska return is easy for the taxpayer to prepare and easy for the Department of Revenue to audit. By requiring taxpayers to report federal audit changes,[1] and by having an agreement for reciprocal exchange of information with the federal government, Alaska gains the benefit of the audit effort of the U.S. Internal Revenue Service free of

charge. In addition, Alaska has effectively shifted to the federal government the burden of adjudicating disputes over the make-up of the tax base.

The Alaska legislature has shown admirable restraint in creating special classes of taxpayers. Highway construction contractors[2] and halibut fishers[3] have been granted preferential treatment, and banks and savings and loan associations[4] and insurance companies[5] have been made subject to other taxes in lieu of the corporation income tax. With these minor exceptions, corporations are treated equally under the pr law.

In the area of allocation of income, Alaska has adopted the same set of rules that has been adopted by 27 of the 45 states (including District of Columbia) that impose taxes on or measured by corporate net income, namely, the rules set forth in the Uniform Division of Income for Tax Purposes Act (UDITPA) and in the Multistate Tax Compact. The UDITPA and Compact rules provide for the apportionment of business income by a formula consisting of the factors of property, payroll, and sales, and this formula is also used by a number of the states that have not actually adopted UDITPA or the Compact.

UDITPA and the Compact represent a major effort to solve, by interstate cooperation, the problem of lack of uniformity in state taxation of multistate business, and Alaska is to be commended for joining in this effort. The extent of Alaska's enthusiasm for the Compact is demonstrated by the fact that its Commissioner of Revenue sits as Treasurer of the Multistate Tax Commission, the body which administers the Compact.

II. THE ZEIFMAN AND AINSWORTH PROPOSALS

Professors Jerome M. Zeifman and Kenneth G. Ainsworth, as consultants to the Alaska Department of Revenue, have criticized the present corporation income tax as it applies to the petroleum industry and have recommended two significant changes. They contend that the present system of taxing the income of oil companies is deficient because the tax base (federal taxable income) is too small and the UDITPA apportionment formula does not assign enough of the tax base to Alaska. They recommend that the tax base for oil companies be equal to the greater of book income or federal taxable income and that the sales factor in the apportionment formula for oil companies be changed from a destination

theory to an origin theory.

A. Effect on Alaska's Membership in the Multistate Tax Compact

The first point to note about the Zeifman and Ainsworth proposals is that they are incompatible with Alaska's continued membership in the Multistate Tax Compact. Article III of the Compact provides that any taxpayer subject to a tax on or measured by net income under the laws of a party state must be given the election to apportion and allocate his income under the rules set forth in Article IV (which are the UDITPA rules). The only exceptions are for financial organizations and public utilities, and it has been held that oil companies are not excludable.[6] The sales factor set forth in Article IV is a destination factor. Therefore, if Alaska subjects oil companies to a tax on or measured by net income and requires them to use an origin sales factor, Alaska will be in breach of the Compact.

Of course Alaska can consider withdrawing from the Compact before enacting the Zeifman and Ainsworth proposals, but this would deprive Alaska of the benefits of the joint audit program of the Multistate Tax Commission.

B. Use of Book Income as the Tax Base

Enacument of Professors Zeifman and Ainsworth's proposal that book income be used as the tax base for oil companies would be a giant step backward from the goal of uniformity, would create inequality among taxpayers similarly situated, would increase the state's audit burden, and would raise questions of constitutionality. Furthermore, their criticism of federal taxable income as the tax base betrays a lack of understanding of the unitary business concept.

(1) The Analytical Error

Professors Zeifman and Ainsworth are correct in saying that by using federal taxable income as the tax base, Alaska accedes to the judgment of Congress regarding tax incentives for industrial expansion; but they are wrong in contending that although it may be all right for Alaska to bear the burden of tax incentives for expansion within the state, it is unfair for it to bear any burden for expansion outside the state. Under the unitary business concept, which is a cornerstone of all modern state tax systems, including Alaska's, an integrated multistate business is looked upon as a single unit, and

each state in which the business is carried on is entitled to tax a portion of the whole. Whatever happens at any place where the business is carried on affects the business everywhere. For example, if an airline serves Alaska, the Western states, Hawaii, and Mexico and if one of its airliners crashes in Mexico, the loss is borne by the entire business, and the resulting tax deduction reduces the tax base in Alaska and everywhere else. Similarly, if an oil company that is active in Alaska and elsewhere makes a major discovery in Brazil, the unitary concept would entitle Alaska to share in the increased tax base that would result from the Brazilian production.

Zeifman and Ainsworth say that Alaska should not go along with Congress in enacting tax incentives to motivate exploration in Brazil, but only to motivate exploration in Alaska. This makes no more sense than to say that the airline should not be allowed to reduce its tax base by loss deductions for crashes in Mexico, but only for crashes in Alaska. The point is that although a case might be made for not allowing any deduction whatsoever for casualty losses or exploration expenses, it is fallacious to argue that Alaska is victimized when its tax base is reduced by such events occurring outside

Alaska. That argument is the equivalent of saying that Alaska accepts the unitary business concept on the income side but rejects it on the deduction side.

(2) The Retreat from Uniformity

Alaska's rejection of federal taxable income in favor of book income would run counter to the trend toward uniformity which Alaska has so far supported. This may be shown by quoting what Professors Zeifman and Ainsworth and others wrote in 1965:

> "Any serious proposals for uniformity of State income tax bases must take into account the fact that the Internal Revenue Code dominates all income taxation in the United States and is a major force in the Nation's business life. Federal tax laws already provide the common frame of reference around which State laws tend to be built and taxpayers tend to regard compliance with Federal definitions of the tax base as byproducts of compliance with Federal definitions. As a result uniformity of State laws can best be achieved through closer conformity of State and Federal definitions.
>
> "The Committee does not recommend that conformity be required to the extent that the States are precluded from formulating their own tax policies. However, it does recommend that each State be required to use, as a starting point for the computation of taxable income, the figure which is reported

to the Federal Government under the Internal Revenue Code."[7]

This recommendation was reached after a long and intensive study of state taxation of interstate commerce, and although the bill embodying the recommedation was not passed by Congress because of state resistance to federal intervention in this area, the statement still stands as a cogent comment on one aspect of the uniformity problem.

(3) The Increased Compliance and Enforcement Burdens

In 1964 Zeifman and Ainsworth, et al., singled out Alaska for special praise in its use of federal taxable income as it exists from time to time and with a minimum of state adjustments. They wrote:

> "Alaska's income tax statute illustrates the simplicity with which the requirements of a moving-base state can be presented. In that State, the taxpayer, having mastered the problems of his Federal return, can quickly determine from the Alaska statute the manner in which it departs from the Federal base. If the taxpayer refers only to the return, his task is even simpler, since Alaska makes only two slight adjustments. These adjustments require the taxpayer to add back Alaska income taxes and contributions to non-Alaska charities.

> The figures for Alaska income taxes and contributions to non-Alaskan charities are readily available both from the taxpayer's Alaska return and the schedules required in support of the Federal return."[8]

Now Zeifman and Ainsworth would have Alaska abandon this commendably simple approach and require one class of taxpayers to use as its tax base the greater of book income or federal taxable income. They state that book income is a readily available figure because it is reported to stockholders and to the Securities and Exchange Commission, but then they suggest that Alaska will want to prescribe its own specific requirements for the determination of book figures. The compliance burden created by this proposal could probably be coped with by the tax departments of the major oil companies, but one wonders whether the Department of Revenue is prepared for what would surely be a greatly increased administrative burden.

To begin with, H.B. 322, the bill incorporating the Zeifman and Ainsworth proposals, (prior to the Senate amendment in full), puts upon the Department the burden of issuing and enforcing regulations for the determination of net income where book income is for some reason unsatisfactory.

Since the recommendation is that the tax base for oil companies be book income or federal taxable income, whichever is greater, the Department of Revenue auditors will have to verify two sets of figures for each taxpayer and then will have to make a determination as to whether book income satisfies the Department's regulations. Furthermore, intricate adjustments will have to be worked out to avoid taxing the same income twice. For example, book income may be higher than federal taxable income in one year because of accelerated depreciation taken on the federal return, and then federal taxable income may be higher than book income in a later year because of recapture of the depreciation under the federal tax rules. Conversely, federal taxable income may be higher than book income in one year because of prepaid income which must be reported in the year of receipt under the federal tax rules, and then book income may be higher than federal taxable income in a later year when the prepaid income is earned and becomes reportable for financial statement purposes. Many more such examples could be cited. Fairness would demand that adjustments be made in all such cases to prevent the same item from being included in the tax base for two years. Failure to allow such adjustments could create such arbitrary and

capricious differences in the relative tax burdens of taxpayers that a serious question of denial of equal protection of the law would arise. Although singling out oil companies for special tax treatment might provide a "reasonable classification" defense to an attack based on the equal protection clause, the defense will break down if the special tax treatment creates discrimination among taxpayers within the class.

Finally, it should be noted that although Zeifman and Ainsworth seem to think that their book income approach could be accommodated into the joint audit program of the Multistate Tax Commission, they have overlooked the fact that their other recommendation of changing to an origin sales factor will require Alaska to leave the Compact altogether. Even if Alaska does not voluntarily withdraw from the Compact and is not expelled by action of the Commission, any oil company could force the issue into court by refusing to submit to a joint audit in which Alaska is participating.

(4) The Due Process Question

It appears that under the Zeifman and Ainsworth proposals the income taxable by Alaska will be determined by applying the three-factor apportionment formula to total book income. Thus they would ignore the distinction between business and nonbusiness income that is made by UDITPA. Under UDITPA (and likewise under the Compact

and current Alaska law) only business income is to be apportioned by formula, and nonbusiness income is to be allocated according to specific rules as to situs.

"Business income" is defined as "income arising from transactions and activity in the regular course of the taxpayer's trade or business, and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations."[9] All other income is "nonbusiness income."[10] Probably all major oil companies include some income on their financial statements that would be nonbusiness income, such as dividends, interest, rents, and royalties produced by tangible or intangible property that is not an integral part of their regular business. Under the UDITPA rules such nonbusiness income would be allocated to the commercial domicile of the corporation (dividends and interest), or to the situs of the property (rents), or to the place where the property is utilized (patent or copyright royalties).[11] But if Alaska requires oil companies to apportion their entire book income by formula, some of this nonbusiness income will be taxed by Alaska.

Under the due process clause of the United States Constitution, a state may tax the income of a foreign corporation only to the extent that the income is derived from or attributable to sources within the state.[12] In the case of a multistate unitary business, it is fair to say that the business income is derived from all of the states in which the business is carried on, and it is appropriate to determine the portion attributable to each state by a formula.[13] But if nonbusiness income is included in the base to which the apportionment formula is applied, then one or more of the states may be taxing income which has no connection with activities or property in that state; and this is a violation of due process.[14]

The Willis Subcommittee's proposed bill (H.R. 11798, 89th Congress) would also have obliterated the distinction between business and nonbusiness income and required total income to be apportioned by formula. A number of well-qualified witnesses testified that this would be unconstitutional. It is possible that the courts would uphold Congress' power to waive due process in furtherance of the commerce clause, but a state could not do this on its own.

C. Use of an Origin - Oriented Sales Factor ("Extraction Factor").

The Department of Revenue has noted some concern that "the present income tax structure does not return to the State of Alaska 9.4 percent of the net income actually earned in Alaska,"[15] and it has found that the fault lies mainly with the destination sales factor which "completely fails to measure the value of oil produced within [the State]."[16] There are evident flaws in this analysis. In the first place, no oil company earns net income simply by pumping oil out of the ground in Alaska. Income is earned only by the full process of producing, transporting, refining, and marketing the oil. Moreover, the proper point of inquiry is not whether the apportionment formula attributes to Alaska an amount of net income that is proportional to the value of the oil produced in the state, but rather whether it attributes to the state an amount of net income that is proportional to the activity of producing, transporting, refining, and marketing in Alaska as compared to that activity everywhere.

The Department feels that the uniform formula with a destination-oriented sales factor works well for

general mercantile business but not so well for the oil business. The courts of other states have held, however, that there is no inherent difference between the oil business and other businesses that justifies departure from the standard apportionment practices.[17]

As previously noted, the great preponderance of states imposing taxes on or measured by net income use a three-factor apportionment formula consisting of property, payroll, and sales. Although there has been some diversity in the construction of the sales factor, the predominant trend in the last fifteen years has been towards the destination test. This is the rule of UDITPA and the Multistate Tax Compact.

The rationale of the destination theory has been well stated by Prof. Pierce, the chief draftsman of UDITPA, in commenting on the deliberations of the National Conference of Commissioners on Uniform State Laws:

> "Manufacturing states probably would prefer a system attributing sales to the place from which goods are shipped in every case. However, the national conference was of the opinion that such a system would merely duplicate the property and payroll factors which emphasize the the activity of the manufacturing state, so that there would tend to be a

> duplication by such a sales factor. Moreover, it is believed that the contribution of the consumer states toward the production of the income should be recognized by attributing the sales to those states."[18]

The preference for a destination sales factor, and the accompanying "throwback" rule to avoid allocating sales to a place without jurisdiction to tax, did not originate with the NCCUSL. In 1951, a committee of the National Tax Association (a joint government-business association formed in the early 1900's) had settled upon this rule as the most appropriate for uniform use, saying:

> "The purpose of the sales factor is to serve as a balance against other factors, such as property and payroll, and to give recognition to the efforts of a taxpayer in obtaining customers and markets. Allocation of sales to the state where possession of the goods is physically delivered to the purchaser (common carriers being considered as agents of the seller for this purpose) would be most workable, from the standpoint of both taxpayer and administrator."[19]

In 1965 when the Willis Subcommittee recommended abolition of the sales factor and enactment by Congress of a compulsory two-factor formula of property and payroll, there was a clamor of opposition by the states and by business representatives. Of course, many

of the objectors had a bias, but the comments of two neutral observers may be noted. The American Institute of Certified Public Accountants Ad Hoc Committee on State Taxation of Interstate Commerce stated:

> "We do not favor the provisions of the bill which prevent a State from using a gross receipts factor if it chooses to do so. We believe it untenable to argue that an integrated manufacturing and selling organization does not realize any of its income from its sales operations. The use of a gross receipts factor in the apportionment formula will result in a more equitable division of income between the various States."[20]

Professor Hellerstein, a prolific writer in the field, after first criticizing the Willis Subcommittee's statistical data on the effects of abolition of the sales factor, went on to criticize the theories of the abolitionists as follows:

> "Consequently, the rigid doctrine espoused by Professor Harriss and Professor Studenski that income is to be taxed only where services are rendered or property producing income is used is simply out of line with the philosophy of taxation widely in vogue in this country and abroad. Instead, under our tax systems, we have long recognized that the nexus between a State and a taxpayer or a transaction which warrant income taxation includes a whole gamut of legal and economic

relationships, benefits and protections, and encompasses virtually every step in the economic process, from the creation of goods to their conversion into dollars in the market place.

"Wise tax policy must be selective in the steps in the economic process to be used as a basis for tax. But in making a judgment as to fiscal policy in our huckster dominated society - from Madison Avenue to Main Street in every town and hamlet, with the radios and television sets blaring forth wares in every home, with an expenditure of $10 billion or more a year on advertising - one ought not have to argue long the importance of the marketplace in the economic process. Consequently, the claim of the market State to a segment of the income of the interstate vendor, without regard to services rendered or property used in the State, seems to me to be eminently justified.

"Finally, the use of a receipts factor with the sales destination test commends itself on a pragmatic basis. The States in which manufacturing and warehousing take place, the States in which executive, accounting, and administrative personnel carry on their functions, obtain a heavy weighting in multifactor apportionment formulas through the property and payroll factors, and, therefore, there is apportioned to such States a substantial part of existing income measures. If the market State is to share to any significant extent in income tax revenues, the sales factor and the destination test afford a workable means to achieve that result. Moreover, that test sets up a standard not easily

> avoided under a properly drafted formula, a fact of no little significance in this area."[21]

Although the interest of Congress in this area has subsided somewhat since the days of the Willis Subcommittee, bills to impose uniform requirements on state apportionment practices continue to be introduced from time to time. The most recent is S. 2173 introduced by Senator Mathias on October 4, 1977. It is interesting to note that it prescribes a three-factor formula with destination as the test for the sales factor. In his explanation of the bill Senator Mathias said:

> "The bill assigns sales by destination in a State as the simplest, most equitable attribution procedure. It gives due weight to the role of the market in the overall production of income or capital and is one that many businesses and States have learned to live with and prefer."[22]

Senator Mathias had been a member of the Willis Subcommittee. The fact that he has switched from advocating abolition of the sales factor to advocating that all states be required to offer a fomula with a destination sales factor is a further indication of the growing consensus that a fair apportionment formula must include

a destination sales factor.

D. Substitution of Privilege Tax for Direct Net Income Tax

Zeifman and Ainsworth propose that the new tax on oil companies be a privilege tax measured by net income rather than a direct net income tax. They say this would tend to strengthen the state's position in court cases involving apportionment disputes, but they cite no authority for this supposition. The only specific point they make is that it could have special significance in enabling Alaska to tax income relating to economic activities on the outer continental shelf which might otherwise be exempt from the present direct tax. However, the federal pre-emption of the outer continental shelf seems absolute. The Submerged Lands Act states flatly that "State taxation laws shall not apply to the outer Continental Shelf."[23] California has determined that its corporation franchise tax measured by net income cannot extend to the outer continental shelf, thus drilling platforms located in California offshore areas that are part of the outer shelf cannot be included in the numerator of the property factor.[24] It seems quite

clear, therefore, that an attempt by Alaska to include outer shelf properties in the property and extraction factors is doomed to failure regardless of whether the tax is a privilege tax or a direct income tax.

There is another reason, not disclosed by Zelfman and Ainsworth, why their proposed tax has to be a privilege tax measured by net income. If an oil company receives federal bond interest it will be included in book income. The states are not permitted to levy a tax directly on the income from obligations of the United States, but it has been held that such income may be included in the measure of a franchise or privilege tax.[25] More recently, however, the U.S. Supreme Court has swept away the long-observed distinction between direct income taxes and privilege taxes insofar as application to interstate commerce is concerned,[26] and perhaps the states can no longer rely on the distinction as it relates to federal bond interest. The eventual result may be that a state tax on or measured by book income including federal bond interest will be impermissible.

III. DETERMINATION OF ALASKA OIL AND GAS INCOME BY SEPARATE ACCOUNTING

Bills have been introduced in the Alaska Legislature (H.B. 145, and S.B. 105, and also H.B. 322 as amended in the Senate) that would take a new approach to the determination of oil and case production income and pipeline transportation income that is to be taxable in Alaska. Oil and gas production income would be the wellhead value of oil and gas produced in Alaska less certain costs attributable to Alaska operations, and pipeline income would be the sum of the amount reported to the ICC under the category "net balance transferred from income" plus federal and Alaska income taxes paid. The net amount would be taxable at the 9.4 percent rate. Oil companies would continue to be subject to the regular income tax which in their case would be computed by deducting from the tax base the amount of income taxable as above and then apportioning the remainder by a two-factor formula of property and payroll, with property and payroll related to Alaska production and pipeline transportation activity excluded from the numerators and denominators of those factors.

This new approach is basically a separate accounting approach. That is, instead of treating the total business of an oil company as a unitary whole, it

would regard the company as being engaged in two separate businesses, with oil and gas production and pipeline transportation in Alaska looked upon as one business and all other activity carried on in Alaska and elsewhere (including oil and gas production and pipeline transportation carried on elsewhere) looked upon as another business. Thus the approach is based on a fiction, for it is an irrefutable fact that these activities are not separate but are integral parts of a single unitary business.

Separate accounting is now generally considered an archaic and outmoded approach to state taxation of multistate business. Almost without exception, the U.S. Supreme Court and the highest courts of the states have rejected it as inferior to the unitary concept with formula apportionment. The states have learned that if separate accounting is the rule, they will often collect only such amount of taxes from business corporations as the corporations choose to give them. This is because any separate accounting system is replete with opportunities for taxpayer manipulation.

The main reason why the separate accounting method so often fails to produce acceptable results is

that it is dependent upon transfer pricing, i.e., if there is a flow of goods and services among the various states and countries in which the business is conducted (and among the various affiliated corporations engaged in the enterprise), then prices must be placed on all goods and services transferred in and out of the segment of the business within the taxing state. Theoretically, the separate accounting method might work satisfactorily if it could be assured that all such transfer prices were on an arm's length basis, but such assurance always proves elusive.

The sponsors of the Alaska proposal may think they have solved this problem by pricing the crude oil itself at the wellhead value, a figure which can be objectively determined and is beyond taxpayer manipulation. On the deduction side, however, there is fertile ground for the growth of administrative problems. Direct operating costs are deductible, but many of these costs may be incurred in transactions with segments of the business (or affiliated corporations) operating outside the state, and the Department will have to examine every such transaction to assure that no more than an arm's length charge was made to the Alaska operation. Indirect

costs and overhead are not deductible, but it is easy to visualize interminable arguments as to what is a deductible direct cost and what is a nondeductible indirect cost. Depreciation of capital assets is deductible, but it is quite likely that capital assets used in Alaska will be acquired from other segments of the business, and the transfer pricing problem will arise again.

Advocates of separate accounting often cite the fact that the federal government uses it in the taxation of multinational businesses. If a U.S. corporation conducts its foreign operations through foreign subsidiary corporations, its U.S. tax liability is computed only with respect to its own operations, and the income of its foreign subsidiaries generally is not taxable until it is repatriated as dividends to the parent. The Internal Revenue Service tries to cope with the transfer pricing problem by making adjustments under the authority of § 482 of the Internal Revenue Code. This approach has been highly criticized both by politicians[27] and by academicians.[28] Alaska itself has rejected the federal approach in favor of world-wide combination for purposes of its regular income tax.

Like the Zeifman and Ainsworth proposals, the separate account proposals may very well be a breach of the Multistate Tax Compact. The author of S.B. 105 has attempted to give it legitimacy by reciting that the Legislature is making a determination under § 18 of Article IV of the Compact that separate accounting is a better way of allocating oil and gas production income and pipeline transportation income. That section (also § 18 of UDITPA) allows variances from the standard three-factor formula, on motion of either the taxpayer or the state, if the standard method does not fairly represent the extent of the taxpayer's business activity in the state, and separate accounting is mentioned as one of the variations that may be used "if reasonable." Those courts which have considered § 18 have held that the one who invokes the section must bear the burden of proving that the standard method is unsatisfactory and that the proposed variance is more reasonable.[29]

Legislative declarations are not proof, and it appears that Alaska would be hard pressed to make its case. In the first place there are several court decisions that the standard method does produce a reasonable

result for oil companies. Furthermore, if separate accounting is appropriate for Alaska, why is it not also appropriate for every other place where the taxpayer has oil and gas production activity or pipeline transportation activity? If a company has production in Alaska and in California, how can Alaska justify taxing separately the Alaska production income and at the same time leaving the California production income in the tax base to which the apportionment formula is applied in determining the company's regular Alaska income tax?

Unless Alaska can provide convincing answers to such questions, the chances of this new tax scheme surviving litigation seem rather slim.

The foregoing comments are also applicable to S.B. 202 which enacts an "oil and gas net proceeds tax," with the net proceeds to be determined by separate accounting. Although the preamble calls the tax an "ad valorem tax," it would fall within the definition of an "income tax" in § 4 of Article II of the Multistate Tax Compact and would violate the Compact for the same reasons given above with respect to S.B. 105.

III. APPLICATION OF THE VANIK THEORY TO ALASKA TAXES

Each year for the past several years Congressman Vanik has published a study purporting to show the effective federal income tax rate applicable to the nation's major corporations. Briefly stated, Mr. Vanik's technique is to compute the amount of the federal income tax paid by each such corporation as a percentage of that corporation's net income for financial statement purposes. He includes in the total net income figure 100% of the income of subsidiaries (foreign and domestic) in which the corporation owns an interest of more than 50% and the corporation's equity interest in the income of subsidiaries in which it owns an interest of 50% or less. Foreign income taxes are taken as a deduction.

Zeifman and Ainsworth have cited the Vanik study for 1975 in support of their contention that the federal tax base has been unduly eroded by "tax expenditures" and is no longer worthy of use by Alaska for the taxation of oil companies. The Department of Revenue has gone on to convert the Vanik results into Alaska results. The Department takes Vanik's finding that certain oil companies paid an effective

federal tax rate ranging from 1.8% to 35.6% and converts this into effective Alaska tax rates of from .28% to 5% for the same companies. The precise method by which the Department accomplished the conversion has not been disclosed, but for purposes of this discussion it will be assumed that it was done by applying to Vanik's effective federal rates the ratio which the Alaska statutory rate (9.4%) bears to the federal statutory rate (48%).

There are a number of criticisms that can be made of the Vanik approach in the federal context, but even if it is accepted as gospel truth in that context, the extension of it to Alaska is totally undependable.

As previously noted, the federal approach to the taxation of multinational businesses is essentially a separate accounting approach. The foreign operations of multinationals are in large part carried on through foreign subsidiaries, and foreign subsidiaries are not combined with the parent for federal income tax purposes. Alaska, however, does require the inclusion of foreign subsidiaries in a combined report and then applies the apportionment formula to the combined net income. Mr. Vanik also combines them in his approach.

It is erroneous, therefore, to assume that Alaska taxes paid will be in the same proportion to Alaska net income as federal taxes paid bear to Vanik's reconstructed federal net income. A large part of the discrepancy which Vanik finds between federal statutory and effective rates for multinationals must be attributable to the separate accounting method that the federal government uses and the combined method which Vanik uses. Since Alaska also uses the combined method, the discrepancy between Alaska statutory and effective rates should be considerably smaller when properly calculated.

Another aspect of the difference between the federal approach and the Alaska approach to the taxation of multinational corporations has to do with the allowance of credits for foreign taxes. This is pertinent if and to the extent that a U.S.-based multinational corporation conducts foreign operations itself rather than through foreign subsidiary corporations. U.S. corporations are subject to federal income tax on their world-wide income and not just on the income from U.S. sources, as would be the case if the federal government used the formula apportionment approach. Therefore, to avoid the foreign-source income being subjected to duuble taxation, the

federal system allows such a corporation to reduce its federal income tax by the amount of foreign income taxes paid. By contrast, in Alaska and all of the other states inposing income taxes, the double taxation problem is met by taxing the corporation only on its income from sources within the state as determined by formula apportionment. Therefore, states such as Alaska do not, and should not, allow credits for foreign taxes.

Once again, the unreliability of trying to convert Vanik's federal figures and Alaska's figures is apparent. The allowance of foreign tax credits must account for a significant part of the discrepancy which Vanik finds between federal statutory and effective rates, but that is a condition which does not exist in the Alaska tax system.

FOOTNOTES

1. § 43.20.030(d), Alaska Statutes

2. § 19.40.040 AS.

3. § 43.20.031(b)(1) AS.

4. §§ 43.20.031, 43.70.020, 43.70.030 AS.

5. § 21.09.210 AS.

6. Amoco Production Co. v. Arnhold, 213 Kan. 636, 518 P. 2d 453 (1974).

7. Report of Special Subcommittee on State Taxation of Interstate Commerce of the House Committee on the Judiciary (89th Congress) Vol. 4, Part VI, Ch. 39, p. 34. Zeifman and Ainsworth were prominent members of the subcommittee staff, and Zeifman ultimately became the chief counsel. The subcommittee was popularly known as the "Willis Subcommittee" and will hereinafter be so identified.

8. Willis Subcommittee Report, Vol. 1, Part II, Ch. 8, p. 273.

9. § 1(a), UDITPA; § 43.20.170(1) AS.

10. § 1(e), UDITPA; § 43.20.150(5), AS.

11. §§ 4 - 8, UDITPA

12. Shaffer v. Carter, 252 U.S. 37, 52-53 (1919).

13. Underwood Typewriter Co. v. Chamberlain, 254 U.S. 113 (1920).

14. Connecticut General Life Ins. Co. v. Johnson 303 U.S. 77 (1937)

15. Alaska's Oil and Gas Tax Structure: A Study with Recommendations for Improvement, February 1977, pp V-1 (hereinafter referred to as the "Department Report").

16. Department Report, p. V-18

the ground that the extraction factor would generate more tax revenues than the sales factor. Apportionment formulas are not intended to be vehicles to generate tax revenues but are designed to divide income among the states fairly and uniformly so as to avoid multiple taxation.

Finally as to the proposed new tax base and apportionment formula in H.B. 322, the singling out of the oil and gas industry and of companies within the industry having receipts of more than $250,000,000 may well be unconstitutional.

SEPARATE ACCOUNTING -- SENATE CS FOR CS FOR HOUSE BILL 322

I understand that the other major proposal before this Committee is adoption of a tax based upon principles of separate accounting. The declared purpose of this bill is to tax oil and gas production and pipeline transportation income in Alaska by means of a statutory separate accounting, while retaining formula apportionment (as modified) to apportion all other income.

Conceptually, separate accounting constructs an income or loss statement for the activities of a corporation in the state as if it conducted an independent oil and gas production or transportation business solely within Alaska and assumes that all dealings by the business with other

aspects of its business and with the outside world are at arm's-length. I am sure it is an attractive concept to try to isolate the Alaskan income by what purports to be a rational procedure rather than the fixed formula. But let me suggest, as your Department of Revenue has strongly argued, that this approach is doomed to failure. Perhaps with small localized businesses the concept is workable. But to apply this concept to large integrated multinational oil and gas corporations ignores the unitary nature of their operations. Each element of a corporation contributes to the overall net profit of the business. You simply cannot ignore the contribution of out-of-state activity to the creation of income in Alaska and how will separate accounting deal with this?

Separate accounting, in practice, is impossible to administer and determine. I fail to see how a concept which proved to be unworkable in the 1920's, when business was relatively simple, can be expected to work in today's era of complex multistate and multinational business of which the oil companies are a preeminent example. The apportionment formula was resorted to because separate accounting could not be administered.

The current proposal attempts to avoid some of the inherent problems of separate accounting by arbitrarily defining net income. Allocation of overhead expenses is "solved"

by simply denying a deduction for such costs. Pricing differences are "solved" by using as gross income the value of the oil and gas produced as determined for purposes of the production tax. And inadvertently, I assume, the proposal results in a double allocation of production income to Alaska, first by allocating production income in Alaska under the statutory separate accounting formula and then allocating to Alaska a portion of the production income outside Alaska under the two-factor apportionment formula. This is clearly a duplication.

Such duplication can be eliminated only by determining production income by separate accounting both in Alaska and outside Alaska and eliminating both, not just Alaskan production income, from the base subjected to the two-factor apportionment formula.

Accordingly, the current proposal does not by definition even approach theoretical separate accounting, and is at least as arbitrary, if not more so, than formula apportionment. It is, indeed another kind of statutory formula.

The proposal has major infirmities. It purports to be an application of separate accounting but it is not and it incorporates a "double dip" allocation of production income to Alaska. It represents a sharp deviation from uniformity and as such would constitute a major disruption of the common consensus underlying the system of state taxation of interstate business income. Separate accounting defined by legislative fiat and applied by one state to a whole industry in order to increase the state's share of the total income

over that resulting from the three-factor formula necessarily results in multiple taxation because income which is fully taxed by the one state is also apportioned by formula to other states. Such deviant action, particularly when it is directed at one industry, may well be unconstitutional.

Moreover, Alaska must ask itself again whether it is appropriate for it to take unilateral action which will disrupt the progress toward uniformity in the division of income among the states which is essential to avoidance of multiple taxation.

THE MULTISTATE TAX COMPACT

Alaska's continuing membership in the Multistate Tax Compact and the administrative benefits derived from such membership may not be tenable if either of the proposals under consideration are adopted. The courts may find such proposals to be in conflict with the Compact and as a result may hold that Alaska has in effect withdrawn from the Compact or that the Compact remains in effect but enactment of the proposals is ineffective to prevent taxpayers from applying the UDITPA formula under the provisions of the Compact. It will take years of litigation to clarify these issues which will cast doubt on what the applicable law is for taxing the income of the oil and gas industry.

CONCLUSION

The United States Supreme Court presently is considering the constitutionality of Iowa's single-factor sales formula. I cannot predict the Court's decision, nor can I

predict to what extent a state may tamper with the uniform formula without violating constitutional principles. Perhaps the Court is ill suited to act as final arbiter as to whether one method of apportionment is fairer or more reasonable than another. But I suspect that with the nearly nationwide acceptance of UDITPA, the Court will show less tolerance of deviant formulas which result in multiple taxation. In any event years of litigation as to the constitutional validity of either of the proposals if enacted as well as their compatibility with the Multistate Tax Compact must be anticipated.

Great progress has been made in recent years in adopting uniform apportionment methods. Part of the drive for voluntary uniformity has obviously been the desire of both states and taxpayers to avoid Federal intervention. As long as states strive toward uniformity as a goal of fair taxation, Congress will be hesitant to act. If the drive for uniformity falters through unilateral action by states asserting their currently perceived self-interest without restraint and the Supreme Court declines to prescribe a uniform formula, Congress will be constrained to exercise its constitutional responsibility to protect interstate commerce by prescribing a Federal standard of uniformity in the division of multistate business income.

Alaska has been in the forefront of the drive for uniformity. By the collective judgment reflected in the

development and general acceptance of the three-factor formula, Alaska's net income tax fairly and effectively reaches its proportionate share of the income of multinational oil and gas corporations doing business within the state. The proposed changes are designed to produce higher revenue, not a fairer division of multistate income, and they would be destructive of the cooperative effort among the states in developing a uniform approach to the division of multistate business income among them.

Madame Chairman and members of the Committee, I want to reemphasize in conclusion that changing the present formula for determining the portion of the worldwide income of oil and gas companies which is taxable in Alaska is not an appropriate way to increase revenues. If Alaska is to act responsibly it cannot ignore the interests of its sister states and in the long run its own interests in maintaining uniformity in the division of multistate business income among the states. If Alaska believes that the apportionment formula is not fair and reasonable as it applies to oil companies, the proper action to take is under Article 18 of UDITPA or through the Multistate Tax Compact or other cooperative state machinery to persuade other states of a different uniform approach, not unilateral legislation which is destructive of uniformity.

SUMMARY

INCOME TAXATION OF MULTISTATE CORPORATIONS ENGAGED IN OIL AND GAS PRODUCTION AND TRANSPORTATION IN ALASKA

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I. PRINCIPLES OF TAX JURISPRUDENCE

Where the activities of a business extend over two or more states, all of the income from such business cannot reasonably be taxed by each of the states. The whole development of the law regarding state taxation of multistate business income rests on this manifest and undisputed principle. Similarly, international tax jurisprudence and tax treaties are grounded on this basic principle with respect to national taxation of multinational business income.

Under the Constitution and within our federal system, this principle has been implemented by Supreme Court decisions under the commerce and due process clauses and through the voluntary and mutually compatible actions of state legislatures and tax administrators.

The effort has been to avoid multiple taxation of the income of a multistate business through the taxing by each state in which the business has activities of only a portion of the income, determined by some reasonable method of apportionment. The system which has developed has two basic elements: (i) a tax base measured by a company's worldwide income determined by Federal taxable income and (ii) a method of dividing this base through use of an apportionment formula.

The Massachusetts, or three-factor, formula apportions the income of a multistate business to the taxing state on the basis of the average of three fractions: (1) property within the state over total property, (2) payroll within the state over total payroll, and (3) sales within the state over total sales.

It was recognized at the outset that multiple taxation of multistate business income arises not merely from failure to apportion reasonably but from disparity in methods of apportionment as well, even though each method by itself and applied universally might be reasonable. The National Tax Association began advocating uniformity in the method of apportionment as early as 1919. Ultimately, these and other efforts culminated in the Uniform Division of Income for Tax Purposes Act (UDITPA) adopted by the National Commissioners on Uniform State Laws in 1957. UDITPA incorporated the three-factor formula and, most notably, defined the numerator of the sales fraction, with respect to which the greatest divergence from uniformity had developed, as being sales having their destination, that is, delivered to customers, in the state.

The Multistate Tax Compact, inaugurated in 1966 to promote uniformity and thereby avert Federal legislation then under consideration to impose uniformity on the states, incorporates UDITPA.

Out of a total of 44 states and the District of Columbia which impose a corporate net income tax, 40 provide for the three-factor formula, 25 by adoption of UDITPA or the Multistate Tax Compact and 15 by incorporation in their own tax statutes, four of the latter giving greater weight to the sales factor than to the property and payroll factors. Differences in the economies of the states as to whether primarily industrial, or commercial, or agricultural or extractive have not affected the general acceptance of the three-factor formula as essentially fair and reasonable.

II. ALASKA INCOME TAX--PRESENT STRUCTURE AND APPLICATION TO THE OIL AND GAS PRODUCTION AND TRANSPORTATION INDUSTRIES.

Alaska has adopted both UDITPA and the Multistate Tax Compact and determines taxable income by reference to the Federal tax base. No distinction is made between the oil and gas industry and other industries engaged in the production and sale of tangible personal property. Since this is essentially the same treatment which is accorded to the oil and gas industry by all of the states imposing a corporate income tax, Alaska suffers no disadvantage in comparison with other states. Accordingly, there does not appear to be justification for change and departure from uniformity. The burden of proof should rest on those who advocate departure.

III. THE ZEIFMAN-AINSWORTH REPORT

The Zeifman-Ainsworth Report contends that Alaska's tax base has been eroded through Federal tax subsidies and incentives which are unrelated to the definition of net income but which are provided solely to accomplish certain economic and social goals, and that the UDITPA apportionment formula reduces the amount of taxable income attributable to Alaska by corporations which export non-renewable petroleum resources from the state.

Zeifman and Ainsworth's recommendations which have been endorsed by the Department of Revenue and incorporated in H.B. 322 are:

1. Adoption of a tax base measured by the greater of book income or Federal taxable income.
2. Replacement of the destination-oriented sales factor with an "extraction factor" -- the ratio of oil and gas energy units produced in Alaska to total oil and gas energy units produced everywhere.

These changes would apply only to corporations with ordinary gross receipts in excess of $250,000,000 more than 50% of which is derived from production, transportation,

refining, manufacturing, processing, distribution of retail sale of oil or gas or products derived from oil and gas.

The "tax subsidies" cited by Zeifman and Ainsworth are for the most part available to all corporations. It is unfair and perhaps unconstitutional to single out the oil industry.

Furthermore, with respect to the one Federal "tax subsidy" allowed to the oil and gas industries, a current deduction for intangible drilling costs, Alaska does not, as Zeifman and Ainsworth claim, provide an incentive to drill wells outside Alaska. Federal taxable income reflects not only deductions for the cost of wells drilled throughout the world but also the income from such wells. It is not a one-way street. Alaska is no more providing an incentive for drilling outside Alaska than other states are providing an incentive for drilling in Alaska. Denial of this current deduction in Alaska, however, could reduce the incentive to drill wells in Alaska.

Congressman Vanik's computations of "effective taxable income" do not support the view that the adoption of the Federal tax base by Alaska automatically causes Alaska's "effective tax rate" to be less than 9.4%, by something comparable to the difference between the statutory 48% rate and the Vanik "effective U.S. tax rate on

worldwide income". Congressman Vanik's approach of measuring Federal income tax due as a percentage of worldwide income is patently incorrect because the United States, recognizing the principles of international tax jurisprudence, provides a credit against its tax on worldwide income for taxes paid to other countries. Alaska does not provide a credit but imposes its tax rate of 9.4% on a corporation's worldwide income apportioned to Alaska. Obviously after apportionment (or after the foreign tax credit at the Federal level) the amount of Alaskan tax as a percentage of worldwide income will be less than 9.4% (or the Federal tax will be less than 48%).

Book income is an inappropriate tax base. It will greatly increase the administrative and audit costs and burdens of both the oil companies and the Department of Revenue. Furthermore, book income not only reflects taxable income before tax subsidies but also many timing differences unrelated to Congressional tax policies. Use of the higher of Federal taxable income or book income as a tax base would tax income twice to the extent of such timing differences.

The UDITPA apportionment formula provides for fair and equitable division of income of oil and gas corporations between Alaska and the rest of the world and fairly reflects the extent of their activity in Alaska as compared to the rest of the world. The destination sales factor properly

gives recognition to the contribution of the market states to the creation of income. Without the demand and purchasing power of the market states, the value of Alaska's oil and gas would be less and the income tax base of oil and gas companies would be smaller. The extraction factor ignores the contribution of the market state and creates multiple taxation, since nearly every other state uses a destination oriented sales factor.

The extraction factor has been proposed not to make Alaska's apportionment formula "fairer" in terms of reasonable sharing of the income tax base with other states, but to generate more tax revenue. Apportionment formulas are not intended to be vehicles to generate tax revenue but to divide income among the states fairly and uniformly so as to avoid multiple taxation.

IV. SEPARATE ACCOUNTING--S.B. 105

The declared purpose of the "net proceeds" tax is to tax production and pipeline transportation income in Alaska by means of a statutory separate accounting, while retaining formula apportionment (as modified) to apportion all other income.

Conceptually, separate accounting constructs an income or loss statement for the activities of the business in the state as if they constituted an independent business

dealing at arm's-length with the remainder of the business and the outside world. In practice separate accounting is impossible to administer and determine. Separate accounting requires that hypothetical prices be established for goods and services between affiliated companies. Separate accounting must effectively contend with efforts of companies to shift income among divisions, affiliates and states and must devise some reasonable way to attribute overhead expenses to the various business locations and activities of the taxpayer, no doubt by means of an apportionment formula, thereby abandoning to that extent its initial purpose of avoiding the apportionment formula. Furthermore, separate accounting requires maintenance of records needed in the effort to determine geographic income--records which serve no other business function.

S.B. 105 handles the problem of allocating overhead expenses by simply denying a deduction for such costs. Pricing difficulties are "solved" by using as gross income the value of oil and gas produced as determined for purposes of the production tax.

Thus, the proposed net proceeds tax would not by definition apply separate accounting even though it purports to do so.

The proposed net proceeds tax has major infirmities. It purports to be an application of separate accounting but it is not. It represents a sharp deviation

from uniformity and as such would constitute a major disruption of the common consensus underlying the system of state taxation of interstate business income. Separate accounting applied by one state to a whole industry in order to increase its share of tne total income over that resulting from the three-factor formula necessarily results in multiple taxation because income which is fully taxed by one state is also apportioned by formula to other states.

V. THE MULTISTATE TAX COMPACT

Alaska's continuing membership in the Multistate Tax Compact and the administrative benefits derived from such membership may not be tenable if either the Zeifman-Ainsworth proposals or S.B. 105 were adopted. The courts may find such proposals to be in conflict with the Compact and as a result may further hold that Alaska has in effect withdrawn from the Compact or that the Compact remains in effect but enactment of the proposals is ineffective to prevent taxpayers from applying the UDITPA formula under the provisions of the Compact.

VI. UNIFORMITY, COMITY AND ENLIGHTENED SELF-INTEREST

Great progress has been made in recent years in adopting uniform allocation methods. Part of the drive for voluntary uniformity has obviously been the desire of both

states and taxpayers to avoid Federal intervention. As long as states strive toward uniformity as a goal of fair taxation, Congress will be hesitant to act. If the drive for uniformity falters through independent action by states asserting their currently perceived self-interest without restraint, Congress will be constrained to exercise its constitutional responsibility to protect interstate commerce by prescribing a Federal standard of uniformity.

Alaska has been in the forefront of the drive for uniformity. By the collective judgment reflected in the development and general acceptance of the three-factor formula, Alaska's net income tax fairly and effectively reaches its proportionate share of the income of multinational oil and gas corporations doing business within the state. The proposed changes would be destructive of community and comity among the states in dealing reasonably with state taxation of multistate business and are parochially designed to increase tax revenues without regard to the general principles of tax jurisprudence for division of interstate business income adhered to by other states.

A NEW VENTURE IN FEDERALISM— TOWARD A SOLUTION TO STATE TAXATION OF MULTISTATE BUSINESS †

Leonard E. Kust *

I. Introduction

My title—"A New Venture in Federalism" possibly conjures up something far more exciting than my subject. But the obdurate problems involved in state taxation of interstate business require new perspectives and some venturesomeness in statecraft and I will stand by my title, trusting that my subject will at least be challenging if not exactly exciting.

New initiatives are needed to break the sterile impasse with which we have been confronted. All proffered solutions have been rejected.

The present impasse is, of course, part of the historic confrontation between state and national government in a federal system. The problems of state taxation of multistate business arise naturally from a nationwide economy functioning within a federal system. Solutions, on the other hand, necessarily impair in some measure the autonomy of the states.

In spite of this historic context, we must not permit an overweening emphasis on the conflict between "states' rights" and "national supremacy" deflect us from the search for a reasonable accommodation.

Reviewing the history of the controversy, I believe we have passed well beyond a simplistic confrontation between state and national government.

Ever since Chief Justice Marshall in *Brown v. Maryland* [1] declared the obvious, it has remained persuasive that state taxation can impede interstate commerce in violation of the Constitution. Yet as some 300 decisions of the Supreme Court [2] since attest, the judicial process is not a satisfactory

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[1] 25 U.S. (12 Wheat.) 419 (1827)

[2] *Northwestern States Portland Cement Co. v. Minnesota*, 380 U.S. 450 at 457, 458 (1959).

instrument for reconciling the sovereign power of states to impose taxes to the needs of a national economy contemplated by the commerce clause of the Constitution.

Recognizing that the taxing power is the most jealously guarded power of sovereignty, it is unfortunate indeed that the first full scale and considered attempt of Congress to exercise its constitutional power to regulate state taxation of interstate commerce should have unnecessarily exacerbated the inherent conflict between state and national government.

Yet H.R. 11798, the result in 1965 of five years of prepatory work by the Subcommittee of the House Judiciary Committee, could not have been better calculated to alarm the states and give credence to a claim of invasion of "states' rights." The drastic departure from prevailing state practice in presenting a two-factor apportionment formula for income taxes and the provision for substantial federal administration provided a momentum for state resistance which has since blocked any reasonable action.

Withdrawal by Congress since to consideration of such modest and really inadequate measures as the Rodino Bill (H.R. 7906) has convinced everyone, I believe, that no undue invasion of "states' rights" is threatened. Reasonable restraints on state taxing power in the interest of freer interstate commerce is now largely accepted on all sides. The quarrel is over what is reasonable and how it should be implemented.

Against this background, let me give you my appraisal of where matters stand and what the prospects are.

II. Possible Solutions in Process

There are presently in process several initiatives in varying degree of implementation and with varying promise of providing reasonable solutions to the problems of state taxation of multistate business.

A. *Uniform Acts.* Since 1890 the National Conference of Commissioners on Uniform State Laws has promoted uniformity in state legislation on subjects where diversity of treatment is an interstate evil.

A National Tax Association Committee issued a report in 1919 urging States to utilize a simple uniform tax on income and in 1921 set forth the model acts which had been drafted pursuant to the 1919 study. Although the NTA persisted in its advocacy of a uniform law, nothing concrete ensued until

1957 when the present Uniform Division of Income for Tax Purposes Act, referred to by the acronym UDITPA, was drafted and approved by the National Commissioners on Uniform State Laws and was in the same year endorsed by the American Bar Association.[3]

After years of standing as the only solution being advocated with respect to the problems of state taxation of interstate business, no sooner had the proposal begun go be implemented than it began to be viewed as inadequate. The Supreme Court decisions in the *Stockham Valve* and *Northwestern Cement* cases[4] in 1959 centered attention on the question of jurisdiction. UDITPA does not deal with jurisdiction. Mr. Justice Frankfurter in his dissent in the forementioned cases urged Congress to act. The business community organized an urgent demand on Congress and Congress, though it had never theretofore recognized any obligation or power in the area, promptly enacted Public Law 86-272 in 1959 delimiting the power of states to impose an income tax on interstate business corporations and calling on the House Judiciary and Senate Finance Committees to make a thorough study and recommend legislation with respect to all of the problems involved, including apportionment of income. When the Supreme Court decided the *Scripto* case[5] in 1960, the impact of sales and use taxes on interstate commerce was by amendment of P.L. 86-272 added to the investigation.[6]

Overtaken by these developments UDITPA has languished. Although efforts continue to have it enacted by state legislatures and some progress continues, the uniform act is now generally viewed as guidance and as a prototype for incorporation in other broader solutions.

But aside from the roll of events, does UDITPA deserve its apparent fate? I believe it has served a laudable and perhaps indispensable purpose in crystallizing thinking about the standards to be incorporated in a uniform apportionment formula, but both its scope and its approach are, I think, clearly inadequate to the needs.

Uniform acts are rarely adopted by all states. Only 25 states and the District of Columbia have adopted UDITPA.[7]

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[3] H.Rep. 1480, 88th Cong., 2d Sess., Vol. 1, pp. 129, et seq. (Willis Subcommittee Report)

[4] *Supra*, 358 U.S. 450 (1959).

[5] *Scripto, Inc. v. Carson*, 362 U.S. 207(1960).

[6] P.L. 87-17; H.Rep. 1480, supra, p. 9.

[7] Alabama, Alaska, Arkansas, California, Colorado, Hawaii, Idaho, Illinois, Indiana, Kansas, Kentucky, Michigan, Missouri, Montana, Nebraska, New Mexico, North Dakota, New Hampshire, Oklahoma, Oregon, South Carolina, Washington, North Carolina, Utah, Virginia.

Usually some deviating amendments are made by state legislatures, as has happened with respect to UDITPA. Some lack of uniformity may be tolerable with respect to other uniform laws, but with respect to UDITPA deviation means a potential duplication of tax burden.

Moreover, as already noted, UDITPA does not deal with jurisdiction. It does not deal with he determination of the income base; it does not deal with the treatment of related taxpayers; and it does not deal with taxes other than the income tax. Finally, the uniform law approach cannot provide machinery for uniform administrative and judicial interpretation which can over time create wide diversity.

I think we can conclude that the uniform law approach will not serve to solve the problems of state taxation of multistate business.

B. *Federal Legislation.* Congressional action and the prospect of additional Congressional action have drained the uniform act approach of vitality. But while federal legislation has distinct advantages over uniform laws, what are the real prospects for effective federal legislation and how would it be implemented?

The prospects are at best uncertain. After its disastrous first proposal for Congressional action incorporated in H.R. 11798, the House Judiciary Subcommittee offered a drastically truncated measure directed primarily to small business. It has been twice passed by the House in spite of adamant opposition by state tax administrators. Now known as the Rodino Bill (H.R. 7906) and pending before the Senate Finance Committee, it is in threat of becoming a casualty a second time as time is running out in this Session of Congress.

Why after so many years and so much effort and such clear need is Congressional action again about to abort?

There is a complex of reasons. There is still a residue of resistance based on the notion that any action represents Congressional interference with states' rights. There is disagreement between business and state tax administrators; there is disagreement among business groups; there is disagreement among tax administrators; and there is reluctance on the part of Congress, particularly the Senate Finance Committee on which all these disagreements have come to bear, to act as arbiter and impose a solution. My reading of the mood of the Finance Committee is quite

frankly that it is waiting for the contending parties to compose their differences.

Overhanging the troubled attempts to solve the problems through federal legislation are some nagging questions if we are to enlarge the narrow scope of the Rodino Bill. How far can the scope be broadened and made effective without provision for administrative and judicial interpretation in a manner which will preserve uniformity? Is federal administration avoidable and if not how can present state opposition be overcome? Is a multistate tax compact an alternative to federal legislation?

C. *The Multistate Tax Compact.* The Multistate Tax Compact was conceived in 1966, and has been promoted as an alternative to federal legislation. It incorporates UDITPA, it provides some sales and use tax standards, it provides for advisory administrative regulations and it provides an arbitration procedure. It is thus clearly superior to the uniform law approach. But it still suffers from some of the defects of a uniform act and encounters some special problems of its own.

In 4 years the Compact has been adopted by only 20 states [8] and has been adopted by none of the major Eastern seaboard industrial states. It has succeeded in getting associate membership from 13 states, including important industrial states, but clearly the prospect of getting broad enough participation to make the compact a self-sufficient solution to the problems of state taxation of multistate business is doubtful.

Moreover, the Compact does not deal with the issues of jurisdiction and its provisions for administrative interpretation are weak. It has no provisions for judicial review. While the contrary is argued, it may well be invalid without Congressional consent. Its enlargement and amendment to meet changing needs would involve cumbersome individual member state legislative approval and if Congressional consent is required, repeated Congressional approval. Facing all of these problems and the present reluctance of additional states to adopt it, the Compact approach also appears unlikely to provide an adequate solution to state taxation of multistate business. It has, nevertheless, served as a rallying point for state tax administrators in their effort to forestall federal legislation, and they have had bills introduced to give Congressional assent to the Compact.

[8] Multistate Tax Newsletter No. 22, July, 1970.

III. AN INNOVATION IN STATECRAFT—FEDERAL LEGISLATION ADMINISTERED UNDER A MULTISTATE COMPACT.

All of the apparently available avenues to solution of the problems of state taxation of interstate business seem to be seriously flawed. How, then, do we proceed?

Obviously some innovative, reconciling initiative is needed. Fortunately this initiative nas been launched, not as a self-conscious exercise in creative statecraft, but intuitively, forced by the logic of the circumstances. It has emerged from the chrysalis of pressure for solution through federal legislation and the counterpressure for solution through a multistate compact. Neither pressure or solution appears sufficient in itself, but an amalgamation of the two approaches may well be the reconciling, innovative answer.

The Bill drafted by the Ad Hoc Committee on Taxation of Interstate Business offers such an answer. I had the privilege of serving as Co-Chairman of this Committee. As you know, the Committee was a volunteer and self-appointed group of state tax administrators and business representatives who subscribed to the view that reconciliation of the positions of business and state tax administrators was necessary and were willing to devote effort to that end.

While palpable hostility between the business and state representatives at the outset threatened the joint enterprise, this gradually gave way to respectful regard for opposing views. Total reconciliation was not achieved but a wide area of accord was defined and, remarkably, from the beginning there was consensus that the solutions to the problems of multistate taxation of interstate business should be implemented through a merger of the compact approach with federal legislation.

I am convinced that, consciously or unconsciously, this was genuinely innovative and regardless of the fact that the Committee's recommendations were not unanimous or whether we individually, on study and reflection, agree with all the details of the Committee's proposals, the larger thrust of the Committee's effort is sound and offers the best and most hopeful solution to the problems of state taxation of multistate business.

A. *The Ad Hoc Committee Proposal.* A brief description of the main provisions of the Ad Hoc Committee's proposal will, I trust, serve to justify this conviction. The fundamental, creative conception is, of course, the merger of the multi-

state tax compact approach and the federal legislation approach.

Under this conception, federal legislation would provide jurisdictional standards, a uniform apportionment formula for income and capital stock taxes, standards for consolidation or combination of affiliated corporations for income tax purposes, standards for sales and use taxes, and procedures for the settlement of disputes, with the Multistate Tax Compact providing the means for administration of the federal legislation.

Such a structure would provide flexibility for adjustment and evolution to improve the system for taxation of interstate business. With the Multistate Tax Compact providing only the administrative machinery under which the States would act cooperatively to administer federal standards, and not itself containing substantive standards, there should be little or no need for future amendments of the Compact. This is desirable since, as already noted, amendment of an interstate compact involves procedures which it would be difficult to make responsive to changing needs and developing thinking with respect to standards for taxation of interstate business. On the other hand, with the Multistate Tax Commission under the Compact acting as the administrative agency it could implement and modify, within the limits of permissible administrative interpretation, the legislative standards under federal law, and when the need for changes exceeded the bounds of permissible administrative interpretation the Commission could seek amendments to the federal legislation, a far more responsive procedure than amendment of an interstate compact. Moreover, under the Committee structure of the Multistate Tax Compact any proposal for amendment of the federal legislation will have been preceded by extensive discussions between state administrators and business representatives and will presumably, therefore, be presented to Congress with a substantial consensus of support.

Time does not permit discussion of the specifics of the standards to be provided by federal legislation or the specifics of the powers of administration delegated to the Multistate Tax Commission. Some are freighted with controversy and the Committee sought to limit itself only to the most pressing problems rather than to deal with all the problems that might arise in the areas which were included in its proposal. The Committee deemed it more important to take an initial step, but a sound one, which would lay the groundwork for perfecting amendments as experience pointed the way.

While the Committee conceived its approach under the compulsion of existential pressures, unaware of historical precedents and unsure of its constitutional propriety, its conception, one finds on research, is not wholly unprecedented and is, with little doubt, wholly constitutional, the latter having been confirmed by competent outside legal counsel during the course of the Committee's deliberations.

B. *Precedents.* In a landmark article in 1925,[9] Mr. Justice Frankfurter, then Professor of Law at Harvard Law School, and James Landis, then his research associate and later Dean of the Law School, analyzed the compact clause of the Constitution and urged a more imaginative use of this clause in dealing with problems requiring interstate adjustments within our federal system. They cited this approach as preservative of the legal autonomy of the states rather than reducing them to departments or mere administrative divisions of the central government. Although acknowledging that the compact cluase had its origin in the boundary disputes pending at the time the Constitution was framed and adopted, they traced its gradual application in other areas and argued that the pressure of modern interstate problems has revealed the rich potentialities of the device. They specifically called attention to its usefulness with respect to interstate conflicts in taxation. The following quotation sounds remarkably current:

> ". . . no one can scan the flood of cases dealing with 'jurisdiction' to tax, rules for apportionment and the like, without realizing that the opportunities for taxation open to the States against common resources might find a more economic and more effective solution through negotiation than through litigation. At all events, in view of the growing burden upon time and feelings, as well as the cost in money due to the conflicts and confusion arising from the administration of independent systems of State taxation, the possibilities of amelioration and economy realizable through an alert use of the Compact Cluase call for more intensive study, as part of a disciplined attack upon the entire tax problem."

This early recognition of the usefulness of the compact clause in interstate taxation has been validated by time, but as we have learned a simple resort to the compact clause is not enough. A more alert and imaginative use is needed. The Ad Hoc Committee's proposal for federal legislation of uniform standards administered under a multistate compact is such a use.

[9] Frankfurter & Landis, THE COMPACT CLAUSE OF THE CONSTITUTION—A STUDY IN INTERSTATE ADJUSTMENTS, 34 Yale Law Journal 685 (1925).

But even this conception is not wholly unprecedented. In an article in 1936,[10] Professor Stevens of Cornell Law School proposed the adoption of uniform corporation laws through a combination of federal legislation and an interstate compact. He suggested federal legislation authorizing an interstate compact to set up an interstate commission on corporation law which would draft and approve uniform corporation law provisions for adoption by member states. But more critically for our purposes, he also suggested that in order to make the compact approach effective the federal legislation should prohibit the conduct of interstate commerce by corporations not formed under an act embodying the uniform law. He had no doubt as to the constitutionality of such a combination of federal regulation of interstate commerce with an interstate compact.[11]

Similarly, there also appears to be ample authority under several Supreme Court decisions[12] to support the administrative and judicial appeal procedures envisioned by the Ad Hoc Committee proposal.

IV. INTERNATIONAL IMPLICATIONS OF THE AD HOC COMMITTEE'S PROPOSAL.

There is more than a federal and interstate dimension to the Ad Hoc Committee's proposal which heightens my interest. The parallel between our interstate problems and the problems of international taxation of multinational business is inescapable. If we can resolve through federal legislation and a multistate compact the problem of interstate taxation, why should not this serve as a prototype for resolution of the problems of international taxation of multinational business through a multilateral treaty? The obstacles may seem insurmountable but the power of the example will be there and and as pressure for solutions mounts with the accelerating growth of multinational business, international machinery may well be implemented to parallel our example. It is clearly in the interest of business not only to solve our domestic problems but to grasp the opportunity through a successful domestic solution to provide a compelling international

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[10] Stevens, UNIFORM CORPORATION LAWS THROUGH INTERSTATE COMPACTS AND FEDERAL LEGISLATION, 34 Michigan Law Rev. 1063 (1936)

[11] See also Holcombe, THE STATES AS AGENTS OF THE NATION, 3 SELECTED ESSAYS ON CONSTITUTIONAL LAW, 1187 (1938).

[12] *Petty v. Tennessee-Missouri Bridge Comm.*, 359 U.S. 275 (1959); *Parden v. Terminal Railway of the Alabama State Docks Department*, 377 U.S. 184 (1964); *Tobin v. U.S.*, 306 F (2) 270 (D.C. Cir. 1962), Cert. den., 371 U.S. 902 (1963).

example. The time may not be so far off when a burgeoning multinational business will require new initiatives to deal with the international implications, including taxes. The impending seriousness of this is attested in the recent testimony on multinational corporations last December and May before the Subcommittee on Foreign Economic Policy of the Joint Economic Committee.

V. PLEA FOR STATESMANSHIP.

I am convinced that nothing less than a new venture in federalism such as the merger of the Multistate Tax Compact and federal legislation will resolve the differences between business and state tax administrators over solutions to the problems of state taxation of interstate business. To me this venture beckons as a challenge to statecraft. It calls for a kind of statesmanship that has not always been abundantly present in the debates on the subject heretofore. But I am optimistic. The not uncommon history of apparently intractible controversies is that they pass from unyielding hostility to grudging recognition of merit in opposing views and gradually to reconciling compromise. I think the multistate business tax controversy is running this course and we may well be entering the last stage of reconciling compromise.

But an acceptable issue out of our difficulties is by no means assured. One must plead for dedication to making our federal system work and for some sustained statesmanship on the part of both tax administrators and business representatives.

I have dealt only with the larger issues but there are specifics which must be incorporated in any solution and my experience on the Ad Hoc Committee makes it only too clear that unyielding adherence to a preferred view with respect to important specifics can destroy the promise of the joint venture.

Aside from its central conception, the genius of the Ad Hoc Committee's proposal, if it merits so laudatory a description, is its spirit of accommodation. There is danger that it may not be considered in the same spirit by contending business groups and state tax administrators now reviewing it.

I do not mean to suggest that the Ad Hoc Committee's proposal must be accepted intact or all will fall. But in seeking adjustments in the proposal let us not rekindle the old hostilities and resume the old intransigent stands.

I question whethe. either of the opposing views in the major specific controversies, such as over use tax jurisdiction and the consolidation of related companies, can wholly prevail. And if we persist in unyielding disagreement, the opportunity for creative statecraft may irrevocably pass, risking to unpredictable future pressures the fashioning of perhaps some drastic solution.

State Taxation of Interstate Business--An Obdurate Issue†

LEONARD E. KUST*

If you are familiar with my past involvement in efforts to resolve the problems and the conflicts in state taxation of interstate business or have yourself been involved as long as I, you will surely agree if I begin by observing that time passes but does not heal . This is not only an observation but a plea for reconciliation to nullify the observation.

A simple roll call of the events of the past 16 years quickly delineates the problems, the conflicts, the fruitless efforts at solutions and the present confusion.

The central problem is inherent in our federal system, the success of which depends on a reasonable accommodation between the soverign powers of the states and the national interest as defined in the Constitution. Specifically with respect to interstate business, the powers of the states to tax such business is subject to the national interest in promoting an open economy as embodied in the commerce clause.

In spite of the clear power of Congress to implement the

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commerce clause in this area and the plea addressed by members of the Supreme Court in several cases to Congress to act, the task of accommodating the power of states to tax interstate business to the national interest was left to the fragmentary and uncoordinated process of case by case decisions by the courts.

Finally, in 1957 the National Commissioners on Uniform State Laws adopted the Uniform Division of Income for Tax Purposes Act (UDITPA), and therewith began 16 years of history which almost at once rendered this pioneering effort inadequate if not largely irrelevant. UDITPA had not been adopted by any state when the Supreme Court decisions in the *Stockham Valves* and *Northwestern Cement* cases in 1959 (358 U.S. 450) centered attention on the question of minimum connection as a basis for jurisdiction and UDITPA does not deal with jurisdiction. Prior to those decisions, a foreign corporation engaged solely in interstate activity in a state that had been held not to be subject to a tax measured by net income imposed by such state on the privilege of doing business therein (*Spector Motor Service v. O'Connor*, 340 U.S. 602 (1951)). Under those decisions, however, a tax imposed directly on the net income of such a business was permissible "provided the levy is not discriminatory and is properly apportioned to local activities within the taxing State forming sufficient nexus to support the same" (358 U.S. 450 (1959) at 452).

Alarmed by the exposure to state taxation of income from interstate commerce and the uncertainty of the minimum nexus in the absence of which protection still existed, the business community quickly prevailed upon Congress to take action and within seven months P.L. 86-272 was enacted denying to a state the power to impose a net income tax on an interstate business if the only activity within such state was solicitation. Recognizing that more comprehensive legislation required careful consideration, Congress in P.L. 86-272 called on the House Judiciary and the Senate Finance Committees to make a thorough study and to recommend legislation with respect to all of the problems involved, including apportionment of income. When the Supreme Court decided the *Scripto* case in 1960 (362 U.S. 207), the impact of sales and use tax collection on interstate commerce was added to the investigation.

Against this setting let me simply recall the intervening events in the droning drama that comes to no end and leaves us where we are today. The mere recital without elaboration

conjures up vividly the conflicts and contending views and leaves space to identify the areas of substantial consensus as well as the areas of conflict and to appraise the possibilities of reconciliation and prospective action.

The list of events following P.L. 86-272, unhappily, begins with the legislative proposal, based on the disastrously misconceived conclusions of an elaborate four-year long study by the Willis Subcommittee and embodied in H.R. 11798, which persuaded few but alarmed many, particularly the state tax administrators. This was followed by the drastically truncated measure directed primarily to small business, beginning as the Willis Bill and continuing as the Rodino Bill, which, although thrice enacted by the House has died in three successive sessions of Congress but arises, Phoenix-like, to be introduced again. There is the Multistate Tax Compact promoted by state tax administrators as the alternative to federal legislation. There is the *National Bellas Hess* case (386 U.S. 753 (1967)). There is the unredeemed promise of Senate Finance Committee hearings. There are the first Ad Hoc Committee proposal, the Multistate Tax Commission "Plan", the second Ad Hoc Committee proposal and the Council of State Chambers' COST proposal. There are the competing legislative bills embracing, besides the Rodino Bill (H.R. 1538), the Ribicoff-Mathias Bill (S. 317), the Talcott-Tunney Bill (H.R. 4267), the two Magnuson Bills (S. 1883 and S. 3333) and the Mathias Bill (S. 4080). And, finally, there are the court decisions interpreting P.L. 86-272, the most notable of which are the *Smith, Kline & French* (241 Ore. 50, 403 P. 2d 375 (1965)), *Clairol* (57 N.J. 199, 270 A. 2d 702 (1970) appeal dismissed, 402 U.S. 902 (1971)) and *Heublein* (Dec. 18, 1972) cases, the last of which was just decided last December 18th by the Supreme Court.

There has been plenty of movement; the question is whether it has been forward. The portent of these tangled events is not easy to read. But let us try to devine some meaning from the confused history and venture some views as to where it will or at least should lead.

General Areas of Consensus

The recitation of the recent history of state taxation of interstate business reflects mostly conflict and competing views but there are substantial areas of consensus. It is important not to lose sight of this, for if the differences are to be composed, we shall have to build on the areas of consensus.

There is substantial agreement that there should be a uni-

form formula for the division of interstate business income among the states and that the collection of sales and use taxes by interstate business should be governed by uniform standards.

Although the agreement is less general, it is also broadly agreed that there should be uniform minimum jurisdictional standards for the imposition of an income tax and for the collection of a use tax by interstate business and possibly also for the imposition of capital and gross receipts taxes on such business.

There is accordingly substantial agreement as to the basic elements of needed action. But there is not the same agreement as to means for translating the agreed on general concepts into the needed action nor as to the specifics of such action; indeed, there are some means and some specifics as to which there is only stalemated and unyielding disagreement.

General Areas of Conflict

Having identified the general areas of substantial agreement, let us identify the conflicts as to general concepts that hold little promise of resolution and then consider the specifics with respect to which there is substantial agreement or with respect to which conflict has frustrated the achievement of progress.

First of all, the Rodino Bill, limited to small business and providing a "business location" jurisdictional standard and a two-factor apportionment formula for income has only limited support from business and has been adamantly opposed by the states. It has had the general support of the business community in the past only as a basis of action by the House to permit corrective and enlarging amendments in the Senate. But this has become a worn and tired formula and one wonders whether it will be repeated in this session of Congress.

It seems equally clear that the Multistate Tax Compact cannot carry the day as a self-sufficient solution. Its legal status without Congressional approval remains untested and with business opposition to it as the whole solution, it is unlikely that it will be sufficiently accepted by the large industrial states to work effectively.

It is less clear but probably also true that federal legislation alone, without giving to the states a continuing lead role by way of a modified Multistate Tax Compact, has little chance of being enacted because of state opposition.

This seems to leave only one promising course of action, but

we will deal with this later, turning first to the specific areas of agreement or conflict.

Specific Areas of Agreement or Conflict

Jurisdiction

The problem of the minimum connection required to justify imposition of tax on an interstate business remains as one of the most difficult problems in the accommodation of state and local governments' power to tax to the national interest in an open economy. It is not just a question of equality between in-state and out-of-state business but a question of the deterrence to out-of-state business when the connection with a state or locality is too thin to justify compliance with state and local tax laws by the out-of-state business. This is, of course, primarily a problem of small, expanding business. But this is at the heart of a growing national economy and the encouragement of economic competition. It is also evident that the burden of compliance arises primarily from disparate rules for the determination of income, the apportionment of income, and the obligation to collect use taxes. If the rules were uniform among the states, jurisdictional protection from any state in which there are customers might well prove to be unnecessary, at least with respect to state level taxes.

The proliferation of the imposition of income and use taxes by local governments, however, is another matter. This can be as burdensome to large business as to small, considering that there are some 80,000 local governments. With respect to such taxes, there should be a substantial minimum connection with the taxing jurisdiction.

In spite of the fact that concern about jurisdictional overreach by the states initiated the recent history and remains the prime concern of small business, there has developed far more agreement than may at first be evident.

With respect to income taxes, the Ad Hoc Committee proposal, introduced in the last session of Congress by Senator Magnuson as S. 3333, and the Multistate Tax Commission Plan, both accept P.L. 86-272 as sufficient while the Rodino Bill, the Ribicoff-Mathias Bill and the COST proposal, introduced at the end of the last session of Congress by Senator Mathias as S. 4080, embrace a "business location" concept. But on close examination, how much difference is there between P.L. 86-272 and "business location?" The latter is a more precise and elaborate definition but solicitation by an employee in the state would alone be sufficient in certain circumstances to confer jurisdiction except as solicitation is

rendered insufficient by incorporation of the language of P.L. 86-272 in the definition of "location of an employee." Thus, the minimum connection in both comes to the same thing and by virtue of the same language except for the additional exclusion under the business location standard of installation or repair incidental to an interstate sale, which is important but not a likely matter of critical disagreement.

With respect to the power of state and local governments to impose the obligation on interstate business to collect sales or use taxes, there is substantial agreement in all of the proposals and bills except the Rodino and Ribicoff Bills. The latter bills would impose the business location standard modified only by regular household deliveries. All the other bills and proposals would codify the *Scripto* and *National Bellas Hess* case law extending the jurisdictional reach of states to cover regular solicitation in the state by an employee or representative *(Scripto)*, but not solicitation solely by mail, radio or television *(National Bellas Hess)*. The jurisdiction of local governments, however, would extend beyond the business location test only to regular household deliveries under the Ad Hoc Committee bill, the Multistate Tax Commission Plan and the COST bill, as under the Rodino and Ribicoff Bills.

Thus, again, except for lingering small business interest in the higher state level limitation in the Rodino Bill, there is general agreement as to sales and use tax jurisdiction. It would appear that the far greatest importance of effective limitation of potentially 80,000 local governments requiring collection of their separate sales and use taxes will persuade small business to join in the general consensus.

The Sales Factor

There is no significant controversey with respect to the use or definition of the property and payroll factors of the income apportionment formula. All the conflict centers on the sales factor, first as to whether it should be used and second as to its content. The Rodino and Ribicoff Bills continue to incorporate the two factor formula, omitting sales, which first appeared in H.R. 11798. However, the momentum of support for the two factor formula is waning and was never sufficient to overcome the adamant state opposition. All the other pending proposals employ a three factor formula, including a sales factor on a destination basis.

But disagreement persists with respect to the so-called "throwback" rule, under which sales to customers in a state lacking jurisdiction to tax the seller are assigned to the state of origin. UDITPA, the Multistate Tax Compact and the

Multistate Tax Commission's Plan all incorporate the "throwback" rule. The Ad Hoc Committee Bill (S. 3333) modifies the rule by making it inapplicable to export sales, other than to the U.S. Government, and the COST bill eliminates the "throwback" rule completely.

There is more theoretical fervor than there is practical significance in the disagreement and an accommodation along the lines of the Ad Hoc Committee proposal should be acceptable.

Dividends

There is substantial agreement that the business/nonbusiness income distinction embodied in UDITPA should be avoided and that all income should be apportioned under the formula, with the exception of dividends with respect to which there is strong disagreement.

The Multistate Tax Commission in its regulations and in its Plan would include dividends in apportionable income. The Ad Hoc Committee bill would eliminate from the tax base dividends from 80% owned affiliates and would allocate all other dividends to the commercial domicile of the recipient. The COST bill follows the Ad Hoc proposal but reduces ownership of affiliates to 50%.

The general practice among the states is not to tax intercorporate dividends, but a few states vigorously disagree. It would seem that the taxation of inter-corporate dividends is undoubted double taxation which should certainly not be extended beyond the 15% included in income under the Internal Revenue Code.

The treatment of dividends clearly is one of the most sensitive and important remaining controversies. Failure to resolve it may well stand in the way of the needed accommodation.

Combined or Consolidated Returns.

The treatment of dividends is a sensitive and important issue but the combination or consolidation of related corporations where one is subject to the jurisdiction of the state but the other is not is the more notorious and apparently irreconcilable controversy. Arcane distinctions are drawn between combination and consolidation but for brevity we shall use consolidation as comprehensive.

The storm center of the controversy is the premise, aside from a common ownership, on which consolidation should rest. There are strong advocates of the "unitary business" doctrine among state tax administrators but most administra-

tors appear to be indifferent. On the other hand, business generally strongly adheres to the view that consolidation should be imposed by states only if there has been non-arm's length dealing between the related companies.

Reflecting the controversy, the Ribicoff Bill prohibits consolidation and substitutes reallocation in accordance with the principles of Section 482 of the Internal Revenue Code. The first Ad Hoc Committee bill employed a series of rebuttable presumptions permitting or forbidding consolidation of 80% affiliates, keyed to the volume of intercompany transactions. The Multistate Tax Commission Plan would permit either the state or the taxpayer to elect to consolidate with all 80% affiliates and this was adopted in the second Ad Hoc Committee proposal with the exclusion, however, of affiliates substantially all of the income of which is from foreign sources. The COST bill, on the other hand, permits consolidation only if the state establishes non-arm's length dealing or if the taxpayer establishes that clear reflection of income requires it.

The disparities in the proposals are obviously wide and fundamental but, curiously, the resolution of the conflict may not be as remote as it appears, as I shall explain presently.

Regulations and Appellate Procedures

There are two other specifics over which there is no express general agreement: regulations and appellate procedures. The Multistate Tax Compact provides for the formulation by the Commission of purely advisory regulations while the first Ad Hoc Committee proposal would have conferred on the Multistate Tax Commission the power to promulgate mandatory regulations on nonmembers as well as members of the compact. The second Ad Hoc Committee proposal retreated to advisory regulations which would be adopted only by the action of all states, whether or not members of the compact, and which would not be binding on a state if it took positive administrative action within 180 days rejecting the regulation. None of the other bills or proposals, other than the first Magnuson consent bill, endorse the Multistate Tax Compact or provide for regulations.

With respect to appeals the Multistate Tax Compact provides for arbitration, the first Ad Hoc Committee proposal provided for an appellate procedure within the Multistate Tax Commission from which there was an appeal to the Federal Courts of Appeal, but the second Ad Hoc Committee proposal abandoned all appellate procedure, leaving the resolution of controversies to present state administrative and judicial remedies. The COST proposal does not provide for any ad-

ministrative procedures but would confer jurisdiction on the Court of Claims to review *de novo* final state administrative determinations involving application of the federal legislation.

These are interesting proposals and alternatives for regulations and appeals but they do not represent crucial differences that cannot be dealt with in the context of general agreement with respect to the rest of the legislative package.

The Need for Reconciliation

Having traversed the sixteen years of recent history, where do we stand today? It is my reading of the mood of Congress, particularly of the Finance Committee, that it is waiting for the contending parties to compose their differences. The Congress does not intend to act as arbiter and unless state administrators and business are prepared to give substantial support to one of the existing proposals or a new accommodation it will not act. This is now more likely than ever to be true since Congress will be preoccupied with its constitutional confrontation with the executive. Therefore, unless the past 16 years of effort, contention and substantial accommodation are to come to naught, a final effort to resolve remaining differences must be made.

A Solution to Resolve the Remaining Conflicts

Since neither Federal legislation alone nor the Multistate Tax Compact alone seem capable of commanding sufficient support to provide a solution, the Ad Hoc Committee conception of a combination of the two with appropriate modifications provides the only real promise of reconciliation. It makes sense and deserves support. I do not, however, foreclose; indeed, I encourage, the substitution of a new and broader accord between business and tax administrators, if one can be forged. There is promise of this in the discussions under progress between COST and the Executive Committee of the National Association of Tax Administrators (NATA). One can only hope that the promise will come to an early fruition, since the remaining differences are no longer really so very great, except for some partisans who continue to insist on their own special interest or point of view.

With respect to jurisdiction the existing proposals are not substantively very different with respect to income taxes, and although I would prefer the business location test to simple continuation of P.L. 86-272, I think we should recognize that the business location test would not have resolved beforehand the litigation in the *Clairol* and *Heublein* cases with respect to

the meaning of solicitation under P.L. 86-272. With respect to sales and use tax collection, I believe small business should yield to the more general consensus as to state jurisdiction in order to achieve limitations on the potentially far more burdensome obligation of collecting local government taxes.

The treatment of dividends and consolidation of related companies are the two remaining significant obstacles to general consensus. Again it seems to me that the Ad Hoc Committee proposals are reasonable accommodations. I do not like the elective consolidation by either the state or the taxpayer, since it lacks any rationale except expediency, but it seems to be the only solution that can possibly achieve substantial support from both states and business. The proposal originated with the Multistate Tax Commission Plan and therefore has state support and despite the COST bill's adherence to the arm's-length standard, I have reason to believe that the business community can and would accept the dual elective standard, if affiliates, substantially all of the income of which is from foreign sources, are excluded.

A final effort at accommodation must be made and it must be made during this session of Congress or I fear that all reasonable hope of useful action to bring order and balance into the chaos of state and local taxation of interstate business will be spent, perhaps irrevocably.

An Optimistic Outlook

But I remain optimistic. The not uncommon history of apparently intractable controversies is that they pass from unyielding hostility to grudging recognition of merit in opposing views and gradually to reconciling compromise.

But an acceptable issue out of our difficulties is by no means assured. One must plead for statesmanship on the part of both tax administrators and business representatives. The Ad Hoc Committee conception of a combination of federal legislative standards and the Multistate Tax Compact is a new venture in federalism and, perhaps with some further adjustment, deserves support.. But any other solution with substantial backing by business and state tax administrators, such as the developing COST-NATA accord, deserves encouragement and support. If we persist in unyielding disagreement, the opportunity for creative statecraft may irretrievably pass, risking to unpredictable future pressures the fashioning of perhaps some drastic solution.

Robert Richards

ALASKA ECONOMICS

Alaska's oil and gas tax—one of the highest burdens in the country

Government is the largest sector of Alaska's economy, and the petroleum industry is the major contributor to state government revenue. Let us look at the relationship between these two important sectors:

Government remains the largest employer in Alaska, providing over one-third of all the jobs and about one-quarter of the gross state product. This huge public sector, which at the state and local levels has exhibited strong growth, has been the major factor underlying the stability of the Alaska economy.

The state of Alaska fiscal year 1978 budget provides for total operating expenditures of $1 billion. This represents a 13 percent increase over the level of fiscal year 1977—considerably slower than the 19 percent increase of the previous year.

The state budget has become increasingly dependent on the petroleum industry for its funding. More than one-half of the state's total unrestricted general fund revenue came from petroleum firms in fiscal year 1977. State estimates of fiscal year 1978 petroleum taxes and revenues range from $672 million to $742 million, depending on the wellhead value for North Slope production. These petroleum figures jump to between $856 million and $1.4 billion by 1980. Based on the state's estimated "medium case," the petroleum industry will contribute approximately three-fourths of total state revenue in 1978 and in 1979.

In November, 1976, Alaska voters passed a constitutional amendment creating a Permanent Fund to hold at least one-quarter of all mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments, and bonuses. The Permanent Fund, by law, must be used only for income-producing investments, and the income is to go into the general fund. Depending on the wellhead value, contributions from Prudhoe Bay and Cook Inlet petroleum production at the 25 percent rate to the Permanent Fund could range between $81 million and $94 million in fiscal year 1978, $90 million to $136 million in fiscal year 1979, and $96 million to $173 million in fiscal year 1980.

An aerial view of a pipe storage yard at Valdez showing some of the 48-inch steel pipe used in construction of the Trans Alaska oil pipeline. The state budget has become increasingly dependent on the petroleum industry for its funding. *Alyeska Pipeline Service Co. photo*

It is expected that the 1978 session of the Alaska legislature will enact legislation establishing the investment policies and objectives and the management structure and procedures of the Permanent Fund.

Alaska's oil and gas tax structure also impose one of the highest burdens in the

country, well in excess of the state's requirements to fund its needs. The petroleum industry pays to the state a multiplicity of taxes, including severance taxes, regulation and conservation taxes, exploration, production and pipeline transportation property taxes, as well as motor fuel taxes and corporate income taxes. These taxes are in addition to royalty, bonus and rental payments. In mid-1977 severance tax rates on petroleum production were legislated higher by about one-half for oil and more than double for gas. As the laws now stand, both severance taxes and royalty payments will net the state about one-quarter of the gross value of production at Prudhoe Bay.

Additionally, Alaska has imposed a $30 million Coastal Protection Fund for oil spills in state waters, an item which is being litigated. There is also a $1-to-$10-per gallon state spill penalties law to protect anadromous streams, estuaries and public lands. On top of state taxes, as the oil is loaded into tankers at Valdez, the owners must pay five cents per-barrel into a federal $100 million Trans-Alaska Pipeline Liability Fund. Considering the small petroleum industry permanent work force in Alaska of about 5,000, this capital intensive industry is a corporate citizen which contributes considerably more public revenue than the burden it imposes on public services.

Accompanying heavy taxation, future pre-leasing requirements by state government may require competing petroleum firms to submit confidential seismic and geological data to the state. Additionally, proposed changes in leasing procedures could result in final tract selections being announced only a half-year in advance of each sale.

Another major issue is the tariff charged by the pipeline owners for the service of moving Prudhoe Bay crude oil to Valdez. The tariff is one of the costs deducted from the price of the oil in calculating the field value upon which state royalty payments and severance taxes are based. The owners have proposed an interim tariff ranging from $6.04 to $6.44 on interstate oil, but the Interstate Commerce Commission (ICC) suggested interim charges from $4.68 to $5.10. However, the Supreme Court stayed the ICC tariff order, and the originally filed tariffs became effective on Oct. 20, 1977. Similarly, the Alaska Pipeline Commission is in the process of determining tariffs for intrastate oil.

Considering the already high operating and production costs associated with Alaska's remote location and severe climate, the Alaska state regulatory and tax burden now looms another impediment to development in the 49th state. □

Robert Richards is Executive Vice President of Alaska Pacific Bank and leading economist in the state of Alaska.

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SI N UP SHEET

HEARINGS ON SCS/CS HB 322 - OIL AND GAS CORPORATE FRANCHISE TAX

WEDNESDAY, FEB. 8

DONALD NIELSEN
BRISTOL BAY NATIVE CORP

LEONARD KUST
CONSULTANT, ALASKA OIL & GAS ASSN.

BOB MOORE
CONSULTANT, ARTHUR ANDERSON

FRIDAY, FEB. 10

COMMISSIONER GALLAGHER
DEPT. OF REVENUE

MONTE TAYLOR
EXXON

DICK DONALDSON
SOHIO

JOHN WARREN
CONSULTANT, ALASKA OIL & GAS ASSN

HERMAN LOEB
PENNZOIL

BILL VAN ALEN
H.L. HUNT

EXHIBIT

Reproduced from Congressional Budget Office, Budget Option for Fiscal Year 1977: A Report to the Senate and House Committees on the Budget.

TAX EXPENDITURE ESTIMATES, BY FUNCTION[a]

[Millions of dollars, fiscal years]

Function	Corporations					Individuals				
	1977	1978	1979	1980	1981	1977	1978	1979	1980	1981
National defense (050):										
Exclusion of benefits and allowances to armed forces personnel	.....	.....	.....	.....	.....	650	650	650	650	650
Exclusion of military disability pensions	.....	.....	.....	.....	.....	90	100	110	120	130
International affairs (150):										
Exclusion of income earned abroad by U.S. citizens	.....	.....	.....	.....	.....	160	175	195	205	220
Exclusion of gross-up on dividends of LDC corporations	55	55	55	55	55	.....	.....	.....	.....	.....
Deferral of income of domestic international sales corporations (DISC)	1,420	1,460	1,495	1,580	1,735	.....	.....	.....	.....	.....
Deferral of income of controlled foreign corporations	365	365	365	365	365	.....	.....	.....	.....	.....
Special rate for Western Hemisphere trade corporations	50	50	50	50	50	.....	.....	.....	.....	.....
Natural resources, environment and energy (300):										
Exclusion of interest on state and local government pollution control bonds	170	220	265	300	330	75	100	125	145	160
Expensing of exploration and development costs	840	1,045	1,285	1,540	1,850	195	245	305	365	435
Excess of percentage over cost depletion	1,020	1,015	1,110	1,215	1,325	575	625	640	670	695
Pollution control: 5-year amortization	15	5	.....	.....	.....	.....	.....	.....	.....	.....
Capital gains treatment of royalties on coal and iron ore	20	20	25	25	30	50	60	65	75	85
Capital gains treatment of certain timber income	165	175	190	200	215	65	70	75	80	85
Agriculture (350):										
Expensing of certain capital outlays	115	120	130	135	150	360	370	380	390	400
Capital gains treatment of certain income	40	40	45	50	50	565	655	705	760	820
Cooperatives: deductibility of noncash patronage dividends and certain other items	455	485	520	555	595	.....	.....	.....	.....	.....
Commerce and transportation (400):										
Exemption of credit unions	135	145	155	165	175	.....	.....	.....	.....	.....
Corporate surtax exemption	6,185	6,745	7,300	7,865	8,455	.....	.....	.....	.....	.....
Deferral of tax on shipping companies	130	155	180	205	230	.....	.....	.....	.....	.....
Railroad rolling stock: 5-year amortization	10	5	.....	.....	.....	.....	.....	.....	.....	.....
Financial institutions: excess bad debt reserves	570	635	730	900	1,060	.....	.....	.....	.....	.....
Deductibility of nonbusiness state gasoline taxes	.....	.....	.....	.....	.....	600	665	735	815	910
Depreciation on rental housing in excess of straight line	125	135	145	155	170	455	480	510	545	580
Depreciation on buildings (other than rental housing) in excess of straight line	280	300	325	350	375	215	235	250	275	300

See footnote at end of table.

*Source: Staffs of the Treasury Department & the Joint Committee on Internal Revenue Taxation.

TAX EXPENDITURE ESTIMATES, BY FUNCTION[a]—continued

[Millions of dollars, fiscal years]

Function	Corporations					Individuals				
	1977	1978	1979	1980	1981	1977	1978	1979	1980	1981
Expensing of research and development expenditures	695	725	755	785	815	.....	.....	.....	.....	.....
Capital gains: Corporate (other than farming and timber)	900	1,015	1,090	1,170	1,260	.....	.....	.....	.....	.....
Investment credit	7,585	8,045	8,480	8,890	9,310	1,530	1,635	1,750	1,870	1,995
Asset depreciation range	1,630	1,825	2,000	2,095	2,135	175	195	220	230	235
Dividend exclusion	.....	.....	.....	.....	.....	350	370	385	405	425
Capital gains: Individual (other than farming or timber)	.....	.....	.....	.....	.....	6,225	7,360	7,905	8,490	9,145
Capital gains at death	.....	.....	.....	.....	.....	7,280	8,120	9,015	10,005	11,105
Deferral of capital gains on home sales	.....	.....	.....	.....	.....	890	935	980	1,030	1,080
Deductibility of mortgage interest on owner-occupied homes	.....	.....	.....	.....	.....	4,710	5,225	5,800	6,440	7,150
Deductibility of property tax on owner-occupied homes	.....	.....	.....	.....	.....	3,825	4,245	4,710	5,230	5,805
Deductibility of interest on consumer credit	.....	.....	.....	.....	.....	1,075	1,195	1,325	1,475	1,635
Exclusion of interest on state and local industrial development bonds	195	235	270	315	355	90	110	130	150	170
Excess 1st year depreciation	165	180	200	220	240	85	95	105	115	130
Expensing of construction period interest and taxes	1,065	1,110	1,150	1,190	1,230	570	595	620	645	670
Credit for purchase of new home	.....	.....	.....	.....	.....	100	.....	.....	.....	.....
Community and regional development (450):										
Housing rehabilitation: 5-year amortization	25	20	15	10	10	40	25	15	15	15
Education, training, employment, and social services (500):										
Exclusion of scholarships and fellowships	.....	.....	.....	.....	.....	220	235	245	255	270
Parental personal exemption for student age 19 and over	.....	.....	.....	.....	.....	715	735	760	780	805
Deductibility of charitable contributions (education)	280	325	355	390	430	500	555	610	670	735
Deductibility of child and dependent care expenses	.....	.....	.....	.....	.....	420	460	510	560	615
Child care facilities: 5-year amortization	5	5	.....	.....	.....	.....	.....	.....	.....	.....
Credit for employing AFDC recipients and public assistance recipients under work incentive program	10	10	10	10	10	.....	.....	.....	.....	.....
Deductibility of charitable contributions (social services)	352	402	446	489	536	3,124	3,468	3,847	4,274	4,740
Health (550):										
Exclusion of employer contributions to medical insurance premiums and medical care	.....	.....	.....	.....	.....	4,225	4,730	5,300	5,935	6,650
Deductibility of medical expenses	.....	.....	.....	.....	.....	2,095	2,325	2,580	2,865	3,175
Deductibility of charitable contributions (health)	173	198	219	241	264	831	922	1,023	1,136	1,260

See footnote at end of table.

TAX EXPENDITURE ESTIMATES, BY FUNCTION[a]—continued

[Millions of dollars, fiscal years]

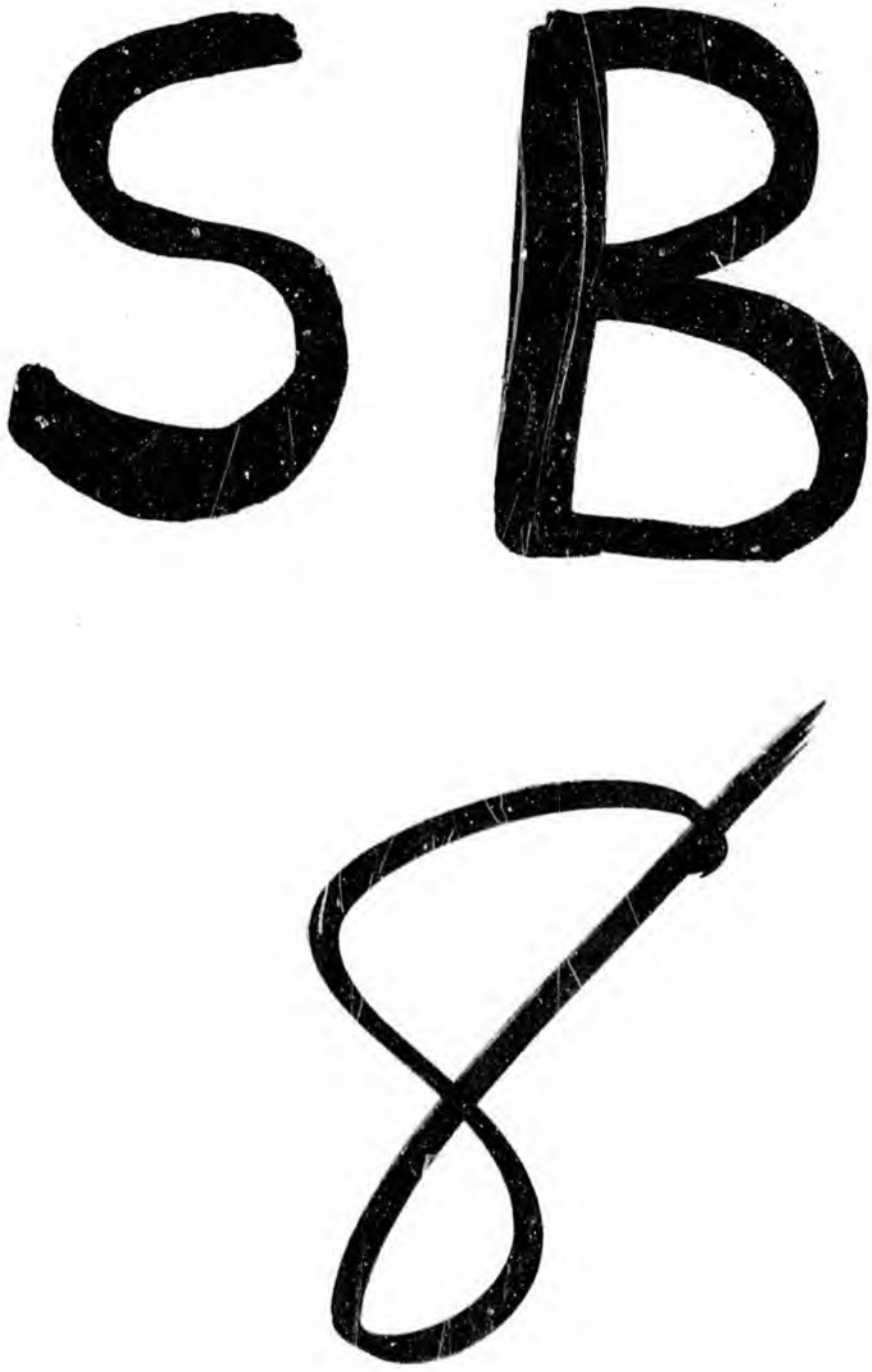
Function	Corporations					Individuals				
	1977	1978	1979	1980	1981	1977	1978	1979	1980	1981
Income security (600):										
Exclusion of social security benefits:										
Disability insurance benefits						370	415	470	525	595
OASI benefits for aged						3,525	3,965	4,460	5,020	5,645
Benefits for dependents and survivors						565	635	715	805	905
Exclusion of railroad retirement system benefits						200	215	230	245	260
Exclusion of unemployment insurance benefits						2,855	2,655	2,470	2,295	2,135
Exclusion of workmen's compensation benefits						640	705	775	855	940
Exclusion of public assistance benefits						130	145	165	185	210
Exclusion of special benefits for disabled coal miners						50	50	50	50	50
Exclusion of sick pay						350	370	385	405	425
Net exclusion of pension contributions and earnings:										
Employer plans						6,475	7,120	7,835	8,620	9,480
Plans for self-employed and others						965	1,065	1,180	1,300	1,440
Exclusion of other employee benefits:										
Premiums on group term life insurance						895	965	1,050	1,135	1,230
Premiums on accident and accidental death insurance						60	65	70	80	85
Income of trusts to finance supplementary unemployment benefits						5	5	5	5	5
Meals and lodging						305	320	335	350	365
Exclusion of capital gains on home sales if over 65						50	55	60	65	70
Excess of percentage standard deduction over minimum standard deduction						1,560	1,635	1,720	1,805	1,895
Additional exemption for the blind						25	25	25	25	25
Additional exemption for over 65						1,220	1,280	1,340	1,410	1,480
Retirement income credit						110	100	90	80	70
Earned income credit: nonrefundable portion						280	270	255	245	235
Earned income credit: refundable portion						1,110	1,065	1,025	985	945
Exclusion of interest on life insurance savings						1,855	2,025	2,210	2,410	2,625
Deductibility of casualty losses						330	355	380	405	430
Maximum tax on earned income						505	580	670	770	885
Veterans' benefits and services (700):										
Exclusion of veterans' disability compensation						595	595	595	595	595
Exclusion of veterans' pensions						30	30	30	30	30
Exclusion of GI bill benefits						280	265	255	240	230

See footnote at end of table.

Ken Kluck
Houston Oil
and Minerals

Regrets testimony
Wed (10-15 min.)
Friday

Per Bill
Hopkins



COMMITTEE REPORT

SENATE

2/4/77 Date

Mr. President:

The Committee on RESOURCES has had SB 18 licensing of pesticide applicators under consideration. A majority of the members of the Committee

☐ recommends it do pass

☐ recommends it do not pass

☐ recommends it do pass with attached amendment(s)

☒ recommends it be replaced with CS for SB 18 and that CS for _____ do pass

☐ (and) recommends it be referred to the _____ committee

☐ reports it back without recommendation

☐ AND attaches a report of its intent

☐ (other) _____

MEMBERS SIGNING THE MAJORITY REPORT:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

MEMBERS NOT CONCURRING IN THE MAJORITY REPORT:

_____ recommends: _____

_____ recommends: _____

_____ recommends: _____

_____
Chairman

S 60

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

Pouch O
Juneau 99811

October 15, 1976

Ms. Sally Hanson
Office of Senator Jalmar Kerttula
c/o Legislative Affairs Agency
Pouch Y
Juneau, Alaska 99811

Dear Ms. Hanson:

Thank you for your telephone call relating to the status of the Wasilla water study included by the Legislature in the FY 1977 capital budget for this Department. As you know, the original appropriation was for both a water study and a sewer, $35,000; this was reduced by the Governor to $15,000 for a water study only, as there are other Federal and State funding sources available for sewer studies. We are working closely with the City of Wasilla on this project, and hope to be able to release the funds to them soon. As you are aware, there have been some changes in the city's staff, and the new staff had to be made familiar with this project. We will probably have someone from our construction grants staff visit the city soon to finalize plans for this project. We will try to keep you informed as this project goes along.

You will recall we also discussed the impact of the 1972 Amendments to the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). As I mentioned, FIFRA requires that EPA classify all pesticides and pesticidal products as being for "general" or for "restricted" use. General use pesticides are to be those which are relatively safe for use by the general public. Restricted use pesticides are to be those which are deemed too dangerous for untrained persons to use.

In order to purchase or use restricted pesticides, persons must be trained and certified by the state in which they plan to work. States, of course, would then need the legal authority to require certification, and to establish a training, examination, and certification program. While Alaska has had such legal authority for a number of years for contract, commercial, and custom applicators, we have no such authority over private

applicators. Under EPA's proposed regulations, farmers are "private" applicators if they apply pesticides on their own land. It is proposed that the training and examination requirements for private applicators be significantly less rigorous than those for commercial or contract applicators. If the State does not have sufficient authority to establish this as a private applicator certification program, these persons would not be able to purchase or use restricted pesticides, but would have to contract with a certified commercial applicator. As one of the herbicides commonly used in Alaskan agriculture, Premerge, will probably be a restricted pesticide, our agriculture community could lose a valuable tool, or be forced to pay a much greater price for its use.

Attached is a simple language change proposal that the Attorney General assures us would solve this problem. I would appreciate your views on this proposal, and Senator Kerttula's consideration for introduction.

Sincerely yours,

Ernst W. Mueller
Commissioner

Enclosure
cc: Ms. Fran Ulmer

THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. Senate Bill No. 13
Title "An Act Making a Special Appropriation To University of Alaska...for the study of ~~Resource~~ Surplus Heat Utilization..." Date January 26, 1977
REQUESTED BY Senator Kerttula

II. FISCAL DETAIL
Agency Affected University of Alaska
Program Category Affected Education
Budget Request Unit(s) Affected Agricultural Experiment Station/Organized Research

EXPENDITURES (Thousands of Dollars)

		FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
100	PERSONAL SERVICES	4.2	40.7	43.9	-0-	-0-	-0-
200	TRAVEL	-0-	2.3	-0-	-0-	-0-	-0-
300	CONTRACTUAL	-0-	1.7	-0-	-0-	-0-	-0-
400	COMMODITIES	-0-	5.5	2.5	-0-	-0-	-0-
500	EQUIPMENT	-0-	0.5	-0-	-0-	-0-	-0-
600	LAND & STRUCTURES	-0-	-0-	-0-	-0-	-0-	-0-
700	GRANTS, CLAIMS, ETC.	-0-	-0-	-0-	-0-	-0-	-0-
	TOTAL	4.2	50.7	46.4	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND	4.2	50.7	46.4	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER (Specify)	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS

FULL TIME	1	1	1	-0-	-0-	-0-
PART TIME	-0-	-0-	1	-0-	-0-	-0-
TEMPORARY	1	1	1	-0-	-0-	-0-

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

See Attachment

IV. DATE January 27, 1977 PREPARED BY Dr. Donald H. Dinkel, Professor of Plant Physiology
AGENCY Agricultural Experiment Station
PHONE 479-7652 University of Alaska

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

Senate Bill No. 13
Project Summary Totals

100	Personal Services		$ 88,716.84
	FY 77	$ 4,209.97	
	FY 78	$40,655.95	
	FY 79	$43,850.92	
200	Travel		$ 2,350.00
	FY 77	$ 0	
	FY 78	$ 2,350.00	
	FY 79	$ 0	
300	Contractural Services		$ 1,700.00
	FY 77	$ 0	
	FY 78	$ 1,700.00	
	FY 79	$ 0	
400	Commodities		$ 8,040.00
	FY 77	$ 0	
	FY 78	$ 5,540.00	
	FY 79	$ 2,500.00	
500	Equipment		$ 500.00
	FY 77	$ 0	
	FY 78	$ 500.00	
	FY 79	$ 0	
		TOTAL	$ 101,306.84

Senate Bill No. 13
Analysis of Fiscal Note

FY 77 Costs

100 Personal Services $4,209.97

Senior Research Assistant (21A) $2,635.57

This position would be employed for one month prior to FY 78 to begin implementation of the research project. The Senior Research Assistant would be a specialist in horticulture technology and would be responsible for data analysis, background preparation, and other duties as assigned by the project head.

$1,895.00	Salary ($1,895.00 per month x 1 month)
301.31	Leave Allowance (15.9%)
$2,196.31	Subtotal
439.26	Staff Benefits (20%)
$2,635.57	Position Total

Horticulture Trainee (11A) (Temporary Help) $1,574.40

This position would be employed for one month prior to FY 78 to perform gardening functions and other tasks. This position would weed, care for harvest, weigh the garden products, and perform other labor duties.

$1,312.00	Salary ($1,312.00 x 1 month)
262.40	Staff Benefits (20%)
$1,574.40	Position Total

TOTAL FY 77 COSTS $4,209.97

100 Personal Services $40,655.95

Senior Research Assistant (21A) $31,209.55

This position would be needed for 12 months to develop the project. The person employed would be a horticulture specialist who would care for plants, calculate data documenting project accomplishments, and do other duties as assigned by the project head.

$22,440.00	Salary ($2,040.00 per month x 11 months)
3,567.96	Leave Allowance (15.9%)
$26,007.96	Subtotal
5,201.59	Staff Benefits (20%)
$31,209.55	Position Total

Horticulture Trainee (11A) $ 9,446.40
(Temporary Help)

This position would be responsible for performance of horticulture labor functions related to the project. The person would do maintenance duties of weeding, caring for plants, etc.

$7,872.00	Salary ($1,312.00 per month x 6 months)
1,574.40	Staff Benefits (20%)
$9,446.40	Position Total

200 Travel $ 2,350.00

Travel required to review waste heat agriculture projects in parts of United States, such as Minnesota, Oregon, Idaho, etc., to analyze various techniques for application in Alaska. $ 850.00

Iceland is one of the major countries that currently employes waste heat for industry uses. A review of its techniques would be done to examine for methods useable in Alaskan environment. $ 1,200.00

Three trips to and from Palmer would be necessary to build greenhouse facilities. Transportation to install equipment and appliances would be required. $ 300.00

300 Contractual Services

Photography services will be required to record results of study. Computer services will be needed to calculate and analyze data produced.	$ 500.00	
Publication of study to report findings of the projects. Printing and mailing costs are included in the figure.	$ 1,200.00	
		$ 5,540.00

400 Commodities

Supplies necessary for waste heat research

a) Thermo Couple Wire	$ 175.00
b) Stakes, Tags, Bags Containers	200.00
c) Fertilizers and Growth Media	800.00
d) Shade Cloths and Alterations to Attach to This	725.00
e) Plants and Shipping	2,500.00
f) Special Tubing	250.00
g) Pots	325.00
h) Vexar Netting	145.00
i) Special Tools (Knives, pruning shears)	75.00
j) Insecticides	70.00
k) Connections for Steaming Soil	275.00
	$ 5,540.00

500 Equipment $ 500.00

Special pumps and fertilizer injector are necessary for project.

FY 78 TOTAL $50,745.95

FY 79 Costs

100 Personal Services $43,850.92

Senior Research Assistant (21B) $32,942.90

This position would be responsible for maintenance and completion of the project. The person would also prepare documentation for publication on the results.

$23,298.00	Salary ($2,118.00 per month x 11 months)
3,704.38	Leave Allowance (15.9%)
$27,002.38	Subtotal
5,940.52	Staff Benefits (22%)
$32,942.90	Position Total

Secretary (9A) $ 4,505.46

Secretarial services would be necessary for three months to type project results for publication and maintain files on project documentation.

$3,693.00	Salary ($1,231 per month x 3 months)
812.46	Staff Benefits (22%)
$4,505.46	Position Total

Horticulture Trainee (11A) $6,402.56
(Temporary Help)

This position would be necessary to perform maintenance and gardening functions and other tasks. This person would weed, care for harvest, weigh garden products and perform other labor functions.

$5,248.00	Salary ($1,312 per month x 4 months)
1,154.56	Staff Benefits (22%)
$6,402.56	Position Total

400 Commodities $2,500.00

Supplies necessary to continue waste heat research:

a) Fertilizers and Growth Media	$ 550.00
b) Pots	225.00
c) Plants and Seed	1,725.00
	$2,500.00

TOTAL FY 79 COSTS $46,350.92

Pertinent Questions and Answers on Subject of Waste Heat

By
D. H. Finkel

Q. What is waste heat?

A. Waste heat is the term commonly used for energy that is rejected from various industrial sources. It usually results from the burning or other consumption of fossil fuels; however, it may also result from nuclear power plants or represent the unused heat from geothermal sources. The waste heat rejected from a process using fossil fuel usually exceeds the amount of the energy that is put to useful work such as the production of electricity. For example, most electrical power generation facilities that operate with fossil fuels have only a 30 per cent efficiency and the remainder is rejected as hot water or hot air.

Q. What is the extent of unused heat in Alaska?

A. The quantity is enormous at the present time and it will increase greatly as the pipelines, refinery and other power plants are placed into operation. It is estimated that each pumping station along the Trans-Alaska Pipeline could heat 2000 homes. The estimate for the North Pole Petroleum refinery is that 10,000 homes could be heated. Canadian sources estimate that each pumping station associated with their Mackenzie Valley Pipeline will produce enough clean waste heat to meet the requirements for 15 to 20 acres of greenhouse vegetable production. However, there has not been an inventory made of the present and future status of the waste heat that will be rejected and that could be used in the state.

Q. What are some proposed uses?

A. Agriculture, fisheries and aquaculture, forestry, processing and district heating in commercial and domestic areas. High temperature waste heat also may be useful in some cases for the generation of electricity where uses can be found for the remaining lower temperature heat so that vapor and thermal pollution is not a problem. For example, it would be technically possible to generate electricity from the high temperature waste from the North Pole Petroleum refinery. However, if this is done the reject energy would be in a form that could not be injected into the upper atmosphere and would create a vapor or ice fog problem during winter months. Agriculture and district heating could provide a use for this remaining low temperature reject energy.

Agriculture

The high temperature reject heat could be useful for forage and grain drying and may provide the necessary component that would make potato processing feasible in the state and therefore, expand potato production.

Heat energy consisting of hot air, hot water or steam and at temperatures ranging from 80°F to 800°F would be useful for greenhouse

production and vegetable and plant production in areas that would support horticulture crop production resulting from soil warming. The use of the heat in greenhouses and then during the summer months in the soil for crop production is necessary to all wise proposals that suggest a near total use for the energy. This crop use is probably necessary because it can utilize the low temperature energy and would utilize the heat as less is needed for other uses. It appears to be an important part of every systems approach to utilizing this resource because the near total use of the resource will make the collection and distribution more economical for each use.

Aquaculture, Forestry Processing and District Heating

The use of heat to improve production of fisheries through hatchery rearing and in fish production ponds is suggested. The heat requirement for forestry, processing industries and in district heating of homes and businesses is obvious if the heat can be collected and distributed. The more complete use that would result by greenhouse and soil heat use would provide a better economic picture for the above uses.

Q. Is our environment suitable for the types of intensive crop production that is suggested?

A. During the four summer months it is superior to most other areas of the nation. The northern latitudes are recognized to have the highest photosynthetic production rate in the world during these four summer months. If the season can be lengthened and/or the soil warmed, the productive capacity can be further increased, and this photosynthetic advantage further exploited.

Q. Why hasn't the greenhouse industry developed without the waste heat use?

A. It is one of Alaska's major agricultural industries at the present time, but it has been developed through the use of fossil fuels which are even higher in cost than they are in the rest of the nation.

Q. There are indications that hundreds of acres of greenhouse and soil heated vegetable production is possible. Could all of these products be marketed in Alaska?

A. No. Besides providing Alaskans with vegetables and ornamental plants, it would be necessary to market cut flowers such as roses, carnations, chrysanthemums and etc. on national and world markets. It is proposed that this could be done competively during 5-6 months of the year because of Alaska's superior environment for greenhouse production and through the use of waste energy.

Q. Why do you feel that it is important to examine national and world markets for cutflowers?

A. Because it appears to be necessary at the present time in order to make more complete use of our unused resource. It also would add to the stability of our economy to have a renewable resource such as this contributing to the state's economy. It would also decrease the nation's consumption of fossil fuels now used for this purpose in the present greenhouse growing areas.

Q. What will be the temperature of the Waste Heat?

A. The temperature of the reject heat energy will vary with the type of industry and will range from about 80°F to above 800°F. It will be exhausted as hot air, hot water or steam.

It is expected that not all reject energy could be utilized at this time because of accessibility problems, the lack of adjacent growing areas and the lack of technology. A systems approach with agriculture as a major user appears to give the best potential.

Q. What is the urgency in the legislation now in process?

A. We must promote the use or it will not happen. The potential for use must be designed into the system in the beginning in order to develop the most economical recovery system. For example the oil pipeline pumping stations were not designed with reject heat use in mind, and, therefore, it will cost more to recover the heat.

Although the technology appears to be available at the present time to make economical use of the energy, it is necessary to demonstrate this and to improve this technology.

(DRAFT)

Research Proposal

The Development of technology necessary to use "waste" heat for the enhancement of horticulture in Alaska and to reduce thermal pollution problems

University of Alaska
Agricultural Experiment Station
Fairbanks, Alaska 99701

D.H. Dinkel
Principal Investigator

Abstract

The purpose of this project is to develop the horticultural technology necessary to use the enormous quantities of excess heat that will be rejected in Alaska from power plants, refineries, pipeline pumping stations and geothermal sources. The use of waste heat for the production of horticultural crops in greenhouses and heated areas of soil outdoors is common to all wise proposals to completely utilize reject heat. The horticulture production part is necessary because the heat can be utilized during summer months and when less is required for space heating or other uses.

It is estimated that the quantity of excess heat that would be available from industry in Alaska could meet the heat energy requirements for hundreds of acres of high value vegetable and flower production.

In this project, both soil heating and "space" heating for greenhouses will be employed in conjunction with proven Northern Agricultural practice, with the dual purpose of improving agricultural production and reducing final output temperature and consequently thermal pollution from power plant cooling water.

The agricultural industry, and particularly the horticultural industry, is probably in the best position of many of the enrgy consuming activities to use low-grade heat from cooling waters descharged by industry. The Agricultural industry is also in the best position to utilize the high temperature excess heat from the pumping stations of the oil and gas pipelines.

Considering the magnitude and basic importance of agricultural production and the extent of its' energy use, a significant increase in efficiency of production would be obtained through the substitution of waste energy for nonrenewable resource-consuming energy. In addition, the increase in solar energy conversion to food and ornamental plants would be an important Alaskan and national gain.

The principle reason for agriculture's favorable position in Alaska is that growth rates are increased dramatically when soil temperatures are increased slightly or conventional greenhouses and temporary plastic canopies are used to improve air temperatures. These practices make possible in Alaska the use of solar energy that otherwise is not useable for food and other beneficial production. In some instances, lengthened growing seasons may permit additions of another crop, possibly doubling and tripling production of the land. Increasing Alaska's critically low soil temperature and using canopies and greenhouses creates a significantly better plant growth environment than found in most other areas of the U.S. because of the long sunlight days. This advantage should allow us to produce high value intensively cultured crops at world market prices, and more important provide these products to Alaskans.

Much of the basic information needed for the establishment of a horticultural industry using waste heat in Alaska is available in literature and from preliminary research in the state. What is most needed now is applications research, and the engineering and economic design required to demonstrate and incorporate what is known into development plans.

The proposed research will be done by the Agriculture Experiment Station, University of Alaska in cooperation with (CRREL) Cold Regions Research and Engineering Laboratory) and the U.S. Army.

The work will be done using existing greenhouse and crop facilities at the Fairbanks Agricultural Experiment Station and in facilities that are fortuitously being developed by the U.S. Army at Fort Wainwright to reduce thermal pollution and ice fog problems associated with the power generating facility.

The engineering and construction for much of this project is being done by the U.S. Army and Cold Regions Research and Engineering Laboratory (CRREL) at the Fort Wainwright South Power Plant. Heated "waste" water with temperatures of +70°F to +85°F in large quantities is available. Evaporation from the present large cooling ponds associated with this waste creates a severe ice fog problem in winter months. Efforts to reduce this thermal pollution problem are underway by dissipating the heat in soil by circulating the warm water through a buried grid of pipes. There would be a significant advantage to Alaska and the immediate community if these efforts could be used to conduct the developmental research necessary to demonstrate the use for the tremendous quantities of unused heat in the state.

Introduction

The primary energy source for modern agricultural food, fiber and ornamental production remains the sun; however, man has learned that he can increase productivity of his crops by modifying the plants' environment for maximum capture of sunlight. This environment modification is largely dependent upon the use of fossil fuels to supply the required technological materials such as machinery, plastics, pesticides and petroleum for heating, farming, drying, processing and transportation.

Much of the energy required to produce intensively cultured crops in Alaska is in the form of heat requirements. This energy is needed to heat greenhouses and warm soils. If these heat requirements are supplied in Alaska we then have a plant growth environment that is technically superior which should create an economic advantage even in regards to competing on world markets for commodities that can be shipped. The advantage is due to the improved photosynthetic activity of leaves in sunlight and cool air conditions (10), and the longer period of this advantage. An analysis of Alaska's climate shows that during a similar calendar period corresponding to May through mid-September, there are 430 to 550 more hours of sunshine in Alaska than there are at latitudes similar to Minneapolis, Minnesota and Chicago, Illinois. The advantage

of this extra sunshine for rapid growth of adapted crops has been amply demonstrated by the production of the well-known 70-lb Alaskan cabbage and by numerous research studies in Alaska (7). Thus, the longer period of sunlight from March 20 to September 20 and the better internal plant condition for photosynthesis are advantages to growth if soil temperature or other factor does not limit the activity.

It has been demonstrated that one of the most critical environmental factors that limits the growth of many crops in Alaska is the soil temperature (4,5,6,7). Soil temperatures that seldom rise above 13-18°C. at the 10 cm. soil depth during the growing season impede seed germination and severely limit the growth of certain economic plants. The optimum soil temperatures for most cultivated crops ranges from between 21 and 30°C. Increased soil temperatures resulting from the use of clear polyethylene on the soil, electric heating cables and buried styrofoam give greatly increased growth of crops and earlier maturation (7). Clear polyethylene mulches cause soil heating by solar radiation because of the entrapped layer of still air, reduced moisture evaporation and the lower transmission by polyethylene of the heat radiation from soil as compared to the high transmission of incoming solar radiation. The improved soil temperatures allow the crops to take full advantage of the long sunlight days, and often higher yields are measured than those produced in the best commercial production areas of the nation.

Research in climates such as Minnesota show that soil warming by waste heat does provide some improved growth rate and some extension of the growing season (1,2). Due to normally warm soils during mid-summer in Minnesota that are near optimum for plant growth, waste energy can only be used during the spring and again in the fall. Alaska, with the much colder soils throughout the year and the greater sunlight during the growing season, offers greater advantages for waste heat utilization for the production of high value crops.

The feasibility for the use of low temperature waste heat for heating of greenhouses has been reported (3, 10, 11). A large greenhouse industry has developed in Iceland using warm water from geothermally heated springs for heating. A viable seasonal greenhouse industry has developed in Alaska using fossil fuels for a heat source. There is a significant need to expand this industry utilizing waste heat from industrial and geothermal sources. The rising cost and scarcity of fossil fuels to heat greenhouse units is a major threat to the stability and continuance of the nation's greenhouse vegetable and ornamental units. These factors appear to be blocking expansion and may actually terminate the greenhouse industry in areas where alternative methods of heating cannot be found.

Energy from industrial sources, usually in the form of hot water at temperatures from 21 to 70°C, is normally wasted by discharging it into the air or into bodies of water. These point sources of unused heat represent a poor stewardship of our resources and cause an environmental impact of considerable concern. A systematic approach to the utilization of unused heat suggest its' use in district heating of

houses, businesses and greenhouses, and in warming field soils for crop production.

Extent of unused heat: The efficiency of modern fossil fueled electrical generator plants is approximately 40%, while that of nuclear plants ranges between 30 and 33%. Thus, of the total energy available from the original fuel source slightly over one-third is presently used. The remaining two-thirds is rejected by being discharged into the environment. About 85 percent of the rejected heat is discharged into water bodies and 15 percent is discharged into the environment through the stack. Enormous quantities of very high temperature steam will be exhausted from the Energy Resources of Alaska refinery at North Pole, Alaska. Each pumping station along the trans-Alaska oil pipeline will exhaust large quantities of heat. It has been estimated that the 12 pumping station and liquefaction plant for a trans-Alaska gas line may exhaust approximately 36 million BTUs per second.

Facilities:

The Agricultural Experiment Station 40' x 90' existing greenhouse with attached head house will be used to produce test plants and for initiating the greenhouse work. One 30' x 40' section of the greenhouse will be slightly modified to simulate conditions that will be associated with a source of hot water.

The major plot work will be done at Fort Wainwright near the Power plant cooling pond. The U.S. Army and CRREL are concerned about the vapor pollution problems associated with the cooling pond and about the thermal waste. They have agreed to support a joint effort to the extent that they will provide engineering and most of the construction for the study site. The Agricultural Experiment Station wishes to cooperate by supplying the horticultural research effort.

CRREL has leveled the land adjacent to the site, added peat soil amendment to our specifications and are presently in the final stages of installing the distribution system and the piping to heat some test plots. There presently are 3 test plots 50' x 150' that will be heated with adjacent control plots. CRREL presently has plans to construct greenhouse facilities adjacent to these test plots to transfer the technology from the Agricultural Experiment Station greenhouse to an operational system.

Tasks:

To determine proper crop varieties and productive capacity of vegetables under the proposed system of near optimum soil temperature.

To determine the amount of season extension that can be achieved both in the greenhouse and out of doors using soil heating with and without plastic canopies.

To determine the proper fertility and irrigation practices necessary for this type of system.

To examine the possibility of growing commercial cut flowers such as roses, carnations and chrysanthemums by using a system that has heat provided in the soil and that would grow for 9 months and during the dark months of November, December and January would be held at a storage temperature of approximately 35°F. During the dark period the greenhouse would be modified with heat saving shields similar to those used in Europe so that heat loss could be reduced.

To determine if unusual disease and insect problems may develop as a result of the warmer environment.

Additional Project Objectives:

Concurrent with the horticultural objectives, data will be produced that will be useful for improving the collection and distribution system for waste energy in northern conditions.

Information will be gathered on thermal and vapor pollution abatement.

Personnel:

The Principle Investigator and leader for the Agricultural Experiment Station effort will be Dr. Donald H. Dinkel, Professor of Plant Physiology. The legislation is largely to provide research assistance to Dr. Dinkel.

The Principle Investigator and leader of the CRREL effort will be Dr. Terry McFadden.

TENTH LEGISLATURE

#5

FISCAL NOTE

I. REQUEST

Bill Resolution No. Senate Bill No. 18

Title: Licensing of Pesticide Applicators

Requested by Kertula and Tillion Date 01/21/77

II. FISCAL DETAIL

Agency Affected Environmental Conservation

Program Category Affected Natural Resources Management and Environmental Conservation

Budget Request Unit(s) Affected None

EXPENDITURES (Thousands of Dollars)

	FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

No Fiscal Impact

The department already provides the licensing function to private enterprise under the existing law. The minimal cost of extending this service to the public sector can be readily absorbed with virtually no increase in costs.

IV. DATE 01/21/77 PREPARED BY A. L. Eagle

AGENCY Environmental Conservation

PHONE 465-2604

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

33-001 (Rev. 10/76)

IN THE SENATE BY KERTTULA AND TILLION

SENATE BILL NO. 18

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the licensing of pesticide applicators."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 46.03.320(b) is amended to read:

(b) The department may provide by regulation for the licensing of persons engaged in the [CUSTOM, COMMERCIAL OR CONTRACT] spraying or application of pesticides and broadcast chemicals ~~, including the requirement of a surety bond and liability insurance for a [THE] licensee, engaged in the custom, commercial or contract spraying or application of pesticides and broadcast chemicals~~. Persons engaged in the custom, commercial or contract spraying or application of pesticides and broadcast chemicals may, by regulation, be required to secure a surety bond or liability insurance.

SB

49

COMMITTEE REPORT

SENATE

1/27/77

3/9/77 Date

Mr. President:

The Committee on RESOURCES has had SB 49 relating to the full utilization of herring under consideration. A majority of the members of the Committee

☐ recommends it do pass

☐ recommends it do not pass

☐ recommends it do pass with attached amendment(s)

☐ recommends it be replaced with CS for [illegible] and that CS for [illegible] do pass

☐ (and) recommends it be referred to the _____ committee

☐ reports it back without recommendation

☐ AND attaches a report of its intent

☐ (other) _____

MEMBERS SIGNING THE MAJORITY REPORT:

_____ _____ _____

_____ _____ _____

[illegible] [illegible] _____

_____ _____ _____

MEMBERS NOT CONCURRING IN THE MAJORITY REPORT:

_____ recommends: _____

_____ recommends: _____

_____ recommends: _____

_____
Chairman

S 60

TELEGRAM

RCA ALASKA COMMUNICATIONS INC.
PHONE: 586-6141
JUNEAU, ALASKA

MJA

77 FEB 2 PM 2 58

X4 GEPERSBURG ALASKA 73 02-03 0330 PST

PMS KAY POLAND

538

SENATE RESOURCES COMMITTEE

STATE CAPITOL BUILDING

JUNEAU AK "

WE OBJECT TO PASSAGE OF SB49, AS ACT RELATING TO THE FULL

UTILIZATION OF HERRING AT THIS TIME.

THE FLESH OF HERRING TAKEN DURING THE ROE SEASON IS OF LITTLE

VALUE FOR FURTHER PROCESSING AND FOR REDUCTION TO MEAL.

LIMITING PROCESSING OF ROE HERRING TO FULL UTILIZATION WILL

ELIMINATE MANY JOBS AND REDUCE MUCH OF THE FISHING EFFORT.

UNTIL FACILITIES IN ALL DISTRICTS WHERE ROE HERRING IS

PROCESSED ARE DEVELOPED FOR FULL UTILIZATION SB49 PASSAGE

SHOULD BE DELAYED.

JOHN W. [illegible], WHITNEY FIDALGO SEAFOODS.

See-Roe Herring

AM. Bill

CS SB49

Sent 2/14/77

SB

58

COMMITTEE REPORT

SENATE

**Finance

1/18/77

1/28/77 Date

Mr. President:

The Committee on RESOURCES has had SB 58 relating to hydrological data under consideration. A majority of the members of the Committee

/X/ recommends it do pass

/ / recommends it do not pass

/ / recommends it do pass with attached amendment(s)

/ / recommends it be replaced with CS for _____ and that CS for _____ do pass

/ / (and) recommends it be referred to the _____ committee

/ / reports it back without recommendation

/ / AND attaches a report of its intent

/ / (other) _____

MEMBERS SIGNING THE MAJORITY REPORT:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

MEMBERS NOT CONCURRING IN THE MAJORITY REPORT:

_____ recommends: _____

_____ recommends: _____

_____ recommends: _____

_____
Chairman

S 60

repealed

Article 1. Hydrological Data.

Section
10. Hydrological data declared to be of public interest
20. Collection, recording, distribution and use of hydrological data
30. Regulations by Department of Health and Social Services

Re-written word for word as A.S. 41.08.017 in Sec. 1 of SB 58.

Sec. 41.05.010. Hydrological data declared to be of public interest. Systematic collection, recording, evaluation, and distribution of data on the quantity, location and quality of waters of the state in the ground, on the surface of the ground, or along the coasts, are in the public interest and necessary to the orderly domestic and industrial development of the state. (§ 1 ch 155 SLA 1957)

Added on in slightly different language to A.S. 41.08.020 in Sec. 2 of SB 58. Replaces H.&S.S. with D.G.G.S.

Sec. 41.05.020. Collection, recording, distribution and use of hydrological data. The Department of Health and Social Services has the following powers and duties:

(1) collect, record, evaluate, and distribute data on the quantity, quality and location of underground, surface and coastal waters of the state;

(2) publish or have published data on the waters of the state;

(3) require the filing with it of the results and findings of surveys of water quality, quantity and location, including water well drilling logs, pumping tests, flow measurements, type of aquifer, tidal currents and physical characteristics, and volume determinations;

(4) accept and expend funds for the purposes of §§ 10—30 of this chapter and enter into agreements with individuals, public or private agencies, communities, private industry, state agencies and agencies of the federal government. (§ 2 ch 155 SLA 1957; am § 6 ch 104 SLA 1971)

Effect of amendment. — The 1971 amendment substituted "Department of Health and Social Services" for "Department of Health and Welfare" near the beginning of this section.

Re-written in Sec. 3 as A.S. 41.08.035 replacing H.&S.S. with Nat. Resources

Sec. 41.05.030. Regulations by Department of Health and Social Services. The Department of Health and Social Services may adopt regulations relating to and providing for the systematic collection, recording and distribution of data on the waters of the state. (§ 3 ch 155 SLA 1957; am § 6 ch 104 SLA 1971)

Effect of amendment. — The 1971 amendment substituted "Department of Health and Social Services" for "Department of Health and Welfare."

Article 2. Mineral Resources.

Section
40. Revolving fund
50. Mineral Resource Fund Board
60. Operation of the board
70. Purchase and sale of minerals
80. Stockpiling of minerals
90. Purpose
100. Definitions

Sec. 41.05.040. Revolving fund. The mineral resource revolving fund is created. The assets of the fund shall be used to purchase minerals. (§ 2 ch 116 SLA 1962)

SB

59

SENATE

FURTHER: FINANCE

4/6/78

Date: 4/24/78

Mr. President:

The Committee on RESOURCES has had SESB 59

Forest resources and practices

under consideration and (a majority of the committee) (the committee reports it back as follows)

( ) recommends it do pass ( ) recommends it do not pass

( ) recommends it do pass with attached amendment(s)

( ) recommends it be replaced with CS for _____

and _____ ( ) new title ( ) same title

( ) AND attaches a Letter of Intent ( ) New Fiscal Note

( ) reports it back without recommendation

( ) and recommends it be referred to the _____ Committee

MEMBERS SIGNING DO PASS:

OTHER RECOMMENDATIONS:

Chairman

S 60 (rev. 6/77)

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

SENATE RESOURCES COMMITTEE

Attached in order of appearnce are the testimonies of the hearing on Senate Bill 59, held on February 11, 1977.

Testimonies include:

1. Guy Martin -- Commissioner, Department of Natural Resources
   Jeff Haynes - Assistant Attorney General
2. Robert Rehfeld - Assistant Regional Forester
3. John Borbridge - SEAlaska Corporation
4. Mike Leach - Society of American Foresters
5. Warren Weathers - Shee Atika, Incorporated
6. Jim Clark - Alaska Lumber and Pulp Company
7. Robert Loescher - Goldbelt Corporation

Testimony of Commissioner Guy Martin
Department of Natural Resources and
Jeff Haynes, Assistant Attorney General

February 11, 1977
Hearing on SB 59

COMMISSIONER MARTIN - Madam Chairman, I think that I should stand here with Jeff Haynes the Assistant Attorney General who has done a great bulk of the work on this legislation. This bill, as you know, was introduced in the last Legislature, and I should say at the outset that the bill you have before you has been changed somewhat, but is basically the same bill. We think that it has been improved, and its improvements are a result of further consultation since the last legislative session.

CHAIRMAN POLAND - Commissioner, that bill never reached this committee last year.

COMMISSIONER MARTIN - I understand that Madam Chairman. In any case for those who did see the bill, it is similar, but has been somewhat changed. Those changes can be pointed out to you by Mr. Haynes. I'm going to have to apologize because of the holiday. I guess Commissioners and Legislators are working, but some of the staff in the Department is gone and there are some maps and some other information that I will make available for the committee records and to all members, however, I was unable to get it today without the help of some of the staff.

CHAIRMAN POLAND - I'm sure that we will have at least one, if not more, meetings on the bill before we're through.

COMMISSIONER MARTIN - I think it is the sort of subject that merits that, and it is one that we are very willing to work with, whatever interest exists, to shape into a good piece of legislation. Let me just briefly speak to the policy of the bill before turning it over to Jeff Haynes. Basically, Madam Chairman, I think it sprang from our feeling that many of the western states where there were timber resources, were under diverse ownership ranging from public ownership in State and local governments to private ownership in a broad variety of ownerships, all the way from small individual landowners to quite large corporate landowners, and that the history of forestry and of the forest practices in that area was very mixed. Overall, the trend has shown, and we will supply information that I think can support that fact, that in many cases the management, with all of the diverse owners operating in terms of the forest practices, has been unsuccessful in terms of the long range sustained yields of those forests. It doesn't condemn any individual owner, it simply indicates that when so many people are managing individually owned forest resources in

different ways and not dealing with it as a unitary matter across ownership lines, there has been damage to the renewable aspect of that resource, and our thought and the policy that we put behind this bill is basically that for some purposes. We think those purposes should be very limited and very reasonable. We should treat the forest resources of Alaska as one large resource subject to a certain group of practices which chould help the State to sustain those very important resources over a very lony period of time. Now, I would say that among many bills that I've worked on since I've been here, I think very few have had a greater level of consultation, thanks mostly to Mr. Haynes. I think that it can fairly be said that he has made the broadest possible attempt to work with diverse groups to make this bill be fair and make sense. In many cases we've gotten at least reasonably good endorsements from people that we've worked with on the bill. That is not to imply that there is unanimity, that it's either a good idea, or that the bill is good, but is has been very broadly worked on by a number of interests. The philosophy of the bill is to not affect the small owner a great deal, but rather to look at general policies and practices which are important to protect the overall forest resources of the State. Let me at this point end my remarks except to answer other questions, and possibly turn it over to Mr. Haynes to at least walk you through the bill and indicate how we've carried out some of those policy ideas.

CHAIRMAN POLAND - Are there any questions of Mr. Martin before Mr. Haynes starts? If not, thank you Commissioner. Mr. Haynes.

JEFF HAYNES - Thank you, Madam Chairman, Members of the Committee. I'll try to go through and highlight some significant portions of the bill and give you an idea of why we did what we did starting off with Section 0 0, just the findings and purposes section. It recognizes that one of the main purposes of the bill is to maintain a perpetuity of the timber industry in the State and forest products industry. What is really the chief objective here is to maintain an industry which is stable and which recognizes this isn't really a state-wide asset. The administration of the bill would be with the Commissioner of the Department of Natural Resources, and, of course, we've added in some other powers which are fairly typical in State forest practices acts. Things like experimental forests and cooperative forestry programs, extension service programs, and things like that, so that the Department of Natural Resources may assist the private landowner in the perspective of his own timber resources. As the Commissioner mentioned, we do have a section in here on exemptions. This is quite important.

Testimony of Commissioner Guy Martin
and Assistant Attorney General Jeff Haynes Cont.
February 11, 1977
Hearing on SB 59

There are two exemptions in this section. One is small landowners - landowners of tracts of 160 acres or less. We don't really feel that it is within the objectives of this particular bill to regulate that sort of thing. What we are after are major types of operations. For the same reason, we have exempted non-commercial forest lands which is under municipal or private ownership. I don't have the map here which shows what is commercial and what is non-commercial forest land. We've keyed our definitions to those used by the forest service.

SENATOR HUBER - Could I get a clarification at this point? This would mean then, if somebody owns 300 acres of cleared farm land in an area, which on your map is commercial forest, he would be classified as commercial forest. Is that right?

JEFF HAYNES - Commercial forest is determined by what types and what volume or quantity of trees there are on a particular site. It's cleared land. I don't see why it would be commercial forest.

SENATOR HUBER - You said it goes by map.

MR. HAYNES - It goes by definition. We indicated that there is a map that tends to show generally what would be covered and not covered.

SENATOR HUBER - If you're in an area, and you are obviously on a commercial forest - I'm thinking of a farmer with 300 acres of cleared land and 40 acres of wood lot. He might sell a little wood off it. Is he exempt or not?

MR. HAYNES - We don't intend to cover that type of individual. Madam Chairman, we drew the line at 160 acres, but maybe there is a more reasonable line to draw or a more reasonable definition.

SENATOR HUBER - I was referring to A, but maybe I'll understand it better as you go along.

JEFF HAYNES - I think there's a definition in the back which will help you.

One of the controversies that has sort of taken place over forest practices acts in other states, and I should mention at this point that we could go through and review all of the legislation that is presently on the books in other states and try to see what they have done and why, and how well accepted that was by the public. In that same context we went through and looked at the recommendations of the Society of American

Foresters, and those other groups have made about forest practices legislation. One of the things which we have more or less decided to do here was not to put actual forest practices per say in the legislation. This is what California did, but that has not been very well received. So, we have opted instead for a system which basically allows for the development of regulations, and those would be your forest practices. We have set up, instead, some very general standards which would govern setting of those regulations, and that is what you see in section 0 40. Not only that, but we have come up with two different sets of standards, one which applies to all of the forest land which would be subject to this bill, that is subsection B, and then another set of standards which are really quite a bit stricter and have to do with things like multiple use which applies only to public forest lands. In other words, we would be using different standards for private land, and for public land to reflect what, in fact, the public interest is.

Section 0 50 has to do with an administrative plan and report, and basically this is a duty which would be imposed on the Commissioner of Natural Resources to come up with and maintain a plan showing that in fact the basic objectives of this act are being carried out in a report to the legislature at two year intervals.

Section 0 60 is the regulations themselves. These are pretty straightforward in that most of the subject matter headings are taken from other forest practices acts from other states. There is of course a provision in here requiring consultation with all sorts of public and private organizations, and does allow for the establishment of different forest practices in different areas of the state to reflect the fact that there are different varying conditions as well.

Subsection C. One of the things we really did not want to do here was establish a whole new bureaucracy just for dealing with forest management and practices. It is really not necessary. What we are trying to do is more or less fill in the blanks in the existing statutes only to the extent necessary to accomplish the purpose of this goal. We are not trying to duplicate or preempt the statutory authority of other agencies.

I might add that we are also attempting to impose only the most minimal burden on any timber operator who might be subject to the act. This is reflected in subsection E which says we are only supposed to adopt those regulations which are necessary and which do not just merely increase operating costs.

Maybe the most significant compromise, in terms of approaches, is Section O 70. This is where you really get down to looking at individual operations. There are two systems that are used now in other states. One is called a notification system. In that instance, the timber operator merely notifies the government that he's going out in the field, and that's all the contact there is. Then he goes out and does it. In other states they have what is called a prior approval system. In this case you have to submit a detailed plan. In some states the plans have to be done by a licensed forester. In states like California, a plan may approach the depth of something like an environmental impact statement, and in that case, there's a very detailed review by the government before the guy can go out and do anything. There are advantages to each of those systems as well as disadvantages. The notification system is very simple, and it's not very expensive to administer, but the problem is that in a state especially as large as Alaska, the government really has no idea what the guy is doing because all he's done is told them that he's going to operate, and the operator has not really much contact with the State, which means he isn't going to get the benefit of any kind of cooperative programs or service assistance programs or something that the State might have. He also is not going to understand very well what the regulations or practices established by the State really mean, so you have a much higher possibility of inadvertant violations. The prior approval system, of course, is very expensive to administer. It does have the benefit of allowing the government to know what exactly the guy is going to do, but in many cases it is extremely onerous on the operator, requires a lot more paperwork, and requires a lot of delays that are really not necessary. What we tried to do is split it up, and take the best out of each of those systems. What we have here is a very very minimal type of review and approval. It is merely a notification to the Commissioner by the operator of a very brief description of what he is going to do. After that, there is a statutory review period by the State, but it is iron-clad. There is a set number of days, and there is no way to go beyond that. The State has to make up its mind within that period of time what it wants. If they feel there is something in that operation that they think they need to look at more closely, they can require something more like a full-scale plan, but only for that aspect of the operation which they find questionable, otherwise, they just let it go. So, we are trying to set this up so that insofar as there is contact between the operator and the State, it is only to the extent necessary to accomplish the purposes of this bill, and not to require the operator to go through a lot of i.a._____ for no purpose whatsoever. In other words, not a lot of bureaucracy,

and we think we've done that here. We've spent a lot of time writing this section, and we think we have made it as close as possible to what the minimum necessary would really be. Again, there is an iron-clad time review period here, and if the Department of Natural Resources fails to take action within that time review period, they are presumed to approve that operation. So there is no way that the government can drag on a delay and put the operator at a disadvantage.

Again, we have emphasized in this section on operations that the practicalities and economic constraints affecting the operator must be looked at. We have even stated that the paperwork required of the operator must be kept at the minimum necessary, so we've stressed that many times in this legislation.

We have a special section in here, section 0 80, on deployment of chemicals. There is not much of that going on in the State right now, and most of the people we have talked to felt that this was really one type of area which should require specific approval by the State in each instance because of potentiality or abuse in using broadcast chemicals.

Section 0 90 has to do with conversion of forest land - other uses. We can't really prevent that constitutionally, but we did say we set this up so that if somebody is going to convert a forest land to another use, then he has to do so within the time which he would ordinarily be required to regenerate that particular tract. It would probably be about 5 years. In other words, that is to prevent subtrafuge , with some guy saying he's going to convert it, and basically all he's doing is just not taking any steps to regenerate it. If he does in fact convert it within that time period then that's good enough.

The section on new investigations and enforcement in the field is pretty straight forward.

The prohabition and penalties section - this is pretty much taken out of the Oregon Act, except that we rewrote it because we felt that the Oregon legislation was very unclear as to what the procedures were. This is a straight administrative penalty system. There are no criminal penalties in this act at all. There is plenty of due process in here for the operator, and also some pretty decent constraints on the State as far as what kind of penalties can be imposed and what factors they have to consider in determining what the penalties are. I could go through that with you, but it's pretty lengthy, and I don't know that you'd want to do that at this time.

Testimony of Commissioner Guy Martin
and Assistant Attorney General Jeff Haynes Cont.
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There is a fairly straight-forward provision again on appeals and judicial review, and one on civil action. This is sort of a citizens provision, but it is limited to those duties which are discretionary with the Commissioner. In other words, only those duties under the act which if mandated by law, can be enforced by citizens actions.

Finally, the last part is the definition section. I might point out to Senator Huber that the first definition there is commercial forest land, and that might help explain to you what lands would in fact be covered because that's what we tried to do. That is the same definition used by the Forest Service which means that all their inventory work is valid as far as determining what land would and would not be subject to this act. There are a couple of other definitions in here which are significant.

The definition of multiple use is basically the same as in the Federal Act and the same for sustained yield.

I think that's it. You may have a lot of questions on this. I hate to summarize something that is this significant in ten or fifteen minutes, and I'm sure I've missed some things, but if you've got any questions, I'll try to answer them.

(It was decided that the Committee would wait to ask any questions of Mr. Haynes until after the testimonies of those opposing the bill.)

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2

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE

P.O. Box 1628, Juneau, AK 99802

Robert Rehfeld

1510

January 25, 1977

The Honorable Alvin Osterback
Chairman House Resources
Alaska State House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Representative Osterback:

This responds to your request for a statement on forestry activities at the State level. The Forest Service strongly supports measures which will strengthen the professional forestry staff and organization of State governments so that professional forestry expertise can better serve the needs of people in the management of forests and related resources. With the imminent acquisition of the full 103.4 million acres of land provided by the Statehood Act and approximately 44 million acres transferring to Native ownerhsip, such measures are timely.

The State forestry staff is already charged with responsibility for protecting State and private lands from fire, insect, and disease attack. A statewide organization able to meet these demands needs the equipment, experienced managers, and training to provide this support. It needs the cooperation of local communities to provide the manpower during periods of extreme fire hazard, and it must be able to react rapidly to minimize delays in meeting these demands. A trained statewide organization can effectively handle such situations.

Our present State forestry organization is beginning the major task of fielding fire protection forces to protect Alaskan life and property with the gradual phase out of the Bureau of Land Management protection contract. Experience in firefighting and organization of a cadre of district personnel capable of leading temporary firefighters is of paramount importance for making the operation function.

In the area of management, the renewable resources of forest and rangelands include timber production, fish and wildlife habitat, recreational opportunities, wilderness experiences, and watersheds. Minerals management is also related to these resources. The State Forestry organization, working through cooperative Federal-State programs, can provide technical, and in some cases financial, assistance to establish, protect, manage, and use forest and related resources.

The Forest Service works closely with the State Forestry organization of the States and Territories. The National Association of State Foresters is an organization with substantial leadership in promoting sound forest practices on all non-Federal lands. We would encourage the State to examine the opportunities to strengthen its organization to meet the rapidly expanding challenge of its forests. The National Association of State Foresters and individual State organizations have demonstrated the merits of sound forest management practices. A number of States have established forest practice laws and regulation. Their experience could be very helpful in your efforts.

In summary, we believe Alaska now needs a strong State forestry organization operating at a level of government that reflects the emerging importance of this resource activity. Additionally, a comprehensive State forestry program is needed that focuses not only on State lands but is also designed to provide forestry assistance of all kinds to Alaska's new landowners. Numerous federal grant programs exist requiring some state matching funds that are specifically directed to this purpose. The State Forester needs authority and a mandate to participate in these programs.

Many bush communities, wanting to develop sound managment programs for their lands, are now requesting forestry and land managment assistance. With a strong forestry organization and program the state can be responsive to their citizens needs. We believe it very important that any forestry legislation considered this session address these concerns.

Sincerely,

JOHN A. SANDOR
Regional Forester

8.

STATEMENT MADE TO ALASKA SENATE - RESOURCES COMMITTEE
FEBRUARY 11, 1977

SENATE BILL 59
"AN ACT RELATED TO FOREST RESOURCES AND PRACTICES AND PROVIDING FOR AN EFFECTIVE DATE"

MADAME CHAIRMAN, MY NAME IS JOHN BORBRIDGE, JR.; I AM PRESIDENT OF THE SEALASKA CORPORATION THE NATIVE REGIONAL CORPORATION FOR SOUTHEAST ALASKA.

UPON CONVEYANCE OF OUR LANDS, WHICH WILL BE SELECTED FROM WITHIN THE TONGASS NATIONAL FOREST, SEALASKA CORPORATION WILL UNDOUBTEDLY HAVE THE LARGEST COMMERCIAL PRIVATELY OWNED FOREST INVENTORY IN THE STATE OF ALASKA. WITH RECEIPT OF SUCH A SIGNIFICANT RESOURCE COMES THE RESPONSIBILITY FOR WISE USE AND MANAGEMENT WHICH OUR CORPORATION FULLY ACCEPTS AND INTENDS TO IMPLEMENT. THE ALASKA NATIVES HAVE ALWAYS BEEN WISE USERS OF NATURAL RESOURCES AND WE IN SEALASKA FULLY INTEND TO CONTINUE THAT TRADITION.

ADDITIONALLY, IT IS MY OBSERVATION FROM DISCUSSIONS WITH NATIVES FROM OTHER REGIONAL AND FROM MANY VILLAGE CORPORATIONS THAT CONCERN FOR PROPER USE OF NATURAL RESOURCES IS A TRADITION WHICH HAS NOT BEEN LOST.

WITH THIS AS BACKGROUND, WE HAVE REVIEWED SENATE BILL 59 AND WISH TO OFFER COMMENTS TO YOU AND THE MEMBERS OF YOUR COMMITTEE IN ORDER TO ASSIST YOU IN INSURING THAT RESPONSIBLE AND EQUITABLE FOREST REGULATIONS ARE IMPLEMENTED IN A TIMELY FASHION SO AS TO REASSURE THE STATE THAT PRIVATE FOREST LANDS WILL BE WISELY MANAGED.

WHILE WE SUPPORT IMPLEMENTATION OF APPROPRIATE FOREST PRACTICES, WE HAVE SOME VERY SIGNIFICANT RESERVATIONS CONCERNING SENATE BILL 59. OUR RESERVATIONS MOSTLY INVOLVE PRINCIPLES WHICH ARE IMPORTANT TO THE FOREST INDUSTRY IN ALASKA. MY COMMENTS ARE DERIVED FROM DISCUSSIONS WITH FOREST MANAGERS, AND A REVIEW OF THE FOREST PRACTICES ACTS IN CALIFORNIA, OREGON AND WASHINGTON. THEREFORE WE ARE ENDEAVORING TO BRING BEFORE YOU A BROAD BACKGROUND WHICH HAS INCLUDED THE DETAILED EXPLORATION OF PRINCIPLES WHICH ARE IMPORTANT IN A FOREST PRACTICES ACT.

1. OF PRIME IMPORTANCE TO THE FOREST LANDOWNER AND USER IS THAT THERE BE A STRONG DIVISION OF FORESTRY WITHIN THE DEPARTMENT OF NATURAL RESOURCES. SUCH A DIVISION MUST BE AT A SUFFICIENTLY HIGH LEVEL TO ALLOW THE STATE FORESTER TO BE ABLE TO SET POLICY AND MAKE DECISIONS INVOLVING THE ADMINISTRATION OF REGULATIONS AND THE MANAGEMENT OF FOREST LANDS. THEREFORE THE STATE FORESTER WILL BE AN INDIVIDUAL WHO REPORTS

DIRECTLY TO THE COMMISSIONER OF THE DEPARTMENT OF NATURAL RESOURCES AND WILL HAVE A BACKGROUND WHICH INCLUDES A FORMAL EDUCATION AND SIGNIFICANT EXPERIENCE IN FOREST MANAGEMENT. TO DILUTE THE ADMINISTRATION OF FOREST RESOURCES AND PRACTICES IN ANY WAY OTHER THAN JUST DESCRIBED PLACES A SIGNIFICANT BURDEN ON THE FOREST LANDOWNER AND DENIES TO THE CITIZENS OF THE STATE THE TYPE OF RESPONSIBLE IMPLEMENTATION OF FOREST REGULATIONS WHICH EVERYBODY DESERVES.

2. SB 59 IN SEC. 41.17.040(B)(5) PROVIDES THAT THE PRIVATE LANDOWNER MUST MANAGE HIS FOREST RESOURCE IN A MANNER WHICH WILL NOT DETRACT FROM SCENIC AND AESTHETIC QUALITY IN OR ADJACENT TO AREAS WHERE THERE IS OR COULD BE SIGNIFICANT IMPORTANCE TO TOURISM. WE VIEW SUCH A PROVISION WITH A HIGH DEGREE OF CONSTERNATION. THE STANDARD DENIES TO THE RESPONSIBLE FOREST MANAGER THE RIGHT TO IMPLEMENT PROPER SILVICULTURAL PRACTICES TO ENHANCE THE FOREST RESOURCE. ADDITIONALLY, ITS' LACK OF SPECIFICITY PLACES THE DEPARTMENT OF NATURAL RESOURCES AND THE PRIVATE LANDOWNER IN AN UNTENABLE AREA OF INTERPRETATION.

3. IN SOME OTHER STATES, BY USING THE VEHICLE OF A COMMISSION WHICH INCLUDES FOREST LAND USERS AND

OTHER INTERESTED PARTIES, THE STATE FORESTER, THROUGH THE HEARING PROCESS, HAS PROMULGATED AND IMPLEMENTED APPROPRIATE FORESTRY PRACTICES AND REGULATIONS BY REGION, WHICH INCLUDE CONCEPTS AND PRINCIPLES OF LAND MANAGEMENT FOR ALL PARTIES TO FOLLOW. BY ALLOWING THE STATE FORESTER TO DETERMINE WHAT REGULATIONS ARE APPROPRIATE IN EACH REGION, WE PROVIDE FOR DIVISION ADMINISTRATION WHICH MEETS THE NEEDS OF THE CITIZENS OF THE STATE AND PROVIDES FOR AS SIMPLE A BODY OF REGULATIONS AS IS FEASIBLE.

4. IN ADDITION, THROUGH THE PROCESS OF REVIEW AND PROMULGATION, THE STATE FORESTER CAN IMPLEMENT AN EFFICIENT APPLICATION PROCESS WHICH EMBODIES THE PRINCIPLES OF NOTIFICATION. THE STATE FORESTER IS IN A POSITION TO DETERMINE APPROPRIATE PERFORMANCE BONDS BY REGION, PENALTIES AS APPROPRIATE, AND OTHER REGULATORY MATTERS.

5. OF SIGNIFICANT IMPORTANCE TO THE CITIZENS OF THE STATE AND THE FOREST LANDOWNER IS THAT AN EQUITABLE HEARING PROCESS BE IMPLEMENTED WHICH ALLOWS THE REVIEW OF ALLEGED VIOLATIONS BY INDEPENDENT HEARING EXAMINERS WHO ARE QUALIFIED WITHIN THE FORESTRY FIELD. SENATE BILL 59 PROVIDES FOR THE COMMISSIONER TO APPOINT A STATE EMPLOYEE AS HEARING OFFICER AND THE COMMISSIONER DETERMINES THE HEARING PROCEDURES. IF MISUSED,

SUCH A SITUATION COULD LEAD TO HAVING THE ALLEGED VIOLATOR BEING PLACED IN A VERY UNEQUAL SITUATION. WITH APPROPRIATE INPUT FROM INTERESTED PARTIES, THE STATE FORESTER CAN SET EQUITABLE PROCEDURES FOR THE HEARING OF ALLEGED VIOLATIONS AND CAN ASSURE THE ALLEGED VIOLATOR THAT THE STATE IS SYMPATHETIC TO HIS SITUATION AND YET IS PROPERLY DISCHARGING ITS RESPONSIBILITIES TO ALL OF THE CITIZENS IN THE STATE. NATURALLY, SHOULD THE ALLEGED VIOLATOR FEEL THAT THE HEARING PROCESS WAS NOT SUFFICIENTLY FAIR TO HIM, THEN HE WOULD HAVE RECOURSE TO APPEALS AND JUDICIAL REVIEW.

WHILE SEALASKA CORPORATION HAS OTHER CONCERNS ABOUT SOME LINE ITEMS CONTAINED IN SB 59, WE FEEL THAT THE PRINCIPLES WHICH WE HAVE STATED TODAY ARE OF THE TYPE TO ALLOW YOUR COMMITTEE THE OPPORTUNITY TO RECONSTRUCT THIS BILL WHERE APPROPRIATE IN ORDER TO MEET THE CONCERNS OF THE PRIVATE FOREST LAND MANAGER AND THE CITIZENS OF THE STATE.

ALTHOUGH TESTIMONY TODAY IS DIRECTED TOWARD SENATE BILL 59, I URGE THAT YOUR COMMITTEE REVIEW HOUSE BILL 40, WHICH I CONSIDER TO BE A LOGICAL PIECE OF LEGISLATION TO ORGANIZE A STATE FORESTRY ORGANIZATION WITH SUBSEQUENT PROMULGATION OF RESPONSIBLE FOREST PRACTICES.

I THANK YOU, MADAME CHAIRMAN FOR THIS OPPORTUNITY.

COOK INLET CHAPTER
JUNEAU CHAPTER
KETCHIKAN CHAPTER
YUKON RIVER CHAPTER
SITKA CHAPTER

SOCIETY OF AMERICAN FORESTERS

Alaska Section

February 1[illegible] 1977

The Honorable Kay Poland
Chairman, Senate Resources Committee
Alaska State Senate
Capitol Building
Juneau, Alaska 99811

Dear Senator Poland:

The Alaska Section of the Society of American Foresters has had a continuing interest in proposed Forest Practices legislation for the State of Alaska. The Alaska Section represents over 200 professional foresters and is a part of a National organization consisting of over 20,000 professional foresters.

The Society of American Foresters does not advocate that States should enact laws which regulate forest practices. This is for each State to decide, based on its needs in terms of environmental protection and forest land productivity which are likely to vary from State to State. Nevertheless, we are concerned that if a Forest Practices Act is enacted in a given State, it be a competent law. To this end, the Society has established "criteria for a competent State Forest Practices Act", a copy of which is enclosed.

In 1976, we tested S.B. No. 563 against the Society criteria, but unfortunately, only one of our recommendations was incorporated into S.B. No. 59. We have again tested S. B. No. 59 against this same criteria. We sincerely hope that our enclosed analysis and recommendations will be helpful and useful to you and your Committee in developing a competent forest practices act for the State of Alaska.

We recognize the importance of the proposed legislation, especially in view of the fact that more than one-third of the entire State of Alaska or 141,000,000 acres are classified as forest land. Of this amount, 18,650,000 acres are in the coastal western hemlock timber type, with 1,187,000 acres in State ownership and 1,340,000 acres in Native land ownership. The remaining 122,350,000 acres are spruce-hardwood timber types in the Interior, with 27,089,000 acres in State ownership and 16,190,000 acres in Native land ownership.

This means 32.5% or nearly one-third of Alaska's forested lands are now in State and private land ownership. Subsequent State and Native selections will substantially add to this acreage.

Please advise if we can be of additional service. We would be happy to work with you on developing specific language, definitions or other aspects as you consider appropriate.

Sincerely,

Forest Practices Act Committee, Alaska Section, SAF
Joseph Zylinski, Chairman
Michael S. Leach
Frank Price
Robert Janes

Enclosure

TESTING SENATE BILL 59

AGAINST SOCIETY OF AMERICAN FORESTERS

CRITERIA FOR A COMPETENT STATE

FOREST PRACTICE ACT

PREPARED BY JUNEAU CHAPTER

SOCIETY OF AMERICAN FORESTERS

FEBRUARY 10, 1977

1. "A Forest Practices Act should encourage the application of scientific knowledge and forest management principles in order that society can obtain the largest net sum of benefits from forest lands. Such an Act should reflect full consideration of both its social and private costs and benefits."

Since the Act designates the Commissioner of the Department of Natural Resources as the person responsible to administer the Act, there is no assurance that scientific and forest management principles will be applied. It is recommended that the State Forester play a more prominent role in administering the Act to assure a sound professional approach He should be specifically named in the Act and his responsibilities clearly defined.

To be really effective a Division of Forestry should be established with the State Forester as Director. The Act then would be administered by this Division.

2. "A Forest Practices Act should insure the productivity of forest lands and protect the environment, including air and water quality."

Review of this Act indicates that this criteria is adequately covered. Although air pollution is not specifically mentioned, it is assumed that air pollution is included in the review by other agencies, i.e. Department of Environmental Conservation.

3. "State-initiated regulation of forest practices is perferable to regulation initiated by federal and local governments. A Forest Practices Act should recognize regional forest variations within a state's boundaries."

Section 41.17.060 (b) provides "the Commissioner may establish regions, districts, or other subdivisions of forest land within the state in which different regulations apply to reflect varying conditions throughout the state."

It appears that this criteria is fully met by S.B. 59.

4. "A Forest Practices Act should be coordinated and in compliance with related regulatory programs in order to minimize jurisdictional conflicts and administrative costs. Such an Act should be consistent with public forestry research, education, technical assistance and financial incentive programs."

This Act does not specifically provide for acknowledgment that compliance with the Act constitutes compliance with State Federal water quality standards, including non-point pollution. This feature should be integrated into the notification system. Review without objection by other state agencies affected should constitute compliance.

Section 41.17.020 (b) provides for the designation and operation of experimental forests; (c) establishing cooperative forestry programs and extension service programs; (d) establishing and maintaining forest tree nurseries.

There is no provision for forestry education or financial incentive programs. These features should be made a part of the cooperative forestry and extension service programs. Funds would have to be made available for the incentive program.

5. "A Forest Practices Act should clearly define the forest land to be covered under the Act as well as any standards and terms applied with respect to forest practices, air and water quality and soil erosion. A Forest Practices Act should use terminology which is generally accepted by the professions concerned."

Section 41.17.030 establishes exemptions to the provisions of the Act. Subsection (b)(1) indicates that a tract less than 160 acres does not fall under the provisions of the Act. While we believe certain operations are so small as to cause little concern to the citizens of the State, we recognize that a timber harvest of 160 acres at the mouth of certain streams or adjacent to certain estuarine areas could have substantial effects on offsite users if timber harvesting is conducted improperly. As with most resource management policies we find it difficult to establish an acreage limit where impacts are a matter of general public concern. However, we believe this is an administrative detail best left to professionals to prescribe on a case to case basis. We would prefer that the Board, along with the State Forester, establish guidelines that are based on a combination of resource factors including, but not limited to, acreage.

The definitions in Section 41.17.950 are a credit to this bill. Definitions specified are close to meeting SAF criteria No. 5. Improvement of some definitions is needed. We would be more than willing to coordinate this section with the various professions involved and recommend appropriate language.

6. "A Forest Practices Act should establish procedures and guidelines for the development and adoption of regulations, but make no attempt to specify the regulations themselves."

We believe the proposed bill generally meets this criteria and have only one suggestion. The suggestions is that Section 41.17.060 provide for procedures (probably) a subsection (14) should be added) aimed at establishing regulations for maintaining State water quality standards and protecting the environment o. aquatic and offsite fisheries resources commensurate with economic values represented.

7. "A Forest Practices Act should allow a forest landowner latitude in applying professional forestry expertise and forest management principles. Administrative requirements for forest landowners and operators should not be unduly burdensome."

We find the bill reaches far beyond our criteria in this respect and from a number of different aspects. In essence we believe the provisions of the Bill are unduly burdensome and deprive forest landowners of land resource value and operational latitude without any form of compensation for this taking of basic rights. For instance:

1. Subsection 41.17.040 (b) provides equal regulations for State, municipal, and private land. Item (1) under this subsection (p.4) places the burden of proof on the landowner. While this may be appropriate for State or municipal forest lands, it is not appropriate as a basis for depriving a private landowner of economic values that exist on his own land. The burden of proof should be on the administering agency.

2. Item (3) under this subsection (p.4) requires administration of forest land with respect to production levels of timber products to allow reasonable consideration for marketing conditions. We submit that there is little likelihood that State officials will have access to sufficient data on an individual land owners marketing conditions to warrant any regulation on this account. Even if sufficient trend data for forest products operations at large within a district are available to the State, there can be little justification in regulating any individual landowner's harvest plan since that individual's market opportunities simply are not the concern of the State. This is another illustration of the need to consider regulation of private forest land separately from State or municipal lands.

3. Item (5) under this subsection (p.4) requires the maintenance of scenery in or adjacent to areas important to the tourism and recreation industry. Again, such an imposition on a private landowner is questionable while it can be mandated for State or municipal lands.

4. Section 41.17.050 requires that this Act shall be administered so as to protect forest land from "depletion", "overharvesting", "unsatisfactory forest management", etc. In our view such objectives, while perhaps appropriate for public lands, are not entirely applicable to all private lands in Alaska.

This Section also requires that the State conduct periodic inventories of timber on lands subject to the Act. While we agree that the State needs such authority, there is little reason to require it as a State function. The nationwide Forest Survey of the Forest Service has traditionally provided such service to states and to private and other forest landowners as well as to the various federal agencies.

Section 41.17.060 (d) is an improvement over old S.B. No. 563. This approaches a one-stop-shopping service that will benefit the operator and reduce the amount of work and frustration needed to wade through an unfamiliar bureaucratic requirements. This Section needs to be worded in such a manner to imply that approval of the plan also carries with it a certification that it meets with State air and water quality standards and grants all necessary permits, such as: tideland or other land and water use or occupancy.

Section 41.17.070, subsection (b) provides a "notification" procedure as contrasted to a permit process. We endorse this concept as being more efficient and less burdensome on the private landowner. We believe this notification should reflect an operator's "planned" operation rather than a proposal.

It is noted that up to a total of at least 85 days is provided for the State to make up its mind on each timber harvest plan. While this may be appropriate for public land activities, it is unduly burdensome and debilitating with respect to planned activities on private lands.

Under subsection (d) (3) (p.8) any other agency of the State may trigger a 20 day delay in a crucial operation. Again, we emphasize the importance of eliminating unduly burdensome requirements.

Under subsections (c) and (g) the State must ask for comment on each harvesting plan from both State agencies and by the citizenry through newspaper invitation. This is an open invitation to delays in legitimate plans of a private economic entity. We believe the needed agency coordination should be developed with a Forest Practices Board during the promulgation of regulations and any private landowner's plan or actual operation conducted in compliance with these State regulations should not be postponed or denied.

We endorse subsection (i) of this section.

Subsection (j) limits State approval of deviations from approved plans. Approval is contingent upon consultation with other affected State agencies. We believe a strong professional head of the Forestry Agency can provide an appropriate and expeditious decision on such matters without violating valid concerns of other agencies and without delaying a crucial decision to an operator.

Section 41.17.080 adopts the attitude that chemicals are not a bonafide attribute of productive forest management. The burden of proof is put on the landowner to prove no adverse consequences. We believe the State's policy should be the other way around, i.e. any application of chemicals for forestry purposes which is lawful is acceptable unless evidence in the hands of the State Forestry Agency shows otherwise. To do otherwise is to deprive a landowner of the opportunity to profit by modern day forest practices.

8. "Where boards, commissions or advisory bodies are used, their composition should represent the broad public interest with at least a majority of the membership being knowledgeable and experienced in the scientific management of forest resources."

A major weakness of the bill is that it creates weakness in the administering agency. First, there is no recognition that a strong Forestry Agency is needed to achieve competent and beneficial regulation of forest practices. A demonstratably effective arrangement for achieving such a goal is to provide for a professional State Forester to administer the Act and a Forest Practices Board to promulgate those necessary procedures or

regulations which can't be efficiently established through the legislative process. Forest practices in the State of Oregon have been, over the years, notably more advanced than other west coast states and without the forest practice legislative upheavals experienced in sister states. Oregon has long operated under the State Forester-Forest Practices Board approach.

Next is the problem of gaining support for a forest practices act from forest landowners or forestry experienced residents of the State when the Act will be administered by an appointee subject to change with each new State administration. Forestry programs and regulations must have more continuity and stability to be successful.

Our suggestions for solving this dilemma is to establish a board and a State Forester or Director, perhaps along the lines outlined in the EPA model Forest Practices Act. An additional suggestion varying from the EPA model is that a majority of the board members be knowledgeable and experienced in the scientific management of forest resources. Such a board should include at least one member from the Forest Products Industry and one from an Alaskan Native Corporation.

Recognizing that the question of establishing a strong and professional forestry agency is a major philosophical difference between the Administration and the Society, we wish to point out that the Alaska Section of the Society has been a leader, possibly the first, in advocating that it is timely for Alaska to adopt forest practices legislation. We will not support legislation that is not competent in the forest practices field.

9. "The development of forest practice regulations should be accomplished with due consideration of the knowledge and opinions of forest landowners, timber operators, forestry and related professionals and the public, and should take into account regional forest variations and disparities in land ownership patterns. Public hearings are necessary to achieve these purposes.

It appears that SB No. 59 meets this criteria. However, we recommend emphasis on technical assistance and incentive programs rather than on regulation of activities.

10. "Using appropriate State administrative procedures, forest practice regulations should be adopted by a State forestry agency or board with responsibility for interagency coordination. Forest practice regulations should rest upon scientific knowledge and professionally recognized forest management principles. The regulations should be administered and enforced by a single state agency with adequate staffing and forestry expertise."

The bill fails to provide for a state forestry agency or a board with responsibility for interagency coordination. All powers are vested in the Commissioner who may delegate authority to his subordinate employees or units within the Department of Natural Resources to the extent he considers advisable. This does not guarantee that regulations would be

administered and enforced by an entity within the Department with either adequate staffing, forestry expertise, and funding.

The conversion of nearly 150 million acres of federal land to state and private ownership will occur in the near future. This will involve many millions of acres of forest land. It is reasonable to assume that the Commissioner could satisfactorily perform all of the administrative and regulatory functions as described in SB No. 59 without delegation. The very scope of other activities and responsibilities vested within his Department would necessitate delegation.

The Governor, in transmitting essentially this same bill to the previcus Legislature, indicated a desire to administer and regulate forest practices on state and private lands within existing structures and personnel resources of the Department to avoid the creation of a new bureaucracy and to keep government regulation at a minimum. We subscribe to that philosophy. However, we contend that the existing structure, personnel, and professional resources of the Department are insufficient to perform satisfactorily the state and private forestry workload presently existent within the State without even considering the 150 million acres moving from federal to State and private status.

While the Governor's motives are admirable, we believe that the imposition of an additional sizable workload upon an existing skeletal capability would be a disservice to the State, its forest and related resources and a derogation of the stated findings and purposes of SB No. 59.

In this regard, we urge the identification of a State Forester established within and heading a Division of Forestry. In addition, funding and professional forestry manpower needed by the State Forester to administer and enforce a Forest Practice Act need to be recognized and provided for in SB No. 59.

11. "A Forest Practices Act should provide for effective administration and enforcement, with adequate provisions for due process, to achieve the objectives and purposes of the Act. Administrative and enforcement procedures should be efficient and expeditious. Provisions should also be included for the use of continuing education, information and training programs to implement regulations adopted under the Act. Forest management operations conducted in accordance with adopted forest practice regulations should be considered to have met the requirements of laws pertaining to soil sedimentation and air and water quality."

Senate Bill No. 59 contains a considerable amount of administrative and regulatory detail. We believe the Bill should provide for these features in broad terms. The development of details should be left to the State Forester who would work with the various publics in a series of scheduled and well-advertised public meetings. Resultant administrative and regulatory details developed within that medium would be substantially more palatable, relevant, and acceptable.

The Bill should provide for the use of continuing education, information,

and training programs designed to implement regulations adopted under the Act. The State Forester should play a key role in this activity.

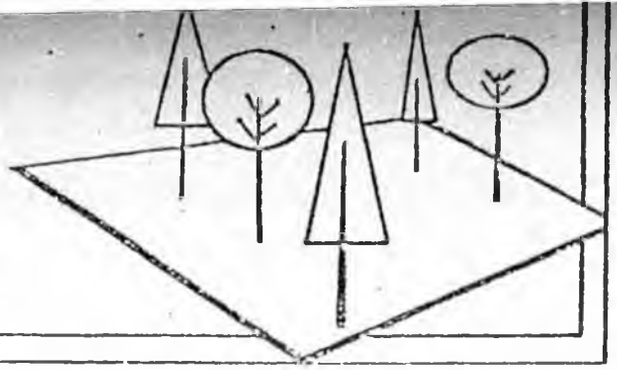
These features would go a long way toward developing public acceptance of Forest Practices Act.

12. "A Forest Practices Act should not preclude the legitimate conversion of forest land to other uses."

Senate Bill No. 59 appears to meet this criteria.

General Comment

Section 41.17.040 (c) (3) states that "...all resources and values are of equal priority;...." This is inconsistant with the definition for multiple use contained in Section 41.17.950. We concur with the definition of multiple use and that consideration in any activity must be given to the relative value of the various resources.



SOCIETY OF AMERICAN FORESTERS

CRITERIA FOR A COMPETENT STATE FOREST PRACTICES ACT*

The Society of American Foresters (SAF) has prepared its "Criteria for a Competent State Forest Practices Act" to aid legislators and other groups considering the development or adoption of legislation to regulate forest practices. The paragraphs below are provided as an introduction and should be read carefully so that the "Criteria" can be considered in its proper perspective.

Controversy over the regulation of forest practices in the United States has reached national proportions in three periods prior to the current debate, namely 1910-1911, 1923-1924 and 1938-1952. The sources of these earlier controversies were widespread public concern over future timber supplies, poor timber harvesting practices and wildfire, and the consequent damage in terms of soil erosion and sedimentation of watercourses.

The present focus on state forest practice legislation is a result of the recent sharp increase in public concern over the quality of life in the United States. This change has caused Federal enactment of several far-reaching environmental laws, many of which apply to water quality, to include the Federal Water Pollution Control Act Amendments of 1972. This law is the basis for the Environmental Protection Agency's development of a "Suggested State Forest Practices Act" in late 1974.

There has been and remains a concomitant concern for the potential and actual productivity of the forest lands in the United States. When some activities related to forest land management are improperly performed, accelerated soil erosion can result in a significant reduction in water quality and the capacity of the land to produce vegetation. In addition to man-caused siltation of watercourses, other forms of water pollution can result. Certainly, occurrences of this kind ought to be discouraged or at least kept within acceptable limits. This can be done through various education, training and financial incentive programs. Activities which diminish a forest's capacity to grow trees can also be discouraged or prevented through regulation by states or other authority. For this purpose regulation might be useful, and in some cases, necessary.

If the forest management activities involving soil disturbance are properly performed, water quality and the potential productivity of forest soil can be maintained. In fact, certain forest management practices can increase tree growth and provide for wildlife habitat and recreational opportunities substantially beyond the natural limitations of many forest lands. These practices ought to be encouraged, and can be through various education and incentive programs. However, the efficacy of legal coercion in the form of regulation of forest practices is questionable so far as encouraging intensive forest management. The bulk of experience indicates that regulation is better employed to enforce minimum performance standards. Expectations to achieve anything more appear unwarranted.

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*A statement approved by the Society of American Foresters on March 7 1975

The Society of American Foresters does not advocate that states should enact laws which regulate forest practices. This is for each state to decide based on its needs in terms of environmental protection and forest land productivity which are likely to vary from state to state. Nevertheless, SAF is concerned that if a Forest Practices Act is enacted in a given state, it be a competent law. To this end SAF undertook the task of developing its "Criteria for a Competent State Forest Practices Act" set forth below.

There are twelve criteria. In some cases it was found necessary to either expand on a given criterion or to address a current issue. These are the purposes of the short paragraphs which follow some of the criteria.

SAF is prepared to elaborate, where necessary, upon any of the following "Criteria" and to assist in discussions or deliberations regarding the regulation of forest practices.

Criteria for a Competent State Forest Practices Act

1. A Forest Practices Act should encourage the application of scientific knowledge and forest management principles in order that society can obtain the largest net sum of benefits from forest lands. Such an Act should reflect full consideration of both its social and private costs and benefits.

2. A Forest Practices Act should insure the productivity of forest lands and protect the environment, including air and water quality.

3. State-initiated regulation of forest practices is preferable to regulation initiated by federal and local governments. A Forest Practices Act should recognize regional forest variations within a state's boundaries.

One of the principal arguments for state regulation of forest practices is the immense variability of forest types within the boundaries of most states. A regular practice of states which have forest practices acts is to divide the state in two or more forest districts. Subsequently, separate forest practice regulations are developed for each forest district. This procedure is quite defensible.

4. A Forest Practices Act should be coordinated and in compliance with related regulatory programs in order to minimize jurisdictional conflicts and administrative costs. Such an Act should be consistent with public forestry research, education, technical assistance and financial incentive programs.

If a Forest Practices Act becomes law in a state, it would be but one part of a body of laws, regulations and programs relating to forest resources. Efforts to integrate elements of a Forest Practices Act with other existing laws, regulations and programs should be encouraged. Duplications in agency jurisdictions should be minimized.

5. A Forest Practices Act should clearly define the forest land to be covered under the Act as well as any standards and terms applied with respect to forest practices, air and water quality and soil erosion. A Forest Practices Act should use terminology which is generally accepted by the professions concerned.

Because a Forest Practices Act deals directly with scientific phenomena, to clarify the Act's purposes and scope technical terminology should be employed where appropriate, and standards and terms should be operationally defined.

6. A Forest Practices Act should establish procedures and guidelines for the development and adoption of regulations, but make no attempt to specify the regulations themselves.

Forests are inherently heterogeneous. Furthermore, scientific knowledge of forests and forest management techniques is rapidly evolving. Therefore, a Forest Practices Act would be best designed if it prescribed the procedures by which forest practice regulations are developed and implemented rather than specify the regulations themselves.

Where a Forest Practices Act provides for reforestation, specific stocking standards should evolve from the same process used to develop forest practice regulations.

7. A Forest Practices Act should allow a forest landowner latitude in applying professional forestry expertise and forest management principles. Administrative requirements for forest landowners and operators should not be unduly burdensome.

A Forest Practices Act could so encumber a forest landowner with its requirements that he would forego opportunities to sell his timber, and hence, would have little inducement to manage his land for timber production. In such cases, timber supplies will be adversely affected. There will also be a misallocation of resources if, as a result, intensive timber management techniques are applied to lands which are relatively less suited for timber production.

8. Where boards, commissions or advisory bodies are used, their composition should represent the broad public interest with at least a majority of the membership being knowledgeable and experienced in the scientific management of forest resources.

A widely accepted arrangement for developing forest practice regulations is through an appointed board or commission. If this arrangement is employed, at least a majority of the board's members should be selected on the basis of their education, knowledge and experience in the scientific management of forest resources. Together the board members should be broadly representative of the public interest in forest resources, to include the interests of private forest landowners and timber operators.

9. The development of forest practice regulations should be accomplished with due consideration of the knowledge and opinions of forest landowners, timber operators, forestry and related professionals and the public, and should take into account regional forest variations and disparities in land ownership patterns. Public hearings are necessary to achieve these purposes.

10. Using appropriate state administrative procedures, forest practice regulations should be adopted by a state forestry agency or board with responsibility for interagency coordination. Forest practice regulations should rest upon scientific knowledge and professionally recognized forest management principles. The regulations should be administered and enforced by a single state agency with adequate staffing and forestry expertise.

11. A Forest Practices Act should provide for effective administration and enforcement, with adequate provisions for due process, to achieve the objectives and purposes of the Act. Administrative and enforcement procedures should be efficient and expeditious. Provisions should also be included for the use of continuing education, information and training programs to implement regulations adopted under the Act. Forest management operations conducted in accordance with adopted forest practice regulations should be considered to have met the requirements of laws pertaining to soil sedimentation and air and water quality.

Two methods by which an administrative agency may be advised of an intended timber harvesting operation are by a so-called "notification scheme" and by a system requiring state approval prior to the commencement of timber harvesting. Under a notification scheme, the forest landowner, timber owner, or timber operator notifies the administering agency of his intent to harvest and the location of the harvesting site, together with other pertinent information. Under the "prior approval" system, the forest landowner, timber owner or timber operator submits an explicit statement, application or plan stating his intentions and must await approval by the administering state agency. To date there is no evidence which of these schemes ultimately results in a greater degree of environmental protection or more productive forest land. However, the costs of a prior approval system appear to be inherently greater than those of a notification scheme, all other things being equal. Therefore, a notification scheme should be given preferential consideration.

Instruments which have been effective in enforcing forest practice regulations include: (1) informal conferences, (2) notices to comply, (3) "stop work orders," and ultimately, (4) agency authority to take corrective action at the violator's expense where environmental damage has occurred or is imminent. It should be recognized that the effectiveness of these instruments does not preclude the existence or the possible development of other effective means for enforcement.

12. A Forest Practices Act should not preclude the legitimate conversion of forest land to other uses.

A Forest Practices Act which would prevent a forest landowner from converting his land to uses other than timber production would severely infringe upon his property rights. Nevertheless, the landowner's legal right to such conversion should not become a means for evading the provisions of a Forest Practices Act.

ABOUT THE SOCIETY

The Society of American Foresters, with over 19,000 members, is the national organization representing all segments of the forestry profession of the United States including public and private practitioners, researchers, administrators, educators, and forestry students.

Objectives of the Society are: To advance the science, technology, education, and practice of professional forestry in America, and to use the knowledge and skills of the profession to benefit society.

Gifford Pinchot and six other pioneer foresters established the Society in 1900.

Members subscribe to a strict code of professional ethics. The Society is the accreditation authority for professional forestry education in the U.S. It publishes the *Journal of Forestry* and *Forest Science*.

SOCIETY OF AMERICAN FORESTERS

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Testimony of Warren Weathers
Shee Atika Corporation
February 11, 1977
Hearing on SB 59

Madam Chairman, Honorable Committee Members, I would like to apologize for not having anything in writing, but we would like to submit something in writing within the next two weeks which would include a draft of the revision of SB 59.

I am Warren Weathers, I speak on behalf of Shee Atika, Incorporated which is the urban native corporation for the native road to Sitka. We have 1,800 stockholders. I am also a professional forester, with a background of having worked for the U. S. Forest Service, having worked in the State of Oregon as a land manager, as an extension forester in the field of State and Private Forestry, and also, I was extensively involved in the enforcement of the Oregon State Forest Practices Act before the revision and then after the new Forest Practices Act was passed. I have worked in Alaska in the forest industry since 1972 as a professional forester.

Shee Atika has selected 23,040 acres of forest land. Roughly 4,000 acres of this has been logged, and the corporation plans to manage it in such a manner that the 4,000 acres that has been logged will grow trees and produce quality water, and recreation opportunities, etc. Everything will be managed under the multiple use of sustained yield basis.

Our estimates indicate that under intensive sustained yield management, the corporation's timber resources alone will produce an annual cut of roughly twelve million board feet. This is under intensive management. Conservatively, with a multiplier, this would indicate that this annual cut could be expected to produce someplace in the neighborhood of seventeen million dollars annually in new money that would be put into the economy of Southeast Alaska, and this just from our native corporation's timber reserve. The corporation has the policy of managing lands for multiple use of all resources. We are interested in producing fish. Many of our stockholders are fishermen. We are interested in recreation. We are, at the present time, in the process of putting together a hotel in Sitka. We are very interested in tourism, and our stockholders have an historic interest in the wildlife resources. All this in addition to the timber.

Until 1983, our land must be managed under the same set of standards as the Forest Service manages their lands, under the provisions of the Native Claims Settlement Act. It's not 1977 so we have some time, I think, to look at the situation and draft a very well thought out planned bill that would be equitable to the landowners, and achieve the interest that the general public is looking for.

Testimony of Warren Weathers Cont.
Shee Atika Corporation
February 11, 1977
Hearing on SB 59

On some comments on the bill. I think it's dangerous from the standpoint that it places an awful lot of authority on one person, in this case the Commissioner, who is not necessarily a professional forester. Basically he is a politician. I think it would be an improvement to have a strong forestry division with a professional state forester leading it, and having a board in which landowners were heavily represented. In this case of the commercial forest land in the state, roughly over 99% of it is going to be native owned. I think that landowners should be heavily represented and professional land managers and resource managers should be heavily represented on an advisory board that would assist the State Forester in drafting regulations that are going to be implemented under this act, so that it will be something that won't be an unnecessary burden on the landowner and the industry. I think that if you have somebody that's administering it and drafting the regulations that is not familiar with the problems intimately, there's a good chance you are going to have a negative impact on the landowner and on the industry.

One portion of the bill discusses aesthetics. It more or less indicates that somebody from the State is going to evaluate what is aesthetically pleasing, what's pretty and what looks good, etc. as far as forest practices goes on private land. I feel that this would be very difficult to do from the standpoint that what I think is attractive is not necessarily what somebody else thinks is attractive. The evaluation of aesthetics is a value judgement, and you can't tie it down to anything to decide what is good and what's not. You have a tremendous conflict and you wouldn't be treating all the landowners equitably. The State has the power to do this on their own lands anyway, and if the State would like to manage its forest land for aesthetics then they can control what they feel is attractive. That's fine, but I don't think it's fair to try and place this type of thing on the private landowner.

The way SB 59 is drafted, an operator can make application, and it will be up to 80 days before he really gets a response. The way the weather is and operations are in the industry in southeastern Alaska, lots of times things will come up where landowners have to make a change in plans due to the weather, etc., and if it takes him 80 days to make the change, he will have lost the opportunity, and we will have serious economic consequences to the landowner and to the operator. Not only from the operating problems that might come up where he'd need to change his operation, but also to respond to changes in marketing conditions, etc. I think that something more like a maximum of 30 days would be more appropriate.

There is a provision in SB 59 that requires the operator to submit a performance bond prior to getting his operation. I feel that this is an unnecessary burden on an operator from a standpoint that the law provides penalties that is another means of satisfying the problem in case he does break the law and is not in compliance with the act.

I don't think the bond is necessary, and could eliminate a lot of the small operators. Although the bill is drafted, they attempted to draft it with a combination of both the prior approval and notification systems. I think in reality, it's going to end up being enforced as a prior approval type forest practices act, in which case it would be expensive and it would place the burden on the landowner and not on the state. Having worked with the notification system, and the way it worked in Oregon was an operator would submit plans to us essentially the same as those that are listed in SB 59. We would review them. We had a very short period of time. I don't remember exactly what it was now. We would review the plans. As a matter of course, if I had not worked with the landowner before, I'd make a point to go and find him and walk over his operation with him and point out some of the areas where he might have problems. If he had a slope that looked like it might be unstable if you put a road across it, I'd help him with his road location. To try and minimize erosion problems, I'd give him advice as to what areas he could expect to grass seed or something like this to prevent erosion problems. As a matter of course, if there were a fish stream in the area, and I could see that there was potentially some impact on the quality of the water with his operation, I'd call up the Department of Fish and Game and they would send a fisheries biologist out and he would go out with me and we would both talk to the operator, and this was generally before he started his operation, and he was then familiar with what we were going to expect or what his alternatives were. Then he could go ahead and operate. We checked up on him occasionally, and if he broke the law, he paid for it, and the situation was corrected. If the burden was on us to go out and check up on him, and work with him, it wasn't on him to submit plan after plan and wait 80 days before he could start doing anything. I think that as things progress, and the State has worked with one operator and they are familiar with an area the way he operates and all this, there may not be quite as much need to spend that much time with an operator once they did become educated to what you are going to require and they are aware that you are going to go out and check up on them, and they are familiar with the law, under the notification system.

Under the prior approval system, I don't think that would be possible. I would like to read some comments that I jotted down that were given to me by our attorney, Mr. Lanahan, who specializes in forest resources law. He is also a professional forester. Point No. 1 disucsses the constitutionality, federal preemption. He said, I have not had the opportunity to any in-depth research on some of these points. As a matter of federal law of the U. S. Constitution is the supreme law of the land, the well established docterine of constitutional law provides when congress has occupied the field or preempted it by specific legislation, the states do not have the authority to legislate or

regulate in this same area. Examples of the preemption field are the National Labor Relations Act which governs all matters relating to labor and employee relations and cases affecting inter-state commerce. More perscriptive state laws can only apply to strictly local or intra-state matters. The Native Claims Settlement Act is special federal legislation designed to settle all original claims in Alaska. Many areas of potential regulation of native lands acquired under the Claims Settlement Act have been dealt with by specific provisions of the Act. For example, Section 20A exempts revenues originating from the native fund from all federal, state, and local taxation at the time of receipt by regional and village corporations or individual natives.

Section 20B exempts shares of stock of village or regional corporations received by natives from any form of federal, state or local taxation. Receipt of land or cash is exempt from federal, state or local taxes by Section 20C, and its basis for income tax purposes is for market value at the time of receipt.

Section 20D exempts real property interests from state and local taxation until 1991 unless they are earlier transferred, leased, or developed. Section 20E continues to treat lands distributed to native corporations as public lands for stated reasons as long as the exemption from state and local taxes remain in effect. Specifically, Section 21K requires all lands selected from within the boundaries of a National forest to be managed under principals of state yield and under management practices for the protection and enhancement of environmental quality no less stringent than such management practices on adjacent National forest through 1983. Mr. Linahan goes on to say, in my opinion this is a specific preemption by Congress in the field of forest practices. Any attempt by the state to impose more stringent restrictions will be regarded as unconstitutional. The second point discussed is denial of equal protection. The 14th Amendment to the U. S. Constitution guarantees all citizens relief from State action that denies them equal protection under the law.

Forest practices legislation that regulates private ownership of commercial forest lands of 160 acres or more probably effects virtually no private ownership other than the native corporation. I speculate that other than native lands, less than one tenth of one percent of all private forest land ownership in the state exceeds a tract of 160 acres. From this, one may infer that proposed forest practices legislation regulating private ownership of tracts of 160 acres or more is discriminatory, and special purpose in scope. If so, equal protection regulation in this instance is being denied by the likes of Senate Bill 59.

Third point - other federal and State constitutional issues. It may be argued that SB 59, because of the lack of standards and regulatory authority of scope may be unconstitutionally vague. I believe serious questions can be raised as to whether or not the State can constitutionally impose a burden of management to protect or enhance adjacent scenic

recreation, aesthetic, tourism, or other natural values on private land other than as a valid exercise of police power. If not this requirement could result on an unconstitutional taking of private property without compensation.

Section 20C of the bill appears to create a potential for conflict between the Commissioner of Natural Resources and other State or local agencies.

Section 60D may further this proposition. I suspect the intent of the drafter is to insure that there would be only one set of regulations in print that is required for each type of activity, rather than having to go through 3 or 4 agencies. I suggest that these provisions can be reworded to better accomplish that intent.

Section 60C can be reworded to give the Department exclusive authority in the field rather than subordinate to other agencies. The proposed notification system has some advantages over a permit system, however, the time lag and the ability to give qualified approval could create problems. If the operations are going to be conducted on public lands, in all liklihood, contractual provisions containing all the operating restrictions necessary will be used so that the notification system should be a mere formality. In the case of operations on private lands, without more definitive standards of what and when activities will be permitted, we could end up with dual standards. The procedure for notice in hearing of claimed violations is a good one. Mr. Lanahan thinks the exemption of hearings from the provisions of the Administrative Procedures Act and Sections 110J may be unwise unless it is to free the hearings from the requirements of formality.

Section 130 he felt was interesting. The addition of penal provisions for spacious or groundless suits might be added to discourage i.a._____ from suing the State without good cause.

In recommendations, he said, I would recommend you tax SB 59 or any other similar bill on unconstitutional grounds primarily on the issues of federal preemption under the 14th Amendment "Equal Protection Argument. Bills such as SB 59 may involve reported police power regulation that is so stringent that it causes the unconstitutional taking of property. SB 59, if it were to exclude private land could, with a few changes, be made into a decent bill. You could approach supporting a modified bill with specific exemption of all native lands through 1983, or you could flatly oppose the bill on unconstitutional or other grounds to kill it insofar as it might pertain to private land. If legislation effecting your lands is passed, its constitutionality can be promptly tested in an action instituted for a three judge federal court. i.a_____ the event of adverse decision from the three judge panel as direct to the United States Supreme Court as a matter of right. I suggest that

you adopt a forestry board and a state forester approach incorporated with the draft forest practices act that SANTCO has been working on. SANTCO is the Southeast Alaska Native Timber Corporation of which Shee Atika is part of.

The bill that SANTCO is working on, is based on the Oregon Forest Practices Law which is considered to be a model for State laws of this type. Mr. Lanahan felt, lastly, in any event that date of interest should be marshalled to oppose this type of forest practices legislation as it effects native lands. The natives have been and are the original conservationists. We will manage our lands in a fashion that will be environmental for all, including the State of Alaska.

I think that House Bill 40 would be a lot easier to work with, and with a few amendments, it could be a pretty good bill. However, within a matter of a week, we will have a revised draft of Senate Bill 59 that we would like to submit. Thank you.

CHAIRMAN POLAND - Thank you Mr. Weathers. Are there any questions?

SENATOR TILLION - I think he ought to find a better lawyer.

SENATOR MELAND - You say you worked closely with the Oregon Forest Practices Act, does that differ too much from SB 59, or is it more along the lines of 40?

WARREN WEATHERS - It's closer to 40. It's strictly notification.

SENATOR MELAND - Is the man in charge a professional forester?

WARREN WEATHERS - He's a professional forester, but he's appointed by an advisory board, and the advisory board has representatives of conservation minded groups, the industry, landowners, county commissioners, Oregon cattlemen's association and this type of thing. They are the ones that supervise essentially the State Forester, and then the school of forestry chairs the Board. Something similar to that would be, maybe, just an advisory board as far as drafting the regulations. I think the regulations are the most important thing that, as far as the road goes, they be drafted to where they are realistic, and those are the big differences in the State of Oregon's bill.

CHAIRMAN POLAND - Thank you Mr. Weathers.

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Alaska Lumber & Pulp Co. Inc.

TESTIMONY ON SB-59

ALP worked last year with the Administration in drafting a Bill similar to SB 59. We have been in touch with the Administration on the proposal this year also. We appreciate the opportunity to provide input in the initial stages of drafting as this contributes to legislation we can live with. We believe that the group primarily effected by this legislation, the Alaska Natives should be the people to whom you listen most in deciding the necessity of this legislation at this time. If there is to be a Forest Practices Act, the Administration Bill SB 59 is a fair, workable, and responsible bill. The major exception to this is § 41.17.040(b)(5) which requires private land owners to maintain their land for scenic and aesthetic purposes. However, this does not change anything for those, like ALP, who operate on National Forest Land.

The key problem we have with this Bill, and the reason we cannot support it at the present time, is its failure to provide for a strong State Forester reporting directly to the Commissioner of Natural Resources. Presently, the State Forester is buried in the Land and Water Division of the Division of Lands. Thus, his expertise must be passed through an intermediate non-forester decision maker before reaching the Commissioner. This creates needles red tape and delay and sets up the possibility that the professional management advice which the Forester should be providing the

Commissioner will become confused or perhaps altered at some point short of the top. There is simply no one available at the present time to advise the legislature on forestry matters. More ofthen than not the situation has resulted in no policy-making whatsoever with respect to forestry - a point which will be developed further on in this testimony. Moreover, since decision effecting the forests are often made in other agencies concerned with forest management, but with a lack of professional forestry expertise - e.g. Fish and Game and Department of Environmental Conservation - it is important that the State Forester be in a position to effectively deal with the decisions of other agencies. Under the present Bill, he will be too far from the field of play both in distance (he will apparently remain in Anchorage) and in position (he will be subject to the Director of Lands.)

The argument is made that a strong State Forester will tend to become an advocate of the industry he regulates. The Governor could fire such a man. The point is that it is the man, not his position as a director, that could allow this to occur. If such a "captured" forester were in Juneau, his "industry" bias could more easily be identified. Therefore, this argument against a strong State Forester is without merit.

It is also urged that a strong State Forester heading a Division which reports directly to the Commissioner would create a new bureaucracy. Since this Bill calls for review of logging plans and inspections of logging practices, it

is obvious that many more personnel will have to be added to the present forestry section and that people familiar with the forests in Southeastern Alaska will have to be added to the present staff. It is our belief that at least as many personnel would be required under present plans as with a Division of Forestry.

This gets us down to the nub of this controversy - should the State Forester report directly to the Commissioner or Natural Resources? Commissioner Martin and others in the Administration have been most generous in affording us time to present our point of view to them. The Commissioner's belief that the Division of Lands should manage all State lands without what he has called "a State Forest Service" is one with which reasonable men could agree. I emphasize this because I think it important to let you know that this Administration has worked hard to educate itself on forestry matters and we have enjoyed a good working relationship with it.

However, we strongly disagree with the Administration position on this issue. It is our belief that in return for authority to regulate forest practices, the State should now be willing to take on the responsibility of setting policies for the State forests and the forest industry within the State. Let me point to three examples of where State forest policy is adrift: (1) For too long policy on forestry issues in the State have been set by State agencies which have no forestry expertise and which often are antagonistic toward the timber industry. The

best example of this is the Alaska Department of Fish and Game which has often used logging as an explanation for the lack of fish. (2) Secondly, there are 22.5 million acres of commercial forest land in the Interior of Alaska capable of supporting up to 36,000 jobs in Alaska which is about to be impacted by (d)(2) legislation. Yet to our knowledge no one in State Government has addressed the simple policy question of whether or not the (d)(2) issue should be approached in such a way as to permit the formation of an Alaskan forest industry in the Interior. Finally, the State is now in the process of continuing its land selections under the Statehood Act. Yet to our knowledge, while forested areas are being selected, no one in State Government has decided whether or not its land selections should be used in part to allow the formation of a forest industry in the areas involved.

Remember this policy vacuum exists under the organizational table Commissioner Martin is asking you to maintain. In point of fact the Division of Lands has not been forestry oriented or forestry concerned. It has not been aggressive in attempting to advance comprehensive Statewide and local forestry plans. Why should you expect it to become so now? Further, it is an open secret that logging on State forest lands is the most poorly planned and administered of any that goes on in Alaska. This is true notwithstanding the fact that by contract provisions the Division of Lands could have required operators to observe forest practices at least as tough as the Forest Service.

The point of all this is that the Division of Lands has poorly handled forestry in the past and allowed other agencies to pre-empt the policy decisions it should have been and should be making. Now the Administration proposes to keep this structure in place in the face of the (d)(2) issue and its own land selections under the Statehood Act. We say the Division of Lands has handled forestry too poorly in the past to be intrusted with the task of making and administering these monumental policy questions now before it and on which it has not yet taken any apparent action. In short, the State Forests and the State forest industry are to important to have their administration regulated by non-professional unconcerned management in the backwater of a bureaucracy with a miserable forestry management track record.

A strong State Forester in Juneau reporting directly to the Commissioner of Natural Resources would not be an instant cure for the problems described. But, responsibility would be fixed upon a Division Director answerable to the Administration and who could answer to you for the Administration. Such an individual, who should be a professional forester, would per force aggressively formulate State forestry policy for consideration by the Administration. Alaskans could then know when the Alaska Department of Fish and Game was overreaching its own policy - making mandate or blaming the lack of fish on the wrong thing. We would then have someone working on a State forestry position with respect to (d)(2) and State land selections. We would then

have someone to answer for poor planning and/or administration of logging on State Forest Lands when it occurs. Under the system we propose land classification could remain with the Division of Lands, and be co-ordinated with the State Forester in the same way the Bureau of Land Management and U.S. Forest Service have done on federal lands.

In conclusion, if a strong State Forester reporting directly to the Commissioner of Natural Resources is added to this Bill, ALP will support it. If we are to have a wise forward looking State policy on forestry what we ask is vital. We ask your assistance in bringing it about.

Testimony of Robert Loescher
February 11, 1977
Hearing on SB 59

Madam Chairman, my name is Bob Loescher. I'm with the Board of Directors of Goldbelt Corporation. The Juneau native corporation has about 2,600 stockholders. We are in the process of finalizing land selections around the Juneau area, and our land selections are turning up quite a bit of timber as a primary resource of those lands.

We are a member of the SANTCO Corporation (The Southeast Alaska Native Timber Corporation), and we understand that there are activities within the corporation that are taking place to take a hard look at this Bill. As you know in this Legislature the only bill is Senate Bill 59, and then there is House Bill 40. In the previous Legislature this process had started, but hadn't gotten very far.

We would like to state for the record that Goldbelt Corporation is in a position to support development of legislation. We would like to see a good forestry bill be developed during this session. We're not necessarily in concurrence with many of the provisions of Senate Bill 59, and we would like to just generalize on a number of areas, and if the procedure would hold true, we would like to advance some specific language and rationale at a later time in the next several weeks to the Senate in hopes that we might be able to influence the direction of this legislation.

We are concerned that the bill is aimed at two areas. The public lands that are going to be selected by the State of Alaska under the Statehood Act in the National Forest, and then in combining private lands simultaneously in the same piece of legislation. We do realize that forestry resources are of interest to the citizenry as a whole, however, our corporation has some specific responsibilities to its stockholders in the management of its assets that we have received under the Alaska Native Claims Settlement Act. We are wondering if in time, we might be more specific in the legislation on how the State's interests and the taxpayers and the other shareowners of our assets of this State, how they reflect and coordinate directly with our management of our lands.

There are areas in this bill under the Administration's bill that provide for direct involvement of the State in the management of our resources. We're quite concerned about that. We feel that we have a fiduciary responsibility to manage our resources directly.

We also have a couple other concerns. One is that the bill, as drafted, puts great emphasis on aesthetics, other subjective type values that are not quantifiable and identifiable, and can't be measured, and are very subjective in policy determinations. We're concerned about being affected indirectly or directly by such legislation. We have no problem working to co-manage our lands with other interests or adjacent interests, but we want to have the opportunity to have a direct input into the development of these kinds of land-use policies and planning. We feel that the bill should put emphasis on the fact that it's in the economic interests of the people of the State that there be a viable logging industry, and a viable milling industry, and we feel it important to the taxpayers and to ourselves that this have primary importance in the purpose of the bill. We're quite concerned that there is a lesser value or lesser emphasis in this regard.

We also have a couple other concerns in the bill just generally. We don't agree that the business of enforcing the regulations and how you go about through the hearing procedure and what-not is very close to due process of law. In fact, it overextends due process to the point, we'll be out of business in no time flat if we follow those types of procedures. We can't afford it. We're a small corporation, admittedly, we have 23,000 acres of land, but it abuses the whole concept of due process of law, and we will have some recommendations in that regard.

In other areas, we are concerned about the logging operations on our land. We're concerned that the cost that the Senate or the House when they consider this legislation, they consider the cost to the taxpayers of the State of Alaska, and that they also consider the cost of administration to the private landowners. There are a lot of factors in administration of this bill that are going to be very expensive if enforced. In the operation of harvesting of timber, there's bonding requirements in there that are very costly, and nobody has determined how you are going to go about that. There's requirements that we submit data and develop information for the State Forester, or whoever to review and go through a very lengthy 80 day process in order to get approvals and what-not. There is also a requirement in here that the State of Alaska will inventory lands. Now, we've been in the business for a couple of years now in trying to develop planning for our lands that we are going to be receiving patent to very shortly. Already, we've spent close to a million dollars throughout our region just investigating our lands and what-not, and we have a requirement to inventory and appraise our lands every five years. That costs 30 to 70 thousand dollars to do everytime around. Now, in this bill there's a requirement that lands be inventoried by the Commissioner and the State of Alaska. I'd sure like the State to participate and maybe we can offset some of our costs, but it's a very expensive management operation, and you should be aware of that.

In conclusion, Madam Chairman, we would like to be a part of any effort that you and your staff to this committee may go into. We'd like to spend time. We have drafted, many times in the last two years, amendments to certain sections of certain bills, but I think we need to sit down and work out philosophy of land management in the purpose section of the legislation and then procedures, and see how they look all together. We're willing to work with any group in order to develop this bill.

Thank you very much.

CHAIRMAN POLAND - Thank you Mr. Loescher. We would be very glad to receive any suggestions, any written comments or amendments, and we will take them into consideration. We would like to request that if possible of all of the witnesses that have said they wish to put in further information, if we could get them in the next ten days it would be a tremendous help.

Is there anyone else who cares to comment on Senate Bill 59? If not, I thank you all very much for all the testimony that's been given here today, and it certainly will be considered with the additional testimony that we are requesting from anyone who has an interest in the bill.

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Alaska State Legislature

Senate

Committee on Resources

KAY POLAND, CHAIRMAN

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SS SB 59 - FORESTRY PRACTICES ACT

AGENDA FOR WEDNESDAY, APRIL 12

pro - 3:00 - CLARENCE KRAMER, ALASKA LUMBER AND PULP

pro - ~~[illegible]~~ Kay Greenough - S.E. Al. Con. Society

3:15 - BOB MARTIN, TAKU CHAPTER
pro ALASKA CONSERVATION SOCIETY

~~3:30 - KAREN TILLINGHAST, S.E. ALASKA CONSERVATION SOCIETY~~

? - 3:45 - ROBERT LOESCHER, SEALASKA

Con - 4:00 - LES ANDERSON, KONCOR

Con - 4:15 - SAM DEMMERT, YAK-TAT KWAAN, INC.

4:30 - WARREN WEATHERS, SHEE-ATIKA

Con - 4:45 - DAVID WOLF, ATTORNY
KONCOR & YAK-TAT KWAAN, INC.

Alaska State Legislature

Senate

Committee on Resources

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4:00 - LES ANDERSON, KONCOR Con

4:15 - SAM DEMMERT, YAK-TAT KWAAN, INC. Con

4:30 - WARREN WEATHERS, SHEE-ATIKA Con

4:45 - DAVID WOLF, ATTORNY Con
KONCOR & YAK-TAT KWAAN, INC.

Friday Con
5:00 - Joseph G. Wilson - Goldbelt
3815 Huna Totem Corp - Con
James Austin, Jr.

Alaska State Legislature

Senate

Committee on Resources

KAY POLAND, CHAIRMAN

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State Capitol
Juneau, Alaska 99811

14 April 1978

AGENDA

SSSB 59 — FORESTRY PRACTICES ACT

Testimony

JOSEPH G. WILSON, GOLDBELT INC.

JAMES AUSTIN, JR., HUNA TOTEM CORP.

SCR 101 — ESTABLISHMENT OF FISH QUOTAS

HB 704 — APPROP. DEPT. OF NATURAL RESOURCES, DIV. OF LAND AND WATER MANAGEMENT

Alaska State Legislature

Senate

Committee on Resources

Official Business

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Pouch V
State Capitol
Juneau, Alaska 99811

14 April 1978

AGENDA

SSSB 59 — FORESTRY PRACTICES ACT

Testimony

JOSEPH G. WILSON, GOLDBELT INC. Con - unless amended

JAMES AUSTIN, JR., HUNA TOTEM CORP.
Dick Bradley — moved out

SCR 101 — ESTABLISHMENT OF FISH QUOTAS

HB 704 — APPROP. DEPT. OF NATURAL RESOURCES, DIV. OF LAND AND WATER MANAGEMENT

Wed 19th

21

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

The Honorable Kay Poland
Chairman
Senate Resources Committee

Kay,

This will be introduced Thursday, April 6, 1978.

Keith

April 6, 1978

The Honorable John L. Rader
President of the Senate
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. President:

Under authority of art. III, sec. 18 of the Alaska Constitution, and in accordance with AS 24.30.060(b) and the Uniform Rules of the Alaska State Legislature, I am transmitting a substitute bill for SB 59 (forest resources and practices), introduced by me during the 1977 legislative session. This sponsor substitute is the result of a considerable amount of further study and numerous meetings involving persons and organizations concerned with forest resources and practices. The following statement of the reasons for this legislation and the section-by-section analysis go into some detail in order to provide evidence of legislative intent.

I. REASONS FOR THE LEGISLATION

The purpose of the legislation is to establish a program for the administration of forest resources in Alaska so that the state may realize, over the long term, the wide variety of products, benefits, and services obtainable from forestland.

It is especially important that this legislation be enacted before use of forest resources in Alaska reaches its greatest intensity. States which have delayed passage of appropriate forest practices Acts until an absolute necessity arose have often experienced a climate of conflict which complicated legislative deliberations and reduced the quality of the legislative product. In addition, some options for approaches to administration and for realization of objectives were already foreclosed. Enactment of an Alaska Forest Resources and Practices Act at this time would permit consideration of potential measures and programs in an atmosphere conducive to

solutions mutually agreeable to all parties. Most important, it will allow conflicts to be resolved in advance, precluding potential disruption of operations in the field.

While a state forest resources program is necessary and desirable, it is not the intention of this legislation to create a massive new bureaucracy which would only result in waste of government funds and manpower. Rather, the approach used is to fill existing gaps in the statutes through enabling legislation which would provide for a thorough forest management program without duplicating or overlapping existing government programs of the Department of Natural Resources or other state agencies. Emphasis is placed on cooperation between these agencies to achieve generally desired objectives.

Development of this transmittal letter reflects my wish to limit the language of the Act to essential matters while providing the intent behind its provisions. I offer the Act and the letter as a package, with the statements of intent in the letter to govern application and interpretation of the Act. The appropriate committees of the legislature are strongly urged to adopt this transmittal letter as the committee report on the bill.

II. SECTION-BY-SECTION ANALYSIS

Section 10. Declaration of Intent.

Section 10 contains a brief statement of the findings of the legislature and the purpose of the legislation. Paragraph (1) recognizes the range and variety of forest resources; that forest products include not only timber but other products obtained from the land and water (including marine areas) influenced by forest ecosystems; that multiple products, benefits, and services are obtained from forest resources; and that forest resources and values often escape quantification.

Paragraph (2) reflects my desire that the various businesses and other activities (whether or not commercial) which are dependent upon forest resources receive the support of the state for their continuation in the government's forest resources program. The term "economic enterprises" is intended to be comprehensive, including not only existing businesses but those industries which may be developed as new forest resources become accessible or economically viable, and recognizing that forest resources present opportunities for small businesses as well as large corporations.

"Activities and pursuits" includes those which are not necessarily revenue-generating, and would encompass subsistence use.

Paragraph (3) declares that the programs and measures provided for in the Act are not only desirable but a basic duty of the state and implement the directives contained in several of the sections of Article VIII, Alaska Constitution. It is especially critical that timber supplies and other renewable resources be maintained and available in perpetuity to protect the longevity and insure the stability of the forest products industry, to insure that enterprises dependent on forest resources continue to make a substantial contribution to the Alaskan economy, to prevent impairment of the capability of the land and water to produce renewable resources, and to make certain that forest land generates the services and benefits, whether commercial or not, which Alaskans have come to expect from it.

Paragraph (4) contains two important concepts. First, much contemporary legislation has relied excessively on regulatory measures to achieve desired goals when this approach may in fact be both onerous and inefficient. Therefore, this Act would direct that regulations, services, and incentives be employed in the combination which is most likely to accomplish the purposes of the Act.

Second, the state has not to date developed a high-profile forestry program emphasizing the expertise of professional foresters, which is inherently necessary if forest resource administration in Alaska is to be successful. As a result, paragraph (4) stresses the importance of forest resource professionals as an essential element to complete the state's multidisciplinary capacity.

Paragraph (5) addresses the need for the state to carry out its responsibilities for control of nonpoint source pollution under the Federal Water Pollution Control Act under the leadership of the Department of Environmental Conservation, which is the lead agency under law for this program. The Environmental Protection Agency has left it to the states to devise their own approaches in this area, but has indicated that the federal government will assume control if a state does not develop an approved program. The Department of Environmental Conservation may legally delegate its authority with respect to this program to the Department of Natural Resources or otherwise use the forestry expertise of DNR with respect to development of the nonpoint source program, and the regulations developed under this chapter could be used in conjunction with this program.

Paragraph (6) recognizes that regulations adopted under the Alaska Coastal Management Act must address forestry matters; to avoid conflicting regulations, it is necessary that those adopted under this Act be used under the Coastal Management Act, superseding any forestry regulations previously adopted under the CZM Act. However, any prior efforts under CZM should be considered in adopting regulations under this Act.

Section 20. Administration.

This section designates the officials responsible for administration of the Act and establishes authority for carrying out desirable forest resources programs.

Subsection (a) reflects the request of numerous interest groups that a division responsible for forestry be created within state government in order to (1) provide recognition for forestry and forest products, as has already been done for many other natural resources, (2) bring the expertise of professional foresters to bear on forest management issues, and (3) establish a contact and focus point in the government for the forest products industry and other users of forest resources. This subsection expresses the governor's power to create a Division of Forest, Land and Water Management with the director to be known as the state forester. It is emphasized that the state forester must be a trained professional with the requisite education and fully experienced with the many issues and subjects inevitable in the administration of the Act.

Subsection (b) provides that the ultimate responsibility for implementing the Act is vested in the commissioner. However, the expertise of forest resource managers cannot be employed unless the forestry expertise housed in the division is fully used. Consequently, it is expected that the commissioner will delegate authority for daily administration of the Act to the state forester, reserving to himself only those matters requiring the attention of a cabinet officer. Moreover, the commissioner and the state government in general should make use of the state forester on other forestry matters even though they may technically be beyond the purview of the Act.

I recognize that it will take some time to develop completely the program envisioned by the legislation However, by creating the division, naming a state forester, and listing the functions assigned to him, I expect that the program ultimately formulated will exceed the accepted minimums for administration of forest resources. Specifically, I intend

that the commissioner and the state forester employ foresight and innovation rather than being constrained by conventional attitudes so that Alaska's forest management effort enjoys a national reputation for leadership and competence.

Forest managers are expected to calculate timber harvests and rotation ages in a way which insures sustained yield and a steady supply; this has been difficult in the past on state land because the acreage available for timber use has not remained constant. Subsection (c) provides for the opportunity to establish a minimum fixed timber supply base from which to make sustained yield calculations. In addition, the state will ultimately determine that land which it wishes to retain in state ownership for multiple use purposes, some of which will be forested land. While subsection (c) does not mean that all of the state's retained land will be designated as state forests (as opposed to some other category), it does allow for the designation of that land with substantial timber and other resources for retention. Failure to designate state forest land as a state forest does not, of course, remove it from the provisions of this chapter.

The ultimate success of the state's forest management program will depend on the knowledge available to decisionmakers. Numerous subjects and issues invite research and experimentation, and subsection (d) sanctions the designation of special forest units for this purpose. I would anticipate the use of such forests for analysis of exotic stocks; development of genetically superior stocks; evaluation of the effects of land use activities and of methods to reduce adverse impacts; experimentation with advanced harvesting, extraction and transportation techniques and equipment; examination of programs for control of disease, fire, and insect infestation; cooperative projects with other agencies respecting compatible management of multiple resources; and any other activities enhancing or refining forest management efforts. Such forests must be limited to the minimal size necessary for conducting the research or experiment so that ill-considered major projects may not be continued under the guise of scientific investigation.

Reforestation and afforestation must be the highest priority among silvicultural programs, being most directly related to maintenance of perpetual supplies of timber. Within funding capacity, the commissioner is expected to make available planting stock to assist operators in meeting reforestation requirements of the Act, although this does not relieve their duty to observe those requirements. The term "nurseries and

greenhouses" is not intended to be restrictive; all facilities providing planting stock (including containerized greenhouses and other advanced versions) are consistent with this section. "Forest vegetation" was used instead of forest trees since there may be instances where ground cover or other plants will be beneficial in forest management. Subsection (e) also provides that the commissioner may charge for providing planting stock, with any proceeds to go to the general fund.

Subsection (f) authorizes a full range of professional management services and participation in federal assistance programs such as those conducted by the Forest Service under their state and private forestry division. Since there will be many new timber operators and owners in the state in the near future, education and management assistance efforts may provide expertise which would be otherwise unavailable, leading to more efficient operations and better forest practices. Such services must be closely coordinated with regulatory and review requirements, as is discussed later in this analysis.

As discussed earlier, the Department of Environmental Conservation may legally delegate authority to the Department of Natural Resources for development of regulations necessary to implement the forestry portion of the state program for control of nonpoint source pollution under the Federal Water Pollution Control Act, as amended, or to use any other arrangement to take advantage of the forestry expertise of DNR. Subsection (g) formalizes this authorization and directs DNR to seek a cooperative agreement on this subject. However, it also reemphasizes that DEC is the lead agency and that any regulations or cooperative agreements must be approved by the commissioner of environmental conservation before they become effective.

Since maximum contact with forest resource constituencies is critical if the government and the private sector are to understand each other's positions and interests, subsection (h) places a duty on the commissioner to consult with all appropriate parties in the administration of the Act. The commissioner is expected to consult continuously with other state agencies possessing natural resource management responsibilities and to draw fully upon their expertise; this is especially true where DNR has no expertise of its own in a particular subject area. The term "landowners" should be construed to include adjacent landowners with respect to operations which may affect them. Moreover, the commissioner is not limited to entities within the state; federal

agencies, and agencies and institutions of other states and of foreign countries should be contacted to provide the state forester with maximum access to information on new management techniques and other matters. The provision on cooperative agreements and contracts is intended to permit formalization of consultation, management, and other activities where desirable.

With respect to subsection (i), there were a number of requests for creation of an advisory committee or board to assist the state forester. However, establishment of a specific committee or board by statute automatically initiates a useless controversy over the makeup of the entity. Moreover, while a general advisory committee may be important, creation of special committees on particular issues of special importance may also be warranted from time to time. While the bill endorses the advisory committee approach where appropriate, it provides flexibility which is the key to a successful advisory committee system, and thus leaves it to the department to determine the particulars. The commissioner is, nevertheless, directed to establish at least one advisory committee, and it is expected that the commissioner will use the advisory committee system (1) to develop specific approaches to implementing the standards in sec. 40 through the advice of professionals and other interested persons, (2) to formulate the particulars of the exemptions under sec. 30(c), and (3) to carry out consultative duties under subsection (h).

Moreover, advisory committees created must be representative of the various constituencies dependent on or affected by management of forest resources so that a full range of public opinion is received. Advisory committees should meet regularly, and members should be appointed to specified terms long enough to permit them to become familiar with the issues and to make meaningful recommendations. The commissioner should appoint an advisory committee as soon as possible after the effective date of the Act to assist in the development of regulations. The provision on travel and expenses is intended to be used only where advisory committee activities are clearly necessary and of benefit to the state.

While there were several suggestions for a provision mandating the location of the state forester, I believe that access to trained forestry personnel by the public is more directly responsible for the success of a government forestry program. Therefore, subsection (j) speaks to distribution of the department's foresters rather than the location of the state forester.

The introduction to this analysis stressed the importance of avoiding duplication of existing authority in the enactment of forest practices legislation. Subsection (k) fulfills this objective by insuring that the statutory prerogatives of other agencies are retained and that this Act is not viewed as other than supplemental to the overall state regulatory framework for forest resources. The only exceptions are that (1) forestry regulations developed under this chapter shall be used as the forestry segment of the Coastal Management Act program and (2) if authorized by the commissioner of environmental conservation, regulations adopted under this chapter may serve as the forestry portion of the state program for control of nonpoint source pollution.

Subsection (l) is self-explanatory.

Section 30. Applicability.

This section specifies the applicability of the Act to particular land and activities.

Subsection (a) is self-explanatory. The limitation in SB 59 to commercial forest land was removed as it was considered to be illogical and extremely difficult to administer. Municipalities are not prevented from adopting ordinances which embody stricter standards and practices than those promulgated under this Act.

Subsection (b) reflects the fact that state standards adopted under the Federal Water Pollution Control Act may be made applicable to federal lands.

Subsection (c) covers exemptions. The intent of this provision is to limit the applicability of this Act to major commercial operations which genuinely affect the objectives of this chapter relating to the maintenance of a stable and healthy forest products industry and the perpetuation of supplies of renewable resources. Consequently, the commissioner is required to make exemptions by regulation to insure that small landowners who expect to be able to sell or otherwise use their timber will be permitted to do so. Since it is impossible to determine in all cases what is a "small landowner", the commissioner may determine the particulars through exemption regulations. However, any owner of the tracts described is entitled to an exemption unless his tract is being used as a part of a major commercial operation, as where a logging company purchases the timber rights to numerous contiguous tracts in order to conduct a large scale logging program. With respect to tracts larger than 160

acres which are not part of a homestead, farm, or residential or recreational property, the commissioner may exempt them if they are not capable of being managed as a sustained yield forest unit.

Section 40. Regulatory and Administrative Standards.

The best approach to forest practices legislation is to avoid placing specific practices measures in the statute; instead, practices should be developed through the regulatory process, with such regulations and other administrative actions governed by guiding standards contained in the Act. Section 40 contains such standards.

Subsection (a) contains standards applicable to all forest land, regardless of whether in public or private ownership.

Paragraph (1) recognizes the importance of determining the reforestation capacity of land before timber harvesting. The determination is to be made by the government. This standard is not intended to mandate a non-declining yield type of management, but it does reflect the paramount state interest in having all forest land (unless legitimately converted to another use) continue to produce merchantable timber over the long term.

Paragraph (2) dictates that important information relative to any decision should be collected and used, and that it should be current. In some cases, land managers have become lax in keeping abreast of recent developments in their field, and make decisions based more on their status as professionals rather than through true analysis of a situation. This standard is not intended to be an unwarranted obstacle to management activities or to focus the burden of developing data on the operator. It does, however, place a duty on the manager to account for his actions in a convincing way.

Paragraph (3) mandates recognition of the concepts of environmentally sensitive areas and best management practices in conjunction with nonpoint source measures if adopted under this chapter. A number of approaches could be utilized, depending on the objective to be achieved, including standards, quantitative limitations, and zones or management units.

Paragraph (4) identifies two important elements often missing in forest resource management; first, that forest practices requirements often impose real costs on the operator, and should be weighed in terms of the public benefits realized;

and second, that a format for the harvest of trees convenient for government managers may be unrealistic for operators in view of marketing conditions.

Paragraph (5) recognizes the fundamental public trust obligation of the state to insure that the capability of the land to produce renewable resources is not impaired. While a particular species of tree or wildlife may have little relative value now, the future may find it suddenly in great demand. If the land is incapable of producing it to the demand level, an important land management option is lost, to the detriment of the public welfare.

Paragraph (6) reflects that loss of scenic quality may have an impact beyond the boundaries of the land where the activity is taking place. While this standard permits consideration of scenic factors where economically feasible, it is not intended as a prohibition on land-use activities, especially on private land where private landowners are justified in using resources subject to their ownership. It is directed primarily at public land where scenic quality is one of the multiple uses and values deserving recognition in a public land management program. In situations where an area is an important source of tourism and recreation, for example, a landscape architect might be employed in the design of the layout.

Subsection (c) contains those additional standards appropriate for public land.

Paragraph (1) follows similar federal legislation by applying the principles of multiple use and sustained yield to public land. These concepts are so well accepted as desirable objectives that further explanation is unnecessary. Once again, the approach which allows satisfaction of present needs without foreclosing future options is the most desirable.

Paragraph (2) injects another common principle in forest management. Specifically, while multiple use necessarily involves combining compatible uses within a large land area, forest practices and allocations result in assigning priority uses to particular areas. This standard provides that any allocation system should be implemented through analysis of the capability of the land and the resources and values present.

Paragraph (3) does not require that all uses be given equal distribution in the implementation of a multiple-use system.

It does, however, require that the process begin without any preconceptions or prejudices on the part of land managers.

Paragraph (4) recognizes the need to accommodate the concerns and requirements of the many forest resource constituencies.

Section 50. Administrative Plan and Report.

Subsection (a) requires that a plan be developed by the department demonstrating compliance with the Act. Without such a planning process, it would be difficult for the department to direct all of its activities and programs toward meeting uniform goals. Moreover, there would be no guarantee that a long range blueprint (based on a rotation age or similar concept) for forest management would be formulated; this is necessary if undesirable consequences are to be addressed before they become impossible to deal with. It is expected that the plan will concern itself specifically with management issues of interest to the public, such as harvesting methodology, timber management philosophy, and a system for perpetuation of supplies of renewable resources. While the plan will necessarily be revised and augmented over time to reflect new information and management techniques, the first draft should accompany the first report to the legislature required by subsection (b).

Subsection (b) requires a report to the legislature demonstrating accountability with respect to subsection (a).

Subsection (c) directs the preparation of recommendations for financial incentives as part of the threefold approach to achieving the objectives of the Act (regulations, services, and incentives).

Section 60. Regulations.

This section vests authority for regulations governing forest practices. Regulations may be adopted, of course, to implement other portions of the Act as well.

Subsection (a) lists the subject areas for regulations. They are intended to cover appropriate silvicultural and related activities necessary for forest management without encroaching on functions traditionally performed by other agencies. It is expected that a set of at least interim regulations would be developed by early 1979.

There has been a number of requests for a one-stop permit process. The department should not be vested with authority

to actually approve permit applications on behalf of other agencies since that is a matter for their discretion. However, an operator should not have to visit each agency and division which requires a permit. Therefore, this section allows the operator to make all of his permit applications through one place and to be informed of the outcome by the department. Where applicable, the provisions of AS 46.35 should be used to coordinate multiple permit determinations.

Subsections (c) and (d) are self-explanatory.

Section 70. Review and Approval of Operations.

This section is intended to institute a review process which combines the best elements of the notification system and the prior-approval system without incorporating their disadvantages as well.

Subsection (a) is, of course, subject to any exemptions granted under sec. 30(c).

Subsection (b) stresses the importance of the professional management services approach. If there is early and consistent contact between operators and the department with respect to pending operations, the operator will gain maximum benefit from assistance programs, understand applicable regulations so as to avoid inadvertent violations, provide state officials with a full understanding of his interests and needs, and in general facilitate administration of the Act. With full cooperation between operators and the state, review under this section could be rendered largely a formality. Moreover, while the statutory requirements must be met, I recognize that operations may range from a one-time harvest occupying one season to an ongoing harvest program taking place continuously for years. The commissioner is expected to tailor this process to various proposed projects so that unnecessary bureaucratic obstacles are not erected.

The review process in subsections (c) through (i) imposes an ironclad time frame on the length of the government review. There are no exceptions. The notification description should consist of a logging and access plan so that the location of land-use activities is easily discerned. The extended period in subsection (d) is to be authorized only where the complexity of the subject matter makes it physically impossible for a 20-day review, such as for a proposed operation involving many thousands of acres to take place over a number of years. If state agencies possess the manpower to review the operation within 20 days, an extension

should not be authorized. Moreover, an extension should only be for the period necessary to complete the review, and not necessarily for the full additional 20 days. Above all, the commissioner must insure that extensions are not used as an excuse for bureaucratic delay. This extension is not to be employed as an excuse for bureaucratic delay.

Subsection (e)(4) recognizes that there may be instances where a particular phase of an operation requires closer examination; it is emphasized that additional materials required of the operator under this language must be carefully limited to only those matters requiring additional review, and not used as an excuse for the forest managers to force the operator to do their work for them. Once again, if the professional management services approach is fully used, the review process in this section should not become an issue.

With respect to public notice under subsection (h), notice should be given locally as well where there is no newspaper published in the area.

Subsection (i) stresses that site examinations may be used where such would benefit the review process.

Subsection (j) prohibits substantial deviation from approved plans. "Substantial deviation" means a departure significant enough to jeopardize attainment of the objectives of the Act. Close contact between the operator and the department should permit any problems to be resolved in advance of a crisis.

Subsection (k) reflects that there will be some instances where immediate action is necessary, as in the case of salvage of trees, fire hazards, or other situations where a genuine emergency is involved.

The authority for posting of security under subsection (m) is to be used only where necessary. Obtaining bonds and other security devices is often difficult, especially for small operators, and may prevent them from doing business at all. Where security is required, the amount should be geared to the actual danger being protected against, possibly through some type of sliding scale arrangement.

Subsection (n) is self-explanatory. This was not intended to apply to operations which have already been completed.

Section 80. Deployment of Broadcast Chemicals

Regulation of forest practices must necessarily reflect the state of the art. All consequences cannot be known in advance of operating; with an appropriate margin of error built in, such operations can be conducted successfully even though there are many unknowns regarding particular impacts.

Broadcast chemicals are a special case, however, as they involve the introduction of a foreign substance into the ecosystem. The state, for example, very strictly controls the introduction of exotic wildlife into Alaska because biologists often have little idea as to how a new species will interreact with the existing species composition. Foreign substances pose similar dangers to the forest ecosystem. I believe that forest managers should have a reasonable idea of the effects of using a foreign substance before it is applied on a large scale. While this section leaves to the discretion of the commissioner of environmental conservation the methodology to be used in regulating broadcast chemicals, it may well be advisable to undertake testing of some substances under controlled conditions before permitting commercial application of the substance.

Section 90. Conversion of Forest Land to Other Uses.

The provision in this section is a requirement of due process. However, it is my intent that proposed conversions be closely monitored so that subterfuge is not employed to escape responsibilities for reforestation. Moreover, while continued use as productive forest land cannot be required, it may be permissible to specify minimum revegetation of land for water quality purposes.

Section 100. Inspections, Investigations, and Enforcement.

This section authorizes each agency with statutory responsibilities over forest land to enforce those responsibilities. However, it also directs affected agencies to coordinate their enforcement activities so that operators are not subjected to differing interpretations of the same law or other undesirable or unnecessary procedures; interagency enforcement teams could be used to avoid this problem. Enforcement agents should avoid entering upon private land unless there is good reason to be there.

Section 110. Prohibitions, Penalties, and Enforcement Procedures.

The enforcement procedures in this section are straightforward and need no detailed explanation. Several features of this section should be stressed, however.

First, there are no criminal penalties. An administrative (civil) penalty system is used instead. Fines and penalties imposed are judicially reviewable under sec. 120.

Second, the burden of proof is, of course, on the state. An order resulting from a proceeding may be tailored to the exact nature of the violation so that the punishment is not disproportionate to the violation. A number of factors must be considered in determining a fine so that it reflects the gravity of the violation; it is expected that some type of fine schedule will be developed by the department so that penalties for the same offense are uniform.

Third, any emergency orders are limited to actual emergencies and have a duration of 21 days; therefore, they cannot be used as an excuse for not holding a hearing except in the context of an emergency.

Fourth, the bill establishes a hearing system designed to insure that operators are given a fair opportunity to present their case, and it recognizes that any proceeding instituted against a respondent may visit considerable expense and inconvenience on him. Special provisions are inserted to provide assistance to a respondent and to permit him to select an informal, nonadversary hearing process.

Fifth, the bill provides for a hearing officer who is not a state employee and who is not in any way connected with the preparation of the state's case.

Section 120. Appeals and Judicial Review.

This section is self-explanatory.

Section 130. Civil Action.

This section is self-explanatory. However, in order to discourage frivolous or obstructionist suits, I would hope that judges adjudicating cases brought under this section having no serious merit would impose costs and fees on the plaintiff under Civil Rule 82.

Section 950. Definitions.

While the definitions are self-explanatory, special mention must be made of the definition in paragraph (13). The intent of this definition, as the term is used in the Act, is to insure that consequences recognizable on the basis of the present state of the art of forest resource management are

reflected in management decisions, and that decisions include the establishment of a margin of error where it is understood that the consequences of an action are unknown. It is expected that studies undertaken by the state forester (using experimental forests and/or commercial logging operations) will be used to continually increase the bank of knowledge relating to the impacts of logging and other land use activities, and that the results would be described in the report submitted under § 50.

Partially exempt service.

Section 2 of the bill amends the section of the State Personnel Act listing the positions in the exempt service. It adds the state forester, consistent with the new chapter in sec. 1 of the bill.

Effective Date.

The effective date of the Act is January 1, 1979. However, it is expected that the department will engage in preparatory activities immediately so that full implementation may begin on the effective date.

Sincerely,

Jay S. Hammond
Governor

IN THE SENATE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 59

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE -- SECOND SESSION

BILL

For an Act entitled: "An Act relating to forest resources and practices; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 41 is amended by adding a new chapter to read:

CHAPTER 17. FOREST RESOURCES AND PRACTICES.

Sec. 41.17.010. DECLARATION OF INTENT. The legislature declares that

(1) the forest resources of Alaska are among the most valuable natural resources of the state, and furnish timber and wood products, fish and wildlife, tourism, outdoor recreation and aesthetic enjoyment water, soil, air, minerals, diverse lifestyle opportunities, general health and welfare, and a multitude of other products, benefits, and services, tangible and intangible;

(2) economic enterprises and other activities and pursuits derived from forest resources warrant the continuing recognition and support of the state;

(3) the state has a fundamental obligation to insure that management of forest resources guarantees perpetual supplies of renewable resources, provides nonrenewable resources in a manner consistent with that obligation, and serves the needs of all Alaska for the many products, benefits, and services obtained from them;

(4) government administration of forest resources should combine professional management services, regulatory measures, and economic incentives in a complementary fashion, and should draw upon

the expertise of professional foresters in conjunction with other disciplines;

(5) under the leadership of the Department of Environmental Conservation, the state should exercise its full responsibility and authority for control of nonpoint source pollution with respect to the Federal Water Pollution Control Act, as amended;

(6) the provisions of this chapter shall be the basis for forest management standards, policies, and guidelines developed under the Alaska Coastal Management Act to the extent permitted by law.

Sec. 41.17.020. ADMINISTRATION. (a) The governor may create, within the Department of Natural Resources, a Division of Forest, Land, and Water Management to carry out this chapter and other appropriate duties designated by the governor. The division shall be headed by a director who shall be the state forester, appointed by the commissioner to the partially exempt service in accordance with law. The state forester shall be a natural resources land manager with generally accepted educational credentials, familiar and experienced with the renewable and nonrenewable resources and values of forest land and the products, benefits, and services obtained from them.

(b) The commissioner shall administer this chapter and is authorized and encouraged to delegate responsibilities for carrying out this chapter to the state forester.

(c) After planning and classification procedures under AS 38.05 have been completed, the governor may create, by administrative order, state forests, to consist of land determined by him to be desirable for retention in state ownership as multiple-use land.

(d) The commissioner may designate and operate experimental and research forests on state land consistent with the limitations of AS 38.05.300. Laboratories and other facilities may be employed in con-

junction with those forests.

(e) The commissioner may establish and maintain forest vegetation nurseries and greenhouses for planting stock to be made available, with or without charge, to organizations, institutions, government agencies, individuals, and businesses for reforestation, afforestation, and related purposes.

(f) The commissioner is authorized to undertake cooperative forestry programs, extension services and education programs, and to otherwise offer a full range of professional management services to the interested public. When he considers it beneficial, the commissioner may participate in federal assistance programs by accepting assistance in whatever form offered.

(g) The commissioner may develop proposed regulations under this chapter as part of the state program for control of nonpoint source pollution under the Federal Water Pollution Control Act, as amended, and shall seek to enter into a cooperative agreement with the commissioner of environmental conservation for that purpose. However, the Department of Environmental Conservation is the lead agency for water quality and control of nonpoint source pollution under that Act, and the regulations and cooperative agreement are therefore subject to the advance approval of the commissioner of environmental conservation.

(h) In the administration of this chapter, the commissioner shall consult with and draw upon the expertise of interested organizations, enterprises, individuals, government agencies, educational institutions, and landowners. The commissioner may enter into cooperative agreements and contracts with them to carry out this chapter.

(i) The commissioner shall establish, for general or special purposes, one or more representative advisory committees to assist in the administration of this chapter. Members of advisory committees

shall be appointed to specified terms, and may be reimbursed for travel and expenses in accordance with law when approved by the commissioner.

(j) The commissioner shall locate department personnel with forestry expertise throughout the state to facilitate public access to professional management services and other forest resources programs.

(k) Notwithstanding any other provision of this chapter, the commissioner may not employ the authority vested by this chapter so as to duplicate or preempt the statutory authority of other state agencies to adopt regulations or undertake other administrative actions governing resources, values, or activities on forest land except for (1) regulations under the Coastal Management Act; and (2) if authorized by the commissioner of environmental conservation, regulations relating to control of nonpoint source pollution.

(l) The commissioner may take other actions necessary and proper for the administration of this chapter, including the adoption of regulations under the Administrative Procedure Act (AS 44.62).

Sec. 41.17.030. APPLICABILITY. (a) Unless otherwise specified, this chapter applies to forest land under state, municipal, or private ownership.

(b) The provisions of this chapter applicable to state land are applicable to forest land under federal ownership to the extent permitted by law.

(c) The commissioner shall exempt from the provisions of this chapter

(1) minor, small scale, or incidental operations of little significance with respect to the purposes of this chapter; and

(2) operations on private homesteads, farms, residential or recreational property, and on all private tracts of 160 acres or less under single ownership, unless those operations are part of a major

commercial logging network encompassing other tracts of land.

Sec. 41.17.040. REGULATORY AND ADMINISTRATIVE STANDARDS. (a) All regulations, administrative actions, and other activities and duties undertaken under this chapter must be in full accordance with the standards set out in this section.

(b) With respect to state, municipal, and private forest land, the following standards apply:

(1) timber harvesting is limited to areas where data and information demonstrate that natural or artificial reforestation techniques will result in the production of a sustained yield of merchantable timber from that area;

(2) to the maximum extent possible, all applicable data and information of applicable disciplines must be updated and used in making decisions relative to the management of forest resources;

(3) environmentally sensitive areas and best management practices must be recognized in the implementation of any nonpoint source pollution control measures authorized under this chapter;

(4) where not inconsistent with the other provisions of this section, administration of forest land must consider marketing conditions and other economic constraints affecting the operator;

(5) there shall be no significant impairment of the productivity of the land and water with respect to renewable resources; and

(6) where economically practicable, allowance may be made for scenic and aesthetic quality in or adjacent to areas of substantial importance to the tourism and recreation industry.

(c) With respect to state and municipal forest land only, the following standards also apply:

(1) forest land must be administered for the multiple use of the renewable and nonrenewable resources and for the sustained

yield of the renewable resources of the land in the manner which best provides for the present needs and preserves the future options of the people of Alaska;

(2) any system of allocating predominant uses or values to particular units within a contiguous area of land must reflect in reasonable proportion the various resources and values present in that area;

(3) determinations of multiple-use patterns to be recognized within any area must begin with the assumption that all resources and values are of equal priority; and

(4) to the extent its capacity permits, forest land must be administered so as to provide for the continuation of businesses, activities, and lifestyles which are dependent upon or derived from forest resources.

Sec. 41.17.050. ADMINISTRATIVE PLAN AND REPORT. (a) The commissioner shall develop and continually maintain a long range plan for the administration of this chapter which demonstrates that the provisions of sec. 10 are being recognized and that the standards of sec. 40 are being met. The commissioner shall maintain a current inventory or assessment of timber on forest land to assist in meeting the requirements of this section.

(b) On June 30, 1980, and at two-year intervals after that date, the commissioner shall submit a detailed report to the legislature reviewing the administration of this chapter over the preceding two years, demonstrating compliance with (a) of this section, and describing how the plan will affect the welfare of the forest products industry and other activities and pursuits derived from or affected by forest resources.

(c) As a part of the report to be submitted on June 30, 1980,

under (b) of this section, the commissioner shall, after consultation with interested constituencies,

(1) review the structure and operations of the division of forest, land, and water management;

(2) describe the degree to which the division has established a high-profile forestry program utilizing the expertise of professional foresters;

(3) describe the responsiveness of the division to the interest of forest resources constituencies; and

(4) make recommendations to the legislature respecting the legal authority of the Department of Natural Resources relating to forestry, the qualifications of the director of the division, and the location of the division within the department.

(d) On January 1, 1981, the commissioner, after consultation with the commissioner of revenue, shall transmit to the legislature recommendations for legislation establishing economic incentives which would further the purposes of this chapter.

Sec. 41.17.060. REGULATIONS. (a) The commissioner may adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) governing operations on forest land with respect to the following:

(1) harvesting, removal, and use of timber and tree products and related management activities;

(2) reforestation, afforestation, revegetation, stocking, prescribed burning, fertilization, thinning, and other silvicultural activities;

(3) brush, slash, and debris, and salvage of trees;

(4) soil erosion and wasting;

(5) fire and flood hazards;

(6) general administrative requirements and procedures;

(7) prevention and control of disease and insect infestation;

(8) with respect to the items in this subsection, identification of areas or circumstances warranting prohibitions or special limitations on land-use activities.

(b) An operator may apply through the commissioner for permits required by other state agencies to operate on forest land, which applications may be forwarded to the commissioner of environmental conservation for procedures in accordance with AS 46.35. The commissioner shall notify the operator of the action taken. Where practicable and desirable, the commissioner may enter into cooperative agreements with federal agencies authorizing the department to serve as a collection point for federal permit applications.

(c) The commissioner may establish regions, districts, or other subdivisions of forest land within the state in which different regulations apply to reflect varying conditions within the state, or to facilitate administration.

(d) The commissioner shall adopt only those regulations necessary to accomplish the purposes of this chapter, and shall avoid those which increase operating costs without yielding significant benefits.

Sec. 41.17.070. REVIEW AND APPROVAL OF OPERATIONS. (a) Operations on forest land must be reviewed and approved under this section for consistency with the policies and provisions of this chapter and regulations adopted under this chapter.

(b) The commissioner shall make full use of professional management services and other educational and assistance programs of the department to encourage early contact between operators and the state and to minimize reliance on this section as a principal means of

achieving the purposes of this chapter.

(c) Before operating on forest land, an operator shall give notification to the commissioner consisting of

(1) a brief written description of the proposed operation;

(2) a USGS map of the largest available scale showing the location of all proposed activities;

(3) proposed measures for soil conservation and reforestation; and

(4) evidence that the landowner and timber owner (if different from the operator) have approved the proposed operation.

(d) Within five days after receipt, the commissioner shall distribute the notification materials to affected state agencies. The agencies shall make their recommendations within 20 days after receiving the materials. The commissioner may extend the review period up to an additional 20 days only if the subject matter is highly and unusually complex.

(e) Within 10 days after expiration of the review period, the commissioner shall, as appropriate:

(1) grant unconditional approval of the proposed operation;

(2) grant conditional approval, imposing necessary terms and conditions based on the recommendations of the department or another agency;

(3) disapprove the proposed operation, but only if he considers it impossible to take other action under this subsection; or

(4) upon the recommendation of the department or another agency, require the submission of additional plans or descriptions from the operator, but only to the extent necessary for proper assessment of the proposed operation; however, any action by the commissioner under this paragraph must be taken within three days after expiration

of the review period.

(f) If action is taken under (e)(4) of this section, the commissioner and affected agencies have an additional 20-day review period, after which time action must be taken under (e)(1), (2), or (3). If the commissioner takes no action under (e) of this section within the statutory time limit, he is presumed to have taken action under (e)(1). Action taken by the commissioner under (e) of this section must be accompanied by a written justification.

(g) If recommendations of another state agency are rejected, the commissioner shall provide the agency with a written statement of the reasons for that action.

(h) Upon receipt of any notification, the commissioner shall provide copies to the timber owner and landowner, if different from the operator, and within five days shall publish the brief description received in a newspaper of general circulation, with an invitation for public comment. Recommendations received from the public must be considered.

(i) Information and paperwork required of the operator under this section must be limited to that necessary to accomplish the purposes of this section. Site examinations, including an interdisciplinary review, may be undertaken by the commissioner.

(j) An operator may not substantially deviate from plans approved under this section unless approved in writing by the commissioner after full consultation with affected agencies.

(k) The commissioner may limit the review and approval process under this section to 10 days where such action is immediately necessary for the preservation of the public peace, health, safety or general welfare, and is undertaken in concert with affected agencies.

(l) No action taken by the commissioner under this section is an

authorization for an operator to violate applicable laws or regulations.

(m) The commissioner may require an operator to post security with respect to an operation, and to submit written reports.

(n) Operations which begin before the effective date of this Act have one year to comply with this chapter.

Sec. 41.17.080. DEPLOYMENT OF BROADCAST CHEMICALS. The commissioner of environmental conservation, in consultation with the commissioner, shall formulate necessary plans and measures to insure that application of broadcast chemicals and other substances foreign to the Alaska forest ecosystem do not lead to results contrary to the objectives and provisions of this chapter and other applicable laws and regulations relating to renewable resources. Regulations adopted by the commissioner of environmental conservation may include requirements for advance testing, posting of security, written reports, and other matters.

Sec. 41.17.090. CONVERSION OF FOREST LAND TO OTHER USES. An intention to convert forest land to other uses after timber harvesting must be stated in the notification submitted under sec. 70 of this chapter. In that event, reforestation requirements adopted under this chapter do not apply, except that conversion must be completed during the time set by regulation for minimum reforestation of the land, and other requirements for revegetation may be imposed to the extent permitted by law. If the commissioner finds at any time that the responsible party has failed to conform to the intent to convert as stated in the notification, the commissioner shall revoke approval of the conversion and require full compliance with reforestation requirements.

Sec. 41.17.100. INSPECTIONS, INVESTIGATIONS, AND ENFORCEMENT. The commissioner may inspect and investigate forest land and activities

on it and may enter upon it in conjunction with any operations as necessary to insure compliance with applicable regulations and requirements and to otherwise enforce the provisions of this chapter. Other state agencies have this same authority to the extent necessary to enforce their own laws and regulations on forest land. Those agencies and the commissioner shall coordinate their actions under this section.

Sec. 41.17.110. PROHIBITIONS, PENALTIES, AND ENFORCEMENT PROCEDURES. (a) It is unlawful for any person to violate or permit a violation of a provision of this chapter, a regulation adopted under this chapter, or a term or condition of any approval granted under secs. 70 - 90 of this chapter. A person who commits a violation is liable for a civil fine to be assessed by the commissioner not to exceed $10,000.

(b) If an investigation discloses probable cause to believe a violation has occurred, the commissioner shall serve upon the alleged violator (the "respondent") written notice and a formal complaint which describes the alleged violation and requires the respondent to answer the charges at a hearing not more than 10 days thereafter. The respondent will be granted a 10-day extension upon request. The notice must also describe any damage which has occurred or might occur as a result of the violation. At the hearing, the state must show by a preponderance of the evidence that the respondent has caused or permitted a violation described in (a) of this section.

(c) Within 10 days after the hearing, or upon nonappearance of the respondent, the hearing officer shall enter a final order. The order must be based on the evidence presented at the hearing, and must be accompanied by a written opinion stating the reasons for the decision. The commissioner shall immediately notify the respondent of the order by registered mail. The order may include:

(1) a directive to stop the violation;

(2) the imposition of a civil fine under (a) of this section, which is payable immediately;

(3) a directive to repair damages;

(4) a finding that the charges are wholly or partially unjustified; or

(5) a combination of the above.

(d) In determining the amount of any civil fine imposed, the following must be considered, as appropriate:

(1) the character and degree of injury to forest resources and values;

(2) the degree of intent or negligence of the respondent in causing or permitting the violation;

(3) the character and number of past violations caused or permitted by the respondent; and

(4) if such information is available, the net economic savings realized by the respondent through the violation described in (a) of this section.

(e) If the commissioner finds that a violation described in (a) of this section has occurred and that continuation of the violation or failure to repair damage would likely result in irreversible or irretrievable damage to the forest resources or values affected, and it would be prejudicial to the welfare of the state to delay action pending a hearing, the commissioner may, without prior hearing, issue a temporary order in addition to the documents required by (b) of this section requiring the respondent to stop the violation or repair damage or both. The order remains in effect for 21 days unless a final order is issued earlier. Proceedings in conjunction with the alleged violation must otherwise be the same.

(f) If a person fails to comply with an order issued under (c) or (e) of this section, the attorney general, at the request of the commissioner, may seek an injunction suspending all or part of the operations being conducted by the respondent until he or she complies with the order. If the order directs the respondent to repair damage, the commissioner may proceed with department staff or contractors to repair the damage, and the timber owner, forest landowner, and operator are jointly and severally liable for the cost of the repair after delivery by the commissioner of an itemized statement of expenses incurred. Those expenses constitute a general lien, arising at the time the order is issued, upon the real and personal property of the operator, timber owner, and forest landowner within the state. A lien arising under this subsection is prior and paramount to all other liens and encumbrances except governmental tax liens.

(g) All orders issued under this section are enforceable by injunction, attachment, garnishment, or other appropriate remedy.

(h) Unless otherwise specified, proceedings under this section are not subject to the Administrative Procedure Act (AS 44.62). A hearing under this section must be held before a hearing officer, appointed by the attorney general from among members of the Alaska Bar Association who are knowledgeable and experienced in the subject matter. A person who has assisted in the preparation of the state's case or who is a state employee is ineligible. Hearings are not limited by common law, statutory, or judicial rules of evidence; however, the hearing officer may admit only that evidence which appears to him to be reliable and trustworthy. All hearings must be open to the public. Written or oral testimony may be submitted. A party to a hearing may make written or oral argument, secure the issuance of a subpoena under AS 44.62.430, offer testimony or other evidence, and

cross-examine witnesses. The hearing officer shall endeavor, in conducting any hearing, to insure that the respondent understands the proceedings and that the facts supporting the position of each party have been adequately presented. Hearings shall be held as close as practicable to the location of the alleged violation. Testimony given at the hearing must be recorded.

(i) If the respondent notifies the commissioner within five days before the hearing provided for in (h) of this section, the following rules and procedures apply to the hearing:

(1) the hearing will be a nonadversary proceeding, with the hearing officer fully and impartially representing the interests of the state and the respondent;

(2) the hearing officer will thoroughly investigate the facts and circumstances relating to the alleged violation, including taking testimony from appropriate persons, collecting and examining documents and other evidence, and performing other actions consistent with due process of law;

(3) issue a decision in accordance with the applicable procedures of (h) of this section.

(j) For purposes of this section, "damage" includes any unsatisfactory condition resulting from an alleged violation, and an order to "repair damage" may direct correction of any unsatisfactory condition.

Sec. 41.17.120. APPEALS AND JUDICIAL REVIEW. (a) An administrative action of the department under this chapter, except actions under sec. 110 and except for adoption of regulations, may be appealed to the commissioner within 30 days after it is taken. The commissioner shall hold a hearing, at which all substantial issues shall be considered, within 15 days after an appeal is filed. Within 10 days after conclusion of the hearing thereafter, the commissioner shall

issue a written decision based upon the evidence, which must be provided to the appellant. The commissioner may delegate his duties, in whole or in part, under this subsection to a hearing officer.

(b) A final decision under (a) of this section or a final order under sec. 110 of this chapter, may be appealed to the superior court within 30 days after it is issued. Judicial review must be as provided in AS 44.62.560 and 44.62.570.

(c) A temporary order issued under sec. 110 of this chapter may be immediately appealed to the superior court as to its propriety.

Sec. 41.17.130. CIVIL ACTION. Any aggrieved person may commence a civil action on his or her own behalf against the commissioner where it is alleged that the commissioner (or his delegate) has failed to perform a duty or has committed an abuse of discretion under this chapter. The superior court has jurisdiction to order the commissioner to take necessary corrective action. No action may be commenced under this section until the plaintiff has completed an appeal under sec. 120(a) of this chapter unless the plaintiff can demonstrate that a condition of urgency exists or unless he is alleging a failure to perform a duty. Nothing in this section restricts any right which a person or class of persons may have under statute or common law to any other relief against the commissioner.

Sec. 41.17.950. DEFINITIONS. In this chapter, unless the context otherwise requires,

(1) "broadcast chemicals" includes pesticides, herbicides, fungicides, fertilizers, poisons, and any other substances

(A) used for silvicultural management or related purposes;

(B) not native to the ecosystem in which they are being applied; and

(C) having a foreseeable adverse impact on the welfare of renewable resources, as determined by the commissioner of environmental conservation;

(2) "commissioner" means the commissioner of natural resources;

(3) "department" means the Department of Natural Resources;

(4) "forest land" means land stocked or having been stocked with forest trees of any size and not currently developed for non-forest use, regardless of whether presently available or accessible for commercial purposes, and includes any such land under state, municipal, or private ownership;

(5) "forest landowner" means a person who owns forest land;

(6) "multiple use" means

(A) the management of all the various resources of forest land so that they are used in the combination that will best meet the needs of the citizens of Alaska, making the most judicious use of the land for some or all of these resources or related values, benefits, and services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions;

(B) that some land will be used for less than all of the resources; and

(C) harmonious and coordinated management of the various resources, each with the other, without significant impairment of the productivity of the land and water, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output;

(7) "operations" means timber harvesting or activities

associated with timber harvesting or forest development unless exempted under sec. 30 of this chapter;

(8) "operator" means a person who is engaged in timber harvesting or activities associated with timber harvesting or forest development himself, or who contracts with others to conduct operations on his behalf, except a person who is engaged in an operation as employee with wages or piecework as his sole compensation;

(9) "person" includes a joint venture as well as the entities set out in AS 01.10.060(7);

(10) "silviculture" means the art of producing and tending a forest, the application of the knowledge of silvics in the treatment of a forest, and the theory and practice of controlling and managing forest establishment, composition, and growth;

(11) "sustained yield" means the achievement and maintenance in perpetuity of a high level annual or regular periodic output of the various renewable resources of forest land and water without significant impairment of the productivity of the land and water, but does not require that timber be harvested in a non-declining yield basis over a rotation period;

(12) "timber owner" means a person who owns timber on forest land or who has the rights to timber, but does not own the land itself; and

(13) "significant impairment of the productivity of the land and water" means any activity which may foreseeably result in prolonged or substantial damage to renewable resources or prolonged or substantial reduction of the continuing capability of the land or water to produce renewable resources at their natural or historic levels.

* Sec. 2. AS 39.25.120 is amended by adding a new paragraph to read:

(10) the state forester, in the Department of Natural Resources.

* Sec. 3. This Act takes effect January 1, 1979. However, the commissioner is not precluded from undertaking preparatory activities in the interim.

To John

Date _____ Time _____

WHILE YOU WERE OUT

M Loren Womke

of _____

Phone (3183) or 3460

TELEPHONED	✓	PLEASE CALL	✓
CALLED TO SEE YOU		WILL CALL AGAIN	
WANTS TO SEE YOU		RUSH	

RETURNED YOUR CALL	

Message re SB 59

Operator

02 09 7 (Rev. 5/75)

Revision of Senate Bill 59: the proposed Alaska Forest Practices Act

The revised bill accompanying this sectional analysis makes substantial changes in the administrative review and fair hearing provisions of SB 59. Other sections of SB 59 remain unaffected. The sole objective of the amendments is to create a mechanism which will operate as a check and balance to the broad authority vested in the Commissioner of the Department of Natural Resources by the administration's version of the forest practices bill.

The governor's version delegates extensive regulatory authority over all commercial forest land to the commissioner. These proposed changes will in no way diminish the department's rule-making functions. However, they will deny the agency the discretion to act as the arbiter of first resort when conflicts arise between the department and those regulated. The likelihood for the abuse of administrative power arises because the department is empowered, subject only to the standards in SB 59, to create an extensive body of law, to investigate and prosecute suspected violators, and to adjudicate disputes. This mixing of legislative, prosecutorial, and judicial roles in one agency creates an unnecessary risk that agency bias will be transmitted into administrative adjudications and that potential violators will not receive a fair hearing before an impartial tribunal or hearing officer.

By contrast, the proposed substitute adopts the philosophy of explicit and complete separation of powers. The agency may not, as in SB 59, act as the trier of fact and law in its own case. To accomplish this end, an independent and quasi-judicial tribunal would be established to hear and decide all departmental complaints. This mechanism is not without precedent and is conceptually akin to the independent administrative review provided under the 1973 Forest Practices Act of California. At the federal level, this form of external separation of powers was utilized early on by the drafters of the Taft-Hartley Act, where two separate authorities were created, one for investigating and prosecuting, and the other for judging.

Hearing Officers

SB 59: Hearing officers are selected from those qualified employees of the state. The bill no where defines or limits the class of hearing officers. Conceivably, an officer could be designated by the commissioner from among the employees of the Department of Natural Resources.

Revision: Hearing officers would be selected by the governor from outside of the department and must be attorneys and Alaska residents. Presumably, hearing officers would be appointed under the provisions of AS 44.62, upon recommendations submitted by the attorney general.

Forest Practices Tribunal

SB 59: Most of the jurisidiction given to the commissioner under the administration version is transferred to the tribunal or hearing officer by the revision.

Revision: It is anticipated that there may be insufficient enforcement activity requiring hearings to justify a full-time tribunal and staff, at least in the initial years after enactment. Therefore, the revision provides that hearing officer appointments may be made on a case-by-case basis.

Administrative due process rights of the alleged violator are expanded: Besides the procedural rights listed in sections 110 and 120 of SB 59, the accused is given the right to a speedy hearing, a hearing in the judicial district where the alleged violation occurred, at least 7 days notice of the hearing, and the right to a 14 day continuance of the hearing date.

Summary action by the Commissioner

As in SB 59, the commissioner would retain the power to issue temporary orders, without notice or hearing to the accused. Unlike the current bill, the revision would limit the absolute duration of these temporary orders to 21 days. Within three weeks, the commissioner would be required to hold a hearing on the topic covered by the temporary order. Under both versions, the alleged violator would retain the right to an immediate appeal to the superior court from the issuance of a temporary order.

A BILL

For an Act entitled: "An Act relating to forest resources and practices; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 41 is amended by adding a new chapter to read:

CHAPTER 17. FOREST RESOURCES AND PRACTICES.

ARTICLE 1. ADMINISTRATION

Sec. 41.17.010. FINDINGS AND PURPOSE. (a) The legislature finds that

(1) the forest land and water resources of Alaska are among the most valuable natural resources of the state;

(2) healthy industries and businesses derived from the products, benefits, and services obtained from forest land and water resources are of prime importance to the state;

(3) the public interest demands that productive state, municipal, and private forest land be administered consistent with sound and refined principles of natural resource management;

(4) the forest land and water resources furnish timber and numerous wood products derived from timber, fish and wildlife, tourism, outdoor recreation and aesthetic enjoyment, water, minerals, soil, air, diverse lifestyle opportunities, general health and welfare, and a multitude of other valuable products, benefits, and services;

(5) it is the policy of the state to formulate prudent and responsible forest management measures calculated to serve the needs of all Alaskans for the many products, benefits, and services obtained from forest land and water resources;

(6) imprudent forest management would preclude receiving all of the products, benefits, and services obtained from forest land and water resources, upon which the economy and welfare of Alaska depend and will continue to depend in the future; and

(7) failure to implement wise forest management measures designed to guarantee perpetual supplies of renewable resources and to make available nonrenewable resources in a compatible manner would be a grave disservice to the people of Alaska.

(b) It is the purpose of this chapter to insure that timber harvesting will continue to contribute substantially to Alaska's economy; to protect the longevity of Alaska's forest products industry by implementing effective forest management practices and maintaining over the long term Alaska's supply of timber; to prevent significant impairment of the ability of the land and water to produce renewable resources; and to create and maintain a system for the administration, regulation, and use of productive state, municipal, and private forest land so as to guarantee continuous and perpetual supplies of the various products, benefits, and services obtained from it.

Sec. 41.17.030 ADMINISTRATION. (a) The commissioner shall administer this chapter, except where otherwise specified. The commissioner may delegate his authority under this chapter to subordinate employees or units within the department to the extent he considers advisable.

(b) The commissioner may designate and operate experimental forests on land owned by the state, except that those forests must be limited to the size necessary to conduct the requisite experiments.

(c) The commissioner may undertake cooperative forestry programs and extension service programs.

(d) The commissioner may establish and maintain forest tree

Sec. 41.17.020. PROHIBITIONS. It is unlawful for any person to violate a provision of this chapter, a regulation adopted under this chapter, or a term or condition of any approval granted by the commissioner under secs. 90 - 110 of this chapter.

seedling nurseries and greenhouses and similar facilities to provide planting stock for reforestation purposes. He may make forest tree seedlings available to organizations, agencies, and individuals for reforestation and afforestation projects.

(e) The commissioner may perform any other acts reasonably necessary to carry out his duties under this chapter.

Sec. 41.17.340. EXEMPTIONS. (a) Noncommercial forest land under municipal or private ownership is not subject to the provisions of this chapter.

(b) Any small parcel or tract of forest land is exempt from the provisions of this chapter if the commissioner determines that the parcel or tract is:

(1) 160 acres or less in size;

(2) owned entirely by one person or group of persons;

(3) not to be utilized as part of a timber harvesting or forest development plan or agreement of any kind involving other parcels or tracts of forest land; and

(4) not appurtenant to other parcels or tracts of forest land either owned by the same person or groups of persons or in which that person or group of persons has any property interest.

(c) As used in this section only, "person" includes the state or a municipality.

(d) The commissioner may adopt regulations, in accordance with the Administrative Procedure Act (AS 44.62), necessary to implement this section.

Sec. 41.17.350. REGULATORY AND ADMINISTRATIVE STANDARDS. (a) All regulations, administrative actions, and other activities and duties undertaken pursuant to this chapter must be in full accordance with the standards set out in this section.

(b) With respect to state, municipal, and private forest land, the following standards apply:

(1) timber harvesting is not permitted in an area unless relevant data and information indicate that there will be no reforestation problems leading to the inability of that area to produce a sustained yield of merchantable timber;

(2) to the extent practicable, all relevant data and information shall be used in making decisions relative to the administration of forest land;

(3) where consistent with the other provisions of this section, administration of forest land with respect to production levels of timber and timber products shall allow reasonable consideration for changes in marketing conditions;

(4) there shall be no significant impairment of the productivity of the land and water with respect to renewable resources; and

(5) scenic and aesthetic quality shall be maintained in or adjacent to areas of significant importance to the tourism and recreation industry.

(c) With respect to state and municipal forest land only, the following standards also apply:

(1) forest land shall be administered for the multiple use of the renewable and nonrenewable resources and for the sustained yield of the renewable resources of the land in the manner which best provides the present needs and preserves the future options of the people of Alaska;

(2) any system of allocating key values to particular units within a contiguous area of land shall reflect in reasonable proportion the various resources and values present in that area;

(3) determinations of multiple use patterns to be established

within any area shall begin with the assumption that all resources and values are of equal priority; and

(4) to the extent its capacity permits, forest land shall be administered so as to provide for the continuation of businesses, industries, activities, and lifestyles which are dependent upon or derived from forest land and water resources.

Sec. 41.17.060. ADMINISTRATIVE PLAN AND REPORT. (a) In addition to the requirements of sec. 50 of this chapter, the commissioner shall develop and continually maintain a plan for the administration of this chapter insuring that the sustained yield of merchantable high-quality timber from forest land subject to this chapter will be maintained or increased, and that forest land will be protected from depletion or degradation caused by overharvesting, unsatisfactory forest management, failure to recognize areas incapable of prompt reforestation or adequate stocking, or other factors. The commissioner shall conduct periodic inventories of timber on forest land subject to this chapter to assist in meeting the requirements of this section.

(b) On June 30, 1979, and at two-year intervals after that date, the commissioner shall submit a detailed report to the legislature reviewing the administration of this chapter over the preceding two years, demonstrating compliance with (a) of this section, and describing how the plan will affect the long-term stability of the timber industry.

Sec. 41.17.070. REGULATIONS. (a) The commissioner may adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) governing operations on forest land with respect to the following:

(1) timber harvesting and management and directly related activities;

(2) disposal of slash and debris;

(3) reforestation and stocking;

(4) precommercial thinning and similar activities;

(5) control of soil erosion and waste;

(6) logging road and bridge and trail construction and maintenance;

(7) fire prevention and control;

(8) fertilization;

(9) salvage of trees and brush control;

(10) protection of forest land from damage by insects, pests, noxious weeds, and diseases;

(11) flood control;

(12) protection of scenic, recreational, aesthetic, and other natural values, consistent with sec. 50(4)(5) of this chapter;

(13) general administrative requirements and procedures.

(b) The commissioner shall consult with interested state and federal agencies, private individuals, and organizations in conjunction with the adoption of regulations under this section. The commissioner may establish regions, districts, or other subdivisions of forest land within the state in which different regulations apply in order to reflect varying conditions throughout the state, or for other purposes.

(c) The authority vested in the commissioner by (a) of this section may not be employed by the commissioner in a manner that would result in duplicating or pre-empting the statutory authority of other state agencies to adopt regulations governing resources, values, or activities on forest land.

(d) An operator may apply through the commissioner or his designee for any permit required by any other state agency to operate on forest land. The commissioner shall transmit any permit application

to the appropriate state agency, and shall notify the operator of the action taken by that agency on the permit application.

(e) The commissioner shall adopt only those regulations which are necessary to accomplish the purposes of this chapter. The commissioner shall avoid adoption of regulations which merely increase operating costs and do not yield significant benefits.

Sec. 41.17.050. REVIEW AND APPROVAL OF OPERATIONS. (a) Operations on forest land shall be reviewed and approved under this section for consistency with the policies and provisions of this chapter and regulations adopted under sec. 70(a) of this chapter. However, the commissioner may adopt regulations under the Administrative Procedure Act (AS 44.62) exempting certain operations from review and approval under this section if they are of minimal concern with respect to the policies and provisions of this chapter.

(b) Before operating on forest land, the operator shall first give formal notification to the commissioner. Notification must consist of filing a notification certificate together with a United States Geological Survey map of the largest available scale showing the locations of all proposed activities. The operator shall also submit a brief description of the proposed operation on a form provided by the commissioner.

(c) Within five days after receipt of formal notification, the commissioner shall distribute copies of the certificate, map, and description to all state agencies whose areas of responsibility could be significantly affected by the proposed operation for their review. Those agencies shall complete their review and submit their recommendations to the commissioner within 25 days after receipt of that material. The commissioner may extend the review period for up to an additional 20 days upon a showing by an affected state agency that the

proposed operation is exceedingly complex and not susceptible to adequate review within 25 days.

(d) Upon expiration of the review period, the commissioner shall, within 15 days:

(1) grant unconditional approval of the proposed operation, if appropriate;

(2) grant conditional approval, including the terms and conditions he considers necessary to insure consistency with the policies and provisions of this chapter and regulations adopted under this chapter, based on his or other agencies' recommendations; or

(3) upon his own recommendation or that of another agency, require the submission of additional plans or descriptions from the operator for part or all of the proposed operation, but only to the extent necessary for proper assessment of the operation.

(e) If action is taken under (d)(3) of this section, the commissioner and affected agencies requesting additional plans or descriptions have an additional 20-day review-and-recommendation period, at which time the commissioner shall take action under (d)(1) or (d)(2) of this section. The commissioner shall disapprove a proposed operation only if he considers it impossible to take action under (d)(2) of this section.

(f) If the commissioner takes no action under (d) or (e) of this section within the time specified in this section, he is presumed to have taken action under (d)(1) of this section.

(g) At the time formal notification is given by the operator, the operator shall provide copies of documents submitted to the commissioner to the timber owner or forest landowner or both, if different from the operator. Upon receipt of any formal notification, the commissioner shall publish a brief description of the proposed

action in one newspaper of general circulation within the state and invite and consider public comment during the statutory review-and-recommendation period.

(h) If recommendations of another state agency submitted during the statutory review-and-recommendation period are not accepted by the commissioner, he shall provide the agency with a written statement of the reasons for the rejection.

(i) In reviewing proposed operations under this section, the commissioner and affected state agencies shall consider the practicalities and economic constraints affecting the operator. In addition, the commissioner shall insure that the information and paperwork required of the operator under this section shall be kept to the minimum necessary to accomplish the purposes of this chapter.

(j) The operator may not materially deviate from plans approved or terms and conditions imposed by the commissioner under this section without prior written approval from the commissioner, who shall grant that approval only after full consultation with other affected state agencies.

(k) No action taken by the commissioner under (d) of this section is an authorization to violate applicable laws or regulations.

(l) The commissioner may require any operator to post a performance bond in an amount he considers advisable to insure that all or part of the proposed operations or terms and conditions imposed by the commissioner will be carried out and that damage to resources is not incurred, or, if incurred, will be remedied. The commissioner may require a written report from the operator at the conclusion of operations.

Sec. 41.17.090. DEPLOYMENT OF CHEMICALS. (a) Herbicides, pesticides, fungicides, rodenticides, insecticides, fertilizers, and

other similar chemicals may not be deployed on forest land unless (1) the deployment is in accordance with applicable state laws and regulations, and (2) prior written approval from the commissioner is obtained.

(b) The commissioner may not grant approval under (a) of this section unless he, in consultation with affected agencies, finds that (1) deployment is a matter of strict necessity or is not likely to result in significant adverse consequences, and (2) that the deployment would be consistent with the policies and provisions of this chapter. The commissioner may impose conditions on deployment in granting written approval, and shall require the posting of a performance bond by the operator before the deployment of chemicals. Each individual usage of chemicals must be specifically approved by the commissioner. The commissioner shall require a full report from the operator upon completion of chemical deployment. No operator may materially deviate from operations approved by the commissioner without the prior written consent of the commissioner.

Sec. 41.17.100. CONVERSION OF FOREST LAND TO OTHER USES. A person owning forest land which he intends to convert to other uses following timber harvesting shall state that intention to the commissioner in conjunction with the formal notification. Reforestation requirements applicable under regulations adopted under this chapter do not apply if the land is in fact so converted, except that the conversion must be completed during the time set by regulation for minimum reforestation of the land. If the commissioner finds at any time that the forest landowner or other responsible party has failed to conform to the intent to convert as stated at the time of notification, the commissioner shall revoke approval of the operation and require full compliance with reforestation regulations and requirements.

Sec. 41.17.110. INSPECTIONS, INVESTIGATIONS, AND ENFORCEMENT.

The commissioner or his designee may inspect and investigate forest land and enter upon it before, during, and after operations as necessary to insure compliance with applicable regulations and requirements and to otherwise enforce the provisions of this chapter. Other state agencies have this same authority to the extent necessary to enforce their own laws and regulations on forest land.

Sec. 41.17.120. ENFORCEMENT PROCEDURES. (a) If an investigation discloses that there is reasonable cause to believe a violation has occurred, the commissioner, in the event there is no permanent staff for the tribunal, shall issue and serve upon all parties, by timely means, written notice of a hearing. The notice shall advise all parties of the subject of the hearing, the time and place where it will be held, and the rights of the parties, as named in secs. 170, 200 - 220 of this chapter. In addition, the commissioner shall issue and serve upon the respondent a written complaint which specifies the nature and extent of the alleged violation and any damage which has occurred or will foreseeably occur as a direct consequence of the violation. Notices and complaints will also be furnished to the tribunal or hearing officer.

(b) The notice and complaint shall issue not less than seven days before the hearing.

(c) The state shall have the burden of proving its case by establishing substantial evidence of the violation on the hearing record.

(d) In the event there is a permanent staff for the tribunal, the commissioner shall file hearing notices and complaints with the tribunal, which shall then serve all parties to the hearing.

Sec. 41.17.130. TEMPORARY ORDERS. (a) If the commissioner finds, after investigation, that a violation of this chapter has occurred and determines that continuation of the violation or failure to repair damage would likely result in irreversible or irreparable

damage to the forest resources or values affected, and it appears to be prejudicial to the interests of the people of the state to delay action until opportunity for a hearing can be provided, the commissioner may issue a temporary order in addition to the notice of violation and complaint required in sec. 120 of this chapter. The temporary order remains in effect, subject to the terms of sec. 200 of this chapter, until a final order is issued by the tribunal.

(b) The temporary order may direct the respondent to stop the violation or to repair the damage, or both.

(c) If a person fails to comply with an order issued under (a) of this section, the attorney general, at the request of the commissioner, may seek, pending a final order by the tribunal, an injunction in the superior court. If a person fails to comply with an order issued under (a) of this section directing a person to repair damages, the commissioner may also proceed either with department staff or by contract to repair the damage. The commissioner shall keep a complete account of direct expenditures incurred, and upon completion of the work shall prepare an itemized statement of them and shall deliver a copy to the operator, timber owner, and forest landowner, who are jointly and severally liable for those expenditures. Those expenditures constitute a general lien upon the real and personal property of the operator, timber owner, and forest landowner within the state.

(d) The commissioner may issue a temporary order without earlier notice and affording respondent a hearing. However, a temporary order shall remain in effect the lesser of 21 days or until the date of a final order made by a tribur ., except as extended by the excluded period in sec. 200 (b) ' this chapter. Whenever possible, the commissioner shall notif the respondent of the temporary order and informally confer with him to resolve the alleged violation at the earliest possible date. The commissioner may adopt regulations to administer this section.

Sec. 41.17.140. CIVIL ACTION. Any person may commence a civil action on his own behalf against the commissioner upon a showing of injury to himself and others similarly situated where a failure of the commissioner to perform any act or duty under this chapter which is not discretionary with the commissioner is alleged. The superior court has jurisdiction to order the commissioner to perform the act or duty. No action may be commenced under this section sooner than 30 days after the plaintiff has given notice of the proposed action to the commissioner, unless the plaintiff can demonstrate that an emergency exists. Nothing in this section restricts any right which a person or class of persons may have under statute or common law to any other relief against the commissioner.

ARTICLE 2. FOREST PRACTICES TRIBUNAL.

Sec. 41.17.150. ESTABLISHMENT OF FOREST PRACTICES TRIBUNAL. There is established the Forest Practices Tribunal as an independent and quasi-judicial agency of the state.

Sec. 41.17.160. JURISDICTION. (a) The tribunal has original jurisdiction to hear all complaints issued under sec. 120 of this chapter.

(b) The tribunal has jurisdiction as follows:

(1) to impose a civil fine not to exceed $7,500, and an additional civil fine not to exceed $1,000 for each day a violation of this chapter continues;

(2) to issue subpoenas and subpoenas duces tecum in accordance with the procedures in AS 44.62.430;

(3) to respond to contemptuous behavior by any party or witness to a hearing in the manner provided in AS 44.62.590;

(4) to enjoin violations of this chapter and the regulation promulgated under its authority, to attach and garnish property, and to impose such equitable remedies as may necessary in the interests of justice; and

(5) to assume continuing jurisdiction over a matter and to supervise compliance with its orders.

Sec. 41.17.170. WHERE THE HEARINGS ARE TO BE HELD. (a) Hearings shall be held in the judicial district where the alleged violation was committed or in Juneau, the capital upon agreement of all the parties.

(b) The tribunal may change the place of hearing to promote convenience to the parties and witnesses, to advance the ends of justice, and to prevent unnecessary expense and hardship to the ~~defendant~~ respondent.

Sec. 41.17.180. HEARING OFFICERS. (a) Hearings under secs. 150 - 220 of this chapter shall be held before a hearing officer appointed by the governor. ~~The~~ Appointments of hearing officers to the tribunal shall be made either on a case-by-case or permanent basis, except that a person who has participated in the investigation or preparation of the state's case may not serve as a hearing officer or otherwise participate in the hearing. The hearing officer may only be removed for misfeasance or malfeasance in the performance of official duties.

(b) The hearing officer must be an attorney and resident of the State of Alaska and may not be an employee of the department.

(c) Hearing officer is a partially exempt position as provided in AS 39.25.120.

Sec. 41.17.190. ENFORCEMENT PROCEDURES. In the event the tribunal has a permanent staff, it shall proceed under sec. 120 of this chapter. In the event the tribunal has no permanent staff, the commissioner, as provided in sec. 120 of this chapter, shall serve notices and complaints upon the parties.

Sec. 41.17.200. SPEEDY HEARING. (a) A respondent shall receive a hearing:

(1) within 30 days after mailing of a written notice and complaint; or

(2) within 21 days after the imposition of a temporary order by the commissioner.

(b) The respondent may request one extension of the hearing date not to exceed 14 days.

(c) The time for hearing shall begin running without demand by the respondent. If the hearing does not begin within the period named in (a) of this section, as extended in (b) of this section, the tribunal, upon request by the respondent, shall dismiss the complaint with prejudice. Such discharge bars all further administrative review on the transaction from which the complaint arose.

Sec. 41.17.210. HEARINGS. (a) Hearings under this chapter are not subject to the Administrative Procedure Act (AS 44.62), except as otherwise named in this section. Until a permanent staff is appointed for the tribunal, the Department of Law shall establish such regulations as are consistent with this section to insure

the expeditious and impartial handling of complaints. When the tribunal acquires a permanent staff, it may establish its own rules of conduct consistent with the simplified procedures in this section.

(b) All hearings shall be open to the public, and any person may submit written statements to the hearing officer in connection with the subject of the hearing. In addition, the hearing officer may permit any person to offer oral testimony. All issues pertaining to the alleged violation shall be examined and considered at the hearing. Any party to a hearing may be represented by counsel, may make oral or written argument, secure the issuance of a subpoena under AS 44.62.430, offer testimony or other evidence, cross-examine witnesses, or take any combination of these actions. All testimony given at the hearing shall be recorded stenographically or electronically.

(c) Hearings conducted under this section are not limited by common law or statutory rules of evidence; however, the hearing officer may admit only that evidence which appears to him to be reliable and trustworthy. Hearsay evidence which is inadmissible in a judicial proceeding may not be admitted in a hearing under this section unless:

(1) the commissioner provides the ~~person charged~~ respondent with the name and address of the declarant and the substance of his accusation or testimony along with the service of the complaint or, if the evidence is not known at that time, then at a reasonable time before the hearing; and

(2) the hearsay evidence is of a type normally relied upon by reasonable men in the conduct of serious business affairs.

(d) Within 10 days after the close of the hearing, or upon the non-appearance of the respondent on the day set for the hearing, the hearing officer shall issue and enter a final order. The order shall be based on the evidence presented at the hearing. In all matters the hearing officer shall file and publish a written opinion, stating the findings of fact and law which led to the decision. The tribunal shall immediately notify the respondent of the order by registered mail.

(e) In determining the amount of any civil fine imposed, the following factors shall be considered, as appropriate:

(1) the character and degree of injury to forest resources and values;

(2) the degree of intent, negligence, or inattention of the violator in causing or permitting the violation;

(3) the character and number of past violations caused or permitted by the violator; and

(4) to the extent such information is available, the net economic savings realized by the violator through noncompliance with (a) of this section.

Sec. 41.17.220. APPEALS AND JUDICIAL REVIEW. (a) An action of the commissioner taken under this chapter may be appealed to the tribunal within 30 days after the action is taken.

(b) A final order issued by a tribunal may be appealed to the superior court within 30 days after entry of the order. Appeals may be had in the manner provided in AS 44.62.560 and AS 44.62.570.

(c) A temporary order issued by the commissioner under sec. 130 of this chapter may be appealed immediately to the superior court.

ARTICLE 3. GENERAL PROVISIONS.

Sec. 41.17.950. DEFINITIONS. In this chapter, unless the context otherwise requires,

(1) "commercial forest land" means forest land producing or capable of producing crops of industrial wood and not withdrawn from timber utilization; areas qualifying as commercial forest land are those which have the capability of producing in excess of 20 cubic feet per acre per year of industrial wood under management;

(2) "commissioner" means the commissioner of natural resources;

(3) "cooperative forestry programs" and "extension service programs" mean programs that will provide technical assistance designed to further the policies and provisions of this chapter to persons engaged in timber harvesting or activities associated with timber harvesting or forest development and to other individuals, organizations, and agencies concerned with forest resource management;

(4) "department" means the Department of Natural Resources;

(5) "forest land" means land at least 16.7 per cent stocked by forest trees of any size, or formerly having such tree cover and not currently developed for nonforest use, regardless of whether presently available or accessible for commercial purposes, and includes any such land under state, municipal, or private ownership;

(6) "forest landowner" means a person who owns forest land;

(7) "multiple use" means (A) the management of all the various resources of forest land so that they are used in the combination that will best meet the needs of the Alaskan people, making the most judicious use of the land for some or all of these resources or related values, benefits, and services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; (B) that some land will be used for less than all of the resources; and (C) harmonious and coordinated management of the various resources, each with the other, without significant impairment of the productivity of the land and water, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output;

(8) "noncommercial forest land" means unproductive forest land incapable of yielding crops of industrial wood because of adverse site conditions (capable of producing no more than 20 cubic feet per acre per year) and productive forest land withdrawn from commercial timber use through statute or administrative regulation;

(9) "notification certificate" means a document prescribed by the commissioner and constituting an intent to operate on forest land, which must be signed and sworn to by the operator;

(10) "operations" means timber harvesting or activities associated with timber harvesting or forest development;

(11) "person" includes a joint venture as well as the entities set out in AS 01.10.060(7);

(12) "sustained yield" means the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of forest land and water without significant impairment of the productivity of the land and water;

(13) "timber operator" or "operator" means a person who is engaged in timber harvesting or activities associated with timber harvesting or forest development himself, or who contracts with others to conduct such harvesting or activities or development on his behalf, except a person who is engaged in timber harvesting or associated

activities or forest development as an employee with wages as his sole compensation;

(14) "timber owner" means a person who owns timber on forest land or who has the rights to timber, but does not own the land itself;

(15) "tribunal" means Forest Practices Tribunal; and

(16) "without significant impairment of the productivity of the land and water" means that operations which may foreseeably result in prolonged or indeterminate damage to renewable resources or prolonged or indefinite reduction of the continuing capability of the land or water to produce renewable resources at their optimum level are prohibited.

* Sec. 2. This Act takes effect July 1, 1977.

AMENDMENTS TO WORK DRAFT 4-21-78
for CS for Sponsor Substitute for SB 59
Proposed by Koncor and Yak-Tat Kwaan, Inc.

Page	Line	Section		Amendment
2	1-2	§010(5)	delete	"under the leadership of the Department of Environmental Conservation"

Reason: The leadership of the Department of Environmental Conservation has been created by an Executive Order of the Governor. By placing it specifically in this Act, the legislature will foreclose a new Governor from changing that Executive Order.

3	11	§020(h)	delete	"may"
			substitute	"shall"
	14-19	§020(h)	delete	"the commissioner" on Line 14 and all of lines 15-19 and
			substitute	"the head of the designated lead state agency, if other than the commissioner, under the Federal Water Pollution Control Act to implement such regulations."

Reason: Same as for §010(5) above.

4	4-6	§020(k)(2)	delete	"if authorized by the Commissioner of environmental conservation"
			substitute	"in accordance with subsection (h) of this section"

Reason: Same as for §010(5) above.

Page	Line	Section		Amendment
4	9	§020(1)	add	"and under 040(f) of this Chapter" after (AS 44.62)

Reason: This merely coordinates two sections of the Act. 040(f) requires the Board of Forestry to review and comment on the proposed regulations which is an additional requirement to those in the Administrative Procedure Act.

7	2-3	§060(b)(2)	delete	"best management practices"
			substitute	"economical forest management practices"

Reason: Best management practices is a term of art used in the Federal Water Pollution Act and if used here will bring with it all future Federal Regulations developed under this phrase without the State being able to reanalyze the federal regulations.

7	5-6	§060(b)(3)	delete	"where not inconsistent with other provisions of this section,"

Reason: This phrase makes marketing conditions and economic constraints secondary to environmentally sensitive areas and management practices when they should be at least equal.

7	7	§060(b)(3)	insert	"forest landowner, timber owner or" before "operator"

Reason: The marketing conditions and economic constraints should include those on the forest landowner and timber owner, not just the operator.

Page	Line	Section		Amendment
9	8	§080(a)	insert	"and 040(f) of this Chapter" after (AS 44.62)

Reason: This merely coordinates two sections of the Act. 040(f) requires the Board of Forestry to review and comment on the proposed regulations which is an additional requirement to those in the Administrative Procedure Act.

9	12	§080(a)(2)	delete	"stocking"
9	12		insert	"and" before "prescribed burning"
9	13		delete	"thinning, and other silvicultural activities"

Reason: This section might be interpreted that the regulations may impose affirmative duties on the landowner such as to reforest or revegetate. If this is so, then the State should not however be able to require thinning for example. There is no reason for the State to be able to insist that a landowner spend money on operations when the landowner is willing to leave the land in a natural condition. Also stocking refers to the number of trees per acre and creates the same problem as the term "thinning". Also the phrase "other silvicultural activities" means everything without limit to the items listed and therefore should be deleted.

9	17	§080(a)(6)	delete	
9	18	§080(a)(7)	change	(7) to (6)

Reason: This phrase does not make sense unless it is intended to regulate the internal administrative requirements and procedures of private forest landowners, timber owners and operators. Section 020(1) allows the commissioner to develop the internal administrative requirements and procedures of the division of forestry.

Page	Line	Section	Amendment	
9	19-21	§080(a)(8)	delete	

Reason: This subsection allows the State to develop regulations about scenic, aesthetic or any other land use activity it may wish on private lands. If the purpose is to allow for regional variations within the State, then subsection 080(c) takes care of this problem.

10	8-11	§090(a)	delete	

Reason: This subsection is unnecessary and extra to this section in general. It is essentially only a statement of existing law that operations subject to this Act must comply with it. On the other hand, if this subsection is left in, then insert "on municipal and state forest lands" after the "and" and before "approved" on Line 9. This will make clear that permit approval is not required on private forest lands. This ties into the proposed amendment for subsection 090(e) below.

11	4	§090(e)	insert	"for state and municipal forest lands" after "shall" and before "as"

Reason: This will eliminate the requirement for advance approval under this Act for an operation on private forest lands. Private forest lands will still be subject to the regulations, advance notification, enforcement and other provisions of this Act, but will not have to obtain additional permits because of this Act. This will not change any provisions of existing statutes which require permits on private lands.

11	29	§090(h)	insert	"for state and municipal forest lands" after "days" and before "shall"

Reason: This will eliminate the requirement to publish in the newspapers for operations on private lands.

Page	Line	Section		Amendment
12	3	§090(h)	Add	"Recommendations from the public with respect to private forest lands may or may not be considered in the discretion of the commissioner."

Reason: As the bill is now written, this section will lead to litigation over whether recommendations from the public were considered. It will also lead to lawsuits over how much consideration is necessary to meet the requirements of Act. Meanwhile, operations will be stalled while the courts consider whether the commissioner considered every public recommendation no matter how silly. It will be like the litigation over environmental impact statements. At least private lands should be exempt from these costly delays of endless litigation.

12	17	§090(m)	insert	"With respect to State and municipal forest lands" at the beginning of the sentence.

Reason: Security bonds are an added cost which should not be imposed on private landowners. If an operation violates the regulations, enforcement fines or court injunctions should be enough.

12	20	§090(o)	insert	a new subsection (o) as follows:

"The times requirements of this section and the presumption of unconditional approval for failure to act within the time requirements of this section shall apply to processing all permits required by any state agency under any statute or regulation for any operation on private forest land."

Reason: This new subsection makes it clear that the procedures and time limits of this Act apply to all permits on private forest lands. If the amendment to §090(e) is accepted, then this amendment will only refer to permits on private forest lands required by statutes other than this Act.

Page	Line	Section	Amendment
16-17	29-2	§130(j)	delete

Reason: This subsection defines the terms "damage" and "repair damage" in subsections 130(b) (e) and (f) to include any unsatisfactory condition or the correction of any unsatisfactory condition. This is an attempt to expand the common understanding of the term "damage" so that it can mean almost anything.

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A UNIT IN THE ORIGINAL FILE.

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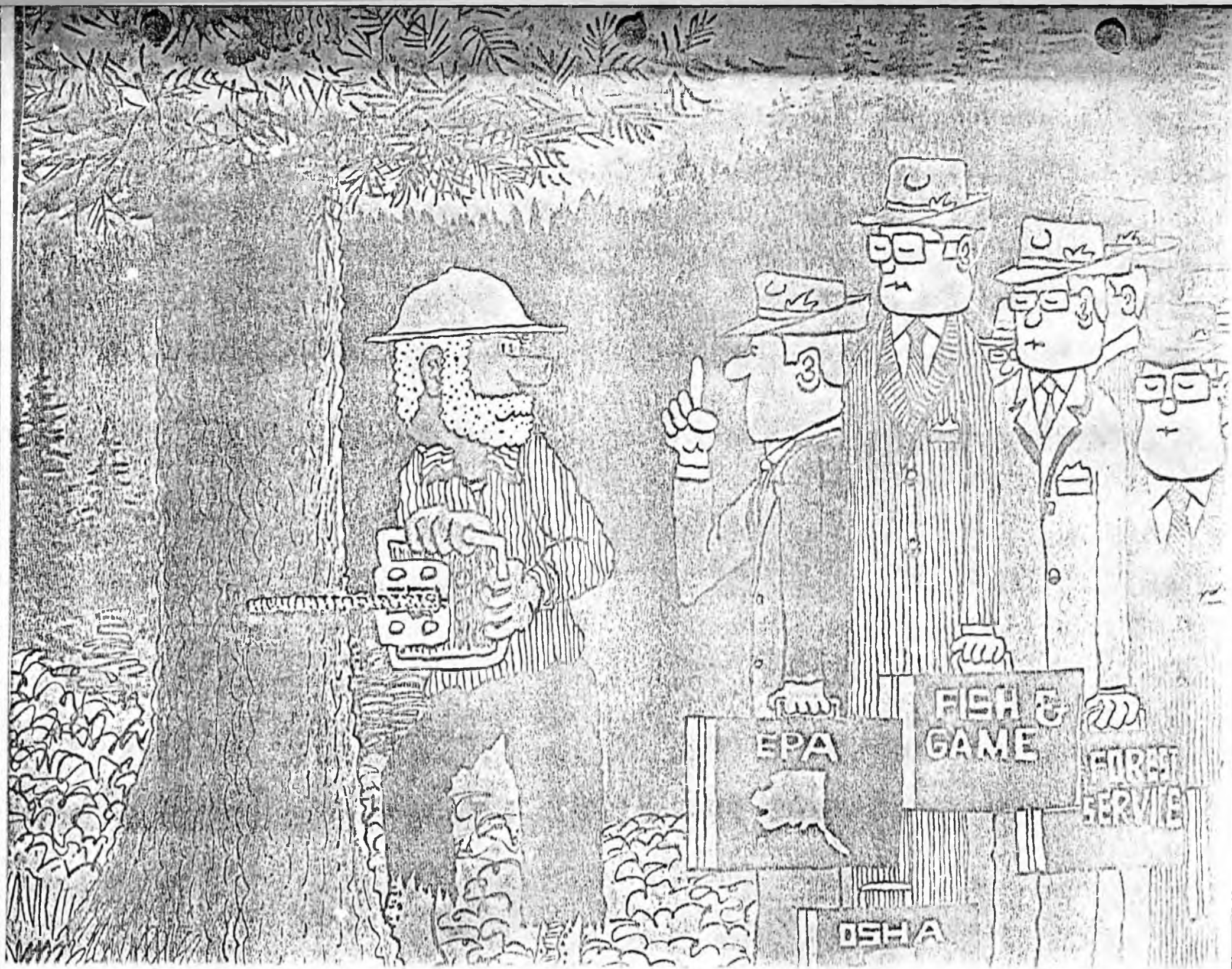
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FOREST SERVICE
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SENATE AND HOUSE RESOURECE COMMITTEES:

My name is Clarence Jackson. I would like to offer the following comments as Chairman of the Board of Directors of SANTCO (Southeast Alaska Native Timber Corporation). SANTCO is one of the largest private commercial forest landowner in the State and represents 10 village and urban Native corporations owning 230,400 acres in Southeast Alaska. Our members include Native corporations from Craig, Hoonah, Hydaburg, Juneau, Kake, Kasaan, Klawock, Saxman, Sitka, and Yakutat.

Senate Bill 59 would govern operations on privately owned commercial forest land in Alaska and will significantly impact our control over our own fee simple resources. SANTCO would like to suggest changes to Senate Bill 59 for your consideration. These suggestions mainly address State control over operations on private forest lands and would generally not be applicable to State or Municipal forests.

After a year long study of forest practices acts in Oregon, Washington, and California and consultation with various chapters of The Society of American Foresters, and attorneys specializing in forest law, we can see a Forest Practices Act which combines the intent of House Bill 40 and Senate Bill 59 and which permits the State to govern operations on private forest lands to insure a healthy state economy, to protect the public interest in SANTCO's resources, and to

PROTECT SANTCO'S INTEREST IN ITS OWN RESOURCES.

OUR CONCEPT OF A FOREST PRACTICES ACT WOULD:

1. GIVE US AS LANDOWNERS A SIGNIFICANT VOICE IN THE MANAGEMENT OF OUR LANDS AND INSURE THAT ALL INTEREST GROUPS HAVE INPUT INTO REGULATION OF OPERATIONS ON PRIVATE FOREST LAND. WE WOULD PROVIDE FOR THE GOVERNOR TO APPOINT A BOARD OF FORESTRY WITHIN THE DEPARTMENT OF NATURAL RESOURCES TO ASSIST HIM AND THE COMMISSIONER WITH THE ADMINISTRATION OF A DIVISION OF FORESTRY.

2. BE LESS EXPENSIVE FOR BOTH THE STATE TO ADMINISTER AND THE LANDOWNER TO COMPLY WITH; BUT, THE PENALTIES FOR VIOLATION OF STATE LAWS OR REGULATIONS', AND THE ENFORCEMENT PROVISIONS WOULD BE EQUALLY SEVERE. AS LANDOWNERS WE WILL NOT TOLERATE MISMANAGEMENT OF OUR RESOURCES. WE HAVE A DOUBLE RESPONSIBILITY AS CITIZENS AND STOCKHOLDERS TO SUPPORT A STABLE ECONOMY, A HEALTHY FOREST, AND CLEAN WATERS THROUGH THE WELL PLANNED SUSTAINED YIELD AND MULTIPLE USE MANAGEMENT OF SANTCO FOREST LANDS. THE EXPENSIVE PROVISIONS OF SENATE BILL 59 SHOULD BE AMENDED TO MAKE THE BILL CLEARLY A NOTIFICATION BILL. A NOTIFICATION BILL IS DESIGNED TO EDUCATE THE LANDOWNER AND OPERATER ABOUT THE LAW AND PROPER FOREST MANAGEMENT; BUT, THE BURDEN WOULD LIE WITH THE STATE THROUGH ENFORCEMENT.

A LANDOWNER SHOULD BE ABLE TO MANAGE HIS LANDS; BUT RISK STATE SUSPENSION OF HIS OPERATIONS AND POSSIBLE ENCUMBRANCE OF HIS LANDS, AND PENALTIES IF HE BREAKS THE LAW OR REGULATIONS DRAFTED UNDER THE LAW.

3. WOULD REMOVE THE IMPLICATION THAT A LANDOWNER COULD HAVE HIS RESOURCES TAKEN WITHOUT COMPENSATION; BUT, IT WOULD ALSO PROVIDE A VEHICLE TO ASSURE THE STATE THAT OPERATIONS ON PRIVATE FOREST LAND WILL PROTECT THE RESOURCE WITHOUT LOCKING IT UP.

WE ARE GRATEFUL FOR THE OPPORTUNITY TO PRESENT OUR VIEW OF A PRACTICAL SOLUTION TO THE PROBLEM. SANTCO WANTS TO DO ITS PART TOO, TO INSURE THAT PRIVATE FOREST LANDS ARE CAREFULLY MANAGED FOR THE BEST INTEREST OF BOTH THE STATE AND OURSELVES AS A MAJOR FOREST LANDOWNER.

March 9, 1977

PRELIMINARY DRAFT

FORESTRY CODE FOR ALASKA

Patterned on Senate Bill 563-1976

and S.B.59-1977 and H.B.40-1977

1. Eliminates pielogging permit system.
2. Establishes a Forestry Division.
3. Provides for regulations to be approved by a Board representing all of Alaska with majority of the members representing commercial forest landowners, professional resource managers, industry and labor with knowledge of forest management problems.

House Bill No. _____

SENATE BILL NO. _____

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to forest resources and practices; and providing for an effective date." BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

Section 1. AS 41 is amended by adding a new chapter to read:

CHAPTER 17. FOREST RESOURCES AND PRACTICES.

Sec. 41.17.010. FINDINGS AND PURPOSE. (a) The legislature finds that

(1) the forest land and water resources of Alaska are among the most valuable natural resources of the state;

(2) healthy stable communities, industries and businesses derived from the products, benefits and services obtained from forest land and water resources are of prime importance to the state;

(3) the public interest demands that productive state, municipal and private forest land be administered consistent with sound and refined principles of natural resource management;

(4) the forest land and water resources furnish economic stability, timber and numerous wood products derived from timber, fish and wildlife, employment opportunity, tourism, outdoor recreation and aesthetic enjoyment, water, minerals, soil, air, general health and welfare and a multitude of other valuable products, benefits, and services;

(5) it is the policy of the state to formulate prudent and responsible forest management measures calculated to serve the needs of all Alaskans for the long term economic benefits to its inhabitants and communities and for the many products, benefits and services obtained from forest land and water resources;

(6) imprudent forest management would preclude receiving all of the products, benefits and services obtained from forest land and water resources, upon which the economy and welfare of Alaska depend and will continue to depend in the future; and

(7) failure to implement wise forest management measures designed to guarantee perpetual supplies of renewable resources and to make available nonrenewable resources in a compatible manner would be a grave disservice to the people of Alaska.

(b) It is the purpose of this chapter to insure that timber harvesting will continue to contribute substantially to Alaska's economy; to protect the longevity of Alaska's forest products industry by implementing effective forest management practices and maintaining over the long term Alaska's supply of timber; to prevent degradation of renewable resources; and to create and maintain a system for the administration, regulation and use of productive state, municipal, and private forest land so as to guarantee continuous and perpetual supplies of the various products, benefits and services obtained from it.

Sec. 41.17.020 STATE FORESTRY DIVISION

(a) To administrate its forestry code, there is hereby created a state forestry division within the Department of Natural Resources consisting of the State Forester and his deputy, assistants and employees, acting under the direction of the State Board of Forestry.

(b) Selection of members of the Board: Confirmation

(1) The voting members, of the Board shall consist of the Commissioner of Naturual Resources and 12 members appointed as provided in sub-paragraph (d) below. The Board shall elect one member as its chairman. The chairman shall have such power and duties as are provided by the rules of the Board. The composition of the Board shall fairly represent the interests of all the people of Alaska. The term of office of a voting member of the Board other than the Commissioner is four years.

(c) If a vacancy occurs before the end of the term, the Governor shall appoint an individual to complete the unexpired term in the same manner and under the same requirements as provided in sub-paragraph (d) below, as in the case of the member whose term was not completed.

(d) Selection of members of Board, Confirmation. Three (3) voting members shall be chosen from persons actively and principally engaged in an administrative or production capacity in the production of logs or manufacture of forest products. Two (2) members of this group shall be appointed

from Southeastern Alaska, and one (1) member shall be appointed from other timbered areas of Alaska.

Three(3) voting members shall be appointed from persons recommended by associations representing private commercial forest landowners of Alaska.

One(1) voting member shall be appointed from candidates recommended by the Alaska Loggers Association, Alaska Visitors Association or the Chamber of Commerce.

One(1) voting member shall be appointed from persons recommended by organized lumber industry unions.

One(1) voting member shall be appointed from persons recommended by the Alaska Wildlife Federation.

One(1) voting member shall be appointed from candidates recommended by the United Fishermen of Alaska.

Two(2) voting members shall be non-aligned Alaskan residents.

The Regional Forester of the U. S. Forest Service and the State Director of the U. S, Bureau of Land Management or their designated representatives shall be non-voting members of the board and shall serve in an advisory capacity.

(e) General duties of Board, compensation and expenses, meetings and rules.

(1) The Board shall supervise all matters of forest policy and management under the jurisdiction of this state and approve claims for expenses incurred under the statutes administered by the Board except as otherwise provided by law.

(2) The members of the Board are entitled to per diem

compensation at the rate of $_____ per day and repayment of expenses.

(3) The Board shall meet on the first Wednesday after the first Monday in January, March, June and September, at places designated by the chairman of the Board or the State Forester. The Board may meet at other times and places in this state on the call of the chairman or the State Forester. A majority of the voting members of the Board constitutes a quorum to do business.

(4) The Board shall promulate rules governing the transaction of its business and shall approve or reject rules proposed for promulgation by the Forester establishing general rules respecting operations on forest lands as provided in sub-paragraph (h).

(f) State Forester; deputy and assistants; compensation.

(1) The Governor shall appoint a State Forester, who must be a professional forester familiar with Alaskan conditions, from four (4) candidates recommended by the Board. The forester shall be the chief executive officer of the division. The forester shall act as secretary of the Board.

(2) With the approval of the Board and subject to applicable provisions of the State Law, the State Forester may appoint a Deputy State Forester, assistant state forester

and other employees of the division. During the State Forester's absence or disability, all of his authority shall be exercised by the Deputy State Forester or by the assistant whom the State Forester or the Board, by written order filed with the Lieutenant Governor, has designated as Acting State Forester.

(3) Unless otherwise provided by law, the Board shall fix the compensation of the State Forester. In addition to their salaries, the forester and his deputy and assistants shall be reimbursed, subject to the limitations otherwise provided by law, for their actual and necessary travel and other expenses incurred in the performance of their duties.

(g) Fidelity Bonds.

(1) Before entering upon the duties of his office, the Forester shall furnish a fidelity bond in favor of the State of Alaska in the penal sum of $100,000 issued by one or more corporate sureties authorized to do business in the State of Alaska, conditioned upon the faithful and honest handling and disposition of the moneys in the State Forestry Department Account and any other moneys in the hands of the Forester.

(2) The premium for the bond shall be paid from the appropriation of the division.

(3) Except as provided in sub-section (1) of this section, the Board may require a fidelity bond, with one or more

corporate sureties authorized to do business in this state, of any officer or employee of the division. . The Board shall fix the amount of the bond which otherwise is subject to subsections (1) and (2) of this section.

(h) General duties of the State Forester.

The Forester, under the general supervision of the Board, shall:

(1) In compliance with A.S. 44.62 and the specific approval of the Board, promulgate rules consistent with the law for the enforcement of the state forest laws relating directly to the protection of forest land and the conservation of forest resources.

(2) Direct the improvement and protection of forest land owned by the State of Alaska.

(3) Collect data relative to forest conditions.

(4) Take action authorized by law to prevent and extinguish forest, brush and grass fires.

(5) Enforce all laws pertaining to forest land and prosecute violations of such laws.

(6) Cooperate with landowners, political subdivisions, private associations and agencies and others in forest protection.

(7) Advise on and encourage reforestation.

(8) Publish such information on forestry as he determines to be in the public interest.

(9) Prepare biennially a report to the Governor and the

Legislative Assemoly on the performance of the functions of the division, including the progress and condition of state forest work, containing recommendations for improving methods of forest protection, management and reproduction.

(10) Enter into contracts and cooperative agreements pertaining to experiments and research in forestry.

(11) Sell, exchange or otherwise dipose of any real property heretofore or hereafter acquired by the division for administrative purposes and no longer needed.

(12) Sell timber for harvesting from State owned timber lands.

(i) State Forester to cooperate with other agencies and persons; payment of expenses; contracts for supervision; deposit for costs.

(1) Under the direction of the Board, the forester:

(a) Shall, upon request and whenever he deems that it is in the public interest, assist and cooperate with any federal or state department or any institution, political subdivision or person owning or controlling forest land within this state, in the preparation of plans for their protection, management, replacement or extension. Unless otherwise provided by law, the parties obtaining such assistance shall pay the necessary costs of travel, subsistence and other field expenses incurred by the forester or his assistants

in the preparation and execution of these plans.

(b) May enter into contracts with the applicants under which he will supervise the execution of the plans. However, the costs of carrying out the plans shall be paid by the applicants.

(2) In carrying out this section the forester may require the applicant to deposit in one or more installments the moneys needed to cover the cost of preparing and executing the plans. These deposits shall be placed in the State Treasury, credited to the State Forestry Division Account and used exclusively for the purposes of this section.

Sec. 41.17.030. EXEMPTIONS.

(a) Noncommercial forest land under municipal or private ownership is not subject to the provisions of this chapter.

(b) Any small parcel or tract of forest land is exempt from the provisions of this chapter if the forester determines that the parcel or tract is all of the following:

(1) 160 acres or less in size;

(2) owned entirely by one person or group of persons;

(3) not to be utilized as part of a timber harvesting or forest development plan or agreement of any kind involving other parcels or tracts of forest land; and

(4) not appurtenant to other parcels or tracts of forest land either owned by the same person or groups of persons or in which that person or group of persons has any property interest.

(c) Any commercial forest land parcel owned by a Native village, urban, regional or group corporation organized pursuant to the Alaska Native Claims Settlement Act, 43 USC, Sec. 1601 ETSEQ, P.L. 92-203, 85 Statute 688 as amended and which is subject to 43USC, Sec. 1622 (k)(2) shall not be subject to the provisions of this chapter until December 18, 1983.

(d) As used in this section only, "person" includes the state or a municipality; or corporation.

(3) The Forester may adopt regulations, inaccordance with Board approval and the Administrative Procedure Act (AS 44.62), necessary to implement this section.

Sec.41.17.040. REGULATORY AND ADMINISTRATIVE STANDARDS

(a) All regulations, administrative actions, and other activities and duties undertaken pursuant to this chapter must be in full accordance with the standards set out in this section.

(b) Standards applicable to all land.

With respect to state, municipal, and private forest land, the following standards apply:

(a) It is of the first importance to the people of Alaska that the economic long term well being of the forest land owner and those industries dependant on forest resources, and the long term productivity of forest lands and waters are recognized as the primary objectives towards which the Division shall establish standards regulating the management of forest resources.

(2) to the extent practicable, all relevant data and information shall be used in making decisions relative to the administration of forest land;

(3) where consistent with other provisions of this section, administration of forest lands with respect to production levels of timber and timber products shall allow reasonable consideration for changes in market conditions;

(4) there shall be no significant impairment of the productivity of the land and water with respect to renewable resources unless removed from timber production.

Standards applicable to State and Municipal Land.

(c) With respect to state and municipal forest land only, the following standards also apply:

(1) forest land shall be administered for the economic multiple use of the renewable and nonrenewable resources and for the sustained yield of the renewable resources of the land in the manner which best provides the present needs and preserves the future value to the people of Alaska;

(2) determinations of multiple use patterns to be established within any area shall begin with the assumption that all resources and values are of importance; and

(3) to the extent its capacity permits, forest land shall be administered so as to provide for the continuation of businesses, stable industries, activities, and life styles which are dependent upon or derived from forest land and water resources.

(4) scenic and aesthetic quality shall be maintained in or adjacent to areas of major importance to the tourism or recreation industry.

Sec. 41.17.050 ADMINISTRATIVE PLAN AND REPORT

(a) The division of Forestry shall develop and continually maintain a plan for the administration of this chapter insuring that the sustained yield of merchantable high-quality timber from State owned forest land subject to this chapter will be maintained or increased, and that forest land will be protected from unsatisfactory forest management. The Forester shall conduct periodic inventories of timber on state forest land subject to this chapter to assist in meeting the requirements of this section.

Sec. 41.17.060. REGULATION

(a) The Board of Forestry may adopt regulations in accordance with the Administrative Procedure Act (AS 44.62) governing operations on forest land with respect to the following:

(1) timber harvesting and management and directly related activities;

(2) disposal of slash and debris;

(3) reforestation and stocking;

(4) precommercial thinning and similar activities;

(5) control of soil erosion and waste;

(6) logging road and bridge and trail construction and maintenance;

(7) fire prevention and control;

(8) fertilization;

(9) salvage of trees and brush control;

(10) protection of forest land from damage by insects, pests, noxious weeds and diseases;

(11) flood control;

(12) protection of scenic, recreational, aesthetic and other natural values, where consistent with Sec. 40 (c)(4) of this chapter.

(13) general administrative requirements.

(b) The Board shall consult with interested state and federal agencies, private individuals and organizations in conjunction with the adoption of regulations under this section. The Board may establish regions, districts, or other subdivisions

of forest land within the state in which different regulations apply in order to reflect varying conditions throughout the state, or for other purposes, and may appoint advisory committees within established regions.

Sec. 41.17.070. REVIEW AND APPROVAL OF OPERATIONS

(a) Operations on forest land shall be inspected and reviewed under this section for consistency with the policies and provisions of this chapter and regulations adopted under Sec. 60(a) of this chapter. However, the Board may adopt regulations under the Administrative Procedure Act (AS 44.62) exempting certain operations from administration under this section if they are of minimal concern with respect to the policies and provisions of this chapter.

(b) Before operating on forest land, the operator shall first give formal notification to the Forester. Notification must consist of filing a notification certificate together with a United States Geological Survey map of the largest available scale showing the locations of all proposed activities. The operator shall also submit a brief description of the proposed operation on a form provided by the Forester.

(c) In reviewing proposed operations under this section, the Forester and affected state agencies shall consider the practicalities and economic constraints affecting the operator. In addition, the forester shall insure that the information and paperwork required of the operator under this section shall be kept to the minimum necessary to accomplish the purposes of this chapter.

(d) The operator may not materially deviate from plans, terms, and conditions stated in the operation plan filed with the notification certificate under this section

without the prior written approval from the forester, who shall grant that approval only after full consultation with other affected state agencies.

(e) No action taken by the forester under (d) of this section is an authorization to violate applicable laws or regulations.

Sec. 41.17.080. DEPLOYMENT OF CHEMICALS

(a) Herbicides, pesticides, fungicides, rodenticides, insecticides, fertilizers and other similar chemicals may not be deployed on forest land unless (1) the deployment is in accordance with applicable state laws and regulations and (2) prior written approval from the Forester is obtained.

(b) The Forester may not grant approval under (a) of this section unless he, in consultation with affected agencies, finds that (1) deployment is reasonable or is not likely to result in significant adverse consequences and (2) that the deployment would be consistent with the policies and provisions of this chapter. The Forester may impose conditions on deployment in granting written approval, and shall require the posting of a performance bond by the operator before the deployment of chemicals. Each individual usage of chemicals must be specifically approved by the Forester. The Forester shall require a full report from the operator upon completion of chemical deployment. No operator may materially deviate from operations approved by the Forester without the prior written consent of the Forester.

(c) The Forester must act upon any application within thirty(30) days. If the application is denied, the full reasons therefor must be stated in writing. A denial shall be appealable directly to the Superior Court.

Sec. 41.17.100. INSPECTIONS, INVESTIGATIONS, AND ENFORCEMENT

The Forester or his designee may inspect and investigate forest land and enter upon it before, during and after operations as necessary to insure compliance with applicable regulations and requirements and to otherwise enforce the provisions of this chapter. Other state agencies have this same authority to the extent necessary to enforce their own laws and regulations on forest land.

Sec. 41.17.110. PROHIBITIONS, PENALTIES, AND ENFORCEMENT PROCEDURES.

(a) It is unlawful for any person to violate the provisions of this chapter or any regulations adopted under this chapter. A person who violates this subsection is liable for a civil fine to be assessed by the Forester with Board approval not to exceed $7,500, and an additional civil fine not to exceed $1,000 for each day the violations continue.

(b) If an investigation discloses that there is probable cause to believe a violation has occurred, the Forester shall issue and serve upon the alleged violator written notice, with a formal complaint which specifies the nature and extent of the alleged violation and requires the alleged violator to answer the charges of the formal complaint at a hearing not more than 14 days after the date of notice (unless the alleged violator requests an extension, which may be no more than an additional 14 days). The notice shall also specify the nature of the violation and any damage or unsatisfactory condition which has occurred or might occur as a result of the violation. At the hearing, the state has the burden of proof to establish that the person charged has caused or permitted a violation described in (a) of this section.

(c) A hearing under (b) of this section shall be held before a qualified hearing officer designated by the Forester from among the employees of the State of Alaska, except that a person who

has participated in the investigation or preparation of the state's case may not serve as a hearing officer or otherwise participate in the decision. All hearing shall be open to the public, and any person may submit written statements to the hearing officer in connection with the subject of the hearing. In addition, the hearing officer may permit any person to offer oral testimony. All issues pertaining to the alleged violation shall be examined and considered at the hearing. Any party to a hearing may be represented by counsel, may make oral or written argument, secure the issuance of a subpoena under AS 44.62.430, offer testimony or other evidence, cross-examine witnesses, or take any combination of these actions. All testimony given before the hearing shall be recorded stenographically or electronically.

(d) Within 10 days after the close of the hearing, or upon the non-appearance of the alleged violator on the day specified for the hearing, the hearing officer shall issue and enter a recommended order. The order shall be based on the evidence presented at the hearing. In all matters, the hearing officer shall file and publish a written opinion and order stating the facts and reasons leading to the decision. The Forester shall immediately notify the violator of the recommended order by registered mail.

(3) The recommended order of the hearing officer under (d) of this section may include:

(1) a directive to stop the violation;

(2) the imposition of a civil fine under (a) of this section which is payable immediately;

(3) a directive to repair damage or correct an unsatisfactory condition; or

(4) any combination of the above.

(f) In determining the amount of any civil fine imposed, the following factors shall be considered where practicable:

(1) the character and degree of injury to forest resources and values;

(2) the degree of intent, negligence or inattention of the violator in causing or permitting the violation;

(3) the character and number of past violations caused or permitted by the violator; and

(4) to the extent such information is available, the net economic savings realized by the violator through noncompliar with (a) of this section.

(g) If the Forester finds, after investigation, that a violation of (a) of this section has occurred and determines that continuation of the violation or failure to repair damage or correct an unsatisfactory condition would likely result in irreversible or irreparable damage to the forest resources or values affected, and it appears to be prejudicial to the interes of the people of the state to delay action until opportunity for hearing can be provided, the Forester may, without prior hearing issue a temporary order in addition to the notice of violation a complaint required in (b) of this section. The order may direct

the violator to stop the violation or to repair danage or correct an unsatisfactory condition, or both. The order remains in effect until a final order is issued. Proceedings in conjunction with the violation shall otherwise be the same as for violations where no temporary order has issued, except that the hearing shall be held at the earliest possible date convenient to the alleged violator.

(h) If a person fails to comply with a final order issued under (d) or (g) of this section, the attorney general, at the request of the Forester, may seek an injunction to suspend the violative operations being conducted by that person until the order is complied with. In addition, if a person fails to comply with a final order issued under (d) or (g) of this section directing the person to repair damage or correct an unsatisfactory condition, the Forester may proceed either with division staff or by contract to repair the damage or correct the unsatisfactory condition. The Forester shall keep a complete account of direct expenditures incurred and upon completion of the work shall prepare an itemized statement of them and shall deliver a copy to the operator, timber owner and forest landowner, who are jointly and severally liable for those expenditures. Those expenditures constitute a general lien upon the real and personal property of the operator, timber owner and forest landowner within the state.

(i) All final orders issued under this section are enforceable by injunction, attachment, garnishment or other appropriate remedy.

(j) The administration of this section, including the conduct of hearings, shall be conducted according to regulations adopted by the Board. Except as otherwise specified in this section, proceedings under this section are not subject to the Administrative Procedure Act (AS 44.62). Hearings conducted under this section are not limited by common law or statutory rules of evidence; however, the hearing officer may admit only that evidence which appears to him to be reliable and trustworthy. Hearsay evidence which is inadmissible in a judicial proceeding may not be admitted in a hearing under this section unless:

(1) the Forester provides the person charged with the name and address of the declarant and the substance of his accusation or testimony along with the service of the complaint, or, if the evidence is not known at that time, then at a reasonable time before the hearing; and

(2) the hearsay evidence is of a type normally relied upon by reasonable men in the conduct of serious business affairs.

(k) The recommended order shall not become the final order of the Forester until review and approval by the Forester.

Sec. 41.17.120 APPEALS AND JUDICIAL REVIEW.

(a) An action of the Forester taken under this chapter may be appealed to the Board within 30 days after the action is taken. The Board shall hold a hearing within 15 days after the appeal is filed, at which all substantial issues pertaining to the action shall be examined and considered. Within 10 days after the hearing closes, the Board shall issue a decision in writing, a copy of which shall be provided to the appellant.

(b) A final order issued under (a) of this section or under Sec. 120 of this chapter may be appealed to the Superior Court within 30 days after the entry of the order. Judicial review shall be as provided in AS 44.62.560 and 44.62.570.

(c) A temporary order issued under Sec. 110 of this chapter may be immediately appealed to the Superior Court as to the propriety of the temporary order.

Sec. 41.17.950. DEFINITIONS.

In this chapter, unless the context requires otherwise:

(1) "Commercial Forest Land" means forest land producing or capable of producing crops of industrial wood and not withdrawn from timber utilization; areas qualifying as commercial forest land are those which have the capability of producing in excess of 20 cubic feet per acre per year of industrial wood under management;

(2) "Forester" means the Forester or the Division of Forestry;

(3) "Cooperative Forestry Programs" and "extension service programs" mean programs that will provide technical assistance designed to further the policies and provisions of this chapter to persons engaged in timber harvesting or activities associated with timber harvesting or forest development and to other individuals, organizations and agencies concerned with forest resource management;

(4) "Division" means the Division of Forestry;

(5) "Forest Land" means land at least 16.7 percent stocked by forest trees of any size, or formerly having such tree cover and not currently developed for nonforest use, regardless of whether presently available or accessible for commercial purposes, and includes any such land under state, municipal or private ownership;

(6) "Forest Landowner" means a person who owns forest land;

(7) "Multiple Use" means (a) the management of all the

various resources of publicaly owned forest land so that they are used in the combination that will best meet the needs of the owner and the Alaskan people, making the most judicious use of the land for some or all of these resources or related values, benefits and services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; (b) that some land will be used for less than all of the resources; and (c) harmonious and coordinated management of the various resources, each with the other, without significant impairment of the productivity of the land and water, with consideration being given to the relative values of the various resources, and not necessarily the combinations of uses that will give the greatest dollar return or the greatest unit output;

(8) "Noncommercial Forest Land" means unproductive forest land incapable of yielding crops of industrial wood because of adverse site conditions (capable of producing no more than 20 cubic feet per acre per year) and productive forest land withdrawn from commercial timber use through statute or administrative regualation.

(9) "Notification Certificate" means a document prescribed by the Forester and constituting an intent to operate on forest land, which must be signed and sworn to by the operator.

10) "Operations" means timber harvesting or activities associated with timber harvesting or forest development;

(11) "Person" includes a joint venture or corporation as well as the entities set out in AS 01.10.060 (7);

(12) "Sustained Yield" means the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of forest land and water without significant impairment of the productivity of the land and water;

(13) "Timber Operator" or "Operator" means a person who is engaged in timber harvesting or activities associated with timber harvesting or forest development himself, or who contracts with others to conduct such harvesting or activities or development in his behalf, except a person who is engaged in timber harvesting or associated activities or forest development as an employee with wages as his sole compensation;

(14) "Timber Owner" means a person who owns timber on forest land or who has the rights to timber, but does not own the land itself.

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

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

STATEMENT OF JOHN BORBRIDGE, JR.
PRESIDENT OF SEALASKA CORPORATION

ON SPONSOR SUBSTITUTE SENATE BILL 59
ALASKA FOREST PRACTICES ACT

BEFORE

SENATE RESOURCES COMMITTEE
STATE OF ALASKA

APRIL 12, 1978

MADAME CHAIRMAN AND MEMBERS OF THE SENATE RESOURCES COMMITTEE, FOR THE RECORD MY NAME IS JOHN BORBRIDGE, JR. I AM PRESIDENT OF SEALASKA CORPORATION, THE REGIONAL CORPORATION ORGANIZED UNDER THE ALASKA NATIVE CLAIMS SETTLEMENT ACT BY THE NATIVES OF SOUTHEAST ALASKA. TODAY ACCOMPANYING ME FROM SEALASKA EXECUTIVE STAFF BEFORE THIS HEARING, IS MR. ROBERT W. LOESCHER , DIRECTOR OF NATURAL RESOURCES AND MR. PETER HUBERTH, MANAGER OF OUR FOREST PRODUCTS DIVISION.

BY THE END OF 1978 OR EARLY SPRING 1979 PURSUANT TO THE ALASKA NATIVE CLAIMS SETTLEMENT ACT SEALASKA CORPORATION SHOULD HAVE PATENT TO AS MUCH AS 250,000 ACRES OF LAND IN SOUTHEASTERN ALASKA. AMONG THE RESOURCE VALUES OF THE LAND WHICH INCLUDES RECREATIONAL RESOURCES, FISH AND WILDLIFE RESOURCES, MINERALS, WATER RESOURCES AND OTHER REAL ESTATE POTENTIALS, IS THE FOREST RESOURCE. SEALASKA IS MOVING TO IMPLEMENT THE FIRST YEAR OF ITS FIVE-YEAR FOREST PRODUCTS PLAN. EFFORTS TO STAFF UP, PREPARE THE ENGINEERING FOR ROAD CONSTRUCTION AND PLANS TO HARVEST OUR FIRST TREES IN THE SPRING OF 1980, ARE UNDERWAY. AS THE CORPORATION PROCEEDS, IN THIS TOTAL EFFORT, THE CONCEPTS OF SUSTAINED YIELD MANAGEMENT AND RESPECT FOR OTHER ENVIRONMENTAL VALUES WILL GUIDE THESE DEVELOPMENTS. AS THE LARGEST PRIVATE LANDOWNER IN SOUTHEASTERN ALASKA IT IS OUR INTENT TO MOVE AHEAD IN THE FOREST PRODUCTS INDUSTRY AS CAREFULLY AND PRUDENTLY AS POSSIBLE IN ORDER TO

DEVELOP THE LONG-TERM BENEFITS OF THIS RESOURCE.

ALSO, BY THE END OF 1978 IT SHOULD BE RECOGNIZED THAT PURSUANT TO THE ALASKA NATIVE CLAIMS SETTLEMENT ACT, AN ADDITIONAL 276,480 ACRES OF FORESTED LAND WILL BE PATENTED TO TWELVE (12) VILLAGE AND URBAN CORPORATIONS LOCATED AT SAXMAN, HYDABURG, CRAIG, KLAWOCK, KASAAN, KLUKWAN, KAKE, ANGOON, HOONAH, YAKUTAT, JUNEAU AND SITKA. SEALASKA DOES NOT REPRESENT THE VIEWS OF THESE CORPORATIONS; HOWEVER, IT IS OUR UNDERSTANDING THAT THESE CORPORATIONS ARE PROGRESSING WITH THE MANAGEMENT AND DEVELOPMENT OF THEIR FOREST RESOURCES AND GENERALLY SHARE SIMILAR CONCERNS AS OUR CORPORATION ABOUT THE FORMULATION BY THE LEGISLATURE OF A STATE FOREST PRACTICES ACT. A NUMBER OF THE CORPORATIONS ARE REPRESENTED HERE TODAY. MADAME CHAIRMAN, I URGE YOU AND YOUR COMMITTEE TO GIVE FULL WEIGHT OF CONSIDERATION TO THE TESTIMONY GIVEN BY OUR RESPECTIVE CORPORATIONS REPRESENTED HERE TODAY. IT GOES WITHOUT SAYING THAT THIS SINGULAR PIECE OF LEGISLATION WILL HAVE VITAL IMPACT ON OVER A HALF A MILLION ACRES OF TIMBERED LAND, PRIVATELY OWNED BY THE NATIVES OF SOUTHEASTERN ALASKA.

SINCE THE LAST SESSION, SEALASKA CORPORATION HAS PARTICIPATED IN TRYING TO ARRIVE AT A COMPROMISE DRAFT OF SB 59 WHICH WE FELT WOULD REPRESENT THE INTERESTS OF THE PRIVATE LANDOWNER. IN THIS

EFFORT, WORKING WITH INDUSTRY, ENVIRONMENTAL GROUPS, STATE AND FEDERAL AGENCY REPRESENTATIVES, UNIONS AND OTHERS, HAS TRULY ESTABLISHED OUR UNDERSTANDING OF OTHER VIEWS ABOUT THIS VERY IMPORTANT MATTER. WITH CERTAIN BASIC EXCEPTIONS, WE FEEL THAT ASSISTANT ATTORNEY GENERAL HAYNES AND MEMBERS OF THE INFORMAL COMMITTEE DID AN EXCELLENT JOB OF REDRAFTING SB 59.

AS PRIVATE LANDOWNERS, CONCERNED WITH THE NEED FOR CONTINUITY OF STATE IMPLEMENTATION OF FOREST PRACTICES WE FEEL THAT STANDARDS FOR PRIVATE LANDOWNERS AND PROMULGATION OF REGULATIONS MUST BE KEPT ABOVE POLITICS AS MUCH AS POSSIBLE. HOW TO ARRIVE AT PROTECTION OF PROPERTY RIGHTS AND PROMULGATE PRACTICAL REGULATIONS WILL BE THE MAJOR THRUST OF OUR TESTIMONY.

THE STANDARDS CONTAINED IN THE ACT MUST INCLUDE THE FACT THAT MAN IS A PART OF THE ENVIRONMENT AND THAT HIS ECONOMIC WELL-BEING IS OF PRIMARY CONSIDERATION FOR THE BENEFIT OF THE ECONOMY AND ALL THE CITIZENS OF THE STATE OF ALASKA.

IN THE DELIBERATION RELATED TO THIS LEGISLATION, IT IS IMPORTANT TO EMPHASIZE THE ECONOMIC ENVIRONMENT IN WHICH THE ALASKA FOREST PRODUCTS INDUSTRY MUST FUNCTION. OUR PRODUCTS PROVIDE RELATIVELY MARGINAL RETURNS COMPARED TO OREGON OR WASHINGTON. OUR TIMBER HARVESTING COSTS ON PUBLIC LANDS ARE 50 - 100% HIGHER THAN

THE LOWER 48. OUR SELLING PRICES ARE NO GREATER AND IN MOST INSTANCES ARE LESS THAN IN THE CONTINENTAL UNITED STATES. THEREFORE, IN MARKET DOWNTURNS, THE ALASKA PRODUCERS TEND TO BE THE FIRST TO SHUT DOWN. CONVERSELY IN RISING MARKETS WE TEND TO BE THE LAST TO DERIVE MAXIMUM BENEFITS. THE STUMPAGE OWNER IN OUR CASE THE PRIVATE LANDOWNER, IS THE INDIVIDUAL MOST AFFECTED BY THE MARKET CYCLES.

A FOREST PRACTICES ACT MUST ACCOUNT FOR THE ALASKA POSITION IN THE MARKET. THEREFORE, OUR SUGGESTED AMENDMENTS AND TESTIMONY ARE CONCERNED WITH ECONOMICS AND RESPONSIBLE MANAGEMENT OF PUBLIC AND PRIVATE FOREST LANDS.

SEALASKA CORPORATION AGREES THAT THE PRINCIPALS WHICH MIGHT BE UNDERTAKEN IN THE MANAGEMENT OF STATE TIMBER WOULD DIFFER FROM PRIVATE PRACTICES. HOWEVER, IT IS IMPORTANT THAT THE STATE NOT GIVE AWAY ITS' TIMBER ASSETS OR MANAGE THEM IN A MANNER WHEREBY THE ECONOMIC RETURN TO THE STATE IS DIMINISHED, THEREBY CREATING AN ADDITIONAL FINANCIAL BURDEN TO THE TAXPAYERS. THE MANAGEMENT OF RENEWABLE RESOURCES, WHETHER ON STATE OR MUNICIPAL OWNERSHIP, WHEN DESIGNATED FOR MULTIPLE-USE MANAGEMENT, SHOULD BE MANAGED SO AS TO PROVIDE A BROADENED INDUSTRIAL BASE, ENHANCED EMPLOYMENT AND ECONOMIC STABILIZATION, AND SATISFACTORY REVENUES TO HELP

FUND STATE OPERATIONS. INCREASING THE ECONOMIC BASE OF THE FOREST PRODUCTS INDUSTRY NOT ONLY PROVIDES FOR OPPORTUNITIES TO MANAGE FOREST LANDS IN A MORE RESPONSIBLE FASHION, BUT INTRODUCES OPPORTUNITIES FOR COMPETITION IN THE MARKET PLACE. THERE IS LITTLE OR NO MARKET PLACE COMPETITION AT THE PRESENT TIME IN ALASKA.

BECAUSE OF THE IMPORTANCE OF THE FOREST PRODUCTS INDUSTRY TO THE STATE OF ALASKA, SEALASKA CORPORATION BELIEVES THAT THIS ACT SHOULD PROVIDE FOR A BODY OF LAW, NOT THE OPPORTUNITY FOR A GUBERNATORIAL APPOINTEE OR SIMILAR INDIVIDUAL TO PROMULGATE REGULATIONS WHICH REFLECT NEITHER THE VIEWS OF COMMUNITY NOR WHICH REPRESENT THE BASIC NEEDS OF THE FOREST PRODUCTS INDUSTRY. THEREFORE, WE STRONGLY SUPPORT A LEGISLATIVE STRUCTURE WHICH WILL PROVIDE FOR A STATE BOARD OF FORESTRY, THE MEMBERS OF WHICH WILL ADEQUATELY REPRESENT THE FOREST INDUSTRY. ALSO MEMBERSHIP SHOULD REFLECT THE DIVERSITY OF OPINIONS REPRESENTED WITHIN THE STATE. THE STATE BOARD OF FORESTRY WOULD UNDERTAKE THE DRAFTING AND APPROVAL OF REGULATIONS TO INSURE THAT ALL INTERESTS ARE PROTECTED AND ESPECIALLY THAT THE FOREST PRODUCTS INDUSTRY WILL BE A SIGNIFICANT ECONOMIC CONTRIBUTOR TO THE STATE OF ALASKA.

JUST AS OTHER BOARDS IN THE STATE HAVE PROFESSIONAL MEMBERS FROM THE APPROPRIATE INTERESTED DISCIPLINE IT IS IMPORTANT THAT THIS BOARD HAVE A VERY STRONG REPRESENTATION OF PROFESSIONAL REPRESENTA-

TIVES FROM THE FOREST PRODUCTS INDUSTRY TO INSURE THAT FORESTRY NEEDS ARE PROPERLY MET.

IT IS IMPORTANT TO UNDERSTAND THAT THE AMENDMENTS WHICH WE OFFER PROVIDE FOR THE IMPLEMENTATION OF THE SUGGESTED STRUCTURE, MAKE A DISTINCTION BETWEEN THE BOARD OF FORESTRY AND OTHER BOARDS THAT HAVE BEEN ESTABLISHED PREVIOUSLY. IT IS ENVISIONED THAT THIS BOARD WILL HAVE A PRIMARY DUTY OF DETERMINING THE REGULATIONS WHICH WILL BE THE GUIDELINES FOR THE STATE FORESTER'S ADMINISTRATION. IN ADDITION, THE BOARD WILL GENERALLY REVIEW THE ACTIVITIES OF THE DIVISION OF FORESTRY AND OFFER SUGGESTIONS TO THE STATE FORESTER TO ASSIST HIM IN MORE EFFICIENTLY OPERATING HIS DIVISION.

WE HAVE REVIEWED THE REPRESENTATION ON OTHER BOARDS OF FORESTRY IN OTHER STATES SPECIFICALLY OREGON AND CALIFORNIA. IN OREGON A MAJORITY OF THE MEMBERS OF THE BOARD ARE FROM INDUSTRY AND IT HAS BEEN PROVEN OVER THE YEARS THAT THIS BOARD HAS OPERATED EFFICIENTLY AND HAS INSURED THAT PROPER AND RESPONSIBLE LAND MANAGEMENT PRACTICES ARE ENFORCED. HOWEVER, IN CALIFORNIA THE BOARD HAS BEEN SO SUBSTANTIALLY MODIFIED THAT THERE IS ONLY ONE FORESTER LEFT AND HIS TERM IS DUE TO EXPIRE. THE RESULT IS PANDOMONIUM WITHIN THE FOREST PRODUCTS INDUSTRY WITHIN THAT STATE.

THEREFORE, SEALASKA CORPORATION STRONGLY ENDORSES A BOARD OF FORESTRY WHICH WILL NOT ONLY INSURE A HIGH DEGREE OF PROFESSIONALISM, IN TERMS OF THE PROMULGATION OF REGULATIONS, BUT WILL ALSO REFLECT OTHER DIVERSE INTERESTS. IT IS RECOMMENDED THAT SUCH A BOARD INCLUDE REPRESENTATIVES OF THE FISHING INDUSTRY, THE FOREST PRODUCTS INDUSTRY, ENVIRONMENTALISTS, LABOR, BUT THAT IT INCLUDE A PREDOMINANT NUMBER OF REPRESENTATIVES OF LANDOWNERS AND PROFESSIONAL FORESTERS WHO WILL INSURE THE PROMULGATION OF REGULATIONS WHICH WILL MEET THE VARYING NEEDS, INCLUDING ECONOMIC, OF THE REGIONS IN ALASKA. DUE TO STAGGERED TERMS WHICH CAN BE SET, THESE PEOPLE WILL NOT BE DISPLACED BY THE VIEWS OF ANY INDIVIDUAL GOVERNOR, BUT WILL PROVIDE FOR THE NECESSARY CONTINUITY WHICH IS ESSENTIAL TO FOSTERING A VIGOROUS FOREST INDUSTRY. IN ADDITION, THE SOURCES FROM WHICH THESE APPOINTEES ARE DRAWN, AS SET BY THE STATUTE, WILL INSURE THE REFLECTION OF A BREADTH OF VIEWS NECESSARY TO ASSIST IN MEETING THE NEEDS OF THE STATE.

THE ACT CONTINUALLY SPEAKS OF BEST MANAGEMENT PRACTICES. SEALASKA CORPORATION AGREES WITH THE IDEA OF BEST MANAGEMENT PRACTICES AS LONG AS THEY MEET ECONOMIC DICTATES AND FEASIBILITY. IN ALASKA, BEST MANAGEMENT PRACTICES HAVE NOT YET BEEN DRAFTED. THE BOARD OF FORESTRY AS ENVISIONED WILL BE IN AN EXCELLENT POSITION TO ASSURE THAT BEST MANAGEMENT PRACTICES WILL BE PRACTICAL.

IT IS FELT THAT THE PROPOSED SPONSOR SUBSTITUTE BILL WILL FOSTER LITIGATION DUE TO STANDARDS THAT ARE TOO BROAD AS WRITTEN, AND SOME STANDARDS DO NOT PROVIDE SUFFICIENTLY CLEAR GUIDELINES FOR THE DRAFTING OF THE REGULATIONS. THE RESTATED STANDARDS THAT WE SHALL SUBMIT AND THE SYSTEM OF USING THE BOARD OF FORESTRY TO DRAFT THE REGULATIONS WILL ACCOMPLISH A VERY SUBSTANTIAL STEP IN INSURING THAT THERE WILL BE THE NECESSARY SPECIFICITY, THEREBY REDUCING OPPORTUNITIES FOR LITIGATION, ENHANCING THE OPPORTUNITIES FOR THE FIELD PRACTICIONERS TO UNDERSTAND AND ACCEPT THE REGULATIONS PROMULGATED BY THE BOARD.

SEALASKA STRONGLY ENDORSES THE ORGANIZATION WITHIN THE DEPARTMENT OF NATURAL RESOURCES WHICH PROVIDES FOR A DIVISION OF FORESTRY WITH A STATE FORESTER REPORTING TO THE COMMISSIONER. A STRONG STATE FORESTER, ABLE TO PARTICIPATE AT A LEVEL RELATIVELY EQUAL TO OTHER RESOURCES AND ADMINISTERING MOST REGULATIONS APPLYING TO FOREST LANDS, WILL ENHANCE OPPORTUNITIES FOR A HEALTHY FOREST PRODUCTS INDUSTRY.

SEALASKA SUPPORTS THE APPROACH WHEREBY BASIC UNDERLINING STATUTORY LANGUAGE INCORPORATED IN THIS LEGISLATION MAKE CLEAR THAT THE CONCEPT OF ONE DIVISION WITHIN THE ADMINISTRATION ENFORCING

FOREST PRACTICE REGULATIONS, COASTAL MANAGEMENT ACT REGULATIONS AND OTHER REGULATIONS WHICH LOGICALLY COULD BE INCLUDED, WORK TOGETHER TO RESULT IN A STRONG FORESTRY DIVISION WITH A HIGH PROFESSIONAL PROFILE. EXPERIENCE AND OBSERVATION AS TO EVENTS WHICH ARE OCCURING IN OTHER STATES INDICATE THAT IT IS VERY DIFFICULT FOR THE FOREST LAND MANAGER TO FOLLOW VARIOUS STATE PROMULGATED REGULATIONS IN A RESPONSIBLE FASHION WHEN HE MUST LOOK TO MANY AGENCIES AND A CHANGING SITUATION IN TERMS OF THE PROMULGATION OF SUCH REGULATIONS. THE ADMINISTRATION OF FOREST LAND IS SUBSTANTIALLY SIMPLIFIED WHEN THE LAND MANAGER KNOWS THAT THERE IS A PRIMARY STATE AGENCY TO WHOM HE CAN TURN FOR ASSISTANCE AND INTERPRETATION OF THE MANY REGULATIONS WHICH AFFECT LAND AND FOREST MANAGEMENT IN THE STATE OF ALASKA.

ONE OF THE GENERAL AREAS WHICH STILL VERY MUCH CONCERNS SEALASKA CORPORATION IS THE EFFECT OF THE ALASKA COASTAL MANAGEMENT ACT WITH RESPECT TO FOREST OPERATIONS. THE ALASKA COASTAL MANAGEMENT ACT ALLOWS, EVEN MANDATES, LOCAL CONTROL OF COASTAL PLANNING WHICH WE BASICALLY SUPPORT. HOWEVER, THE ACT ALSO RECOGNIZES SOME USE WILL BE OF SUCH IMPORTANCE THAT LOCAL GOVERNMENTS MUST NOT BE ALLOWED TO THWART SUCH USES. FOR INSTANCE, SECTION 46.35.040 (4) REQUIRES THE ALASKA COASTAL POLICY COUNCIL TO "...INITIATE A PROCESS FOR IDENTIFYING AND MANAGING USES OF STATE CONCERN..."

SECTION 46.35.210 THEN DEFINES USES OF STATE CONCERN GENERALLY AS USES OF GREATER THAN LOCAL CONCERN AND FURTHER SPECIFICALLY STATES THAT ENERGY RELATED DEVELOPMENT, INCLUDING BUT NOT LIMITED TO SITING OF MAJOR ENERGY FACILITIES OR LARGE SCALE INDUSTRIAL OR COMMERCIAL DEVELOPMENT ARE USES OF STATE CONCERN.

WE BELIEVE, AS STATED PREVIOUSLY THAT TIMBER MANAGEMENT INCLUDING HARVESTING IS EQUALLY A USE OF STATE CONCERN AND SHOULD BE SO DESIGNATED BY THE LEGISLATURE. WE THEREFORE RESPECTFULLY SUGGEST AND REQUEST AN AMENDMENT TO THE ALASKA COASTAL MANAGEMENT ACT BE INCLUDED IN THE LEGISLATION ESTABLISHING AN ALASKA FOREST PRACTICES ACT WHICH WOULD ADD TO THE DEFINITION OF "USE OF STATE CONCERN" THE MANAGEMENT, INCLUDING HARVEST, OF THE STATES TIMBER RESOURCES WHETHER ON PUBLIC OR PRIVATE LAND. SUCH A DEFINITION WOULD MINIMIZE IF NOT COMPLETELY PREVENT A SITUATION WHEREIN LOCAL PLANNING AND ZONING UNDER THE ALASKA COASTAL MANAGEMENT ACT WOULD CONFLICT WITH TIMBER ACTIVITIES AS REQUIRED OR ALLOWED UNDER THE ALASKA FOREST PRACTICES ACT.

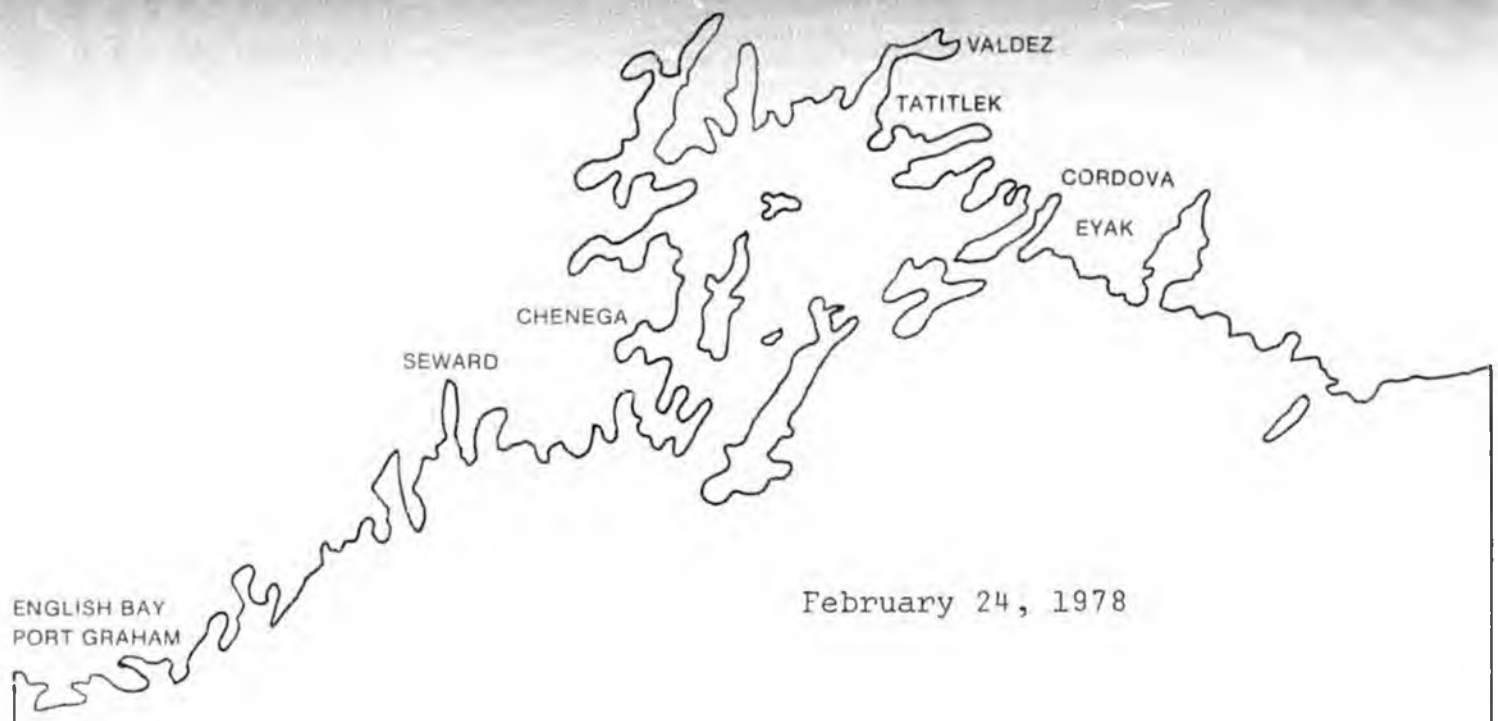
THERE ARE SOME SMALL AMENDMENTS THAT WE ARE INCLUDING WHICH CLEAN UP SOME OF THE LANGUAGE OF THE DRAFT AS SUBMITTED. IN ALL CASES WE HAVE TRIED TO INCREASE THE SPECIFICITY OF CERTAIN SECTIONS TO PROVIDE FOR GREATER CLARITY.

THE DRAFT AS DRAWN, IN AT LEAST ONE INSTANCE, COULD PROBABLY BE CONSIDERED UNCONSTITUTIONAL BECAUSE IT PROVIDES FOR A TAKING OF PRIVATE PROPERTY WITHOUT COMPENSATION. ONE EXAMPLE IS POTENTIAL FOR PROHIBITION OF CUTTING OF PRIVATE TIMBER IF IT AFFECTS THE SCENIC AND AESTHETIC QUALITIES IN CERTAIN AREAS. WE SUGGEST THE ELIMINATION OF THE SUBPARAGRAPH IN QUESTION.

AS HAS BEEN INDICATED BY SOME OF THE SENATORS AT THIS TABLE, IT IS FELT THAT THE PRIVATE LANDOWNER HAS THE FULL RESPONSIBILITY AND RIGHT FOR DETERMINING HOW HE WILL INTERPRET SUSTAINED YIELD MANAGEMENT. WE ENDORSE THIS PRINCIPAL AND HAVE MODIFIED THE WORDING TO ALLOW FOR APPROPRIATE FLEXIBILITY.

MADAME CHAIRMAN, WE THANK YOU FOR THE OPPORTUNITY TO APPEAR AND TESTIFY BEFORE YOU TODAY. AT THIS TIME, I WOULD LIKE TO HAVE PETER HUBERTH INTRODUCE AND EXPLAIN EACH OF THE SUGGESTED MODIFICATIONS WHICH SEALASKA CORPORATION WISHES TO OFFER.

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



February 24, 1978

Kay Poland, Chairman
Senate Resources Committee
Pouch V
Juneau, Alaska 99811

Dear Ms. Poland,

We are extremely concerned with the movement of SB 59, HB 40, and any other state forest practices legislation which may be introduced during this session of the Legislature.

Therefore, could you please notify us when you schedule these bills for hearing or debate before your committee.

Thank you very much.

Sincerely,

Carl A. Propes, Jr.

Carl A. Propes, Jr.,
Land Mgr.

Will do

912 East 15th Avenue, Anchorage, Alaska 99501, Phone (907) 274-4558

Chugach Natives, Inc.

11 MARCH, 1977

TESTIMONY BY CHUGACH NATIVES, INC., ON SENATE BILL 59 -
"AN ACT RELATING TO FOREST MANAGEMENT AND PRACTICES",
BEFORE THE SENATE RESOURCES COMMITTEE IN JUNEAU

GOOD AFTERNOON LADIES AND GENTLEMEN. MY NAME IS CARL PROPES, LAND MANAGER FOR CHUGACH NATIVES, INC., AND TODAY I AM SPEAKING ON BEHALF OF CECIL BARNES, PRESIDENT OF CHUGACH NATIVES, INC.

MY INTRODUCTORY REMARKS CONSIST OF TWO APOLOGIES. FIRST, I HAVE NO COPIES OF THIS TESTIMONY TO DISTRIBUTE TO THE COMMITTEE, FOR IT WAS ONLY PREPARED AFTER WE ARRIVED IN JUNEAU THIS WEEK. I WILL BE GLAD TO FORWARD SEVERAL COPIES OF THE FINAL DRAFT OF MY REMARKS TO YOU DURING THE COURSE OF NEXT WEEK, HOWEVER. SECONDLY, I MUST APOLOGIZE FOR NOT BEING ABLE TO SPEAK TO YOU THIS AFTERNOON AS A FORESTER, FOR THAT IS NOT WHERE MY TRAINING LIES. HOWEVER, WHAT I WILL ATTEMPT TO DO IS ACQUAINT YOU WITH HOW A LAND MANAGER FOR A PRIVATE CORPORATION, A CORPORATION DEEPLY AND INHERENTLY INVOLVED WITH FOREST MANAGEMENT, VIEWS SENATE BILL 59.

FIRST, I WANT TO IMPRESS UPON YOU HOW DEEPLY CHUGACH NATIVES, INC., IS COMMITTED TO SOUND FOREST MANAGEMENT AND PRACTICES. THE FORESTS OF SOUTHCENTRAL ALASKA HAVE BEEN THE ANCESTRAL HOME OF THE CHUGACH PEOPLE EVER SINCE THE GREAT NORTH AMERICAN ICE SHEETS RECEDED. FROM PREHISTORY TO THE PRESENT WE HAVE INHABITED WHAT IN THE EARLY TWENTIETH CENTURY CAME TO BE

CALLED THE CHUGACH NATIONAL FOREST. TODAY, AS A CORPORATION REPRESENTING THESE FOREST-DWELLING PEOPLE AS SHAREHOLDERS, CHUGACH NATIVES, INC., IS NO LESS CONCERNED ABOUT THE FUTURE OF ALASKA'S FOREST LANDS.

THE SECOND POINT THAT WE MUST EMPHASIZE IS THAT OUR FOREST ENVIRONMENT HAS MADE US INTO WHAT YOU MIGHT CALL "NATURAL ENVIRONMENTALISTS". BY LIVING IN THE FOREST AND SUBSISTING FROM ITS ABUNDANT RESOURCES, WE HAVE LEARNED FIRST HAND OF BOTH ITS PRODUCTIVITY AND ITS FRAGILITY. MOREOVER, THE LOCATION OF CHUGACH'S LAND SELECTIONS WILL DICTATE THAT THEY BE MANAGED IN CLOSE COORDINATION WITH ENVIRONMENTAL CONCERNS. OUR VAST SELECTIONS IN THE BREMNER RIVER AREA FALL WITHIN THE RECENTLY PROPOSED (d)(2) WRANGELL NATIONAL PARK, SUGGESTING THE POSSIBILITY OF EXTENSIVE LAND EXCHANGES AND COOPERATIVE MANAGEMENT AGREEMENTS. SECONDLY, LANDS IN EXCESS OF ONE HUNDRED THOUSAND ACRES ON THE EASTERN SHORES OF ICY BAY WILL SOON BE CONVEYED TO CHUGACH NATIVES' OWNERSHIP. IN TURN, THE CONGRESS HAS SPECIFICALLY REQUIRED THAT CHUGACH, IN ITS LAND MANAGEMENT PROGRAM AT ICY BAY, REFRAIN FROM TAKING ANY UNREASONABLE OR ARBITRARY ACTIONS FOR THE PRIMARY PURPOSE, AND WITH THE EFFECT, OF IMPAIRING OR CURTAILING ANY TRADITIONAL SUBSISTENCE USES IN THAT VICINITY BY NATIVES . . ENROLLED TO YAKUTAT.

I WOULD NEXT LIKE TO EXPLAIN TO THE COMMITTEE THAT SECTION 22(k)(2) OF THE ALASKA NATIVE CLAIMS SETTLEMENT ACT OF 1971

ALREADY REQUIRES THAT CHUGACH UPHOLD MANY OF THOSE SAME FOREST STANDARDS AND PRACTICES THAT SENATE BILL 59 WOULD SEEK TO RE-IMPOSE ON US. SECTION 22(k)(2) READS:

> Any patents to lands under this Act which are located within the boundaries of a national forest shall contain such conditions as the Secretary deems necessary to assure that such lands are managed under the principle of sustained yield and under management practices for protection and enhancement of environmental quality no less stringent than such management practices on adjacent national forest lands for a period of twelve years.

IN SUM, WE FEEL THAT THE FOREST SERVICE HAS SPELLED OUT ITS OWN STANDARDS AND REQUIREMENTS IN THE CHUGACH NATIONAL FOREST LAND USE PLAN, FOR INSTANCE, IN THE FOREST AND RANGELAND RENEWABLE RESOURCES PLANNING ACT OF 1974, AND IN THE ENVIRONMENTAL IMPACT STATEMENTS WHICH IT PREPARES FOR EACH OF ITS TIMBER SALE AREAS. AND, IN SHORT, THESE GUIDELINES SHOULD ALSO SUFFICE FOR THE ADJACENT PRIVATE FOREST MANAGERS. ANY ADDITIONAL RESTRICTIONS ENACTED BY THE STATE OF ALASKA, SUCH AS THOSE INCLUDED IN SENATE BILL 59, COULD SERVE LITTLE PURPOSE OTHER THAN TO COMPLICATE AND CONFUSE THE ISSUE.

IN CONCLUSION, CHUGACH NATIVES, INC., WOULD LIKE TO REFER THE COMMITTEE TO A BRIEF CLAUSE IN SECTION 2(b) OF THE CLAIMS ACT. THIS DECLARATION OF POLICY BY THE CONGRESS READS:

> ...the settlement should be accomplished rapidly, with certainty, in conformity with the real economic and social needs of Natives, without litigation, with maximum participation by Natives in decisions affecting their rights and property.. (emphasis added)

OVER THE YEARS THIS CLAUSE HAS BEEN IGNORED, ABRIDGED, DISTORTED, AND RARELY, IF EVER, HONORED. CHUGACH NATIVES, INC.,

WOULD THEREFORE LIKE TO URGE THAT THIS COMMITTEE, IN ITS DELIBERATION ON FOREST POLICY AND PRACTICES LEGISLATION, TAKE THE INITIATIVE AND REVERSE THIS SAD TREND OF IGNORING THE NATIVE VOICE.

AT THIS TIME I WOULD LIKE TO ADDRESS OUR SPECIFIC OBJECTIONS TO SENATE BILL 59. IT SHOULD BE UNDERSTOOD BY THE COMMITTEE, HOWEVER, THAT FOR THOSE REASONS OUTLINED PREVIOUSLY, CHUGACH NATIVES, INC., OPPOSES THE PASSAGE OF ANY FOREST PRACTICES LEGISLATION BY THE STATE AT THIS TIME. HOWEVER, WE ALSO RECOGNIZE THAT BY DIRECTING OUR COMMENTS TO SPECIFIC AREAS OF THE LEGISLATION CURRENTLY BEFORE THE COMMITTEE, WE CAN ALSO BE OF SERVICE.

FIRST, I THINK THAT THE TENOR OF THE BILL'S PURPOSES SECTION IS ITSELF SUBVERTED BY THE SUBSEQUENT PAGES OF EXTREME REGULATORY AUTHORITY GIVEN TO THE ADMINISTRATOR OF THIS CHAPTER. SEVERAL OF THE RESULTS WHICH SENATE BILL 59 PURPORTS TO ATTAIN ARE: (1) "TO INSURE THAT TIMBER HARVESTING WILL CONTINUE TO CONTRIBUTE SUBSTANTIALLY TO ALASKA'S ECONOMY"; AND (2) "TO PROTECT THE LONGEVITY OF ALASKA'S FOREST PRODUCTS INDUSTRY BY IMPLEMENTING EFFECTIVE FOREST MANAGEMENT PRACTICES AND MAINTAINING OVER THE LONG TERM ALASKA'S SUPPLY OF TIMBER..." UNFORTUNATELY, IT IS OUR OPINION THAT MANY, IF NOT MOST, OF THE REQUIREMENTS WHICH FOLLOW WOULD ONLY SERVE TO FORESTALL AND IMPEDE THE ACHIEVEMENT OF THESE NOBLE GOALS.

SECONDLY, WE SUPPORT THE CONCEPT OF HOUSE BILL 40, WHICH WOULD CREATE A DIVISION OF FORESTRY WITHIN THE DEPARTMENT OF NATURAL RESOURCES, UNDER THE DIRECTION OF A CHIEF FORESTER. WE STRONGLY FEEL THAT SUCH A CHIEF FORESTER SHOULD BE NAMED AS THE ADMINISTRATOR OF ANY FOREST PRACTICES LEGISLATION, RATHER THAN ADOPT THE ALTERNATIVE POSTURE, NOW INCLUDED IN SENATE BILL 59, OF DELEGATING EVEN MORE AUTHORITY TO THE ALREADY POLLUTED POST OF THE COMMISSIONER OF NATURAL RESOURCES.

THIRDLY, WE AGREE WITH THE FINDING OF SENATE BILL 59 THAT THE "FAILURE TO IMPLEMENT WISE FOREST MANAGEMENT MEASURES DESIGNED TO GUARENTEE PERPETUAL SUPPLIES OF RENEWABLE RESOURCES IN A COMPATIBLE MANNER WOULD BE A GRAVE DISSERVICE TO THE PEOPLE OF ALASKA." AND, CHUGACH NATIVES, INC., INTENDS TO DO EVERYTHING IN ITS POWER TO ENSURE WISE MANAGEMENT IN CONCERT WITH THE STEADY PRODUCTION OF TIMBER PRODUCTS FROM ITS FOREST LANDS. HOWEVER, IN OUR REGION OF ALASKA, AND TO VARIOUS DEGREES ELSEWHERE IN THE STATE, THE CURRENT LACK OF ADEQUATE REFORESTATION MATERIALS CONTRIBUTES TO A LAGGING REFORESTATION PROGRAM. THEREFORE, WE WOULD LIKE TO SEE A STATE DIVISION OF FORESTRY MANDATED TO ESTABLISH AND MAINTAIN TREE SEEDLING NURSERIES AND GREENHOUSES, AN ACTION WHICH THE COMMISSIONER IS ONLY GIVEN THE DISCRETIONARY POWER TO DO UNDER THIS BILL.

FOURTHLY, WE FEEL THAT THE REQUIREMENT OF ITEM #4 IN SECTION .040 OF SENATE BILL 59, THAT "THERE SHALL BE NO SIGNIFICANT IMPAIRMENT OF THE PRODUCTIVITY OF THE LAND AND WATER WITH

RESPECT TO RENEWABLE RESOURCES...", ONLY DUPLICATES EXISTING REGULATIONS, AND, AS SUCH, IS EXCESSIVE AND UNNECESSARY. ALSO, ITEM #5 IN THIS SECTION, WHICH SEEKS TO MAINTAIN THE SCENIC AND AESTHETIC QUALITY OF LANDS ADJACENT TO AREAS OF SIGNIFICANT IMPORTANCE TO THE TOURISM AND RECREATION INDUSTRIES, COULD BE INTERPRETED TO EFFECTIVELY PROHIBIT TIMBER DEVELOPMENT IN THE PRINCE WILLIAM SOUND AREA, FOR INSTANCE. WE BELIEVE THAT SUCH BROAD DISCRETIONARY POWERS SHOULD NEVER BE PLACED IN THE HANDS OF A SINGLE ADMINISTRATOR. THEREFORE, IN AN ATTEMPT TO NARROW THE LATITUDE AFFORDED THE ADMINISTRATOR IN THIS SECTION, WE WOULD RECOMMEND THAT THE FOLLOWING TWO PHRASES BE DEFINED IN SECTION .950 OF THIS BILL: "SCENIC AND AESTHETIC QUALITY" AND "AREAS OF SIGNIFICANT IMPORTANCE TO THE TOURISM AND RECREATION INDUSTRY".

FIFTHLY, WE BELIEVE THAT THE PREPARATION OF A TIMBER MANAGEMENT PLAN IS INDEED A LAUDABLE ACHIEVEMENT, AND AS A PRIVATE FOREST-LAND OWNER WE INTEND TO DO JUST THAT. ANY PLAN PREPARED BY THE STATE, HOWEVER, AS WOULD BE REQUIRED BY SECTION .050 OF SENATE BILL 59, MUST ONLY BE MADE TO APPLY TO STATE AND MUNICIPAL LANDS, NOT PRIVATE LANDS. YOU MAY BE ASSURED THAT ALL RESPONSIBLE PRIVATE LAND-OWNERS, SUCH AS CHUGACH NATIVES, INC., AND OTHER NATIVE CORPORATIONS, UNDERSTAND THAT THE "SUSTAINED YIELD OF MERCHANTABLE HIGH QUALITY TIMBER FROM FOREST LAND" IS THE ONLY MANAGEMENT GOAL THAT CAN ASSURE MAXIMUM LONG-RANGE BENEFITS TO THE CORPORATIONS AND THEIR SHAREHOLDERS. IN ALL CANDOR, WE HAVE NO REASON TO BELIEVE THAT

THE DEPARTMENT OF NATURAL RESOURCES - IN SPITE OF ALL THE GOOD FAITH IT CAN MUSTER - WILL HAVE MORE EXPERTISE, MORE INTEREST IN PRIVATE FORESTS, MORE TIME TO DEVELOP SOUND FOREST MANAGEMENT PLANNING, OR MORE INCENTIVE TO DO SO, THAN THE PRIVATE CORPORATIONS THEMSELVES. AND FRANKLY, WE ARE CONCERNED ABOUT THE DELETERIOUS EFFECTS WHICH WOULD RESULT UPON OUR FORESTS IF PLANNING WERE LEFT TO THE INITIATIVE OF A REMOTE BUREAUCRACY.

SIXTHLY, IN REFERRING TO SECTION .060 OF THIS BILL, WHERE THE GUIDELINES FOR THOSE REGULATIONS WHICH THE ADMINISTRATOR MAY ADOPT ARE DRAWN, WE WOULD HAVE TO OBJECT TO ANY WHICH SEEK TO REGULATE THOSE ASPECTS OF TIMBER HARVESTING ON PRIVATE LANDS WHICH HAVE NO SIGNIFICANT ENVIRONMENTAL EFFECT ON THE ADJACENT PUBLIC DOMAIN. THAT IS, IT WOULD BE EXCESSIVE FOR THE ADMINISTRATOR OF THIS ACT TO IMPOSE REGULATIONS REQUIRING US TO COMPLY WITH CERTAIN PROCEDURES WHICH IT IS IN OUR BEST ECONOMIC INTERESTS TO COMPLY WITH ANYWAY.

SEVENTH, WHILE SECTION .110 ON "PROHIBITIONS, PENALTIES AND ENFORCEMENT PROCEDURES" IS GENERALLY UNACCEPTABLE, TWO OF THE MOST OBJECTIONABLE PROVISIONS THEREIN ARE: (1) THAT THE ADMINISTRATOR IS ALLOWED TO STOP ALL TIMBER OPERATIONS IMMEDIATELY IN AN EMERGENCY SITUATION - A POWER THAT WE FEEL SHOULD REST ONLY WITH THE ATTORNEY GENERAL'S OFFICE; AND (2) THAT THESE PROCEEDINGS ARE NOT SUBJECT TO THE ADMINISTRATIVE PROCEDURES ACT. NO DOUBT THIS SECOND POINT WAS INCLUDED

IN THE BILL IN ORDER TO SANCTION HEARING OFFICERS APPOINTED BY THE COMMISSIONER OF NATURAL RESOURCES WHO MIGHT OTHERWISE BE DISQUALIFIED UNDER THE ADMINISTRATIVE PROCEDURES ACT ON THE GROUNDS THAT THEY ARE NOT "UNBIASED AND IMPARTIAL".

EIGHTH, ONE OF CHUGACH'S MOST GRIEVOUS COMPLAINTS ABOUT SENATE BILL 59 CONCERNS SECTION .120, WHICH ESTABLISHES THE COMMISSIONER OF NATURAL RESOURCES, THE ADMINISTRATOR OF THIS ACT, AS THE OFFICER WHO WOULD ALSO RECEIVE AND HEAR APPEALS, MANY OF WHICH WOULD STEM FROM THE COMMISSIONER'S OWN ACTIONS. CERTAINLY THIS COMMITTEE CAN DEVISE A MORE EQUITABLE APPEAL PROCEDURE THAN THIS.

NINTH, AND LASTLY, CHUGACH NATIVES, INC., FINDS FAULT WITH THE DEFINITIONS OF "COMMERCIAL AND NON-COMMERCIAL FOREST LAND" IN SECTION .950 OF SENATE BILL 59. WHEN ALL LANDS "CAPABLE OF PRODUCING CROPS OF INDUSTRIAL WOOD" ARE CONSIDERED TO BE "COMMERCIAL FOREST LAND", THIS INFERS THAT THEY WILL BE MANAGED ACCORDING TO PRINCIPLES AND PRACTICES SIMILAR TO THOSE MENTIONED IN THIS BILL. THEREFORE, SIMPLY BY BEING "CAPABLE" OF TIMBER PRODUCTION, THIS BECOMES THE HIGHEST AND BEST USE FOR MANY LANDS THAT WOULD PROBABLY BE BETTER SUITED TO OTHER USES.

IN CONCLUSION, I WOULD LIKE TO REITERATE OUR EARLIER PLEA THAT THE PRIVATE FOREST OWNER BE INVOLVED IN THE FORMULATION AND DRAFTING OF ANY STATE FOREST POLICY AND PRACTICES LEGISLATION. LET'S MAKE SUCH LEGISLATION A MODEL FOR INCORPORATING

THE OPINIONS OF INDIVIDUALS ENGAGED IN FOREST MANAGEMENT IN ALL SECTORS OF SOCIETY. THIS IS THE BEST MEANS FOR ASSURING THAT THE LAW WHICH ULTS FROM YOUR DELIBERATIONS WILL NOT EXCESSIVELY BURDEN THE PRIVATE OWNER, NOR EXERCISE TOO LENIENT A CONTROL OVER OUR COMMON ENVIRONMENT.

AS AN AFTERTHOUGHT, I MIGHT REMARK THAT I WAS RATHER SURPRISED TO NOTE THAT SENATE BILL 59 CONTAINS NO PROVISION FOR ANY KIND OF FORESTRY COMMISSION, COUNCIL OR BOARD. HOWEVER, WE BELIEVE THAT THE COMMITTEE SHOULD CONTEMPLATE WHAT THE NEED IS AND WHAT THE EFFECTS WOULD BE OF CREATING SUCH AN AD HOC ADVISORY BOARD, COMPOSED OF PRIVATE, AS WELL AS STATE AND FEDERAL FOREST OWNERS AND MANAGERS, TO EVALUATE AND RECOMMEND THE POLICIES AND PROCEDURES WHICH ANY FUTURE STATE FOREST PRACTICES LEGISLATION SHOULD CONTAIN.

WE THANK YOU, MADAM CHAIRMAN AND COMMITTEE MEMBERS, FOR AFFORDING CHUGACH NATIVES, INC., THE OPPORTUNITY TO TESTIFY THIS AFTERNOON ON SENATE BILL 59.

THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. Sponsor Substitute for Senate Bill No. 59
Title An Act Relating to Forest Resources and Practices
Requested by _____ Date _____

II. FISCAL DETAIL
Agency Affected Department of Natural Resources
Program Category Affected Division of Land and Water Management
Budget Request Unit(s) Affected Protection and Management

EXPENDITURES (Thousands of Dollars)

	FY 78	FY 79	FY 80	FY 81	FY 82	FY 83
100 PERSONAL SERVICES		186.3	241.6	349.0	367.0	380.0
200 TRAVEL		35.0	35.0	31.0	30.0	33.0
300 CONTRACTUAL		120.0	100.0	122.0	4072.0	4055.0
400 COMMODITIES		4.0	3.0	3.0	3.0	3.1
500 EQUIPMENT		24.0	2.0	20.0	5.0	2.0
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		369.3	381.6	525.0	1477.0	4473.1

FUNDING (Thousands of Dollars)

GENERAL FUND		369.3	351.6	490.0	4417.0	4408.1
FEDERAL FUNDS			30.0	35.0	60.0	65.0
OTHER (Specify)						

POSITIONS

FULL TIME		8	8	12	12	12
PART TIME		3	3	3	3	3
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)
A. Assumptions:

1. Under *Sec. 3. the Act takes effect January 1, 1979. However, as the Commissioner is not precluded from undertaking preparatory activities in the interim, it is assumed that one forester in the state office and one forester in each of the three regional offices of Fairbanks, Anchorage and Juneau will provide the necessary personnel to develop regulations and give public access to forestry expertise throughout the state (Sec. 41.17.020 (j)). These foresters would start July 1, 1978. Thereafter, dependent on the degree of forest practice activity it may be assumed that a forester should be made available to each area. Possible centers for these areas are: Delta, Willow, Soldotna, Glennallen and Haines.

2. It is assumed that other activities as inventory and advisory committee work would start after January 1, 1979.

IV. DATE 4/7/78 PREPARED BY Harvey R. Robbins
AGENCY Division of Land and Water Management
PHONE 279-5577

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33–001 (Rev. 12/77)

3. Section 41.17.050 of this Bill provides that the Commissioner shall maintain a current inventory or assessment of timber on forest land to assist in meeting the requirements of the Act. It is assumed that an inventory will be done on 8,000,000 acres of state and municipal lands and an equal amount of private lands will be assessed. To be of value this should be repeated every ten years. Experience shows that one man month is required to complete an inventory on one township (23,040 acres). Therefore, six persons are needed to complete the work each year. This allows for three two-man crews during the five month summer field period and three men for winter mapping and photo work.

4. Section 41.17.020 provides for advisory committes to be reimbursed for travel and expenses while giving assistance in the administration of this chapter. It is assumed that these committees will meet more often during the first period of the fiscal note as a result of development of regulation and public hearing meetings.

5. Section 41.17.020 provides that the Commissioner may establish and maintain forest tree nurseries and greenhouses for reforestation purposes. It is assumed that an agronomist and one forest technician will be needed in the program. A future expansion of forest nursery facilities will be sought using capital improvement funds.

6. Section 41.17.050(d) It is expected that after Janaury 1, 1981 recommendations transmitted to the legislature establishing economic incentives would amount to four to five million dollars.

7. Section 41.17.030(b) Amendments to the Federal Water Act may make applicable the provisions of the Act to forest land under federal ownership. It is assumed that the workload would increase dramatically in the southeastern area if this becomes fact.

B. Program Summary:

Personal Services:		$186,300
New Positions		
Forester III 1 for 12 mos.	$32,500	
Forester III 1 for mos.	16,200	
Forester II 3 for 12 mos.	84,900	
Forester II 1 for 6 mos.	14,100	
Forester Tech II 3 for 3 mos.	15,500	
Forester Tech I 1 for 3 mos.	4,500	
Drafting Tech II 1 for 6 mos.	10,200	
Inventory Overtime	8,400	
Travel:		$ 35,000
Forest Practice Committee	$ 7,000	
Inventory	24,000	
Forest Practice	4,000	
Contractual:		$120,000
Helicopter	$ 30,000	
Vehicle Milegage	6,000	
Aerial Photography	75,000	
Printing and Advertising	5,000	
Office Rent	4,000	
Commodities:		$ 4,000
Equipment:		$ 24,000
Office equipment	$ 4,000	
Vehicles	20,000	
		$369,300

SHEE ATIKA, INCORPORATED

P.O. Box 578
Mt. Edgecumbe, Alaska 99835
Phone - (907) 747-3534

February 18, 1977

SB 59

Senator Kay Poland
Senate Resources Committee
Pouch V
Juneau, Alaska 99801

Sir,

Shee Atika, Inc., as owner of 23,040 acres of commercial forest land in Southeast Alaska would like to submitt the following summary position on SB59 in behalf of our 1,850 stockholders.

1. SB59 will judge and establish resource management standards based on political criterea by placing all authority in the Commissioner of Natural Resources. We feel the authority to administer the standards should be delegated to a strong state forester who answers to a board of professionals, land owners, labor, industry and other parties. The board would draft the regulations.

2. We feel that asthetics are an improper subject for regulations affecting land management on private forest lands.

3. We feel that the Forest Practices Act should incorporate a notification system in lieu of the proposed prior approval system. The burden thus would be on the state, not the landowner and the Act would be much less expensive to enforce.

4. We feel that notification should not be required any earlier than a maximum of 30 days prior to commencement of operations.

5. We feel that requirement of a preformance bond prior to operation on private land is unnecessary as the law provides severe penalties for violation of the law and regulations. The preformance bond would prevent many small operators from being able to continue in business.

6. We would like to request a delay in hearings on SB59 until May 1st to allow SANTCO(the largest private commercial forest landowner in Alaska) adequate time to complete its recommendations.

Sincerely,

Nelson Frank

Nelson Frank,
President & Chairman,
Shee Atika, Inc.

wrw/tab

Alaska State Legislature

SENATOR
KAY POLAND
DISTRICT L
P.O. BOX 45
KODIAK, ALASKA 99615

KODIAK-ALEUTIAN
DISTRICT

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811

Senate

March 3, 1977

Mr. Nelson Frank
President & Chairman
Shee Atika, Inc.
P. O. Box 578
Mt. Edgecumbe, Alaska 99835

Dear Mr. Frank:

Thank you for your letter and critique on SB 59, Forest Practices Act. Your letter will be made part of our record and your suggestions will be considered by the Resources Committee.

I note your request that we delay hearings on this bill until May 1; this would be the equivalent of abandoning any hope for action this year. We have scheduled our next hearing on SB 59 for Friday, March 11, at 3:00 p.m., in Senate Resources Committee Room 126; I hope that SANTCO will be able to make some recommendations at that time. I feel sure that we will have additional hearings, but cannot make a commitment as to when they will be at this time.

Again, thank you for your comments, and I will look forward to hearing from you.

Sincerely,

Kay Poland
State Senator
Kodiak-Aleutian District

KP:ss

SHEE ATIKA, INCORPORATED

P.O. Box 578
Mt. Edgecumbe, Alaska 99835
Phone - (907) 747-3534

February 24, 1978

Senator Kay Poland
Chairman, Senate Natural Resources Committee
Alaska State Senate
Pouch V
Juneau, Alaska 99801

Dear Senator Poland,

We have researched the cost of administration and enforcement of "prior approval" forest practices acts such as that used in California and such as the act (SB 59) proposed by the Governor and the cost of administrating and enforcing a "notification" type forest practices act such as the act adopted in Oregon and the act proposed by the Southeast Alaska Native Timber Corporation. It is interesting to note that a "prior approval" act (SB 59) is 6.5 times as expensive as a "notification" act (proposed by SANTCO), considering volume harvested, and 27.3 times as expensive when one considers the number of operation notices filed.

COST BENIFIT COMPARISON OF PRIOR APPROVAL AND NOTIFICATION SYSTEMS
FOR
STATE FOREST PRACTICES ACTS

	Prior Approval System California	Notification System Oregon
Operations or Notices filed/year	1,371	8,100
MBF Harvested/year	2,700,000	3,778,000
Annual Budget	$2,400,000	$515,000
Administration and Enforcement Cost		
$/operation notice filed	$1,750.55	$64.07
$/MBF harvested	$.89/MBF	$.14/MBF

Oregon and California allow approximately 7% of their respective budgets for transportation and 33% for administrative overhead. The cost of administration and enforcement in Alaska should reasonably be expected to be 58% higher than the cost in California or Oregon. This conclusion is reached by increasing transportation expense to an estimated 33% of the total budget as it would apply to Alaska and further compounding the entire revised budget by an additional 25% estimated cost of operating differential.

We agree that Alaska should have a Forest Practices Act. The questions to be considered are:

Senator Kay Poland
February 24, 1978

1. What type of Forest Practice Act do we really need ?

2. How badly do we need the particular form of Forest Practices Act proposed ?

3. What type of Forest Practice Act can the people of Alaska and our fragile economy afford and justify ?

Please keep us imformed of the committee's progress on the subject.

Sincerely,

Warren R. Weathers

Warren R. Weathers
Executive Director

WRW/nw

Alaska State Legislature

SENATOR
KAY POLAND
DISTRICT L
P.O. BOX 45
KODIAK, ALASKA 99615

Senate

KODIAK-ALEUTIAN
DISTRICT

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 9981

March 1, 1978

Warren R. Weathers
Executive Director
Shee Atika, Inc.
Box 578
Mt. Edgecumbe, Alaska 99835

Dear Warren:

I have received your letter of February 24 regarding Senate Bill 59, the Forest Practices Act. It will be included in the record of testimony on the bill.

A revised version of the bill is currently being prepared by the Administration. I hope to reopen hearings on the latest draft sometime during March. You will be notified as soon as hearing dates have been scheduled.

Sincerely,

Kay Poland

Kay Poland
State Senator
Kodiak-Aleutian District

KP:ts

TESTIMONY OF CLARENCE KRAMER

FOR ALASKA LUMBER AND PULP CO., INC

BEFORE THE SENATE NATURAL RESOURCES COMMITTEE ON

S. B. 59

My name is Clarence Kramer. I am the President of Alaska Lumber & Pulp Co., Inc. I am here today to testify in support of Senate Bill 59 and urge its prompt passage by the legislature.

At the outset let me commend those who have participated in this process of drafting this bill for what has been three trying years. Anyone who reviews its various drafts can see that it is the work product of many people. It achieves an effective compromise and consensus of what will be required to protect our forests and our industry. It is of value to all the citizens of the State and is indeed in the public interest that this legislation has been brought before you prior to the time that there was a crisis in our forests requiring adoption of such a bill under emergency conditions.

More than any person, Madame Chairman, you deserve credit for this Bill. You forced the Administration to seek concensus so that the private landowner, public land user, interested citizens, and the regulatory area of government would all be served rather than hindered by a Forest Practices Act. At times when progress was stalled, it was your prodding

that got the parties back on track. In short, you have done a tremendous job on this Bill, which is in the highest tradition of Alaskan Legislative Service.

I thought it would be useful to go through this bill and explain the various points that we see as beneficial to both the wood industry and public interest:

1. Section 41.17.010(2). In this section of legislative intent, the importance of the forest industry to the State is recognized and the support of the State in maintaining the forest industry is promised. We expect to be self-sustaining and pay our own way in this State as we always have. However, we desire to do this in concert with the State and this Section promises that kind of relationship.

2. Section 41.17.010(4). This section of the declaration of intent indicates the tripartite approach of the legislation. Namely, the bill recognizes the need for professional management services and economic incentives along with regulatory measures. Thus a balanced approach which we hope will be fully implemented in the regulations.

3. Section 41.17.010(5) &(6). These sections of the declaration of intent recognize that regulations to be promulgated under both the Coastal Zone Management Act and Section 208 of the Federal Water Pollution Control Act of 1972 must be coordinated with the Forest Practices Act. This will give us one comprehensive set of regulations for operators. What we do not want is three sets of regulations under three different management agencies within the State.

One of the major incentives for our support of this bill is the fact that it promises that Section 208 and the Coastal Zone Management Act Regulations regarding forestry will be coordinated under the Forest Practices Act. Madame Chairman, I can assure you that we will be asking for legislative oversight if this promise is not carried out.

4. Section 41.17.020(a). This section provides for the creation of a Division of Forest, Land, and Water Management within the Department of Natural Resources. This section has been one of the key stumbling blocks to reaching an agreement on a Forest Practices Act. The industry has been concerned for years over the Fish and Game Department's control of forestry affairs. To the extent that the State of Alaska has had a policy with respect to its forests and forest industry, it has been created by the Alaska Department of Fish and Game. Since the Alaska Department of Fish and Game is headed by a Commissioner, the political power of the Department vis a vis the political power of anyone within the State Government regarding forestry has always been one sided. One of the major things we had hoped to accomplish by this bill was the assurance that fishery values receive equal consideration with timber values on our forests. We had hoped to do this by placing the Division of Forestry directly under the Commissioner so that it would have the same importance as the Division of Lands.

There appears however to be problems associated with creating a separate Division of Forestry which reports directly to the Commissioner. First of all, the land management authority of the Department of Natural Resources resides

with the Division of Lands. The authority of that Division is spelled out in Title 38 of the Alaska Statutes. It is going to be necessary in the near future for the legislature to extensively revise this anachronistic and archaic statute. Commissioner LeResche has promised to take a look at this problem over the next two year period to see what changes should be made in Title 38. He has also assured us that he will make certain the concerns of the forest industry receive equal consideration with concerns for other resources in the top levels of the Government. Accordingly, we will bow to his wishes for the time being that the Division of Forestry be within the Division of Lands. The Bill leaves open to the Commissioner the option of moving the Division of Forestry if the proposed arrangement is unsuccessful.

We would like to compliment Commissioner LeResche for the active interest he has taken in responding to our concerns regarding this problem. His recognition of the importance of the forest industry and that it has a rightful place in the forest is in marked contrast to the previous Commissioner. The very struggle on this issue which has taken place over the last three years has sensitized the Department of Natural Resources to our concerns. We are satisfied that they will be considered.

As we understand the inner-workings of 41.17.020(a) and 41.17.050(c), the Commissioner can move the Division of Forestry outside the Division of Lands at any point he deems appropriate. After a two year period he will review the administrative arrangement in his report to the legislature. The legislature will then have an opportunity to review his

report and determine whether it would be appropriate to move the Division of Forestry outside the Divison of Lands at that time. At the very least, we hope that Title 38 will have been revised at that time, so that if the legislature deems it appropriate to move the Division of Forestry there is no stumbling block to prevent it from happening.

5. Section 41.17.020(g) coordinates the activities of the Department of Environmental Conservation and the Department of Natural Resources with respect to Section 208 regulations regarding forestry. Under the Federal regulations and by act of the Governor, the Department of Environmental Conservation is the lead agency for Section 208 regulation within the State. This means that DEC is not subject to legislative direction but rather receives its authority from the Federal Government. This is why the Section is written to require the Commissioner to "seek to enter into a cooperative agreement with the Commissioner of Environmental Conservation". This is why it provides that DEC has to approve the agreement. We have received assurances from Mr. Reinwand that the Department of Environmental Conservation intends to be reasonable and fair in assuring that this section of the Act is carried out.

6 Section 41.17.020(i) provides for the creation of advisory committees to assist in the administration of this chapter. We believe it to be essential that this advisory committee be developed early on so that it can assist in the

creation of the regulations under this Act. We believe further that private land holding interests should be heavily represented on this Board.

7. Section 41.17.040(b)(1) should be changed as has been suggested by the Administration. As it stands now it requires the production of a sustained yield of merchantable timber from private forest land. Sustained yield is defined in this statute in the same way it is in the Multiple Use-Sustained Yield Act of 1960. The Federal Government has determined that Sustained Yield means non-declining yield. While the continued production of merchantable timber is obviously something that needs to be considered on private land a notion that the private land owners' must manage their timber on a non-declinirg basis is something that the State should not dictate. Obviously, sustained yield management is appropriate for State and Municipal forest land.

8. Section 41.17.040(c)(4) requires that forest lands must be administered to provide for the continuation of forest-related business. This again is a recognition important to us of the importance of the forest industry in the Alaskan economy. We expect to rely heavily on this section in the preparation of regulations.

9. Section 41.17.050 is what may be termed a mini State Forest and Rangeland Renewable Resources Planning Act. As I am sure this Committee is aware, this latter Act is a Federal Act passed in 1974 to require advanced planning for

the use of Forest Resources on public land. In recent days we have seen a sorry example of the way it was supposed to be administered when the Carter Administration came out with a recommendation for wilderness in the Tongass National Forest prior to the time that the Tongass Land Use Management Plan was completed. Nevertheless the idea of that bill is good and the fact that we would do many of the same things on State lands which are required by that Bill will be most valuable.

10. Section 41.17.060(b) sets up a single stop permit requirement within the Department of Natural Resources to be coordinated with the Act that this Committee sponsored and passed last year, Madame Chairman.

11. Section 41.17.060(d) is another important section to us. It provides that the Commissioner shall adopt only regulations necessary to accomplish the purpose of the Chapter and will avoid regulations which increase operating costs witnout yielding significant benefits. It remains to be seen whether or not this can be done. However, this is the first time I have seen this stated as a goal in State legislation. Hopefully when the regulations are being formulated this Section of the Bill will be remembered.

12. Section 41.17.070 sets up the procedures for granting permits. As I am sure you are aware, this is a modified notification procedure. I believe it is valuable to have a procedure designed to limit paperwork and which sets a proscribed time for agency action. Too often in the past agencies have failed to act in a timely way, and thus

caused delay in a number of projects. This has occurred most frequently with respect to our industry where we have applied for Corps of Engineer Permits' which require concurrence by State agencies. Now State agencies will no longer be able to withhold such consideration until it is convenient for them to act.

13. Section 41.17.110 is another compromise in the Bill. Frankly, we had wanted a Section which set up an independent office of hearing examiner which would have the right to use both an informal and formal procedure. What has been prepared here is a reasonable compromise which allows for persons uninvolved with the Department of Natural Resources to act as hearing examiner and also allows an operator to proceed informally when there is a complaint against him. That is, he may elect to go forward without the necessity of having a lawyer, realizing that he will not be opposed by a lawyer or a representive from the agency on the other side.

Thank you very much Madame Chairwoman for all of your hard work in assuring that there was an equitable resolution of this issue. As you can see from the foregoing the forest industry has been given much incentive to support this bill. Without your participation we doubt that this would have occurred in the extent it did. We would also like to compliment Commissioner LeResche for his insight and understanding of the issues and willingness to spend time and energy in achieving a fair bill. He too urged compromise

on all parties and was willing to take strong and decisive action when needed. Had he been Commissioner of Natural Resources when this bill originally came up for consideration I am sure it would have been whipped into shape far more quickly than it was. Finally, Geoff Haynes, from the Department of Law, deserves commendation for his hard work and persistence on this bill. I am sure that there were many times when Geoff felt frustrated by the seeming lack of progress in getting this bill moving. He has done an admirable job in seeking a reasonable solution.

I would be glad to answer any questions.

Alaska Conservation Society

Incorporated in 1960

P.O. Box 80192 College Branch, Fairbanks, Alaska 99708

SSSB 59 Forestry Practices Act

A state forestry practices act is needed to set criteria and standards under which state, municipal and private commercially forested lands are to be managed.

Obviously, the main purposes of the act are to deal with management of c commercial timber for in-state needs as well as export. But, receiving equal and balanced consideration should be other uses of our forests. Also, emphasis should be on cooperative management between federal, state municipal, and private forest landholders. Special consideration should be given to doordination and cooperation with federal agencies in the development of national forest management plans and with the Joint Federal State Land Use Planning Commission or its successor. Regulations should encompass strong environmental safeguards and the ability by the state to shut down damaging activities should they occur. Reforestation must be practiced to incure perpetuation of our state forest ecosystems. Inventories must be carried out to establish what forest resources are in the state. A comprehensive management plan, long term, for state forest lands should be developed to allow the timber industry to know the conditions of leasing state forest lands and allowing them to be able to plan. Such an act is needed to provide a clear basis from which to operate and make forestry management decisions. Economic incentives should be tempered with fair taxation policies on timber and timber growing land.

SSSB 59 incorporates these ideas and others. Much work has been done between industry, native and conservation groups to arrive at a forestry

practices act acceptable to all. ACS appreciates the opportunity for input into this important piece of legislation and supports the concepts embodied in this bill.

The amendments we have to offer are as follows:

1. .040, pg. 5, line 23-25, delete current (6) and add new (6) to read: "(6) scenic and aesthetic quality shall be maintained in or adjacent to areas of significant importance to tourism, recreation, and wilderness areas."

2. .060, pg. 8, line 7, add "(9) protection of scenic, recreation, aesthetic, wilderness and other national values."

3. .110, pg. 12, line 13, change "$10,000" to "$100,000" or restore sentence after $10,000 to read "Each day constitutes a separate offence."

GOLDBELT, INCORPORATED
130 SEWARD STREET, SUITE 302 • JUNEAU ALASKA 99801 • (907) 586-6244

TESTIMONY OF JOSEPH G. WILSON
ON BEHALF OF GOLDBELT, INCORPORATED ON
PROPOSED SPONSOR SUBSTITUTE
SENATE BILL NO. 59
IN THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE - SECOND SESSION
A BILL RELATING TO FOREST RESOURCES AND PRACTICES

Madame Chairman, Members of the Committee, My name is Joseph G. Wilson. I am the President and Chairman of the Board of Directors of Goldbelt, Incorporated, the Alaska Native Claims Corporation organized by the Juneau Natives for the purpose of selecting land pursuant to Section 14 H (3) of the Alaska Native Claims Settlement Act of 1971. Goldbelt has 2,700 shareholders, each of whom is a duly enrolled Alaska Native. Goldbelt will own the surface estate of 23,040 acres of land in Northern Southeast Alaska that will have substantial timber value.

Goldbelts concern with Proposed Sponsor Substitute Senate Bill No. 59 lies in its impact on our right as private land owners to manage our forest lands.

Goldbelt has reviewed Sealaska's amendments to the Proposed Sponsor Substitute Senate Bill 59, Alaska Forest Practices Act and consider these to be the minimum requirements for the protection of private property interests.

The amendments focus on 1.) a Board of Forestry is established with broad representation from industry, property owners, and other interest groups. An important consideration of the Board is that their responsibility will be to directly participate in the formulation of draft regulations pertaining to the

MANAGEMENT AND USE OF FOREST RESOURCES. 2.) THE ORGANIZATION FOR A DIVISION OF FORESTRY LED BY A STATE FORESTER WITH SUFFICIENT FORESTRY EDUCATIONAL BACKGROUND. 3.) THE AMENDMENTS ADDRESS THE STANDARDS OF REGULATIONS WITH EMPHASIS ON THE ECONOMIC ENVIRONMENT OF THE INDUSTRY AND RECOGNITION THAT MAN IS AN ESSENTIAL FEATURE IN MANAGING THE FOREST AND RELATED RESOURCES.

GOLDBELT CONSIDERS THESE TO BE THE BASIC MINIMUM REQUIREMENTS FOR THE PROTECTION OF PRIVATE LAND OWNERSHIP INTERESTS. WITHOUT THESE AMENDMENTS, GOLDBELT, INCORPORATED WOULD BE OPPOSED TO THE PASSAGE OF THIS LEGISLATION DURING THIS SESSION.

MADAME CHAIRMAN, WE THANK YOU FOR THE OPPORTUNITY TO TESTIFY.

COOK INLET CHAPTER
JUNEAU CHAPTER
KETCHIKAN CHAPTER
YUKON RIVER CHAPTER
SITKA CHAPTER
STIKINE CHAPTER

SOCIETY OF AMERICAN FORESTERS

Alaska Section

April 10, 1978

TESTIMONY FOR THE SENATE RESOURCES COMMITTEE
SENATE BILL NO. 59, SPONSOR SUBSTITUTE

MADAM CHAIRMAN AND MEMBERS OF THE COMMITTEE;

MY NAME IS BOB JANES AND I AM APPEARING TODAY FOR THE ALASKA SECTION OF THE SOCIETY OF AMERICAN FORESTERS.

WE WELCOME THIS OPPORTUNITY TO GIVE TESTIMONY IN FAVOR OF THE CURRENT SPONSOR SUBSTITUTE FOR SENATE BILL NO. 59. THE ALASKA SECTION REPRESENTS OVER 200 PROFESSIONAL FORESTERS THROUGHOUT THE STATE OF ALASKA, AND IS PART OF A NATIONAL ORGANIZATION OF MORE THAN 20,000 SUCH MEMBERS. DURING THE PAST THREE YEARS, WE HAVE BEEN ACTIVE IN HELPING TO FORMULATE LEGISLATION FOR A SOUND STATE FOREST PRACTICES ACT IN ALASKA. A YEAR AGO, WE MADE AN IN-DEPTH ANALYSIS OF SENATE BILL NO. 59, BY TESTING IT AGAINST OUR SOCIETY OF AMERICAN FORESTERS RECOMMENDED NATIONAL CRITERIA FOR A COMPETENT STATE FOREST PRACTICES ACT. WE ARE HAPPY TO SEE THAT SUGGESTIONS AS A RESULT OF THAT EFFORT HAVE BEEN INCORPORATED INTO THE SPONSOR SUBSTITUTE BEFORE YOU TODAY.

ONE OF OUR PRIMARY CONCERNS A YEAR AGO, WAS THE NEED FOR THE STATE FORESTER TO PLAY A MORE PROMINENT AND AUTHORITATIVE ROLE IN ADMINISTERING THE ACT IN A SOUND AND PROFESSIONAL MANNER. SINCE THE DIRECTOR OF THE DIVISION OF FOREST, LAND, AND WATER

MANAGEMENT WILL BE THE STATE FORESTER, AND SINCE THIS PERSON MUST HAVE PROFESSIONAL NATURAL RESOURCES LAND MANAGEMENT CREDENTIALS, IT APPEARS THE ORGANIZATIONAL STRUCTURE NOW PROVIDES FOR OVERCOMING THAT PARTICULAR PROBLEM. WITH PROPER DELEGATED AUTHORITY EXTENDED BY THE COMMISSIONER, THE STATE FORESTER SHOULD BE ABLE TO OPERATE IN A LEADERSHIP ROLE IN THE MANNER WE ENVISION IS NECESSARY. WE MUST EMPHASIZE, HOWEVER, THE IMPORTANCE OF DELEGATING SIGNIFICANT AUTHORITIES TO THE STATE FORESTER. OTHERWISE, A PROGRESSIVE STATE FORESTRY AWARENESS IN ALASKA COULD AGAIN BACKSLIDE, AND OBSTRUCT SOUND PROTECTION, MANAGEMENT AND UTILIZATION OF THE ABUNDANCE OF NATURAL RESOURCES THIS GREAT STATE HAS.

ANOTHER OF OUR MAJOR CONCERNS IN THE PAST WAS THE EFFECT THIS LEGISLATION WOULD HAVE ON PRIVATE LANDOWNERS. CRITERIA #7 OF OUR NATIONAL GUIDELINES STATES "A FOREST PRACTICES ACT SHOULD ALLOW A FOREST LANDOWNER LATITUDE IN APPLYING PROFESSIONAL FORESTRY EXPERTISE AND FOREST MANAGEMENT PRINCIPLES. ADMINISTRATIVE REQUIREMENTS FOR FOREST LANDOWNERS AND OPERATORS SHOULD NOT BE UNDULY BURDENED." IN PREVIOUS INPUT, WE EXPRESSED THOUGHTS ABOUT THE APPARENT INAPPROPRIATE INVASION OF RIGHTS AGAINST PRIVATE LANDOWNERS BECAUSE OF UNDULY RESTRICTIVE REGULATORY PRACTICES. FOR EXAMPLE, THERE WAS A PROVISION IN PREVIOUS PROPOSED LEGISLATION THAT READ "TIMBER HARVESTING IS NOT PERMITTED IN AN AREA UNLESS RELEVANT DATA AND INFORMATION INDICATE THAT THERE WILL BE NO REFORESTATION PROBLEMS LEADING TO THE INABILITY OF THAT AREA TO PRODUCE A SUSTAINED YIELD OF MERCHANTABLE TIMBER." WE COMMENTED THAT WHILE THIS MAY BE APPROPRIATE FOR STATE OR MUNICIPAL FOREST LANDS, IT

WAS NOT APPROPRIATE AS A BASIS FOR DEPRIVING A PRIVATE LANDOWNER OF ECONOMIC VALUES THAT EXISTED ON HIS OWN LAND. THE CORRESPONDING REGULATORY STANDARD IN THE CURRENT SPONSOR SUBSTITUTE, SEC. 41.17.040 (B) (1), NOW READS "TIMBER HARVESTING IS LIMITED TO AREAS WHERE DATA AND INFORMATION DEMONSTRATE THAT NATURAL OR ARTIFICIAL REFORESTATION TECHNIQUES WILL RESULT IN THE PRODUCTION OF A SUSTAINED YIELD OF MERCHANTABLE TIMBER FROM THAT AREA." DURING THE OPERATOR NOTIFICATION PROCESS WITH THE COMMISSIONER, THIS REQUIRED DETERMINATION SHOULD BE EASILY RESOLVED. ANOTHER OVERLY RESTRICTIVE PROVISION IN THE SAME SECTION OF THE PREVIOUSLY PROPOSED LEGISLATION READ, "SCENIC AND AESTHETIC QUALITY SHALL BE MAINTAINED IN OR ADJACENT TO AREAS OF SIGNIFICANT IMPORTANCE TO THE TOURISM AND RECREATION INDUSTRY." THE CORRESPONDING REGULATORY STANDARD NOW READS "WHERE ECONOMICALLY PRACTICABLE, ALLOWANCE MAY BE MADE FOR SCENIC AND AESTHETIC QUALITY IN OR ADJACENT TO AREAS OF SUBSTANTIAL IMPORTANCE TO THE TOURISM AND RECREATION INDUSTRY." IN ESSENCE, THESE TYPES OF UNDULY RESTRICTIVE MEASURES HAVE BEEN ELIMINATED AND WE BELIEVE PRIVATE LANDOWNERS ARE NOW GIVEN FAIR CONSIDERATION IN THE SPONSOR SUBSTITUTE BILL. IN ADDITION, SECTION 41.17.070 HAS BEEN SUBSTANTIALLY IMPROVED REGARDING REVIEW AND APPROVAL OF OPERATIONS. EVERY EFFORT WILL BE MADE TO LIMIT THE REVIEW AND APPROVAL PERIOD TO A MAXIMUM OF 20 DAYS. WITH THESE EXAMPLES, IT IS DEMONSTRATED THAT UNDULY BURDENSOME REQUIREMENTS HAVE BEEN STREAMLINED OVER THE PREVIOUS BILL.

PROPOSED LEGISLATION FOR AN ALASKA FOREST PRACTICES ACT STARTED IN THE SECOND SESSION OF THE NINTH LEGISLATURE. IT CONTINUED IN THE FIRST SESSION OF THE TENTH LEGISLATURE, AND IS NOW IN ITS THIRD YEAR. TO HELP ASSURE SOUND PROFESSIONAL MANAGEMENT OF ALASKA'S

FOREST LAND RESOURCES AT THE EARLIEST POSSIBLE TIME, WE URGE YOUR COMMITTEE TO AGGRESSIVELY STRIVE FOR ADOPTION OF THIS SPONSOR SUBSTITUTE FOR SENATE BILL No. 59, DURING THIS SECOND SESSION OF THE TENTH LEGISLATURE.

THANK YOU FOR LISTENING TO US TODAY.

R. C. James

May 4, 1977

The Honorable Kay Poland
Alaska State Senate
Pouch V
Juneau, AK 99811

Dear Senator Poland:

It is our understanding that the likelihood of a Forest Practices Bill or a bill reorganizing a portion of the department of Natural Resources, in order to more efficiently implement forest practices will not be enacted by the legislature during this session. Since Sealaska has been very interested in organization modifications to the Department of Natural Resources in order to provide an environment which will assure the responsible implementation of forest practices, we would like to assist in the pursuit of drafting appropriate legislation to ensure enactment in next year's session.

Since you have been so responsive and helpful regarding such legislation, I would like to offer the services of Sealaska Corporation in assisting you in any way possible toward the drafting of a bill which will meet the needs of the private forest landowner in the State and yet assure all of the citizens that this very important renewable resource is being properly managed for future generations. Therefore, when your summer or fall schedule permits, I would be very glad to make our personnel available in order to have a bill drafted prior to next year's session and to which you could give your full support.

I will be waiting for your reply.

Sincerely,

John Borbridge, Jr.

John Borbridge, Jr.
President

LEGISLATIVE AFFAIRS

Alaska State Legislature

SENATOR
KAY POLAND
DISTRICT L
P.O. BOX 45
KODIAK, ALASKA 99615

Senate

KODIAK-ALEUTIAN
DISTRICT

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811

May 31, 1977

John Borbridge, Jr.
President
SEAlaska Corporation
811 West 12th Street
Juneau, Alaska 99801

Dear Mr. Borbridge:

I was very pleased to receive your letter offering the services of SEAlaska Corporation, for assistance in drafting a forestry practices bill for the next session. I feel that it is timely for such a bill, and I was not satisfied with the bill submitted by the administration this year. I would like to take advantage of your kind offer, and I will be contacting you this summer or fall as to a time which will be mutually agreeable.

Sincerely,

Kay Poland

Kay Poland
State Senator
Kodiak-Aleutian District

KP:ss

SHEE ATIKA, INCORPORATED

P.O. Box 578
Mt. Edgecumbe, Alaska 99835
Phone - (907) 747-3534

February 18, 1977

SB 59

Senator Kay Poland
Senate Resources Committee
Pouch V
Juneau, Alaska 99801

Sir,

Shee Atika, Inc., as owner of 23,040 acres of commercial forest land in SouthEast Alaska would like to submitt the following summary position on SB59 in behalf of our 1,850 stockholders.

1. SB59 will judge and establish resource management standards based on political criterea by placing all authority in the Commissioner of Natural Resources. We feel the authority to administer the standards should be delegated to a strong state forester who answers to a board of professionals, land owners, labor, industry and other parties. The board would draft the regulations.

2. We feel that asthetics are an improper subject for regulations affecting land management on private forest lands.

3. We feel that the Forest Practices Act should incorporate a notification system in lieu of the proposed prior approval system. The burden thus would be on the state, not the landowner and the Act would be much less expensive to enforce.

4. We feel that notification should not be required any earlier than a maximum of 30 days prior to commencement of operations.

5. We feel that requirement of a preformance bond prior to operation on private land is unnecessary as the law provides severe penalties for violation of the law and regulations. The preformance bond would prevent many small operators from being able to continue in business.

6. We would like to request a delay in hearings on SB59 until May 1st to allow SANTCO(the largest private commercial forest landowner in Alaska) adequate time to complete its recommendations.

Sincerely,

Nelson Frank

Nelson Frank,
President & Chairman,
Shee Atika, Inc.

wrw/tab

Alaska State Legislature

SENATOR
KAY POLAND
DISTRICT L
P.O. BOX 45
KODIAK, ALASKA 99615

Senate

KODIAK-ALEUTIAN
DISTRICT

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811

March 3, 1977

Mr. Nelson Frank
President & Chairman
Shee Atika, Inc.
P. O. Box 578
Mt. Edgecumbe, Alaska 99835

Dear Mr. Frank:

Thank you for your letter and critique on SB 59, Forest Practices Act. Your letter will be made part of our record and your suggestions will be considered by the Resources Committee.

I note your request that we delay hearings on this bill until May 1; this would be the equivalent of abandoning any hope for action this year. We have scheduled our next hearing on SB 59 for Friday, March 11, at 3:00 p.m., in Senate Resources Committee Room 126; I hope that SANTCO will be able to make some recommendations at that time. I feel sure that we will have additional hearings, but cannot make a commitment as to when they will be at this time.

Again, thank you for your comments, and I will look forward to hearing from you.

Sincerely,

Kay Poland
State Senator
Kodiak-Aleutian District

KP:ss

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE

P.O. Box 1628, Juneau, AK 99802

1510

January 25, 1977

The Honorable Alvin Osterback
Chairman House Resources
Alaska State House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Representative Osterback:

This responds to your request for a statement on forestry activities at the State level. The Forest Service strongly supports measures which will strengthen the professional forestry staff and organization of State governments so that professional forestry expertise can better serve the needs of people in the management of forests and related resources. With the imminent acquisition of the full 103.4 million acres of land provided by the Statehood Act and approximately 44 million acres transferring to Native ownerhsip, such measures are timely.

The State forestry staff is already charged with responsibility for protecting State and private lands from fire, insect, and disease attack. A statewide organization able to meet these demands needs the equipment, experienced managers, and training to provide this support. It needs the cooperation of local communities to provide the manpower during periods of extreme fire hazard, and it must be able to react rapidly to minimize delays in meeting these demands. A trained statewide organization can effectively handle such situations.

Our present State forestry organization is beginning the major task of fielding fire protection forces to protect Alaskan life and property with the gradual phase out of the Bureau of Land Management protection contract. Experience in firefighting and organization of a cadre of district personnel capable of leading temporary firefighters is of paramount importance for making the operation function.

In the area of management, the renewable resources of forest and rangelands include timber production, fish and wildlife habitat, recreational opportunities, wilderness experiences, and watersheds. Minerals management is also related to these resources. The State Forestry organization, working through cooperative Federal-State programs, can provide technical, and in some cases financial, assistance to establish, protect, manage, and use forest and related resources.

The Forest Service works closely with the State Forestry organization of the States and Territories. The National Association of State Foresters is an organization with substantial leadership in promoting sound forest practices on all non-Federal lands. We would encourage the State to examine the opportunities to strengthen its organization to meet the rapidly expanding challenge of its forests. The National Association of State Foresters and individual State organizations have demonstrated the merits of sound forest management practices. A number of States have established forest practice laws and regulation. Their experience could be very helpful in your efforts.

In summary, we believe Alaska now needs a strong State forestry organization operating at a level of government that reflects the emerging importance of this resource activity. Additionally, a comprehensive State forestry program is needed that focuses not only on State lands but is also designed to provide forestry assistance of all kinds to Alaska's new landowners. Numerous federal grant programs exist requiring some state matching funds that are specifically directed to this purpose. The State Forester needs authority and a mandate to participate in these programs.

Many bush communities, wanting to develop sound managment programs for their lands, are now requesting forestry and land managment assistance. With a strong forestry organization and program the state can be responsive to their citizens needs. We believe it very important that any forestry legislation considered this session address these concerns.

Sincerely,

John A. Sandor

JOHN A. SANDOR
Regional Forester

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE
P.O. Box 1628, Juneau, AK 99802

1510
March 3, 1977

Honorable Kathryn Poland
Chairman, Senate Resources Committee
Alaska State Senate
Pouch V
Juneau, AK 99811

Dear Senator Poland:

As you requested, here are our comments on S.B. 59, "An Act Relating to Forest Resources and Practices." We have a longstanding interest in this type of legislation and are pleased to share with you our thoughts on this important proposal.

Senate Bill 59 would provide authority to the State Commissioners of Natural Resources to establish experimental forests on State lands to conduct cooperative forestry and extension service programs, to conduct surveys of forest resources, to establish forest tree seed nurseries and to distribute seedlings, to promulgate regulations governing silvicultural practices on all forest lands, and to coordinate the application and issuance of various permits required to harvest timber. Senate Bill 59 would also establish in statute the concept of multiple-use, sustained-yield management as the guiding management principle for Alaska's forest lands.

The State of Alaska is emerging as a State with both national and international natural resource significance. Alaska contains nearly 141 million acres of forest land. At present, approximately 35 percent of these forested lands are identified through selection for State and private ownership. By the time the State completes its land selection, this figure is expected to significantly increase.

This substantial increase in State and private forest lands over the next few years suggests the need for a program to assure that forest resources are protected by application of sound silvicultural and other forest management practices. We would hope that any legislation enacted by the State would encourage and assist the landowners in applying these practices.

Landowners should be encouraged to carefully plan the management of their forest lands recognizing not only timber production but also fish and wildlife values, recreational opportunities, range and watershed protection. There is also a need to provide proper protection against fire, insects, and disease.

The experience of other States has shown that a strong State forestry organization coupled with a forest practices act emphasizing application of sound management practices are not only desirable, but also effective in getting private landowners to practice good forestry.

Senate Bill 59 stresses regulation of forest practices conducted within the State of Alaska, particularly regulation of the timber owner and operator. We believe the Committee should also bear in mind that the availability of professional management services and incentives are also important in achieving an effective State forestry program. Experience in other States has shown that a balance among regulations, incentives and services to the landowner will result in widespread application of sound forestry practices. This balance will also foster a climate of greater cooperation between landowners and the State than regulation alone. Also, rather than establishing prescriptive standards in statute, we would recommend that a forest practices act establish a process by which "best management practices" on a site specific basis can be established. Additionally, we would recommend that the act be compatible with Federal guidelines covering State water quality control standards. Inclusion of these features coupled with the provision that the forestry organization coordinate all necessary forest management permits and regulations will do much to alleviate the private landowner's fear of overregulation and inconsistent and confusing government requirements.

Throughout the country, the various States have developed programs that provide assistance to landowners to help them accomplish these ends through their respective forestry organizations. Several Federal assistance programs are channelled through the States to complement their efforts. For example, to assist the State of Alaska in conducting its current forestry program, the Forest Service will disburse over a half million dollars during fiscal year 1977 through its cooperative assistance programs. This includes funds for forest fire control, forest management, forest tree production, forest resource planning on private lands, and rural community fire protection. In addition, we expect continuation of an emergency employment program for forestry related projects. We would recommend that any forestry legislation permit the continuance and expansion of the State of Alaska's participation in these Federal programs. In this regard, the Committee may wish to revise the definition of "cooperative forestry programs" as contained in Sec. 41.17.950 of S.B. 59. That definition limits the Commissioner to technical assistance which might be construed as a limitation on the State's participation in Federal financial assistance programs.

The Forest Service has continuously supported the need for a strong State forestry organization and a comprehensive State forestry program. These thoughts were recently set forth in a letter to Representative Alvin Osterback, Chairman of the House Resources Committee, in regard to H.B. 40. Because of that bill's relationship to S.B. 59, I am enclosing a copy for your committee's information. We believe the concerns expressed in this letter are equally important to the success of this legislation.

Also enclosed is a copy of our State and Private Forestry Mission Statement with an insert showing the Goals for Alaska which will give you some idea of the priorities we see emerging in the near future. In response to the Alaska's new landowners, this statement attempts to identify the kinds of programs that are essential at this time.

We recognize that Alaska must develop forest practices legislation or guidelines that best suits its needs and this proposal is a good start toward meeting that objective. We would also encourage the Committee to invite the National Association of State Foresters to review and comment upon S.B. 59. The Association can bring to the Committee's attention the experiences and results of various legislative approaches in other States.

We appreciate this opportunity to comment on S.B. 59.

Sincerely,

JOHN A. SANDOR
Regional Forester

Enclosures

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE

P.O. Box 1628, Juneau, AK 99802

1510

January 25, 1977

The Honorable Alvin Osterback
Chairman House Resources
Alaska State House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Representative Osterback:

This responds to your request for a statement on forestry activities at the State level. The Forest Service strongly supports measures which will strengthen the professional forestry staff and organization of State governments so that professional forestry expertise can better serve the needs of people in the management of forests and related resources. With the imminent acquisition of the full 103.4 million acres of land provided by the Statehood Act and approximately 44 million acres transferring to Native ownerhsip, such measures are timely.

The State forestry staff is already charged with responsibility for protecting State and private lands from fire, insect, and disease attack. A statewide organization able to meet these demands needs the equipment, experienced managers, and training to provide this support. It needs the cooperation of local communities to provide the manpower during periods of extreme fire hazard, and it must be able to react rapidly to minimize delays in meeting these demands. A trained statewide organization can effectively handle such situations.

Our present State forestry organization is beginning the major task of fielding fire protection forces to protect Alaskan life and property with the gradual phase out of the Bureau of Land Management protection contract. Experience in firefighting and organization of a cadre of district personnel capable of leading temporary firefighters is of paramount importance for making the operation function.

In the area of management, the renewable resources of forest and rangelands include timber production, fish and wildlife habitat, recreational opportunities, wilderness experiences, and watersheds. Minerals management is also related to these resources. The State Forestry organization, working through cooperative Federal-State programs, can provide technical, and in some cases financial, assistance to establish, protect, manage, and use forest and related resources.

The Forest Service works closely with the State Forestry organization of the States and Territories. The National Association of State Foresters is an organization with substantial leadership in promoting sound forest practices on all non-Federal lands. We would encourage the State to examine the opportunities to strengthen its organization to meet the rapidly expanding challenge of its forests. The National Association of State Foresters and individual State organizations have demonstrated the merits of sound forest management practices. A number of States have established forest practice laws and regulation. Their experience could be very helpful in your efforts.

In summary, we believe Alaska now needs a strong State forestry organization operating at a level of government that reflects the emerging importance of this resource activity. Additionally, a comprehensive State forestry program is needed that focuses not only on State lands but is also designed to provide forestry assistance of all kinds to Alaska's new landowners. Numerous federal grant programs exist requiring some state matching funds that are specifically directed to this purpose. The State Forester needs authority and a mandate to participate in these programs.

Many bush communities, wanting to develop sound managment programs for their lands, are now requesting forestry and land managment assistance. With a strong forestry organization and program the state can be responsive to their citizens needs. We believe it very important that any forestry legislation considered this session address these concerns.

Sincerely,

John A. Sandor

JOHN A. SANDOR
Regional Forester

Administration

Area Planning

Environmental Improvement

Flood Prevention and Related Watershed Management

Forest Fire Management

Forest Insect and Disease Management

Forest Management

Genetics

Harvesting, Transporting, and Marketing of Forest Products

Multipurpose Forest Management

Nursery Management

Pesticide Use Management

Primary Processing of Forest Products

Resource Planning

Rural Development

Secondary Processing and Wood in Use

MISSION FOR THE FUTURE

Statement of Goals and Policy Guides

STATE AND PRIVATE FORESTRY

TO MAINTAIN AND ENHANCE THE ENVIRONMENT

Policy Guides To protect forests and related resources from erosion, fire, destructive insects, diseases, and air and water pollutants by providing leadership and technical and financial aid to Federal, State, and private owners and managers.

Encourage and practice the judicious use of environmentally acceptable pesticides to reduce potential adverse effects on the environment, and consult agencies at all levels of government in their use.

Provide "outdoor classroom" training (including demonstration forests) to State and private forest managers in resource management methods.

Sustain national leadership in programs that involve the use of trees and vegetation to reduce noise and heat and adverse effects on the well-being of people living in cities and urban communities.

Orient citizens on the interplay of environmental factors to assist them to understand and appreciate the Nation's natural resources.

Cooperate with State agencies, universities, and school systems, and assist them in environmental education efforts by training education specialists to function at the local level.

The Nation's forest lands—State, Federal, private—are vital to America's economy and environment. They have performed a historic, and now a contemporary, role in providing forest products and services—utilitarian as well as esthetic.

To sustain the flow of goods and services, State and Private Forestry, meeting the challenge in partnership with the National Forest System and Research, exemplifies a cooperative - administrative - technical-professional partnership with State and private forest landowners and managers.

TO EFFICIENTLY PLAN USES OF LAND AND WATER RESOURCES

Policy Guides Meet the Nation's needs for forest-based products and services by providing national leadership and most efficient planning and use of land and water resources associated with forest and forest-range lands.

Utilize water and related land-use planning programs as vehicles to coordinate activities on National Forest, other Federal lands, and State and private forestlands.

Use cooperative watershed programs, which involve numerous private organizations, to maintain extensive coordination with other Federal and State and county organizations.

Provide technical assistance to solve specific forest-resource development problems by use of data and analyses, cost-sharing for critical areas, special equipment for watershed protection, and action programs to supplement ongoing cooperative programs.

Assist small cities, towns, villages, and farm communities throughout rural America by creating job opportunities and an improved social and physical environment.

Utilize forest resources to develop manpower programs for youth as well as the elderly, and disadvantaged persons in rural areas.

Create satisfying jobs for rural people by providing technical assistance to forest-resource enterprises.

Implement the findings of research, and enhance opportunities for rural citizens to enjoy adequate housing and outdoor recreation and the use of abundant clear water for domestic as well as industrial purposes.

Improve the forest and related environment of rural America by preserving and restoring its natural beauty.

Adapt and extend the management and development of State and private forestlands and resources, and include technical and financial aid, to assist rural minorities.

Initiate emergency aid—including financial aid if necessary—and coordinate action with cooperators, to mitigate damage to forests caused by catastrophes.

TO APPLY RESEARCH

Policy Guides Gather, synthesize, and disseminate forestry related research findings from Federal, State, and private sources by means of seminars, symposia, workshops, and publications media, to all cooperators.

Identify research needs of State and private forestlands and forest industries, and refer such needs to forestry research organizations.

Utilize the most modern methods of computer sampling techniques to expedite forest inventories.

Assign professionally trained and experienced personnel from the National Forest System, State and Private Forestry, Research, Extension, and land grant universities to assist public and private planners, forest managers, and forest-product processors.

TO MEET FUTURE DEMANDS FOR FOREST RESOURCES

Policy Guides Help meet increasing demands for quality goods and services by providing technical assistance—through the State Forestry organization—to aid primary owners of State and private forest and related lands in contributing greater supplies.

Augment planning, management, and protection of such lands by providing technical and financial assistance.

Expedite meeting output goals and supplying national needs by strengthening cooperating organizations with professional and

TO EXTEND AVAILABLE SUPPLIES AND SERVICES

Policy Guides Recover and utilize waste by improving sawmill techniques, analyzing harvesting operations, discovering uses for disaster-killed and damaged timber, preventing insect and disease losses during storage, emphasizing proper log classification and grading, and instructing processors to recognize the most valuable use for residues.

Apply multiple-use principles toward the extension of existing supplies of forest resources, especially from privately owned forest lands, by calling for a concerted national effort to meet national needs.

Improve and implement procedures to reduce losses to all resources by increasing the technical capabilities for earlier detection, evaluation, and suppression of insect or disease outbreaks.

Provide training to States, as well as technical and financial aid, through continuously updated fire prevention and protection programs designed to help reduce losses of products and services from State and privately owned forest lands.

Provide Federal excess personal property, such as trucks, tractors, and pumps, so that State and local governments can strengthen fire protection services.

Assist State Foresters in their efforts to organize, train, and equip local fire-fighting forces to prevent or reduce losses to human life, forests, crops, pastures, and structures from fire.

The Key

Cooperation is the key—cooperative forestry programs are the means—in achieving the mission of State and Private Forestry.

Cooperation puts it all together: the discussions, the plans, the coordination, the goals, the guiding principles, the programs, as well as the action.

Cooperation with:

Federal, State, and local agencies; private forest owners; processors of forest products; community leaders; and keymen in organizations. The principal coordinating partner is the State forestry organization in each State and territory.

Cooperative forestry programs that:

Assist the protection and management of 631 million acres of forest and associated watershed lands.

Seek to increase job opportunities and incomes of rural people.

Develop multiple-use management to obtain maximum potential of forest and related resources.

Improve harvesting, processing, and marketing of forest products.

Transmit and implement research information into practical applications.

Improve fire prevention and control.

Reduce losses from forest insects and diseases by improved detection, evaluations, and suppression methods.

Ensure proper use of environmentally acceptable pesticides in the forest environment.

Cooperation with State and private forest owners achieves more than protection, management, and utilization—it means people cooperating, people helping. The underlying mission of State and Private Forestry is to help society—rural societies and urban societies—to use and enjoy the resources of forest lands, utilitarian as well as esthetic.

Our Principal Goals

Policymaking is a dynamic process that is subject to continuing evaluation. Priorities accorded to goals are often superseded as we respond to the pressing needs of our dynamic society.

These State and Private Forestry goals indicate their general character only. They are not listed by priority:

TO MEET FUTURE DEMANDS FOR FOREST RESOURCES

TO EXTEND AVAILABLE SUPPLIES AND SERVICES

TO EFFICIENTLY PLAN USES OF LAND AND WATER RESOURCES

TO APPLY RESEARCH

TO MAINTAIN AND ENHANCE THE ENVIRONMENT

The following pages describe policies that are used as guides toward meeting these goals.

The cover symbolizes State and Private Forestry as a cooperative effort of representatives from the Forest Service, other Federal and State agencies, and private groups and individuals.

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE

Washington, D. C. 20250

Together we face challenges presented by the ever-growing needs of our society. Changing economic conditions and environmental impacts provide new responsibilities and opportunities to agencies and organizations concerned with natural resources. To help you understand how our State and Private Forestry efforts contribute to the overall natural resource effort, we are distributing a Mission Statement for State and Private Forestry. The foundation for this statement is "Framework for the Future," which defines the Forest Service mission.

Teamwork has been effective in meeting past challenges, and we need to seek opportunities to meet continuing and emerging challenges. I believe a part of the total effort is to help others know more about the State and Private Forestry responsibilities and activities. The cooperative efforts of many Federal, State, and local agencies and groups help the numerous S&PF activities contribute to the overall natural resources effort.

It is my hope that you will find this Mission Statement a useful reference.

Sincerely,

John R. McGuire

JOHN R. McGUIRE
Chief

GOALS FOR ALASKA

With the rapidly changing pattern of land ownership in Alaska there has emerged a whole new spectrum of opportunity and responsibility for forest land management. The following State and Private Forestry "Goals for Alaska" focus on the many challenges that lie ahead.

1. TO MEET FUTURE DEMANDS FOR FOREST RESOURCES

Program Emphasis for Alaska

a. Work with the State Forester in developing a State tree nursery and improved seed sources

b. Conduct a sawmill improvement program

c. Provide technical assistance to industry and landowners

d. Work with the State Forester to promote a Forestry Incentives Program (FIP) on Native village and regional corporation lands

e. Promote Rural Conservation and Development projects (RC&D) through working with landowners and the Soil Conservation Service

f. Followup on the "Organization Management for Managers" training session conducted May 25-28, 1976 for the State Forester's organization, Alaska Division of Lands, and BLM personnel

g. Assist State Forester with organizational evaluations as requested

h. Extend advisory management services to Native village and regional corporations and other private landowners as opportunities allow

2. TO EXTEND AVAILABLE SUPPLIES AND SERVICES

Program Emphasis for Alaska

a. Provide technical assistance to industry and landowners

b. Provide timber inventory assistance to Ahtna, Bristol Bay, Doyon, and Koniag Regional Corporations

c. Conduct sawmill improvement training in northcentral and south-central Alaska

d. Work with Cooperative Extension Service in providing training in log cabin construction

e. Participate with Institute of Northern Forestry in an administrative study to determine the rate of deterioration of beetle-killed white spruce in southcentral Alaska

f. Work with the Seward Skills Center in providing training in small sawmill operations and logging techniques; also Ahtna and Shageluk

g. Continue wood preservation study at the Juneau Small Boat Harbor

h. Assist the State Forester in developing a State-wide fire plan

i. Continue excess property acquisitions for State Forester

j. Accelerate the Rural Community Fire Protection (RCFP) program under the Rural Development Act of 1972

k. Assist the State Forester in implementing operational plans for his new air unit

l. Assist in making fire prevention contacts with schools, local landowners, and organizations

m. Assist the State Forester in development of cooperative fire protection agreements with communities and Native corporations

n. Emphasize the need for adequate fire protection at all forestry workshops

3. TO EFFICIENTLY PLAN USES OF LAND AND WATER RESOURCES

Program Emphasis for Alaska

a. Coordinate land use planning for proposed new National Forests with similar efforts on adjacent State and private lands

b. Provide advisory land use planning assistance to Native village and regional corporations

c. Participate in the Cooperative Copper River-Wrangells Regional Study with the APT, CES, Univ of Alaska, LUPC, State Department of Natural Resources, other Federal agencies, and Native corporations

d. Implement an Area Planning and Development (AP&D) unit--emphasis on the Alaska Water Study, coastal zone, and outer continental shelf

e. Continue Forest Service representation on the Alaska Rural Development Council

f. Conduct forestry workshops and other field training programs for Native village and regional corporations

g. Assist the Seward Skills Center in providing forestry training for the disadvantaged

h. Coordinate with Native leaders and State agencies in identifying and implementing programs to train resource managers needed for Native lands

i. Work with the State Forester in administration of Job Opportunities Program, under Title X of the Public Works and Economic Development Act of 1975 (Federal grant of $431,000 in FY 76)

4. TO APPLY RESEARCH

Program Emphasis for Alaska

a. Participate with Institute of Northern Forestry in a growth and yield study of white spruce in the Cook Inlet area

b. Continue to work with Cooperative Extension Service and the State Forester in producing and circulating the Alaska Forest Products Newsletter

c. Participate with Institute of Northern Forestry and Forestry Sciences Laboratory in producing an annotated bibliography of research results in Alaska

d. Extend information on research to new landowners at every opportunity

e. Participate with Institute of Northern Forestry on fire management research in the interior

f. Participate with Institute of Northern Forestry in producing a joint research publication that discusses management of white spruce in Alaska and how to handle spruce beetle problems

g. Participate with Forest Products Laboratory, Pacific Northwest Experiment Station, and the Fairbanks Industrial Corporation in a cooperative investigation for the feasibility of manufacturing particleboard in Alaska (also pertains to Activity #2 - To Extend Available Supplies and Services)

5. TO MAINTAIN AND ENHANCE THE ENVIRONMENT

Program Emphasis for Alaska

a. Insect and Disease Management and Pesticide Use Coordination

(1) Aerial and ground detection surveys of insect and disease conditions on all forested lands in Alaska

(2) Biological, economic, and environmental evaluations of forest insect and disease outbreaks detected. Emphasis on spruce beetle (Cook Inlet), spear-marked black moth, dwarfmistletoe, southeastern defoliating insects, and disease problems in white spruce-birch forests

(3) Production and release of insect and disease condition reports, evaluation reports, and publications

(4) Salvage of bark beetle-caused losses in white spruce (coordinated with Western Forest Issues Study)

(5) Coordinate through Pesticide Use Coordinating Committee, pesticide use on National Forests. Update herbicide environmental impact statement and monitor implementation.

(6) Maintain cooperative relationship with State Department of Environmental Conservation on pesticide use and training

(7) Train forest managers, owners, and workers in insect and disease detection and management

(8) Train Forest Service handlers of pesticides

b. Conduct environmental education forestry workshops for Native village and regional corporations.

c. Develop a meaningful awareness for endangered species protection

d. Work with State agencies and landowners in control of non-point pollution

e. Assist in development of a sound State Forest Practices Act for Alaska

MADAME CHAIRMAN, HONORABLE COMMITTEE MEMBERS, MY NAME IS CLARENCE JACKSON, SR.; I SPEAK IN BEHALF OF SANTCO (SOUTHEAST ALASKA NATIVE TIMBER CORPORATION). SANTCO REPRESENTS ONE OF THE LARGEST PRIVATE COMMERCIAL FOREST LANDOWNERS IN THE STATE; REPRESENTING 10 VILLAGE AND URBAN NATIVE CORPORATIONS OWNING 230,400 ACRES IN SOUTHEAST ALASKA. OUR MEMBERS INCLUDE NATIVE CORPORATIONS FROM CRAIG, HOONAH, HYDABURG, JUNEAU, KAKE, KASAAN, KLAWOCK, SAXMAN, SITKA AND YAKUTAT.

OUR CONCERN WITH SENATE BILL 59 LIES IN ITS IMPACT ON OUR RIGHT AS LANDOWNERS TO MANAGE SANTCO'S FOREST LANDS.

WE WOULD RATHER SEE A STRONG PROFESSIONAL FORESTER LEADING A DIVISION OF FORESTRY AS IN HOUSE BILL 40. WE FEEL THIS IS NECESSARY TO INSURE THAT ALL RESOURCES AND OUR ECONOMIC INTEREST ARE PROTECTED IN THE REGULATIONS TO BE DRAFTED. THIS WOULD FURTHER INSURE THAT MOST OF OUR DEALINGS WOULD BE WITH ONE DIVISION WHO WOULD IN TURN COORDINATE WITH OTHER DIVISIONS WITHIN THE DEPARTMENT.

UNDER SENATE BILL 59 A 159 ACRE PARCEL COULD BE LOGGED WITHOUT QUALIFYING, CONCEIVABLE, AS COMMERCIAL FOREST LAND. WE DON'T FEEL THAT THIS WAS THE INTENT. SANTCO WOULD SUGGEST THAT ANY TRACT MUST MEET ALL LISTED CRITERIA TO BE CONSIDERED EXEMPT FROM A FOREST PRACTICES ACT.

THERE ARE SEVERAL PASSAGES WHICH APPEAR EITHER MEANINGLESS OR AT BEST EXTREMELY DIFFICULT TO COMPREHEND OR INTERPRET, SUCH AS SEC. 14.17.04 (c)(2) RELATING TO STATE AND MUNICIPAL FORESTS. THE STATE ALREADY HAS THE POWER TO MANAGE ITS LAND AND TO CONSIDER ALL RESOURCE VALUES IN THE PROCESS. THIS SECTION WOULD APPEAR TO BE UNNECESSARY. TERMS SUCH AS "KEY VALUES" ARE UNDEFINED.

SEC. 41.17.060 (6) DUPLICATES THE APPARENT OBJECTIVE OF PARAGRAPH (5) AND SHOULD BE DELETED. THE ONLY JUSTIFIABLE REASON FOR THE STATE TO BE CONCERNED ABOUT ROAD AND BRIDGE CONSTRUCTION ON PRIVATE LANDS WOULD BE TO PREVENT EROSION OR PROTECT STREAMS. BOTH OF THESE AREAS ARE ALREADY COVERED IN THE BILL.

SENATE BILL 59 PROPOSES IN SEC. 41.17.060 PARAGRAPH (12) TO REGULATE OPERATIONS WHICH EFFECT AESTHETIC VALUES ON OUR LANDS. WE FEEL THAT ANY EVALUATION OF AESTHETICS COULD ONLY BE A VALUE JUDGEMENT BY THE INDIVIDUAL REVIEWING THE SPECIFIC OPERATION. CONTROL OF AESTHETICS ON PUBLIC LANDS IS AN ACCEPTED FUNCTION OF THE STATE; HOWEVER, IT SEEMS INAPPROPRIATE THAT THE STATE SHOULD RESTRICT OPERATIONS ON PRIVATE LANDS, WHICH MAY OTHERWISE BE COMMENDABLE, SOLEY BECAUSE THEY DO NOT HAPPEN TO FIND THE OPERATION ATTRACTIVE.

WE DON'T FEEL A FOREST PRACTICES ACT CAN SUCCESSFULY INCORPORATE A COMPROMISE OF TWO OPPOSING CONCEPTS SUCH AS A NOTIFICATION

SYSTEM AND A PRIOR APPROVAL SYSTEM. ANY COMPROMISE WOULD AUTOMATICALLY BE ENFORCED AS A PRIOR APPROVAL SYSTEM AND WOULD BE VERY EXPENSIVE TO ADMINISTER. WE WOULD SUGGEST INSTEAD A MANDATORY 30 DAY PRIOR NOTIFICATION. SENATE BILL 59 COULD DELAY AN OPERATION UP TO 85 DAYS WHICH POTENTIALLY COULD CAUSE AN OPERATOR TO LOSE AN ENTIRE SEASON AND COST HIM A FORTUNE WHILE EQUIPMENT, MANPOWER AND SUPPLIES SAT IDLE WAITING FOR THE STATE TO COMPLETE ITS LENGTHY REVIEW, EXTENSION, REVIEW, EXTENSION PROCESS. THE OPERATOR WOULD BE INCAPABLE OF RESPONDING TO WEATHER CONDITIONS OR MARKET.

WE FEEL THAT THE STATE SHOULD WORK <u>WITH</u> AND SHOULD EDUCATE THE LANDOWNER AND OPERATOR IN A <u>POSITIVE</u> VEIN AS UNDER THE <u>NOTIFICATION</u> SYSTEM. IF AN OPERATOR <u>THEN</u> BREAKS THE LAW HE SHOULD BE SUBJECT TO PENALTY, IMMEDIATE SUSPENSION OF HIS OPERATION IF DETERMINED NECESSARY BY THE STATE, AND SHOULD BE SUBJECT TO THE EXPENSE OF CORRECTING THE RESULT OF HIS VIOLATION. THE 30 DAY MANDATORY PRIOR NOTIFICATION PERIOD WOULD ALLOW ADEQUATE TIME FOR THE STATE TO COMMENT ON AN OPERATION PLAN. THE STATE SHOULD ASSIST A LANDOWNER WITH THE PROPER SUBMISSION OF HIS PLAN AND SHOULD BE IN THE VICINITY OF THE OPERATION WHEN A QUESTIONABLE PORTION OF THE OPERATION IS INITIATED. UNDER THE RISK OF HEAVY PENALTY AND THE WATCHFUL EYE OF THE STATE, VIOLATIONS WOULD BE MINIMAL.

I APPRECIATE THIS OPPORTUNITY TO TESTIFY ON THIS MATTER WHICH COULD NEEDLESSLY RESTRICT SOUND RESOURCE MANAGEMENT PRACTICES, IF IT WERE ADOPTED AS INTRODUCED, IT COULD ALSO INCREASE BOTH THE TAX BURDEN FOR US AS CITIZENS AND EXPENSES FOR US AS LANDOWNERS.

IN CLOSING, OUR CONCERN IS TO PROTECT THE LAND AND THE ENVIRONMENT AS WELL AS JOBS FOR PEOPLE IN ALASKA. WE FEEL THAT EVERYTHING WE DO CAN AND WILL HELP THE ECONOMY IN SOUTHEASTERN ALASKA. I'M SURE THAT IF GIVEN AN OPPORTUNITY TO SIT DOWN TOGETHER, JOINING FORCES AS CONCERNED ALASKAN'S THAT WE CAN SUCCEED IN PRESERVING ALASKA AS WELL AS MIXIMIZING OUR RESOURCES FOR ALL ALASKANS.

I THANK YOU, MADAME CHAIRMAN FOR THIS OPPORTUNITY.

Sec. 41.17.020. ADMINISTRATION (a) The governor shall create, within the Department of Natural Resources, a Division of Forestry to carry out this chapter and other appropriate duties designated by the governor. The division shall be headed by a director who shall be the state forester, appointed by the commissioner to the partially exempt service in accordance with law. The state forester shall be a natural resources land manager with generally accepted forestry educational credentials, production experience, familiar and experienced with the renewable and nonrenewable resources and values of forest land and the products, benefits, and services obtained from them.

RATIONALE:

Because of the importance of the need for a Division of Forestry, we suggest the following modifications to this paragraph:

1. It is felt that the governor shall be required by the legislature to create a Division of Forestry within the Department of Natural Resources. We feel that this division should report directly to the commissioner in order to be at an appropriate level to speak for the needs of the forest products industry throughout the State of Alaska.

2. We strongly feel that a state forester should have some forest industry production experience as part as his background and we would include not only harvesting, but saw milling and/or pulp mill operations, because most any individual who has been associated with the manufacturing end has some familiarity with the need of obtaining forest products in a

manner to sustain existing industry. In addition, we feel that the educational credentials should include a forestry education.

Sec. 41.17.020.

(g) The commissioner may develop proposed regulations under this chapter as part of the state program for control of nonpoint source pollution under the Federal Water Pollution Control Act, as amended, and shall seek to enter into a cooperative agreement with the commissioner of environmental conservation for that purpose.

RATIONALE:

We suggest the deletion of the last sentence in the draft legislation to strengthen the management of the Forestry Division in dealing with the Federal Water Pollution Control Act as amended. It is felt that the division needs to attain the necessary level of expertise in order for division personnel to regulate and understand how various laws and regulations interrelate when applied to forest management activities.

Sec. 41.17.020.

(i) There shall be established a State Board of Forestry consisting of twelve members appointed by the governor. The board shall elect its own chairman.

The State Board of Forestry shall consist of twelve members as follows:

(1) The dean of the school of engineering, University of Alaska;

(2) The nominee of the U.S. Regional Forester, United States Forest Service;

(3) The nominee of the Alaska Federatio. of Natives;

(4) Four members one each nominated by Chugach Natives, Inc., Doyon Limited, Koniag, Inc., and Sealaska Corporation;

(5) The nominee of the Alaska Loggers' Association;

(6) The nominee of the Alaska Coalition or appropriate environmental group;

(7) The nominee of the Alaska Coastal Management Council;

(8) The nominee of unions engaged in processing forest products;

(9) The nominee of the United Fishermen's Association.

The term of office of a voting member of the board is four years. If a vacancy occurs before the end of a term, the governor shall appoint an individual to complete the unexpired term in the same manner and from the same class provided.

Duties of the board shall include the drafting of regulations provided for by this act.

Sec. 41.17.020.

RATIONALE:

The major concern of Sealaska Corporation is to insure that there is a properly constituted body with a reasonable degree of autonomy, with terms which will tend to overlap administrations which will bring a high level of forest management expertise; and which then provide a strong input from private land owners, timber owners or their authorized representatives to insure the citizens of the State of Alaska will benefit through fostering a healthy and vigorous forest products industry which in turn will provide wages for state citizens, some tax income for the State of Alaska and dividends for forest product company shareholders.

Therefore, we suggest a State Board of Forestry which will have the primary duties of drafting forestry regulations provided by this act.

We offer for your consideration a Board of Forestry consisting of twelve members which includes seven members from land owners, the Alaska Loggers' Association, and from labor unions associated with the forest products industry. In addition we included members of interested citizen constituencies who tend to be representative of users of public forest lands. Finally, we include the Dean of the School of Engineering, presently Charles Behlke, who can provide an interface between education and industry, and who by education tends to have an understanding of industry requirements and how education can fill those requirements.

Sec. 41.17.040. REGULATORY AND ADMINISTRATIVE STANDARDS. (a) All regulations, administrative actions, and other activities and duties undertaken under this chapter must be in full accordance with the standards set out in this section.

(b) With respect to private forest land, the following standards apply:

(1) The privately owned commercially forested areas of the State shall be managed to meet the rights and economic needs of the land and timber owners. Provisions may include regulations encouraging a sustained yield basis, so as to enhance the economic stability for an area and its citizens, to provide employment opportunities, to provide economically sound timber-based industries, and to provide a source of revenue for communities and state.

(2) There shall be no material impairment of the productive capacity of the land to produce a sustained yield of merchantable timber within the total land ownership of any individual owner or affiliated owners whose land is managed collectively.

(3) To the extent reasonably practical, all applicable data and information shall be constantly updated and used in making timber management decisions.

(4) Environmentally sensitive areas and the best practical management practices shall be recognized in the implementation of non point source pollution control measures.

(c) With respect to state and municipal forest land only, the following standards also apply:

(1) forest land must be administered for the multiple use of the renewable and nonrenewable resources and for the sustained yield of the renewable resources of the land in the manner which best provides for the present needs and preserves the future options of the people of Alaska:

(2) any system of allocating predominant uses or values to particular units within a contiguous area of land must reflect in reasonable proportion the various resources and values present in that area;

(3) in the determination of multiple use patterns to be recognized within any area, the State Forester shall recognize that the economic well being of the citizens of the State is of primary importance and that the disposition and use of State-owned assets must be conducted in a manner so as to return the full value to all of the citizens of the State;

(4) to the extent its capacity permits, forest land must be administered so as to provide for the continuation of businesses, activities, and lifestyles which are dependent upon or derived from forest resources;

(5) to the maximum extent possible, all applicable data and information of applicable disciplines must be updated and used in making decisions relative to the management of forest resources;

(6) environmentally sensitive areas and best management practices must be recognized in the implementation

of any nonpoint source pollution control measures authorized under this chapter;

(7) there shall be no signifigant impairment of the productivity of the land and water with respect to renewable resources.

RATIONALE:

Of primary importance is that the standards for the management of private forest land versus the management of municipal and state forest land be clearly differentiated in order for the Board of Forestry to draft regulations which are appropriate for the classes of ownership. Under subsection (b) dealing with private forest land (1) directly addresses the requirement that a regulatory climate be provided which will allow for responsible development of a forest products base and yet protect the rights of the individual land owner. Without this provision, there is always the danger that other regulations may be drafted which will substantially reduce economic viability and preclude the forest land owner from participating in a profitable forest products venture.

As land owners, Sealaska Corporation strongly subscribes to a concern of all citizens of the State that there be no material impairment of the productive capacity of the land, to utilize applicable data and information in making management decisions, and to pay particular attention to best practical management practices in implementing management decisions so as to protect the water sources of the State from pollution.

In subsection (c) Sealaska Corporation strongly recommends the inclusion of some of the existing sections plus those

sections from section (b) which would be appropriate. In addition in the draft bill paragraph (3) has been deleted and we have substituted a paragraph which is addressed to the obligation of the state and municipal goverments to recognize the econcomic well being of the citizens by managing forest lands which have been set aside for multiple use in a manner to return the full value of stumpage, etc. to all the citizens of the State and thereby reducing the financial burden to those citizens in the form of direct taxes.

Sec. 41.17.050. ADMINISTRATIVE PLAN & REPORT (c)

(1) review the structure and operations of the division of forestry;

(3) describe the responsiveness of the division to the interest of forest resources constituencies.

(4) omit

RATIONALE:

Subsection one cleans up wording to refer just to the division of forestry. It is felt that subsections two and three are both appropriate to this act, however in keeping with the amendments already offered it is recommended that subsection four be eliminated since the act prescribes legal authority, qualifications of the director of the division and location of the division within the department. With our amendments the division would report directly to the commissioner and the director would have certain qualifications including education and professional background. Also there is nothing to preclude the commissioner at a later date from making recommendations to the legislature concerning problems with Title 38 in order to meet the desires of the legislature and administration.

Sec. 41.17.060. REGULATIONS. (a) The commissioner may adopt regulations with the approval of the State Board of Forestry in accordance with the Administrative Procedure Act (AS 44.62) governing operations on forest land with respect to the following:

(1) harvesting;

(2) reforestation, revegetation, stocking, prescribed burning, fertilization, thinning, and other silvicultural activities;

(8) omit

RATIONALE:

As mentioned in this committee on Monday, April 10, 1978 it is very difficult to define removal and use of timber and tree products and related management activities. It is recommended that harvesting be addressed as is necessary by the Board of Forestry how the landowner, operator or timber owner removes and disposes of the products is strictly up to that person.

In subparagraph 2 " aforestation " has been eliminated because it addresses itself to the foresting of lands which have not supported forests for a long time, if ever. It is felt that aforestation simply is not germaine to the act.

It is recommended that subparagraph 8 be omitted from this draft bill because of the broad nature and all encompensing aspects of this subparagraph.

It is language such as this which provides significant opportunities for litigation in order to provide for future interpretation. Therefore, it is felt that it is unnecessary.

Sec. 41.17.070.

(f) If action is taken under (e)(4) of this section, the commissioner and affected agencies have an additional 20-day review period, after which time action must be taken under (e)(1), (2), or (3). If the commissioner or any other affected agency takes no action under (e) of this section within the statutory time limit, they are presumed to have taken action under (e)(1). Action taken by the commissioner under (e)(2)-(4) of this section must be accompanied by a written justification.

(m) omit

RATIONALE:

While the act in its draft form seemingly requires that the Commissioner of Natural Resources forward the permit to other state agencies for their review and further requires the commissioner to provide an answer to the applicant within a specified time limit, it does not seem to put enough emphasis on insuring that other state agencies must either respond or by their lack of response show that they approve the permit. We suggest language which is inclusive not only for the commissioner but other affected agencies thereby if they take no action that approval is automatic.

Subparagraph (m) is suggested for omission because many small corporations who own land, individual land owners, and operators are not able to post security for operations on private lands. Therefore, there is the distinct possibility that some individuals could be forced out of business or precluded from entering into the forest products business.

Sec. 41.17.090. CONVERSION OF FOREST LAND TO OTHER USES. An intention to convert forest land to other uses after timber harvesting must be stated in the notification submitted under sec. 70 of this chapter. In that event, reforestation requirements adopted under this chapter do not apply, except that conversion must be completed during the time set by regulation for minimum reforestation of the land, other than land held for other commercial purposes. Other requirements for revegetation may be imposed to the extent permitted by law and consistent with the intended use. If the commissioner finds at any time that the responsible party has failed to conform to the intent to convert as stated in the notification, the commissioner shall revoke approval of the conversion and require full compliance with reforestation requirements.

RATIONALE:

For those who wish to convert forest lands for other purposes, it is felt that they should have every right to do so and not be burdened with a reforestation clause which might require reforesting after a certain period of time because a land had not been converted. Then there is always the possibility that in another five years the land is actually cleared and converted for other purposes such as agriculture or commercial development. The economic loss to the original land owner can be very significant. Therefore, this paragraph is modified to allow for such a situation.

Sec. 41.17.110 PROHIBITION, PENALTIES, AND ENFORCEMENT PROCEDURES. (a) It is unlawful for any person to violate or permit a violation of a provision of this chapter, a regulation adopted under this chapter, or a term or condition of any approval granted under secs. 70 - 90 of this chapter. A person who commits a violation is liable for a civil fine to be assessed by the commissioner not to exceed a total of $10,000.

(b) If an investigation discloses probable cause to believe a violation has occurred, the commissioner shall serve upon the alleged violator (the "respondent") written notice and a formal complaint which describes the alleged violation and requires the respondent to answer the charges at a hearing not more than 10 days thereafter. Upon request the respondent will be granted an extension not to exceed 60 days. The notice must also describe any damage which has occurred or might occur as a result of the violation. At the hearing, the state must show by a preponderance of the evidence that the respondent has caused or permitted a violation described in (a) of this section.

(d) In determining the amount of any civil fine imposed, the following must be considered, as appropriate:

(1) the character and degree of injury to forest resources and values;

(2) the degree of intent or negligence of the respondent in causing or permitting the violation;

(3) the character and number of past violations caused or permitted by the respondent.

(d) omit (4)

(h) Unless otherwise specified, proceedings under this section are not subject to the Adminstrative Procedure Act (AS 44.62). A hearing under this section must be held before a hearing officer, appointed by the attorney general from among members of a panel of the Alaska Bar Association approved by the Board of Forestry who are knowledgeable and experienced in the subject matter. A person who has assisted in the preparation of the state's case or who is a state employee is ineligible. Hearings are not limited by common law, statutory, or judicial rules of evidence; however, the hearing officer may admit only that evidence which appears to him to be reliable and trustworthy. All hearings must be open to the public. Written or oral testimony may be submitted. A party to a hearing may make written or oral argument, secure the issuance of a subpoena under AS 44.63.430, offer testimony or other evidence, and cross-examine witnesses. The hearing officer shall endeavor, in conducting any hearing, to insure that the respondent understands the proceedings and that the facts supporting the position of each party have been adequately presented. Hearings shall be held as close as practicable to the location of the alleged violation. Testimony given at the hearing must be recorded.

RATIONALE:

In subparagraph (a) the language has been modified to show that a total fine cannot exceed $10,000.

In subparagraph (b) a sentence has been inserted to allow the respondent an extension of up to 60 days if the respondent requests it in order to adequately prepare for his case. Normally the respondent will want to proceed as fast as possible in order to clear up matters and be able to continue operations in a normal fashion.

Subparagraph (d)(4) has been eliminated because it is felt that it should not be germaine to the consideration of a civil fine. What is germaine is the character and degree of injury to forest resources, negligence, and the past record of the respondent.

In subparagraph (h), wording is offered which provides that the hearing officer be appointed by the attorney general from among members of a panel of the Alaska Bar Association approved by the Board of Forestry. In this fashion the Board of Forestry has the opportunity to review the background and credentials of members of the Alaska Bar Association to insure that they have some feeling for environmental and land management problems. By such members having a basic understanding of forestry needs and problems, they can more equitably determine any relief which may be necessary.

Sec. 41.17.120. APPEALS AND JUDICIAL REVIEW. (a) An administrative action of the department under this chapter, except actions under sec. 110 and except for adoption of regulations, may be appealed to the commissioner within 30 days after it is taken. The commissioner shall hold a hearing, at which all substantial issues shall be considered, within 15 days after an appeal is filed. The respondent shall however have the right to a 60 day extension upon request. Within 10 days after conclusion of the hearing thereafter, the commissioner shall issue a written decision based upon the evidence, which may be provided to the appellant. The commissioner may delegate his duties, in whole or in part, under this subsection to a hearing officer.

RATIONALE:

In this paragraph is inclusion of wording which allows the respondent an additional 60 day extension upon his request in order to more thoroughly prepare his case for the appeal, since it is obvious that his case was not sufficiently thorough in the original hearing.

Sec. 41.17.130. omit

RATIONALE:

As future land owners we feel that there are sufficient opportunities in other state laws for individuals who are groups to commence civil action without having to provide specific wording in this draft bill. Instead the bill should address itself simply to forest practices.

Sec. 41.17.950. (13)

(13) "Material impairment of the productivity of the land and water" means any activity which may foreseeably result in prolonged or substantial damage to renewable resources or prolonged or substantial reduction of the continuing capability of the land or water to produce renewable resources at their natural or historic levels.

RATIONALE:

The term material impairment is defined in order to have it be consistent with the use of that term in Section 040 REGULATORY AND ADMINISTRATIVE STANDARDS (b)(2) where it has been substituted for the term significant.

SHEE ATIKA, INCORPORATED

P.O. Box 578
Mt. Edgecumbe, Alaska 99835
Phone - (907) 747-3534

April 18, 1978

Dear Senator Poland,

We appreciated the opportunity for our representative, Mr. Warren Weathers, to testify on the sponsor substitute Forest Practices Act before your committee last Wednesday. Our primary concern with the bill relates to its restriction of resource management alternatives on private land. Shee Atika, Inc. endorses the concept of granting the state authority to insure that private forests are managed in a manner which protects the productivity of all related resources. We take issue with the extent of the state's interferance with the methods of obtaining that objective. The acts concentration should rest with the objective of insuring that private forest resources remain productive. The state should not be concerned with a land-owner's method of compliance, so long as the compliance accomplishes the objective.

Enclosed are copies of Shee Atika, Inc.'s testimony including an aritcle from the March Journal of Forestry relating to Section 208 of the Federal Water Polution Control Act.

Sincerely

Nelson D. Frank

Nelson D. Frank
Chairman of the Board

NDF/nmw

SHEE ATIKA, INCORPORATED

P.O. Box 578
Mt. Edgecumbe, Alaska 99835
Phone - (907) 747-3534

Madame Chairman, Senators of the Committee

I am Warren Weathers

I speak in behalf of Shee Atika, the claims act corporation of Sitka, and one of the 12 village corporation's in Southeast who will in aggregate manage some 250,000 acres of forest land. Nelson Frank, Chairman of Shee Atika, regrets that he can not be here today.

I am a professional forester, a graduate of O. S. U. school of Forestry with 6 years in private forestry in Alaska, prior to which I was a forest practices officer for the Oregon State Board of Forestry. I am a member of the Society of American Foresters.

The Board of Directors of Shee Atika has directed me to convey today, their concern relating to the administration's sponsor substitute. Shee Atika, like the other village corporations in southeast, did not participate in darfting this bill. Unfortunately the state did not solicit, or was not receptive to, much land owner input relative to the impact that this bill will have on the private forest land owner. The land owner is the one that will pay for this thing, not the mill owner, the operator, or the federal government.

We would like to see a forest practices act adopted this year. We are more interested however, in seeing that the act adopted accomplishes its purpose without unnecessarily interfering with the right of private citizens to manage their resources and businesses.

It appears that Section 208 of the Federal Water Polution Control Act as amended might induce the various State agencies to adopt regulations affecting private forest lands, with little land owner, technical forestry and forest products industry input if a forest prectices act is not adopted this year. Section 208 does not force us to adopt a permit type act as advocated by the administration and as used currently in California. This case is supported by an article in the March 78 issue of the Journal of Forestry written by Luke Popovitch of the Society of American Foresters.

We feel that the administration's bill is generally acceptable with the following critical exceptions:

The proposed Division should be guided by a seasoned professional forester. This is necessary to insure that administration of a forest practices act have continuity without being subject to automatic adjustments with changes of administration, to insure an appreciation for forest management problems by the administrator, and to insure that modern-technical forestry is properly represented in intragovernment communications.

The administration's bill incorporates the word "notification" in reference to the mechanics of enforcement; in fact it is actually purely a prior approval permit system. We have no objection to the use of this system (the prior approval permit system on public lands. The differences between the two systems were not adequately

or fairly, presented by Mr. Haynes at the March 8 committee work session. The basic difference is that under the prior approval permit system (as used in California and as in this bill) the state may deny (41.17.070 e (3)) the land owner the right to operate on his own land, without the land owner having broken any law or regulation. Furthermore, under this permit system (41.17.070 e(2)) the state will have the power to tell a landowner what, where, how, and when he will be allowed to manage his resource.

Under a notification system, as used in the Oregon Forest Practices Act, and as recommended by ourselves, the landowner still has the responsibility and burden of operating within the law; but, he also has the freedom to formulate his own plans, as best meet his constraints, solong as he complies with the laws and regulations. The notification system is not as Mr. Haynes described it "merely mailing in a postcard." A landowner can be required to submit the very same plans and information which are required under the administration's proposed permit system. Under a notification system you can still require that these plans be submitted, even thirty days in advance of commencing any activity on private land. We would have no objection.

If that is not enough, the state could go farther under a notification system and require a preformance bond. We would not like that provision; but, it might be a trade-off just to get a notification system in this bill. We should be careful that a preformance bond would be no larger than adequate to both prevent careless or willful infraction and to correct any adverse situation which might result from an infraction of the law or regulation. Frankly, I'm afraid that a bond requirement would get so far out of hand that it would force small operators out of business. A bond is unnecessary against the land-owning operator as you have the land to throw liens on already.

Under a notification system the state could still have the authority to require a pre-operation meeting with the land owner/ operator-to explain potential problem areas and suggest alternatives - before an operation started But the land owner would retain the essential freedom - and flexibility - vital in Alaska - to formulate his own plans.

There is no need to burden the private land-owner with a permit system as proposed in this bill. We can accomplish the objective, and guarantee the practice of modern - scientific forest management, in Alaska, with a notification system.

Section 41.17.070(j) in the administration's draft further provides for major review lasting another 68 days if a land owner discovers that his situation has changed-and that he must amend his plans. This delay would not happen under a notification system. September 30 to December 8 is 68 days. What if: a land owner is faced with a situation where in a land owner's particular part of the state, where the ground normally freezes before the snow flies, in which he would normally log on frozen ground with a low ground pressure FMC to control surface disturbance, but this year the snow comes first. Can he alter his plans and use a cable suspension system befor the snow buries his fell and bucked timber. NO. Not unless the snow decides to let up for 68 days so the state can review the situation and process a change in his permit.

What if normally the snow flies first and he had planned to use a cable system, but this year the ground freezes first-so he could meet his production schedule and save some funds,- without disturbing the surface,- by using his FMC. If its going to take

the state 68 days to react, he can forget about taking advantage of the break God gave him this year.

What if: as has happened to myself here in Southeast, he is logging with a helicopter and it crashes. Can he switch over to a skyline for part of the area, to minimize his losses. Not if he has to wait 68 days. He'll have to shut down and lose 2½ months production and probably his whole business. A true notification system, as used in Oregon, is far less expensive to administer than the permit system that the administration is asking for. Considering volume harvested California's permit system is 6.5 times as expensive for that states taxpayers as is Oregon's notification system to its taxpayers. Considering the number of operation notices filed, California's permit system is 27.3 times as expensive to enforce as is Oregon's notification system. It is logical to conclude that these costs would increase by a blanket 25% cost of business factor here in Alaska- plus an additional 25% overall increase for transportation (which is only 7% of Oregon and California's forest practices related budget.) I've noticed that the administration's fiscal note allows only $4,000 for transportation/year for the entire forest practices enforcement program in the state. This leads me to conclude that they either don't plan to enforce it at all or they plan to do the whole thing without ever getting out on the ground to see what the situation really is. If they plan to enforce this thing properly, especially if we're stuck with a permit system, they'd better allow at least $12,000/year for each enforcement officer between Ketchikan and Kodiak. On the ground inspection, at least twice, would be virtually mandatory under a permit system. No self respecting forest practices officer is going to stick his neck out and give someone permission to do something without getting on the ground before and after it takes place. This budget will virtually force the state to ask for more time, more information, and to take action under 41.17.070 e(3) to deny the permit. The bill has budgeted for eight new forester positions. I don't believe that the state could enforce this act, run a nursery, a public education effort and conduct a meaningful inventory program with twice that number.

Section 41.17.070 (h) requires publication of a permit application for operations on private land and requires solicitation of public comment. This could destroy a land owners bargaining position in the market as all the buyer, sellers, and competitors in the world would know exactly what his plans are. They'd know what he was going to produce, where, when, and how much. By deduction they could determine relative operating costs, and his margin of profit or loss. This informations should be held in strict confidence.

We agree with Senator Meland's concern regarding the administration provision 41.17.070(b)(6) governing private land that states "allowance be made for scenic and asthetic quality in or adjacent to areas of substantial importance to the tourism industry." This provision will undoubtedly foster many lawsuits as people disagree on such items as:

1. What constitutes "allowance"

2. What is "scenic and asthetic quality"

3. What constitutes "substantial importance"

Mr. Haynes suggested that this passage merely authorizes the state to compensate land owners for the economic impact of state restrictions under this section. Perhaps then

the act should mention the state's authority to compensate a land owner for voluntarily curtailing planned activities which conflict with the state's vision of "scenic quality." We further suggest that the implication that a land owner may be prevented from managing his resource (when the state finds a potential conflict with their interpretation of "scenic value") be deleted from the bill.

Section 41.17.020 (i) which requires an advisory committee is a good start. We feel that this committee should have substantial land owner representation as long as the act has jurisdiction over private lands. For purposes of adopting regulations governing forest management practices on private land the committee should draft the regulations. Oregon's act requires 2/3 land owner representation on their committee.

Sound forest management with consideration for, and enhancement of all the resources of the forest ecosystem can be a highly profitable enterprise. Although it may be benificial to encourage the practice of modern forestry on small woodlots, a 4 or 5 million dollar economic incentive program is not really required to promote proper management for the bulk of Alaska's future private forests.

We endorse the concept of mandatory standards for reforestation and conversion to non-forest use. These standards must be carefully set for the various conditions and ecosystems found in the state. Southeast does not share the same problems as Afognak, the Matanuska Valley, or Elim and visa versa. Standards that apply to Southeast do not necessarily apply to other forested areas of the state. These regulations must not be hastily drafted, or drafted just to say we have a regulation. Forestry in most areas of the state, is relatively new. Alot more work needs to be done.

The Alaska Native Claims Settlement Act requires that our corporations follow management practices no less stringent than those used on adjacent national forest lands until December 18, 1983. There shouldn't be any rush to pass this act as it relates to private land just to get federal approval for state control under Section 208. Because 208 applies to federal land via the state forest practices act, you could delete private land from the bill and it would still apply to our (essentially the) private forests until the end of 1983 anyway.

If we can't have a good bill this year perhaps all reference to private lands should be deleted with the intent of considering an amendment later to control operations on private land in the same spirit as Oregon's act.

MARK G. COPELAND*
DAVID WOLF
*SO ADMITTED IN OREGON

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RANDALL L. DUNN
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RICHARD L. SADLER

March 29, 1978

Kay Poland
Resource Committee of the Senate
Room 120
Capitol Building
Juneau, Alaska

Dear Mrs. Poland:

Thank you for the telephone call from Sharon Stoops, your secretary, informing us of the hearing on the Sponsor Substitute to S.B. 59 on April 10 and 12. Also I appreciate the fact that she is not only going to send me a copy of the Sponsor Substitute to S.B. 59, but is also sending a copy directly to Les Anderson of Koncor and Sam Demmert, President, Yak-Tat Kwaan, Inc. I gathered when I talked to her on March 29 that the Sponsor Substitute has not yet been published and this is the reason we could not obtain a copy in Anchorage, but that it should be printed later this week and will be sent from Juneau.

Sincerely yours,

KEANE, HARPER, PEARLMAN & COPELAND

David

DAVID WOLF

DW/ps

cc: Les Anderson, Koncor
Sam Demmert, Yak-Tat Kwaan

AMENDMENTS REQUESTED

#1. Retain original language from Sponsor Subsitute regarding creation of a Division with responsibility for forestry and establishment of the position of State Forester.

Justification: Fragmenting surface land management responsibilities, as would occur under the language of the Work Draft Paper, will result in duplication of effort, conflict between divisions, and risk separating forestry matters from the mainstream of land management decisionmaking.

If a separate division of forestry is to be created, its responsibilities should be left up to the commissioner so that unnecessary administrative problems and legal difficulties with implementation of AS 38.05 can be avoided.

#2. Add new paragraph (10) to §040(c) to read:

"(10) nominees of the state forester have three seats."

Justification: There is no way of anticipating all of the interest groups or points of view which might warrant representation on the Board of Forestry. At least three seats should be at the discretion of the state forester so that some flexibility over membership is retained.

#3. Add new paragraph (4) to §060(b) to read:

"(4) to the fullest extent practicable, harvested forest land shall be reforested (naturally or artificially) so as to result in a sustained yield of merchantable timber from that land."

Justification: While the timing and extent of reforestation should be handled by regulation, there should be policy direction in the bill that reforestation take place. Constituencies such as mill workers and forest products support industries are dependent for their jobs upon continued supplies of timber. Since much reforestation in Alaska will be natural and major landowners have stated their intent to reforest anyway, this provision would impose no hardship.

#4. Move §060(c) back into §060(b).

Justification: Everyone understands that there will be some temporary damage resulting from logging. However, some direction should be given to avoid permanent damage to the ability of the land to produce renewable resources. If the latter

AMENDMENTS REQUESTED (continued)

happens, the interests and income of fishermen and others who depend upon forest resources are impaired and the impacts of activities on private land extend beyond the boundaries of that land. Language nearly identical to this is included in the Federal Multiple Use/Sustained Yield Act.

ALASKA BOARDS OF FISHERIES AND GAME

JOINT RESOLUTION #

April 7, 1978

WHEREAS, the Senate Resources Committee is currently considering the Sponsor Substitute for Senate Bill 59, an Act relating to forest resources and practices;

WHEREAS, fish and wildlife and their habitat are among the renewable forest resources of Alaska, and are therefore of major concern to the Joint Boards of Fisheries and Game;

WHEREAS, the Sponsor Substitute for Senate Bill 59 appears to the Boards to establish a professional forest management program which will protect fish and wildlife resources and their habitat while providing benefits and services resulting from use and development of timber resources;

BE IT RESOLVED, that the Joint Boards of Fisheries and Game urge that the Senate Resources Committee take favorable action on the Sponsor Substitute for Senate Bill 59.

Adopted unanimously (12-0) this 7th day of April, 1978.

Nick Szabo
Chairman, Board of Fisheries

Samuel Kubley
Chairman, Board of Game

Gordon Jensen
Chairman, Joint Boards of Fisheries and Game

File

KONCOR

FOREST RESOURCE MANAGEMENT

P.O. Box 2212
Kodiak, Alaska 99615
Phone (907) 486-3985

February 17, 1978

Honorable Jay S. Hammond, Governor
State of Alaska
Pouch A
Juneau, Ak 99811

Dear Governor Hammond:

It has come to my attention through conversations with both State Division of Land and U. S. Forest Service personnel that the State's nursery facility at Palmer may be dying a slow death due to lack of funding. If this is indeed true, it is extremely disappointing to me personally and a grave management concern to KONCOR.

KONCOR is the managing entity for several village corporation's forest land selections in the Koniag region. During the course of calender year 1977 KONCOR sought and received removal of the U.S.F.S. Perenosa timber sale from lands under our management jurisdiction on Afognak Island. Prior to removal of the timber sale from KONCOR lands, approximately 600 acres of timber were harvested under the Forest Service's operational plan.

Pursuant to agreement with the USFS KONCOR presently is removing timber harvested approximately two (2) years ago.

Both the USFS and KONCOR have been relying on the Palmer facility to raise the seedlings necessary for these lands to be reforested.

KONCOR's management objectives also call for additional acreage to be harvested in the years to come. We must either enter into our own nursery program or purchase the stock from outside sources. The state facility certainly could provide KONCOR, as well as other land owners through out the state, with regeneration stock.

I urge you to look into this critical matter and seriously consider funding the Palmer facility so it can produce planting stock on a production basis.

Alaska Loggers Association, Inc.

111 STEDMAN, SUITE 200
KETCHIKAN, ALASKA 99901
Phone 907-225-6114

April 10, 1978

Honorable Kay Poland
Senate Resource Committee
Pouch "V"
State Capitol Building
Juneau, AK 99811

Dear Senator Poland:

Enclosed is a copy of the Alaska Loggers Association Resolution 78-1, which supports the proposed State Forest Practices Act, and urges its speedy enactment into law. This resolution was passed by the ALA Directors and its members at the annual spring membership meeting in Juneau, March 19, 1978.

Sincerely,

Donald A. Bell
General Manager
ALASKA LOGGERS ASSOCIATION

DAB/mjh
Enclosure:

RESOLUTION

78-1

OF THE ALASKA LOGGERS ASSOCIATION

IN SUPPORT OF S. B. 59

CREATING AN ALASKA STATE FOREST PRACTICES ACT

WHEREAS, the proposed State Forest Practices Act combines professional management services, regulatory measures, and economic incentives in complementory fashion and draws upon the expertise of a professional forester in conjunction with other disciplines, and

WHEREAS, passage of this proposed State Forest Practices Act will assure strong recognition of the role of the forest industry in Alaska's economy within the State government, and

WHEREAS, there exists a need for a strong State forester at a sufficiently high policy making position within State Government to assure that legitimate forestry concerns are integrated with, not dominated by, concerns regarding related forest values, and

WHEREAS, it is essential that the State's Division of Forestry have a high level of forestry expertise (as well as expertise in related disciplines), good morale, and a sense of purpose and importance within State Government, and

WHEREAS, the proposed State Forest Practices Act requires the minimum possible, regulation, paper work, procedure and delay; and

WHEREAS, the proposed State Forest Practices Act assures that regulations promulated by the State under the Alaska Coastal Zone Management Act, and Section 208 of the Federal Water Pollution Control Act will be integrated with the Forest Practice regulations into one set of regulations; and

WHEREAS, the proposed State Forest Pracitces Act provides for the creation of new State forests; and

WHEREAS, the proposed State Forest Practices Act recognizes the legitimate right of private forest land owners to utilize their land in the manner they deem best, and limits that right only to the extent its exercise would substantially impact upon the rights of others, and

WHEREAS, it is the intention of the proposed State Forest Practices Act to foster policies which will nurture and enhance the forest industry in its operations on State and private lands; and

WHEREAS, the proposed State Forest Practices Act provides for creation of an Advisory Board made up of knowledgeable foresters which would participate in the formulation of regulations under the act; and

WHEREAS, the propsed State Forest Practices Act creates a fair and equitable system for hearings when a breach of the regulations promulgated thereunder has been alleged, and

WHEREAS, Commissioner of Natural Resources, Bob LeResche, has directed a process of concensus and reasons in the development of the proposed State Forest Practices Act, which policy has been skillfully implemented through the persistent efforts and expertise of Jeoff Haynes of the Department of Law;

NOW THEREFORE, the Alaska Loggers Association hereby:

1) Supports the proposed State Forest Practices Act, S.B. 59 and urges its speedy enactment into law; and

2) Commends both Commissioner LeResche and Assistant Attorney General Haynes for their leadership, persistence, patience and reason in developing this bill.

Adopted this 19th day of March 1978

Mike Valentine

Mike Valentine, President
ALASKA LOGGERS ASSOCIATION

cc. Governor Hammond, President of the Senate, Speaker of the House, Members of the House and Senate Resource Committees.

MARK G. COPELAND*
DAVID WOLF

*ALSO ADMITTED IN OREGON

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ROBERT B. HOPKINS
RICHARD L. SADLER

March 10, 1978

Kay Poland, Chairman
Resources Committee
of the Senate
Room 120
Capitol Building
Juneau, Alaska

Dear Mrs. Poland:

Thank you very much for taking the time to discuss with me the status of S.B. 59 last month. I gather that the Resources Committee will not be considering this bill until the administration has completed development of its proposed sponsor substitute and submits it to the committee. When anything new happens with this bill, I would appreciate receiving the information so that Yak-Tat Kwaan, Inc. and Koncor may submit information concerning the bill to the committee for its consideration. Thank you again for your time.

Sincerely yours,

KEANE, HARPER, PEARLMAN & COPELAND

DAVID WOLF

DW/ps

cc: Sam Dermett, Yak-Tat Kwaan, Inc.
Les Anderson, Koncor

Call Art Peterson 6-1820

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March 29, 1978

Kay Poland
Resource Committee of the Senate
Room 120
Capitol Building
Juneau, Alaska

Dear Mrs. Poland:

Thank you for the telephone call from Sharon Stoops, your secretary, informing us of the hearing on the Sponsor Substitute to S.B. 59 on April 10 and 12. Also I appreciate the fact that she is not only going to send me a copy of the Sponsor Substitute to S.B. 59, but is also sending a copy directly to Les Anderson of Koncor and Sam Demmert, President, Yak-Tat Kwaan, Inc. I gathered when I talked to her on March 29 that the Sponsor Substitute has not yet been published and this is the reason we could not obtain a copy in Anchorage, but that it should be printed later this week and will be sent from Juneau.

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KEANE, HARPER, PEARLMAN & COPELAND

David

DAVID WOLF

DW/ps

cc: Les Anderson, Koncor
Sam Demmert, Yak-Tat Kwaan

Dup

Honorable Senator Poland and
Committee Members;
My name is Gene Sundberg;
I am the Vice President in charge
of Lands for Koniag, Inc, the
Native Regional Corporation from
Kodiak. I would like to thank
you for the opportunity to submit
comments to you on Senate Bill
69.
We certainly agree that our
forest resources, for many
different reasons, is valuable
in our region, as well as to

all of Alaska; and that the resource should be prudently managed. We also agree that the State is in need of a strong and wise forest practices guideline.

We cannot, however, concur with the acceptance of the present Senate Bill 59 with respect to its present language, and, with this in mind, would like to share with you, the following impressions and interpretations of various sections of this Bill.

In Section 41.17.010 paragraph (2) on page 1 refers to healthy industries. It seems an unnecessary adjective and implies that the State appreciate benefits from only large corporate structures with lots of money. It would leave a small private industry or business as feeling unhealthy.

On the same page on paragraph (4) for reasons of clarity and better understanding, we recommend that it be rewritten to read

as follows; "Prudent management of forest land and water resources furnish timber, minerals, fish and wildlife, tourism and recreation." Period. Present language duplicates the benefits derived from the above listed categories.

Also, for the sake of clarity on paragraph (5) on page 1 we recommend that the paragraph end with a period following management resources. The rest of that particular sentence serves only as a descriptive phrase

which would be covered under the words "prudent and responsible forest management measures."

In Section 41.17.060 (b)(5) on page 4, we feel that if a renewable resource is harvested in an ecologically compatible manner within the harvest unit and adjacent area, tourism should not take precedence over the harvest of that resource. As an example an adjacent land owner, for possibly unjust cause could dictate how

his neighbors land would be utilized; and perhaps prevent his neighbors full enjoyment of multiple uses of the land and resources.

the harvest of ~~trees~~ resources.

We feel that a reasonable revenue is harvested in an ecologically compatible manner, ~~that~~

In reference to Section 41.17.110 (c) page 11, ~~entitled~~, we recommend that the hearing officer be a State employee experienced in the practices of silviculture. As stated in the present ~~bill~~ the hearing officer, who will be designated by the Commissioner, need be ~~only~~ an employee of the State. Our feeling is that the Commissioner must be compelled by ~~the~~ Law

alleged violator

to ~~give~~ the ~~offended party~~ a hearing

the benefit of ~~the~~ officer

~~hearing the case, the~~ D with

knowledge and expertise in

the field of forestry. Without

that knowledge we feel that

a hearing officer without qualifications cannot

~~properly~~ render a proper

judgement.

Under Section 41.17.950 entitled "definitions" on page 16 (1) the phrase " and not withdrawn from timber utilization" is completely unclear ~~to my own mind~~, and ~~needs clarification~~ as to its meaning, and needs to be clarified.

Finally, As a matter of interest to this committee, and not a part of this bill is the fact that Koniag, Inc does approve of the concept of H.B. 40 which would create a Division of forestry within the Department of Natural Resources.

KONIAG

Madame Chairman, in closing may I state that in our Koniag Region there lies many hundreds of thousands of acres of timberland and that we are cognizant of the fact that, unless proper forest practices are invoked on our lands, we may lose what we are trying to save for the future generations.

Again thank you for the opportunity to state our views and I hope that other knowledgable persons in our region send in more testimony. Thank You

February 22, 1977

Jay S. Hammond, Governor
Pouch A
Juneau, AK 99811

Dear Governor Hammond:

The Ad Hoc Committee on land policies and procedures has met on a weekly schedule since late October. We have addressed many problems dealing with the administration of the state's land patrimony. Many of these problems need resolution through the legislative process. Accordingly we are submitting these following recommendations as an interim report of the Committee, in the hope that the legislature may act during its current session.

Recommendation #1

The committee recommends that the State adopt a system of level payments in place of declining payments in its sales contracts. The system of level payments is in common use in the business world, and the payment figures are easily set forth in a contract. The disadvantage of the present method is that interest must be recalculated every year and the payments decrease each year. From both the State's and the buyers' viewpoints, the level payment method would be preferred. The State would receive slightly more in interest payments over the contract terms and the buyer would not have to make as high initial payments.

Section 2 & 3 of the attached draft bill would accomplish this.

Recommendation #2

The committee recommends that the State charge a market rate of interest in its sales contracts. The interest rate, at present 6%, is below market levels and may have contributed to inflated prices at state land sales. By setting interest rates at market levels, the State would help prevent inflated land prices and at the same time return more income to the State. To provide for a market rate of interest in sales contracts, no change in AS 38.05.065 would be required. The addition of a statement of market rate in this statute would be desirable, however.

Section 3 of the attached draft bill would accomplish this.

Recommendation #3

The Committee recommends that all sales contracts over $400.00 per year have the option of paying in quarterly installments instead of annual installments. It is the committee's belief that this would ease the financial strain on the buyer and yet not add significantly to the State's administrative costs.

Section 3 of the attached draft bill would accomplish this.

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Section 3 of the attached draft bill would accomplish this.

Recommendation #3

The Committee recommends that all sales contracts over $700.00 per year have the option of paying in quarterly installments instead of annual installments. It is the committee's belief that this would ease the financial strain on the buyer and yet not add significantly to the State's administrative costs.

Section 3 of the attached draft bill would accomplish this.

Recommendation #4

The committee recommends that the Director be given the authority to set the payment period from one to twenty years. This type of flexibility would allow the State and buyers greater market possibilities.

Section 3 of the attached draft bill would accomplish this.

Recommendation #5

The committee believes that the word "primarily" may imply special consideration to some lessees. In order to treat all lessees fairly and equitably the committee recommends that the word primarily be stricken. Deleting "primarily" would clarify the basis for reappraisal. This recommendation is also made by the hearing panel on the Alaska Industrial Subdivision leasing protest.

Section 8 of the attached bill will accomplish this.

Recommendation #6

Since public notice is covered in AS 38.05.345 the change to "appraisal" for AS 38.05.310 is warranted by its present content. The committee recommends that land may be appraised 120 days in advance of a sale or lease. The change from 90 to 120 days would be desirable in that minimum bid information could be given to the public well in advance of the actual sale or lease auction.

Section 10 of the attached draft bill will accomplish this.

Recommendation #7

The committee recommends that land offered over the counter be reviewed at 90 to 120 day intervals to determine if an increase in value has occurred. This review is desired so that parcels are not undervalued by progressive changes in the market.

Section 10 of the attached draft bill would accomplish this.

Recommendation #8

The committee recommends that in Title 38.05 of the statutes the terms "fair market value" be used in place of "fair appraised market value" and "market value." The meaning is meant to be the same in all cases. The committee would like to see one standard term used to avoid confusion and misunderstanding.

Sections 4, 5, 7, & 13 of the attached draft bill would accomplish this.

Recommendation #9

The duration of a lease and the economic life of substantial improvements, such as stores or factories may not coincide. In order to see that state leased land is used in a rational economically productive manner the committee recommends that lessees of long-term leases be given a renewal option for up to fifteen years. This type of option would grant the lessee more flexibility in maximizing

his investment returns, especially during the final years of his lease. It would also increase the lessee's planning possibilities for use of the leased ground. This action would also soften the impact of termination of the lease. Specifically, this would permit a lessee to work substantial repairs to a building when the remaining term of the lease would not otherwise justify it.

Section 6 of the attached draft bill would accomplish this.

Recommendation #10

In order to provide a uniform 55 year limit for all long-term leases the committee recommends deletion of the 99 year provision found in 38.05.070(c) for school lands.

Section 6 of the attached bill would accomplish this.

Recommendation #11

The committee believes that state trust lands (school, mental health, and university) are now and have been managed at a low intensity. These lands may be returning only a fraction of their potential value that could be realized by a small full time management staff. The Division manages, these lands at no charge to the various trust funds and receives no reimbursement for its services. Therefore, it has traditionally placed low priority on management of these lands. This committee recommends that the State Legislature authorize each trust board the authority to freely contract with any agency or private firm for the management of its lands for revenue production in accordance with the state's land a[illegible].

Section 1 of the attached draft bill would accomplish this.

Recommendation #12

To provide the lessee insurance against a land boom or unexpected increase the committee recommends that rental increases at the five-year reappraisal periods not exceed 100% of the prior existing annual rental rate. This action would increase the predictability of the lessees payments. The stability thus created would add significant borrowing power for the lessee to finance improvements on the leased ground. Mr. Mack of this committee does not concur and believes that 100% is too high a ceiling.

Section 8 of the attached draft bill would accomplish this.

Recommendation #13

The Division of Lands has had many protests from private parties over the past few years leading the committee to believe that a board of appeals is highly desirable and needed, at this time. At present there exists no arbitration board or board of appeals to handle appeals allowed by Division of Lands regulations. The creation of a board of appeals would effect a responsive mechanism for solving most problem cases arising out of Division of Lands transactions that affect private parties. The board of appeals would be faster and less costly to private parties than legal recourse, which would still be available. The board is structured to maintain adequate expertise while attempting to eliminate bias in favor of the

Division of Lands. The appeal board would substitute for the Commissioner in the present appeal process.

Section 14 of the attached draft bill would accomplish this.

Recommendation #14

The current procedures for informing the public of state lands transactions are covered in AS 38.05.305 and AS 38.05.345. The two procedures do not mesh in a clear manner. The committee recommends that the procedures be clarified in a manner that will be flexible enough to inform the public fully and yet not require multiple advertising for minor negotiated transactions.

Section 11 of the attached draft will accomplish this.

Recommendation #15

To implement the new lease provisions recommended by this committee new lease forms for various types of leases will be required. It is the committee's recommendation that the Division draft new lease forms to comply with the statues adopted, and that the new forms be reviewed by this committee.

Recommendation #16

At present many lessees are suffering hardship due to rent increases of several hundred percent. To provide for this relief and as a curative for such future increases the statutory provisions found in section nine are recommended. Provision for optional conversion of present leases to ones that will place a ceiling of 100% on rental increases every five years will largely prevent future hardship cases and resolve satisfactorily the present cases. With a rent ceiling lease rental increases will be more predictable resulting in more financial stability for the lessee. Mr. Mack does not concur with the limitation of 100%.

Section 8 & 9 of the attached draft bill will accomplish the above recommendations.

Recommendation #17

The committee recommends that the Legislature apply the provisions found in Title 38 to those in Title 3 and Title 19. The rationale would be to make land laws uniform between the Division of Aviation, Department of Highways and Division of Lands.

Recommendation #18

To comply with new statues the committee recommends a major overhaul of Division of Lands regulations. The committee has found many of the regulations now in effect to be outdated and superseded by statutes.

Recommendation #19

The committee recommends that the State be given more flexibility to resolve contract of sale violations. This is necessary to prevent foreclosure as the

only remedy for minor contract violations.

Section 3 of the attached bill will accomplish this.

The committee wishes to note that in the course of public testimony it was apparent that Division of Aviation lessees had significant problems with their current leases. This subject was not within the scope of the committees deliberations and, therefore, not addressed.

The committee wishes to emphasize that this is an interim report and will be followed by additional recommendations not necessarily involving legislative actions.

THEODORE C. SMITH
Co-chairman

Committee Members:

Hugh Gellert, Co-chairman
William Mack
John Norman
Lidia Selkregg
Jamie Love
Carl Marrs
Clark Gruening
Mike Colletta
Herb Lang
David McCabe

IN THE

BY RULES COMMITTEE BY REQUEST OF THE GOVERNOR

BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to state lands and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 38.05.030 is amended by adding a new subsection to read:

Section 38.05.030 (f) Notwithstanding the provisions of (a) and (e) above and 38.05.035 (a)(13), the trustees of state trus. lands may manage or contract with any agency, public or private, for the management of trust lands pursuant to the provisions of this chapter. Costs of such management shall be borne by the respective trusts.

* Section 2. AS 38.05.055 is amended to read:

Section 38.05.055. SALE PROCEDURES. Except as provided in Section 315(d) of this chapter, the sale shall be made at public auction 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 an amount determined by the director but not less than 5% (EQUAL TO ONE-TENTH) of the purchase price. The director or his representative shall immediatley issue a receipt containing a description of the land or property purchased, the price bid, and the terms of slae, which 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, after approval of the commissioner, the contract shall also be signed by the director on behalf of the state.

* Section 3. AS 38.05.065 is amended to read:

Section 38.05.065. TERMS OF CONTRACT OF SALE. The contract of sale shall require the remainder of the purchase price to be paid over a period

of not more than 20 years, which shall be set for each sale by the director. Installment payments plus interest will be set on the level payment basis over the payment period. The interest rate charged on installment payments shall be the prevailing rate on similar land transactions at the time the contract is signed, as determined by the director, but in no case shall it be below 5% per year or above the current usury rate as set by AS 45.45.010(b) and (d). (IN ANNUAL INSTALLMENTS OF NOT LESS THAN 10 PER CENT OF THE PURCHASE PRICE, WITH INTEREST AT THE RATE OF NOT LESS THAN FIVE PER CENT A YEAR.) The director, with the consent of the commissioner, may also impose conditions, limitations, and terms which he considers necessary and proper to protect the interest of the state. Violations of any provision of this chapter or the terms of the contract of sale subject the purchaser to appropriate administrative and legal action, including but not limited to specific performance, foreclosure, ejectment, or other legal remedies in accordance with applicable state law. (LEGAL ACTION, INCLUDING A FORECLOSURE ACTION IN ACCORDANCE WITH APPLICABLE STATE LAW.)

* Section 4. AS 38.05.067(b) is amended to read:

Section 38.05.067(b). The director shall not sell the lands under this section at less than their fair (APPRAISED) market value. The director shall make regulations necessary to ensure that lands sold under this section are for bona fide residential use and not for speculation.

* Section 5. AS 38.05.068(a) is amended to read:

Section 38.05.068(a). FOREST SERVICE PERMITTEES' SALES PREFERENCE. Before offering to the public any land which is subject to a valid existing United States Forest Service permit in effect in a state-selected area at the time the area was patented to the state, or which is subject to a lease issued under Section 87 of this chapter, the director shall offer the land for sale to the permittee or his successor in title, if he can be found, at not less than its fair (APPRAISED) market value before offering to the general public.

* Section 6. AS 38.05.070(c) is amended to read:

Section 38.05.070(c). A lease may be issued for a period of up to 55 years, if it appears to be in the best interest of the state and if the commissioner approves. A lease for a period in excess of 25 years shall grant the lessee an option entitling him to extend the term of the lease for up to 3 consecutive five year periods in addition to the original term. If the Commissioner determines that the land or a part of it which is the subject of a grazing

lease is not being used for the purpose issued, the lease may be declared void. (HOWEVER, A NONRENEWABLE LEASE FOR SCHOOL LANDS MAY BE ISSUED FOR A PERIOD NOT TO EXCEED 99 YEARS.)

* Section 7. AS 38.05.087(a) is amended to read:

Section 38.05.087(a). FOREST SERVICE PERMITTEES' LEASING PREFERENCE. Before offering to the public any land for lease which is subject to a valid existing United States Forest Service permit in effect in a state-selected area at the time the area was patented to the state, the director shall offer the land for leasing to the permittee at not less than its fair (APPRAISED) market value before offering it to the general public.

* Section 8. AS 38.05.105 is amended to read:

Section 38.05.105. Each lease shall stipulate that the annual rental payment is subject to adjustment at five year intervals and shall be based (PRIMARILY) on a reappraised annual rental value. Any increase due to reappraisal may not exceed 100% of the annual rental for the preceding 5 year period. However, if the director of the division of lands determines that residential development is the best use for the land, the reappraisal period may be lengthened or the readjustment waived in accordance with regulations adopted by the commissioner. Before a waiver of rental readjustment is issued, the land shall have a current reappraisal. A waiver is valid only if residential development actually occurs, and only if it is necessary for obtaining primary long-term financing. The regulations adopted under this section shall ensure that the state receives a fair return from the land.

* Section 9. AS 38.05 is amended by adding a new paragraph to read:

Section 38.05.106. CONVERSION OF LEASES. (a) Any person holding a valid lease as lessee of lands from the State under provisions of AS 38.05.070 - .105, or as an approved assignee of such lessee under the terms of such lease, may, at his option, convert his lease so as to obtain certain benefits, enumerated in subparagraph (b) below, which were not available to him at the date his lease was originally entered, if the lessee at the time of conversion makes all payments due under the conversion rate and is not in violation of any other lease provision.

(b) Those lease benefits which shall be made available to a lessee qualifying under subsection (a) of this section shall be all of those lease provisions authorized or made applicable by this act to new leases entered into by the State after the effective date of such statutes.

(c) The effective annual rental value at conversion shall be based on the most recent reappraisal provided that such reappraisal was within 2 years of the effective date of this act. In all other cases, the conversion shall be based on the next reappraisal.

(d) Any conversion as to trust lands shall be effective only if approved by the appropriate board of trustees.

(e) Applications for conversion must be made within 3 years of the effective date of this act.

* Section 10. AS 38.05.310 is amended to read:

Section 38.05.310 (NOTICE AND) APPRAISAL. (a) 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 120 (90) days before the date of (FIXED FOR THE) sale or lease. (WHEN LAND IS OFFERED AT PUBLIC SALE BUT IS NOT SOLD AND IS AVAILABLE)For over the counter sale (AT THE PRIVATE SALE, NO) an (RE)appraisal is required unless the director finds (CONSIDERS) that a change in value of the lands has not (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 fair (THE APPROVED, APPRAISED) market value, except as provided in .315 and .320 of this chapter and .75 - .85 of this chapter. No land or interest in land may be sold, leased, or otherwise disposed of without public notice.

(b) When land is offered at public sale but is not sold, it may be available for sale over the counter. The director shall review the list

of lands available on a quarterly basis and shall certify that there has been no change in value since the last reappraisal. If an increase in value occurs in any parcel, the director shall withdraw that parcel from sale over the counter.

* Section 11. AS 38.05.345(a) is amended to read:

Section 38.05.345(a). Public notice of an auction sale (LEASE OR OTHER DISPOSAL) of land or interest in it shall be substantially as follows.

* Section 12. AS 38.05.345(e) is amended by adding a new subparagraph to read:

Section 38.05.345(e) Public notice of an action other than as specified in paragraph (a) above shall conform to the requirements of AS 38.05.305 and this paragraph. Such notice shall, when given pursuant to AS 38.05.305(c), be published at least once in a newspaper of general circulation in the vicinity in which the land affected by the proposed activities is located.

* Section 13. AS 38.05.365 is amended by adding a new subparagraph to read:

Section 38.05.365. "Market Value" or "Fair Market Value" means the highest prices, estimated in terms of money, which the property would bring if exposed for a sale for a reasonable time in the open market, with a seller, willing but not forced to sell, and a buyer, willing but not forced to buy, both being fully informed of all the purposes for which the property is best adapted or could be used.

* Section 14. AS 38.05 is amended by adding a new paragraph to read:

Section 38.05.380. STATE BOARD OF LAND APPEALS. (a) The State Board of Land Appeals shall consist of five members, one of whom shall be the Commissioner of Natural Resources or his designated representative. The other members of the board shall be appointed by the governor from the general public, with due regard for the desirability of prior legal, natural resource or real estate training and experience as criteria for selection of public members. All board members are subject to confirmation by a majority of the members of the legislature in joint session.

(b) The director of the division of lands shall provide administrative support for the board.

(c) The governor shall appoint the public members of the board for terms of three years each, except that the initial terms of one of the members first appointed under this chapter shall be for one year and one member for two years. The public members are entitled to compensation

in the amount of $50.00 per day for each day or portion of a day spent in actual meeting or on authorized official business incident to their duties, and to all other transportation and per diem expenses as provided by law.

(d) Jurisdiction of the board shall extend to all matters arising under the Alaska Land Act (AS 38.05) and the Water Act (AS 46.15) from which an appeal may be taken under statute or regulation to the commissioner from a decision of the director, division of lands. The board in all appeals filed after the effective date of this chapter, shall have the appellate authority formally vested in the commissioner by provisions of the Alaska Land Act. An appeal from a decision of the board, if taken, shall be to the Superior Court.

of a quorum shall be able to render a decision. The board shall adopt regulations governing its procedures, and may adopt other regulations which may be necessary or convenient in carrying out the purposes of this chapter.

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE

P. O. Box 1628, Juneau, Alaska 99811

1510

April 24, 1978

Honorable Kay Poland
Alaska State Senate
Pouch Y
Juneau, Alaska 99811

Dear Senator Poland:

I have been following with a great deal of both personal and professional interest, the development of State forest practices legislation. I have been impressed with your concern to assure that the legislation provides the environmental protection necessary, and at the same time protects the rights of private landowners. The issues involved in forest practices on private land are indeed more complex than on public land.

Section 41.17.060 on regulatory and administrative standards, is of particular interest to us. This section authorizes the implementation of specific regulatory forest practices on the ground, and through membership on the Board of Forestry, we look forward to participating in the development of those regulations.

The policy of the Forest Service nationally, has been to encourage and support sound State forest practices legislation. Our previous testimony before your Committee attests to this.

An additional consideration in Alaska is the requirement in the Alaska Native Claims Settlement Act that lands selected by the Native corporations be managed under certain specified practices. Sub-section K, Section 22, states that:

> "Any patents to lands under this Act which are located within the boundaries of a National Forest shall contain such conditions as the Secretary deems necessary to assure that such lands are managed under the principle of sustained yield and under management practices for protection and enhancement of environmental quality no less stringent than such management practices on adjacent National Forest lands for a period of twelve years."

The job that now faces us is to develop standards and guidelines to meet the intent stated by Congress. We expect the State Forest Practices

Act now under development by your Committee will significantly aid in meeting Congressional requirements.

The work you and your Committee have done in bringing the various interests together on Statewide forest practices issues is of great value. I might suggest a meeting with ourselves, you and some of the other interests, as a way toward developing a practical approach in complying with the forest practices provision of ANCSA. I would welcome your counsel on this.

Sincerely,

Robert H Tracy

for JOHN A. SANDOR
Regional Forester

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE
P. O. Box 1628, Juneau, Alaska

April 10, 1978

TESTIMONY FOR THE SENATE RESOURCE COMMITTEE
SENATE BILL NO. 59, SPONSOR SUBSTITUTE

MADAM CHAIRMAN AND MEMBERS OF THE COMMITTEE:

MY NAME IS MARVIN C. MEIER, U. S. FOREST SERVICE, AND I AM TESTIFYING TODAY FOR REGIONAL FORESTER, JOHN. A. SANDOR.

WE ARE PLEASED TO HAVE THIS OPPORTUNITY TO SHARE OUR THOUGHTS ON THE PROPOSED FOREST PRACTICES ACT, SPONSOR SUBSTITUTE FOR SENATE BILL NO. 59. WE HAVE A KEEN INTEREST IN THE DEVELOPMENT OF A STRONG STATE FORESTRY PROGRAM BECAUSE WE FIRMLY BELIEVE THAT ALASKANS WILL PROFIT IN MANY WAYS FROM THE DEVELOPMENT OF SUCH A PROGRAM. THE BILL UNDER CONSIDERATION WILL BE HELPFUL IN ACHIEVING THIS OBJECTIVE. IT IS THE RESULT OF A COOPERATIVE EFFORT OF LEGISLATIVE, EXECUTIVE, AND PROFESSTIONAL FORESTRY EXPERTISE.

MADAM CHAIRMAN, YOUR PERSONAL LEADERSHIP AND THE EFFORTS OF THIS COMMITTEE HAVE BEEN EFFECTIVE IN IMPROVING THE PROPOSED FOREST PRACTICES ACT THAT HAS EVOLVED THESE PAST THREE YEARS. IT HAS BEEN A PLEASURE FOR THE FOREST SERVICE TO WORK WITH THE STATE, YOUR COMMITTEE, AND OTHERS IN THIS EFFORT.

ALTHOUGH WE WILL NOT DISCUSS THE BILL IN GREAT DETAIL, THERE ARE SOME POINTS ON WHICH WE DO WISH TO COMMENT. FIRST, THE BILL WILL STRENGTHEN THE STATE FORESTRY AGENCY AND THE ROLE OF THE

STATE FORESTER. IN THIS GREAT STATE WITH THE VAST ACREAGE OF FORESTS AND RELATED RENEWABLE RESOURCES, THE APPLICATION OF SOUND FOREST PRACTICES MUST BE ASSURED. THE MANAGEMENT OF THE STATE'S FOREST RESOURCES IS EXTREMELY IMPORTANT FOR TIMBER, FISHERIES AND WILDLIFE, RECREATION, WATER, AND OTHER USES. THE FULL VALUE OF FOREST RESOURCE MANAGEMENT WILL BE REALIZED ONLY IF THE STATE CONTINUES TO HAVE COMPETENT, PROFESSIONAL PERSONNEL IN THE POLICY MAKING POSITIONS DIRECTING THE PROTECTION AND MANAGEMENT OF THESE RESOURCES. THE EXPERIENCE IN MOST WESTERN STATES CLEARLY ILLUSTRATES THIS.

THE BILL PROVIDES FOR THE DEVELOPMENT OF INCENTIVES AS A WAY OF ACHIEVING GOOD FOREST MANAGEMENT. SEVERAL OF THE LOWER 48 STATES HAVE ESTABLISHED, OR ARE WORKING TOWARD THE ESTABLISHMENT OF, INCENTIVE PROGRAMS. THEIR EXPERIENCE WILL BE HELPFUL TO ALASKA. THE INCENTIVES NEED TO BE THOUGHT OF IN BROAD TERMS AS INCENTIVES TO ALL FOREST RESOURCES AND OVERALL FOREST LAND MANAGEMENT, NOT JUST TIMBER MANAGEMENT. THE SECTION ON INCENTIVES AND COOPERATIVE FOREST MANAGEMENT WILL ENCOURAGE AND ASSIST PRIVATE FOREST LANDOWNERS TO USE THEIR LAND AND RESOURCES TO THEIR OWN BENEFIT, AND IN WAYS IN WHICH SOCIETY AS A WHOLE DOES NOT SUFFER.

THE BILL'S SECTION ON REGULATORY PROCEDURES WILL ALSO HELP PROTECT ALASKA'S RESOURCES. THIS PART OF THE PROGRAM IS IMPORTANT TO ASSURE THAT FOREST-RELATED RESOURCES ARE WISELY MANAGED FOR COMMODITY AS WELL AS ENVIRONMENTAL GOALS.

THE BILL PROVIDES FOR THE STATE'S CONTINUED PARTICIPATION AND INVOLVEMENT IN THE FEDERAL COOPERATIVE FORESTRY PROGRAMS. THESE PROGRAMS HAVE PROVEN THEMSELVES VALUABLE TO MOST OTHER STATES. THIS WILL WILL HELP ASSURE THE CONTINUATION AND EXPANSION OF ALASKA'S PARTICIPATION IN THESE PROGRAMS. IN FISCAL YEAR 1978, THE FOREST SERVICE WILL PROVIDE OVER $700,000 FOR COOPERATIVE PROGRAM FUNDING, WHICH IS A 40 PERCENT INCREASE OVER FISCAL YEAR 1977. WE CANNOT PROMISE THIS KIND OF INCREASE EACH YEAR, HOWEVER, THE U. S. DEPARTMENT OF AGRICULTURE DOES RECOGNIZE THE IMPORTANCE OF A STRONG COOPERATIVE FORESTRY PROGRAM HERE AND NOW. THE FOREST SERVICE IS COMMITTED TO SUPPORTING AND AND CONTINUING SUCH A PROGRAM.

THE BILL AUTHORIZES DESIGNATION OF STATE FORESTS FOR RETENTION AS MULTIPLE-USE LANDS AND AUTHORIZES THE ESTABLISHMENT OF STATE TREE NURSERIES. SUCH AUTHORITIES ARE SOUND, AND AGAIN ARE PROVEN IN THE EXPERIENCE OF OTHER STATES. THERE ARE FOREST REGENERATION NEEDS NOW, AND THESE NEEDS ARE LIKELY TO INCREASE AS MORE TIMBER IS HARVESTED. TO THE EXTENT THAT PRIVATE NURSERIES ARE NOT ABLE TO PROVIDE THE STOCK THAT IS NEEDED AT AN AFFORDABLE PRICE, WE ADVOCATE STATE SUPPORTED NURSERIES. THEY WOULD RESULT IN BETTER LAND UTILIZATION, THEREBY REDUCING THE AMOUNT OF LAND IMPACTED BY A GIVEN TIMBER HARVEST LEVEL. ALSO, A STATE SUPPORTED NURSERY COULD LEAD TO DEVELOPMENT OF IMPROVED PLANTING STOCK.

AGAIN, IT HAS BEEN A PLEAURE WORKING WITH VARIOUS STATE PERSONNEL AND WITH YOUR COMMITTEE IN THE DEVELOPMENT OF THIS PROPOSED LEGISLATION. THE ENACTMENT AND IMPLEMENTATION OF THE PROPOSED BILL SHOULD HELP ASSURE THE SOUND MANAGEMENT OF ALASKA'S FORESTS AND RELATED RENEWABLE RESOURCES.

COOK INLET CHAPTER
JUNEAU CHAPTER
KETCHIKAN CHAPTER
YUKON RIVER CHAPTER
SITKA CHAPTER
STIKINE CHAPTER

SOCIETY OF AMERICAN FORESTERS

Alaska Section

April 10, 1978

TESTIMONY FOR THE SENATE RESOURCES COMMITTEE
SENATE BILL NO. 59, SPONSOR SUBSTITUTE

MADAM CHAIRMAN AND MEMBERS OF THE COMMITTEE:

MY NAME IS BOB JANES AND I AM APPEARING TODAY FOR THE ALASKA SECTION OF THE SOCIETY OF AMERICAN FORESTERS.

WE WELCOME THIS OPPORTUNITY TO GIVE TESTIMONY IN FAVOR OF THE CURRENT SPONSOR SUBSTITUTE FOR SENATE BILL NO. 59. THE ALASKA SECTION REPRESENTS OVER 200 PROFESSIONAL FORESTERS THROUGHOUT THE STATE OF ALASKA, AND IS PART OF A NATIONAL ORGANIZATION OF MORE THAN 20,000 SUCH MEMBERS. DURING THE PAST THREE YEARS, WE HAVE BEEN ACTIVE IN HELPING TO FORMULATE LEGISLATION FOR A SOUND STATE FOREST PRACTICES ACT IN ALASKA. A YEAR AGO, WE MADE AN IN-DEPTH ANALYSIS OF SENATE BILL NO. 59, BY TESTING IT AGAINST OUR SOCIETY OF AMERICAN FORESTERS RECOMMENDED NATIONAL CRITERIA FOR A COMPETENT STATE FOREST PRACTICES ACT. WE ARE HAPPY TO SEE THAT SUGGESTIONS AS A RESULT OF THAT EFFORT HAVE BEEN INCORPORATED INTO THE SPONSOR SUBSTITUTE BEFORE YOU TODAY.

ONE OF OUR PRIMARY CONCERNS A YEAR AGO, WAS THE NEED FOR THE STATE FORESTER TO PLAY A MORE PROMINENT AND AUTHORITATIVE ROLE IN ADMINISTERING THE ACT IN A SOUND AND PROFESSIONAL MANNER. SINCE THE DIRECTOR OF THE DIVISION OF FOREST, LAND, AND WATER

MANAGEMENT WILL BE THE STATE FORESTER, AND SINCE THIS PERSON MUST HAVE PROFESSIONAL NATURAL RESOURCES LAND MANAGEMENT CREDENTIALS, IT APPEARS THE ORGANIZATIONAL STRUCTURE NOW PROVIDES FOR OVERCOMING THAT PARTICULAR PROBLEM. WITH PROPER DELEGATED AUTHORITY EXTENDED BY THE COMMISSIONER, THE STATE FORESTER SHOULD BE ABLE TO OPERATE IN A LEADERSHIP ROLE IN THE MANNER WE ENVISION IS NECESSARY. WE MUST EMPHASIZE, HOWEVER, THE IMPORTANCE OF DELEGATING SIGNIFICANT AUTHORITIES TO THE STATE FORESTER. OTHERWISE, A PROGRESSIVE STATE FORESTRY AWARENESS IN ALASKA COULD AGAIN BACKSLIDE, AND OBSTRUCT SOUND PROTECTION, MANAGEMENT AND UTILIZATION OF THE ABUNDANCE OF NATURAL RESOURCES THIS GREAT STATE HAS.

ANOTHER OF OUR MAJOR CONCERNS IN THE PAST WAS THE EFFECT THIS LEGISLATION WOULD HAVE ON PRIVATE LANDOWNERS. CRITERIA #7 OF OUR NATIONAL GUIDELINES STATES "A FOREST PRACTICES ACT SHOULD ALLOW A FOREST LANDOWNER LATITUDE IN APPLYING PROFESSIONAL FORESTRY EXPERTISE AND FOREST MANAGEMENT PRINCIPLES. ADMINISTRATIVE REQUIREMENTS FOR FOREST LANDOWNERS AND OPERATORS SHOULD NOT BE UNDULY BURDENED." IN PREVIOUS INPUT, WE EXPRESSED THOUGHTS ABOUT THE APPARENT INAPPROPRIATE INVASION OF RIGHTS AGAINST PRIVATE LANDOWNERS BECAUSE OF UNDULY RESTRICTIVE REGULATORY PRACTICES. FOR EXAMPLE, THERE WAS A PROVISION IN PREVIOUS PROPOSED LEGISLATION THAT READ "TIMBER HARVESTING IS NOT PERMITTED IN AN AREA UNLESS RELEVANT DATA AND INFORMATION INDICATE THAT THERE WILL BE NO REFORESTATION PROBLEMS LEADING TO THE INABILITY OF THAT AREA TO PRODUCE A SUSTAINED YIELD OF MERCHANTABLE TIMBER." WE COMMENTED THAT WHILE THIS MAY BE APPROPRIATE FOR STATE OR MUNICIPAL FOREST LANDS, IT

WAS NOT APPROPRIATE AS A BASIS FOR DEPRIVING A PRIVATE LANDOWNER OF ECONOMIC VALUES THAT EXISTED ON HIS OWN LAND. THE CORRESPONDING REGULATORY STANDARD IN THE CURRENT SPONSOR SUBSTITUTE, SEC. 41.17.040 (B) (1), NOW READS "TIMBER HARVESTING IS LIMITED TO AREAS WHERE DATA AND INFORMATION DEMONSTRATE THAT NATURAL OR ARTIFICIAL REFORESTATION TECHNIQUES WILL RESULT IN THE PRODUCTION OF A SUSTAINED YIELD OF MERCHANTABLE TIMBER FROM THAT AREA." DURING THE OPERATOR NOTIFICATION PROCESS WITH THE COMMISSIONER, THIS REQUIRED DETERMINATION SHOULD BE EASILY RESOLVED. ANOTHER OVERLY RESTRICTIVE PROVISION IN THE SAME SECTION OF THE PREVIOUSLY PROPOSED LEGISLATION READ, "SCENIC AND AESTHETIC QUALITY SHALL BE MAINTAINED IN OR ADJACENT TO AREAS OF SIGNIFICANT IMPORTANCE TO THE TOURISM AND RECREATION INDUSTRY." THE CORRESPONDING REGULATORY STANDARD NOW READS "WHERE ECONOMICALLY PRACTICABLE, ALLOWANCE MAY BE MADE FOR SCENIC AND AESTHETIC QUALITY IN OR ADJACENT TO AREAS OF SUBSTANTIAL IMPORTANCE TO THE TOURISM AND RECREATION INDUSTRY." IN ESSENCE, THESE TYPES OF UNDULY RESTRICTIVE MEASURES HAVE BEEN ELIMINATED AND WE BELIEVE PRIVATE LANDOWNERS ARE NOW GIVEN FAIR CONSIDERATION IN THE SPONSOR SUBSTITUTE BILL. IN ADDITION, SECTION 41.17.070 HAS BEEN SUBSTANTIALLY IMPROVED REGARDING REVIEW AND APPROVAL OF OPERATIONS. EVERY EFFORT WILL BE MADE TO LIMIT THE REVIEW AND APPROVAL PERIOD TO A MAXIMUM OF 20 DAYS. WITH THESE EXAMPLES, IT IS DEMONSTRATED THAT UNDULY BURDENSOME REQUIREMENTS HAVE BEEN STREAMLINED OVER THE PREVIOUS BILL.

PROPOSED LEGISLATION FOR AN ALASKA FOREST PRACTICES ACT STARTED IN THE SECOND SESSION OF THE NINTH LEGISLATURE. IT CONTINUED IN THE FIRST SESSION OF THE TENTH LEGISLATURE, AND IS NOW IN ITS THIRD YEAR. TO HELP ASSURE SOUND PROFESSIONAL MANAGEMENT OF ALASKA'S

FOREST LAND RESOURCES AT THE EARLIEST POSSIBLE TIME, WE URGE YOUR COMMITTEE TO AGGRESSIVELY STRIVE FOR ADOPTION OF THIS SPONSOR SUBSTITUTE FOR SENATE BILL No. 59, DURING THIS SECOND SESSION OF THE TENTH LEGISLATURE.

THANK YOU FOR LISTENING TO US TODAY.

R.C. James

SHEE ATIKA, INCORPORATED

P.O. Box 578
Mt. Edgecumbe, Alaska 99835
Phone - (907) 747-3534

March 23, 1978

Senator Kay Poland
Chairman, Senate Resources Committee
Alaska State Senate
Pouch V
Juneau, Alaska 99801

Dear Senator Poland

The Board of Directors of Shee Atika, Inc. have directed me to convey their concerns to the Senate Resource Committee relating to the administration's proposed forest practices act.

We would very much like to see a forest practices act adopted this year. We are equally interested; however, in seeing that a practical and fair forest practices act is adopted. Several points were noted by our Directors during their attendance at the Senate Resource Committee work session, held March 8th, at which Mr. Jeff Haynes presented the administration's draft bill. Shee Atika, Inc. would like to express the following concerns relating to those points:

1. We need a forest practices act <u>this</u> year.

   A. It appears that operations and activities on privately owned forest lands will be regulated through other authority, with less concern or emphasis on private forest management, if an act is not adopted this year.

   B. Section 208 of the Federal Water Polution Control Act essentially mandates the State to adopt an act, <u>BUT</u> we can adopt a practical act to satisfy the Section 208 requirements. Sec. 208 does not require us to adopt a "California" type act which is both difficult expensive to administer and unfair to the private land owner.

2. We feel that the administration's draft bill is generally acceptable with the following critical exceptions:

   A. Forestry on private and state or municipal land should be administered from a level comparable to atleast the Division status within state government. Forest resources deserve attention and status equal to Commercial Fisheries, Sport Fisheries etc. if not equivilant to Fish and Game and Environmental Conservation.

   B. The Forestry branch should be led by a professional forester. This is necessary to insure that administration of a forest practices act have continuity without being subject to a possible political reward system, to insure appreciation for forest management problems by the administrator, to insure communication between the forest land owner and the administrator, and to insure that in inter division or inter department relationships modern technical forestry is represented and understood.

C. Alaska's forest practices act should incorporate a notification system for activities on private lands, not a permit system as in the administration draft. We have no objection to the "prior approval permit" system on public lands. At the Resources committee meeting Mr. Haynes did not adequately discuss the differences between these two systems. The basic difference is that a permit system (as proposed in the administration's draft requires the state's permission before a land owner can conduct activities on private lands; while, a notification system requires that a land owner inform the state prior to any activity on private land and that the land owner obey state law and regulation. Mr. Haynes reported that a notification system was nothing more than requiring a land owner to "mail a postcard" to the state when he or she was planning to conduct a forestry operation on his or her land. This is absolutely untrue. The administration probably has proposed a prior approval "permit" system because it wants the state to have a reasonable amount of influence on forest practices on private lands. That objective is reasonable and very acceptable for us as a land owner. That same objective can be accomplished; however, by tailoring a notification system in the proposed forest practices act. The notification system works very well in Oregon and it will work well in Alaska. We don't need to burden the private land owners and the state with the inherent problems of a California type prior approval "permit" system to accomplish the objective of insuring that privately owned forest resources are properly managed. We would suggest that the "permit" system in the administration's draft be replaced by a"notification" system which required 30 days prior notification by an operator or owner including filing of operation plans which identify what activity (s) is/are planned, what equipment will be used, where roads will be located, where streams are located, how the area be reforested etc. The plans should include location of the affected area on a USGS 1" mile topographic map with road & bridge locations, activity boundaries, streams, campsites, land fills, log storage areas, fuel storage areas, rock pits, water source, sewage disposal system, and landings identified and located. This is the same information that would be required by the administration's draft. We suggest that in lieu of a "permit" system the act should authorize the state to require a pre-orperation meeting with the operator or land owner This would give the state an opportunity to explain any concerns and advise the land owner/operator of the probable consequence of an activity. The need for a pre-operation meeting shuld be left to the discretion of the reviewing officer. We would advocate and endorse very stiff penalties(as in the administration's bill) to insure compliance with state law and regulation under a true "notification" system. We would not be adverse to posting a reasonable bond prior to any operation on our lands. If the state considers adopting the preformance bond concept; however, it would be desirable to include some means of exempting small landowners and operators and guaranteeing that the bond amount would be no larger than that required to both encourage compliance and cover the expense of correcting a possible adverse situation created by an illegal activity.

March 23, 1978

Senator Kay Poland
Chairman, Senate Resources Committee

A true notification system (as used in Oregon) is far less expensive to administer than a permit system which requires state consent as suggested by the administration. Considering volume harvested California's permit system is 6.5 times as expensive for that state's taxpayers when compared to Oregon's notification system. Considering the number of operation " notices filed California's permit system is 27.3 times as expensive as a notification act. It is logical to conclude that these costs would increase by a blanket 25%cost of business factor and 25% allowance for increased transportation expense in Alaska. Transportaion represents only 7% of Oregon and California's forest practices connected budget while it would probably approach 33% of the forest practices budget in Alaska. The transportation allowance would tend to be much higher under a "permit" system as a "permit" system has an inherent characteristic which encourages state enforcement personnel to make several visits to each operation prior, during and following the activity. Fixed administrative expenses will also be much higher in Alaska due to the relatively fewer number of operations here and smaller annual yield when compared with Oregon and California.

D. We agree with Senator Meland's concern regarding the administration's provision 41,17.040 b (6) that "allowance be made for scenic and asthetic quality in or adjacent to areas of substantial importance to the tourism industry." This provision will undoubtedly foster many law suits as people disagree on such items as:

1. What constitutes "allowance"?

2. What is "scenic and asthetic quality"?

3. What constitutes "substantial importance"?

Mr. Haynes indicated that this section intended to authorize the state to use an incentive program to compensate land owners for the economic impact of state restrictions under this section. If this is the intent, we suggest that the act should mention the state's authority to compensate a land owner for volutarily curtailing any activity related to "scenic quality" which the state finds objectionable. We further suggest that the implication that a land owner can be prevented from managing his resources (if the state feels the activity would conflict with "scenic value") be stricken.

We would like to express the following views on other points discussed in the committee session March 8.

1. We endorse that portion of the administrations bill which sets mandatory standards for reforestation and conversion to non-forest uses. These are reasonable standards which we plan to meet and surpass.

March 23, 1978

Senator Kay Poland
Chairman, Senate Resources Committee

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2. We concur with Senator Sumner's concern about who has the burden (landowner or state ?) under Section 41.17.040 b(1) of the administration's bill which states "timber harvesting is limited to areas where data and information indicate an absence of reforestation problems which would preclude that area from producing a sustained yield of merchantable timber". This problem could easily be corrected, and the objective retained, by modifing the passage to read "timber harvesting may be limited in areas where data and information indicate that it would produce unsolvable reforestation problems which would preclude that area from producing a sustained yield of merchantable timber."

Thank you for your consideration. We were pleased to note the committee's expression of concern for the rights of the private landowner at the March 8 meeting.

Sincerely

Warren R. Weathers
Executive Director Shee Atika, Inc.

WRW/nmw

Testimony of Robert E. LeResche, Commissioner
Department of Natural Resources
on the
Sponsor Substitute for Senate Bill 59

Senate Resources Committee
April 10, 1978

Thank you for the opportunity to testify before the Committee on the Sponsor Substitute for Senate Bill 59, an Act relating to forest resources and practices.

As you know, a forest practices act has been in the works for more than three years. We consider it an extremely high priority. Only if we enact such legislation before logging reaches its greatest intensity are we in a position to (1) head off user groups conflicts before they occur, (2) establish forest practices and other ground rules before equipment is moved into the field, (3) provide the highest level of professional assistance to logging operators, and (4) fully realize the benefits of a healthy forest products industry while insuring perpetual supplies of renewable forest resources. Accomodating the many constituencies which depend upon forest resources will be difficult and complex, and we must start now. Most states have waited too long to adopt forest practices legislation, and have suffered for it. We should not repeat that mistake. By acting now, the establishment of a high profile professional forestry program will permit Alaska to occupy a position of national leadership in forest management.

During the hearings held by this Committee last year, it was evident that there was opposition to a number of provisions of the Administration Bill. Consequently, you asked that we work with affected interest groups in an attempt to come up with legislation which would respond to and reconcile the many points of view in

this controversial area.

In the interim period, we have tried to negotiate solutions to the problems with the bill with the Forest Service, state government entities, professional foresters, the forest products industry, native corporations, conservation groups, fishermen, and others. Of course, virtually everyone in Alaska has some stake in the management of Alaska's forests, and it was impossible to talk with all of them. Nevertheless, we did work continuously with those who evidenced a desire to participate in the revision of S.B. 59. Indeed, I cannot think of many pieces of legislation which have undergone the scrutiny, discussion, and reworking which has taken place on S.B. 59. At this point, the bill belongs as much to those participants as it does to us, and we believe the Sponsor Substitute is about as close as we can come to consensus legislation. It is certainly superior to the original S.B. 59, and we are indebted to those who have worked with us for the numerous improvements made and to this Committee for providing the forum to do so. We expect that the bill will receive considerable support from a number of different interest groups.

The Committee will note that we have submitted a rather lengthy transmittal letter along with the Sponsor Substitute. This letter contains the many statements of intent requested by persons and organizations who worked on the bill. The bill and the letter should be considered a package representing our efforts over the past year. As a result, we urge in the strongest terms that, if the bill is passed out favorably by this Committee, the transmittal letter be adopted as the Committee Report on the legislation.

The specifics of the legislation were reviewed with you at the working session of the Committee several weeks ago. Consequently, I will reserve going into that level of detail until responding to your questions when the testimony is completed. I would like to underscore, however, that the bill-

(1) establishes a visible professional forestry program in the Department of Natural Resources;

(2) adopts a threefold approach to forest management to include assistance by professional foresters and economic incentives as well as regulations;

(3) mandates thorough consultation with public and private entities through advisory committees and other mechanisms;

(4) exempts from regulation small landowners who may wish to sell their timber but are not really in the forest products business;

(5) allows for coordination of forestry regulations under this Act, the Coastal Management Act, and the Federal Water Pollution Control Act to avoid duplication and insure that appropriate disciplines are involved;

(6) establishes general policies for forest management, separated into those appropriate for public and for private land, and covering such matters as reforestation, providing for the needs of all constituencies, avoiding unwarranted economic burdens on operators, and insuring retention of the productive capacity of forest land with respect to renewable resources;

(7) authorizes regulations but precludes duplication of the programs of other agencies;

(8) limits government oversight of operations to a restricted and closely controlled review process;

(9) requires a report to the legislature showing that DNR has complied with and carried out the legislation;

(10) leaves development of specific standards to a regulatory process involving

all interest groups;

(11) permits genuine conversion of forest land to other uses; and

(12) employs an administrative penalty system rather than criminal sanctions, with special safeguards to avoid undue burdens on an operator charged with a violation.

In addition, two matters warrant special mention. First, there has been an obvious desire on the part of industry to obtain a high level forestry program, and therefore considerable discussion on the locus of a forestry division and the state forester. After a meeting in my office with representatives of various interest groups, we have redrafted certain parts of the bill to incorporate what we believe should be an acceptable compromise. Section 020 no longer requires that the Division of Forest, Land, and Water Management be in the Division of Lands, and Section 050(c) requires us to report to the Legislature in two years on the operations of the Division and, in consultation with interested parties, to develop recommendations regarding the qualifications of the state forester and the location of the Division as well as the legal authorities of the Department relating to forestry. 2 year trial period

Second, several suggestions for changes were made by Committee members at the working session. As a result, we have (1) clarified and made more express the exemption for small landowners in §030, (2) added a definition of "silviculture" in §950, (3) deleted the provision in §110(a) that each day of a violation constitutes a separate offense, (4) added to the definition of "sustained yield" in §950 to clarify reforestation requirements, and (5) and added language to the transmittal letter to deter unwarranted intrusions on private land by state officials.

In concluding, I would stress again the importance of gaining passage of the Sponsor Substitute this year before many new operations get under way. If the bill is enacted, it is our intention to create the Division of Forest, Land, and Water Management immediately and to name an advisory committee with representation of all forest resources constituencies to work with us in the implementation of our forestry program. ASAP

At this point, I would ask that you hear from the persons who have indicated a desire to testify, since they will be able to speak to many of the issues which you are undoubtedly concerned about. Along with other members of the Administration, I will be available during the course of the hearings to answer questions on the bill and to provide any other assistance. Again, I appreciate the opportunity to testify, and I thank the Committee for the interest it has already shown in this bill.

* * * * * * * * * * * * * * *

February 17, 1977

The Honorable Kay Poland
Chairman, Senate Resources Committee
Alaska State Senate
Pouch V - Capitol Building
Juneau, AK 99811

Dear Senator Poland:

Senate Bill 59

Sealaska very much appreciates having had the opportunity on Friday, February 11, 1977, to make a statement about the concept of a strong State Forester and forest practices in general.

In response to your request in which you asked for specific comments about Senate Bill 59, we have the following to offer. Naturally these comments are in addition to those in our statement which emphasized having a strong State Forester reporting to the Commissioner of Natural Resources, the onerous aesthetics standard and the hearing process inequities.

1. While philosophically, we agree with the concern of the Department of Natural Resources that private forest landowners should contribute to a sustained yield production on a State-wide basis, we feel that the individual forest landowner should have the latitude to respond to economic conditions and his financial needs to substantially vary his harvest practices from a sustained yield concept. The smaller private landowner who may have even up to a township of forest resource, is not in the

position to annually or periodically harvest his timber due to the uneconomic situation posed by having a small logging operation working continuously on his lands. Even in southeast Alaska, where a village may own over 20,000 acres of commercial forest resource, there probably would be only six separate times during a forest rotation in which a commercial logger could be brought in to operate on such lands. This is because a large amount of volume must be moved fairly rapidly in order to underwrite the very high costs of moving to a new operation and setting up the social and industrial infrastructure necessary for its support.

2. Sec. 41.17.040(b)(1) deals with reforestation. From the standpoint of the Forest Manager, there are always reforestation problems whether they involve understocking or overstocking of commercial species. Therefore, it is felt that this paragraph is too restrictive and denies to the Forest Manager the opportunity to undertake managed cultural measures to assure reforestation even in problem areas.

3. Sec. 41.17.050(a) on lines 12 and 13 indicates that forest land will be protected from depletion or degradation caused by over-harvesting, unsatisfactory forest management, etc. Over-harvesting is very difficult to define and from the standpoint of some people, unsatisfactory harvesting exists whenever a small clearcut is made. These terms are very general and could better be handled through the regulatory process where there would be a body of testimony in the record from qualified Forest Managers in the major regions of the State.

4. Sec. 41.17.060(b) line 15 indicates that the Commissioner shall consult with various interested parties within the State concerning the adoption of regulations under this section. It is important that the Commissioner, or preferably the State Forester, not only consult but very carefully weigh and evaluate statements made by those who will be responsible for forest-land management within the State in order to formulate regulations which are equitable and encourage good silvicultural practice.

5. Sec. 41.17.070(b) line 15-16 indicates that formal notification shall be given prior to undertaking a forest practice. This and subsequent subsections deal with the notification process. We agree with the testimony given by others that although the process is meant to be notification it in reality will probably be an application process with time limits on it. It is felt that a reaction time on the part of the Department of Natural Resources of even 60 days is excessive for many types of forest management practices including harvesting of timber. Among other factors, storms seasonal aspects of timber harvesting and silvicultural practices require that a landowner react very quickly to new conditions as they occur. Should a need arise in late summer, the delay of 60 days could constitute the delay of one year; and the delay of one year could have wiped out the opportunity to take advantage of a new market situation or opportunity to protect the resource. We would encourage a process embodying notification, especially since there will be regulations guiding the forest manager in the direction of wise resource use.

6. Sec. 41.17.070(j) line 14 indicates that an operator may not materially deviate from plans approved or terms in conditions imposed...We are concerned because this paragraph is very broadly written and could deny the operator his economic opportunity to market products. If there already is a body of regulations dealing with silvicultural and harvesting practices, it would seem that the operator could deviate from plans assuming that he adhered to the regulations promulgated.

7. Sec. 41.17.080(a) deals with the deployment of chemicals and herbicides. It requires that (1) deployment be in accordance with applicable State laws and regulations and (2) prior written approval from the Commissioner be obtained. If adherence is being made to all applicable State laws and regulations, why is it necessary for the operator to obtain approval from the Commissioner? We submit that this constitutes wasteful duplication and promotes needless delay.

8. Sec. 41.17.110 line 13 deals with the size of fines to be levied for civil violations. It is felt that a fine of up to $1,000 for each day of violation is totally excessive and that regulatory guidelines concerning fines should be promulgated so that fines really fit the alleged violations and the value of the material harvested or affected.

9. Sec. 41.17.110(b) deals with investigations and hearings. It is felt that any hearings which take place should be as local as possible to the operator's area of work in order to reduce the cost to the individual. In many instances, having onsite hearings would allow the hearing examiner to fully evaluate the alleged violation. Additionally, it should be unnecessary for the defendant to have to have an attorney at the hearing; i.e., the procedures at the hearing should be such to allow an individual operator to fully present his case without harassment on the part of an attorney for the State. This requires an empathetic and knowledgeable hearing officer who will insure that all matters relevant to the case are brought to the attention of the hearing officer. Additionally, the hearing officer should have a forestry background in order to be able to understand both sides of any testimony.

10. Sec. 41.17.110(d) and (e) deal with the alleged violation and violator. The tone of these paragraphs is such that the alleged violator is presumed to be guilty prior to even presenting his case at the hearing in that the paragraphs refer to the violator. In (e) the orders of the hearing officer include four items of remedy and do not even discuss the appropriate steps to be taken by the hearing officer should there be an acquittal or not guilty verdict.

11. Sec. 41.17.110(g) continues the presumption of guilt. It might better be worded "if the Commissioner finds, after investigation, that there is an alleged violation of (a) ..." and a continuing wording which will show a more objective stance on the part of the State.

12. It is felt that in Sec. 41.17.110 or another appropriate section that some procedure should allow the operator to immediately take the necessary steps to rectify an alleged violation after it is identified by a State official. By doing so, the State and the operator would incur much less cost than if they had to go through the full hearing process.

    The phraseology throughout 41.17.110 implicitly promotes the atmosphere that forest operators are "bad" and, therefore, must prove their innocence instead of the State having to prove that an alleged violation did occur.

13. Sec. 41.17.950(5) dealing with "forest land" refers to a stocking statistic of 16.7 percent as meeting the requirements for forest land. This figure alone is meaningless unless there is a reference to an authority which more fully describes its meaning. Therefore, we cannot offer further comment to this particular statistic.

This constitutes our major comments concerning individual line items in Senate Bill 59, should your committee elect to pursue a bill structured similarly to it. However, I wish to emphasize that we suggest the Senate Resources Committee carefully look at House Bill 40 as the guide to a logical piece of legislation to organize a State forestry organization with subsequent promulgation of responsible forest practices.

I would be very to discuss this further with you or the Committee if this is desired. With respect to further discussions on the Bill, I will be pleased to offer the services of Peter M. Huberth, General Manager - Forest Products Division, for further clarification should you or any members of your committee have questions. Mr. Huberth has over 20 years in the industry - mostly in a large variety of forest management activities on the west costs of California, Oregon and Washington.

I thank you, Madame Chairman for this opportunity.

Very truly yours,

John Borbridge, Jr.

John Borbridge, Jr.
President

KONCOR
FOREST RESOURCE MANAGEMENT

P.O.Box 2212
Kodiak, Alaska 99615
Phone (907) 486 3985

The following is KONCOR FOREST RESOURCE MANAGEMENT COMPANY'S testimony with respect to the Sponsor Substitute for Senate Bill No. 59:

Sec. 41. 17. 010 Declaration of Intent

(3) *". . . State has a fundamental obligation to insure that management of forest resources guarantees perpetual supplies of renewable resources. . ."*

The State's obligation is to State lands. As indicated by the process of receiving a state tideland lease permit, State involvement with the private enterprise sector often hinders rather than helps productivity and most assuredly has, in times past, created many costly time delays.

Sec. 41. 17. 020 Administration

(a) *" The Governor may create . . . a Division of Forest, Land, and Water Management to carry out this chapter . . ."*

This subsection of the Act is one of the key issues that must be focussed on. To inact a Forest Practice Act prior to having an orgainized, professional staff of forestry personel is a clear case of the tail "wagging the dog".

It is unrealistic for this session of the legislature to consider passage of a Forest Practice Act until (1) the State land selections are properly identified, (2) an inventory of state forest resource is performed as to provide meaningful

management data, (3) a state forest nursery is properly funded and functioning on a production basis to meet the regeneration needs identified in this bill.

There are tremendous resource data requirements that must be met before an effective forest practice act can be realistically considered. To strive for a completed Act simply because other states function under some form of forest practice is not sufficient reason for the legislature to consider passage. The Alaska Forest Practice Act should meet and identify Alaska's unique resource needs ---- what is done in Washington, Oregon or California only provides this legislature with a format of drafting a bill, Alaska is unique and our forest practices should reflect our field situations!!

Page seven (7) of the Draft Tranmittal Letter to Accompany Proposed Sponsor Substitute of SB-59 states that ". . . *the draters intend that the commissioner and the state forester employ foresight and innovation rather than being constrained by conventional attitudes so that Alaska's forest management effort enjoys a national reputation for leadership and competence.*" To enact a comprehensive Practice Act before basic management organizational structure is instituted smacks in the face of the drafters concern for inovation and foresight!

(C) ". . ., the governor may create, by administrative order, state forest, . . . for retention in State ownership as multiple-use land."

Here again is an example of why it is premature for the legislature to consider passing a state forest practice act. Until the state knows what commercial forest lands will be of management concern to the D.N.R. and until professionals have identified the management needs, established goals and objectives to properly fulfill their role as stewards to the Alaska public, SB-59, or any other forest practice bill should not be considered.

(e) " The Commissioner may establish and maintain forest vegetation nurseries. . ."

First of all the text should not contain the word "may" but should contain "shall".

Page 9 of the accompanying Draft Transmittal Letter states that *"Reforestation . . . must be the highest priority among silvicultural programs."* This, to KONCOR, is indeed interesting. Our immediate needs for Sitka spruce planting stock exceeds three hundred thousand (300,000) seedlings annually. KONCOR was pleased when we were told by the state that the nursery facility at Palmer would be able to provide our stocking needs as well as the U.S. Forest Service requirements for regeneration of Afognak Island harvesting units.

The fact of the matter is that as we entered 1978 KONCOR found that the nursery facility at Palmer for all intents and purposes had closed their doors. Not only was this facility "dying on the vine" due to lack of funding, the Governor in meeting with State and Private personel of the U.S.F.S. indicated that he had no working knowledge of the nursery situation.

Thanks to the efforts of Senator Poland, a modest amount of funding was provided the Palmer facility in March of this year enabling the operation to "exist".

It is KONCOR's management objectives to regenerate harvested lands as soon as possible. Artificial regeneration by planting nursery grown stock is the only feasible way to combat the vegetative competition factor the professional forester deals with in south-central Alaska. The present administration's attitude about a production nursery operation has been disappointing, to say the least, to KONCOR and other forest management personel throughout Alaska.

KONCOR has no reason to believe that the State's attitude will change and, until the State does "practice that which is preached" in this draft of a Forest Practice Act --- you as committee members should not allow this bill to go any further.

(h) The term "landowners" is construed to include adjacent landowners with respect to operations which may affect them. (page 11 -- Draft Transmittal Letter)

This is ridiculous ! You either are or are not the land owner! Any party who does not own land is no more than an interested citizen. Let's not open up the opportunity for an individual who has a special interest to assume he has management authority over another entities private land.

(i) *" The Commissioner shall establish . . . one or more representative advisory committees . . ."*

This should be done, however, prior to passing a forest

Practice Act. Organizationally, the Division of Forest, Land, and Water must be operational and then the advisory committee working with the Department personel should be charged with drafting a realistic State Forest Practice Act after the needed resource data is attained.

Sec. 41.17.030 Applicability

(a) ". . . *this chapter applies to forest lands under the state, municipal, or private ownership.*"

The Draft Transmittal Letter is to provide evidence of legislative intent and fails to comment on this subsection. It is clear that the intent of this bill is to manage State owned lands. All language aims toward State organizational structure. Private land referances should be removed. There are ample regulations through Federal, State, and municipal authorities to insure proper safeguards of forest operations on private land. For the State to dictate additional regulatory requirements on the private land owner is to further complicate a already combersome bureaucratic process placing an additional and unneccessary economic burden on private land.

Sec. 41.17.040 Regulatory and Administrative Standards

(a) *All regulations. . .*"

The Transmittal Letter (page 15) states " *The best approach to forest practice legislation is to avoid placing specific practice measures in the statute; instead, practices should be developed through the regulatory process. . .*"

With respect to drafting regulations no mention is made of a public hearing process. This is critical --- public

input must be acquired to produce meaningful regulations and, such regulations must reflect the practices necessary to properly manage forest lands in specific locals. Ecologically Alaska is just to large to have "blanket" regulations imposed on its forest lands.

(b) The reference to "private land" should be removed.

(1) *"timber harvesting is limited to areas where data and information demonstrate that natural or artificial reforestation techniques will result in the production of a sustained yeild of merchantable timber from that area;"*

This sounds good but is not realistic at todays standards. Alaska in practicality, is in the same state of a rosebud starting to bloom. The beauty of the resource potential is is amazing to any land manager but, quite frankly, the informational bank on Alaskan resources (particularly timber) is insufficient to make such a statement.

Even in areas, where a greater degree of forest management has occurred (ie: U.S.F.S - Afognak Island) data on regeneration capabilities of the land is more or less the "best guess" of a few professionals.

September 1977 a Symposium on North America Forest was held at the University of Alaska, Fairbanks in which forestry experts from around the world gathered to exchange information. Review of the findings of that symposium will show that Alaska is just starting to seriously consider intensive forest management. Alaska has not and can not develop regeneration data

sufficient to live up to the language of this subsection for years to come.

Fortunately, private forest land acquired by Alaskan natives under A.N.C.S.A. is being managed for sustained-yeild and thus will be generating valuable resource data. This subsection again points out that consideration of a State Forest Practice Act is premature.

(2) This subsection and the language of the Transmittal Letter again point to the fact that the State is on a "data search" --- Until proper resource information is obtained by the State, this bill should not be considered.

(3) *" environmentally sensitive areas and best management practices must be recognized. . ."*

What is best management? Forestry is as much an art as it is an applied science, ---- to legislate "best management" is to ham string the inovative professional forester.

(4) *" where not inconsistent with the other provisions of this section, administration of forest land must consider marketing conditions and other economic constraints affecting the operator;"*

This subsection again points out why the reference to "private land" should be removed from this bill. It is presumptuous for the State to involve itself with the market or economic constraints on the private landowner/operator. The free enterprise system will control itself on this matter. For the State to legislate regulations with respect to marketing on private lands is socialistic.

(6) *" where economically practicable, allowance may be made for scenic and aesthetic quality in or adjacent to areas of substantial importance to the tourism and recreation industry."*

The legislative intent is clearly identified in the Transmittal Letter (page 17) where it states *" it is not intended as a prohibition on land-use activities, especially on private land where private landowners are justified in using resources subject to their ownership. It is directed primarily at public land . . ."*

This subsection should be removed from any reference to private land --- the legislative intent is clear! The clause can and should be moved to the following subsection (c) *" with respect to state and municipal lands only. . . "*

Sec. 41.17.050 Administrative Plan and Report

(a) *" . . . The Commissioner shall maintain a current inventory or assessment of timber on forest land to assist in meeting the requirements of this section.*

Does the State have a realistic inventory of timber on forest lands? If not, this bill should not be considered until such basic work is completed.

(b) *" On June 30, 1980, and at two-year intervals after that date, the commissioner shall submit a detailed report to the legislature reviewing the administration of this chapter over the preceding two years, demonstrating compliance with (a) of this section, and describing how the*

plan will affect the welfare of the forest products industry and other activities and pursuits derived from or affected by forest resources."

The idea of a detailed report by the Commissioner to be submitted to the legislature is a sound one, however, such a report should only be on the progress of the organizational structure of the Division of Forest, Land and Water and on the acquisition of the data needed to then consider legislation on a State Forest Practice bill as identified by (c) 1-4. Until the administration can "prove up" on having a functioning forestry department --- no consideration on this bill should be granted.

Sec. 41.17.060 Regulations

(a) *" (1) harvesting, removal, and use of timber and tree products and related management activities;"*

This clause points again to the fact that private land should not be included in the language of this bill. What right does the State have in dictating the "use of timber and tree products"? Such language clearly oversteps the State's authority.

(2) *"reforestation, afforestation, revegetation, stocking, prescribed burning, fertilization, thinning, and other silvicultural activities;"*

Again, until the state faces up to it's economic responsibility to develop a functioning production nursery operation to meet reforestation needs, it is indeed premature to draft regulatory powers for such silvicultural activities.

(b) *" An operator may apply through the commissioner for permits required by other state agencies to operate on forest land, . . . The commissioner shall notify the operator of the action taken. . . ."*

The thought of an operator having to acquire a permit to operate on State land may have merit. It is, however, unfair and a show of excessive power, for the state administration to require the private land owner to acquire such operational permits. Besides placing an undue economic burden on the landowner/operator through time delay, it is contrary to all the basic principles that the American people have come tc enjoy by holding private land.

If you need to be convinced on the time delays such a system would place on the land owner --- review the track record of the D.N.R. over the past five years on how long it takes an operator to acquire a State tideland permit.

Sec. 41.17.070 Review and Approval of Operations

C (3) *" proposed measures for soil conservation and reforestation;"*

How can the operator honestly make an attempt at regeneration when no facility exists to provide planting stock? Are we to assume natural regeneration is acceptable? In many areas of the state natural regeneration will not produce the desire stocking rate and would significantly increase the rotation age.

(d) *" Within five days after receipt, the commissioner shall distribute the notification materials to affected*

state agencies. The agencies shall make their recommendations within 20 days after receiving the materials. The commissioner may extend the review period up to an additional 20 days only if the subject matter is highly and unusually complex.

(e) Within 10 days after expiration of the review period, the commissioner shall, as appropriate:"

It is realistic to assume that seventy (70) days will be required to acquire an operational permit in light of subsections (3), (4) and (f).

" upon the recommendation of the department or another agency, require the submission of additional plans or descriptions from the operator, . . . "

" If action is taken under (e) (4) of this section, the commissioner and affected agencies have an additional 20 day review period . . ."

Such an open door for costly time delays is blatantly unfair to an operator --- at least an operator who expects to stay in business. At the minimum, this language should not be applicable to the private landowner/operator.

Although it can be well argued that an operator should plan his activities out far enough in advance so that two months is not a critical time period --- in reality, that is not a fair argument. As evidenced by our own operations, one may have well thought out plans that for a variety of reasons must be changed right before a specific organizational activity is undertaken. In such a case, we could be faced with a situation of "stop work" until the proper permits were obtained.

The permit clauses of this bill are totally unnecessary. When a realistic forest practice act is drafted, the provisions of such a well organized bill can include the proper safeguards and eliminate the need for any permit process.

(h) *" Upon receipt of any notification, the commissioner shall provide copies to the timber owner and landowner, if different from the operator, and within five days shall publish the brief description received in a newspaper of general circulation, with an invitation for public comment. Recommendations received from the public must be considered."*

It is clear that inviting public comment on notification relates only to public lands! This bill must exclude any reference to private land --- What logic could there possibly be in seeking public comment on a private operation? This is ridiculuous !

(j) *" An operator may not substantially deviate from plans approved under this section unless approved in writing by the commissioner after full consultation with affected agencies."*

This is also insulting to the professional practice of forestry. The environment in which the trained forester must work is not Static! As mentioned before, forestry is also an art, one can not simply set out a series of planned efforts and expect an uninterupted schedule --- the wind blows hard and a salvage sale is needed; a stream course changes after heavy rains and thus one must change his stream crossing; rabbits nibble off the freshly planted

seedlings and thus regeneration schedules fall apart. Flexibility in forestry is not only necessary, it is the by-word. This subsection would require going through the ill-conceived permit process all over again. This is totally unacceptable !!

(m) *" The commissioner may require an operator to post security with respect to an operation, and to submit written reports.*

This is an unfair burden to place on the operator. If the state administration is doing their job properly, they should be in the field making examinations. A report is no better than the interpretation of the author and, of course, such a report would be biased.

(n) *" Operations which begin before the effective date of this Act have one year to comply with this chapter."*

No operation should be required to comply with a forest practice not in effect at the time the operation was started! Budget planning and cash flows are predicated on the situations and standards of the day. To try and force retroactive compliance is self defeating to the principle laid out in the legislative intent of the Transmittal Letter where it states *" . . . to protect the longevity and insure the stability of the forest products industry. . ."* (page 4)

In summary, KONCOR FOREST RESOURCE MANAGEMENT COMPANY is opposed to the Sponser Substitute of Senate Bill No. 59.

The concept of having an innovative and competent forest practice act is indeed valid, but, this draft is not the answer to the complex task set out before the legislature.

The State should organize it's Department of Forest, Land and Water under the D.N.R., properly funded so as to generate the much needed data necessary to set realistic goals and objectives for forest practices. A state forest nursery and/or nurseries must be developed for meeting the regeneration needs of timber harvesting operations throughout the state. When these tasks are completed, it will be more opportune to consider legislation to direct forest practices.

Thank you.

Sincerely,

KONCOR FOREST RESOURCE MANAGEMENT COMPANY

Leslie M. Anderson

Leslie M. Anderson
General Manager

LMA:eg

DNR 4

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL / *POUCH K – STATE CAPITOL JUNEAU 99811*

November 5, 1976

M E M O R A N D U M

TO: The Honorable Jay S. Hammond
Governor

FROM: Avrum M. Gross
Attorney General

RE: Attached bill on forest resources and practices
Our File No. J-77-001-77

Attached is a bill (a slightly revised version of last legislature's SB 563) which has been requested and reviewed by numerous agencies, although the lead agency is the Department of Natural Resources. A few relatively minor modifications of last year's bill have been worked out with Alaska Lumber and Pulp Company and the Alaska Loggers Association.

We have spent considerable time soliciting the comments of interested organizations on this subject, and made numerous changes to reflect their recommendations before introduction of the bill last year. We will continue to work with these organizations up to and during the upcoming session to obtain consensus on this legislation if possible.

A draft transmittal letter to the legislature, explaining the bill, is attached.

AMG:md:JH

D R A F T

Under the authority of art. III, sec. 18 of the Alaska Constitution, and in accordance with AS 24.30.060(b) and the Uniform Rules of the Alaska State Legislature, I am transmitting a bill which relates to state forest resources and practices. This bill has been extensively reviewed by various state agencies and interested organizations, including representatives of the forest products industry; it contains provisions responding to concerns expressed by them.

In addition to Alaska's incomparable mineral wealth, the forest land and water resources of Alaska are among the most valuable natural resources of the state. This land not only holds timber resources which are vital to the economic well-being of the state and the numerous businesses and activities dependent on timber, but the land is also important as the habitat for fish and wildlife, as collection areas for our water resources, and as places for people to fish, hunt, or simply find peace with themselves.

The purpose of this bill is to provide, with a minimum of new bureaucracy, the essentials necessary to foster the longevity of Alaska's forest products industries while concurrently benefiting from all other forest values along the way. This can be done only through adopting some controls over forest practices, but the controls in the bill have intentionally been kept to a minimum.

The focus of the bill throughout is to create new authority only where gaps exist in present authority, and specifically to avoid the creation of a new bureaucracy to deal with forest practices. Furthermore, the authority to be exercised over private forest land, which is treated distinctly from state forest land, emphasizes only a few basic objectives. Our intention is, above all, to keep government regulation at the basic minimum necessary to do the job.

Instead of creating a new entity to deal with forest practices, responsibility is housed in the Department of Natural Resources which, with its experience in land administration, is the most logical choice. The commissioner would administer the Act, with full powers of delegation to existing structures and personnel resources within the department. This will provide for implementation of the Act with a minimum of disruption and expense and without significant inconvenience to the affected public.

Not all timber harvest activities in the state are subject to regulation. Certain activities are exempted. For example, with regard to private and municipal forest land, only commercial forest land, as defined by the Act, is covered. In addition, unconnected small tracts of 160 acres or less under single ownership are excluded from the provisions of the bill to avoid regulation of activities which have minimal impact. The commissioner

also may exempt certain types of operations of forest land from regulation regardless of where they occur, if unnecessary to achieve the objectives of the legislation.

Fostering a continuous supply of timber is another objective, and, here, no complex or restrictive system of allowable cuts or production limits is imposed. Rather, the commissioner is simply charged with reporting to the legislature at two-year intervals on his administration of the Act; his report must demonstrate his plan for insuring a long-term sustained yield of timber.

As to utilization of timber in a manner compatible with other resource values, this bill does not copy the approach used in several other states of incorporating highly detailed forest practice restrictions and codes. Instead, the commissioner is authorized to adopt regulations governing forest practices with respect to subject matter areas that are common in forest practices legislation. He is guided by certain regulatory and administrative standards which are flexible enough to encourage practicality without sacrificing the objectives of the legislation. Most important, these guiding standards distinguish private forest land (which may not be available for general public use) from state and municipal forest land (which will normally be open to the public), and designate the objectives that are appropriate for each. For example, forest administration on <u>public</u> forest

land must be based on the principle of multiple use of all of the resources and values, and encourages recognition of all resources and values. On the other hand, since private forest land owners may elect to concentrate on particular uses and exclude others, their land is not subject to the multiple use directive.

Timber harvesting will be taking place across the state. Some of this harvesting will be covered by the policies of the bill and the regulations issued under it. Consequently, there must be some means of assuring that those regulations are complied with and that the objectives of the bill are reached. Two different systems have been used in other states. The notification system merely requires a timber harvester to notify the state that he intends to operate on forest land; no advance approval is necessary. The advantage of the notification system is that it is simple and administratively inexpensive (at least the process itself is). The disadvantages are that the government may be largely unaware of what is happening in particular projects and violations may escape notice. In addition, the timber harvester has little or no contact with the administrative authority, leading to the likelihood of misunderstandings and a large number of inadvertent violations. Other states use varying degrees of a prior-approval system. In some cases, highly detailed plans approaching impact-statement detail are required; in addition, they may have to be prepared by a licensed forester. The benefits of this system

include a much greater familiarity with operations taking place around the state, the opportunity to identify undesirable aspects of operations before any damage occurs, and the chance to work out differences with the operator before the project is initiated. On the negative side, the prior-approval system can be highly expensive, onerous to the operator, and may lead to extensive delays.

This bill uses neither system exclusively; rather, it incorporates the positive and eliminates the negative aspects of each. Before operating, the timber harvester must submit a brief description of the proposed project. It is to be reviewed during a relatively brief time by the commissioner (with input from affected agencies) for consistency with the applicable policies and regulations, and approved or conditioned to insure that consistency. Only if substantial problems appear would more detailed plans be required, and these would apply only to the particular problem area rather than to the entire project. To protect against bureaucratic footdragging, there is a statutory maximum time which the commissioner may use for review and approval, and there are no exceptions. There is also a statutory directive that paperwork be kept to a minimum to prevent inconvenience to the operator. This approach will require only that amount of information and participation from the operator necessary to provide the commissioner with familiarity as to the nature of forest development operations and to identify in advance serious problems.

Finally, in the event of a violation, the bill uses an administrative fine system (with full due process guarantees) rather than criminal penalties. Criteria are set out for establishing the amount of the fine. Judicial review of the administrative fine is provided.

I am convinced that this bill is well suited to Alaska and will greatly benefit the natural resources and general well-being of the state. I urge your favorable consideration.

Sincerely,

Jay S. Hammond
Governor

SB

103

COMMITTEE REPORT

SENATE

1/28/77 **Finance

4/18/77 Date

Mr. President:

The Committee on RESOURCES has had SB 103 oil and gas properties production tax under consideration. A majority of the members of the Committee

☐ recommends it do pass

☐ recommends it do not pass

☐ recommends it do pass with attached amendment(s)

☒ recommends it be replaced with CS for SB 103 and that CS for SB 103 do pass

☐ (and) recommends it be referred to the _____ committee

☐ reports it back without recommendation

☐ AND attaches a report of its intent

☐ (other) _____

MEMBERS SIGNING THE MAJORITY REPORT:

Fulton	Do Pass	Hensley DP Do Pass
Goetze	Zoke	John Thoken Do Pass As Amended
Kim Brettnacher	Do Pass	
Peterman	No Rec	

MEMBERS NOT CONCURRING IN THE MAJORITY REPORT:

_____ recommends: _____

_____ recommends: _____

_____ recommends: _____

AGU 546603

_____
Chairman

MEMORANDUM State of Alaska

TO: R. D. Stevenson
Special Assistant
Department of Revenue

DATE: February 18, 1977

FILE NO:

TELEPHONE NO:

FROM: Thomas K. Williams
Director
Petroleum Revenue Division
Department of Revenue

SUBJECT: SB 103 and HB 144
(identical Bills)

At the outset I would note that the Department of Revenue has recently released its review of Alaska's present taxation methods as they apply to the oil and gas industry. Within that review is the production tax, and recommendations regarding this tax have been made by the Department. This will shortly be followed up with specific bills.

SB 103 and HB 144 are identical. They incorporate a number of suggestions made last Session by the Administration to improve the production tax; however, these Bills do not reflect the latest recommendations in the Department's tax study. The most notable difference is that these Bills retain the basic "stair step" approach based on productivity, while the Department proposes a "curve" (instead of "steps") based on the actual economic condition of a property. The Department's recommendation recognizes and adapts itself to the fact that different areas of the State have different scales of economic production (i.e., in some places a far greater amount of production is needed to break even than is needed in others).

No simple set of "steps" can be structured for statewide application that will reduce the economic effect of the tax as the production of a property declines toward the minimum needed to break even. Either the tax will accommodate Cook Inlet operations and be too insensitive for non-coastal Native lands (whose break-even rates of production will more closely resemble the break-even rates for Prudhoe Bay than those for the Inlet), or else they will reflect the economic scale of operations for Native lands and Prudhoe Bay and give too much away to the Inlet operations.

If the "stair step" approach is to be retained despite its defects, the change to average well productivity as the basis for the "steps" is an improvement over the present tax. Both Bills make this change. However, they seem to give a bit too much away in their present definition of average daily per well production." A well operated only one day in the month would count the same as one operated every day of the month. To prevent the "one-day well" tax dodge, it is suggested that something along the lines of the following be used:

60 Feb 3072

(15) "average daily per well production" means the amount calculated by dividing the total number of barrels of oil produced from a lease or property during the calendar month by the well-days for that lease or property for the calendar month.

(16) "well-days" means the total obtained by determining the number of days each well of a lease or property was operated during the calendar month and then adding those numbers together for all the wells of that lease or property.

Again, this suggestion is made only if "stair steps" are to be retained: it would be unnecessary if the Department's proposed Economic Limit Factor (ELF) is adopted instead.

Despite the difference between "stair steps" and the ELF, these Bills do contain a number of the Administration's recommendations last Session that would still be beneficial.

Most important of these is the specification of the point at which the production is to be valued. There was litigation over this question for Cook Inlet production, and only the fact that the tax is being paid on the cents-per-barrel basis keeps the controversy from boiling up anew. A similar situation could develop at Prudhoe Bay. Specifying the valuation point corrects this and prevents a problem from arising.

Another good feature of the Bills is their proposal to extend the tax to flared gas and to tax that gas at a higher rate. Without a cents-per-Mcf tax, however, the percent-of-value tax could have little if any effect. A producer presumably would argue (before the courts?) that its flared gas has zero value or else why would it be flared.

Neither Bill would change the ordinary gas production tax rate to achieve rate parity with oil. This flaw in the existing tax structure was pointed out in the Department's tax study.

TKW/fm

cc: Sterling Gallagher
Commissioner of Revenue

John R. Messenger
Deputy Commission er of Revenue

CSSB 103 (FINANCE)

OIL AND GAS PROPERTIES PRODUCTION TAX

A. Difference between CS (Resources) and CS (Finance)

All of the changes occur on page 3. Three words were deleted from the Resources version (See attached page 3, CSSB 103). Language was added to 43.55.012 (c) stipulating a date certain for the rebuttal hearing relative to setting the economic limit of production, and the use of the results of that hearing (See attached page 3. CSSB 103 Finance).

The two added words to sub-paragraph (d) decrease the latitude of the supplies allowed for deduction, and limit fuel deductions to only those actually purchased rather than any used from production.

B. Difference between the CS and the original Bill(s)

1. In general, the CS is a combination of SB 103 and SB 238, with a greater similarity to the latter. Whereas SB 103 was based on a stair-step approach of specific percentages, from zero to 14 percent for specific ranges of production, the CS provides for a smooth curve from zero to 12.5 percent of taxation versus the rate of production, through the entire spectrum of production.

2. The cents per barrel floor provision is maintained somewhere between SB 103 and SB 238, but closer to the existing ceiling than not.

3. Both SB 103 and SB 238 contained price indexing mechanisms though of different natures. The CS has eliminated both the Wholesale Price Index of SB 103 and the Gross National Product Deflator of SB 238.

4. The point of production in both SB 103 and 238 was the point of metering. The CS moves the point of production back to the wellhead, as is presently being done.

5. The gross value of production in both SB 103 and 238 was determined at the point of metering. In addition, SB 238 used the price of delivered imported oil im computing gross value. The CS determines gross value at the wellhead based on delivered price of Prudhoe oil or gas, as is presently being done.

6. Both SB 103 and 238 tax gas flared under permit from DNR. The CS removes the tax from such flared gas.

C. Analysis, CSSB 103

1. CSSB 103 imposes a tax on the gross value of oil or gas, at the wellhead, produced from any lease or property in Alaska.

2. The tax is computed through a formula which has an upper marginal limit expressed as a percent, a cents per barrel floor, an exponential factor, and an economic limit factor.

3. The upper limit, the cents per barrel floor, and the exponential factor are the constants which will be fixed upon passage of this Bill. The economic limit factor is a variable whose size is to be henceforth computed in the manner described in the Bill.

4. The upper marginal limit is set at 12.5%. When mitigated by an economic limit factor of 100 barrels, it becomes an effective 12%. The floor is set at 65 cents, which when mitigated by an economic limit factor of 100 barrels becomes an effective 52 cents (approximate). The higher the economic limit factor, the lower the effective rate of taxation. The exponential factor is designed to give relief to Cook Inlet. If it is lowered or removed, Cook Inlet will pay a much higher effective rate than it presently pays.

5. The use of an economic limit factor recognizes that the cost of production varies from field to field. Thus, two properties producing identical quantities of oil may pay a different tax, depending on the circumstances and location of production.

6. As a point of beginning the State assumes an economic limit of 100 barrels (no tax paid on the first 100 barrels). The taxpayer will get as many barrels free from taxation, over 100, as he can conclusively prove he needs to continue operating.

7. The Bill specifically recites the expense items that can and cannot be deducted from operational costs in computing the economic limit factor.

8. Due date for the tax is moved from the last day of the month to the 20th day.

9. Taxable amount is the oil or gas produced rather than that removed and sold.

10. Under CSSB 103, the effective rate of taxation on the Cook Inlet field has been reduced from 8.9% to 7.9%, with several marginal leases being reduced to zero.

11. Under CSSB 103, the effective rate of taxation on the Prudhoe Bay field has been increased from 7.7% to 12.0%. This is approximately a 50% tax increase on oil production, and an approximately 62% tax increase on total field production when the increase on gas is counted in.

or property is presumed to be 100 barrels times the number of well days for the lease or property during the month for which the tax is to be paid, unless the taxpayer at a formal hearing under AS 43.05.240 provides clear and convincing evidence of a different monthly production rate at the economic limit for the lease or property. The monthly production rate at the economic limit for the lease or property based upon the clear and convincing evidence of the taxpayer shall be calculated by dividing the value determined under (e) of this section into the average monthly direct operating cost determined under (d) of this section.

(d) The average monthly direct operating cost for oil production operations of the lease or property shall be determined based on the number of months operated during the preceding 12-month period. The direct operating costs include drilling supplies, fuel, routine maintenance, and wages and benefits of employees working on the production operations. The direct operating costs do not include capital expenditures, tangible or intangible drilling expenses, costs of well workovers, costs for replacement or repairs (other than routine maintenance), depreciation or amortization, taxes, insurance, overhead, money paid or set aside (or booked as being paid or set aside) to cover the cost of terminating the oil production operations of the lease or property, or any other cost not directly related to the oil production operations of the lease or property.

(e) For the purposes of this chapter, the gross value of oil shall be calculated as provided in sec. 150 of this chapter, and the gross value of gas shall be calculated as provided in (h) of this section.

(f) Before February 15 of each year or within six months after commencement of production for a lease or property, the department shall notify the producer of gas of the monthly production rate at the economic

limit for each lease or property in the state for that year. The monthly production rate at the economic limit for a lease or property shall be determined at a formal hearing under AS 43.05.240 and must be established by clear and convincing evidence presented by the taxpayer at that hearing. The monthly production rate at the economic limit for the lease or property based upon the clear and convincing evidence of the taxpayer shall be calculated by dividing the value determined under (h) of this section into the average monthly direct operating cost determined under (g) of this section.

(g) The average monthly direct operating cost for gas production operations of the lease or property shall be determined based on the number of months operated during the preceding 12-month period. The direct operating costs include drilling supplies, fuel, routine maintenance, and wages and benefits of employees working on the production operations. The direct operating costs do not include capital expenditures, tangible or intangible drilling expenses, costs of well workovers, costs for replacement or repairs (other than routine maintenance), depreciation or amortization, taxes, insurance, overhead, money paid or set aside (or booked as being paid or set aside) to cover the cost of terminating the gas production operations of the lease or property, or any other cost not directly related to the gas production operations of the lease or property.

(h) The value at the point of production of gas produced from the lease or property shall be determined on the basis of the highest price paid for gas of like quality and pressure in the same field.

(i) The department may aggregate two or more leases or properties (or portions of them), for purposes of determining economic limit factors under this section and applying them to sec. 11 of this chapter, when economically interdependent oil or gas production operations are

or property is presumed to be 100 barrels times the number of well days for the lease or property during the month for which the tax is to be paid. The taxpayer may rebut this presumption at a formal hearing under AS 43.05.420 by providing clear and convincing evidence of a different monthly production rate at the economic limit for the lease or property. The hearing shall be held before February 15 of the year or within six months after commencement of oil production for a lease or property. The monthly production rate at the economic limit for the lease or property based upon the clear and convincing evidence of the taxpayer shall be calculated by dividing the value determined under (e) of this section into the average monthly direct operating cost determined under (d) of this section and shall be used for purposes of this section for all oil production during that calendar year from the lease or property.

(d) The average monthly direct operating cost for oil production operations of the lease or property shall be determined based on the number of months operated during the preceding 12-month period. The direct operating costs include production supplies, purchased fuel, routine maintenance, and wages and benefits of employees working on the production operations. The direct operating costs do not include capital expenditures, tangible or intangible drilling expenses, costs of well workovers, costs for replacement or repairs (other than routine maintenance), depreciation or amortization, taxes, insurance, overhead, money paid or set aside (or booked as being paid or set aside) to cover the cost of terminating the oil production operations of the lease or property, or any other cost not directly related to the oil production operations of the lease or property.

(e) For the purposes of this chapter, the gross value of oil shall be calculated as provided in sec. 150 of this chapter, and the gross

AGO 546606

value of gas shall be calculated as provided in (h) of this section.

(f) Before February 15 of each year or within six months after commencement of gas production for a lease or property, the department shall notify the producer of gas of the monthly production rate at the economic limit for each lease or property in the state for that year. The monthly production rate at the economic limit for a lease or property shall be determined at a formal hearing under AS 43.05.240 and must be established by clear and convincing evidence presented by the taxpayer at that hearing. The monthly production rate at the economic limit for the lease or property based upon the clear and convincing evidence of the taxpayer shall be calculated by dividing the value determined under (h) of this section into the average monthly direct operating cost determined under (g) of this section.

(g) The average monthly direct operating cost for gas production operations of the lease or property shall be determined based on the number of months operated during the preceding 12-month period. The direct operating costs include drilling supplies, fuel, routine maintenance, and wages and benefits of employees working on the production operations. The direct operating costs do not include capital expenditures, tangible or intangible drilling expenses, costs of well workovers, costs for replacement or repairs (other than routine maintenance), depreciation or amortization, taxes, insurance, overhead, money paid or set aside (or booked as being paid or set aside) to cover the cost of terminating the gas production operations of the lease or property, or any other cost not directly related to the gas production operations of the lease or property.

(h) The value at the point of production of gas produced from the lease or property shall be determined on the basis of the highest price paid for gas of like quality and pressure in the same field.

PRUDHOE BAY

EFFECT OF PROPOSED SEVERANCE TAX INCREASES
CSSB 103

(In Millions)

Oil Revenues* =	$139,146	
Oil Tax @ 7.7% =	10,714	(Current Rate)
Oil Tax @ 12.0%=	16,697	(Proposed Rate)
Increase on Oil =	$ 5,983	

Gas Revenues** =	$ 20,700
Gas Tax @ 4% =	828
Gas Tax @ 10% =	2,070
Increase on Gas =	$ 1,242

INCREASE ON BOTH OIL AND GAS = $7,225 +62.2%

* 1977-2005, From Wainwright Securities 4/1/77 Report

** Assumes 23 trillion CF Total Production at a constant $1.00 per MCF Wellhead Price.

AGO 546608

THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. SB 103
Title Act concerning the oil and gas properties production tax
Requested by _____ Date _____

II. FISCAL DETAIL
Agency Affected Revenue
Program Category Affected General Government - Fiscal Services
Budget Request Unit(s) Affected Petroleum Revenue

EXPENDITURES (Thousands of Dollars)

	FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	None	None	None	None	None	None

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

FULL TIME	None	None	None	None	None	None
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

This Bill would facilitate the administration of the present production tax, making it fully auditable for the first time since "stair steps" were introduced into the statute in 1970. No additional staff or other costs are anticipated to administer this Bill. Assuming a full and fair market price for Prudhoe Bay oil, estimated receipts under the Bill for production from the main reservoir of that field would be $131.3 million in FY 78, $205.6 million in FY 79, $362.4 million in FY 80, $585.9 million in FY 81 and $636.3 million in FY 82. Further comments (which are hereby incorporated into and made part of this Analysis) on the Bill appear in the attached memorandum from Thomas Williams to R. D. Stevenson.

IV. DATE February 18, 1977 PREPARED BY Thomas L. Williams
AGENCY Revenue
PHONE (907) 276-1363

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

AGO 546623

RICHARD KILGORE Okay, I would then like to turn to the severance tax. ... I said in my general remarks, if you're interested in raising the severance tax, both of these bills that we're going to consider seem to in general follow our guidelines, and has to do with more the specifics of how each one of them works. We'll start with HB 144, SB 103. This bill does several things. One is it moves to lease averaging rather than wells in the calculation, and we think that makes an awful lot of sense from the administrative standpoint, and probably should be done even if you don't raise the severance tax, probably even amending your present severance tax would do that, and would make sense. Page 1, Line 11 of the bill moves the point of tax from the wellhead to a new point of production which is later defined.

SENATOR HUBER - How is this defined?

RICHARD KILGORE - It's defined back on Page 4, line 9, gross value at the point of production means for oil, the value of the oil at the point where it is metered or measured in a condition of pipeline quality on the premises of the lease or property from which it is recovered. So in come cases it would change the point of taxation from the wellhead to somewhere beyond up to a point where it was meter measured and made put in pipeline conditions, so it clearly, and this is pointed out by someone else, moves the point of taxation

and in a sense in certain situations it would tend to tax the transportation and upgrading of the crude oil. That's clearly the case.

SENATOR HUBER - I think it had another reason for being in there. I think it was on account of that Kenai deal to where if they transferred our royalty share portion that went into resale that they were subject to the APUC, and doing it this way, while they pushed their royalty share through our line, they were not subject to our APUC. There was quite a problem on that in Kenai, it happens to be in gas, but we're talking jointly here and I think this was done for the company's benefit.

RICHARD KILGORE - Well, I think also in Cook Inlet, as I understand it, there have been continuing disputes about questions of wellhead and where one taxes, and I think this is all intended to straighten this matter out by legislation. This is where it is, and we don't have to argue about backing out transportation or whatever, this is what they're talking about. This makes administration of it easier, clearly, I think that some of the testimony yesterday it was complained that there would be a cost to the companies in a sense that they wouldn't be taxed on transporting and upgrading. I think that if it's administratively easier and there is a cost, perhaps what you should do here is get a better idea of what you're really talking about in terms of cost and dollars and

cents. What is really the extra costs that companies would bear by doing this, or some idea. I think that's how you would have to assess that. Now lets look at the tax rates in this bill. I think you are all familiar with the fact that it adds higher well brackets and puts in these higher brackets at higher tax rates than exist in the present legislation, and it also lowers the tax rates, both the cents per barrel tax and the percentage tax for lower productivity wells. Now, just to give you a rough idea of what this does, and I'd like to just give you some numbers on how it would seem to us to effect, say, Prudhoe Bay, and then look at the Cook Inlet situation under this bill. All the numbers I'm going to use are ease of comperability for 27 gravity crude oil. Now, in Prudhoe Bay, and I'm assuming for purposes of this calculation that the wellhead value on Prudhoe Bay is say $7.50 per barrel just as illustriative. Under the present tax for a 5,000 barrel a day well in Prudhoe Bay, and these figures are cents per barrel of gross production not of taxable production, but you still get an idea of the relative increase in the tax. The present tax for 5,000 barrel a day well at $7.50 is 49 and 1/2 cents per barrel of gross production. This tax for the same well, a 5,000 barrel a day well would raise the tax to 68.9 cents. That's about a 37% increase in taxation of a 5,000 barrel a day well in Prudhoe Bay. If you went to a 10,000 barrel a day well, the percentage increase and the tax is greater. As against

about 51 cents at the present time, this tax would raise it to about 80 cents, so on a very productive 10,000 barrel a day well at Prudhoe Bay, the increase there would be about 58%, increased through this tax over what you have today. The effective rate on gross barrels produced would go from about 7.8% on a 10,000 barrel a day well to about 12.2% under the new tax, so this is what it does to Prudhoe Bay, very significant increases. And the percentage as I gave you were really the effective rate on taxable barrels going from 7.8 to 12.2. So you are ending up on the very productive well, you end up with an average effective rate on taxable barrels of just under 12 and 1/2 percent in Louisiana. I think that's what was intended. So that's the impact it has on Cook Inlet, I mean on Prudhoe Bay. Now, lets look at Cook Inlet, and particularly the old oil because we've always been worried about effective taxation of old oil. Now, this bill does retain the cents per barrel feature that exists in the present bill, and it retains the cents per barrel feature with basically the same floor price as you have today. It works out for 27 gravity crude to about $6.10 today. So it retains that, but what it does at the same time is that it does lower the rates of taxation both percentage and the cents per barrel taxes in the lower well brackets, so despite the cents per barrel feature still being in there, it does lower taxes on low productivity wells below what they are today. I'll again give you some examples, and they'll

again be on the same basis as before. 27 gravity crude, and these are figures on a gross barrel basis. At the present time a 100 barrel a day well in Cook Inlet would be on the cents per barrel tax and it would pay 26.6 cents per barrel. This bill on a 100 barrel a day well would eliminate the tax. It would go to zero, and a very substantial gain for a 100 barrel per day well. For a 300 barrel a day well, would also pay under the present tax, 26.6 cents. Under this bill, under our calculations, it would drop that 26.6 to 14.2 cents per barrel. So you have about a 12 and 1/2 cent reduction for a 300 barrel a day well, and if you move up to a 500 barrel a day well, you still get a reduction. Under the present tax it would be 28.7 cents. Under SB 103 it would be 21.2. So even for a 500 barrel per day well, you're going down by about 7 and 1/2 cents per barrel, and in fact this new tax as compared with the present lowers the tax up to somewhere wells in the range of 1,000 to 2,000 barrels a day. Somewhere in that range, the new tax gets higher than the old tax, so it does provide very significant relief for low productivity wells.

SENATOR HUBER - Madam Chairman - the figures which we have in the committee they are open to him now, I think, I just wonder when he finishes there. If you have any dispute with those, I think that they confirmed his testimony.

RICHARD KILGORE - Yes Senator, we did do our own homework on this obviously, and we have had a chance to look at what legislative affairs has, and they coincide with what I'm testifying here.

SENATOR HUBER - I was wondering. It would help us a lot to know that they do or don't or if there are differences.

RICHARD KILGORE - No they don't they calculate the same way we do.

Now, so this bill does, I think, meet our objections really to the present taxation of old oil at Cook Inlet which has the high effective rates because of the cents per barrel feature. At least its present operatior would reduce the tax substantially for low productivity wells, and we think that's a good feature of this bill. I should point out though, this bill does retain cents per barrel and it does retain escalation of that cents per barrel, so it is possible that under this bill we would again be back in the same problem that we have today. If the escalation manages to raise the cents per barrel tax high enough, we could be back in this problem again of taxing old oil in Cook Inlet at high prices, it's possible. The potential is still in this bill.

SENATOR HUBER - This evades it from present time, and we might have to look at it again in future years if we don't do something with cents per barrel.

RICHARD KILGORE - Yes, it may be back again.

SENATOR HUBER - Well, I'd sure look at it again, Madam Chairman, than I would to have Tom Fink for Governor.

RICHARD KILGORE - I think I was on record the first time I testified as saying that if you do retain a cents per barrel that perhaps what you do is at least consider no further escalation in cents per barrel, and perhaps that could be in this bill too. I don't know. I want to only point out that it could happen again. So that's basically what this tax does. It raises fairly significantly, the tax in Prudhoe Bay, but it does lower the tax considerably on low productivity old oil priced wells in Cook Inlet. It also has a severance tax for gas that is flaired, and a very substantial one, five times the rate. I think before you do this kind of thing and add such a tax, you ought to look very carefully at where gas is being flaired and why. There has been testimony yesterday about safety flairs and so on. I think you ought to look very carefully at what it is that you would be taxing and why the flairing is going on at the present time. Now, if what you're really trying to do is tell companies to find a use for this flaired

gas and find markets for it, I think that at the very least if there is gas being flaired now which you think you could find markets for, therefore you're going to try to compel people through this tax, somebody used the word incentive the other day, but you're compelling them through this tax that at least you ought to provide somebody with a grace period before they would pay this tax. That is, you wouldn't start right away. You would make it clear to them that they had certain time within which to find markets for this. You wouldn't penalize them in the meantime, but if you don't find gas for which it's logical to find markets, that you would say at some point in the future you're going to start paying a tax on this, so you had better get busy and look for markets. I don't think I.....

SENATOR HUBER - I think, Madam Chairman, that we should make sure in there. I think we should find out the required safety flair of no more than a certain amount except during an emergency blowout or something like that. The idea was, as long as it's economically unfeasible to take small amounts of gas and reinject them, the State loses its royalty share on it, and the nation loses the energy strictly because at a given space in time, using if you will excuse me, a cash discounting flow and everything else, that we determine its value and we say it's nothing, and what's nothing is moving down the pike another twenty or thirty years may be all we have, and Prudhoe Bay, in spite of an absolute no

flair restriction has been allowed to flair and everybody knows it. Somehow or other, it does have to be stopped, and if you make it so it isn't economically feasible to flair, then it becomes economically feasible to build a small compressor system for saving.

GEORGE SILIDES - Madam Chairman, I know that the flairing _____ as Huber pointed out, _____ that the flairing of course, and the word allowed is important, they get permission from the State, and we have to do something about the bill, that we don't have competition between the taxing department and the Department of Oil and Gas Conservation. They are the ones that give the permission, and you have to apply and you have to point out that it's being done with safety and so on. I don't think that the bill intended to penalize somebody for entering into a safety feature, and so am I correct Mr. Kilgore?

RICHARD KILGORE - I would assume that that's the intent. You'r not really interested in taxing gas.....

SENATOR HUBER - But that board still has the power and makes the exemptions and has been constantly making the exemptions, and it's a matter of record, both at Prudhoe Bay and elsewhere, they make the exemptions, they're legally made, but the product is gone, the resource is gone, it is flaired, and so at least putting in a fairly stiff recovery there does at

least give us something off of our severance tax that went up in flair too.

GEORGE SILIDES - Madam Chairman, I might make another comment. I think that in view of the comments being made, we're going to have to look into the legality of being able to tax a safety feature.

SENATOR HUBER - No, we don't tax the safety feature. Let's not get crossways on that. We should put an exemption in here for the safety flair only, and somewhere we need to come up with a figure of what is the amount that may be flaired to date per well or per safety flair. We definitely shouldn't tax them on what is a safety requirement. But there isn't a provision. The gas that's being burned in significant, is not being burned in so called legal actual safety flairs. It's being flaired otherwise by legal permits by the board.

CHAIRMAN POLAND - I think we have to check with the Board as to why they are giving the tax.

SENATOR HUBER - That's why the Governor's bills has it in it. That's why committee's bills has had this for two years, and we should certainly, like Dick says, make sure that we don't tax the necessary safety flairs. I asked yesterday what

was, and they said a million cubic feet. That's a thousand MCF's a day. I'm not sure that that isn't considerably over what's needed to burn there in case, I need a good definition of a safety flair.

RICHARD KILGORE - I think also you might consider if you really feel the gas is being flaired that you don't want to be flaired other than as safety purposes or whatever, that's something you might consider as an alternative just tightening up your regulatory bill and your regulations rather than do it through a taxing approach.

SENATOR HUBER - We've done everything but tar and feather the board.

REPRESENTATIVE OSTERBACK - Madam Chairman, could anybody tell us how much gas they will be flairing at Prudhoe Bay? Anything that burns is energy. We're talking about we're running short of energy. Somebody talked about the railroad. If they took it in there, they could take out about a hundred tanks of gas a day, and they didn't think it would be enough to pack that out with flairing, and that would be an awful lot of energy, but most of us don't really know what this gas is with the flairing, but I know anything that burns is energy, and we're talking we're running out of energy. So I think there should be something done about it. Anything

that you can save as energy, you can sell. There's no problem in that.

RICHARD KILGORE - Well, I agree with you, if what we're really talking about is waste, then I think we should eliminate that. It is energy, and you're abs lutely right, and I think you should look very carefully at what's going to happen at Prudhoe Bay, and how your regulatory people will handle it.

SENATOR HUBER - Might we, Madam Chairman, Al brought it up and it's very important. I think that it's understood that they have stopped flairing or are to stop flairing. It was only for that refinery that they flaired at Prudhoe Bay, and they didn't pump it back down the gas well even though they were drawing gas out to run the refinery because it would have cost more money than the gas was worth, so naturally the gas was worth nothing, so it wouldn't cost money to pump it back down into the ground. If it had a value of 20 cents an MCF, it would have been a lot cheaper to pump it back down into the ground, but just so that the record is straight, we aren't really looking for flairing at Prudhoe Bay, but if you will take a look at the Valdez terminal, you will find that we don't flair no more, but we've got three huge oxidizers there, and there's going to be a tremendous amount of energy unless the LPG's that are in that gas and the vapors that are in the gas at Valdez,

unless there's a plant built to recover those and use them which is not in the plan, it is going to effectively flair trillions of BTU's before Valdez is over with. That's because the plant and the tanks will not stand the pressure in the storage.

GEORGE SILIDES - Madam Chairman, I think the point is well made that something's got to be done about defining what is meant by safety gas, what is being wasted, and I think also that the bill had intended to address the bottom of the possible wasting of carbon dioxide. There was a considerable amount in this particular natural gas, and I suppose what we're getting to is that we have to do something about those things, either by definition or by amending the bill. I think this is a point that we're going to have to look into. I don't think we're going to get it solved right here.

SENATOR HUBER - I think they're willing, George, not to flair the carbon dioxide, but I'm not sure if they will get rid of it.

GEORGE SILIDES - It doesn't burn anyway, Senator.

CHAIRMAN POLAND - We'll be checking on this flairing part.

SENATOR HUBER - Well, it's important on both ends. I think that the bill needs to not penalize them, but by all means

should be retained in the bill, and we may of course have to put it in in some other places. I don't think this is going to effect it when it comes to the flairs in Valdez.

SB

105

COMMITTEE REPORT

SENATE

**Finance

1331/77

4/25/77
Date

Mr. President:

The Committee on RESOURCES has had SB 105
Alaska net income tax
under consideration. A majority of the members of the Committee

☐ recommends it do pass

☐ recommends it do not pass

☐ recommends it do pass with attached amendment(s)

☒ recommends it be replaced with CS for SB 105 and that

CS for SB 105 do ~~pass~~ Individual Recommendations

☐ (and) recommends it be referred to the _____

committee

☐ reports it back without recommendation

☐ AND attaches a report of its intent

☐ (other) _____

MEMBERS SIGNING THE MAJORITY REPORT:

Williams	No Rec.	
Ramey (By Proxy)	Do Pass	
Ivan Person	DO PASS	

MEMBERS NOT CONCURRING IN THE MAJORITY REPORT:

Ken Williams recommends: No Rec.

_____ recommends: _____

_____ recommends: _____

Collett signed No Rec

K Poland
Chairman

S 60

Gov. Conf. Room

04-D3LH

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER / POUCH S – JUNEAU 99811

accepted as to item 12

I attend

April 25, 1977

Tax avoidance
Profit shifting

The Honorable Kay Poland
Chairman
Senate Resources Committee
Alaska State Legislature
Juneau, AK 99801

Dear Senator Poland:

You have asked the Department of Revenue to testify on the proposed CS for SB 105 relating to the Alaska net income tax act. Specifically you have asked the department to respond to ways in which the bill may be changed to improve the administration of the tax. Accordingly I have included the technical changes and administrative changes which we would recommend.

1. page 1, line 25
delete the reference "AS 43.20.066" and insert the following in its place "AS 43.20.011"

2. page , line 2 as modified
after the word "accordance" delete the following phrase "with section 18 of article IV of the Multi-State Compact (AS 43.19.010) and"

3. page 2, line 3
after the word "secs." delete the phrase "12-14" and insert the following in its place "67-69"

4. page 2, line 8
after the word "under" delete the phrase "secs. 11(e) and (f) of this chapter" and insert the following in its place "sec. 11(f) of this chapter."

5. page 2, lines 9 and 10
after the word "chapter" delete the rest of the sentence and insert the following in its place "shall be calculated using gross income and deductions from gross income as defined in this section."

6. page 2, line 11
delete the word "revenue" and insert "income" in its place.

7. page 2, line 12
delete the words "wellhead value" and insert the phrase "value of oil and gas produced" in its place.

8. page 2, line 15
delete the word "revenue" and insert the word "income" in its place.

9. page 2, line 25
after the word "the" insert the word "direct"

10. page 2, line 28
after the word "services" insert the phrase "and not including indirect costs or overhead"

11. page 3, line 5
after the word "capitalized" insert the phrase "and also including the amortization of"

12. page 3, line 20
after the word "properties" insert the phrase "after a well has been plugged and abandoned."

13. page 3, between lines 25 and 26
insert the following:
(e) deductions from gross income under this section shall not include expenses previously deducted on a return filed under this chapter.

14. page 6, line 21
delete the word "consolidated" and insert the word "combined" in its place.

15. page 6, line 21
delete the word "allocation" and insert the word "apportionment" in its place.

16. page 7, line 15
delete the reference "As 43.20.330" and insert "AS 43.20.335" in its place.

17. page 8, between lines 3 and 4
insert the following:
Sec. 43.20.075 BOOKS AND RECORDS. The department may provide by regulation the manner in which books and records must be kept and maintained for purposes of determining gross income and deductions from gross income under secs. 67-69 of this chapter.

Sincerely,

John R. Messenger
Deputy Commissioner

STATE OF ALASKA

DEPARTMENT OF REVENUE

JAY S. HAMMOND, GOVERNOR

STATE OFFICE BUILDING / POUCH SA – JUNEAU 99811

March 16, 1977

The Honorable Kay Poland
Chairman
Senate Resources Committee
Alaska State Legislature
State Capitol Building
Juneau, Alaska

Re: Senate Bill No. 105

Dear Senator Poland:

Senate Bill No. 105, an Act relating to the Alaska net income tax was introduced in the Senate on January 31, 1977 and was referred to the Senate Resources and Finance Committees.

For the consideration of the Senate Resources Committee, I am enclosing a Fiscal Note prepared by Mr. Gary L. Jenkins, Director, Audit Division, Department of Revenue, Juneau.

Very truly yours,

R. D. Stevenson
Special Assistant

cc: The Honorable John C. Sackett
Chairman
Senate Finance Committee
Alaska State Legislature
State Capitol Building
Juneau, Alaska

Gary L. Jenkins, Director
Audit Division
Department of Revenue
Juneau, Alaska

THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. Senate Bill No. 105

Title An Act relating to the Alaska net income tax

Requested by Senate Resources Committee Date 2-1-77

II. FISCAL DETAIL

Agency Affected Revenue

Program Category Affected Fiscal Services

Budget Request Unit(s) Affected Audit Division

EXPENDITURES (Thousands of Dollars)

		FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
100	PERSONAL SERVICES		88.1	317.8	317.8	353.3	353.3
200	TRAVEL		5.0	70.0	70.0	75.0	75.0
300	CONTRACTUAL		10.2	105.2	65.2	70.0	70.0
400	COMMODITIES		.6	2.0	2.0	2.2	2.2
500	EQUIPMENT		1.8	6.0	1.0	1.8	1.0
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL	-0-	105.7	501.0	456.0	502.3	501.5

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	105.7	501.0	456.0	502.3	501.5
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

FULL TIME	-0-	3	10	10	11	11
PART TIME						
TEMPORARY			.			

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

This bill will necessitate an Audit staff of 8 Field Auditors with a Clerk Typist III and a Tax Examiner to handle the clerical, typing and return processing duties. The other costs are related to the development of the computer processing systems and costs related to the positions. See memo attached to R. D. Stevenson dated 2/3/77.

IV. DATE 2-3-77 PREPARED BY [signature]

AGENCY Audit Division

PHONE 465-2320

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 10/76)

04-D3LH

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

POUCH S – JUNEAU 99811

April 25, 1977

The Honorable Kay Poland
Chairman
Senate Resources Committee
Alaska State Legislature
Juneau, AK 99801

Dear Senator Poland:

You have asked the Department of Revenue to testify on the proposed CS for SB 105 relating to the Alaska net income tax act. Specifically you have asked the department to respond to ways in which the bill may be changed to improve the administration of the tax. Accordingly I have included the technical changes and administrative changes which we would recommend.

1. page 1, line 25
delete the reference "AS 43.20.066" and insert the following in its place "AS 43.20.011"

2. page 2, line 2
after the word "accordance" delete the following phrase "with section 18 of article IV of the Multi-State Compact (AS 43.19.010) and"

3. page 2, line 3
after the word "secs." delete the phrase "12-14" and insert the following in its place "67-69"

4. page 2, line 8
after the word "under" delete the phrase "secs. 11(e) and (f) of this chapter" and insert the following in its place "sec. 11(f) of this chapter."

5. page 2, lines 9 and 10
after the word "chapter" delete the rest of the sentence and insert the following in its place "shall be calculated using gross income and deductions from gross income as defined in this section."

6. page 2, line 11
delete the word "revenue" and insert "income" in its place.

7. page 2, line 12
delete the words "wellhead value" and insert the phrase "value of oil and gas produced" in its place.

8. page 2, line 15
delete the word "revenue" and insert the word "income" in its place.

9. page 2, line 25
after the word "the" insert the word "direct"

10. page 2, line 28
after the word "services" insert the phrase "and not including indirect costs or overhead"

11. page 3, line 5
after the word "capitalized" insert the phrase "and also including the amortization of"

12. page 3, line 20
after the word "properties" insert the phrase "after a well has been plugged and abandoned."

13. page 3, between lines 25 and 26
insert the following:
(e) deductions from gross income under this section shall not include expenses previously deducted on a return filed under this chapter.

14. page 6, line 21
delete the word "consolidated" and insert the word "combined" in its place.

15. page 6, line 21
delete the word "allocation" and insert the word "apportionment" in its place.

16. page 7, line 15
delete the reference "As 43.20.330" and insert "AS 43.20.335" in its place.

17. page 8, between lines 3 and 4
insert the following:
Sec. 43.20.075 BOOKS AND RECORDS. The department may provide by regulation the manner in which books and records must be kept and maintained for purposes of determining gross income and deductions from gross income under secs. 67-69 of this chapter.

Sincerely,

John R. Messenger
Deputy Commissioner

SB

113

SB 460
HB 361

Introduced: 2/2/77
Referred: Resources and Finance

BY CROFT, BRADLEY, RADER AND RODEY

IN THE SENATE

SENATE BILL NO. 113

IN THE LEGISLATURE OF THE STATE OF ALASKA

A BILL

For an Act entitled: "An Act making a special appropriation to the Department of Fish and Game to purchase real property known as the Rabbit Creek Rifle Range within Potter Point State Game Refuge; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. The sum of $75,000 is appropriated from the general fund to the Department of Fish and Game to purchase real property known as the Rabbit Creek Rifle Range within the area known as the Potter Point State Game Refuge.

* Sec. 2. The real property described in sec. 1 of this Act shall be maintained as waterfowl habitat, refuge access, and a continued limited use shooting facility.

* Sec. 3. Any funds not used in the purchase of the property described in sec. 1 of this Act shall be used to develop safety and sound abatement features on the rifle range.

* Sec. 4. The unexpended and unobligated portion of this appropriation lapses into the general fund June 30, 1978.

* Sec. 5. This Act takes effect immmediately in accordance with AS 01.10.-070(c).

March 9, 1976

Hugh Malone, Chairman
House Finance Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Malone:

Re: Potter Point Shooting Range - HB 381

Representative Lisa Rudd has requested a clarification from my department concerning funding sources and amounts required for the purchase of Potter Point Shooting Range. Some confusion arose, and to a certain extent remains, over the availability of federal aid matching funds on a three (federal) to one (state) basis. These are the so-called Pittman-Robertson funds that form the bulk of the Game Division's budget. It is now my best estimate that funds will be available and I recommend that the sum of $50,000 be appropriated from the general fund for matching with $150,000 of federal aid monies to purchase and improve the Potter Point Shooting Range.

Sincerely,

James W. Brooks
Commissioner

cc: Lisa Rudd

MEMORANDUM State of Alaska

TO: Ronald J. Somerville
Regional Game Supervisor
Anchorage

DATE: April 25, 1975

FILE NO:

TELEPHONE NO:

FROM: Jack E. Alexander
Hunter Safety Coordinator
Anchorage

SUBJECT: Rabbit Creek Rifle Range

The Rabbit Creek Rifle Range located approximately 10 miles south of Anchorage on the Potter Flats is presently the only area readily available to an estimated 40,000 firearm owners and users.

Need

The Department of Fish and Game's involvement in the range came about primarily as a result of the lack of safe facilities needed in the Hunter Education program for instruction and practice in firearms training. It soon became apparent that the need for safe shooting facilities far exceeded that of training an estimated 2,000 hunter safety students annually in the Anchorage area. Adequate firearms training facilities are also lacking for local and state law enforcement agencies. However, the largest need for shooting facilities is in the area of general public shooting.

In addition to firearms training the residents of the Anchorage area have indicated a strong support for year round recreational shooting facilities and programs. Beside the recreational aspect, benefits to the local and state government will no doubt be a reduction in the hazards and conflicts associated with uncontrolled shooting. It is generally felt that an easily accessible range would reduce the frequency of nuisance and indiscriminate shooting along roadsides, litter collection points, etc.

A number of alternate range sites in the Anchorage area have been examined, however, distance, unsuitable topography, high cost of land and lack of controlling authority have eliminated these areas from further consideration.

A count of people utilizing the existing facilities at the Rabbit Creek site and a survey of their interest was conducted during the first two weekends of March (see attachment). During this 4 day period 714 people were observed shooting. During the fall of 1974 when the range operated 7 days a week an estimated 700 people utilized range facilities weekly.

History

The range came into existence as a result of a patent granted by the Bureau of Land Management under authority of the public purposes act (62 and SLAT.,476, 43U.S.C. Section 15) to the Alaska Range Association in 1961. The patent stipulates under a reversionary clause that the land is to be used for recreational firearms and archery range only until the year 1986.

The range operated under the supervision of Dave Drew, President of the Alaska Range Association from its inception until the fall of 1973 when his supervisory activities were suspended due to health problems. Unsupervised and unrestricted public use of the range occurred from that time until the fall of 1974. Without supervision and controllin authorities indiscriminate use of firearms occurred on and adjac to the Rifle Range. Crowded and unsupervised range conditions forc shooters away from the range and generally towards the railroad tracks and nearby residential areas. In the fall of 1974, the Department of Fish and Game obtained a one year lease with an option to purchase on the property under authority of the Federally funded Hunter Education Program (PL-92-558 and PL-91-503).

The Department of Fish and Game is proposing through legislative action the Rabbit Creek Range be purchased with available federal Pittman-Robertson and state general fund monies. The range is to be a public shooting range, available also for hunter safety and law enforcement training.

Operation and Maintenance -

The range will be operated and policies developed on a cooperative agreement basis with the Greater Anchorage Area Borough, Parks & Recreation Division. Maintenance costs will be covered by user fee. Presently an estimated 15,000 to 20,000 people use the range annually.

Cost -

An appraisal conducted by the Alaska Department of Highways estimates the values of the property at approximately $148,000. However, the price is subject to negotiation and is likely to be closer to $100,000. An engineer's estimate of construction cost is not available, however, with labor and equipment provided by the National Guard, Navy and Army reserves cost should remain under $50,000.

The basis for funding is $52,000 in surplus Federal hunter safety monies and $48,000 in PR funds plus the $50,000 state general fund matching monies.

Planned Developments -

The diversity of shooting interest requires many considerations in range development. Rifle sighting, pistol and shotgun facilities are being considered. The type and number of facilities will rest heavily with the ability to control such activities. Basic safety and noise control features will include earth fills for bullet stops and a parallel baffling system.

Denali State Park Development, Mat-Su Borough	235,000		235,000
Kenai Peninsula Development, Kenai	255,000		255,000
Kachemak Bay State Park Acquisition, Homer	300,000		300,000
Pleasant Camp Acquisition & Adaptive Use, Haines	75,000		75,000
Ninilchik Camp Development, Kenai	75,000		75,000
Caines Head Recreation Area Development, Seward	800,000		800,000
Chugach State Park Development, Anchorage	725,000		725,000
~~Hazelet-Bird Lake Development~~	~~50,000~~	~~50,000~~	
Chugach Park Road Acquisition-Glenalps	40,000		40,000
Department of Fish and Game			
Vessel Equipment Placement, Various	54,000	54,000	
Crystal Lake Hatchery Improvement Petersburg	284,000	284,000	
Sonar Scanning Equipment, SE Alaska	15,000	15,000	
Starrigavan Bay Weir and Dock Improvement, Sitka	157,500	157,500	
Central District Water Inventory Equipment	60,000	60,000	
SE District Water Inventory Equipment	50,000	50,000	
Fairbanks Regional Office Generator	22,300	22,300	
Sockeye Substrate Incubation Units	445,000	445,000	
Big Lake Expansion, Central Alaska	315,000	315,000	
Tutka Expansion, Homer	420,000	420,000	
~~Ruby Bay Aquaculture Study~~	~~25,000~~	~~25,000~~	
Deer Mountain Hatchery Repairs	30,000	30,000	
~~Gene Blossom Shad Fishery Project~~	~~15,000~~	~~15,000~~	
~~Rabbit Creek Rifle Range~~	~~200,000~~	~~50,000~~	~~150,000~~
~~Cushman Street Rifle Range - Fairbanks~~	~~95,000~~	~~95,000~~	
~~Montana Creek Trap Range~~	~~100,000~~	~~25,000~~	~~75,000~~
~~Sitka Rifle Range~~	~~25,000~~	~~25,000~~	
~~Palmer Rifle Range~~	~~25,000~~	~~25,000~~	
Willow River Stream Clearance	40,000	40,000	
Department of Public Safety			
Single Sideband Marine Radios, Statewide	54,000	54,000	
VHF Marine Radios, Statewide	16,500	16,500	
VHF Portable Radios	61,500	61,500	
Citizen Band Portable Radios, Statewide	1,200	1,200	
Department of Environmental Conservation			

NATURAL RESOURCE MANAGEMENT AND ENVIRONMENTAL CONSERVATION

Department of Fish and Game - Various Rifle Ranges

Rabbit Creek Rifle Range deleted $200,000

Cushman Street Rifle Range, Fairbanks, deleted $55,000

Montana Creek Trap Range deleted $100,000

Sitka Rifle Range deleted $25,000

Petersburg Rifle Range deleted $25,000

These reductions delete these projects which, in my opinion, enter the state into a new and potentially large arena of state funding. While, when viewed in isolation, these programs are certainly desirable, it is felt that the projects could best be performed by interested private groups or funded at the local level. This effort I feel should not begin to rely on state support. Accordingly, rather than play favorites and include some projects while deleting others, I have felt it imperative that an across-the-board reduction be made.

TRANSPORTATION

Department of Highways - Various Road Projects

The vetoes that I have made in this area are based upon the belief that the legislature has in this instance appropriated state funds for streets and roads that are now the responsibility of local government. The State of Alaska does have a Local Service Roads and Trails program which provides state bond funds on a formula basis to be meted out by local prioritization by political subdivisions for expenditure on locally controlled and maintained roads. If the roads chosen by the individual legislators for state funding within their various districts are a priority to the citizens in the political subdivision, they can be upgraded or constructed through either local funding or through the state funded Local Service Roads and Trails grant program arranged by the priorities of the local government. My bond package presented to the legislature in January and the final bill which passed the legislature contained $7.5 million for this very purpose. The reductions are itemized as follows:

SB

128

COMMITTEE REPORT

SENATE

**Finance

2/4/77

3/11/77 Date

Mr. President:

The Committee on RESOURCES has had SB 128 commercial fishing licensing under consideration. A majority of the members of the Committee

☐ recommends it do pass

☐ recommends it do not pass

☐ recommends it do pass with attached amendment(s)

☒ recommends it be replaced with CS for SB 128 and that CS for SB 128 do pass

☐ (and) recommends it be referred to the _____ committee

☐ reports it back without recommendation

☐ AND attaches a report of its intent

☐ (other) _____

MEMBERS SIGNING THE MAJORITY REPORT:

A. Ellis

Pahlke

Ken Lentsch

MEMBERS NOT CONCURRING IN THE MAJORITY REPORT:

Francis Dufresne recommends: no Rec

Tom Fink recommends: no Rec

_____ recommends: _____

R. Poland

Chairman

S 60

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

STATE OF ALASKA
COMMERCIAL FISHERIES ENTRY COMMISSION

JAY S. HAMMOND, GOVERNOR

POUCH KB – JUNEAU 99801

February 23, 1977

The Honorable Kay Poland
Chairman, Senate Resources Committee
Capitol Building
Juneau, Alaska 99801

Dear Senator Poland:

Enclosed please find a report explaining the rationale behind Senate Bill No. 128. This should assist you and your committee when reviewing the bill. If questions should arise which are not answered in the report, please do not hesitate to contact the Commission.

The Commission, along with the Departments of Fish and Game, Revenue, and Public Safety, have worked for months formulating a fair, simple and practical system of commercial fishing licensing. The new system we are proposing will result in eliminating State agency duplication of time and effort, create a much needed data base, and most important will eliminate much of the bureaucratic paperwork for the fishermen.

We have received wholehearted support from fishermen and fishermen's groups we have discussed this new program with. I urge your approval of the new licensing program proposed in SB 128.

Sincerely,

Roy A. Rickey
Chairman

RAR:dl

Enclosure

A REPORT ON

SENATE BILL NO. 128

by The Commercial Fisheries Entry Commission

with the concurrence of:
The Department of Fish and Game
The Department of Revenue
The Department of Public Safety

February 22, 1977

SENATE BILL NO. 128

"An Act relating to commercial fishing licensing and providing for an effective date."

Introduction

The Governor's bill entitled "An Act relating to commercial fishing licensing and providing for an effective date" presents the legislature with a new program of commercial fisheries licensing. The departments of Fish and Game and Revenue and the Commercial Fisheries Entry Commission designed this program to ease the paperwork for the fisherman, to save time and money for the State and to increase the accuracy ard availability of the licensing data base.

Program Description

The new licensing program eliminates the gear and commercial licenses, separates the vessel license from an assigned operator and creates a crewmember license similar to the commercial license. A renewed entry permit will be the only requirement for a gear operator in order to participate in a fishery. A vessel used in commercial fishing must be licensed and no indication of who will operate the boat will be needed. People who participate in the fishery as crewmembers will have to obtain a crewmember license.

A resident, non-resident fee system for permits will be initiated in the proposed licensing program. This will compensate for revenue previously received for gear and commercial licenses based on residency. The 3 to 1 non-resident fee ratio used for gear licenses will be adopted for the permit fee schedule.

In the present system, vessel licenses are issued to operators. This has caused considerable inconvenience to the fishermen since Revenue and/or Fish and Game forms must be completed each time a fisherman changes vessels or takes on additional operators. The Department of Fish and Game also finds this paperwork time consuming and unnecessary. Without the operator connected to the vessel, there will no longer be a residency distinction and the proposed license program will charge one fee for the vessel license.

The Commercial Fisheries Entry Commission will continue to issue entry permits and will incorporate vessel licensing in its renewal system making licensing for gear operators one simple function. Each year forms will be sent to every permit holder with his renewal information pre-printed by computer. The recipient simply makes any necessary corrections, signs the form and returns it to the Commission with the appropriate fees. The permit holder and the vessel will then be licensed for the coming year. This new procedure for licensing requires far less time and effort for the fisherman than the present licensing system in which he has to obtain three Fish and Game licenses from the Department of Revenue and an entry permit from the Commercial Fisheries Entry Commission.

The Department of Revenue licensing division will issue licenses to crewmembers using its license vendor outlets. The holder of a renewed entry permit may participate in any fishery as a crewmember without purchasing a crewmember license.

The Alaska Fishermen's Fund will be maintained at its current level. This Fund provides for the treatment and care of Alaska commercial fishermen who are injured or become ill in commercial fishing activities. The Commercial Fisheries Entry Commission will assume responsibility for the transfer of money to cover each permit holder. The Department of Revenue will also transfer money to the fund for each crewmember license sold.

Revenue Analysis

The gear and commercial fishing licenses are being discontinued and will no longer contribute to the State's commercial license revenue. The anonymous vessel license and the new crewmember license will only partly make up for this loss. The rest must come from increased permit fees.

As seen in Table I, State revenues derived from the four types of license and permits now available approximated $1.5 million for each of the last four years. The new system is expected to produce $2.6 from the new vessel and crewmember

licenses and entry permits. The increase in revenue will come mainly from the three to one non-resident to resident permit fee differentiation.

Vessel license revenue will be based on a new fee. An anonymous $20 fee will replace the previous $10 fee for a resident vessel operator and $30 fee for the non-resident. When the $20 fee is applied to the number of vessel licenses sold in the past, vessel revenue totals $254,380, approximately $100,000 more than previous years. (Table II)

To project crewmember license revenue, the number of commercial license sold to persons who did not also have a gear license is used to estimate the number of people who were crewmembers. The percentages of resident and non-resident commercial licenses sold in the past are applied to the estimated number of crewmembers so total anticipated revenue can be derived. As seen in Table III projected 1978 crewmember revenue is $113,550.

These two amounts of new fee revenues, $254,380 for vessel licenses and $113,550 for crewmember licenses make up only a quarter of total revenues collected in the past. Under the new program the additional revenue must come exclusively from permit fees.

The Limited Entry Law requires permit fees to "reasonably reflect the different rates of economic return for different fisheries". It also calls for the fees to be set by regulation, although a ceiling is mandated. SB 128 raises the ceiling from $100 to $500. The new permit fees will remain in about the same proportions as they presently exist. Some adjustments will be made to more closely reflect the rates of economic return for the various fisheries.

When deriving total permit revenues, adjustments must be made to account for poverty permit fees. If a fisherman falls within Federal poverty guidelines he may purchase a permit for a reduced fee. This fee will be increased from $5 to $15 to reflect the cost of issuing the permit. The $15 fee will be less than the total cost of his licenses and permit under the present system.

A doubling of present permit fees closely reflects what the resident fisherman now pays in annual licenses and permits. However, with the 3 to 1 non-resident to resident ratio, the doubled fees will bring the State an extra million dollars in revenue. This extra revenue would bring the total money collected from commercial fishing licensing to $2.6 million. Table IV compares portions of the new fee schedule with the old schedule.

The cost of managing, rehabilitating and enforcing the fisheries have increased at a rapid rate over the last few years and now totals $17.6 million. Over the past 5 years the State has operated at an average inflation rate of 7% yet the price of commercial gear and vessel licenses have not increased since 1959. A bill which was passed in last year's Legislature doubled the cost of sports fishing licenses for residents from $5 to $10. SB 128 would allow a greater recognition of the State's costs in relation to commercial fisheries while at the same streamlining and improving its licensing program.

Table I

1974-1976 Licensing Revenue

	1974	1975	1976	Projected 1978
Gear	$ 425,287	$ 397,777	$ 413,805	- - -
Vessel	$ 152,486	$ 158,704	$ 160,737	$ 254,380
Commercial	$ 325,020	$ 334,510	$ 385,280	$ 113,550
Permits	$ 604,924	$ 646,191	$ 625,894	$2,202,395
TOTAL	$1,507,717	$1,537,182	$1,585,716	$2,570,325

Total figures include money transferred to the Fishermen's Fund, approximately $200,000 per year. The 1976 revenues for gear, vessel and commercial licenses are preliminary figures. The 1978 Commercial License entry represents revenue to be collected from Crewmember Licenses.

Table II

Vessel License Revenue

1975 Resident Licenses	10,369	@ $10 =	$103,690
1975 Nonresident Licenses	2,350	@ $30 =	$ 70,500
	12,719		$174,190

Projected 1978 Vessel License Revenue:

Total Licenses 12,719 @ $20 = $254,380

Table III

Crewmember License Revenue

1975 Commercial licenses less gear licenses: 7,373

73% resident or 5,382 licenses @ $10/license = $53,820

27% nonresident or 1,991 licenses @ $30/license = $59,730

Projected 1978 Crewmember License Revenue: $113,550

Table IV

A COMPARISION OF OLD AND NEW RESIDENT LICENSE AND PERMIT FEES

	Old System				New System
	Gear License	Commercial License	Permit	Total	Permit
	$	$	$	$	$
Purse Seine (Based on 250 fathoms)	70	10	60	140	120
Drift Gill net (Based on 200 fathoms)	20	10	50	80	100
Set Net (Based on 150 fathoms)	15	10	20	45	40
Hand Troll	15	10	20	45	40
Power Troll	15	10	50	75	100
Long Line (Vessel length 26' or less)	25	10	20	55	40
Long Line (Vessel length over 26')	25	10	60	95	120
Pots (Vessel length 50' or less- based on 150 pots)	30	10	50	90	100
Pots (Vessel length over 50'- based on 150 pots)	45	10	100	155	200

Non-Resident fees are three times resident fees

A COMPARISON OF OLD AND NEW NON-RESIDENT LICENSE AND PERMIT FEES

	Old System				New System
	Gear License	Commercial License	Permit	Total	Permit
Purse Seine (Based on 250 fathoms)	210	30	60	300	360
Drift Gill net (Based on 200 fathoms)	60	30	50	140	300
Set Net (Based on 150 fathoms)	45	30	20	95	120
Hand Troll	45	30	20	95	120
Power Troll	45	30	50	125	300
Long Line (Vessel length 26' or less)	50	30	20	100	120
Long Line (Vessel length over 26')	50	30	60	140	360
Pots (Vessel length 50' or less- based on 150 pots)	90	30	50	170	300
Pots (Vessel length over 50'- based on 150 pots)	135	30	100	265	600

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

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A UNIT IN THE ORIGINAL FILE.

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A REPORT ON

SENATE BILL NO. 128

by The Commercial Fisheries Entry Commission

with the concurrence of:
The Department of Fish and Game
The Department of Revenue
The Department of Public Safety

February 22, 1977

SENATE BILL NO. 128

"An Act relating to commercial fishing licensing and providing for an effective date."

Introduction

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Program Description

The new licensing program eliminates the gear and commercial licenses, separates the vessel license from an assigned operator and creates a crewmember license similar to the commercial license. A renewed entry permit will be the only requirement for a gear operator in order to participate in a fishery. A vessel used in commercial fishing must be licensed and no indication of who will operate the boat will be needed. People who participate in the fishery as crewmembers will have to obtain a crewmember license.

A resident, non-resident fee system for permits will be initiated in the proposed licensing program. This will compensate for revenue previously received for gear and commercial licenses based on residency. The 3 to 1 non-resident fee ratio used for gear licenses will be adopted for the permit fee schedule.

In the present system, vessel licenses are issued to operators. This has caused considerable inconvenience to the fishermen since Revenue and/or Fish and Game forms must be completed each time a fisherman changes vessels or takes on additional operators. The Department of Fish and Game also finds this paperwork time consuming and unnecessary. Without the operator connected to the vessel, there will no longer be a residency distinction and the proposed license program will charge one fee for the vessel license.

The Commercial Fisheries Entry Commission will continue to issue entry permits and will incorporate vessel licensing in its renewal system making licensing for gear operators one simple function. Each year forms will be sent to every permit holder with his renewal information pre-printed by computer. The recipient simply makes any necessary corrections, signs the form and returns it to the Commission with the appropriate fees. The permit holder and the vessel will then be licensed for the coming year. This new procedure for licensing requires far less time and effort for the fisherman than the present licensing system in which he has to obtain three Fish and Game licenses from the Department of Revenue and an entry permit from the Commercial Fisheries Entry Commission.

The Department of Revenue licensing division will issue licenses to crewmembers using its license vendor outlets. The holder of a renewed entry permit may participate in any fishery as a crewmember without purchasing a crewmember license.

The Alaska Fishermen's Fund will be maintained at its current level. This Fund provides for the treatment and care of Alaska commercial fishermen who are injured or become ill in commercial fishing activities. The Commercial Fisheries Entry Commission will assume responsibility for the transfer of money to cover each permit holder. The Department of Revenue will also transfer money to the fund for each crewmember license sold.

Revenue Analysis

The gear and commercial fishing licenses are being discontinued and will no longer contribute to the State's commercial license revenue. The anonymous vessel license and the new crewmember license will only partly make up for this loss. The rest must come from increased permit fees.

As seen in Table I, State revenues derived from the four types of license and permits now available approximated $1.5 million for each of the last four years. The new system is expected to produce $2.6 from the new vessel and crewmember

licenses and entry permits. The increase in revenue will come mainly from the three to one non-resident to resident permit fee differentiation.

Vessel license revenue will be based on a new fee. An anonymous $20 fee will replace the previous $10 fee for a resident vessel operator and $30 fee for the non-resident. When the $20 fee is applied to the number of vessel licenses sold in the past, vessel revenue totals $254,380, approximately $100,000 more than previous years. (Table II)

To project crewmember license revenue, the number of commercial license sold to persons who did not also have a gear license is used to estimate the number of people who were crewmembers. The percentages of resident and non-resident commercial licenses sold in the past are applied to the estimated number of crewmembers so total anticipated revenue can be derived. As seen in Table III projected 1978 crewmember revenue is $113,550.

These two amounts of new fee revenues, $254,380 for vessel licenses and $113,550 for crewmember licenses make up only a quarter of total revenues collected in the past. Under the new program the additional revenue must come exclusively from permit fees.

The Limited Entry Law requires permit fees to "reasonably reflect the different rates of economic return for different fisheries". It also calls for the fees to be set by regulation, although a ceiling is mandated. SB 128 raises the ceiling from $100 to $500. The new permit fees will remain in about the same proportions as they presently exist. Some adjustments will be made to more closely reflect the rates of economic return for the various fisheries.

When deriving total permit revenues, adjustments must be made to account for poverty permit fees. If a fisherman falls within Federal poverty guidelines he may purchase a permit for a reduced fee. This fee will be increased from $5 to $15 to reflect the cost of issuing the permit. The $15 fee will be less than the total cost of his licenses and permit under the present system.

A doubling of present permit fees closely reflects what the resident fisherman now pays in annual licenses and permits. However, with the 3 to 1 non-resident to resident ratio, the doubled fees will bring the State an extra million dollars in revenue. This extra revenue would bring the total money collected from commercial fishing licensing to $2.6 million. Table IV compares portions of the new fee schedule with the old schedule.

The cost of managing, rehabilitating and enforcing the fisheries have increased at a rapid rate over the last few years and now totals $17.6 million. Over the past 5 years the State has operated at an average inflation rate of 7% yet the price of commercial gear and vessel licenses have not increased since 1959. A bill which was passed in last year's Legislature doubled the cost of sports fishing licenses for residents from $5 to $10. SB 128 would allow a greater recognition of the State's costs in relation to commercial fisheries while at the same streamlining and improving its licensing program.

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Projected 1978 Crewmember License Revenue: $113,550

Table IV

A COMPARISION OF OLD AND NEW RESIDENT LICENSE AND PERMIT FEES

	Old System				New System
	Gear License	Commercial License	Permit	Total	Permit
	$	$	$	$	$
Purse Seine (Based on 250 fathoms)	70	10	60	140	120
Drift Gill net (Based on 200 fathoms)	20	10	50	80	100
Set Net (Based on 150 fathoms)	15	10	20	45	40
Hand Troll	15	10	20	45	40
Power Troll	15	10	50	75	100
Long Line (Vessel length 26' or less)	25	10	20	55	40
Long Line (Vessel length over 26')	25	10	60	95	120
Pots (Vessel length 50' or less- based on 150 pots)	30	10	50	90	100
Pots (Vessel length over 50'- based on 150 pots)	45	10	100	155	200

Non-Resident fees are three times resident fees

75.

160 40
200

A COMPARISON OF OLD AND NEW NON-RESIDENT LICENSE AND PERMIT FEES

	Old System				New System
	Gear License	Commercial License	Permit	Total	Permit
Purse Seine (Based on 250 fathoms)	210	30	60	300	360
Drift Gill net (Based on 200 fathoms)	60	30	50	140	300
Set Net (Based on 150 fathoms)	45	30	20	95	120
Hand Troll	45	30	20	95	120
Power Troll	45	30	50	125	300
Long Line (Vessel length 26' or less)	50	30	20	100	120
Long Line (Vessel length over 26')	50	30	60	140	360
Pots (Vessel length 50' or less- based on 150 pots)	90	30	50	170	300
Pots (Vessel length over 50'- based on 150 pots)	135	30	100	265	600

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

Cordova District Fisheries Union

Headquarters: Box 939, Cordova, Alaska

February 18, 1977

Senator Kay Poland
Alaska State Senate
Pouch V
Juneau; Alaska 99801

Dear Kay,

In regards to Senate Bill #128 "An Act relating to commercial fishing licensing and providing for an effective date".

Our response to this bill is negative. Outwardly this would appear as a move toward efficiency which in reality we doubt seriously that this is either an efficient or financially sound maneuver.

The efficiency of the postal service between Juneau and the coastal fishing communities at best leaves a lot to be desired. We have experienced delays of over a month between here and Juneau, and while this is extreme, weekly or longer delays are commonplace. The efficiency of the Limited Entry Commission and their computer is at least on the same par.

Elimination of the personal, human, aspect of filling out the necessary forms under the direct assistance of the local vendor will certainly have an adverse effect on many of the lesser educated, handicapped or otherwise incapable persons, especially persons from the village areas.

We do not feel at this time that the Alaskan fishing community as a whole is ready to cope with the Limited Entry Commission in Juneau armed with their computer, handling the majority of the fishing licenses.

If this bill is enacted we anticipate, lengthy delays, loss of the personal, 24 hour per day, 7 day a week, service now received from local vendors, and certainly not an increase of efficiency or reduction of cost to the State.

Your responsible consideration is requested in this matter.

Sincerely,

Bob

Bob Blake
Chairman

SB

1411

SUMMARY OF STATE LAND GRANT STATUS

At Statehood, Alaska became heir to several federal land grants made during Alaska's territorial years in addition to being granted two significant land entitlements under the Statehood Act. The following is a summary of the State's progress in selecting its land entitlements under federal land grants.

General Grant Lands

Section 6 (b) of the Statehood Act entitles the State to select up to 102.55 million acres of unreserved federal land in Alaska within twenty-five years of Statehood. The State has selected 67 million acres under this land entitlement and has seven years in which to select the balance over 35 million acres. These figures do not include the proposed land selection of 2.8 million acres now under review.

Community Grant Lands

Under Section 6 (a) of the Statehood Act, Alaska is entitled to select 400,000 acres from National Forests and another 400,000 acres from other public domain lands for the purpose of providing for community related needs. Almost 320,000 acres remain to be selected out of the public domain land entitlement while over 360,000 acres remain in the National Forest land grant. The State has seven years to complete its community grant land selections.

Mental Health Lands

Public Law 84-830, passed in 1956, gave the then Territory of Alaska ten years in which to select one million acres of unreserved federal land to be administered for the support of Alaska's mental health program. This land grant vested with the State of Alaska at statehood. The full entitlement of 1,000,000 acres has been selected.

University Lands

Alaska was granted 100,000 acres of land to support a University program. The selection of this land is 99 percent complete. This grant supplements an earlier University grant of specific sections of townships certain in the Tanana Valley.

Common School Lands

Alaska was granted sections 16 and 36 in each township of federal land which was surveyed at the time of Statehood for the support of Alaska's common school program. Over 100,000 acres have been received under this grant.

Department of Natural Resources
February 7, 1977

LAND SELECTIONS

Law and Written Policy

Although the Statehood Act was silent about the Federal purpose underlying the major grant of 102,550,000 acres to Alaska, congressional discussion prior to statehood emphasized the expectation that a transfer of land from Federal to State ownership would open Alaska for economic development. Alaska's Constitution speaks of both conservation and development, yet the dominant theme is development.

This context of Federal and State policy is reflected in the Alaska Land Act, the 1959 statute in which the State Legislature established the Division of Lands and structured its operations. The general policy statement in this statute repeats the State constitutional mandate to encourage settlement and development by making land available for use consistent with the public interest.[1] Land selection policy is specifically guided by Section 38.05.290 which directs the Commissioner of Natural Resources to "give preference of selection to land which will provide the maximum benefits to the people of the State."

The determinant policy guiding land selection by the Division has been to choose lands with potential for human habitation and economic development, preferably lands with a variety of such potentials. In the 1963 annual report, on the occasion of its five-year anniversary, the Division summarized the objectives guiding its activities:

> "To further development---by making land, minerals, timber, gravel and other materials available for private development; working with individuals and existing or potential industries to assure maximum sustained use of resources.
>
> "to furnish State revenues---by providing a solid base of recurring revenue from leases and sale contracts; producing immediate revenue through competitive oil and gas lease sales; reducing State expenses by furnishing gravel and materials, building sites, and rights-of-way for State and local government use.

1. Alaska Statutes, Section 38.05.350.

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

DEC 27 76
2

FILE No.

DEC 17 1976

Mr. Jack Wick, President
Koniag, Inc.
P.O. Box 746
Kodiak, Alaska 99615

Dear Mr. Wick:

On July 16, 1976, we sent to each Regional Corporation an assessment of land entitlements under sections 14(a), 12(b), and 12(c) of the Alaska Native Claims Settlement Act (ANCSA) and requested comments or suggested corrections to be made to these estimates. Thus far we have received no material response. After further review of those estimates within the Department, we have developed some more refined figures to be used for planning purposes by the Department and by Native Corporations. These estimates are contained in enclosure 1 to this letter.

At this time, we are making an initial 12(b) entitlement allocation, enclosure 2. Subsequently, when more of the uncertainties are resolved, there may be additional allocations of 12(b) entitlement. However, this initial allocation is a firm minimum allocation made pursuant to section 12(b) of the ANCSA for the purpose of reallocation of the entitlement to the Village Corporations by the Regional Corporations. Enclosure 3 is a listing of the 12(b) entitlement allocation to each of the eleven Regions.

As you know, we recognize the need to permit reasonable overfiling in order to assure that each Native Corporation receives its full land entitlement under the ANCSA. However, it is apparent that in many cases there has been excessive overfiling which serves only to needlessly tie up land that should be made available for other purposes and delays the BLM's ability to process selections and convey the land. Moreover, in many cases, there has been no numerical priority assigned by the applicant corporation to its selections (43 CFR 2651.3 and 2652.3).

The Bureau of Land Management in Alaska will be directed to reject selections filed by Native Corporations which exceed the estimates in enclosure 1, as BLM reviews the selections which are pending adjudication. If selections are prioritized, they will be

AMERICAN REVOLUTION BICENTENNIAL 1776-1976

X-C Ron Swanson/Bob Coe 2/22/77

rejected on the basis of lowest priority first. If selections are not prioritized, they will be rejected on the basis of last filing first. Where a filing includes more land than the Corporation's entitlement, the BLM will reject selections beginning with the last unit of land described in the filing.

We realize that the reduction of overselections may create some difficulty for Native Corporations. However, it is clearly not the intent of the ANCSA that the selection process should indefinitely tie up nearly three times the entitlement provided the Native Corporations. We believe it is in the long-term best interests of all parties involved in the administration of the Act that the selections be brought more closely in line with the statutory entitlements.

Sincerely yours,

Forrest M. Gilmore

Assistant Secretary of the Interior

Enclosures - 3

The studies have been completed and proposals developed. Most conservationalists view the government's plan as excellent as far as it goes, but too conservative none-the-less. They have therefore organized an Alaska Coalition, developed their own proposals and presented them in bill form. Their D-2 bill along with several others are now before the Congress, which has a self-imposed deadline of December 18, 1978 for taking action on the proposed legislation. And knowing how long it takes to move controversial legislation through the national political mill, conservationalists have decided to start pushing now - strong and hard.

To this end, Congressman Morris K. Udall (D-Arizona) has introduced the Alaska National Interest Lands Conservation Act of 1977 (HR 39). Conservationalists are delighted that there are currently 75 co-sponsors for the Udall bill. The letters and telegrams coming into Congressional offices have already had an enormous impact; most of those members co-sponsoring the legislation were responding to this mail from home. Alaska's Congressman Don Young is not among the co-sponsors, however, and needs to hear from Alaskans on the issue. Interested persons can write both Congressman Udall and Young (all Congressmen can be addressed at: House Office Building, Washington, D.C. 20515) on this unprecedented conservation initiative, and express their views, be they pro or con.

The House Interior Committee chaired by Mr. Udall recently established a new Oversight and Alaska Lands Sub-committee which will have sole jurisdiction over the whole Alaska lands issue. John Seiberling of Ohio, one of the foremost environmental spokesmen in Congress, will be the chairmen. This new development is received with great excitement by those working on the D-2 lands issue, for it guarantees that their views will be heard.

Once the Congress has dealt with the high priority strip mining legislation now before it, Mr. Seiberling's subcommittee anticipates holding field hearings on the Udall bill in Alaska and key cities in the Lower 48. This is expected to occur in early summer. The hearings will be followed by a "show me" trip to Alaska now being planned for House and Senate Interior Committee members and their wives for the August Congressional recess.

The Carter Administration has yet to develop a firm position on the D-2 lands question, but is watching proceedings in the Congress with keen interest. Key advisors are well aware that the proper decisions on this issue may well afford Mr. Carter the opportunity to become the greatest conservation President since Teddy Roosevelt.

Without question, conservationists view the Alaskan national interest lands as providing the last and greatest opportunity of our lifetime to dedicate vast and yet unspoiled ecosystems large enough to provide lasting protection to their unmatched wildland and wildlife values. The degree to which Alaskans and other U.S. citizens get involved will to a large extent determine the final outcome.

These and other questions pertaining to the Alaska D-2 lands issue will be addressed in ensuing editions of the Alaska Currently in our attempt to keep you fully informed as events unfold.

(Dave Cline is federal programs coordinator for the Alaska Coastal Management Program in Juneau. For further information he can be contacted at 465-4974).

* * *

Title to property.

SEC. 5. The State of Alaska and its political subdivisions, respectively, shall have and retain title to all property, real and personal, title to which is in the Territory of Alaska or any of the subdivisions. Except as provided in section 6 hereof, the United States shall retain title to all property, real and personal, to which it has title, including public lands.

Selection from public lands.

SEC. 6. (a) For the purposes of furthering the development of and expansion of communities, the State of Alaska is hereby granted and shall be entitled to select, within twenty-five years after the date of the admission of the State of Alaska into the Union, from lands within national forests in Alaska which are vacant and unappropriated at the time of their selection not to exceed four hundred thousand acres of land, and from the other public lands of the United States in Alaska which are vacant, unappropriated, and unreserved at the time of their selection not to exceed another four hundred thousand acres of land, all of which shall be adjacent to established communities or suitable for prospective community centers and recreational areas. Such lands shall be selected by the State of Alaska with the approval of the Secretary of Agriculture as to national forest lands and with the approval of the Secretary of the Interior as to other public lands: *Provided*, That nothing herein contained shall affect any valid existing claim, location, or entry under the laws of the United States, whether for homestead, mineral, right-of-way, or other purpose whatsoever, or shall affect the rights of any such owner, claimant, locator, or entryman to the full use and enjoyment of the land so occupied.

(b) The State of Alaska, in addition to any other grants made in this section, is hereby granted and shall be entitled to select, within twenty-five years after the admission of Alaska into the Union, not to exceed one hundred and two million five hundred and fifty thousand acres from the public lands of the United States in Alaska which are vacant, unappropriated, and unreserved at the time of their selection: *Provided*, That nothing herein contained shall affect any valid existing claim, location, or entry under the laws of the United States, whether for homestead, mineral, right-of-way, or other purpose whatsoever, or shall affect the rights of any such owner, claimant, locator, or entryman to the full use and enjoyment of the lands so occupied: *And provided further*, That no selection hereunder shall be made in the area north and west of the line described in section 10 without approval of the President or his designated representative.

(c) Block 32, and the structures and improvements thereon, in the city of Juneau are granted to the State of Alaska for any or all of the following purposes or a combination thereof: A residence for the Governor, a State museum, or park and recreational use.

(d) Block 19, and the structures and improvements thereon, and the interests of the United States in blocks C and 7, and the structures and improvements thereon, in the city of Juneau, are hereby granted to the State of Alaska.

Fish and wildlife resources.

(e) All real and personal property of the United States situated in the Territory of Alaska which is specifically used for the sole purpose of conservation and protection of the fisheries and wildlife of Alaska, under the provisions of the Alaska game law of July 1, 1943 (57 Stat. 301; 48 U. S. C., secs. 192–211), as amended, and under the provisions of the Alaska commercial fisheries laws of June 26, 1906 (34 Stat. 478; 48 U. S. C., secs. 230–239 and 241–242), and June 6, 1924 (43 Stat. 465; 48 U. S. C., secs. 221–228), as supplemented and amended, shall be transferred and conveyed to the State of Alaska by the appropriate Federal agency: *Provided*, That the administration and management of the fish and wildlife resources of Alaska shall be retained by the Federal Government under existing laws until the

The Council of State Governments

WESTERN OFFICE

85 POST STREET
SAN FRANCISCO, CALIFORNIA 94104
(415) 986-3760

February 18, 1977

John B. Chenoweth
Legislative Counsel
Legislative Affairs Agency
Pouch Y, State Capitol
Juneau, Alaska 99811

RE: In lieu Land Section request

Dear Mr. Chenoweth:

Yours is a particularly interesting and timely request, and while this letter will partially answer your questions, I hope to have supplemental information within the next week. (Please find enclosed Utah HJR 38)

The activity of the states in regard to legal action against the federal government for return of public lands has been generally minimal in the last few years. Tensions have grown in Utah, however, to the point of litigation presently underway in Appelate Court. The Bureau of Land Management is claiming that the lands Utah is selecting in lieu of Sections 16 and 36 under 43 U.S.C. 851-852, and Revised Statutes 2275-2276 are prime lands containing oil shale and should, therefore, not be remitted to the State of Utah but remain federal land for purposes of development. Utah is, of course, not in agreement with BLM. BLM argues that Lands 16 and 36, which would have passed to state ownership, were not prime lands so the State may not now take prime lands in lieu of 16 and 36. I hope I am not misinterpreting this case; but you may check with BLM in Utah for further information. (BLM, Division of Technical Services, Adjudication Division --801-588-5340)

As far as activities in other Western States, there appears to be growing interest in this area from California. An important consideration is that BLM has not surveyed all the land eligible for selection, according to BLM's Regional Office in Sacramento. (per Joan Russell, BLM, Federal Building, 2800 Cottage Way, Sacramento, Ca. 95825, 916-468-4431) I do not know the school lands California selected in lieu of Sections 16 and 36, but am aware that the state wants to claim some national park land as a part of the state indemnity. Again, the federal government is not pleased with the state's selection. Litigation in California has not occurred to date. In addition, there is not much interest from a legislative standpoint in Sacramento as far as I can tell.

Daily News-Miner, Fairbanks, Alaska, Friday, March 4, 1977—A-5

Support asked for suit against feds over Statehood violations

The Fairbanks chapter of Citizens for the Management of Alaska's Lands (C-MAL) will ask the statewide group to support a move by Sen. Jay Kerttula to sue the federal government, charging violations of the Statehood Act.

The group had its second organizational meeting this morning to consider selection of its board of directors and to discuss the position it will take on Alaska land issues.

Acting on a motion from Jim O'Sullivan, the group voted to ask the statewide group to support Kerttula's efforts to get a $500,000 appropriation for a lawsuit against the federal government. Kerttula claims the state's rights to select land under the Statehood Act have been violated by the federal government.

C-MAL was initially formed in Anchorage by representatives of mining, business, forestry, Native, fishing, labor, and other interests. Its immediate goal is to secure a unified Alaska position on d-2 land classifications.

The Fairbanks group will act as a regional chapter to the Anchorage body, which now claims membership statewide. Six directors from the Fairbanks chapter will serve on the statewide board of directors.

Thirty-seven persons were nominated for the local board, but final action was not taken. Nominees will attend a board of directors meeting Tuesday morning, however, and the slate may be narrowed at that time. Nominees represent conservation interests, mining, the Native community, business and industry, agriculture, local government land agencies, fish and game interests, forestry, and rural residents.

After a general discussion of the state's right to choose and use land, the group voted to ask other western states to join in any assertion of state's right, including possible litigation.

Ernest Wolff, vice-chairman of the group, said he believes court action will be the only way for the state to gain control over lands within its boundaries. Others suggested that lobbying and education programs could also be used.

C-MAL plans to meet every Friday at 7 a.m., at the borough assembly chambers. One of the first orders of business will be to establish a list of goals and priorities.

Members agreed that they might not be able to come up with a position all could support unanimously, but most felt they could come up with at least a general direction agreeable to everyone.

The C-MAL board will meet Tuesday at 7:30 a.m. at the assembly chambers for a more specific discussion of issues, and the entire group will continue to meet Friday mornings.

3/6/77
Jay - This Action passed by unanimously, miners, environmentalists, Native, conservationists, Business Black, Church, Government, et al with were present At The meeting. You have a great deal of support across The Board. All are fed up with violations of States Rights

Editorial Opinion and Comment of

FAIRBANKS
Daily News-Miner

"Independent in All Things . . . Neutral in None"

Other opinions expressed on this page do not necessarily reflect those of the Daily News-Miner.

A better idea

Some time ago we said Sen. Jay Kerttula, D-Palmer, had a good idea with his bill to pursue a lawsuit against the federal government over its various efforts to water down the promises it made in the Alaska Statehood Act. Now it's an even better idea.

Sen. Kerttula is circulating a draft revision of the bill to expand its earlier legal research and include the executive branch in this important decision.

The changes in the new draft eliminate an outright charge against the Hammond administration's land selection record, and replaces it with a call for a review of current state policies and practices in land selection.

"The determination of selection policy and resolution of the legal questions involving the rights of selection under the Statehood Act as against the continuing efforts of the federal government to restrict selections by withdrawal or reservation of public land is of immediate concern to the people of Alaska and to the future development of the state and its resources," the bill states.

The duties of the special legislative commission created in the bill are expanded in the draft to include research of the history of federal land selection management "to determine the degree of diligence with which the Bureau (of Land Management) has completed action on state selections."

The draft also directs the commission to research the legal status of tentatively approved state selections, and the effects of the federal government's inertia on these.

While the bill and the draft specifically exclude valid land selections by Native corporations under the Alaska Native Claims Settlement Act, the draft does call for a review and report on the effects of the Native

Alaska Loggers Association, Inc.

111 STEDMAN, SUITE 200
KETCHIKAN, ALASKA 99901
Phone 907-225-6114

March 28, 1977

The Honorable Jalmar Kerttula
Alaska State Senate
Pouch "V" State Capitol Bldg.
Juneau, Alaska 99811

Dear Senator Kerttula:

Enclosed for your consideration is resolution number 77-3 passed by the Directors and members of the Alaska Loggers Association at their scheduled spring membership meeting in Juneau on March 19 and 20, 1977. Your careful consideration of the resolution is requested.

Sincerely,

Donald A. Bell
General Manager
ALASKA LOGGERS ASSOCIATION

DAB/mjh
Enclosure

RESOLUTION NUMBER 77-3

RESOLUTION OF THE ALASKA LOGGERS ASSOCIATION

REGARDING THE KERTULLA BILL

WHEREAS, the Alaska Statehood Act authorized selection by the State of 102,550,000 acres from the unreserved public land of the United States; and

WHEREAS, selection of lands by the State of Alaska pursuant to the said Act was delayed for the settlement of Native Claims which is now nearly complete, and

WHEREAS, S17(d)(2) of the Alaska Native Claims Settlement Act provides for the withdrawal of up to 80 million acres of unreserved public land for inclusion in the National Park, National Wildlife Refuge, Wild and Scenic Rivers and National Forest Systems, which withdrawals will add extensive additional acreage to the land already closed to selection by the State of Alaska; and

WHEREAS, the State of Alaska should have available for its selection lands having actual or potential economic value; and

WHEREAS, the continuing withdrawal of public lands in Alaska by the Federal government restricts State land

selections which is of concern to the people of the State of Alaska and to the future uses of the State's resources for the benefit of the people of the State;

NOW THEREFORE BE IT RESOLVED that the Alaska Loggers' Association endorses CSSB 141 introduced by Senator Jalmar Kertulla which would appoint a Joint Legislative Commission to review State land selection practices and the policies of the Federal government concerning reservation, withdrawal or disposition of public land in Alaska.

February 24, 1977
2020 Lake Otis Pkwy.
Anchorage, Alaska 99504

Senator Jalmar Kertulla
Co-Chairman State Affairs Committee
Alaska State Senate
Pouch V, Juneau, Alaska 99811

Dear Jalmar:

As you know, I have been active in Alaskan mineral exploration and development for about 30 years. I am writing to express my alarm at recent Congressional proposals to set aside up to 116,000,000 acres of our state lands for additional parks and wilderness.

It is my opinion that these same lands many contain the petroleum potential of Iran, the coal potential of West Virginia and the metal potential of Montana. Our federal government should, at the very least, conduct some intelligent in depth mineral evaluations of these lands. The state of Alaska should seek title to some of these lands under provisions of the statehood act.

I want to applaud and support your efforts to have the land grant provisions of the Alaska Statehood Act reviewed. The legislature should determine if, infact, Alaska's land grants have been denied or thwarted by acts of Congress.

Best personal regards,
Sincerely,

Leo Mark Anthony

Leo Mark Anthony

Walter J. Hickel

907-279-9401
935 THIRD AVENUE
ANCHORAGE, ALASKA 99501

February 28, 1977

Honorable Jalmar Kerttula
Senate Majority Leader
State Capitol
Juneau, AK 99801

Dear Jay:

Thank you for your note and the copy of Senate Bills #141 and #142. Your bills clearly express both the intent and the thrust of an all-out bid to protect Alaska's state lands.

I was deeply involved in this particular issue in the Statehood Act, and I worked with Senator Robert Taft, Sr. and his staff in Washington, D.C. to recommit the Statehood Bill in 1952 because of the lack of acreage it provided the state.

One of the reasons of our overwhelming ratification of the Statehood Act was that the bill in 1958 promised us over 100,000 acres, thereby allowing us to become a viable, economic unit. You remember how it was the anti-statehood forces who said we couldn't sustain ourselves, and we can't without the land.

The only suggestion I have for the language of Senate Bill #141 is that Section 1 Subsection (1) should use the word contract instead of compact. A contract is more understandable to the average American and lends strength to the entire legal argument.

With best regards.

Sincerely,

Walter J. Hickel

Keep up the fight

MOENING-GREY & ASSOCIATES, INC.
GEOLOGISTS AND ENGINEERS
715 L STREET, SUITE 8 ANCHORAGE, ALASKA 99501
TELEPHONE 274-2314

March 9, 1977

Honorable Jalmar Kerttula
Senate Majority Leader
Alaska State Senate
Pouch V, State Capitol
Juneau, Alaska 99811

Dear Senator Kerttula:

Your proposed legislation, Senate Bill No. 141, has merit. The State's posture of showing maturity and the ability to act timely, has waned to the point of being a "mass of mush". Those persons having the responsibility to protect the State's rights and exercise its prerogatives seem to be fully occupied in learning how to do their job, re-inventing the wheel, and being unaware of the forces that are preempting our statehood rights.

Presently, those now formulating a State land selection program are setting up a rating system on which to justify each acre for selection. Along with this, as presented in the Department of Natural Resources public meeting on selections, the Department appears to be unsure of what they are doing. They want each movement blessed by the public exposure, and being able to say, you the public said it should be this way. I ask, what are we hiring all those experts for if they cannot make a decision.

The proposed Joint Legislative Commission, though probably to be criticized for meddling in the administratives arena, may provide the hammer that can get things back in prospective. The Commission could provide the leadership and set the goals to be attained.

A question in my mind is the ability of the Commission to act timely. While we are all concerned about the many D-2 bills that affects the final acreage, more harm is done to the State through public land orders published in the Federal Register. It is through this vehicle that the public domain lands are

withdrawn from State selection by a five line paragraph. These notices require timely, often less than 30 days, responses and would be the basis of most legal action. Can such a Commission be responsive on a day to day crisis situation? The State selection process is not all that complicated. There are X number of acres to be selected within a known time frame. The time frame may be a basis for legal action because of the various land freezes. With 30± million acres remaining to be selected, you cannot go too far astray with what is left to pick from. It is kind of like taking a bath--95% of the job can be taken care of by just jumping into the water. When it gets down to cleaning the finger nails and cleaning the ears is when the special tools are needed.

The State selection process is a known quantity. All we have to do is do it before it is too late. It costs $10.00 for filing fees for each 1/4 township of land or portion thereof. The selections must meet compactness criteria and other tests as published in the BLM regulations. My thoughts here are:

1. Set up an account or fund that is readily available for selection fees, publication costs and fees for legal action.

2 Identify the bulk of the lands that are worthy of state selection and give notice to the BLM. Presently all D-1 lands are withdrawn from selection and will require a public land order to make them available for the States 90 day selection preference right.

3. Make the U. S. Forest community grant selections. These will probably require a law suit to break the Forest Service administrative hold on what they think is proper for the State to select.

4. Assign a watchdog to stay on top of the withdrawals that infringe on the State's selection rights and provide meaningful counteraction when injury is evident.

5. Keep control on administrative deals that bargain away land selection rights or erode the State's sovereignty for land management jurisdiction.

6. Set some target dates for the administration to meet. State selections is not a new program and should not warrant the cry of manpower shortage. Lets get things back in prospective and not get exploited with outside expertise and the fast shoe shuffle.

I am enclosing some material that provides some of the history of the State selection process. This type of material is readily found and should not get studied to death. The former directors, commissioners or myself could sum it up very readily.

Your invitation for me to testify on the bill is gratifying. My concern gets down to my position with my employer. It would constitute a financial burden, especially now when revenues are low. I can, however, provide additional comment as requested and meet with you or members of the State Affairs or Resources Committees if they get to Anchorage on other matters.

Sincerely,

MOENING-GREY & ASSOCIATES, INC.

Dale P. Tubbs

Dale P. Tubbs

DPT/lv
encl.

FRANK H. MURKOWSKI
S. R. BOX 10459
FAIRBANKS, ALASKA 99701

February 17, 1977

Senator Jay Kerttula
Pouch V
Juneau, Alaksa 99811

Dear Senator Kerttula:

I was extremely pleased to learn of your proposal to file suit against the federal government for breach of our Statehood Act. I think you are on the right track and for what it is worth, you certainly have my support.

This matter came up under discussion with a group of the Alaska State Chamber of Commerce board members and they too enthusiastically support your efforts.

Should you feel it appropriate, we would be happy to be called upon. Keep up the good work.

Sincerely,

cc: Don Dickey

P.S. Enclosed is a copy of my testimony given recently on a D-2 Lands hearing in Anchorage.

ANS.
2-21-77
AM

James D. Rhodes, Esq.
717 K Street
Anchorage, AK 99501
February 14, 1977

Representative Jalmar M. Kerttula
Box Z
Palmer, AK 99645

Dear Representative Kerttula:

I was very much interested in the newspaper article which reported that you are intending to introduce legislation which will permit a suit to be brought against the Federal Government for breach of its obligations to allow the State of Alaska to select a certain amount of land pursuant to the terms of the Alaska Statehood Act and the corresponding compact.

At the outset, let me say that I wholeheartedly agree that the Federal Government has not only breached the Alaska Statehood Act, it has simply ignored the respective obligations contained within the Act and in my opinion has continued to treat the State of Alaska as though it were nothing more than a possession of the United States or at the very best, as still a territory.

Although I have only lived in Alaska for eleven years, I became intimately familiar with the problems of the State of Alaska vis a vis the Federal Government during a four year period of time when I worked as an Assistant Attorney General under Governors Hickel, Miller and Egan. During the years 1968 through 1971, we were engaged extensively in the issue of ownership of Cook Inlet, the Native Land Claims Settlement Act and many disputes concerning federal/state ownership of navigable waters, tide and submerged lands. We were also involved extensively in litigation to attempt to render the "Udall Super Land Freeze" unconstitutional. It was during this period of time that I came to the ultimate, unequivocable conclusion that the Federal Government, in general, and Mr. Udall, in particular, could not give a damn about what Alaskans want in the way of self-determination or self government, much less what the

law is or what the obligations of the government are to the State of Alaska. It is my considered opinion that many of the current leaders in Congress, especially Mr. Udall and even our now Vice President Mondale, resent very much that Alaska was given Statehood and are now actively pursuing a course of conduct which will in effect circumvent statehood and perhaps effectively render Alaska a state in name only.

I believe that your idea of bringing suit is a good idea and should be done even though, sadly to say, I believe that it is doomed to failure from the start. I say that with deep personal regret because, in my opinion, I believe that we Alaskans have allowed our "leaders" to bargain away Alaska's sovereignty in exchange for very short term political gains or economic expediencies which seemed vitally important at the moment, but which in reality, and over the long haul, are relatively unimportant.

Even if Alaska has retained some of its sovereign powers, which I honestly doubt, it must assert that sovereignty in the most forceful and meaningful manner available to it. I firmly believe that if you are to succeed in a challenge to the Federal Government's gross abuse of its obligations under the Statehood Act, you would have to have the unequivocable backing of a courageous declaration of unity from both the people of the State of Alaska and its leaders equal to, at the very least, the courage of the men who founded this country 200 years ago. Without such a display of strength and determination, your challenge in the courts would be looked upon by the Federal Government with about as much alarm as the troops in Camp Pendelton, California, would look upon a single person walking into Camp Pendelton with a pea shooter and demanding the surrender of the First Marine Division.

Unfortunately, the judicial branch is the only vehicle by which a challenge of the type you contemplate may be peacefully made this day and age. I say unfortunately because the courts are the very entity that has fostered the erosion of the concept of individual State sovereignty, and have by judicial fiat reduced our once sovereign, but United States, into fifty quivering little political subdivisions who send

highly paid "lobbyists" called Senators and Congressmen to Washington, D.C. to bargain away whatever vestige of sovereignty is left in exchange for monetary grants or favors which ultimately take the form of simply redistributing the wealth from one section of the country to another, or from one community to another.

In short, I believe that the forum you have chosen to make your challenge, although the only one available, is hostile to the very notion that a state should be able to assert a claim against the United States any more than a child should be able to reprimand its parents.

The newspaper also reported that you would retain the services of a Washington, D.C. law firm to bring the suit and I am therefore assuming that such suit would be brought in Washington, D.C. If I have accurately characterized the courts in general as hostile to the philosophy that would be advanced through the type of challenge you proposed, I would be also correct in describing the federal courts and judges residing within the District of Columbia as downright hatefully vindictive towards such a notion and in all likelihood will seize your challenge as an opportunity to write law which would not only defeat your purpose, but will take the final step of divesting Alaska of any right to even speak out against federal control and domination of our state. In my opinion, the battle would be lost the day you filed the complaint and it would simply go downhill from that point on.

I strongly urge you to consider legislation which would require the Governor to instruct the Attorney General to bring suit in the District Court for the District of Alaska, coupled with the type of declaration mentioned above, and a strongly worded resolution unanimously adopted by our Legislature directed to the Federal Government and to those whom you indicated would be defendants, that the gauntlet has been thrown down with a fight to the finish to follow.

Finally, although I greatly admire the action you are taking, I believe that you will find that the halls of the Capitol literally "abound" with opponents of your bill and the implications that would flow from a successful conclusion on behalf of the State of Alaska. I believe that you will

find that Senator Gravel will strongly denounce such action as well as Senator Stevens although perhaps less so. I believe you will also find that Governor Hammond's philosophy of government very closely parallels that suggested by implementation of Udall's proposals.

Be that as it may, you have one ardent supporter at least in the undersigned and one who will watch with great interest the progress of the challenge.

Kindest regards.

Very truly yours,

James D. Rhodes

JDR:ce

W. EUGENE GUESS, 1912-1975
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JOSEPH RUDD
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FRANCIS E. SWEENEY, JR.
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NORMAN C. GORSUCH
JOSEPH A. McLEAN
STEPHEN J. PEARSON

March 15, 1977

Senator Jalmar Kerttula
Senate Majority Leader
Pouch Y
Juneau, Alaska 99811

Dear Jay:

I received your letter of March 4th last Thursday and had a chance to consider it over the weekend. I think the objective of Senate Bill No. 141, particularly as expanded in the Committee Substitute, very worthwhile. Many others besides myself have been concerned from time to time with the slowness of the federal government's processing of state selections, the apparent view of the Interior Department that it may reject selections even after tentative approval for its "public purposes", and the Secretary's leniency in allowing Native corporation over-selections and other matters which serve to delay filing and processing of state selections. In addition, and the Committee Substitute addresses this, there is concern about the rate at which state selections are made and the criteria employed by the Division of Lands in making those selections. At present the only criteria stated in AS 38.05.290 is provision of "the maximum benefits to the people of the state."

I have a few specific suggestions regarding Committee Substitute for Senate Bill No. 141 which you may wish to consider. In §1(4) insert "up to, but not to exceed," before the figure "80". This would conform with the language of §17(d)(2) of the Settlement Act and would point out that the Secretary has exceeded his authority and thereby withheld some land from state selection.

Section 1(5) might be rewritten as follows:

(5) the state has not completed selection of the land which it is authorized to select under the Statehood Act, seven years remain to the state to complete its selections, and the continuing action on the part of the Congress in effecting, authorizing, or considering the withdrawal or reservation of land constitutes a serious threat to the state's ability under the Statehood Act to make timely selection of and promptly receive title to land [UNDER THE STATEHOOD ACT OF LAND] having actual or potential economic value;

The so-called BLM Organic Act (Public Law 94-579, October 21, 1976) completely revamped the laws under which BLM operates. Among other things, it authorizes a variety of new types of classifications or withdrawals which might interfere with state selections. In addition, one of the problems in the slowness of state selection processing is the change of law and policy which occurs in the interim and which sometimes results in rejection of selection -- most notably, the provision of the Settlement Act making some tentatively approved selections available to the Native corporations. I am not sure how badly the state was actually affected by that provision, but state selections made in the early 60's might never have been subject to it if they had been processed promptly.

Section 5(a)(3) might be rewritten as follows:

(3) research the legal status of lands which have been selected and which have been "tentatively approved" for conveyance to [SELECTION BY] the state and the subsequent resultant effects of the failure of the federal government to recognize that status and to complete action on tentatively approved selections in a timely manner;

It has been argued that the Statehood Act grant was effective as of January 3, 1959, subject only to identification by the state of the lands it wished to be subject to the grant. Once a selection has been filed on land available for transfer to the state, the grant is fixed and must be conveyed to the state. This argument has never truly been tested under the Alaska Statehood Act although

similar grants in other states have been construed in that manner. As noted above, BLM does not seem to accept that position.

In §5(b) I am unclear as to exactly what is intended. Subsection (1) does not contain any authority for the commission, or direction to the Attorney General, to commence or join in actions. It seems to be authority merely to review and consider. In any event I would add at the end of subsection (1) "and the actions of the federal government preventing prompt conveyance to the state;". The added language might encompass the problems of overselection by Native corporations.

A degree of over-selection is legitimately permitted so that if portions of the original selections are found to be under navigable water owned by the state or otherwise unavailable for selection, the Native corporation will not be shorted. Some corporations, however, have over-selected to the extent of 50 or 60 percent and, in the case of the village corporations in Southeast, they selected everything which had originally been withdrawn for them which may be an over-selection of several hundred percent. In order to determine the amount of over-selection to which the Natives are actually entitled, it is first necessary to determine how much of the original selection may be unavailable and may even require surveys. All of this may cause delay which could result in additional changes of law or policy cutting off selection rights.

By the same token subsection 5(b)(2) seems unclear as to what participation there may be by others. Normally the Attorney General should be expected to represent the state's interest by commencing or by intervening in lawsuits. Should the Joint Legislative Commission hold views which differ from the Attorney General's, you may wish to authorize employment of outside counsel, though that may raise serious problems between the branches and in defining to the court the position of the state as a whole. I am sure that's a matter you will give consideration to.

I would be happy to testify before a committee if I can arrange for a trip to Juneau at the proper time. For obvious reasons a hearing on a Friday, Saturday or Monday would be most convenient for me. Certainly I would be happy

to discuss this further with you by telephone or correspondence. Please note my new address.

urs very truly,

ELY, GUESS & RUDD

Joseph Rudd

JR/mcv

Alaska's concern is that the process of state land selections, unless separated entirely from the proposed general land classification regulations, may be compromised or impeded by the ambiguous or inconsistent language of the proposed regulations, or by any redraft which may be undertaken to meet the presumed requirements of the 1976 Land Policy Act. As you are no doubt aware, Section 701(g)(6) of that act preserves the Statehood Act Grant from infringement under the new act. The proposed regulations ignore this distinction entirely, and confusion and delay will certainly result if they are adopted in the present form. Since state selections need not be dealt with in new regulations pursuant to the 1976 Act, and since regulations exist under which the State has made selections to date, what seems to be required now is an agreement implementing Alaska's selection rights in light of the developing land ownership pattern in the State. My staff is anxious to work closely and soon with your department to outline the process by which this goal may be reached. Given the often divisive atmosphere that prevailed between Alaska and the Department for years past, few endeavors would have our greater priority or enthusiasm.

I would appreciate a response at your earliest convenience regarding the points I have raised in this letter, and particularly my request that the comment period regarding the proposed regulations be extended to June 22, 1977..

Sincerely yours,

JAY S. HAMMOND
Governor

Dec 2, 1977

Sen. Jay Kertuka,
Alaska State Legislature,
Box V, Juneau, Ak. 99801.

Dear Sen. Kertuka -

Please add my name to the list of those Alaskans who agree with you that it appears that a suit against the federal government is the only choice we have to acquire the acreage promised by the Alaska Statehood Act. Although U.S. senator Stevens, Congressman Young and our governor Hammond had to come up with some plan it doesn't have enough Alaska character in it. Of course, Udall's dream would be a real nightmare - entirely unacceptable.

You have many people in the Fairbanks area who concur with you regarding the Statehood Act land grant, and will support you.

Respectfully yours -

Carl O. Mack,
Box 80509,
College, Ak. 99708.

Alaska
STATE CHAMBER of COMMERCE
208 National Bank of Alaska Building
Juneau, Alaska 99801
Phone 586-2323

TO: Walter J. Hickel
Jalmar Kerttula
Lew Williams
Bill Snedden
Bill Tobin

FROM: Frank H. Murkowski

DATE: March 22, 1977

SUBJECT: Alaska State Presentation in the Congressional Record

Enclosed is a copy of a letter from Representative Don Young, along with a copy of the Congressional Record for March 1, 1977, covering the State Chamber's position on the D-2 Lands.

alaska national bank of the north

COLLEGE OFFICE AND ADMINISTRATIVE CENTER P.O. BOX 80730 FAIRBANKS, ALASKA 99701 (907) 479-2281

March 21, 1977

The Honorable Jalmar Kerttula
Senate Majority Leader
Alaska State Senate
Pouch Y, State Capitol
Juneau, Alaska 99811

Daer Senator Kerttula:

I wholeheartedly endorse your efforts to establish a Joint Legislative Commission on the selection of State land through Senate Bill 141. Your approach is realistic and forthright and it deserves the support of the administration as well as all Alaskans. We are certainly not asking for anything more than we were led to believe was our consitutional right under the Statehood Act and the Constitution of the State of Alaska.

I am sorry that I was unable to visit with you when you were in Fairbanks last week, but I was out of town.

I would be pleased to testify on behalf of the Bill, however, I am going to be traveling from the 23rd of March through about the 5th of April. You may contact me through my secretary, Jan Stroffolino, at this address or 479-6566. I will be in contact with her during my absence.

Keep up the good work.

Sincerely,

Frank H. Murkowski
President

FHM:js

DON YOUNG
CONGRESSMAN FOR ALL ALASKA

COMMITTEES:
INTERIOR AND INSULAR AFFAIRS
MERCHANT MARINE AND FISHERIES

Congress of the United States
House of Representatives
Washington, D.C. 20515

WASHINGTON OFFICE
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DISTRICT OFFICES
115 U.S. FEDERAL BUILDING
ANCHORAGE, ALASKA 99501
TELEPHONE 907/279-1537

202 U.S. FEDERAL BUILDING
FAIRBANKS, ALASKA 99701
TELEPHONE 907/456-0210

March 7, 1977

To: [illegible]

Dear Frank:

I took the liberty of inserting your statement on the d-2 land issue in the Congressional Record on March 1. I have enclosed a copy for your records.

I will also be sending copies of it to various interest groups throughout the state such as state legislators, state officials and Chambers of Commerce.

We need to do everything within our power to inform Alaskans and other Americans on this issue. In a recent television interview I publicly urged Alaskans to write friends and relatives in the lower 48 and have them write their Congressman. The more voices that are heard expounding Alaskan's views, of course, the better.

I fully appreciate your stand on this vital issue and am working here in Congress to see that Alaskans get a fair shake. Thank you for your help.

Sincerely,

Don Young
Congressman for all Alaska

ALASKA
BANK OF COMMERCE
MAIN OFFICE: POUCH 7012, ANCHORAGE, ALASKA 99510

March 16, 1977

Senator Jalmar Kerttula
Senate Majority Leader
Alaska State Legislature
Pouch Y State Capitol
Juneau, Alaska 99811

Dear Jalmar:

Thank you for sending me a copy of your proposed SB141. As I have stated before some such action has been long overdue. I am far removed from being an attorney or an authority on proper wording for an act to start the ball rolling on relief from what Congress has done and about to do to the people of Alaska.

By unilaterally changing the intent of the Statehood Act I couldn't agree with your reasoning more. We all realize that no action could or should be taken to upset the Native's claim of 40 million acres, whether we agree with it or not. However, to further break faith with the people of Alaska with D-2 and further lock-ups I firmly believe is wrong.

In answer to your question as whether I could qualify as an expert on the proposed legislation, I doubt that I am one of the people you need. May I suggest the following names:

Bill Arnold	Joe Keenan
Chuck Herbert	Phil Holdsworth
Ed Merdes	Dean Earl Beistline
Irene Ryan	Roscoe Bell
Kirk Stanley	(Peanuts) L. T. Main
Bill Waugaman	Bert Silcock
Bob Hartig	Dick Pettinger - A.G.C. Staff

Cameron Edmondson - CMAL (278-3837)

There are probably many more persons who are knowledgeable on this subject.

In closing I think your proposal is a good one, and I will do whatever I can within my capacity to help you.

Kindest regards.

Sincerely,

A. C. Swalling
Chairman of the Board

ACS:il

Kerttula will ask for statehood suit

JUNEAU (AP)—A prominent state lawmaker said Friday he plans to introduce legislation appropriating at least $500,000 for the state to sue the federal government for breach of Alaska's statehood act.

Sen. Jay Kerttula, D-Palmer, said he thinks the federal government has violated the act by not allowing Alaska the promised 25 years to select the state's 100 million acres of land.

"When we bought statehood we didn't buy it on the basis we had mountaintops to choose from," Kerttula said. "We recognized some aboriginal claims (Native land claims) but we must not be third in line" behind the federal government, he added.

"They're just literally taking it away from us and we're letting them."

Kerttula said his proposed action has been prompted by the introduction of Rep. Morris Udall's d-2 land proposal in Congress.

On the floor of the Senate Friday, Kerttula, who is majority leader, urged his fellow lawmakers to join him in deciding how to proceed with the suit.

"But as an alternative I'm going to introduce legislation to sue and to fund the suit," he said.

He estimated the suit would cost a minimum $500,000 and "will request a cease-and-desist order and tell the feds we must have the balance of the 25 years to do our selections." He said the suit would at least be a stalling tactic, although he insists that he thinks the state could win.

"We're about to lose the ball" in Congress, Kerttula said, and he predicts the Udall legislation has a good chance for Congressional approval.

Udall's bill is supported by a coalition of Alaska and national conservation groups and would set aside 110 million acres of Alaska land, including a good chunk of Southeast's Tongass National Forest, for parks, national monuments, wild and scenic river systems and wildlife refuges.

Kerttula criticized the Hammond administration for "showing no interest" in suing the federal government.

A spokesman for the attorney general's office said he could not comment on the administration's position without knowing the details of Kerttula's plan.

Fairbanks News-Miner
5 FEB. 1977

FIDC

DR. WILLIAM R. WOOD
EXECUTIVE VICE PRESIDENT

FAIRBANKS INDUSTRIAL DEVELOPMENT CORPORATION
Phone 907 452-5400 619 Eleventh Avenue Fairbanks, Alaska 99701

February 7, 1977

Senator Jalmar M. Kerttula
Alaska State Legislature
Juneau, Alaska

Dear Jalmar:

Let me join the thousands who by now should be applauding your proposal to bring a "Statehood suit" against the Congress. I have argued privately for some time that since the Statehood Act had to be ratified by the vote of the Alaska people, any modification of that Act would also require a vote of the people of Alaska.

This, you will recall, did not happen when former Governor Egan challenged the Federal Government on the D-2 lands withdrawals, and later settled out of court with the Secretary of Interior. It has been my contention that the out-of-court settlement was illegal because there was no such authority to act contained in the Statehood Act.

This should take us back to the Statehood Act itself wherein the State of Alaska has the specific right to select up to 104,000,000 acres of land before any additional withdrawals can be made by anyone other than those whose aboriginal rights were recognized in the Statehood Act.

Whenever I discuss this matter with members of our Congressional delegation, or with local newspaper editors, or with representatives of the State administration, I find them all in agreement that the Congress can and will do as it pleases. This, I find very difficult to swallow.

The Alaska Statehood Act amounts to a treaty obligating the Federal Government forever if its position of integrity is to be maintained. Should the Congress at some future time wish to cancel the treaty, it could not do so unilaterally without distroying the confidence of the people through a violation of what amounts to a sacred trust.

On purely legal grounds, it seems clear to me that you do have a sound case to make on behalf of all Alaskans. If the

Supreme Court cannot determine this matter, then an International Court of Law should be given an opportunity to hear it.

Tentatively, I am scheduled to be in Juneau on Wednesday and would like to see you. You may be interested in seeing how the Fairbanks people are treating the various land issues. I hope that you will take the time to read the statements which I have made to the Governor during the past year on certain aspects of our State selection process.

I do hope that I can see you while I am in Juneau, for I do have to talk with you about the agricultural matter.

Sincerely yours,

Bill Wood

William R. Wood
Executive Vice President

WRW/kb
encl.

P. O. Box 80148
Fairbanks, Alaska 99708
March 11, 1977

The Honorable Jalmar Kerttula
Senate Majority Leader
Alaska State Legislature
Pouch Y, State Capitol
Juneau, Alaska 99811

Dear Jay:

Thank you for your letter of March 5, 1977, and the copies of SB 141 and CSSB 141, and congratulations on your taking the initiative toward resolving problems surrounding selection and utilization of Alaska's lands. It is a forward-looking action and one of great importance to the State, both on a short-term basis, as well as for many years in the future.

Overall, I believe the following points are paramount.

True multiple use of the land is essential.

Private ownership by the individuals rather than government ownership is fundamental to the way of life of our American people.

A minimum of government regulations for developing the resources (renewable and non-renewable) of the land is desirable.

Clarification of State rights vs. Federal rights of land selection between units such as the State, ANLCSA, D-2 lands, D-1 lands, State withdrawals, Federal withdrawals, etc., needs to be clearly established.

Access to "land units" within the State is needed for utilization of land regardless of status.

Several thoughts have been made on the accompanying copy of CSSB 141 for your consideration.

I would be happy to testify on this bill by letter or in person if you believe the thoughts that have been expressed herein are not duplications and will be helpful in the passage of your bill. Any additional information that you may have on the subject of your bill will be appreciated.

Best regards.

Sincerely,

Earl H. Beistline

EHB/jc

Enclosure

ALASKA LUMBER & PULP CO., INC.
Sitka Office: P.O. BOX 1050 • SITKA ALASKA 99835 • TELEPHONE 747-0265

March 21, 1977

The Honorable Jalmar Kerttula
Senate Majority Leader
Alaska State Legislature
Pouch Y, State Capitol
Juneau, Alaska 99811

Dear Jay:

Thank you for your letter of March 3, 1977 inviting me to comment upon CSSB 141. Enclosed you will find a copy of resolution passed by the Alaska Loggers Association with respect to your bill which I sponsored at the Association's Board of Directors Meeting on March 19, 1977. I think this demonstrates my personal belief in the wisdom of what you have suggested. I also would not object to passage of the Act in its present form.

However, I believe that you may want to consider joining your bill with HB 231 and HB 232, which create a steering commission on D-2. Such action would recognize the close interrelationship between adequate opportunity for land selection under the Statehood Act and the impact that D-2 proposals in Congress would have upon that. The steering commission idea could have grafted into it the findings, intent and duties set forth in Sections 1, 2 and 5 of CSSB 141. This would then result in a commission made up of legislators and the public whose duty it would be not only to form a consensus position, and lobby for that position before Congress with respect to Section 17 D-2 issue, but to formulate such a concensus with due consideration for the requirements of the Alaska Statehood Act.

The advantage of the above approach is that it would have both of these important issues in the same commission rather than two separate commissions. It would further allow funding tc accomplish two missions at once--namely, send people from the State back to D.C. to work for the State's 17 D-2 position, and for the State's land selections as well.

I would appreciate knowing whether or not you think this is a viable suggestion. If so, I would be glad to work with you on it. If you do not think it is viable, I'd be more than glad to support your original proposal.

Yours very truly,

Clarence Kramer

Clarence Kramer

RESOLUTION OF THE ALASKA LOGGERS ASSOCIATION

REGARDING THE KERTULLA BILL

WHEREAS, the Alaska Statehood Act authorized selection by the State of 102,550,000 acres from the unreserved public land of the United States; and

WHEREAS, selection of lands by the State of Alaska pursuant to the said Act was delayed for the settlement of Native Claims which is now nearly complete, and

WHEREAS, §17(d)(2) of the Alaska Native Claims Settlement Act provides for the withdrawal of up to 80 million acres of unreserved public land for inclusion in the National Park, National Wildlife Refuge, Wild and Scenic Rivers and National Forest Systems, which withdrawals will add extensive additional acreage to the land already closed to selection by the State of Alaska; and

WHEREAS, the State of Alaska should have available for its selection lands having actual or potential economic value; and

WHEREAS, the continuing withdrawal of public lands in Alaska by the Federal government restricts State land

selections which is of concern to the people of the State of Alaska and to the future uses of the State's resources for the benefit of the people of the State;

NOW THEREFORE BE IT RESOLVED that the Alaska Loggers' Association endorses CSSB 141 introduced by Senator Jalmar Kertulla which would appoint a Joint Legislative Commission to review State land selection practices and the policies of the Federal government concerning reservation, withdrawal or disposition of public land in Alaska.

Mr. & Mrs. Robert G. Zorich
P.O. Box 335
Glennallen, Alaska 99588

March 15, 1977

Governor Jay Hammond
Pouch D
Juneau, Alaska 99811

Dear Governor Hammond:

I think it is a sad day for all of the United States when a state such as Alaska has so little say in such matters as how the land within its boundaries can be managed and used. But it seems as if people are best qualified to determine the destiny of Alaska if one has never lived here. A few articles read in monthly magazines makes one knowledgeable of this vast expanse of wilderness, and if one was fortunate enough for a visit during the pleasurable months of summer an unquestionable expert is born. Unfortunately a person living here must not be as astute as those viewing Alaska part-time or from afar, because Alaskan views do not seem to weigh as heavily about Alaskan land management policies now being proposed in our nation's capital (sounds similar to the cry of taxation without representation 200 years ago).

Many of the current land use proposals go way beyond the original intend of the total 80 million acre D-2 land proposal, with total disregard for the studies that both state and federal agencies did that cost tax payers millions of dollars. I am not suggesting that Alaska be thrown up for grabs; for that is what congress is virtually doing for its special interest groups now; but that a land policy be adopted that would provide the most benifits to all and I believe that is in multiple use. Parks are fine but don't let them confine us.

My wife and I just want you to know that we support your efforts in voicing Alaskan views and hope through your efforts we can shape our own future.

Sincerely
Mr. & Mrs. Robert G. Zorich
Mr. & Mrs. Robert G. Zorich

CC.
State Senator Jay Hertulla
U.S. Senator Mike Gravel
U.S. Senator Ted Stevens
U.S. Representative Don Young

CMAL CITIZENS FOR MANAGEMENT OF ALASKA LANDS
P.O. Box 3256DT
Anchorage, AK 99510

S141

February 21, 1977

Senator Jalmar M. Kerttula
Court Bldg. - Rm. 624
Pouch V
Juneau, Alaska 99811

Dear Senator Kerttula:

Here is some basic information about a new organization which has formed in Anchorage to deal with the (D)(2) land issue. I hope you will find it of interest as the outcome of this question is now shaping up as one which will mold Alaska's future for many decades to come.

The organization is mandated to seek a statewide consensus and is in the process of acquiring affiliates in all parts of Alaska.

If you have any questions, or if we may be of help to you in any manner, please call on us.

Sincerely,
CMAL

Cameron Edmondson
Executive Director

/jb

STATEMENT OF POLICY OF

CITIZENS FOR MANAGEMENT OF ALASKA LANDS

Citizens for Management of Alaska Lands (CMAL) is a broad-based coalition of Alaskans and others interested in the wise use of Alaska lands and resources. Its philosophy, to the extent it can be expressed simply, can be paraphrased as "land for peoples' needs."

CMAL believes in the mulitple-use concept, wherein land can be managed to produce both the basic needs--such as, food and shelter--and important, yet secondary, needs--such as, recreation. CMAL believes that this concept makes sense for the bulk of Alaska's land which has strong multiple-values or potentials, as it allows use of the land to produce the greatest good for the greatest number.

By recognizing that peoples' needs also include solitude and aesthetic values, CMAL is also in favor of preservation of certain wild lands whose uniqueness is widely acclaimed in units of the National Park and Wildlife Refuge systems. It proposes, however, that all the resource values be professionally evaluated and inventoried, so there is a clear understanding of benefits and costs of those lands placed in restricted withdrawals.

It is the policy of CMAL that stable land ownership and management practices be paramount to any decision relating to Alaska's land and resources. Thus there must be no doubts about Alaska's statehood and Native entitlements, as new land decisions are made.

Finally, CMAL believes that the vast area of Alaska--if dynamically managed to take into account changing needs of man--will play an increasingly important role in the national destiny with room for recreation, wildlife, timber, energy and food production, mining, and human habitat.

CITIZENS FOR MANAGEMENT OF ALASKA LANDS

THE ALASKAN (D)(2) LANDS -- AN EXECUTIVE SUMMARY

The phrase "(D)(2) lands" is seen in the local and national press, heard on radio and television and in debates in the halls of Congress. Yet some Alaskans and most other Americans do not know what these lands are, or their significance to the entire nation. Although questions about (D)(2) lands cannot be answered completely in a short statement, CMAL, the newly-organized Citizens for Management of Alaska Lands, Inc., has prepared the following summary of the (D)(2) issue.

WHAT ARE THE (D)(2) LANDS? These are the roughly 80 million acres withdrawn under Section 17 (D)(2) of the Alaska Native Claims Settlement Act for possible "addition to or creation as units of the National Park, Forest, Wildlife Refuge, and Wild and Scenic Rivers Systems." How much land is to be placed in each system is the question before Congress.

WHERE ARE THE (D)(2) LANDS? Lands are widely scattered throughout Alaska, with scenic mountain lands mainly in the Brooks Range, the Wrangell Mountains, and the Alaska-Aleutian Ranges; the hilly and lowland areas in northeastern Alaska, and in the Yukon and Kuskokwim River systems.

HOW LARGE IS 80 MILLION ACRES? It's big! It would make more than 37 Yellowstone National Parks or two-thirds of California--or more than the combined areas of New York, Pennsylvania and New Jersey.

WHAT ARE THE RESOURCE VALUES? Everything. Some of the (D)(2) lands are among the most scenic lands in the world. The low wet lands are breeding grounds for wild fowl; hilly country has caribou, moose, bear, and wolves. The (D)(2) lands also contain millions of acres of commercial quality timber, millions of acres of virgin tillable soils, and major resources of copper, molybdenum, gold, silver, antimony, strategic minerals such as chromium, nickel, tin and very probably uranium, oil and gas. And while it is often forgotten, people are our main resource. Many of the (D)(2) lands are near areas of chronic under-employment and, while no one has advocated forced development, the possible loss--or gain--of thousands of new private jobs has to be considered in the decision.

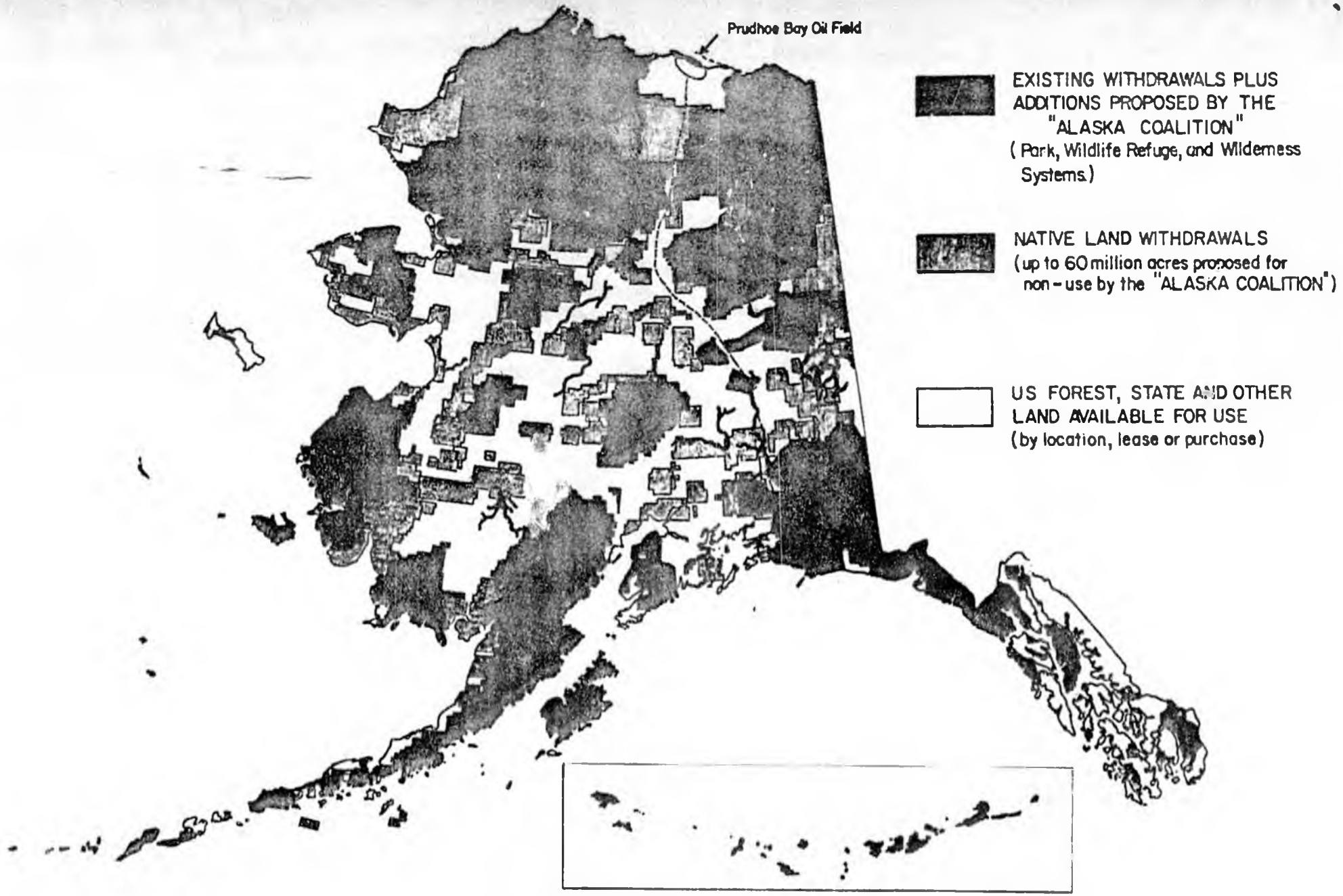
WHAT IS THE PROBLEM? The problem is to determine how an exceptional series of wild lands--some with an obvious prime value, some with multiple values--will be managed.

HOW SHOULD THE PROBLEM BE RESOLVED? Several approaches have been proposed. One extreme, that of the Alaska Coalition would place 147 million acres in wilderness National Parks and Wildlife Refuges. Together with existing withdrawals, this proposal places an area larger than the state of Texas out of bounds for all development and for most human uses. Several of the other proposals are also biased toward non-use of Alaska's land. In contrast, CMAL favors the use of "Land for peoples' needs." CMAL seeks a consensus on unique lands which most Alaskans and other Americans agree deserve protection; it is also identifying lands with a variety of values which must be managed under a multiple-use philosophy. Alaskans and, indeed, all Americans must be concerned--our state and national economy, our way of life, is involved, so great is the magnitude of the problem.

WHAT CAN BE DONE ABOUT THE PROBLEM? Individual citizens should immediately write their local members of Congress to express concern and to urge those officals to support retention of options from multiple use management for most of our lands and resources. To become more informed, more involved, and to help, write:

CMAL
Box 3256 DT
Anchorage, Alaska 99510

Membership dues are: Individuals $10.00; Corporate $100.000; and Association $250.00. (There is also vital need for supplemental grants.)



THE PRESERVATIONISTS' BLACKOUT

STATE OF ALASKA
One Inch = 190 Miles

SB

159

COMMITTEE REPORT

SENATE

**Finance

2/15/77

3/7/77 Date

Mr. President:

The Committee on RESOURCES has had SB 159 leasing of state land other than for the extraction of natural resources under consideration. A majority of the members of the Committee

/7 recommends it do pass

/7 recommends it do not pass

/7 recommends it do pass with attached amendment(s)

/7 recommends it be replaced with CS for SB 159 and that CS for SB 159 do pass

/7 (and) recommends it be referred to the _____ committee

/7 reports it back without recommendation

/7 AND attaches a report of its intent

/7 (other) _____

MEMBERS SIGNING THE MAJORITY REPORT:

Nancy Dn | Jo Ann | [illegible]

MEMBERS NOT CONCURRING IN THE MAJORITY REPORT:

_____ recommends: _____

_____ recommends: _____

_____ recommends: _____

H. Poland

Chairman

S 60

AGO 885623

February 22, 1977

Jay S. Hammond, Governor
Pouch A
Juneau, AK 99811

Dear Governor Hammond:

The Ad Hoc Committee on land policies and procedures has met on a weekly schedule since late October. We have addressed many problems dealing with the administration of the state's land patrimony. Many of these problems need resolution through the legislative process. Accordingly we are submitting these following recommendations as an interim report of the Committee, in the hope that the legislature may act during its current session.

Recommendation #1

The committee recommends that the State adopt a system of level payments in place of declining payments in its sales contracts. The system of level payments is in common use in the business world, and the payment figures are easily set forth in a contract. The disadvantage of the present method is that interest must be recalculated every year and the payments decrease each year. From both the State's and the buyers' viewpoints, the level payment method would be preferred. The State would receive slightly more in interest payments over the contract terms and the buyer would not have to make as high initial payments.

Section 2 & 3 of the attached draft bill would accomplish this.

Recommendation #2

The committee recommends that the State charge a market rate of interest in its sales contracts. The interest rate, at present 6%, is below market levels and may have contributed to inflated prices at state land sales. By setting interest rates at market levels, the State would help prevent inflated land prices and at the same time return more income to the State. To provide for a market rate of interest in sales contracts, no change in AS 38.05.065 would be required. The addition of a statement of market rate in this statute would be desirable, however.

Section 3 of the attached draft bill would accomplish this.

Recommendation #3

The Committee recommends that all sales contracts over $400.00 per year have the option of paying in quarterly installments instead of annual installments. It is the committee's belief that this would ease the financial strain on the buyer and yet not add significantly to the State's administrative costs.

Section 3 of the attached draft bill would accomplish this.

AGO 885612

Recommendation #4

The committee recommends that the Director be given the authority to set the payment period from one to twenty years. This type of flexibility would allow the State and buyers greater market possibilities.

Section 3 of the attached draft bill would accomplish this.

Recommendation #5

The committee believes that the word "primarily" may imply special consideration to some lessees. In order to treat all lessees fairly and equitably the committee recommends that the word primarily be stricken. Deleting "primarily" would clarify the basis for reappraisal. This recommendation is also made by the hearing panel on the Alaska Industrial Subdivision leasing protest.

Section 8 of the attached bill will accomplish this.

Recommendation #6

Since public notice is covered in AS 38.05.345 the change to "appraisal" for AS 38.05.310 is warranted by its present content. The committee recommends that land may be appraised 120 days in advance of a sale or lease. The change from 90 to 120 days would be desirable in that minimum bid information could be given to the public well in advance of the actual sale or lease auction.

Section 10 of the attached draft bill will accomplish this.

Recommendation #7

The committee recommends that land offered over the counter be reviewed at 90 to 120 day intervals to determine if an increase in value has occurred. This review is desired so that parcels are not undervalued by progressive changes in the market.

Section 10 of the attached draft bill would accomplish this.

Recommendation #3

The committee recommends that in Title 38.05 of the statutes the terms "fair market value" be used in place of "fair appraised market value" and "market value." The meaning is meant to be the same in all cases. The committee would like to see one standard term used to avoid confusion and misunderstanding.

Sections 4, 5, 7, & 13 of the attached draft bill would accomplish this.

Recommendation #9

The duration of a lease and the economic life of substantial improvements, such as stores or factories may not coincide. In order to see that state leased land is used in a rational economically productive manner the committee recommends that lessees of long-term leases be given a renewal option for up to fifteen years. This type of option would grant the lessee more flexibility in maximizing

his investment returns, especially during the final years of his lease. It would also increase the lessee's planning possibilities for use of the leased ground. This action would also soften the impact of termination of the lease. Specifically, this would permit a lessee to work substantial repairs to a building when the remaining term of the lease would not otherwise justify it.

Section 6 of the attached draft bill would accomplish this.

Recommendation #10

In order to provide a uniform 55 year limit for all long-term leases the committee recommends deletion of the 99 year provision found in 38.05.070(c) for school lands.

Section 6 of the attached bill would accomplish this.

Recommendation #11

The committee believes that state trust lands (school, mental health, and university) are now and have been managed at a low intensity. These lands may be returning only a fraction of their potential value that could be realized by a small full time management staff. The Division manages, these lands at no charge to the various trust funds and receives no reimbursement for its services. Therefore, it has traditionally placed low priority on management of these lands. This committee recommends that the State Legislature authorize each trust board the authority to freely contract with any agency or private firm for the management of its lands for revenue production in accordance with the state's land act.

Section 1 of the attached draft bill would accomplish this.

Recommendation #12

To provide the lessee insurance against a land boom or unexpected increase the committee recommends that rental increases at the five-year reappraisal periods not exceed 100% of the prior existing annual rental rate. This action would increase the predictability of the lessees payments. The stability thus created would add significant borrowing power for the lessee to finance improvements on the leased ground. Mr. Mack of this committee does not concur and believes that 100% is too high a ceiling.

Section 8 of the attached draft bill would accomplish this.

Recommendation #13

The Division of Lands has had many protests from private parties over the past few years leading the committee to believe that a board of appeals is highly desirable and needed, at this time. At present there exists no arbitration board or board of appeals to handle appeals allowed by Division of Lands regulations. The creation of a board of appeals would effect a responsive mechanism for solving most problem cases arising out of Division of Lands transactions that affect private parties. The board of appeals would be faster and less costly to private parties than legal recourse, which would still be available. The board is structured to maintain adequate expertise while attempting to eliminate bias in favor of the

Division of Lands. The appeal board would substitute for the Commissioner in the present appeal process.

Section 14 of the attached draft bill would accomplish this.

Recommendation #14

The current procedures for informing the public of state lands transactions are covered in AS 38.05.305 and AS 38.05.345. The two procedures do not mesh in a clear manner. The committee recommends that the procedures be clarified in a manner that will be flexible enough to inform the public fully and yet not require multiple advertising for minor negotiated transactions.

Section 11 of the attached draft will accomplish this.

Recommendation #15

To implement the new lease provisions recommended by this committee new lease forms for various types of leases will be required. It is the committee's recommendation that the Division draft new lease forms to comply with the statues adopted, and that the new forms be reviewed by this committee.

Recommendation #16

At present many lessees are suffering hardship due to rent increases of several hundred percent. To provide for this relief and as a curative for such future increases the statutory provisions found in section nine are recommended. Provision for optional conversion of present leases to ones that will place a ceiling of 100% on rental increases every five years will largely prevent future hardship cases and resolve satisfactorily the present cases. With a rent ceiling lease rental increases will be more predictable resulting in more financial stability for the lessee. Mr. Mack does not concur with the limitation of 100%.

Section 8 & 9 of the attached draft bill will accomplish the above recommendations.

Recommendation #17

The committee recommends that the Legislature apply the provisions found in Title 38 to those in Title 3 and Title 19. The rationale would be to make land laws uniform between the Division of Aviation, Department of Highways and Division of Lands.

Recommendation #18

To comply with new statues the committee recommends a major overhaul of Division of Lands regulations. The committee has found many of the regulations now in effect to be outdated and superseded by statutes.

Recommendation #19

The committee recommends that the State be given more flexibility to resolve contract of sale violations. This is necessary to prevent foreclosure as the

only remedy for minor contract violations.

Section 3 of the attached bill will accomplish this.

The committee wishes to note that in the course of public testimony it was apparent that Division of Aviation lessees had significant problems with their current leases. This subject was not within the scope of the committees deliberations and, therefore, not addressed.

The committee wishes to emphasize that this is an interim report and will be followed by additional recommendations not necessarily involving legislative actions.

THEODORE G. SMITH
Co-chairman

Committee Members:

Hugh Gellert, Co-chairman
William Mack
John Norman
Lidia Selkregg
Jamie Love
Carl Marrs
Clark Gruening
Mike Colletta
Herb Laag
David McCabe

IN THE

BY RULES COMMITTEE BY REQUEST OF THE GOVERNOR

BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to state lands and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 38.05.030 is amended by adding a new subsection to read:

Section 38.05.030 (f). Notwithstanding the provisions of (a) and (e) above and 38.05.035 (a)(13), the trustees of state trust lands may manage or contract with any agency, public or private, for the management of trust lands pursuant to the provisions of this chapter. Costs of such management shall be borne by the respective trusts.

* Section 2. AS 38.05.055 is amended to read:

Section 38.05.055. SALE PROCEDURES. Except as provided in Section 315(d) of this chapter, the sale shall be made at public auction 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 an amount determined by the director but not less than 5% (EQUAL TO ONE-TENTH) of the purchase price. The director or his representative shall immediatley issue a receipt containing a description of the land or property purchased, the price bid, and the terms of slae, which 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, after approval of the commissioner, the contract shall also be signed by the director on behalf of the state.

* Section 3. AS 38.05.065 is amended to read:

Section 38.05.065. TERMS OF CONTRACT OF SALE. The contract of sale shall require the remainder of the purchase price to be paid over a period

of not more than 20 years, which shall be set for each sale by the director. Installment payments plus interest will be set on the level payment basis over the payment period. The interest rate charged on installment payments shall be the prevailing rate on similar land transactions at the time the contract is signed, as determined by the director, but in no case shall it be below 5% per year or above the current usury rate as set by AS 45.45.010(b) and (d). (IN ANNUAL INSTALLMENTS OF NOT LESS THAN 10 PER CENT OF THE PURCHASE PRICE, WITH INTEREST AT THE RATE OF NOT LESS THAN FIVE PER CENT A YEAR.) The director, with the consent of the commissioner, may also impose conditions, limitations, and terms which he considers necessary and proper to protect the interest of the state. Violations of any provision of this chapter or the terms of the contract of sale subject the purchaser to appropriate administrative and legal action, including but not limited to specific performance, foreclosure, ejectment, or other legal remedies in accordance with applicable state law. (LEGAL ACTION, INCLUDING A FORECLOSURE ACTION IN ACCORDANCE WITH APPLICABLE STATE LAW.)

* Section 4. AS 38.05.067(b) is amended to read:

Section 38.05.067(b). The director shall not sell the lands under this section at less than their fair (APPRAISED) market value. The director shall make regulations necessary to ensure that lands sold under this section are for bona fide residential use and not for speculation.

* Section 5. AS 38.05.068(a) is amended to read:

Section 38.05.068(a). FOREST SERVICE PERMITTEES' SALES PREFERENCE. Before offering to the public any land which is subject to a valid existing United States Forest Service permit in effect in a state-selected area at the time the area was patented to the state, or which is subject to a lease issued under Section 87 of this chapter, the director shall offer the land for sale to the permittee or his successor in title, if he can be found, at not less than its fair (APPRAISED) market value before offering to the general public.

* Section 6. AS 38.05.070(c) is amended to read:

Section 38.05.070(c). A lease may be issued for a period of up to 55 years, if it appears to be in the best interest of the state and if the commissioner approves. A lease for a period in excess of 25 years shall grant the lessee an option entitling him to extend the term of the lease for up to 3 consecutive five year periods in addition to the original term. If the Commissioner determines that the land or a part of it which is the subject of a grazing

AGO 885618

lease is not being used for the purpose issued, the lease may be declared void. (HOWEVER, A NONRENEWABLE LEASE FOR SCHOOL LANDS MAY BE ISSUED FOR A PERIOD NOT TO EXCEED 99 YEARS.)

* Section 7. AS 38.05.087(a) is amended to read:

Section 38.05.087(a). FOREST SERVICE PERMITTEES' LEASING PREFERENCE. Before offering to the public any land for lease which is subject to a valid existing United States Forest Service permit in effect in a state-selected area at the time the area was patented to the state, the director shall offer the land for leasing to the permittee at not less than its fair (APPRAISED) market value before offering it to the general public.

* Section 8. AS 38.05.105 is amended to read:

Section 38.05.105. Each lease shall stipulate that the annual rental payment is subject to adjustment at five year intervals and shall be based (PRIMARILY) on a reappraised annual rental value. Any increase due to reappraisal may not exceed 100% of the annual rental for the preceding 5 year period. However, if the director of the division of lands determines that residential development is the best use for the land, the reappraisal period may be lengthened or the readjustment waived in accordance with regulations adopted by the commissioner. Before a waiver of rental readjustment is issued, the land shall have a current reappraisal. A waiver is valid only if residential development actually occurs, and only if it is necessary for obtaining primary long-term financing. The regulations adopted under this section shall ensure that the state receives a fair return from the land.

* Section 9. AS 38.05 is amended by adding a new paragraph to read:

Section 38.05.106. CONVERSION OF LEASES. (a) Any person holding a valid lease as lessee of lands from the State under provisions of AS 38.05.070 - .105, or as an approved assignee of such lessee under the terms of such lease, may, at his option, convert his lease so as to obtain certain benefits, enumerated in subparagraph (b) below, which were not available to him at the date his lease was originally entered, if the lessee at the time of conversion makes all payments due under the conversion rate and is not in violation of any other lease provision.

(b) Those lease benefits which shall be made available to a lessee qualifying under subsection (a) of this section shall be all of those lease provisions authorized or made applicable by this act to new leases entered into by the State after the effective date of such statutes.

AGO 885619

(c) The effective annual rental value at conversion shall be based on the most recent reappraisal provided that such reappraisal was within 2 years of the effective date of this act. In all other cases, the conversion shall be based on the next reappraisal.

(d) Any conversion as to trust lands shall be effective only if approved by the appropriate board of trustees.

(e) Applications for conversion must be made within 3 years of the effective date of this act.

* Section 10. AS 38.05.310 is amended to read:

Section 38.05.310 (NOTICE AND) APPRAISAL. (a) 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 120 (90) days before the date of (FIXED FOR THE) sale or lease. (WHEN LAND IS OFFERED AT PUBLIC SALE BUT IS NOT SOLD AND IS AVAILABLE) for over the counter sale (AT THE PRIVATE SALE, NO) an (RE)appraisal is required unless the director finds (CONSIDERS) that a change in value of the lands has not (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 fair (THE APPROVED, APPRAISED) market value, except as provided in .315 and .320 of this chapter and .75 - .85 of this chapter. No land or interest in land may be sold, leased, or otherwise disposed of without public notice.

(b) When land is offered at public sale but is not sold, it may be available for sale over the counter. The director shall review the list

of lands available on a quarterly basis and shall certify that there has been no change in value since the last reappraisal. If an increase in value occurs in any parcel, the director shall withdraw that parcel from sale over the counter.

* Section 11. AS 38.05.345(a) is amended to read:

Section 38.05.345(a). Public notice of an auction sale (LEASE OR OTHER DISPOSAL) of land or interest in it shall be substantially as follows.

* Section 12. AS 38.05.345(e) is amended by adding a new subparagraph to read:

Section 38.05.345(e) Public notice of an action other than as specified in paragraph (a) above shall conform to the requirements of AS 38.05.305 and this paragraph. Such notice shall, when given pursuant to AS 38.05.305(c), be published at least once in a newspaper of general circulation in the vicinity in which the land affected by the proposed activities is located.

* Section 13. AS 38.05.365 is amended by adding a new subparagraph to read:

Section 38.05.365. "Market Value" or "Fair Market Value" means the highest prices, estimated in terms of money, which the property would bring if exposed for a sale for a reasonable time in the open market, with a seller, willing but not forced to sell, and a buyer, willing but not forced to buy, both being fully informed of all the purposes for which the property is best adapted or could be used.

* Section 14. AS 38.05 is amended by adding a new paragraph to read:

Section 38.05.380. STATE BOARD OF LAND APPEALS. (a) The State Board of Land Appeals shall consist of five members, one of whom shall be the Commissioner of Natural Resources or his designated representative. The other members of the board shall be appointed by the governor from the general public, with due regard for the desirability of prior legal, natural resource or real estate training and experience as criteria for selection of public members. All board members are subject to confirmation by a majority of the members of the legislature in joint session.

(b) The director of the division of lands shall provide administrative support for the board.

(c) The governor shall appoint the public members of the board for terms of three years each, except that the initial terms of one of the members first appointed under this chapter shall be for one year and one member for two years. The public members are entitled to compensation

in the amount of $50.00 per day for each day or portion of a day spent in actual meeting or on authorized official business incident to their duties, and to all other transportation and per diem expenses as provided by law.

(d) Jurisdiction of the board shall extend to all matters arising under the Alaska Land Act (AS 38.05) and the Water Act (AS 46.15) from which an appeal may be taken under statute or regulation to the commissioner from a decision of the director, division of lands. The board in all appeals filed after the effective date of this chapter, shall have the appellate authority formally vested in the commissioner by provisions of the Alaska Land Act. An appeal from a decision of the board, if taken, shall be to the Superior Court.

of a quorum shall be able to render a decision. The board shall adopt regulations governing its procedures, and may adopt other regulations which may be necessary or convenient in carrying out the purposes of this chapter.

Alaska State Legislature

JUNEAU ALASKA

MEMORANDUM

TO: Senator John Sackett March 8, 1977

FROM: Senator Kay Poland KP

RE: CSSB 159, Leasing of State Land for Purposes Other Than for the Extraction of Minerals

There has been transmitted to Senate Finance the Senate Resources Committee Substitute for SB 159 as referenced above.

During 1976, the Division of Lands raised rentals to what was considered an onerous level. More importantly, the non-definable upper level of government and other potential excesses, severely limited, or eliminated, bank loan considerations. The complete file of testimony given to the Resources Committee contains a schedule clearly depicting the rental increases and percentages. That testimony is transmitted herewith, and has already been made available to Senators Butrovich, Tillion, Meland and Croft. We can provide additional sets if necessary.

The original SB 159 allowed for too frequent compounding of appraisals and rental increases, thus not affording proper remedy.

I feel that the Committee Substitute does afford proper relief in lease rentals while protecting the interests of the State. The attached telegram indicates the acceptance of the CS by the Leaseholders Association. I would urge early action on the measure to resolve the present conflict between the leaseholders and the State administration.

KP:ke

cc: Members - Senate Finance Committee

AGO 885624

Box 25
Kodiak, Alaska 99615
April 5, 1977

Senator Kay Poland
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Sen. Poland:

We are concerned about the implications of SB 159 for the ranching on Kodiak Island. Please send us a copy of the bill at your earliest convenience.

Sincerely,

Wanda Fields

Wanda Fields

Sent 4-11-77

AGO 885625

SB 154

Testimony of Joe Wilhour to Ad Hoc Committee March 3, 1977

Gentlemen:

I think the most recent draft of recommendations to the Governor and Legislature is extremely unfair for the following reasons:

The committee met and made decisions most of the time without what I consider a proper quorum. Sometimes with as few as four members.

The input of the State Division of Lands was overwhelming. I attended all but one of the meetings whereas a minimum of seven to twelve or more people of the Division of Lands attended. They were recognized to speak at all times, whereas the leaseholders were represented by one, Bill Mack, and a few leaseholders who were recognized at times and ignored at other times. Few leaseholders could afford to leave their business or jobs to attend, and paid lease holders attendance was nil simply because we did not have the $70.00 per hour.

Probably the greatest input from the Division of lands was from Mr. Ron Bunn, the States appraisor, who in my opinion is extremely incompedient. I refer you to the recommendations of the Hearing Panel appointed by the Director of the Division of Lands for your evaluation.

We Had hopped to rebut and offer our recommendations at a final meeting, ~~but~~ we are at that meeting now - and we are limited to 5 minutes each, or a total of 2 1/2 hours, to counter the spoonfed testimony of the Division at meetings held regularly every week since last October, plus an unknown number of secret meetings, so-called work sessions, plus dear knows how many private contacts by employees of the Division with the panel members.

To my knowledge, we have had only 4 or 5 private contacts with panel members, plus a few minutes during coffey brakes at the regular hearings. I don't know of one member other than Bill Mack, who has attempted to contact us to talk to us, or ask to see our leased land and improvements. Get our story

In short, we have 5 minutes individually, or 2 1/2 hours collectively, to try to salvage our millions of dollars and 20 years invested in good faith in our leases.

Looking at the recommendations addressed to Governor Hammond, dated Feb. 22nd and signed by Theodore Smith, it appears that anyone, including the Governor, could interprete them to mean that the committee members listed on the last page concurs in the recommendations. But in checking with some of the committee members I find some have almost an exact opposite opinion - possibly the majority do. I suggest the final recommendations be signed only by those members who totally concur, or at least have the disenting opinions noted. If not, it appears to me the odds of coming up with viable lease recommendations from this committee are greater than 1000 to 1.

Paper included Coal Mines.

While in Juneau, I met Mr. Phil Holsworth, the Commissioner of Natural Reserves at the time our leases were issued. His opinions and recommendations of the original intent of our leases could be most helpful to this committee - in fact to all of us.

AGO 885626

Recommendation #12, limiting rent increase to 100 percent of prior annual rentals: I refer you to the Ron Bunn memorandum to Ted Smith, present director of lands, dated 2-22-77

Quote: " Some parcels have a very slight rent advantage while others would be substantially below the current market and would possibly never catch up to market rent even with 100 percent increases each five year period." Unquote.

As I read it, the maximum also becomes the minimum, which according to Ron Bunn and probably the Division of Lands, is not enough. They proved this by trying to impose an 850 percent increase on me! I should possibly thank this committee for recommending they would reduce my lease payments from possible billions to only forty million, but that would be like thanking someone for drowning me in Lake Lucille or the bathtub instead of the Pacific Ocean.

Compounding 100 percent every 5 years on my lease, block 3, lot 7A, less than 2 acres, would show a total rental of $40,325,900.00 for 55 years.

Almost any policy recommending compounding would be disastrous. Com= pounding one dollar, 100 percent, 20 times totals $1,048,576.00.

Compounding $100.00, 100 percent, 15 times totals $1,638,400.00. Com- pounding it a few more times is beyond the capascity of any standard calculator. Possibly when this committee and the Division of Lands compiled their figures for our leases, their calculators had a loose screw or slipped a couple of coggs - you check it!
Paper - Attached, My figures
To compare this lease policy with the policy of the bank: Several years ago I borrowed $162,000.00 from the First National Bank to construct a warehouse on lot 7-A, block 3, Alaska Industrial Subdivision. The lot at the time was appraised at approximately 30,000.00 dollars. The totat pay out to the bank for the use of their money - principal and interest - would be approximately $300,000.00. The total pay out to the State for use of their $30,000.00 piece of land, using the committees compounded 100 percent revaluation would amount to over $40,000,000.00 - plus return of the land! Yet this committee and the Division of Lands claims this is fair and will encourage development.

In our recent hearing before the Senate Resources committee I think we convinced that committee to take the 1975 appraised value of the property and multiply it by a figure somewhere between five and ten, and then devide that figure by 55 to come up with the annual rent, with the larger proportions coming at the latter part of the lease. Which would make our leases bankable, ~~and~~ more feasible to pay and encourage development. This would give us a positive figure of what we would have to pay for the 55 year land use.

Section 8 of the Committees proposed bill - waiver of rent adjustment. Why residential and not industrial, agriculture, utility,etc.?

Section 9, ¶ A, B, C, Conversions of leases. Paragraph C throws us right back to the mercy of the State appraisers. We would be in the exact position we were in when we got our notice of reappraisal in July 1976 with an 850 percent increase - it is no solution at all.

AGO 885627

I recommend that the committee choose an appraised value of our leases predating Ron Bunn and the present Director of the Division of Lands. SB 159 has selected January 1, 1975.

I also recommend that this committee review the new lease forms and regulations and submit ~~them~~ them for public comment and recommendations The total package of State lease policy. Otherwise there is the probability that the Division of Lands will alter or misinterpret the intended objectives of the new lease policy and the leaseholders will be right back appealing for a new hearing - or be in court.

If the recommendations of the Ad Hoc committee are left as they are and not substantually changed, especially recommendation #12 and Sec. 8 and 9 of the proposed bill, the results will force the present leaseholders to surrender their leases and totally destroy the leasing of Alaskas State lands for the foreseeable future.

In closing, Mr. NOrman, one question: If the recommendations as they were submitted Feb. 22nd by this committee were followed, would you recommend to a client to take and develop a state lease, or would you want one yourself? Yes or no please.

Joe Wilhour
Box 740
Wasilla, Alaska 99687
376-5601

I think 18 mo. ousenvation, Hearings, Ect the State Divison of Lands objective is to break us & Take Our Leases

Hope This Committal don't help Them.

(Sorry IF I hurT anyons Feelings)

~~Any How of This can only Say as I Think,~~

I have NOT acQuired The Art of Seperating what i Think From what I Say.

ALASKA INDUSTRIAL SUBDIVISION LEASEHOLDERS ASSOCIATION

EXAMPLE OF A LONG TERM LEASE APPRAISAL METHOD PROPOSED BY LEASE AGREEMENT REVISED 1/27/77.

MY APPRAISAL $65,640.00 - TO BE REAPPRAISED NEXT YEAR (1978).

TERM	% INC TERM	% ORIG VALUE	NEW APPRAISED VALUE	LEASE PAYMENTS	ACCUMULATED COST TO LEASEE
1-5	0%	100%	$ 65,640.00	$ 19,700.00	$ 19,700.00
5-10	100%	200%	131,280.00	39,400.00	59,100.00
10-15	100%	400%	262,560.00	78,800.00	137,900.00
15-20	100%	800%	525,120.00	157,600.00	295,500.00
20-25	100%	1600%	1,050,240.00	315,200.00	610,700.00
	Beyond year 25, one can't calculate further as per Paragraph 9; we would have nothing any different than we have now. However, if one projected 100% compounded every 5 years until the end of the lease, this is what he would have:				
25-30	100%	3200%	2,100,480.00	630,400.00	1,241,100.00
30-35	100%	6400%	4,200,960.00	1,260,800.00	2,501,900.00
35-40	100%	12800%	8,401,920.00	2,521,600.00	5,023,500.00
40-45	100%	25600%	16,803,840.00	5,043,200.00	10,066,700.00
45-50	100%	51200%	33,607,680.00	10,086,400.00	20,153,100.00
50-55	100%	102400%	67,215,360.00	20,172,800.00	40,325,900.00

On Lot 7A, Block 3, I built a 12,500 foot warehouse for over $200,000.00, and have it leased to Mammoth Trucking for 35 cents per ft. which is a fair market value for the location. This is a gross annual income of $52,500.00. With expenses as follows: (annually)

Bank payments	$21,000.00
Utilities	4,274.59
Taxes, insurance	6,311.14
Maintenance, misc.	5,400.64
Land Lease	3,940.00
Total	$40,926.37

This produces a net profit, before taxes, depreciation, vacancies, inflation etc. of $11,573.63. With the land lease raised in accordance with the above scale, it can be readily seen that there is no way I can possibly hold on to the property and improvements beyond six years.

Every leaseholder in the Alaska Industrial Subdivision is faced with the same circumstances to a greater or lessor degree. How can the State expect to enhance development with this kind of lease policy?

The question is, shall the State lease land or not?

If not, the proposed lease policy will accomplish this. I would reccommend that the State should at least buy the improvements from their present

leasees, who they mis-lead many years ago. If you want the State to continue to lease land and treat their leasees fairly, I request that you recommend our bill to the Governor and the legislature.

Thank you.

Joe Wilhour
Box 740, Wasilla, Alaska 99687
Telephone 376-5601

ALASKA LAND AND LEASE OWNERS ASSOCIATION

TRANSMITTAL TO
ALASKA DIVISION OF LAND

EXAMPLE OF A LONG TERM LEASE APPRAISAL METHOD

ASSUME ORIGINAL COST OF LEASE $10,000.00
LEASE PAYMENTS TO EQUAL 75% OF APPRAISED VALUE X 6%/YR.

TERM	% INC YR	% INC TERM	% ORIG VALUE	NEW APPRAISED VALUE	LEASE PAYMENTS	ACCUMULATED COST TO LEASEE
1-5	5%	25%	100.00%	10,000.00	2,250.00	12,250.00
5-6	5%	25%	125.00%	12,500.00	2,812.50	15,062.50
6-10	5%	25%	156.25%	15,625.00	3,515.63	18,578.13
10-15	5%	25%	195.31%	19,531.25	4,394.53	22,972.66
15-20	5%	25%	244.14%	24,414.06	5,493.16	28,465.82
20-25	5%	25%	305.18%	30,517.58	6,866.44	35,332.28
25-30	5%	25%	381.48%	38,146.98	8,583.05	43,915.33
30-35	5%	25%	476.85%	47,683.73	10,728.81	54,644.16
35-40	5%	25%	596.06%	59,604.66	13,411.02	68,055.18
40-45	5%	25%	745.08%	74,505.83	16,763.77	84,818.95
45-50	5%	25%	931.33%	93,132.29	20,954.71	105,773.66
50-55	5%	25%	1,164.18%	116,415.36	26,193.39	131,967.05

ACO 885631

At the end of a typical 55 year lease using a reasonable 5%/year increase in appraised value, the State of Alaska collects $131,967.05 for a parcel that cost $10,000.00 originally - still owns the land, and lease holder has no accrued equity. To compare this to fee simple title for appraisal is wrong and not good business on the part of the state.

If the parcel changes hands during a 55 year lease the state could place a reasonable tax on any net lease holder gain, for example 5%, this would leave incentive for investors, developers and not unfairly penalize individual lease holders who want to live on state lease land.

In view of the example above how can reappraisals amounting to increases of from several hundred to over one thousand percent in a 5 year period be justified?

RESPECTFULLY SUBMITTED
BY

ALASKA LAND AND LEASE OWNERS ASSOCIATION

AGO 885632

STATE of ALASKA

MEMORANDUM

TO: TED SMITH
Director

DATE : February 22, 1977

R.B.

FROM: RON BUNN

SUBJECT: Rent Savings

As can be seen from the four leases presented, the amount of the rent savings when basing the new contract on the original annual rental will vary substantially depending on the commencement date. Some parcels have a very slight rent advantage while others would be substantially below the current market and would possibly never catch up to market rent even with 100% increase each 5 year period.

When considering conversion of old leases based on original rentals, there are several things to be considered. First, a number of parcels have retained the original ADL number while either being increased or decreased in size through combining parcels or splitting parcels and thereby effecting the unit value and resulting rental. Difficulty may arise in determining which portion of the original land and original rent should apply to the new parcel under the new lease.

Also some lease contracts were originally negotiated at a nominal rate until a proper appraisal could be performed. To base the converted contract rent on the negotiated rental would bear no relationship to todays market value.

Further, numerous parcels have been assigned since they were originally leased and bonuses paid may not bear any relationship to their actual value due to an unknowledgeable market. Therefore, if anyone besides the present lessee were to receive rent refunds it would be quite difficult to determine how much would go to whom.

It would seem that in order to be equitable to all lessees, the following methods could apply:

(1) For those parcels which represent an economic unit, the fair market value of the land at the original rate would apply under the most recent appraisal, if performed within the past 2 years or the next scheduled appraisal. ?

(2) For those parcels which do not represent economic units

AGO 885633

COOK INLET REGION, INC.

1211 WEST 27th AVENUE
(907) 274-8638

P.O. BOX 4-N
ANCHORAGE, ALASKA 99509

March 2, 1977

Mr. Theodore G. Smith,
Co-Chairman
Ad Hoc Advisory Committee
328 East 4th Avenue
Anchorage, Alaska 99501

Dear Mr. Smith:

I work with Carl Marrs, a member of the State Ad Hoc Advisory Committee. On three occasions I attended those meetings when he was not present.

Carl is in Hawaii at this time when the Committee is soliciting comments on their interim recommendations to the Governor. I have read the recommendations that the Division sent to this office and also spoke with Joe Wilhour, a State lessee.

I talked with Carl on other matters and also mentioned these recommendations. In reference to Recommendation No. 12, he told me that he didn't concur with it, feeling that a ceiling of 100% could be too high a figure and therefore may not be equitable to the lessees. Perhaps this matter can be taken up again at a future committee meeting and be resolved to everyone's satisfaction.

Sincerely,

COOK INLET REGION, INC.

Kirk McGee,
Acting Land Manager

SB 159

TESTIMONY ON SENATE BILL #159

By Joe Wilhour

Ladies and Gentlemen:

First, I would like to thank you for your time and efforts in consideration of our "headache"; and second, I would like to request you "hang in there" -- we're improved, but not cured.

On my lot 7-A, Block 3, Alaska Industrial Subdivision, the proposed lease payments of Bill 159 would total over three million dollars. That's 45 times the 1975 valuation, or approximately 600 times the appraised value when first leased in 1958.

I contend that this is not a fair lease. Not to me, not to future leaseholders, and not to the State of Alaska. It will not encourage development; in all probability it will force the leaseholders to do unto others as the State of Alaska has done unto them; increase our tenants' rent, increase the price of our products and services to the extent they are not competitive, thereby forcing us out of business and to abandon our State leases. Within 10 to 15 years, Section 16 could easily be mistaken for a slum area.

I built a 12,500 foot warehouse for over $200,000.00, and have it leased to Mammoth Trucking for 35 cents per foot, which is a fair market value for the location. This is a gross annual income of $52,500.00. With annual expenses as follows:

Bank payments	$21,000.00
Utilities	4,274.59
Taxes, Insurance	6,311.14
Maintenance, Misc.	5,400.64
Land Lease	3,940.00
Total:	$40,926.37

This produces a net profit, before taxes, depreciation, inflation, vacancies, etc. of $11,573.63. Senate Bill #159 would allow me to hold the property for approximately 10 years, which would relieve my present situation and allow the leaseholders time to seek additional corrective legislation, but both my inability to obtain bank financing and my common sense would prohibit improvements or further development. Look at the statistics:

ALASKA INDUSTRIAL SUBDIVISION LEASEHOLDERS ASSOCIATION

EFFECT OF SENATE BILL #159 ON MY PROPERTY LOCATED BLOCK 3, LOT 7A, ALASKA INDUSTRIAL SUBDIVISION. LOT SIZE APPROXIMATELY 64,000 SQ. FT. APPRAISED AT $65,640.00 TO BE REAPPRAISED 1978.

TERM	% INC TERM	% ORIG VALUE	NEW APPRAISED VALUE	LEASE PAYMENTS	ACCUMULATED COST TO LESSEE
1-10	0%	100%	$ 65,640.00	$ 52,512.00	$ 52,512.00
10-15	50%	150%	98,460.00	39,384.00	91,896.00
15-20	50%	225%	147,690.00	59,076.00	150,972.00
20-25	50%	337.5%	221,535.00	88,614.00	239,586.00
25-30	50%	506.25%	332,302.00	132,920.80	372,506.80
30-35	50%	759.38%	498,454.00	199,381.60	571,888.40
35-40	50%	1,139.07%	747,686.00	299.074.40	870,962.80
40-45	50%	1,708.61%	1,121,531.00	448,612.64	1,319,575.44
45-50	50%	2,562.92%	1,682,301.00	672,920.28	1,992,495.72
50-55	50%	3,844.38%	2,523,451.00	1,009,380.40	3,001,876.12

1. Above is MINIMUM
2. Rates are compounded
3. When lease finished, lessee will have paid 45.73 times value (3,001,876 ÷ 65,640)

AGO 885636

What amount would I, or anyone, have to invest to make this land support a State lease under SB#159? And where and how could it be financed?

Regardless of the formula used, as I said before, whether it be a percentage of the reappraised value every five years, a comparison to private leases, the number of quills on a porcupine divided by pi, or the number of moose in the Mat-Su Valley times the square root, if the total monetary figure exceeds six times the appraised value of the land at the time of lease, it will not be a fair rental that will enhance development and be acceptable to future leasees.

This is but one example of many, so again I request your cooperation. Put your feet in my boots and walk a mile, and I'm confident we can pass a better law that will be fair to present leaseholders, more desirable to all future leaseholders and non-leaseholders, and beneficial to our State Government both now, and in the future.

THE FIRST NATIONAL BANK OF ANCHORAGE

February 22, 1977

Mrs. Kay Poland
Resource & Finance
Legislature of Alaska
Juneau, Alaska

Dear Mrs. Poland:

This concerns our bank's attitude in providing funds for the purpose of financing leasehold improvements on land leased from the State of Alaska.

Our loans on improved real estate are governed by certain regulations made by the Comptroller of the Currency, United States Treasury Department. Any leasehold, against which we are lending money, must have a firm lease extending at least ten (10) years beyond the term of our loan. In calculating the amount of the loan against a leasehold, we must project the expenses incident to the operation of the property. This includes lease payments that are subject to increases of an unknown amount. We are understandably reluctant to make such loans.

Our bank's policy is to loan against leaseholds for a term in which we are assured of a reasonable fixed payment. We will not make loans when we are not able to accurately forecast the lease payments during the term of our loan.

Sincerely,

David G. Freund
Vice President

DGF/er

AGO 885638

The following comments, opinions, and recommendations regarding State land leasing are offered to further acquaint you with the bill we are submitting this session.

I first leased property in Section 16 in 1958 in an advertised competitive bid sale. Mr. Chipperfield, Territorial Director of Lands at the time, told the group that we would pay no taxes on the land because we didn't own it. This is not true - the city of Anchorage came up with what they call lease-hold-interest, and we have paid taxes every year. Also, we were told that over the 55 year period we would be paying more than the land could sell for, but not having to pay taxes, it would be very little more. Many of the present leaseholders acquired their land at the original sale and were told that the State wanted to develop a tax base, and develop the land.

I was in my thirties in 1958, so a 55 year lease represented my life span. Either through stupidity or unwarranted faith in the integrity of the State, I have spent most of my, and my wifes, available time and money that was not absolutely necessary for a growing family, on the development of these leases. A lot of this time and money was spent improving the land itself; stripping the trees and top soil, filling a large gully which ran from the road through the property and along the south side and adding gravel. I now lease these improvements back from the State.

Until recently the State has adjusted our rent every five years from approximately 40 to 100 percent, which is high, but workable. Now that the land has been developed and put to good use, forming a tax base by the investment of millions of dollars, and creating employment for over a thousand people, the State has adjusted our rent 850 percent to over 1000 percent.

Are we reverting back to a feudal system? Or State Land Bank vs sharecropper leasees? Or a con-game? One wonders, but with lease payments so high it's the equivalent of the State condemning the land! Through their reappraisal, the State has, in effect, condemned the leases.

Under the current policy the State has turned a 55 year lease into a 5 year lease. This year there has been less development in Section 16 than in any other part of town. It is impossible for the leaseholders to get financing, which has stopped development. See paper from the First National Bank of Anchorage attached. One questions whether it is advisable to repair a leaky roof.

My position is impossible. My annual rent increased from $3,940.00 to $32,800.00. I cannot increase my investment because the financing has been made impossible. I cannot raise my tenants rent and compete with fee-simple land rents. To raise my rents accordingly will only create vacancies and undermine my chances of making lease payments if and when the State does come up with a fair rental. And I cannot afford to just walk away from my 20 years investment of time and money, with only part of the money repaid to the bank.

At the 1975 rate of $3940.00 per year, I would pay the State, for my less than 2 acres, a lease rental for my remaining 37 years, $145,780.00 - nearly 15 times the original appraised value, plus what's already been paid the past 18 years.

At the current rate of $32,800.00 per year, and with no additional reappraisals but precariously assuming I could hold onto the property, I would pay the State for my less than 2 acres, a lease rental for my remaining 37 years, $1,213,600.00, plus what's already been paid the past 18 years.

If the State raises my rent the same 850 percent every 5 years, I would pay the State a lease rental for my less than 2 acres, for my remaining 37 years, $272,151,090,464.00, plus what's already been paid the past 18 years. Fantastic!

I built a 12,500 foot warehouse for over $200,000.00, and have it leased to Mammoth Trucking for 35 cents per ft. which is a fair market value for the location. This is a gross annual income of $52,500.00. With expenses as follows: (annually)

Bank payments	$21,000.00
Utilities	4,274.59
Taxes, Insurance	6,311.14
Maintenance, Misc.	5,400.64
Land Lease	3,940.00
Total	$40,926.37

This produces a net profit, before taxes, depreciation, inflation, etc. of $11,573.63. With the land lease raised to $32,800.00, an increase of $28,860.00, it will show a loss of $17,286.37. It appears the State not only wants their land back, but also my warehouse! Who pays the bank? What amount would I have to invest to make it support a State lease? Few, if any of us, would not give up our leases if we could recover our investments.

In comparison to the Fishing land leases, the lease for set-net fishing, not to exceed 10 years, quote, "The Director shall establish a reasonable rental for the lease, equal to the Administration costs involved in processing the leasehold application." These leases, however, may produce large profits for the leasee with small, comparable investment, and cost less than $50.00 a year.

In comparison of individual tracts of land, Bob Penney and the Teamsters Union are leasing larger tracts, of greater value, for pennies where many are paying dollars. Mr. Penney averages about $750.00 per acre. The Teamsters Union averages about $3,500.00 per acre - with no reappraisal. My lease averages over $19,000.00 per acre. If I, and my banker, had chosen to be dishonest we could have arranged a similiar situation, but that is not justification for bias on the States behalf.

In comparison to housing, the State has passed a law of rent control whereby the leasor must justify any housing rent increase. No law exists for State leaseholders and rents may be unjustly raised. No law states we cannot just pass this increase on to our tenants, but there is no way we could still compete with fee-simple land rents so we will only create vacant land and buildings. Because, however,

additional expenses must be commensurate with additional income if we are to survive financially, a large measure, or all, of such additional expense must be passed on to our tenants, or added to the cost of our product or services. The State should not be the leader increasing such inflation, but should take every action possible to hold it down.

In comparison to other land lease policies, the Mat-Su Borough pamphlet of June 26th states the lease amount is not subject to reappraisal. The highest bid establishes the annual rental for the 55 year term of the lease. With the capital move to Willow, how will the State lease land in the Willow area?

Some possible recomendations:

1. level payments, similar to the recent Mat-Su Borough auction, not changed every time the administration is changed. Eliminate the State "open-end" policy. A stable lease enables the leasee to plan ahead and this ridiculous predicament won't happen again in the future.
2. Some arrangement should be made whereby a lease is bankable. A long term lease should be comparable and competitive in price at time of lease, with fee-simple sales.
3. Taxes, if any, on the land itself, should be at a percentage rate, on all state-owned lease land.
4. Consideration and lowering lease rate scale for value of improvements made, due to additional taxes incurred and as incentive to develop industry, and protect human rights.
5. Some method to renew a lease 15 to 20 years prior to its current expiration date, in order to secure financing and continue to develop the property.
6. Maximum return for State leased land should be a fair rental encouraging leasing and development of additional State land, and not exorbitant returns and the eventual forced voidance of the approximately one percent of state land now leased. Forced voidance of the present land leases, and continuance of the existing policy so no one will be dumb enough to lease additional lands, will surely not benefit the State, and just as surely will not benefit her residents.
7. Some formula giving retroactive credit for money already paid into the land lease and credit for development and investments already made. Also, a fair appeal process - fair to both the State and the leasee.
8. The present blanket easement should be eliminated from the leases not only because it is not bankable, but also because, if exercised, it would take all value out of the leasehold interest, and could ruin the leasee business without any compensation.
9. A public hearing would be informative and advisable. I would recommend such public hearing be held in the Anchorage area where the majority of lease holders can attend.

As I see it, the recommendations should result in a lease policy that make leases desirable to you as individuals, and all residents of the State. They shouldn't change every 5 years. They should be bankable and have a value, especially after payments have been made for some 20 years or more. They should, as the Constitution states, "enhance development". The State will get their maximum return by

AGO 885641

taxing the development and its income, and by being able to lease their millions of surplus lands. Reappraisal and any adjustment of increased values due to inflation should come at the end of the lease period. If this can't be done, the land should be sold, allowing credits for those who have for a long time paid lease rents, paid to improve the land itself, and paid to develop the property into taxable use.

The State gets three shots at its leaseholders; (a) land lease rental payments, (b) taxes on improvements and (c) income tax. By taking an unfair advantage of the lease rental payments, the State will, or possibly has already, eliminated all three.

On Thursday morning, Dec. 16th, I attended the Governors Advisory Committee meeting where two representatives of F.H.A. testified that the appraisal clause and other parts of the State leases would not be acceptable for F.H.A. commercial or residential loans.

Mr. Paul Troch, (344-4665) a constitutional lawyer and teaching professor testified he has clients who are going to bring suit if that is the only way to get the State to comply with the regulations provided in its charter, which reads the State must provide a way to distribute its lands to the public for development.

Thursday afternoon I saw Mr. Richard Ullrich, Loan Examiner of the State Veterans Affairs. After explaining the terms of our State leases, he said the State Veterans would not, or could not, make a loan under the terms of our leases. Especially the reappraisal clause which the State Division of Lands claims is a fair rental.

Also, Thursday, I visited the Alaska State Bank where I couldn't help but notice the pictures of Anchorage, taken about 1915, on the walls. And compare the Anchorage of today through the windows. I wondered what Anchorage would look like now if the Territory, or Federal Government, had used the present state land policy to develop the area.

There is no way the leaseholders can unreasonably increase the price of their rentals, products, or services, every five years to meet the increased rentals which the State Division of Lands claims are fair. Local competition in the town and the State, as well as State and Federal regulations, such as the trucking industry who must abide by ICC regulations, eliminate the possibility. Other businesses in town, grocery stores, department stores, banks, etc. do not raise the price of their products and services because of the appreciation of the land their businesses are occupying. They must compete too.

It would seem the State is in the same position with their excess lands as the banks are with their money. Both need people to manage it. The banks, thanks to comptition and regulations, do not change their interest rates every five years on committed loans. The State should be forced by law to adopt the same policy and not be allowed to take advantage of their monoply of State land, or the few dumb tenants they have trapped.

I think that six percent annual rental of the original appraised

value of the land for 55 years would be a fair rental which would enhance development. This would net the State over three hundred percent more income than could be derived from the sale of the lands, plus considerable savings in State administration and litigation costs, plus the return of the land to lease again or re-evaluation of the leases at their expiration, which would be acceptable to the citizens of the State, be they present or prospective leaseholders, or non-leaseholders who none-the-less derive benefits from the money collected.

Regardless of the formula used - whether it be a percentage of the reappraised value every five years, a comparison to private leases, the number of quills on a porcupine divided by pi, or the number of moose in the Mat-Su Valley times the square root, if the total monetary figure exceeds 300 percent of the appraised value of the land at the time of lease, it will not be a fair rental that will enhance development and be acceptable to future leasees.

The problem as I see it, is not the few leasees who now hold State leases. They are insignificant. It is restoring the credibility of the State as a monopolistic landlord, and creating a workable policy of developing and utilizing a portion of Alaskas millions of acres of land, whether by leasing or selling. The people of this State cannot afford, and will not allow this, or any other administration, to lock up their 100 million acres of land in a non-productive policy. A percentage of it must be made productive to support the parks, animal habitats, scenic lands, wild rivers, and so forth.

Senator Stevens newsletter is attached, informing us of an amendment signed by President Ford with regard to Federal leasing in Alaska. The law will allow individuals to gain a right to and an interest in federal lands by actively working to develop and use the land productively. I intend to find out what their lease policy is.

Addressing the 30 day default clause of the lease; I, and other leaseholders have paid our lease rentals for about 20 years and have invested millions of dollars in improvements and have borrowed large sums from banks for development of our leases. Surely our credit has been established beyond thirty days! There are many justified occasions for not being able to meet this 30 day default clause in a 55 year lease. Death, mental or physical health difficulties, temporary memory loss, temporary or permanent financial ability, lack of communication, or the States unfair interpretation of the fair rental value, to name a few. I would recommend that the 30 day default be changed to the same rules the banks or the public comply with. Foreclosure through legal procedures, then sale of the lease and improvements with the balance of the money derived from such sales, minus state expenses, reverting to the leasee.

With regard to the adjustment of rents, the State method this time was an April 1 notice of future re-appraisal and a retroactive bill dated June 7th, that I owed $15,403.00 by August 1st. This not only made it improbable that the leasee could comply, but also locked the State into a figure they will not easily recind. I think the State would be more justified if they gave six months notice and explained why, and the method used, to increase rentals, and accepted input,

and in general considered their leasees ability to comply. Many years ago I anticipated some difficulity in meeting my obligations to the bank, and consulted them on this. I was told not to worry, if necessary I could make interest payments only for a period of time, or make lesser payments over an extended period of time. Fortunately I did not have to do either. But I feel both the leaseholder and the State would benefit from a negotiation clause, similar in principal, written into each lease. The land policy of the State, if not changed or altered, has been and will be, more devastating to the State and its present leasees than the 1964 earthquake. High prices are caused by the scarcity of land, which is caused by the State.

In closing, I would like to state that I have been an Alaskan since 1941 with continual residence except for my years in service from 1943 to 1946. The last 20 years I've worked to improve this leased land and now have several substantial buildings, tho I owe the bank over $400,000.00 in personal guaranteed loans. I've worked hard. I've provided for increases such as inflation and taxes, but who of us can afford 850 percent increases? We who have paid many times the original value, held it, and improved it, should be entitled to justice. It seems impossible that 20 years of work and investment can be wiped out with one stroke of a pen - in this country! Particularly so, when it does not appear beneficial to the State government, or her resident Alaskans.

Ask yourself if the present land rental is fair and will enhance development. If the answer is yes, I am quite sure all leases in Section 16 are available for a "steal". If the answer is no, will you help us change it?

Thank you.

Joe Wilhour
Box 740
Wasilla, Alaska 99687
Phone 376-5601

THE FIRST NATIONAL BANK OF ANCHORAGE

June 18, 1976

Mr. Joe Wilhour
Anchorage, Alaska

Dear Mr. Wilhour:

We have reviewed your informal request to consider financing a new building on Commercial Row, the loan to be secured by an assignment of the State land lease and the building placed on the lease.

At this time it is impossible for us to give you a commitment for construction until we can confirm what the future rental on the building will be. We have reviewed the other financing that we have done for you on your property and find that the quarterly rent has been raised from $996.00 to $8,200.00, an increase of 850%. A further review of the lease indicates that every five years it can be similarly raised.

Under these circumstances, it is impossible for us to guess what the future land rentals will be, and therefore, unless you are able to secure a lease of an equal term to the mortgage wherein the tenant agrees to pay the increased land rental, it will be impossible for us to advance the credit requested.

Sincerely,

D. H. CUDDY
President

DHC:mh

AGO 885645

Ted Stevens
411 Old Senate Office Building, Washington, D.C., 20510 (202) 224-3004
United States Senator FOR Alaska
NEWSLETTER
Vol. 8, No. 9
Oct/Nov., 1976

S-N Stevens News Letter

TIONAL PARK -- Claudia Louis, a member of the Washington, D.C. staff, presents the ceremonial pen used by President Ford to sign S. 98, the Klondike Park bill, into law to Mayor John Edwards (right) of Skagway and Ward A. Hisman (left), Superintendent of the White Pass & Yukon Route Railway.

BLM Bill

President Ford has signed a bill which will allow Alaskans to continue to use public lands to build homes, farms, or trade or manufacturing concerns, under provisions added to the bill in the Senate by Senator Stevens.

The amendment allows the Secretary of the Interior to grant long-term leases for habitation, cultivation, trade or manufacturing on the lands.

The National Resource Lands Management Act, S. 507, also known as the BLM Organic Act, repeals homesteading in 10 years and this amendment was needed to enable individuals to continue to use and develop public lands, despite the repeal of homesteading laws.

The authority of the new law -- designed to provide for the management, protection and development of public domain lands not committed to other uses -- extends to the unreserved federal land in Alaska remaining after Alaska Native Claims Settlement Act and Statehood Act withdrawals are made.

It was pointed out that the passage of this law with this amendment will provide some type of incentive for people to come in and carve a livelihood out of the wilderness. The law will allow individuals to gain a right to and an interest in federal lands by actively working to develop and use the land productively.

The leases could be used to build new communities, farms, small sawmills and small manufacturing plants needed in isolated rural areas.

Wonder what Their Lease policy is?

Mid-Decade Census Law

A bill which could mean substantially increased federal funding for Alaska from programs based on population has been signed into law by President Ford.

The bill, cosponsored by Senator Stevens, authorizes a national census and July 1, 1975, Alaska's population increased by 16.3 percent. An official census every five years would allow this rapid change to be reflected in federal funding and programs.

The Office of Management and Budget estimates that about $39 billion in federal funds are distributed every year to the states according to formulas based on population.

AGO 885646

IN SUPPORT OF THE LEASEHOLDERS BILL

In support of the 6% annual rental rate, I would like to request you re-read the Hearing Panel Proposed Decision and Recommendations, page 12, ¶4, which quite clearly defines our position.

The total lease rental for the 55 year period proposed in our bill would amount to $379,411.00. This is 5.78 times the 1975 appraised value, or 75.88 times the 1958 appraised value. Under SB#159, the total lease rental for the 55 yr. period would amount to over three million dollars. This is 45 times the 1975 appraised value, or approximately 600 times the 1958 appraised value.

In my opinion, our bill provides the maximum rental to be beneficial to all concerned; an excellent return to the State, a fair settlement to the existing State leaseholders, a fair opportunity for future leaseholders, as well as the maximum rental allowable to encourage development and bank financing. Whereas SB#159 is not beneficial to all concerned. It is a maximum return to the State from current leaseholders with existing improvements, from 10 to maybe 15 years when they will be forced to give up their leases, it is not a fair settlement to the existing leaseholders, it is not a fair opportunity to future leaseholders, it will not encourage development, and it is not acceptable to the banks for financing.

I would also suggest the elimination of the floating easement be added to SB#159, as recommended by the Hearing Panel on page 19, ¶5 of their report.

Joe Wilhour

ALASKA INDUSTRIAL SUBDIVISION LEASEHOLDERS ASSOCIATION

EFFECT OF ALASKA LEASEHOLDERS ASSOCIATION PROPOSED BILL ON MY PROPERTY LOCATED BLOCK 3, LOT 7A, ALASKA INDUSTRIAL SUBDIVISION. LOT SIZE APPROXIMATELY 64,000 S. FT. APPRAISED AT $65,640.00 TO BE REAPPRAISED 1978.

TERM	% INC TERM	% ORIG VALUE	NEW APPRAISED VALUE	LEASE PAYMENTS	ACCUMULATED COST TO LEASEE
1-25	0%	100%	$ 65,640.00	$ 19,700.	$ 98,500.00
25-35	50%	150%	98,660.00	59,196.	157,696.00
35-45	50%	225%	147,990.00	88,794.	246,490.00
45-55	50%	337.5%	221,535.00	132,921.	379,411.00

1. Above is MAXIMUM
2. Rates are compounded
3. When lease finished, leasee will have paid 5.78 times value (379,411 ÷ 65,640)

The Honorable Senator Kay Poland
Alaska State Legislature
Pouch V
Juneau, Alaska 99801
MAIL STOP 3100

Dear Senator Poland:

We, asx State land leaseholders, are about to be faced with huge increases in rental rates of our leased property (Lot 5, Block 1, Kasilof Pioneer Subdivision., with two homes on it). These new rates, if imposed, will force a severe hardship on us financially and may even force us to give up our lease.

Such rates substantially reduce the value of our improvements which we have worked long and hard at and spent substantial money on. We feel the present policies of the Division of Lands are not in our best interest, nor in the best interest of the State of Alaska.

We therefore urge you to support legislation currently on the floor which would:

1. Set a 25 year period of fixed rental, giving us time to finance and pay for our improvements.

2. Establish a six percent rate and a fifty percent ceiling on rent increases so we can compute what we will pay in rent over the 55 year period. Due to the present policies, it is almost impossible to finance improvements on our lease.

3. Provide for independent appraisal of our lease. Appraisal by our landlord, as is now done, is an obvious conflict of interest.

4. Provide a grandfather clause whereby we, as existing leaseholders, can take advantage of a new lease.

Passage of a law with the above provisions is critical if we are to be able to continue leasing our land.

Thank you for your help.

Very truly yours

Mr & Mrs L B Watts

Mr. and Mrs. L. B. Watts

AGO 885649

SENATOR
KAY POLAND
DISTRICT L
P.O. BOX 45
KODIAK, ALASKA 99615

Alaska State Legislature

Senate

KODIAK-ALEUTIAN
DISTRICT

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811

March 21, 1977

Mr. & Mrs. [illegible] B. Watts
Route 2, Bo[illegible] 713
Kasilof, Al[illegible]a 99610

Dear Mr. & Mrs. Watts:

Thank you for writing me regarding the matter of state land leases. I introduced SB 159 this year, and I am enclosing a copy of this bill. I had worked with leaseholders in Anchorage and Mat Su Valley this summer and tried to come up with a bill that would be fair to leaseholders and the State of Alaska. I would be interested in your comments on SB 159. It has passed out of Senate Resources and is now in Senate Finance Committee.

Sincerely,

Kay Poland

Kay Poland
State Senator
Kodiak-Aleutian District

KP:ss

AGO 885650

LA21 0908 11.24 JA01 0009 11.24 02/22/77

TO: CINDY, JNU
FROM: APRIL, FBX

PLEASE DELIVER THE FOLLOWING MESSAGE TO SENATORS BUTROVICH AND HUBER:

MESSAGE: JUST RECIEVED A COPY OF SB 159 RE: LEASING OF STATE LAND. TRUST LANDS ARE NOT SPECIFICALLY MENTIONED BUT MUST ASSUME THE BILL APPLIES TO THEM. THE STATE BOARD OF EDUCATION, AS THE TRUSTEE OF SCHOOL TRUST LANDS, HAS SOME CONCERNS ABOUT CURRENT LEASING POLICIES AND WOULD LIKE TO REACT TO ANY BILLS DEALING WITH LEASING OF STATE LANDS, ESPECIALLY THE SCHOOL TRUST LANDS. WE WILL COMMENT ON SB 159 IN THE NEAR FUTURE.

DARWIN HEINE
VICE CHRMAN, STATE BD OF EDUCATION
1506 DENALI WAY, FBX 99701
PH: 456-5722

PLEASE ACK WHEN MESSAGE DELIVERED THANKS. /A/ EOM

AGO 885651

Alaska State Legislature

JUNEAU ALASKA

MEMORANDUM

TO: All House Members May 9, 1977

FROM: Senator Kay Poland KP

SUBJECT: CSSB 159

Attached for your consideration is a short analysis of SB 159. Please note, especially, the difference in pay back amounts between CSSB 159 and proposed HCS CSSB 159 (Rules).

KP:ke

AGO 885652

CSSB 159

1. In 1976 the Division of Lands raised rentals to what was considered an onerous level. This level is such that there is serious doubt of the practicability of continuing the present use of the land.

2. Because of the uncertainty occasioned by the actions of the Division of Lands, both commercial and residential development of the leases became "non-bankable" in terms of loans because of no feasible upper limit of rent could be determined.

3. The proposed bill corrects this situation by:

   a. Extending the initial period to 25 years to provide stability in the development stage, and providing for three additional reappraisals instead of about eight.

   b. allows the mortgagor to assume the payments in the event of a late payment or default by the lessee.

   c. Protects the state's interest by increasing the percent of the rental fee to 10%. The original appraisal will have to be correctly done.

   d. Results in a definable upper limit of the sum of the rental payments over the life of the lessee. This amount is 9 1/2 times the original appraisal. For example, for each $1,000 of the original appraisal value, the lessee will pay $9,500 in rent over a 55 year period. The HCS which changes the initial period to 15 years and the periodic difference to 100%, results in a payback of 31 1/2 times.

TO: Senator Croft

FR: Jamie Love

RE: SB 159

2/22/77

As promised, I am providing you with comments on SB 159, which would change the state's leasing policies with regard to the methods of determining annual rents. As you are surely aware, rental readjustments on state leased lands have become quite a controversial subject. This first manifested itself in highly publicized transactions such as the Teamster's Mall lease and the Penney lease near Merrill field. In both cases leaseholders had obtained choice properties at rents substantially below market prices. One key provision of both leases was the state's waiver of rental increases for a period of forty years.

In response to these and other transactions, the legislature amended Title 38 last year to restrict the discretion of the Department of Natural Resources to give such waivers, except on properties developed for residential purposes. Also enacted was legislation which established a formal trust for all school lands, and gave the State Board of Education independent authority over the Division of Lands to insure that leasing policies protected the interests of the School Trust Fund. The State Board of Education and its chairwoman, Katie Hurley, have taken their new responsibilities very seriously and have educated themselves about the land leasing business thoroughly.

At the same time the Teamster and Penney leases were being addressed, it became clear that the state's entire leasing program was in serious trouble. Not only were those two transactions providing less than adequate rents to the state, but the Division of Lands was discovered to have been routinely under-appraising its properties and using out-of-date percentages on its rental readjustments. In 1975, the Division of Lands was leasing lands for a readjusted rental figure of six percent of the appraised value of the land, while most leases in the private market had been using eight percent and higher for some time. When asked to account for the six percent figure, Division of Lands officials could not explain why it was being used. Most thaought that six percent was called for either in the lease or the regulations, but it appeared neither there nor anywhere else. The combination of the six percent figure and the underappraisal for old and new leases alike resulted in returns vastly below market values.

Because the rents were so low, potential leaseholders were willing to pay substantial bonuses to take over leases from previous leaseholders. In one transaction, a party paid the

old leaseholder more than $250,000. for an assignment of a 20 acre tract of school land near downtown Anchorage. Bonus payments of this type were not uncommon, since the ADL practice of collecting low rents was well established under the Kennan administration.

After the Hammond administration cancelled the Teamster lease, and renegotiated the Penney lease, it undertook an overhaul of rent readjustment practices. Lease properties were appraised at market value and rents were adjusted to eight percent of the appraised value of the land. At that point in time land values all over Alaska were skyrocketing. Properties in Kenai, Wassila and Anchorage were appreciating anywhere from 300%-1000% during the period 1971-1976. Consequently, the combination of raising rental rates from six to eight percent, which represented a 33% increase, and more realistic appraisals, which increased the basis on which the eight percent was applied, resulted in rental increases of 400%-1000% for some leaseholders.

Such a dramatic change in the lease rents brought cries of outrage from the leaseholders, who had analyzed the viability of the state's leasing program more in terms of its past history than in terms of the leases themselves. Despite the hardships and problems that the sudden increase in rents caused, ADL maintained that the division was without legal authority to offer relief since the higher rents were just the result of the ADL staff applying the actual terms of the leases and obeying state statutes.

Many of the problems cited by the leaseholders were valid. Thinking that the state would continue as it had in the past, many leaseholders found the investments they made in buying old leases effectively wiped out, since the bonus represented the discounted cash value of below market rents. Other leaseholders had not developed their properties to the extent necessary to pay the new rents in anticipation of further subsidies by the state. Leaseholders found that financial institutions were leery of bankrolling projects on state leased lands in light of the large increases, which the bankers perceived as an indication of instability in the management of the leasing program. This "hands off" policy by bankers made it doubly hard for leaseholders to develop their properties to higher uses which would support the new rents.

As a result of these developments, the leaseholders began petitioning the ADL and the legislature for some relief. For several months ADL did not deal with the problem, which only added to the outrage felt by the leaseholders. The angier they got, the more extreme their "reform" proposals became, including some suggestions for blanket level term rents for all existing leaseholders and other major changes in leaseholder's obligations.

In the fall of 1976, the Hammond administration responded to the growing crisis by appointing an Ad Hoc task force for land disposition practices. Appointed to this committe were various representatives from the business, banking and professional communities, a representative from the leaseholders, and a public interest representative (myself). Meeting weekly for five months, the Ad Hoc committee heard countless hours of testimony from the leaseholders, the ADL staff, professional appraisers and the public at large. At this time, the committee is nearing its goal of recommending to the legislature and the Division of Lands proposed changes in its leasing policies, with provisions for relief for existing leaseholders.

In doing its work, the Ad Hoc committee sought to:

1) recommend leasing terms as closely parallel to the private leasing market as possible;

2) determine if the state had a moral responsibility to negotiate new terms for old leaseholders; and

3) to protect the interests of the state's taxpayers.

On the first goal, the committe reviewed the terms of approximately fifteen private leases currently let in the Anchorage area. The committee analyzed not only the rent readjustment periods and percentages, but also looked at right of way and condemnation clauses, subordination and security assignment and many other elements of both private and state lease instruments.

In the process of its work, it became apparent to the committee that different types of land use dictated different lease terms. For example, where it is common for a commercial or industrial lease to provide for five year reappraisal periods, residential properties are often leased for flat terms. Also, recreational and agricultural properties seemed to call for different treatment than commercial/industrial properties. To deal with this problem, the committe recommends four different lease forms, one for each different use. Since the commercial/industrial leases seemed to present the most pressing problems, the committee addressed that area first, and has finalized a recommended leasing form.

The major changes which the committee recommends, insofar as your legislation is concerned, is the establishment of fixed rent readjustment percentages in the lease document, and limitations on rent increases. Looking at the first issue, the committe found that leases in the private market use the figure of eight percent for properties leased recently. But the leases

do not say eight percent today and whatever the going rate is in five years. In other words, although eight may be the market today, and ten could be the market tomorrow, the lease would still charge only eight percent for the entire term of the lease. This is an important difference from the state lease form, which allows the percentage to be varied at each reappraisal period. The committee could find no examples of leases in the private market which used the states system. Hence, the committee recommendation is for a fixed percent in the lease document itself.

Based upon the committee's analysis of actual lease documents in the private market, and in particular recent leases which may be more sophisticated, the committee recommends limitations on rent increases of 100 percent every five years. This, the committee felt, was the closest parallel to the terms of private market leases, and, in the opinion of the committee, provided enough certainty to allow for longterm financing on leasehold properties.

The committee also decided that the state did have a moral obligation to offer the existing leaseholders the opportunity to exchange existing leases for the new one. The committee felt this could be justified on the basis of the hardships created for leaseholders by the vague and outdated language of the old forms (unchanged since statehood), and by virture of the benefits which would accrue to the state through renewed confidence in the state's leasing program.

To put it simply, the committee will recommend this: All current leaseholders will be give a period of time to swap their old leases for the new ones. As a condition of the exchange, the leaseholders would have their properties reappraised, except for leases which had been reappraised within the past two years. The percentage of the appraised value of the lease would be the percent which represented the market at the time the lease was entered into. For example, a lease entered into around 1965 might have the rent readjusted to six percent of the appraised value of the land, while a lease entered into in 1974 might use the eight percent figure. Whichever figure was used would then be written into the lease. As mentioned earlier, leases would have ceilings on prospective rent increases of no more than 100 percent every five years during the lease term.

A suggestion was made to go back to the original beginning of each lease and apply the limits forward to current rents, but this was rejected by the committee. First of all, there was no evidence that current appraised values would create unfair hardships, if the fixed percentages and ceilings were applied as explained above. Second, and more important, the committee found persuasive evidence that it would be grossly unfair to the state's taxpayers if the ceilings were applied retroactively.

AGO 885657

The reason such a practice would be unfair is the state'e historic failure to charge realistic rents on its lands, leasing decisions which placed land on the market before it had more than a nominal value, and mismanagement by previous administrations. For example, in 1974, the same month as the capitol move vote, ADL leased 2400 acres o.. land five miles from the proposed site of the new capitol, at rents established in a 1971 appraisal. The old appraisal had set the rents at $6-$14 per year, per acre. To retroactively apply rent ceilings would be tantamount to just giving away 2400 acres of University trust lands. This is only one of many examples of gross mismanagement by the state which has provided windfalls in the past. To retroactively apply the rent ceilings would be to indiscriminately give away legitimate state interests in thousands of acres of university, school and mental health trust lands.

SB 159 is similiar to the Ad Hoc Committee's approach in many ways, but there are a few areas that should be examined. The bill establishes a figure of 8 per cent, as the maxium rate for readjusting rents. First of all, as previously stated, the terms of commerical and industrial leases might be substantially different than the terms of residential or agricultural leases. But more important, by using a figure which represents todays market of 8 per cent for most commercial leases, the act would lock the state into an inflexable system. 8 per cent may be alright today, but it might be considerably out of touch with market values in the future. Likewise, allthough 8 per cent may represent a market figure for Anchorage or Fairbanks, or other areas of long term sustained growth, the state might be better off using a figure of 10 to 14 per cent for leases in some area undergoing a short term boom. The higher rate might represent the market in an area that offers a short term economic life for the lease. Under the Committee's proposal, the rate would be fixed in the lease form itself, at the rate the market would bear at the time the lease was entered into.

The simplist approach would be to exaimine the recomendations of the Ad Hoc Committee, and if satisfactory, enact legislation which would permit ADL to offer an election to leaseholders, to enter into the new lease forms, similiar to the mechanism established in Sec. 4 of SB 159, except providing that all apprasials should be current within two years, and in the absence of a current appraisal, the election could be made at the next reappraisal period.

THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. SB 159
Title Leasing of State land other than for extraction of Natural resources
Requested by _____ Date _____

II. FISCAL DETAIL
Agency Affected Natural Resources
Program Category Affected NRMEC
Budget Request Unit(s) Affected Land and Water Management

EXPENDITURES (Thousands of Dollars)

	FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	-0-	-0-	-0-	-0-	-0-	

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

There would be no change in cost of administration due to this bill.

Revenues would be reduced substantially, especially trust fund revenues (see attached).

IV. DATE February 23, 1977 PREPARED BY Ted Smith
AGENCY Land and Water Management
PHONE 279-5577

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 10/76)

AGO 885659

LEASE METHOD COMPARISONS

	LEASE (1)	LEASE (2)	LEASE (3)	LEASE (4)
Rent Per Present Law and State Appraisal	(a) $5,691	$5,232	$1,300	$1,650
Rent Per Lessess Appraisal	(b) $4,552	$4,160	N/A	N/A
Rent Per Ad Hoc Committee	a or b	a or b	$1,300	$1,650
Rent Per S.B. 159	$ 930	$ 800	$ 120	$ 270
Lease Commencement	1961	1961	1969	1969
Lease Term	55 yrs.	55 yrs.	55 yrs.	55 yrs.
Location	Anchorage	Anchorage	Susitna Valley	Susitna Valley
Size	14,782 S.F.	18,012 S.F.	40 Ac.	80 Ac.

LEASE NO. 1

Term	(a) Rent By S.B. 159	(b) Economic Rent Per Lessee's Appraisal	(c) Rent Savings (Per Period)	(d) Economic Rent Per State's Appraisal	(e) Rent Savings (Per Period)
76-81	$ 930	$4,552	$18,110	$5,691	$23,805
81-86	930	4,552	18,110	5,691	23,805
86-91	1,395	4,552	15,785	5,691	21,480
91-96	2,092	4,552	12,300	5,691	17,995
96-2001	3,138	4,552	7,070	5,691	12,765

Assume: (1) Land value does not rise beyond present value
(2) Economic lease rate does not rise

Column:

(a) Annual rent for each year under S.B. 159
(b) Present economic rent as determined by lessees appraisers
(c) Period rent savings under S.B. 159 (difference between column (a) and column (b)).
(d) Present economic rent as determined by states appraiser
(e) Period rent savings under S.B. 159 (difference between column (a) and column (d)

LEASE NO. 3

Term	(a) Rent By S.B. 159	(b) Economic Rent Per State's Appraisal	(c) Rent Savings (Per Period)
76-81	$120	$1,300	$5,900
81-86	120	1,300	5,900
86-91	180	1,300	5,600
91-96	270	1,300	5,150
96-2001	405	1,300	4,475
2001-2006	607	1,300	3,465
2006-2011	911	1,300	1,945

Assume:

(1) Land value does not rise beyond present value
(2) Economic lease rate does not rise

Column:

(a) Annual rent for each year under S.B. 159
(b) Present economic rent as determined by states appraisal
(c) Period rent savings under S.B. 159

1). Assume property at initial value @ $1000

@ 8% rent for 1st 10 yrs = $80/yr or $800/ten

2) Assume the property has increased in value $ $1500

then @ 8% rent for next 5 yrs = 120/yr or $600/5

~~Could go~~ which is the maximum under this bill –

Id:

Bill assumes 50% increase in value each 5 yrs –

AGO 885663

Alaska Land Lines

STATE OF ALASKA - DEPARTMENT OF NATURAL RESOURCES
DIVISION OF LANDS - 344 6th Ave. ANCHORAGE

Volume II No. 4 April 1961

BR 29301

A MESSAGE FROM THE DIRECTOR:

This issue marks the first anniversary of the publication of the "Alaska Land Lines" as the official information channel of the Alaska Division of Lands. This has been a busy, full and eventful year for the Division. Since Statehood much of the groundwork of the State's resource management program has been laid which included the drafting and adoption of the following seven sets of regulations, with full participation by the public in many public hearings:

Classification
Tide and Submerged Lands
Homestead Entries
Sale of Lands
Leasing of Lands
Disposal of Timber and Materials
Mineral Leasing including Oil and Gas and Coal

During the first year the "Land Lines" has carried announcements of the first of the State tidelands patents issued to cities, the first clay sale, the right of way for the marine terminal at Nikishki Beach now carrying over 10,000 barrels of oil a day, the selection of many thousands of acres of potentially valuable land, the development of area-land-use plans, tidelands and uplands classifications, plans for broad land and resource disposal and management programs for the future.

Our purpose in initiating this publication in April of last year was set forth at that time and remains the same today: to keep the public fully informed of actions taken by the Division of Lands in the business of creating opportunities in Alaska through wise use of our land resources. We visualize the state land resources as being the foundation for economic development of Alaska and are anxious to keep the public posted as to our trusteeship of these resources. In so doing we invite as we did one year ago this month, and will continue to do, your questions, your comments, and, if our actions merit it, your criticism.

AGO 885664

ROSCOE E. BELL, Director
Division of Lands

INDUSTRIAL SUBDIVISION AUCTION SCHEDULED

The Division of Lands has set May 2, 1961 as the date for the public auction at which 72 lots in the Alaska Industrial Subdivision and the First Addition thereto will be put up for lease. The auction will take place at 1:30 p.m. at the office of the Division of Lands, 344 Sixth Avenue, Anchorage.

The property lies within the city limits of Anchorage, in the Merrill Field area, and is subject to applicable city ordinances and zoning restrictions. Specifically, the area is located between Third and Fifth Avenues, in Section 16 (school section), T13N, R3W, SM.

The State's appraisal of the fair market value of each lot will serve as the minimum acceptable bid for the annual rental on the same, and no bids will be accepted for less. The lots range in size from 11,652 sq. ft. to 77,683 sq. ft.; minimum annual rentals range from $174 to $1080. Leases on all lots, save 12, will be for 55 years; the 12 excepted are for a period not in excess of 10 years and shall be subject to a 90-day revokable clause.

The successful bidder shall deposit at the time of the award the sum of not less than 25% of the high bid, plus $20.00 to cover appraisal and advertising costs, in cash, and/or certified check, and/or cashier's check, and/or money order, or combination thereof.

Detailed information and plats covering the area are available at the Division office.

SURVEY CONTRACT LET

A contract was entered into with F. M. Lindsey of Anchorage to survey the proposed Cheri Lake Subdivision, which lies in Section 36, T18N, R3W, SM.

* * *

DISPOSAL OF TWO ANCHORAGE TRACTS CONSIDERED

Two tracts in the Anchorage area are presently under consideration for disposal by the Division. One 12 acre portion lies facing Turnagain Arm approximately four miles west of Seward Highway on Sand Lake Road, in Section 16, T12N, R4W, SM. The second is a 100 acre tract in Section 36, T13N, R4W, SM, and is legally described as the E½NE¼NE¼, the SW¼NE¼NE¼, the SE¼NE¼ and that portion of the SW¼NE¼ lying along the north side of International Airport road, east of the Alaska Railroad right-of-way. Anyone interested in developing these tracts, or who would like to comment on their disposal, or offer suggestions, should contact the Division. Further information will be furnished upon request.

* * *

FIRST COMPETITIVE TIDELAND LEASE LET

Mr. Donald King of Ketchikan was the successful bidder in the State's first competitive tideland lease sale. A 1.2 acre tract several miles outside of Ketchikan went for $150.00 minimum annual rental.

AGO 885.61

* * *

NOTICE: The Delta Junction maps mentioned on the front page of last month's issue of the Land Lines are being revised and will not be available for purchase until further notice.

* * *

DL-37
Revised July, 1960

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF LANDS
344 Sixth Avenue
Anchorage, Alaska

Lease No. ADL 03066

LEASE AGREEMENT

THIS INDENTURE made and entered into this 2nd day of May 19 61, by and between the STATE OF ALASKA, through the Director of the Division of Lands, with the consent and approval of the Commissioner of the Department of Natural Resources, acting for and on its behalf under and pursuant to Chapter 169, SLA 1959, as amended, and the regulations promulgated thereunder, as amended or hereafter amended, hereinafter referred to as the LESSOR; and James E. Rigsbee, Jr. of 2005 - 20th Avenue, Anchorage, Alaska, hereinafter referred to as the LESSEE:

WITNESSETH, that whereas the Lessor has classified the lands herein demised as: Commercial - Industrial lands on April 24, 19 61, pursuant to Chapter 169, SLA 1959, as amended; and

WHEREAS, the Lessor has caused the lands herein demised to be appraised and such appraisal was made and approved on or after February 23, 1961; and

WHEREAS, the Lessor has caused a notice of intent to lease the lands herein demised to be published as required by law or caused notices of intent to lease to be posted as required by law; and

WHEREAS, an auction of the within demised property was held at the time and place designated by notice and said sale was approved by the Director of the Division of Lands, Department of Natural Resources, State of Alaska:

NOW THEREFOR, the Lessor has agreed to let and does hereby let and demise to the Lessee, and the Lessee has agreed to take and does hereby take from the Lessor all that lot, piece, or parcel of land more particularly bounded and described, as follows: Lots One (1), and Two (2), Block Ten (10), First Addition to the Alaska Industrial Subdivision, within the Northeast Quarter of Section Sixteen, Township Thirteen North, Range Three West, Seward Meridian, containing 0.61 acres, more or less, according to the official plat thereof, on file and of record with the Recorder of Deeds, Anchorage Recording Precinct, Anchorage, Alaska.

TO HAVE AND TO HOLD the said demised premises for a term of fifty-five (55) years commencing on the 2nd day of May, 19 61 and ending at 12 o'clock midnight on the 1st day of May, 2016, unless sooner terminated as hereinafter provided.

The Lessee shall pay to the Lessor rental as follows: Equal quarterly payments, in advance, on or before the 2nd day of August, November, February and May of ev ry year during said term at the rate of Two Hundred and Fifty-five and NO/100---------- Dollars ($ 255.00-------) per quarter

AGO 885665

IN TREES, BRUSH MUSKEG

such payments to be subject to adjustment at each five year interval from the effective date hereof, if the lease term hereof exceeds five years, such adjustment to be based primarily upon a reappraised annual rental value of land in a state of improvement similar to that of the land described herein at the time this lease was entered into.

It is hereby mutually covenanted and agreed that this indenture is made upon the foregoing, and upon the following agreements, conditions, covenants, and terms, VIZ:

1. The word "Lessor" as and wherever used in the lease, shall be construed to include, and shall include, bind and inure to the benefit of, the State of Alaska, its successor and assigns, at any time during the term of this lease or any renewal thereof; and the word "Lessee" as and wherever used in this lease shall be construed to include and shall include and bind and inure to the benefit of the Lessee, his successors and assigns.

2. It shall be the responsibility of the Lessee to properly locate himself and his improvements within the confines of the property leased herein.

3. The Lessor, 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.

Provided, however, no rights shall be exercised by Alaska, its lessees, successors or assigns, until provision has been made by Alaska, its lessees, successors or assigns, to pay to the owner of the land, upon which the rights herein reserved to Alaska, its lessees, successors, or assigns are sought to be exercised, full payment for all damages sustained by said owner, by reason of entering upon said land; provided, that if said owner for any cause whatever refuses or neglects to settle said damages, Alaska, its lessees, successors or assigns or any applicant for a lease or contract from Alaska for the purpose of prospecting for valuable minerals, or option contract or lease for mining coal or lease for extracting petroleum or natural gas, shall have the right, after posting a surety bond with the Director in a company qualified to do business in Alaska or in a form as determined by the Director, after due notice and opportunity to

be heard, to be sufficient in amount and security to secure the said owner full payment for all such damages, to enter upon the land in the exercise of said reserved rights, and shall have the right to institute such legal proceedings in a court of competent jurisdiction wherein the land is situated, as may be necessary to determine the damages which the surface lessee of such lands may suffer.

4. The lands leased herein have been classified as shown on page 1 of this agreement and in accordance with the Classification Regulations, Title 11, Division 1, Chapter 1, Subchapter 1, and any use thereof which shall be in material conflict with said classification shall, if not remedied after due notice thereof has been served on the Lessee, constitute a breach of this lease and the Lessor may thereupon terminate same in accordance with provisions herein contained. The Lessor does not warrant that by such classification the land is ideally suited for the use authorized thereunder and the Lessor gives no guaranty, actual or implied, that the utilization under said classification will be profitable.

5. All coal, oil, gas and other minerals and all deposits of stone or gravel valuable for extraction and utilization and all materials subject to Title 11, Division 1, Chapters Four (4), Five (5), and Six (6), Alaska Administrative Code, as amended or as shall hereafter be amended are excepted from the operation of this lease. Viz: The Lessee shall not sell or remove for use elsewhere any timber, stone, gravel, peatmoss, or any other material valuable for building or commercial purposes; provided, however, that material required in the enjoyment of this lease may be used after a written permit therefor has been obtained from the Lessor.

6. The Lessor expressly reserves the right to grant easements or rights-of-way across the land herein leased if it is determined to be in the best interests of the State to do so; provided, however, that the Lessee shall be entitled to compensation for all improvements or crops which are damaged or destroyed as a direct result of such easement or right-of-way.

7. The Lessee shall not commit waste or injury upon the lands leased herein. Any violation of this agreement shall not only subject the offender to civil liability, but upon conviction thereof he may be fined in any sum not exceeding $1000.00.

8. If the lands leased herein are classified and leased as grazing or agricultural lands the Lessee shall not prevent or deny the lawful pursuit or the hunting of game or the taking of fish; provided, however, the Director, upon request in writing, may allow the lands leased herein, or portions thereof, to be posted to prohibit hunting and fishing when it appears necessary in order to properly protect the Lessee and his property.

9. Should the lands herein leased lie within the jurisdiction of any authorized building or zoning authority they shall be utilized in accordance with the rules and regulations promulgated by said authority.

10. The Lessee shall take all reasonable precaution to prevent, and take all reasonable action to suppress grass, brush and forest fires on the land herein leased.

11. The Lessee shall allow the Lessor, through its duly authorized representative, to enter upon the leased premises, at any reasonable time, for the purpose of an inspection thereof.

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12. When the Lessee shall use the lands leased herein to construct any form of hydraulic project or employ any equipment or engage in any activity which will use, divert, obstruct, pollute or change the natural flow or bed of any river, lake or stream or that will utilize any of the waters of the State or materials from any river, lake or stream beds, the Lessee shall, prior to the commencement of any such operations, procure the approval of the Commissioner of the Department of Fish and Game and the original or an image copy thereof shall be filed with the Lessor prior to the commencement of such activity.

13. The Lessee may assign the lands, or portion thereof, herein demised, provided, he first makes application to the Lessor for a permit and the Lessor, in his discretion, may issue such permit if he finds it to be in the best interest of Alaska. Upon an assignment being granted, the assignee thereunder shall become subject to and be governed by the provisions of this lease in the same manner as though he were the original Lessee.

14. This lease may not be modified orally or in any manner other than by an agreement in writing signed by all parties hereto or their respective successors in interest.

15. This lease may be cancelled, in whole or in part, under one or more of the following conditions:

A. While in good standing by the mutual agreement in writing of the respective parties hereto.

B. If issued in error with respect to material facts.

C. If the leased premises are being used for an unlawful purpose.

16. If the Lessee should default in the performance of any of the terms, covenants or stipulations herein contained or of the regulations promulgated pursuant to Chapter 169, SLA 1959, as amended, and said default shall not be remedied within 30 days after written notice of such default has been served upon the Lessee by the Lessor, the Lessee shall be subjected to such legal action as the Lessor shall deem appropriate, including but not limited to, the forfeiture of this lease. No improvements may be removed by the Lessee during any period in which this lease is in default. In the event that this lease shall be terminated because of a breach of any of the terms, covenants, or stipulations contained herein the annual rental payment last made by the Lessee shall be retained by the Lessor as liquidated damages.

17. Any notice or demand which must be given or made by the parties hereto shall be in writing, and shall be complete by sending such notice or demand by United States registered or certified mail to the address shown on the lease or to such other address as the parties shall designate in writing from time to time. A copy of any such notice shall be forwarded by the Lessor to any lienholder who has properly recorded his interest in the lease with the Lessor.

18. In the event that this lease is terminated as herein provided, by summary proceedings or otherwise, or in the event that the demised lands, or any part thereof, should be abandoned by the Lessee during the term of this lease, the Lessor may immediately, or at any time thereafter, enter or re-enter and take possession of said lands, or any part thereof, and without liability for any damage therefor, remove all

persons and property therefrom either by summary proceedings or by a suit[illegible] or proceeding at law; provided, however, that the words "entry" and "re-enter" as used herein, are not restricted to their technical legal meaning. Any entry or re-entry, possession, repossession, dispossess, and/or disposseession by the Lessor, [illegible] or taken by summary proceedings, or otherwise, shall not be deemed to resolve, relieve, release or discharge the Lessee, either in whole or in part, from any liability hereunder.

19. Upon the expiration, termination or cancellation of this lease unless the same has been renewed, the Lessee shall quietly and peaceably leave, surrender and yield up unto the Lessor all of the leased land on the last day of the term of the lease.

20. The receipt of rent by the Lessor, with or without knowledge of any breach of the lease by the Lessee or of any default on the part of the Lessee in observance or performance of any of the conditions or covenants of this lease, shall not be deemed to be a waiver of any provision of this lease. No failure on the part of the Lessor to enforce any covenant or provision herein contained, nor any waiver of any right hereunder by the Lessor, unless in writing, shall discharge or invalidate such terms or covenants or affect the right of the Lessor to enforce the same in the event of any subsequent breach or default. The receipt by the Lessor of rent or any other sum of money or the termination, in any manner, of the term herein demised, or after giving by the Lessor of any notice hereunder to effect such termination, shall not reinstate, continue, or extend the resultant term herein demised, or destroy, or in any manner impair the efficacy of any such notice of termination as may have been given hereunder by the Lessor to the Lessee prior to the receipt of any such sum of money or other consideration, unless expressed in writing and signed by the Lessor.

21. The Lessee, after written request therefor has been filed with the Lessor and prior to the commencement of such work, may receive credit toward current or future rentals, provided the contemplated work, to be accomplished on or off the area leased herein, in the discretion of the Lessor, shall result in increased valuation to other State owned lands. The Lessor's authorization to proceed with the work for rental credit, if granted, shall stipulate the type and extent of improvements, standards of construction to be followed and the maximum allowable rental credit therefor; provided further that no credit shall inure to the Lessee until the work has been completed and the Lessor has accepted same as being in accordance with the provisions of said authorization.

22. If, upon the expiration of this lease, the Lessee desires a renewal lease on the lands, properties or interests covered herein, he shall within 30 days before the expiration of this lease, make application to the Lessor on Form 81-74 entitled "Application for Renewal of Lease," in which he must certify under oath as to the character and value of all the improvements existing upon the land, the purpose for which he desires a renewal and such other information as the Director of the Division of Lands may require. Along with the application the applicant shall deposit a sum equal to 50% of the current annual rental, as provided herein, but in no event to exceed the sum of $50.00. The Lessor may thereupon lease said lands in compliance with the provisions herein enumerated, Chapter 169, SLA 1959, as amended, and the rules and regulations promulgated thereunder, allowing a preference right to the Lessee herein.

23. The Lessee hereunder shall, upon the expiration of this lease or the prior termination thereof by mutual agreement, be allowed a preference right to re-lease the lands leased herein if all other pertinent factors are substantially equivalent. If the renewal lease does not require public auction the preference rightholder shall exercise his right within 30 days before the expiration of this lease by written notice directed

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to the Lessor and failure to do so shall result in forfeiture and cancellation of such preference right. In the event that the lease is subject to and is offered at public auction the preference rightholder shall, at the close of bidding, indicate his desire to exercise his preference right and meet the highest bid. In the event the preference right holder does not elect to exercise his right and fails to do so at this time his preference right shall be forfeited and forever lost.

24. Improvements owned by a Lessee on Alaska lands shall within 60 days after the termination of the lease be removed by him; provided, such removal will not cause injury or damage to the lands; and further provided, that the Lessor may extend the time for removing such improvements in cases where hardship is proven. The retiring Lessee or permittee may, with the consent of the Lessor, sell his improvements to the succeeding lessee or permittee.

If any improvements and/or chattels having an appraised value in excess of $10,000.00 as determined by the Lessor are not removed within the time allowed, such improvements and/or chattels shall upon due notice to the Lessee, be sold at public sale under the direction of the Lessor. The proceeds of sale shall inure to the Lessee who placed such improvements and/or chattels on the lands after paying to Alaska all rents due and owing and expenses incurred in making such sale. In case there are no other bidders at any such sales, the Lessor is authorized to bid, in the name of Alaska, on such improvements and/or chattels. The bid money shall be taken from the fund to which said lands belong and the said fund shall receive all monies or other value subsequently derived from the sale or leasing of such improvements and/or chattels. Alaska shall acquire all the rights, both legal and equitable, that any other purchaser could acquire by reason of said purchase.

If any improvements and/or chattels having an appraised value of $10,000.00 or less, as determined by the Lessor, are not removed within the time allowed, such improvements and/or chattels shall revert to and absolute title shall vest in Alaska.

25. If any clause, or provision, herein contained, shall be adjudged to be invalid, it shall not affect the validity of any other clause or provision, of this lease or constitute any cause of action in favor of either party as against the other.

It is agreed that the covenants, terms and agreements herein contained shall be binding upon the successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the State of Alaska, Lessor, acting through the Director of the Division of Lands of the Department of Natural Resources, lawfully authorized thereunto, has caused these presents to be executed at Anchorage, Alaska, in duplicate and the said Lessee has hereunto set his hand, agreeing to keep, observe and perform the rules and regulations promulgated under Chapter 169, SLA 1959, as amended, the terms, conditions and provisions herein contained, on the Lessee's part to be kept, observed and performed; and executed said instrument, in duplicate on the 15th day of May, 19 61.

APPROVED:

Director, Division of Lands

COMMISSIONER, DEPARTMENT OF NATURAL RESOURCES
STATE OF ALASKA

LESSEE(S)

AGO 885671

UNITED STATES OF AMERICA)
State of Alaska) ss.

THIS IS TO CERTIFY that on the 23rd day of June, 19 61, before me, the undersigned Notary Public, personally appeared [illegible] known to me and known by me to be the Director of the Division of Lands of the Department of Natural Resources, and acknowledged to me that he executed the foregoing lease for and on behalf of said State, freely and voluntarily and for the use and purposes therein set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

Notary Public in and for the State of Alaska
My commission expires March 27 1965

UNITED STATES OF AMERICA)
State of Alaska) ss.

THIS IS TO CERTIFY that on this 23rd day of June, 19 61, before me, the undersigned, a Notary Public in and for Alaska duly commissioned and sworn, personally appeared James E. Fitzgerald Jr. to me personally known to be one of the persons described in and who executed the within instrument and the said James E. Fitzgerald Jr. acknowledged to me that he signed and executed the same freely and voluntarily for the uses and purposes therein mentioned.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

Notary Public in and for the State of Alaska
My commission expires March 27, 1965

Approved as to Form:

Ralph E. Moody
Attorney General

By George H Sturges

Title Assistant Attorney General

AGO 885672

Sen. Clay Pollard

RENT ADJUSTMENTS FOR

STATE LEASED LANDS

1975

ADL No.	Old Rental	New Rental	Per cent Increase (Decrease)
01227	112.50	1,575.00	1,300
51107	110.00	1,100.00	900
02534	608.50	25,500.00	4,090
01302	75.00	248.00	230
25068	100.00	380.00	280
38895	180.00	1,404.00	680
25305	1,425.00	2,886.00	103
52370	6,075.00	13,032.00	115
00273	6,780.00	14,400.00	112
52167	970.00	9,600.00	890
52209	195.00	2,040.00	946
52168	830.00	8,500.00	924
50738	1,400.00	5,280.00	277
41569	175.00	350.00	100
49723	150.00	605.00	303
41417	225.00	670.00	198
50598	50.00	630.00	1,160
00775	1,000.00	24,960.00	2,396
17103	1,000.00	18,800.00	1,780
51238	145.00	1,680.00	1,059
51515	160.00	1,680.00	950
51621	180.00	1,410.00	683
51428	220.00	1,770.00	704
50938	190.00	1,940.00	921
51065	210.00	1,700.00	709
46473	60.00	260.00	333
46474	60.00	260.00	333
52177	150.00	180.00	20
52182	250.00	285.00	14
21477	45.00	265.00	489
52185	300.00	320.00	7
51147	40.00	170.00	325
52422	40.00	170.00	325
52421	40.00	170.00	325
52187	75.00	175.00	133
52186	75.00	175.00	133
52190	40.00	100.00	150
52191	100.00	680.00	580
52714	40.00	165.00	312
52208	80.00	100.00	25

ADL No.	Old Rental	New Rental	Per Cent Increase (Decrease)
52205	50.00	220.00	340
52194	150.00	100.00	(50)
52192	250.00	235.00	(6)
50172	155.00	755.00	387
50688	75.00	175.00	133
52199	55.00	135.00	145
26653	235.00	470.00	100
26654	235.00	470.00	100
52179	235.00	470.00	100
52180	260.00	545.00	110
52170	325.00	575.00	77
52365	125.00	245.00	96
52430	125.00	245.00	96
52213	315.00	325.00	3
52171	150.00	295.00	97
52172	150.00	295.00	97
52213	315.00	295.00	(7)
52174	160.00	325.00	103
50587	150.00	385.00	157
50588	145.00	325.00	124
52703	40.00	100.00	150
45008	65.00	2,400.00	3,592
40014	220.00	2,430.00	1,005
45586	80.00	150.00	88
45585	460.00	675.00	47
26511	1,000.00	5,525.00	452
46628	140.00	1,680.00	1,100
46620	160.00	1,620.00	912
46383	110.00	600.00	445
49755	125.00	390.00	212
25956	125.00	390.00	212
47414	150.00	834.00	456
49060	250.00	702.00	181
22348	260.00	390.00	50
24099	215.00	420.00	95
36015	180.00	250.00	39
21928	1,260.00	10,920.00	767
01380	1,190.00	3,552.00	198
51395	820.00	3,054.00	272
00889	2,600.00	5,976.00	130
01308	7,170.00	10,014.00	40
49685	145.00	1,260.00	769
49795	175.00	1,500.00	757
25988	240.00	275.00	15
26269	165.00	190.00	15

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RENT ADJUSTMENTS FOR

STATE LEASED LANDS

1976

ADL No.	Old Rental	New Rental	Per Cent Increase (Decrease)
71326		3,500.00	
22526	360.00	2,150.00	497
22525	175.00	3,360.00	1,820
22654	95.00	1,192.00	1,155
50603	85.00	840.00	888
22652	155.00	4,350.00	2,706
44351	100.00	438.00	338
44350	80.00	744.00	830
46483	110.00	750.00	582
02380	880.00	6,540.00	643
39877	1,000.00	2,280.00	128
30489	240.00	2,350.00	879
26632	1,835.00	6,900.00	276
32919	1,020.00	2,760.00	171
31328	120.00	840.00	600
54326	175.00	910.00	420
54331	165.00	910.00	452
54365	205.00	950.00	363
54332	225.00	950.00	322
40806	355.00	690.00	94
54345	200.00	550.00	175
54346	175.00	550.00	214
54347	210.00	550.00	162
54349	190.00	575.00	203
54333	260.00	665.00	156
54334	250.00	690.00	176
54335	105.00	605.00	476
54336	120.00	605.00	404
54337	110.00	625.00	468
54338	145.00	690.00	376
54339	210.00	690.00	228
54340	200.00	690.00	245
54341	280.00	690.00	146
54342	270.00	690.00	156
32128	115.00	690.00	500
32065	115.00	665.00	478
54344	160.00	635.00	297
54351	430.00	870.00	102
03045	3,985.00	32,800.00	723
03042	2,925.00	22,360.00	664

Rent Adjustments for
State Leased Lands, 1976

ADL No.	Old Rental	New Rental	Per Cent Increase
03050	990.00	7,400.00	647
53595	1,775.00	11,760.00	562
03041	1,340.00	9,360.00	598
03049	700.00	6,160.00	780
51395	820.00	6,160.00	651
03040	820.00	6,160.00	651
03059	820.00	6,160.00	651
03070	950.00	7,000.00	637
47382	680.00	5,000.00	635
03058	1,010.00	6,680.00	561
03067	700.00	5,160.00	637
03044	8,495.00	75,440.00	788
47378	1,720.00	14,400.00	737
47598	3,260.00	27,360.00	739
03051	1,410.00	13,680.00	870
03062	1,635.00	13,680.00	737
03071	1,410.00	13,680.00	870
03069	800.00	6,000.00	650
03066	1,745.00	11,600.00	565
03063	945.00	6,600.00	598
03048	945.00	6,600.00	598
03068	945.00	6,600.00	598
03073	945.00	6,600.00	598
03039	1,425.00	10,280.00	621
03052	2,490.00	18,400.00	639
03102	3,955.00	28,640.00	624
03064	1,305.00	9,120.00	599
03104	930.00	6,520.00	601
49686	1,835.00	13,240.00	622
57237	1,835.00	13,240.00	622
03065	3,670.00	26,480.00	622
03057	3,665.00	27,040.00	638
03053	890.00	6,640.00	646
30746	915.00	6,880.00	652
03043	910.00	6,680.00	634
47983	135.00	1,300.00	863
49430	175.00	1,400.00	700
47809	175.00	1,450.00	728
49172	120.00	1,300.00	983
46499	270.00	1,650.00	511
53444	140.00	1,200.00	757

Rent Adjustments for
State Leased Lands, 1976

ADL No.	Old Rental	New Rental	Per Cent Increase (Decrease)
27894	135.00	155.00	15
27948	200.00	230.00	15
50816	40.00	180.00	350
50669	40.00	120.00	200
47776	42.00	100.00	138
36315	40.00	100.00	150
47777	40.00	100.00	150
47778	40.00	100.00	150
35199	40.00	100.00	150
47775	42.00	100.00	138
41843	40.00	100.00	150
46609	72.00	100.00	39
47151	90.00	100.00	11
00037	700.00	5,250.00	650

AGO 885677

MEMORANDUM State of Alaska

TO: The Honorable Guy R. Martin
Commissioner
Department of Natural Resources

DATE: June 4, 1976

FILE NO:

TELEPHONE NO:

FROM: AVRUM M. GROSS
ATTORNEY GENERAL

SUBJECT: Waiver of reappraisal and adjustment of rent

BY: Rodger W. Pegues
Assistant Attorney General

This is further to the opinion of June 1, 1976, by Assistant Attorney General Reeves on this subject. In that opinion, we advised that you were without authority under then existing law to grant a blanket waiver of all rental increases exceeding 100 percent which was requested by the Alaska Land & Lease Owner's Association. Since that opinion was written, new legislation was adopted which further restricts your authority to grant a waiver. FCCS SCSHB 139.

AS 38.05.105 has been amended to delete the language authorizing a waiver or extension of reappraisal "when development of the land is not otherwise possible due to special conditions" and to provide for an extension or waiver "only if residential development actually occurs, and only if it is necessary for obtaining primary long-term financing." As a result of the amendment, the Director of the Division of Lands may now grant a waiver or lengthen

ALASKA LAND & LEASE OWNERS ASSOCIATION

The Chairperson's Report Number 3 To The Members

During the past several months, the Alaska Division of Lands has reappraised a number of leases, In many cases the lease fees have been set at such ridiculously high rates, that many Alaskans will have to give up their leases and, insome instances, sacrifice substantial investments that have been made in improvements. For example, some of the leased property reappraised in 1975 has had the lease payments increased over one thousand percent (Yes, 1,000 %). We, of course, have no way of knowing what future increases other leasees may face, when additional leases reach the five year mark. Sufficient to say, only a few Alaska State leases have incorporated a clause limiting the increase in lease payments every five years.

Because of this situation, and other inequities, which effect investments in land purchased or leased from the State of Alaska, the A.L.A.L.O.A. was formed to present the case of all Alaska land and lease owners to the Alaska Division of Lands, the Commissioner of Natural Resources, the Governor and the Legislature.

Our specific goals are to:

1. Obtain from the Division of Lands, a moratorium and subsequent reduction in payments on those leaseholdings which have been reappraised and now require increased payments far beyond the fair value of the lease.

2. Establish a vehicle whereby the Alaska Land & Lease Owners Association is able to assist the State of Alaska in obtaining better use of State of Alaska lands for all Alaskans.

3. Encourage distribution of Alaska State Lands thru a planned program of sale and lease of additional parcels of land, to both present and future Alaskans.

4. Bring about more equitable formulas for taxation of Alaska fee lands and leaseholds.

5. Encourage the multiple use of Alaska land.

We are pleased to report that some progress has been made toward our first goal, the reevaluation of leasehold land programs and that our fourth goal, equitable formulas for taxation of Alaska fee lands and leaseholds has met with limited sucess.

No matter what, we do need your continued support if we are to form chapters is other parts of Alaska and if we are to continue these programs. We urge you to make ever effort to seek new members, who will join their voice to ours in helping to make Alaska a fine home for all of us to enjoy.

Ask one friend today. If you have not already done so, fill out the attached membership form, enclose your check for $25.00 and pass to our treasurer. Please join now.

Respectfully,

William M. Mack

William M. Mack, Chairperson

WMM:ih

STAR ROUTE BOX 2751 · WASILLA, ALASKA 99687 · TELEPHONE: 907-892-6250 · TELEX: 090-26-132

AGO 885679

formula for re-appraisal appears to be the problem.

George Atkinson
Anchorage Industrial Park
owner Alaska Industrial Park
~~Dexter~~ leased to $45,000
3800 per year raised 1st 5 years
re-appraisal and 2nd for life of lease
Agricultural leases
Recreational leases
has ~~Dexter~~ lands
utility lands
state should stop selling lands &
they should transit received title to
from the Feder-

defeating
frustrated
education
attrition
balanced view

Can actual lands
be sold

272-5955

Malone 7

Jane Cole
John Miller
2 lots
Rocky Lake
$600 lease

AGO 885680

APPEAL + PROTEST

Submitted By — KIESBEE

Copy to —

July 15, 1976

Michael C.T. Smith, Director
Division of Lands
323 East 4th Avenue
Anchorage, AK 99501

APPEAL

Subject: Land Lease 2-003066-5- Lots 1 and 2, Block 10, First Addition to Alaska Industrial Subdivision, Anchorage, Alaska

Dear Sir:

I am herewith appealing the exorbitant increase of my leasehold rent--from $1,745.00 per year to $11,600.00! I am protesting this for the following reasons:-

1. I think it is not legal and very unfair. Our lease clearly states (and this was the impression given us at time of the auction sale) that the method of reappraising will be by comparison to other rental values of lands in a like area and same state of improvement ours was at the time of original lease, quote--

"such payments to be subject to adjustment at each five year interval from the effective date hereof, if the lease term hereof exceeds five years, such adjustment to be based primarily upon a reappraised annual rental value of land in a state of improvement similar to that of the land described herein at the time this lease was entered into."

When these lands were auctioned and leased, they were in heavy growth of birch, spruce and underbrush and had to be cleared, leveled, top soil removed and gravel backfilled, roads and utilities brought in. We even had our own culverts put in along the roadway.

Are you using such a raw land basis for your appraisal?

2. It appears to be a premeditated "land grab" to take the leases back, since you advise in advance that the Division of Lands is "prohibited" from granting any extensions (which has been done in the past) and you are raising the rent too high for people to stay in business.

If it takes an "Act of God" to extend the rent due, I should think you would need God's permission for you to make such an unreal raise in rent.

3. Improved land with utilities in, ready for a building, rents for 10¢ per sq. ft. per year, in a good location. You are trying to charge us 43¢ after we have made all the improvements. $1000.00 a month would rent a great shop, including utilities.. how can we pay that for land only?

4. I consulted your appraiser and I feel that the formula used and the "few" overpriced properties he used as a comparison (already developed) are neither fair nor legal. I also was advised by him that the "state was in the leasing business to make as much profit as possible...and if we made any profit it would have to from buildings, etc.," or words to that effect. At the rent you are trying to charge...who could build or make any profit. People can only pay so much, there is a limit...and at this rent rate, the land is not even salvable. No one in his right mind would purchase our lease knowing he could never have a deeded title and looking forward to a future

AGO 885681 +

RON BUN

4. (continued)

of insecurity and continual five year hassles.

We understood at the time of purchase that we could not own these lands, that during the lifetime of the lease we would probably pay as much rent as it would cost to purchase it. However, we did not expect to have to pay the purchase price over and over during the term of our lease.

Most of the leaseholders are long time Alaskan citizens who love their state and have helped pioneer and settle and develop this country.

We have worked hard for the good of Alaska and at the time we leased these lands, we had good faith that our Government would keep it's word--and could be trusted--but things like this are beginning to make us doubtful. We are becoming very discouraged as well as older--trying to keep up with all the zoning ordinances, rules and restrictions and cost of living, etc., and especiallythis new method of interpreting the land laws to suit your favor.

Greediness is driving away some of the big investors, are you now starting on the small ones?

Please reconsider these appraisals and get back to a feasible and workable plan as before. Thank you.

Sincerely,

James E. Rigsbee Jr

James E. Rigsbee, Jr.
2015 Heraulis Drive
Anchorage, AK. 99503

cc: Hon. Jay S. Hammond, Governor
Office of the Governor, Juneau
Commissioner, Department of Natural Resources
Leaseholders Association

ALASKA LAND AND LEASE OWNERS ASSOCIATION

A number of Alaskans have leased State land from the Alaska Division of Lands. Most leases were written for a period of fifty-five years with renewal rights, subject to appropriate application and approval.

During the past year, ADL has reviewed the rental rates on a number of lots and parcels and, in some cases, has raised them over 1000%, others at a lesser rate but most increases seem excessive. Much of this land is in the Matanuska-Susitna Borough.

We recognize that there has been a great deal of speculation on fee simple land in the Borough because of the publicity attendant to the Capitol relocation. These speculative values, however, do not necessarily apply to lease lands. However, we have been informed by ADL personnel that the new rental rates have been arrived at by appraising a limited number of fee simple parcels (not leased parcels), estimating their sales value and taking 6% of that figure as the annual rent.

A.S. 38.05.105 says "rental payment is subject to adjustment at five-year intervals and charges or adjustments shall be based primarily on a reappraised annual rental value" i.e. not sale value.

There is no direct relation between the value of a title and the value of a lease, particularly when most rural land in Alaska is undeveloped. The situation differs with apartment rentals whereby when the supply is short and demand great rental value increases, but even there Governor Hammond has set up rent control boards to limit rent increases to a reasonable amount.

There are many reasons why a State leasehold cannot be equated to a title. Let me cite a few:

1. Bank financing is virtually unobtainable on lease land because of the uncertainties associated with the "five year adjustment" clause.

2. Renewal of lease is not assured at end of a 55 year period.

3. Use of land may be limited at ADL's discretion.

4. No equity accruses in the property.

In regard to point No. 4, most rural fee simple property could be purchased in a ten to twenty year period outright at or close to many of the new State rental fees and, most important, a great deal of rural land is available for fee simple purchase from individual owners, reducing the relative value of State Lease Lands, in view of the long term unpredictability of State Lease payment levels and absence of any accrued equity after long term lease.

We feel that ADL's method for adjusting lease rentals is not a fair or a correct procedure and, in fact, is in violation of State Statutes. We also feel that the procedures being used, particularly the "five year clause" deny much needed tax revenue to local governments. Putting the problem on a personal basis, many Alaskans will be forced to terminate their State leases, give up hopes for planned development, and sacrifice valuable improvements if the present policies and reappraisal methods are not improved.

We recommend several possible solutions:

1. Lands could be sold outright rather than leased.

2. Lands could be leased with an option to purchase at end of five years.

3. Rental could be:

   a. Fixed for the fifty-five year lease period with leasee charged a percentage of any gain realized.

   b. Increased annually at a fixed rate such as five percent.

   c. Increased at the inflation or recession rate reflected in the Consumer Price Index.

The members of theAlaska Land and Lease Owners Association will appreciate and remember any positive action that can be taken on behalf of all State Land Leaseholders.

We appreciate you already having taken time to hear our views.

Respectfully Submitted:

William M. Mack
Chairman, Board of Directors
Alaska Land and Lease Owners Association

Box 740
Wasilla, Alaska 99687
June 19, 1976

Governor Jay Hammond
Juneau, Alaska 99801

Dear Governor Hammond:

I request an appointment with you to discuss my state land lease #ADL 003045-3.

At auction in 1956 I bid and won this lease - land which was previously rented for 50 cents an acre - for about $1000.00 per year, with full realization that every five years it would be reappraised, as the lease states, "to represent the true appraised rental value of the leased area". It has increased steadily; I paid $3,985.00 for the year 1975.

About a week ago I received notice that the new lease appraisal will be $32,800.00 per year - approximately 850 per cent increase!

I am one of many. A group of leaseholders made an appointment to discuss this with Mr. Smith, the Director of the Lands Division, who would not see us when we arrived. We did talk to Mr. Bruce Ackerson, the chief appraiser, who was very nice, and sympathetic, and unable to help. He explained that due to someones interpretation of the law, "fair price" has been changed to "fair market price", thereby increasing the annual rental 2% in addition to a new market appraisal value.

In viewing the States side, persistance of this rental policy will undoubtedly make re-leasing, or leasing other lands, very negligable. Also, the banks will be extremely hesitant to loan monies for building - either or both of which will incur less in taxes. I notice the Mat-Su Borough land auction June 26th states the lease amount is not subject to reappraisal. The highest bid establishes the annual rental for the 55 year term of the lease.

In viewing my side, I am an Alaskan since 1941, with continual residency except my years in service from 1943 to 1946. The last twenty years I've worked to improve this leased land and now have several substantial buildings, tho I owe the bank over $400,000.00. I have worked and provided for increases, such as the Municipality of Anchorage tax bill which is $20,000.00 this year; a modest raise that is tolerable. But who of us can afford 850 per cent increases?

I feel quite sure it is not the intent of the State to bankrupt me, my leaseholding neighbors, or my tenants. I approached several of my tenants who were outraged at the amount I will have to increase their rents. With only one exception, they informed

AGO 885685

me they will have to move on or go out of business.

Nor do I believe it is the intent of the state to show bias; though we are aware that just down the street Bob Penney and the Teamsters Union are leaseing larger tracts of land, of greater value, for pennies, where we are paying dollars. Bob Penneys averages about $750.00 per acre and the Teamsters have a better deal yet. Mine averages over $19,000.00 per acre. How can this be justified?

We who have paid many times the original value, held it, and improved it should be entitled to justice. Instead, for our efforts, the State has seen fit to impose a highly inflationary and unfair rental fee, thereby not only taking back the property but also our entire investment in the land and all it's improvements, and leaving leaseholders of twenty plus years with insurmountable debts.

It seems impossible that twenty years of work and investment can be wiped out with one stroke of a pen - in this country! Particularly so, when it does not appear beneficial to the State Government, or her resident Alaskans. This may create more damage than the 1964 earthquake, to those of us involved in both.

Please consider my request for an appointment to discuss this with you. I will be anxiously awaiting your reply.

Sincerely,

Joe Wilhour
Box 740
Wasilla, Alaska 99687

Phone 376-5601

STATE OF ALASKA

JAY S. HAMMOND, Governor

DEPARTMENT OF NATURAL RESOURCES

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

June 25, 1976

Leon T. Brown
01 Mountain View Dr.
Anchorage, Alaska 99504

2 Lots
@ 80'x150',
@ 80'x200'

Re: ADL 03039 - Lease of Alaska Land

Dear Mr. Brown;

ADL
-
35625

After consideration of the late mailing of your quarterly billing notice for the period 05-02-76 to 08-02-76 , your new rental rate of 2570.00 per quarter, based upon our reappraisal, will become effective for the quarter beginning 08-02-76 . As you have made payment at the previous rate no further payment will be due until 08-02-76 .

Your next quarterly courtesy billing, which will reflect our reappraisal, will be mailed to you in the usual manner.

No employee or official of the Division of Lands has the authority to grant an extension of time for the making of payments. The Commissioner of the Department of Natural Resources is the only person with authority to do so, and his power is limited to cases where "war, riots, or acts of God" have prevented timely payment.

Very truly yours,

MICHAEL C. T. SMITH, DIRECTOR

Roberta Staats

By Roberta Staats, Accounting Technician I

AGO 88568T +

Dear Editor:

I am one of the "fortunate" State land leaseholders who just received an 850 per cent increase in rent. Possibly this is a little inflationary as I now have to increase my tenants rent and they in turn will have to raise their prices to the consumer. But that's the way it goes.

I wonder if this will require an impact statement? My lease land could be more valuable than Prudhoe Bay, tho I hope the State doesn't spend the money before I pay it.

The Legislators should get busy and think what they are going to do with all this money. The State should be able to borrow enough to get them through the budget crises for the last session, and they can increase their employees so Alaska will have no more unemployment. Or they can move the Capital. Possibly they can lease all of Alaska and buy the United States - and then lease it! Or we could pay off the National Debt as a friendly gesture. Or maybe the State should change their lease policy?

Joe Wilhour

Can these figures be correct? My calculator ran out of spots.

If the rent policy remains the present rate, I will pay the State a lease rental over the next 40 years $32,800.00 X 40 = $1,312,000.00.

However, if the State decides to raise the rent the same 850 per cent every five year period, I will pay the following:

At the end of the first five years	$ 164,000.00
At the end of the second five years	1,394,000.00
At the end of the third five years	11,849,000.00
At the end of the fourth five years	100,716,500.00
At the end of the fifth five years	856,090,250.00
At the end of the sixth five years	7,276,767,125.00
At the end of the seventh five years	61,852,520,560.00
At the end of the eighth five years	525,746,424,760.00
Which totals:	$595,845,926,195.00

Five hundred ninety-five billion, eight hundred forty-five million, nine hundred twenty-six thousand, one hundred ninety-five dollars! For less than two acres!

The state owns 640 acres - Section 16 - in the Anchorage area. If all of this were leased at the same rate the State could collect One hundred ninety trillion, six hundred forty-four billion, five hundred thirty-five million, six hundred thirty-nine thousand, forty Dollars. ($190,644,535,639,040.00) And just from Section 16 for the next 40 years.

Anyone want to buy a State lease? Improvements extra, of course.

Joe Wilhour
Box 740 Wasilla, Alaska 99687

AGO 885688

3350 COMMERCIAL DRIVE ANCHORAGE

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF LANDS
323 EAST 4TH AVENUE
ANCHORAGE, ALASKA 99501

DATE	TYPE	SERIAL NUMBER ADL	CUSTOMER ID	SUBJECT	FUND
06-09-76	2	03065-7	16247	LAND LEASE	076

PAYOR

ANCHORAGE CAMPER CENTER
~~CLARK-RICHARDS ETUS~~
2756 COMMERCIAL DRIVE
ANCHORAGE AK 99501

PURPOSE	FROM PERIOD	TO	AMOUNT
QUARTERLY RENTAL AT NEW APPRAISAL	05-02-76	08-02-76	6,620.00

	DATE	RECEIPT AMOUNT		
RECEIVED BY_____			PAY THIS AMOUNT	6,620.00

REMARKS

MAIL OR DELIVER TO

RETURN THIS COPY WITH YOUR REMITTANCE

DIVISION OF LANDS
323 EAST 4TH AVENUE
ANCHORAGE, ALASKA 99501

MAKE REMITTANCE PAYABLE TO

DEPARTMENT OF REVENUE

DO NOT ACCEPT THIS COPY AS A RECEIPT
THIS IS A BILL OR NOTICE

CUSTOMER BILL

AGO 885689

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF LANDS
323 EAST 4TH AVENUE
ANCHORAGE, ALASKA 99501

DATE	TYPE	SERIAL NUMBER ADL	CUSTOMER ID	SUBJECT	NOTICE OR BILL NO.
06-30-76	2	003066-5	05458	LAND LEASE	790243

PAYOR

JAMES E RIGSBEE JR
2015 BOREALIS DR
ANCHORAGE AK 99503

xck 10034 by same

PURPOSE	PERIOD FROM	PERIOD TO	AMOUNT
QUARTERLY RENTAL	08-02-76	11-02-76	2,900.00

RECEIVED BY	DATE	RECEIPT AMOUNT		
jb	8/02/76	436.25		2,900.00

REMARKS

Pay with Protest Present Net New Increased Billing

RECEIPT

RECEIPT

3
2900
4
$11,600.00 Per year

$436.00 to
4
1744 year

35
4
140
24
16
10
7

Started at
22
235
4
1020

$1020 year

AGO 885690 +

1020
5
5000
8720
10000
20,720

3224
17
5
8720

MARSHALL K. CORYELL
ATTORNEY AT LAW
TRANSAMERICA TITLE BUILDING
705 WEST SIXTH AVENUE, SUITE 207
ANCHORAGE, ALASKA 99501
TELEPHONE (907) 272-7581

July 13, 1976

The Honorable Guy R. Martin
Commissioner
Department of Natural Resources
Pouch M
Juneau, Alaska 99811

Re: My Clients: Don H. Clark, Beth Clark, D. Craig Clark and Bonnie Clark
Subject Land Lease No. 022652-5
Customer I.D. No. 80759
Term of Lease: May 6, 1964 to May 5, 2019
Property Description: Unit L-12: Lots 1, 2, S 1/2 NE 1/4, SE 1/4 of Section 4, Township 24 North, Range 4 West, Seward Meridian, containing 320.37 acres. Subject to right of way reservation 60 feet in width as designated on the records of the Division of Lands, State of Alaska.

Dear Mr. Martin:

Mr. Craig Clark and I conferred with Mr. Bruce Atkinson, Chief Appraiser of Division of Lands a short time ago regarding the above-entitled lease and another lease also. I think a brief recitation of the background on this matter might be of assistance:

The lease was entered into on or about May 6, 1964, and the original lease provided that the annual lease rate would be $40.00 per annum. In or about 1969, the annual lease rate was re-appraised and raised to $155.00 per annum.

In 1976 the Division re-appraised the land and reassessed the annual lease rental to the sum of $4350.00 per year. The first quarterly installment of $1,087.50 due on or about May 10, 1976 has been paid.

The original agreement classified the lands as agricultural on page 1 of the agreement. Also, on page 1 of the lease agreement there is the wording "note special provision on page eight of this agreement." Page 8 of the lease agreement provides as follows:

> "It is understood and agreed between the parties that the rental of $40.00 per annum shall remain in effect from the date of this agreement, May 6, 1964, for a five (5) year period, ending May 6, 1969. On or before the 6th day of May, 1969, the Lessor shall re-appraise the lands herein leased and the annual rental, for the balance of the lease term, shall then be adjusted to reflect an annual rental predicated upon the then current fair market value of the lands herein leased.
>
> It is the intent of this provision to permit the Lessee during the five year period of reduced rental, to clear the land and accomplish such other prerequisites as shall be necessary to bring the land, or portions thereof, into cultivation and thereby make it economically feasible for the Lessee to pay a rental predicated upon the market value of agricultural lands in the area."

This land was classified as University lands from the beginning and the billings for several number of years, specifically indicated that the lands were University lands and classified as agricultural. 11 AAC 58.120 entitled School Lands and University Lands provides as follows:

> "(a) School lands or university lands when classified as agricultural lands may be leased at a rental of not less than $0.10 per acre for the first five years of a lease awarded to the highest bidder at public auction for a term of 55 years or less. At the expiration of the first five year term the lands so leased shall be appraised and the lessee shall pay the then current fair market rental on the leased land for the balance of the term. Such appraisal shall not contemplate the improvements made by the lessee during the five-year period.
>
> (b) Th purpose of this provision is to make it economically feasible for a lessee to develop agricultural lands that are not available for purchase. (Eff 7/1/60, Reg. 1;am 8/15/64, Reg. 17;am 3/20/66, Reg. 22)"

It appears that upon our review of the lease agreement and the supporting regulation, that it was the intent of the Division to comply with this regulation when they granted the original lease. Since one re-appraisal period has gone by, it is Mr. and Mrs. Clark's position that no further re-appraisals are in order or in fact allowed by law. For these reasons Mr. and Mrs. Clark will not make any additional payments as our interpretation of the lease and regulation does not require them to make such increased payments. In fact, the lease payments are prepaid thru mid-year of 1982.

Based upon the foregoing we would request being advised of the position of the Department of Natural Resources in order that we might take appropriate legal action, if necessary. We will appreciate your response.

Sincerely,

Marshall K. Coryell
Attorney for Don H. Clark
and Beth P. Clark and D. Craig Clark and Bonnie Clark

cc: Mr. & Mrs. Don H. Clark
2731 Valley Forge Circle
Anchorage, Alaska 99502

Mr. Bruce Atkinson
Chief Appraiser
Division of Lands
Anchorage, Alaska 99501

Mr. James N. Reeves
Assistant Attorney General
360 "K" Street
Anchorage, Alaska 99501

United States Government?" First, let us realize that corporations are currently only paying about 15% of all tax revenues and the National Dividend Plan sponsors feel this program would be instituted over a five year period with phasing at 20% increase per year. The results would boost personal income tax sufficiently to cover the loss of the corporate taxes. Of course, this is based upon no increase in federal spending.

What are the benefits? According to N D P , the following would occur: 1) A big chunk of extra purchasing power for every family in the nation. 2) The yearly dividends spent for goods and services, or plunked into savings accounts, should increase production, create jobs, and give workers a direct stake in the success of American business; all business, not simply a workers own employer.

3) Thousands of families receiving $1500 or more a year would be lifted above the poverty line. Welfare rolls would be reduced, thereby lessening government spending at a federal, state, and local levels. The goal of the program is to reduce government spending. Individuals needing special help still would get it according to N P D sponsors, but need would diminish as family incomes grew through the Dividend Plan.

Home builders, would this type of program be worthwhile to sponsor? In my opinion, it would be a step in the right direction because it would encourage support of the free enterprise system throughout this country. Further, it would give each and every registered voter in the United States additional tax-free disposable income with which to invest, or increase his standard of living. More particularly it would aid in getting welfare reciprients off the rolls. Could we, as an organization, not support such a program? It seems to me that this is an adequate challenge to change our tax structures.

ANOTHER WAY, LEASED LAND

by William Schlegel, Broker

For several years, Anchorage has experienced a large annual increase in housing costs. While a good portion of these costs have come from inflation in the labor field and in material cost, the largest single contribution has been the increases in the cost of land and its development.

In the last five years the land cost has increased about 20% per year. In 1970, good builder lots retailed for $10,000. Today, the same quality lot, if you can find it, goes for $20,000 to $22,000. The land developer who converts raw land into usable city size lots (ie 9000 ft2) invests approximately $13,500 to provide water, sewer, paving and fire hydrant to each lot. These costs do not include such niceties as street lighting, electricity or telephone service.

The obvious solution to these spiraling costs is to reduce the building size and or reduce the lot size to obtain more density. As an alternate innovative, realtor-builder teams have been endeavoring to provide better living and cost control by more imaginative use of the land through town house and condominium developments under the Municipality planned unit development.

A third attraction on reducing sales price has been the leased land concept that was pioneered in Hawaii

(continued from Page 4)

which has proven to be so useful there. Probably the most successful project of this type has been James Wong's 144 unit Mt. Vernon Commons Condominium project in Anchorage. Mt. Vernon Commons combined imaginative land use, the saving in construction inherent in condominium common wall construction concepts, and the reduction in land cost through leasing and the "near fee ownership" created by this 75 year lease.

The cost advantages of leased land are that you substantially reduce your monthly payment yet you enjoy the same basic land use that you would experience if you own the land outright (ie in fee simple). In most aspects a 75 year lease is tandamont to fee ownership because you control the land for over two generations. When you remember that our country is only 200 years old, 75 years represents over a third of the lifetime of our country.

When an owner buys a home, you pay for it out of his home loan at current market rate. If you have a 9½% loan, and your lot costs you $20,000, you would pay $168.00 per month. If you leased the same property at the typical basic 8% lease, your monthly cost would be $133.00, a $35.00 per month saving. In addition to this, your purchase price should be reduced by $20,000 thereby reducing your down payment by $2,000.00. Many times these costs reductions make the difference in qualifying for a loan.

As the buying public becomes more knowledgeable about leasing concepts , we can expect to see more sophisticated uses of leasing. For the first time we now see the leased land concepts used on single family. One builder offering this type of purchase option is Foremost Homes. Their Crestwood project offers 1¼ acre heavily treed estate sized tracts off Birch Road. Because of the tract size, all homes are hidden from each other and offer an unusual park-like setting for rural living within fifteen minutes from town and with a substantial reduction in purchase price.

Buyers; you owe it to yourself to become familiar with the lease concept because of the financial benefits of such purchases.

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COMPLETE LOAN SERVICE

- CONVENTIONAL
- CONSTRUCTION

Assembly modifies petition ordinance

An ordinance outlining the ground rules for initiative and referendum petitions has been amended and approved by the Anchorage Assembly.

The ordinance sets down the acceptable procedure for the petitions which are the first step for citizen repeal or enactment of ordinances.

UNDER THE REVISED ordinance, individuals have 90 days from the date when the petition was first circulated to procure the number of signatures needed. Under the municipal charter, a petition must be signed by at least 10 per cent of the number of voters casting ballots at the last regular mayoral election.

Some individuals have been vocal in their criticism of the new time limit, claiming it makes petition requirements more difficult to meet, potentially limiting citizen participation.

However at Tuesday's assembly meeting, municipal clerk Mary Coffey noted that the ordinance does not set a time limit on starting a petition, technically allowing individuals to repeatedly attempt to gather the necessary signatures within any given 90-day time frame.

"I think 90 days is a happy medium," Coffey said. "If the referendum is not valid, there is no time limit on starting another petition for a referendum."

ASSEMBLYMAN Ben Marsh agreed, saying, "It seems that only 30 per cent of voters go to the polls. If you can't get those 10 per cent in 90 days, then it's not a very good petition."

Another amendment to the referendum procedure removes the assembly's jurisdiction over whether a petition is acceptable. Under the original ordinance, individuals could appeal to the assembly if the municipal clerk rejected their petition.

However the assembly Tuesday amended that provision to send the appeal directly to the superior court.

ASSEMBLY PRESIDENT Dave Rose introduced the amendment, saying petitions — which were probably started out of dissatisfaction with some assembly action — should be kept clear of the political process.

The other major amendment in the ordinance removed the requirement that petitions embrace "only a single comprehensive subject."

Although Coffey told the assembly the passage was intended to encourage conciseness in petitions, assembly member Tony Knowles questioned how a subject could be both singular and comprehensive.

"Would that we could by ordinance give the entire community clarity by virtue of ordinance," he said. "I would endorse it wholeheartedly."

Irate leaseholders will get to appeal

Mountain View leaseholders who are upset by substantial rent increases will have a chance to appeal at a hearing probably in mid-October, Mike Smith, director of the State Division of Lands, said Tuesday.

The Lands Division will send its standard warning letters soon to some 30 leaseholders on industrial tracts in Mountain View who paid their rent last month at old rates in protest of the increases.

THE WARNING LETTERS also notify leaseholders of the right to appeal, and Smith said a hearing will be set up after responses from the warning letters indicate how many people intend to appeal.

Leaseholders in the Alaska Industrial Subdivision, a state lease area between Commercial Drive and Mountain View Drive, were met with rental increases of 800 per cent and more when the state reappraised the tracts and sent out bills due in early August.

The leases are for 55 years, and the state reappraises them every five years. This year, rent on those leases up for reappraisal rose more dramatically than ever before.

Juneau sawmill proposed

JUNEAU (AP) — A new sawmill with a projected cost of $20 million has been proposed for a 60-acre site on the Gastineau Channel here.

The two-plant mill planned by Alaska Timber Corp. of Klawock would represent an initial investment of nearly $14 million. Alaska Timber has established the Alaska-Juneau Forest Products, Inc., to build and operate the proposed mill.

ED HAD, president of the southeastern firm, said Friday the first plant will mill rough timber and tips for export to Japan. The second mill, equipped with planers and

Kenai Native Association
3rd Annual Stockholders Meeting
ANCHORAGE

AGO 885695

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

Sen. Kay Poland

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

State land hearing

September 10, 1976

The Honorable Jalmar M. Kerttula
Box Z
Palmer, Alaska 99645

Dear Senator Kerttula:

Attached please find a draft letter to Commissioner Martin which we have prepared for your signature.

We hope this covers the subject matter adequately. However, should you wish to be more detailed and explicit regarding the surface leasing regulations, or if you want to have the matter handled differently, please advise us.

We are also enclosing certain back-up data and working notes which we utilized to come to grips with the sometimes conflicting and/or confusing regulations. We thought they might be helpful to you.

If there is anything further we can do, please let us know.

Sincerely,

Elke Kallab

Elke Kallab
Research Analyst

EK:jm
Enclosures

AGO 885696

DRAFT: Elke Kallab
9/10/76

Dear Commissioner Martin:

While investigating protests of leaseholders regarding recent rent increases, it has come to my attention that the regulations governing surface leasing policy of the state are frequently not only confusing and outdated, but also contradictory and inconsistent.

As chairman of the Administrative Regulation Review Committee I am writing to you to determine what the Department of Natural Resources plans to do to revise its regulations to bring them into compliance with existing statutory authorities and to standardize them so they are consistent and can be more readily understood.

Following is a listing of some of the areas which appear to be in need of attention, particularly as they apply to surface leasing of state lands.

1. The variety of expressions and phrases used throughout Chapter 53 to establish the rental price of state leased lands is, to say the least, confusing and open to erroneous interpretation. Here is a sampling:

   - fair market value
   - appraised price determined by the division

- current fair market rental
- appraised value
- approved appraised annual rental
- change in value
- (Re)Appraisal annual rental value

Only fair market value is defined. It is not surprising that leaseholders should be in disagreement with the Division of Lands over what certain wording means. There is no reason why the language cannot be uniform and consistent throughout, just as there is no reason why significant and special words or phrases cannot be defined in order to prevent misunderstandings and arguments over what means what.

2. Related to the above are the differences of definitions for various classified lands. For instance, definitions of grazing, material, mineral, private recreation, public recreation and timber lands in Chapter 52 are not the same as in Chapter 58. Why should the same lands be defined differently in different chapters?

Along the same lines, classified lands available for leasing, such as industrial, utility, and watershed lands, are not even defined in Chapter 58, although Chapter 52 states that they may be leased "in accordance with regulations issued as Chapter 58..."

3. Another deficiency which applies to several regulations is that the authorities cited are general instead of specific. Sec. 44.62.040(b) states that "...citation of specific statutory sections being implemented, interpreted or made clear, shall follow the text of each regulation submitted..."

By not referring to the specific statutory authority it is most difficult to determine where the specific authority for the regulations derives from.

An excellent example of the above problem can be found in 11 AAC 58.520 which cites as authorities:

38.05.020 - authorities and duties of the commissioner of the Department of Natural Resources.
38.05.035 - authorities and duties of the director of the Division of Lands
38.05.075 - leasing procedure

However, the above regulation deals with the periodic rental adjustment of leased lands for which a specific statutory authority exists, namely 38.05.105-periodic rental adjustments.

Regulation 11 AAC 58.370 is another example where the specific authority should be cited. (AS 38.05.135)

I strongly urge that the applicable specific statutory author-

ities be cited with each regulation, along with the general authorities provided for in Sec. 44.62.040(b).

4. It seems to me that regulation 11 AAC 58.120 clearly needs to be revised. As the regulation presently reads, four leaseholders who show lease agreements with special provisions regarding the times their leases can be reappraised have a quite reasonable case against the Division of Lands. Since there is no specific statutory authority for regulation 11 AAC 58.120, it appears that at the time the four leases were issued the intent of the Department of Natural Resources (Division of Lands) was to grant these leaseholders special privileges. Otherwise, why write a separate regulation to make it possible? If the provision in the regulation is illegal as has been ruled by the attorney general's office, it should be revised at the earliest opportunity.

The above examples are but a few of the areas which appear to be in need of attention. I suspect that revisions and up-dating for all of Title 11 is in order.

I would appreciate being advised as soon as possible how soon and how extensively you intend to pursue the matter.

Sincerely,

Jay Kerttula

Surface Leasing Regulation

11 AAC 58

(The intent of the surface leasing regulation is "to insure the equitable leasing of AK land in a manner that will encourage development for its highest and best use".)

Regulation 11 AAC 58.040 (b) - Preference Right Grazing Lease and Forest Service Permittee Lease - states that "the director shall offer the land for leasing to the permittee for not less than its fair market value . . ."

Regulation 11 AAC 58.660 (b) - Preference Rights - talks about how land under preference rights is to be leased "at an appraised price determined by the division".

Regulation 11 AAC 58.660 (c) (3) - Preference Rights -states that lands (leased under preference rights for the unexpired term of the lease) is to be leased "at an annual rental to be predicated on the fair market value of (said) lands". This is on lands which have been classified agricultural.

Regulation 11 AAC 58.120 - School Lands & University Lands - refers to "current fair market rental . ."

Regulation 11 AAC 58.370 - Public and Charitable Use -states that state lands may be leased "for less than appraised value" as determined by director and approved by commissioner to any state, federal or political subdivisions, or public service or function providing agency (utility); also charitable and non-profit organizations--all organizations exempt from federal income tax.

The director may decide, at his discretion, the annual rent considering the financial resources of the applicant for the lease, but such rental may be "no less than one percent of fair market value" on lands primarily acquired for development, or "no less than 5% of the fair market value on school, university, mental health or acquired lands".

Regulation 11 AAC 58.390 - Appraisal - states that no lands shall be leased or renewed unless the land has been "appraised" within 90 days prior to date fixed for leasing. If lands have been offered at public leasing but were not leased, then the land will be available by negotiation "at no less than the approved appraised annual rental". "No reappraisal

is required unless the Director believes a "change in value" of the lands has occurred".

Regulation 11 AAC 58.[illegible] - Annual Rental - states that "annual minimum rentals shall be computed from the approved appraised market value".

Regulation 11 AAC 58.[illegible] Adjustment of Rental - states that "all leases shall stipulate that the annual rental payment, (which is pegged to the approved appraised market value) shall be subject to adjustment by the director at 5 year intervals and any changes or adjustments shall be based primarily upon the reappraised annual rental value."

When reappraising the annual rental value, the director shall take into consideration the following factors:

- Value of comparable lands in the same or similar areas, exclusive of improvements provided by lessee.

The commissioner may waive rental adjustments or lengthen reappraisal periods when lessee (who is improving the leased property) can show he needs this "special treatment" to obtain financing or loan insurance for development of the leased land.

Regulation 11 AAC 58.740 - Rights-of-Way - states that damages sustained by the lessee as a result of the state granting a right-of-way across the leased land "shall be determined by fair market value".

AGO 885703

Definitions

	11 AAC 52.220	11 AAC 58.910
Agricultural Lands	Those lands which, because of location, adjacent development, physical and climatic features, are or may be made suitable for the production of agricultural crops.	Those lands which, because of location, adjacent development, physical and climatic features, are or may be made suitable for the production of agricultural crops.
Commercial Lands	Those lands which, because of location, physical features or adjacent developments, may best be utilized for non-industrial business purposes.	Those lands which, because of location, physical features or adjacent developments may best be utilized for non-industrial business purposes.
* Grazing Lands	Those lands which have the physical and climatic features that make them primarily useful for the pasturing of domestic livestock.	Those lands which in their natural state have the climatic features that make them primarily useful for the pasturing of domestic livestock. (Forage crops allowed for lessee's own use only - 11 AAC 58.030).
Industrial Lands	Those lands which, because of location, physical features, or adjacent developments, may be best utilized for industrial purposes.	None
* Material Lands	Those lands that are chiefly valuable for materials, including, but not limited, to the common varieties of sand, gravel, stone, pumice, pumicite, cinders and clay and where the removal of the material would seriously interfere with the surface utilization.	Those lands that are chiefly valuable for materials, including, but not limited to, the common varieties of the following: sand, gravel, stone, pumice, pumicite, cinders and clay. (May be leased for purpose other than removal of materials, so long as it is consistent with primary classification - 11 AAC 58.050).
* Mineral Lands	Those lands that are chiefly valuable for minerals, including, but not limited to coal, phosphate, oil shale, sodium, sulphur and potash and where the removal of the material would seriously interfere with surface utilization.	Those lands that are chiefly valuable for minerals, including, but not limited to coal, phosphate, oil shale, sodium sulphur, potassium, wherever it appears probable that the surface use for the extraction of such minerals would preclude other utilization.
* Private Recreation Lands	Those lands which, because of location, physical features or adjacent developments, are chiefly	Those lands which, because of [illegible] physical features or adjacent [illegible], are

	11 AAC 52.220	11 AAC 58.910
	valuable as outdoor rural areas and may best be utilized by private non-commercial development.	chiefly valuable as outdoor recreational areas and may best be utilized by private non-commercial development. (One residence per lot leased - 11 AAC 58.070).
* Public Recreation Lands	Those lands which, because of location, physical features or adjacent development, may best be utilized by the public for, but not limited to, natural and developed recreational and historical areas.	Those lands which, because of location, physical features or adjacent development, may best be utilized by the public for, but not limited to, parks, scenic overlooks, campgrounds, historical sites, and fishing-hunting access sites. (May be leased for other purposes than recreation so long as it is consistent with primary classification - 11 AAC 58.110).
Residential Lands	Those lands which, because of location, physical features or adjacent development, may best be utilized for single or multiple unit dwellings.	Those lands which, because of location, physical features or adjacent development, may best be utilized for single or multiple unit dwellings.
* Timber lands	Those lands which, because of physical, climatic and vegetative conditions, are presently or potentially chiefly valuable for the production of timber and other forest products.	Those lands which are primarily useful for production of forest products or watershed protection.
Utility Lands	Those lands which, because of size of tracts, physical features, adjacent developments or location, may be suitable for a variety of uses or which do not lend themselves to classification under the other designations herein contained.	None
Watershed Lands	A drainage area which may best be utilized as a public water source.	None

* Inconsistency between various chapters.

AGO 885705

	11 AAC 56.610(5)	11 AAC 52.220(5) & 11 AAC 58.910(5)
* Classification	The systematic designation of lands according to their highest and best use.	The designation of lands according to their apparent best use.

Fair Market Value — Means the highest price, estimated in terms of money, which the property would bring if exposed for sale for a reasonable time in the open market, with a seller, willing but not forced to sell, and a buyer, willing but not forced to buy, both being fully informed of all the purposes for which the property is best adapted or could be used. (11 AAC 58.910(11))

* Inconsistency between various chapters.

THE FOLLOWING DOCUMENT(S) MAY NOT FILM LEGIBLY BECAUSE OF POOR QUALITY OF THE ORIGINAL.

11 AAC 58.510. LEASE UTILIZATION. Leased lands shall be utilized for purposes within the approved use and land classification. Utilization or development for other than the allowed uses shall constitute a violation of the lease. A development plan may be required on all leases including 640 acres or more. Failure to make substantial use of the land, consistent with the development plan, within five years, shall, in the director's discretion, constitute grounds for cancellation. (Eff. 7/1/60, Reg. 1; am 8/15/64, Reg. 17; am 3/22/66, Reg. 22)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.075

11 AAC 58.520. ADJUSTMENT OF RENTAL. All leases shall stipulate that the annual rental payment shall be subject to adjustment by the director at five-year intervals and any changes or adjustments shall be based primarily upon the reappraised annual rental value. The director shall take into consideration the following factors in reappraising the annual rental value: the value of comparable lands in the same or similar area exclusive of buildings, structures, appurtenances, equipment, land fill, clearing, leveling or roads owned by the lessee. The commissioner may waive one or more of the periodic rental adjustments or lengthen the reappraisal period, when a lessee who has acquired a tract of land for multiple unit housing, commercial, or industrial development can demonstrate to the satisfaction of the commissioner that such action is essential in order to obtain the primary long term financing or loan insurance required for development of the leased land. In order to qualify, applicants must furnish written evidence that, in requiring a waiver of rental adjustment, the lending or insuring agency is applying a generally applicable rule. Waivers shall remain in effect only during the term of the loan but shall not exceed 40 years. (Eff. 7/1/60, Reg. 1; am 8/15/64, Reg. 17; am 3/20/66, Reg. 22)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.075

Specific authority → 105

11 AAC 58.530. SUBLEASING. Any lessee may sublease the lands or portion thereof upon which he has a lease; provided, that before any lessee shall be permitted to sublease any of such lands or portion thereof, he shall make application to the director for a permit and the director may issue such permit if he finds it is in the best interest of Alaska. Leases may be subleased in their entirety. Subleasing shall be allowed of leases or portions thereof that have improvements thereof, where, in the director's opinion, the improvements are substantially the reason for the subleasing. Sublessees shall not be allowed to further sublease their interest. All subleases shall be in writing. (Eff. 7/1/60, Reg. 1; am 8/15/64, Reg. 17; am 3/20/66, Reg. 22)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.075

11 AAC 58.540. ASSIGNMENTS. Any lessee may assign the lands or portion thereof upon which he has a lease; provided, that before any lessee shall be permitted to assign any of such lands or portion thereof, he shall make application to the director for a permit and the director may issue such permit if he finds it in the best interest of Alaska. Applications for assignment shall be made in writing to the director on form DL-50 "Assignment of Lease" or an image copy thereof. The assignee shall be subject to and governed by the provisions of the lease and regulations applicable thereto. (Eff. 7/1/60, Reg. 1; am 8/15/64, Reg. 17; am 3/20/66, Reg. 22)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.075

11 AAC 58.550. MODIFICATION. A lease may not be modified orally or in any manner other than by an agreement in writing signed by all parties thereto or their respective successors in interest. (Eff. 7/1/60, Reg. 1; am 8/15/64, Reg. 17; am 3/20/66, Reg. 22)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.075

11 AAC 58.560. CANCELLATION - FORFEITURE. (a) Leases in good standing may be cancelled in whole or in part, at any time, upon mutual written agreement by the lessee and the director.

(b) A lease is subject to cancellation in whole or in part if improperly issued through

AGO 885706

...of this title and sec. 380 of this chapter, no land within or adjacent to an incorporated municipality or other organized community may be leased or a renewal lease issued until the proposed use of the land has been studied and reviewed jointly by the director and the local authorized planning agencies. (Eff. 7/1/60, Reg. 1; am 8/15/64, Reg. 17; am 3/20/66, Reg. 22)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.075

11 AAC 58.370. PUBLIC AND CHARITABLE USE. (a) The lease, sale or other disposal of any Alaska lands or resources may be made to any Alaska or federal agency or political subdivision, or the lease, sale or other disposal for less than the appraised value as may be 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 being given to the nature of the public services or functions rendered by the said agency, subdivision or utility making application therefor, and of the terms of the grant under which the land was acquired by Alaska.

(b) The director upon application filed by an applicant eligible under this subsection may, by negotiation and without public auction in the manner prescribed in this subsection, lease any lands of the state for a term not in excess of 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 this subsection, 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, as hereinafter described, has the financial ability to carry out the project. The commissioner may establish limitation on the acreage which may be leased pursuant to this subsection to any applicant.

(c) [illegible] applicants under this section shall be limited to nonprofit corporations, associations, clubs, or societies organized and operated exclusively for charitable, religious, scientific or educational purposes, or for the benefit of social welfare, if the project for which land is desired conforms to those [illegible] In every case the applicant shall submit evidence that it is exempt from payment of federal income tax.

(d) The director may lease such land to an eligible applicant at a reasonable annual rental, taking into consideration the purposes for which the lands are to be used and the financial resources of the applicant, but in no case may such rental be less than one percent of the fair market value on lands acquired primarily for development, or less than five percent of the fair market value on school, university, mental health or acquired lands. Renewal leases may be issued at the discretion of the director upon the expiration of any primary or renewal term. Each lease shall contain a provision for its termination as to all or part of the lands upon a finding by the director that the land or any part of it has not been used by the lessee for the purpose specified in the lease for a period of two years. No lease may be assigned or subleased, except with the consent of the director, and in any case may only be transferred to an applicant eligible under this subsection. A lessee may not change the use specified in the lease to another or additional use except with the consent of the director. If, at any time after the lands are leased, the lessee attempts to assign the lease or transfer control over these lands to another, or if the lands are devoted to a use other than that for which the lands were leased without the consent of the director, the lease automatically terminates. (Eff. 7/1/60, Reg. 1; am 8/15/64, Reg. 17; am 3/20/66, Reg. 22)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.075

Specific auth → 315

11 AAC 58.380. TERM OF LEASE. Lease may be issued for a period up to 55 years, if it appears to be in the best interests of Alaska and if approved by the commissioner; provided, however, if the intial annual rental of a lease does not exceed $1000, the approval of the commissioner is not required. (Eff. 7/1/60, Reg. 1; am 8/15/64, Reg. 17; am 3/20/66, Reg. 22)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.075

11 AAC 58.390. APPRAISAL. No [illegible] shall be leased or a renewal lease issued, except in the case of an oil and gas lease or a [illegible]

AGO 885707

(c) The lessee may elect to abandon his rights under the cancelled federal lease, as herein provided, and make application to the director for a state lease for a term up to 55 years. If the lessee should elect, he shall be afforded the same preference right as an expiring lessee as provided in sec. 660 of this chapter. (Eff. 7/1/60, Reg. 1; am 8/15/64, Reg. 17; am 3/20/66, Reg. 22)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.075

11 AAC 58.050. MATERIAL LANDS. Land classified as material lands shall be available for lease under this chapter. Material lands may be leased for purposes other than the removal of materials, provided such proposed use is consistent with the primary classification. (Eff. 6/30/60, Reg. 1; am 8/15/64, Reg. 17; am 3/22/69, Reg. 28)

Authority: AS 38.05.020
AS 38.05.070

11 AAC 58.060. MINERAL LANDS. Land classified as mineral lands shall be available for lease under this chapter. Mineral lands may be leased for purposes other than the removal of minerals, provided such proposed use is consistent with the primary classification. (Eff. 6/30/60, Reg. 1; am 8/15/64, Reg. 17; am 3/22/69, Reg. 28)

Authority: AS 38.05.020
AS 38.05.070

11 AAC 58.070. PUBLIC RECREATION LANDS. Land classified as public recreation land shall be available for lease. Public recreation lands may be leased for purposes other than public recreation, provided such proposed use is consistent with the primary classification. (Eff. 6/30/60, Reg. 1; am 8/15/64, Reg. 17; am 3/22/69, Reg. 28)

Authority: AS 38.05.020
AS 38.05.070

11 AAC 58.080. PRIVATE RECREATIONAL LANDS. Lands classified as private recreational land leased for that purpose shall be used for noncommercial recreational purposes. No more than one residence shall be constructed on each lease parcel. However, the director may, if [illegible] disapproval of the use of [illegible]

proper notice, cancel the existing lease. (Eff. 7/1/60, Reg. 1; am 8/15/64, Reg. 17; am 3/20/66, Reg. 22)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.075

11 AAC 58.090. RESIDENTIAL LANDS. Lands classified as residential lands and leased for that purpose shall be used for residential purposes only and in accordance with any applicable building and zoning codes. In the absence of such codes the lessee, shall, at least 30 calendar days prior to commencement of construction or utilization, file with the director a plot plan and a general description of contemplated construction. The director shall reject said plan within 30 calendar days after receipt thereof if he deems such utilization or construction contrary to the orderly development of the area or incompatible with existing development. (Eff. 7/1/60, Reg. 1; am 8/15/64, Reg. 17; am 3/20/66, Reg. 22)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.075

11 AAC 58.100. RESERVED USE LANDS. Reserved use lands are available for leasing and may be utilized under an Inter-agency Land Management Transfer. Lands transferred to a qualified agency may be utilized by sublease or any other manner, provided such utilization shall be consistent with the function assigned said agency and the provisions of the Land Act and these regulations unless otherwise exempted. (Eff. 6/30/60, Reg. 1; am 8/15/64, Reg. 17; am 3/22/69, Reg. 28)

Authority: AS 38.05.020
AS 38.05.070

11 AAC 58.110. TIMBER LANDS. Timber lands are available for lease. Timber lands may be leased for purposes other than the removal of timber, provided such proposed use is consistent with the primary classification. (Eff. 6/30/60, Reg. 1; am 8/15/64, Reg. 17; am 3/22/69, Reg. 28)

Authority: AS 38.05.020
AS 38.05.070

11 AAC 58.120. SCHOOL LANDS AND UNIVERSITY LANDS. [illegible]

GO 885708

lands may be leased at a rental of not less than $0.10 per acre for the first five years of a lease awarded to the highest bidder at public auction for a term of 55 years or less. At the expiration of the first five year term the lands so leased shall be appraised and the lessee shall pay the then current fair market rental on the leased land for the balance of the term. Such appraisal shall not contemplate the improvements made by the lessee during the five-year period.

(b) The purpose of this provision is to make it economically feasible for a lessee to develop agricultural lands that are not available for purchase. (Eff. 7/1/60, Reg. 1; am 8/15/64, Reg. 17; am 3/20/66, Reg. 22)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.075

11 AAC 58.130. RESOURCE MANAGEMENT LANDS. Resource management lands are available for lease under the terms and provisions of this chapter. (Eff. 3/22/69, Reg. 28)

Authority: AS 38.05.020
AS 38.05.300

11 AAC 58.140. OPEN-TO-ENTRY LANDS. Open-to-entry lands are available for lease subject to the provisions of AS 38.05.077. (Eff. 3/22/69, Reg. 28)

Authority: AS 38.05.020
AS 38.05.077

ARTICLE 2. PERMITS

Section:
200 Right-of-way or easement permit
210. Special land use permit
220. Roads to subdivided state lands

11 AAC 58.200. RIGHT-OF-WAY OR EASEMENT PERMIT. (a) The director, without the prior approval of the commissioner, may issue permits for roads, trails, ditches, pipelines, drill sites, log storage, telephone and transmission lines or similar uses or improvements. Application shall be made on Form DL-75 completed in full or an image copy thereof and include therewith the required plats and application fee.

(b) In the granting of any permit or easement on tidal or submerged lands, the applicant upon shall have the first preference to the use of such land which is contiguous and seaward of the upland property of such upland owner and which is needed by such upland owner for any of the purposes for which the permit or an easement may be granted.

(c) In the event the use authorized under said permit is a hydraulic project, or uses any equipment that will use, divert, obstruct, pollute or change the natural flow or bed of any river, lake or stream or that will utilize any of the waters of the state or materials from any river, lake or stream bed, the applicant shall notify the Commissioner of the Department of Fish and Game and shall obtain his approval prior to the commencement of operations.

(d) In the event the use authorized under said permit shall require navigable water or in any way interfere with navigation, permission of the Corps of Engineers, Department of Army, shall be obtained prior to use. (Eff. 7/1/60, Reg. 1; am 8/15/64, Reg. 17; am 3/20/66, Reg. 22)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.075

11 AAC 58.210. SPECIAL LAND USE PERMIT. The director, without prior approval of the commissioner, may issue special land use permits on such terms and conditions as he deems to be in the best interests of Alaska. (Eff. 7/1/60, Reg. 1; am 8/15/64, Reg. 17; am 3/20/66, Reg. 22)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.075

11 AAC 58.220. ROADS TO SUBDIVIDED STATE LANDS. (a) It is the purpose of this section to provide access to subdivided state lands which are programmed for surface disposal, and to provide access roads at the lowest possible cost.

(b) The director of the Division of Lands may contract with private persons for the construction of roads to and on subdivided state lands programmed for surface disposal which are not more than six miles from existing roads or highways.

AGO 885709

MEMORANDUM State of Alaska

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

DATE: October 3, 1975

FILE NO:

TELEPHONE NO:

FROM: James N. Reeves
Assistant Attorney General
ACO - Anchorage

SUBJECT: Harry Cummings Lease;
ADL 21928

This is a 1963 lease of University lands classified as agricultural. Two independent legal problems have recently arisen. Over the summer, I gave your office informal advice on these problems, but it was apparently lost and forgotten.

On September 9, Mr. Atkinson of your office delivered the entire file to me and requested that I handle the problems it raises, stating that he and Mr. Ballback regard them as "legal." Charles Tulin, attorney for Mr. Cummings, has since contacted me at the suggestion of your office regarding one of the two problems. I feel that it would be more appropriate for your office to handle this matter on the basis of the legal advice which follows, but I will do it myself if for some reason your office cannot.

This lease was sold at public auction in November, 1973. Cummings was the high bidder. Thereafter, between the signing of Mr. Cummings' conditional receipt and agreement to lease and the issuance of the lease agreement itself, certain "Special Provisions" were added to the lease agreement. These Special Provisions, apparently unique to this lease, give rise to two illegal questions.

1. Is the Division foreclosed by the Special Provisions from raising the rent based upon five year reappraisals?

The statute applicable when this lease was issued was the original unamended Section 105 of the Alaska Land Act, which then read:

> All leases shal[illegible] tipulate that the annual rental [illegible]ment shall be subject to adjustment a[illegible] five-year intervals and any charges fo[illegible] adjustments shall be based primarily on a reappraised annual rental value.

AGO 885710

The standard lease form used in this transaction is consistent with that statute; it provides that rental payments will be "subject to adjustment at each five-year interval from the effective date" of the lease.

One provision of the Special Provisions could be interpretted as conflicting with that foregoing provision:

> On or before the 19th of November 1968 [the five-year anniversary date] the Lessor shall re-appraise the lands herein leased and the annual rental for the balance of the lease term, shall then be adjusted to reflect an annual rental predicated upon six (6) percent of the then current fair market value of the lands herein leased.

The Special Provisions recite that this procedure was approved in 1963 by the President of the University and by the Commissioner of Natural Resources.

This is a fifty-five year lease with a statutory right of renewal. The original annual rent of the 720 acre parcel was set in 1963 at $300. In 1968, it was reappraised pursuant to the above provisions of the lease and rent was raised to $1,260 per year. In 1973, the Division notified the lessee that it intended to reappraise and raise the rent again. For some reason, reappraisal took 18 months; on May 22, 1975, the Division notified the lessee that the rent had been raised to $10,920 per year.

The lessee and his attorney naturally take the position that no readjustment of rent may occur for the balance of the term. They base this argument upon the Special Provision of the lease which seems to waive the State's power to make five-year rent readjustments. Over the life of the lease, this question is obviously one which could be worth hundreds of thousands of dollars to the parties.

It is my opinion that for at least two reasons the Division should continue to readjust rents at five-year intervals based upon up-dated reappraisals.

In the first place, the statute under which the land was leased required adjustments at five-year intervals. AS 38.05.105 (before 1964 amendment). Therefore, the Special Provision which purports to waive readjustment conflicts with the statute which required it. For that reason the Director acted in excess of statutory authority in attempting to waive

rental readjustment provision in 1963. Cummings' attorney has taken the position that AS 38.05.105 as it presently reads clearly authorizes such a waiver; what he overlooks or fails to acknowledge is that the waiver authority now found in the second sentence of that statute was not a part of the Land Act when this lease was issued, but was added by an amendment in 1964. See, Chapter 44 SLA 1964. Certainly the 1964 statute did not authorize a waiver in 1963.

There is another, independent reason why the Special Provision purporting to waive rental readjustment is unenforceable. As is required by statute, this lease was sold at public auction. But it appears that the lease was offered to the public at auction without the Special Provision which purports to waive the rental readjustment. Had the Division in 1963 possessed statutory authority to offer a long term lease with a waiver of rental readjustments, it would certainly have been obligated to do so at public auction. Indeed, had this lease been offered at public auction with the waiver, it would almost certainly have brought substantially larger bids. For this reason, it is my opinion that the waiver, even if otherwise authorized by law in 1963, could not legally be engrafted to the transaction by the Division after it had been offered at public auction without that "bonus." Mr. Cummings bid on what was offered, and that is all he got. 1/

2. Is the Special Provision purporting to authorize the commercial harvesting of timber from the leased land valid?

This 720 acre parcel apparently supports a commercially-valuable stand of timber. The Division has asked whether Cummings may be permitted to harvest that timber for economic gain rather than personal use. It is my opinion that he may not.

The Alaska Land Act authorizes the sale of timber on State lands either by sealed bids or public auction. AS 38.05.120. As I understand it, no timber sale has been held with respect to this property; instead, the State has leased the land.

1/ Because these two independent grounds so clearly establish the invalidity of the lease's purported waiver of rent readjustments, I have not addressed the question of whether, had AS 38.05.105 read in 1963 as it does today, the Director could have leased these university lands at public auction with the rental readjustment waiver without violating some fiduciary obligation imposed by 43 U.S.C. § 852 or other laws.

Again, the form lease agreement used by the Division in this case deals specifically with this question. Paragraph five of the lease states that "the lessee shall not sell or remove for use elsewhere any timber, . . . provided, however that material required in the enjoyment of this lease may be used after a written permit therefor has been obtained from the lessor." The lease also provides that "the lessee shall not commit waste or injury upon the lands leased herein." These standard lease provisions are consistent with regulations on the same subject. Although timber lands are leasable for other purposes (11 AAC 58.110), the timber itself may be sold for commercial purposes only under the timber sale regulations, 11 AAC 76.005-.385. Leasing of the surface with unrestricted rights to remove and sell the timber would circumvent the specific statutory limitations upon the sale of timber.

This implicit statutory prohibition of the sale or lease of land as a device to avoid the timber sale provisions of the Land Act is expressly reiterated in the Division's land leasing regulations. 11 AAC 54.110 permits the lease of timber lands, but only "for purposes other than the removal of timber." When timber lands or other lands chiefly valuable for the materials occurring thereon are leased, the lessee of the surface rights is not permitted to "sell or remove for use elsewhere any timber, . . . or any other material valuable for building or commercial purposes [except insofar as that material may be] required for the development of the leasehold." 11 AAC 58.730.

In accord with these statutes and regulations, the standard lease and sale contract forms used for more than a decade by the Division all contain provisions unequivocally prohibiting commercial harvesting of timber. The Cummings lease is a good example. It specifically states that

> the Lessee shall not sell or remove for use elsewhere any timber, . . . or any other material valuable for building or commercial purposes; provided, however, that material required in the enjoyment of this lease may be used after a written permit therefore has been obtained from the Lessor.

Likewise, the lease provides that "the lessee shall not commit waste or injury upon the lands leased herein."

The misunderstanding concerning Cummings' right to harvest timber, like that concerning rental readjustment, springs from the unique Special Provisions added to this lease following the auction. One of them reads as follows:

> Permission is hereby granted the Lessee to remove all or any portion of the timber now growing on the lands included in this lease agreement and to dispose of the timber so removed in such manner as he shall see fit.

For precisely the same reasons which compel the conclusion that the attempted waiver of the State's right to readjust rents is void, the Special Provision concerning timber harvest is void as well. The law applicable when the sale was held forbade the granting of rights to harvest timber for other than personal use as a part of a land lease. Furthermore, even if such a grant were then permitted by law, the lease offered to the public at auction did not contain this valuable right, and therefore it could not be engrafted upon the transaction by negotiation or simple generosity.

I suppose that this opinion will generate problems for the Division of Lands, particularly with regard to the timber problem - for the Division has vacillated on that issue in connection with this lease and ultimately advised Mr. Cummings in 1973 that he was entitled to take the timber. Having reluctantly concluded that that advice was in error, I urge that it be countermanded immediately.

Perhaps the personnel of the Division of Lands should be reminded that they have no carte blanche authority to deal with state lands. Their power derives entirely from the legislature. In some areas, the Commissioner has by regulation limited the Director's ability to implement or use statutory authority by voluntarily imposing additional conditions and limitations upon the powers given him by statute. The Division's personnel must examine every proposed Division action to determine whether the legislature has authorized it by statute and, if so, whether Division regulations permit it. Unless both questions are answered in the affirmative, the proposed action should not be taken.

JM:ij

damage to the land by its lessee, or liable for any claims of any third party or to any claims that may arise from ownership. In the event the state does receive title to the land under lease, the conditional lease shall then have the same standing, force and effect as a non-conditional lease issued under the regulations of this chapter. (Eff. 7/1/60, Reg. 1; am 8/15/64, Reg. 17; am 3/20/66, Reg. 22)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.077

ARTICLE 4. SHORT TITLE AND DEFINITIONS

Section
900. Short title
910. Definitions

11 AAC 58.900. SHORT TITLE. This chapter pertains to the leasing of lands of the State of Alaska and to the jurisdiction of the Division of Lands, Department of Natural Resources and related matters. The intent of this chapter is to insure the equitable leasing of Alaska land in a manner that will encourage development for its highest and best use. This chapter may be referred to as the "Surface Leasing Regulations." (Eff. 7/1/60, Reg. 1; am 8/15/64, Reg. 17; am 3/20/66, Reg. 22)

Authority: AS 38.05.020
AS 38.05.035
AS 38.05.075

11 AAC 58.910. DEFINITIONS. In these regulations the following terms shall have the meaning indicated unless the context clearly requires a different meaning:

(1) "agricultural lands" means those lands which, because of location, adjacent development, physical and climatic features, are or may be made suitable for the production of agricultural crops;

(2) "Act" means the Alaska Land Act, AS 38.05;

(3) "Alaska" means State of Alaska;

(4) "Alaska lands" means all lands including state, title and submerged lands, or resources belonging to or hereafter in any manner acquired by Alaska;

(5) "classification" means the designation of lands according to their apparent best use;

(6) "commercial lands" means those lands which, because of location, physical features or adjacent developments, may best be utilized for non-industrial business purposes;

(7) "commissioner" means the Commissioner of the Department of Natural Resources;

(8) "department" means the Department of Natural Resources;

(9) "director" means the Director of the Division of Lands, Department of Natural Resources;

(10) "division" means Division of Lands within the Department of Natural Resources. Administrative powers and other delegated duties as prescribed by law or regulations are vested in the director;

(11) "fair market value" means the highest price, estimated in terms of money, which the property would bring if exposed for sale for a reasonable time in the open market, with a seller, willing but not forced to sell, and a buyer, willing but not forced to buy, both being fully informed of all the purposes for which the property is best adapted or could be used;

(12) "grazing lands" means those lands which in their natural state have the physical and climatic features that make them primarily useful for the pasturing of domestic livestock;

(13) "preference right grazing lease" means a grazing lease granted to a lessee whose federal grazing lease was cancelled to allow the land under lease to be selected by the state;

(14) "land" means all lands under the jurisdiction of the division;

(15) "lease" means a surface lease issued or built pursuant to the Act and these regulations;

(16) "material lands" means those lands that are chiefly valuable for materials, including, but

11 AAC

Good Luck!!!

THE PRECEDING DOCUMENT(S) MAY NOT FILM LEGIBLY BECAUSE OF POOR QUALITY OF THE ORIGINAL.

Problems with Chapter 58

1) Definition of various classifications of lands vary from chapter to chapter in the regulations. They should be consistent at all times. See chapters 56 and 58, for instance.

2) Every chapter ought to have the same number of definitions; i.e., commercial lands should be defined, as should be industrial, not just one or the other. For instance, Chapter 58 dealing with state leases does not have a definition of industrial lands, yet a goodly number of state leases are just that.

3) Commercial-Industrial classification (11 AAC 56.610) no longer exists, yet it still is on the books.

4) a. Public recreation lands classification should be 'tdoor recreation areas (which include parks, scenic overlooks, campgrounds, etc., etc.): it should be removed from private recreation lands because it conjures up the image of public use.

b. Some more descriptive term (such as cabin site or leisure or recreational purposes) should be substituted for outdoor rec. ational areas under private recreation lands.

5) Classification of lands is supposedly the systematic designation of lands according to their highest and best use, according to 11 AAC 56.610; yet 1. AAC 58.910(5) says "apparent best use", even though 11 AAC 58.900

states "highest and best use".

6) Authorizing statutes must be shown in the regulations. Someone ought to check that in minute detail. We came across a couple of omissions just checking on problems with state leases. (Omission of AS 38.05.105 authorizing specifically half of 11 AAC 58.520. Instead, they cite the very general and broad .020, .035 and .075. The same thing is true of AS 38.05.135 which deals specifically with public and charitable uses on leased land, but 11 AAC 58.370 just mentions the old standbys of .020, .035 and .075.)

7) What constitutes the annual rental rate? How it is to be arrived at needs to be spelled out in the regulations.

8) Related to 7) above, annual rental value (which should not be pegged to the fair market value, but in fact is determined by it due to the non-existence of private leases comparable to those offered by the state) should be defined, which it is not now, in the regulations.

9) Watershed Lands/Timber Lands-Classified. Defined separately in Chapter 52; combined in Chapter 58. Must/should be consistent.

10) What is the difference between "may not be disposed by sale" (52.060) and "shall not be sold" (52.080)? If they should be identical, make it one or the other.

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

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

MEMORANDUM

September 14, 1976

SUBJECT: Surface Leasing Policy of State Owned Lands

TO: The Honorable Kay Poland

FROM: Elke Kallab
Research Analyst

This memorandum addresses various issues which have been raised in conjunction with recent rent increases on state leased lands and, as you requested, comments on points brought up by leaseholders protesting the readjustment of their rents on a variety of grounds. Only the area of surface leasing of state owned lands has been investigated.

In summary we found that the rent increases appear to be in compliance of current, applicable statutes. However, we did discover numerous irregularities and inconsistencies in the regulations which govern surface leasing of state lands. We believe that the various shortcomings and ambiguities of the regulations have contributed significantly to the leaseholders' perceptions that the increases are illegal or arbitrary. The information and data pertaining to surface leasing regulations have been submitted to the chairman of the Administrative Regulation Review Committee, as is a copy of this memorandum.

* * * * * * * * * * * * *

I. Rent Increases

Substantial increases of rents in the process of reappraisal did not begin this year. Attached to this report are two lists which show the old and current rental rates on every state lease which came up for reappraisal in 1975 and 1976 as supplied to us by the Division of Lands. As can be seen, some of the steeper increases occurred in 1975.

AGO 885718

Records show that the Division of Lands adopted the policy to use "market rental rates" for appraisals and reappraisals of state lands, when and where a comparable private rental market existed, as early as March 10, 1975. This decision was made because the Division of Lands believed that enough private leases existed by then which were comparable to certain types of state leases to institute market rental rates rather than charging contract rents at the rate of six percent of the fair market value of the property as was and continues to be the case when no market exists. So far, this policy has been limited in application primarily to industrial and commercial leases in the Anchorage area, since a private market for other types of leases does not exist at this time. However, a subdivision is presently being built in Anchorage in which the lots are being leased rather than being sold. Therefore, state leased lands in Anchorage which are classified as residential may soon be (re)appraised on the basis of economic rather than contract rental rates as established by the Division of Lands.

Current private market rates in Anchorage are comparable to those charged leaseholders in the Anchorage Industrial Subdivision according to the Division of Lands. (The Alaska Industrial Subdivision is located on Sec. 16 school land in downtown Anchorage.) For instance, we have been advised by the Division of Lands that Alaska Industrial Park, a private industrial subdivision on the southwest corner of C and 44th Streets charges an annual rental of eight percent of the "appraised fair market value," with a periodic five year rent adjustment provision part of the lease. Calais Company and Carr-Gottstein Properties lease their industrial lands at a rate of seven percent. However, unlike Alaska Industrial Park, they will not subordinate their lands; i.e., take a "back seat" to the improvements on the land which have been financed by a third party.

Leaseholders have charged that the Division of Lands has not used comparable parcels or proper appraisal methods when it reappraised certain leases in the Alaska Industrial Subdivision in Anchorage and a utility lease in the Matanuska Valley. However, all attempts to have these charges substantiated by the leaseholders with supporting data have been unsuccessful to date. We have looked at a randomly selected appraisal done by the Division of Lands to familiarize ourselves with appraising methods employed by the Division of Lands. Although we claim no special expertise in this field, the appraisal appeared to be thorough, extensive and impartial.

The Constitution (Article VIII, Sec.2) and various sections of Title 38 direct that state lands shall be selected, sold or leased to provide the maximum benefits to the people of the state. It is therefore difficult to find fault with the Division, in the absence of some other statutory definition, for attempting to maximize the monetary returns on state leased lands. How they set about doing it, however, is another subject.

The decision to use market rental rates was further refined and delineated when the Board of Education instructed the Division of Lands at its August 28, 1975 meeting in Kodiak that henceforth the Division was to obtain "fair market rental" 1/ on all leased school lands. Since Sec. 16 and 36 lands were conveyed to the state to generate school revenues, it is only reasonable to expect that rents should reflect this when they come up for periodic adjustment, particularly in light of the directive issued by the Board of Education to charge market rental value.

The Division of Lands is quite willing to admit that in the past the Appraising Section in the Division of Lands was viewed as a "poor relation", which accounts for the continuing low rents over the years in violation of the law which provides that "... no land may be sold or leased for less than the approved, appraised market value..." (38.05.310). The Division is now applying the law, thereby correcting past neglect which resulted in low rental rates on state leased lands, benefitting the individual leaseholders, but not necessarily the people of Alaska in general.

A legal opinion (copy attached) from the Attorney General's office to Commissioner Martin prevents the Commissioner from waiving or lowering the increases.

II. Rate of Contract Rents

The statutes provide that the initial rent shall be determined based on the "approved, appraised market value" (38.05.310), and that subsequent readjustments of the rents be based on a "reappraised annual rental value" (38.05.105)

Much controversy has arisen over the term "annual rental value". Protesting leaseholders claim that rental value cannot be pegged to the market value, that it is something less. The sources we have checked for a definition of rental value state that rental value is--

> "(T)he monetary amount reasonably expectable for the right to the agreed use of real estate.... Usually, it is established by competitive conditions." 2/

1/ Memo from W. Bruce Atkinson, ADL, to File, dated November 17, 1975.

2/ Real Estate Appraisal Principles and Terminology, Society of Real Estate Appraisers, p. 164; and Real Estate Appraisal Manual, Jerome Knowles, Jr. and Associates, p. 286.

From the above it appears that rental value is established by market conditions. The problem which has and continues to exist in Alaska, though, is that in most instances the state (Division of Lands) makes its own market. There is no private market to speak of for agricultural, grazing, recreational and other classified lands. Therefore, the state historically has used a percentage rate of the fair market value instead of rental value to determine rents on leased lands. As mentioned earlier, where a private market exists the Division is charging market rental value.

Until 1968 this rate was five percent. There is nothing in writing which explains why the rate was set at five percent, but we have been told that the five percent figure was a minimim amount derived from the Public and Charitable Use statute of the Alaska Land Act which stipulates that the rental shall be not less than five percent of the fair market value on school, university and mental health, or acquired lands (38.05.315(d)). Also, the rate of interest on the unpaid balance of contract sales of state lands was five percent at that time, and the reasoning, according to Division personnel, was to standardize the contract sale and contract rent rates. In 1968, then Commissioner of Natural Resources, Tom Kelly, raised the rate to six percent because he felt five percent was too low. Again, there is nothing in writing which would substantiate this. The Division of Lands now charges six percent of the fair market value when there is no private lease market and the lease is of a non-revenue producing nature. The Division charges up to eight and one-half percent (8 1/2%),or the market rental rate, when a private lease market exists and when the land is a potential revenue producer; i.e., land which is classified and/or zoned commercial, industrial, or residential.

The raising of the lease rental percentage rates, in some instances (such as the Alaska Industrial Subdivision), together with reappraising the leases based on fair market value have been responsible for the steep increases. The Division of Lands is quite cognizant of the potential hardships such a policy creates for certain leaseholders, particularly for those individuals who hold non-income producing leases. 3/

Much of the bad feeling that was generated over the rent increases probably could have been avoided if the Division of Lands had been more approachable and open in what it was doing. By not being advised of significant changes in policy, even when they are justifiable and defensible, and by being confused by or ignorant of appraisal terminology as used by the Division of Lands, it is not surprising that leaseholders feel that the Division has been acting arbitrarily and capriciously.

3/ Memo from W. Bruce Atkinson, ADL, to Michael C. T. Smith, ADL, dated November 4, 1975.

III. Special Provisions on Certain Leases Limiting Reappraisal to One Time

According to the Division of Lands, four leases exist which have a special provision on the back side of the last page which indicates that the lease will be reappraised but once five years after issuance of the initial lease. These leases have been reappraised now for a second time, and the four leaseholders are protesting the reappraisals.

A legal opinion issued by the Attorney General's office, dated October 3, 1975, holds that the Division of Lands exceeded its authority granting the special provisions on several grounds.

A. No statutory authority existed to grant the exemption from five year rent adjustments. Apparently all four leases were issued prior to passage of a 1964 bill which amended 38.05.105 providing for waivers due to special conditions.

B. However, even if they had been issued after this amendment became law, the special provision would still be invalid since 38.05.075 stipulates that a lease has to be on a form approved by the attorney general. Clearly, these leases were not on an approved form.

C. Finally, the special provisions are invalid because the leases were offered at public auction without the special provision being part of the terms of the lease.

As a result of the above legal opinion, parts of regulation 11 AAC 58.120, which allows for the special provision on university and school lands, should be changed immediately.

While checking into the above matter, we found that the Division of Lands is apparently in violation of 38.05.075 - Leasing Procedures. This section states that "(T)he director or his representative shall immediately issue a receipt containing a description of the land or interest leased, the price bid, and the terms of the lease." According to Division of Lands personnel this has never been done. It would appear that either the Division of Lands should provide the bidder the "terms of the lease" at the time it issues the receipt, or the reference to the "lease terms" should be removed from 38.05.075.

IV. Improvement to Leased Properties

The charge has been made by several leaseholders in the Alaska Industrial Subdivision that their land has been reappraised improperly because improvements to the land have been taken into consideration, even though the lease states quite clearly that the land is to be reappraised in a state of improvement similar to that of the land described in the lease at the time the lease was issued.

(" .. in a state of improvement similar to that of the land described herein at the time this lease was entered into.").

The Division of Lands maintains that while leaseholders cannot be and, for that matter, have never been penalized for the improvements made to their leased lands, improvements which were made at public expense and which as a consequence raised the value of the area or the lands under lease should be reflected in the reappraisal. We are told that this practice is consistent and standard procedure in the reappraising business. While we are not appraisers, the reasoning seems to make sense.

Short of being provided with data by the leaseholders (which we have asked for but not received) which would bear out their charge that improvements they have made to their properties were being included in the reappraisal, we cannot assume that the Division is not reappraising the properties exclusive of improvements owned by the individual leaseholders, or that they are not applying professional standards when appraising lands.

* * * * * * * * * *

Conclusions

Our investigations indicate that substantive and/or long term relief to the leaseholders regarding the periodic rent adjustment of their leaseholdings is probably not possible under the existing statutes. If it is believed that increases of rents should be limited in some way , or that rents be readjusted on a different basis than percentage of fair market value or fair market rental value as is the practice now, it will be necessary to legislate to that effect.

No new legislation will be necessary to require the Department of Natural Resources (Division of Lands) to bring their regulations into compliance with existing, applicable statutes or to "clean them up" so that the ambiguities regarding meaning and the inconsistencies of the language and definitions used in the regulations are eliminated. While no new legislation is necessary for the revision and up-dating of the regulations, it is recommended that the applicable, authorizing statutes be revised as necessary to be consistent and clear throughout. They are not now, in some instances.

EK:jm
Attachments

cc: The Honorable Jalmar Kerttula

STATE OF ALASKA

JAY S. HAMMOND, Governor

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF LANDS

323 E. FOURTH AVENUE – ANCHORAGE 99501

October 22, 1976

Mr. Milt Barker
Legislative Finance Division
Pouch WF-State Capitol
Juneau, Alaska 99801

Re: Data Request. Land Lease Reappraisal Costs.

Dear Mr. Barker:

This is in reply to your telephone request of October 20, 1976 for data regarding costs of appraising State leases during the last year.

Our records indicate a total number of 661 parcels have been appraised during the last 12 month period, roughly from October, 1975 to October, 1976. Of these 661 units 176 tracts have been reappraisals of leased properties. Considering the percentage of staff time spent on these leases, including salary, per diem, travel expense, appraisal review, and secretarial help, it is calculated that approximately $31,900.00, or roughly $180.00 per parcel, was expended in reappraising these properties.

I hope this data is adequate for your needs. Should you require further information feel free to call on us.

Sincerely

W. Bruce Atkinson

W. Bruce Atkinson
Chief, Contracts Administration

AGO 885724

Kay Tolrud

10/15 copy sent to Commissioner Martin

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

pw

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF LANDS / 323 E. 4TH AVENUE – ANCHORAGE 99501

RCD 10/15/76

October 6, 1976

J. H. Hogan, Director
Legislative Finance Division
Pouch MF - State Capitol
Juneau, Alaska 99801

Re: Data Request. Land Lease Reappraisal Cost.

Dear Mr. Hogan:

This is a sadly delayed response to your letter of August 25, 1976 requesting information on costs of "the reappraisal program recently conducted by the State for much of its leased land".

Regretably we are unable to send you the data you request as it is not exactly clear what you are seeking. Reappraisal efforts here at the Division of Lands is a continuing process. We handle reappraisals of State lease lands, statewide, as the need (lease anniversary date) arises.

If you could be more explicit regarding the particular appraisal effort perhaps we could help you.

Yours truly,

W Bruce Atkinson

W. Bruce Atkinson
Acting Chief, Lands & Water

Roderick says Martin or Mike Smith will respond

AGO 885725

STATE OF ALASKA
JAY S. HAMMOND, GOVERNOR
DEPARTMENT OF NATURAL RESOURCES
OFFICE OF THE COMMISSIONER
11TH FLOOR, STATE OFFICE BLDG.
POUCH M – JUNEAU 99811

February 17, 1977

The Honorable Kay Poland
Chairperson, Senate Resources
Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Poland:

As you are aware, there has been a great deal of concern lately over State land disposal policies and procedures. This is occasioned particularly by the recent problems in reappraisal of certain leases in the Anchorage area.

Responding to this concern, the Governor in October of last year appointed an Ad Hoc Committee on State Land Practices and Procedures which has been meeting since, in an effort to bring together expertise on this continuing problem. Members of that committee include Bill Mack, Chairman of the Alaska Land and Leaseholders Association; John Norman, an attorney with the firm of Cole, Hartig, Rhodes & Norman; Hugh Gellert, President of Bear Fritz, Inc., (a land development company with interests in Anchorage and the Kenai Peninsula); Lidia Selkregg, Anchorage Assemblywoman and Professor of Regional Planning at the Arctic Environmental Information and Data Center; Jamie Love, Director of the Alaska Public Interest Research Group; Grant Geisler, Vice President of Alaska Mutual Savings Bank; Carl Marrs, land manager for Cook Inlet Region, Inc.; David McCabe, professional appraiser representing the Real Estate Appraisers' Association; and Herb Lang, former Anchorage Assemblyman and President of Alaska Sand and Gravel Company. Legislative members appointed to the committee were Senator Mike Colletta and Representative Ted Smith. Upon Representative Smith's resignation he was replaced by Representative Clark Gruening.

This committee has held meetings on a weekly basis since its inception in October and has also convened one evening meeting for the purpose of taking public testimony. We presently anticipate that their deliberations will be complete by the end of February and that they will at that time have a report prepared for delivery to the Governor. We expect this report to include several changes in law, numerous changes in regulatory authority of the Department and a number of policy changes in how those laws and regulations are executed.

460 885726

We are also proposing that the committee meet with Legislators and other interested parties in Juneau prior to finalizing its report. We look forward to setting a time for that meeting.

We want to assure you that we share your concern over proper administration of the State's resources and look forward to an opportunity to discuss the land disposal policy in detail in the near future.

Sincerely,

Guy R. Martin
Commissioner

M E M O R A N D U M

March 9, 1977

SUBJECT: CSSB 159, relating to leasing of state lands

TO: Senator John Sackett, Chairman
Senate Finance Committee

FROM: John B. Chenoweth
Legislative Counsel

The above-referenced bill has been referred to the Finance Committee.

Should the committee concur in the changes to the original bill made by the Resources Committee, please amend page 1, line 23 to make reference to "the preceding ten-year period" rather than the five-year period mentioned, to conform to the alteration of the reappraisal period from five to ten years.

JBC:hjd

AGO 885728

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC
PHONE: 586-6440
JUNEAU, ALASKA 99801

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PMS SENATOR KAY POLAND

POUCH V 0811

JUNEAU ALASKA 99811

RECEIVED REVISED COPY OF SB159 AND HAVE REVIEWED IT WITH THE LEGISLATIVE COMMITTEE OF THE INDUSTRIAL LEASEHOLDERS ASSOC. THE UNDERSIGNED MAJORITY OF THE COMMITTEE CONCUR WITH THE BILL AS REDRAFTED. WE FEEL IT IS NOT ONLY IN THE BEST INTEREST OF THE EXISTING LEASEHOLDERS, BUT ALSO IN THE BEST INTEREST OF THE STATE OF ALASKA, IN THAT IT CONFIRMS THE STATES DESIRE TO MAKE PUBLIC LANDS AVAILABLE ON A LEASE BASIS.

IN BEHALF OF OUR ASSOCIATION OF LEASEHOLDERS, WE WISH TO EXPRESS OUR THANKS AND APPRECIATION FOR YOUR EFFORTS.

VERY TRULY YOURS

KEN DAVIS

BOB FORD

LOWELL MACNUTT

AGO 885729

Original Sponsor.

Introduced: 2/15/77
Referred: Resources and Finance

The Resources Committee

IN THE SENATE BY POLAND, CROFT AND HUBER

CS SENATE BILL NO. 159

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the leasing of state land other than for the extraction of natural resources; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 38.05.085 is repealed and re-enacted to read:

Sec. 38.05.085. TERM OF LEASE. (a) The lease shall provide that

(1) for the initial 25-year period of the lease, the lessee shall pay the state a fixed base annual rental to be agreed upon by the parties in compliance with the provisions of this chapter; however, this annual rental may not exceed TEN per cent of the fair market value of the property as determined in (b) of this section;

(2) the fixed base annual rental to be paid by the lessee shall be readjusted when the initial 25-year period of the lease has expired and, thereafter, every TEN years; and

(3) the readjusted annual rental shall not exceed TEN [eight] per cent of the fair market value of the property as determined in (b) of this section or 50 per cent more than the amount paid each year during the initial period or the preceding five-year period, whichever is ~~[higher]~~ LOWER

(b) When it becomes necessary to determine the fair market value of property as required by (a) of this section, the lessee shall appoint an M.A.I. appraiser and the state shall appoint an M.A.I. appraiser. The two appraisers so appointed shall, within a specified period of time agreed upon by the parties, make their appraisals of the property in

NOTE: This Bill as new version gives 9½ times original appraised value as 535 acres.

AGO 885730

question. If the two appraisers agree upon the fair market value, the determination is absolutely binding on the parties. In the event the two appraisers are unable to agree, they shall together appoint a third M.A.I. appraiser who shall then make his appraisal of the property in question. When the third appraisal is completed, the two of the three appraisals which are nearest each other in their determination of the fair market value shall be averaged and the resultant sum shall be the fair market value of the matter in question and absolutely binding on the parties. All costs incurred in making the appraisals provided for in this subsection shall be borne by the state and the lessee equally.

(c) The lessee shall make advance payments of the annual rent or portion of it as the director, with the approval of the commissioner, may require.

(d) A preference right lessee of grazing or forest land may follow the payment schedule established in his cancelled federal lease or grazing permit if he so desires.

(e) Notice of all actions by the department affecting the rights of a lease or lessee shall be given to the lessee.

(f) A violation of a provision of this chapter or of a term or provision of a lease subjects the lessee to appropriate legal action, including, but not limited to, a forfeiture of the lease.

* Sec. 2. AS 38.05 is amended by adding a new section to read:

Sec. 38.05.103. RIGHTS OF HOLDER OF SECURITY INTEREST. (a) If there is a breach or default of a term of a lease or of the provisions of this chapter relating to a lease, the division shall provide written notice of the breach or default by personal service or by registered or certified mail to the lessee and to any holder of record having a security interest in the leased property. The notice shall also make demand upon the lessee to cure or remedy the breach or default within 60

days from the date of receipt of the notice and demand. If a lessee fails to cure or remedy the breach or default within 60 days, or within the additional time which the division may allow for good cause, the state may, subject to (b) of this section, exercise any right which it may have at law or as set out in the lease.

(b) If a lessee fails to cure or remedy a breach or default within the time allowed in (a) of this section, a holder of a security interest who has received notice under (a) of this section may cure or remedy the breach or default if the breach or default can be cured by the payment of money or, if this cannot be done, by performing or undertaking in writing to perform the terms, convenants, restrictions and conditions of the lease capable of performance by the holder. The holder shall act within 60 days from the date of receipt of notice under (a) of this section, or within an additional period as the director may allow for good cause.

* Sec. 3. AS 38.05.105 is repealed and re-enacted to read:

Sec. 38.05.105. PERIODIC RENTAL ADJUSTMENTS. (a) Each lease shall stipulate that at the conclusion of the initial ~~10~~ 25-year period of the lease and at intervals of ~~five~~ TEN years thereafter the annual rental payment is subject to adjustment. Charges or adjustments shall be based primarily on a reappraised annual rental value. However, if the director of the division of lands determines that residential development is the best use of the land, the reappraisal period may be lengthened or the readjustment waived in accordance with regulations adopted by the department. Before a waiver of rental adjustment is issued, the land shall have a current reappraisal. A waiver is valid only if residential development actually occurs, and only if necessary for obtaining primary long-term financing. The regulations adopted under this section shall ensure that the state receives a fair return from the land.

(b) The provisions of sec. 85(b) of this chapter are applicable to reappraisals of leases required by this section.

* Sec. 4. The provisions of this Act are applicable to state leases which are in existence on or before the effective date of this Act if a lessee under a lease elects, in writing, to be bound by this Act. When a lessee elects to be bound by the provisions of this Act, the state shall enter into a new lease with the lessee for a term equal to the full period of the original lease which is being terminated that is consistent with the provisions of this Act. However, for purposes of determining the annual rent by the state, the fair market value of the property which is used to establish the fixed base annual rental for the initial period of the lease may not exceed the fair market value as it was last appraised on or before January 1, 1975, or, if the lease was entered into after January 1, 1975, on the basis of the fair market value at the time the lease was entered into.

* Sec. 5. This Act takes effect immediately in accordance with AS 01.10.070(c).

AGO 885733

NATIONAL Bank of Alaska
Fifth Avenue Office: P. O. Box 3-3559 • Anchorage, Alaska 99501 • 907/274-1621

See Page 2

February 22, 1977

Mr. R. Ford
Anchorage Camper Center

Re: Senate Bill #159

Dear Mr. Ford,

We have reviewed Senate Bill #159, and feel that if inacted it's passage would seriously hamper long term financing for business affected by the Bill. The reason for this comment Mr. Ford, is that lending institutions would be wary of the repayment knowing what the lease expense would be at a further date without the same guarantee from the business's profits.

I hope this memo will answer your question. My reply is general, but I feel sound. Any further questions on the matter you may have I will try to answer.

Regards,

Ben A. Barrera
Vice President

AGO 885734

The Original

Motor Homes
Truck Campers
Trailers

Sales
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Anchorage Camper Center

Alaska's Recreation Vehicle Supermarket

2756 Commercial Drive Anchorage, Alaska 99501

907-277-0556 907-274-4434

Feb. 22, 1977

Mister Chairman

Ladies & Gentleman

My name is Robert Ford, President of Anchorage Camper Center, Vice President of Boysen Investment Corporation - Alaska Excavating Contrs., and owner of R & M Rentals, a company dealing in leasing in the private market.

I am here today to speak on behalf of Anchorage Camper Center, presently holding ADL Lease 003065-7, Lots 15,16,22 and 23 Block 10 Alaska Industrial Subdivision comprising 70,000 square feet. I speak for myself, but I am sure the appreciation for your time and effort in getting our proposed bill in the Legislation is felt by all the leaseholders of Alaska Industrial Subdivision..

In reviewing SB 159, I feel that somewhere along the way we were not able to express our position and also the lending agents position in clear cut terms or you would not have seen fit to change Sec-1 38.05085. Let's explore that change from 25 years level term to ten years.

AGO 885735

Ten years is not acceptable to the bank to protect their loan where there is no subordination of the fee. The state will not subordinate so the only way we can obtain a loan for improvements on lease land is to either have a health bank account yourself, which very few now days have, or have a lease with a long enough level term lease on the front end to convince the lending people that you will be able to amortize the loan and also stay in business.

I feel safe in stating that any loans for improvements in our sector in the last ten years have been made on the financial statement of the man, not on the lease. Therefore I stongly support the twenty five year fixed base annual rental concept so that we may secure long term money for expansion. That way we can improve and upgrade our leases to the best use of the land.

I would like to comment at this time and submit figures to illustrate that the 50% increase every five years after the level term is not in my estimation a viable solution and this is the breakdown of my lease at the appraised value as of January 1,1975

ALASKA INDUSTRIAL BLOCK 10, LOTS 15, 16, 22, 23 and 24

APPRAISED LAND VALUE $61,167.00

TERM	% INC PER	% ORIG VALUE	NEW APPRAISED VALUE	LEASE PAYMENTS	ACCUMULATED COST TO LESSEE
1-10	0%	100%	$ 61,167.00	$ 48,933.00	$ 48,933.00
10-15	50%	150%	91,750.00	36,700.00	85,633.00
15-20	50%	225%	137,625.00	55,050.00	140,683.00
20-25	50%	337.5%	206,438.00	82,575.20	223,258.20
25-30	50%	506.25%	309,656.00	123,862.40	347,120.60
30-35	50%	759.38%	464,487.00	185,794.80	532,915.40
35-40	50%	1,139.07%	696,731.00	278,692.40	811,607.80
40-45	50%	1,708.61%	1,045,100.00	418,040.00	1,229,647.80
45-50	50%	2,562.92%	1,567,653.00	627,061.20	1,856,709.00
50-55	50%	3,844.38%	2,351,479.00	940,591.60	2,797,300.60

Ladies and Gentleman, I can not comprehend paying the astronomical figure of $2,797,300.00 for 70,000 square feet of land over the next 55 years. I realize inflation is on the rise but God help us all if we are to be faced with figures like these and more, especialy land we can never own.

I thank you for your kind attention.

BEFORE A HEARING PANEL OF
THE ALASKA DIVISION OF LANDS

In the Matter of Protests)
)
of Various Leaseholders in)
)
ALASKA INDUSTRIAL SUBDIVISION)
)

RECEIVED
JAN 24 1977
Matthews, Dunn & Baily

HEARING PANEL PROPOSED DECISION AND RECOMMENDATION

I

INTRODUCTION

Pursuant to a letter of November 2, 1976, written by Michael Smith, Director, Division of Lands, to lessees holding leases in the Alaska Industrial Subdivision, an administrative hearing was held December 14, 15, 20 and 21, 1976. The hearing was called to give the lessees an opportunity to protest the five-year reappraisal of certain state leases within the Alaska Industrial Subdivision, said reappraisal resulting in substantially higher annual rental payments. The hearing panel consisted of George Hollett from the Division of Lands; Kenneth Zamzow, an appraiser with the State Division of Petroleum Revenue; and Timothy C. Middleton, an attorney in private practice.

The Division of Lands (Division) was represented at the hearing by John Gissberg from the Attorney General's Office. Representing various leaseholders was Douglas Baily, and representing leaseholder Groh & Benkert, a partnership, was Clifford Groh.

Testifying as witnesses for the Division were Ronald Bunn, an appraiser with the Division; Robert Keeling, a forester with the Division; and Eugene Karp with the Department of Highways.

Testifying as witnesses for the lessees were Leon Brown, Jim Cristopher, Joe Wilhour, lessees; Fred Ferrata, and Errol Simmons, appraisers; John Kemper, a banker; Andrew Hoge, an attorney; and Paul Kimball from Lynden Transport, a lessee.

The relevent provisions of the lease form, regulations and statute are set out as follows:

(1) State lease provision calling for reappraisal:

> "[S]uch payments to be subject to adjustment at each five-year interval from the effective date hereof, if the lease term hereof exceeds five years, such adjustment to be based primarily upon a reappraised annual rent l value of land in a state of improvement similar to that of the land described herein at the time this lease was entered into.

(2) Regulations governing rental: 11 AAC 58.520 and 11 AAC 58.410:

> 11 AAC 58.520. ADJUSTMENT OF RENTAL. All leases shall stipulate that the annual rental payment shall be subject to adjustment by the director at five-year intervals and any changes or adjustments shall be based primarily upon the reappraised annual rental value. The director shall take into consideration the following factors in reappraising the annual rental value: the value of comparable lands in the same or similar areas, exclusive of buildings, structures, appurtenances, equipment, land fill, clearing, leveling or roads owned by the lessee. The commissioner may waive one or more of the periodic rental adjustments or lengthen the reappraisal period, when a lessee who has acquired a tract of land for multiple unit housing, commercial, or industrial development can demonstrate to the satisfaction of the commissioner that such action is essential in order to obtain the primary long-term financing or loan insurance required for development of the leased land. In order to qualify, applicants must furnish written evidence that, in requiring a waiver of rental adjustment, the lending or insuring agency is applying a generally applicable rule. Waivers shall remain in effect only during the term of the loan but shall not exceed 40 years.
>
> 11 AAC 58.410. ANNUAL RENTAL. Annual minimum rentals shall be computed from the approved appraised market value, except in the case of a preference right grazing lease, and shall be the lowest acceptable bid in the event of an auction. Annual rental shall be the basis of bidding for

all surface leases, except as provided in sec. 440 of this chapter. Annual rentals in amounts up to and including $250.00 shall be paid on an annual basis. Annual rentals in amounts above $250.00 shall be paid either annually or in quarterly installments, at the discretion of the lessee. All rentals shall be paid in advance.

11 AAC 58.900. SHORT TITLE. This chapter pertains to the leasing of land of the State of Alaska and to the jurisdiction of the Division of Lands, Department of Natural Resources and related matters. The intent of this chapter is to insure the equitable leasing of Alaska land in a manner that will encourage development for its highest and best use. This chapter may be referred to as the "Surface Leasing Regulations."

(3) Statutory provision dealing with rental adjustments in effect as of May 1, 1976:[1]

AS 38.05.105. PERIODIC RENTAL ADJUSTMENTS. Each lease shall stipulate that the annual rental payment is subject to adjustment at five-year intervals and charges or adjustments shall be based primarily on a reappraised annual rental value. However, when development of the land is not otherwise possible due to special conditions, the reappraisal period may be lengthened or waived under regulati[illegible]opted by the commissioner.

Because the hearing panel is composed of an appraiser, lawyer and a representative of the Division of Lands, it is considered appropriate in formulating recommendations to the Director that the panel exercise independent judgment based on expert testimony presented and exhibits offered. Accordingly, we do not accord the Division's position any special deference which might be applied in an administrative appeal in the judicial process.

The basic question to be resolved in this hearing is the determination of a fair rental for certain lots within the Alaska Industrial Subdivision. This fair rental is to be determined for the five-year period May 2, 1976, through May 1, 1981, the third rental adjustment p[illegible]iod since the leases

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[1]This section has since been amended, S1, Ch. 267 SLA 1976.

commenced on May 2, 1961. The Division had adjusted the annual rental of the leases in question as of May 1, 1976. This adjustment had been based on a reappraised fair market value and an increase in the rental rate from 6% to 8%. The reappraisal and adjustment were based on the relevant provision of the statute and regulations quoted above. Additionally, the term "fair market value" is defined in 11 AAC 58.910(11) as:

> "Fair market value" means the highest price, estimated in terms of money, which the property would bring if exposed for sale for a reasonable time in the open market, with a seller, willing but not forced to sell, and a buyer, willing but not forced to buy, both being fully informed of all the purposes for which the property is best adapted or could be used.

II

ISSUES

The issues appear to be the following:

(1) An interpretation of the lease, regulatory and statutory provisions, as to the nature of improvements to be included in the appraised value.

(2) Whether or not the term "primarily" as used in the lease, regulations and statute means that the Division should consider other factors in arriving at a reappraised annual rental value.

(3) Whether the Division's appraisal was in accord with the law and consistent with the relevant market conditions, particularly as to (a) use of comparables and (b) determination of original condition.

(4) Whether the 8% rental rate is appropriate in view of market conditions, the provisions of the state lease not found in private leases.

III

DISCUSSION

A. State of Improvements

The lessees represented at this hearing interpret the term "state of improvement" to mean the state of improvement of the entire Alaska Industrial Subdivision. Specifically, the lessees interpret this to mean that any improvements made outside of lot boundaries since 1961, such as roads and utilities, are to be excluded from consideration in the fair market value of the subject lots. The appraisals conducted by Messrs. Ferraro and Simmons for the lessees and presented at the hearing reflected adjustments in value to account for the cost of those improvements, particularly cost of access. This was based on language in the lease indicating value should be based on land in a similar state of improvement as land described in the lease at the time the lease was entered into; thus, the reference to "original condition." The regulations, however, are more explicit in determining what improvements are to be excluded. The Panel believes it would be inappropriate, in view of regulations and principles of equity, to exclude from the value of the leased property improvements off the property, especially when such improvements were paid for by the lessor. When a lessee can demonstrate that such off property improvement was paid for by him or his predecessor in interest, a different approach should be used. Both the State and the lessees agree that any improvements made within lot boundaries by lessees are to be disregarded in the valuation. The Panel finds in favor of the State in interpreting this phrase "state of improvement" to mean only the condition within the subject lots and that all improvements made since the leases were entered into which lie outside of the lot boundaries, specifically roads, water, sewer, power, and any other amenities

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which affect the value of the subject lots are to be included in the fair market value of those lots.

A further disagreement among the parties involving the "state of improvement" is that of the original condition of the lots before any tenant improvements were made. The State's appraisal witness, Mr. Bunn, testified that as far as he could determine after reference to soil maps, aerial photos and consultation with various knowledgeable individuals, that the soils were basically adequate for building development with a minimum of site preparation required for any development, that no substantial amount of overburden needed to be removed. Mr. Bunn admitted his findings in this regard were based largely on the lack of evidence to the contrary. He did not, apparently, attempt to gather evidence from individuals who developed the leased land. Several other witnesses testified as to moderate to severe conditions of peat and unstable soil conditions at the time the leases were originally entered into. The lessees' appraisers, Mr. Simmons and Mr. Ferrara, after thoroughly investigating the original soil conditions with various knowledgeable people indicated that it was still not clear exactly what the soil conditions were on each parcel. There was adequate testimony given that most, if not all, of the subject lots had conditions of unstable peat soils in depths ranging from one to four feet, with testimony given concerning individual spots where the depth of peat extended 14 feet. In Mr. Ferrara's appraisal of Lot 4, Block 4; Lot 12, Block 10; Lot 10, Block 9; Alaska Industrial Subdivision, he stated that soil conditions probably varied from two to three feet of overburden along Commercial Drive on the north with overburden deepening in the area of Rampart Drive and reaching depths of two to three feet

again along Mt. View Drive. Mr. Ferrara testified that although he was uncertain as to the actual soil conditions at the time the leases were entered into, he felt a realistic condition was that approximately two feet of fill was required on the average for development of those lots which he estimated would cost, at the time of reappraisal, $.50 per square foot. Mr. Simmons' appraisal report and testimony regarding soil conditions were similar to those of Mr. Ferrara. In Mr. Simmons' appraisal of Lots 8 and 30, Block 10, he estimated a current cost of surcharging the peat with gravel in an amount adequate to support parking and storage yards was $40,000, which divided by total site area of 46,021 square feet equals $.87 per square foot. In the Panel's opinion, the investigation and analysis by the lessees' two appraisers were reasonably well supported and much more creditable than the investigation, analysis and testimony given by the Division.

B. Meaning of Primarily

The lessees contended that because the lease, regulation and statute all use the adverb "primarily" to modify the verb in, "such adjustment to be based primarily upon a reappraised annual rental value," that the State should consider other factors in arriving at an annual rental value. The lessees point to 11 AAC 58.900 wherein the intent of the regulations is spelled out, i.e., to "insure equitable leasing" to "encourage development." Accordingly, the lessees presented evidence, unrefuted by the Division, of the difficulty in obtaining financing for development of the leaseholds.

The Division's position was that the word meant nothing now with respect to the leases under question, but that it referred to the since repealed provisions for waiver

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of five-year adjustments in cases where such a waiver is necessary to obtain long-term financing. The Division stressed the point that the lessees never attempted to obtain the waiver. The Panel finds the Division's argument to be without merit. First of all, the word "primarily" applies, if at all, to the reappraisal. The waiver would mean there would be no reappraisal at all. The suggestion that the lessees should have attempted to get the waiver is also without merit. The date of the reappraisal was May 1, 1976; the date the waiver repeal became effective was June 22, 1976. Assuming that the lessees had notice of the reappraisal simultaneously with the reappraisal, there would be only six weeks in which to get the waiver after reappraisal. The lessees indicated such actual notice of reappraisal came much later, in June and July; this was not rebutted. It is also unrealistic to believe that the State would have agreed to such a waiver.

The word "primarily", taken along with 11 AAC 58.900, is not without meaning. The Panel believes that the Division should consider other factors besides a determination of open market rent. The present state of the lease and regulations makes it difficult to arrive at a readily ascertainable meaning, especially in view of the duty owed to the people of Alaska by its government to obtain a good return from the State land. While principles of legislative interpretation dictate that the word be given meaning, the Panel finds it difficult to do so. Because nothing was presented to resolve this dilemma, the Panel refrains from attempting a definition beyond suggesting that doubts or ambiguities be resolved in favor of the lessee.

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C. Appraisal.

11 AAC 58.410 states that annual minimum rentals shall be computed from the approved appraised market value. Rent paid for land in the open market place is typically determined by, and expressed as, a percentage of the market value of the land. Therefore, a reasonable estimate of the fair market value of the land in question must first be made before a market rent can be derived. The generally accepted method of appraising vacant land, and that which was used by all three appraisal witnesses, is the direct market comparison approach. All three of the appraisal witnesses utilized definitions in 11 AAC 58.810(11), and 11 AAC 58.520 regarding the use of comparable land sales. All three appraisers used the same basic techniques in adjusting comparable land sales for differences in comparison with the subject lots. The major factors for which adjustments were made were for increase in price levels between the dates of sale and the date of appraisal, neighborhood location, specific location (corner or inside lot, street improvements, utilities available, zoning, etc.), and physical characteristics of the comparables, including such things as soils, topography, shape and easements. As the panel finds that offsite improvements made since 1961, specifically water, sewer, power and road improvements are to be included in arriving at the fee market value of the land, the Panel addressed itself to the major points of disagreement between the State and the lessees' appraisers which are adjustments for time increment, neighborhood and an electrical transmission line easement.

(1) Time Adjustment

All three appraisal witnesses agreed that a rapidly rising trend of price levels for industrial land was evident

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during the two-year period prior to the appraisal date of May 2, 1976. Mr. Bunn testified his conclusion was that a time increment of 3.5% per month was appropriate; both Mr. Ferrara and Mr. Simmons concluded a time increment of 2% per month was appropriate. Mr. Bunn used 10 comparable sales which indicated a range of time increment from 2.8% per month to 4% per month. One example which tended to limit Mr. Bunn's testimony in this regard was where he compared the sale of one parcel with a later sale of another parcel to arrive at an indication of time trend. Mr. Bunn did not adjust for other factors but compared the two sites as equal in value when actually one of the sale sites had much less utility than the other due to its very odd shape. Also, Mr. Bunn utilized sales in a faster growing area of Anchorage (South Anchorage) in arriving at a time adjustment. The Panel believes a reasonable upward adjustment for time increment to be 2% per month. This belief is based on the fact that Ferrara and Simmons used sales of property more likely to reflect accurately the increase in value in the Mountain View area. The Panel finds the lessees' appraisers more persuasive on this point.

(2) Neighborhood Locations.

Mr. Bunn used 18 comparable land sales with two from the immediate Mountain View area, two from the Anchorage Industrial Park in the Ship Creek area and 14 in the South Anchorage area in the vicinity of International Airport Road. Mr. Bunn's testimony was that the Alaska Industrial Subdivision is comparable in location to the other industrial areas of Anchorage, that price levels for industrial land was similar and that no adjustments were required for

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neighborhood location to the comparable sales used. Mr. Simmons and Mr. Ferrara both agreed that the Alaska Industrial Subdivision neighborhood was inferior in price levels to either of the Ship Creek or South Anchorage Industrial area. Testimony was given and agreed by all parties that the Alaska Industrial Subdivision is well located in proximity to the downtown business center of Anchorage, is close to transportation facilities, and has good arterial access. However, testimony was given that the type and intensity of uses, as well as the rate of development within the Alaska Industrial Subdivision are inferior to the Ship Creek and South Anchorage Industrial areas. The Panel agrees with the lessees' appraisers in this regard and finds that the prices of comparable land sales from the Ship Creek and South Anchorage Industrial areas should be adjusted downward before arriving at a comparable market value for subject lots in the Alaska Industrial Subdivision.

(3) Electrical Transmission Line Easement.

Testimony was given and evidence presented concerning an electrical transmission line easement 45 feet in width which crosses diagonally through the Alaska Industrial Subdivision. According to testimony, no permanent structures may be built within the easement right-of-way and no structures may be placed closer than 10 feet vertically and horizontally from the electrical wires or supports. Mr. Bunn testified that the transmission line easement was not important and would not result in any loss in value to those lots crossed by the easement.

Mr. Ferrara testified that there is a loss of value in varying degrees caused by the easement, depending upon its location within each affected lot. Although Mr. Ferrara said he did not have time to investigate the effect

on value to a sufficient degree to estimate what loss in value would be involved for specific lots, he said one measure of the loss in value would be the cost of relocating the easement either within the public street right-of-way or along the property boundaries.

Mr. Leon Brown, a lessee in the Alaska Industrial Subdivision since May, 1958, to the present, testified as to the problems encountered in developing four lots which were affected by this transmission line easement. The Panel notes here that Mr. Wilhour said he complained to Peanuts Main on the staff of the Division of Lands with a resultant rent reduction because of the effect of the easement.

The Panel believes that the evidence is conclusive, and common sense dictates, that the electrical transmission line easement has an adverse effect on value. The Panel suggests that the testimony of Mr. Ferrara as to the cost to cure method, that is the cost of relocating the transmission line, is only one way of measuring this loss in value and that other appropriate means of estimating loss of value may be used. Before Mr. Ferrara's method is used, an investigation of the feasibility and likelihood of moving the line should be made. The Panel notes that the transmission line affects in a substantial way four of the reappraised lots. One method might be an actual computation of the value of the lost area.

(4) Rental Rate.

The May 1, 1976, adjustment, in addition to using a higher fair market value as a basis for computing the annual rent, also increases the rental rate from 6% to 8%. This, Mr. Dunn testified, was done because his review and analysis of private leases in the community indicated that 8% was the more appropriate rate.

The lessees protested that this increase was unwarranted. They argue that various provisions of the state lease make it less desirable than a private lease and that therefore the rental rate should be lower. The major differences which made the state lease less desirable were asserted as follows:

(a) Lack of subordination. Many private leases allow for subordination of the fee to any encumbrance placed on the property to secure debt financing. The state lease does not provide for this, it only allows the financing agency to step into the shoes of the lessee by way of a "collateral assignment of interest." Mr. Bunn testified that this provision was substantially the same as subordination; thus, no downward adjustment should be made in the rental rates to allow for this. The testimony of Andy Hoge, an attorney heavily involved in lease financing, and John Kamper of Peoples Bank persuade the Panel that Mr. Bunn's perception of subordination is simply wrong. The lack of subordination in the State lease is a very significant factor for which adjustment in rental rate should be made.

(b) Lack of arbitration and rent ceiling. Many private leases provide for arbitration of disputes over rent or rent ceilings or rent payments adjusted in accordance with the cost of living index. The State's lease contains none of these provisions. Mr. Bunn made no attempt to adjust for these provisions. The lessees argue, with considerable merit, that provisions such as rent ceilings, linking adjustments to the consumer price index, and arbitration provisions provide some degree of predictability as to what the rent will be in the future. This predictability is absent in the State leases, which provide for a unilateral adjustment

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of rentals by the lessor.

(c) Option to purchase. Many private leases also provide an option to purchase. The State's lease contains no such provision.

(d) Floating easement. The State's lease contains a floating easement giving the lessor the right to grant easements or rights-of way across the leased land with compensation for improvements damaged or destroyed, but does not provide for consequential damage. The private leases do not reserve this kind of easement.

Most private leases contain one or more provisions which make them more advantageous to the lessee than the State's lease. Contrary to testimony of Mr. Munn, the State's lease contains no provisions more advantageous to the lessee. Given the long term of the State lease, the Panel does not believe the right to renew is of significant benefit to the lessee. The evidence is overwhelming on this point. The banker, attorney, and lessee's appraisers all testified to the more noxious State lease. Thus, the Panel believes the increase in rental rate to 8% is unjustified. The general market rate for private leases is no doubt in the 8% range; however, some allowance should be made for the less desirable features of the State lease. For the above reasons, the Panel believes a return to the 6% rate would accurately reflect the market rental value for a State lease.

IV

SUMMARY AND FINDINGS OF FACT

In summary, the Panel makes the following findings:

1. The Division incorrectly made no allowance for site preparation to arrive at a fair market value in accord with the lease. The evidence was overwhelming that there was substantial overburden to remove, from one to four feet with some fill required perhaps on most lots.

2. The Division's appraiser incorrectly arrived at a time increment to use for upward adjustment of comparable sales. The Panel finds that the 2% per month time adjustment suggested by the lessees' appraisers to be well founded and the correct one to apply in the appraisal of the subject lots.

3. The Division's appraiser used some 14 sales from the South Anchorage area as comparables in his reappraisal. Only four comparable sales were taken from an area near the subject property. The Panel is cognizant that Mr. Dunn was attempting to find land of the same zoning classification as the subject lots to use as comparables. However, the Panel finds that the rate of development is higher in South Anchorage and that the type and intensity of uses is greater. Some appropriate downward adjustment should be made before arriving at an appraised value of subject lots from these South Anchorage sales. Additionally, the Division's appraiser should consider the comparable sales used by the lessees' appraisers, even though they were of differing zoning classifications.

4. The Division's appraiser should have, but did not, adjust downward the value of the lots which have an electrical transmission line running through them. The Panel finds from the map submitted by the Division that this line has caused a

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substantial diminution in the value of at least four of the reappraised lots. Additionally, the Panel finds that the adjustment suggested by Mr. Ferrara to be appropriate only if it were economically feasible to move the line, and likely that such a cure could be consummated.

5. The rental rate of 8% is excessive, considering the private lease market and the disadvantageous provisions in the State lease, including: (a) no subordination of fee, (b) no rent ceilings, (c) unilateral adjustment with no arbitration, (d) floating easements, (e) lack of option to purchase. Specifically, the private leases examined contained one or more of the following advantageous conditions: (a) subordination, (b) an option to purchase, (c) rent ceilings, (d) arbitration; and none contained floating easements provisions.

6. The Panel finds that subordination and collateral assignment are not the same as suggested by the Division's appraiser. The evidence on this point is overwhelming, consisting of the testimony of a disinterested expert, Mr. Koga, that financing of a leasehold interest is typically much more favorable to a lessee when the land lease contains a subordination agreement. Mr. Kamper, Mr. Simmons and Mr. Ferrara agreed with this assertion.

7. The advantages alleged to be present in the State lease are more illusory than real. Any advantages to the right to renew the 55-year State lease and removing improvements is insignificant in relation to the disadvantageous features described in Finding No. 5. This is supported by weight of the testimony of expert witnesses.

8. The lessees had no real opportunity after they had received notice of the reappraisal and before the effective

date of the repeal of the waiver of adjustment to seek such a waiver. It was unrealistic to think they might have reason to seek such a waiver prior to receiving notice of the reappraisal.

9. The effect of the adjusted rentals is to discourage development of the subject area rather than to further the objective of encouraging development, which is the intent of the leasing regulations (11 AAC 58.900).

10. A new reappraisal by the Division should be conducted.

V

CONCLUSIONS OF LAW

The Panel having heard legal argument and read the memoranda submitted makes the following conclusions of law:

1. The lease and regulations read together require that the Division include in its appraisal of subject lots the increment of value generated by offsite improvements, such as installation of roads and utilities into the subdivision, with the provision that any utility hook-up to a main trunk line which was paid for by the lessee or a predecessor not be included, even if it is off the subject property.

2. The terms "such adjustment to be based primarily upon a reappraised annual rental value of land" and "any changes or adjustments shall be based primarily upon the reappraised rental value" found in the State's lease and 11 AAC 58.520 mean that the Division should consider other factors besides a reappraised annual rental value in arriving at an adjusted rental. This is so because of the use of the adverb "primarily" to modify the verb "based." The principles of interpretation dictate it be given meaning; without the presence of this word the Division would be able to consider only the reappraised annual rental value.

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3. The reappraisal of May 1, 1976, the subject of this hearing, was not done consistent with the provisions of 11 AAC 58.900, which expresses the intent of the leasing chapter of the Administrative Code.

4. Subordination of the fee and collateral assignment are substantially different as a matter of law. Subordination of the fee means the fee can be encumbered to secure debt financing for the lessee. The holder of a collateral assignment merely steps into the shoes of the lessee.

VI

RECOMMENDATIONS

Implicit in the above discussion and findings is that the Panel finds the Division's reappraisal unacceptably high. Therefore, the Panel recommends that the subject lots in the Alaska Industrial Subdivison be reappraised by the Division in a manner consistent with the above discussion, findings and conclusions.

In addition, the Panel believes further recommendations are appropriate. The present lease and the present leasing policy should be modified. These modifications should be designed to put the State on a competitive footing to the degree possible with private lessors and are as follows:

1. In accord with the provisions of the lease, the lessees should be encouraged to record expenses incurred in site preparation so that the "original condition" can be more adequately ascertained.

2. The lease language should be clarified to remove any possible inconsistencies with 11 AAC 58.520.

3. To insure some predictability, place some control over the size of the rental increase through utilization of a ceiling

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on the size of the increase in rental every five years.

4. Provide for arbitration of disputes over the annual rental arrived at after a reappraisal process and overinterpretation of other sections of the lease. This would ameliorate the current unilateral nature of rent adjustments.

5. Eliminate the floating easement. The State could exercise the right of eminent domain to condemn. The condemnation would result probably in greater compensation for damages to the lessee, especially in view of the Supreme Court decision in State v. Hammer, 550 P.2d 820, thus the lease would be more attractive to the leasing market. Additionally, the language in the current lease is ambiguous as to damages compensable. This ambiguity only encourages litigation.

6. These above recommendations, if adopted, would assure the State a competitive position in the lease market, encourage development of the leaseholds consistent with the intent of the leasing regulations, and be equitable to the lessee. The Panel also believes the State should be able to obtain a good return on its land. Accordingly, if the recommendations as to the lease are adopted, the rental rate should be changed to reflect the removal of the undesirable aspects of the State lease.

7. Suggest an amendment as to AS 38.05.105 to eliminate the term "primarily" from the statute, and also eliminate this term from the regulation and the lease. This is ambiguous, and assuming it has meaning, it may encourage individual accommodation of lessees by the Division. This, the Panel believes, is not in the State's best interest in that it could encourage political maneuvering to attempt to obtain this accommodation, and may well mean uses other than the highest and best use would be perpetuated. Also, the presence of such an ambiguity

could lead to an excess of administrative discretion.

8. Finally, should some or all of the above general recommendations be ultimately adopted, then legislation should be suggested for enactment providing all present lessees the opportunity to negotiate modifications consistent with the changes adopted.

RESPECTFULLY SUBMITTED at Anchorage, Alaska, this 20th day of January, 1977.

TIMOTHY G. MIDDLETON
Hearing Panel Member

KENNETH E. ZANZOW
Hearing Panel Member

GEORGE K. HOLLIST
Hearing Panel Member

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

COMMENTS AND SUGGESTIONS OF THE
ALASKA INDUSTRIAL SUBDIVISION LEASEHOLDERS
ON SB 159

By virtue of the fact that the leaseholders of state lands within the Anchorage area designated as the Alaska Industrial Subdivision have a great deal, if not everything, to lose if remedial legislation is not forth coming which would (in some manner) alleviate the untenable situation they presently face, it would seem only befitting that they offer their comments on SB 159 which was introduced in the Legislature on February 15, 1977.

Prior to undertaking a section-by-section analysis or critique of SB 159, the state leaseholders think it may be beneficial to submit a brief outline of the pertinent facts which surround this controversy. Specifically, the purpose of this background material is twofold: first, to familiarize the reader with the dramatic changes which have occurred recently in state land leasing policy and to emphasize how those harsh changes now threaten the economic survival of the state leaseholders in Alaska; second, such facts establish and support the leaseholders' contentions brought out later in the discussion of SB 159.

1. In 1958 the territorial government of Alaska made the policy determination that an area of government-owned land located east of and nearly inaccesible to Anchorage be leased for commercial and industrial purposes. This area of Anchorage was then leased to the highest bidder at public auction for a term of 55 years. The area in question was designated the Alaska Industrial Subdivision, and during subsequent years other lands in it were leased under terms comprable to those written into the initial leases. One of the basic provisions of these leases, and the one bringing this controversy into existence, was codified

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into state law in 1959 (§7, art. V, Ch. 169, SLA 1959). This statute (AS 38.05.105) reads in part:

> Each lease shall stipulate that the annual rental payment is subject to adjustment at five-year intervals and charges or adjustments shall be based primarily on a reappraised rental value . . .

2. Upon statehood, the Department of Natural Resources, Division of Lands for the State of Alaska, officially reaffirmed the prior land lease policy mentioned in number 1 above, in adopting its administrative regulations on July 1, 1960. The regulation which set forth the intent behind adopting the "Surface Leasing Regulations" read in part:

> . . . The intent of this chapter is to insure the equitable leasing of Alaska land in a manner that will encourage development for its highest and best use. (Emphasis added) (11 AAC 58.900)

This regulation and its intent still remain on the books, and the state has never changed or attempted to change the highest and best use classification of the Alaska Industrial Subdivision from its original designation as commercial industrial lands.

3. During the period of 1958 through the spring of 1976 the leaseholders in the Alaska Industrial Subdivision developed their lands and established business enterprises at a considerable expense in both money (substantial portions being borrowed) and time. The state Division of Lands during this same period had followed rather consistent and tolerable annual rental readjustment practices under the authority of AS 38.05.105. Annual rentals were adjusted upward from 40% to 100% during this period without undue protest from the leaseholders.

4. In the spring of 1976 numerous leaseholders holding state leases in the Alaska Industrial Subdivision were given notice that their leases were to be reappraised and five-year annual rental readjustments made. Such notice caused no particular concern among the leaseholders because of past state policy.

5. In May and June of 1976 the state Division of Lands advised the leaseholders whose lease rentals had come up for readjustment that their new annual rental payments had increased anywhere from 600% to 800%, and in some cases even more. To say the least, this came as an overwhelming shock to the leaseholders and they immediately registered protests with the Division of Lands. These same protests for an independent appraisal or some form of compromise, however, fell upon deaf ears with the Division of Lands, and the leaseholders in the Alaska Industrial Subdivision were thereby faced with exceedingly harsh possibilities of (a) abandoning all the work, time and money they had devoted to the economic endeavors and have their leases forfeited to the state; (b) trying to salvage what they could from their ongoing businesses and attempt, at great personal and monetary sacrifice, to re-establish their business interests on fee simple land in other parts of Anchorage; or (c) try and have the impossible situation remedied in a fair and equitable manner through the proper judicial and legislative channels. The leaseholders in this case chose the latter option as the only one realistically open to them.

6. The leaseholders of the Alaska Industrial Subdivision demanded and were afforded an administrative hearing (held the 14th, 15th, 20th and 21st of December 1976) before a hearing panel consisting of George Hollett from the state Division of Lands; Kenneth Zamzou, an appraiser with the state Division of Petroleum Revenue; and Timothy G. Middleton, an attorney in private practice in Anchorage. During the four days of administrative hearings tremendous amounts of testimony and other evidence were elicited from both the state and the leaseholders. The Hearing Panel's Proposed Decision and Recommendations in this matter are attached hereto and marked as Attachment "A". While there is no need here to summarize this decision or the recommen-

dation, special attention is directed to the Summary and Findings of Facts (p. 15), Conclusions of Law (p. 17), and Recommendations (p. 18) found therein.

7. By virtue of the fact that the Hearing Panel's decision submitted January 20, 1977 so strongly supported the leaseholders' position, and because of their own personal feelings of indignation, the leaseholders have now decided to bring their case before the members of the First Session of the Tenth Alaska Legislature.

CRITIQUE OF SB 159

While the leaseholders of state land in the Alaska Industrial Subdivision believe the basic format of SB 159 offers a good solid foundation upon which equitable relief could be structured, it contains, in its present form, a number of serious deficiencies which must be changed or altered if the impossible situation being faced by state leaseholders is to be resolved with any degree of certainty.

The specific points of contention and the resolution of them can be basically set forth as follows:

1. *Section 1 of SB 159 provides in AS 38.05.085(a)(1) [p. 1, line 12] that the parties shall agree on a fixed base annual rental to run for an initial ten-year period. While the leaseholders realize and appreciate that this new lease period is double the existing length, it nevertheless completely fails the test of economic reality. What is meant by this is that with a short initial period of ten years before the state can readjust the fixed base annual rental, the financial institutions of this and other states will not loan money to leaseholders to develop and improve their leased property. During the administrative hearing held on this matter the testimony of John Kemper, an Anchorage banker, and Andrew Hoge, an Anchorage attorney having done considerable work in this field, brought out the fact that lending institutions require a high degree of certainty that the

borrower will be able to repay a loan under the terms of a ground lease. It was well established that, under normal economic circumstances, to expect a borrower to lease land, develop commercial establishments and be able to repay the borrowed money with interest within a period of ten years is totally unrealistic. In effect whet lenders require is that before loans can be made on unsubordinated ground leases the rental to be paid annually must be either a level term or a rent which is ascertainable for a period of ten to fifteen (or in some cases even more) years after the term of the loan. Because this is a rather complicated matter, a full and thoughtful discussion is left to pages 5 through 7 of the transcribed testimony of Andrew Hoge which is affixed hereto as Attachment "B". For further discussion on this point, also see pages 12 through 15 and 24 through 29 of the Hoge transcript. From this discussion, which reveals the generally accepted practices of the lenders in this state and elsewhere and the testimony of a practicing attorney who is well versed in the field of ground lease financing, it becomes apparent that a short ten-year initial fixed rental will prohibit the leaseholders from acquiring the financing necessary for developing and improving the leasehold property. In light of these circumstances, the leaseholders cannot see any other answer to their economic plight but to have their fixed base annual rental increased from ten years to at least 25 years during the initial period.

2. *Section 1 of SB 159 further provides in AS 38.05.085 (a)(1) [p. 1, line 15] that the initial fixed base annual rental may not exceed 8% of the fair market value of the property. To demonstrate that this percentage figure is much too high, one only has to consult the Hearing Panel's discussion of the appraisal techniques (see Rental Rate, pages 12 through 14 of Attachment "A") and its Findings No. 5, which states:

> The rental rate of 8% is excessive, considering the private lease market and the disadvantageous provisions in the State lease,

including: (a) no subordination of fee, (b) no rent ceilings, (c) unilateral adjustment with no arbitration, (d) floating easements, (e) lack of option to purchase. Specifically, the private leases examined contained one or more of the following advantageous conditions: (a) subordination, (b) an option to purchase, (c) rent ceilings, (d) arbitration; and none contained floating easements provisions.

3. Section 1 of SB 159 provides in AS 38.05.085(a)(2) and (3)[p. 1, lines 17-24] that once the initial lease period has expired, the annual rental is to be readjusted every five years thereafter, so long as the new rental does not exceed 8% of the fair market value of the property or 50% more than the amount paid the preceeding period, whichever is higher. These provisions represent a number of major points of contention and disagreement which the leaseholders have with SB 159.

First, the requirement that the annual rental payments be readjusted every five years after the short ten-year initial period has run only compounds many times over the critical problem which has been discussed in number 1 above with regard to obtaining any financing for developing or making improvements on the land. With a statutory provision requiring the rentals to be paid be readjusted eight times after the initial period gives the leaseholders and their potential lenders absolutely no way to estimate the intermediate or ultimate rental payments to be required. As already noted in number 1 above, the lending institutions making development or improvement loans would not do so where the potential rental liability is so uncertain and unascertainable.

Second, the requirement in this provision of SB 159 that the leaseholder pay a readjusted rental every five years after the initial ten-year period which is the higher of 8% of the reappraised fair market value of the property or no more than 50% of the rental he has paid the preceding period not only further contributes to the problem of making the state lease unbankable because the future rental payments cannot be ascertained with any degree of certainty, but it also penalizes the

state leaseholder over lessees of privately-owned land throughout the lease period to a point which is nearly beyond comprehension. Just how the state leaseholders would be so severely penalized under this "higher" of two limits or ceiling can be fully appreciated from the computations made in Attachment "C" which is attached hereto.

Third, the leaseholders further contend that the 8% figure used in this portion of SB 159 also is unrealistically high considering the unfavorable aspects of state leases in comparison to private commercial leases (see p. 16, Finding No. 5, Attachment "A").

4. Subsection (b) of AS 38.05.085 as proposed in Section 1 of SB 159 (p. 1, line 25 through p. 2, line 10) establishes what the leaseholders believe to be an excellent procedure for appraising state lease land in a fair and certain manner. Further, this provision corresponds with the Hearing Panel's Recommendation No. 4 (see p. 19 of Attachment "A"). The only difficulty the leaseholders have with this proposal is that, because of the frequency of appraisals needed under Section 1 of the bill, they think that the sharing of appraisal costs (p. 2, line 10) would be a highly expensive proposition.

5. The leaseholders earnestly believe that a new section should be inserted between *Section 1 and *Sec. 2 of SB 159. This new section would repeal and reenact AS 38.05.090 and would read as follows:

> Sec. 38.05.090. REIMBURSEMENT FOR FIXTURES AND IMPROVEMENTS. (a) A lessee of state land shall be reimbursed by a succeeding lessee or purchaser for fixtures constructed and installed on the land and improvements made to the land. If the retiring lessee and the new lessee or purchaser do not agree on the fair market value of the fixtures or improvements, or both, then such value shall be determined as provided in (b) of this section.
>
> (b) When it is necessary to determine the fair market value of the property under

> the provisions of (a) of this section, the lessee shall appoint an M.A.I. appraiser and the new lessee or purchaser shall appoint an M.A.I. appraiser. The two appraisers so appointed shall, within a specified period of time agreed upon by the parties, make their appraisals of the property in question. If the two appraisers agree upon the fair market value then that determination is absolutely binding on the parties. In the event that the two appraisers are not able to agree, then they shall together appoint a third M.A.I. appraiser and he shall then make his appraisal of the property in question. When the third appraisal is completed, the two of the three appraisals which are nearest each other in their determination of the fair market value shall be averaged and the resulting sum shall be the fair market value of the the matter in question and absolutely binding on the parties. The cost incurred in making the appraisals provided for in this subsection shall be borne by the parties equally.

The reason that this repeal and reenactment of AS 38.05.090 is necessary is that much of the existing provisions of this section are antiquated and internally inconsistent. This present state of affairs subjects the leaseholders to a great deal of unnecessary uncertainty with regard to their rights (or lack thereof) for reimbursement for improvements made to the state land if they must give up their leases. The amendatory language would eliminate any such problems.

6. The only other modification which the leaseholders believe necessary in SB 159 relates to *Sec. 3 (p. 3, lines 16-20). By virtue of what the leaseholders have suggested in numbers 1 and 3 above, the provision should naturally be redrafted to change the initial lease period to 25 years and readjustments to be made at intervals of ten years or more.

In conclusion, it may be fairly stated that the leaseholders sincerely believe that, in order for them to economically survive in the Alaska Industrial Subdivision, the changes to SB 159 stated herein are essential and not merely wishful thinking.

BEFORE A HEARING PANEL OF
THE ALASKA DIVISION OF LANDS

In the Matter of Protests)
of Various Leaseholders in)
ALASKA INDUSTRIAL SUBDIVISION)

RECEIVED
JAN 24 1977
Matthews, Dunn & Baily

HEARING PANEL PROPOSED DECISION AND RECOMMENDATION

I

INTRODUCTION

Pursuant to a letter of November 2, 1976, written by Michael Smith, Director, Division of Lands, to lessees holding leases in the Alaska Industrial Subdivision, an administrative hearing was held December 14, 15, 20 and 21, 1976. The hearing was called to give the lessees an opportunity to protest the five-year reappraisal of certain state leases within the Alaska Industrial Subdivision, said reappraisal resulting in substantially higher annual rental payments. The hearing panel consisted of George Hollett from the Division of Lands; Kenneth Zamzow, an appraiser with the State Division of Petroleum Revenue; and Timothy G. Middleton, an attorney in private practice.

The Division of Lands (Division) was represented at the hearing by John Cissberg from the Attorney General's Office. Representing various leaseholders was Douglas Baily, and representing leaseholder Groh & Benkert, a partnership, was Clifford Groh.

Testifying as witnesses for the Division were Ronald Bunn, an appraiser with the Division; Robert Kesling, a forester with the Division; and Eugene Parp with the Department of Highways.

Testifying as witnesses for the lessees were Leon Brown, Jim Cristopher, Joe Wilhour, lessees; Fred Ferrara, and Errol Simmons, appraisers; John Kamper, a banker; Andrew Hoge, an attorney; and Paul Kimball from Lynden Transport, a lessee.

The relevant provisions of the lease form, regulations and statute are set out as follows:

(1) State lease provision calling for reappraisal:

> "[S]uch payments to be subject to adjustment at each five-year interval from the effective date hereof, if the lease term hereof exceeds five years, such adjustment to be based primarily upon a reappraised annual rental value of land in a state of improvement similar to that of the land described herein at the time this lease was entered into.

(2) Regulations governing rental: 11 AAC 58.520 and 11 AAC 58.410:

> 11 AAC 58.520. ADJUSTMENT OF RENTAL. All leases shall stipulate that the annual rental payment shall be subject to adjustment by the director at five-year intervals and any changes or adjustments shall be based primarily upon the reappraised annual rental value. The director shall take into consideration the following factors in reappraising the annual rental value: the value of comparable lands in the same or similar areas, exclusive of buildings, structures, appurtenances, equipment, land fill, clearing, leveling or roads owned by the lessee. The commissioner may waive one or more of the periodic rental adjustments or lengthen the reappraisal period, when a lessee who has acquired a tract of land for multiple unit housing, commercial, or industrial development can demonstrate to the satisfaction of the commissioner that such action is essential in order to obtain the primary long-term financing or loan insurance required for development of the leased land. In order to qualify, applicants must furnish written evidence that, in requiring a waiver of rental adjustment, the lending or insuring agency is applying a generally applicable rule. Waivers shall remain in effect only during the term of the loan but shall not exceed 40 years.
>
> 11 AAC 58.410. ANNUAL RENTAL. Annual minimum rentals shall be computed from the approved appraised market value, except in the case of a preference right grazing lease, and shall be the lowest acceptable bid in the event of an auction. Annual rental shall be the basis of bidding for

all surface leases, except as provided in sec. 440 of this chapter. Annual rentals in amounts up to and including $250.00 shall be paid on an annual basis. Annual rentals in amounts above $250.00 shall be paid either annually or in quarterly installments, at the discretion of the lessee. All rentals shall be paid in advance.

11 AAC 58.900. SHORT TITLE. This chapter pertains to the leasing of land of the State of Alaska and to the jurisdiction of the Division of Lands, Department of Natural Resources and related matters. The intent of this chapter is to insure the equitable leasing of Alaska land in a manner that will encourage development for its highest and best use. This chapter may be referred to as the "Surface Leasing Regulations."

(3) Statutory provision dealing with rental adjustments in effect as of May 1, 1976:[1]

AS 38.05.105. PERIODIC RENTAL ADJUSTMENTS. Each lease shall stipulate that the annual rental payment is subject to adjustment at five-year intervals and charges or adjustments shall be based primarily on a reappraised annual rental value. However, when development of the land is not otherwise possible due to special conditions, the reappraisal period may be lengthened or waived under regulations adopted by the commissioner.

Because the hearing panel is composed of an appraiser, lawyer and a representative of the Division of Lands, it is considered appropriate in formulating recommendations to the Director that the panel exercise independent judgment based on expert testimony presented and exhibits offered. Accordingly, we do not accord the Division's position any special deference which might be applied in an administrative appeal in the judicial process.

The basic question to be resolved in this hearing is the determination of a fair rental for certain lots within the Alaska Industrial Subdivision. This fair rental is to be determined for the five-year period May 2, 1976, through May 1, 1981, the third rental adjustment period since the leases

[1] This section has since been amended, S1, Ch. 267 SLA 1976.

commenced on May 2, 1961. The Division had adjusted the annual rental of the leases in question as of May 1, 1976. This adjustment had been based on a reappraised fair market value and an increase in the rental rate from 6% to 8%. The reappraisal and adjustment were based on the relevant provision of the statute and regulations quoted above. Additionally, the term "fair market value" is defined in 11 AAC 58.910(11) as:

> "Fair market value" means the highest price, estimated in terms of money, which the property would bring if exposed for sale for a reasonable time in the open market, with a seller, willing but not forced to sell, and a buyer, willing but not forced to buy, both being fully informed of all the purposes for which the property is best adapted or could be used.

II

ISSUES

The issues appear to be the following:

(1) An interpretation of the lease, regulatory and statutory provisions, as to the nature of improvements to be included in the appraised value.

(2) Whether or not the term "primarily" as used in the lease, regulations and statute means that the Division should consider other factors in arriving at a reappraised annual rental value.

(3) Whether the Division's appraisal was in accord with the law and consistent with the relevant market conditions, particularly as to (a) use of comparables and (b) determination of original condition.

(4) Whether the 8% rental rate is appropriate in view of market conditions, the provisions of the state lease not found in private leases.

III

DISCUSSION

A. State of Improvements

The lessees represented at this hearing interpret the term "state of improvement" to mean the state of improvement of the entire Alaska Industrial Subdivision. Specifically, the lessees interpret this to mean that any improvements made outside of lot boundaries since 1961, such as roads and utilities, are to be excluded from consideration in the fair market value of the subject lots. The appraisals conducted by Messrs. Ferrara and Simmons for the lessees and presented at the hearing reflected adjustments in value to account for the cost of those improvements, particularly cost of access. This was based on language in the lease indicating value should be based on land in a similar state of improvement as land described in the lease at the time the lease was entered into; thus, the reference to "original condition." The regulations, however, are more explicit in determining what improvements are to be excluded. The Panel believes it would be inappropriate, in view of regulations and principles of equity, to exclude from the value of the leased property improvements off the property, especially when such improvements were paid for by the lessor. When a lessee can demonstrate that such off property improvement was paid for by him or his predecessor in interest, a different approach should be used. Both the State and the lessees agree that any improvements made within lot boundaries by lessees are to be disregarded in the valuation. The Panel finds in favor of the State in interpreting this phrase "state of improvement" to mean only the condition within the subject lots and that all improvements made since the leases were entered into which lie outside of the lot boundaries, specifically roads, water, sewer, power, and any other amenities

which affect the value of the subject lots are to be included in the fair market value of those lots.

A further disagreement among the parties involving the "state of improvement" is that of the original condition of the lots before any tenant improvements were made. The State's appraisal witness, Mr. Bunn, testified that as far as he could determine after reference to soil maps, aerial photos and consultation with various knowledgeable individuals, that the soils were basically adequate for building development with a minimum of site preparation required for any development, that no substantial amount of overburden needed to be removed. Mr. Bunn admitted his findings in this regard were based largely on the lack of evidence to the contrary. He did not, apparently, attempt to gather evidence from individuals who developed the leased land. Several other witnesses testified as to moderate to severe conditions of peat and unstable soil conditions at the time the leases were originally entered into. The lessees' appraisers, Mr. Simmons and Mr. Ferrara, after thoroughly investigating the original soil conditions with various knowledgeable people indicated that it was still not clear exactly what the soil conditions were on each parcel. There was adequate testimony given that most, if not all, of the subject lots had conditions of unstable peat soils in depths ranging from one to four feet, with testimony given concerning individual spots where the depth of peat extended 14 feet. In Mr. Ferrara's appraisal of Lot 4, Block 2; Lot 12, Block 10; Lot 10, Block 9; Alaska Industrial Subdivision, he stated that soil conditions probably varied from two to three feet of overburden along Commercial Drive on the north with overburden deepening in the area of Rampart Drive and reaching depths of two to three feet

again along Mt. View Drive. Mr. Ferrara testified that although he was uncertain as to the actual soil conditions at the time the leases were entered into, he felt a realistic condition was that approximately two feet of fill was required on the average for development of those lots which he estimated would cost, at the time of reappraisal, $.50 per square foot. Mr. Simmons' appraisal report and testimony regarding soil conditions were similar to those of Mr. Ferrara. In Mr. Simmons' appraisal of Lots 8 and 30, Block 10, he estimated a current cost of surcharging the peat with gravel in an amount adequate to support parking and storage yards was $40,000, which divided by total site area of 46,021 square feet equals $.87 per square foot. In the Panel's opinion, the investigation and analysis by the lessees' two appraisers were reasonably well supported and much more creditable than the investigation, analysis and testimony given by the Division.

B. Meaning of Primarily

The lessees contended that because the lease, regulation and statute all use the adverb "primarily" to modify the verb in, "such adjustment to be based primarily upon a reappraised annual rental value," that the State should consider other factors in arriving at an annual rental value. The lessees point to 11 AAC 58.900 wherein the intent of the regulations is spelled out, i.e., to "insure equitable leasing" to "encourage development." Accordingly, the lessees presented evidence, unrefuted by the Division, of the difficulty in obtaining financing for development of the leaseholds.

The Division's position was that the word meant nothing now with respect to the leases under question, but that it referred to the since repealed provisions for waiver

of five-year adjustments in cases where such a waiver is necessary to obtain long-term financing. The Division stressed the point that the lessees never attempted to obtain the waiver. The Panel finds the Division's argument to be without merit. First of all, the word "primarily" applies, if at all, to the reappraisal. The waiver would mean there would be no reappraisal at all. The suggestion that the lessees should have attempted to get the waiver is also without merit. The date of the reappraisal was May 1, 1976; the date the waiver repeal became effective was June 22, 1976. Assuming that the lessees had notice of the reappraisal simultaneously with the reappraisal, there would be only six weeks in which to get the waiver after reappraisal. The lessees indicated such actual notice of reappraisal came much later, in June and July; this was not rebutted. It is also unrealistic to believe that the State would have agreed to such a waiver.

The word "primarily", taken along with 11 AAC 58.900, is not without meaning. The Panel believes that the Division should consider other factors besides a determination of open market rent." The present state of the lease and regulations makes it difficult to arrive at a readily ascertainable meaning, especially in view of the duty owed to the people of Alaska by its government to obtain a good return from the State land. While principles of legislative interpretation dictate that the word be given meaning, the Panel finds it difficult to do so. Because nothing was presented to resolve this dilemma, the Panel refrains from attempting a definition beyond suggesting that doubts or ambiguities be resolved in favor of the lessee.

C. Appraisal.

11 AAC 58.410 states that annual minimum rentals shall be computed from the approved appraised market value. Rent paid for land in the open market place is typically determined by, and expressed as, a percentage of the market value of the land. Therefore, a reasonable estimate of the fair market value of the land in question must first be made before a market rent can be derived. The generally accepted method of appraising vacant land, and that which was used by all three appraisal witnesses, is the direct market comparison approach. All three of the appraisal witnesses utilized definitions in 11 AAC 59.810(11), and 11 AAC 58.520 regarding the use of comparable land sales. All three appraisers used the same basic techniques in adjusting comparable land sales for differences in comparison with the subject lots. The major factors for which adjustments were made were for increase in price levels between the dates of sale and the date of appraisal, neighborhood location, specific location (corner or inside lot, street improvements, utilities available, zoning, etc.), and physical characteristics of the comparables, including such things as soils, topography, shape and easements. As the panel finds that offsite improvements made since 1961, specifically water, sewer, power and road improvements are to be included in arriving at the fee market value of the land, the Panel addressed itself to the major points of disagreement between the State and the lessees' appraisers which are adjustments for time increment, neighborhood and an electrical transmission line easement.

(1) Time Adjustment

All three appraisal witnesses agreed that a rapidly rising trend of price levels for industrial land was evident

during the two-year period prior to the appraisal date of May 2, 1976. Mr. Bunn testified his conclusion was that a time increment of 3.5% per month was appropriate; both Mr. Ferrara and Mr. Simmons concluded a time increment of 2% per month was appropriate. Mr. Bunn used 10 comparable sales which indicated a range of time increment from 2.8% per month to 4% per month. One example which tended to limit Mr. Bunn's testimony in this regard was where he compared the sale of one parcel with a later sale of another parcel to arrive at an indication of time trend. Mr. Bunn did not adjust for other factors but compared the two sites as equal in value when actually one of the sale sites had much less utility than the other due to its very odd shape. Also, Mr. Bunn utilized sales in a faster growing area of Anchorage (South Anchorage) in arriving at a time adjustment. The Panel believes a reasonable upward adjustment for time increment to be 2% per month. This belief is based on the fact that Ferrara and Simmons used sales of property more likely to reflect accurately the increase in value in the Mountain View area. The Panel finds the lessees' appraisers more persuasive on this point.

(2) Neighborhood Locations.

Mr. Bunn used 18 comparable land sales with two from the immediate Mountain View area, two from the Anchorage Industrial Park in the Ship Creek area and 14 in the South Anchorage area in the vicinity of International Airport Road. Mr. Bunn's testimony was that the Alaska Industrial Subdivision is comparable in location to the other industrial areas of Anchorage, that price levels for industrial land was similar and that no adjustments were required for

neighborhood location to the comparable sales used. Mr. Simmons and Mr. Ferrara both agreed that the Alaska Industrial Subdivision neighborhood was inferior in price levels to either of the Ship Creek or South Anchorage Industrial area. Testimony was given and agreed by all parties that the Alaska Industrial Subdivision is well located in proximity to the downtown business center of Anchorage, is close to transportation facilities, and has good arterial access. However, testimony was given that the type and intensity of uses, as well as the rate of development within the Alaska Industrial Subdivision are inferior to the Ship Creek and South Anchorage Industrial areas. The Panel agrees with the lessees' appraisers in this regard and finds that the prices of comparable land sales from the Ship Creek and South Anchorage Industrial areas should be adjusted downward before arriving at a comparable market value for subject lots in the Alaska Industrial Subdivision.

(3) Electrical Transmission Line Easement.

Testimony was given and evidence presented concerning an electrical transmission line easement 45 feet in width which crosses diagonally through the Alaska Industrial Subdivision. According to testimony, no permanent structures may be built within the easement right-of-way and no structures may be placed closer than 10 feet vertically and horizontally from the electrical wires or supports. Mr. Bunn testified that the transmission line easement was not important and would not result in any loss in value to those lots crossed by the easement.

Mr. Ferrara testified that there is a loss of value in varying degrees caused by the easement, depending upon its location within each affected lot. Although Mr. Ferrara said he did not have time to investigate the effect

on value to a sufficient degree to estimate what loss in value would be involved for specific lots, he said one measure of the loss in value would be the cost of relocating the easement either within the public street right way or along the property boundaries.

Mr. Leon Brown, a lessee in the Alaska Industrial Subdivision since May, 1958, to the present, testified as to the problems encountered in developing four lots which were affected by this transmission line easement. The Panel notes here that Mr. Wilhour said he complained to Peanuts Main on the staff of the Division of Lands with a resultant rent reduction because of the effect of the easement.

The Panel believes that the evidence is conclusive, and common sense dictates that the electrical transmission line easement has an adverse effect on value. The Panel suggests that the testimony of Mr. Ferrara as to the cost to cure method, that is the cost of relocating the transmission line, is only one way of measuring this loss in value and that other appropriate means of estimating loss of value may be used. Before Mr. Ferrara's method is used, an investigation of the feasibility and likelihood of moving the line should be made. The Panel notes that the transmission line affects in a substantial way four of the reappraised lots. One method might be an actual computation of the value of the lost area.

(4) Rental Rate.

The May 1, 1976, adjustment, in addition to using a higher fair market value as a basis for computing the annual rent, also increases the rental rate from 6% to 8%. This, Mr. Bunn testified, was done because his review and analysis of private leases in the community indicated that 8% was the more appropriate rate.

The lessees protested that this increase was unwarranted. They argue that various provisions of the state lease make it less desirable than a private lease and that therefore the rental rate should be lower. The major differences which made the state lease less desirable were asserted as follows:

(a) Lack of subordination. Many private leases allow for subordination of the fee to any encumbrance placed on the property to secure debt financing. The state lease does not provide for this, it only allows the financing agency to step into the shoes of the lessee by way of a "collateral assignment of interest." Mr. Bunn testified that this provision was substantially the same as subordination; thus, no downward adjustment should be made in the rental rates to allow for this. The testimony of Andy Hoge, an attorney heavily involved in lease financing, and John Kamper of Peoples Bank persuade the Panel that Mr. Bunn's perception of subordination is simply wrong. The lack of subordination in the State lease is a very significant factor for which adjustment in rental rate should be made.

(b) Lack of arbitration and rent ceiling. Many private leases provide for arbitration of disputes over rent or rent ceilings or rent payments adjusted in accordance with the cost of living index. The State's lease contains none of these provisions. Mr. Bunn made no attempt to adjust for these provisions. The lessees argue, with considerable merit, that provisions such as rent ceilings, linking adjustments to the consumer price index, and arbitration provisions provide some degree of predictability as to what the rent will be in the future. This predictability is absent in the State leases, which provide for a unilateral adjustment

of rentals by the lessor.

(c) Option to purchase. Many private leases also provide an option to purchase. The State's lease contains no such provision.

(d) Floating easement. The State's lease contains a floating easement giving the lessor the right to grant easements or rights-of way across the leased land with compensation for improvements damaged or destroyed, but does not provide for consequential damage. The private leases do not reserve this kind of easement.

Most private leases contain one or more provisions which make them more advantageous to the lessee than the State's lease. Contrary to testimony of Mr. Bunn, the State's lease contains no provisions more advantageous to the lessees. Given the long term of the State lease, the Panel does not believe the right to renew is of significant benefit to the lessee. The evidence is overwhelming on this point. The banker, attorney, and lessee's appraisers all testified to the more noxious State lease. Thus, the Panel believes the increase in rental rate to 8% is unjustified. The general market rate for private leases is no doubt in the 8% range; however, some allowance should be made for the less desirable features of the State lease. For the above reasons, the Panel believes a return to the 6% rate would accurately reflect the market rental value for a State lease.

IV

SUMMARY AND FINDINGS OF FACT

In summary, the Panel makes the following findings:

1. The Division incorrectly made no allowance for site preparation to arrive at a fair market value in accord with the lease. The evidence was overwhelming that there was substantial overburden to remove, from one to four feet with some fill required perhaps on most lots.

2. The Division's appraiser incorrectly arrived at a time increment to use for upward adjustment of comparable sales. The Panel finds that the 2% per month time adjustment suggested by the lessees' appraisers to be well founded and the correct one to apply in the appraisal of the subject lots.

3. The Division's appraiser used some 14 sales from the South Anchorage area as comparables in his reappraisal. Only four comparable sales were taken from an area near the subject property. The Panel is cognizant that Mr. Bunn was attempting to find land of the same zoning classification as the subject lots to use as comparables. However, the Panel finds that the rate of development is higher in South Anchorage and that the type and intensity of uses is greater. Some appropriate downward adjustment should be made before arriving at an appraised value of subject lots from these South Anchorage sales. Additionally, the Division's appraiser should consider the comparable sales used by the lessees' appraisers, even though they were of differing zoning classifications.

4. The Division's appraiser should have, but did not, adjust downward the value of the lots which have an electrical transmission line running through them. The Panel finds from the map submitted by the Division that this line has caused a

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substantial diminution in the value of at least four of the reappraised lots. Additionally, the Panel finds that the adjustment suggested by Mr. Ferrara to be appropriate only if it were economically feasible to move the line, and likely that such a cure could be consummated.

5. The rental rate of 8% is excessive, considering the private lease market and the disadvantageous provisions in the State lease, including: (a) no subordination of fee, (b) no rent ceilings, (c) unilateral adjustment with no arbitration, (d) floating easements, (e) lack of option to purchase. Specifically, the private leases examined contained one or more of the following advantageous conditions: (a) subordination, (b) an option to purchase, (c) rent ceilings, (d) arbitration; and none contained floating easements provisions.

6. The Panel finds that subordination and collateral assignment are not the same as suggested by the Division's appraiser. The evidence on this point is overwhelming, consisting of the testimony of a disinterested expert, Mr. Hoge, that financing of a leasehold interest is typically much more favorable to a lessee when the land lease contains a subordination agreement. Mr. Kamper, Mr. Simmons and Mr. Ferrara agreed with this assertion.

7. The advantages alleged to be present in the State lease are more illusory than real. Any advantages to the right to renew the 55-year State lease and removing improvements is insignificant in relation to the disadvantageous features described in Finding No. 5. This is supported by weight of the testimony of expert witnesses.

8. The lessees had no real opportunity after they had received notice of the reappraisal and before the effective

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date of the repeal of the waiver of adjustment to seek such a waiver. It was unrealistic to think they might have reason to seek such a waiver prior to receiving notice of the reappraisal.

9. The effect of the adjusted rentals is to discourage development of the subject area rather than to further the objective of encouraging development, which is the intent of the leasing regulations (11 AAC 58.900).

10. A new reappraisal by the Division should be conducted.

V

CONCLUSIONS OF LAW

The Panel having heard legal argument and read the memoranda submitted makes the following conclusions of law:

1. The lease and regulations read together require that the Division include in its appraisal of subject lots the increment of value generated by offsite improvements, such as installation of roads and utilities into the subdivision, with the provision that any utility hook-up to a main trunk line which was paid for by the lessee or a predecessor not be included, even if it is off the subject property.

2. The terms "such adjustment to be based primarily upon a reappraised annual rental value of land" and "any changes or adjustments shall be based primarily upon the reappraised rental value" found in the State's lease and 11 AAC 58.520 mean that the Division should consider other factors besides a reappraised annual rental value in arriving at an adjusted rental. This is so because of the use of the adverb "primarily" to modify the verb "based." The principles of interpretation dictate it be given meaning; without the presence of this word the Division would be able to consider only the reappraised annual rental value.

3. The reappraisal of May 1, 1976, the subject of this hearing, was not done consistent with the provisions of 11 AAC 58.900, which expresses the intent of the leasing chapter of the Administrative Code.

4. Subordination of the fee and collateral assignment are substantially different as a matter of law. Subordination of the fee means the fee can be encumbered to secure debt financing for the lessee. The holder of a collateral assignment merely steps into the shoes of the lessee.

VI

RECOMMENDATIONS

Implicit in the above discussion and findings is that the Panel finds the Division's reappraisal unacceptably high. Therefore, the Panel recommends that the subject lots in the Alaska Industrial Subdivison be reappraised by the Division in a manner consistent with the above discussion, findings and conclusions.

In addition, the Panel believes further recommendations are appropriate. The present lease and the present leasing policy should be modified. These modifications should be designed to put the State on a competitive footing to the degree possible with private lessors and are as follows:

1. In accord with the provisions of the lease, the lessees should be encouraged to record expenses incurred in site preparation so that the "original condition" can be more adequately ascertained.

2. The lease language should be clarified to remove any possible inconsistencies with 11 AAC 58.520.

3. To insure some predictability, place some control over the size of the rental increase through utilization of a ceiling

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on the size of the increase in rental every five years.

4. Provide for arbitration of disputes over the annual rental arrived at after a reappraisal process and overinterpretation of other sections of the lease. This would ameliorate the current unilateral nature of rent adjustments.

5. Eliminate the floating easement. The State could exercise the right of eminent domain to condemn. The condemnation would result probably in greater compensation for damages to the lessee, especially in view of the Supreme Court decision in State v. Hammer, 550 P.2d 820, thus the lease would be more attractive to the leasing market. Additionally, the language in the current lease is ambiguous as to damages compensable. This ambiguity only encourages litigation.

6. These above recommendations, if adopted, would assure the State a competitive position in the lease market, encourage development of the leaseholds consistent with the intent of the leasing regulations, and be equitable to the lessee. The Panel also believes the State should be able to obtain a good return on its land. Accordingly, if the recommendations as to the lease are adopted, the rental rate should be changed to reflect the removal of the undesirable aspects of the State lease.

7. Suggest an amendment as to AS 38.05.105 to eliminate the term "primarily" from the statute, and also eliminate this term from the regulation and the lease. This is ambiguous, and assuming it has meaning, it may encourage individual accommodation of lessees by the Division. This, the Panel believes, is not in the State's best interest in that it could encourage political maneuvering to attempt to obtain this accommodation, and may well mean uses other than the highest and best use would be perpetuated. Also, the presence of such an ambiguity

could lead to an excess of administrative discretion.

8. Finally, should some or all of the above general recommendations be ultimately adopted, then legislation should be suggested for enactment providing all present lessees the opportunity to negotiate modifications consistent with the changes adopted.

RESPECTFULLY SUBMITTED at Anchorage, Alaska, this 20th day of January, 1977.

TIMOTHY G. MIDDLETON
Hearing Panel Member

KENNETH E. ZAMZOW
Hearing Panel Member

GEORGE K. HOLLEET
Hearing Panel Member

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TESTIMONY OF

ANDREW HOGE

before the

Division of Lands Hearing Panel
meeting to consider various appeals of the
reappraisals of leases in the
ALASKA INDUSTRIAL SUBDIVISION

Hearing convened 10:00 A.M., December 14, 1976.

ATTACHMENT "B"

ANDREW HOGE

Anchorage attorney

BY TIMOTHY MIDDLETON, HEARING OFFICER:

Q: Do you want to state your name for the record?

A: Andrew Hoge.

Q: And your address?

A: My work address is 3201 "C" Street, Suite 706, Anchorage 99503. My home address is 1370 Bennington Drive, Anchorage, 99504.

Q: Okay, thank you. Mr. Baily.

BY DOUGLAS BAILY, ATTORNEY REPRESENTING LEASEHOLDERS

Q: Will you tell us what your business or profession is?

A: I'm an attorney at law.

Q: And you're in private practice?

A: In private practice.

Q: And to take one of the risks that lawyers shouldn't take, I'm going to ask you some questions that I haven't discussed with you. You have been asked to come down here today to testify by myself on behalf of the leaseholders?

A: Yes.

Q: And it is correct, is it not, that you and I have not discussed in any detail your testimony?

A: Yes.

Q: And is it also correct to say I believe that the that the position, the opinions that you will express today were not prepared or derived at my request or in conjunction with any preparation for t is hearing?

A: No.

Q: Do you represent any of the leaseholders in Alaska Industrial Subdivision to your knowledge?

A: To the best of my knowledge, I do not. I used to represent Inside Alaska Tours, but they have sold their property, so ... And I still represent them. They hold the second mortgage. Other than that, I don't know of anybody. Our firm might, but ...

Q: The point is, that it is correct ...

A: But I don't, ah, I mean I don't know of it. There's a likelihood we do have some ...

Q: But is it your understanding that I contacted you concerning your testifying here because I had heard that you have prepared a position, independently of this hearing, for presentation to the Governor's Task Force?

A: Yes. (Inaudible)in the state lease programs.

Q: It is also my understanding that I have been advised by Mr. Rasmussen that you are, have been authorized by

National Bank of Alaska to state what the position of NBA would be with respect to commercial lending on state leases in Alaska Industrial Subdivision?

A: Yes.

Q: I wonder if you would relate them to the hearing panel, and I ask, Mr. Hoge, that you give this presentation in comparative summary with respect to the (inaudible) knowledge of the lease terms contained in the standard state lease forms which are utilized in Alaska Industrial Subdivision and some of the difficulties which he sees with respect to financing institutions participating in real estate loans and commercial loans in Alaska Industrial Subdivision (inaudible).

BY MR. MIDDLETON

Q: Is this his position, or NBA's?

BY MR. BAILY

Andy represents NBA.

BY MR. HOGE

I represent NBA on a case-by-case basis, and I've dealt with one loan at Henlin Subdivision for NBA most recently on an interim loan; and I've dealt with ground leases, in fact representing the developer on a parking garage over here which is similar to the state ground lease. And I've dealt with other

ground leases, both subordinated and unsubordinated, for National Bank of Alaska, Washington Mortgage. I represent several lenders outside and in the state, and I gather I'm reflecting what conclusions I've drawn from that experience as to what lenders generally require of loans of this nature. The state has a policy, which I understand, of leasing its lands. However leasing its lands has several provisions which cause concern to lenders and really affect the possibility of financing the project. Maybe in narrative form I could ... I've got a pad here, just to keep track of the main headings and then maybe after I've testified I can give some ranking to what I think are the more important ones. The obviously most important one is that the state will not subordinate. And that really is the most crucial one, because when that occurs that means that the lender must, if he forecloses his security instrument, which usually is a deed of trust, must come in and assume the responsibilities of the lessee. Now, that may not sound like much, but you've got to realize in the lending business that the lender, when he does come in for foreclosure, means that his borrower's gotten into trouble. And, usually, if he's gotten into trouble on the loan--the real estate project--there are a whole number of defaults which the lender then must of necessity cure to protect his security. And, obviously, if his borrower is in trouble, he can't go against his borrower--his borrower is probably bankrupt or nearly so--so he's got to look to his security, which is the project, to protect

himself. Now, that is a risk in the lending business. I think most lenders accept that. But, when they in addition have to deal with a third party, the State of Alaska in this case--but anybody else, it could be the City of Anchorage, or that--who are sitting there with a defaulting borrower ... I mean, a defaulting lessee ... the pressure is on the lender to cure all these defaults and try to make something rational out of really a messed up situation. So that's why subordination is just very important. It makes another difference, too, in evaluating the project, because if there is subordination it means that the lender can come in and take the fee. It also means that fee is available as security for the loan. If it's just a ground lease that can go up every five years, or whenever your reappraisal increments are stated for in the lease, then that lease really has very little security, you know, towards your project. You really are looking to the commercial project then to carry one of the loans. So, subordination is a very critical thing. Now, the state is taking the position that it will not or cannot subordinate. So, the things then that lenders look to when they make what we call unsubordinated ground lease loans become even more critical, and those things--again, not in terms of importance, but all of them, I think have some value--are first, what happens to the rent? In other words, if you're making a loan, and you make the evaluation of the project--and, again, I'm talking about how lenders evaluate it, maybe not like a real estate appraiser,

although there's a similarity--you've got to say, "Can this project bear the costs associated with that, and pay back the loan?" I mean, that's ultimately what it has to do. If one of those factors, which is usually a major factor in the ground rent, can dramatically increase, then you get into a very critical situation as to whether there's enough money coming back to pay off the loan. So, generally, lenders request that there either be a level term rent or that the rent be ascertainable. And in fact for at least savings and loans, by federal law, that's a regulation that is required, and the regulation when I last looked at it a couple years ago provided that the rent has to be ascertainable for a term of at least ten years after the term of the loan. And I'll explain why that's required. That also, while not necessarily a legal requirement, is generally followed by most banks in Alaska, and some insurance companies, depending on whether they're what we call an eastern life insurance company out of New York, have other terms, like 80 per cent of the loan term. Now the reason for that is that if the lender has to come in on an unsubordinated loan, he can extend the terms of payment to eventually recapture his loan. In other words, he can push the payments out for five years if there's a default. Five years to go. Then you can push them out to fifteen and presumably recapture your loan. I might add I made a comment to the Governor's Committee on that, that while regulations now provide for level term, I mean they provide for level term payments during the term

of the loan, it ought to be the term of the loan and up to ten years. So, the rent is very important.

The next item that causes real difficulty is that the regulations are totally inadequate to cure defaults. The regulation says that if the ground lease is forfeited, then the state will recognize the lienholder, presumably the mortgagee or the lender. But this is only after the lease is terminated. That is not of much help to anybody, because that procedure can take a certain amount of time because of the requirement, as I understand in the McCarrey case, that any lessee who is being defaulted can get a hearing... I mean, that can drag on forever. And you need, you know, if you've got problems--I can tell you in the lending business, I've been in some loans that haven't always worked out as well as the lender planned--you've got to get in there and solve the problems now. The problems only compound themselves if you're forced to wait. So, your default provisions in the present state ground lease are totally inadequate. And I gave the illustration to the Governor's Committee, and I've given it to you here, because I think there's some importance to it. The assignment lease form that you are required to use and analyze it has about two sentences. And I brought along, just to show you what it looks like. This is a copy of the ground lease with the City of Anchorage for the parking garage. And most of those provisions govern the type of construction, the type of the project, curing of defaults, what happens in the event of condem-

nation, what happens in the event of casualty. Yet the state really never addresses any of these really critical problems in their ground lease assignment forms. So, one of the things we've attempted to do ... I know in the first Penny loan, when this whole general problem started coming up ... was we drafted our own assignment. We finally agreed to that with the state, and I think it's four legal pages of single-typed space, it was, every word was negotiated. Not necessarily the most satisfactory thing, but acceptable to the lender. I'm not abdicating either that you have to have big ground leases like this, but there certainly ... there should be discretion, and it should be recognized that various projects require various loan conditions. And then I think you've got to address that, and the fact that you don't have it makes it very risky. Really, what is happening, I think you will find, is the projects that are being and will be developed until these areas are resolved or there's some reasonable policy on some of these things, is the lenders will make some loans--I'm not saying they will never make a loan--but they'll make them on the credit of the borrower, and not on the project. In other words, obviously if you're dealing with General Motors Corporation they can sign a note and, you know, they're not going to be as concerned. But, when you talk about the kinds of people that deal in Alaska who are not of the financial caliber of General Motors, then the lender is going to be looking to that project to make those payments, and not to the particular lender.

So, I think it's just going to cut off and has to have an adverse effect on financing, especially, I think, with some of the dramatic rent increases. You just wouldn't, as a lender, be too enthusiastic about making a loan if you know that rent can jump that dramatically every five years. It just, you know, that's ... to me that's just common sense.

Another area that becomes important, I think, is in these ground leases--and they've ... there's a little variety in them, the aviation lease is, I think, a little different than the Division of Lands, but it's the same problem. One, a condemnation and putting through public roads and improvements. I know in the Penney ground lease they tried to negotiate some of those points. In other words, the reason why you do that is you, when you get a state ground lease or make a development, you're planning to put "X" building here, "Y" building there, "Z" building here. If you were building a shopping center, it's critical that you have certain tenants--what they call "anchor tenants", "national tenants", "regional tenants". If the state can come through and build a road and say--I guess in some of the aviation leases they only have to pay you for the land- but, if they can just go through and, without any regard to your planning, take condemnation, that's another risk that the lender's gotta' take. While true, there's the right of private condemnation in any project, but the prevailing thing of that is, at least the little experience I had with the Department of Highways, both as an attorney general

and outside of it, is obviously the state's going to look to use state lands before it condemns private lands. I mean, that's logical, 'cause it costs the state something. (inaudible). You've got to recognize some of those protections. I don't know that casualty insurance becomes significant to the state, but obviously on the parking garage here that's very significant, I mean casualty insurance. So, those are what I call normal lease provisions that really aren't adequately provided for under the state regulations, and I've advocated to the Governor's Committee that, to the extent possible, there ought to be given discretion to the Director or someone in his office that these things can be negotiated. The state, of cours., is ultimately protected because it never subordinates. And by never subordinating it will always have the land and the improvements on it. So, those are the ... I think ... the main areas I address myself to. I made comments to the Committee on some of the things that are involved. You get different problems, of course, with residential housing, FHA requirements ... but I think that general category of things that the general problem areas there's different solutions, of course. So, those generally would be the considerations that I think any lender is looking at in determining whether to make a loan; and, obviously, a lender is going to ... y'know, if you've got a good project on fee land or subordinated lease land versus a project on state land ... y'know, a comparable project, you've just ... the lender's got to be looking at the fee land. I mean, there's

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just too much uncertainty in this area, and I really think the state needs to address those questions. And I hope they will. I mean, I think it's important if you're going to have state land and you're going to hold on to it and lease it, then you ought to provide the means to develop it. You know, unless you want to leave it as park land, but then if you want to leave it as park land, which may be a legitimate choice by the state, then you shouldn't be forced to lease it, and it should have never been given (inaudible). That's really the object of this (inaudible). That really is the areas that I would stress to this committee.

MR. BAILY

Your honor, I have nothing ... no further questions.

MR. MIDDLETON

Mr. Gissberg.

JOHN GISSBERG, ASSISTANT ATTORNEY GENERAL

Q: Right. Mr. Hoge, how long have you been in the Anchorage area?

A: Anchorage, Alaska? I've lived in Anchorage since 1965.

Q: And have you been familiar with the Alaska Industrial Subdivision?

A: I've served it, yes.

Q: You have, reviewed (inaudible) lease agreements for that particular area ...

A: In connection with this comments before the Committee I looked at a lease. I can't tell you for this hearing today I intimately reviewed it.

Q: The provisions that you mentioned, though, were from a state lease and they were applicable, of course (inaudible).

A: Yes, I think so.

Q: As far as (inaudible).

A: I mean, I think they're pretty standard provisions.

Q: Now, until ... you talked about this ten years' security period past the normal time of the loan. What's the normal term of a loan that your bank has been involved in?

A: Well, let me give you ... there's been a little change in that, and that's because of our inflation which we don't seem to be able to control. It used to be lenders would loan --and again--a variety of terms on ground lease loans. But say you're looking at a 20-year term, maybe a 25-year term of a loan. But what the lenders do now is make the payments amortize on either a 20-year basis, 25, 28, I've seen 29. But they have a balloon at the end of 15 years, and the balloon is there so that if the money market--in other words, the lenders traditionally got caught in four per cent when money rates are at ten. Now they could never get out of the loan for thirty years. So, as a compromise, they're looking at ten years, 15 years, a balloon, so

that at least they can look at the loan again. And then the nature of the provisions, at least I have written for National Bank of Alaska, Washington Mortage Savings and Loan in Washington, are that then they have an option to continue the payout over the next 20 years or 25 years. It varies, but that's one thing that's ... I've got to qualify my remark on. But, assuming you're dealing with a 20 or 25-year term, then the ten years you would add to the maximum term of the loan. But, as I stated, some of the New York life insurance companies, I may even have a letter on this, we have a ... when we were doing the parking garage, we had to put in a provision because our long-term commitment wasn't fully committed at that point to get enough term so we could make the loan to whoever came along, and I think it's 80 per cent--there may even be a few that are 75 per cent. So, if you have a 20-year term, you take in effect 20 per cent of the 20, which would be four additional years.

Q: Okay.

A: If you're an 80 per cent lender. If you're a 25 per cent lender, they want five additional years. If you're a 30 year loan, you'd have six years, if you're a 75 per cent lender you're, well, you're adding about eight years. If you're dealing with an S&L--savings and loan, federal--you're adding ten years. If you're doing with NBA, generally, obviously every lender where he's got discretion makes exceptions. I think they generally talk about ten years. They generally follow ten years. That's

been my experience.

Q: That's very complicated and interesting. I don't know it very well. If the state could ... if you got an application for somebody with one of these state leases, and, I mean, you looked at it on the basis of what you have said very possibly they might say no, we can't lend on this because we don't know what that rate is going to be in 15 years from now. It will have changed three times by then. The rental rate may have gone up quite high, so we ...

A: Yeh.

Q: You'd say, in light of the fact that there's no subordination, why, it would be difficult for us to loan on that. If your loan was for 20 ears and if you were able to give them testimony, the lender, the person who wanted the money, evidence that no, we can't loan on this unless we know that that rate is going to be fixed for ten years beyond the term of our loan, and they came back with a statement from the Division of Lands that we will fix it at this rate for the length of your loan plus 20 years, then you would be able to lend on it, because you would know the rate. If that were possible.

A: Yes, that would eliminate that problem on rent.

Q: I presume you are familiar enough with what happens in the (inaudible) office lending at that, that it was possible to get waivers, like thru June 22 of this last year, when it became only possible to get waivers on residential property.

A: Yes. But that was PET land.

Q: That's exactly right.

A: (Inaudible) is maybe a good example, but before that statute was passed I can assure you it was not that easy to get the waiver. I think ...

Q: Do you know if anybody ever got one of those in those particular cases.

A: I don't know.

Q: Do you know of anybody in your experience in the bank that applied for one?

A: No.

Q: Can the loans that the bank made that you're aware of (inaudible).

A: The loans I was involved in, no. I don't think.

Q: How many loans, approximately, have you been involved in on state leases that don't provide for subordination?

A: On state leases, I've been involved with, directly involved with two on PET land and I'm familiar with three or four over there. I was involved in Inside Alaska Tours' loan on their building, and that to me wasn't on commercial real estate, it was on the strength of the borrower, Mr. Kniesol, who was very well-to-do by himself. I have been involved with other ground leases, unsubordinated ground leases, but I think those are the ones that you could call my most direct experience with the state. I've been involved in the City of Kenai, the City of Anchorage, private

parties.

Q: The loss of this opportunity for a commercial developer to get a waiver is to make them more risky for your loan?

A: Yes, it does.

Q: Now you also mention, I think you were referring to a (inaudible) lease, the need for what you call "anchor" tenants?

A: Well, I ... what I was trying to mention there was that the condemnation provision which gives just the state the right to build a road or use (inaudible) right-of-ways is too broad, just by itself. In other words, you have to make some agreement that can be exercised rationally, and I gave you an example of ... say you made a little shopping center--or a big shopping center--on state land. And you have Safeway and Pay'N Save or LaMonts and Pay'N Save as your anchor tenants. If the state should just decide that it wanted to put a road through there, you know, then that's a negative factor in deciding to make the loan, because it's more likely that the state will use free right-of-way than right-of-way it has to pay for. Based on my experience, and I think just common sense ...

Q: Okay. But now you would have loaned from the bank that amount of money you will (inaudible), or somewhat close to that, I mean, if we ...

A: Yeh. Well, I think the appraisers can tell you it

doesn't quite work that way. I'm talking about commercial real estate. You figure the income from the building or the project. Okay. You deduct the expenses, then you use a capitalization rate to get the amount that that project is worth in terms of income. Now it may cost you more to build it than it's worth in income, so you wouldn't build it. But assuming that the income producing ability of that building equals its construction cost, or nearly that, then you've got the discount that you make in a ground lease loan. You have the loan, the value ratio, and ...

Q: What is the discount ecause you're making a ground lease loan?

A: Well, because ...

Q: What is the (inaudible).

A: Well, because on a ground lease loan you can never get the appreciation of the land.

Q: You have a fixed discount?

A: Well, I ... it varies again by lender. But I've seen sixty-five to seventy per cent--this is on unsubordinated ground lease loans.

Q: What would be the range?

A: Sixty-five to seventy. Some may even go as high as seventy-five -- it depends on the quality of your project, what kind of income it's turning out. Whereas on a fee loan you might go as high as eighty. In fact under, I think, the state banking laws you can go up to eighty under the law. I mean,

that's ... you know, when you're looking at construction, that's pretty dramatic. That ten per cent is, y'know ... that may be what you need to make the project go. So, it, ah ... and when you're looking at multi-million dollar projects, which in Alaska more and more you look at, that stuff is very important.

Q: So you're looking carefully at the income producing aspect of it (inaudible)?

A: Right.

Q: Would it be unusual to loan more than the improvements cost?

A: Ah, that gets involved again. When you say what the improvements cost, okay. It's a mistake to have what they call "hard cost" -- that's the contract cost. Okay. And I won't name the project, but I'll give you -- this is a realistically -- this is a true example. On a project in this town that's going to cost -- construction cost -- seven million dollars, the loan has to be nine million dollars to take care of what we call "soft cost". Architects, loan fees, special utilities, fixtures, other improvements, attorneys' fees. So, to answer your question, you have to loan ... you have to meet all these costs. I mean, the buyer has to meet all these costs.

Q: So, in the event that ... let's say that this was a true example and that, okay, nine million dollars was lent, and it's a seven million dollar structure on fee land which the state came in and ...

A: Right.

Q: ... and condemned it. Now the state would pay for the cost ... the seven million dollars that the lender ...

A: Well, hopefully, the state'll pay for the nine million dollars. Because these soft costs are costs you can say go into the improvement ... are part of the improvement. But the state could go down to seven million dollars. They could say ...

Q: How much does it cost you to build that building?

A: The contract says seven million dollars.

Q: It might take litigation to decide it?

A: It would probably take litigation in proving that.

Q: How often (inaudible). Let's say you were able to get the nine million.

A: Okay.

Q: Well, let's say you only lent the loan for seven million.

A: Okay.

Q: Why ... Why is the subordination of the fee so important if you get it back from the improvements when that easement went through?

A: Well, okay. This is a changing area of law. Until -- and we can into this on the parking garage -- until this past summer our supreme court had not ruled as to what extent if any they were gonna' recognize lessees. Ah, there's better recent supreme court where they'll ... decision recognizing lost

profits. But we don't know how far that's going to go.

Q: (inaudible)

A: I can't tell you the name of it, it was out of Fairbanks, it was on a bar. The guy had a bar and they started to recognize lost profits in the decision. But there is such a decision. And up till then negotiating with the city, they didn't want to recognize those values in a ground lease, and after we had a supreme court decision it was easier to negotiate on that. But, we don't know. I mean, we really don't know what recognition is going to be given to those values.

Q: (Inaudible)

A: I had understood up to that time they left that to be part of the award and then whatever agreement the parties made with the Division and so forth.

Q: So, it would be incorporated from the state, but the city ... as far as the city was concerned, what ... ?

A: Well, no ...

Q: I mean, it's a supreme court decision.

A: No, I'm just saying as I understood the state's past practice it determined what the value of the land or the building they were taking and that was their award. Now if that building was leased, the state said, "Here's the fair market value, that's all I'm required to give to you. Now you people fight." And I'm sure any of your appraisers who've been involved in that kind of litigation will tell you how interesting it gets,

ah ...

Q: Now we're talking ... I'd like to think about the case where the state is the ...

A: Right.

Q: ... lessor. Then if there's a multiple ... if there's multiple lessees ...

A: Division.

Q: ... then, of course, they would have to fight it out. That would depend on their subleases, and whatever they ...

A: Right. All I'm trying to point out is that that's an area of law that is changing, that there's really no definite policy on it, and obviously the state -- you can expect them to take this position -- is going to take the hardest position they can to protect the state. I ... I don't have any problem with that. But, in some of these areas there are ... in other words, you go to the California law ... they have gone through some of this litigation -- there are some set rules that you can agree to that at least are acceptable to the financial community. We really don't have those rules set up in Alaska.

Q: In California would they be more likely to lend on the ... with the use of improvements as security rather than requiring the subordination of the lease?

A: I ... I can't tell you what California lending practices ... California is unique in a lot of respects.

Q: I guess what I really don't understand -- and I

think you did explain it to, ah, me -- is if we ... if a lender can get seven million dollars out of improved ... the state is going to pay you ... compensate for those improvements. Why is the subordination ... (inaudible)?

A: I don't know how much the state's going to ... y'know, is the state gonna' pay the severance damages? You take the corner off of Safeway's building, and they lose the value there; and you take fifty per cent. You know, it's the severance damages to the whole project. Or, you build a planned-unit development -- a nice housing project -- you run a highway through the middle of it. Y'know. That ....

Q: So then what you really need is ...

A: ... dimishes. Well, sure, sure. I would stress ... my solution is better planning before you start so that will never happen.

Q: You plan it better.

A: Right. And then as a second resort have a fair ... And, I'm not saying the state should get cheated or anything. I'm saying a fair division of compensation. And that's all I advocate. And so everybody's treated fairly, that's all. Y'know.

Q: Thank you. And on the ... on this point about the state being treated fairly ... I think that's obviously what they ... the best interests of the state certainly ... the state is going to have to be served or we're not going to be involved in leases if we didn't think it was. What ... I mean, a lawyer

plays many roles, as you have in your long term of service in Anchorage. Could you assume now the role of a private attorney and I'm a person ready to, ah ... I come in and I have some property that I invested some money in, and I don't see much of an income from that property and I don't need ... I want to set it aside, and, in fact, I think I want to set it aside for a long term -- say a hundred years.

A: Okay.

Q: And, further, let's assume that we're talking about forty years ago. And, I'm going to rent it now -- I'm going to rent it to somebody for a hundred year term at three per cent. But in the year 2000 if the common rental rate in Anchorage is fifteen per cent, I'd like to make sure that whoever's going to benefit from that income is getting better than three per cent or four percent, whatever I said, of the fair market alue. Now, you indicated the example of the bank, which is quite interesting, where they may on a long-term loan lend at a low -- at the going rate -- I say, four per cent, and have a balloon payment at a certain period of time. I think you said fifteen years would be a common one. And that doesn't necessarily mean that the guy has to pay it all, but then that part of the loan is renegotiated at the going rate at that time. Now, if the state was going to get involved, if a person was going to get involved in a long-term lease like this, what could they do that would be desirable concerning the lease rate, so that there would not be such a

windfall benefit to the person that picked up the lease in the beginning?

A: Well, one of the things I've told many ... I mean, you're going to back the value of the loan, but ... the Governor's Committee has put a lid on the rent. Obviously, it's one ... y'know, you can't have 300 and 400 and 600 per cent increases, but it would never go up by more than, say, 25 per cent.

Q: Put a lid on the per cent increase.

A: Yeah. Because that ... it's either a fixed rental or ascertainable rental. Then it would be up to lenders to decide whether even that's acceptable. In the Penland thing -- because I was dealing with the mobile home space -- and we had to show this to the state. Mr. Penney, I think, went to something like 25 lenders before he found one, and that lender was only going to go on a level term. And that was over a period of, y'know, four, five or six years. So, ah, y'know, that ascertainable rent, putting the lid, may work -- hopefully will work -- for most, but not all.

Q: Well, what do you think if you're in a, ah, property value situation where the market value of a piece of property could double in even as much as three months? I mean, would a 25 per cent lid every five years seem reasonable as a maximum?

A: Well, to me it does. Y'know, I'm trying to be impartial a little bit here. Y'know, I can see the state's point

of view to say, "Boy, we want what every per cent that value goes up we want some money for it." Okay.

Q: I'm trying to think ... and you said this is what the bank does, too.

A: Well, I mean, they consider ... you know ... they're trying to look at that. But, let's look at the other coin. If any leaseholder developed on fee land. Okay? Presumably he's paid at today's prices and the land appreciates. By upping the rent he never gets any benefit of the appreciation. And appreciation, of course, provides security for lenders, so the lender gets no benefit from that appreciation. In other words, I suppose you get philosophical then about market value. You ... a year ago, you were doing ... or maybe two years ago ... a subdivision, and there was a great demand for housing. Okay? You're just going like gangbusters. But, if you have a subdivision today, you don't have it sold, you've probably been talking to your banker. So the vagueries of market value ... trying to be ... trying to answer your question ... are maybe not that kind of concept you can pinpoint every second of the day. True, you know, I can understand that these -- especially in the last few years -- we've had some tremendous increases in market value of land. But, alot of people too, you've got to look at their use of the property. They build buildings for themselves -- for their companies. And those companies sometimes just can't respond to the inflation like the state can if it can just raise its

rent, or maybe an attorney can--he can raise his fees. Y'know. But they can't. They're selling a product; they've got a lot of competition; and, y'know, all of those things go into figuring market value. And, again, what's in the public interest? You know, it's kinda' like taxes--everything that you put against a person he's gotta' try to pass on to the consumer and go out of business.

Q: When you talk about the benefit of appreciation, do you see as a philosophy of the private leases you look at the fact that they start out at what the market will bear the first year and then thereafter it's ... it'll be below what (inaudible) were offering at that point?

A: I think it's been ... the lender's gotta' be looking at them as a definite (inaudible) at maturity. Maybe ... let me ... take the disaster situation. Y'know, you can say ... Take the Calais office building--that's where I have my office--okay. That's a great project right now. It's full, good tenants, you know. First-class tenant oil companies, title companies and Alyeska. But two years from now, okay, when Alyeska's done, they've got three or four floors they've gotta' rent out. And when the federal office building opens up that changes your whole market immediately, overnight. And I don't know what's going to happen. And is that building then worth, in terms of let's say--and I have no reason to believe this and I probably shouldn't use it as an example--but, let's say they had to going into Chapter

XI or something. Is that building now worth what it's worth today? The answer is no. Because the market value concept changes. Ah, and what is market value? Are you talking about terms, are you talking about wholesale market value, or are you talking about retail market value? Those are different. Market value to a developer is different that what you and I expect to pay for one lot in the subdivision. So, maybe that word market value gets elusive both in a disaster situation and what level are you talking about? At the development level? Or are you talking at the retail level?

Q: On this benefit of appreciation where the lease is renegotiated every five years to take it back into what the lease market will bear, wouldn't the lessee have the benefit of appreciation as soon as the market started going up and land developers in three months can start getting some benefit from (inaudible)?

A: For how long? For four years, three years?

Q: Well, wouldn't he have it ... wouldn't he have it until the next adjustment to take it back to market value?

A: Well, generally not, because his people that lease from him ... Let's say he builds a building to lease. Okay? They want their fixed rent as long as they can have it. You know.

Q: But what he would give is not the same curve, I suppose he would change his...

A: He would try... obviously he would try to pass

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through the increases that he could.

Q: If he did have anybody on the property he would be getting the benefit of leasing land at less than the actual leasehold interest for at least four years, I presume.

A: He, he might. He might, if he could. It depends on his terms. You know, a person in 1970, 71 or 74 could have made terms for a ten-year lease, not thinking there was going to be a big increase in rental. And he's locked in. I mean, he's dead.

Q: Well, let's say it's, ah, let's...

A: And he can't renegotiate these.

Q: Let's look at the state lease. Would, wouldn't there be for every five years ... it's a 55-year lease, and every five years it comes into the market (inaudible).

A: Right.

Q: Then, if the market continues to go up as it has, would he be renting for at least four years below the market rate; and, so, wouldn't that be a favorable deal for him?

A: No. No, no. Oh, I don't think so necessarily. In other words, let's say he made a lease in '74 for ten years. He agreed to.

Q: But let's say it's (inaudible), and every five years...

A: Well, no. I'm talkin' about the owner of the building. In other words, one measure of market value to him is

what can he rent the building out at. Okay? Or rent out part of it. He rents it out. He agrees for ten years to a certain term. The state comes in and with this rather huge increase. It's something he can't pass on. So what... I mean, what's the market value to him? Y'know, he might have a ... I heard testimony in one of the governor's ad hoc committee work ... somebody had, ah ... they were makin' money on a lease. You know, it didn't sound like an outrageous profit from land. And because of the rent increase they're losing money. And they're ... they're tied into a big term.

Q: Well, for example, you probably do...

A: So, if you were gonna' say, "What's the market value of your lease, Mr. Jones?", and he says, "Well, it's a great deal, I'm only losing $12,000 a year." What are you gonna' pay him for it? What are you going to pay for a $12,000-a-year loss? Y'know, the state doesn't reflect those things in its appraisals, I don't think.

Q: Sounds to me like what you might be saying is that, not only would you find it difficult to loan on such a lease that the state has, but you would ... you would probably not be inclined to enter into such a lease agreement yourself.

A: I would find that difficult, yes. I mean, realistically, you know, if you're talking about big projects--multi-million dollar projects--boy, you know the lender's gotta' look at those things.

Q: I sure appreciate your testimony on this. I'm gonna have to point away (inaudible).

A: Okay, John.

Q: And, ah, I'm sure that it's also been very valuable to the ad hoc committee. We've been... Some of the things we've been talking about have hit specific words and I want to make sure that I know you meant in the beginning of your narrative you indicated that the regulations are inadequate defaults, and then later on you mentioned provisions. Alright. Were you talking about the paragraph in the lease when you stated ... when you said that? I believe you said that.

A: I'm referring to the regulations.

Q: Alright. Which one are you specifically talking about?

A: Let me see what we've got in here. I at one point had these regulations in this file, but if you have them I can point them out to you. Yeah, I've got it. Not necessarily readily. Okay, ah, when you talk about defaults, if you look at 11 AAC 58.540, that's what I call the DL-50 form, which is this two sentence form that is supposed to protect these somewhat large loans. Maybe it's right that the bank accuses me of writing too much, so they like to keep it concise. So maybe they like that form, I don't know. But, anyhow, you look at the assignment provision. You have to use that form. And that form to me, representing lenders, is adequate. Okay? I mean, I can say that

unqualifiably, and I'll show you ... I gave some sources to the committee that (inaudible). I referred them to ... there's about three good books on ground lease practice, that I thought he should look at. Then look at the rights of mortgagee or lienholder, 11 AAC 58.590. Okay? And notice of default, 11 AAC 58.570.

Q: What specifically about .590, would you make reference to?

A: Well, in .590 it says that in the event of cancellation or forfeiture of the lease, okay?

Q: Um-hum.

A: The holder of a suborted mortgage, conditional assignment--I haven't figured out what that is--or a collateral assignment--well, the collateral means more to me--will have the option to acquire the lease or the unexpired terms thereof, subject to the same terms and conditions as the original lease. Okay. Number one. And some of these leases have some peculiar conditions in 'em. I don't know whether they do in the Industrial Subdivision, but the lender comes in, and a lender really can cure things with money. I mean, you know, that's one thing generally a lender has, is money. But, if the lessee was supposed to do something that has to be cured, ah, then... Let's say he does. In other words, he has to assume the obligations of the lessee. That's difficult, number one. What I call "non-monetary defaults."

Q: If the obligations are more than paying money.

A: Right.

Q: If, for example, you're thinking of something specific.

A: Well, let's make it like if you had to put in sewers, and you hadn't put in sewers. Or, he was supposed to build something for the state or put in a beacon. He hasn't done those things. And, you know, one, can he do them? Is he capable of doing them? I gather some of the--I'm not talking about the Industrial Subdivision, but some other leases that I've heard about--have some peculiar provisions. I mean they're peculiar in the sense that they're particular to a certain project but not generally applicable. So, you've gotta' comply with those. So, anyhow--and I'm not sure how the state does all this, I've never... I don't think they've really thought it through. But, you go back to 11 AAC 58.560, you can cancel it, basically, on 30 days' notice. Okay? And let's say one of the things that you're cancelling for is the input into sewers. Well...

Q: But does it say mutual ... doesn't it say mutual in this agreement? It can't be unilateral then at all, can it?

A: Well, for a default--I'm talking about a default--the guy is defaulted. He was supposed to put in sewers by July 1, 1976 and didn't put it in; we got the loan; you try to cancel it. Okay. You cancel it in the middle of the winter; he says, "Well, I had trouble with the borough, etc., give me some more

time." You give him some more time. The lender doesn't know. I mean, he can't come in to really take over if you read literally .590. "Cause you can ... the lender can only come in and assume that lease if you cancel it. You never cancel, that creates an ambiguity that I think is unnecessary. So, what I try to write into my assignment forms is a provision talking about what happens if we take over by reason of foreclosure, judicial or non-judicial. Okay? In other words, the reality of the lending industry is we come in on foreclosure, not when you cancel the lease. And you don't--I'm saying you, but I mean the State of Alaska--never dresses that question.

Q: Is forfeiture ... it says forfeiture, too ... is that closer to default than ...

A: W[illegible]es forfeiture mean? I mean, I don't know what... The word cancellation I understand. But, if you cancelled and forfeited the lease, how can you tell me to assume a lease that's not in existence? I mean that ... it's ... the language isn't even accurate. How can you assume you cancelled ...

Q: Well you have acquired. Let's say you've acquired the lease, so you acquired... I mean, whatever happens that lease goes back to the state, wouldn't you think that then you have a right to acquire that lease. Doesn't that... Who has it, then? Doesn't... It says you have the right to acquire... (Inaudible.)

A: I think we could agree that the words could be

more precise, without arguing the point.

Q: As far as curing the default, one of the things that is required of all leases in .510--58.510?

A: Um-hum.

Q: Is on use utilization. And, there it says that failure to make substantial use of the land (inaudible) within five years shall, on discretion, constitute cancellation.

A: Um-hum.

Q: I presume if you lose ... if you did lend money, though, you would make sure that there was ... it was going to be used for the purpose that it was applied so that, at least as far as Alaska Industrial Subdivision is concerned here, have you ever been concerned with anything other than payment of money for a ...

A: Yes, in fact we were concerned with that with the Penland development, and I was supposed to ...

Q: Well, I know that, but I was just wanting to talk about Alaska Industrial Subdivision.

A: No. Okay, well I...

Q: You have been concerned about...

A: It's the same kind of problem. Let me explain the problem. Ah, the land out there might have certain zoning restrictions or utilization restrictions. In other words, apart from the state there might be some zoning or some other restrictions placed on the land. Another problem we've had, like with the

Penland lease ... there's no provision for the ground lessor to file an estoppel agreement, although I always require it. I write it into the ground lease. I said in granting and approving this assignment the State of Alaska says there are no known defaults. You know, that's the only prudent thing to do, is make them commit themselves in writing that there aren't any. And I tell 'em to go ahead and check it, too. 'Cause we don't wanta' make the loan if there's defaults. And obviously we don't want the state, the day we fund a two or three million dollar loan, to come back and say, "We're cancelling the lease." Y'know.

Q: Are you aware at this time of any permanent action required of any lessee on a parcel of Alaska Industrial Subdivision lease (inaudible).

A: I'm not aware of any. I'm just suggesting that that's a problem and can be a problem. In other words, when I get a loan package from the bank, the bank says, "We're going to make X loan on this property, you put the paperwork together." So I, y'know, I'll go over to the state lease file and read it and talk to the state lease people, y'know the administrators of the program and say, "Do you know of anything wrong," and "What's your view of the project?" and, y'know, check with the borough, or the municipality, now.

Q: I really didn't understand that when you first explained, I think I do now.

A: Okay.

Q: One other thing related to that which you mentioned is preference and assignment lease form that is required to be used ... and you used the words required to use ... and then looking at .540, it does say that application for assignment shall be made in writing to the director on forms with the assignment of lease or attach a copy thereof. Now you have indicated that you have prepared a better assignment and have had that approved...

A: I'm not saying it's better, but at least...

Q: No, no, well I mean longer...

A: It was longer.

Q: It was more satisfactory to you?

A: Yes. More confortable, at least...

Q: Doesn't that seem to indicate that this DL-50, although it's called an assignment of lease is an application for the assignment; and, if it's approved it should reference something else, such as you or a private attorney might prepare to make it a better collateral assignment for that...

A: If you'd review the files that the lenders have filed you'd find a variety of attempts to solve this problem. And they vary. I mean, each bank has been different. All I'm trying to point out you is that that--if you read that regulation literally I suppose you could read that's all you could ever have in there. I've read it and add things that aren't otherwise covered in here. And, all I've advocated to the Governor's

AGO 885823

Committee, and maybe even this panel, is that there has to be some flexibility in there to make what we call in lending make the lease bankable.

Q: There was... At least you were able to persuade ... corrected there was enough flexibility to make your (inaudible).

A: Well they, y'know, you give 'em to them, you don't argue with them. You say, "This is what we need to make the loan, you sign it." If they sign it I figure they're bound by it. But, you know, I recognize and advise the clients, well, they can argue the other way. The big thing in any real estate transaction--I think any attorney who does a lot of it will tell you--and this has been a big problem in Alaska. We have absolutely no certainty in our law or our procedures or our practices. You know. And that's what hurts Alaskans. We pay an extra penny, I mean an extra point in interest--not solely because of that, part of it is our isolation. But lenders have told me outside of this state. "Lookit. We're fifteen hundred miles away from you, we're based in Seattle--I'm talking about some f these big ones--and you people have no certainty in your law. Absolutely no certainty in your law or your procedures."

Q: And because of that it should be defined more specifically?

A: Yes. Yes, uh-huh. Sure. If the lender comes in and he feels comfortable with your procedures and practices, y'know. Then that's gonna' allow development. And if he doesn't feel comfortable, then I think it's going to be charged to him.

BY MR. MIDDLETON

Q: It's past noon already, and I'd like to complete Mr. Hoge's examination. I just really have one question. Ah, with respect to, ah, the rental provisions in the state leases. Ah, let's... And more particularly the one's that resulted from the reappraisal ... let's kind of draw, ah, make a hypothetical here. Ah, y'know, assume that there perhaps had been an under-valuation for the purpose of this question. That in fact the rental payments were lower than they should have been considering the standards that have been set up.

A: Um-hum.

Q: i.e., appraised value based on the fair market value, or appraised rental based on fair market value. Ah, and, then assume that there was ... there was what you might refer to as a correction of that, coupled with a tremendous jump in real estate values generally in a certain period of four or five years. Ah, would the bank be quite so concerned by the dramatic increase?

A: The answer is that they would always be concerned. Now, how adverse that would be would depend upon, ah, what the particular loan transaction was. If the transaction were one that, say there couldn't be a dramatic increase in rent necessarily... In other words, it depends on your lease. Some of these leases, ah, like a Safeway lease or that. The ones I've seen, they've got a base rent and they go on profits. Okay. I ... I mean

percentage of sales and volume. That, coupled with a dramatic increase of the underlying ground lease--and that is also reflective of another thing that's going up, is that the real property taxes presumably are going up. This is, I understand, although I got into this again with the parking garage. The municipality has a variety ... has used a variety of methods ... it's not legally committed to one over the other ... of evaluating these ground lease projects. Y'know. And that's a whole 'nuther area. But, to answer your question directly, Mr. Middleton, I think one, yes, it is of concern. Two, it depends on the project--how big a factor that would be.

Q: Well, what I'm... What I'm getting at is they all, look, they jumped this rental payment six, seven hundred per cent and, and, God knows, they're gonna' do it every five years. Y'know. When the truth of the matter may be, Gentlemen, that this is a one-time thing, resulting from, y'know, these two or three factors. Specifically a possible undervaluation. A tremendous jump in real estate prices, y'know. In other words, an increase in ... of the market value. And that in five years you may see ... you may see a reversion to the trend that--you weren't here-but the earlier trend in the rental adjustments was ... was substantial, but not in the neighborhood of six or seven hundred per cent. It was maybe fifty per cent over five years or something like that. People felt they could live with it.

A: Obviously that's a judgment thing, but I just

remember reading in the Alaska Land Lines, put out by the Division of Lands--a very good publication, I recommend that everybody get it--but, they were talking about the speech of the governor gave recently. And, I don't have the correct figures, but he was pointing out that of all the land in Alaska maybe one per cent is in private ownership. And then, I don't know what small per cent is in Anchorage. You know. And the trend that I see in Anchorage is everybody wants to live in Anchorage. Maybe people want to live in the capitol and the valley. Obviously, there's more development in that area. But, I don't ... I guess I don't see the trend that you might see, but you may be right, y'know. That it may normalize out. Maybe people will move to the other side of the inlet and develop their warehouses in other places. But I don't know that.

Q: Well, I'm just concerned that maybe the bank and the lenders ... the banks and the lenders are saying ... are getting nervous about a six or seven hundred per cent increase that may not be really something that can be projected as a trend. And they may get all nervous about this. Obviously, y'know, the provisions of the lease are there.

A: Yeah.

Q: And they're concerned about that. But, is it simply because this one time, you know, we've seen a really very, very dramatic increase?

A: Well, that could obviously be. But it is, y'know,

part of all of this is in Alaska--and I think this may have come out at the governor's committee the day I was there--y'know we accepted ... I'm sure banks made loans on these ground leases and never questioned them. They just ... things went along. The rental increases were always moderate, and you just accepted that as a way of life. Now, I think with the Penney matter, the Teamsters matter, this matter, and the general increased value, y'know, you've awakened the lenders and say, "Oh, we're not gonna' get in that." Y'know, whether itis gonna' go up or not, because you've gotta' say, "God, it went up six hundred per cent this time, is it gonna' go six hundred per cent again?" And I've, y'know ... I don't know that that's gonna' always happen. God, I hope not. I really do. But, ah, y'know the lenders gotta be saying, "What kind of people are we dealing with?" Y'know. If they can always change the rules, then you've taken out of lending--at least on state ground land--the certainty that you need. Especially when it's unsubordinated. That's what really hurts the lenders. If it was subordinated, then, y'know, the lender... The lender will always know he'll get his project back if the state ever pushes too hard on the rents. But, when he doesn't have that subordination, that ... that's where he's gotta' really have certainty. He's gotta' know what his relationship is.

Q: Alright, I don't have any more questions.

BY CLIFFORD GROH, ATTORNEY REPRESENTING INDIVIDUAL LEASEHOLDER

Q: Very, very quickly I would like (inaudible). But, Mr. Hoge, there's some discussion by the Attorney General about the benefit of the appreciation the lessee has because there's been an appraisal and then there's not another reappraisal for five years, there's a benefit to the lessee in some fashion. But there's really nothing the lessee can do with that appreciation, is there?

A: No, I ... I... In terms of a five-year term, there's not enough ... there's not enough time to get any benefit out of it.

Q: Well, he can't sell it. He can't buy it. He can endeavor to renegotiate his lease, if he's successful in doing so, but as you and I know it's a very difficult proposition.

A: It is difficult.

Q: Okay. Now, there has been some confusion in this hearing among some of us about the basic difference between a subordination and a so-called collateral assignment. And let's you and I see if we can straighten this up. Okay. In a subordination, what really happens is the lessor agrees that the lender may have the fee if the lessee defaults. Is that correct?

A: That's right.

Q: Okay. Now in an assignment, or a so-called "collateral" assignment, all that really happens is that the lessee assigns to his lender his ... gives the lender the right to cure

the default if there's a default?

A: That's true.

Q: And that is the basic difference?

A: Yeah. It's more dramatically. In one case on subordination the lender's getting the asset, and on an assignment he's really getting a liability, potentially.

Q: Right.

A: In other words, the potential liability is he'd have to cure the defaults, assume ... pay the rent on the ground lease.

Q: And any suggestion that the two things are equivalent just isn't, ah, legally correct?

A: No. No, they ... both in lending and law, they're about 180 degrees apart ... maybe not quite that.

BY MR. GISSBERG:

Q: Well, would you take one that had no subordination and no collateral assignment?

A: Well, you wouldn't ... I mean, you wouldn't be... Well, I'm sure the Controller of the Currency would be putting you in jail if you ever made a loan like that. I mean, you've gotta' have at least the assignment of the ground lease, unless you're a charitable institution, and banks, believe me, are not. I don't say that facetiously, they've gotta' make a profit. You don't... What you would be doing is saying, here, I'm gonna'

lend five million dollars. Build a building on this property. The state comes along and cancels the gound lease, gets the property. Even though they've got this permission that you can move the improvement in 30 days, but you're not gonna' remove a parking garage. You're not gonna' remove any kind of five million dollar building. So, in effect, the lender's made a charitable contribution, because he'll never get his building back, and he'll never get his security. He's gotta have at the minimal the collateral assignment, and much preferred is lease subordination. Much, much preferred.

Q: Could you have a subordination on the leasehold interest. That's the collateral assignment?

A: No, that's meaningless, because you'd still have the fee interest. I mean, that... You can have-there's another word for it that doesn't come to mind--a partial subordination thing, but it wouldn't be realistic, nor, I don't think, applicable in terms of what you're dealing with in state ground leases. In other words, the state either, y'know, the state probably is at this point not going to subordinate; and, if it's not going to subordinate, then it has to take care of these other problems.

Q: Is subordination always included in collateral assignments?

A: Ah, yeah, I've done one like that. "A" owns the fee. "A" leases to "B", a developer. Ah, developer "B" leases to "C". Well, you wouldn't have it in terms of the state ground

lease, but in that situation the developer will assign his tenant leases to the bank as security for the loan. Ah, the ground lessor may subordinate to the loan. Y'know, "A" will subordinate to the lender, and "B" will also be assigning his leases, but you wouldn't have it on the same lease, you'd have different leases in order to accomplish it.

MR. MIDDLETON:

Q: Okay, anything further? Thank you, Mr. Hoge.

A: Okay, thank you.

END OF TESTIMONY

ALASKA INDUSTRIAL SUBDIVISION LEASEHOLDERS ASSOCIATION

EFFECT OF SENATE BILL #159 ON MY PROPERTY LOCATED BLOCK 3, LOT 7A, ALASKA INDUSTRIAL SUBDIVISION. LOT SIZE APPROXIMATELY 64,000 SQ. FT. APPRAISED AT $65,640.00 TO BE REAPPRAISED 1978.

TERM	% INC TERM	% ORIG VALUE	NEW APPRAISED VALUE	LEASE PAYMENTS	ACCUMULATED COST TO LEASEE
1-10	0%	100%	$ 65,640.00	$ 52,512.00	$ 52,512.00
10-15	50%	150%	98,460.00	39,384.00	91,896.00
15-20	50%	225%	147,690.00	59,076.00	150,972.00
20-25	50%	337.5%	221,535.00	88,614.00	239,586.00
25-30	50%	506.25%	332,302.00	132,920.80	372,506.80
30-35	50%	759.38%	498,454.00	199,381.60	571,888.40
35-40	50%	1,139.07%	747,686.00	299.074.40	870,962.80
40-45	50%	1,708.61%	1,121,531.00	448,612.64	1,319,575.44
45-50	50%	2,562.92%	1,682,301.00	672,920.28	1,992,495.72
50-55	50%	3,844.38%	2,523,451.00	1,009,380.40	3,001,876.12

1. Above is MINIMUM
2. Rates are compounded
3. When lease finished, leasee will have paid 45.73 times value (3,001,876 ÷ 65,640)

ATTACHMENT "C"

AGO 885833

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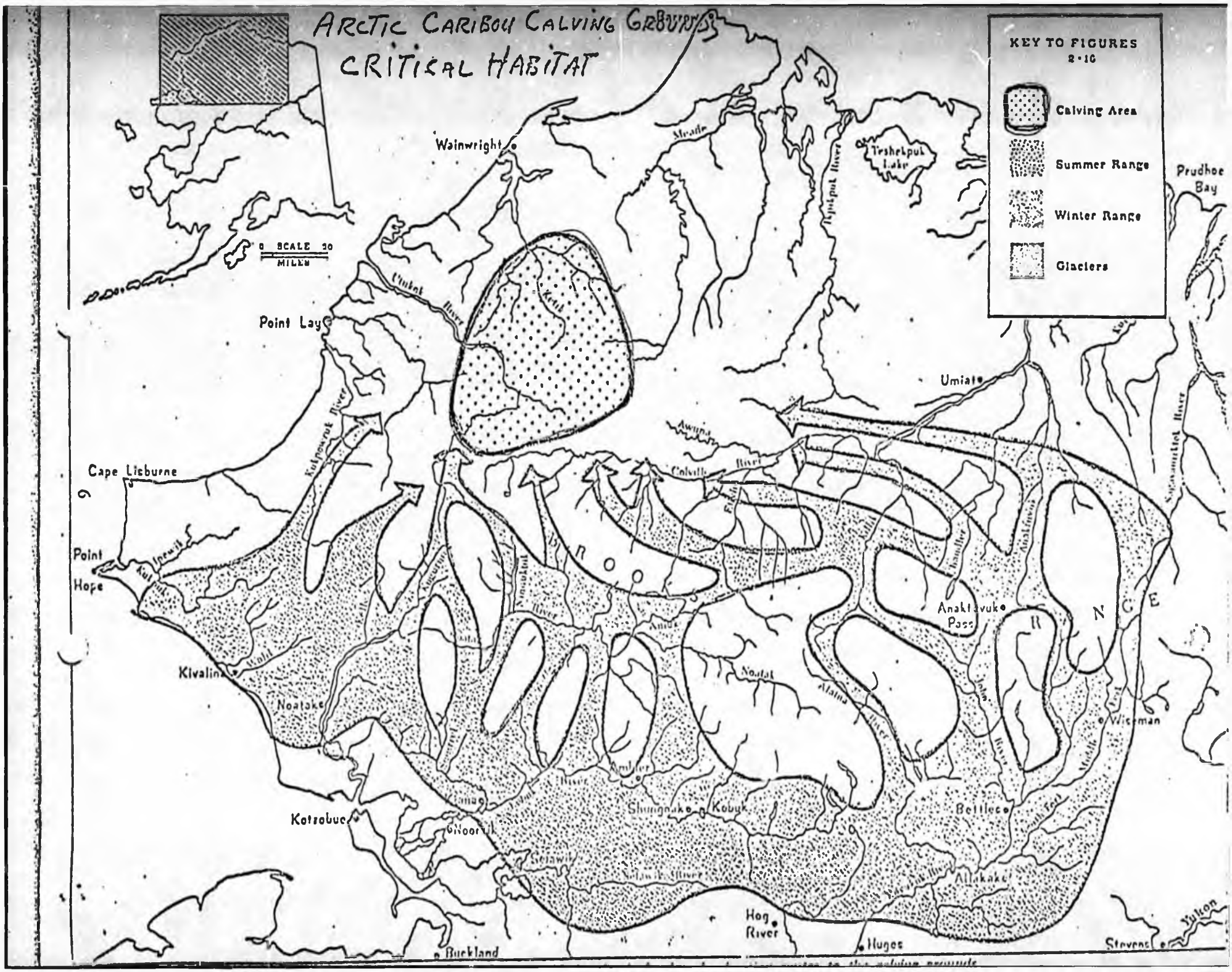
SB

180


ARCTIC CARIBOU CALVING GROUNDS
CRITICAL HABITAT
KEY TO FIGURES
2-16
Calving Area
Summer Range
Winter Range
Glaciers
SCALE 30 MILES
Wainwright
Point Lay
Cape Lisburne
Point Hope
Kivalina
Noatak
Kotzebue
Buckland
Umiat
Anaktuvuk Pass
Wiseman
Bettles
Allakaket
Hughes
Hog River
Stevens
Yukon
Prudhoe Bay
Tasherkpuk Lake
Colville River
Kobuk
Shungnak
Ambler
Noatak
Kelly River
Killik River
Chukchi Sea

SB

181

COMMITTEE REPORT

SENATE

2/24/77

5/26/77 Date

Mr. President:

The Committee on RESOURCES has had SB 181 creating Orca Inlet and Controller Bay critical habitat areas under consideration. A majority of the members of the Committee

☐ recommends it do pass

☐ recommends it do not pass

☐ recommends it do pass with attached amendment(s)

☐ recommends it be replaced with CS for _____ and that CS for _____ do pass

☐ (and) recommends it be referred to the _____ committee

☒ reports it back without recommendation as follows:

☐ AND attaches a report of its intent

☐ (other) _____

MEMBERS SIGNING THE MAJORITY REPORT:

MEMBERS NOT CONCURRING IN THE MAJORITY REPORT:

_____ recommends: _____

_____ recommends: _____

_____ recommends: _____

_____
Chairman

S 60

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A UNIT IN THE ORIGINAL FILE.

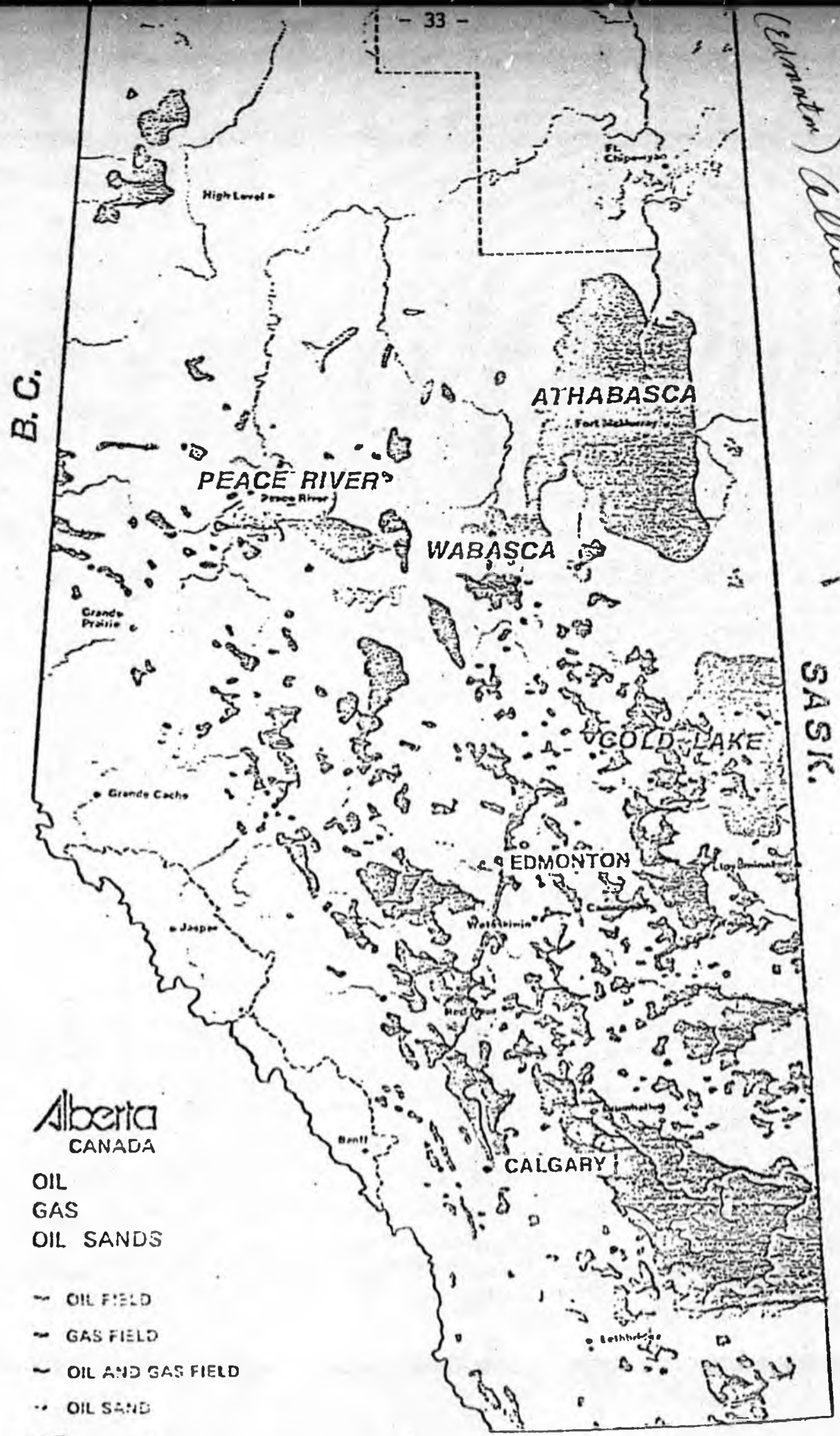

Fig 1

George Dalyford Natural Resources
Dept. Energy & Water
(Edmonton) Alberta, Canada

GOVERNMENT INCENTIVES TO EXPLORATION

FIGURE 1

Alberta's oil and gas resources extend over most of the province and constitute a major source of energy. To expedite the location of such resources, the Government of Alberta on July 28, 1972, approved the Natural Resource Revenue Plan. A main feature of this plan was an increase in annual revenues to the Government of about 70 million dollars commencing in 1973. The Alberta government felt this to be a fair and reasonable additional return to the citizens of Alberta for their ownership of a depleting and non-renewable resource. This dollar figure has increased since the initiation of the program due to the escalating price of crude oil.

To offset this increase in revenues from industry and to stimulate increased exploratory activity in Alberta, the Government implemented the Exploratory Drilling Incentive System. The program has undergone several modifications since it was introduced, but essentially consists of a monetary credit for an exploratory well drilled for oil or gas. The credit may be applied against taxes payable under The Freehold Mineral Taxation Act,

.....2

royalties, rentals, fees and bonuses on petroleum and natural gas Crown minerals rights. A producing incentive exploratory well may also qualify for royalty or mineral taxation exemptions.

The Exploratory Drilling Incentive System is administered jointly by the Alberta Department of Energy and Natural Resources and the Alberta Energy Resources Conservation Board. Determination of qualifying footage upon completion or abandonment of the incentive exploratory well is made by the Board. Determination of the credit to be established is made by the Department.

Due to the close relationship between geophysical and drilling activity, it is found desirable to provide incentives for geophysical exploration. It is considered vital to maintain a high level of geophysical work to ensure the continuity of the search for new oil or gas reserves.

Therefore, the Alberta Government, in taking a second step toward maintaining the necessary level of petroleum activity in the province, implemented on January 1, 1975, the Geophysical Incentive Program.

The credit for a geophysical incentive program is determined from a

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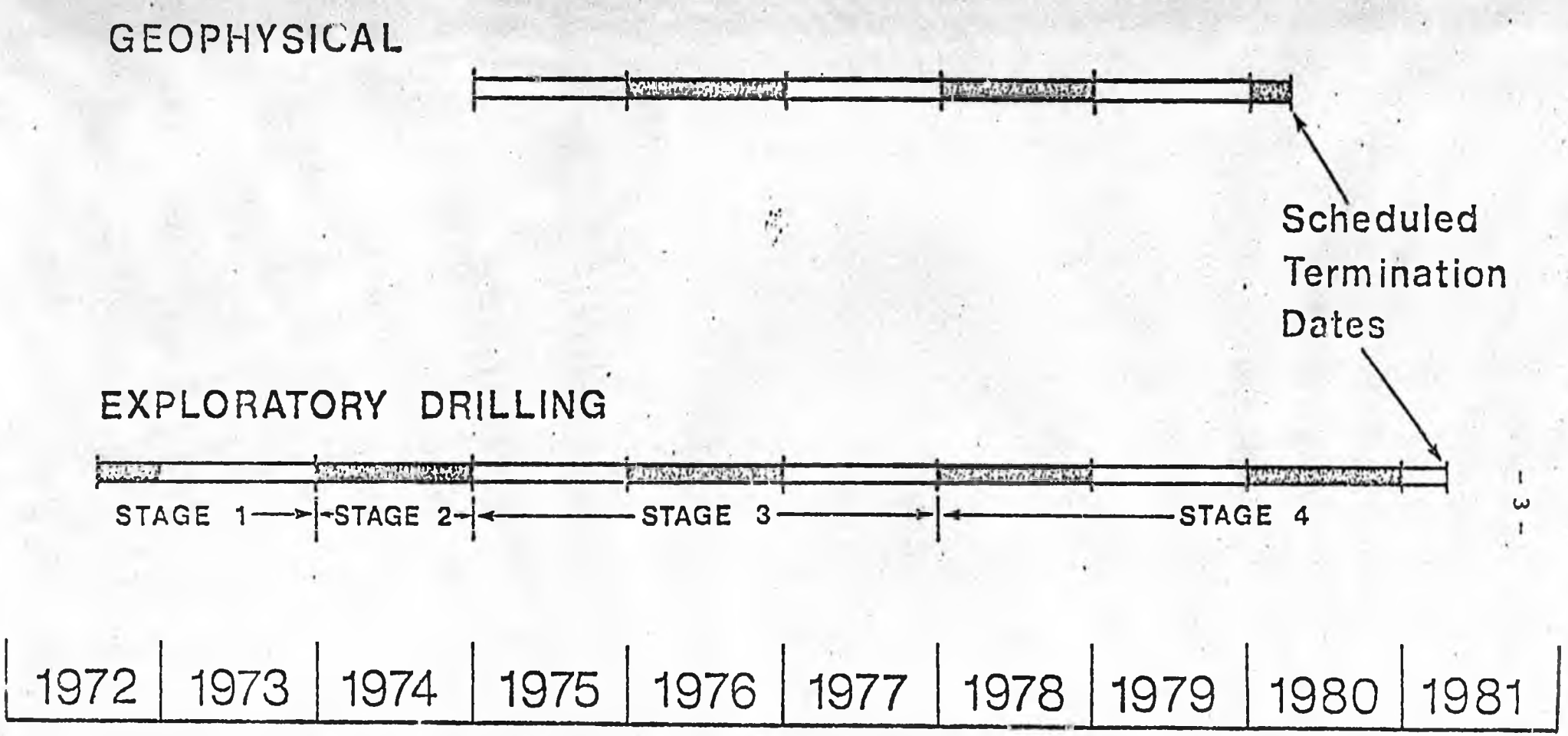

DURATION OF INCENTIVE PROGRAMS

Source: ERCB

FIGURE 2

formula based on the number of miles of subsurface coverage recorded and the geographical area in which the survey was conducted. The incentive credits maybe applied against revenues owing to the Crown, for bonuses on petroleum and natural gas, Crown mineral rights, fees, rentals, royalties and freehold mineral taxes.

FIGURE 2

The Exploratory Drilling Incentive System was implemented on August 1, 1972, and was scheduled to be in existence for a period of five years terminating on December 31, 1977.

After an extensive government task force study, an amendment was introduced extending the Exploratory Drilling Incentive System to March 31, 1981.

At the time the Drilling Incentive program was implemented, it was estimated that only 50% of ultimate oil and gas reserves in Alberta had been discovered. Exploratory activity had declined and many companies with substantial land holdings were apparently shifting their exploratory activity to the frontier areas. For this reason, the Government tried to "tie-in" the Natural Resource Revenue Plan with the Exploratory Drilling Incentive System to benefit those

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operators who undertook exploration in Alberta.

Between 1964 and 1969, the number of new field wildcat wells drilled in Alberta maintained fairly high levels - about 500 wells per year. In 1971, this number dropped to about 300 wells per year.

A further indication of both the decline and shift in exploratory activity was indicated by seismic crew activity in Canada. Seismic activity dropped from a peak of 972 crew months in 1967 to a 1970 low of 724 crew months.

The shift of activity away from Alberta during 1970 and 1971 was of greater significance. From 1961 to 1967, close to 70% of Canada's geophysical activity occurred in Alberta. In 1968 and 1969, Alberta accounted for just over 60% of the total. In 1970, more Canadian seismic activity occurred outside Alberta than in Alberta.

There was a substantial drop in bonuses from the sale of Crown mineral rights. During the period 1965 to 1969, these revenues averaged $100 million per year. In 1970 and 1971, these revenues dropped to about $25 million per year.

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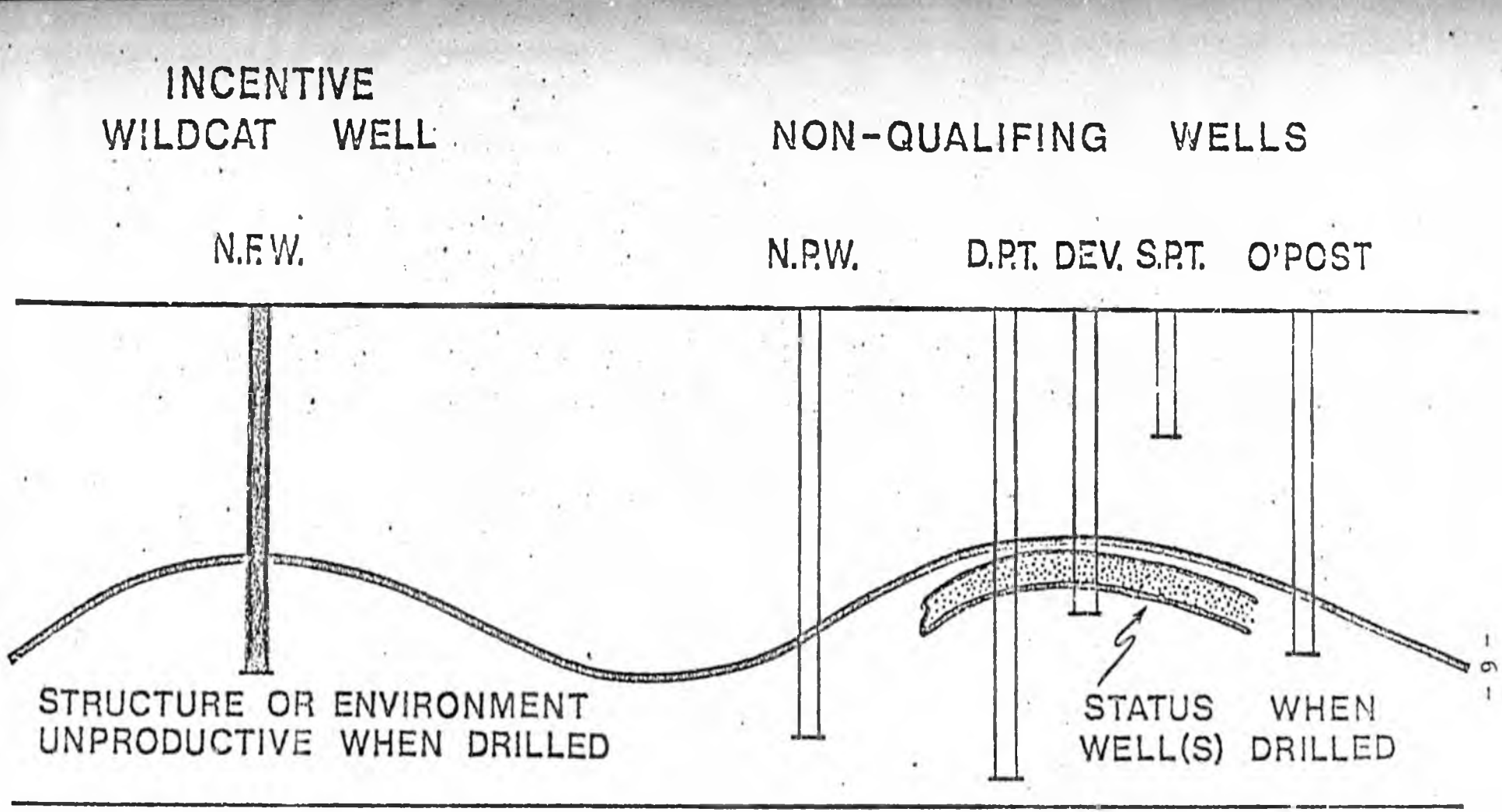

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J.R. Pow

INCENTIVE WILDCAT WELL

AUGUST 1, 1972 TO DECEMBER 31, 1973

FIGURE 3

The Exploratory Drilling Incentive System, within the Natural Resource Revenue Plan, was designed to stimulate the discovery of crude oil reserves and shift exploratory activity back to the province by providing substantial rewards to the wildcat entrepreneur.

The objective of the Exploratory Drilling Incentive System was to encourage high risk exploratory drilling and increase the drilling activity in remote locations at a time when this type of drilling was declining in the province. The tendency in Alberta was to explore in known and reasonably accessible regions rather than stepping out in the search for new fields.

The Exploratory Drilling Incentive System has had several amendments since its original inception.

FIGURE 3

From August 1, 1972 to December 31, 1973, the program related to wells that were classified by the Energy Resources Conservation Board as "New Field Wildcats" under the "Lahee" classification system. A formula was derived which enabled the establishment of a credit equalling approximately 30% of the cost

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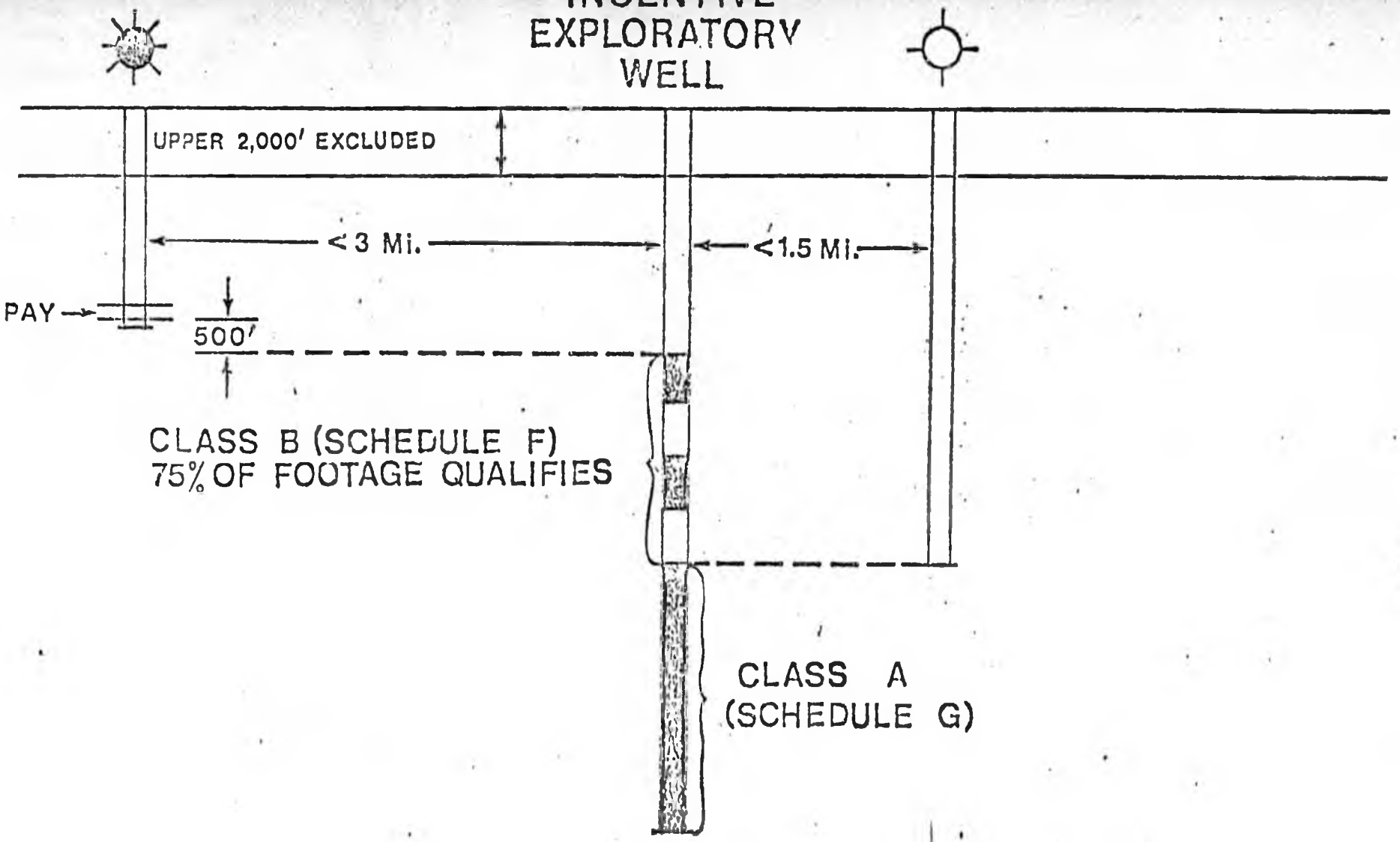

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TWO CLASSES OF QUALIFYING FOOTAGE

(EXCLUDING UPPER 2,000 FEET)

FIGURE 4

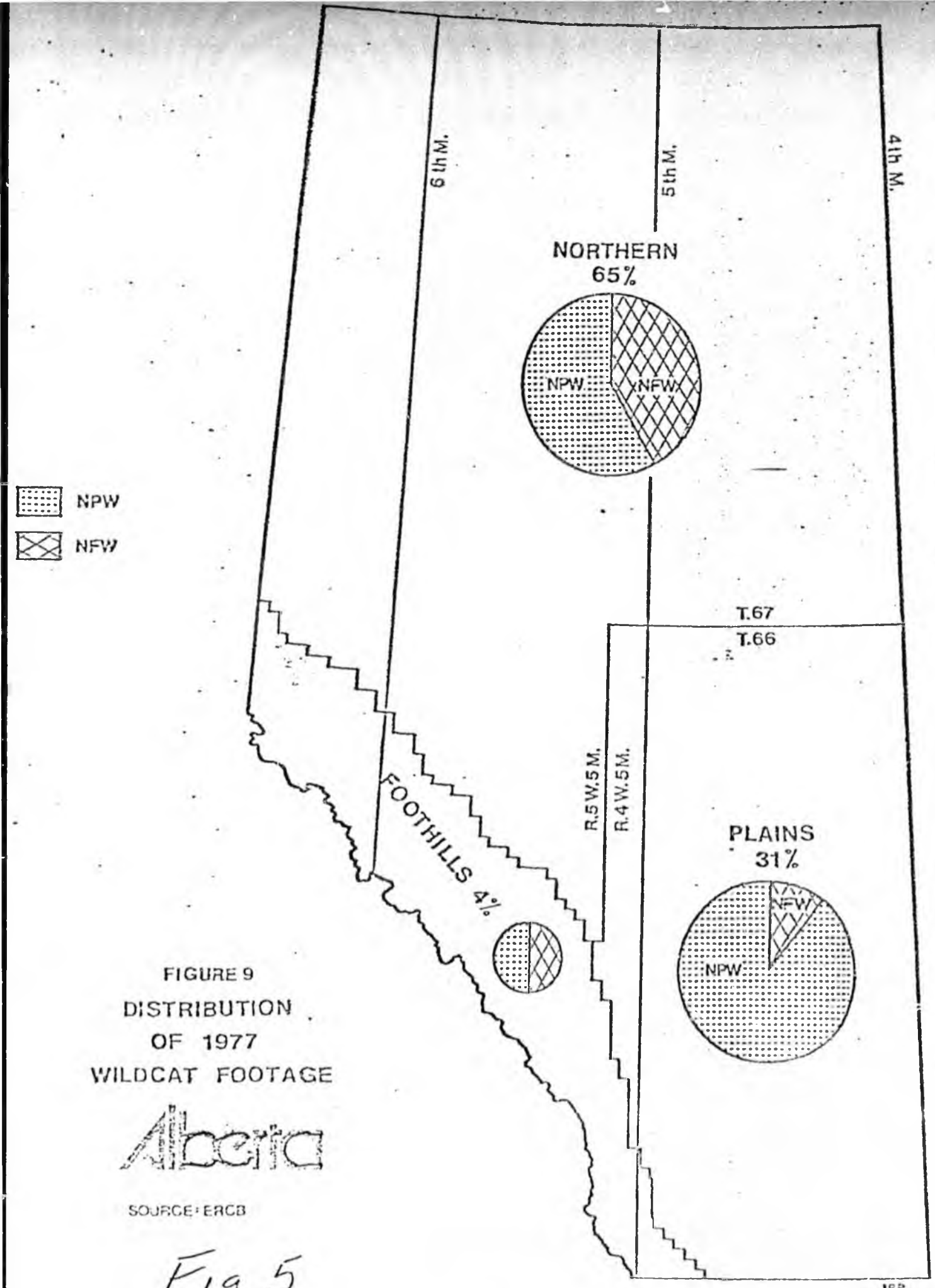

FIGURE 9
DISTRIBUTION
OF 1977
WILDCAT FOOTAGE

SOURCE: ERCB

Fig 5

of the well. The total footage of a new field wildcat qualified for incentive credit. A five-year crude oil royalty "holiday" was granted.

During this 17 month period, $16 million in drilling credits were earned by industry.

FIGURE 4

From January 1, 1974 to December 31, 1974 the program was expanded to include, along with the new field wildcats, about one-quarter of the more remote new pool wildcats and deeper pool footage. Figure 4 shows the principles that were adopted on January 1, 1974. The footage shown in white is known as Class "A" footage and it earned as credits, approximately 40% of the total recognized cost of the well. The Class "B" footage is applicable where a dry hole is within one and one half miles of the well. Class "B" footage earned about 30% support.

FIGURE 5

During this period, drilling costs were increased and a cost distinction was made for wells located in the Foothills, Northern and Plains regions.

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These areas, as modified on February 26, 1975, are shown on Figure 5. Added features included a two-year natural gas royalty "holiday" and authorization for credits to be used to defray bonus payments tendered for Crown oil and gas mineral rights. The credits could continue to be used to offset payments due for royalty, rental or freehold mineral tax.

On January 15, 1974, the Alberta Petroleum Marketing Commission was created. Prior to its creation incentive credits established could be used by the holder to satisfy oil Crown royalty payments. This was discontinued on January 15, 1974 by the Commission.

During this 12 month period, the credits amounted to roughly $20 million and involved almost 600 wells.

From January 1, 1975 to December 31, 1977, the Government increased the benefits of the Exploratory Drilling Incentive System by expanding recognized well costs and by increasing the credit support for Class "A" and "B" footage to approximately 50% and 37½% respectively.

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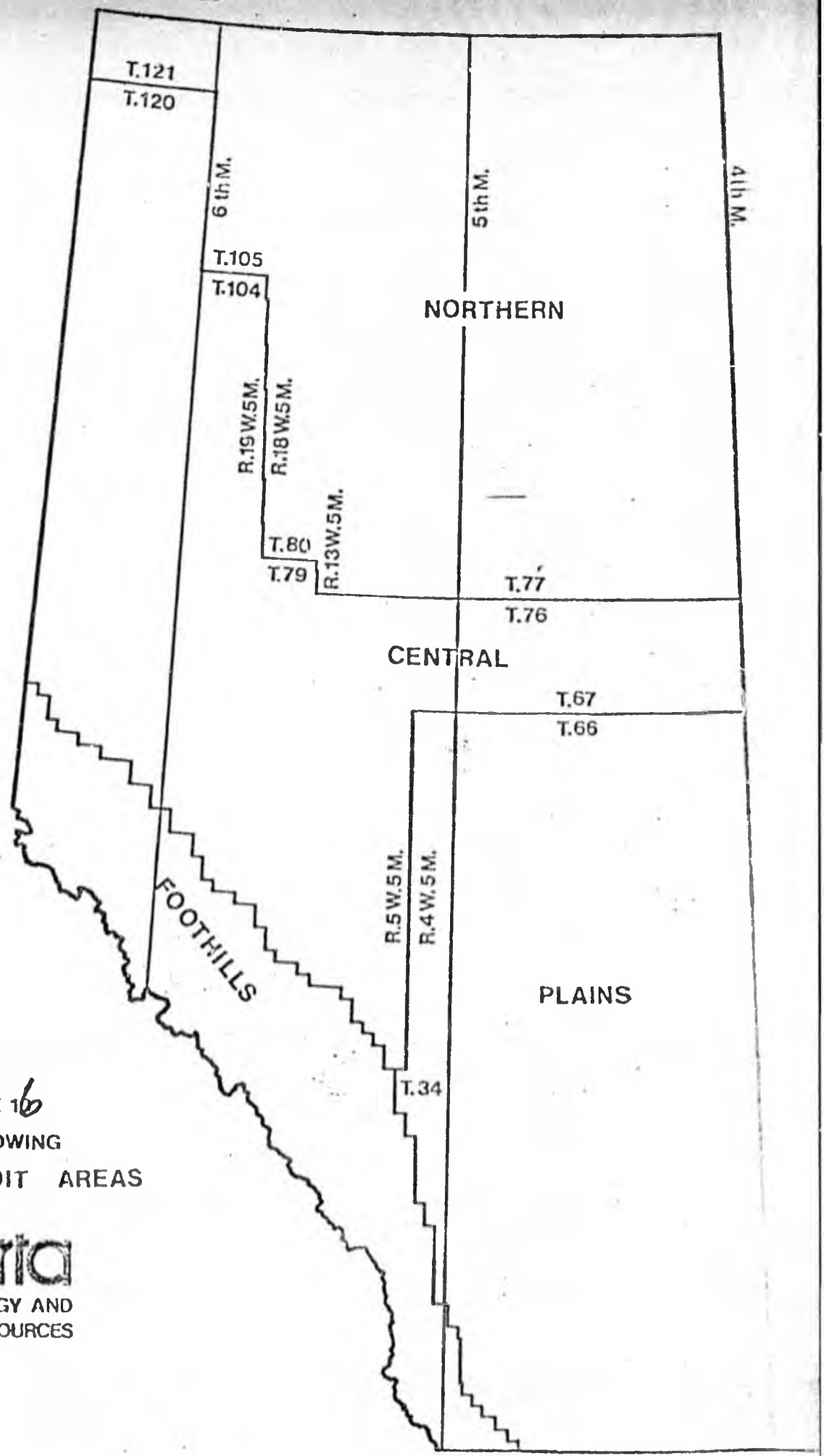


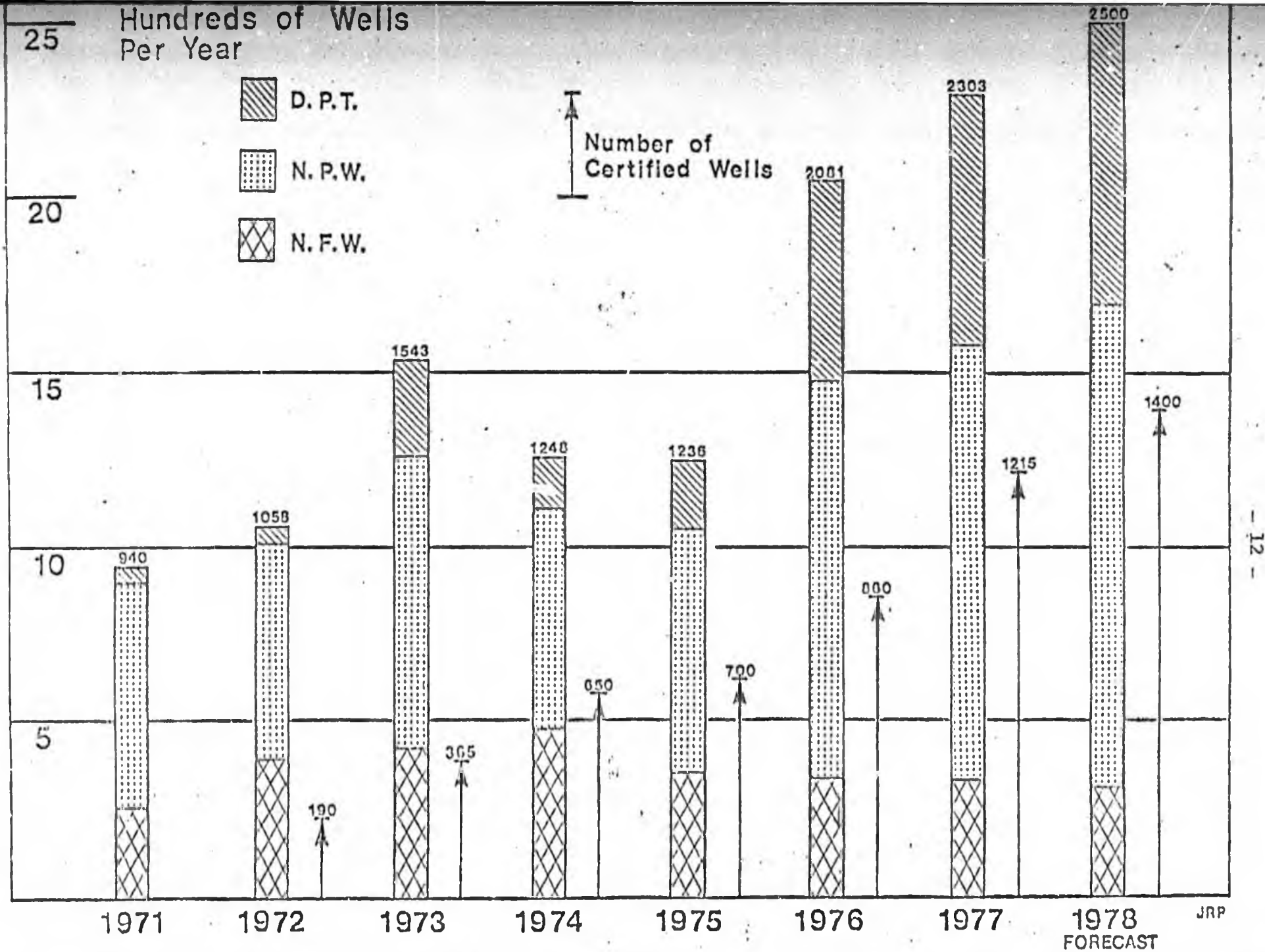
FIGURE 16

MAP SHOWING

DRILLING CREDIT AREAS

Alberta

ENERGY AND
NATURAL RESOURCES



EXPLORATORY AND CERTIFIED WELLS, ALBERTA

FIGURE 6

Commencing January 1, 1978 the drilling credit areas have been redefined. The Plains and Foothills Areas are unchanged, but the former Northern Area was divided into a Central and Northern Area. The boundary between the two new areas was defined on the bais on well costs, topographic and access considerations. The amendments also include the upper 2,000 feet of sediments from receiving any incentive credit and increase the credits for qualifying wells deeper than 3,500 feet.

For wells greater than 5,000 feet in depth, the incentive is increased by 25% to 45% depending on the location of the well.

FIGURE 7

There has been a considerable increase in the number of exploratory wells drilled in Alberta since inception of the incentive program in 1972. There were 1,058 exploratory wells drilled in 1972 compared with 2,303 drilled in 1977. The number of wells qualifying for incentive footage in 1972 was 190 compared to 1,215 in 1977. An increase is expected in 1978. The number of new pool

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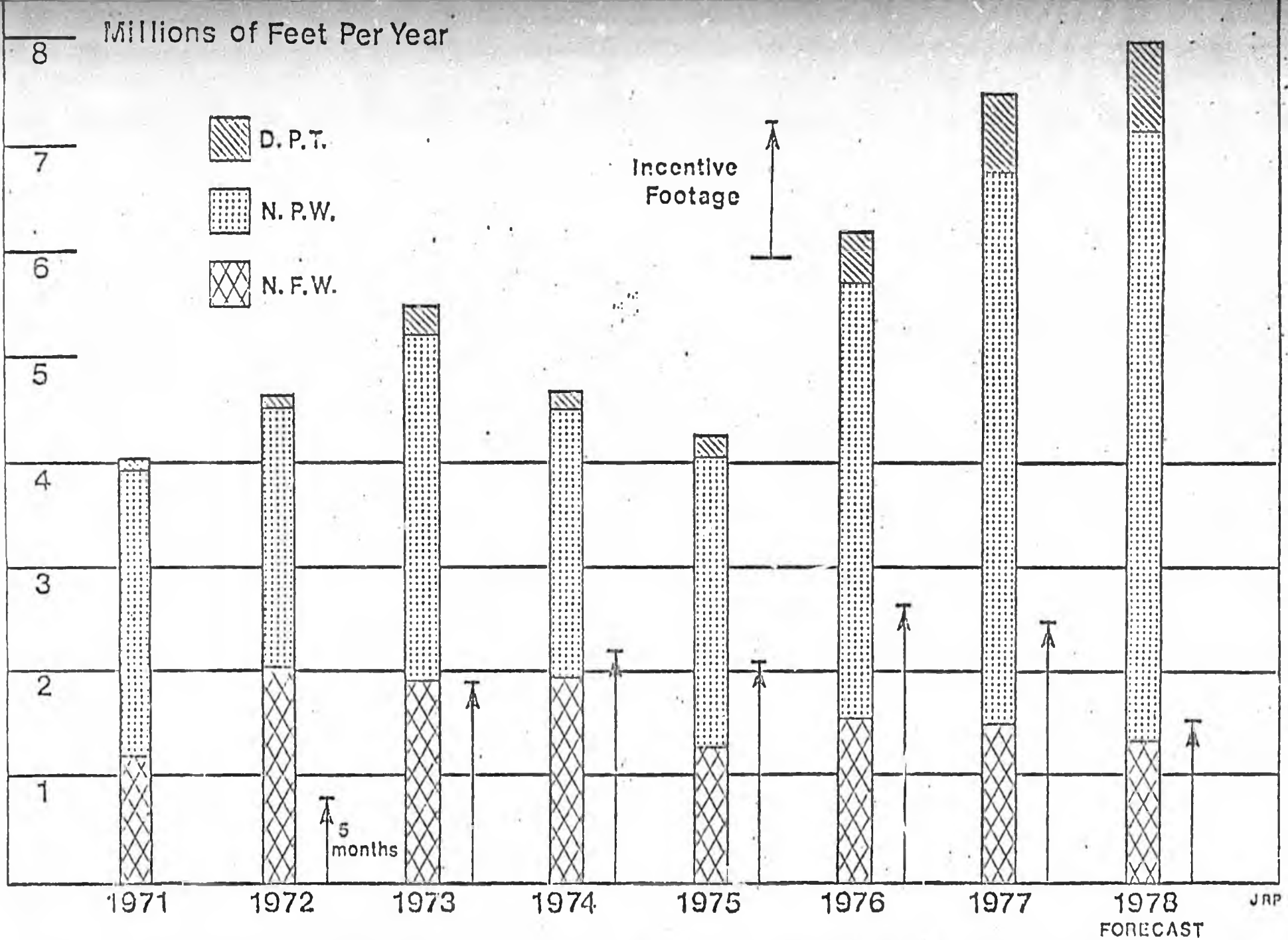
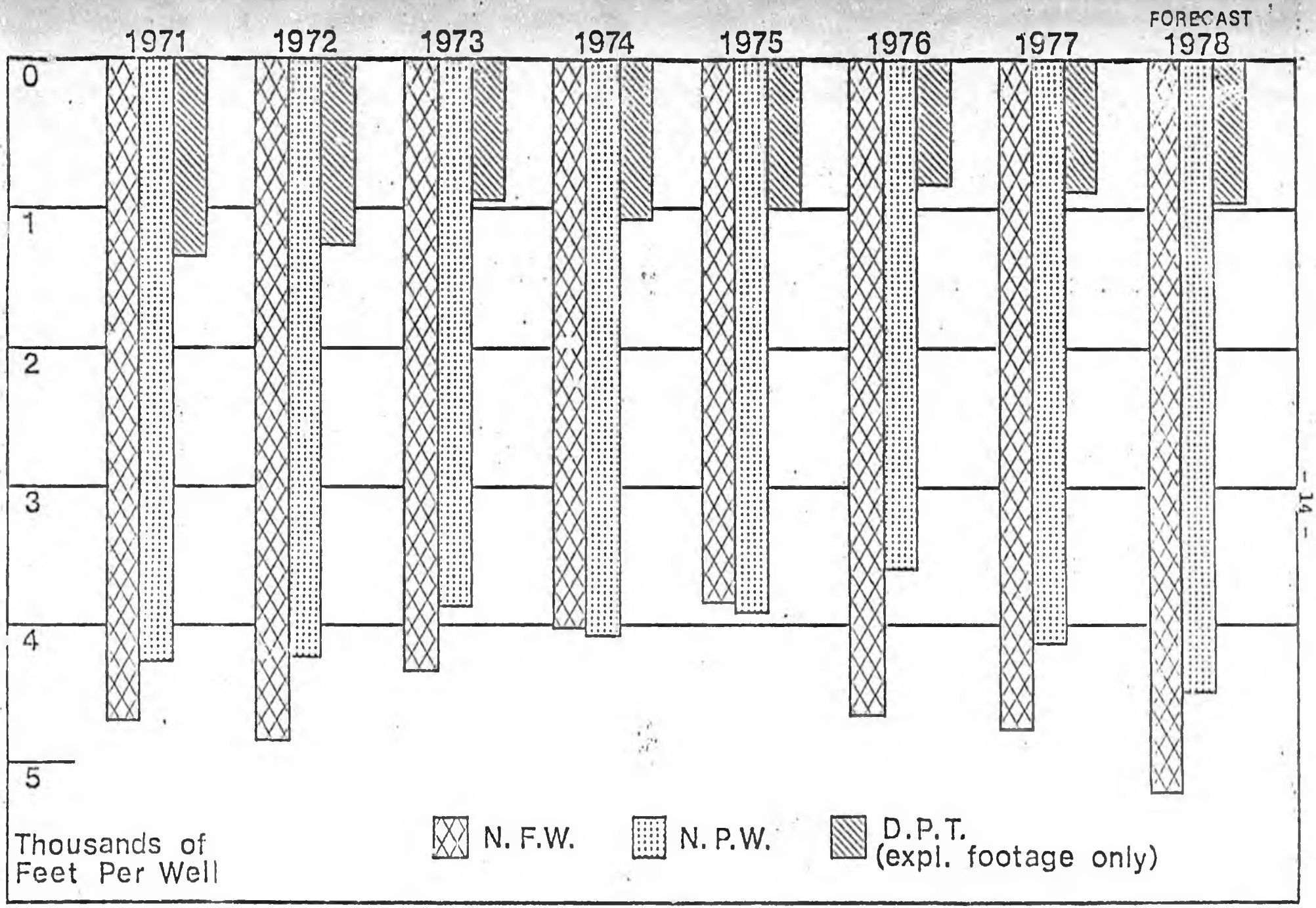


EXPLORATORY AND INCENTIVE FOOTAGE

Source: E&NR, FUCD

FIGURE 7



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AVERAGE WELL DEPTH

Source: ERCO

FIGURE 8

wildcats and deeper pool tests have increased since the program began, but the number of new field wildcats have declined.

FIGURE 8

The amount of exploratory footage drilled in 1977 exceeded all previous years. Footage for new field wildcats remained similar to 1976 at 1½ million feet, new pool wildcats increased to 5⅛ million from 4⅞ million feet in 1976, and deeper pool tests increased to 3/4 million feet from 1/2 million feet. The amount of footage certified under the program has increased since inception, equally divided between New Pool Wildcats and New Field Wildcats. In 1977 a total of 2½ million feet were certified to receive incentive footage. This figure shows an increase of 32% from the first full year the program was in operation.

Normally, 100% of the new field wildcat footage, 20% of the new pool wildcat footage, and 80% of the deeper pool test footage qualified for incentive benefits.

FIGURE 9

The average well depths per year has shown a gradual decrease from the period 1971 to 1976, but a slight upswing occurred in 1977. New field wildcats

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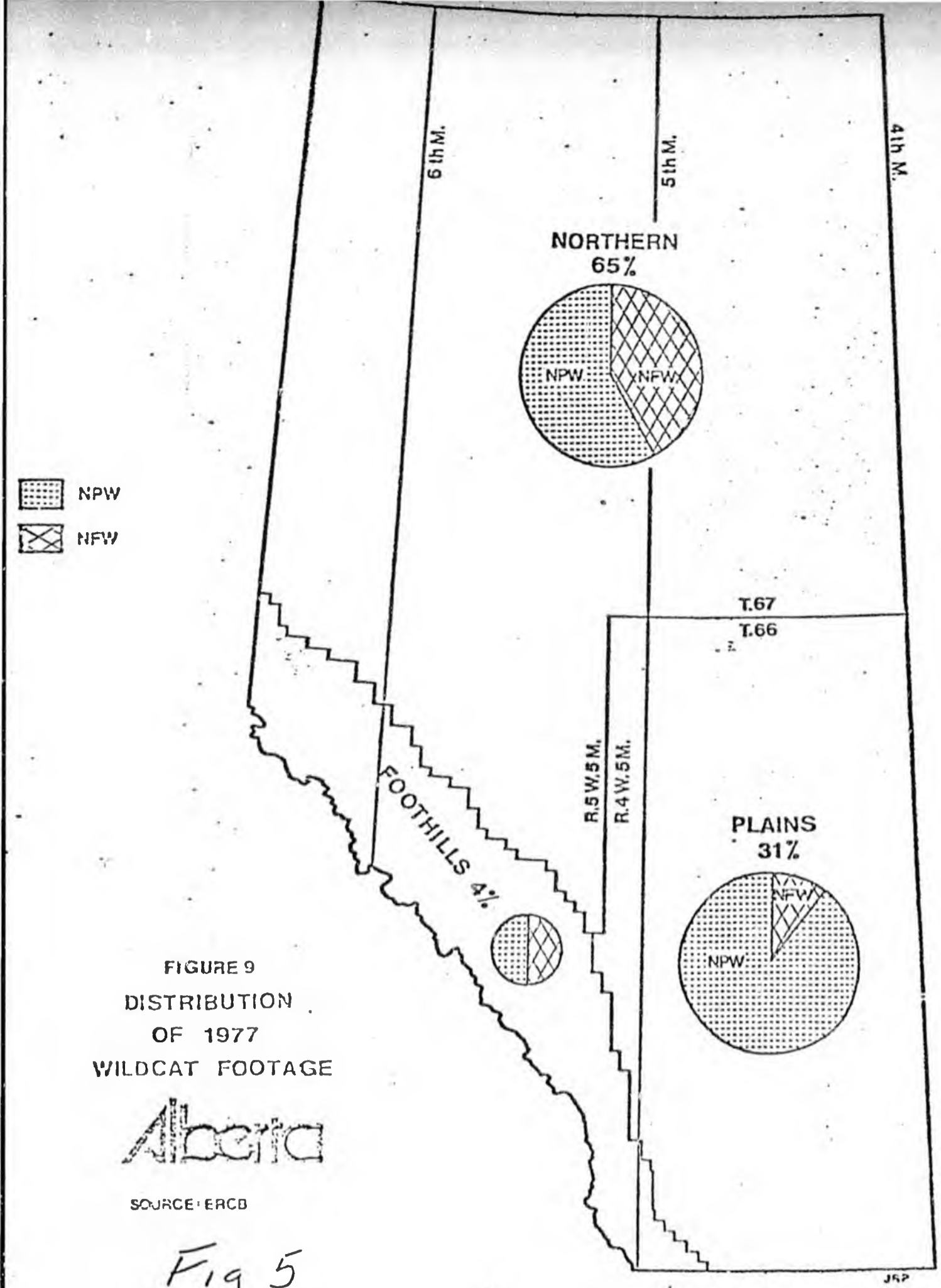


FIGURE 9

DISTRIBUTION OF 1977 WILDCAT FOOTAGE

Alberta

SOURCE: ERCB

Fig 5

averaged 4,800 feet in 1977, new pool wildcats averaged 4,100 feet, and deeper pool tests averaged 1,000 feet.

FIGURE 5

The majority of the exploratory footage drilled in 1977 was in the Northern Areas. The total footage drilled here was 65% of the total exploratory footage. Of this 65%, new pool wildcats constituted 65% and new field wildcats 36%.

Exploratory drilling in the Plains Area accounted for 31% of the total, with new pool wildcats forming 90% of the figure, and new field wildcats about 10%. Drilling footage in the Foothills Area constituted 4% of the total. Of this 4%, half were classed as new pool wildcats and half as new field wildcats. Deeper pool tests formed less than 10% of the total exploratory footage for the province in 1977.

These figures indicate a shift of emphasis since 1976 from the Plains Area to the more remote Northern Area. In both areas, the total footage of new field wildcats has taken a considerable drop from the 1976 figures. New field wildcat footage in the Foothills Area has increased.

.....11

Geophysical Incentive Program

On January 1, 1975, the Alberta Government implemented the Geophysical Incentive Program to stimulate the level of seismic exploratory activty in Alberta. The program was scheduled to terminate on March 31, 1978. This program has been extended to March 31, 1980 through a recent amendment to the Regulations. The Government recognizes the positive effects improved geophysical techniques have on drilling success rates and feels geophysical work must be encouraged to search for the less obvious hydrocarbon accumulations.

The Geophysical Incentive Program is administered by the Department of Energy and Natural Resources.

Geophysical activities, primarily in the form of reflection surveys, provide the initial technical basis on which many exploration "plays" for new oil and gas deposits are planned. Such surveys have performed a key role in finding many of the prolific reef accumulations of hydrocarbons in the Alberta plains. Geophysical data is essential to interpreting the complex rock structures of the foothills which are expected to contain major new deposits of hydrocarbons.

.....12

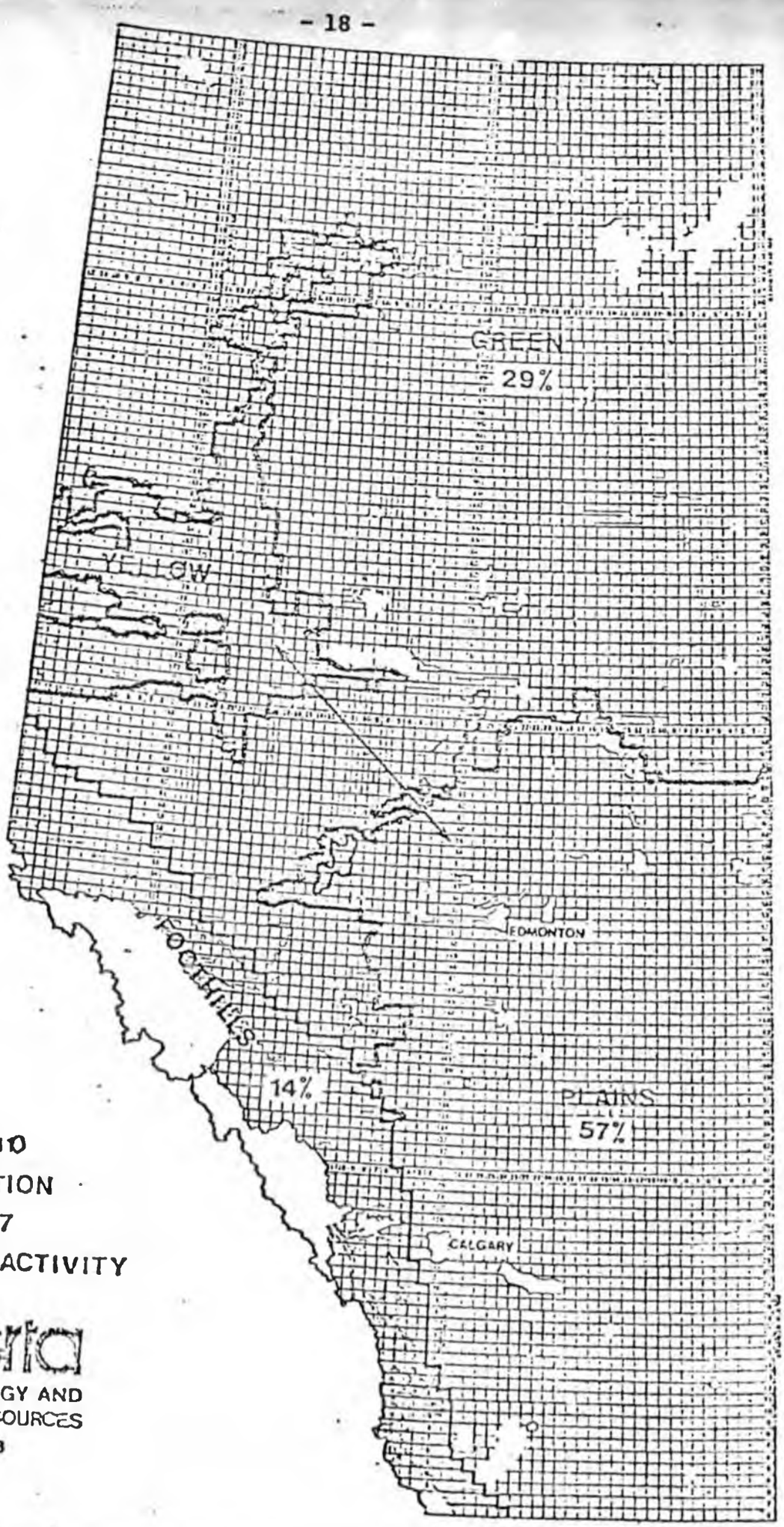


FIGURE 10
DISTRIBUTION
OF 1977
GEOPHYSICAL ACTIVITY

Alberta
ENERGY AND
NATURAL RESOURCES
JUNE, 1978

The main features of the Geophysical Incentive Program are:

(a) The incentive will apply to seismic surveys certified after January 1, 1975. Before 1980

(b) Incentive credits are established in the name of the licensee however, these credits may be allocated to partners sharing in the cost of the seismic program.

FIGURE 10

The incentive credits are determined from a formula based on the number of miles of subsurface coverage and the area in which the survey is conducted. Surveys carried out in difficult terrain in the Foothills and Green Areas receive a larger incentive credit than surveys carried out in the Plains region.

The determination of credit for a certified geophysical incentive program was calculated on the number of miles of minimum (400%) subsurface coverage by the following equation:

Credit (dollars) = 500 K M

Where K is the incentive factor for different geographic areas in Alberta where the program was conduted M is the number of miles of minimum subsurface

.....13

coverage.

The incentive credits may be applied in the same manner as the exploratory drilling incentive credits. A licensee may apply for the monetary equivalent of the credit where he is not the owner of a mineral agreement or a freehold mineral right.

Any geophysical information and data obtained pursuant to a geophysical incentive program must be made available by the licensee to any person for a period of not less than five years

(a) three years after the date the program was certified.

(b) at a cost to that person of 60% of the credit determined for each mile of minimum subsurface coverage.

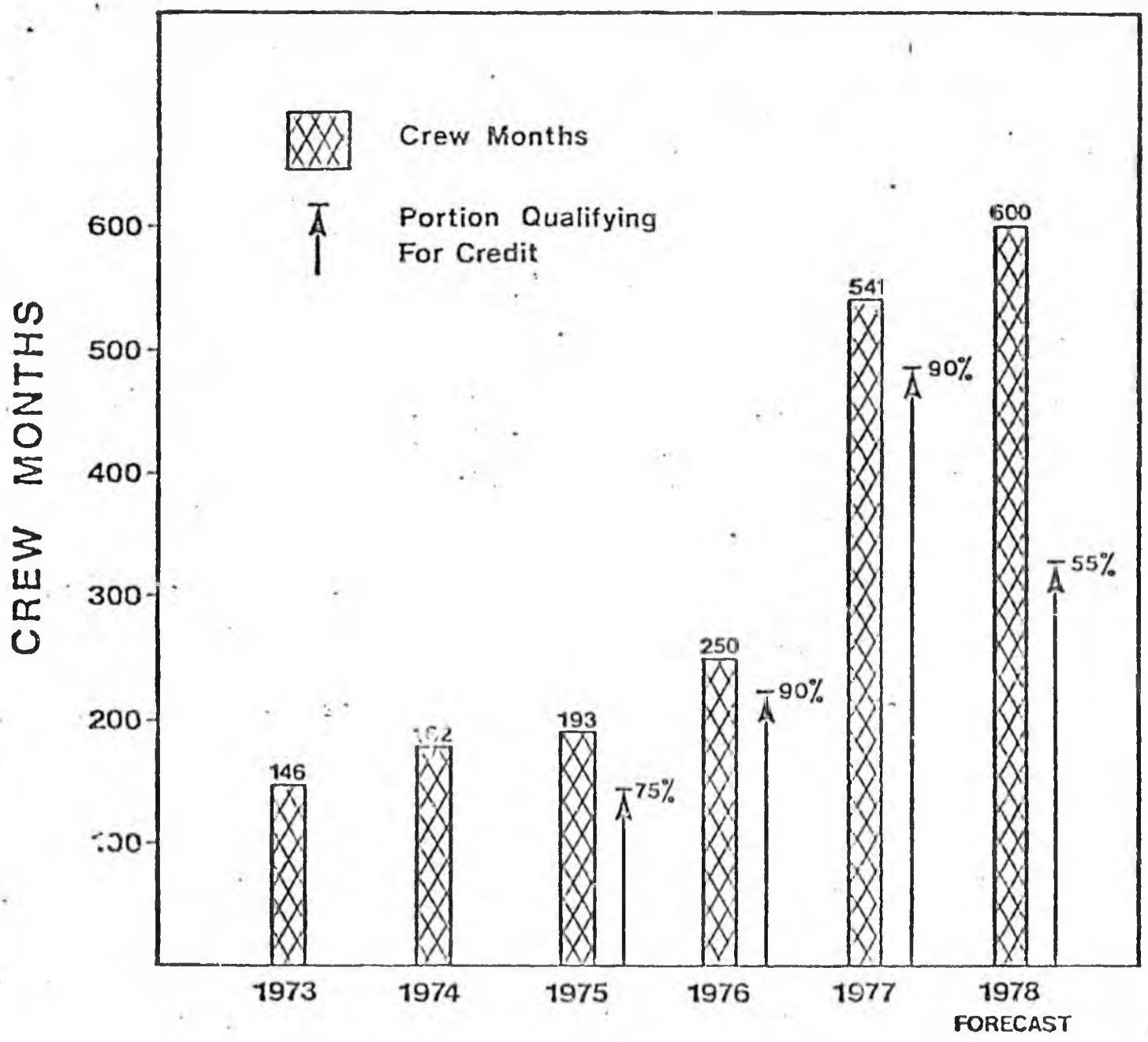
Amendments to the Geophysical Incentive Program effective April 1, 1978, reducing credit by 50% will result in a phase down of the program.

Credit (dollars) = 250 K M

The minimum subsurface requirements have been increased requiring 600% in the white and yellow area and 1200% in Foothills and Northern Areas.

The total number of miles of subsurface coverage in 1977 that qualified for incentive credit was 28,000 miles. This figure reflects an increase of

.....14



SEISMIC ACTIVITY & PORTION QUALIFYING FOR INCENTIVE CREDIT

FIGURE 12

ergy & N.
Resou , June

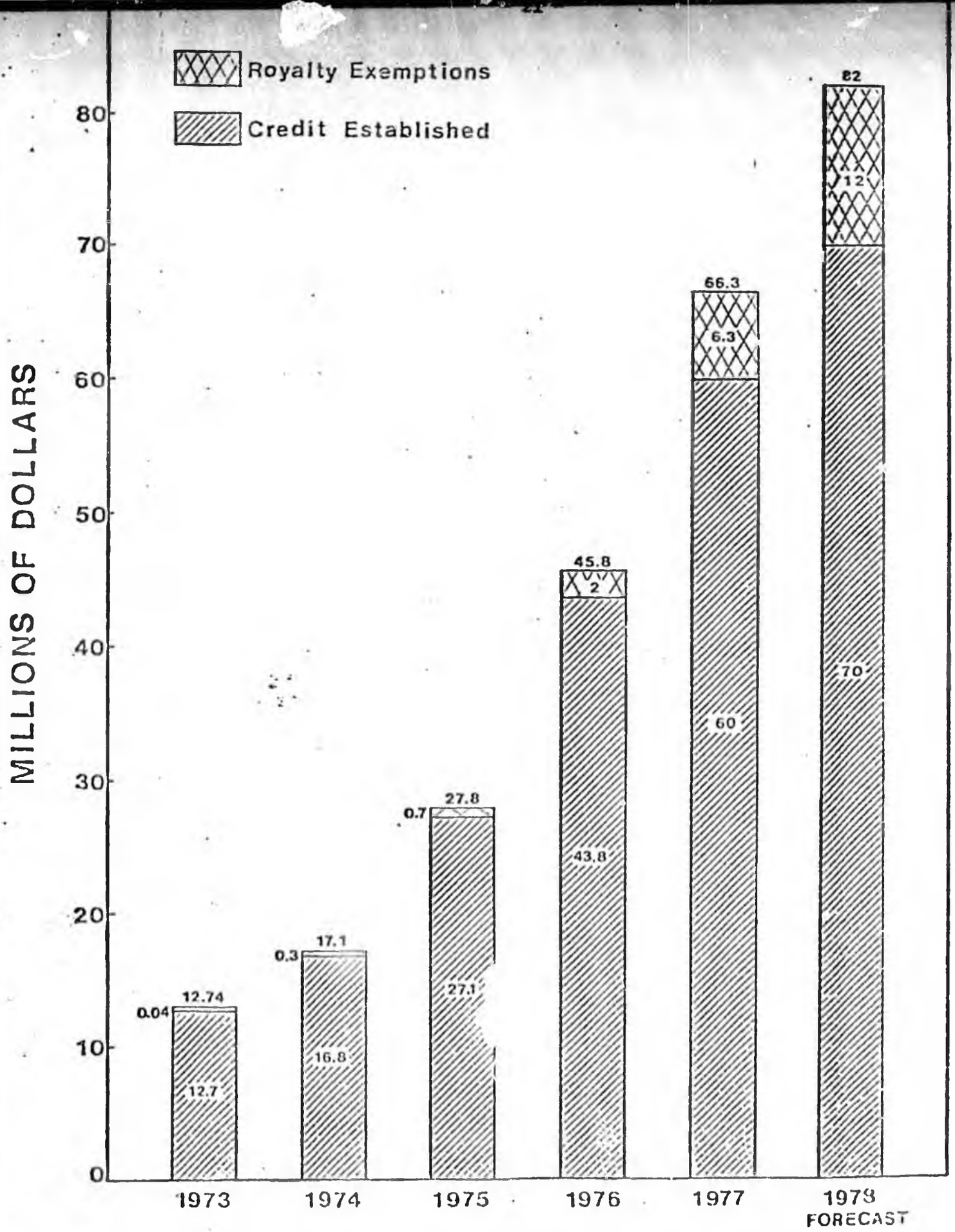
82% over the 1976 figure of 15,400 miles. Of this total, 16,105 miles was in the Yellow-Plains Area, 7,994 miles was in the Green Area and 3,921 miles was in the Foothills Area. These figures show an increase in activity in the Yellow-Plains Area, a decrease in the Foothills Area and unchanged activity in the Green Area.

FIGURE 12

This figure shows the crew activity from 1973 to 1978. In 1977 there were 541 crew months of activity, compared with 193 crew months in 1975 the first year the incentive program was in operation. The forecast is that the number of crew months will continue to increase.

In 1976 and 1977, 90% of the programs conducted in the province were certified under the Geophysical Incentive Program Regulations compared with 75% in 1975. The amendments effective April 1, 1978 are expected to reduce the number of programs submitted to the Department for credit. It is estimated that 55% of the programs shot in Alberta will receive incentive credits.

.....15



INCENTIVE COSTS ASSOCIATED WITH DRILLING ACTIVITY

FIGURE 13

Energy & Natura
Resources, June 197

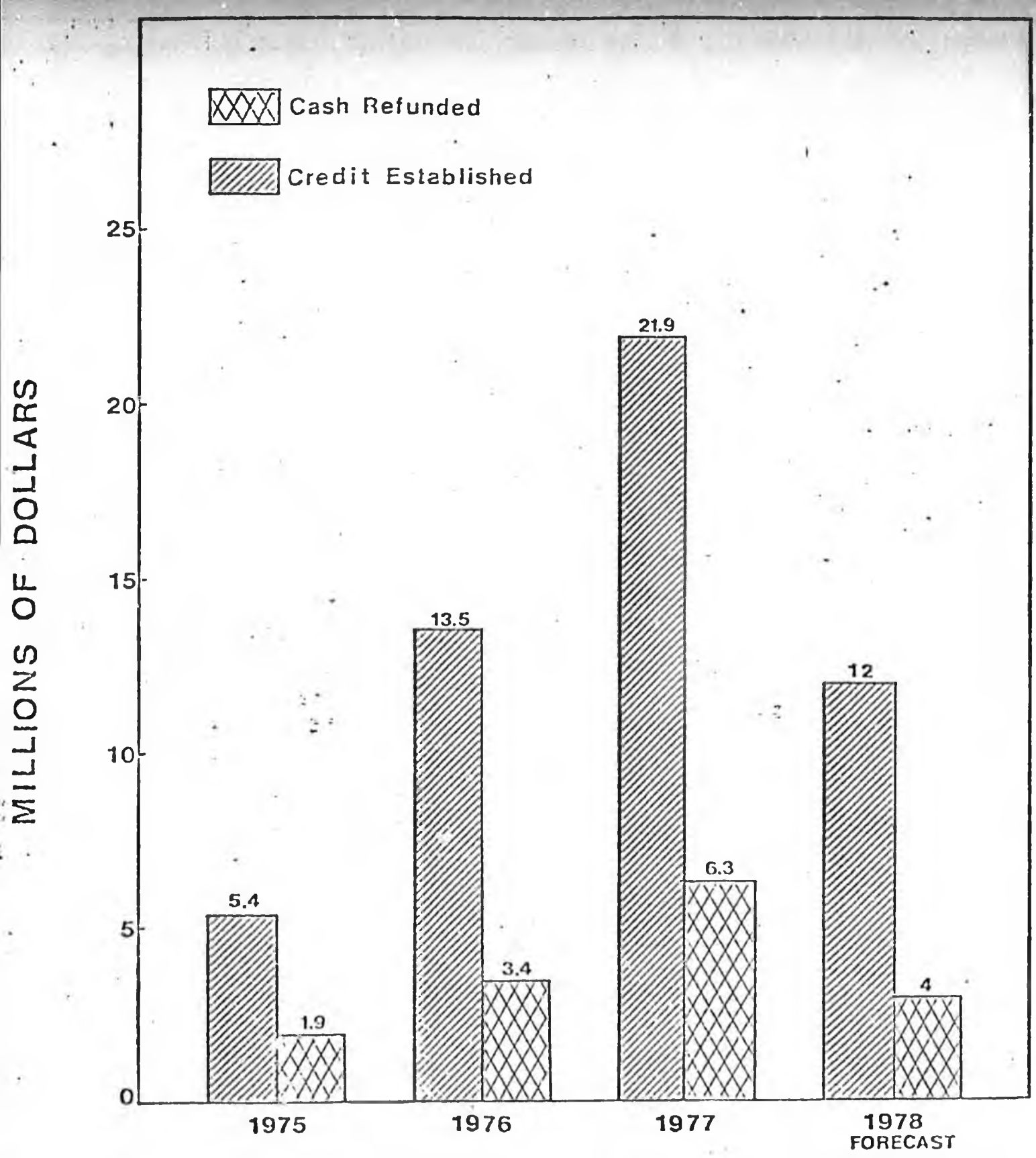
FIGURE 1

The Exploratory Drilling Incentive System and the Geophysical Incentive Program were initially devised to reduce the burden placed on industry when the Natural Resource Revenue Plan was initiated. The incentive programs were meant to reduce the increased royalties owed on Crown oil and gas mineral rights by financing a portion of the exploration costs. These incentive costs have escalated considerably in the years since the inception of the programs from a few million dollars to tens of millions of dollars per year.

The total costs to the Alberta Government for credit, royalty exemptions, cash refunds and administration of the programs amounted to over $90 million in 1977.

The cost for the Exploratory Drilling Incentive System in 1977 was 66.3 million dollars. This figure shows an increase over the 1973 costs of 12.7 million dollars. The credit established in 1978 is forecast to be $82 million. During the same period royalty exemptions have increased from $0.04 million to $6.3 million. It is forecast that royalty exemptions will reach $12 million in 1978.

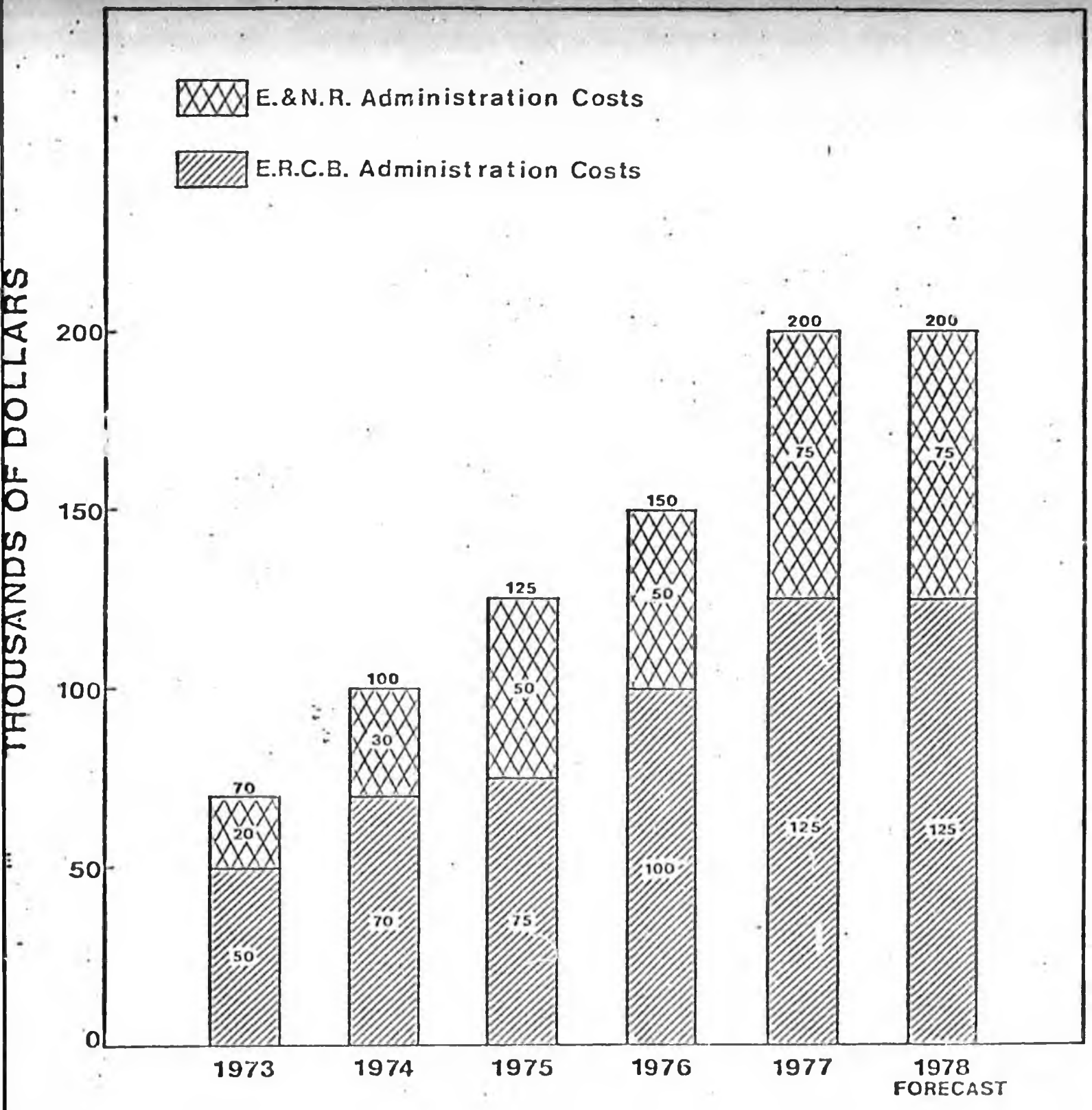
.....16



INCENTIVE COST ASSOCIATED WITH SEISMIC ACTIVITY AND CASH REFUNDED

FIGURE 14

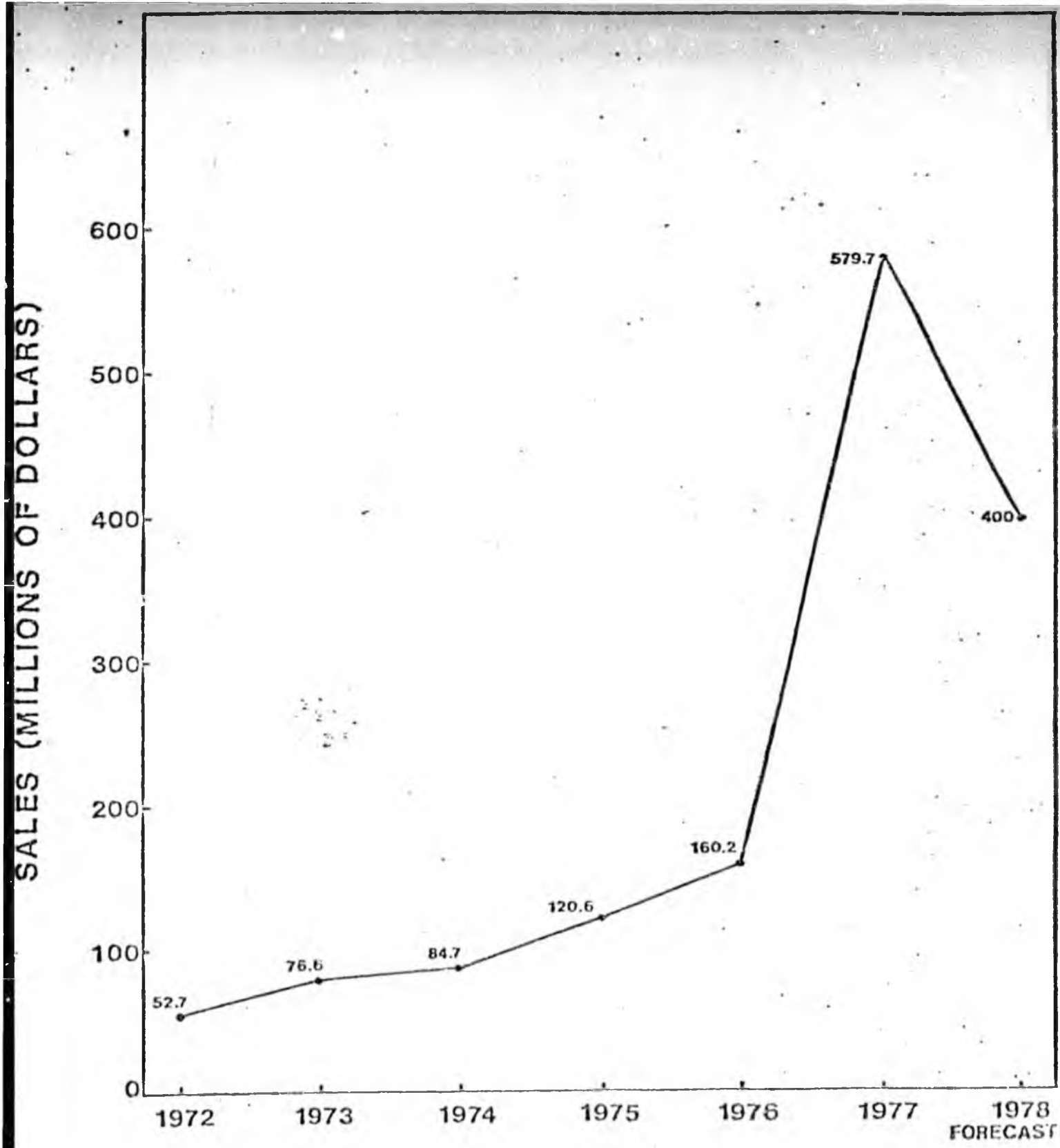
Energy & Natural Resources, June 1978



GOVERNMENT ADMINISTRATION COSTS ASSOCIATED WITH THE DRILLING AND GEOPHYSICAL INCENTIVE PROGRAMS

FIGURE 15

Energy & Natural Resources, June 1978



SALES OF CROWN OIL AND GAS MINERAL RIGHTS

FIGURE 16

Energy & Natural Resources, June 1978

FIGURE 14

$21.9 million was established as credit in 1977 for the Geophysical Incentive Program. This is an increase of more than 300% over the credit established in the first year the of the program. It is estimated that $12 million will be established as credit in 1978.

The cash refunded has increased from $1.9 million in 1975 to $6.3 million in 1977. We believed that in 1978 cash refunds will total $4 million.

FIGURE 15

In 1973, total administration costs were $70,000 roughly $50,000 for the ERCB and $20,000 for the Department. In 1977, these figures had risen to about $200,000 - $125,000 for the ERCB and $75,000 for the Department. It is expected that these figures will remain constant in 1978.

FIGURE 16

The revenue generated through sales of Crown oil and gas mineral rights has tripled from 1972 to 1976. During 1977 sales increased from $160 million to $579.7 million. The forecast for 1978 is 400 million.

.....17

We recognize three factors which may exist when exploration is supported by an incentive program.

(a) The activity may have occurred even if it had not been supported by an incentive program.

(b) The exploration activity was advanced to take advantage of the programs before their scheduled termination dates.

(c) The activity may not be performed in the forseeable future without incentive support.

The second and third considerations appear in the present situation to be applicable. The programs have been directly responsible for the discovery of large additional reserves and have encouraged high risk deep drilling in the foothills region.

Although the definite effects of the programs on exploration activity cannot be quantitatively assessed, the general trend has shown a considerable increase in exploration activity since inception of the programs.

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

Wednesday, May 25, 1977, statement by Alaska Department of Fish and Game concerning:

Orca Inlet-Controller Bay
Critical Habitat Nomination
(Senate Bill No. 181)

The Alaska Department of Fish and Game strongly supports this bill. This area is probably the major shore bird/waterfowl migration/staging area in Alaska and possibly in North America. It encompasses tidelands and adjacent lowlands south and east of Cordova and of Hawkins Island, and also in the Copper River Delta and Controller Bay areas east and west of Katala.

Importance: During the spring migration period in excess of 20-million shore-birds (plovers, sandpipers, snipe, etc.) and an additional one-million waterfowl (ducks plus geese) utilize the food and water resources on these tidelands while waiting for the northern breeding grounds to open. This tremendous number of birds includes over 180 individual species. This resting period is extremely important to the migrating birds in permitting them to regain some of the fat reserves expended during the northward flight.

During the fall migration, depending on environmental factors, 10-20 million shore-birds, about one-million ducks and geese, and thousands of Sandhill cranes stop again at these tidelands, resting and feeding while preparing for the migration to their wintering grounds. These are located principally within the Pacific flyway, but also extend

throughout the United States, Mexico, South America, Australia, New Zealand, and the Hawaiian Islands.

In addition to this extensive use by migrating birds, some 50-100,000 shore-birds and waterfowl, hundreds of thousands of sea-birds, hundreds of bald eagles, and many other birds utilize the area throughout this spring-fall period. In total, 219 species have been recorded in the region: 72 occur in the tens of thousands, 10 in the millions.

National Significance: This habitat is one of the most important shore-bird migration/staging areas in North America. It also provides the nesting, molting, and feeding habitat for the largest known concentration of Trumpeter Swans in North America, nearly the entire world's population of Dusky Canada Geese, and large numbers of bald eagles.

Rationale for this Critical Habitat Designation: The preceding discussion outlines well the extensive use of this region as a breeding, resting, and staging area by countless numbers of various species of waterbirds and shorebirds. Many of these (e.g. the ducks and geese, et al.) provide exceptional recreational opportunity for both consumptive (hunters) and non-consumptive (bird watchers) users. More importantly, however, it is a key area for the migration of a major portion of Alaska's waterbird populations by providing a valuable rest stop for the "energy refueling" necessary to sustain long migrational flights. The major responsibility of the Alaska Department of Fish and Game is to manage and sustain Alaska's fish and wildlife resources for the enjoyment and use of all Alaskans, and in fact of all Americans. A "critical habitat" designation for this area will demonstrate the State's concern for such resources and will help control unrestrictive use that could be detrimental to these vast bird populations. The designation is not prohibitive of other uses, but does direct attention and consideration to all resources and does help provide for rational "development" planning by the State.

Public Support: The designation of this area as a "critical habitat" has received strong support from the Alaska Waterfowl Association, the Alaska Conservation Society, conservationists generally, and numerous members of the public at large, especially waterfowl hunters and bird watchers. A public hearing was held by the Alaska Department of Fish and Game in Cordova on February 26, 1976, and there was general strong support. Recommendations from that meeting resulted in the deletion of certain areas proposed and the addition of others.

Possible Problems: The Department of Natural Resources has indicated that there is low hydrocarbon potential in the Orca Inlet portion of the area, but better potential elsewhere in the area for both oil and gas. That kind of development could be detrimental, but need not if properly planned. There is nothing in the current statutes that prohibits mining or oil and gas development or other development from occurring within designated "critical habitats".

Permitting Requirements: As indicated on the following page, Alaska Statute 16.20.260 requires that any person or organization contemplating "use" or "construction work" on a "critical habitat" obtain the written approval of the Commissioner of the Alaska Department of Fish and Game.

Statute Authority: Pertinent language of the Alaska Statutes, Title 16, Article 5, are restated here for your information.

Article 5. Fish and Game Critical Habitat Areas

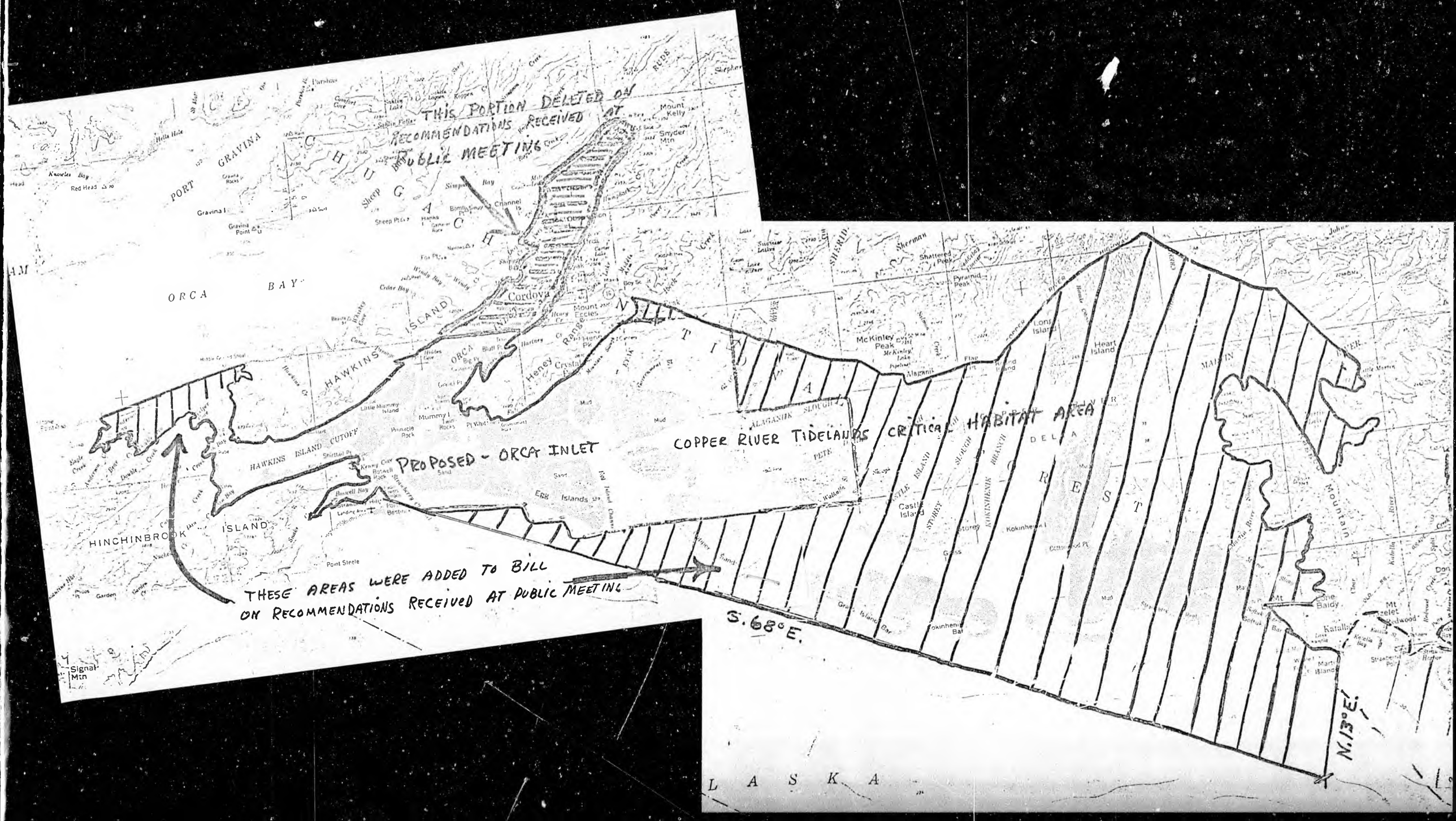
Sec. 16.20.220. Purpose. The purpose of §§ 220-270 of this chapter is to protect and preserve habitat areas especially crucial to the perpetuation of fish and wildlife, and to restrict all other uses not compatible with that primary purpose.

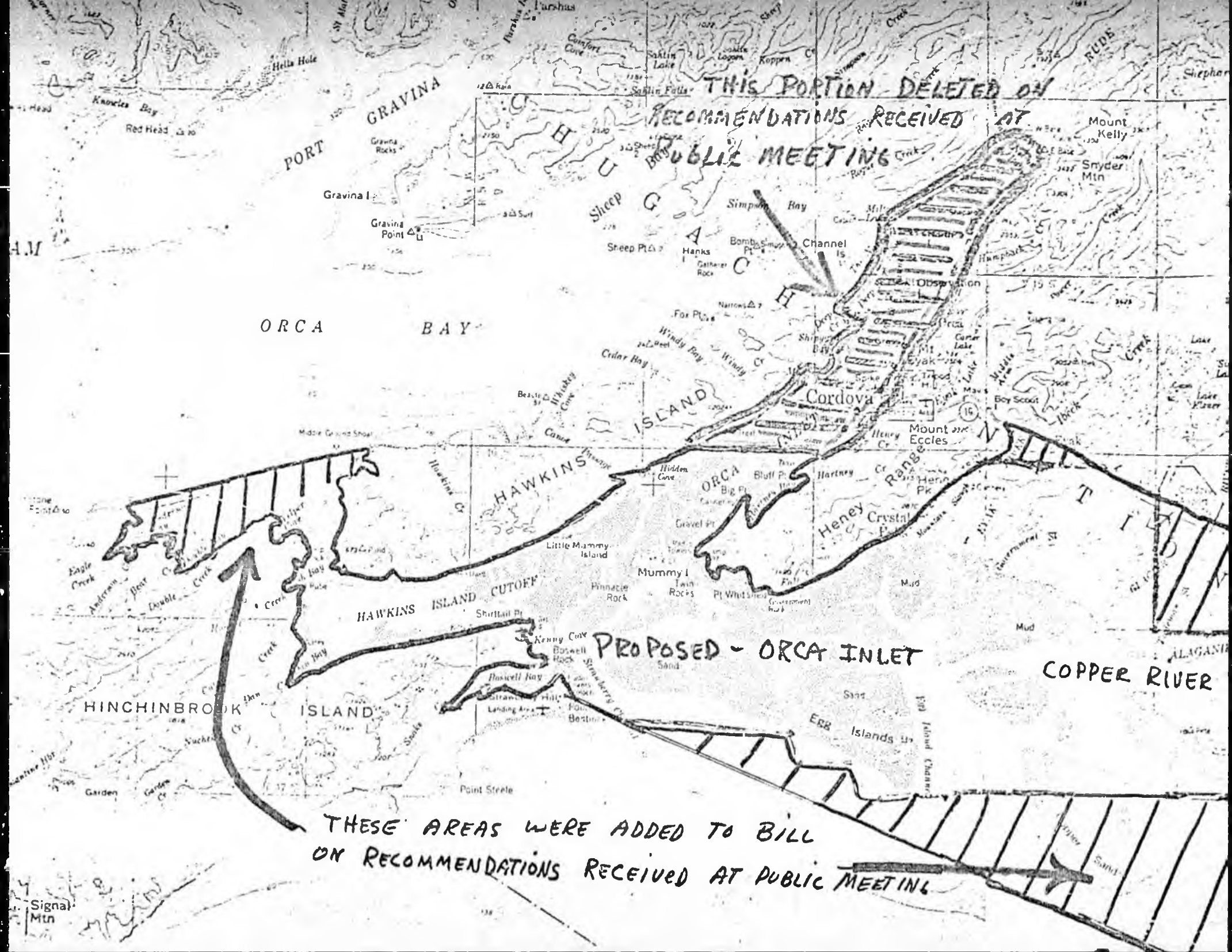
Sec. 16.20.240. Regulations. The board shall promulgate regulations it considers advisable for conservation and protection purposes governing the taking of fish and game in state fish and game critical habitat areas.

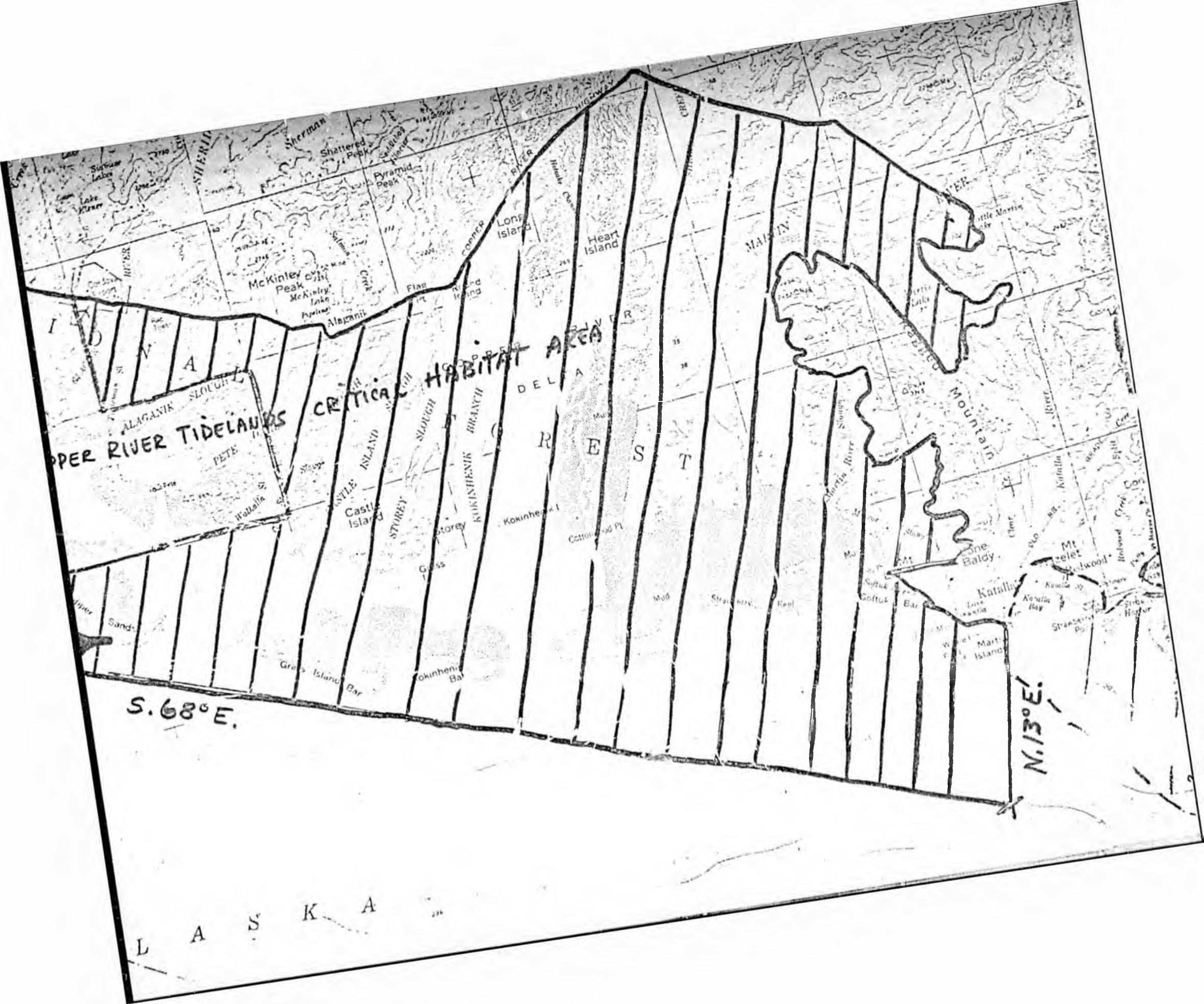
Sec. 16.20.250. Multiple land use. Before the use, lease or other disposal of land under private ownership or state jurisdiction and control, within state fish and game critical habitat areas created under this chapter, the period or responsible state department or agency shall notify the commissioner of fish and game. The commissioner shall acknowledge receipt of notice by return mail.

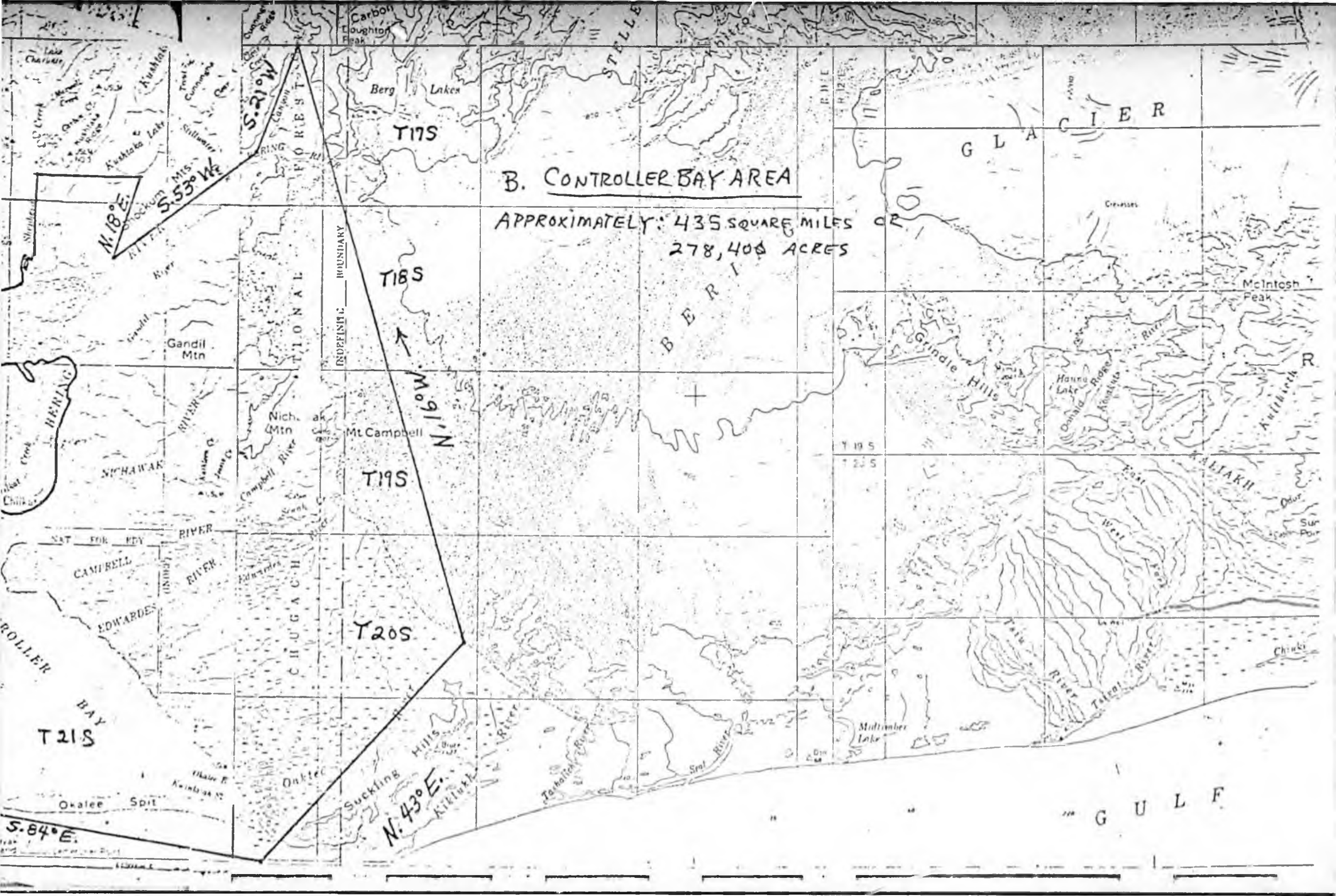
Sec. 16.20.260. Submission of plans and specifications. When the board so determines, it shall instruct the commissioner, in the letter of acknowledgement, to require the person or governmental agency to submit full plans for the anticipated use, full plans and specifications of proposed construction work, complete plans and specifications for the proper protection of fish and game, and the approximate date when the construction or work is to commence, and shall require the person or governmental agency to obtain the written approval of the commissioner as to the sufficiency of the plans or specifications before construction is commenced.

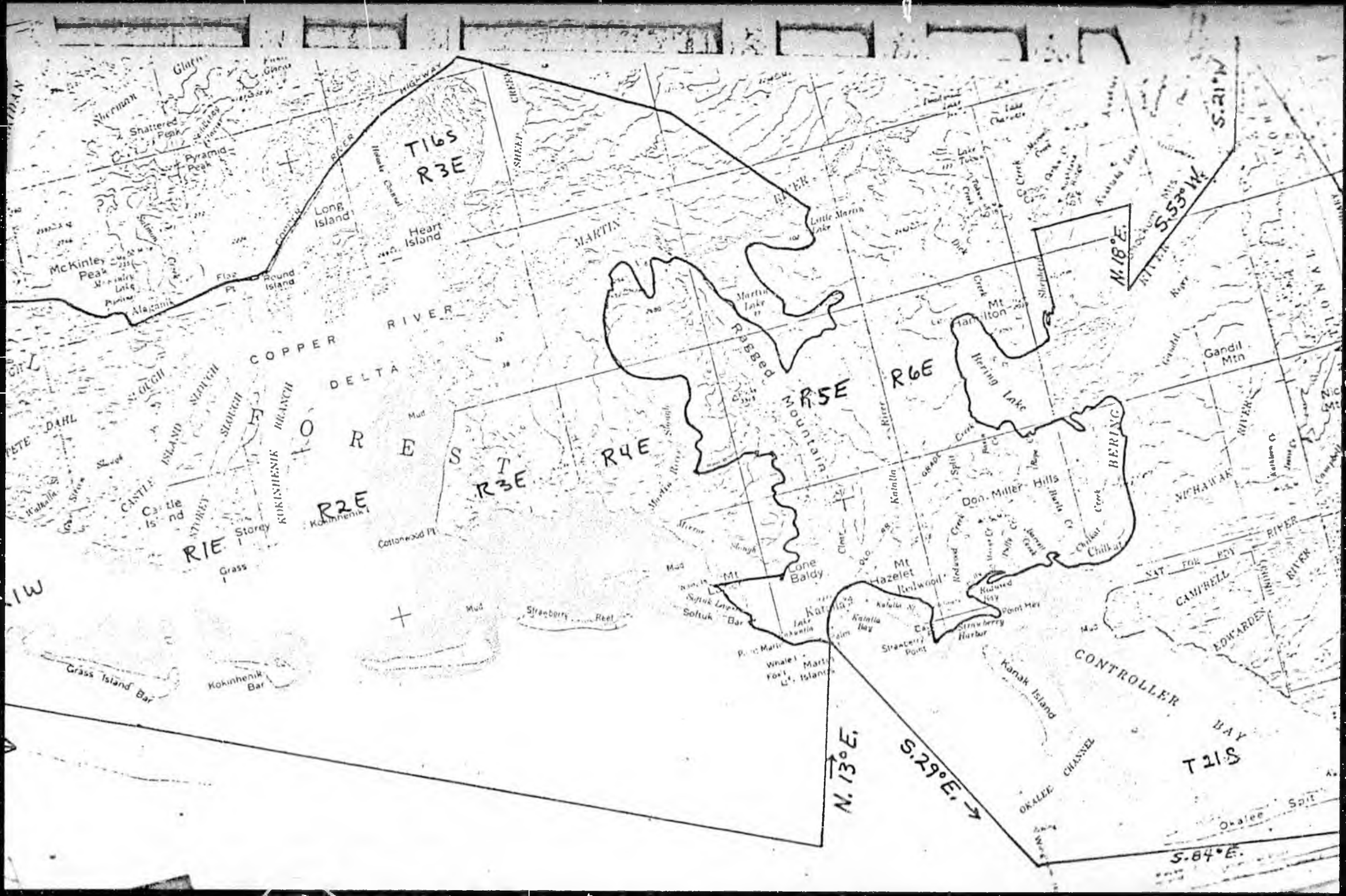
Sec. 16.20.270. Additional critical habitat areas. The commissioner shall submit a list of additional critical habitat areas to the legislature annually.


THIS PORTION DELETED ON RECOMMENDATIONS RECEIVED AT PUBLIC MEETING
PROPOSED - ORCA INLET
COPPER RIVER TIDELANDS CRITICAL HABITAT AREA
THESE AREAS WERE ADDED TO BILL ON RECOMMENDATIONS RECEIVED AT PUBLIC MEETING
S. 68° E.
N. 13° E.
ORCA BAY
HAWKINS ISLAND
HINCHINBROOK ISLAND
Cordova
Point Steele
Signal Mtn
Gravina Point
Red Head
Gravina I
Sheep Bay
Channel
Simpson Bay
Mount Kelly
Snyder Mtn
Mount Eccles
Mummy I
Little Mummy Island
Pinnacle Rock
Boswell Bay
Kenny Cove
Shattered Peak
Pyramid Peak
McKinley Peak
Long Island
Heart Island
Alaganik
Alaganik Slough
Castle Island
Kokinhenik I
Kokinhenik Bar
Stokey Slough
Delta Creek
Mt Baldy
Mt Eyelet
Katalla
Martin River
Martin Mountain
Hawkins Island Cutoff
Erb Islands
Sheep Pt
Hanks I
Bamby Pt
Fox Pt
Windy Bay
Cedar Bay
Beach Cove
Comfort Cove
Sakiln Lake
Sakiln Feller
Granite Rocks
Hells Hole
Knowles Bay
Parnishus
Reids
Sherman
Lake Eyak
Eyak Lake
Eyak River
Copper River Delta
Alaska

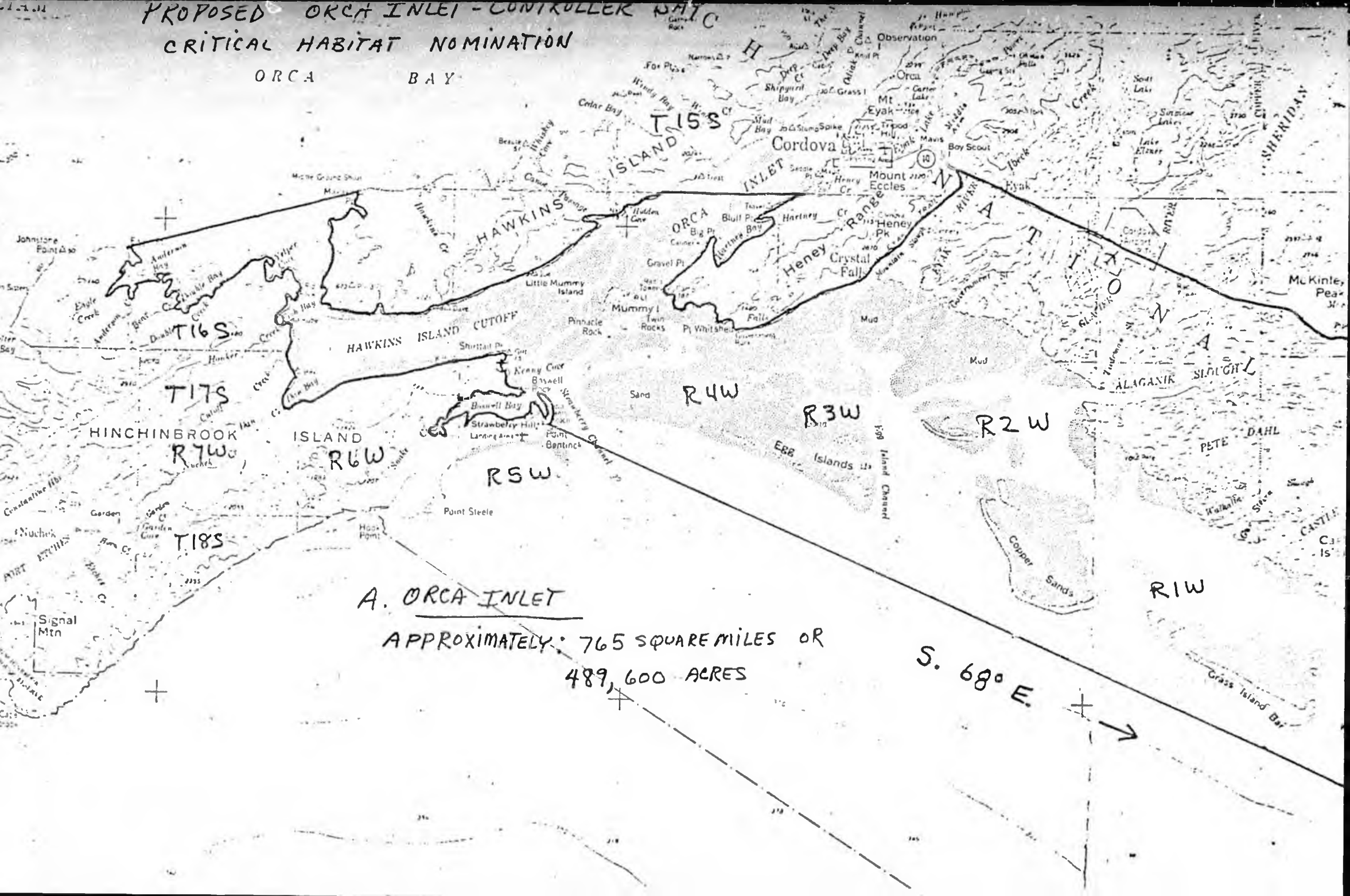

THIS PORTION DELETED ON RECOMMENDATIONS RECEIVED AT PUBLIC MEETING
PROPOSED - ORCA INLET
COPPER RIVER
THESE AREAS WERE ADDED TO BILL ON RECOMMENDATIONS RECEIVED AT PUBLIC MEETING
ORCA BAY
HAWKINS ISLAND CUTOFF
HINCHINBROOK ISLAND
HAWKINS ISLAND
Cordova
Mount Eccles
Mount Kelly
Snyder Mtn
Signal Mtn
Point Steele
Sheep Pt
Gravina Point
Gravina Rocks
Red Head
Knowles Bay
Hells Hole
Saklin Falls
Comfort Cove
Simpson Bay
Channel Is
Hanks I
Observation
Fox Pt
Windy Bay
Cedar Bay
Whiskey Cove
Middle Ground Shoal
Hidden Cove
Bluff Pt
Hartney Cr
Heney Range
Heney
Crystal
Little Mummy Island
Mummy I
Twin Rocks
Pinnacle Rock
Kenny Cove
Boswell Rock
Boswell Bay
Landing Area
Sand
Mud
Eagle Creek
Andrews Creek
Bear Creek
Double Creek
Suchek
Garden
Eggs Islands
Middle Arm
Lake Eyak
Mt Eyak
Eyak
Lake Kleer
Boy Scouts
Ibrick
Tidewater
Alagani


UPPER RIVER TIDELANDS CRITICAL HABITAT AREA
S. 68° E.
N. 13° E.
Sherman
Shattered Peak
Pyramid Peak
McKinley Peak
McKinley Lake
Alaganik
Long Island
Heart Island
Castle Island
Storey
Kokinhenik
Grass Island Bar
Mud
Strawberry Reef
Mountain
Bone
Baldy
Katalla
Softuk Bar
Martin Island
Strawberry Point
Stillwater Bay
Softuk
Mt
Mud
Grass
Sand
Bar
Point
Island
Creek
River
Slough
Lake
Pipeline
Flag Pt
Cotton Wood Pt
Kokinhenik Bar
Walkelia St
Katalla Bay
Katalla River
Martin River
Slough
Glacier
Highway
Pete
Alaganik
Copper
Storey
Kokinhenik
Castle Island
Island
Branch
Delta
Creek
Lake
Mountain
Katalla
Softuk
Strawberry
Stillwater
Martin


B. CONTROLLER BAY AREA
APPROXIMATELY: 435 SQUARE MILES OR
278,400 ACRES
INDEFINITE BOUNDARY
S. 21° W.
S. 53° W.
N. 18° E.
N. 69° W.
N. 16° E.
N. 43° E.
S. 84° E.
T17S
T18S
T19S
T20S
T21S
T19S
T20S
Berg Lakes
Carbon Mt
Loughton Peak
Gandil Mtn
Mt Campbell
Nich... Mtn
McIntosh Peak
Grindle Hills
Midtimber Lake
Okalee Spit
Suckling Hills
Onkilon
Kiklukh
Tokalida River
Seal River
Chinik
Kaliakh
Kushtaka Lake
Stillwater
Shumagin
Chilkat
Nichawak
Hering
Edwardes
Chugach
Campbell River
Haung Lake
Oonald
Kuliktuk
Tana River
Talrai River
Odur
Sur Point
GLACIER
BERING
GULF


T16S
R3E
R4E
R5E
R6E
R2E
R1E
T21S
COPPER RIVER DELTA
MARTIN RIVER
KUKSHENIK BRANCH
CASTLE ISLAND SLOUGH
Shattered Peak
Pyramid Peak
McKinley Peak
Long Island
Heart Island
Round Island
Flag Pt
Alaganik
Castle Island
Storey
Grass
Cottonwood Pt
Kokinhenik
Grass Island Bar
Kokinhenik Bar
Strawberry Reef
Softuk Bar
Lone Baldy
Mt Hazelet
Redwood Bay
Strawberry Harbor
Point Hay
Strawberry Point
Kanak Island
CONTROLLER BAY
OKALEE CHANNEL
Okalee Spit
Rubber Mountain
Martin Lake
Little Martin Lake
Mt Hamilton
Hering Lake
Gandil Mtn
Don Miller Hills
Chilkat Creek
Redwood Creek
Kaluta Bay
Kaluta Lake
Whale Island
Fort Island
Mud
Grass
N. 18° E.
S. 53° W.
S. 21° W.
N. 13° E.
S. 29° E.
S. 84° E.

PROPOSED ORCA INLET - CONTROLLER BAY
CRITICAL HABITAT NOMINATION



A. ORCA INLET

APPROXIMATELY: 765 SQUARE MILES OR
489,600 ACRES

SB

196

COMMITTEE REPORT

SENATE

March 1, 1977

4/11/77 Date

Mr. President:

The Committee on Resources (regulation of shellfish pots) has had SB 196 under consideration. A majority of the members of the Committee

/ / recommends it do pass

/ / recommends it do not pass

/ / recommends it do pass with attached amendment(s)

/X/ recommends it be replaced with CS for SB 196 and that CS for SB 196 do pass

/ / (and) recommends it be referred to the _____ committee

/ / reports it back without recommendation

/ / AND attaches a report of its intent

/ / (other) _____

MEMBERS SIGNING THE MAJORITY REPORT:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

MEMBERS NOT CONCURRING IN THE MAJORITY REPORT:

_____ recommends: _____

_____ recommends: _____

_____ recommends: _____

K. Poland
Chairman

S 60

AMENDMENT

OFFERED IN THE HOUSE: BY: Terry Gardiner

TO: _____ HOUSE BILL No. HB 444

SENATE BILL No. _____

PAGE: _____ LINE: _____

Page 1, Line 10

Insert "(a)" before the word "Reports"

Page 1, Line 29

Add a subsection "(b)" as follows:

(b) Information under ~~this section~~ See b may be released to qualified applicants defined in section (a) for valid statistical or other information-gathering purposes if

(1) any information which would identify the person to whom the record pertains is deleted; and

(2) disclosure is made in a manner which would not compromise or defeat the purposes of any statutory provision designed to maintain the confidentiality of certain information.

STATE
of ALASKA

MEMORANDUM

TO: R.D. Stevenson
Special Assistant
Department of Revenue

DATE : March 9, 1977

FROM: R. H. Pilcher, Manager
Juneau Field Office
Department of Revenue

SUBJECT: SB 196 Regulation of Shellfish Pots

Passage of SB 196 will require positive identification of shellfish pots (and buoys) by means of individually numbered registration tags designating year of issuance which are to be issued with each license and permanently affixed to each pot.

It is believed the tag would have to be of a compostion that would withstand rough handling and exposure to the elements, including long periods of submersion in salt water. The information required on the tag, Indiviually numbered designating year of issuance, will necessitate a tag at least 3/4 inch by 2 1/2 inches in size, if not larger. A reliable manufacturer estimates that such a tag could be produced in .032 gauge stainless steel with stamped in eight digit numbers and with drilled holes at each end, for approximately $.20 ecnts each.

In 1976, 989 shellfish pot licenses were sold. Pot limits run from 40 to 900 pots that can be legally fished, but the average in 1976 was approximately 200 pots per license. Therefore, approximately 200,000 tags would have to be produced at a cost of approximately $40,000.00. Shipping, postage and other handling charges would amount to approximately $20,000.00. Therefore, it is believed that registration tags could be issued for a fee of $1.00 per tag.

SB 196 requires registration tags and buoys to conform to regulations, other specifications and requirements considered appropriate by the Board of Fisheries, and be issued under procedures considered appropriate by the Department of Revenue. If these regulations, specifications, requirements and procedures result in a tag different from that proposed above, the fee per tag may have to be adjusted.

There is no effective date on the bill. An effective date of January 1, 1978 is required to allow time to design, order, manufacture and ship the tags.

ANALYSIS OF MAJOR CHANGES BETWEEN SB 196 AND CSSB 196
BY JOHN FARLEIGH, ADMINISTRATIVE ASSISTANT, SENATE RESOURCES

SB 196	CSSB 196
(a) Requires tags for all shellfish pots.	(a) Requires tags only for king crab pots in areas with pot limits.
(b) Tags are issued by Dept. of Revenue with each shellfish pot license.	(b) Tags are issued by Dept. of Fish & Game at the time the fisherman notifies the Dept. of his intent to fish in an area with a pot limit. (He must notify the Dept. by August 1)
(c) Requires the tags to be attached directly to the pot (the pot would have to be pulled to be checked for the proper tag).	(c) Requires the tags to be attached to the pot and/or buoy at the Board of Fisheries' discretion.
(d) Allows the Dept. of Revenue to set the fees in an appropriate manner.	(d) Requires the Dept. of Fish & Game to charge the fisherman for the cost of the tags including reasonable administrative costs.
(e) Requires all shellfish pots to be connected to a "sea lion" buoy.	(e) Requires only king crab pots to be connected to a "sea lion" buoy (license revocation clause does not apply to this requirement).

In addition to these changes CSSB 196 also includes:

(f) A provision to make tags nontransferable unless the gear license is transferred under emergency provisions. (A.S. 16.05.670)

(g) A prohibition against unauthorized sale, reproduction, exchange, or use of tags.

(h) A definition of "registration tags" that allows the Board of Fisheries to require any device or method determined to be appropriate.

(i) A requirement that the court, in addition to any other penalty imposed by law, revoke the shellfish pot license of a person convicted of fraud or misuse of registration tags for a period of one to five years.

THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB 196

Title An Act relating to the Regulation of Shellfish Pots

Requested by Poland Date 3/1/77

II. FISCAL DETAIL

Agency Affected Department of Revenue

Program Category Affected Natural Resources Management & Environmental Conservation

Budget Request Unit(s) Affected Fish & Game Licensing

EXPENDITURES (Thousands of Dollars)

	FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL		90.8	90.8	90.8	90.8	90.8
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL						

FUNDING (Thousands of Dollars)

GENERAL FUND		60.8	60.8	60.8	60.8	60.8
FEDERAL FUNDS						
OTHER (Specify)						
Program Receipts		30.0	30.0	30.0	30.0	30.0

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

SEE ATTACHED MEMORANDUM

300 CONTRACTUAL

200,000 Shellfish Registration Tags	$ 40,000
Postage, shipping & handling	20,000
2,000 Four-part forms for control of issuance	750
15% Vendor fees	30,000

IV. DATE 3/9/77 PREPARED BY R. H. Pilcher

AGENCY Department of Revenue

PHONE 586-1870

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 10/76)

STATE
of ALASKA

MEMORANDUM

TO: R.D. Stevenson
Special Assistant
Department of Revenue

DATE : March 9, 1977

FROM: R. H. Pilcher, Manager
Juneau Field Office
Department of Revenue

SUBJECT: SB 196 Regulation of Shellfish Pots

Passage of SB 196 will require positive identification of shellfish pots (and buoys) by means of individually numbered registration tags designating year of issuance which are to be issued with each license and permanently affixed to each pot.

It is believed the tag would have to be of a compostion that would withstand rough handling and exposure to the elements, including long periods of submersion in salt water. The information required on the tag, Indiviually numbered designating year of issuance, will necessitate a tag at least 3/4 inch by 2 1/2 inches in size, if not larger. A reliable manufacturer estimates that such a tag could be produced in .032 gauge stainless steel with stamped in eight digit numbers and with drilled holes at each end, for approximately $.20 ecnts each.

In 1976, 989 shellfish pot licenses were sold. Pot limits run from 40 to 900 pots that can be legally fished, but the average in 1976 was approximately 200 pots per license. Therefore, approximately 200,000 tags would have to be produced at a cost of approximately $40,000.00. Shipping, postage and other handling charges would amount to approximately $20,000.00. Therefore, it is believed that registration tags could be issued for a fee of $1.00 per tag.

SB 196 requires registration tags and buoys to conform to regulations, other specifications and requirements considered appropriate by the Board of Fisheries, and be issued under procedures considered appropriate by the Department of Revenue. If these regulations, specifications, requirements and procedures result in a tag different from that proposed above, the fee per tag may have to be adjusted.

There is no effective date on the bill. An effective date of January 1, 1978 is required to allow time to design, order, manufacture and ship the tags.

THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. CS for SENATE BILL 196
Title Regulation of Shellfish Pots & Buoys Used In Taking King Crab
Requested by POLAND Date 4/13/77

II. FISCAL DETAIL
Agency Affected Department of Fish and Game
Program Category Affected NRMEC
Budget Request Unit(s) Affected Commercial Fisheries

EXPENDITURES (Thousands of Dollars)

	FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
100 PERSONAL SERVICES	0	12.7	12.7	12.7	12.7	12.7
200 TRAVEL	0	0	0	0	0	0
300 CONTRACTUAL	0	7.3	7.3	7.3	7.3	7.3
400 COMMODITIES	0	0	0	0	0	0
500 EQUIPMENT	0	0	0	0	0	0
600 LAND & STRUCTURES	0	0	0	0	0	0
700 GRANTS, CLAIMS, ETC.	0	0	0	0	0	0
TOTAL	0	20.0	20.0	20.0	20.0	20.0

FUNDING (Thousands of Dollars)

GENERAL FUND	0	20.0	20.0	20.0	20.0	20.0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER (Specify)	0	0	0	0	0	0

POSITIONS

FULL TIME	0	0	0	0	0	0
PART TIME	0	0	0	0	0	0
TEMPORARY	0	12.7	12.7	12.7	12.7	12.7

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

See attached.

GERERAL FUNDS TO BE OFFSET BY PROGRAM RECEIPTS.

IV. DATE 4/19/77 PREPARED BY Robin Glauthier Robin Glauthier
AGENCY Commercial Fisheries
PHONE 465-4210

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 10/76)

Alaska State Legislature

House

HOUSE RESOURCES COMMITTEE

Alvin Osterback, Chairman

Pouch V, State Capitol
Juneau, Alaska 99811
(907) 465-3715

M E M O R A N D U M 19 April 1977

RE: HB 444 Confidentiality of Fishery Reports

TO: House Resources Committee Members

Please note the attached Committee Substitute. Perhaps this will clear up some of the problems that the Committee had with the bill.

DRAFT RESOLUTION

The Board recognizes the socio-economic advantages of pot limits in certain areas and urges the Protection Division to enforce it to the best of its abilities.

Furthermore, Mr. Harder's proposal may be applicable on some king crab fisheries of the state while in other major production areas new refinements may be necessary to implement it on a reasonable cost-benefit ~~ratio.~~ basis The Alaska Board of Fisheries urges the legislature to explore the possibilities of funding a comprehensive program that would incorporate a realistic and enforceable approach to this pot limit problem.

Here it is Red

Dee

Sec. 16.05.815. CONFIDENTIAL NATURE OF CERTAIN RECORDS.

(a) Reports required by regulations of the department concerning the landing of fish, shellfish, or fishery products, and annual statistical reports of buyers and processors required by regulations of the department, insofar as they are in the form of individual records, are confidential. They may be released to the Department of Revenue, the Division of Fish and Wildlife Protection, and the Commercial Fisheries Entry Commission to assist them in carrying out their statutory responsibilities. However, the commissioner may not release a report if he determins that to do so would abuse the intent of this section, and he may limit or condition any release to insure that proper confidentiality is maintained. Confidential reports held by the department, or received from the department by the agencies or organizations mentioned in this section, may not be communicated or distributed in the form of individual records to any other agency, organization, or individual unless required by a court order.

(b) Reports under section (a) may be released to the North Pacific Fisheries Management Council, the University of Alaska, and the Department of Commerce & Economic Development for valid statistical or other information-gathering purposes if

(1) any information which would identify the person to whom the record pertains is deleted; and

(2) disclosure is made in a manner which would not compromise or defeat the purposes of any statutory provision designed to maintain the confidentiality of certain information.

STATE
of ALASKA

MEMORANDUM

TO: R.D. Stevenson
Special Assistant
Department of Revenue

DATE : March 9, 1977

FROM: R. H. Pilcher, Manager
Juneau Field Office
Department of Revenue

SUBJECT: SB 196 Regulation of Shellfish Pots

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SB 196 requires registration tags and buoys to conform to regulations, other specifications and requirements considered appropriate by the Board of Fisheries, and be issued under procedures considered appropriate by the Department of Revenue. If these regulations, specifications, requirements and procedures result in a tag different from that proposed above, the fee per tag may have to be adjusted.

There is no effective date on the bill. An effective date of January 1, 1978 is required to allow time to design, order, manufacture and ship the tags.

THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. SB 196
Title An Act relating to the Regulation of Shellfish Pots
Requested by Poland Date 3/1/77

II. FISCAL DETAIL
Agency Affected Department of Revenue
Program Category Affected Natural Resources Management & Environmental Conservation
Budget Request Unit(s) Affected Fish & Game Licensing

EXPENDITURES (Thousands of Dollars)

	FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL		90.8	90.8	90.8	90.8	90.8
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL						

FUNDING (Thousands of Dollars)

GENERAL FUND		60.8	60.8	60.8	60.8	60.8
FEDERAL FUNDS						
OTHER (Specify)						
Program Receipts		30.0	30.0	30.0	30.0	30.0

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

SEE ATTACHED MEMORANDUM

300 CONTRACTUAL

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IV. DATE 3/9/77 PREPARED BY R. H. Pilcher
AGENCY Department of Revenue
PHONE 586-1870

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 10/76)

DRAFT RESOLUTION

The Board recognizes the socio-economic advantages of pot limits in certain areas and urges the Protection Division to enforce it to the best of its abilities.

Furthermore, Mr. Harder's proposal may be applicable on some king crab fisheries of the state while in other major production areas new refinements may be necessary to implement it on a reasonable cost-benefit ~~ratio.~~ basis. The Alaska Board of Fisheries urges the legislature to explore the possibilities of funding a comprehensive program that would incorporate a realistic and enforceable approach to this pot limit problem.

My name is Ole Harder, I'm a crab fisherman from Kodiak. I started fishing in Kodiak in 1948, and except for a few years I've fished there ever since. I'd like to express myself on the King Crab pot limit to the Resources Committee and the House and Senate. I'd like to start out with a little background on the pot limit. We started with 30 pots in Kodiak, then went to 60 pots, and then to 75. Kodiak fishermen signed a petition to bring it back to 60 a number of years ago, and everyone signed it with the exception of a few boats. Somehow the petition was lost at the Board meeting in Seward. Since that time we have had a 75 pot limit, and up until three or four years ago we hadn't had major problems. Somewhere, and somehow the chiseling has gotten worse. I would say that guys are fishing as high as 250 pots in Kodiak now, while fishermen who abide by the limit and fish 75 pots could be penalized for $100,000 or better in gross stock because he is living within the law. Now we have to find an answer to this problem. One of the things we can do is throw the pot limit out. If we do that let's see how that might affect Kodiak. We have a population of around ten or eleven thousand people that are totally dependent on fishing. Without fishing there would be nothing, except a little logging. I can predict what might happen without the pot limit. I understand we have a quota of around 12 or 13 million pounds of 7 inch crab this season. If a hundred boats fished with 200 pots, 50 with 150, and 50 with 75 pots. If my arithmetic is right, it would come to around 31,250 pots. If in three days we came up with a thousand pounds per pot (which, by the way, is a very reasonable catch at around 120 crab per pot in three days) we would then be talking around 31,000,000 pounds. While these figures are high, believe

you me, in not too many years you might see to throw the pot limit out. What this will do to the local economy I'm sure I don't have to tell you. Even if I cut my figures in half, or even in thirds, it would be disastrous. For instance if the Bering Sea and Dutch Harbor opens on September 15, and we open on September 1, we might be seeing the beginning of the end to the local fishermen and particularly the smaller boats. We also have to consider the resource. If fishing is better than the Department of Fish and Game anticipated, we could very well catch more than the allowable harvest which would, of course, be disastrous for the future. The pot limit is not any different in my opinion than the size of the seine or gill net in this state. If we get away with the size of the seines and gill nets and so forth, we will also see a drastic change in the gearing of the boats. Most everybody who wants to stay in business will have to buy a bigger boat in order to compete with the bigger seines and bigger gill nets and so on. Now I've heard the argument quite frequently as a matter of fact, that the National Marine Fisheries Service wants to do away with it. Well, I talked to Mr. Chingham who is on the Council and he reassured me that if the Council would implement whatever the State does and it will stick. And furthermore, I think that the new administration in Washington, D.C. is committed to put people to work, not take work away from them, which would be the case if the pot limit were thrown out. The Department of Fish and Game or the enforcement people so far have not been able to come up with a workable solution to the pot limit. My suggestion is that the State has a tape made up and put on every pot the fishermen fish. It can be a four

inch tape by the Fish and Game Department and they can be numbered from 1 to 75. They can even have reflector tape stuck on the tape that will work for radar. The reflector could also work for lights, and the tape could even be infra-red. All we have to do is apply it around the center of the buoy (I think a 60 inch buoy is the biggest size to my knowledge anyone uses) and every year we can change the color code. In other words, once you use the color one year that color is out - the next year you use a different color. I also suggest that you have ten extra tags. If a fisherman loses a pot, for instance pot number 16, you then put pot number 76 on after notifying the Department of Fish and Game. A total of ten extra pots should be sufficient to cover what might be lost in one year. There might be various questions about the enforcement of this policy. The fishermen I have talked to so far all seem to think that there is a workable solution, and they will in turn testify. I feel that if I am on the grounds and I see a pot without the State tag on the pot bouys, I will consider it a lost pot and treat it as such. I also suggest that we put a permanent plastic tag with the Fish and Game number on it fastened below the pivot buoy. Thank you very much.

My name is Kenneth Moore from Homer, Alaska. I have fished lower Cook Inlet area. I've fished for 11 years, the past 7 I've fished in the king crab area. In lower Cook Inlet and Kachemak Bay, we have a problem with people fishing too many pots. It's an unenforceable problem, as near as we can see there is very little attempt has been made to enforce it, however, it is a very difficult thing to enforce. The tape that Ole just brought up is probably the only possible means that I have heard that might work to enforce it. I feel very strongly that it would work, and I think it should be considered along with considering in

however, there is also enforcement would have to take place, and I think that if enforcement would look into it, they will probably find that it could be enforced in this manner. Thank you very much.

My name is Hank Gain, I am a commercial fishermen from Seldovia. I have been fishing Kachemak Bay since 1953. We feel that removing the pot limit at this time would be disaster to the communities boardering on Kachemak Bay. As it is we have a law on the books , and to my knowledge has never been even attempted to be enforced. We have asked the department previously while the protection agency was with the department to enforce this law and they said it was unenforceable. Since the State Police have taken over the protection, we hear the same thing. We think we do have a workable plan now that can be enforced, and with the enforcement of this law, it will stop a lot of the influx of the gear coming into the Bay, which is over the pot limit. Some of the boats fishing as high as 150 pots are causing an economic hardship on the fishermen and the residents of Seldovia. Therefore, we recommend that they adopt the proposal that was submitted previously on this tape to put, in effect, taping of the bouys which we highly endorse. This tape can be made or bought in its form now that cannot be peeled off the bouy that you will destruct, whereas other tapes can possibly be removed. But this tape can be applied to these bouys and cannot be used over again. We firmly and highly endorse this method of identifying pots and with this, we feel certain that the pot limit can be enforced and preserve the fishers of the small areas and preserve the economy of the towns surrounding Kachemak and Kamishak Bay.

Members of the House and Senate Committees, I'm Bill Bledso, a fishermen from Homer, and I fish king and tanner crab in the lower Cook Inlet. I think it's a real good idea to get some kind of enforcement going on this pot limit thing. The law has been on the books for quite a long time and the many comments we get when we bring it up to people who are supposed to be enforcing it, is that they don't have any way to do it, because at the present time they have to go out and pull every pot that a fisherman has to be sure that the pot itself is fishing king crab before they can even start to make a case. In addition, there are quite a number of pots in Cook Inlet that are fishing , and people are using them are completely unmarked with even Fish and Game numbers of the boats , there are a couple of bouys tied on. If we could set up some system where the pots could be accounted for, and this tape idea that Ole presented earlier might be a real good idea. Might make the whole system a lot more enforceable and help us out a lot and help out the resource as far as conserving the crab and making the season last a little bit longer and spreading it out so the processors could handle the crab. I think it would also be necessary to enact some kind of a rule or regulation or a law that stated that any pot that any pot that had this particular tape on it was a king crab pot, and that would not make it necessary for the enforcement people to have to pull the pot and determine that it was a king crab pot. There are going to have enough trouble locating all 75 pots or more of person's string anyway to be sure that they have more than 75 pots there. So I think it would be a real good idea, all in all, to somehow enforce this provision. I talked to a fisherman the other day and he said that he didn't know of anybody fishing in Cook Inlet who had only 75 pots. So that might give you some idea of the magnitude of this problem. So I would urge you to adopt this proposal and how to get us some help there on enforcing this regulation.

Thank you.

Ruel Homberg from Sand Point. I've fished here since 1954. My organization has a proposal to the Fish and Game to abolish the pot limit for our area. However, we've considered this a long time before we finally did put the proposal in. I wasn't one of the original members, that submitted that proposal this year, however, after talking to various people about the , someway to enforce the pot limit, I would feel that may be we should consider or take another look that the pot limit before we go to far. However, I don't know what the Board's action is going to be, but I would say if the Board did abolish the pot limit for our area now, possibly when they did come up with some way of enforceing the pot limit, I could see where this could really be a great help to us because as we are looking at some other things with the tanner crab, for instance, wanting a area registration or a an exclusive area registration were we could work a pot limit into that to be in effect and would probably eliminate need for area registration then. I have been trying to get ahold of some of the people from other organizations to find out what their feeling was on what we have talked about here but I haven't been able to , so what I'm saying here, I just have to speak for myself right now. I don't have much more to say other than that after talking with Ole here, I think maybe what he has is probably about the only way that there may be some way to enforce this. Thank you.

SB

197

COMMITTEE REPORT

SENATE

3/23/77

4/4/77 Date

Mr. President:

The Committee on RESOURCES has had SB 197 sale of subsistence-caught fish eggs under consideration. A majority of the members of the Committee

☐ recommends it do pass

☐ recommends it do not pass

☒ recommends it do pass with attached amendment(s)

☐ recommends it be replaced with CS for _____ and that CS for _____ do pass

☐ (and) recommends it be referred to the _____ committee

☐ reports it back without recommendation

☐ AND attaches a report of its intent

☐ (other) _____

MEMBERS SIGNING THE MAJORITY REPORT:

Ben Stevens

Colletta DO Pass

Sam McGee Do Pass

Harry D

MEMBERS NOT CONCURRING IN THE MAJORITY REPORT:

Lee Yuen recommends: Do Not Pass

Fithian recommends: Do Not Pass

_____ recommends: _____

K. Poland

Chairman

S 60

AMENDMENT

OFFERED IN THE SENATE: BY: Senate Resources Committee

To: _____ SENATE BILL No. 197

HOUSE BILL No. _____

PAGE: 1 LINE: 10

Delete: 1979

Insert: 1978

SB

199

COMMITTEE REPORT

SENATE **Finance

3/1/77

4/4/77
Date

Mr. President:

The Committee on Resources has had SB 199
oil & gas leasehold interests in Kachemak Bay
under consideration. A majority of the members of the Committee

/ / recommends it do pass

/ / recommends it do not pass

/ / recommends it do pass with attached amendment(s)

/ / recommends it be replaced with CS for _____ and that CS for _____ do pass

/ / (and) recommends it be referred to the _____ committee

/ / reports it back without recommendation

/ / AND attaches a report of its intent

/ / (other) _____

MEMBERS SIGNING THE MAJORITY REPORT:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

MEMBERS NOT CONCURRING IN THE MAJORITY REPORT:

_____ recommends: _____

_____ recommends: _____

_____ recommends: _____

_____
Chairman

S 60

Cordova District Fisheries Union

Headquarters: Box 939, Cordova, Alaska

March 25, 1977

Senator Kay Poland, Chairman
Senate Resources Committee
Pouch V
Juneau, Alaska 99811

Dear Senator Poland:

We urge you oppose SB #199. We feel the long range benefits derived from buying back the Kackemak Bay leases will far outweigh the short term benefits.

Sincerely,

Bob Blake

Bob Blake
Chairman

bb/mh

SB

220

COMMITTEE REPORT

SENATE

3/7/77

**Finance
**Community & Regional Affairs (3/8/77)

4/6/77 Date

Mr. President:

The Committee on RESOURCES has had SB 220 management of coastal resources of the state under consideration. A majority of the members of the Committee

☐ recommends it do pass

☐ recommends it do not pass

☒ recommends it do pass with attached amendment(s)

☐ recommends it be replaced with CS for _____ and that CS for _____ do pass

☐ (and) recommends it be referred to the _____ committee

☐ reports it back without recommendation

☐ AND attaches a report of its intent

☐ (other) _____

MEMBERS SIGNING THE MAJORITY REPORT:

Tillion Do Pass _____

_____ Do Pass _____

_____ Do Pass _____

_____ _____

MEMBERS NOT CONCURRING IN THE MAJORITY REPORT:

_____ recommends: _____

_____ recommends: _____

_____ recommends: _____

H. Pearce
Chairman

S 60

AMENDMENT #1

OFFERED IN THE SENATE: BY: Resources Committee

TO: _____ SENATE BILL No. 220

HOUSE BILL No. _____

PAGE: 2 LINE: 28

Sec. 44.33.891. ALASKA COASTAL POLICY COUNCIL

After (1) substitute new language as follows:

Delete line 28 & substitute

Eight public members appointed by the Governor from a list comprised of at least three names from each region, nominated by the municipalities of each region. The nominees shall

AMENDMENT #2

OFFERED IN THE SENATE: BY: Resources Committee

TO: _____ SENATE BILL No. 220

HOUSE BILL No. _____

PAGE: 24 LINE: 22

between AS 46.35 and State Agencies, insert the following

Such technical assistance shall include the direct granting to the coastal resource districts a portion of any funds received by the state from the federal coastal zone management program, the amounts to be individually determined for each coastal resource district by the Commissioner.

AMENDMENT #1

OFFERED IN THE SENATE: BY: Resources Committee

TO: _____ SENATE BILL No. 220

HOUSE BILL No. _____

PAGE: 2 LINE: 28

Sec. 44.19.891. ALASKA COASTAL POLICY COUNCIL.

After (1) substitute new language as follows:

Eight public members appointed by the Governor from a list comprised of at least three names from each region, nominated by the municipalities of each region. The nominees shall

Alaska State Legislature

JUNEAU ALASKA

TO: ALL MEMBERS

FROM: SENATOR KAY POLAND MAY 10, 1977

HB 342 IS A COASTAL MANAGEMENT BILL AND LANDMARK LEGISLATION OF LONG-TERM EFFECT ON LAND PLANNING AND MANAGEMENT.

THE MEASURE IS THE PRODUCT OF A JOINT ADMINISTRATIVE AND LEGISLATIVE COMMITTEE STATUTORILY CREATED DURING THE 1976 SESSION. MEMBERS OF THE COMMITTEE WERE SENATOR POLAND, SENATOR TILLION, AND REPRESENTATIVES NELS ANDERSON AND SAM COTTON. ADMINISTRATION MEMBERS WERE COMMISSIONERS LEE MCANERNEY AND DON HARRIS, AND DPDP DIRECTOR BOB LERESCH. THE COMMITTEE WAS FORMED AFTER THE FIRM REJECTION OF AN ADMINISTRATION BILL INTRODUCED DURING THE 1975 SESSION, AND WHICH HAD BEEN BRANDED AS JUST ANOTHER ONEROUS LAYER OF GOVERNMENT.

THE PRESENT JOINT EFFORT BILL IS ONE THAT BEGINS THE PLANNING PROCESS AT THE CITIZEN LEVEL RATHER THAN AT THE CAPITAL LEVEL. THE BILL DOES NOT PERMIT THE PROMULGATION OF ANY ADDITIONAL REGULATIONS, BUT FOR THE COOPERATIVE FORMULATION OF A MANAGEMENT PLAN THAT MUST BE SUBMITTED FOR AFFIRMATIVE LEGISLATIVE APPROVAL BEFORE ANY PORTION CAN BE ADOPTED. ADDITIONALLY, THE MEASURE CALLS FOR THE CONFORMANCE OF ALL EXISTING DEPARTMENTAL REGULATION TO THE COASTAL MANAGEMENT ACT, AND FOR REVIEW FOR ANNULLMENT OF ANY REGULATION NOT NEEDED FOR THE IMPLEMENTATION OF THE MANAGEMENT PLAN.

Alaska Conservation Society

Incorporated in 1960

P.O. Box 80192 College Branch, Fairbanks, Alaska 99708

COASTAL ZONE MANAGEMENT - HB 342 & SB 220
Joint Senate/House ~~Resource~~ Committees
Mar. 30, 1977 C.R.&A.

The Alaska Conservation Society once again would like to reiterate its strong support for the concept of coastal management for Alaska. The Alaskan coastline stretches for some 34,000 miles. It encompasses more than a third of our nation's shores and includes an array of ecosystems from the arctic ice pack to ell-grass estuaries. It serves many peoples needs - fishing grounds, logging areas, oil and gas pipeline corridors, wildlife habitat, transportation and soon, energy production facilities. The place where the land meets the sea is an indispensible resource in the most literal sense of the word. But, it goes even beyond that in intangible values, those of renewal of the human spirit and ecological integrity. To mesh all these factors is a challenge we are far from meeting.

There are many dilemmas now facing Alaska's coastal areas. We are grappling with many of them, such as OCS oil and gas development, but few easy solutions can be expected. Coastal management is a concept of a process - a system that is often put forth as the states best bet, the most promising means for solution. Coastal management is not necessarily a protective device despite the fact that the national program was inspired by conservation concerns. It is naive to assume that coastal management will be a smooth process that will vacuum up all the problems on Alaska's shores and spew them back neatly solved.

Coastal management is merely a first step. It can be something of a prototype for land use planning and it may provide a handle on such

immediate issues as OCS development. But it is a program that will only serve us well if we put demands on it from the beginning. The program will only reflect the needs and concerns of Alaskans to the extent that those needs and concerns are heard. It will only stand up to the expectations of the environmental community to the degree that those expectations are forcefully voiced. Toward that end, we would recommend the following ideas be included in a coastal management act:

1. Maximum local participation in planning for Alaska's coastal zone balanced with the reality that the coastal plan is primarily a state responsibility. The bill recommends a Coastal Policy Council. Some form of a council is needed in order to focus thought and discussion on coastal planning. We suggest that the Council be widened to include more than local elected officials selected by the Governor and members of the Governor's cabinet. The Council should contain several at large voting citizen members (appointed by the Governor) for example, using the 4 judicial districts, for basis of selection. This would allow the state to have the benefit of interested, knowledgable people from areas such as private industry, the University of Alaska, Native groups and conservation groups. Also a technical change, Sec. 44.19.891 Alaska Coastal Policy Council (a)(2)(G) (pg. 4 line 8) change "commissioner of Dept. of Public Works" to "commissioner of Dept. of Transportation and Public Facilities". But the local participation should be under the comprehensive and guiding hand of the state who have the ultimate responsibility in coastal planning and management for Alaska.

2. There should be a requirement for public hearings for regions formulating district coastal management plans. These hearings should be recorded, transcribed and all questions raised at these hearings should be answered and opinions and proposals should be discussed and their validity ascertained. The hearing records and evaluation should accompany any plan submitted to the Council. In this way the Council and the

citizens of the future will have a record of both majority and minority opinions within the community and the hearing records can serve as a valuable source of information in the years ahead as the value of the program is assessed and modified. This provision should be in the Act as local ordinances often have no such requirements. All hearings of the Council should likewise be recorded, transcribed, evaluated and made available as appropriate.

3. The emphasis of this act should be on protection, enhancement and management of the coastal zone, not on development. This program should not be used as a development tool. The coastal zone is a fragile area and needs protection, not harassment. This brings up the question of what protection will the coastal zone receive while the coastal plans are being developed? There is up to 2½ years, maybe more, before plans are required to be completed. Who will hold the reins until then? Will existing statutes and regulations be continued in haphazard form? Should interim protection be addressed in this Act? This could be a serious problem.

4. In line with our view that coastal management is a land use issue, we feel it makes more sense to treat the coastal zone as a resource and therefore, that this Act should be under the Dept. of Natural Resources, not Community and Regional Affairs. DNR has all current land use/resource management for the state and it seem logical that they should assume management of the coastal zone. Possibly the program could go under the Div. of Land and Water Management or a new division of coastal zone management could be created. This will become even more important as the plans are completed and the program moves into management of coastal resources.

In summary, a coastal management program should not be viewed as a crisis-resolution mechanism. Careful thought and critical evaluation must be used to develop flexible yet strong managment plans. This type

of planning and management is one of those rare opportunities for streamlinging unconsolidated state regulatory and management activities, as so many existing laws remain inadequately implemented and so many agencies fail to exercise their mandates.

Over and above the financial benefits which can be expected to accrue to Alaska - over and above the valuable contribution coastal management could make toward cleaning up the state system of land and resource management - there is something else...what coastal management is all about. It is a protection of values, a balancing of the irretrievable, an acknowledgement of those qualities of life which make the coastline of Alaska worthy of our special attention.

Our state is in great need of a process which pulls the loose ends together and turns them to a common purpose. We see coastal management as one such tool.

SECTION-BY-SECTION ANALYSIS

SB 220 - HB 342

(An Act Relating to the Management of the Coastal Resources of the State)

In this analysis --

Council means the	Alaska Coastal Policy Council
Program means the	Alaska Coastal Management Program
District Program means the	District Coastal Management Program
Service Area means the	Coastal Resource Service Area

Area which Merits Special Attention	Defined in section 46.35.210(1)
Coastal Resource District	Defined in section 46.35.210(2)
Use of Direct and Significant Impact	Defined in section 46.35.210(5)
Uses of State Concern	Defined in section 46.35.210(6)

Major Economic Activity	Defined - 46.35.160(b)
Village	Defined - 46.35.180(d)

* Section. 1.

Sets out the legislative findings which show that

- The development of valuable resources which exist along Alaska's coast may outstrip the capabilities of coastal communities to deal with the impacts of accelerated development in the coastal areas; and that there is
- Great need for sound water and land use planning along the coast which would allow for development and use of the resources while at the same time protecting the natural and scenic values of the coast;

* Sec. 2

Sets out the legislative policy which provides that

- The coastal resources of the State should be preserved, protected, restored and enhanced as necessary, but also developed and used, for the benefit of this and future generations; that
- Coordinated planning and decision making among the various levels of governments and citizens of the State should be encouraged; that
- A management program, which would set out the State's policies, objectives and procedures regarding the coast should be developed; that
- Such a management program provide for the resolution of conflicts which may arise between public and private coastal resource activities as well as those which may have a direct and significant impact upon the coastal areas of the State; that

- Such a management program provide for participation by the public, local governments, and agencies of the State and Federal governments in the development and implementation of the program; that
- Such a management program utilize existing governmental structures and authorities; and finally that
- State agencies comply with the policies, and the guidelines and standards adopted by the Alaska Coastal Policy Council.

* Sec. 3

Adds new sections to Chapter 19 (Office of the Governor) of Title 44 (State Government) which would establish the Alaska Coastal Policy Council to carry out the State' policies.

Sec. 44.19.891

(a) Creates the Alaska Coastal Policy Council within the Governor's Office. The council would consist of 15 members; eight would be public members, appointed by the governor, and seven would be Administration members. The eight public members would nave to be mayors, or members of assemblies or councils of incorporated local governments from one of eight designated coastal regions. The seven Administration members would be the Director of DPDP, and the Commissioners of the Departments of Commerce and Economic Development, Community and Regional Affairs, Environmental Conservation, Fish and Game, Natural Resources, and Transportation and Public Facilities.

(b) The public members would serve two year terms and could be reappointed. Their terms would be staggered.

(c) The Council would select co-chairmen from among its membership, one from the public members and one from the Administration designees.

(d) Members of the Council would be allowed to select one person as a permanent alternate to represent them at Council meeting.

(e) Four public members and three designated members would constitute a quorum.

However, one or more members would be able to hold hearings.

Decisions of the Council would be by majority vote of those present and voting.

(f) Council members would be entitled to per diem and travel expenses, and

(g) A vacancy among the public members would be filled by appointment of the Governor for the unexpired portion of the term.

Sec. 44.19.892

Sets out the powers of the Council, which would include

- Applying for and accepting of grants, contributions, and appropriations, including Federal monies which would become available for coastal planning and management.
- Contracting for services.
- Consulting and cooperating with all parties concerned with or having jurisdiction over coastal planning and management.

Sec. 44.19.893

Sets out the duties of the Council, which would include

- Developing guidelines and standards for the preparation and approval of the Alaska Coastal Management Program.
- Establishing continuing coordination among the various State agencies to facilitate the development and implementation of the Alaska Coastal Management Program, as well as
- Initiating an interagency program of comprehensive coastal resource planning for each of the eight coastal regions represented on the Council.
- Providing, on a continuing basis, data and information to Coastal Resource Districts to carry out their planning and management functions under the Alaska Coastal Management Program.
- Submitting annually to the Legislature those portions of the Alaska Coastal Management Program approved or amended by the Council during the preceding year.

Sec. 44.19.894

Designates the staff of the Office of Coastal Management within DPDP to be the staff to the Council in carrying out its duties.

* Sec. 4

Adds a new chapter to Title 46 (Water, Air and Environmental Conservation) to develop the Alaska Coastal Management Program.

Sec. 46.35.010

((a) (Provides that the Council approves the Alaska Coastal Management Program.)

(b) Provides that portions of the Alaska Coastal Management Program could be approved by the Council as they are developed.

(c) The Council would review the Program, and when appropriate revise it to

- Add newly approved District Coastal Management Programs;
- Intergrate newly approved District Coastal Management Programs, and/or revisions and amendments of District Coastal Management Programs with existing programs, and/or with plans developed by State agencies.
- Add new or revised State statutes, policies, regulations or other appropriate material.
- Review the effectiveness of implementation of District Coastal Management Programs.
- Consider new information acquired by the State and by Coastal Resource Districts.

(d) All reviews and revisions by the Council would have to be in accordance with the guidelines and standards adopted by the Council.

Sec. 46.35.020

Lists the eight objectives of the Alaska Coastal Management Program. They include

- The use, management, restoration and enhancement of the overall quality of the coastal environment.
- The development of industrial or commercial enterprises consistent with the social, cultural, historic, economic and environmental interests of the people.

- The orderly, balanced utilization and protection of the resources of the coastal areas consistent with sound conservation and sustained yield principles.
- The management of coastal land and water uses in such a manner that those uses which are dependent on a coastal location (economically and/or physically) are given a higher priority than those uses which do not require a coastal location.
- The protection and management of signficant historic, cultural, natural and aesthetic values, and natural systems or processes within the coastal area.
- The prevention of damage to or degradation of land and water (reserved for their natural values) as a result of inconsistent land or water usages (adjacent to that land).
- The recognition of the need for a continuing supply of energy to meet the requirements of the State and the nation, and
- The full and fair evaluation of all demands on the land and water in coastal areas.

Sec. 46.35.030

Provides for the creation of Coastal Resource Districts to develop District Coastal Management Programs. The District Coastal Management Program would be based on a comprehensive resource use plan, or a comprehensive statement of needs, policies, objectives and standards which would govern the use of the various resources in the Coastal Resource District. Each District Program would have to be consistent with the guidelines and standards of the Alaska Coastal Management Program, and would include

- The delineation of the boundaries of the Coastal Resource District.
- A listing or definition of land and water uses and activities which would be subject to a District Coastal Management Program.
- The policies and regulations which would be applied to the land and water uses and activities which would be subject to a District Coastal Management Program.
- A description of the uses and activities which would be proper and those which would be improper within the boundaries of a Coastal Resource District.
- The policy which would be applied, and the procedures which would be used to determine which proposals for land or water uses or activities would be allowed.
- The designation of areas in a Coastal Resource District which merit special attention, and the criteria which would be applied for their use.

Sec. 46.35.040

Specifies the duties of the Alaska Coastal Policy Council. Among these would be

- The development, identification and definition of guidelines and standards for use by Coastal Resource Districts and State agencies within six months of the effective date of this Act. (These guidelines and standards, developed by the Council, would essentially cover the same items listed in the previous section (46.35.030).)

  In addition, the guidelines and standards which would be developed by the Council would be used to measure the progress

Coastal Resources Districts are making in developing and implementing their own District Programs.

- The development of an ongoing program which would provide technical and financial assistance to the Coastal Resource Districts in the development and implementation of their District Programs.
- The review and approval of District Programs.
- The initiation of a process for identifying and managing, uses of State, regional and/or district concerns within specific coastal areas.
- The development of procedures and/or guidelines for coordination and cooperation with Federal agencies which manage and use Federal lands in coastal areas.

Sec. 46.35.050

Provides that Coastal Resource Districts would be required to complete and submit to the Council for approval a District Program within 30 months of the effective date of this Act, or within 30 months of certification of the results of a Coastal Resource District's organization, whichever would occur later.

Sec. 46.35.060

(a) Provides that if certain portions of a District Program submitted to the Council for approval were not in compliance with the provisions of the Act, the Council could still approve those portions which were consistent.

(b) Those portions of a District Coastal Management Plan which would or could not be approved by the Council because of deficiencies would be mediated. Such mediations would include public hearings in the affected Coastal Resource District, and meetings between the Council and Coastal Resource District officials to resolve the differences and correct the deficiencies.

(c) If differences could not be resolved by mediation the Council would then call for a public hearing, and the differences would be resolved in accordance with the Administrative Procedure Act (44.62). The Council would be required to enter its findings, and then could require that

- The affected District Program be amended to be consistent with the Act, or that
- The Program be revised to accommodate a use of State concern.

(d) Designates the Superior Court as the court which would have jurisdiction to enforce orders of the Council.

Sec. 46.35.070

(a) Provides for the standards the Council would have to follow in approving or disapproving a District Program. The Council must approve a District Program if it is consistent with the Act and the guidelines and standards adopted by the Council.

(b) Even if a District Program were not consistent, the Council would have to approve it if it were determined that strict adherence to the guidelines and standards

- would result in violation of another law, or

- would cause substantial harm to another value in the Coastal Resource District, or that
- the inconsistency is of a technical nature and would not result in substantial harm.

(c) This section also provides that the Council would have to approve a restriction or exclusion (of a District Program) of a use of State concern, if it found that
- The Coastal Resource District had consulted with the appropriate State agencies; that
- The restriction or exclusion was based on the fact that no suitable alternative site was available; and that
- The restriction or exclusion was based on an analysis which showed that the proposed use would have been incompatible with the proposed site.

(d) Under this section a decision by the Council would have to be made within 90 days.

Sec. 46.35.080

Provides that the Alaska Coastal Management Program would take effect upon adoption of a concurrent resolution by a majority of each house, or by a vote of the majority of each house at a time the houses are convened in joint session to confirm executive appointments.

Sec. 46.35.090

(a) Provides that District Programs (approved by the Council for a Coastal Resources District) which do not have planning and zoning authority would be implemented by the appropriate State agencies.

(b) Those Coastal Resource Districts who exercise planning and zoning authority would implement their own Programs (once they had been approved by the Council).

Sec. 46.35.100

(a) Deals with compliance and enforcement of District Programs. It provides that muncipalities and State agencies would administer land and water use regulations in conformity with approved Programs.

(b) The sections states that if it were found that a District Program was not being enforced, implemented or complied with, the Council would convene a public hearing to consider the matter. After the hearing the Council could order the affected Coastal Resource District and/or State agency to take the necessary actions to enforce, implement or comply with an approved District Program.

(c) In determining whether an approved District Program is being enforced, implemented or complied with by a Coastal Resource District which exercises planning and zoning authority, the Council would find in favor of the respective Coastal Resource District if

- Zoning or other regulations had been adopted or were being enforced;
- Variances had been granted which complied with the elements of the District Program, or which had been approved by the Council; and

- Procedures and sta is of the Act had been followed and considered by the Coastal Resource District.

(d) In determining whether a State agency was enforcing, implementing, or complying with a District Program with respect to its exercise of regulations or control of the resources, the Council would find in favor of the State agency if the
- Use or activity for which the permit, license, or approval had been granted was consistent with the District Program, and if the
- Requirements imposed by State statute, regulation, or local ordinance applicable to the use or activity were consistent with the District Program.

((e) The Superior Court would have jurisdiction to enforce orders of the Council.)

Sec. 46.35.110

Would provide for the establishment of Coastal Resource Service Areas with powers granted to perform the duties required in this Act, in the unorganized borough.

Sec. 46.35.120

(a) Provides for the organization of Coastal Resource Service Areas in those Regional Education Attendance Areas which contain part of the coastline.

(b) The section further provides that the Commissioner of the Department of Community and Regional Affairs could, after public hearings, consolidate two or more REAAs into a single Coastal Resource Service Area if

- A substantial portion of the coastal area in question belonged to or was administered by the Federal Government; i.e., an area over which the State could not exercise control as to its use; or if
- There was the likelihood that an area in the unorganized borough which covered more than one REAA might be incorporated.

(c) The section also provides that a determination for a possible consolidation of two or more REAAs (for the above stated reasons) would have to be made prior to organizing a Service Area, but no later than six months after the effective date of the Act.

Sec. 46.35.130

(a) Provides for the three forms of organization of a Coastal Resource Service Area. It could be accomplished either by
- Submission of a petition to the Council by the number of voters equal to 15 percent of the number of votes cast in the last general election; or it could be accomplished by
- Submission of a resolution to the Council by a city council, or a traditional governing body of not less than 25 percent of the number of cities and villages located within the Service Area; or it could be done at the
- Direction of the Council whenever it appeared that a major economic development activity would occur in the Service Area. (Major economic activity is defined in Sec. 46.35.160(b)).

(b) The Lt. governor would conduct an election on the question of organization of a Service Area within 60 days (but no later than 90 days) after the receipt of a petition or resolution, or at the direction of the Council.

Sec. 46.35.140

(a) Provides that each Service Area would have an elected board which would have the same powers, duties and functions (to develop and implement a program) as those required of a Coastal Resource District.

(b) The Board would have seven members, which would be elected at large, except that

(c) The Commissioner of the Department of Community and Regional Affairs could (after consultation with residents of a Service Area) divide Service Areas into sections for the purpose of nominating and electing board members. (In accordance with AS 14.08.051(a)). Such division could also be requested in the petitions or resolutions submitted by Service Areas, or at the direction of the Council for organization of Service Areas as noted earlier. (Sec. 46.35.130(a))

Division into sections could also be proposed at any time by members of the respective Service Area boards. However, if such divisioning were to be proposed by a Service Area, it would have to be approved first by a majority of the qualified voters voting at the next regular election, or a special election called for that purpose.

If a division into sections for the purpose of nominating and electing board members were to be approved, it would take effect at the next regular election of Service Area board members.

(d) The term of office for Service Area board members would be three years. Board members could be reelected. Terms would be staggered.

(e) The Lt. governor would have to hold elections, with the first election to be held not less than 60 nor more than 90 days, after certification of the results of a Service Area organization election.

(f) Subsequent elections would be held annually on the same date as the election for board members of REAAs.

(g) Subsection (g) of this section provides for the appointment of a board member to fill a vacancy on a Service Area board. (According to AS 14.08.041(a))

(h) Recall of Service Area board members is subject to the same provisions as a recall for municipal officials. (Under AS 29.28.130 - 29.28.250).

(The Lt. governor would receive and review recall petitions, as well as conduct recall elections.)

Sec. 46.35.150

Provides that all elections in the Service Areas be administered by the Lt. governor as provided for in the Alaska Election Code. (In addition, it provides that the Lt. governor may adopt regulations as necessary, and that all election costs would be borne by the State.)

Sec. 46 35.160

(a) Provides for the organization of a Service Area at the direction of the Council whenever it appeared that a major economic development activity would occur in a Service Area, or in waters adjacent to a Service Area which had not been organized. The Council would have to hold at least one public hearing in the affected area before an election could be held by the Council.

((b) Defines "major economic development activity".)

Sec. 46.35.170

(a) Provides that if residents of a Service Area were to reject organization, and the Council found after public hearings that a major economic development activity was or would be occurring the Council could direct the Department of Community and Regional Affairs to prepare a District Program for submission to the Council and the Legislature.

(b) In addition, the Department of Community and Regional Affairs would complete a District Coastal Management Program for a Service Area which had been organized, but which had

- Failed to make substantial progress in preparing an approvable District Program within 18 months of organization, or which had
- Failed to submit for approval a District Program within 30 months of organization.

The preparation of a District Program by the Department of Community and Regional Affairs would be accomplished in consultation with the affected Service Area. The section further

provides that the District Program would reflect the expressed concerns of the residents of the Service Area to the maximum extent possible.

(c) However, subsection (c) provides that before the Department of Community and Regional Affairs could complete a District Program, the Council would be required to meet with members of the Service Area board to determine if they could complete a District Program on their own within the time frame established in subsection (b) of this section (i.e., 18 or 30 months).

Sec. 46.35.180

(a) Provides that a District Program would have to be submitted for review to each city or village within the Service Area before adoption by the board.

Within 60 days the council of a city, or the residents of a village could either approve, or enter their objections to the District Program.

(b) If a city or village failed to approve portions of the District Program, the governing body would have to advise the Service Area board (or the Department of C&RA) of its objections, as well as suggest alternatives.

The Service Area board would accept new material from a city or village (which would be consistent with the guidelines and standards adopted by the Council) and the District Program would be modified accordingly.

(c) Objections by a city council would be confined to elements of the District Program which would be within the corporate limits of the city. The objections of a village council would be confined to those elements of the District

Program which would be within the village and/or a two mile radius of the village.

((d) Defines "village".)

Sec. 46.35.190

(a) A city which is within the coastal area, but which is not part of a Service Area could include itself in that Service Area if its governing body consented to the inclusion.

(b) The initiation of mutual agreements and cooperative or joint administration of functions between a municipality and a Service Area is encouraged.

Sec. 46.35.200

Provides that upon adoption of the Alaska Coastal Management Program State departments, boards, and commissions would have to review their statutory authority, administrative regulations and applicable procedures to determine if any deficiences or inconsistencies existed which would prevent them from complying with the statewide Program. State agencies would be required to take whatever actions were necessary to insure that they would be in full compliance with the statewide Program. This would include the preparation and submission of recommendations to the Council for needed legislation within six months from the effective date of the Program.

Sec. 46.35.210

Contains the defintions' section (pp. 21, 22, 23, 24), which includes definitions of

(1) Area which merits special attention

(2) Coastal Resource District

(3) Use of direct and significant impact

(4) Uses of State concern

* Sec. 5

Adds a new section to Chapter 47 (Department of C&RA) of Title 44 (State Government).

The section provides for various kinds of assistance for the development, implementation and maintenance of District Coastal Management Programs by the Department of Community & Regional Affairs.

* Sec. 6

Provides that the Administrative Regulation Review Committee would have to review the administrative regulations adopted by the various executive departments dealing with the State's coastal areas. The Committee would have to make recommendations by January 20, 1979 for annulment of regulations which in the Committee's opinion would not meet the intent of the Alaska Coastal Management Program. These recommendations would have to be transmitted to the first session of the Eleventh Alaska Legislature.

* Sec. 7

Provides for an effective date clause.

the alaska native foundation
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Testimony on SB 220

Submitted to Senate Natural Resources Committee on March 29, 1977, at the request of Sen. Kay Poland, Chairwoman.

My name is Michael H. DeMan. I am the director of the Alaska Native Foundation's Village Management Assistance Program. I am by birth and choice a coastal Alaskan, and through my position at the Foundation, and previous work in state and local government, have traveled quite extensively in rural Alaska. The Foundation's involvement -- and mine -- with the coastal zone management, and its attendent OCS development issue, began last year. While ANF has limited resources to work with -- or perhaps because of that fact -- we try to stretch dollars as far as possible. And in dealing with coastal management and OCS -- we've seen our money go pretty far. We didn't look for the CZM/OCS issue -- rather it came to us, for two reasons:

1. As an organization working with villages, we received numerous questions about CZM and OCS from village leaders which we couldn't answer; so
2. ANF, together with the Alaska Native Human Resources project, set out to determine what CZM/OCS needs were not being met. Information and discussion seemed to be needed most strongly, so an OCS Awareness seminar was held in February. Funded in part by the State, the Kellogg Foundation and the BIA, more than 80 residents from coastal communities attended.

As a result of that Seminar and other work with the villages, ANF has come to the realization that CZM/OCS is only a portion of a much larger need for all of rural Alaska. The following

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outline proposes a workable solution for government -- for all rural Alaskans.

1. There is a need for regional and sub-regional planning for rural Alaska (unorganized borough), which is not filled by an existing organizational structure.

2. This need could be met under the service area concept (Chapter 29-03-020) but it is unrealistic to expect existing small cities and villages to deal with major forces affecting their lives on an area wide basis. City annexation of lands in question is not the answer. The planning need is of a much broader nature.

3. The service area concept should be rewritten to allow cluster groups of communities to share planning and zoning administration and powers outside their respective cities. This would give service areas a structure to deal with such forces and concepts as: Coastal zone management, rural energy needs, economic development, large scale agriculture projects, inter-village transportation systems and communications, and other regional or sub-regional planning needs.

4. State and federal governments also need certain structures to interface with to make important decisions and determine policy directions. As the saying goes, what is everyone's responsibility, is no one's responsibility. So it is with the unorganized borough and planning.

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5. The first step for rural Alaska is important. Too many times, the structure of present local governments has been super-imposed over an already totally mixed bag of organizations which evolved haphazardly to meet special situations. Although everyone agrees planning should come first, no one provides for it in a comprehensive non-burdensome way. We have that opportunity now.

6. Instead of forming planning structures and areas in reaction to government or private industry's ventures into rural life, which may overlap -- or which are designed for one purpose but used for another -- let's design planning structures and applications based on what is there now, in terms of inter-village relationships. All new projects emanating from without or within, then, would be able to deal with a planning organization which has defined goals, objectives, and responsibilities.

7. This service area should not be super-imposed, though outside guidance may be needed -- and welcomed. Rather, after careful development and pre-planning by the local people concerned, it should be voted upon by those people within the designated service area.

8. These service areas should then be allocated planning funds to cope with their priorities.

In order to accomplish the goal of development of a planning

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structure for rural Alaska, the following must first take place:

1. Develop the boundaries of existing geographically-homogenous planning units, i.e., the cluster groups. An example would be the Nunivak-Nelson Island group of six villages.

2. Identify existing governmental, non-governmental, economic, and other applied boundaries presently in use in rural Alaska.

3. Define the rationale and purpose for each boundary.

4. Design a "Service Area Powers" concept, which allows a step-by-step approach to governmental responsibilities starting with overall planning. These service areas should not put additional strain on limited local expertise, which is already over-extended in many locations.

5. Re-examine the existing structure of the Department of community and Regional Affairs.

6. Identify money necessary to accomplish the above on a multi-year basis.

If these service areas are designed in a sound, effective way in close partnership with the people who will administer -- and in turn, be affected by such administration -- then sound decisions can be made in planning the physical, social and economic future of rural Alaskans.

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I know this is a major proposal but coordination is vital for a rural people presently smothered by conflicting responsibilities, districts, jurisdictions, and general state overlap. Such coordination must come from you because you know the people best; you live there, and you make the laws.

SENATE BILL 220
ALASKA COASTAL MANAGEMENT
TESTIMONY BY JOHN BORBRIDGE, JR., PRESIDENT
SEALASKA CORPORATION
MARCH 30, 1977

MADAME CHAIRMAN AND MEMBERS OF THE SENATE RESOURCES COMMITTEE, FOR THE RECORD, MY NAME IS JOHN BORBRIDGE, JR. I AM THE PRESIDENT OF SEALASKA CORPORATION. I AM HERE TODAY TO OFFER OUR COMMENTS WITH RESPECT TO SENATE BILL 220, "AN ACT RELATING TO THE MANAGEMENT OF COASTAL RESOURCES OF THE STATE AND PROVIDING FOR AN EFFECTIVE DATE."

SEALASKA CORPORATION GENERALLY BELIEVES THAT A COASTAL MANAGEMENT ACT SIMILAR TO SENATE BILL 220 IS NOT ONLY INEVITABLE BUT DESIRABLE, IN ORDER TO PROVIDE FOR THE WISE DEVELOPMENT OF THE COASTAL AREAS OF THE STATE OF ALASKA. HOWEVER, IT IS UNFORTUNATE THAT THE MOVE TO IMPLEMENT COASTAL MANAGEMENT IN THE STATE OF ALASKA COMES AT THIS POINT IN TIME.

ON DECEMBER 18, 1971, PRESIDENT NIXON SIGNED THE ALASKA NATIVE CLAIMS SETTLEMENT ACT, WHICH PROVIDED AMONG OTHER THINGS FOR ALASKA NATIVES TO RETAIN OWNERSHIP OF 40 MILLION ACRES OF LANDS, WHICH THEY HAD OWNED SINCE TIME IMMEMORIAL. UNDER THE PROVISIONS OF THAT ACT, VILLAGE CORPORATION LAND SELECTION APPLICATIONS HAD TO BE FILED BY DECEMBER 18, 1974. TODAY IS MARCH 30, 1977 AND

TO DATE, ALTHOUGH THE VILLAGES IN SOUTHEASTERN ALASKA FILED THEIR APPLICATIONS IN A TIMELY MANNER, LESS THAN ONE ACRE OF LAND HAS IN FACT BEEN CONVEYED FROM THE FEDERAL GOVERNMENT TO THE NATIVE CORPORATIONS IN OUR REGION. ALTHOUGH MOST OF THE DELAY INVOLVED IN OBTAINING CONVEYANCE IS ATTRIBUTABLE TO THE DEPARTMENT OF INTERIOR, THE STATE OF ALASKA HAS CONTRIBUTED TO THESE DELAYS.

AS A CONSEQUENCE OF THESE GOVERNMENTAL DELAYS, THE NATIVE CORPORATIONS ARE IN GENERAL NOT RECEPTIVE TO ADDITIONAL CONTROLS AND ENCUMBRANCES BEING PLACED UPON LANDS TO WHICH THEY HAVE YET TO RECEIVE CONVEYANCE. CONSEQUENTLY, SEALASKA CORPORATION FROM A MATTER OF PRINCIPLE, MUST CONCUR WITH THE ALASKA FEDERATION OF NATIVES' POSITION THAT A COASTAL MANAGEMENT ACT SHOULD NOT BE IMPLEMENTED AT THIS TIME. RATHER, SUCH LEGISLATION SHOULD WAIT UNTIL THE NATIVE CORPORATIONS HAVE AT LEAST RECEIVED TITLE TO THE MAJORITY OF THEIR LANDS. THEN THESE CORPORATIONS WILL HAVE A BETTER IDEA OF THE SPECIFIC AFFECTS OF ANY STATE CONTROLS ON THE DEVELOPMENT OF THE LANDS. WE WILL BE ABLE TO PARTICIPATE IN THE COASTAL RESOURCE PLANNING PROCESS AS FULL-FLEDGED LANDOWNERS WITH THE ATTENDANT RESPONSIBILITY FOR ORDERLY AND RESPONSIBLE DEVELOPMENT. ADDITIONALLY, MANY NATIVE CORPORATIONS HAVE BUSINESSES AND SHAREHOLDERS WHO RELY HEAVILY ON THE COASTAL ECOSYSTEM. WE HAVE OR WILL, BE EMPLOYING PERSONNEL WHO ARE VERY KNOWLEDGEABLE IN THE USE AND PRESERVATION OF COASTAL RESOURCES. IT IS MOST DESIRABLE FROM OUR POINT

OF VIEW TO BE GIVEN A LITTLE MORE TIME TO CLARIFY OUR CONCERNS AND POSITIONS PRIOR TO ENACTMENT.

SEALASKA CORPORATION, HOWEVER, IS ALSO AWARE THAT CERTAIN FEDERAL FUNDS WHICH MAY BE BENEFICIAL TO COASTAL COMMUNITIES, PARTICULARLY WITH RESPECT TO THE PENDING OUTER CONTINENTAL SHELF DEVELOPMENT OF FEDERAL OIL RESERVES, MAY NOT BE AVAILABLE TO THESE COMMUNITIES IF A COASTAL PLAN IS NOT ADOPTED BY THE STATE. THEREFORE, OUR POSITION IS AS FOLLOWS:

1) TO THE EXTENT IMPLEMENTATION OF A COASTAL MANAGEMENT PROGRAM CAN BE DELAYED UNTIL TITLE IS RECEIVED TO THE NATIVE CORPORATION LANDS, THE STATE SHOULD DELAY SUCH IMPLEMENTATION;

2) TO THE EXTENT THAT SUCH A DELAY WOULD WORK ADVERSELY WITH RESPECT TO FEDERAL FUNDS TO OFFSET THE IMPACT OF OIL DEVELOPMENT ON THE OUTER CONTINENTAL SHELF, THE COASTAL MANAGEMENT PROGRAM SHOULD BE IMPLEMENTED.

INSOFAR AS SENATE BILL 220 IS CONCERNED, WE HAVE THE FOLLOWING COMMENTS:

OUR MAJOR OBJECTION TO SENATE BILL 220 AS IT PRESENTLY STANDS IS THAT THE UNORGANIZED BOROUGH LARGE PRIVATE OWNERS ARE EFFECTIVELY DISENFRANCHISED WITH RESPECT TO DEVELOPING THE

COASTAL DISTRICT PROGRAM FOR THEIR AREAS. SPECIFICALLY, DUE TO THE STIPULATIONS IN THE ALASKA NATIVE CLAIMS SETTLEMENT ACT AND SUBSEQUENT AMENDMENTS, SEALASKA CORPORATION IS FORCED TO SELECT ITS LAND FROM AREAS WHICH ARE IN THE UNORGANIZED BOROUGHS. A GOODLY PORTION OF THE LANDS SELECTED BY SEALASKA CORPORATION WILL BE ON PRINCE OF WALES ISLAND AND THE PROVISIONS OF SENATE BILL 220 DO NOT ALLOW ANY INPUT BY SEALASKA CORPORATION IN THE DECISIONMAKING BODY WHICH WILL ESTABLISH THE COASTAL PLAN FOR THE PRINCE OF WALES ISLAND. JUST AS A GOOD FOREST MANAGEMENT ACT MUST PROVIDE FOR DIRECT INPUT IN THE DECISION-MAKING PROCESS BY TIMBER LANDOWNERS, SO ALSO A GOOD COASTAL MANAGEMENT PROGRAM ACT MUST PROVIDE FOR DIRECT USER INPUT IN THE POLICY BODY WHICH ESTABLISHES THE COASTAL MANAGEMENT PROGRAM. SOME METHOD MUST BE FOUND FOR NOT ONLY SEALASKA, BUT THE OTHER MAJOR PRIVATE NDOWNERS IN THE STATE, TO HAVE A DIRECT INPUT INTO THE POLICYM KING BODY THAT FORMULATES THE COASTAL MANAGEMENT PROGRAM THAT EFFECTS THEIR LANDS.

ONE OTHER MAJOR FAILING WE SEE IN SENATE BILL 220 IS THE COMPOSITION OF THE ALASKA COASTAL POLICY COUNCIL (LINE 24 ON PAGE 2 OF THE PROPOSED BILL). AS OUTLINED, THE COUNCIL WOULD CONSIST OF EIGHT PUBLIC MEMBERS APPOINTED BY THE GOVERNOR, AND SEVEN DEPARTMENT HEADS ALSO APPOINTED BY THE GOVERNOR. IN ESSENCE THEN, THE 15 MEMBER COUNCIL WOULD BE ENTIRELY SELECTED BY THE GOVERNOR OF THE STATE AND WOULD QUITE OBVIOUSLY REFLECT HIS PARTICULAR POSITION WITH RESPECT TO COASTAL MANAGEMENT.

Furthermore, the structure of the Coastal Management program as outlined in Senate Bill 220 is "from the top down". The Alaska Coastal Policy Council dictates to the coastal resource districts the basic policies and programs which must be developed by the district.

In order to overcome these two serious drawbacks in Senate Bill 220, we would suggest that the membership on the Alaska Coastal Policy Council consist of one member from each of the Coastal Resource Districts, said member to be elected by a majority vote of the members serving on the coastal resource district board. This provision would allow those citizens in the unorganized boroughs an opportunity to be represented on the Council. In addition, the Alaska Coastal Policy Council could have members designated by the Governor, representing the various departments as presently outlined in Senate Bill 220. An Alaska Coastal Policy Council made up of one member from each coastal resource district, plus the various commissioners, would appear to be more consistent with local planning development and control, and still allow substantial input by the State through the commissioners of the various department. Policies and program guidelines developed by such a council would more adequately reflect the various differences in resource management throughout the State, and should minimize friction between the Policy Council coordinating the statewide effort, and the Resource District Boards charged with implementing the statewide policy.

In closing, Madame Chairman, again let me thank you for allowing Sealaska Corporation to testify on this proposed legislation. Any Coastal Management Program established will have a substantial impact upon the State of Alaska, Sealaska Corporation and the villages in Southeastern Alaska.

Testimony
SB 220/HB 342 "Coastal Resources"

Glenn Akins
Coordinator, Alaska Coastal Management Program
Division of Policy Development and Planning
Office of the Governor

I would like to address three things: 1) the role of the Administration in conducting a coastal management program; 2) the manner in which the coastal management bill will help us with the program; and 3) some suggested changes in wording which have been provided by state agency staff members.

The Coastal Management Program

The State of Alaska has been conducting a coastal management program for two and one-half years, without benefit of legislation. The goals of the Administration in conducting this program are to:

1. develop an understanding, an overview, within one program, of all the important uses and activities taking place along Alaska's 34,000 miles of coastline, filling gaps in the regulatory process where necessary, and simplifying it otherwise;

2. assist state agencies and local governments do a better job of managing coastal resources, through

   a. developing better information on resources and resource uses and impacts,
   b. funding local OCS siting programs and municipal coastal management programs,
   c. conducting special regional planning efforts, such as the Gulf of Alaska facility siting program, and
   d. preparing for the administration of the Coastal Energy Impact Fund;

3. providing for greater participation of citizens and local governments in coastal management decisions; and

4. establishing greater coordination among state and federal agencies which have responsibility for regulation of coastal resources.

The Bill

SB 220/HB 342 fits the Administration's goals for coastal management in the following ways:

1. The bill specifies the uses and areas which should be addressed within the coastal management program. It explains that coastal management is not regulation of everything that is happening along Alaska's shores and coasts. Many citizens and local government officials have had the impression that coastal management means regulation of any kind of use or activity, no matter how minor or local.

2. The bill establishes policies, or guidelines if you wish to call them that, in law which explain the State's interest in regulating the major uses and areas defined in the legislation.

3. The bill would establish the tie between state regulation and local planning and zoning. The guidelines for coastal areas and activities would become the basis for completing and reviewing local (municipal) coastal programs. Local governments would have a role in planning for uses and areas along the coast, in close cooperation with state agencies.

4. The bill provides a mechanism for resolving conflicts between the state and local governments.

5. The bill provides means for residents of the unorganized borough to participate in the coastal management program.

One question that could be raised here relates to federal approval of the State's coastal management program. That is, will this bill make the State's program approvable under the terms of the Coastal Zone Management Act of 1972?

The State can seek approval on the basis of state authorities alone, or on the basis of a partnership between the State and local governments. Every state which is actively involved in coastal management has chosen to involve local governments in a significant way. The bill would allow the State to use local planning and zoning authorities as an important part of the management program.

Suggested Changes

Administration Suggestions for Changes to SB 220/HB 342
"Relating to the Management of the Coastal Resources of the State"

1. Remove Legislative Oversight

The Legislature should have a proper oversight role in the coastal management process. This role, however, is already provided for in the budget review process, the ability to repeal or modify statutes, and the ability to review regulations. Furthermore, since the Legislature would create a Policy Council to oversee the program, it should abide by the Council's decision.

Recommendation: Revise Section 46.35.080 EFFECTIVE DATE OF THE ALASKA COASTAL MANAGEMENT PROGRAM. The Alaska coastal management program adopted by the Council, and any additions, revisions, or amendments of the program, take effect after approval by the Council.

2. The Unorganized Borough

The Administration requests close review of the Unorganized Borough provisions. The Administration does not wish to establish disincentives for the eventual formation of organized local governments. However, the Administration felt it necessary to respond to requests for participation by residents of the Unorganized Borough in the Coastal Management Program. It must be emphasized that the bill does not mandate districts in the Unorganized Borough, but allows their formation as a local option.

3. Existing Expertise

Revise Sections 44.19.892 and 44.18.894 to read
POWERS OF THE COUNCIL. The council may shall
(1) apply for and accept grants, contributions, and appropriations, including application for and acceptance of federal funds which may become available for coastal planning and management;
(2) utilize, to the maximum extent feasible, the expertise of and the information supplied by state agencies;
(3) contract for etc. as in existing bill.

COUNCIL STAFF. The council shall utilize the staff of the office of coastal management within the Division of Policy Development and Planning in discharging its powers and duties. The coordinator of the office, with the concurrence of the council, may contract with or employ

personnel or consultants he considers necessary to carry out the powers and duties of the council. The coordinator shall use the expertise of the state agencies to the maximum extent feasible, in carrying out his duties."

THE CITY AND BOROUGH OF JUNEAU
CAPITAL OF ALASKA
155 SOUTH SEWARD ST. JUNEAU, ALASKA 99801

DATE: March 30, 1977

FILE NO. SB 220/HB 342

SUBJECT: Senate Bill 220, Management of the Coastal Resources of the State

The Honorable Kay Poland, Chair
Senate Resources Committee
Pouch V
Juneau, Alaska 99811

Dear Senator Poland:

The Legislative Committee of the City and Borough of Juneau has reviewed and considered SB 220 and supports the general approach taken in the bill to management of our coastal resources. The committee supports maximum local participation in the policy making and enforcement aspects of coastal resource management and to that end requests that minor changes be considered which would help maximize local government input, participation and response under the bill.

The membership of the Alaska Coastal Policy Council is made up of seven state department or division heads who have been appointed to their position by the governor or one of his appointees. In addition, the governor appoints eight persons of his choosing from various regions who are elected local government officials. Thus, the governor appoints all fifteen of the council members. The appointment of the eight elected local government officials is made without the advice and consent of either the legislature or the local municipalities. In order to insure that the viewpoint of local government is represented by local government members who reflect the policies of the local governments involved, the appointing power as to the public members should be shifted to the local governments involved. It could be completely shifted to the local governments if the language between lines 28 and 29 on page 2 and lines 1 and 2 on page 3 is deleted and replaced by the following language:

> (1) eight public members, who shall be the mayor or member of the assembly or council of a municipality shall be appointed. One public member shall be appointed from each of the following general regions:

Following line 24 on page 3, add the following language which would be a continuation of (1):

> Initially, and upon a vacancy or upon or prior to the expiration of the term of an incumbent, public members shall be appointed for the term or unexpired term in the following manner:
>
> (A) Upon notification to municipalities in a general region by the governor or the council of a vacancy or a prospective vacancy in the seat representing the general region, the assembly or council of each municipality therein may, by motion or resolution, nominate its mayor or a member of its assembly or council to fill the vacancy. Upon making such a nomination, the municipality shall notify the governor and each of the other municipalities within the region of its nomination. If, subsequent to the making of such nominations, a majority of the municipalities within the general region adopt resolutions selecting one of the nominees as the region representative, such person shall be deemed appointed to the council.
>
> (B) The person appointed shall notify the governor, the council, and each municipality in the region of the appointment. The person selected shall include with such notice a copy of each of the resolutions selecting that person as the representative of the general region.
>
> (C) If the governor has not received notification of an appointment under (A) and (B) within 90 days of the last date upon which notice to a municipality was sent by the council or the governor, the governor shall appoint a public member for that general region from among the nominations supplied him under (A).

The procedure suggested above could be altered, however, the two elements which are essential to this procedure are:

1. That the representative for the general region should be appointed by the municipalities which will be the front line for enforcement of the coastal resources management program, and

2. That in the event the municipalities are not able to agree, the governor be limited in his appointments to the public member seats to persons who have been nominated by municipalities.

Other references to the appointment of public members by the governor which appear in the bill should be deleted or changed to conform to the change proposed above. Lines 1 and 2 of page 5 should be changed to read as follows:

> (a)(1) of this section, the alternate designated under (d) shall serve until a replacement who shall serve for the unexpired portion of the term has been appointed in accordance with the procedures set forth in (a)(1) of this section.

Municipalities are the key to the implementation of the Alaska coastal management program. By providing municipalities with an opportunity to select their representatives for the council, the state will be taking a step in the direction of creating greater credibility of the state program, encouraging the fullest possible local input to and cooperation with the council and providing an environment in which local enforcement of the district coastal management program can be expected to be the most vigorous. In addition, allowing municipalities to select their representative in each general region will probably help insure a better balance on the council between those who represent state interests and those who most accurately reflect local needs and interest.

While the municipality has not taken a position relative to the following points I believe they are points which might be appropriate for committee discussion.

1. There appears to be a conscious effort not to specify which agency or body has the responsibility for developing the Alaska coastal management program. While it is the council which initially approves the program, it does not clearly appear that the council has any responsibility for developing or assembling the program. It develops guidelines for the preparation of the program; it reviews the program, and it approves the program in part or in whole. Section 46.35.010 on page 6 clearly gives the council the power to review the program but merely provides that the program be revised when appropriate without noting what body or agency has the revisory power. Subsection (c)(1) of subject section provides that the council add newly approved district management coastal programs to the Alaska coastal management program.

2. Proposed sections 60 and 70 set forth the procedure for council approval of district coastal management programs. Proposed section 80 provides that the Alaska coastal management program adopted by the council takes effect upon its approval by the state legislature. Thus, it would appear that district coastal management programs would, by their incorporation in the Alaska coastal management program, be subject to legislative approval. Section 90, however, indicates that council approval is all that is needed for the district coastal management program of a district which exercises zoning or other resource control. Thus, while it is not really clear in the proposed legislation, it does appear that if the state is to be responsible for implementation of a district coastal management program, that program must be approved by both the council and the legislature while council approval is all that is necessary for a district which exercises zoning or other resource controls. If the foregoing reading is accurate as to legislative intent, then changes should be made to the language in section 10(c)(1) which appears to provide for the incorporation of approved district programs into the Alaska program which then receives legislative approval. In addition, the language at lines 12 and 13 on page 13 should be changed so that after the word "programs" in line 12 it would read "which have received final approval by the council or the legislature, as required, and are in effect." Language of this nature would help remove the ambiguity of whether or not both council and legislative approval are required for both state enforced and locally enforced programs. If, on the other hand, it is the intent of the legislature that district programs which are to be implemented through local zoning and other resource controls should be fixed in concrete through the mechanism of legislative approval, section 100 should be redrafted to remove the very strong implication that legislative approval is not needed except where state implementation is contemplated.

3. Returning to page 7, it does not appear in the list of objectives that the interests of the region or district are to be considered. If these are deemed appropriate for consideration, the addition of the phrase ", the region and the district" at the end of the sentence ending on line 18 on page 7 would incorporate such standards.

4. It would appear from reading section 30 starting on page 8, and in particular subsections (5) and (6), that implementation of the district coastal management program is contemplated through a mechanism which is

similar to conditional use procedures in conventional zoning programs. If it is contemplated that each use of land or water regulated under the district program is to be regulated as a conditional use, this aspect of the legislation could be subject to attack as many courts do not hesitate to overturn ordinances which purport to be zoning ordinances but under which all or almost all land uses are subject to the conditional use procedure. Such courts seem to balk at the idea that the legislative or regulatory body can decide on a case-by-case basis whether each or most uses under a general zoning will be allowed. Such an approach can be likened to spot zoning for each use. Of course, if there are sufficient standards that there is little discretion as to whether or not an application for a particular use is to be granted, such procedures are less vulnerable to attack.

5. At pages 10 and 11, the bill contemplates a mediation process which is to be utilized as to those district programs or parts thereof which are not approved by the council. The committee may want to consider whether it would be more appropriate to give the coastal resource district an opportunity to revise all or certain parts of its plan to bring it into compliance with council requirements before forcing the district into mediation. While the conventional concept of mediation involves a neutral third party who attempts to obtain agreement between the disputants, it appears that section 60(b) contemplates that the council itself acts as mediator. This appears to be something more akin to negotiation than mediation. However, it appears that in either event the coastal resource district is not in much of a position to resist changes requested by the council as the council has the ultimate authority to order the program amended. It must be admitted, however, that this is a commendable effort to provide a vehicle for the resolution of disputes between inferior and superior agencies prior to the superior agency invoking its power of a final and formal disapproval.

In closing, the municipality encourages the committee to increase or strengthen the authority and role of municipalities in the coastal resource management scheme.

Very truly yours,

Gerald L. Sharp
City/Borough Attorney

cc: Senators Butrovich, Croft,
Meland, Huber, Colletta, and Tillion
Don Berry, Executive Director
Alaska Municipal League

GLSmmb

SB 220 HB 342

Virginia Del Pino - Alaska Conservation Society

Mike DeMann - Alaska Native Foundation

State people should be only advisors
plan for something

Mayor Gilman Kenai Peninsula Borough
- 5 municipalities within borough
commission too large?
boroughs nominate to the Gov.
elected panel - likes that
money to assist in planning

Peter Herbert, Seldovia Rep. for John Babbidge

Feels - have not surveyed lands
wants State to wait until Natives receive their lands
unorganized borough - Seldovia has lands in
~~Kenai~~ ~~Seward~~ office area
Council - doesn't want Gov. picking

Lem Sharp - City of Juneau

Glen Alsworth - Co-ordinator of the OCS office

Alaska

(1) Maximum loc participation – wants State in

wants more council members

(2) public hearings for district plans

(3) hearing; The council – types & transcribes
wants interim plan protection not development

(4) – wants it under DNR not OCS A

ANCHORAGE – ALASKA KODIAK PRINCE Wm Sound

Glen Aikens – CZM office

NUNAM KITLUTSISTI
Protector of the Land
BOX 267
BETHEL, ALASKA 99559

May 16, 1977

THE ENVIRONMENTAL PROGRAM
OF THE ASSOCIATION OF VILLAGE
COUNCIL PRESIDENTS

Senator Kay Poland
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Poland,

I am somewhat concerned that a message sent to you directly on March 26, 1977 did not come to your attention until mid-May. The reason for the letter in the first place was the very vital issue of coastal zone management. The letter was the result of a three day work session in the lower Yukon concerning the proposed legislation, and possibly was the only direct input your Committee received from rural Alaskan native villages concerning this legislation that will directly affect the lives of these coastal Alaskan citizens. Following the failure of your committee to keep any form of information coming on this issue: no reports sent, copies of bills, or questions about rural concerns; and the fact that the villages involved and threatened by Norton Sound OCS activities called the meeting to review the bill, it appears that decision making in Juneau for coastal Alaska is once again operating in the blind. To this date, I still have no information about the final form of this bill so that we may interpret the language into Yup'ik Eskimo to see if the concerns of the villages were met or were as unheeded as their correspondance.

I am sending a copy of your letter and this letter to each village in the region affected by the CZM legislation. I hope that the information flow to these villages from your Committee will soon begin.

in peace,
harold sparck, director

Alaska State Legislature

SENATOR
KAY POLAND
DISTRICT L
P.O. BOX 45
KODIAK, ALASKA 99615

Senate

KODIAK-ALEUTIAN
DISTRICT

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811

Harold Sparck
Director
Nunam Kitlutsisti
P. O. Box 267
Bethel, Alaska 99559

May 31, 1977

Dear Mr. Sparck:

I am enclosing a copy of the final coastal zone bill. There may have to be amendments to this act next year. In the meantime, you can contact Glenn Akins, Pouch A-D, Juneau, Alaska 99811. Mr. Akins is the Director of the Coastal Management Office.

The coastal zone bill went through three additional committees after it left our committee, and, apparently, the Governor's legislative office in Bethel was not used, for they could have given you all the action on this bill.

Three years of work and hearings went into the coastal zone bill to put the decision making at the local level, this was fought by the administration, and the measures taken to assure the unorganized borough of having a voice in their decisions was insisted upon by the coastal zone committee.

Mr. Akins tells me he will be holding w[illegible]kshops throughout the state and I would suggest that you contact him regarding a workshop for your area. He probably is planning a workshop for Bethel but rather than assume this, I would advise making a direct request.

Sincerely,

Kay Poland

Kay Poland
State Senator
Kodiak-Aleutian District

KP:ss

ADMINISTRATION REPORT TO THE HCR 123 COMMITTEE FEB. 25, 1977

The Administration, acting through the Coastal Management Policy Committee created by the Governor, has examined the recently circulated draft of coastal management legislation, called "draft #3", and has the following comments to make:

1. Item (4) of sec. 44.19.893 (page 5) DUTIES OF THE COUNCIL, in the draft calls for legislative reaffirmation of the program every year. There are several checks on council activity already available and this provision seems unduly burdensome. This item should be changed back to the original version which called for annual reports to the legislature.

2. The draft does not provide a state role in coastal management apart from membership on the council. We feel that the regional coastal program concept is still valid and would like to offer the attached suggestion as a way of providing for regional programs.

3. Sec. 46.35.040 DUTIES OF THE ALASKA COASTAL POLICY COUNCIL has been changed in item (1) by removing the substantive areas over which the council can establish guidelines. It is important that both the district and state programs have meaningful guidance, so we would recommend that the five items dealing with land and water uses be restored to this section. If the regional coastal program concept is employed, the state agencies should have to operate by the same rules as local governments, and these rules should be substantive so that basic coastal policies are known in advance. Both local governments and state agencies are protected since the council can allow deviations from the guidelines, and the legislature has the power to disapprove any of the guidelines because of the administrative regulations review mechanism.

4. The state is committed to encouraging the formation of organized local governments in the unorganized borough, and while we believe that a meaningful method must be found for involvement of Unorganized Borough residents in coastal management, we believe that the formation of special purpose service areas would act as a disincentive to the creation of regular local governments. Therefore, we must renew our belief that Article 2 should be deleted. The regional coastal program concept will go a long way toward involving the residents in the Unorganized Borough. One way of assuring this involvement is to require numerous hearings in each region prior to the adoption of a regional coastal program, and as an added safeguard, a requirement that each comment and question about the progaram must be answered by the council. This would prevent the council form ignoring a concern and would make public the response or reaction of the council.

NEW SECTION

Sec. _____ REGIONAL COASTAL PROGRAMS BY STATE AGENCIES

(a) In order that the state interest may be fully understood, and to coordinate and facilitate the exercise of existing state authorities and programs, the state agencies shall prepare regional coastal management programs based on their present duties and functions.

(b) The state agencies' individual components shall be combined and coordinated into a single program for each region, which, after approval by the administration members of the council will be presented to the full council with a request for approval and adoption.

(c) The council shall assure that the substantive contents of the state regional coastal programs and the substantive contents of district coastal programs are mutually coordinated and consistent, and to this end may request or order changes in either district or state regional programs to assure such coordination and consistency.

(d) The subject areas that may be addressed in state regional coastal programs are the same as described in sec. 46.35.030 for district coastal programs. However, substantive land or water use regulations, standards, designations, and other restrictions and commitments in the state regional coastal programs shall be based wholly on authorities provided in existing state law and such new laws as may be enacted in the future.

(e) Nothing in this Act shall be construed to expand or broaden state agency authority over land and water uses; the only intent of this section is to facilitate and coordinate the exercise of existing state law in coastal areas, except insofar as new state law may be enacted which affects the coast.

(f) The guidelines to be used for the development of district coastal programs shall be used by the state agencies in the development of regional coastal programs.

(g) The state agencies, coordinated by the administration members of the council, acting as a subcommittee, shall prepare a preliminary designation of the regions for which programs shall be developed, and all other administrative arrangements shall be made and documented within six months of the effective date of this Act, and such materials shall be submitted to the full council for their adoption.

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

Dillingham
Sallatna
Kenai -
Bethel

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M January 6, 1977

SUBJECT: Interim Activity by HCR 123 Committee on Coastal Management

TO: Members of the Legislative Council

FROM: Senator Kay Poland

This report supplements my November 8 report to you on the same subject.

The committee has had two meetings since that date. In early November, the subject of discussion was the review and revision of the working draft of a bill to establish a coastal management program for Alaska. After considering the draft at hand and the changes offered by all present, staff prepared a "clean" copy of the bill which was mailed, in late November, to local governments in the state's coastal areas, native corporations, and to representative groups and interested parties inviting review and comment. A few responses were received. Each suggested specific changes broadening the membership of the statewide coastal policy council established in the bill and otherwise offered comments on particular concerns.

Remarks generally supportive of the draft have been received from municipal officials, at least as regards the division of responsibilities between the state and its local governments, implying that objections to earlier legislation offered on this subject have been partially answered.

State departments also received copies of the working draft. Meeting during the first part of this week, agency officials expressed serious reservations about elements of the legislation and directed administration representatives most knowledgeable of the provisions of the legislation to prepare alternative sections responding to these concerns.

Accordingly, the meeting of the HCR 123 committee of yesterday did not further consider the bill. Rather, administration representatives in attendance requested an additional 10 - 14 days in which to draft amendments incorporating their concerns. The time requested has been granted and we would hope to meet again about January 19 to have the comments and work product.

I cannot, therefore, report that the HCR 123 committee has concluded its work. There is substantial agreement on major elements of the draft, material disagreement on other portions; comments received from officials and the general public should be considered. I believe I speak for a majority of the members of the committee in suggesting that substantial agreement concerning this very important subject is to be preferred and that reasonable delay in submission of legislation is warranted at this time. We are interested in having the administration's comments and alternative suggestions and I, personally, believe that we can, in due course, have a bill which will serve as the basis of formal consideration by standing legislative committees.

The coordinator of the Alaska Coastal Management Office, Glenn Akins, has provided a copy of the draft of the legislation to officials of the U.S. Office of Coastal Zone Management. Their response, with commentary as to specific provisions of the bill in light of federal requirements, is attached.

Speaking for the legislative members of the HCR 123 committee -- Representatives Anderson and Cotten and Senator Tillion -- I appreciate the support extended by the members of the Ninth Legislature and the Legislative Council in our efforts to prepare and offer for consideration a bill establishing the framework for a coastal management program which meets the needs and desires of the people of the state. I regret that our work is, at this date, unfinished.

KP:JBC/smh

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

M E M O R A N D U M November 8, 1976

SUBJECT: Interim Activity by HCR 123 Committee on Coastal Management

TO: Members of the Legislative Council

FROM: Senator Kay Poland

The members of the committee on coastal management* have met twice and are to meet again at 1:30 p.m. tomorrow afternoon to continue work looking toward completion of a legislative package addressing coastal management.

The resolution directing the establishment of an interim committee had two purposes. It asked, first, that the Legislative Affairs Agency, in cooperation with the Office of the Governor, "codify all laws and regulations pertaining to coastal zone management" for submission to the legislative session convening in January. The first meeting of the committee considered that mandate. We found that a significant amount of work had been completed, under contract between the Office of Coastal Management and a private consultant, and had culminated in the preparation of a two volume report summarizing and analyzing constitutional provisions, current state statutes, and regulations adopted and followed by the several state agencies which touched on the subject of management of the coastal resources of the state. The report, copies of which are available from the Office of Coastal Management, provides, in a convenient location, a working summary of the principal provisions of law which may be looked to as authority by which to implement and carry forward a comprehensive coastal program.

---

*The members of the committee are:

Senator Kay Poland
Representative Nels Anderson
Representative Sam Cotten
Senator Clem Tillion
Don Harris, Commissioner of Public Works
Guy Martin, Commissioner of Natural Resources
Lee McAnerney, Commissioner of Community and Regional Affairs
Bob LeResche, Director, Division of Policy Development and Planning

Rather than move forward on this single directive, the members of the council turned their attention to the second matter, the "review of ... public testimony ... on the subject of Alaska coastal zone management" and "the development of a sound coastal zone management program" for submission to the Legislature.

On this subject, the record of hearings held by the interim legislative committee during the summer and fall of 1975 was particularly useful. The final report of that committee noted particularly the expression of interest in coastal resource planning by residents of affected areas. The testimony received from many people indicated that a state coastal management program must provide for community expression and, where possible, direct community involvement and implementation. Noteworthy, also, was an expression from representatives of the business community that attention be given to provision for a coordinated system of permit issuance as an alternative to the current piecemeal system.

These suggestions were the starting point for the committee's deliberations. Through the first two meetings we have considered the question of how to provide for coastal management in a manner which recognizes a responsible role for local governments and residents of the coastal area while attempting to achieve a balance with the needs and interests of the state. We are generally agreed that the essence of the approach to be taken would be one which relies primarily on community and regional entities willing to develop and implement comprehensive coastal area plans that, in turn, would serve as the basis for the general state program. Approval of plans would rest with the state; moreover, at least as to "uses" of the coastal resources which were of direct interest to the state (or to the federal government), including development of state transportation facilities, siting of energy facilities, and the like, provision would be made for the state administration to supersede a decision by a local government where this local decision arbitrarily or unreasonably precluded such uses. Principal reliance would rest with development of coastal management programs by local governments which have and exercise planning and zoning authority. To assure that residents of areas outside incorporated municipalities were given opportunity to participate, we are considering the establishment of coastal service areas of the unorganized borough not unlike those which were established for operation of rural schools in 1975.

To assure that Alaska and its local governments would continue to obtain financial assistance in the preparation and implementation of a coastal management program from the federal government under the 1972 Coastal Zone Management Act as amended, the drafting process has paid particular attention

to the requirements which the federal act imposes. We find that these requirements are technical, albeit not insurmountable.

The committee contemplates no separate permitting system such as characterized earlier legislation on the subject. The numerous permit requirements now found in state law should, when reoriented to coastal management programs substantially developed by local governments, provide ample authority to enforce policies enunciated in the community and state programs.

Finally, the committee is expected to consider, possibly as a separate bill, a coordinated permitting system. We understand that a substantively similar recommendation was directed to the governor in the recently-completed Management and Efficiency Review, and have been advised that staff of the Office of Coastal Management and the Department of Environmental Conservation have the subject under consideration.

The working relationship between members of the legislature and persons designated by the governor to serve on the committee has been quite good, and discussion of alternatives and resolution of conflicting viewpoints has usually resulted in a working agreement or consensus. I am confident that comprehensive legislation on the subject of coastal management which is consistent with the interests of all concerned can be offered for consideration during the session convening in January, and am reasonably certain that the bill(s) offered would have the support of many interests.

JBC:hjd

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the management of the coastal resources of the state; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. LEGISLATIVE FINDINGS. The legislature finds that

(1) the coastal area of the state is a distinct and valuable natural resource of concern to all the people of the state;

(2) the demands upon the resources of the coastal area are significant, and will increase in the future;

(3) the protection of the natural and scenic resources and the fostering of wise development of the coastal area are of concern to present and future citizens of the state;

(4) the capacity of the coastal area to withstand the demands upon it is limited;

(5) the degree of planning and resource allocation which has occurred in the coastal area has often been motivated by short-term considerations, unrelated to sound planning principles; and

(6) in order to promote the public health and welfare, there is a critical need to engage in comprehensive land and water use planning in coastal areas and to establish the means by which a planning process and management program involving the several governments and areas of the unorganized borough having an interest in the coastal area may be effectively implemented.

* Sec. 2. LEGISLATIVE POLICY. It is the policy of the state to

(1) preserve, protect, develop, and, where possible, restore or enhance the coastal resources of the state for this and succeeding generations;

(2) encourage coordinated planning and decision making in the coastal area among levels of government and citizens engaging in or affected by activities involving the coastal resources of the state;

(3) develop a management program which sets out policies, objectives, standards and procedures to guide and resolve conflicts among public and private activities involving the use of resources which have a direct and significant impact upon the coastal waters of the state;

(4) assure the participation of the public, local governments, and agencies of the state and federal governments in the development and implementation of a coastal management program; and

(5) utilize existing governmental structures and authorities, to the maximum extent feasible, to achieve the policies and objectives set out in this chapter.

* Sec. 3. AS 44.19 is amended by adding new sections to read:

ARTICLE 11A. ALASKA COASTAL POLICY COUNCIL.

Sec. 44.19.891. ALASKA COASTAL POLICY COUNCIL. (a) There is created in the Office of the Governor the Alaska Coastal Policy Council. The council consists of the following:

(1) four public members appointed by the governor from among the following municipalities and communities located within the coastal area of the state:

(A) the mayor or member of a city council of a city having a population of more than 5,000;

(B) the mayor or member of a city council of a city having a population of less than 5,000;

(C) the mayor or member of the assembly of a borough

or unified municipality; and

(D) one representative who is a resident of a second class city or unincorporated community of the unorganized borough;

(2) each of the following ex officio:

(A) the director of the division of policy development and planning;

(B) the commissioner of the Department of Commerce and Economic Development;

(C) the commissioner of the Department of Community and Regional Affairs;

(D) the commissioner of the Department of Environmental Conservation;

(E) the commissioner of the Department of Fish and Game;

(F) the commissioner of the Department of Natural Resources; and

(G) the commissioner of the Department of Public Works.

(b) Each public member appointed by the governor under (a)(1) of this section serves a term of two years and until his successor is appointed and qualified, except that the term of office of a public member first appointed under (a)(1)(A) and (a)(1)(C) of this section shall be one year. A public member may be reappointed.

(c) The four public members appointed under (a)(1) of this section are voting members of the council. From those persons serving ex officio under (a)(2) of this section, the governor shall designate four members who shall be voting members.

(d) The governor shall designate a chairman from among the eight voting members of the council.

(e) Members appointed under (a) of this section may select one person to serve as an alternate at meetings of the council. If the

member appointed or designated is unable to attend, the alternate may act in his place.

(f) A majority of the voting members of the council constitutes a quorum, but one or more of the members designated by the council may hold hearings. All decisions of the council shall be by a majority vote of the voting members present and voting.

Sec. 44.19.892. POWERS OF THE COUNCIL. The council may

(1) apply for and accept grants, contributions, and appropriations, including application for and acceptance of federal funds which may become available for coastal planning and management;

(2) contract for necessary services;

(3) consult and cooperate with

(A) persons, organizations, and groups, public or private, interested in, affected by, or concerned with coastal area planning and management;

(B) agents and officials of the coastal resource districts of the state, and federal and state agencies concerned with or having jurisdiction over coastal area planning and management;

(4) take any reasonable action necessary to carry out the provisions of secs. 891 - 894 of this chapter.

Sec. 44.19.893. DUTIES OF THE COUNCIL. In conformity with the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 et seq.), the council shall

(1) develop guidelines and standards for the preparation of, and approve, in accordance with AS 46.35, the Alaska coastal management program;

(2) establish continuing coordination among state agencies to facilitate implementation of the Alaska coastal management program;

(3) assure continued provision of data and information to

coastal resource districts to carry out their planning and management functions under the program;

(4) report annually to the legislature on the status of the program.

Sec. 44.19.894. COUNCIL STAFF. The council may utilize the staff of the office of coastal management within the division of policy development and planning in discharging its powers and duties. The coordinator of the office, with the concurrence of the council, may contract with or employ personnel or consultants he considers necessary to carry out the powers and duties of the council.

* Sec. 4. AS 46 is amended by adding a new chapter to read:

CHAPTER 35. COASTAL MANAGEMENT PROGRAM.

ARTICLE 1. DEVELOPMENT OF ALASKA COASTAL MANAGEMENT PROGRAM.

Sec. 46.35.010. DEVELOPMENT OF ALASKA COASTAL MANAGEMENT PROGRAM. (a) The Alaska Coastal Policy Council established in AS 44.19.891 shall approve, in accordance with secs. 10 - 200 of this chapter, the Alaska coastal management program.

(b) The council may approve the Alaska coastal management program for a portion or portions of the coastal area before approving the complete program under (a) of this section. Portions of the program approved under this subsection shall be incorporated into the Alaska coastal management program adopted under (a) of this section.

(c) The Alaska coastal management program shall be reviewed and, when appropriate, revised annually to

(1) add newly approved district coastal management programs, or revisions and amendments to existing approved district coastal management programs;

(2) add new or revised state statutes, policies, regulations or other appropriate material;

(3) review the effectiveness of implementation of district coastal management programs; and

(4) consider new information acquired by the state and coastal resource districts.

(d) All reviews and revisions shall be in accordance with the guidelines and standards adopted by the council under sec. 40 of this chapter.

Sec. 46.35.020. OBJECTIVES. The Alaska coastal management program shall be consistent with the following objectives:

(1) the management, restoration and enhancement of the overal quality of the coastal environment;

(2) the development of industrial or commercial enterprises which are consistent with the social, cultural, historical, economic and environmental interests of the people of the state;

(3) the orderly, balanced utilization and preservation of the resources of the coastal area consistent with sound conservation and sustained yield principles;

(4) the management of coastal land and water uses in such a manner that, generally, those uses which are dependent on a coastal location are given higher priority when compared to uses which do not require a coastal location;

(5) the protection and enhancement of significant historic, cultural, natural and aesthetic values and natural systems or processes within the coastal area;

(6) the prevention of damage to or degradation of land and water reserved for their natural values as a result of inconsistent land or water usages adjacent to that land;

(7) the recognition of the need for a continuing supply of energy to meet the requirements of the state and the contribution of a

share of the state's resources in meeting national energy needs; and

(8) the full and fair evaluation of all demands on the land and water in the coastal area.

Sec. 46.35.030. DEVELOPMENT OF DISTRICT COASTAL MANAGEMENT PROGRAMS. Coastal resource districts shall develop and adopt district coastal management programs in accordance with the provisions of this chapter. The program adopted by a coastal resource district shall be based upon a comprehensive resource use plan or a comprehensive statement of needs, policies, objectives and standards governing the use of resources within the coastal area of the district. The program shall be consistent with the guidelines and standards adopted by the council under sec. 40 of this chapter and shall include:

(1) a delineation within the district of the boundaries of the coastal area subject to the district coastal management program;

(2) a statement, list, or definition of the land and water uses and activities subject to the district coastal management program;

(3) a statement of policies to be applied to the land and water uses subject to the district coastal management program;

(4) regulations, as appropriate, to be applied to the land and water uses subject to the district coastal management program;

(5) a description of the uses and activities which will be considered proper and the uses and activities which will be considered improper with respect to the land and water within the coastal area;

(6) a summary or statement of the policies which will be applied and the procedures which will be used to determine whether specific proposals for land or water uses or activities shall be allowed; and

(7) a designation of, and the policies which will be applied to the use of, areas within the coastal resource district which merit

special attention.

Sec. 46.35.040. DUTIES OF THE ALASKA COASTAL POLICY COUNCIL. The Alaska Coastal Policy Council shall

(1) by regulation adopted under the provisions of the Administrative Procedure Act (AS 44.62), identify and define, within six months of the effective date of this Act, for the use of and application by coastal resource districts for carrying out their responsibilities under this chapter, guidelines and standards for

(A) identifying the boundaries of the coastal area subject to the district coastal management program;

(B) determining the land and water uses and activities subject to the district coastal management program;

(C) developing policies applicable to the land and water uses subject to the district coastal management program;

(D) developing regulations applicable to land and water uses subject to the district coastal management program;

(E) describing the uses and activities which will be considered proper and those which will be considered improper with respect to those land and water uses;

(F) developing policies and procedures to determine whether specific proposals for the land and water uses or activities subject to the district coastal management program shall be allowed;

(G) designating and developing policies for the use of areas of the coast which merit special attention; and

(H) measuring the progress of a coastal resource district in meeting its responsibilities under this chapter;

(2) develop and maintain a program of technical and financial assistance to aid coastal resource districts in the development

and implementation of district coastal management programs;

(3) undertake review and approval of district coastal management programs in accordance with this chapter;

(4) initiate, as necessary, a process for identifying and managing uses of state concern within specific areas of the coast;

(5) develop procedures or guidelines for consultation and coordination with federal agencies managing land or conducting activities potentially affecting the coastal area of the state.

Sec. 46.35.050. ACTION AND SUBMISSION BY COASTAL RESOURCE DISTRICTS. Each coastal resource district shall make substantial progress, in the opinion of the council, toward completion of an approvable district coastal management program and shall complete and submit to the council for approval its program within 30 months of the effective date of this Act.

Sec. 46.35.060. REVIEW AND APPROVAL BY COUNCIL. (a) If, upon submission of a district coastal management program for approval, the council finds that the program is substantially consistent with the provisions of this chapter and the guidelines and standards adopted by the council and does not arbitrarily or unreasonably restrict or exclude uses of state concern, the council may grant summary approval of the district coastal management program, or may approve portions of the district program which are consistent. An approved district coastal management program shall take effect upon adoption by the coastal resource district and approval by the council, except that programs prepared by coastal resource service areas under sec. 110 of this chapter or by the Department of Community and Regional Affairs under sec. 160 of this chapter shall be submitted for review by the legislature and shall take effect 45 days after the convening of a regular legislative session unless disapproved by a concurrent resolution adopted by a

majority of the members of each house.

(b) If the council finds that a district coastal management program is not approvable or is approvable only in part under (a) of this section, it shall direct that deficiencies in the program submitted by the coastal resource district be mediated. In mediating the deficiencies, the council may call for one or more public hearings in the district. The council shall meet with officials of the coastal resource district in order to resolve differences.

(c) If, after mediation, the differences have not been resolved to the mutual agreement of the coastal resource district and the council, the council shall call for a public hearing and shall resolve the differences in accordance with the Administrative Procedure Act (AS 44.62). After a public hearing held under this subsection, the council shall enter findings and, by order, may require

(1) that the district coastal management program be amended to make it consistent with the provisions of this chapter or the guidelines and standards adopted by the council;

(2) that the district coastal management program be revised to accommodate a use of state concern; or

(3) any other action be taken by the coastal resource district as appropriate.

(d) The superior courts of the state have jurisdiction to enforce orders of the council entered under (c) of this section.

Sec. 46.35.070. STANDARDS FOR COUNCIL REVIEW AND APPROVAL. (a) The council shall approve a district coastal management program submitted for review and approval if the program is consistent with the provisions of this chapter and the guidelines and standards adopted by the council.

(b) Notwithstanding an inconsistency of a district coastal

management program submitted for review and approval with the guidelines and standards adopted, the council shall approve the program if it finds that

(1) strict adherence to the guidelines and standards adopted would result in a violation of another state law or policy;

(2) strict adherence to the guidelines and standards adopted would cause or probably cause substantial irreparable harm to another interest or value in the coastal area of the district; or

(3) the inconsistency is of a technical nature and no substantial harm would result to the policies and objectives of this chapter or the Alaska coastal management program.

(c) In determining whether a restriction or exclusion of a use of state concern is arbitrary or unreasonable, the council shall approve the restriction or exclusion if its finds that

(1) the coastal resource district has consulted with and considered the views of appropriate federal, state or regional agencies;

(2) the district has based its restriction or exclusion on the availability of reasonable alternative sites; and

(3) the district has based its restriction or exclusion on an analysis showing that the proposed use is incompatible with the proposed site.

(d) A decision by the council under this section shall be given within 90 days.

Sec. 46.35.080. IMPLEMENTATION OF DISTRICT COASTAL MANAGEMENT PROGRAMS. (a) A district coastal management program approved by the council for a coastal resource district which does not have and exercise zoning or other controls on the use of resources within the coastal area shall be implemented by appropriate state agencies. Implementation shall be in accordance with the comprehensive use plan or the

statement of needs, policies, objectives and standards adopted by the district.

(b) A municipality which has and exercises zoning or other controls on the use of resources within the coastal area shall implement its district coastal management program. Implementation shall be in accordance with the comprehensive use plan or the statement of needs, policies, objectives and standards adopted by the municipality.

Sec. 46.35.090. COMPLIANCE AND ENFORCEMENT. (a) Municipalities and state agencies shall administer land and water use regulations or controls in conformity with district coastal management programs approved by the council and in effect.

(b) On petition of a coastal resource district, a citizen of the district, or a state agency, showing that a district coastal management program is not being enforced or implemented, the council shall convene a public hearing to consider the matter. A hearing called under this subsection shall be held in accordance with the Administrative Procedure Act (AS 44.62). After hearing, the council may order that the coastal resource district or state agency take any action which the council considers necessary to enforce, implement or comply with the district coastal management program.

(c) In determining whether an approved district coastal management program is being implemented, enforced or complied with by a coastal resource district which exercises planning authority or controls on the use of resources within the coastal area, the council shall find in favor of the district if

(1) zoning or other regulations have been adopted and are being enforced;

(2) variances are being granted according to procedures and criteria which are elements of the district coastal management program,

or the variance is otherwise approved by the council; and

(3) procedures and standards adopted by the coastal resource district as required by this chapter or by the guidelines and standards adopted by the council have been followed and considered.

(d) In determining whether a state agency is complying with a district coastal management program with respect to its exercise of regulation or control of the resources within the coastal area, the council shall find in favor of the agency if

(1) the use or activity for which the permit, license or approval is granted is consistent with the district coastal management program and regulations adopted under it; and

(2) the use or activity for which the permit, license or approval is granted is consistent with requirements imposed by state statute, regulation, or local ordinance applicable to the use or activity.

(e) The superior courts of the state have jurisdiction to enforce lawful orders of the council.

ARTICLE 2. COASTAL MANAGEMENT PROGRAMS IN THE UNORGANIZED BOROUGH.

Sec. 46.35.100. AUTHORITY IN THE UNORGANIZED BOROUGH. Under AS 29.03.020 and secs. 100 - 170 of this chapter, the legislature authorizes organization of coastal resource service areas in the unorganized borough and grants authority to the service areas which may be organized to perform the duties required under this chapter.

Sec. 46.35.110. COASTAL RESOURCE SERVICE AREAS. (a) Except as provided in (b) of this section, each regional educational attendance area established under AS 14.08.031 containing a part of the coastal area may be organized as a coastal resource service area.

(b) The commissioner of the Department of Community and Regional

Affairs may, after public hearings held in the area affected, consolidate two or more regional educational attendance areas as a single coastal resource service area if

(1) a substantial portion of the coastal area contains land and water area owned by the federal government over which it exercises exclusive jurisdiction or land held in trust by the federal government for Alaska Natives over which the state would not exercise control as to use; or

(2) in the opinion of the commissioner, the functions to be performed could be undertaken more efficiently through combination of regional educational attendance areas as a single coastal resource service area.

(c) A determination under (b) of this section shall be made before organization of the coastal resource service area and no later than six months from the effective date of this Act.

Sec. 46.35.120. ORGANIZATION OF SERVICE AREA. (a) Organization of a coastal resource service area may be initiated by

(1) submission to the council of a petition signed by a number of registered voters equal to 15 per cent of the number of votes cast within the coastal resource service area at the last state general election;

(2) submission to the council of a resolution approved by the city council or traditional governing body of not less than 25 per cent of the number of cities and villages within the coastal resource service area; or

(3) at the direction of a majority of the members of the council in the manner set out in sec. 150 of this chapter.

(b) Acting at the request of the council, the lieutenant governor, not less than 60 nor more than 90 days after receipt of a proper

petition under (a)(1) of this section, a proper resolution under (a)(2) of this section, or at the direction of the council under (a)(3) of this section, shall conduct an election on the question of organization of a coastal resource service area.

Sec. 46.35.130. COASTAL AREA BOARDS. (a) Each coastal resource service area, upon organization, shall have an elected board representing the population of the service area. The board shall have the powers and duties and perform the functions prescribed for or required of coastal resource districts.

(b) A coastal area board shall contain seven members. Board members shall be elected at large by the qualified voters of the coastal resource service area.

(c) The commissioner of the Department of Community and Regional Affairs, after consultation with residents of a coastal resource service area, may divide a service area into sections only for the purpose of nominating and electing board members. Division of a service area into sections for the purpose of nomination and election shall be in accordance with the provisions of AS 14.08.051(a). Division may be proposed in the petition submitted under sec. 120(a)(1) of this chapter, in the resolution submitted under sec. 120(a)(2) of this chapter, at the direction of the council under sec. 120(a)(3) of this chapter, or may be proposed at any time by the members of the coastal area board. If proposed by the board, the division of the service area into sections is subject to approval of a majority of the qualified voters voting on the question in the coastal resource service area at the next regular election or at a special election called for that purpose and, if approved, takes effect at the next regular election of members of the coastal area board.

(d) The term of office of a member of a coastal area board is

three years, except that the terms of the members of the first board elected after organization of a coastal resource service area shall be determined by lot, with two members serving one-year terms, two members serving two-year terms, and three members serving three-year terms. Members serve until their successors are elected and have qualified. Nothing in this section prohibits the reelection of a board member.

(e) The lieutenant governor shall provide for the election of the members of coastal area boards. The first election of board members shall occur not less than 60 nor more than 90 days after certification of the results of an organization election under sec. 120(b) of this chapter in which a majority of votes cast favors organization of the service area.

(f) Except for the first election of members of coastal area boards, elections shall be held annually on the date of election of members of regional educational attendance area boards under AS 14.08.-071(b).

(g) A vacancy on a coastal area board shall be filled by appointment as provided in AS 14.08.041(a) for vacancies in the membership of regional educational attendance area boards.

(h) Members of coastal area boards are subject to recall on the same grounds and in the same manner as provided for recall of municipal officials in AS 29.28.130 - 29.28.250. The lieutenant governor functions in place of the assembly or council and municipal clerk for receipt and review of recall petitions and the conduct of recall elections.

Sec. 46.35.140. ELECTIONS IN SERVICE AREAS. Organization elections under sec. 120 of this chapter and other elections, including recall elections conducted under sec. 130 of this chapter, shall be administered by the lieutenant governor in the general manner provided in the Alaska Election Code (AS 15.05 - 15.60). In addition, the

lieutenant governor may adopt regulations necessary to the conduct of coastal area board elections. The state shall pay all election costs.

Sec. 46.35.150. ORGANIZATION AT THE DIRECTION OF THE COUNCIL. (a) Whenever it appears that major economic development activity will occur in a coastal resource service area or in waters adjacent to a coastal resource service area which has not been organized, the council may direct the lieutenant governor to submit to the voters of the service area the question of organization. The council may require an election on the question only after holding at least one public hearing within the area proposed for organization.

(b) For purposes of this section, "major economic development activity" includes a call for nomination by the secretary of the United States Department of the Interior for leasing of tracts within petroleum basins in waters of the outer continental shelf adjacent to the coastal resource service area or any other significant industrial or commercial activity which, in the opinion of the council, would commit the resources of the coastal area to a use of direct and significant impact upon the coastal waters of the state.

Sec. 46.35.160. PREPARATION OF DISTRICT COASTAL MANAGEMENT PROGRAM BY THE DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS. (a) If residents of a coastal resource service area reject organization of the service area at an election called for the purpose and the council finds, after public hearing, that major economic development activity has occurred or will occur within the service area, the council may direct the Department of Community and Regional Affairs to prepare and recommend for consideration by the council a district coastal management program for the service area.

(b) At the request of the council, the Department of Community and Regional Affairs shall complete the district coastal management

program in accordance with this chapter and the guidelines and standards adopted by the council for a coastal resource service area which has been organized but which has failed to make substantial progress in the preparation of an approvable district coastal management program within 18 months of certification of the results of an organization election or which has not submitted for approval to the council a program within 30 months of certification of the results of its organization election. Preparation of the program shall be conducted in consultation with the coastal resource service area and shall, to the maximum extent consistent with this chapter, reflect the expressed concerns of the residents of the service area.

(c) Before requesting the department to complete the district coastal management program under (b) of this section, the council shall meet with the members of the coastal area board to determine whether the coastal area board is able to complete a district coastal management program within the time limitations established in this section.

Sec. 46.35.170. LIMITATIONS OF APPROVAL OF DISTRICT COASTAL MANAGEMENT PROGRAMS. (a) Unless specifically required by federal or state law, a coastal area board, or the Department of Community and Regional Affairs acting in the place of a coastal area board under sec. 160 of this chapter, may not adopt and recommend to the council for approval a district coastal management program involving coastal land and water within cities and villages of a coastal resource service area without first securing the consent of the following:

(1) for land and water within the corporate limits of a city of any class within the service area, the approval of the council of the city;

(2) for land and water within two miles of a village within the service area, the approval of an appropriate village entity such

as the traditional council, the majority of the residents of the village obtained at a public meeting held in the village and called for the purpose, or a village referendum.

(b) If a city or village within a coastal resource service area fails to approve a portion of the coastal district management program prepared and submitted for approval under (a) of this section, the governing body shall, within 60 days, advise the coastal area board or the department, as applicable, of its objections to the proposed program and suggest alternative elements or components for inclusion in the district coastal management program. New matter submitted by a city or village which is substantially consistent with the guidelines and criteria adopted by the council shall be accepted and the district coastal management program modified accordingly. If a city or village fails to provide objections and suggested alternatives within the time limits established in this section, the coastal area board or the department, as applicable, may adopt the district coastal management program as initially offered.

(c) For purposes of this section, "village" means an unincorporated community where at least 25 persons reside as a social unit as determined by the Department of Community and Regional Affairs.

ARTICLE 3. GENERAL PROVISIONS.

Sec. 46.35.180. COOPERATIVE ADMINISTRATION. (a) A city within the coastal area which is not part of an adjacent coastal resource service area may include itself for purposes of this chapter within an adjacent coastal resource service area if its governing body, by resolution adopted by a majority of its membership, consents to the inclusion of the city and a copy of the resolution is filed with the commissioner of the Department of Community and Regional Affairs.

(b) Nothing in this chapter restricts or prohibits cooperative

or joint administration of functions between a municipality and a coasta resource service area organized under the provisions of this chapter upon initiation of a mutual agreement for the purpose.

Sec. 46.35.190. STATE AGENCIES. Upon the adoption of the Alaska coastal management program, state departments, boards and commissions shall review their statutory authority, administrative regulations, and applicable procedures pertaining to land and water uses within the coastal area for the purpose of determining whether there are any deficiencies or inconsistencies which prohibit compliance with the program adopted. They shall, within six months of the effective date of the Alaska coastal management program, take whatever action is necessary, including preparation and submission of recommendations to the council for additional or amended legislation, in order to facilitate full compliance with and implementation of the program.

Sec. 46.35.200. DEFINITIONS. In this chapter, unless the context otherwise requires,

(1) "area which merits special attention" means a delineated geographic area within the coastal area which is sensitive to change or alteration and which, because of plans or commitments or because a claim on the resources within the area delineated would preclude subsequent use of the resources to a conflicting or incompatible use, warrants special management attention, or which, because of its value to the general public, should be identified for current or future planning, protection, or acquisition; these areas, subject to council definition of criteria for their identification, include:

(A) areas of unique, scarce, fragile or vulnerable natural habitat, cultural value, historical significance, or scenic importance;

(B) areas of high natural productivity or essential

habitat for living resources;

(C) areas of substantial recreational value or opportunity;

(D) areas where development of facilities is dependent upon the utilization of, or access to, coastal waters;

(E) areas of unique geologic or topographic significance which are susceptible to industrial or commercial development;

(F) areas of significant hazard due to storms, slides, floods, erosion or settlement; and

(G) areas needed to protect, maintain, or replenish coastal land or resources, including coastal flood plains, aquifer recharge areas, beaches and offshore sand deposits;

(2) "coastal resource district" means each of the following which contains a portion of the coastal area of the state:

(A) unified municipalities established under AS 29.68.-240 - 29.68.440;

(B) organized boroughs of any class which exercise planning and zoning authority;

(C) home rule and first class cities of the unorganized borough or within boroughs which do not exercise planning and zoning authority;

(D) second class cities of the unorganized borough, or within boroughs which do not exercise planning and zoning authority, which have established a planning commission, and which, in the opinion of the commissioner of the Department of Community and Regional Affairs, have the capability of preparing and implementing a comprehensive district coastal management program under sec. 30 of this chapter;

(E) coastal resource service areas established and

organized under AS 29.03.020 and secs. 100 - 170 of this chapter;

(3) "council" means the Alaska Coastal Policy Council;

(4) "department" means the Department of Community and Regional Affairs;

(5) "use of direct and significant impact" means a use, or an activity associated with the use, which proximately contributes to a material change or alteration in the natural or social characteristics of a part of the state's coastal area and in which

(A) the use, or activity associated with it, would have a net adverse effect on the quality of the resources of the coastal area;

(B) the use, or activity associated with it, would limit the range of alternative uses of the resources of the coastal area; or

(C) the use would, of itself, constitute a tolerable change or alteration of the resources within the coastal area but which, cumulatively, would have an adverse effect;

(6) "uses of state concern" means those land and water uses which would significantly affect the long-term public interest; these uses, subject to council definition of their extent, include:

(A) uses of national interest, including the use of resources for the siting of ports and major facilities which contribute to meeting national energy needs, construction and maintenance of navigational facilities and systems, resource development of federal land, and national defense and related security facilities that are dependent upon coastal locations;

(B) uses of more than local concern, including those land and water uses which confer significant environmental, social, cultural, or economic benefits or burdens beyond a single coastal

resource district;

(C) the siting of major energy facilities or large-scale industrial or commercial development activities which are dependent on a coastal location and which, because of their magnitude or the magnitude of their effect on the economy of the state or the surrounding area, are reasonably likely to present issues of more than local significance;

(D) facilities serving statewide or interregional transporation and communication needs; and

(E) uses in areas established as state parks or recreational areas under AS 41.20 or as state game refuges, game sanctuaries or critical habitat areas under AS 16.20.

* Sec. 5. AS 44.47 is amended by adding a new section to read:

Sec. 44.47.085. PLANNING ASSISTANCE FOR DEVELOPMENT AND MAINTENANCE DISTRICT COASTAL MANAGEMENT PROGRAMS. The department shall conduct a program of research, training, and technical assistance to coastal resource districts necessary for the development and implementation of district coastal management programs under AS 46.35. State agencies shall assist the department in carrying out the purposes of this section

* Sec. 6. This Act takes effect immediately in accordance with AS 01.10.-070(c).

#

CHANGES TO THE DRAFT:

(1) Page 2, after line 16, add the following:

(6) authorize and require state agencies to carry out their planning duties, powers and responsibilities and take actions authorized by law with respect to programs affecting the use of resources within the coastal area in accordance with the policies set forth in this Act and the guidelines and standards adopted by the Alaska Coastal Policy Council.

(2) Page 3, line 21; add the following:

A public member may be reappointed. Public members are subject to confirmation by a majority of the members of the legislature in joint session.

(3) Page 4, line 6 and following, add:

(g) Members of the council are entitled to per diem and travel expenses authorized by law for members of boards and commissions.

(h) If there is a vacancy among the public members appointed under (a)(1) of this section, the governor shall make an appointment to become immediately effective for the unexpired term.

(4) Page 8, line 7:

...application by coastal resource districts and state agencies carrying out their responsibilities...

(5) Page 9, line 9:

Sec. 46.35.050. ACTION AND SUBMISSION BY COASTAL RESOURCE DISTRICTS. Each coastal resource district shall make substantial progress, in the opinion of the council, toward completion of an approvable coastal management program and shall complete and submit to the council for approval its program within 30 months of the effective date of this Act or within 30 months of certification of the

results of its organization election, whichever is later.

(6) Page 18, line 17 and following:

Replace the language in (a) of the draft with the following:

Sec. 46.35.170. APPROVAL OF PROGRAMS IN COASTAL SERVICE AREAS. (a) Before adoption by a coastal area board, or by the department of community and regional affairs under sec. 160 of this chapter, a district coastal management program shall be submitted for review to each city or village within the coastal resource service area. The council of a city or residents of a village may approve the program submitted for review or may enter objection to any portion of the program. Objection by a city council is limited to objection to elements of the program affecting resources or the use of resources within the corporate limits of the city. Objection by a village is limited to objection to elements of the program affecting resources or the use of resources within the village or within two miles of the village.

KENAI PENINSULA BOROUGH
BOX 850 • SOLDOTNA, ALASKA 99669
PHONE 262-4441

DON GILMAN
MAYOR

December 20, 1976

Guy R. Martin, Commissioner
Department of Natural Resources
Pouch M
Juneau, Alaska 99811

Kay Poland, Senator
Pouch V
Juneau, Alaska 99811

Dear Commissioner Martin and
Senator Poland:

The following comments are a result of a review of the proposed legislation for Coastal Zone Management. The review was conducted jointly by representatives of the Kenai Peninsula Borough, City of Seward, City of Homer, City of Soldotna, Borough Planning Commission, OEDP and several members of the Kenai Peninsula Borough Assembly. We forward them to you in all sincerity and ask that they be given due consideration.

It was the consensus of opinion of the above representatives that the HCR 123 Committee had made a major effort to return to the legally constituted planning authorities the chief responsibility for implementing an Alaskan Coastal Zone Management Program. We wish to compliment the Committee for this effort for it removes much of the criticism of previous bills. We believe this action shows a definite shift away from state domination of planning to an equal partnership with local governments.

There are several areas of importance on which we wish to submit questions or comments. I will list them but not necessarily in priority.

1. The exact jurisdiction of this Act is in question. There should be a clearer definition of the coastal zone written into the language. It is difficult to determine, for instance, whether large, navigible rivers are included

under this Bill. This becomes important when the consideration of eligibility of communities for seats on the Policy Committee are considered. If this determination is to be left to the Coastal Resource Districts, the Act should stipulate this fact.

2. The local representation on the Policy Committee should be expanded to a nine member committee with six local community representatives and three state voting members. There should be a requirement for five votes to pass any resolution of this board instead of a majority of a quorum. These remarks are made for the following reasons:

a) There are only two cities of more than 5,000 in the coastal zone if Fairbanks and the unified municipalities are omitted. They are Kenai and Ketchikan.

b) In order to allow for a wide representative distribution from coastal communities, including boroughs and cities, 4 members is not sufficient to represent the numerous categories of communities. For instance, there are: 2 first class or home rule cities over 5,000; 3 unified municipalities; 25 first class or home rule cities under 5,000; 104 second class cities in the unorganized boroughs.

c) The wording in Sec. 44.19.891 (1) virtually eliminates first class or home rule cities in the unorganized boroughs, therefore leaving out Cordova, Valdez, Yakutat, Unalaska, Dillingham, Nome, etc.

We would like to propose the following changes:

a) Sec. 44.19.891 (1) (A) Amended to read: Mayor or member of council or assembly of a city or unified municipality having a population of more than 5,000.

b) Sec. 44.19.891 (1) (B) Amended to read: "Mayor or member of council of a first class or home rule city having a population of less than 5,000. Two (2) to be appointed."

c) Sec. 44.19.891 (1) (C) Amended to read: "Mayor or member of the assembly of a home rule, first class or second class borough."

d) Sec. 44.19.891 (1) (D) leave intact.

e) Sec. 44.19.891 (1) (E): Added to Sec. "Mayor, member of council, member of assembly or member of a planning commission to be appointed at large."

3. The definition of a coastal resource district needs to succinctly state that any city, borough, or unified municipality with planning and zoning authority will constitute a district. This suggestion is made because of the reference in Sec. 46.35.080 (b) and 46.35.090 to municipality and coastal resource district. As we read the intent of the Act, municipalities exercising planning and zoning authority and coastal resource districts are synonymous.

4. The enforcement of the Program should include a section that specifically states how the Policy Council will review a state agency program which has had a question raised regarding the agencies working within the framework of an accepted coastal district program. In other words, all state agencies should realize that they are to adhere to the adopted program.

In summary, we feel that the local communities must have a strong role in the implementation and enforcement of this program. The only way to insure this participation is to write into the initial legislation adequate requirements which will place local governments on an equal status with the state.

Yours for a Better Alaska,

Donald E. Gilman, Mayor
Kenai Peninsula Borough

DEG/tb

Association of Village Council Presidents
Nunam Kitlutsisti
Box 267
Bethel, Alaska 99559
December 28, 1977

Senator Ray Poland
Pouch V
Juneau, Alaska 99811

Dear Senator Poland,

We have finally received a copy of the work draft copy of Bill proposed for coastal zone management for the 1978 legislature. Representative Anderson asked that our comments be made known to the committee prior to January 5. The Association of Village Council Presidents will not meet until January 19th in Bethel, and at that time, the AVCP will decide on its position concerningthe establishment of REAA zones as Coastal Resource Districts, and the mechanism proposed for election of district representatives.

However, we are able to address at this time several parts of the bill that have been discussed within the region. The proposed legislation is considerably better then the administration's original draft. The creation of policy making Coastal Resource Districts is appropriate with the Governor's themes of de-centralizing government where local areasare capable of self-management, and in line with rural Alaska's opposition to a single state-wide board managing the State's vast coastal zone. In that the unorganized borough will comprise the major portion of lands included in the coastal zone. we would recommend that the Alaska Coastal Policy Council be expanded to include 3 additional public members from the unincorporated communities or boroughs in the State. An expansion in rural representation is the best way to guarantee adaquate analysis of the coastal management plans submitted from districts or from DCRA by the Council. As currently proposed, there would be very little expertise among members of the Council to judge rural land practices or current or proposed uses.

A second major change would involve the specific language of subsistence utilization. Rural Alaskans were recently informed by the Commissioner of Economic Development that our way of life is an embarrassment for econometrics. The rural subsistence lifestyle is difficult to value in cash terms or in market terms, and has been just ignored. We do not believe that it is being ignored so that subsistence will go away, but that it is too difficult to manage from a state-wide mechanism of government. We therefore propose that in Sec. 46.35.020 and again in Sec. 46.35.200, that subsistence utilization be considered as a use of the coastal zone. Each alternate word employed by the drafters of the bill imply subsistence, but only by clearly stating the word, and by describing the activity can the subject be properly covered.

The third major change we would recommend concerns districts managing their own programs. In Sections 46.35.040(2) and 44.47.035, a state-wide technical advisory system is proposed, with staff members from the DCRA being assigned different districts. In line with the revisions that guarantee local policy making, provisions should be made for the Coastal Resource District to manage its own funds, and hire its own staff. The bill correctly defines a policy, and a mechnism to assure local input, but expects existing state bureaucracy to properly handle the input of both elder natives and the political desires of both the district and the unincorporated communities. We feel that the

Alaska Policy Coastal Council should have the authority to pass-through Federal appropriations to the Districts to develop their own technical and financial programs, and aid in the growth of local ability to develop policy and manpower.

The problem of timing the lease sales brings on the fourth major problem. Delays in leasing may take us well past the 30 month maximum proposed by the bill in regard to designation of Districts within the REAA mechanism. In our own region, the Navarin Basin is a future possibility for OCS leasing, yet in the establishment of Districts the State may not want to create a District and thereby spread both finances and manpower as a hedge against future development while trying to fit within the election and designation mechanism of the Act. In Sections 46.35.050, and again in 46.35.110(c) specific time tables are created that may be unrealistic. The formation of a Disrict within the Lower Kuskokwim REAA to handle proposed activ ites brought on by the future Navarin Basin lease sale should be based on the expectation of a committment to lease by the Secretary of the Interior.

In unrelated topics, it would be important to include the subject of timing of development:intensive, moderate, or slow; as a condition of Sec. 45.35.030 with interest given to the seasonal nature of activities, particularly the timing of activities to conform to local environmental and biological conditions. Section 46.35.170(b) speaks of time limits established in this section(page 19, line 14-15) yet there is no mention of a time limit in the section. Section 46.35.130(d) does not mention the duration of the Council. If the District is to stay in existence after approval of its plan by the Council, this should be explicitly stated, and our region approves of the continuation of the Districts. We would also like to request that some review mechanism be made available to the Districts once organized to review the Council's authority under Sec. 46.35.040.

We hope that a representative from our region will be in Juneau after AVCP meets in mid-January to inform you of our region's decision on the mechanism of designation and election.

Sincerely yours,

David Friday, Chairman
Nunam Kitlutsisti

cc:Representative Nels Anderson
Representative Phillip Guy
Representative William Akers
Senator George Hohman
Senator John Sackett
Governor Jay Hammond

RR 6 Box 3491
Juneau, AK 99803
January 3, 1977

Senator Ray Poland
c/o Legislative Affairs Agency
State of Alaska
Juneau, AK 99802

Dear Senator Poland:

I have reviewed the Draft of the "Act Relating to the Management of the Coastal Resources of the State" that is to be presented to the tenth Legislature. This appears to be a fine Act and should do much to prevent the loss of public values and the degradation of coastal communities that has blighted so much of the coast "outside". I do have two suggestions:

1. The Council appears to be too narrow with only selected local officials or the Governor's cabinet permitted. I would suggest that the Council should contain three, at large, voting members appointed by the Governor so that the State can have the benefit of some of the vast knowledge of industry people, University people, coastal residents or others who might have expertize in coastal planning matters.

2. Public hearings should be required by any entity submitting District Coastal Management Plans. These hearings should be recorded, transcribed and all questions raised at these hearings should be answered and all opinions and proposals should be discussed and their validity ascertained. The hearing records and evaluation should accompany any Plan submitted to the Council. In this way the Council and the citizens of the future will have a record of both majority and minority opinions within the community and the hearing records can serve as a valuable source of information in the years ahead as the value of the program is assessed and modified. The provision should be in the Act as local ordinances often have no such requirements.

   All hearings of the Council should likewise be recorded, transcribed, evaluated and made available as appropriate.

Thank you very much for the consideration of these proposals.

Yours truly,

James G. King

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Rockville, Maryland 20852

January 5, 1977

Jack Elke

Mr. Robert LeResche
Director, Department of Policy
Development & Planning
State of Alaska
Pouch AD
Juneau, Alaska 99811

Dear Bob:

At the request of Glenn Akins, the Office of Coastal Zone Management has reviewed the draft bill on coastal management for Alaska, prepared by the Interim Committee established by HCR 123.

We have evaluated this bill in light of the standards established by the Coastal Zone Management Act of 1972, as amended, and of the experience provided by other existing state coastal management programs.

Our preliminary assessment of this bill is that it will establish the foundation for a coastal management program which is unique to Alaska. While the management program should meet many of the requirements of the Federal Coastal Zone Management Act, there are a number of areas outlined below where further provisions and clarifications appear to be needed. Our assessment assumes a demonstration in the completed management program that Alaska's existing land and water use controls will be adequate to carry out the state role envisioned by this bill, and that the standards, guidelines and procedures to be adopted pursuant to the final legislation will be sufficient to meet the minimum standards imposed by Congress in passing the Coastal Zone Management Act. We are anxious to work with your staff and the HCR 123 Committee as needed to insure that this very innovative approach to coastal management, which is sensitively designed to meet the needs of Alaska, can also fully meet the requirements of the Coastal Zone Management Act and implementing regulations.

As a first step in this process, which we hope will continue over the next few months while the bill is being further revised and considered, we offer the following comments and raise certain questions about the draft bill. First, there are three general issues which we would like to raise for your consideration, which could have a major effect on the timing and acceptability of the Alaska coastal management program in terms of the approval under Section 306 of the Federal Act.

1. What interim controls would the state use to implement the Alaska coastal management program prior to completion and approval of district coastal management programs? Prior to granting approval of a management program submitted by a coastal state, the Secretary of Commerce must find, among other things, that the state has the authority necessary to implement the program, including the authority required under Section 306(d).

If the state is to seek approval of its management program prior to completion of the district coastal management programs, the legislation should establish the authority and the mechanism for the state to carry out the management program, at the time the program is approved. This authority should insure that the objectives, policies and guidelines established in the management program will guide land and water use decisions by state agencies, local governments, and other Federal and regional agencies, while the district coastal programs are being prepared.

In other states with existing coastal management programs, the objectives and policies established in state legislation and rules and regulations are controlling at the time the program is approved. An appeals mechanism through an administrative body (such as the proposed Alaska Coastal Policy Council) and/or the courts can insure that land and water use decisions will be carried out in accordance with the management program.

2. What agency of the state will be designated to administer grants for implementing the program? The bill in its current form establishes responsibilities for several state agencies for approving and implementing a coastal management program. The Alaska Coastal Policy Council appears to have overall responsibility for carrying out the management program. This Council is representative of several state agencies and local officials. The staff Office of Coastal Zone Management within the Division of Policy Development and Planning may be utilized as staff to the Council. The Department of Community and Regional Affairs (CRA) has major responsibilities for assisting coastal resource districts, conducting a program of research and training and technical assistance, and for preparing coastal resource district management programs in certain situations. The bill does not make it clear which of these state entities would have the lead agency responsibility under Section 306(c)(5) of the Federal Act. This bill could clarify the fiscal and programmatic responsibilities of the lead agency for purposes outlined in the Coastal Zone Management Act and NOAA regulations.

3. What form will the standards and guidelines have, and what legal function will be served? Section 46.35.040 provides for the adoption by regulation of guidelines and standards covering major elements of the Alaska coastal management program. It is not clear from the language of this section whether these are procedural guidelines or standards for "identifying," "determining," "developing," "describing," and "designating," the policies of the management program, or whether these are to be substantive guidelines and standards of the program establishing the boundaries, uses, and other policies guiding land and water use decisions.

It is not clear whether state and local agencies in resource districts would be bound by substantive land and water use standards and guidelines at the time these regulations are adopted, or only whether a process of developing the substantive policies would be in place. Section 46.35.070 suggests that it is the intent of the bill for these guidelines and standards to provide the substantive basis for decisions. If the state is to seek 306 approval prior to completion of the district coastal management programs, these standards and guidelines should establish the substantive land and water use policies of the management program and should be enforceable at the time of approval. This might be accomplished by omission of the first words of subsection (A) through (G). These guidelines and standards should be specific enough for the lead agency to determine (1) the compliance of district coastal resource programs,

(2) the compliance of major development activities or projects in the interim, or those not covered by the approved programs, and (3) the consistency of Federal programs and policies affecting the state's coastal area.

The following comments are offered on the specific sections of the bill:

44.19.891(b):

Several other pieces of legislation similar to HCR 123 have expanded this section to include time constraints for actually making the appointments (i.e. "governor shall appoint within ___ months after enactment", or "by June __,1977"). It appears that there is no actual date which would officially start the Council's performance of their duties.

44.19.892:

It is not clear why (4) limits the powers of the Council to take any reasonable action to carry out the provisions of Sections 891-894 only, rather than the entire bill, especially Chapter 35.

44.19.893:

To be in conformity with the Federal Coastal Zone Management Act, as stated in this section, the Council should also have the duty for administrative review of compliance with the guidelines and standards and the objectives of the program by state and local agencies and districts, provided under subparagraph (1). This assumes that the Alaska coastal management program will rely, in large part, upon the techniques for control of land and water uses specified in Section 305(e)(1)(a) of the Federal Act.

The Council might also have the duty to establish continuing coordination among the local units of government or coastal resource districts to facilitate implementation of the Alaska coastal management program, as paragraph (2) provides among state agencies.

The way item (3) is worded can perhaps be misunderstood. It sounds like the state will do all the supplying of data and information to the locals. While this may be appropriate for some of the unorganized boroughs or villages, some of the larger cities may be capable of generating their own data on a scale appropriate to their needs. The current local program development grant preliminary guidelines require inventories and analyses work to be performed by the locals. This line might read, "to help them carry out their planning and management functions" or "to provide technical and financial assistance to coastal resource districts . . ."

44.19.894:

This section should be more specific regarding the duties and responsibilities of the staff to the Council. The administrative staff of the Council should have more than a coordination function as implied in the title, "Coordinator," and should be capable of handling the fiscal and programmatic responsibilities and executive functions as the lead staff agency. If the Council or DPOP is to be the lead agency designated by the Governor, perhaps a title of "Director" or

"Manager" would be more appropriate. The term "may utilize" implies that the Council is not bound to utilize the staff agency for its lead administrative support. As indicated earlier, the duties and responsibilities of the lead staff agency should be clarified.

46.35.010(c):

We suggest that the Council should maintain the flexibility to review and evaluate the Alaska coastal management program, whenever appropriate, rather than restricting this to an annual review and revision. We also suggest that the eligible purposes for review and revision established by section (c)1-4 be broadened to allow general purpose revisions at the discretion of the state, which at a minimum, would allow for revisions in response to Federal performance evaluations under Section 312 of the Federal Act and for revisions in response to amendments to the Federal Act and implementing regulations.

46.35.030(7):

The term "special attention" should probably be defined under Sec. 46.35.200 or in the guidelines and standards pursuant to Sec. 44.19.893(1).

46.35.040(1):

As stated above, the guidelines and standards developed in response to this section should be substantive as well as procedural. This would be assured by omitting the first words of (A) through (G). These standards and guidelines should also apply to state agencies in addition to the coastal resource districts, and should be adopted with the force of regulation by the time the state seeks approval of their program under Section 306 of the Federal Act. If the state wishes to seek Federal approval under Section 306 prior to the adoption of such regulations, the objectives of the program in Sec. 46.35.020 would need to be much more specific, and provide an adequate standard for interim land and water use controls before district coastal resource programs are approved.

46.35.040(2):

Subsection 5 should include as well reference to Federal funding assistance programs which also are subject to the Federal consistency regulations of Section 307. We would recommend revising the sentence so it reads, ". . . managing land, conducting activities, or providing Federal assistance . . ."

46.35.080:

This section provides for implementation of district coastal management programs for (a) a coastal resource district which does not exercise zoning, and for a municipality which has zoning and other controls. Are there units of local government with zoning or other controls other than municipalities which are not covered by either (a) or (b) of this section? Would subsection (b) more appropriately begin, "A coastal resource district which has and exercises zoning or other controls . . . ," if this is the case, to insure implementation of all district coastal resource programs?

46.35.060(b):

You may want to look at the use of the term "mediation of deficiencies." This implies that there may be a compromise of state guidelines and standards especially after the Council has found the program not approvable. Perhaps something like "the Council will advise and consult with the district on program inadequacies prior to going to the step outlined in (c)" would be another way of approaching it.

46.35.090:

This section seems to require compliance with the management program by coastal resource districts and state agencies only after completion and approval of district coastal resource programs. Unless this section also requires interim compliance by state agencies and coastal resource districts and other unorganized units of government, all of the district coastal resource programs would need to be completed prior to approval of the state program under Section 306 of the Federal Act.

If this section could be expanded to also provide for compliance and enforcement of the objectives of the chapter and the standards and guidelines promulgated under section 46.35.040, in place of coastal management programs until such programs are approved, the state could qualify for 306 funding much earlier. This enhanced funding could be used by coastal resource districts completing their programs.

Let me bring to your attention two statements made in the California Coastal Act of 1976 which deal with compliance and conflict resolution:

> "The legislature further finds and recognizes that conflicts may occur between one or more policies of the division. The legislature therefore declares that in carrying out the provisions of this division, such conflict be resolved in a manner which on balance is the most protective of significant coastal resources. In this context, the legislature declares that broader policies which, for example, serve to concentrate development in close proximity to urban and employment centers may be more protective, overall, than specific wildlife habitat and other similar resource policies."

This gives clear recognition that policies may be conflicting especially within a given resource area, but that in the event of conflict, the decision to be most protective of significant coastal resources should prevail. This, of course, is just one type of priority-setting that can be used as a means to resolve conflict. The second statement says that "all state agencies shall carry out their duties and responsibilities in conformity with this decision." This means that they must comply with the policies of the Act prior to local coastal program certification.

46.35.150:

This section and section 46.35.160 seem to limit the ability of the state to control land and water uses in unorganized districts to situations where major economic development activity has or will occur. This does not appear to be consistent with the Federal law and would seem to be contradictory to the objective of developing management programs in advance of such development activities occurring.

OCZM is concerned with the limitation on the definition of "major economic development activity" to OCS and other significant industrial and commercial development activities only. How would the coastal program developed as a result of this bill control other uses which might have direct and significant impacts on coastal waters of the state, such as residential and recreation development, or major public works such as highways, utilities and other civic and educational facilities? Could "major economic development activity" be changed to "major development activity" to include all uses with a direct and significant impact on coastal waters?

46.35.160(a):

The subsection states that the Council may direct the Department of Community and Regional Affairs to prepare a district coastal management program. The bill or the management program prepared for submission for Federal approval should describe the circumstances under which the Council might not direct CRA to prepare such a program, and what alternative courses of action might be taken by the Council to insure compliance with the management program.

46.35.170:

This section appears to provide a mechanism for local governments, village and citizen involvement in the development and approval of district coastal resource programs, while insuring compliance with the management program guidelines and criteria. However, this would require that the Coastal Policy Council have the final administrative authority to determine whether "new matters" submitted by a city or village under (b) are "substantially consistent" or not. This provision should allow the Council to disapprove the "new matter" or require modification as needed, after considering the views of the coastal area board.

If, however, a city or village is able to block approval of the district coastal resource program through this provision, this section could become a major obstacle to Federal approval of Alaska's coastal management program.

46.35.190:

We read this section to require state agencies to comply with the Alaska coastal management program within 6 months of approval, and assume it is not meant to give 6 months to establish a process to put the requirement for operation at some future date. The bill should also make clear its intent to expand the basis of decision-making under existing statutes to allow purposes, objectives, policies and standards of the Alaska coastal management program to be taken into account in decisions of other state agencies.

As it appears that the state agency enforcement of the Alaska coastal management program is an integral and major part of this bill, it would be difficult to obtain 306 approval of the program prior to completion of this 6 month compliance by state agencies. However, this period roughly corresponds to the period necessary for Federal review of the management program and environmental impact statement, so it might be possible to begin the review process prior to full state compliance.

What mechanism is provided for administrative review of the state's activities for enforcement of compliance with the state program? The key provision of coastal legislation in other states is an appeals mechanism and standing for affected parties, and units of government to appeal land and water use decisions to an administrative agency and/or the courts.

46.35.200:

The definition of the Alaska coastal management program would be desirable since several places in the bill refer to compliance or consistency with this program. The definitions of the uses of national interest is very important to meeting the concerns of Federal agencies and the Federal Act's requirements. We recommend that you take a close look at this since it may save you a lot of controversy. Our Section 305 regulations would suggest that there are other items that deserve mention (i.e. resource preservation of Federal lands such as parks and ther recreation facilities, historic sites, etc., and production of food and fiber such as fisheries, agricultural or forest lands). Therefore, you might want to expand the list or make it non-exclusive by saying "such as the use of resources . . ." and further refine it in the guidelines.

Finally, of some concern is the frequent use of the word "may" in connection with the exercise of authority by one or another entity and in relation to one or another subject matters. Thus, under Section 46.35.069(c), page 10, the Council "may require" certain actions in relation to a district coastal management program. Under Section 46.35.090(b), page 12, the Council "may" order certain actions. Under Section 46.35.110, page 13, a regional educational attendance area "may be organized into a coastal resource service area." When used in these sections and others elsewhere in the bill, is "may" also meant to imply "may not?" On the basis of its plain meaning, the word clearly implies discretion, ergo clearly also implies may not.

We hope these comments will help in your revision of the proposed coastal bill. If we can be of further assistance or if you have any questions in this regard, please call me at 202/634-4235.

Sincerely,

Richard B. Roberts (for)

H. Grant Dehart
Pacific Regional Coordinator
Office of Coastal Zone Management

SB
227

COMMITTEE REPORT

SENATE

3/9/77

4/11/77 Date

Mr. President:

The Committee on RESOURCES has had SB 227 under consideration. A majority of the members of the Committee

regulating procedures on applications for permits for use of state's air, land, or water resources

/7 recommends it do pass

/7 recommends it do not pass

/7 recommends it do pass with attached amendment(s)

/7 recommends it be replaced with CS for SB 227 and that CS for SB 227 do pass

/7 (and) recommends it be referred to the _____ committee

/7 reports it back without recommendation

/7 AND attaches a report of its intent

/7 (other) _____

MEMBERS SIGNING THE MAJORITY REPORT:

[illegible]	Do Pass	
[illegible]	NO REC	
[illegible]		
[illegible]	Do Pass	

MEMBERS NOT CONCURRING IN THE MAJORITY REPORT:

Collette recommends: Do Pass

_____ recommends: _____

_____ recommends: _____

R. Poland
Chairman

Do Pass

S 60

STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION

JAY S. HAMMOND, GOVERNOR

POUCH O—JUNEAU 99811

May 17, 1977

SB 227

The Honorable Kay Poland
Alaska State Senate
Capitol Building
Juneau, Alaska 99811

Dear Senator Poland:

We have been tracking the progress of SB 227, the bill whose goal is to expedite the State's permit process by providing the "one stop shopping" for permits and to provide a permit information system. As one of the bill's original sponsors, I know that you share my commitment to make certain that the bill is implemented successfully.

As you know, HCS CSSB 227 mandates the Department of Environmental Conservation to be the "lead" agency for coordination of applications for State permits. However, apparently due to an oversight the bill was not referred to the Finance Committee of either house, and as a result I am informed that the funding of the fiscal note needed to implement the bill may not be provided. If no funds are appropriated, this means that the Department will be unable to implement the bill within the time frame established in it. We would be required to delay implementation until fiscal year 1979, and then only if the budget process results in funding for that fiscal year.

As you can see, the Department faces a serious dilemma. To implement HCS CSSB 227 we will need funding from the Legislature. The Department complied fully with the Legislature's administrative procedures by supplying fiscal notes to the appropriate committees. Therefore, I hope that you will be able to obtain funding, perhaps by ensuring that the Conference Committee on the Budget appropriates moneys to implement this bill.

If you have any questions on this matter, please do not hesitate to contact me.

Sincerely,

Ernst W. Mueller
Commissioner

Enclosure: Fiscal Note

CSSB 227 "PERMITTING"

SB 227, the proposed "Environmental Coordination Procedures Act" (ECPA) is designed largely around a bill passed by the Washington State Legislature in 1973. The bill is designed to facilitate communications between the public, including applicants for permits, and state agencies which have jurisdiction over various permits. The bill establishes a procedure, optional with the applicant, by which all permits necessary for a particular project may be applied for, and processed, as a single unit. A single, joint public hearing on all permits is provided for, as well as a single public notice procedure.

As envisioned, the bill has the following objectives:

1. To provide a regularly, accessible local office where information on the requirements for federal, State, and local permits may be acquired. These, the so-called "Permit Requirements Information Centers," are to be established in the Office of the Commissioner of Environmental Conservation, and each regional office of the Department of Environmental Conservation.

2. To provide a single master application form, which is submitted to the Department, and circulated by it directly to other State agencies. The other agencies must declare, within 15 days, whether they require permits of the applicant and, if so, which permits. Agencies which do not so declare may not subsequently require a permit of the applicant for that project.

3. To provide for an expedited process by which all permit applications, as identified by State agencies, are transmitted by the Department to the applicant, are returned by him to the Department, which subsequently coordinates the permit processes of other agencies. Thus, the contacts between an individual and a potentially large number of State agencies can be limited to a single contact with one agency. In the event of problems with a particular project, communications between all agencies and the applicant are facilitated, but if no such problems arise, the applicant contacts only the Department of Environmental Conservation.

4. ECPA would help coordinate the decision-making process for all State agencies, through a mandated information flow, but it would not remove or alter an individual agency's decision-making authority.

5. If a public hearing is found to be required after polling all affected agencies, ECPA would require a single public hearing at which all the various views of the agencies, the applicant, and the public can be heard.

6. The ECPA process would eliminate guesswork and undue delays in permit processing; a firm time sequence is established by law, this sequence can be extended only for overriding considerations.

7. The Department of Environmental Conservation would be the administrator of the program, coordinating the efforts of the various State agencies. ECPA would not give DEC any new jurisdiction or new power over other State agencies. ECPA specifically retains the existing authorities of State agencies.

8. ECPA would provide for proof of conformance with local government requirements before State permits are issued. In a real sense, local governments would then have a "veto" or certification power over a project through denial of certification.

9. The committee substitute allows for the withholding of the final permit until ownership of the land is established, but requires the application process to continue concurrently with acquisition. As a practical matter, any state land involved is usually a part of the application process.

It should be understood that the ECPA process does not, necessarily, expedite the permit process. An applicant can choose to handle each required permit on an individual basis, although this could potentially be more time consuming. Most permits for small projects are handled routinely by State agencies, many simple ones in a matter of days or hours. The ECPA process, in that it has a minimum time requirement of 150 or so days between master application filing and permit issuance, would not be chosen by a project sponsor which had only a few, simple permits needed.

More complex projects, such as oil refineries, power plants, ~~pipelines~~, etc., would be required to have a much larger number of permits, some of which, because of legal requirements or built-in delay factors, may take 180 days or more for processing. For example, the discharge permit issued by the Environmental Protection Agency under the National Pollutant Discharge Elimination System requires that permits be applied for 180 days prior to discharge. State requirements vary; many have mandatory 30- or 60-day waiting periods, although extensions for cause are allowed. Many State permit processes do not mandate time schedules, and potentially the applicant could suffer undue delays without recourse. By mandating a maximum time schedule by which all permits must be processed and issued, ECPA would assure the applicant of an answer within a time certain.

The ECPA permit process is by no means without cost to the public. Costs previously borne by the applicant, and his consultants, if any, would be partly borne by the State in copying permit applications, distribution, and coordination costs. Many State permit and approval programs are conducted at no cost to the applicant, and those that do not always relate actual costs of permit processing to the fee. In addition, the establishment of the Permit Requirements Information Center would entail costs, both in manpower and material.

Insert 1

Existing fee schedules are retained, and nothing in the Act prohibits amending the fee schedules, if necessary, to meet any added costs.

3/14/77 Ron Skoog
Com. Mueller

Re: SB 227

An Act regulating the procedure on applications for permits for the use of the state's air, land, or water resources. (construction projects)

Summary:

Establishes a simplified procedure and a degree of certainty for the processing of permit applications.

1. Master application is made to Department of Environmental Conservation. 46.30.030.

2. D.E.C. circularizes all other state agencies which must respond within 15 days or lose their option to participate further. 46.30.030 (b) (c)

3. D.E.C. gathers all agency requirements and submits to applicant for completion. 46.30.030 (e)

4. D.E.C. returns completed forms to agencies and within 30 days makes notice of public hearing, unless none of the agencies have requested a hearing. If no public hearing is requested, public shall have 30 days to submit views in writing. 46.30.030 (f) and 46.30.050 (a) (b)

5. If hearing is required it shall be held not less than 20 days, nor more than 30 days following last publication of notice of hearing. 46.30.050

6. Final decisions from the state agencies must be forwarded to D.E.C. within 60 days following hearing. 46.30.070 (a)

7. If any agency denies the permit it must state its reasons and also present an alternate means for completion of the project. If the agency believes no alternate means is feasible, it must provide written reasons for that conclusion. 46.30.070 (c)

8. Any person denied a permit by a state agency may appeal to the Superior Court. 46.30.090

9. The Bill is also a repealer, in effect, because the procedures described are in lieu of any regulations enacted before or after the legislation. 46.30.110 (a)

10. All local and federal laws must be complied with before final permit is issued. 46.30.130

11. Establishes public information centers in all regions. 46.30.160

12. Excludes ATC and APUC. 46.30.200 (4)

13. Does not include applications to lease, purchase, or otherwise acquire state land. However, if the permit application is for construction on land to be acquired from the state, the Bill requires that the state agency or municipality promptly abjudicate the application for the land or water filed by the applicant. 46.30.040

14. Maintains fee schedules. 46.30.120

15. See all definitions. 46.30.200 (1) - (8)

16. Passage of Bill would be a public service.

ROBERT B. ATWOOD
Editor and Publisher

WILLIAM J. TOBIN
Associate Editor
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Page A-4 Sunday, February 27, 1977

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THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB 227

Title Procedure on applications for permits for state air, land, water.

Requested by Poland & Tillion Date

II. FISCAL DETAIL

Agency Affected Environmental Conservation

Program Category Affected NRM & EC

Budget Request Unit(s) Affected Program Coordination

EXPENDITURES (Thousands of Dollars) Inflation at 6%

		FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
100	PERSONAL SERVICES		56.725	60.128	63.736	67.560	71.614
200	TRAVEL		15.000	15.900	16.854	17.865	18.937
300	CONTRACTUAL		21.500	27.790	24.157	25.607	27.143
400	COMMODITIES		1.200	1.272	1.348	1.429	1.515
500	EQUIPMENT		4.000	--	--	--	--
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL		98.425	100.090	106.095	112.461	119.209

FUNDING (Thousands of Dollars)

GENERAL FUND		98.425	100.090	106.095	112.461	119.209
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

FULL TIME		4	4	4	4	4
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

See attached

IV. DATE 4-15-77 PREPARED BY A. L. Eagle

AGENCY Environmental Conservation

PHONE 465-2684

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

33-001 (Rev. 10/76)

FISCAL ANALYSIS SB 227

The difficulty in preparing a fiscal analysis for this bill stems from it's optional nature. We are not sure how often this procedure will be utilized by the public. Washington State established a similar optional system in 1973. By [illegible] of the 119 applications received, 10 were active, 25 permits had been issued and 84 were withdrawn. Basically their system is used in determining the various agency positions on a permit prior to withdrawal. Assuming similar usage in Alaska, say for the purposes of this analysis, 30 permits per year for major projects; the tasks required by this bill and their associated costs are:

1. Develop master application format, print and distribute.

Object Code	Item	Cost
300	development, printing and distribution	$2,000.00

2. Local government certification of project proposals

   Fiscal impact on local governments only

3. Receive screen and process master applications

   Costs can be absorbed in Field Office and Permit Information Centers.

4. Establish a tracking mechanism. Once established, log and process master applications to other agencies.

Object Code	Item	Cost
100	Clerk IV	$15,270

5. Process agency responses to master applications

   Costs included in #4 above.

6. Mail necessary applications to applicant. Send complete applications to other agencies.

   Costs included in #4 above.

7. Verify land and water ownership

   Costs may increase for applicant but can probably be absorbed by the Department. The applicant would be required to submit the proof of ownership.

8. The Department must cause an advertisement to be placed at the applicants expense in the local papers, once a week for three weeks.

   To avoid costs here the applicant would be required to show proof of publication. Therefore State costs can be absorbed into the position established under item #4 above.

9. Public hearings must be held on controversial permits. Assuming half of the 30 permits per year require hearings at a cost of $1,500.00 per hearing costs become $22,500.00

Object Code	Item	Cost
200	travel	$15,000.00
300	hearing and transcription	$7,500.00

10. Hearing information must be summarized and distributed.

Because this activityis already done to some extent, the cost to summarize the additional hearings can probably be absorbed by existing and new positions and associated costs discussed above.

11. Final decisions by other agencies must be received and processed through to the applicant as a final permit.

Costs included in #4, above.

12. Information Centers are required at each regional office and in the Commissioners Office in Juneau. Assuming a contractual arrangement with a municipality where Regional Offices exist to be just as expensive as establishing these centers "inhouse", the costs become.

Object Code	Item	Cost
100	Ad. Assistant I - Anchorage	$18,465.00
100	Ad. Assistant I - Valdez	$21,885.00
100	Ad. Assistant I - Fairbanks	$21,105.00
100	*Ad Assistant I - Juneau	-0-
	Total	$41,455.00

* Costs for Juneau position can be absorbed in #4 above.

13. Contracts for Local Permit Information Centers may be initiated with outlying communities. Assuming no additional personnel would be hired, the costs should be minimal. Estimate 1,000/year support costs for perhaps a dozen centers

Object Code	Item	Cost
300	12 Local Information Centers	$12,000.00

14. Miscellaneous support costs for each center and new position

Object Code	Item	Cost
400	Commodities	$1,200.00
500	Equipment for new positions	$4,000.00

3/14/77

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Page A-4 Sunday, February 27, 1977

re: Oppn. to application for permit

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SB

238

COMMITTEE REPORT

SENATE **Finance

3/11/77

5/2/77 Date

Mr. President:

The Committee on Resources has had SB 238
oil & gas prperties production tax
under consideration. A majority of the members of the Committee

☐ recommends it do pass

☐ recommends it do not pass

☐ recommends it do pass with attached amendment(s)

☒ recommends it be replaced with CS for SB 238 and that CS for SB 238 do pass

☐ (and) recommends it be referred to the _____ committee

☐ reports it back without recommendation

☐ AND attaches a report of its intent

☒ (other) Individual Recommendations

MEMBERS SIGNING THE MAJORITY REPORT:

Fulton, Do Pass

Harvey (?) No Rec

John Harper NO REC

MEMBERS NOT CONCURRING IN THE MAJORITY REPORT:

_____ recommends: _____

_____ recommends: _____

_____ recommends: _____

K. Poland
Chairman

S 60

No Rec

AGO 547858

AMENDMENT

OFFERED IN THE SENATE: BY: _____

TO: _____ SENATE BILL No. 238

HOUSE BILL No. _____

PAGE: 2 LINE: 27-29

Delete everything after the word "equals", and substitute the following:

":

(1-[PEL/TP]) exp ([300 x WD]/PEL)

Where: PEL = The production rate at the economic limit;

TP = Total production during the month for which the tax is to be paid;

WD = The total number of well days in the month for which the tax is to be paid; and

Where "exp" indicates that the expression following it is an exponent."

AGO 547860

AMENDMENT

OFFERED IN THE SENATE: BY: _____

TO: _____ SENATE BILL No. 238

HOUSE BILL No. _____

PAGE: 3 LINE: 1-5

Delete the first sentence

Page 3, Line 7:

Delete everything after the word "during", and substitute the following material:

"the month for which the tax is to be paid,"

AGO 547861

Poland

EFFECTIVE SEVERANCE TAX RATES IN PERCENT
FOR PRESENT LAW, HB 144/SB 103, HB 321, AND PROPOSED CHANGE, BY UNITS
FISCAL YEAR 1978

Field Units	Present Law	Com Int. HB 144/SB 103	Admin HB 321/SB 238	Proposed
Beaver Creek	8.3	5.6	10.2	5.2
Granite Point				
280001	7.7	5.8	10.5	6.7
280002	7.5	5.1	9.3	4.3
280012	7.0	0	0	0
280022	8.0	6 8	10.9	5.5
McArthur River				
520001	10.5	11.7	14.8	12.7
520002	9.0	7.5	13.3	7.5
520003	8.8	7.4	13.1	9.0
Middle Ground Shoal				
524001	5.6	4.2	7.7	3.9
524002	6.0	5.3	8.7	5.0
524003	5.8	4.9	8.5	5.5
524013	5.6	4.4	8.2	4.8
Swanson River				
772001	10.4	7.7	10.5	4.[illegible]
772002	0	0	0	[illegible]
Trading Bay				
800001	7.6	5.3	12.0	4.3
800002	7.2	0	0	0
800003	0	0	0	0
800004	8.5	5.7	11.4	2.1
800005	7.1	2.2	3.5	0
PRODUCTION WEIGHTED COOK INLET COMPOSITE	8.9	8.3	12.3	8.7
PRUDHOE BAY	7.7	12.3	9.6*	10.3*

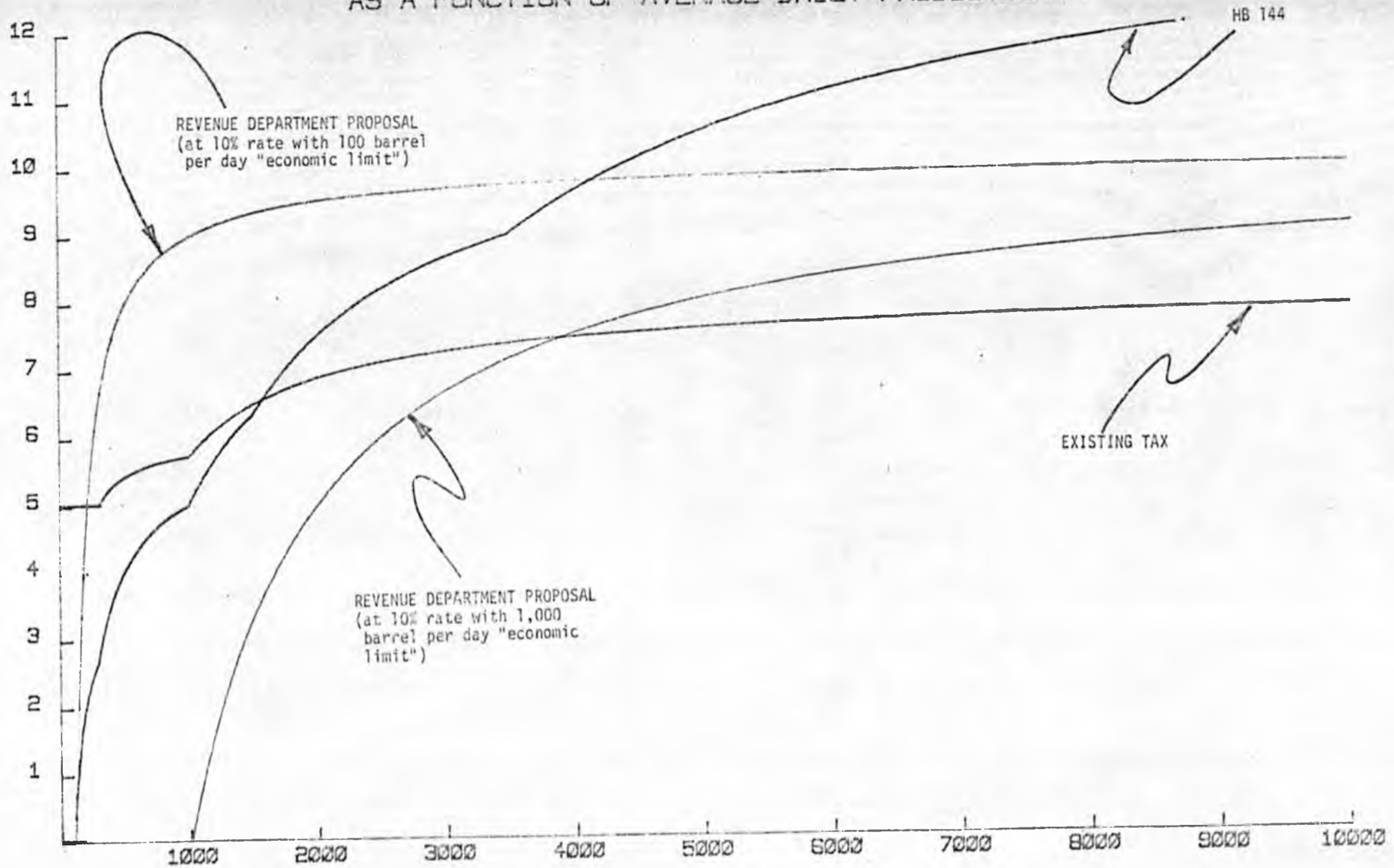
* Assuming an economic limit of 750 bbl/day

Prepared for Senator Poland by:
Legislative Affairs Agency
Research Division
13 April 1977

AGO 547862

2.2

EFFECTIVE SEVERANCE TAX RATE
AS A FUNCTION OF AVERAGE DAILY PRODUCTION



DCR Y=12*(X-100)/X: INTEGRAL F(X)=[illegible]

LCR Y=10*(X-1000)/X: INTEGRAL F(X)=67886.60

LEGISLATIVE AFFAIRS AGENCY
RESEARCH DIVISION
15 February 1977

AGO 5478LL

Alaska State Legislature

POUCH Y, STATE CAPITOL
JUNEAU, ALASKA 99811
907 465-3800

SENATE RESOURCES COMMITTEE

KAY POLAND CHAIRMAN

Wed.

~~TUESDAY,~~ APRIL 13 ROOM 126, CAPITOL 3:00 P.M.

DISCUSSION AND WORK SESSION ON COMPOSITE COMMITTEE SUBSTITUTE FOR

SB 103 - OIL & GAS PROPERTIES PRODUCTION TAX

SB 238 - OIL & GAS PROPERTIES PRODUCTION TAX

SB 306 - CABINS WITHIN STATE PARKS & GAME REFUGES

HB 195 - DRILLING OF DEEP WELLS

HJR 15 - OFFSHORE AREAS, GEOLOGICAL & GEOGRAPHICAL DATA

AGO 547859 +

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

RICHARD KILGORE - Okay, I would then like to turn to the severance tax. As I said in my general remarks, if you're interested in raising the severance tax, both of these bills that we're going to consider seem to in general follow our guidelines, and has to do with more the specifics of how each one of them works. We'll start with HB 144, SB 103. This bill does several things. One is it moves to lease averaging rather than wells in the calculation, and we think that makes an awful lot of sense from the administrative standpoint, and probably should be done even if you don't raise the severance tax, probably even amending your present severance tax would do that, and would make sense. Page 1, Line 11 of the bill m ves the point of tax from the wellhead to a new point of production which is later defined.

SENATOR HUBER - How is this defined?

RICHARD KILGORE - It's defined back on Page 4, line 9, gross value at the point of production means for oil, the value of the oil at the point where it is metered or measured in a condition of pipeline quality on the premises of the lease or property from which it is recovered. So in come cases it would change the point of taxation from the wellhead to somewhere beyond up to a point where it was meter measured and made put in pipeline conditions, so it clearly, and this is pointed out by someone else, moves the point of taxation

and in a sense in certain situations it would tend to tax the transportation and upgrading of the crude oil. That's clearly the case.

SENATOR HUBER - I think it had another reason for being in there. I think it was on account of that Kenai deal to where if they transferred our royalty share portion that went into resale that they were subject to the APUC, and doing it this way, while they pushed their royalty share through our line, they were not subject to our APUC. There was quite a problem on that in Kenai, it happens to be in gas, but we're talking jointly here and I think this was done for the company's benefit.

RICHARD KILGORE - Well, I think also in Cook Inlet, as I understand it, there have been continuing disputes about questions of wellhead and where one taxes, and I think this is all intended to straighten this matter out by legislation. This is where it is, and we don't have to argue about backing out transportation or whatever, this is what they're talking about. This makes administration of it easier, clearly, I think that some of the testimony yesterday it was complained that there would be a cost to the companies in a sense that they wouldn't be taxed on transporting and upgrading. I think that if it's administratively easier and there is a cost, perhaps what you should do here is get a better idea of what you're really talking about in terms of cost and dollars and

cents. What is really the extra costs that companies would bear by doing this, or some idea. I think that's how you would have to assess that. Now lets look at the tax rates in this bill. I think you are all familiar with the fact that it adds higher well brackets and puts in these higher brackets at higher tax rates than exist in the present legislation, and it also lowers the tax rates, both the cents per barrel tax and the percentage tax for lower productivity wells. Now, just to give you a rough idea of what this does, and I'd like to just give you some numbers on how it would seem to us to effect, say, Prudhoe Bay, and then look at the Cook Inlet situation under this bill. All the numbers I'm going to use are ease of comperability for 27 gravity crude oil. Now, in Prudhoe Bay, and I'm assuming for purposes of this calculation that the wellhead value on Prudhoe Bay is say $7.50 per barrel just as illustriative. Under the present tax for a 5,000 barrel a day well in Prudhoe Bay, and these figures are cents per barrel of gross production not of taxable production, but you still get an idea of the relative increase in the tax. The present tax for 5,000 barrel a day well at $7.50 is 49 and 1/2 cents per barrel of gross production. This tax for the same well, a 5,000 barrel a day well would raise the tax to 68.9 cents. That's about a 37% increase in taxation of a 5,000 barrel a day well in Prudhoe Bay. If you went to a 10,000 barrel a day well, the percentage increase and the tax is greater. As against

about 51 cents at the present time, this tax would raise it to about 80 cents, so on a very productive 10,000 barrel a day well at Prudhoe Bay, the increase there would be about 58%, increased through this tax over what you have today. The effective rate on gross barrels produced would go from about 7.8% on a 10,000 barrel a day well to about 12.2% under the new tax, so this is what it does to Prudhoe Bay, very significant increases. And the percentage as I gave you were really the effective rate on taxable barrels going from 7.8 to 12.2. So you are ending up on the very productive well, you end up with an average effective rate or taxable barrels of just under 12 and 1/2 percent in Louisiana. I think that's what was intended. So that's the impact it has on Cook Inlet, I mean on Prudhoe Bay. Now, lets look at Cook Inlet, and particularly the old oil because we've always been worried about effective taxation of old oil. Now, this bill does retain the cents per barrel feature that exists in the present bill, and it retains the cents per barrel feature with basically the same floor price as you have today. It works out for 27 gravity crude to about $6.10 today. So it retains that, but what it does at the same time is that it does lower the rates of taxation both percentage and the cents per barrel taxes in the lower well brackets, so despite the cents per barrel feature still being in there, it does lower taxes on low productivity wells below what they are today. I'll again give you some examples, and they'll

again be on the same basis as before. 27 gravity crude, and these are figures on a gross barrel basis. At the present time a 100 barrel a day well in Cook Inlet would be on the cents per barrel tax and it would pay 26.6 cents per barrel. This bill on a 100 barrel a day well would eliminate the tax. It would go to zero, and a very substantial gain for a 100 barrel per day well. For a 300 barrel a day well, would also pay under the present tax, 26.6 cents. Under this bill, under our calculations, it would drop that 26.6 to 14.2 cents per barrel. So you have about a 12 and 1/2 cent reduction for a 300 barrel a day well, and if you move up to a 500 barrel a day well, you still get a reduction. Under the present tax it would be 28.7 cents. Under SB 103 it would be 21.2. So even for a 500 barrel per day well, you're going down by about 7 and 1/2 cents per barrel, and in fact this new tax as compared with the present lowers the tax up to somewhere wells in the range of 1,000 to 2,000 barrels a day. Somewhere in that range, the new tax gets higher than the old tax, so it does provide very significant relief for low productivity wells.

SENATOR HUBER - Madam Chairman - the figures which we have in the committee they are open to him now, I think, I just wonder when he finishes there. If you have any dispute with those, I think that they confirmed his testimony.

RICHARD KILGORE - Yes Senator, we did do our own homework on this obviously, and we have had a chance to look at what legislative affairs has, and they coincide with what I'm testifying here.

SENATOR HUBER - I was wondering. It would help us a lot to know that they do or don't or if there are differences.

RICHARD KILGORE - No they don't they calculate the same way we do.

Now, so this bill does, I think, meet our objections really to the present taxation of old oil at Cook Inlet which has the high effective rates because of the cents per barrel feature. At least its present operation would reduce the tax substantially for low productivity wells, and we think that's a good feature of this bill. I should point out though, this bill does retain cents per barrel and it does retain escalation of that cents per barrel, so it is possible that under this bill we would again be back in the same problem that we have today. If the escalation manages to raise the cents per barrel tax high enough, we could be back in this problem again of taxing old oil in Cook Inlet at high prices, it's possible. The potential is still in this bill.

SENATOR HUBER - This evades it from present time, and we might have to look at it again in future years if we don't do something with cents per barrel.

RICHARD KILGORE - Yes, it may be back again.

SENATOR HUBER - Well, I'd sure look at it again, Madam Chairman, than I would to have Tom Fink for Governor.

RICHARD KILGORE - I think I was on record the first time I testified as saying that if you do retain a cents per barrel that perhaps what you do is at least consider no further escalation in cents per barrel, and perhaps that could be in this bill too. I don't know. I want to only point out that it could happen again. So that's basically what this tax does. It raises fairly significantly, the tax in Prudhoe Bay, but it does lower the tax considerably on low productivity old oil priced wells in Cook Inlet. It also has a severance tax for gas that is flaired, and a very substantial one, five times the rate. I think before you do this kind of thing and add such a tax, you ought to look very carefully at where gas is being flaired and why. There has been testimony yesterday about safety flairs and so on. I think you ought to look very carefully at what it is that you would be taxing and why the flairing is going on at the present time. Now, if what you're really trying to do is tell companies to find a use for this flaired

gas and find markets for it, I think that at the very least if there is gas being flaired now which you think you could find markets for, therefore you're going to try to compel people through this tax, somebody used the word incentive the other day, but you're compelling them through this tax that at least you ought to provide somebody with a grace period before they would pay this tax. That is, you wo[illegible]'t start right away. You would make it clear to them that they had certain time within which to find markets for this. You wouldn't penalize them in the meantime, but if you don't find gas for which it's logical to find markets, that you would say at some point in the future you're going to start paying a tax on this, so you had better get busy and look for markets. I don't think I.....

SENATOR HUBER - I think, Madam Chairman, that we should make sure in there. I think we should find out the required safety flair of no more than a certain amount except during an emergency blowout or something like that. The idea was, as long as it's economically unfeasible to take small amounts of gas and reinject them, the State loses its royalty share on it, and the nation loses the energy strictly because at a given space in time, using if you will excuse me, a cash discounting flow and everything else, that we determine its value and we say it's nothing, and what's nothing is moving down the pike another twenty or thirty years may be all we have, and Prudhoe Bay, in spite of an absolute no

flair restriction has been allowed to flair and everybody knows it. Somehow or other, it does have to be stopped, and if you make it so it isn't economically feasible to flair, then it becomes economically feasible to build a small compressor system for saving.

GEORGE SILIDES - Madam Chairman, I know that the flairing _____ as Huber pointed out, _____ that the flairing of course, and the word allowed is important, they get permission from the State, and we have to do something about the bill, that we don't have competition between the taxing department and the Department of Oil and Gas Conservation. They are the ones that give the permission, and you have to apply and you have to point out that it's being done with safety and so on. I don't think that the bill intended to penalize somebody for entering into a safety feature, and so am I correct Mr. Kilgore?

RICHARD KILGORE - I would assume that that's the intent. You'r not really interested in taxing gas.....

SENATOR HUBER - But that board still has the power and makes the exemptions and has been constantly making the exemptions, and it's a matter of record, both at Prudhoe Bay and elsewhere, they make the exemptions, they're legally made, but the product is gone, the resource is gone, it is flaired, and so at least putting in a fairly stiff recovery there, does at

least give us something off of our severance tax that went up in flair too.

GEORGE SILIDES - Madam Chairman, I might make another comment. I think that in view of the comments being made, we're going to have to look into the legality of being able to tax a safety feature.

SENATOR HUBER - No, we don't tax the safety feature. Let's not get crossways on that. We should put an exemption in here for the safety flair only, and somewhere we need to come up with a figure of what is the amount that may be flaired to date per well or per safety flair. We definitely shouldn't tax them on what is a safety requirement. But there isn't a provision. The gas that's being burned in significant, is not being burned in so called legal actual safety flairs. It's being flaired otherwise by legal permits by the board.

CHAIRMAN POLAND - I think we have to check with the Board as to why they are giving the tax.

SENATOR HUBER - That's why the Governor's bills has it in it. That's why committee's bills has had this for two years, and we should certainly, like Dick says, make sure that we don't tax the necessary safety flairs. I asked yesterday what

was, and they said a million cubic feet. That's a thousand MCF's a day. I'm not sure that that isn't considerably over what's needed to burn there in case, I need a good definition of a safety flair.

RICHARD KILGORE - I think also you might consider if you really feel the gas is being flaired that you don't want to be flaired other than as safety purposes or whatever, that's something you might consider as an alternative just tightening up your regulatory bill and your regulations rather than do it through a taxing approach.

SENATOR HUBER - We've done everything but tar and feather the board.

REPRESENTATIVE OSTERBACK - Madam Chairman, could anybody tell us how much gas they will be flairing at Prudhoe Bay? Anything that burns is energy. We're talking about we're running short of energy. Somebody talked about the railroad. If they took it in there, they could take out about a hundred tanks of gas a day, and they didn't think it would be enough to pack that out with flairing, and that would be an awful lot of energy, but most of us don't really know what this gas is with the flairing, but I know anything that burns is energy, and we're talking we're running out of energy. So I think there should be something done about it. Anything

that you can save as energy, you can sell. There's no problem in that.

RICHARD KILGORE - Well, I agree with you, if what we're really talking about is waste, then I think we should eliminate that. It is energy, and you're absolutely right, and I think you should look very carefully at what's going to happen at Prudhoe Bay, and how your regulatory people will handle it.

SENATOR HUBER - Might we, Madam Chairman, Al brought it up and it's very important. I think that it's understood that they have stopped flairing or are to stop flairing. It was only for that refinery that they flaired at Prudhoe Bay, and they didn't pump it back down the gas well even though they were drawing gas out to run the refinery because it would have cost more money than the gas was worth, so naturally the gas was worth nothing, so it wouldn't cost money to pump it back down into the ground. If it had a value of 20 cents an MCF, it would have been a lot cheaper to pump it back down into the ground, but just so that the record is straight, we aren't really looking for flairing at Prudhoe Bay, but if you will take a look at the Valdez terminal, you will find that we don't flair no more, but we've got three huge oxidizers there, and there's going to be a tremendous amount of energy unless the LPG's that are in that gas and the vapors that are in the gas at Valdez,

unless there's a plant built to recover those and use them which is not in the plan, it is going to effectively flair trillions of BTU's before Valdez is over with. That's because the plant and the tanks will not stand the pressure in the storage.

GEORGE SILIDES - Madam Chairman, I think the point is well made that something's got to be done about defining what is meant by safety gas, what is being wasted, and I think also that the bill had intended to address the bottom of the possible wasting of carbon dioxide. There was a considerable amount in this particular natural gas, and I suppose what we're getting to is that we have to do something about those things, either by definition or by amending the bill. I think this is a point that we're going to have to look into. I don't think we're going to get it solved right here.

SENATOR HUBER - I think they're willing, George, not to flair the carbon dioxide, but I'm not sure if they will get rid of it.

GEORGE SILIDES - It doesn't burn anyway, Senator.

CHAIRMAN POLAND - We'll be checking on this flairing part.

SENATOR HUBER - Well, it's important on both ends. I think that the bill needs to not penalize them, but by all means

should be retained in the bill, and we may of course have to put it in in some other places. I don't think this is going to effect it when it comes to the flairs in Valdez.

RICHARD KILGORE - I'd like to move on the the second severance tax bill, and that's HB 321, SB 238. Now, basically this tax changes the tax rate to 10%, but it also has a cents per barrel feature of 75 cents per barrel, so it has an effective floor price of $7.50, and it also has what _____ for an economic limit factor built into it, and I think Mr. Wilson yesterday did quite a good job explaining how the mechanics of this worked, and he also provided an example for you that I think was probably quite useful. Basically what the bill does is give you the first hundred barrels a day as an allowance for operating costs is what it amounts to, and wells producing more than 100 barrels a day, they pay then an increasing fraction of the 10% for the 75 cent tax is the way it works, and it's a continually increasing thing as well productivity moves above average well productivity moves above loo barrels a day. Very roughly, a 100 barrel a day well would pay no tax under this bill. A 200 barrel a day well would pay about 43% of the tax. It isn't 50% because as you might think by taking 100 to 200 because it's taxable barrels only that count. That is the 200 barrel a day doesn't produce 200 barrels that are entirely income to the company. Twelve and a half percent of those go to the State.

GEORGE SILIDES - Mr. Kilgore, it's 43%.

RICHARD KILGORE - It's 43%, 200 is 43% of either 10% of value or 75 cents a barrel depending on which it is.

GEORGE SILIDES - That's what I wanted you to say.

RICHARD KILGORE - For a 300 barrel a day well it would be 62% of these basic rates and on a 4,000 barrel a day well, it would be up to 89% of this. This is the way it works, and it amounts to a continuous function as against the step schedule that you have in your present legislation. As I said, it amounts to a continuous function and in principal we find it as kind of an appealing concept as against the step schedule. Now the other feature of it is that one can't apply for an economic limit factor greater than 100 barrels per day well average if you can prove it, and what you basically have to prove is that your operating costs that you require, out of pocket operating costs are greater than what you would get with 100 barrels of production per well. You would need more than this to recover your operating costs. Now, there appear to us to be a couple problems with how this actually works. First of all on Page 3 Line.....

SENATOR HUBER - Madam Chairman, I would note that we've got John Messenger here, too. This is the same problem that came

up yesterday in talking with the industries. We might want John to answer some of these.

RICHARD KILGORE - It has to do first of all with how costs are defined, and that starts on Page 3, Line 16, subsection C here, and as was pointed out in testimony yesterday, it is not clear that the cost category specifically allowed here really provide for all the kind of out of pocket expenses that a producer might have, and basically that's the concept that you're trying to get at, whatever is out of pocket expenses, and it's not clear to us that that is the case and some questions were raised yesterday and I think you ought to consider those too, but what I think is more important is that after calculating the costs here, you then have to determine how many barrels are necessary to recover, that is if more than the hundred that you are allowed anyway. Now the problem with it is that the way that the bill was written, you don't take your costs and divide through by the price of oil that you as a producer receive. That is your actual price, if you're an old oil producer and getting $5.00 per barrel, you don't divide through by $5.00 to see how many barrels you need to recover your costs, but you use another deemed price to do this, and the deemed price is acquisition, this is Page 3, Line 29, its acquisition costs CIF at westcoast refineries for imported oil of like quality and then you net this back to Alaska, so you're not doing it on the price you actually

receive, you're doing it on a deemed price that you may not be receiving, and it seems to us this causes problems.

SENATOR HUBER - Could we at this point if it's convenient, I wonder, Sterling isn't here, but John is and this was the question yesterday, I understood from the testimony by the State that as of starting in December or sometime like that that these wells that were in economic trouble shall we say, that these figures that you have put in here talking about _____ price are actually what's happened. They are now being allowed, these higher prices on the producer's share, but not upon the State's royalty share. The argument yesterday, and I think we're right into it again today, is whether we're just talking about a possible deemed price working it back from San Francisco or whether we're truly talking about what they're going to get, and the industry said no this was unfair that wasn't what they were going to get, so we're right at the nitty gritty, and I think you can help us John.

RICHARD KILGORE - Perhaps, Senator, I'm going to give an example, maybe I ought to do this and then we can talk about it.

SENATOR HUBER - Okay, just so that John, he wasn't here yesterday, so he's alerted. My stand was or what I saw was that you fellows put this in here because that's actually

what the oil companies are getting, and so you were getting right to the nitty gritty, and they said no this is what they might give them, but I understood Sterling to say that this had actually started in December, and I don't think this was in testimony, I believe this was talking in the afterwards that it actually had started in December and the State had been denied that increase, but the producer's share had been allowed, so if that predicates it and as he goes on if you can straighten this out, it will help me a lot.

RICHARD KILGORE - I'd like to just give a little example of what we're talking about here. If we had an operating cost for a well or wells whatever the unit or something, and say $2,800 a day, and these were direct operating expenses defined properly however, and if you didn't get these revenue enough to do this, you would shut down. Now, if one looked at the foreign price and then netted back to Alaska, let's say you came up with $14 just to make the arithmetic easy, you came up with $14. Now in calculating your economic limit factor here, you would divide through by that, and that would give you $2,800 divided by $14 is 200 barrels a day. You're economic limit you could then justify is 200, rather than the 100 which you had presumed. That means you're getting more, but let's say that the producer only gets $5 a barrel for oil because he's receiving the old oil price in Cook Inlet. He doesn't bet $14, he gets $5. Well for him to actually recover the

$2,800 his total expenses at $5 he's actually receiving for his oil, his real economic limit factor is $2,800 divided by $5 or 560 barrels, so that in fact, his limit factor, that is the number of barrels he needs before he's got to shut down, because he doesn't make it out of pocket cost of 560 under this bill it appears to me, he would only get 200. I don't think it really gives you the results that you intend. The result that you intend is to provide relief for marginal wells. It doesn't appear to really serve the intended purpose.

SENATOR HUBER - That's at $5.61?

RICHARD KILGORE - That's at $5.00 even.

SENATOR HUBER - But doesn't this other deal work to raise that?

RICHARD KILGORE - Well, the other thing we're talking about is price relief under FEA regulations. I think that's really something different here. I'm addressing.....

SENATOR HUBER - That's not five dollar oil. You know, if we're talking about his economical limit on the well then we assume it to be $5 00 oil, but he is actually receiving $10.95 for it because it's below a certain economic limit

already established, then we're dealing with something that doesn't exist, and that's what I'm trying to get into this, and I thought that that was why the State had drafted it.

RICHARD KILGORE - Because it assumes that the Federal government will always bail out people, is what you're saying, other than royalty owners.

SENATOR HUBER - My information was, it didn't only assume, it was based on what was happening. Can you clarify that John?

JOHN MESSENGER - Let me just make a couple comments. I guess it's true that one position that we've taken on this bill that our taxes should not be based on the artificial price set by the Federal government, and the Federal government set a price of $5.00. Our position is that we shouldn't be content with the tax based on that artificial price, and that's why, one, we've set the cents per barrel floor, likewise when you're figuring the economic limit factor, again, we say the true economic limit is not how many barrel are produced at the artificial price, but the amount of barrels they would produce using the true value of that oil, pre-market oil. We should insure ourselves that so many cents to so many percent of that pre-market oil because that is our resource and we should get at least that percent out of it. Secondly, is that producers are

reaching their break even point which they will stop producing. There is a procedure by which they can make application to the FEA and get price relief and with that higher price they can produce longer, but the FEA has said that they will give price relief only to the producers, and not to royalty owners, so if a company is reaching its economic limit in Cook Inlet, and they go in for price relief, they are given that price relief. They will raise their price, but they will not raise that price in the terms of the amount of royalties which _____. So, it's two things, one is the tax rate and the economic limit factor should be based upon the true value of the oil, and secondly that producers are protected through FEA regulations, but the State is not.

SENATOR HUBER - Then I guess what he's saying is that if someone's going to shut down the production there, by it being below economic limit on $5.00 oil, the State is advocating that we put the monkey on the fed's back and say you did it, you set an artificial price, we're going to set our tax based on free market price, and if you want to save that resource, save that company, you can turn around and do likewise what's reasonable. I'd say it's what I call putting the monkey on the Fed's back. They caused the problem. I happen to be strongly in agreement with the State's stand on that, and compliment them for it because why should we throw away our royalty share and our

taxing ability because somebody forced an artificial price down our throut, and is forcing that same artificial price down the throat of the oil companies.

RICHARD KILGORE - Look, I'm going to address myself to the question of the artificial price, that's part of what I'm doing here, and I think the Commissioner took issue with earlier testimony I made when I said I thought this was a flaw in the thing, and it certainly was, I thought, a flaw in terms of its purpose of providing relief, and now I do understand why they do this which is another objective, than what appeared to be the intent of the bill and I'm going to come back to the whole question of the artificial price. It's very clear they did this by design. I'd like to again, as you asked, talk about just very roughly what it does to Prudhoe Bay and then to Cook Inlet, and then discuss the consequences of that. Again, for Prudhoe Bay, looking at 5,000 and 10,000 barrel a day wells at Prudhoe Bay, this bill also raises taxes significantly on those wells as does the other bill, as does HB 321 that we looked at before, excuse me HB 144, that we looked at before, but it does not raise them as sharply as the other tax. If we take a 5,000 barrel a day well, I said that, and I'm not going to run through all the numbers here, I think but that the other tax for a 5,000 barrel a day well raised the tax about 39% on a 5,000 barrel a day well. This tax would raise it about 29% it appears to us using the presumed hundred

barrel figure. The discrepancy between the two gets larger at very productive wells because of the steep rates near the end of the schedule in the other bill, and for a 10,000 barrel a day well, HB 144 raised it 58%, this would raise it about 27% on the very productive wells, so if it both increased taxes on Prudhoe Bay, clearly the one, HB 144 would increase them significantly.

SENATOR HUBER - That would be effective of what of 5 and 10.

RICHARD KILGORE - Okay, the effective rate would be very close to, on taxable barrels it would be very close to 10%. On 5,000, it would be 9.8% and 9.9% on the 10,000. It approaches 10%.

SENATOR HUBER - Just slightly under ten percent for a total maximum. Or fully 2 and 1/2 percent, a little over 2 and 1/2 percent below Louisiana. Using the Administration's bill.

RICHARD KILGORE - That's correct.

SENATOR HUBER - And it would be right at Louisiana with the other bill.

RICHARD KILGORE - Close to it. That's correct.

Now, let's look at what happens to the Cook Inlet old oil price here. This bill as the other one for a 100 barrel a day well eliminates the tax altogether. It does exactly the same thing, but what we find troublesome is that is you go to 300 barrel a day wells, these are the wells that we're concerned with because of their productivity and the old oil price they have to bare, they get the tax there doesn't go down, but it increases. It goes up from 26.6 cents on gross barrels to 40.6 cents. It goes up by 14 cents a barrel. This tax raises it that much. On a 500 barrel a day well, it raises it by about 13 and 1/2 cents, and on a 1,000 barrel a day well. I'm sorry 14 cents increase on a 300 barrel a day well, 22 cents on a five hundred barrel a day well, and 28 cents on a 1,000 barrel a day well. What I think are particularly disturbing are the increases on the lower productivity wells. A well as low as 300 barrels a day which we already have some concern for because of the effective rate on the old oil thing has actually a fairly substantial increase in its tax burden. As Commissioner Gallagher stated correctly, you get this result because of raising the floor price essentially. You are raising the floor price from $6.10 to $7.50 and you have higher tax rates at the same time, and it's deliberately designed to do this. Now, we really feel that this kind of goes against what we feel are good principals of severance taxation. What you're saying is the producer in Cook Inlet he received a relatively low old oil price established by

the Federal government. This in turn restricts his own profitability, but then the State adds to his burden by taxing him as if he received $7.50, and it seems to us that rather than help his producing situation, this only makes the situation worse. One of the reasons given for doing this is that the Federal government is following an unwise, or I think it was described as a foolish price policy. Now, this may or may not be the case. I'm not willing to pass a judgement on that, but they're, you should know that the Federal government does have reasons for doing this. It's not capricious, they do have reasons. They have concern over the effect. What they're concerned with is this, we've had a fantastic increase in the oil prices outside the United States by the OPEC nations and if one frees the oil, the old oil price, it will go up very, very sharply. It will, perhaps in some cases, close to triple in price, and the people are concerned about the consequences of this. Rightly or wrongly, they are concerned about the inflationary impact on consumers. They're concerned about when _____ producers, because these are on old oil wells, wells production which is established at old costs and so on and therefore you have to question whether you want to give them huge increases in the price and windfalls. There is concern over that. So there are reasons, and you can argue one way or another, but there are reasons for this.

SENATOR HUBER - Would it be fair to say that those reasons are exactly on a par with the same reasons for having controlled gas prices as would be in inter-state commerce as well as setting a free-market price. It's the same principal in both cases.

RICHARD KILGORE - As deregulation of natural gas prices. Yes.

SENATOR HUBER - Deregulation of natural gas. Deregulation of petroleum would do the same thing, it would increase the price at the burner or the price at the gas tank as it comes in out of the nozel, but all of the other factors of pro and con are the same.

RICHARD KILGORE - Yes, that's right, and the concern is that if you let it go up to, and I really object to the word free-market price because we're not talking about free-market price, what we're talking about is it goes to a price administered by OPEC. That's what we're talking about going from price administered by the Federal government to a price administered by OPEC. This is by no means a free-market price. It's a market price, but one set by OPEC, and set by political reasons as much as for economic reasons.

SENATOR HUBER - Some of us are referring to free-market price though as to this free-market price that exists that we talk

about what the price would be if OPEC were not controling it. Some of us are talking about a true free-market price

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RICHARD KILGORE - Senator, I don't know what the price would be if OPEC were not controling it.

SENATOR HUBER - We don't know. We have projections just like we do on what Prudhoe Bay is going to cost.

RICHARD KILGORE - One the one hand, if OPEC did not exist one would certainly expect over time that the price would rise at some point in time to the level of alternative energy sources which are quite high in the $20 - $25 range. On the other hand, in the short run, you do have an overhang of surplus productive capacity in the world, and if there were no OPEC, and it were perfectly free market, there's no reason why the price couldn't drop to less than $1.00 per barrel, because that's what costs are in their surplus capacity. If there were truly competitive free market, one would have $1.00 a barrel oil or less because that's what the costs are in the middle east, less than that so but as time went on, and this surplus which overhangs the market now, and which would push it down, gets eaten up and it will, one would then have prices moving off in the other direction. I don't know what the price would be. But anyway, we're talking about not letting the price, the U.S.

government as a matter of policy, not letting it go to a price set outside its own borders by an orgnaization of petroleum exporting companies, and that's what we're talking about. It's the intent apparently of the Congress not to do this because basically the idea is concerned with price impacts, concerned with windfalls, and also that there's no way of assuring that the price that would be set by OPEC is an appropriate price for our internal markets for our own costs and so forth. There's no way of knowing whether they will set a price appropriate to our cost circumstances in the United States or a price that may be very much higher than people think it is now or maybe even a price lower. Not good enough for development of our domestic resources. So this is a matter of national policy and people can quarrel.

SENATOR HUBER - Feable minded or otherwise.....

RICHARD KILGORE - Well, I don't want to characterize it. I'm trying to give you a few of the reasons for doing this, and this is a matter of federal policy. Now, but even if it is a foolish policy, or at least if Alaska views it as one, or the people who did this legislation think it is, I think that you have to ask, if that is the case, still, why do you want to then punish producers for this price policy basically. They already suffer enough from it in terms of the revenues they receive, why do you want to go an

added step and raise their taxes because of this. I don't think it's reasonable to assume that if you do this you will force national policy to change by what you do in the way of taxation here in Alaska. That seems to be reasonable.

GEORGE SILIDES - Madam Chairman, may I ask a question?

In addition to your comment of being unable to force national policy, would you think that this kind of tax is counter-productive?

RICHARD KILGORE - I suppose it's possible, I don't really know the answer to that, but I suppose there are reasons that might want to lead one to that result, and if the FEA has procedures for relief of these kinds of situations , then it sees the State of Alaska in fact imposing higher and higher taxes on such low productivity wells. I don't know. It's not inconceivable that it would enter into their thinking in this matter. Rather than providing relief, it seems that the State of Alaska goes in the other direction in this situation.

SENATOR HUBER - George brought something up here. Isn't this the fact that it effects these 300 barrel wells just because of the total tax maximum that we pay and then how we apply the mechanics of the formula. They could for instance, modify, and the mathematics of it I would have

to find out from somebody else how, so that that point would hit, maybe, more on a five or six hundred barrel a day well and maybe give as much as 10.3% or 10.4% out of Prudhoe Bay instead of an even 10%, and the formula diddled with enough to change that point to where it would be correct. Couldn't that be done?

RICHARD KILGORE - Yes it could be. If you like the basic approach of the continuous formula .....

SENATOR HUBER - Apparently you do, and I do too, and we might consider, and George's question pointed up that we might consider something from being John Messender is here, that they might give us an alternative is that reasonable Madam Chairman?

CHAIRMAN POLAND - Well yes, except today we have Mr. Kilgore with us. He's leaving on a plane and we want to take advantage of this. We can bring this up.

SENATOR HUBER - I have considered this, Madam Chairman, to be a work session with him, and it's more valuable to me, the way we've been conducting it here today, than anything that we've had.

CHAIRMAN POLAND - Well fine. Let's give him a chance to get with it.

RICHARD KILGORE - Okay, we really are concerned with how this aspect works. There are two parts where Alaska is attempting to impose its own view of what the proper price policy should be, that is if they want the OPEC price. It comes on the floor, and it also comes as I said before in this calculation of the economic limit factor again. It enters in two places, and we have serious questions about this and what you really want to do. If the basic intent of the legislation is to provide relief that you don't go off in the other direction simply because you're unhappy with the prices because this throws all the burden on the producer, and then you're going exactly against what you really want to do, and you could have economic consequences to this.

I understand your concern with the prices that you get for your oil, and you'd rather get higher prices than lower prices, and that's fine, but the question is if the price is not set at a level that you think is appropriate then what do you do about it, and I guess, it's just bothersome to us that what you do about it is throw a burden back on a producer here. That's what you're doing about it, and that then goes against what we feel is an appropriate kind of severance tax because then you run into all the kind of economic problems with this gross tax and that's our concern, and we appreciate why you think in terms of floors and why you want to get an adequate value for your oil, and so forth,

and we understand why you do it, it's the consequences.

This tax also raises the tax on natural gas. If you'll recall our testimony before, we were always pointing out to you that if you did this you would have an impact on Alaskan consumers, that would flow through to Alaskan consumers. I noticed that there is another bill which is HB 329, SB 239 which is a residential fuel credit, and I presume that the intent of this is to mitigate to some extent the impact that raising the gas tax would have on Alaska. Consumers - we're not really in a position to know how adequately it does this because this has to do with what fuel bills really are in Anchorage and so on. We really don't have the information to calculate how adequately that does that, but obviously, you are concerned with that aspect to it, and the balance of the increase of course would be assessed against exports. I think that the other thing I should point out is that here you have in this not only an increase in the tax rate from 4% to 10%, but also introduce a floor price here, that is a minimum 6.4% per MCF, which is an effective floor price of 64 cents per MCF, and I think we have the same reservations here about this as you do on the oil side. If you have oil flowing, producers getting less than 64 cents, someone mentioned 42 cents the other day, but less than 64 cents, then you start to raise the effective rate of it, and I think we have the same problems with it here as we would anywhere else, and this

also has a gas flaired feature taxation, but it's only double, not five times, and all my comments on that go for this too.

SENATOR HUBER - That is in the equalization deal?

RICHARD KILGORE - No, it's in the severance tax, itself. There's a provision.

In the end, I'd like to talk a little bit about this whole question of the overall tax burden and how you assess it, the kind of questions that Senator Rader has been talking about, but I would first just like to make a few comments on the property tax bill, unless there are some other questions here on the severance tax.

CHAIRMAN POLAND - No. I was going to suggest that when you are finished on the bill, and before you kind of wrap up, that we take a five minute break.

RICHARD KILGORE - Okay, shall I just say a few things about the property tax. I have relatively limited comments here. HB 323, SB 237, now, this extends the property tax to some other areas as you know to refineries, gas plants, and also to marine transportation, and L & G liquifaction facilities, and so forth. So it extends the kinds of things that you would tax with your property tax. Now, the only real comments

that we have here are that for each of these areas that you're thinking of proposing a property tax on, you think carefully about where that tax will actually be borne. You're talking about taxing properties for crude oil production that largely obviously is borne by producers. They realize prices in the lower '48 that are set for them, and the tax you impose is a tax which they have to bare in terms of their own profitability, but that's not necessarily the case with each of these other areas that you are extending, and what I think you ought to think about what you are doing, because if you're looking at property taxes on refining in Alaska, we would expect that most of the refining capacity in Alaska for some time to come would be basically capacity oriented to supplying low markets so that the tax that you impose on those refineries presumably would over the long run be borne by Alaskan consumers. You're assessing a tax which goes to the treasury, but eventually that tax would have to be borne by consumers if the refineries are to operate properly. So you have to worry about the incidence of the tax. If you're looking at L & G facilities you have to worry again about the consequences of this and what will happen, and who will actually bare this. Will it be a cost that will simply be passed along because the facilities under an FPC jurisdiction will be passed along as probably may be the case. It's not clear that if it's L & G or export to foreign countries whether this would be the case. Who would bare it, it's not entirely clear.

GEORGE SILIDES - Would it not also have an effect on a decision as to whether to locate in Alaska.

RICHARD KILGORE - Yes, it could under certain circumstances. If it's a cost which basically the person thinking of putting in the facility has to bare himself because he hasn't got an automatic pass along or he can't pass along to Alaskan consumers, or he can't through his regulatory process, pass it along, then surely, it would be one of those tax entering into his decision as to whether to locate in Alaska. Noone can say whether this is the thing that would swing it in the balance, but obviously, it's part of the package of doing business, if it's a higher cost, it could have some effect, yes.

The last one is marine transportation, and there, well there's a question of legality, I guess, but we can't address ourselves to those, but it seems to me you might have some concern about this one too, because you already face a problem where you are concerned with the fact that your oil may have to move to quite distant markets, for example the U. S. gulf and the eastcoast, and you're very much rightly concerned about that long haul and those high transportation costs and what it may do to your wellhead value, and if you go this route of taxing marine transportation, you obviously add to the cost of transportation, I don't know how much would be thrown up by this tax, but you are in principal anyway

adding to the cost of transporting your oil which certainly works in the direction of lowering the value of your oil, so I think that you ought to consider this as well, as I say, in each case consider the consequences, but here you're putting an added cost on transportation and it may be small, but it certainly works in the direction of lowering your wellhead value. Basically that concludes my remarks on the specifics of the bill.

I would like to conclude with a few remarks about this old question of the total tax burden in Alaska. What fair share is, and at what point do you destroy incentives, undermine profitability and the like, and of course Senator Rader has been pressing a number of people for answers to this, but as he himself in asking the question admits, there obviously is no easy answer to this question. If there were, somebody would have given it, and I can't give you an easy answer. A number of things have been suggested, all of which make a certain amount of sense. What kind of activity is there in the State has been suggested. A number of people have suggested looking at the total tax burden in Alaska, relative to other states. I have a few comments on that aspect too. It clearly is important what the total tax burden is on the oil and gas industry, there's just no doubt about that and how it compares with other states. It certainly is not just the absolute amount of dollars being paid or dollars per

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

SB
274

COMMITTEE REPORT

SENATE

3/23/77

3/8/77 Date

Mr. President:

The Committee on Resources has had SB 274 taking oil oil & gas royalty-in-kind under consideration. A majority of the members of the Committee

- [X] recommends it do pass
- [ ] recommends it do not pass
- [ ] recommends it do pass with attached amendment(s)
- [ ] recommends it be replaced with CS for _____ and that CS for _____ do pass
- [ ] (and) recommends it be referred to the _____ committee
- [ ] reports it back without recommendation
- [ ] AND attaches a report of its intent
- [ ] (other) _____

MEMBERS SIGNING THE MAJORITY REPORT:

Pete Dutcovich — Ke Pass — _____

Metcalf — Do Pass — _____

John Thayer — Do Pass — _____

Wm Roskie — Do Pass — _____

MEMBERS NOT CONCURRING IN THE MAJORITY REPORT:

Tillman recommends: No Rec

Goodale recommends: Do Pass

_____ recommends: _____

Chairman

S 60

Do Pass

AGO 785679

AMENDMENT

OFFERED IN THE SENATE: BY: POLAND

TO: _____ SENATE BILL No. 274

HOUSE BILL No. _____

PAGE: 1 LINE: 23

ADD NEW SECTION 2

A purchase of royalty oil on a one year non-renewable basis remains eligible to negotiate a long term purchase agreement in accordance with all the other provision of AS 38.06.182, AS 38.05.183, and AS 38.06.055

Number Section 3 accordingly

(1p)

AGO 785680

Original sponsor: Resources Committee

Offered: 3/19/75
Referred: Rules

IN THE SENATE BY THE RESOURCES COMMITTEE

CS FOR SENATE BILL NO. 174

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the taking of oil and gas royalty-in-kind; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 38.05.182 is amended to read:

Sec. 38.05.182. ROYALTY ON NATURAL RESOURCES. Any royalty provided for in secs. 135 - 181 of this chapter shall [MAY] be taken in kind rather than in money unless [IF] the commissioner, with the consent of the board, determines that the taking in money [KIND] would be in the best interest of the state. The consent of the board is required only with respect to oil and gas royalty-in-kind under sec. 183 of this chapter. The action of the commissioner and the board with respect to oil and gas royalty-in-kind under sec. 183 of this chapter is subject to the prior approval of the legislature in accordance with AS 38.06.055, except for nonrenewable contracts not exceeding one year in duration which may be entered into to relieve a shortage of storage capacity.

* Sec. 2. This Act takes effect immediately in accordance with AS 01.10.-070(c).

Re: attached

CSSB174 Passed Senate 18-2
Died in the House because of vigorous opposition by Guy Martin.

AGO 785682

Resource Dept. wants flexibility

State seeks pledge on its royalty oil

JUNEAU (AP)—State officials are seeking an unusual written pledge from Prudhoe Bay producers to guarantee Alaska's right to switch from taking its North Slope royalty oil in-value to in-kind, the Royalty Oil and Gas Advisory Board was told Tuesday.

In a memo to the board, outgoing Natural Resources Commissioner Guy Martin said he has written to all North Slope leaseholders, asking them to sign an agreement by March 15 to give the state advance written permission to take back its royalty oil with one month's notice.

The action was prompted by the recent revelation that Federal Energy Administration regulations prevent any producer from terminating contracts for the sale of their oil without the consent of the purchasers.

Since taking its oil in value through cash royalty payments is interpreted by the FEA as a contract sale, the state would not be able to later take its oil in-kind unless the purchasers concur.

Alaska's congressional delegation also dispatched letters to the board, urging that the state take all of its royalty oil in-kind as soon as production begins.

Sen. Mike Gravel said he has analyzed the federal energy law and has "concluded that state control of its royalty oil may be lost if the state at any time elect to take its royalty oil in value, rather than in-kind."

Sen. Ted Stevens said that his reading of the federal Mandatory Petroleum Allocation Act indicates "a great threat to Alaska's future welfare exists."

Rep. Don Young joined Stevens and Gravel in urging the board to make a quick decision on what to do with the state's royalty oil.

"Our best hope," Stevens said, "resides in taking our oil in-kind from the initial drop pumped" and selling it to bidders who will give the state "maximum assurances that we can withdraw our oil without opposition from them or the Federal Energy Administration."

Oil production from Prudhoe Bay is scheduled to begin upon completion of the trans-Alaska pipeline in July.

And since the state is required under its oil leases to give the leaseholders six months notice prior to taking its royalty oil or gas in-kind, the opportunity to take oil in-kind from initial North Slope production already has been lost unless the producers agree to sign the pledge proposed by Martin.

In a related issue, the board received a revised proposal for a $400 million petroleum refinery in Alaska based on a commitment for the sale of Alaska's royalty oil, the second such offer the board has received in as many weeks.

The proposal by Alaska Petroleum Co. was submitted in competition with a similar deal offered by Alaska Consolidated Shipping, Inc., a Native corporation-backed firm.

Officials of Alaska Consolidated also appeared before the board to modify their deal, and representatives for both firms exchanged verbal blows over the relative merits of the competing proposals.

The Alaska Petroleum proposal would call for the purchase of 150,000 barrels a day of the state's royalty share of Prudhoe Bay crude to use in a "world-scale refinery," which would take five years to plan and develop, company officials said.

Alaska Petroleum is a Houston-based subsidiary of the Coastal States Gas Corp., which owns three refineries with production capacity of nearly 300,000 barrels of oil a day.

A key to the Alaska Petroleum proposal is a provision to purchase all of the state's royalty oil for the first month or two that it flows, countering worries about the adverse FEA regulations.

George H. Shipley, a director and consultant for Alaska Petroleum, declined to say where the proposed refinery might be located, but added that his company has examined "six to eight" sites, including Valdez, Point MacKenzie near Anchorage and Tyonek on Cook Inlet.

Shipley attacked the refinery proposal offered last month by Alaska Consolidated, saying the company had underestimated its costs and overestimated its benefits.

But Alaska Consolidated Vice President Jim Stupp disputed Shipley's claims and said he would present a point-by-point rebuttal to the board later.

In its revised proposal, Stupp said he was "75 to 80 per cent certain" his company's plans for a $225 million refinery would prove economically feasible.

The Alaska Consolidated proposal calls for a refinery which would use 150,000 barrels of state royalty oil per day. It also calls for the state to sell the firm 100,000 barrels of royalty oil a day during the three to five-year period before the refinery would be operational.

AGO 785683

SB

393

COMMITTEE REPORT

SENATE

FURTHER: FINANCE

1/10/78

Date: ~~1/10/78~~ 1/11/78

Mr. President:

The Committee on RESOURCES has had SB 393 relating to state assumption of the national pollutant discharge elimination system

under consideration and (a majority of the committee) (the committee reports it back as follows)

( ) recommends it do pass ( ) recommends it do not pass

( ) recommends it do pass with attached amendment(s)

( ) recommends it be replaced with CS for _____

and _____ ( ) new title ( ) same title

( ) AND attaches a Letter of Intent ( ) New Fiscal Note

( ) reports it back without recommendation

( ) and recommends it be referred to the _____ Committee

MEMBERS SIGNING DO PASS:

OTHER RECOMMENDATIONS:

C. Tillion No Rec

R. Poland

Chairman

S 60 (rev. 6/77)

AMENDMENT

OFFERED IN THE SENATE: BY: _____

To: _____ SENATE BILL No. 213

HOUSE BILL No. _____

PAGE: 9 / 10 LINE: 24 / 1

Delete [or monitoring, electrocardiographic or
pneumatic radiation, or a similar
reference, or other comparable]

and substitute the following language in
its place [, X-ray, or other [similar
radiation]]

January 10, 1978

The Honorable John L. Rader
President of the Senate
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. President:

Under the authority of art. III, sec. 18 of the Alaska Constitution, and in accordance with AS 24.30.060(b) and the Uniform Rules of the Alaska State Legislature, I am transmitting a bill to provide the Department of Environmental Conservation with sufficient statutory authority to assume responsibility for implementing the National Pollutant Discharge Elimination System ("NPDES") within Alaska.

The NPDES is established under sec. 402 of the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.). It requires that any person discharging a pollutant into water obtain a permit from the United States Environmental Protection Agency ("EPA"). The section also provides, however, that state environmental departments with sufficient authority may implement the NPDES program within their jurisdictions. So far, twenty-seven states and the Virgin Islands have assumed the program.

In 1976, the legislature urged me to direct the Department of Environmental Conservation to assume the NPDES program "as quickly as possible." HCR 122, 9th Leg., 2nd Sess. I share the legislature's belief that water pollution control is a state responsibility, and that our citizens should be able to deal with their own state officials, rather than distant federal bureaucrats, in obtaining water pollution control permits. The primary constraint, until now, has been a lack of funding to properly administer the program. However, under amendments to the federal Act now in Congressional Conference Committee, it is likely that sufficient

federal funds will be available to remove this fiscal stumbling block. Given the probable availability of sufficient federal program grants, the time is ripe for equipping the department with the statutory tools necessary to obtain EPA approval.

The bill will not take effect until EPA has actually delegated the NPDES program to the state, and the department will petition for delegation only when sufficient program funds are secured. By meeting statutory deficiencies in advance, I am confident that the department will be able to assume the program at a far earlier date than if legislation were deferred pending sufficient funding.

The transmitted bill borrows heavily from the model state NPDES bill prepared by the Council of State Governments in 1973. The bill confers upon the department the authority to establish discharge standards according to the criteria established in the federal Act, and provides for permit procedures, and the imposition of permit terms consistent with federal requirements. The bill was also drafted to provide for delegation to the department of the federal dredge and fill permit program contained in sec. 404 of the federal Act. Under pending amendments to the federal Act, this program, as well as the NPDES program, can be delegated to the states, and, certainly, the same considerations warranting a delegation of the NPDES program apply to delegation of the dredge and fill program as well. The bill also allows the department to issue general permits for minor discharges, obviating the need for small operations to become enmeshed in regulatory details when their activities pose no real environmental consequences.

Passage of this legislation will not bring with it a weakening of water pollution control efforts. Under the federal Act, standards established by the department must be as stringent as federal requirements. The bill will, however, make the drafting and monitoring of permits a state function, and will provide for state establishment of standards for those operations for which no federal standard has been adopted.

The bill does pose a legal uncertainty. To gain EPA approval, state programs must provide that permittees consent to inspections of the discharging facilities. 40 C.F.R. § 124.45(c). In Woods and Rhode, Inc. v. Department of Labor (No. 1433, June 2, 1977), the Alaska Supreme Court ruled that the

Occupational Safety and Health Administration could not constitutionally conduct routine warrantless searches of regulated premises. The same reasoning may or may not limit the breadth of inspection authority in the water pollution control field. The bill meets the current federal requirement. If it is subsequently determined that the department cannot impose such an inspection requirement in permits, I am confident that EPA will not revoke its delegation simply on the basis of unavoidable constitutional constraints.

Sincerely,

S/ JSH

Jay S. Hammond
Governor

FISCAL ANALYSIS

ASSUMPTION OF NPDES PERMITS

The subject bill modifies existing statutes to allow the State's adoption of the Federal National Pollution Discharge Elimination System (NPDES) Permit Program. There are about 800 Federal NPDES permits issued in Alaska. The U. S. Environmental Protection Agency (EPA) currently has about four employees assigned to operate this program in Alaska.

The difficulty in preparing a fiscal analysis of this bill stems from the unspecified level of service which this program requires and the amount of man hours that EPA devotes to its operation which aren't charged directly to the NPDES Program. Currently, the Federal government appears to be devoting a minimum amount of effort to this program with uncertain benefit to the environment of the State.

This Fiscal Note assumes a level of service above that currently maintained by the Federal government but much less than maximum/optimum effort. It is anticipated that a short term contract will be developed in the near future to better define costs involved. This contract and eventual funding to support this program is to come from the Federal government. Without full Federal funding, Alaska should probably not adopt the program.

1. AS 46.03.095 permits the department to adopt by regulation effluent limitations previously promulgated by EPA, modify effluent limitations and/or adopt new limitations. This may require up to one year of effort to develop a complete set of Alaskan modifications. However, the initial preliminary adoption could be achieved almost immediately.

   One Environmental Engineer First Year only:

Object Code	Cost
100	32.0
200	4.0
300	3.0
400	.5
500	.5
TOTAL	40.0

2. AS 46.03.100 adopts Federal permits as State permits, specifies Federal violations as State violations, establishes application schedules and allows general permits. No specific costs are incurred by this section.

3. AS 46.03.105 establishes guidelines by which to issue or deny permits. No costs are incurred through the provisions of this section.

4. AS 46.03.110 permits the Department to adopt permit regulations. Because the Department is already adopting similar regulations, no additional costs are incurred by its provisions.

5. AS 46.03.120 provides guidelines for permit termination, specifies permit conditions and additionally requires a departmental response to permit applications within 60 days. Other than the staffing level necessary to attain this level of service (addressed later) no specific costs are incurred by the provisions of this section.

6. AS 46.03.107 defines monitoring and inspection requirements. This section may be construed to generate a cost to the permitee. However, in that the Federal government requires self monitoring now, no additional cost to the permitee is forseen.

7. AS 46.03.715 discusses Solid Waste permits. However because the substance of this section has already been adopted into law, this section has no effect.

   AS 46.03.865 discusses confidentiality of industrial processes and generates no costs to the State.

   AS 46.03.900 establishes definitions.

8. Should the Department adopt the NPDES program. We would be required to service between 800 to 1,000 permits. Most of the permits expire every five years. Additionally, general permits may be issued. For the major permitees (50) annual inspections are required. For the remaindar, inspections would probably be scheduled every three to five years. Additionally, general permits may be issued. For the major permittees (50) annual inspections are required. For the remainder, inspections would probably be scheduled every three to five years. Work load which this entails includes:

   a. Receive and route about 200-250 permit applications per year through the permit function in Program Coordination.

      One Administrative Assistant:

Object Code	Cost
100	22.2
200	1.0
300	4.0
400	1.0
500	1.0
TOTAL	29.2

   b. Review and approve or reject about 200-250 permits/year in Water Programs Division.

      One Engineer/Ecologist

Object Code	Cost
100	32.0
200	4.0
300	3.0
400	.5
500	.5
TOTAL	40.0

c. Mail responses, handle inquires, perform logging, tracking and filing activities, mail permits to applicants and Regional Offices;

One Clerk Typist III

Object Code	Cost
100	15.1
200	.5
300	4.0
400	1.0
500	1.0
TOTAL	21.6

d. Perform about 50 inspections per year at major facilities assuming each inspection requires 3 days ± office, travel, and onsite inspection time.

About 1/2 Environmental Field Officer (Fairbanks schedule)

Object Code	Cost
100	16.0
200	4.0
300	6.0
400	1.0
500	1.0
TOTAL	28.0

e. Perform about 750 to 950 field inspections each 5-year period. Annual rate becomes 150-200 ± inspections per year. Assume each inspection requires about 3 days office travel and on-site inspection time. Each man year results in about 250 man days available. Therefore, 200 inspections X 3 days ÷ 250 = 2 1/2 man days per year.

2 1/2 Environmental Field Officers

Object Code	Cost
100	140.0
200	20.0
300	30.0
400	5.0
500	5.0
TOTAL	200.0

f. Laboratory Analysis of an estimated three to five parameters/sample 100 X 4 parameters average = 4,000 analyses.

Chemist/Biologist

Object Code	Cost
100	23.8
200	1.0
300	6.0
400	5.0
500	1.0
TOTAL	36.8

g. Additionally, a minimum of one additional lawyer will be required to the Attorney General's staff.

One lawyer on A.G.'s staff

Object Code	Cost
100	46.3
200	6.0
300	6.0
400	1.0
500	1.0
TOTAL	60.3

THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. _____

Title Assumption of NPDES Permit System

Requested by Governor Date 12/8/77

II. FISCAL DETAIL

Agency Affected Environmental Conservation, Law

Program Category Affected NRM & EC, Justice

Budget Request Unit(s) Affected Water Programs, Program Coordination, Field, Law

EXPENDITURES (Thousands of Dollars)

	FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
100 PERSONAL SERVICES			327.4	304.6	322.9	342.2
200 TRAVEL			40.5	38.7	41.0	43.4
300 CONTRACTUAL			62.0	62.5	66.2	70.2
400 COMMODITIES			15.0	15.3	16.2	17.3
500 EQUIPMENT			11.0	11.1	11.8	12.5
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL			455.9	432.2	458.1	485.6

FUNDING (Thousands of Dollars)

GENERAL FUND			-0-	-0-	-0-	-0-
FEDERAL FUNDS			455.9	432.2	458.1	485.6
OTHER (Specify)						

POSITIONS

FULL TIME			9	8	8	8
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

See attached detailed analysis.

Inflation taken at 6%

IV. DATE 12/8/77 PREPARED BY [signature]

AGENCY Environmental Conservation

PHONE 465-2604

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 10/76)

SB

399

COMMITTEE REPORT

SENATE

1/11/78

FURTHER: FINANCE

Date:

Mr. President:

The Committee on RESOURCES has had SB 399
supplemental appropriation to Dept. of Fish & Game

under consideration and (a majority of the committee) (the committee reports it back as follows)

( ) recommends it do pass ( ) recommends it do not pass

( ) recommends it do pass with attached amendment(s)

( ) recommends it be replaced with CS for _____

and _____ ( ) new title ( ) same title

( ) AND attaches a Letter of Intent ( ) New Fiscal Note

( ) reports it back without recommendation

( ) and recommends it be referred to the _____ Committee

MEMBERS SIGNING DO PASS:

OTHER RECOMMENDATIONS:

_____
Chairman

S 60 (rev. 6/77)

AMENDMENT

OFFERED IN THE SENATE: BY: _____

To: _____ SENATE BILL No. _____

HOUSE BILL No. _____

PAGE: _____ LINE: _____

SUMMARY - CS FOR SENATE BILL 399

"AN ACT MAKING A SUPPLEMENTAL APPROPRIATION TO THE DEPARTMENT OF FISH AND GAME, (d)(2) TRAVEL, AND SALMON TRANSPORTATION."

SECTION (1) OF THE BILL APPROPRIATES $41,800 FROM THE GENERAL FUND TO THE DEPARTMENT OF FISH AND GAME TO COVER EXPENSES RELATING TO (d)(2) PROPOSALS WHICH WERE NOT INCLUDED IN THE FY 78 BUDGET.

THE FUNDS HAVE BEEN AND WILL BE USED FOR:

(1) PRESENTING THE STATE'S (d)(2) POSITION

(2) PREPARING MAPS, BOOKLETS, OVERLAYS, ETC.

(3) ASSISTING THE CONGRESSIONAL DELEGATION

(4) ANALYZING (d)(2) LEGISLATION

(5) PUBLIC INFORMATION

(6) TRAVEL

SECTION (2) APPROPRIATES $68,700 TO THE DEPARTMENT OF FISH AND GAME FOR EXPENSES INCURRED IN AN EMERGENCY FISH LIFT ON THE RUSSIAN RIVER LAST SUMMER. THE LIFT WAS NECESSARY BECAUSE OF UNUSUALLY HIGH RAINFALL WHICH PREVENTED SOCKEYE SALMON FROM PASSING THE FALLS TO THEIR SPAWNING GROUNDS. LIFTS OCCURRED DURING THE PERIOD OF JULY 7-19 & AUGUST 13-18. THE RUSSIAN RIVER SYSTEM ANNUALLY CONTRIBUTES AN ESTIMATED 30 PERCENT OF THE COMMERCIAL SOCKEYE HARVEST IN COOK INLET, AND CONTRIBUTES 8,000-12,000 FISH EACH YEAR TO THE SPORT FISHERY.

OF THE TOTAL APPROPRIATION, $41,600 IS FROM THE GENERAL FUND WITH THE REMAINDER FROM OTHER FISH AND GAME FUNDS.

02-0018

STATE
of ALASKA

MEMORANDUM

SB 399

TO: Ron Lind, Director
Division of Budget and Management
Office of the Governor

DATE: January 27, 1978

FROM: Ronald O. Skoog
Commissioner
Department of Fish and Game

SUBJECT: FY'78 Supplemental, (d)(2)
Support Activities

The Department of Fish and Game, Division of Game, requests a supplemental in the amount of $47,800. This supplemental covers projected expenses and expenses incurred to date in the Department's support of the State's (d)(2) position in Congress. This supplemental includes the $11,000 already approved by the Governor on page 4 of the Executive budget document.

At the time that the Department's representative on (d)(2), Mr. Ron Somerville, was detailed to assist the Governor's Office in its efforts in Congress, it was agreed that the Department would assume most costs until June 30, 1977. After that date, the Department would pay only Mr. Somerville's salary and the additional support costs would be provided either by the Department of Natural Resources or the Office of the Governor. In FY 78, the Department has incurred total costs (excluding Mr. Somerville's salary) of $36,845 through December 31, 1977. A detail sheet is attached. These costs have been charged to the headquarters investigations component (codes 11-41-2-403 and 410). All the costs were made under the assumption that they would be reimbursed. Unless this reimbursement takes place, the activities planned for FY 78 in the headquarters investigations component will need to be reduced drastically.

Mr. Somerville has been working closely with Commissioner LeResche in his support of the State's (d)(2) position. By copy hereof, Commissioner LeResche is requested to support this supplemental request.

Attachment:

cc: Commissioner LeResche
Ron Sommerville
Bob Rausch
Jeff Morrison
John Stewart

MEMORANDUM State of Alaska

RECEIVED
DEC 5 1977
BUDGET & MANAGEMENT

TO: Ron Lind
Director
Office of Budget & Management
Department of Administration

DATE: December 5, 1977

FILE NO:

TELEPHONE NO:

SUBJECT: Supplemental - (d)(2)

FROM: Ronald J. Somerville
Alaska Department of
Fish and Game
Anchorage

Because of the time crunch expressed by Mr. Chuck Taylor, I am corresponding directly.

I believe my September 8, 1977 memo to Commissioner LeResche was routed to your office. At that point, I projected (d)(2) expenditures in my area of responsibility at:

F.Y. 1978 - $94,593 and F.Y. 1979 - $47,790

This excluded my salary which was apparently being picked up by my Department.

As I'm sure you are aware, my present position was established solely for the purpose of assisting in preparing, presenting and selling the State's (d)(2) position. Although I'm located in the Commissioner of Fish and Game's office, I am assigned to assist Commissioner LeResche in many aspects of the (d)(2) issue.

Initially, it was agreed that all expenses associated with my assignment would be carried by either the Department of Natural Resources or the Governor's office. From July 1, 1977 to November 30, 1977, my Department has paid and is still holding the following (d)(2) expenses:

Line Item	
100 - Temporaries	$15,703.64
200 - Travel and per diem	6,358.13
300 - Contractual services (photo processing, mapping, printing, etc.)	10,453.11
400 - Commodities	4,708.15
Total	$37,223.03

Most of the above expenses were for:

1. Designing and printing of maps, summary booklets, overlays and visual support material.

2. Preparation of statewide resource maps for use at Congressional hearings and workshops.

3. Travel and per diem in-state and out-of-state primarily to provide technical staff support.

4. Detailed staff analysis of legislative impacts.

5. Distribution of material to organizations and individuals.

If even the minimal effort we are putting forth on (d)(2) is to continue, we must be willing to finance it. I still believe my estimates of $94,000 for F.Y. 1978 and $48,000 for F.Y. 1979 are accurate. In analyzing my priorities and expenditures, however, I would alter some items.

In addition to the $37,223.03 which should be AV'd to the Department of Fish and Game, we should obligate a minimum of the following amounts:

Line Item	F.Y. 1978 Dec. 1 - June 30	F.Y. 1979
100 - Temporaries	$23,000	$25,000
200 - Travel & per diem	12,000	10,000
300 - Contractual services (Dropping request for office space)	12,000	10,000
400 - Commodities	7,000	3,000
Totals	$54,000	$48,000

These funds will be used for the following:

1. Presenting State's (d)(2) position.

2. Assisting Congressional delegations with logistic and staff support.

3. Preparing maps, booklets, overlays and other material.

4. Maintaining liaison with and providing material for supportive organizations.

5. Legislative analysis (primarily in analysis of resource use impacts and proposal comparisons).

6. Assisting in Congressional workshops.

7. Preparation of alternatives with supporting information.

8. Coordinating Departmental input.

9. Keeping the public informed on progress of (d)(2) legislation.

10. Soliciting support for State's position.

11. Illustrating and justifyi. overnor's Cooperative Management concept.

I hope the above material is satisfactory. If you need additional justification, please let me know.

cc: Commissioner Skoog
Commissioner LeResche

02 0018 (Rev. 10-76)

STATE
of ALASKA

MEMORANDUM

TO: Ron Lind, Director
Division of Budget and Management
Office of the Governor

DATE: December 6, 1977

FILE NO:

TELEPHONE NO:

FROM: for Ronald O. Skoog
Commissioner
Department of Fish and Game

SUBJECT: FY'78 Supplemental Request,
Russian River Fish Lift

The Department of Fish and Game is requesting a total supplemental appropriation of $68,700 to pay for unexpected expenses incurred with the transportation of spawning red salmon up the Russian River. Since both sport fishermen and commercial fishermen will benefit from the action taken, the supplemental request would provide funding for both the Divisions of Sport Fish and Commercial Fish. The Division of Commercial Fish projected deficit without the supplemental is $41,600 in General Funds. The Division of Sport Fish projected deficit without the supplemental is $27,100 in Fish and Game Funds.

The Russian River fish lift was necessitated by the inability of the spawning red salmon to negotiate the Russian River falls. Heavy rains and run-off in the Russian River watershed this summer resulted in very high water runoff over the Russian River falls. The volume and velocity of water at the falls was such that the migrating red salmon were unable to negotiate the falls as they are able to do during a normal year. Since the spawning and rearing area for most of the red salmon in the Russian River system is above the falls, the Department felt that it was mandatory to provide whatever assistance was necessary to enable the fish to negotiate the falls successfully. This particular situation occured twice this year as the Russian River system has both an early and a late Sockeye run.

The Russian River system annually contributes an estimated 30 percent of the commercial Sockeye harvest in Cook Inlet and 8000 to 12,000 fish to the sport fishery. This fish lift during the early run occured from July 7 through July 19 and resulted in the helicopter transportation of 8,477 fish from below to above the falls. The second run of Russian River fish occured about one month after the first run. From the period of August 13 through August 18, the Department lifted 7,436 fish above the Russian River. For purposes of administrative convenience the Division of Sport Fish was charged with the expenses of the first fish lift and the Division of Commercial Fish was charged with the expenses of the second fish lift. All of the activity undertaken in the fish lift was necessary in order to preserve the biological and economic viability of the Russian River Sockeye Salmon.

Failure to approve the supplemental request will seriously impact both the Division of Commercial Fish and Sport Fish. It will be necessary to make program reductions in the amount of the supplementals in both these Divisions. In Sport Fish the program reductions will eliminate all of

the restoration efforts planned by the Division of Sport Fish during FY'78. Even though actual expenditures in the Sport Fish restoration component were relatively minimal during FY'76 and FY'77 as a result of the draw down on the Fish and Game Fund and a general shortage of toxicant, the plans for FY'78 included the following:

1) purchase of toxicant for use in lake rehabilitation work on five selected waters.

2) implementation of the postponed recreational fishery lake management programs requiring needed maintenance on five lake water control structures, lake rehabilitation and supplemental studies to provide the required evaluation.

3) the implementation of toxicant rehabilitation on five lakes.

4) expansion and development of additional egg take sites.

These plans will need to be terminated if the supplemental is not approved.

In the Commercial Fisheries Division the Cook Inlet Management Budget will be forced to reduce considerable effort in gathering and assessing the information for proper management of the fisheries in this area. The significant cutbacks will greatly decrease the information base upon which to make management decisions. As the risk of management error increases an economic impact could occur if the management decisions result in underharvest of any particular fishery resource in Cook Inlet. Similarly, an overharvest undetected by the Cook Inlet fishery managers until after the fact would decrease the number of fish required for reproduction. To supplement the funds needed in Cook Inlet from other areas of the existing Commercial Fisheries Division budget would only serve to shift the risk of management error to another priority fishery.

Attached is a copy of a report to the Board of Fisheries on the Russian River helicopter fish lift. In addition, a summary of expenditures of the Russian River fish lifts is also attached. Your favorable consideration of this supplemental request will be most appreciated.

cc: Carl Rosier, Director
Division of Commercial Fisheries

Rupe Andrews, Director
Division of Sport Fish

Jeff Morrison, Director
Division of Administration

DETAIL OF FISH AND GAME (d)(2) EXPENSES

7/1/77 - 12/31/77

	11-41-2-403	11-41-2-410
Personal Services	-0-	$17,037
Travel & Per Diem	$2,574	$ 4,332
Contractual Services (Photo processing, mapping, printing, etc.)	-0-	$ 8,147
Commodities	-0-	$ 4,755
TOTAL	$2,574	$34,271
GRAND TOTAL	$36,845	

All Charges in code 11-41-2-403 will be AV'd to code 410. Specific items prepared in support of the State's (d)(2) position include 1) summary booklet on (d)(2) lands and S.1787 (Senator Steven's bill); 2) printing of 8½ X 11 color maps depicting the effect of S.1787; 3) photocopying expenses for numerous copies of HR39 and other back-up material; 4) 3 sets of 6 maps each (Series E) with approximately 200 mylar overlays for each set depicting resources on Alaskan lands (One set each for Somerville, Stevens, and Young). Most of the temporary time (estimated 80%) and commodities expenses were spent in the preparation of item 4. The remainder of the temporary time was spent on clerical and other miscellaneous duties. Travel expenses were primarily for the Department's representative, Mr. Somerville, to provide technical support in Washington, D. C. A few other trips were made in-state for the same purpose.

1/1/78 - 6/30/79

An estimated $11,000 in travel expenses will be needed from the present through FY'79. This travel will be for Mr. Somerville to continue to provide his technical support to the Congressional delegation in Washington, D. C. .

United States Department of the Interior
FISH AND WILDLIFE SERVICE
ALASKA AREA OFFICE
813 D STREET
ANCHORAGE, ALASKA 99501

COMMISSIONER'S OFFICE
RECEIVED
JAN 17 1978

DEPARTMENT OF FISH AND GAME
JAN 12 1978

Dr. Ronald Skoog, Commissioner
Alaska State Dept of Fish and Game
Subport Building
Juneau, Alaska 99801

Dear Dr. Skoog:

I have been informed by Jim Frates, Refuge Manager of the Kenai National Moose Range, that ADF&G is proceeding with drawings and bid specifications for the Russian River fish bypass with the intent to issue bid invitations by January 17.

Jim advised members of your engineering staff in Anchorage that the EIA has not been completed. In addition we have not had the opportunity to develop a complete set of construction stipulations that should be a part of the information available to potential bidders.

We do consider it ill advised to solicit bids prior to the completion of the EIA and the issuance of a special use permit or the development of a cooperative agreement as may be appropriate.

We certainly appreciate the concern of ADF&G in trying to get this project into the construction stage, and we would hope that you can appreciate our position on this matter. We will certainly work with your staff to expedite the process, but this is just one of several matters, all of which seem to demand immediate attention. I bring this to your attention in an attempt to avoid any misunderstanding as to our responsibilities and our actions on this issue.

Sincerely yours,

Gordon W. Watson

Area Director

cc: Jerry Gilliland
Bob Palmer
Kenai NMR

by guard to SF & CF + Sue

CONSERVE AMERICA'S ENERGY

Save Energy and You Serve America!

SB

428

COMMITTEE REPORT

SENATE

FURTHER: None

1/19/78

Date: _____

Mr. President:

The Committee on RESOURCES has had SB 426

commercial fishing interim use permits, entry permits, & vessel licenses

under consideration and (a majority of the committee) (the committee reports it back as follows)

( ) recommends it do pass ( ) recommends it do not pass

( ) recommends it do pass with attached amendment(s)

( ) recommends it be replaced with CS for _____

and _____ ( ) new title ( ) same title

( ) AND attaches a Letter of Intent ( ) New Fiscal Note

( ) reports it back without recommendation

( ) and recommends it be referred to the _____ Committee

MEMBERS SIGNING DO PASS:

OTHER RECOMMENDATIONS:

_____

Chairman

S 60 (rev. 6/77)

A M E N D M E N T

Offered in the SENATE By _____

To: _____ SENATE BILL NO. _____

_____ HOUSE BILL NO. _____

AMENDMENT: Page _____ Line _____

01-A6LH

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

COMMERCIAL FISHERIES ENTRY COMMISSION

POUCH KB – JUNEAU 99801

February 3, 1978

The Honorable Kay Poland
Chairman, Senate Resources Committee
Alaska State Senate Pouch V
Juneau, Alaska 99811

Dear Senator Poland:

Re: SB 428

Regarding Senator Tillion's question regarding the term "willfully" as it appears in Sec. 3 of SB 428 at page 3 line 13 and page 4 line 2, we have contacted Dan Hickey at the Department of Law. Mr. Hickey indicated that the term "willfully" appearing at page 3 line 13 should be omitted. The term "willfully" as used at page 4 lines 2 and 6 should be deleted and the word "knowingly" substituted in its place. A letter from Ann Carpinetti of Mr. Hickey's office confirming the above-mentioned amendments should be received by your committee shortly, if it has not been received already.

The propriety of the term "other unavoidable hardship" appearing at page 1 line 12 has been addressed by Pete Froehlich, the Commission's Assistant Attorney General. His statements regarding this wording should have been received by you by now. If not, his letter will be forthcoming shortly.

The Commission will be happy to send a representative to the Monday, February 6, Committee meeting to answer any questions. The Commission has also requested that Pete Froehlich attend the meeting to answer any legal questions the Committee may wish to advance.

If there are any further questions or other service you may require, please feel free to contact me at the Commission. Your assistance in this matter is greatly appreciated. The Commissioners are presently out of town holding previously scheduled public hearings or I'm sure one of them would have

responded personally to the Committee's inquiries.

Respectfully,

David V. George
Legal Advisor

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

CRIMINAL DIVISION

POUCH KC – STATE CAPITOL
JUNEAU, ALASKA 99811

February 6, 1978

The Honorable Kay Poland
Senator
State of Alaska
Pouch V
Juneau, Alaska 99811

Re: SB 428

Dear Senator Poland:

It is my understanding, after discussing Senate Bill 428 with a representative from the Commercial Entries Fisheries Commission, that your committee desired some comment from the Criminal Division of the Department of Law regarding the level of culpability under proposed amendments which would be required to be proven for conviction of certain prohibited acts under AS 16.43, which regulates entry into Alaska commercial fisheries.

Section 3 of Senate Bill 428 amends AS 16.43.360(a) in part by adding the requirement that a person be proved to have acted wilfully before he may be convicted of a statutory or regulatory violation of the chapter. (p.3, line 13). Presently no proof of the violator's state of mind is necessary under the language of the statute to establish a violation under AS 16.43.360(a). I would recommend deleting this portion of the amendment from the bill. It is difficult to establish a wilfull state of mind in prosecuting violations of regulatory provisions, and generally no conscious state of mind is constitutionally required for regulatory violations. Unless there is some other purpose for the amendment, I see no reason to make enforcement of AS 16.43 more difficult for the state.

Section 4 of the bill amends AS 16.43.360(b), which prohibits making a false statement of fact in an application

for renewal of an interim use or entry permit. The proposed amendment in part adds the requirement that a person be proved to have acted wilfully (p. 4, lines 2 and 6) before he may be convicted of violating the subsection. Apparently the purpose of this amendment is to avoid the prosecution under the sub-section of persons who mistakenly mistate facts on an application or renewal form. I would recommend substituting "knowingly" for "wilfully" on page 11, lines 2 and 6. While both terms are similar and indicate a state of mind where the offender is aware that he or she is making a false statement, the use of "knowingly" is suggested because it is more precise and additionally, complies with the efforts by the Criminal Code Revision Subcommission to clarify and limit the terms used to define culpable mental states for criminal offenses. The proposed criminal code employs four mental states: intentional, knowing, reckless, and criminal negligence. If criminal prohibitions in other titles of the Alaska Statutes also use these states of mind, our statute will be easier for people to understand and for the courts to interpret.

Thank you for the opportunity to comment on Senate Bill 428.

Very truly yours,

AVRUM M. GROSS
ATTORNEY GENERAL

DANIEL W. HICKEY
CHIEF PROSECUTOR

By: Anne Carpeneti
Anne Carpeneti
Assistant Attorney General

AC:lw

cc: Art Peterson
Assistant Attorney General

SUMMARY SB 428

"An Act relating to commercial fishing interim-use permits, entry permits, and vessel licenses."

SB 428 as amended by the Resources Committee, would liberalize the conditions under which limited entry permits may be transferred on an emergency basis, authorizing the Commercial Fisheries Entry Commission to revoke permits for falsification of information, and strengthening the penalty provisions of the Limited Entry Act.

Section I of the bill would liberalize the conditions under which the Commission may authorize temporary emergency transfers of permits. Also, interim-use permits issued pending final action on an application could be transferred to alleviate hardships pending final action. Special attention was given to the definition of "hardships" to prevent abuse of permit transfer.

Section 2 of the bill would authorize the Commission to revoke a permit when the holder had falsified information to the Commission. The revocation would be only after a hearing, at which the holder would have the opportunity to present evidence to refute the Commission's proposed action. The Resources Committee debated at considerable length, the judicial recourse of the permit holder.

Sections 3 and 4 of the bill would strengthen the penalties for violation of the Limited Entry Act, and would enable courts to order forfeiture of permits upon conviction of first or second offenses. Currently forfeiture is only possible on third convictions. The bill also allows for possible imposition of a fine not to exceed $5,000 for making a false statement(s) in a permit application or renewal. The Committee has offered minor amendments to Sections 3 & 4 upon the advice of the Commissions legal counsel and the Attorney General's office.

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K – STATE CAPITOL
JUNEAU 99811

February 1, 1978

The Honorable Kay Poland
Chairman, Senate Resources
Committee
Alaska State Legislature
Pouch V, Capitol Building
Juneau, Alaska 99811

Re: SB 428, relating to commercial fishing permits

Dear Senator Poland:

It has come to my attention that a question arose at the January 31, 1978 hearing on this bill before your committee concerning the words "other unavoidable hardship" as used on page 1, line 12 of the bill. I am writing to share with you and the committee my thoughts on this language.

In my opinion, it is possible for the Commercial Fisheries Entry Commission to administer this criteria for temporary emergency transfer of permits both fairly and restrictively. The entire sentence containing the language at issue reads:

> The commission shall adopt regulations providing for the temporary emergency transfer of entry permits and interim use permits when illness, disability, death, or other unavoidable hardship prevents the permit holder from participating in the fisher." (Emphasis added).

In accordance with the well-established principle of statutory construction of ejusdem generis, where general words follow a listing of specific words, the general words are construed to embrace only circumstances similar in nature to those emumerated by the previous specific words. (See 2A Sands, Sutherland Statutory Construction, § 47.17, 4th Ed. 1973). Thus, "other unavoidable hardship" includes only circumstances similar in nature and gravity to illness, disability and death.

The phrase "unavoidable circumstances" is used in the Commission's regulations at 20 AAC 05.630(a)(5). In that context, the Commission has interpreted the phrase to mean circumstances (1) beyond one's control which prevent his participation in a fishery, (2) in frustration of his specific definite intent to do so, (3) despite all reasonably possible efforts. Applying the same meaning to "unavoidable hardship," along with the principle of ejusdem generis, results in the interpretation that only serious hardship beyond one's control which frustrates his specific and definite intent to participate in a fishery despite all reasonably possible efforts would be included within the scope of those words.

This seems to be a sufficiently narrow criteria for emergency transfers, while at the same time allowing for the myriad of possible types of unavoidable hardship which may properly justify such a transfer.

I hope this letter is of some help in your further consideration of this bill. Please contact me if any questions on this matter remain.

Sincerely,

AVRUM M. GROSS
ATTORNEY GENERAL

By: Peter Froehlich
Peter B. Froehlich
Assistant Attorney General

PBF:bvd

cc: Allan Adasiak

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

#1 #3

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM

February 10, 1978

SUBJECT: Senate Bill 428 am

TO: Senator John Huber

FROM: Billy G. Berrier
Director
Division of Legal Services

As I told you verbally, the hearing procedures in this bill differ from the hearing procedures in the Administrative Procedure Act. The reference to the Administrative Procedure Act in subsection (h) on Page 3, lines 10 and 11, incorporate the appeal procedures of the Administrative Adjudicative Act only. You, therefore, asked for an amendment which would allow a de nova appeal as of right and which would require that false information used as a basis for revoking an entry permit be material. Amendments to that effect are attached.

BGB:jpd

Enclosures

A M E N D M E N T #4

Offered in the SENATE By Huber

TO: SENATE BILL NO. 428 am

Page 1, line 21: #3

Following the word "correct" add the word "materially".

Page 3, lines 10 and 11:

Delete all material and substitute:

(h) The permit holder may appeal to the superior court for, and is entitled to, trial de nova of the board's action. Either party to the appeal may demand a jury trial.

See #3

STATE of ALASKA

MEMORANDUM

S. Resources

TO: The Honorable Kay Poland
Chairman, Senate Resources Committee
Alaska State Senate

DATE : February 3, 1978

FROM: David V. George
Commission Legal Advisor
Commercial Fisheries Entry Commission

SUBJECT: Letter of Explanation of SB 428 re cost of proceeding under proposed section relating to administrative revocation of permit

Senator Huber has raised the question of whether judicial review under the Administrative Procedure Act (APA) as provided in Section 2 of SB 428, would act as a defacto financial prohibition to the permit holder's judicial review of the administrative agency's action. The sections of the APA brought into issue are AS 44.62.560 and 570. Copies of these sections are appended to this reply.

SB 428 Section 2 of the Administrative Level:

Due process requires that the proposed revocation of a permit be preceded by notice of the proposed action, and that the permit holder be afforded an opportunity to be heard prior to a resolution of the issues.

SB 428 Section 2 proposes a mechanism for administrative revocation of a permit by the Commercial Fisheries Entry Commission. This power does not presently exist. SB 428 could have stopped there and left the Commission with the obligation to adopt regulations regarding the procedure to be employed which were consistent with due process. However, because of the gravity of the potential consequences of permit revocation, the Commission felt it was appropriate for the Legislature to provide for an administrative revocation procedure which ensured the respect of the permit holder's due process rights. This legislative statement in effect says: "If you cheat you'll be punished, but we are going to make sure that the State plays by the rules so that it doesn't cheat you."

Before any administrative hearing then, the State must give notice of the proposed action. The permit holder is given the opportunity to appear at the hearing, with or without counsel, and give his side of the story. The responsibility of the permit holder at the hearing is no greater than that required at any administrative hearing--he may, if he wishes, show up and contest the proposed action.

Section 2(b)(2) imposes a greater burden on the State, however. Section 2(b)(2) requires that before the Commission acts it must have received an affidavit setting forth facts warranting permit revocation. The notice requirements of Section 2(b)(2-6) were drafted requiring specificity on everything reasonably necessary to apprise the permit holder of the potential loss involved and the basis of the proposed action. This specificity will help guarantee a meaningful hearing.

Under SB 428, the State is also required, when holding the hearing, to provide a hearing officer who will act as the presiding officer of the hearing. The hearing officer is at the expense of the State, but will employ his legal background to aid both the permit holder and the Commission in the presentation of necessary facts. It is believed that use of a hearing officer will help insure greater impartiality as well as a more concise record.

In review, the formal hearing procedures required by SB 428 at the administrative level impose additional burdens only upon the State and not upon the party against whom the action is proposed.

SB 428 Section 2 and the Judicial Level:

Senator Huber has expressed concern that affording judicial review of the Commission's decision pursuant to AS 44.62.560-570 might be financially unfeasible for the permit holder to pursue. It was apparently Senator Huber's concern that a "de novo" judicial review might lower the cost of this review were a less formal administrative hearing held at the outset.

Due process requires the right of judicial review of the Commission's decision, whether the administrative hearing is formal or informal. The nature of the review would ultimately dictate the amount of expense to the permit holder. The proper forum for review is the Superior Court. [AS 22.10.020, 22.15.050, 44.62.560]

Were the Superior Court to hold a "trial de novo", cost to the litigant would be greatly increased. Evidence submitted at the administrative hearing, whether it was formal or informal, would have to be reintroduced at a "trial de novo" subject to all appropriate objections and cross-examination rights of the State. Witnesses would have to appear, perhaps for the second time, and the litigant himself would be making a second appearance thus increasing travel expenses.

Pre-trial discovery may be in order requiring additional costs. Since a trial of three or four days is much more difficult to schedule on the court calendar than a half-day argument (as would be the case were there not a "trial de novo"), greater delay could be anticipated than if the case were one of simple appellate review. All told, an informal administrative hearing followed by a trial "de novo" at the judicial level would substantially increase, rather than decrease, the direct cost to the permit holder.

Review under AS 44.62.560 generally amounts to a review of the record of the administrative hearing to determine the propriety of the administrative action taken. An appellant is required to transmit the record of the administrative agency hearing to the Superior Court at his own cost and provide a cost bond on appeal. In the Commission's experience, for cases involving permit decisions, this is usually no more than $350.00. The Superior Court may, in its discretion, order additional evidence or require a hearing "de novo." [570(d)] Therefore, Sections 560 and 570 of AS 44.62 do provide for the possibility of a "de novo" hearing where justice requires.

Conclusion

Section 2 of SB 428 as proposed will increase the responsiveness of State government at the administrative level, while imposing no greater burden upon the permit holder than would a less formal administrative hearing procedure.

Judicial review of an administrative determination under AS 44.62.560 and 570 provides a much less costly avenue of review than would a mandatory trial "de novo." Notwithstanding, Sections 560 and 570 do allow sufficient discretion whereby the Superior Court may order a trial "de novo" where justice dictates.

It would therefore appear that SB 428 provides a fair method of civil revocation of an entry permit, which is also the least costly alternative available.

DVG:eb

requires the agency to make findings of fact regarding conditions which have changed since the imposition of the penalty at least one year previous. 1963 Ops. Att'y Gen., No. 10.

Sec. 44.62.560. Judicial review. (a) Judicial review by the superior court of a final administrative order may be had by filing a notice of appeal in accordance with the applicable rules of court governing appeals in civil matters. Except as otherwise provided in this section, the notice of appeal shall be filed within 30 days after the last day on which reconsideration can be ordered, and served on each party to the proceeding. The right to appeal is not affected by the failure to seek reconsideration before the agency.

(b) The complete record of the proceedings, or the parts of it which the appellant designates, shall be prepared by the agency. A copy shall be delivered to all parties participating in the appeal. The original shall be filed in the superior court within 30 days after the appellant pays the estimated cost of preparing the complete or designated record or files a corporate surety bond equal to the estimated cost.

(c) The complete record includes (1) the pleadings, (2) all notices and orders issued by the agency, (3) the proposed decision by a hearing officer, (4) the final decision, (5) a transcript of all testimony and proceedings, (6) the exhibits admitted or rejected, (7) the written evidence, and (8) all other documents in the case.

(d) Upon order of the superior court, appeals may be taken on the original record or parts of it. The record may be typewritten or duplicated by any standard process. Analogous rules of court governing appeals in civil matters shall be followed where this chapter is silent, and when not in conflict with this chapter.

(e) The superior court may enjoin agency action in excess of constitutional or statutory authority at any stage of an agency proceeding. If agency action is unlawfully withheld or unreasonably withheld, the superior court may compel the agency to initiate action. (§ 24 (ch 2) ch 143 SLA 1959)

Cross reference. — See note to AS 44.62.570.

This section and AS 44.62.570 prescribe the manner and scope of judicial review. Mobil Oil Corp. v. Local Boundary Comm'n, Sup. Ct. Op. No. 989 (File No. 1947), 518 P.2d 92 (1974).

But they do not address the form of an agency's determinations. Mobil Oil Corp. v. Local Boundary Comm'n, Sup. Ct. Op. No. 989 (File No. 1947), 518 P.2d 92 (1974).

When review is proper. — Review is proper where postponement of appellate review until a final judgment is entered by the superior court may result in injustice because of impairment of a legal right and where the order sought to be reviewed is of such substance and importance as to justify deviation from the normal appellate procedure by way of appeal and to require the immediate attention of this court. Mukluk Freight Lines v. Nabors Alas. Drilling, Inc., Sup. Ct. Op. No. 967 (File No. 1870), 510 P.2d 408 (1973).

When order is final. — An order by the trial court as a general rule is said to be final if it completely and finally disposes of the contested claims on their merits. Mukluk Freight Lines v. Nabors Alas. Drilling, Inc., Sup. Ct. Op. No. 967 (File No. 1870), 516 P.2d 408 (1973).

The term "finality" is subject to several definitions. Mukluk Freight Lines v. Nabors Alas. Drilling, Inc., Sup. Ct. Op. No. 967 (File No. 1870), 516 P.2d 408 (1973).

the superior court to assert jurisdiction and grant preliminary relief in a case where an agency has established a permanent rate. A.J. Industries, Inc. v. Alaska Pub. Serv. Comm'n, Sup. Ct. Op. No. 622 (File No. 1173), 470 P.2d 537 (1970), rev'd on other grounds on rehearing, 483 P.2d 198 (1971).

Appeal to court to obtain review and return to court to continue litigation are separate processes. — Appealing to a court for the purpose of obtaining review of an inferior tribunal's order and returning to a court with retained jurisdiction for the purpose of continuing litigation are separate and distinct legal processes. Greater Anchorage Area Borough v. City of Anchorage, Sup. Ct. Op. No. 856 (File No. 1569), 504 P.2d 1027 (1972).

Court apprising parties of right to seek review did not retain jurisdiction. — A lower court which merely apprised the parties of their rights to seek judicial review of an administrative adjudication under this chapter did not retain jurisdiction. Greater Anchorage Area Borough v. City of Anchorage, Sup. Ct. Op. No. 856 (File No. 1569), 504 P.2d 1027 (1972).

Applied in Wilson v. Employment Security Comm'n, 6 Alaska L.J. No. 3, p. 93 (March, 1968); Jager v. State, Sup. Ct. Op. No. 1161 (File No. 2057), 537 P.2d 1100 (1975); Moore v. State, Sup. Ct. Op. No. 1284 (File Nos. 2551, 2587), 553 P.2d 8 (1976).

Stated in Alaska Transp. Comm'n v. Alaska Airlines, Inc., Sup. Ct. Op. No. 429 (File No. 881), 431 P.2d 510 (1967); Matanuska-Susitna Borough v. Lum, Sup. Ct. Op. No. 1179 (File Nos. 2241, 2250), 538 P.2d 994 (1975).

Cited in Leege v. Martin, Sup. Ct. Op. No. 131 (File No. 256), 379 P.2d 447 (1963); R.C.A. Serv. Co. v. Liggett, 2 Alaska L.J. No. 1, p. 7 (Jan., 1964); King v. Alaska State Housing Auth., Sup. Ct. Op. No. 917 (File No. 1613), 512 P.2d 887 (1973); Alaska Pub. Util. Comm'n v. Greater Anchorage Area Borough, Sup. Ct. Op. No. 1139 (File No. 2314), 534 P.2d 549 (1975).

Am. Jur. reference. — 42 Am. Jur., Public Administrative Law, § 185.

Sec. 44.62.570. Scope of review. (a) An appeal shall be heard by the superior court sitting without a jury.

(b) Inquiry in an appeal extends to the following questions: (1) whether the agency has proceeded without, or in excess of jurisdiction; (2) whether there was a fair hearing; and (3) whether there was a prejudicial abuse of discretion. Abuse of discretion is established if the agency has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.

(c) The court may exercise its independent judgment on the evidence. If it is claimed that the findings are not supported by the evidence, abuse of discretion is established if the court determines that the findings are not supported by (1) the weight of the evidence, or (2) substantial evidence in the light of the whole record.

(d) The court may augment the agency record in whole or in part, or hold a hearing de novo. If the court finds that there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced or which was improperly excluded at the hearing, the court may (1) enter judgment as provided in (e) of this section and remand the case to be reconsidered in the light of that evidence; or (2) admit the evidence at the appellate hearing without remanding the case.

(e) The court shall enter judgment setting aside, modifying, remanding, or affirming the order or decision, without limiting or controlling in any way the discretion legally vested in the agency.

(f) The court in which proceedings under this section are started may stay the operation of the administrative order or decision until (1) the

court enters judgment, (2) a notice of further appeal from the judgment is filed, or (3) the time for filing the notice of appeal expires.

(g) No stay may be imposed or continued if the court is satisfied that it is against the public interest.

(h) If further appeal is taken, the supreme court may, in its discretion, stay the superior court judgment or agency order.

(i) If a final administrative order or decision is the subject of a proceeding under this section, and the appeal is filed while the penalty imposed is in effect, finishing or complying with the penalty imposed by the administrative agency during the pendency of the proceeding does not make the determination moot. (§ 25 (ch 2) ch 143 SLA 1959)

This section and AS 44.62.560 prescribe the manner and scope of judicial review. Mobil Oil Corp. v. Local Boundary Comm'n, Sup. Ct. Op. No. 989 (File No. 1947), 518 P.2d 92 (1974).

But they do not address the form of an agency's determinations. Mobil Oil Corp. v. Local Boundary Comm'n, Sup. Ct. Op. No. 989 (File No. 1947), 518 P.2d 92 (1974).

Questions for review. — One type of administrative decision on questions of law involves questions in which the particularized experience and knowledge of the administrative personnel goes into the determination. When this type of question is presented to the court for review, deference should be given to the administrative interpretation, since the expertise of the agency would be of material assistance to the court. The other kind of case presents questions of law in which knowledge and experience in the industry affords little guidance toward a proper consideration of the legal issues. These cases usually concern statutory interpretation or other analysis of legal relationships about which courts have specialized knowledge and experience. Consequently, courts are at least as capable of deciding this kind of question as an administrative agency. Swindel v. Kelly, Sup. Ct. Op. No. 812 (File Nos. 1416, 1418), 499 P.2d 291 (1972).

Leasing decisions of the division of lands and Department of Natural Resources are subject to judicial review. Such judicial review would be governed by the relevant provisions of the Administrative Procedure Act (AS 44.62). Swindel v. Kelly, Sup. Ct. Op. No. 812 (File Nos. 1416, 1418), 499 P.2d 291 (1972).

Four principal standards of review. — In interpreting this section the supreme court has recognized at least four principal standards of review of administrative decisions. These are the "substantial evidence test" for questions of fact; the "reasonable basis test" for questions of law involving agency expertise; the "substitution of judgment test" for questions of law where no expertise is involved; and the "reasonable and not arbitrary test" for review of administrative regulations. Jager v. State, Sup. Ct. Op. No. 1161 (File No. 2057), 537 P.2d 1100 (1975).

The reasonable basis approach should be used for the most part in cases concerning administrative expertise as to either complex subject matter or fundamental policy formulations. Swindel v. Kelly, Sup. Ct. Op. No. 812 (File Nos. 1416, 1418), 499 P.2d 291 (1972).

Application of the reasonable basis test is extremely useful where the administrative action under review resembles executive as opposed to legislative or judicial activity, where the decision under review clearly has nothing to do with the agency's rule making function. Swindel v. Kelly, Sup. Ct. Op. No. 812 (File Nos. 1416, 1418), 499 P.2d 291 (1972).

This section is made applicable to review of final orders of the Public Utilities Commission by AS 42.05.551. Jager v. State, Sup. Ct. Op. No. 1161 (File No. 2057), 537 P.2d 1100 (1975).

Whether proposed utility rates were designed to and could meet competition, shift sales of gas from winter to summer, and achieve interruptibility, are all questions of fact of the type traditionally reviewed under a substantial evidence standard. Jager v. State, Sup. Ct. Op. No. 1161 (File No. 2057), 537 P.2d 1100 (1975).

Public Utilities Commission's decision whether to conduct a rate investigation is similar to the type of decision involving agency expertise in a mixed law and fact setting subject to the "reasonable basis" standard of review. Jager v. State, Sup. Ct. Op. No. 1161 (File No. 2057), 537 P.2d 1100 (1975).

March 6, 1978

The Honorable Alvin Osterback
Chairman, House Resources Committee
Alaska State House of Representatives
Capitol Bldg. - Room 118
Juneau, Alaska 99801

Dear Representative Osterback:

You have requested the comments of the Commercial Fisheries Entry Commission SB 428 am, which is currently before the House Resources Committee.

Upon second reading in the Senate, SB 428 was amended by several floor motions, about which we would submit the following for your committee's consideration:

The first amendment offered appears at page 2, line 5, beginning with the words "The hearing place..." (Senate Journal page 241). The purpose of this amendment is to provide that the revocation hearing take place at or near the place of residence of the permit holder. The Commission anticipates few revocation hearings and therefore it does not feel that these provisions are unduly oppressive. However, it may well be that the permit holder would desire to have a hearing at a place other than the Judicial District in which he resides. Inasmuch as the referenced section of SB 428 mandates a hearing within the permit holder's Judicial District, the Commission would suggest that the language of that section be amended to allow the permit holder to waive the mandatory requirements appearing on page 2, line 5-7. In this regard, the following language is offered:

> "Unless waived in writing, the hearing place shall be held within the Judicial District in which the permit holder resides for those residing in the State of Alaska. The hearing place shall be at the discretion of the Commission for those permit holders residing outside the State of Alaska;"

While this amendment will undoubtedly have some impact on the Commission's budget because of the added requirement for Commission and staff travel, possible transportation of records, etc., the exact magnitude cannot be determined at this time. The Commission would expect revocation hearings to be rare, and if that is the case attendant costs could probably be absorbed without a specific budgetary increase. Consequently, we recommend no change in the fiscal note accompanying this bill.

The second amendment offered is of two parts (Senate Journal pp. 241-2). Part I appears at page 1, line 21 of SB 428. That amendment added the word "materially" after the word "correct" appearing at line 21. The Senate Resource Committee version of SB 428 did not contain the word "materially." Inasmuch as the word "knowingly" appears in the language of section 16.43.355(a), it is felt by the Commission, that if a person intentionally submitted false information knowing of the falsehood, the use of the modifier "materially" served a superfluous purpose. In effect, what Part I of the amendment accomplishes is to attach culpability to big lies while protecting those lies which are small. A problem also exists in defining the term "materially" as it is necessarily vague. The Commission feels that where proscribed action can result in the revocation of a person's entry permit, the statute should be drawn without words of vagueness. In light of the gravity of permit revocation, it is only fair that a person be specifically apprised of the prohibited conduct.

The second portion of this floor amendment appears at page 3, line 14-16 of SB 428. SB 428 as passed by the Senate Resources Committee provided for an appeal of a Commission permit revocation decision pursuant to the Administrative Procedure Act. A discussion of the scope of that appeal process appears in the House Resource Committee file on SB 428. The floor amendment offered provides that all appeals of a Commission decision to revoke a permit shall be in the scope of a trial de novo. In reference to section (h) appearing at page 3, lines 14-16, Peter Froehlich of the Department of Law will attend the Tuesday committee meeting and offer testimony on those provisions.

While this amendment does not directly affect the Commission's function, it does place what may be excessive burdens upon the permit holder. A full trial over matters previously presented at an administrative hearing will result in added and repetitive costs to the permit holder due to the formal and extended nature of court trials. A

full trial, as opposed to oral arguments, would be more difficult to accommodate on the court calendar due to the amount of time a trial requires. This could result in delays of the resolution of the permit holder's case. It should also be noted that the appeal is from the "Commission's" decision rather than the "board's" decision.

In light of the foregoing, it is respectfully submitted that the interest of the fisherman would be furthered by reinstatement of the language originally appearing in the bill as passed out by the Senate Resource Committee:

> "Judicial review of a commission determination under this section may be had in accordance with AS 44.62.560-44.62.570." (SB 428 as passed by the Senate Resources Committee page 3, lines 10-12.)

This would provide the fisherman with the option of an appeal to the courts at a lower cost and consuming less time than a full scale trial de novo, with or without a jury.

A third floor amendment was offered as section 5 of SB 428 and relates to the transfer of a permit after court ordered suspension of use privileges thereunder (Senate Journal pp. 242-3). The Commission supports this amendment.

The Commission concurs with the remainder of SB 428 am in the form in which it is now before you.

Thank you for the opportunity to comment on this bill. A member of the Commercial Fisheries Commission will be present when SB 428 am comes before the House Resources Committee, Tuesday March 7, 1978 at 1:30 p.m. to answer any questions.

Sincerely,

Allan Adasiak
Chairman

AA:DG:eb

March 9, 1978

The Honorable Alvin Osterback
House Resource Committee Chairman
Alaska State House of Representatives
Capitol Building - Room 118
Juneau, Alaska 99811

Dear Representative Osterback:

Re: Questions raised at Committee Hearing of SB 428 am held on March 8, 1978

In response to questions raised regarding Section 2 (h) appearing at page 3 lines 14 through 16, the following language is offered:

> "Judicial review of commission determinations under this section shall be in accordance with AS 44.62.560-44.62.570 provided that a hearing de novo granted under AS 44.62.570(d) may in the discretion of the court be had with a jury sitting if application therefore is filed with the court no later than 10 days after service of the notice of appeal."

This language provides for a hearing by jury at the discretion of the superior court.

A question was also raised regarding the imposition of culpability on one who assists in the violation of a provision of chapter 43 or regulations promulgated thereunder (SB 428 am, Section 3). It should first be noted that including those who assist in the stated violations under Section 3, does not increase the potential penalties to permit holders, but only extends culpability to persons not previously covered by that section. While most violations would come within the proscribed acts of Section 4 of SB 428 am, there are events of possible concern not covered by that section. For example, a misstatement of monies collected by agents of the Department of Revenue (20 AAC 05.980 eff. 1/1/78) would only be covered by Section 3 of SB 428, and the act proscribed may be accomplished by two or more persons requiring prosecution

under the "assisting" provision of Section 3. So might the situation exist for the improper release of confidential information in violation of 20 AAC 05.930 or the fraudulent representation of one improperly asserting himself as an authorized agent of a permit holder (see 20 AAC 05.960). From the above examples, it appears that reliance solely on Section 4 is insufficient to adequately guard against all situations of improper conduct. Therefore, it is respectfully submitted that Section 3 of SB 428 am be retained.

Sincerely,

Allan Adasiak
Chairman

AA:DG:eb

Introduced: 1/19/78
Referred: Resources

IN THE SENATE BY THE RESOURCES COMMITTEE

SENATE BILL NO. 428

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to commercial fishing interim-use permits, entry permits, and vessel licenses."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 16.43.180(a) is repealed and re-enacted to read:

( ) The commission shall adopt regulations providing for the temporary emergency transfer of entry permits and interim-use permits when illness, disability, death, or other unavoidable hardship prevents the permit holder from participating in the fishery. To alleviate hardship pending a final determination of the permit holder's eligibility for an entry permit, the commission shall adopt regulations providing for the temporary emergency transfer of an interim-use permit under sec. 210(b) of this chapter.

* Sec. 2. AS 16.43 is amended by adding a new section to read:

Sec. 16.43.355. COMMISSION REVOCATION OF ENTRY PERMITS. (a) The commission may revoke an entry permit if a person knowingly supplies, assists in supplying, or fails to correct false information provided to the commission for the purpose of

(1) permit application; or

(2) permit transfer.

(b) Before revocation, the commission shall serve the permit holder personally or by certified or registered mail with a notice to show cause why the proposed action should not take place. The notice to show cause must

(1) be supported by an affidavit which may be made on infor-

mation or belief setting out the facts which are the basis of the proposed action;

(2) provide for at least 30 days notice of the place, date, and time of the hearing where the permit holder may present evidence in opposition to the proposed action;

(3) specify the statutes or regulations violated;

(4) state with particularity the action proposed to be taken;

(5) indicate to the permit holder that his ability to permanently transfer the permit which is the subject of the revocation proceedings has been suspended as of the date of the notice and will continue to be suspended until the exhaustion of all administrative and judicial remedies; and

(6) other information the commission considers proper.

(c) A permit subject to revocation proceedings under this section may not be permanently transferred after the date of the notice in (b) of this section pending exhaustion of all administrative and judicial remedies arising from action taken under this section.

(d) The revocation hearing shall be conducted before a quorum of commissioners and shall be presided over by a properly appointed hearing officer who shall rule on the presentation of evidence and other procedural matters. Within a reasonable time after the conclusion of the hearing, the hearing officer shall submit to the attending commissioners a proposed decision based on the record of the hearing and containing findings of fact, conclusions of law, and recommended action. The attending commissioners shall then review the hearing officer's proposed decision and adopt or amend or reject the contents of the proposed decision in the written decision of the commission. A copy of the commission decision shall be mailed to each party or his attorney by certified or registered mail.

(e) The failure of a permit holder properly served under (b) of this section to appear at the hearing is not grounds for setting aside any commission action taken. However, the commission may in its discretion order a continuance or second hearing.

(f) The effective date of the commission decision under this section is the date of the notice to show cause first served upon the permit holder.

(g) The provisions of this section do not apply to the permit of a person who is a bona fide purchaser.

(h) Judicial review of a commission determination under this section may be had in accordance with AS 44.62.560 - 44.62.570.

* Sec. 3. AS 16.43.360(a) is amended to read:

(a) A person who ~~wilfully~~ violates or assists in the violation of a provision of this chapter or a regulation promulgated under this chapter is, upon conviction, [IS] guilty of a misdemeanor and is punishable by a fine of not more than $5,000 for a first conviction, and [;] a fine of not more than $10,000 for a second or third conviction [; AND, FOR A THIRD CONVICTION, A FINE OF NOT MORE THAN $10,000 AS WELL AS FORFEITURE OF ALL INTERIM-USE PERMITS AND ENTRY PERMITS HELD BY HIM AND PERMANENT LOSS OF ELIGIBILITY FOR INTERIM-USE PERMITS OR FOR ENTRY PERMITS]. Upon a third conviction, the person shall forfeit all interim-use and entry permits held by him and loses eligibility for future issuance or transfer of interim-use or entry permits. Upon a first or second conviction under this section, the court may in its discretion order a forfeiture of interim-use or entry permits held by him as well as a loss of eligibility for future issuance or transfer of interim-use or entry permits or order a suspension of fishing rights under interim-use or entry permits held or to be held by him for a period of not more than three years.

* Sec. 4. AS 16.43.360(b) is amended to read:

(b) A person who ~~wilfully~~ knowingly makes a false statement of [A MATERIAL] fact in the application for or renewal of an interim-use permit or an entry permit or vessel license application or renewal or in the application for a transfer under secs. 170 - 180 of this chapter, or a person who assists another by ~~wilfully~~ knowingly making a false statement of [A MATERIAL] fact in support of the other person's application for issuance or renewal of an interim-use permit or an entry permit or vessel license [TRANSFER OF AN ENTRY PERMIT, UPON CONVICTION,] is guilty of a misdemeanor and shall forfeit all interim-use permits and entry permits held by him and shall lose eligibility for interim-use permits and for entry permits for a period of five years and is punishable by a fine of not more than $5,000.

AMENDMENT #4

OFFERED IN THE SENATE: BY: RAY

TO: _____ SENATE BILL No. 428 amended

HOUSE BILL No. _____

PAGE: 4 LINE: 1

Section 4. AS 16.43.360 is amended by adding a new subsection to read:

(e) Notwithstanding any other provision of this section, no interim-use or entry permit may be transferred while under suspension, without the consent of the Commission.

AMENDMENT NO. 2

OFFERED IN THE SENATE: BY: FERGUSON

TO: _____ SENATE BILL No. 428

HOUSE BILL No. _____

PAGE: 2 LINE: 5

Delete ";", insert a period, and add:

"The hearing place shall be held within the Judicial District in which the permit holder resides for those residing in the state of Alaska. The hearing place shall be at the discretion of the commission for those permit holders residing outside the state of Alaska."

SB

440

COMMITTEE REPORT

SENATE

1/26/78

FURTHER: FINANCE

Date: _____

Mr. President:

The Committee on RESOURCES has had SB 440 spec. appropriation to Dept. of Fish & Game re Alaska Pacific Whaling Commission

under consideration and (a majority of the committee) (the committee reports it back as follows)

( ) recommends it do pass ( ) recommends it do not pass

( ) recommends it do pass with attached amendment(s)

( ) recommends it be replaced with CS for _____

and _____ ( ) new title ( ) same title

( ) AND attaches a Letter of Intent ( ) New Fiscal Note

( ) reports it back without recommendation

( ) and recommends it be referred to the _____ Committee

MEMBERS SIGNING DO PASS:

OTHER RECOMMENDATIONS:

_____

Chairman

S 60 (rev. 6/77)

A M E N D M E N T

Offered in the SENATE By _____

To: _____ SENATE BILL NO. 440

_____ HOUSE BILL NO. _____

AMENDMENT: Page 1 Line 20

Change July 1, 1978 to March 1, 1978

law not ten file

January 30, 1978

Honorable Bill Sumner
Senator
State of Alaska
Pouch V
Juneau, Alaska 99811

SUBJECT: SB #440 by Ferguson

Dear Bill:

The subject bill proposes a special appropriation of State funds to the Department of Fish and Game so that the Department can transfer these funds to a specific organization regardless of the ability of that organization to perform. If indeed studies are needed to "ensure whale stock viability", then those studies should be performed by the best qualified persons available. The Department should be allowed to manage the funds, not be directed to spend them where the legislature dictates.

Highest Personal Regards,

Herbert W. Lehfeldt

January 30, 1978

Honorable Bill Sumner
Senator
State of Alaska
Pouch V
Juneau, Alaska 99811

SUBJECT: House Joint Resolution #48 by Rules Committee

Dear Bill:

This Resolution advocating the legal hunting of migratory birds in the Spring is not worthy of your support.

The Spring time is the mating and rearing season for all birds. If you kill off the parents, the eggs won't hatch and the young won't survive. The perpetuation of the species is in danger.

Ridged controls of seasons in the principal cause for the comeback experienced by our migratory birds following the disasters of the early thirty's.

I urge you to vote against this Resolution.

Highest Personal Regards,

Herbert W. Lehfeldt

January 30, 1978

Honorable Bill Sumner
Senator
State of Alaska
Pouch V
Juneau, Alaska 99811

SUBJECT: House Bill 674 By Rules Committee

Dear Bill:

This bill proposed to regionalize the Board of Fisheries and the Board of Game. This bill is the most distructive thing that can happen to our Game Management Programs in the State. The fish and wildlife belong to all citizens of the State and should be controlled on a uniform basis throughout the State.

With the free flow of people across the State for hunting and fishing purposes, the regulations should be promogated from one central source.

I urge you to vote against this bill when it is up.

Highest Personal Regards,

Herbert W. Lehfeldt

January 30, 1978

Honorable Bill Sumner
Senator
State of Alaska
Pouch V
Juneau, Alaska 99811

SUBJECT: HB #673 by Rules Committee

Dear Bill:

The subject bill creating a division of subsistence hunting and fishing is probably going to be one of the most significant bills you will be asked to vote on this year. I feel the question of subsistence has long been neglected and abused.

I urge your support of this bill.

Highest Personal Regards,

Herbert W. Lehfeldt

January 30, 1978

Honorable Bill Sumner
Senator
State of Alaska
Pouch V
Juneau, Alaska 99811

SUBJECT: House Concurrent Resolution #93
by Rules Committee

Dear Bill:

The subject Concurrent Resolution advocating a subsistence committee concerns probably one of the most sensitive areas of game management. Alaska is the only State that I know of where wildlife and fish are allowed to be taken for subsistence purposes. We need better and complete control of this segment of our wildlife management.

I urge you to support this resolution.

Highest Personal Regards,

Herbert W. Lehfeldt

January 30, 1978

Honorable Bill Sumner
Senator
State of Alaska
Pouch V
Juneau, Alaska 99811

SUBJECT: Senate Bill #439 by Ferguson

Dear Bill:

I urge you to oppose this bill. If the State funds are to be used to "ensure whale stock viability" as advocated by the bill, they should be used to enhance our State Department of Fish and Game [illegible]at adequate staff can perform the proposed studies, etal. Any pro[illegible]n of this kind should be coordinated by State staff, not private groups grinding their own axes. The State Dpeartment has legislative authority to contract for specialist services when needed. This should be adequate.

I urge you to vote against S.B. 439.

Highest Personal Regards,

Herbert W. Lehfeldt

January 30, 1978

Honorable Bill Sumner
Senator
State of Alaska
Pouch V
Juneau, Alaska 99811

SUBJECT: HB #687 by Buchholdt, etal.

Dear Bill:

I urge you to vote against this bill. To direct the Department of Fish and Game to employee a specific group, without any evaluation of that group's ability to perform is improper. If the legislature wants to give money to this group, do it direct. Don't handcuff our fishery's people by dictating this type of action.

If a study is needed, the best qualified persons should be hired.

Highest Personal Regards,

Herbert W. Lehfeldt

January 30, 1978

Honorable Bill Sumner
Senator
State of Alaska
Pouch V
Juneau, Alaska 99811

SUBJECT: HB #686 by Buchholdt, etal.

Dear Bill:

This bill authorizes grants to private organizations engaged in efforts to ensure whale stock viability. If such "efforts" are to serve a legitimate State purpose, these grants should be made to the State Department of Fish and Game. This is the only way to assure that the interest of all citizens are protected.

I urge your opposition to the subject bill.

Highest Personal Regards,

Herbert W. Lehfeldt

SB

477

COMMITTEE REPORT

SENATE

2/9/78

FURTHER: None

Date:

Mr. President:

The Committee on RESOURCES has had SB 477

licensing of sport fishing and hunting

under consideration and (a majority of the committee) (the committee reports it back as follows)

( ) recommends it do pass ( ) recommends it do not pass

( ) recommends it do pass with attached amendment(s)

( ) recommends it be replaced with CS for

and ( ) new title ( ) same title

( ) AND attaches a Letter of Intent ( ) New Fiscal Note

( ) reports it back without recommendation

( ) and recommends it be referred to the Committee

MEMBERS SIGNING DO PASS:

OTHER RECOMMENDATIONS:

Chairman

S 60 (rev. 6/77)

POSITION PAPER/Department of Health and Social Service

POSITION PAPER

SENATE BILL NO. 477

"An Act relating to licensing of sport fishing and hunting."

This legislation would place responsibility with the Department of Health and Social Services for administration of the $24.75 hunting and fishing license fee credit for persons who are living a subsistence lifestyle, or who are receiving welfare.

The effect would be to establish a new program in the Division of Public Assistance, similar to current welfare programs which would require the following:

(1) staff to determine applicants' eligibility for the program based on financial need;

(2) administrative support in the form of promulgation of income regulations; administrative code entries; policy development; budgeting; accounting; implementation of appropriate procedures; and training of staff; and

(3) allocation of funds which would allow for payment of the license subsidies to the Department of Revenue.

Available information relating to this program consists of the following:

(1) Over the past 10 years, an average of 5,556 such credits have been provided annually (through sales of $25 licenses by the Department of Revenue for 25¢).

(2) It is estimated that a trained, qualified person could process 40 such applications and licenses per day;

(3) 6,000 such licenses could reasonably be expected to be issued in FY 79 based upon the activity over the past three years;

(4) This workload would require 139 work days to complete; or 9 days per month per region;

(5) Applications would be evenly distributed among the five regional offices of the Division of Public Assistance and;

(6) This would result in the need for one part-time eligibility worker in each of the five regions. The Division of Public Assistance normally budgets staff based on a legislative formula which applies caseloads to positions required. Under that formula, the Division is understaffed by 7 workers at this time, so this new program could not be absorbed by current staff.

In developing a position and budget related to this bill, the following assumptions were made:

(1) that the legislature intends for this program to be treated as a state welfare program by the Department;

(2) that a turnaround time of two weeks is acceptable for applications processed through the mail;

(3) that Department fee agents would be used to provide applications and forward them to regional offices of the Division of Public Assistance for processing;

(4) That Division of Public Assistance eligibility workers would become license agents for Department of Revenue in order to facilitate processing of such licenses.

Under the above conditions, the cost of establishing and administering this program would be $263,489 for FY 79, of which $148,500 would be for the subsidies (or welfare grants) themselves.

This results in administrative overhead of 77%.

The impact of this legislation would be to eliminate the immediate access to such licenses which is now provided by the licensing agents of the Department of Revenue.

The benefit accruing to the program would be to eliminate participation by persons who falsely claim eligibility based on receipt of welfare assistance. It is not known whether or not a significant number of persons are so involved, however, the number of persons who are sportsmen and who are also welfare clients would be small.

It is the position of this department that the bill would not be beneficial based on the reduction in service levels and the high cost to benefit ratio therefore the following alternative is presented for consideration:

Amend the signature block on the current application form to authorize release to the Department of Revenue of welfare information on all applicants who claim eligibility based on receipt of welfare.

As the number of persons desiring the 25¢ hunting and fishing license would include very few welfare recipients, no additional costs would be incurred by this agency in verifying this for those applicants who indicate they are or have been on welfare within six months of the date of application (this is the current time frame in the Department of Revenue procedure).

POSITION PAPER/Department of Health and Social Service

As it is not feasible to verify income for families or individuals over a period of a calendar year, it would appear that the limited advantages of having this agency determine eligibility could be served at no additional cost by the above action, without disruption of current systems.

Recommended by: Richard R. Wilson
Richard R. Wilson, Director
Division of Public Assistance
3-3-78
Date

Approved by: Helen D. Beirne
Helen D. Beirne, Commissioner
Department of Health & Social Services
3-5-78
Date

POSITION PAPER/Department of Health and Social Servic

TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. SENATE BILL NO. 477
Title "An Act relating to licensing of sport fishing and hunting."
Requested by _____ Date 3/3/78

II. FISCAL DETAIL
Agency Affected DEPARTMENT OF HEALTH AND SOCIAL SERVICES
Program Category Affected SOCIAL AND ECONOMICS ASSISTANCE TO THE GENERAL POPULATION
Budget Request Unit(s) Affected ELIGIBILITY DETERMINATION

EXPENDITURES (Thousands of Dollars)

	FY 78	FY 79	FY 80	FY 81	FY 82	FY 83
100 PERSONAL SERVICES		94,689	104,157	114,572	126,029	138,632
200 TRAVEL		3,200	3,520	3,872	4,259	4,685
300 CONTRACTUAL		11,200	12,320	13,552	14,907	16,398
400 COMMODITIES		1,400	1,540	1,694	1,863	2,049
500 EQUIPMENT		4,500	--	--	--	--
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.		148,500	148,500	148,500	148,500	148,500
TOTAL		263,489	270,037	282,190	295,558	310,264

FUNDING (Thousands of Dollars)

GENERAL FUND		263,489	270,037	282,190	295,558	310,264
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

FULL TIME	2	2	2	2	2	2
PART TIME	5	5	5	5	5	5
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Inflation factor of 10% used for line items 100-400. No increase anticipated in cost or number of licenses processed.

Staffing includes: One full-time Administrator at range 19
One full-time Accounting Clerk II, range 9
Five part-time Eligibility Workers, range 11
(to be stationed in Kotzebue, Bethel, Anchorage, Fairbanks and Juneau.)

IV. DATE MARCH 3, 1978 PREPARED BY Eric S. Hansen ERIC HANSEN, TRAINING SPECIALIST
AGENCY DHSS/DIVISION OF PUBLIC ASSISTANCE
PHONE 465-3347

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/77)

1973 Twenty-five Cent License Survey Estimates

A random sample of 511 of 6,658 was selected.

141 (27.6%) of the sample responded.

2,412 (36.2%) of the 6,658 did not fish.

1973 Annual Income of 25¢ Licenses

Income (dollars)	Number	Percentage
Less than 5000	5,715	85.8
5,000 - 10,000	577	8.7
10,000 - 15,000	262	3.9
15,000 - 20,000	52	0.8
20,000 - 25,000	52	0.8
More than 25,000	0	0.0
Total	6,658	100.0

14.2% had annual incomes exceeding $5,000

1973 Expenditures (Dollars) or 25¢ Licensees

Type of Expenditure	Amount	Mean Per Licensee	Percentage
Gear	195,207	29.32	10.7
Boat	1,215,045	182.49	66.9
Food	234,447	35.21	12.9
Transportation	94,189	14.15	5.2
Lodging	28,993	4.35	1.6
Miscellaneous	46,417	6.97	2.6
Licenses	1,665*	.25	0.1
Total	1,815,963	272.75	100.0

*Includes expenditures for 25¢ licenses only. $12,702 (a mean of $1.90 per licensee) was spent on other licenses (commercial and 25¢ replacements).

Residences of 25¢ Licensees[1]

	1973		1974		1975		Total	
	No.	%	No.	%	No.	%	No.	%
Anchorage	844	18.3	1017	18.1	809	16.9	2670	17.8
[2]Fairbanks	487	10.6	446	7.9	204	4.3	1137	7.6
[3]Juneau	126	2.7	191	3.4	159	3.3	476	3.2
Palmer	84	1.8	165	2.9	150	3.1	399	2.7
Kenai	109	2.4	169	3.0	97	2.0	375	2.5
Nome	114	2.5	136	2.4	123	2.6	373	2.5
Homer	86	1.9	134	2.4	139	2.9	359	2.4
Bethel	50	1.1	87	1.5	117	2.4	254	1.7
Seward	98	2.1	98	1.7	41	.9	237	1.6
Ketchikan	66	1.4	74	1.3	95	2.0	235	1.6
Fort Yukon	80	1.7	74	1.3	77	1.6	231	1.5
Willow	66	1.4	85	1.5	78	1.6	229	1.5
Wasilla	63	1.4	88	1.6	66	1.4	217	1.4
Soldotna	55	1.2	63	1.1	51	1.1	169	1.1
Talkeetna	49	1.1	65	1.2	52	1.1	166	1.1
Elsewhere	2234	48.5	2735	48.6	2536	52.9	7505	49.9
Total	4611	100.1	5627	99.9	4794	100.1	15032	100.1

1. Fifteen residences with highest three year totals.
2. Includes College, Alaska
3. Includes Auke Bay, Alaska

1974* Ages of 25¢ Licensees

Age Category	Number	Percentage
16-20	656	9.8
21-25	1513	22.7
26-30	1211	18.2
31-35	605	9.1
36-40	555	8.3
41-45	403	6.1
46-50	454	6.8
51-55	151	2.3
56-60	151	2.3
61-65	404	6.1
Over 65	555	8.3
Total	6,658	100.0

Mean Age = 36.6

*There was a mean delay of about one year between purchase of license (1973) and receipt of questionnaire (1974). No respondents indicated they were 16 years of age. An estimated 50 fishermen were 17 years of age at the time they received the questionnaire.

04-D3LH

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER / POUCH S – JUNEAU 99811

February 10, 1978

The Honorable Kay Poland
Chairman
Senate Resources Committee
Alaska State Legislature
State Capitol Building
Juneau, Alaska

Dear Senator Poland:

For the information of the Senate Resources Committee, I am enclosing seven copies of statements prepared by the Fish and Game Licensing Section of the Department of Revenue concerning sport fishing and hunting license fees and commercial fishing gear and license fees as follows:

1. Sport fish and game receipts for the calendar year 1977 by type and number of licenses and tags.

2. Commercial fish license receipts for the calendar year 1977 by type and number of licenses and gear.

3. Gross commercial fishing gear and license receipts for the calendar years 1968 through 1977 by type of gear and license.

Very truly yours,

R. D. Stevenson

R. D. Stevenson
Special Assistant

Enclosures

Calendar Year 1977
SPORT FISH AND GAME RECEIPTS

CODE	TYPE OF LICENSE	NUMBER	GROSS	NET	NET/SPORT	NET/GAME	NET/GENERAL
201	R. Sport Fishing	76892	763,250.00	725,012.91	725,012.91	----------	----------
202	R. Hunting	21470	250,110.00	237,620.26	----------	237.620.26	----------
203A	R. Hunt/Trap	2063	30,300.00	28,744.61	----------	22,812.71	5,931.90
204	R. Spt. Fish/Hunt	30403	665,406.00	632,304.48	287,276.22	345,028.26	----------
205	R. Fish/Hunt/Trap	9153	227,555.00	215,983.22	86,275.49	103,648.35	26,059.38
206	NR Sport Fishing	23564	349,080.00	329,249.17	329,249.17	----------	----------
207	NR Sport Fishing	12766	380,480.00	360,440.86	360,440.86	----------	----------
208	NR Hunting	3656	206,680.00	195,721.74	----------	195,721.74	----------
209	NR Fish/Hunt	803	70,670.00	66,792.99	22,455.18	44,337.81	----------
210	NR Hunt/Trap	52	10,400.00	9,926.22	----------	2,839.09	7,087.13
211	NR 1-Day Spt. Fish	11174	55,870.00	53,178.53	53,178.53	----------	----------
212	NR Military Spt. Fish	6527	65,270.00	61,998.90	61,998.90	----------	----------
213	NR Military Small Hunt	841	10,092.00	9,573.09	----------	9,573.09	----------
214	NR Military Spt./Hunt	987	21,714.00	20,641.97	9,382.72	11,259.25	----------
217 3B	R. Trap	1589	4,767.00	4,542.14	----------	----------	4,542.14
218	Duplicate License	2748	5,496.00	5,223.01	----------	----------	5,223.01
120	Fish/Fur/Game Farm	2	100.00	95.65	----------	----------	95.65
121	R. Fur Dealer	107	5,320.00	5,296.35	----------	----------	5,296.35
122	NR Fur Dealer	4	800.00	790.39	----------	----------	790.39
123	R. Taxidermy	45	3,375.00	3,299.64	----------	----------	3,299.64
124	NR Taxidermy	1	200.00	191.01	----------	----------	191.01
200	Permit Fees	218	1,090.00	1,026.64	----------	1,026.64	----------
201 B	R. Blind Spt. Fish	2	.50	.49	.49	----------	----------
205 A	R. 25¢ Hunt/Fish/Trap	5463	1,365.75	1,293.07	430.92	603.49	258.66
SUBTOTAL		210530	3,129,391.25	2,968,947.34	1,935,701.39	974,470.69	58,775.26
215	R. Tag	2937	89,575.00	85,444.75	----------	85,444.75	----------
216	NR Big Game Tags	5775	999,945.00	946,768.14	----------	946,768.14	----------
TOTAL		219242	4,218,911.25	4,001,160.23	1,935,701.39	2,006,683.58	58,775.26

RESIDENT B/G # 2903 GROSS 72,575.00
RESIDENT MUSKOX 34 17,000.00
2937 89,575.00

GROSS	4,218,911.25	
COST	217,751.02	
NET	4,001,160.23	5.16%

MUSKOX	28	28,000.00
B/G	876	214,900.00
BLACK BEAR	877	86,550.00
DEER	425	13,445.00
MOOSE	1438	277,900.00
SHEEP	649	161,350.00
GOAT	320	37,850.00
CARIBOU	875	164,350.00
WOLF	202	10,100.00
WOLVERINE	63	2,700.00
WALRUS	4	1,000.00
ELK	18	1,800.00
TOTAL	5775	999,945.00

COMMERCIAL FISH LICENSE RECEIPTS

Final Calendar Year
January 1, 1977 thru December 31, 1977

Prepared January 30, 1977

RECEIPT CODE NO.	TYPE OF LICENSE RECEIPT	NUMBER SOLD	GROSS	COST	NET
126	Vessel	13,189	$179,142.00	$6,564.09	$172,577.91
127	Troll Line	3,524	61,756.00	2,187.84	59,568.16
128	Long Line	2,409	64,303.00	2,203.35	62,099.65
129	Drift Gill Net	4,638	106,455.00	4,114.46	102,340.54
130	Set Gill Net	3,230	40,960.00	1,522.66	39,437.34
131	Beach Seine	52	845.00	27.62	817.38
132	Purse & Hand Purse Seine	1,339	128,410.00	3,931.40	124,478.60
133	Beam Trawl	45	2,450.00	60.60	2,389.40
134	Otter Trawl	153	12,250.00	217.19	12,032.81
135	Shellfish Pots	1,225	39,690.00	971.39	38,718.61
136)	Clam Digger's	158	368.00	30.58	337.42
137) 40%	Res. Comm. Fisherman	20,603	82,412.00	7,750.00	74,662.00
138)	Non-Res. Comm. Fisherman	7,965	95,556.00	8,638.69	86,917.31
139	Scallop Dredge	2	100.00	3.40	96.60
140	Comm. Fish Ext. Fee	---	7,965.00	---	7,965.00
SUBTOTAL	To General Fund	58,532	822,662.00	38,223.27	784,438.73
843)	Clam Digger's	---	552.00	---	552.00
844) 60%	Res. Comm. Fisherman	---	123,618.00	---	123,618.00
845)	Non-Res. Comm. Fisherman	---	143,334.00	---	143,334.00
SUBTOTAL	To Fishermen's Fund	---	267,504.00	---	267,504.00
TOTAL		$58,532	$1,090,166.00	$38,223.27	$1,051,942.73

GROSS SALES	$1,090,166.00	
COST OF SALES	- 38,223.27	3.50%
NET RECEIPTS	$1,051,942.73	

STATE OF ALASKA, DEPT. OF REVENUE
FISH AND GAME LICENSES
240 S. FRANKLIN; JUNEAU, AK 99801

GROSS COMFISH RECEIPTS 1968 THROUGH 1977

RECEIPT CODE	TYPE OF LICENSE	1968 RESTRICTED SALMON NET	1969 MORATORIUM POSSIBLE RESTRICTED SALMON NET	1970 ANTICIPATED RESTRICTION NET GEAR	1971 GEAR ELIGIBILITY REQUIREMENT REMOVED	1972 REGISTRATION IN AREA	1973 BRISTOL BAY SLIDING GEAR SCALE	1974 LEC INTERIM-USE PERMIT REQUIRED	1975 PERMITS REQUIRED	1976 PERMITS REQUIRED	1977 PERMITS REQUIRED
		$	$	$	$	$	$	$	$	$	$
126	Vessel	143,955.00	146,898.00	161,863.00	156,490.00	156,624.00	164,194.00	152,486.00	158,704.00	163,180.00	179,142.00
127	Troll Line	36,605.00	42,740.00	48,450.00	42,965.00	43,185.00	56,910.00	59,780.00	49,920.00	47,835.00	61,756.00
128	Long Line	9,620.00	18,530.00	29,740.00	29,260.00	33,075.00	52,005.00	40,540.00	37,290.00	54,330.00	64,303.00
129	Drift Gill Net	93,820.00	107,100.00	125,800.00	116,490.00	117,100.00	142,075.00	100,655.00	106,210.00	104,275.00	106,455.00
130	Set Gill Net	30,995.00	33,950.00	37,355.00	34,460.00	35,600.00	38,720.00	36,145.00	35,900.00	37,910.00	40,960.00
131	Beach Seine	600.00	975.00	1,075.00	1,210.00	1,175.00	1,385.00	1,120.00	400.00	455.00	845.00
132	Purse Seine	135,080.00	118,790.00	131,150.00	126,160.00	119,290.00	128,590.00	131,700.00	121,180.00	123,795.00	128,410.00
133	Beam Trawl	675.00	650.00	750.00	1,100.00	1,600.00	2,900.00	4,750.00	3,150.00	2,250.00	2,450.00
134	Otter Trawl	1,700.00	1,650.00	2,550.00	4,550.00	5,850.00	7,900.00	14,050.00	14,100.00	12,800.00	12,250.00
135	shellfish Pots	14,970.00	17,430.00	18,225.00	14,415.00	17,685.00	29,025.00	35,445.00	28,875.00	31,410.00	39,690.00
136-40%	Clam Digger's	336.00	290.00	382.00	670.00	928.00	904.00	652.00	452.00	296.00	368.00
137-40%	Res. Commercial	59,488.00	50,436.00	57,480.00	56,704.00	57,476.00	66,500.00	62,796.00	64,252.00	70,988.00	82,412.00
138-40%	Nonres. Commercial	77,844.00	75,816.00	92,616.00	76,656.00	81,132.00	76,752.00	67,212.00	69,552.00	85,632.00	95,556.00
139	Scallop Dredge	.00	2,500.00	900.00	350.00	350.00	250.00	450.00	300.00	250.00	100.00
140	Comfish Ext. Fees	.00	.00	1,665.00	2,925.00	2,970.00	6,750.00	7,920.00	945.00	12,195.00	7,965.00
SUBTOTAL		605,688.00	617,755.00	710,001.00	664,405.00	674,040.00	774,860.00	715,701.00	691,230.00	747,601.00	822,662.00
843-60%	Clam Digger's	504.00	435.00	573.00	1,005.00	1,392.00	1,356.00	978.00	678.00	444.00	552.00
844-60%	Res. Commercial	89,232.00	75,654.00	86,220.00	85,056.00	86,214.00	99,750.00	94,194.00	96,378.00	106,482.00	123,618.00
845-60%	Nonres. Commercial	116,766.00	113,724.00	138,924.00	114,984.00	121,698.00	115,128.00	100,818.00	104,328.00	128,448.00	143,334.00
SUBTOTAL		206,502.00	189,813.00	225,717.00	201,045.00	209,304.00	216,234.00	195,990.00	201,384.00	235,374.00	267,504.00
TOTAL		812,190.00	807,568.00	935,718.00	865,450.00	883,344.00	991,094.00	911,691.00	892,614.00	982,975.00	1,090,166.00
	NUMBER OF LICENSES SOLD EACH YEAR										
126	Vessel	9,926	9,972	10,877	10,710	10,791	11,777	11,338	11,630	11,813	13,189
127	Troll Line	2,103	2,303	2,567	2,353	2,413	3,190	3,238	2,810	2,683	3,524
128	Long Line	342	700	1,109	1,074	1,221	1,918	1,503	1,393	1,988	2,409
129	Drift Gill Net	4,050	4,374	4,710	4,779	4,611	6,425	4,248	4,511	4,457	4,638
130	Set Gill Net	2,708	3,011	3,053	3,062	3,112	3,504	3,137	3,139	3,178	3,230
131	Beach Seine	38	64	77	86	81	91	76	30	35	52
132	Purse Seine	1,291	1,207	1,311	1,323	1,147	1,341	1,372	1,265	1,289	1,339
133	Beam Trawl	18	13	13	16	32	54	79	57	45	45
134	Otter Trawl	26	30	41	67	87	106	167	172	158	153
135	Shellfish Pots	524	593	617	576	605	959	1,170	936	969	1,225
136	Clam Digger's	148	135	149	237	336	356	262	168	126	158
137	Res. Commercial	14,872	12,609	14,370	14,176	14,369	16,625	15,699	16,064	17,747	20,603
138	Nonres. Commercial	6,487	6,318	7,718	6,388	6,761	6,396	5,601	5,796	7,136	7,965
139	Scallop Dredge	0	18	8	7	5	5	7	6	3	2
TOTAL		42,533	41,347	46,620	44,854	45,571	52,747	47,897	47,977	51,647	58,532

04-D3LH

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER / POUCH S – JUNEAU 99811

February 21, 1978

The Honorable Kay Poland
Chairman
Senate Resources Committee
Alaska State Legislature
State Capitol Building
Juneau, Alaska

Dear Senator Poland:

For the information of the Senate Resources Committee, I am enclosing seven copies of a report prepared by the Fish and Game Licensing Section of the Department of Revenue concerning gross sport fish and game license receipts.

The report covers the calendar years 1968 through 1977 and discloses gross dollar receipts and number and type of licenses sold for the ten year period.

Very truly yours,

R. D. Stevenson

R. D. Stevenson
Special Assistant

Enclosures

STATE OF ALASKA, DEPT. REVENUE
FISH & GAME LICENSES
240 S. FRANKLIN, JUNEAU, AK

GROSS SPORT FISH AND GAME LICENSES RECEIPTS 1968 THROUGH 1977

CODE	TYPE OF LICENSE	1968 $	1969 $	1970 $	1971 $	1972 $	1973 $	1974 $	1975 $	1976 $	1977 $
201	R. Sport Fishing	167,555	177,905	197,210	202,515	220,695	239,415	252,765	272,805	332,045.00	763,250.00
202	R. Hunting	135,366	146,475	155,036	150,171	139,699	167,125	137,893	113,435	119,021.00	250,110.00
203A	R. Hunt/Trap	7,280	9,090	10,420	8,540	8,420	10,590	11,090	11,810	13,280.00	30,300.00
204	R. Spt. Fish/Hunt	210,252	227,328	275,412	308,232	331,500	359,244	388,728	417,348	448,560.00	665,406.00
205	R. Fish/Hunt/Trap	35,850	44,025	59,325	62,505	65,805	80,145	93,585	113,265	144,090.00	227,555.00
206	NR 10-Day Fish	70,155	82,495	86,935	88,310	97,430	221,660	217,020	242,280	267,060.00	349,080.00
207	NR Sport Fishing	158,200	175,530	207,900	184,050	192,690	287,480	320,180	399,060	415,540.00	380,480.00
208	NR Hunting	68,150	78,170	90,040	80,330	80,670	141,320	132,720	108,740	107,800.00	206,680.00
209	NR Fish/Hunt	47,400	54,500	70,120	69,520	71,840	65,560	67,200	65,600	68,440.00	70,670.00
210	NR Hunt/Trap	1,400	1,800	900	1,600	1,000	4,600	4,800	5,200	7,400.00	10,400.00
211	NR 1-Day Fish	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	55,870.00
212	NR Milt. Fish	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	65,270.00
213	NR Milt. Small Hunt	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	10,092.00
214	NR Milt. Fish/Hunt	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	21,714.00
217 3B	R. Trap	1,988	2,571	2,445	2,016	2,466	3,411	2,670	2,277	3,630.00	4,767.00
218	Duplicate License	-0-	-0-	-0-	-0-	2,308	3,074	3,222	2,974	4,436.00	5,496.00
120	Fish/Fur/Game Farm	35	40	80	105	90	400	500	100	200.00	100.00
121	R. Fur Dealer	-0-	-0-	-0-	-0-	-0-	2,520	2,720	2,420	2,720.00	5,320.00
122	NR Fur Dealer	-0-	-0-	-0-	-0-	-0-	200	300	400	300.00	800.00
123	R. Taxidermy	-0-	-0-	-0-	-0-	-0-	2,700	2,100	1,800	2,050.00	3,375.00
124	NR Taxidermy	-0-	-0-	-0-	-0-	-0-	450	-0-	300	-0-	200.00
	R. Fur Dealer-Taxid.	2,740	3,020	3,180	3,320	3,420	-0-	-0-	-0-	-0-	-0-
	NR Fur Dealer-Taxid.	600	1,000	1,300	700	600	-0-	-0-	-0-	-0-	-0-
	Reg. & Master Guides	17,950	17,250	17,300	17,600	18,950	11,650	-0-	-0-	-0-	-0-
	Ass't Guides	1,945	2,215	2,290	2,775	2,475	330	-0-	-0-	-0-	-0-
	Class "A" Ass't Guide	-0-	-0-	520	650	790	180	-0-	-0-	-0-	-0-
200	Permit Fees	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	1,090.00
201B	R. Blind Spt. Fish	3	1	4	1	1	2	3	5	3.00	.50
205A	R. 25c Hunt/Fish/Trap	1,229	1,271	1,339	1,398	1,484	1,664	1,564	1,251	1,320.25	1,365.75
SUBTOTAL		928,098	1,024,686	1,181,756	1,184,338	1,242,333	1,603,720	1,639,260	1,761,070	1,937,895.25	3,129,391.25
215	R. Tag	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	89,575.00
216	NR Big Game	346,350	384,975	424,415	393,840	404,410	753,625	744,950	617,025	698,075 00	999,945.00
TOTAL		1,274,448	1,409,661	1,606,171	1,578,178	1,646,743	2,357,345	2,384,210	2,378,095	2,635,970.25	4,218,911.25
	NUMBER SOLD EACH YEAR BY CLASS										
201	R. Sport Fishing	33,511	35,581	39,442	40,503	44,139	47,883	50,593	54,561	66,409	76,892
202	R. Hunting	19,338	20,925	22,148	21,453	19,957	23,875	19,699	16,205	17,003	21,470
203A	R. Hunt/Trap	728	909	1,042	854	842	1,059	1,109	1,181	1,328	2,063
204	R. Spt. Fish/Hunt	17,521	18,944	22,951	25,686	27,625	29,937	32,394	34,779	37,380	30,403
205	R. Fish/Hunt/Trap	2,390	2,935	3,955	4,167	4,387	5,343	6,239	7,551	9,606	9,153
206	NR 10-Day Fish	14,031	16,499	17,387	17,662	19,486	22,166	21,702	24,228	26,706	23,564
207	NR Sport Fishing	15,820	17,553	20,790	18,405	19,269	14,374	16,009	19,953	20,777	12,766
208	NR Hunting	6,815	7,817	9,004	8,033	8,067	7,066	6,636	5,437	5,390	3,656
209	NR Fish/Hunt	2,370	2,725	3,506	3,476	3,592	1,639	1,680	1,640	1,711	803
210	NR Hunt/Trap	14	18	9	16	10	23	24	26	37	52
211	NR 1-Day Fish	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	11,174
212	NR Milt. Fish	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	6,527
213	NR Milt. Small Hunt	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	841
214	NR Milt. Fish/Hunt	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	987
217 3B	R. Trap	638	857	815	672	822	1,137	890	759	1,210	1,589
218	Duplicate License	-0-	-0-	-0-	-0-	1,154	1,537	1,611	1,487	2,218	2,748
120	Fish/Fur/Game Farm	7	8	16	21	18	4	5	1	2	2
121	R. Fur Dealer	-0-	-0-	-0-	-0-	-0-	126	136	121	136	107
122	NR Fur Dealer	-0-	-0-	-0-	-0-	-0-	2	3	4	3	4
123	R. Taxidermy	-0-	-0-	-0-	-0-	-0-	54	42	36	41	45
124	NR Taxidermy	-0-	-0-	-0-	-0-	-0-	3	-0-	2	-0-	1
	R. Fur Dealer-Taxid.	137	151	159	166	171	-0-	-0-	-0-	-0-	-0
	NR Fur Dealer-Taxid.	6	10	13	7	6	-0-	-0-	-0-	-0-	-0-
	Reg. & Master Guides	359	345	346	352	379	233	-0-	-0-	-0-	-0-
	Ass't Guides	389	443	458	555	495	66	-0-	-0-	-0-	-0-
	Class "A" Ass't Guide	-0-	-0-	52	65	79	18	-0-	-0-	-0-	-0-
200	Permit Fees	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	218
201B	R. Blind Spt. Fish	3	1	4	1	1	2	3	5	3	2
205A	R. 25c Hunt/Fish/Trap	4,919	5,085	5,359	5,595	5,936	6,658	6,256	5,004	5,281	5,463
215	R. Tag	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	-0-	2,937
216	NR Big Game	9,814	11,055	12,607	11,955	11,866	8,339	8,331	6,956	7,415	5,775
TOTAL		128,810	141,861	160,058	159,644	168,301	171,544	173,362	179,936	202,658	219,242

SB

511

COMMITTEE REPORT

SENATE

FURTHER: FINANCE

Date: 2/15/78

Mr. President:

The Committee on RESOURCES has had SB 511

creating division of energy & power development

under consideration and (a majority of the committee) (the committee reports it back as follows)

( ) recommends it do pass ( ) recommends it do not pass

( ) recommends it do pass with attached amendment(s)

( ) recommends it be replaced with CS for _____

and _____ ( ) new title ( ) same title

( ) AND attaches a Letter of Intent ( ) New Fiscal Note

(X) reports it back without recommendation

( ) and recommends it be referred to the _____ Committee

MEMBERS SIGNING DO PASS:

OTHER RECOMMENDATIONS:

Chairman

S 60 (rev. 6/77)

ALASKA POWER AUTHORITY

333 WEST4th - SUITE 31 - ANCHORAGE ALASKA 99501

March 30, 1978

The Honorable Kay Poland
Alaska State Senate
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Poland:

Attached per your request is our legal review of S.B. 511 which would eliminate the Alaska Power Authority and assimilate its functions into the Division of Energy and Power Development.

As I indicated at your committee meeting on March 22, 1978, I am somewhat reluctant to make my views known in that testimony from an agency which is being considered for abolishment might be considered biased. However, since your committee appears interested in my opinions, I am most happy to provide you with my thoughts.

First, as S.B. 511 is written, there is doubt about the ability of the Division of Energy and Power Development to actually fulfill the functions of the Power Authority. This is a technical matter, however, which can certainly be resolved by any scribe. In short, the Division of Energy and Power Development, here-in-after called the Division, could neither provide for long term project financing nor for front end community loans for feasibility studies. Without these abilities, the Division would be quite ineffectual in providing for energy development. Moral support would certainly not get the job done. Realizing, however, that these technical matters can be overcome, the real issue entails the selection of the optimum administrative means of providing for lower cost power development.

Under the present division of responsibility, the Division provides for conservation, research, alternative energy inventories, and regional planning. The Power Authority is responsible for project development by financing or a combination of financing, developing, owning and operating power projects. Division of these responsibilities provides a healthy checks and balances. Since the Power Authority is a facilitating agency, moreover, one with a singular purpose, it is best suited to "getting the job done". With its financial and legal advisors and its present efforts to develop a professional staff consisting of engineers and economists, it is gaining the nucleus needed for its statutory mandate. Absorption into the Division could only dilute the Authority's ability to function effectively.

The Power Authority has been established to operate as a Corpo-

ration (public) of the State of Alaska. Its status as such has made it quite palatable to the vaious utilities and communities that need assistance in power development. The power generation industry in Alaska is actually looking to the Authority as an entity that can provide coordination and development needed to preclude the energy problems which loom ahead. I would question the ability of an energy agency conglomerate, hamstrung by its bureaucratic shroud, to fulfill the same function. Since its corporate nature will require the Power Authority to remain fiscally solvent (or default in the face of the financial market) it will be forced into the role of prudent planning and development. Its state counterpart, with its access to the general fund, may not be similarly inclined.

There is also a philosophical question to be resolved. Should the State actually assume the posture of providing electricity for its citizens? Or should this best remain in the hands of the local entities and a State Corporation. State government is already growing at an alarming rate. If Susitna and other large power projects such as a Southeastern intertie or an AVEC intertie are developed, the agency that owns, operates and markets the energy from these projects will obviously require a sizable staff. Maintenance of such a staff under State government could only serve to further bloat our public sector and its attendant tax requirement and lobbying power.

Finally, one should compare the relative merits by which policy would be established under the two philosophies of power development administration. On the one hand, the Division policy would be established solely by the Director, with final concurrance from the Executive and Legislature. Under the Authority concept, policy matters are established by a Board of Directors which must be viewed as a non-partisan decision making entity from throughout the State. The perspective to be gained from such a diversification is invaluable. The present Board of the Power Authority consists of a Native Corporation Director, a banker, a business executive, a previous federal energy administrator, and a State Commissioner.

Given the opportunity to operate as envisioned in its enacting legislation, the Alaska Power Authority, in concert with the policies of the Division of Energy and Power Development and the Legislative and Executive branches, will provide a significant contribution to the social well being of the people of Alaska. While certainly well intended, S.B. 511 would not appear capable of providing the same level of service.

Sincerely,

Eric P. Yould
Executive Director

EPY/mgf
Attach:

MEMORANDUM

TO: Mr. Eric Yould
Executive Director
ALASKA POWER AUTHORITY

FROM: Wohlforth & Flint

DATE: March 6, 1978

RE: Senate Bill 511 "An Act Creating The Division of Energy and Power Development; and Providing For an Effective Date" and S.B. 429 both introduced by the Senate Special Committee on the Alaska Permanent Fund.

As you know, Senate Bill 429 introduced on January 19, 1978, wipes out or curtails the activities of the Alaska Housing Finance Corporation, the Alaska Municipal Bond Bank Authority and the Alaska Industrial Development Authority. The bill does not deal with the Alaska Power Authority although it provides in Section 250(8) for loans to investor owner utilities for hydroelectric projects and in Section 300 for loans to municipalities by authorizing bidding on their revenue bonds. S.B. 429 does not provide, however, for loans to the Division of Energy and Power Development- or to the Alaska Power Authority by name for that matter.

Apart from the policy question of repealing the statutory authority for the Alaska Power Authority which S.B. 511 does totally, the bill does not transfer to the Division of Energy and Power Development the powers to borrow money or to own or operate power projects. The nearest the subject bill comes to accomplishing this is in Section .035(a)(2) which authorizes contracts with others for the construction, acquisition, operation and maintenance of power projects. In addition, subsection (a) of .035 re-states the statutory purpose of the Alaska Power Authority (AS 44.56.070) as a power of the division. However, none of the typical borrowing powers are given to the division and the division would not be able to issue revenue bonds for power projects or otherwise borrow money on public markets to construct or acquire power projects. In this connection, existing AS 44.33.040 should

be examined. The duties of the division as specified in this section do not include the power to borrow money or to own projects or to buy or sell power.

In summary, S.B. 511 does not integrate the Division of Energy and Power Development into the Alaska Loan Programs Fund as is being attempted with other agencies dealt with in S.B. 429. At the same time the bill fails to permit borrowing independently by the Division for power purposes. It should also be noted that S.B. 511 in repealing the Alaska Power Authority Act repeals the Power Project Revolving Fund while, at the same time, S.B. 429 repeals the Water Resources Revolving Loan Fund.

STATE
of ALASKA

MEMORANDUM

ALASKA POWER AUTHORITY

TO: H. Phillip Hubbard
Commissioner
Department of Commerce &
Economic Development

DATE: 7 March, 1978

FROM: Eric P. Yould
Executive Director
Alaska Power Authority

SUBJECT: S.B. 511

On the surface, Senate Bill 511 appears to be aimed at abolishing the Alaska Power Authority and assimilating its statutory function into the Division of Energy and Power Development under the Department of Commerce and Economic Development. The desirability of such an action can only be determined by the Administration and the Legislature, however, there are some points which should be considered in evaluating the institutional manner in which the State chooses to solve its energy problems.

First, as S.B. 511 is written, there is doubt about the ability of the Division of Energy and Power Development to actually fulfill the functions of the Power Authority. This is a technical matter, however, which can certainly be resolved by any scribe. The salient remissions and ambiguities of S.B. 511 add their effect are briefly pointed out in the attached letter from Wohlforth & Flint, bond counsel for the Power Authority. In short, the Division of Energy and Power Development, here-inafter called the Division, could neither provide for long term project financing nor for front end community loans for feasibility studies. Without these abilities, the Division would be quite ineffectual in providing for energy development. Moral support would certainly not get the job done. Realizing, however, that these technical matters can be overcome the real issue entails the selection of the optimum administrative means of providing for lower cost power development.

Under the present division of responsibility, the Division provides for conservation, research, alternative energy inventories, and regional planning. The Power Authority is responsible for project development by financing or a combination of financing, developing , owning and operating power projects. Division of these responsibilities provides a healthy checks and balances. Since the Power Authority is a facilitating agency, moreover, one with a singular purpose, it is best suited to "getting the job done". With its financial and legal advisors and its pres efforts to develop a professional staff consisting of engineers and economists, it is gaining the nucleus needed for its statutory mandate. Absorption into the Division could only dilute the Authority's ability to function efficiently.

STATE
of ALASKA

MEMORANDUM

ALASKA POWER AUTHORITY

TO: H. Phillip Hubbard
Commissioner
Department of Commerce &
Economic Development

DATE : 7 March, 1978

FROM: Eric P. Yould
Executive Director
Alaska Power Authority

SUBJECT: S.B. 511 (continued)

The Power Authority has been established to operate as a public Corporation of the State of Alaska. Its status as such has made it quite palatable to the various utilities and communities that need assistance in power development. The power generation industry in Alaska is actually looking to the Authority as an entity that can provide coordination and development neededtoo preclude the energy problems which loom ahead. I would question the ability of an energy agency conglomerate, hamstrung by its bureaucratic shroud, to fulfill the same function. Since its corporate nature will require the Power Authority to remain fiscally solvent (or default in the face of the financial market) it will be forced into the role of prudent planning and development. Its State agency counterpart, with its access to the general fund, may not be similarly inclined.

There is also a philosophical question to be resolved. Should the State actually assume the posture of providing electricity for its citizens? Or should this best remain in the hands of the local entities and a State corporation? State government is already growing at an alarming rate. If Susitna and other large power projects such as a Southeastern intertie or an A.V.E.C. intertie are developed, the agency that owns, operates and markets the energy from these projects will obviously require a sizable staff. Maintenance of such a staff under State government could only serve to further bloat our public sector and its attendant tax requirement and lobbying power.

Finally, one should compare the relative merits by which policy would be established under the two philosophies of power development administration. On the one hand, the Division policy would be established solely by the Director, with final concurrance from the Executive and Legislature. Under the Authority concept, policy matters are established by a board of directors which must be viewed as a non-partisan decision making entity from throughout the State. The perspective to be gained from such a diversification is invaluable. The present Board of the Power Authority consists of a Native Corporation Director, a banker, a business executive, a previous federal energy administrator, and a State Commissioner.

Given the opportunity to operate as envisioned in its enacting legislation, the Alaska Power Authority, in concert with the policies of the Division of Energy and Power Development and the Legislative and Executive branches, will provide a significant contribution to the social well being of the people of Alaska. While certainly well intended, S.B. 511 would not appear capable of providing the same level of service.

Attachment: Memo from Wohlforth & Flint
EPY/maf

I. REQUEST
Bill/Resolution No. SB 511-An Act creating the Division of Energy and
Title Power Development
Requested by _____ Date 02/16/78

II. FISCAL DETAIL
Agency Affected Commerce & Economic Development
Program Category Affected Development
Budget Request Unit(s) Affected Energy & Power Development

EXPENDITURES (Thousands of Dollars)

	FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
100 PERSONAL SERVICES			220.0			
200 TRAVEL			25.0			
300 CONTRACTUAL			295.0			
400 COMMODITIES			3.5			
500 EQUIPMENT			4.5			
600 LAND & STRUCTURES			-0-			
700 GRANTS, CLAIMS, ETC.			-0-			
TOTAL			548.0			

FUNDING (Thousands of Dollars)

GENERAL FUND			548.0			
FEDERAL FUNDS			-0-			
OTHER (Specify)			-0-			

POSITIONS

FULL TIME			6			
PART TIME			-0-			
TEMPORARY			-0-			

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

IV. DATE 2-28-78 PREPARED BY Clarissa M. Dunbar
AGENCY Division of Energy & Power Development
PHONE 272-0527

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33 001 (Rev. 10/76)

A. Assumptions

1. Beginning in FY 79, it will be necessary for the division to thoroughly evaluate all aspects of the proposed Upper Susitna Dam Project, as well as address the question of potential funding, construction and operation of smaller proposed power projects.

2. These activities would be part of ongoing multi-year programs, which will extend many years into the future.

B. Program Summary

1. Positions

	Title	Range	Monthly Salary	Yearly Salary
a.	Administrator of Power Projects	24	$3,085.00	$37,020.00
b.	Deputy - Engineering & Construction	23	$2,867.00	$37,020.00
c.	Deputy - Finance & Marketing	23	$2,867.00	$34,404.00
d.	Civil Engineer	22	$2,661.00	$31,932.00
e.	Secretary I	12	$1,293.00	$15,516.00
f.	Clerk Typist III	08	$1,005.00	$12,060.00
				$165,336.00
			Cost of Living Increase (6%	9,920.00
				$175,256.00
			Benefits (25.5%)	44,690.00
				$219,946.00

2. Other Expenditures

a. Travel - $25,000.00

Extensive travel will be required by division staff, both within the State and to Lower 48 financial centers.

b. Contractual - $295,000.00

Approximately $250,000 will be earmarked for contractual services for feasibility studies of proposed projects, and to begin a thorough analysis of all aspects of the Upper Susitna Project over and above the present work being conducted by the Corps of Engineers.

c. Equipment - $4,500.00 and Commodities - $3,500.00

This will primarily cover additional office equipment and supplies required to accommodate the additional staff.

ALASKA POWER AUTHORITY

033 WEST4th - SUITE 31 - ANCHORAGE ALASKA 99501

March 30, 1978

The Honorable Kay Poland
Alaska State Senate
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Poland:

Attached per your request is our legal review of S.B. 511 which would eliminate the Alaska Power Authority and assimilate its functions into the Division of Energy and Power Development.

As I indicated at your committee meeting on March 22, 1978, I am somewhat reluctant to make my views known in that testimony from an agency which is being considered for abolishment might be considered biased. However, since your committee appears interested in my opinions, I am most happy to provide you with my thoughts.

First, as S.B. 511 is written, there is doubt about the ability of the Division of Energy and Power Development to actually fulfill the functions of the Power Authority. This is a technical matter, however, which can certainly be resolved by any scribe. In short, the Division of Energy and Power Development, here-in-after called the Division, could neither provide for long term project financing nor for front end community loans for feasibility studies. Without these abilities, the Division would be quite ineffectual in providing for energy development. Moral support would certainly not get the job done. Realizing, however, that these technical matters can be overcome, the real issue entails the selection of the optimum administrative means of providing for lower cost power development.

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Given the opportunity to operate as envisioned in its enacting legislation, the Alaska Power Authority, in concert with the policies of the Division of Energy and Power Development and the Legislative and Executive branches, will provide a significant contribution to the social well being of the people of Alaska. While certainly well intended, S.B. 511 would not appear capable of providing the same level of service.

Sincerely,

Eric P. Yould
Executive Director

EPY/mgf
Attach:

SB

527

COMMITTEE REPORT

SENATE

1/19/75

Mr. President: Date 5/12/76

The Committee on RESOURCES has had SB 527
relating to the efficient administration of fish and game
under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

( ) recommends it DO PASS WITH ATTACHED AMENDMENT(S)

( ) recommends it BE REPLACED WITH CS FOR SB527 AND THAT
CS FOR SB 527 DO PASS

( ) "and" recommends it BE REFERRED TO THE _____
COMMITTEE

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

R. Talbot
_____ Chairman

ANALYSIS OF CHANGES IN CS FOR SB 527
BY
JOHN FARLEIGH, ADMINISTRATIVE ASSISTANT
SENATE RESOURCES COMMITTEE

SECTION 3: This change is in section 3, paragraph (13), line 25, after "reduce" remove the words "predation or". This is to prevent the commissioner to initiate a wolf control program without board approval but to still allow him to conduct stickleback control, for example, without board consent.

SECTION 4: This section is redrafted to actually tighten up the emergency order powers of the commissioner. The amended language on page 2, lines 8 and 9, defines the circumstances required and since an emergency order is not subject to the Administrative Procedure Act, lines 17 through 27, would establish a due process for the department to go through to implement an emergency order.

SECTION 10: This section was rewritten so as not to appear to put the department above regulation by the boards, but to allow them to perform their duties without special exemptions from board regulations.

SECTION 21: Paragraph (C) was eliminated from this section which would have given the commissioner the power to promulgate regulations without a delegation by the board in the event that he could not contact a quorum of board members.

SECTION 35: (In the original bill) This section was removed in it's entirety, mainly due to the strong objections of the United Fishermen of Alaska.

SECTION 38: This change is self-explanatory. Under the present language, the appropriate board must address each and every case at a board meeting, but under the proposed language, the board may address the issue once and set the policy accordingly.

SECTION 39: In this repealer section a typographical error (16.35.080 is changed to 16.35.180) is corrected and 16.05.210 is eliminated so that it remains unlawful for a department employee or a hunter employed by the department to receive a bounty.

SB 321

Farleigh

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

Dear Mr. President:

In accordance with AS 24.30.060(b) and the Uniform Rules of the Alaska State Legislature, I am transmitting a bill relating to the efficient administration of Title 16 of the Alaska Statutes and the responsibilities regarding conservation and management of fish and game. Some of the changes proposed are purely technical and non-substantive in nature; others are more than that, so this is somewhat more than just a "housekeeping" bill. On the other hand, the substantive changes which do appear are not intended to implement anything resembling major changes in policy; rather, they are aimed at maximizing the efficiency of State government in managing fish and game resources so that the citizens of Alaska may obtain the greatest return for programs and activities funded by their taxes.

Since this bill concerns itself with the administration of fish and game generally, it necessarily pertains to the operations of the Boards of Fisheries and Game as well as to the Department. Therefore, it was considered highly important to obtain the views of the respective boards on this proposed legislation before its submission to the legislature. At their first joint session, in December, 1975, the boards spent nearly four hours reviewing and discussing its provisions with the assistance of the Departments of Law and Fish and Game. They then voted 13-0 to endorse these proposals.

This bill is necessary because: Considering the frequency with which AS 16 is amended and the interrelationship of provisions throughout that title, it is inevitable that some inconsistencies, oversights, and ambiguities will accumulate. Periodic revision of the fish and game laws to rectify these problems is desirable to facilitate administration by the executive branch, to avoid litigations over interpretation matters, and to reduce the likelihood of confusion with regard to future amendments by the legislature. Ambiguities, anachronisms, or inconsistencies in AS 16 may serve as the basis for lawsuits which otherwise would never be

filed. They may lead to board meetings which need not have been called, or meetings and lengthy deliberations by fish and game officials which would otherwise be unnecessary. In all of these cases, the State must spend a great deal of money for matters leading to no benefit for fish and game management. We would estimate that, based on the experience of the past year and the various lawsuits, meetings, and procedures which have taken place because of problems in Title 16, the State would save the taxpayers up to $100,000 per year if this bill were enacted.

Members of the executive branch who administer the laws daily and must interpret legislative directives in the context of particular situations become intimately familiar with the actual language employed. Consequently, they are in an excellent position to recommend changes which either improve the manner in which a legislative concept is to be implemented, or more accurately carry out the original legislative intent.

Problems of this nature in a complicated set of resource management laws are unavoidable. However, we believe that the necessary amendments must be implemented as soon as possible, and we offer the following to aid in your deliberations:

Section-By-Section Analysis of the Bill

Section 1. This updates existing language to reflect reorganizations of federal agencies and departments.

Section 2. This is the first of a number of instances in the bill where the word "chapter" is changed to "title" to allow applicability of a provision to the entire title. This is done only where it is evident that the particular section should so apply because of its general nature. In this case, the power of the Commissioner to collect and disseminate information should be present with respect to any duty vested in him since it is a necessary general function of a resource management agency.

Section 3. Adds to the powers and duties of the Commissioner the ability to perform research. This is already understood and has been implied from other powers, but it is so basic that it should be specifically mentioned.

This section also adds to the powers and duties of the Commissioner regarding fish and game diseases. This power already exists with regard to private nonprofit salmon hatcheries. The respective boards have this power under AS 16.05.251 and 255, but since this is an administrative ?

rather than a rulemaking function, it is properly housed in the Department.

Section 3 also pertains to powers of the Commissioner regarding cooperative agreements. The Commissioner already has these capabilities in a number of specific instances in Title 16, but the public interest of the State dictates that this power should be general since it is a routine administrative function. Inclusion of this section also permits a redraft of AS 16.05.251 and 255 (powers of the boards) separating administrative and rulemaking functions regarding cooperative agreements, the latter function being retained by the boards.

Finally, Section 3 adds the equivalent of a necessary and proper clause to the powers of the Commissioner regarding the general responsibilities vested in AS 16.05.020.

Section 4. This section would accomplish several changes in the emergency powers of the Commissioner. Only one of these, however, is a substantive addition to his authority.

Pressures from competing users of fish and game resources in Alaska is steadily increasing, leading to the need for more refined management techniques which respond as quickly as possible to changes in conditions. This necessarily reduces the margin of error available to fish and game managers. It is virtually impossible for the boards to assess with complete accuracy anticipated resource availability at board meetings, which are usually far in advance of season openings. The ability of the Commissioner to be able to open or close seasons or weekly periods on fish or game by emergency order is an important administrative tool, and it is often used to implement board policy or intent where unexpected changes in conditions require changes to regulations. In many cases, however, season closure may be an unnecessarily harsh measure to protect a resource; necessary safeguards may involve only a reduction of harvest levels of bag limits. Concurrently, while greater than anticipated resource numbers may not justify a season opening if this is the only avenue available, opening of a season might be satisfactory if bag limits or quotas could be reduced at the same time. Therefore, it would seem to be of benefit to the public if the power to change quotas, bag limits, or harvest levels were added to the emergency powers of the Commissioner.

From a strictly legal standpoint, there is some question as to the validity of sec. 60 in the context of due process because of the absence of (1) standards for when emergency orders may be issued and (2) the procedure to be followed in

promulgating the orders. Several additions are made to insure that adequate notice is given to interested persons so that any due process questions are eliminated. This process is also made applicable to Commissioner's announcements.

Finally, the boards frequently include in the text of their regulations that a particular season or weekly period will open or close by emergency order. As a legal safeguard, a sentence is added to sec. 60 specifically authorizing this procedure.

Section 5. AS 16.05.065 permits the Department to extend registration or licensing deadlines for particular individuals upon a showing of "excusable neglect". Since Departmental policy and decisions of courts have resulted in the evolution of a customary definition of this rather ambiguous term, it is advisable to incorporate this definition into the statutes.

Section 6. This section has been redrafted to more accurately reflect the types of actions which should be admitted as evidence of rulemaking activities in courts of law.

Section 7. This section is self-explanatory. It would permit disbursements to be made without the delay normally caused by seasonal fluctuations in receipts accruing to the Fish and Game Fund.

Section 8. "Chapter" is changed to "title" so that uniform enforcement procedures may apply to all of Title 16. In addition, the requirement that offenders be brought before a magistrate immediately is dropped, removing an unnecessary burden on protection officers.

Section 9. "Chapter" is changed to "title" for the same reason expressed regarding section 8.

Section 10. Some confusion has developed as to exactly what the respective powers and relationships are between the boards and the Department. In section 241, the legislature has recognized that the boards are entities of rulemaking and that the Departmental responsibilities are administrative. The relationship is therefore very similar to the distinctions between a legislative and executive branch. It is important to note that section 241 specifies that the boards "do not have administrative, budgeting or fiscal powers". (Emphasis added.) Since the legislature has organized the boards and the Department with this division in mind, it is highly important that this division be preserved in all of the statutes within Title 16; otherwise, it becomes very difficult to determine who is supposed to make the rules and who is supposed to carry them out.

That this distinction is not always clear became evident in a case litigated in 1975 entitled Cordano v. Brooks, in which a Departmental wolf control program in Game Management Subunit 20A was challenged. Imprecise language in the statutes (which was carried over into the split-board law) relating to the powers of the Board of Fish and Game caused the court to determine that the board had to adopt a regulation allowing department employees to engage in predator control. This result was not in keeping with the board/department relationship established by the legislature, since it declared that not only must the Department carry out regulations of the board, but it must also observe those regulations as though they were private persons even when performing official duties. This directive, if applied universally, would prohibit the Department from engaging in any research involving harvesting of resources unless the season were open and appropriate methods and means, bag limits, size restrictions, closed waters, gear restrictions, and quotas, etc., were observed by Departmental employees which is obviously contrary to legislative intent. Therefore, section 241 is amended to indicate that regulations of the boards apply to the public, and not to Departmental employees engaged in activities already authorized by statute.

In succeeding sections of this bill, various sections of Title 16 are rewritten to insure that board functions are limited to rulemaking and Departmental functions are restricted to administration.

Section 11. No specific authorizations exist for harvest levels, sex, and size limitations, even though regulations of this nature are and have been promulgated. Although authority can be implied from other board powers, it should be made express as a legal safeguard.

Section 12. The board does not engage in biological research, which is an administrative function. Consequently, this paragraph is rewritten to more accurately reflect the nature of board regulations in this area. In addition, a reference to the economy or general welfare as justification for regulations is added to expressly support regulations which constitute allocations among users and are not strictly for conservation (e.g., subsistence regulations, regulations pertaining to types of gear or particular methods and means). Note that this language parallels that under the powers of the Commissioner in AS 16.05.020(2).

Section 13. The board does not adopt regulations regarding investigation of predators, which is an administrative

function. It does, however, establish methods and means and harvest levels for the taking of predators through regulation. This paragraph is redrafted to reflect this fact.

Section 14. Entering into cooperative agreements does not necessitate the promulgation of regulations by the board. However, if such a cooperative agreement necessitates assent to the applicability of federal regulations, this is tantamount to a regulation-making function, since it governs the terms under which fish or game will be taken by the public. Therefore, this aspect of cooperative agreements should involve action by the board.

Section 15. Three additions are made to the powers of the board.

Paragraph (13) would authorize the board to adopt regulations limiting utilization and disposition of fish where necessary for protection of the resource. For example, the board could prohibit the use of salmon for bait if this were causing undesirable harvesting pressures on salmon and it was decided that bait utilization was not a high-value use.

Paragraph (14) would allow limiting routes of access or modes of transportation into an area to facilitate conservation and management. The primary purpose of this amendment is to assist the Board of Game with regard to hunting practices in particular areas (e.g., subsistence areas). However, it was felt that an identical section should be added under powers of the Board of Fisheries so that the powers of the respective boards would remain as identical as possible. Both (13) and (14) can probably be implied from existing board authorizations, but specific mention is desirable as a legal safeguard.

Paragraph (15) would formalize a procedure whereby the board decides it to be in the public interest for a regulatory action to be taken by the Commissioner. Usually this occurs where the board does not have sufficient information at its meeting to adopt a specific date for season opening or closure, and provides that it shall be done by emergency order. Again, this is primarily to insure that there is express legal authority for what is already a customary practice.

Section 16. Same justification as for Section 11.

Section 17. Same justification as for Section 13.

Section 18. Same justification as for Section 12.

Section 19. Same justification as for Section 14.

Section 20. Same justification as for Section 15.

Section 21. The Board of Fish and Game customarily met only twice a year. If the Boards of Fisheries and Game follow past practice, the former will meet twice and the latter once per year. During the interim periods, the boards are not in session and their members are scattered throughout the State, often out of contact with each other. Consequently, when a need suddenly arises for regulatory action in order to protect the fish or game resources of Alaska, delegations of the authority of the boards to the Commissioner become a highly important statutory capability. Consequently, Section 21 would make several amendments to AS 16.05.270 in order to clarify procedures for delegations and facilitate the delegation process where a board wishes to transmit its authority to the Commissioner.

Although AS 16.05.251 and 255 recite the basic powers of the Boards of Fisheries and Game, there are a number of other sections in Title 16 where regulatory powers are assigned to a board without specific authorization for delegation. From the standpoint of governmental efficiency, the boards should have the option to delegate their authority for any of their responsibilities if they so desire, especially since convening boards is expensive and may involve only a routine matter out of proportion to the expense. Therefore, subsection (a) would permit them to do so rather than limiting delegations to the powers included in secs. 251 and 255.

In addition, there is a significant legal question as to whether a board must meet in one geographical location in order to accomplish a delegation. It is presumed that the intent of the legislature was otherwise; if the board is able to so meet, there is no purpose in making a delegation, since the board may act on its own. Therefore, subsection (a) would also formalize the procedure often utilized in the past whereby a delegation may be accomplished through a mail or telephone poll of the members by the Commissioner. This is particularly important where there is not time to convene a board meeting (which usually requires at least 30 days advance notice) before action must be taken.

During the course of a year, members of the Department invariably run across ambiguities or inconsistencies in the fish and game regulations which were not discovered at board meetings. Often, they arise where criminal prosecutions are dismissed because a court considers a regulation to be defective. Subsection (b) would establish a standing delegation of the authority from the boards to the Commissioner to make minor technical corrections to regulations. Since such changes do not alter the substance of a regulation, there would not seem to be any need to go to the expense of contacting all of the members of a board for what is necessarily a routine action. The requirement that the intent of the board be retained precludes abuse.

Many members of the boards hold occupations (e.g., fishermen, guides, etc.) which require them to be in remote areas of the State and out of contact for lengthy periods of time. If a situation arises where regulatory action is necessary and a quorum of board members cannot be contacted, the State is essentially out of the regulatory business for that period of time. This could be highly damaging to the welfare of Alaska's fish and game resources if, for example, an entire set of regulations were invalidated by a court for constitutional or procedural defects. Therefore, subsection (c) would allow the Commissioner to take necessary regulatory action under these conditions if, and only if, he is unable to contact a quorum of board members within the time available to act. Moreover, the Commissioner would not be permitted to change the policy of the board as represented by its regulations unless to do otherwise would be patently impossible.

Subsection (d) is self-explanatory.

It is very important to note that this section would not increase the powers of the Commissioner relative to those of the boards. Rather, it would insure that the regulatory policies of the boards could be carried out in response to changing conditions even when the boards were not formally in session by allowing the Commissioner to act as the agent of the boards. As in the case of Hjelle v. Brooks, where a 1974 challenge by nonresident shellfish fishermen to State regulations succeeded in invalidating the board's management system and necessitating their redrafting when the board was not in session, a delegation of authority may result in the savings of tens of thousands of dollars and the continued full protection of the welfare and interests of the citizens of Alaska.

Section 22. This section makes a minor change in AS 16.-05.290 to allow board members to receive expenses and per diem for attending functions which are not strictly meetings or conferences, such as inspections of facilities.

Section 23. This section constitutes a grammatical improvement for AS 16.05.330(b).

Section 24. Section 24 would require the Department to issue identification cards to persons who are exempt from license requirements, and require them to have the cards in their possession while hunting, fishing, or trapping. Otherwise, there is little, if any, deterrent to falsifying applications for exemptions and enforcement is impossible.

Section 25. An oversight in Title 16 results in there being no requirement that vessel licenses must be in the possession of the licensee, which is required for other licenses. Seciton 25 would require actual possession.

Section 26. AS 16.05.680 does not prohibit employing a fisherman or purchasing fish from a fisherman who does not possess the proper licenses except for commercial licenses. This addition would prohibit purchases from fishermen who do not possess all licenses required by Title 16.

Section 27. This section reflects changes in commercial shellfish regulations. The Bering Sea and Western Aleutians are now expressly designated as registration areas.

Section 28. A misunderstanding arose during this past season regarding the burden of proof statute. Under the existing law, the burden of proof is on the holder of the fish and game only after ten days beyond a season closure (three days for crab). However, while this section does allocate the burden of proof, it does not make possession legal even when the burden of proof is on the State (during the first ten days following closure (three days for crab)). Subsection (b) would clarify this point.

Section 29. The existing law regarding confidential reports on fish products does not permit release to the Department of Public Safety. Considering that Department's enforcement responsibilities, such release should be permitted.

A serious defect in the present law concerns the fact that, while the Department of Fish and Game may not release confidential reports to the public without a court order, there is no restriction on such release by the Department of

Revenue and the Commercial Fisheries Entry Commission, which may receive the records from ADF&G. Therefore, this section has been redrafted so that the reports may be exchanged among the four named agencies, but may not be released elsewhere without a court order.

Section 30. This section updates existing law to reflect reorganizations of federal agencies.

Section 31. During the last legislature, a law was adopted prohibiting the waste of salmon. During the deliberations on the bill, however, what was apparently an innocent editorial change resulted in the introduction of an ambiguity in the law which may well nullify its effectiveness. Section 31 would utilize the language employed in the original bill but clear up the ambiguity.

Section 32. The basic prohibition contained in Title 16 is that it is unlawful to possess fish and game unless permitted by statute or a regulation of the boards. This prohibition is contained in AS 16.05.920(a). However, an apparent oversight has limited this prohibition to Chapter 05 only. Therefore, the word "chapter" is changed to "title".

Section 33. AS 16.05.940 is intended to be the basic definitions section for Title 16. However, these definitions apply technically only to Chapter 05, as a result of an apparent oversight. Therefore, Section 33 would change "chapter" to "title".

Section 33 would also change the definition of "resident". There have been many questions by persons who were unsure as to whether or not they were entitled to resident status. In addition, there are considerable loopholes present which allow persons who leave the State or never become bona fide residents to obtain resident licenses.

First, the words "the preceding" are added before "12 consecutive months". Without this, any person who has at any time resided in the State for 12 consecutive months meets the qualification contained in this phrase.

Second, under the new language residents would be required to maintain "their permanent and principal place of abode" in the State to qualify for residency. This would eliminate as a resident the type of person who brings a few belongings to Alaska and shares an apartment in order to avoid non-resident tax fees, but in actuality lives elsewhere. The new language would permit an Alaska resident to have an

additional house in another state (such as a winter home) provided the principal residence and abode was still in Alaska. However, a person who took all his belongings and left the State for eight months out of the year would not be entitled to resident status, even if he owned a home in Alaska. Many cases would have to be judged on their circumstances, but a determination would be possible which reflects the actual situation.

Third, the reference to voting residency is eliminated. It is not an accurate indicator of residence, and such a requirement may be unconstitutional because it requires persons to register in order to enjoy residency privileges, and it disqualifies from residency any person under 18 years of age.

Similar changes are made regarding military personnel and aliens.

Paragraph (6) of the definitions is amended to specify that "fish" includes parts of the fish. This would have applicability, for example, to fish for which the parts are sold individually, such as salmon roe.

Section 34. During the Bristol Bay price dispute last year, the department's role in setting up mediation was hampered by the need to actually certify that 1/3 of the registered fishermen were involved in a price dispute. Given the information available, this is not always possible. Consequently, this section is amended to make the burden on the Department a practical one.

Section 35. This section would make two changes in the private nonprofit salmon hatchery law. First, there should be some limit on the expenditures made from surplus hatchery funds, since "other fisheries activities" includes anything remotely related to fish. Therefore, such expenditures would have to be approved by the Department.

Second, the directive of the last sentence in sec. 450 is not always possible, since salmon sold by hatcheries may not be in a condition comparable to salmon sold commercially through normal channels. Therefore, this requirement would apply only to the extent possible to insure practicality and still prevent abuse.

Section 36-38. Although the legislature has established game refuges, sanctuaries, and critical habitats, required notification for developmental activities, and provided for restrictions in the form of board regulations, there do not

exist any penalties for violating these directives. Therefore, these sections would establish violations as misdemeanors and provide for penalties.

Section 39. Presently, this section requires consent in writing from the board for deployment of poisons. Written consent is an administrative rather than regulation-making function, and belongs with the Department. The amendment would so provide. Additional changes are made so that the restrictions more accurately reflect the objectives of a prohibition of this nature.

Section 40. This section would repeal several existing sections.

AS 16.05.280 provides that members of a board may be removed by the Governor for cause. However, AS 39.05.060 states that members of the boards serve at the pleasure of the Governor. This conflict was not resolved by the legislature in the split board act. However, AS 39.05.060 was amended by that law and the language stipulating that members serve at the Governor's pleasure was not changed, which would seem to indicate the legislature's preference for that approach. Therefore, AS 16.05.280 would be repealed to remove the inconsistency.

AS 16.05.450(c) was intended in the first place to apply to salmon net gear only, although it does not say so. With the advent of limited entry, there does not appear to be any purpose in retaining it, since it is an inconvenience to fishermen.

AS 16.15 is an anachronism, since the laboratory in question no longer exists.

AS 16.35.010-080 pertain in part to bounties which are no longer paid. The bounties on seals are in conflict with the Marine Mammal Protection Act of 1972. Moreover, AS 16.-05.255 provides that the Board of Game may establish bounties through the promulgation of regulations. Therefore, these sections should be repealed. Also within these sections are provisions regarding employment of trappers and hunters for predator control which are archaic and should be repealed.

Repeal of the sections pertaining to bounties should also result in repeal of AS 16.05.210, which makes a reference to special hunters of the Department.

Sincerely,

Jay S. Hammond
Governor

SB

537

1. Addition of the "fourth factor".

Sec. 46.03.758 - Civil Penalties for Discharges of Oil.

Subsection (d) should be amended to read, in part:

> "(d) The schedule shall vary according to the toxicity, degradability and dispersal characteristics of the oil. In order to provide a meaningful incentive for the safe handling of oil, as referred to in paragraph (a) (2), the schedule shall also vary according to the past operating records of the persons liable for the discharge, as far as such operating records reflect the frequency and severity of previous spills for which such persons were liable. The schedule shall also..."

3/31/78

not adopted

March 30, 1978

ALASKA LEGISLATION - 1978
S.B. 557
CIL SPILL PENALTIES

This bill, which amends H.B. 137, Chapter 129 of the 1977 Session, should be further amended as follows:

1. Section 46.03.758(a)(2) is amended to read:

> "~~the exact nature and extent of oil pollution can be neither documented with certainty nor precisely quantified on a spill-by-spill basis; however,~~ in light of the magnitude of harm which may be caused by oil discharges, and the vital importance of commercial, sport and subsistence fishing, tourism, and Alaska's natural abundance and beauty to the economic future of the state, and its quality of life, it is the judgment of the legislature that substantial civil penalties should be imposed for the discharge of oil, in order to provide a meaningful incentive for the safe handling of oil and to insure that the public does not bear substantial losses from oil pollution for which, ~~because of its subtle, long-term or unquantifiable nature,~~ compensation would not otherwise be received; ~~and~~ however, it is not the intent of this section to impose a civil penalty for discharge of oil where there is no demonstrable damage to the environment; and"

This amendment is the most important of the four. It deletes the reference to unquantifiable damage, a thoroughly illogical concept which no one has ever been able to explain, and it adds language to require a demonstration that environmental damage has occurred before penalties under this law can be imposed.

The existing law, which does not require evidence of environmental damage before imposing penalties, must be considered punitive. Yet, subsection (a)(3) states this should not be the case.* Thus, this amendment would render the penalty remedial rather than punitive.

2. Section 46.03.758(b)(1) is amended to read:

> "Subject to subsection (a)(2) and to ~~(3)~~ (2) of this subsection, the penalties for the following categories of receiving environments may not exceed"

Making the penalties subject to subsection (a)(2) is a precaution to ensure that penalties will not be imposed unless it is demonstrated that environmental damage occurred.

*46.03.758 (a)(3) "in order to provide an incentive which is effective, but not punitive."

The change from (3) to (2) is a technical change. There is no (3) in subsection (b).

3. Section 46.03.758(d) is amended to read:

> "The schedule shall vary according to the toxicity, degradability and dispersal characteristics of the oil. The schedule shall also vary according to the sensitivity and productivity of the receiving environment. And, the schedule shall take into account seasonal changes. Variations under this subsection may be by subcategories of receiving environments, specific receiving environments, or both. The maximum penalties established in (b) of this section shall apply to discharges in the most sensitive and productive of receiving environments within each category of receiving environment, and the penalty shall decrease for less productive or less sensitive receiving environments."

This is consistent with past arguments that seasonality is an important factor in determining potential enviromental damage. Also, it reinforces our first amendment. "Less" is added before "sensitive" in the interest of good construction.

4. Section 46.03.758(g) is amended to read:

> "Except as provided in (f) and (j) of this section, the entire penalty specified in the regulations shall be imposed, except that a person who discharges oil into a receiving environment may demonstrate, by a preponderance of evidence, that mitigating circumstances relating to the effects of the discharge would make imposition of the full penalty inappropriate. ~~In determining whether mitigating circumstances exist, the court shall recognize that scientific knowledge pertaining to oil spills is very limited and if there is insufficient knowledge either to predict a base case or to show mitigating circumstances varying from that base case, the administratively established schedule of penalties shall apply.~~ Only when no such mitigating circumstances exist shall the schedule of full penalties apply."

The language deleted describes the body of scientific knowledge pertaining to oil spills as "very limited." This is simply not true. The scientific community, academicians, government, and industry have produced volumes of data on the fate and effects of oil spills (an abbreviated bibliography is attached), and their work is continuing. Therefore, the deleted sentence cannot be justified.

WORK SHEET

FOR

AS 46.03.758/ TITLE 18 CHAPTER 75 ARTICLE 5

POTENTIAL LOSS TO OPERATORS-

1. LOSS #1

GIVEN: 5000 GALLON SPILL IN FRESHWATER CRITICAL ENVIRONMENT (SALMON SPAWNING STREAM).

PRODUCT SPILLED- HOUSE HEATING FUEL

CHARACTERISTICS	FACTORS
HIGHLY TOXIC	1.00
HIGH DEGRADABILITY	.25
HIGH DISBURSIBILITY	.15
	1.40/3=.466

FRESHWATER CRITICAL = $10.00/GAL.

COMPUTATION :=

MAXIMUM STANDARD PENALTY

.466 @ 10 @ 5000 = $23,300

WITH GROSS NEGLIGENCE

$23,000 @ 5 = 116,500

2. LOSS # 2

GIVEN: 2000 GALLON SPILL IN MARINE CRITICAL ENVIRONMENT (WITHIN ONE MILE OF A SALMON SPAWNING STREAM).

PRODUCT SPILLED: MARINE DIESEL

CHARACTERISTICS:	FACTOR
HIGHLY TOXIC	1.00
HIGH DEGRADABILITY	.25
HIGH DISBURSABILITY	.15
	1.40/3=.466

MARINE CRITICAL = $ 2.50/GAL.

COMPUTATION:

MAXIMUM STANDARD PENALTY

.466 @ 2.50 @ 2000 = $2,330

WITH GROSS NEGLIGENCE

2,330 @ 5 = 11,650

Alaska Trucking Association, Inc.

3443 Minnesota Drive
Anchorage, Alaska 99503
(907) 276-1149

TESTIMONY
CONCERNING
CIVIL PENALTIES FOR DISCHARGE OF OIL

FOR THE RECORD, I AM BEN BENEDIKTSSON, MANAGING DIRECTOR OF THE ALASKA TRUCKING ASSOCIATION. MY ASSOCIATION IS MADE UP OF SOME 600 MEMBER FIRMS WHO EMPLOY 17,000 EMPLOYEES DELIVERING VIRTURALLY ALL OF YOUR FOOD, HOUSEHOLD NECESSITIES, AND FUEL.

WE ARE VERY CONCERNED WITH THE ENTIRE SUBJECT OF OIL SPILLS. VERY FEW OF MY MEMBERS ARE PURE CARRIERS IN THE SENSE THAT A YELLOW FREIGHT OR CONSOLIDATED FREIGHTWAY EXISTS IN THE LOWER 48. ALMOST ALL OF MY MEMBER CARRIERS ARE INVOLVED IN A VARIETY OF TYPES OF AUTHORITIES. FOR EXAMPLE, MY TYPICAL MEMBER WILL HAVE AUTHORITY TO MOVE GENERAL COMMODITIES, HOUSEHOLD GOODS, AND FUEL. A LARGER NUMBER OF RELATIVELY SMALL CARRIERS ARE INVOLVED IN FUEL DELIVERIES THAN IS THE CASE IN THE TYPICAL LOWER 48 AREA.

THE HANDLING OF FUEL BY TRUCK IS AN ABSOLUTE NECESSITY TO THE SURVIVAL OF MOST OF THE COMMUNITIES AND CITIES IN ALASKA. WITHOUT THE REQUISITE TANK TRUCKER DELIVERING YOUR HOME HEATING OIL, MANY OF MY MEMBERS AND YOUR CONSTITUENTS COULD NOT SURVIVE.

THE SUBJECT OF THIS HEARING IS SB 557, CONCERNING MANDATORY OIL SPILL PENALTIES. IN THE LAST HALF SESSION, THE LEGISLATURE PASSED HB 137 WHICH, WHILE APPARENTLY BASED ON GOOD INTENTION, WAS BAD

LAW. THE APPARENT INTENT WAS TWO FOLD - (1) TO PROVIDE AN INCENTIVE TO ENSURE SAFER HANDLING OF LARGE QUANTITIES OF OIL AND (2) TO PLACE DOLLARS INTO THE GENERAL FUND TO OFFSET ENVIRONMENTAL REPAIR COSTS, FOR DAMAGE RESULTING FROM LARGE SCALE OIL SPILLS. UNFORTUNATELY, WHAT HAS HAPPENED AS A RESULT OF THE PASSAGE OF AS 46.03.758 IS THAT THE SMALL OIL CARRIER IS PLACED IN A POSITION IN WHICH HE CAN BE SERVED WITH AN ARBITRARY FINE FOR AN OIL SPILL, REGARDLESS OF ACTUAL ENVIRONMENTAL DAMAGE. THAT FINE CAN BE VERY SIGNIFICANT AND, IN FACT, PROBABLY WOULD PUT A LARGE MAJORITY OF MY MEMBERS OUT OF BUSINESS IF THE FULL PENALTIES WERE TO BE ENFORCED IN A RELATIVELY SMALL SPILL.

ATTACHED ARE WORK SHEETS FOR POTENTIAL OIL SPILLS IN TWO TYPICAL CASES OF TRUCK ACCIDENTS.

SB 557 WAS PROPOSED TO ELIMINATE THE SMALL OIL SPILL FROM PENALTIES AGAINST WHICH THE OPERATOR CANNOT EVEN BE INSURED. THERE IS A COMPANION BILL (HB 912) PRESENTLY BEING PROCESSED THROUGH THE HOUSE WHICH PROPOSES ESSENTIALLY THE SAME SOLUTION TO THE CIVIL PENALTY PROBLEM AS SB 557. IT IS OUR RECOMMENDATION THAT THE TWO BILLS BE COMBINED. WE THINK THAT THE RATIONALE AND THE GALLONAGE FIGURE SUPPLIED BY HB 912 WOULD PROVIDE THE PROTECTION NECESSARY TO CARRY OUT THE INTENT OF THE ORIGINAL LEGISLATION. OUR TANK TRUCKER NOW RUNNING THE HIGHWAYS CARRY A MAXIMUM LOAD OF ABOUT 11,500 GALLONS

OF PETROLEUM PRODUCTS. SINCE THE TREND HAS BEEN TOWARD LARGER EQUIPMENT WE SUGGESTED THAT A FACTOR OF 12,500 GALLONS BE USED TO EFFECT THE LOWER LIMIT OF CIVIL PENALTIES. THIS WOULD PROVIDE PROTECTION NECESSARY FOR THE NEXT SEVERAL YEARS. IN EARLIER HEARINGS OF HB 912 THE 12,500 GALLON FIGURE WAS REDUCED TO 12,000. THAT IS FINE BY US. IT HAS ESSENTIALLY THE SAME AFFECT AS THE 12,500 FIGURE.

THE ATA SUGGESTS AS AN AMENDMENT THAT THE TEXT OF HB 912 BE ADOPTED AS SB 557. THIS WILL HAVE THE AFFECT OF ESTABLISHING THE LIMITATION NECESSARY TO PROTECT THE SMALL FUEL CARRIER AND ALSO PROVIDING A MUCH BETTER STATEMENT OF LEGISLATIVE INTENT THAN IS IN SB 557. IT WILL ALSO HAVE THE AFFECT OF MAKING PASSAGE OF THIS LEGISLATION MUCH EASIER.

ON BEHALF OF MY ASSOCIATION, I WOULD LIKE TO THANK YOU FOR THE OPPORTUNITY TO BE HEARD.

WORK SHEET

FOR

AS 46.03.758/ TITLE 18 CHAPTER 75 ARTICLE 5

POTENTIAL LOSS TO OPERATORS-

1. LOSS #1

GIVEN: 5000 GALLON SPILL IN FRESHWATER CRITICAL ENVIRONMENT (SALMON SPAWNING STREAM).

PRODUCT SPILLED- HOUSE HEATING FUEL

CHARACTERISTICS	FACTORS
HIGHLY TOXIC	1.00
HIGH DEGRADABILITY	.25
HIGH DISBURSIBILITY	.15
	1.40/3=.466

FRESHWATER CRITICAL = $10.00/GAL.

COMPUTATION :-

MAXIMUM STANDARD PENALTY

.466 @ 10 @ 5000 = $23,300

WITH GROSS NEGLIGENCE

$23,000 @ 5 = 116,500

2. LOSS # 2

GIVEN: 2000 GALLON SPILL IN MARINE CRITICAL ENVIRONMENT (WITHIN ONE MILE OF A SALMON SPAWNING STREAM).

PRODUCT SPILLED: MARINE DIESEL

CHARACTERISTICS:	FACTOR
HIGHLY TOXIC	1.00
HIGH DEGRADABILITY	.25
HIGH DISBURSABILITY	.15
	1.40/3=.466

MARINE CRITICAL = $ 2.50/GAL.

COMPUTATION:

MAXIMUM STANDARD PENALTY

.466 @ 2.50 @ 2000 = $2,330

WITH GROSS NEGLIGENCE

2,330 @ 5 = 11,650

SB
562

COMMITTEE REPORT

SENATE

FURTHER: FINANCE

4/12/78

Date: 4/24

Mr. President:

The Committee on RESOURCES has had SB 562 Alaska land policy

under consideration and (a majority of the committee) (the committee reports it back as follows)

( ) recommends it do pass ( ) recommends it do not pass

( ) recommends it do pass with attached amendment(s)

(X) recommends it be replaced with CS for [illegible]

and [illegible] ( ) new title (X) same title

( ) AND attaches a Letter of Intent ( ) New Fiscal Note

( ) reports it back without recommendation

( ) and recommends it be referred to the _____ Committee

MEMBERS SIGNING DO PASS:

OTHER RECOMMENDATIONS:

R. Palmer

Chairman

S 60 (rev. 6/77)

FSLUPC
April, 1978

LAND POLICY BILL

Suggested Amendments

A. Page 6, line 6, suggested substitution for section .040.

AVAILABILITY OF MENTAL HEALTH LAND, SCHOOL LAND, AND UNIVERSITY LAND. Under the purposes of this chapter, mental health land, school land, and university land may be made available for private use in accordance with statutes governing such lands. In their capacity as trustee for such lands, the Mental Health Board, the Board of Education, and the Board of Regants of the University of Alaska shall, within 120 days from the date of this act, define goals and objectives for the management and disposition of lands under their trusteeship. In accordance with these goals and objectives and in consultation with the municipalities in which such lands are located, the director shall prepare an annual program for sale or lease offerings of selected mental health lands, school lands, and university lands. This program shall accompany the annual land availability programs submitted to the Legislature in accordance with section .020 of this chapter.

B. Page 7, line 11, substitute for last sentence.

The requirements of this section do not apply to land made available through a cabin permit system, material sales, or short-term leases; provided, however, that for short-term leases a municipality may require compliance with local subdivision ordinances.

C. Page 9, line 27, added sentence to paragraph (e).

The classification process must include notice and review requirements of existing statutes.

D. Page 10, line 5, added sentence to paragraph (g).

Where a local zoning ordinance or other land use regulation is in effect, the provisions of AS 35.30.020 and AS 35.30.030 shall apply.

FSLUPC
April, 1978

SECTION BY SECTION ANALYSIS
LAND POLICY BILL
HOUSE BILL NO. 904/SENATE BILL NO. 562

Sec. .005. This section sets forth basic intent and purpose regarding state-owned lands. Paragraphs (a) through (e) are purposely worded in the form of general policy directives rather than in the form of specific binding legal requirements. The last sentence in (b), lines 13-16, page 2, needs some explanation. Such a statement is necessary if lands classified for open space purposes are to qualify as the matching share for federal funds under the Land and Water Conservation Program.

Sec. .010. Under this statement, the basic orientation of State land disposal is towards the needs of individuals and other parties who will actually use the land. The Commission recommended this policy after finding that state land sales in the late 1960's and 1970's had primarily benefited land companies and wealthy individuals who could afford large tract purchases, rather than individuals who were looking for cabin or house sites. To change this orientation, land should be made available in individually sized parcels.

This section also includes a directive that state land availability programs concentrate in areas where public services already exist or can be extended, or where a viable economic base could be developed. This policy would not prohibit remote land disposal but, rather, direct that in such areas disposal would be mainly for recreation cabin sites with seasonal road or water access. Another method of fulfilling this directive might be through a rural cabin permit system, meeting the needs of people who want real isolation with several miles of separation between sites.

Sec. .015. This section lists the various reasons for retaining some state lands in public ownership, and is generally self-explanatory.

Sec. .020. This paragraph is identical to the first paragraph of the Governor's land credit proposal. An annual determination of acreage to be available for private use gives the legislature the flexibility to respond to changes in circumstances over the years. An annual determination is consistent with the basic thrust of the policy bill which is to make lands available where they are most needed and with consideration of local supply and demand factors. We would note that, in terms of meeting people's needs, it is not the gross acreage of land that is important but, rather, location, access, and tract size.

Sec. .025. This section is simply additional direction to base the land availability programs on an assessment of the differing needs for land of different types in various parts of the state, and to tailor state land programs accordingly.

Sec. .030. This section summarizes the variety of land availability programs within existing statutes and regulations and adds, in lines 25, 26, and 27, authority for a cabin permit system to be used in isolated locations on state-owned lands. To enable private use of remote isolated lands, the state must have a program which does not require land survey. In isolated locations a survey can cost as much as $4,000, often exceeding the market value of the land. A permit system which, unlike a conveyance program, would not entail land survey.

Sec. .035. The fair market value criterion set forth in (1) is self-explanatory. Besides the reasons included in the paragraph, the Commission recommends this approach because grant programs tend to invite public abuse, and are very difficult to administer in a fair and evenhanded manner. It should be noted that most of the participants at the Alaska Public Forum favored a market value approach to state land disposal. However, item (1) allows the use of less than fair market value programs as authorized by statute or administrative regulation and thus would enable the continuation of the homesite, homestead, and open-to-entry programs.

Paragraph (2) is self-explanatory.

Paragraph (3) spells out specific and detailed criteria for the choice of areas where lease programs would be used. This is an important addition to the state's body of land law. In the past lease programs have ofte.. been used where sale programs would have been more suitable.

Paragraph (4) gives direction for the use of cabin permitting in isolated, remote areas.

Paragraph (5) refers to the director's existing statutory authority to grant conditional title in special situations such as agricultural areas where the state wishes to ensure agricultural development, or in areas where the state may wish to preserve scenic easements, while making the land available for private uses compatible with this purpose.

Sec. .040. This section is self-explanatory. As a result of our discussion with the Community and Regional Affairs Committee, we are proposing a substitute paragraph (A in the list of suggested amendments) that would establish a more aggressive program for trust land availability.

Sec. .045. Under this section, the state would set survey control markers so that individual private surveys, tied to these markers, would mesh and not overlap. In the western states where areas were surveyed separately by private citizens, without an overlying set of control points, there were serious problems with overlapping and contradictory surveys. As a result, citizens were saddled with title problems, unusable property, etc. Through this section, we hope to avoid or minimize such problems in Alaska.

Sec. .050. This section requires the state to provide adequate access to private use areas. Lines 18 through 20 gives direction for the integration of state road development programs with land availability programs in appropriate locations. If state land is actually to be made available for individual use, it is important to strengthen the state's role in development of local access roads associated with state land use programs.

Sec. .055. Self-explanatory.

Sec. .060. A regular, updated inventory of the land suitability should be the foundation of the state's land management program. The state already has a good start in this direction through the land selection inventory.

Paragraph (b) of this section directs the division to reassess holdings of other state agencies, such as the Division of Aviation, to see if the land amount is excessive or inadequate in relation to current needs and alternative uses of the property. Such a program is especially important in small communities where excessive agency holdings occasionally preempt lands that are vitally needed for other community uses.

Sec. .065. Paragraphs (a) and (b) provide guidelines and standards for the development of land use plans for state lands.

Paragraph (c) directs the commissioner to prepare regional land use plans for all of the state-owned land. These would be of simple "first-cut" plans separating areas of settlement and settlement impact from areas of public use and ownership.

Paragraph (d) provides a formal method of identifying the official plan so that the public and the administration knows which document to rely on, and makes the important requirement that land classification be based on the official plan.

Paragraph (e) is self-explanatory.

Paragraph (f) establishes a needed tie between transportation planning and general land planning.

Paragraph (g) requires state planning to be consistent with local governmental planning.

Sec. .070. This section adds a state multiple use management system to the existing state park and trail systems. Lands may be designated to this new system, the "State Public Reserve System" by proclamation of the governor. The legislature retains its existing power to approve any designation of land to a system closed to multiple purpose use for an area of over 640 acres.

Paragraph (4) gives the state the option of designating rivers or portions of rivers to be managed by the state under the guidelines of the National Wild and Scenic Rivers System. Such authority may be desirable in some areas where segments of a river are owned by the federal and state governments. If a whole river-trip area can be managed under one set of guidelines, overall recreation benefits may be increased.

Sec. 900. This section includes a requirement that the director adopt, within 120 days, a comprehensive revision of the regulations affecting planning, classification, management, and disposal of state land surface. The administration has long recognized the need for this overall rewrite, and work on a revision is in process.

*Sec. 3. The repealed section 38.05.300 deals with classification and with the authority of the legislature to approve single-use designation for more than 640 acres. This bill spells out the classification and planning process more completely, and section 38.05.300 should be deleted to avoid confusion. The legislature's control over single-use designation of more than 640 acres is included in section .070(c) of this bill (page 8, lines 8-10).

TESTIMONY

REGARDING LAND POLICY BILL

PRESENTED BY

JOINT FEDERAL-STATE LAND USE PLANNING COMMISSION FOR ALASKA

APRIL, 1978

The Commission wants to speak in support of Senate Bill 562 establishing an Alaskan land policy. We have been studying State land policy for several years and participated with the Administration in preparing this bill. As we reviewed the existing statutes governing the State's public domain and studied the State's land programs as they have operated over the past 15 years, we found that Alaska has very little statutory guidance to govern the Administration's decisions about disposal or retention of State lands. The existing constitutional and statutory requirement that State lands be managed for "maximum use and benefit consistent with the public interest" gives us an excellent basic goal, but is not specific enough to guide the administrator who is deciding where and how much State lands to make available for private use. As evidence of this statutory lack, we have seen the State's land program shift from large tract disposal practices in the late 1960's and early 1970's to the minimal disposal of recent years.

Members of the Legislature have recognized this problem, and, last year, Senator Poland requested the Commission to study the subject and prepare recommendations to this Legislature. We presented initial recommendations to members of the Senate and House Resources Committees this

January. The land policy bill represents a refinement of those sections of the Commission's recommendations dealing with policy matters.

The land policy bill before you accomplishes these purposes through three articles:

(1) Article 1 covers policy for public and private use. Essentially, this section makes it clear that the State's overall land policy is to provide lands for both private and public use purposes and to allocate suitable lands for each purpose. Special emphasis is placed on maintaining a balance of public and private lands near communities so that natural areas are easily reached by all people, and not just those who can afford to travel long distances. Two parallel subsections set forth the public purpose in making lands available for private use and the public purpose in retaining State lands in public ownership for recreation, mining, resource development, and other purposes. The policy statement recognizes the essential role of local governments in the process of arriving at decisions about State lands.

(2) Article 2 provides guidelines to the Administration for making land available for private use. The first section on timing and amount is identical to the first section of the land credit bill which Governor Hammond introduced. This section mandates that the Administration make a quantity of State

lands available on an annual basis for private use purposes. A minimum of 50,000 acres is set for the first year, no more than 10% of which may be leased land. Thereafter, the amount is set annually by the Legislature. The basic orientation of this section is towards making land available for direct, individual use in locations and in parcel sizes that best meet differing needs in different areas as determined through an inventory process.

The bill sets forth a State policy for making land available at fair market value, particularly in close-in locations with high real estate values; but the criteria provide room for use of homesiting and open-to-entry in appropriate locations. To prevent misuse of leasing, as has occurred in past years, the bill lists the types of special circumstances where leasing would be an appropriate method of making land available. Provision is also made for recreation cabin permitting in isolated locations on State lands. A section on availability of trust lands is included, and standards for surveying and subdivision as well as for adequate access are set forth. On page 7 there is a strong provision requiring State subdivisions to conform with local platting authority.

(3) Article 3 covers inventory planning and classification. This section draws from existing scattered and partial statutory direction for land inventory, planning and classification to

establish in one statute a clear, simple and unified program for analyzing the value and use potential of State lands. All lands must be inventoried and their appropriate use designated. As part of this process, the advise of local governments must be obtained.

The section establishes a new State management system for multiple use lands, called the "State Public Reserve System." There is also a new section on wild and scenic rivers giving the State the option of designated selected rivers in State ownership as part of the National Wild and Scenic Rivers System to be managed by the State in accordance with national guidelines. The Legislature retains its existing authority to approve any designation of more than 640 acres which would close the land to multiple use.

In summary, much of what is included in the land policy bill are generally accepted principles of good land management. The bill acknowledges the public desire to acquire State land for private use and mandates an active program in this direction. However, it does so in a responsible manner without sacrificing the many other valid uses of State land. We feel that adoption of this bill will clarify the State's position as a land manager, and will help in establishing this fact at a national level.

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB 904 and SB 562

Title Alaska Land Policy

Requested by _____ Date 3/30/78

II. FISCAL DETAIL

Agency Affected Natural Resources

Program Category Affected NRMEC

Budget Request Unit(s) Affected Land & Water Management; Cadastral Engineer; Management and Administration (Lands); District Operations (Lands)

EXPENDITURES (Thousands of Dollars)

	FY 78	FY 79	FY 80	FY 81	FY 82	FY 83
100 PERSONAL SERVICES		1,866				
200 TRAVEL		98				
300 CONTRACTUAL		2,919				
400 COMMODITIES		56				
500 EQUIPMENT		87				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		5,008				

FUNDING (Thousands of Dollars)

GENERAL FUND		5,008				
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

FULL TIME		69				
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Detailed analysis and breakdown not yet completed. Will be completed and submitted on April 3, 1978. (See attached sheet for general breakdown)

N.B.

This fiscal note must be read in conjunction with the fiscal note for HB 905 (Land Disposal Act) since $4,579,631 in costs are identical in both bills (i.e. each bill mandates disposal of the same 50,000 acres). The additional cost of this bill, if HB 905 passes, is only $426,233.

Present municipal subdivision laws generally require actual construction of road access before sale of parcels under 40 acres in size. Unless the State is released from such requirements, the additional fiscal impact could be quite severe.

IV. DATE 3/30/78 PREPARED BY Douglas Mutter DJM

AGENCY DNR, Planning & Research Section

PHONE 274-8542

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/77)

50,000 acres disposal

COST SUMMARY
LAND POLICY ACT

DNR/ADL Section	Personal Services	Travel	Contractual	Commodity	Equipment	Totals
Planning/Classification	(9) $ 262,554	$17,300	$ 74,764	$ 3,100	$ 3,900	$ 361,618
Survey/Records	(15) 426,610	30,000	2,055,760	35,000	40,000	2,587,370
Land & Water Management	(27) 734,761	30,000	530,000	8,100	27,000	1,330,061
Administration	(8) 162,188	2,874	126,440	3,040	6,040	300,582
TOTALS	(59)$1,586,113	$80,174	$ 2,786,964	$49,240	$76,940	$4,579,631

Land inventory/assessment

Agency	Personal Services	Travel	Contractual	Commodity	Equipment	Totals
DNR	(10) $ 279,873	$17,200	$ 131,960	$ 6,200	$10,200	$ 428,233
Grand Totals	(69) $1,856,986	$97,374	$ 2,918,924	$55,440	$87,140	$5,007,864

Land Policy Act

(Front-end)

Minus

reimbursable survey costs (contractual only)	$1,815,760
fair market value for land (average $500 per acre)	25,000,000
Net Profit (long term)	$21,807,896

March 28, 1978

Preliminary

Estimated State Implementation Costs

Alaska Land Policy Act -- HB904, S8562

This preliminary statement analyzes the costs of implementing (1) the 50,000 acre minimum per year disposal directive and (2) the administration of the land inventory, assessment, coordination, etc. efforts. This is basically a first year cost analysis because Section 38.04.020 of the bill provides for an annual program as part of the administration's budget (at the 50,000 acre minimum level an estimated 5 percent inflationary factor could be added for each succeeding year).

1. 50,000 acre disposal TOTAL COST = $4,579,631/TOTAL PERSONNEL = 59 full time

The following acreages from the state's three principal disposal programs are assumed to comprise the first year's offerings (costs do not include provision of roads or services at sites):

Program	No. Sites	Acres/Site	Total Acres
Homesite	1,000	5	5,000
Open-to-entry	1,000	5	5,000
Agriculture and	500	20	10,000
general sales	250	40	10,000
	50	160	8,000
	25	320	8,000
	7	640	4,480
TOTALS	2,830 sites		50,480 acres

The following activities are assumed for any disposal program: (1) site identification and evaluation, (2) public information and community coordination, (3) subdivision and layout, (4) survey and records, (5) appraisal, (6) disposal and accounting, (7) administration, and (8) follow-up monitoring.

A. Estimated costs for (1) site identification and evaluation, (2) public information and community coordination, and (3) subdivision layout: $361,618/ 9 full time.

Personal Services (including 26% benefits)

Title	No. Positions	Grade	Amount
Planning Supervisor	1	21	$ 39,282
Land Mgmt. Officer III	4	18	124,659
Public Info. Officer II	1	17	29,242
Cartographer III	1	16	27,186
Planning Assistant	1	15	25,220
Clerk Typist IV	1	9	16,965
TOTAL	9	TOTAL	$262,554

Travel

per diem	$ 7,200
transportation	10,100
TOTAL	$17,300

Contractual

Media	$ 2,500
Community Land Market Analyses	30,000
Advertising	800
Communication	2,200
Printing	5,000
Equipment Rental	600
Aerial Photography	22,000
Space*	11,664
TOTAL	$74,764

Commodities

Cartographic supplies	$2,300
Other supplies	800
TOTAL	$3,100

Equipment

six desks @ 350 each	$2,100
seven chairs @ 140 each	1,000
one drafting table	700
one drafting chair	100
TOTAL	$3,900

*Space (includes janatorial, electric, telephone, and is included in totals as a contractual). Standard Formula: 80 ft.^{2}/person X $1.35/ft.^{2}/mo. X 12 = cost/year

B. Estimated costs for (4) survey and records: $2,587,370/15 full time

Personal Services (including 26% benefits)

Title	No. Positions	Grade	Amount
Cadastral Surveyor (Dist. offices)	3	20	$109,362
Cadastral Surveyor	1	20	43,848
Cartographer (Dist. offices)	3	15	75,660
Cartographer	1	15	30,240
Surveyor	1	19	33,914
Surveyor	2	16	54,372
Drafting Technician	1	14	23,451
Land Mgmt. Technician	1	12	20,533
Drafting Technician	1	11	19,278
Typist	1	8	15,952
TOTAL	15 (includes a surveyor & cartographer in each district)	TOTAL	$426,610

Travel

per diem (200 man-days @ $50/day)	$10,000
travel	18,000
miscellaneous transportation	2,000
TOTAL	$30,000

Contractual

Professional Services

- $600/5 acre tract for survey for 2,000 tracts = $1,200,000
- $25/acre for agricultural lands for survey 20 acre tract or smaller for 500 tracts = $250,000

- $12/acre for agricultural lands survey for tracts larger than 20 acres for 332 tracts = $365,760

Space	$ 40,000
Data processing/records	200,000
TOTAL	$2,055,760

Commodities - TOTAL $35,000 (supplies, survey monuments, scientific/professional supplies, etc.)

Equipment - Office (chairs, desks)	$20,000
Field	20,000
TOTAL	$40,000

C. Estimated costs for (5) appraisal, (6) disposal and accounting, and (8) follow-up monitoring: $1,330,061/27 full time.

Personal Services

Title	No. Positions	Grade	Amount
LAND SECTION			
Land Management Officer III	1	18	$ 32,464
Land Management Officer II	3	16	84,939
Land Management Officer I	1	14	24,725
Clerk/Typist III	1	8	16,315
SUB-TOTAL	6 For 12 months each		$158,443
WATER SECTION			
Land Management Officer III	1	18	$32,464
Land Management Officer II	1	16	28,313
SUB-TOTAL	2 For 12 months each		$60,777
FORESTRY SECTION			
Forester III	1	18	$ 32,464
Forester I	3	14	74,175
Clerk/Typist III	1	8	16,315
SUB-TOTAL	5 For 12 months each		$122,954
NORTHCENTRAL DISTRICT OFFICE			
Land Management Officer II	3	16	$ 90,090
Land Management Officer I	1	14	28,313
Clerk/Typist III	1	8	22,500
SUB-TOTAL	5 For 12 months each		$140,903

Title	No. Positions	Grade	Amount
SOUTHCENTRAL DISTRICT OFFICE			
Land Management Officer III	2	18	$ 64,928
Land Management Officer II	2	16	56,626
Land Management Officer I	1	14	24,725
Clerk/Typist III	1	8	16,315
SUB-TOTAL	6 For 12 months each		$162,594
SOUTHEAST DISTRICT OFFICE			
Land Management Officer III	1	18	$32,464
Land Management Officer II	2	14	56,626
SUB-TOTAL	3 For 12 months each		$89,090
TOTALS	27		$734,761

Travel

Land Section	$ 2,000
Water Section	3,000
Forestry Section	2,000
Northcentral	10,000
Southcentral	10,000
Southeast	3,000
TOTAL	$30,000

Contractual

Land Section	$ 30,000
Water Section	50,000
Forestry Section	15,000
Northcentral	175,000
Southcentral	175,000
Southeast	150,000
Space Rental	35,000
TOTAL	$530,000

Note: includes air charter, review appraisals, appraisals, forms, printing, advertising, communications, equipment rental, studies, computer terminal use, etc.

Commodities

Land Section	$1,800
Water Section	600
Forestry Section	1,500
Northcentral	1,500
Southcentral	1,800
Southeast	900
TOTAL	$8,100

Equipment

Land Section	$ 6,000
Water Section	2,000
Forestry Section	5,000
Northcentral	5,000
Southcentral	6,000
Southeast	3,000
TOTAL	$27,000

Note: includes tables, chairs, desks, calculators, typewriters, filing cabinets, etc.

D. Estimated costs for (7) administration: $300,582/8 full time.

Personal Services (including 26% benefits)

Title	No. Positions	Grade	Amount
Clerk Typist	4	8	$ 65,800
Upgrade WPC Supervisor			3,024
Personnel Technician I	1	12	21,181
Accounting Clerk II	2	8	37,969
Accountant III Upgrade			6,000
Supply Officer I	1	16	28,214
TOTAL	8		$162,188

Travel

Transportation	$1,578
Per diem	1,296
TOTAL	$2,874

Contractual

Computer programming	$ 58,000
Computer time	25,000
Space	8,640
State vehicle	4,800
Office equipment lease	30,000
TOTAL	$126,440

Commodities - TOTAL $3,040

Equipment

8 desks @ 350 each	$2,800
8 filing cabinets @ 175 each	1,400
3 calculators @ 240 each	720
8 chairs @ 140 each	1,120
TOTAL	$6,040

2. State land inventory/assessment TOTAL COST = $428,233/TOTAL PERSONNEL = 10 full tim

Personal Services (including 26% benefits)

Title	No. Positions	Grade	Amount
Principal Planner	1	21	$ 39,282
Systems Analyst	1	20	36,454
Senior Planner	1	19	33,914
Land Mgmt. Officer III	1	18	31,480
Publications Specialist II	1	16	27,186
Assistant Planner	1	15	25,220
Clerk Typist IV	2	9	33,930
Research Analyst	1	16	27,186
Cartographer II	1	15	25,221
TOTAL	10		$279,873

Travel

per diem	$ 7,100
transportation	10,100
TOTAL	$17,200

Contractual

Land inventory, socio-economic analysis, air photos, field survey, printing, media, etc.	$119,000
Space	12,960
TOTAL	$131,960

Commodities - TOTAL $6,200

Equipment - TOTAL $10,200

Municipality of Anchorage

POUCH 6-650
ANCHORAGE, ALASKA 99502
(907) 274-2525

GEORGE M. SULLIVAN, MAYOR

OFFICE OF THE MAYOR

April 17, 1978

The Honorable Kay Polland
Alaska State Senator
Pouch V
Juneau, Alaska 99811

Dear Senator Polland:

Senate Bill No. 562 will come before the Natural Resource Committee on Monday, April 17, 1978. There are three sections of this Bill which may adversely affect the Municipality of Anchorage. We would like to share our concerns with you regarding these sections before the Bill is heard by your committee.

Proposed section 38.04.045 (b) deals with the survey and subdivision of State land to be conveyed to private ownership. This section mandates compliance with local planning and platting ordinances. However, this section exempts from these ordinances land made available through mineral sales or a cabin permit system.

We object to the exemption provision for two reasons. First, it would be detrimental to the Municipality's planning program because under it large segments of land within the Municipality would not be subject to our planning and platting ordinances. If certain segments of land are not subject to the Municipality's planning and platting ordinances, then the ordinances become ineffective because they are designed to regulate all the land within the Municipality.

Second, the exemption provision conflicts with the policy contained in A.S. 09.55.275 which requires that any agency of the State must comply with local platting regulations in the same manner as private land owners when the State seeks to acquire property. This policy logically applies to the converse, i.e. when the State seeks to dispose of property. Providing for a partial exemption when the State seeks to dispose of property appears to serve no purpose. For the foregoing reasons, we suggest that the exemption provision be deleted.

Proposed section 38.04.065 deals with State Land Use Planning and Classification. Subsection (g) requires that State land use plans be consistent with local plans only to the extent that the Commissioner determines the local plan to be consistent with State interests.

We object to this subsection because it seems to conflict with A.S. 35.10.020 entitled "Consultation with Municipal Planning and Zoning Commissions". This section requires the State to comply with all local planning and zoning ordinances in the same manner as private land owners unless a State agency can "clearly demonstrate an overriding State interest". When a State agency makes such a showing, a specific waiver must be granted by the Governor.

We suggest that subsection (g) be made consistent with the language in A.S. 35.10.020 by amending the latter to require State land use plans to be consistent with Municipal plans unless a gubernatorial waiver is granted upon a "clear showing of an overriding State interest".

Proposed Section 38.04.065 would involve the State in regional land use planning in areas which now have local planning. The Municipality of Anchorage has actively engaged in a land use planning program and intends to maintain this effort. Until the degree of State involvement in local land use management is clarified, we cannot support this proposed section.

Sincerely,

George M. Sullivan
Mayor

Michael J. Meehan
Director of Planning

/sw

Municipality of Anchorage

POUCH 6-650
ANCHORAGE, ALASKA 99502
(907) 274-2525

GEORGE M. SULLIVAN.
MAYOR

OFFICE OF THE MAYOR

April 17, 1978

The Honorable Kay Polland
Alaska State Senator
Pouch V
Juneau, Alaska 99811

Dear Senator Polland:

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Sincerely,

George M. Sullivan
Mayor

Michael J. Meehan
Director of Planning

/sw

SCR

23

COMMITTEE REPORT

SENATE

**Finance

3/1/77

4/6/77 Date

Mr. President:

The Committee on Resources has had SCR 25
construction of oil refineries in Alaska
under consideration. A majority of the members of the Committee

/7 recommends it do pass

/7 recommends it do not pass

/7 recommends it do pass with attached amendment(s)

/7 recommends it be replaced with CS for SCR 25 and that
CS for SCR 25 do pass

/7 (and) recommends it be referred to the _____
committee

/7 reports it back without recommendation

/7 AND attaches a report of its intent

/7 (other) _____

MEMBERS SIGNING THE MAJORITY REPORT:

Kilian

Colletta DeVaul

MEMBERS NOT CONCURRING IN THE MAJORITY REPORT:

_____ recommends: _____

_____ recommends: _____

_____ recommends: _____

_____
Chairman

S 60

AGO 785684

Alaska State Legislature

SENATOR
MIKE COLLETTA
P. O. BOX 3188
ANCHORAGE, ALASKA 99501

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811

Senate

Minority Leader

HEALTH & SOCIAL SERVICES
COMMERCE
STATE AFFAIRS

MEMO

TO: Senator Poland

FROM: Senator Colletta DATE: March 3

I would like to request that SCR 25 relating to Alaska'a royalty oil and its in-state refining, receive priority treatment in committee. It is my expressed opinion that this method will best maintain Alaska's control of its royalty oil. The opinion is based on several legal decisions of the Federal Energy Administration concerning the Mandatory Petroleum Allocation Regulations as it relates to state government. The statement has been made that Alaska's taking of its royalty oil in value would preclude its taking the oil in kind at a future date because the state would become party to supplier/ purchaser relationships as controlled by Mandatory Petroleum Allocation Regulation 10 C.F.R. part 21. In order to not lose control of our royalty oil and its profits, I suggest that we take royalty oil in kind and negotiate for its in-state refining.

Thanks for your consideration.

AGO 785685

SCR

55

COMMITTEE REPORT

SENATE

4/22/77

5/6/77 Date

Mr. President:

The Committee on RESOURCES has had SCR 55 approving disposal to Golden Valley Electric Assoc. of royalty oil taken in-kind under consideration. A majority of the members of the Committee

- [ ] recommends it do pass
- [ ] recommends it do not pass
- [X] recommends it do pass with attached amendment(s)
- [ ] recommends it be replaced with CS for _____ and that CS for _____ do pass
- [ ] (and) recommends it be referred to the _____ committee
- [ ] reports it back without recommendation
- [ ] AND attaches a report of its intent
- [ ] (other) _____

MEMBERS SIGNING THE MAJORITY REPORT:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

MEMBERS NOT CONCURRING IN THE MAJORITY REPORT:

_____ recommends: _____

_____ recommends: _____

_____ recommends: _____

_____
Chairman

S 60

AGO 7856 86

A M E N D M E N T

Offered in the SENATE By Resources Committee

To: _____ SENATE BILL NO. SCR 55

_____ HOUSE BILL NO. _____

AMENDMENT: Page 1 Line 14

Delete "fields in the Cook Inlet area" and insert the following in its place:

"the Prudhoe Bay oil field"

AGO 785687

SCR

56

COMMITTEE REPORT

SENATE

4/22/77

5/9/77 Date

Mr. President:

The Committee on RESOURCES has had SCR 56
Approving disposal to Alaska Pipeline Co. of royalty gas taken in-kind
under consideration. A majority of the members of the Committee

- [X] recommends it do pass
- [ ] recommends it do not pass
- [ ] recommends it do pass with attached amendment(s)
- [ ] recommends it be replaced with CS for _____ and that CS for _____ do pass
- [ ] (and) recommends it be referred to the _____ committee
- [ ] reports it back without recommendation
- [ ] AND attaches a report of its intent
- [ ] (other) _____

MEMBERS SIGNING THE MAJORITY REPORT:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

MEMBERS NOT CONCURRING IN THE MAJORITY REPORT:

_____ recommends: _____

_____ recommends: _____

_____ recommends: _____

_____
Chairman

S 60

AGO 7856 88

MEMORANDUM April 27, 1977

SUBJECT: Policy Considerations in North Cook Inlet Royalty Gas Sale (W.O. #4105, Supplemental)

TO: The Honorable John Rader

FROM: Gregg K. Erickson
Director of Research

Summary

As you requested, we have provided you, in the form of Ms. Kallab's memorandum of April 26, a review of the history and issues raised by the proposed North Cook Inlet royalty gas sale. After review of Ms. Kallab's findings (in which we concur), we believe that approval of this contract will tend to create far-reaching precedents with respect to the terms and conditions under which the state may make royalty gas available for in-state use, both elsewhere in the Cook Inlet field and in the northern part of the state. In addition, we believe that a brief technical analysis of the charges established by Phillips for transportation of the state's royalty gas is in order.

Precedents That Would Be Established By The Proposed Sale

As a matter of public policy, there will be no regulatory review of the transportation costs charged against royalty gas. In general, it makes no economic or technical sense to have a multiplicity of oil or gas pipelines running from point A to point B. Because of the fact that the efficiency of pipeline transportation increases very rapidly as one goes from smaller to larger pipelines, it minimizes the real economic costs of transportation to have a single line of the largest possible diameter. The owner of such a line has a monopoly, but it is a "natural monopoly" in the same sense that an electrical distribution or telephone system is a natural monopoly, i.e., to have more than one system would simply raise costs to the consumer. In the absence of regulatory restraint, however, the natural monopolist will have every incentive to charge "what the market will bear". Ratification of the current proposal may establish an important precedent with respect to the means by which

charges are assessed against gas taken in kind for in-state use elsewhere in Alaska. We may reasonably expect to see many other situations in the future where industrial facilities are served by private carrier lines similar to the Phillips line in Cook Inlet. Use of these lines may be the only reasonable way for the state to bring its royalty gas to local markets. Ratification of the current contract would tend to establish the precedent that the owners of these lines should be permitted to charge for the transportation of the state's royalty gas on the basis of what the market will bear rather than on the basis of the cost to them of providing the transportation service.

Whenever the state takes its royalty gas (or oil) it will be obligated to bear the cost of increasing production by the amount necessary to maintain the original flow level. In the instant case, these costs are the 10¢ per Mcf which would be charged by Phillips to cover their costs of additional compression facilities.

The legislature (and the Alaska Public Utilities Commission) will acquiesce in an arrangement which proposes the construction of a $4 million gas transmission facility which is, by any standard of technical and economic efficiency, totally unnecessary. Because of the lack of regulatory jurisdiction or the unwillingness of Alaska Pipeline Company (APC) and the Alaska Public Utilities Commission (APUC) to pursue regulatory solutions which may be available under existing law, APC has not been able to negotiate an exchange agreement with Union-Marathon (U-M) which would, as Ms. Kallab's memorandum points out, make the $4 million "royalty gas line" unnecessary. Although the negotiation of such an agreement would not appear to increase costs to U-M by one iota (they may even reduce them) there are commercial advantages to U-M in refusing to negotiate, since blocking such an agreement limits the alternative supply options of Alaska Pipeline Company and thus enhances the value of U-M's gas reserves in the Kenai field. Of course, Phillips has its own reasons for not wishing to enter into such an agreement; i.e., to retain the royalty gas share.

By ratifying this agreement the legislature (and the APUC) encourage the cross subsidization of one group of rate payers by another group. The commission has, as noted in Ms. Kallab's memorandum, stated that the higher costs of royalty gas shall be allocated proportionately among all rate payers served by Alaska Pipeline Company. Until and unless the proposed royalty gas line is built (or an exchange agreement is developed) this will result in those rate payers located in the North Kenai Road Service Area (who consume the relatively high cost gas) being subsidized by the rate payers elsewhere in APC's system. If, as expected, the wellhead price of gas in Cook Inlet rises, it will almost certainly result in the Bernice Lake power plant paying less for its gas than Alaska Pipeline Company is paying for it. Apart from the questions of

fairness involved, this is certainly an invitation to a rate-payer action in which it would be asserted that the rates charged by APC are noncompensatory and thus not "just and reasonable" as required under existing law.

Technical Considerations With Respect to the Proposed Rates

As Ms. Kallab has pointed out, Phillips has asserted that the 5.5¢/Mcf deduction used in calculating the wellhead value of natural gas for royalty and severance tax purposes is "not appropriate" for the calculation of transportation charges against royalty gas taken in kind. We are not aware of any rationalization of this statement. It seems fairly clear, however, that the difference between this figure and the 20¢/Mcf (escalating at 6%) which they propose to charge is greater than can be justified by any rationale we can conceive. It is possible that neither figure represents a fair and reasonable transportation cost, but it is impossible that both can simultaneously be "fair and reasonable" in the context of the purposes for which they are being used.

We do not assert that we can establish or even estimate what would be a "fair and reasonable" charge for transporting the royalty gas ashore, but we do concur with the sentiments expressed by Dr. Dave Knudson, petroleum economist with the Department of Revenue, who (writing as a private citizen) states that he can find "no justification that a pipeline costing $10 to $12 million perhaps nine years ago (which is most probably highly depreciated) should have a cost of service of 10¢ per Mcf". Mr. Knudson's letter, dated April 6, 1977, is a part of the royalty board's official file on this matter, and a copy of it is attached for your convenience. Although we believe fair and reasonable charges in this instance can only be determined by an appropriate regulatory proceeding, we do categorically assert that the calculations contained in "Table I" do not conform to any of the possible rate-making methodologies that are used by regulatory commissions in the United States.

GKE:jm
Attachment

?
Re: AK Pipe

Mr. Donald Wold, Executive Director
Oil and Gas Royalty Advisory Board
Department of Natural Resources
State of Alaska
Juneau, AK 99801

April 6, 1977

subject: the proposed contract between State of Alaska and Phillips Petroleum Company for North Cook Inlet royalty gas

Dear Don:

After reading the draft contract attached to this letter, I am required to inform you that I believe this contract to be severely prejudicial to the natural gas consumers served by Alaskan Pipeline Company.

Specifically, I am troubled by Article 9.1, Article 9.2, and Article 11.1. These articles establish a basic cost of service, an escalation factor to be applied to this basic cost of service, a provision for higher costs of service due to compressor costs, and an exemption of this natural gas transmission system from Alaska Public Service Commission control.

I have seen no justification that a pipeline costing 10 to 12 million dollars perhaps 9 years ago (which is most probably highly depreciated) should have a cost of service of 10¢ per Mcf. Regarding the rate of escalation to be applied to the basic rate (i.e., 6 per cent per annum), I would like to point out that in all cost of service projections which I have made show declining transportation charges through time even given a general inflation rate of 6 per cent. I am unaware that future compression costs for State of Alaska royalty gas separate from net working interest gas will require payment on the basis of 10¢ per Mcf and inflated each year thereafter at 6 per cent. In short, the underlying economics of the above mentioned contract should be worked out prior to signing the contract. This is especially so given the fact that contract Article 11.1 frees Phillips from Alaska Public Service Commission supervision.

The delay required by this staff work should not be lengthy.

RECEIVED
APR 07 1977
ALASKA ROYALTY
OIL & GAS BOARD

Sincerely,

David L.T. Knudson

David L.T. Knudson
7510 Chad
Anchorage, AK 99502

AGO 785692

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

M E M O R A N D U M

April 26, 1977

SUBJECT: North Cook Inlet Royalty Gas Sale (W.O. 4105)

TO: The Honorable John Rader

FROM: Elke Kallab
Research Analyst

This is in response to your request to look into matters relating to the proposed sale of state royalty gas from the North Cook Inlet gas field to Alaska Pipeline Company. You were particularly concerned with the gathering and compression charges Phillips Petroleum Company, the operator of the North Cook Inlet gas field, is planning to assess Alaska Pipeline Company for producing and transporting the royalty gas to Alaska Pipeline Company, and the question of whether Phillips Petroleum Company would come under the jurisdiction of the Alaska Public Utilities Commission or the Alaska Pipeline Commission as a result of transporting gas for Alaska Pipeline Company.

Summary

It would appear from the available records and all the information we have obtained that the added gathering and compression charges, negotiated between Phillips Petroleum Company and Alaska Pipeline Company will be allowed to be flowed through by virtue of Order No. 3, Docket U-75-68 issued by the Alaska Public Utilities Commission December 17, 1975, unless the APUC can be convinced to reopen the case in order to determine if the added charges are "reasonable and just". Furthermore, th Attorney General's office has issued legal opinions which exempt Phillips Petroleum Company from Alaska Public Utilities Commission or Alaska Pipeline Commission jurisdiction, since contracts, which have been submitted to the Legislature for approval, propose that Phillips Petroleum Company transport the royalty gas from the platform to a delivery point onshore for the State with Alaska Pipeline Company taking delivery onshore from the State and reimbursing the State for any costs incurred.

However, we believe sufficient grounds exist to question some of the propositions or assumptions which have been put forward to advance the argument that the royalty gas sale as presently proposed is in the best interests of the State and the public.

AGO 7856 93

We submit the following information to provide you with an abbreviated history of what has transpired to date regarding the sale of royalty gas from the North Cook Inlet gas field to Alaska Pipeline Company, as well as to discuss in some detail the various issues which are involved in this matter.

After you have had an opportunity to read this memorandum, we would appreciate receiving your comments and instructions as to how you wish us to proceed. We would be happy to expand on any point or matter, or answer any questions you may have.

EK:mo
Enclosures

ATTACHMENT TO MEMORANDUM OF APRIL 26, 1977
CONCERNING NORTH COOK INLET ROYALTY GAS SALE

Background

In August of 1975 Alaska Pipeline Company (APC) first approached the State to purchase the State's royalty gas from the North Cook Inlet gas field. APC needs additional supplies of gas to assure continued service for its North Kenai Road customers, which includes the Bernice Lake power plant as the main customer, and some 285 other small customers. These customers are presently being supplied by gas APC has contracted for with Union-Marathon (U-M) from the Kenai gas field.* The original contract was for ten years, expiring April 30, 1977, for a total of 10 Bcf of gas. Due to unexpected heavy usage, APC used up its committed supply in August 1976. The contract has been extended by U-M using "Anchorage" reserves from a second contract APC has with Union-Marathon for gas from the Kenai field.

In addition to the immediate need to replace the exhausted gas supply on the North Kenai Road, APC also needs to build up its diminishing dedicated gas reserves, particularly in the Anchorage area. (The need for added dedicated reserves was apparently the major consideration for allowing flow through of higher priced royalty gas in APUC's Order No. 3, according to former Commissioner Richard D. Edwards, who heard the case.)

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* *A map showing location of the gas fields, pipelines and other pertinent information relating to this memorandum is enclosed for ready reference.*

The North Cook Inlet royalty gas for which APC made an offer is now being used by Phillips Petroleum Company, the producer/operator of the North Cook Inlet gas field, to meet 70 percent of its contractual requirements with Tokyo Gas and Tokyo Electric.

APC offered to pay the State the same price as the State is receiving from Phillips for royalty gas taken in value by the State from the North Cook Inlet field. At the time APC assumed this price to be 45¢/Mcf at the wellhead and 5.55¢/Mcf for transportation from the platform to Phillips' Kenai LNG plant. However, as discussions continued, it became quite clear that Phillips did not accept the 5.55¢/Mcf figure as an appropriate transportation cost. They indicated that the 5.55¢/Mcf charge was ". . . worked out and used as a deduction for computing wellhead value of the gas for purposes of paying royalty and taxes . . ." and that it was not the appropriate place differential for the kind of arrangement APC was contemplating.[1] As a result APC and Phillips entered into negotiations to arrive at a mutually agreeable charge for gathering and added compression costs. By negotiation the charges were agreed to be 10¢/Mcf for dehydration and delivery of the royalty gas to shore, and a 10¢/Mcf charge for added compression facilities required to deliver the State's royalty gas in-kind, to be increased by mutual agreement as further compression facilities were needed to maintain production. Table I and II, enclosed, were supplied by Phillips Petroleum Company at the request of the Alaska Royalty Oil and Gas

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1 *Letter from Phillips Petroleum Company to Alaska Gas and Service Company, dated January 9, 1976.*

Development Advisory Board to "justify" the added gathering and compression charges.

The royalty gas which APC hopes to buy from the State is more expensive than gas APC receives and has under contract from other sources. APC expected that the Alaska Public Utilities Commission (APUC) would allow them to flow through the added costs entailed in purchasing the royalty gas, which then were thought to be 50.45¢/Mcf at the Kenai LNG plant gate, and also that the APUC would allow APC to "commingle" the higher priced royalty gas with lower priced gas APC purchases from other suppliers. (Apparently "commingling" is used by the parties involved to mean what is usually referred to as "rolled in" or average cost pricing).

The APUC did in fact permit the commingling of the higher priced royalty gas with lower priced gas available to APC in their Order No. 3, Docket U-75-68 issued December 17, 1975. The order provides that the differing costs would be averaged on a monthly basis to insure a "proper" price to consumers, since the North Cook Inlet royalty gas is available only as produced by Phillips in meeting their own needs, and thus a predictable and fixed daily volume cannot be assured. The APUC estimated that the commingling of royalty gas with lower priced gas would increase the costs to customers between 2¢-5¢/Mcf per month.

In addition, the APUC allowed APC to flow through the costs of royalty gas purchases from the North Cook Inlet gas field. In doing so they did

not mention any cost figures on which the flow through provision was allowed.

(The royalty clause in the commission's December 1975 order states that it was imperative for APC to build up its reserves. However, it also provided that if the royalty clause was not used to reflect an average cost of gas on or before August 1, 1976, the APUC would commence an investigation to determine the reasons for the non-use and to determine whether the royalty clause should be deleted from APC's tariff. APC did provide the APUC with information why they could not take delivery of the North Cook Inlet royalty gas. There is no indication that the APUC took any action as a result of this.)[2]

APC also proposed to build a "royalty" pipeline from the onshore delivery point to its Anchorage line, a distance of approximately 30 miles and at a cost of approximately $4,000,000, to absorb the excess gas over and above that required to meet the North Kenai Road demands, thereby hoping to reduce the rate at which the reserves dedicated to Anchorage in the Kenai field would decline. However, APC stressed that an "exchange" of gas using Union-Marathon's transmission line from the Kenai gas field to the North Kenai Road would be preferable to a literal transfer of excess North Cook Inlet royalty gas since such an "exchange" would reduce the need to construct the "royalty" line. Such an "exchange" agreement has not been worked out between the parties which would be affected.

---

2 *Letter from Alaska Gas and Service Company to Alaska Public Utilities Commission, dated September 29, 1976.*

Around December of 1975, Homer Electric Association (HEA) too made application for the North Cook Inlet royalty gas to provide electricity on the Kenai Peninsula. Much of the available royalty gas from the North Cook Inlet gas field would be used to supply the Bernice Lake power plant on the North Kenai Road, which HEA hopes to acquire from Chugach Electric Association, and which is now being supplied by APC with gas from the Kenai gas field. Additional generating facilities HEA is planning to construct would use up the remaining available royalty gas from the North Cook Inlet gas field. On March 30, 1976 HEA withdrew its application for the North Cook Inlet royalty gas since it had found another reliable supply source for its new generating facilities, and APC had assured HEA that they would supply the Bernice Lake power plant with gas.

Contract 76-1, selling the State's royalty gas from the North Cook Inlet gas field to APC, was executed June 4, 1976 and approved by the Legislature May 20, 1976. The records show that the House passed SCR 106 on voice vote, and the resolution passed the Senate 17-2. The major provisions of this contract were--

Quantity:	All royalty gas available from the North Cook Inlet gas field.
Delivery Point:	The wellhead. Phillips' platform.
Price:	55.5¢/Mcf to July 1, 1977 with subsequent annual price escalations based on the highest of three pricing alternatives.
Expiration Date:	July 1, 1984, the same time Phillips' contract with Tokyo Gas and Tokyo Electric expires.

Appendix "A", enclosed, sets out the key provisions of this contract together with those currently before the Legislature.

APC discovered that they could not take delivery of the gas under Contract 76-1 for a number of reasons, the most significant of which was that APC would have to take delivery of the gas at the platform, which would subject Phillips to regulatory jurisdiction of the APUC or Alaska Pipeline Commission as a utility. Phillips refuses to be subject to any regulatory jurisdiction. Their refusal to be regulated dates back to the very beginning of the negotiations when the State was first approached by APC to take its royalty gas in-kind rather than value, and has always presented a potential risk to the successful completion of negotiations. An attempt to exempt Phillips from regulatory jurisdiction by the APUC or Alaska Pipeline Commission by way of a waiver proved impossible since to do so Phillips would have had first to submit to the jursidiction of the APUC or the Alaska Pipeline Commission to be granted the waiver, a condition unacceptable to Phillips.

Another difficulty arose as the result of APC not being able to take all of the royalty gas available as provided for in Contract 76-1. The average daily royalty gas production from the North Cook Inlet field amounts to between 15-17 MMcf based on previous years' production. APC's estimated average daily needs to service their North Kenai Road customers is approximately 8 MMcf. Since APC has not constructed a

"royalty" pipeline from the delivery point on the North Kenai Road to their "Anchorage" line, and since they have not been able to work out an "exchange" agreement with Union-Marathon, APC is unable to utilize the excess amount of gas. The contract does not allow APC to resell the excess royalty gas to Phillips (although Phillips was agreeable to such an arrangement) since this would violate the contract provision which required that all of the royalty gas sold to APC be used within the State. Since Phillips exports its gas to Japan, selling any excess royalty gas back to Phillips would be in violation of Contract 76-1.

In conjunction with the excess volume which would have been used if a "royalty" pipeline had been in existence, APC told the APUC in September of 1976 that the short life of the contract (July 1, 1984) was one of the reasons for them not constructing a connecting line. Such a line would have allowed for APC to slow the decline of reserves dedicated to Anchorage, the main reason the APUC allowed the flow through tariff for royalty gas. In addition, such a line would also assure a stand-by gas supply for North Kenai Road customers in case production or supply from the North Cook Inlet field were to be interrupted for any reason.

By the end of January, 1977 APC petitioned the State to "re-draft" Contract 76-1 in order to make the contract operational.

To accomplish this it was suggested that the State have the royalty gas transported to shore thus avoiding APUC jurisdiction over Phillips' pipeline, since the State is not a utility. APC would take delivery at

or near the Kenai LNG plant and reimburse the State for any costs incurred. A legal opinion from the Attorney General's office was secured, at the insistence of Phillips, which holds that Phillips is not a utility subject to APUC jursidiction. Another legal opinion was issued exempting Phillips' pipeline from Alaska Pipeline Commission jursidiction on the basis th[illegible]he pipeline is not used as a common carrier by Phillips, and that it is not subject to the common carrier provision of the current law, since the pipeline was constructed prior to the enactment of that law. (Exemption of Phillips' pipeline from APUC jursidiction had been supported by the Alaska Royalty Oil and Gas Development Advisory Board as early as December 1975 to facilitate the sale of royalty gas to APC.)

It was further suggested that APC would be required to take only such amounts of royalty gas as they had need for. Any gas APC was unable to take delivery of as it became available was to be sold to Phillips as if the State had continued to take its royalty gas in value.

These changes and other provisions were incorporated into agreements between Phillips and the State, and APC and the State. The contract between APC and the State is now awaiting legislative approval, with the agreement between Phillips and the State having been submitted to the Legislature as an exhibit to the APC contract. The key provisions of the two agreements are listed in Appendix "A", which is enclosed.

Issues

Gathering, Compression and other Charges or Costs

The amount charged APC by Phillips for dehydration and transportation is 10¢/Mcf. The amount charged APC by Phillips to add a compression unit to maintain capacity in the gathering system is set at 10¢/Mcf. (The agreement between Phillips and the State, and the contract between APC and the State provide that APC will make all payments for the State's account directly to Phillips.) Both of these charges increase at a compounded rate of 6 percent per year. As further compression facilities are installed in the future, additional charges are to be mutually agreed upon by the parties involved. In addition, APC must pay Phillips in proportion to its deliveries for any new or increased taxes and charges which are levied against Phillips with respect to the gathering of royalty gas.

Phillips has supplied data on the gathering and compression charges negotiated between themselves and APC for delivering the State's royalty gas. (See Table I and Table II enclosed.) These figures have not been scrutinized as to whether they are just and reasonable by the Alaska Royalty Oil and Gas Development Advisory Board or the APUC. However, it has been suggested that they are on the high side.

Perhaps one way to get a better handle on these charges would be to request the APUC to review the royalty gas clause of its December 1975 order as it applies to allowing flow through charges. At the time the

AGO 785703

flow through provision was granted the transportation cost figures were thought to be considerably less than those proposed now. It is questionable whether the APUC would have allowed the currently proposed flow through charges, considering their comment in the order that the flow through provisions proposed by Alaska Gas and Service Company (AGAS), the distribution affiliate of APC, were ". . . so broad that nearly all increases in any . . . cost of purchased gas could be flowed through."[3] This tends to raise some doubts concerning APC's assertion that the APUC had intended to allow any and all flow through costs. The APUC order also states that the cost of royalty gas will be "somewhat higher" than the price of gas from other gas supplies now committeed to APC. Other supplies are priced at 41.5¢/Mcf for gas from the Kenai gas field, compared to 84.65¢/Mcf for royalty gas from the North Cook Inlet field, i.e., 104% higher.

It is of particular interest to note that one of the reasons the APUC allowed the added costs was to provide APC with the opportunity to obtain additional gas to supplement their dwindling reserves, particularly in the Anchorage area. Since the "royalty" line to move North Cook Inlet gas to Anchorage has not been built, and APC is not required under the contract to deliver gas to Anchorage, the question arises as to whether the added flow through charges should be allowed by the APUC. It is difficult to ascertain from the written material we have reviewed how hard APC negotiated with Phillips for less than the agreed to

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[3] *Alaska Public Utilities Commission Docket U-75-68, Order No. 3. dated December 17, 1975, page 7.*

charges of 10¢/Mcf for transportation and 10¢/Mcf for compression. Records show that APC discouraged the APUC from developing " . . . 'a complete record' of the negotiations (between APC and Phillips) for the Commission's files . . ."[4]. The question arises as to what incentives, if any, existed for APC to negotiate for lower charges if APC assumes that any added costs can be passed on automatically to the consumer under U-75-68(3)?

The argument that the royalty gas from the North Cook Inlet gas field is cheaper, even with the added 20¢/Mcf cost for transportation and compression charged by Phillips, than any "new" gas available to APC in the Cook Inlet is debatable. APC cites a $1.45 price for similar gas in Cook Inlet being offered by Pacific Alaska LNG to support its contention. (We understand the above to be a "spot sale".) However, since the contract with APC provides that the State will receive the highest of three pricing options on the annual anniversary of the contract, one of which is the highest price paid within a 100 km radius from the Phillips platform, and since we have been advised that the gas for which Pacific Alaska LNG is making an offer is within the 100 km radius, it is unlikely that APC can escape paying the $1.45 (or even a higher) price within the next year. Therefore, the assertion that regardless of the added transportation and compression costs the royalty gas is still a bargain is not quite accurate, and APC is not entirely candid when using this argument to attempt to convince the Alaska Oil and Gas Development

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[4] *Letter from Alaska Gas and Service Company to Alaska Public Utilities Commission, dated September 29, 1976.*

Advisory Board, the APUC or the Legislature " . . . that it appears royalty gas will always be available . . . at less cost than any other likely 'new' gas."[5]

At the same time APC told us that the above situation could not happen since no comparable sale to that provided for in the current contract would occur, and they, therefore, would never be subject to the pricing provision which calls for the highest price to be paid

> ". . . by any purchaser in the upper Cook Inlet area for gas of similar conditions of delivery; with due regard to appropriate factors including, but not limited to, differences of BTU content, delivery pressure, terms of the contract and connection charges." (Current Gas Purchase Contract, page 10, lines 3-8)

Royalty Line

One of the reasons APC cannot make Contract 76-1 of last year operational is that the contract provides that APC take all of the royalty gas available from the North Cook Inlet gas field. To have use for all royalty gas APC needs to ship approximately 50 percent to its Anchorage consumers, since only approximately 8 MMcf/day can be utilized on the North Kenai Road.

APC has been "flirting" with the idea of building a connecting "royalty" line from the North Kenai Road area to its "Anchorage" line, which delivers gas to Anchorage from the Kenai gas field from the beginning of the negotiations. However, they also have indicated that they would

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[5] *Letter from Alaska Pipeline Company to Alaska Oil and Gas Development Advisory Board, dated April 15, 1977.*

AGO 785706

prefer to enter into an "exchange" agreement with U-M and Phillips to exchange royalty gas from North Cook Inlet with U-M gas from the Kenai gas field. This would be technically feasible, and cost far less than the proposed royalty line, since U-M runs a transmission line from the Kenai gas field to the North Kenai Road area, with APC running a line from the Kenai gas field to Anchorage. An exchange agreement would thus avoid a literal transfer of gas and eliminating construction of a "royalty" line. (See enclosed map.)

When APC found it impossible to work out an "exchange", they decided to build their own line to connect with the Anchorage line. However, this decision brought with it the request for all of the State's royalty gas from the North Cook Inlet field for the life of production rather than for a limited term through June of 1984. This request was not accepted by the State and Contract 76-1 provides for a termination date of July 1, 1984.

The question as to whether APC would build a royalty line continued and as late as February 2, 1977 APC informed the Alaska Oil and Gas Development Advisory Board that they would take such quantities of royalty gas as they could readily resell to their North Kenai Road customers, and not be committed to installing a pipeline connecting to their existing pipeline to Anchorage, although they could do so at their option.[6] The

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[6] *Letter from Alaska Pipeline Company to Alaska Oil and Gas Development Advisory Board, dated February 2, 1977.*

most recent indications are that APC is inclined to build the connecting line upon approval of the contract by the Legislature, since " . . . it appears that there is sufficient benefit from the royalty line to justify the investment by APC."[7]

The physical absence of the royalty line not only prevents APC from providing Anchorage with much needed dedicated reserves, which was the APUC's reason for the royalty clause which allowed flow through of costs and commingling of lower priced Kenai field gas with North Cook Inlet royalty gas, but it also prevents APC from providing North Kenai Road customers with stand-by gas should the royalty gas ever be insufficient to meet demand.

APC has indicated that a royalty line would not be feasible if the present contract were not approved this year, because the contract only extends to June 1, 1984. We do not find this argument very persuasive. APC fully expects to get the royalty gas from the North Cook Inlet gas field for the life of production once the contract has been signed. Furthermore, it should be noted that the new contract provides that the contract can be extended prior to its termination, a provision absent from Contract 76-1.

The Legislature may wish to consider extracting a firm commitment from APC that they will build a royalty line immediately, making it a con-

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[7] *Letter from Alaska Pipeline Company to Alaska Oil and Gas Development Advisory Board, dated April 15, 1977.*

dition of contract approval. If this can be accomplished, then APC should be required to take all of the royalty gas which becomes available after completion of the line, and the 3 Bcf "best reasonable effort" provision should be deleted from and/or revised in the APC contract as well as the agreement between the State and Phillips to avoid delays in deliveries once the line is operational.

Jurisdiction

Present indications are that there is no possibility for APUC or APC jurisdiction over Phillips' pipeline, in as much as Phillips operates and maintains the line for its own purposes. Phillips has not violated any laws, and both agreements provide that should Phillips come under either FPC, APUC or Alaska Pipeline Commission jurisdiction, the agreements terminate. Short of revoking their right-of-way permit and substituting a right-of-way lease, which may be possible but almost certainly would entail litigation, there appears to be no way to make them submit to regulatory jurisdiction.

To avoid future problems, the Legislature may provide that

1. All pipelines not currently covered by our common carrier statute agree to common carrier status retroactively to retain their pipeline right-of-way permits (Right-of-Way Leasing Act-38.35.120).

2. Sec. 43.06.630(9) of the Alaska Pipeline Commission Act be amended so that gas processing plants are covered in the definition of what constitutes a pipeline or pipeline facility, and deleting the reference to transportation as a common carrier.

3. The possibility should be explored if producers/operators of oil and gas fields located in remote or inaccessible locations, such as a platform, should be required to enter into mandatory exchange agreements with more favorably located fields or transmission lines, which are regulated by the APUC, to avoid jurisdiction, while at the same time protecting the public interest.

These suggestions have not been thoroughly investigated nor checked with the Division of Legal Services, but are offered as a beginning to remedy the current jurisdictional problems with which the State is faced as it affects Phillips' pipeline.

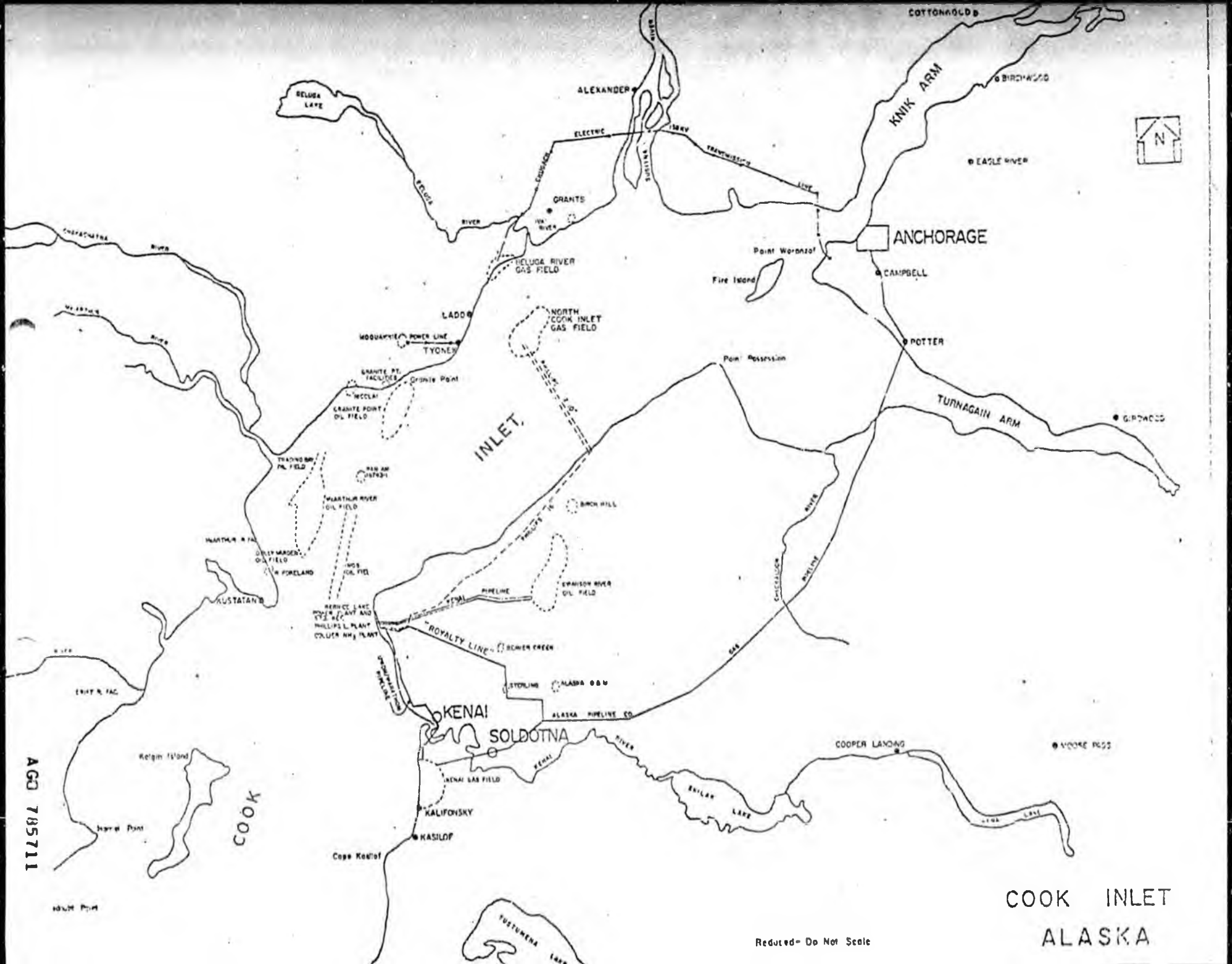

COTTONWOOD
KNIK ARM
BIRDWOOD
ALEXANDER
BELUGA LAKE
ELECTRIC
138KV
TRANSMISSION LINE
EAGLE RIVER
GRANTS
BELUGA RIVER
ANCHORAGE
Point Woronzof
Fire Island
CAMPBELL
BELUGA RIVER GAS FIELD
LADD
NORTH COOK INLET GAS FIELD
POTTER
TYONEK
Point Possession
GRANITE PT. FACILITIES
Granite Point
MCCLAIN
GRANITE POINT OIL FIELD
INLET
TURNAGAIN ARM
GIRDWOOD
TRADING BAY OIL FIELD
MCARTHUR RIVER OIL FIELD
BIRCH HILL
KUSTATAN
PIPELINE
SWANSON RIVER OIL FIELD
ROYALTY LINE
BOWER CREEK
STERLING
ALASKA O&G
ALASKA PIPELINE CO
KENAI
SOLDOTNA
COOPER LANDING
Kalgin Island
COOK
KENAI GAS FIELD
KALIFONSKY
KASILOF
Cape Kasilof
TUSTUMENA LAKE
Reduced- Do Not Scale
COOK INLET
ALASKA
AGO 78711

TABLE I

PIPELINE

Estimated Present-Day Replacement Cost	at least	$25,000,000
Estimated Present-Day Replacement Cost Depreciated to 1977		17,300,000

ESTIMATED COSTS

	$/Year
Depreciation (20 Years)	$1,100,000
Rate of Return 15% on Depreciated Investment	1,520,000
Income Tax @ 52.9% (State & Federal)	1,700,000
Operating Expense	2,750,000
TOTAL	$7,070,000

Cost/Mcf @ 43 Bcf/Year = 16.4¢

Cost/Mcf @ 55 Bcf/Year = 12.9¢

TABLE II

COMPRESSORS
(FIRST UNIT)

To maintain capacity in the gathering system and compressors to handle the full 12.5% royalty gas volume, it will be necessary to install compressors at an earlier date. Also, it is estimated that to maintain this capacity it will be necessary to install an additional compressor unit over and above that required for maintaining deliveries without the State taking its royalty gas in kind. Estimated differential in compressor investment is $5,000,000.

Cost of Compression

	$/Year
Depreciation (10 Years)	$ 500,000
Rate of Return 15% on Average Investment	375,000
Income Taxes @ 52.9% (State & Federal)	420,000
Operating Expense	715,000
TOTAL	$2,010,000

Minimum Annual Payment	= $2,010,000
Royalty Gas Volume @ 43 Bcf/Year	= 5.4 Bcf
Royalty Gas Volume @ 55 Bcf/Year	= 6.9 Bcf
Cost/Mcf @ 5.4 Bcf	= 37.2¢
Cost/Mcf @ 6.9 Bcf	= 29.1¢

Phillips agreed with Alaska Pipeline Company's request to a compressor charge of 10¢/Mcf on a space-available basis and no minimum annual charge.

APPENDIX "A"

KEY PROVISIONS

	CONTRACT 76-1	PROPOSED REVISED CONTRACT CONTRACT BETWEEN STATE AND PHILLIPS (with APC being a signatory)	CONTRACT BETWEEN STATE AND APC
Quantity:	ARTICLE II All royalty gas available, when and as available.	ARTICLE IV 1. Phillips shall use its "best reasonable efforts" to deliver not less than 3 Bcf of royalty gas annually (without requiring installation or operation of added pipeline and compression facilities), and subject to a. availability of capacity in Phillips' facilities to handle volumes in excess of Phillips' own requirements; b. availability of royalty gas at the platform; c. APC's requirements; and d. APC's ability to take the requirements. 2. Over or under deliveries of royalty gas shall be carried in an over and short account. In the event the takes by the State (APC) shall ever be 60 MMcf less than the amount of royalty gas available, Phillips shall purchase the excess undelivered quantities of royalty gas over 60 MMcf from the State, and pay the State a price equal to that amount which Phillips would have otherwise paid the State had the State taken its royalty gas in value.	ARTICLE III 1. Up to all royalty gas available, subject to a. APC's ability to take the entire amount of royalty gas available on any given day; b. APC's need and available delivery facilities. APC shall use its "best reasonable efforts" to take not less than 3 Bcf of royalty gas annually. 2. Over or under deliveries of royalty gas shall be carried in an over and short account. In the event the takes by APC shall ever be 60 MMcf less than the amount of royalty gas available APC is not permitted to make up for any such underdelivery and the State may sell the undelivered quantity of royalty gas to Phillips.
Delivery Point:	ARTICLE III Delivery point shall be the same for APC as it has been for State, which is Phillips' platform.	ARTICLE III & V Delivery point shall be at or near the existing pipeline tap being presently used to deliver gas from Phillips' pipeline to the Tesoro refinery, which is located in the general vicinity of Phillips' Kenai LNG plant on the North Kenai Road.	ARTICLE V APC's connection into Phillips' pipeline system at or near Phillips' pipeline tap serving the Tesoro refinery. It shall be the same delivery point as that of the State and Phillips.
Price:	ARTICLE V 1. To July 1, 1977 55.5¢/Mcf 2. July 1, 1977-July 1, 1978 the higher of a. 60.36¢/Mcf or b. price State would have received had it continued to take its royalty gas in value or c. the highest price paid by any purchaser in the Upper Cook Inlet area (within a 100 km radius of Phillips' platform) for similar quality gas and similar conditions of delivery. 3. July 1, 1978 and each succeeding 12 month period the higher of a. the previous year's price plus 2¢/Mcf or b. price State would have received had it continued to take its royalty gas in value or c. the highest price paid by any purchaser in the Upper Cook Inlet area (within a 100 km radius of Phillips' platform) for similar quality gas and similar conditions of delivery.		ARTICLE VI 1. To July 1, 1978 64.65¢/Mcf 2. July 1, 1978-July 1, 1979 the higher of a. 66.65¢/Mcf or b. price State would have received had it continued to take its royalty gas in value or c. the highest price paid by any purchaser in the Upper Cook Inlet area (within a 100 km radius of Phillips' platform) for similar quality gas and similar conditions of delivery. 3. July 1, 1979 and each succeeding 12 month period the higher of a. the previous year's price plus 2¢/Mcf or b. price State would have received had it continued to take its royalty gas in value or c. the highest price paid by any purchaser in the Upper Cook Inlet area (within a 100 km radius of Phillips' platform) for similar quality gas and similar conditions of delivery.

AGO 785714

	CONTRACT 76-1	CONTRACT BETWEEN STATE AND PHILLIPS	CONTRACT BETWEEN STATE AND APC
Gathering and Compression Charges and Taxes; Other Charges		ARTICLE IX 1. 10¢/Mcf for gathering costs to delivery point to increase 6 percent per year compounded annually on the anniversary date of the contract. 2. 10¢/Mcf for added compression costs to delivery point to increase 6 percent per year compounded annually on the anniversary date when the facilities were first used. 3. Additional compression charges to be mutually agreed upon between the parties, which includes APC since they are signatories of this contract (see also 12.3). If no agreement is reached within 90 days after Phillips serves notice about such added costs, then this contract is terminated. 4. Additionally, the State must pay Phillips any new or increased fee, imposts, duty, charge, excise or tax in proportion to the amount of royalty gas delivered to the State as it relates to gathering and compression.	ARTICLE VI & VII 1. 10¢/Mcf for gathering costs to delivery point to increase 6 percent per year compounded annually on the anniversary date of the contract. 2. 10¢/Mcf for added compression costs to delivery point to increase 6 percent per year compounded annually on the anniversary date when such compression facilities are ready for use. (This is different from State/Phillips agreement.) This does not obligate Phillips to install any compression facilities or to operate any compression facilities already installed. 3. Additional compression charges to be mutually agreed upon between the State and APC. If no agreement is reached within 90 days after the State serves notice about such added costs, then this contract is terminated (7.5). 4. APC must pay the State any amount for which the State is obligated to reimburse Phillips for a proportion of new or increased fees, imposts, duties, charges or taxes. (This leaves out excise.) (The language is somewhat different from State/Phillips contract, but the effect would seem to be the same.) 5. APC must pay the State any additional costs not covered in the contract and incurred by State in transporting the gas to shore.
Term:	ARTICLE VI Effective: Upon approval by the Legislature 5/20/76 Expiration: July 1, 1984	ARTICLE XIV Effective: Upon approval by the Legislature of the contract between the State and APC. Expiration: June 1, 1984 unless terminated or extended prior to that date.	ARTICLE VII Effective: Upon approval by the Legislature. Expiration: June 1, 1984 unless terminated or extended prior to that date.
Termination Clause:	ARTICLE VII Allows APC to terminate the contract within 30 days of written notice to State if APC is unable to make satisfactory arrangements to take delivery of the royalty gas. APC may not exercise this right after January 31, 1978.	ARTICLE IX, XI & XIV 1. Will be terminated immediately if deliveries to State (APC) have not commenced by June 30, 1978. 2. If subjected to regulation as a utility (11.2). 3. If added compression cost cannot be agreed upon within 90 days (9.3). 4. If contract between State and APC is terminated. 5. If terminated the State's election to receive its royalty gas in-kind is revoked, and royalty gas available shall be sold to Phillips in value. 6.	ARTICLE VII 1. Contract shall terminate immediately if deliveries to APC have not commenced by June 30, 1978. 2. Either State or APC may terminate this contract by giving 30 days notice to the other if Phillips comes under regulation as a utility. 3. Contract may be terminated if added compression cost cannot be agreed upon within 90 days. 4. Contract may be terminated if contract between State and Phillips is terminated. 5. 6. State may terminate upon 30 days notice to APC if the State cannot arrange for satisfactory transportation of royalty gas to shore.

AGO 785715

	CONTRACT 76-1	CONTRACT BETWEEN STATE AND PHILLIPS	CONTRACT BETWEEN STATE AND APC
Representation and Condition Precedent:		ARTICLE XI Phillips, by entering into this contract, shall not be subject to regulation by the FPC, APUC or APC. Should they become subject to regulation as a utility this contract may be terminated by either party upon 30 days' notice.	ARTICLE VIII Neither this contract nor APC's use or disposition of the royalty gas will subject Phillips to FPC, APUC or APC regulation.
Payments:		ARTICLE XII APC to make all payments for State's account directly to Phillips.	
Miscellaneous			ARTICLE IX 1. Assignments of interest by APC may be made "...to conform with...(APC's) various financing documents or as may be desirable to...(APC) as to...(APC's) commonly owned affiliate or subsidiary." 2. If APC does not receive or purchase all royalty gas available, then State can dispose of that portion not taken, provided no gathering and compression charges are incurred by APC as a result.

Legislative Affairs Agency
Research Division
April - 1977

AGO 785716

SCR

87

COMMITTEE REPORT

SENATE

FURTHER: _____

_____

Date: _____

Mr. President:

The Committee on RESOURCE S has had SCR 87

annulling a regulation of Dept. of Environmental Conservation

under consideration and (a majority of the committee) (the committee reports it back as follows)

( ) recommends it do pass ( ) recommends it do not pass

( ) recommends it do pass with attached amendment(s)

( ) recommends it be replaced with CS for _____

and _____ ( ) new title ( ) same title

( ) AND attaches a Letter of Intent ( ) New Fiscal Note

( ) reports it back without recommendation

( ) and recommends it be referred to the _____ Committee

MEMBERS SIGNING DO PASS:

_____

_____

_____

_____

_____

_____

_____

_____

_____

OTHER RECOMMENDATIONS:

_____

_____

_____

_____

_____

_____

_____

_____

_____

Chairman

S 60 (rev. 6/77)

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

POUCH O – JUNEAU 99811

March 17, 1978

The Honorable Kay Poland
Chairman, Senate Resources Committee
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Chairman Poland:

On March 8, Senate Concurrent Resolution No. 87, "Annulling a regulation of the Department of Environmental Conservation relating to drinking water," was introduced in the Alaska Legislature. The regulation in question, 18 AAC 80.040(b), became effective December 31, 1977, and reads as follows:

> "No person who owns or operates a Class A or B public water system with surface water as a source may allow the use of water from that system without continuous disinfection."

This regulation applies to public water systems which serve, in the normal order of events, 25 persons per day for at least 60 days out of the year.

Although there are several acceptable means of disinfecting public water supplies, chlorination is the most common. Chlorination was first introduced in 1908. Immediately thereafter, instances of typhoid fever in those communities distributing disinfected water decreased dramatically. The worldwide reputation of United States water supplies as being safe to drink largely results from the almost nationwide disinfection of drinking water. This long-standing treatment technique is recognized today as the single most effective and inexpensive means of reducing waterborne diseases.

Although reported outbreaks of waterborne disease in the United States decreased dramatically from the 1930s to the 1950s, they have increased steadily since the 1950s, and quite dramatically since 1970. The cause for this increase is not completely understood, although it is most probably a combination of better reporting, and the growing contamination of water sources by domestic sewage.

The proposed resolution implies that Alaska's surface waters, in contrast to the national trend, are pure and safe to drink. This is manifestly untrue, as is demonstrated by a number of

serious outbreaks of illness in Alaska that are directly caused by inadequately protected water supplies. It must be understood that only a fraction of the total number of waterborne illnesses are actually reported. The best information available is derived from comprehensive epidemiological and engineering studies of sizable outbreaks. For your information, the following table presents some of the major outbreaks of waterborne diseases in Alaska in recent years. More historical data are available upon request.

Date	Location	Source	Disease	Cases	Comments
1954	Ketchikan	Lake	Salmonellosis	--	Seagulls contaminating lake
1949	Unalaska	Lake	Dysentery (probably shigellosis)	More than 20; 2 deaths	No disinfection
1971	Tok	--	Gastro-enteritis	112	--
1971	Anchorage	Well	Shigellosis	89	No disinfection
1967 (or 68?)	Kodiak	Island Lake	Dysentery	2 infant deaths; 4-5 families ill	No disinfection
1972	Cordova	Eyak Lake	Dysentery	400	Chlorinator not operating
1974	Juneau, Switzer Creek	Surface reservoir	Salmonellosis	28	Inadequate disinfection
1976	Russian Mission	Yukon River	Shigellosis	20-30	River water disinfected
1977	Craig	Surface	Dysentery	300	Chlorinator out of service

(--) indicates information not available

While the above table does not, by any means, include all the entire incidences of waterborne disease in Alaska, nor does it illustrate the degree of protection provided by the many water systems in the State which do provide disinfection, the fact that so many cases result from failure of systems to provide continuous disinfection indicates that the regulation will provide for a substantial increase in public health protection.

The incidence of diseases which may be waterborne is also of value in understanding the rationale for disinfection. While hepatitis A, shigellosis and salmonellosis can be transmitted by

a variety of means, they also are commonly waterborne. Alaska's incidence of hepatitis A was nearly 14 times that of the State of Washington in 1976. The incidence of salmonellosis and shigellosis were 1.6 and 2.3 times that of Washington, respectively. As might be expected from the severity of the disease, hepatitis A statistics are probably more accurate than the others.

Although disinfection is not 100 percent effective in destroying viruses, such as is the causative agent in hepatitis A, it still is the single most effective technique for virus control.

Disinfection of public water supplies is, then, a first line of defense against waterborne infections. Yet this powerful, time honored, tool to ensure that the water we and our children drink is free from bacterial contamination need not be prohibitively expensive. Consider a water system serving 30 families of four. If water consumption is 250 gallons per capita per day, total supply would be 30,000 gallons per day. The capital cost for a chemical feed pump for a system of this size, delivered in Anchorage, is $320. The chemicals used to provide disinfection would cost $1.18 per pound. While the amount of chemical actually used is dependent upon the quality of the water being disinfected, a good estimate of chemical used would be about 14 pounds per month. This would result in a one-time shared cost of $10.57 per family for the chemical feed pump, and about 55 cents per month for chemicals. Naturally, there would be additional costs such as installation and electricity. These costs, however, vary widely depending on the system, the source, and the availability of utilities and we give no estimate for them here.

I hope that this information adequately explains the need for disinfection of public water supply systems as set out in 18 AAC 80.040(b). One cannot escape the conclusion that choosing to not disinfect public water supplies served by surface waters will result in disease outbreaks that need not occur.

If you have any questions, or if additional information would be of value, please contact me.

Sincerely,

Ernst W. Mueller
Commissioner

cc: Senator John Butrovich
Senator Chancy Croft
Senator John Huber
Senator H. D. Meland
Senator Mike Colletta
Senator Clem Tillion

SJR

7

COMMITTEE REPORT

SENATE

1/01/78

11-6-77 Date

Mr. President:

The Committee on RESOURCES has had S.J.R. 7 opposing H.R. 39, the Alaska National Interest Lands Conservation Act under consideration. A majority of the members of the Committee

[X] recommends it do pass

[ ] recommends it do not pass

[ ] recommends it do pass with attached amendment(s)

[ ] recommends it be replaced with CS for _____ and that CS for _____ do pass

[ ] (and) recommends it be referred to the _____ committee

[ ] reports it back without recommendation

[ ] AND attaches a report of its intent

[ ] (other) _____

MEMBERS SIGNING THE MAJORITY REPORT:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

MEMBERS NOT CONCURRING IN THE MAJORITY REPORT:

_____ recommends: _____

_____ recommends: _____

_____ recommends: _____

_____
Chairman

S 60

PLEASE NOTE

THE ORGINAL FILE CONTAINS AN OVERSIZED DOCUMENT THAT IS UNSUITABLE FOR FILMING. PLEASE REFER TO THE ALASKA STATE ARCHIVES TO VIEW THE ORIGINAL.

Alaska Wilderness Brochure

improperly in requesting information from the law firms. At Monday's assembly meeting Fader said he was gathering input and facts on all of the alternatives to get perspective.

As an advocate of consolidation, Fader considers the resignation of the city attorney a perfect time to put the legal departments of both governments into one office. When the city started looking into outside legal service, Fader said he sought the same information.

Fader said Holst was "overreacting to the situation."

Teague defended Fader's action and said "it is premature to be concerned with job security. The importance of legal service makes it necessary to look at the alternatives."

Meanwhile, Wednesday's meeting was attended by representatives of four local law firms, including Ellis, Sund & Whittaker, A. Fred Miller, Esq., Ziegler, Cloudy, Smith, King and Brown, and Dennis McArty.

Most of the questioning by the private firms was directed to Stahla about the city's legal situation.

No formal proposals have been received by either the city or borough.

According to Teague, the next step of providing legal services for the city is up to the council. It has the option of hiring a new attorney, contracting with the borough to do the work, or contracting it out to a private firm.

Although the final decision is up to the council, Teague said he preferred to have the borough's legal services handled by a city attorney. The city has much more legal work, Teague said.

Teague didn't think he would have any problem working under any arrangement. He said contracting out the legal work was a practical solution, although it may not turn out to be the most viable.

If no action has been taken by the time the city attorney leaves, Teague said the assistant to the attorney, Tony Sholty, could act in a temporary capacity.

Right now the total budget for the city legal department is about $92,000. The borough legal department budget runs about $60,000.

A report prepared for the borough assembly by Holst estimated that a combined city-borough legal department could be budgeted at about $131,000, plus some initial office set up costs.

guardian and the complaint referred to youth and adult authority. He is alleged to have taken a bottle of vodka from the Totem Liquor Store.

Two children were reported out after curfew last night.

Today, for the second day in a row, a girl asked police to patrol a school bus stop in case her former boy friend tried to in-

report information of offending vehicles to the troopers, a trooper spokeswoman said.

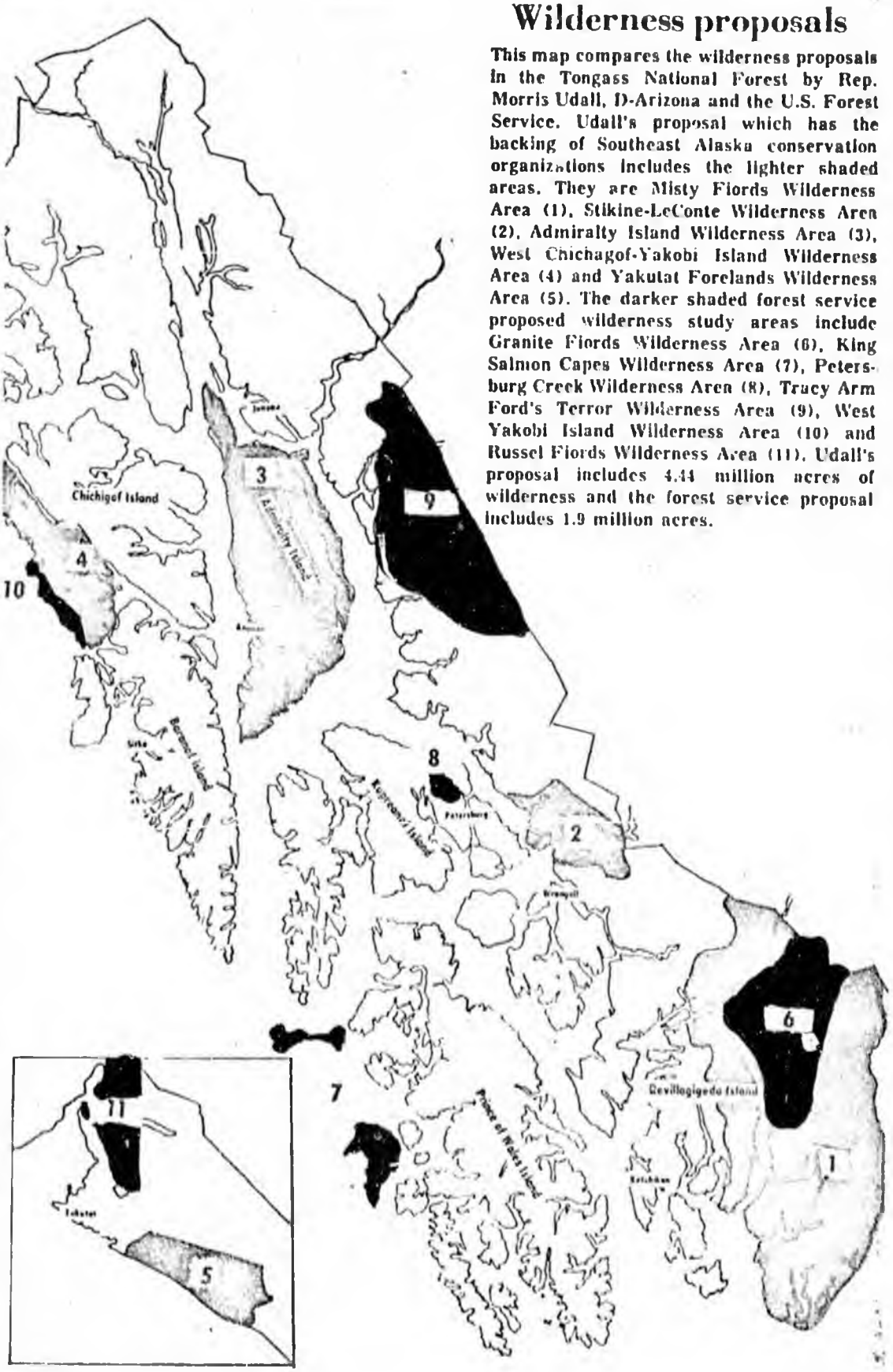
Offenders will be cited into court, she said. Conviction of this offense carries a six-point penalty against a driver's record, which is half the point accumulation allowed before a person's driving privilege is suspended.

Hospital notes:

Admitted to Ketchikan General Hospital Wednesday were Karen Woolery, Harry Reeve, Jill Russell and June Durgan.

Discharged were Dale Strong, Kathleen Lea and Hope Brown and baby girl.

Wilderness proposals



This map compares the wilderness proposals in the Tongass National Forest by Rep. Morris Udall, D-Arizona and the U.S. Forest Service. Udall's proposal which has the backing of Southeast Alaska conservation organizations includes the lighter shaded areas. They are Misty Fiords Wilderness Area (1), Stikine-LeConte Wilderness Area (2), Admiralty Island Wilderness Area (3), West Chichagof-Yakobi Island Wilderness Area (4) and Yakutat Forelands Wilderness Area (5). The darker shaded forest service proposed wilderness study areas include Granite Fiords Wilderness Area (6), King Salmon Capes Wilderness Area (7), Petersburg Creek Wilderness Area (8), Tracy Arm Ford's Terror Wilderness Area (9), West Yakobi Island Wilderness Area (10) and Russel Fiords Wilderness Area (11). Udall's proposal includes 4.44 million acres of wilderness and the forest service proposal includes 1.9 million acres.

Alaska National Interest Land Conservation Act
H.R. 39

Sec. 1 - Describes Titles within the Act - purposes of the Act and where maps of proposal are on file.

Title I - Describes National Park System Proposals

- 64.1 million acres of National Parks, Monuments and Preserves to be managed by the NPS.
- Kenai Fjords may include a portion of the Chugach NF.
- Glacier Bay National Monument addition (.8 mm acres) may include portion of Tongass NF.
- Sec. 103 provides for hunting under provisions of Sec. 702 of this Act.

Title II - Describes National Wildlife Refuge System

- 46.4 million acres of Wildlife Refuges and Ranges to be managed by the Fish and Wildlife Service.
- A portion of the Copper River Delta Refuge proposal would be Chugach NF.

Title III - Describes National Wild and Scenic River Proposals

- 23 Wild and Scenic Rivers proposed containing approximately 4 million acres.
- Rivers are outside and in addition to proposed Parks and Refuges.

- All Rivers would be managed by National Park Service.
- Situk (20 m acres) and Stikine (50 m acres) are now part of Tongass NF
- River boundaries will average 2 miles on each side and will be established within three years after date of enactment (Sec. 302).

Title IV - Describes National Forest System Proposals

- After consultation with both Secretaries of Agriculture and the Interior, the President is authorized within one year of enactment of this Act to add lands to the Tongass and Chugach NF's so as to include entire units of local topography, not to exceed 1.6 million acres, generally depicted on a map entitled "Potential NFS additions in Alaska, Dated _____."
- This 1.6 million acres is rock and ice.

Title V - Deals with National Petroleum Reserve (23 mm acres)

- Land review dedications pursuant to Sec. 105(c) of P.L. 94-258 replaces BLM management responsibilities with the Fish and Wildlife Service to protect surface values.

Title VI - Designation of Wilderness Areas

- Sec. 601 - Lands added to the Park, Refuge and Wild and Scenic Rivers System by this Act are hereby designated as wilderness. (Approximately 115 million acres.)

- Sec. 602 and Sec. 603 - Creates wilderness in existing Parks and Refuges in Alaska. (7.3 mm acres Parks, 19.7 mm acres Refuges) which is virtually all of existing Preserves.
- Sec. 604 - Adds certain lands in Tongass to wilderness

1,030,000 acres - Admiraltly Isla (excludes Native Village)
300,000 acres - Yakutat Forelands (Tongass)
2,400,000 acres - Misty Fjords (Tongass, Mainland East of Ketchikan)
305,000 acres - Stikine--LeConte (Tongass - East of Petersberg)
405,000 acres - West Chichigof-Yakobi (Tongass - North of Sikta)
600,000 acres - Nellie Juan (Chugach, Prince William Sound)

Total 5,040,000 acres Wilderness

(Total wilderness proposed in this bill - 147 million acres)

- Sec. 605 - Wilderness designated by this Act shall be managed in accordance with the Wilderness Act except that any reference in such provisions to the effective date of the Wilderness Act shall be deemed to be a reference to the effective date of this Act and any reference to the Secretary of Agriculture shall be deemed to be a reference to the Secretary of the Interior.

Title VII - General Administrative Provisions

Sec. 701 - Provides for subsistence use in Parks, Refuges, Wild and Scenic Rivers and National Forests (Titles I, II, III, and IV).

- Secretary may designate "Subsistence Mgt. Zones" and "Regulatory Subsistence Boards."

- Secretary retains responsibility and may overrule Subsistence Board decisions.
- Provides for periodic review of advisability to continue subsistence use.

Sec. 702 - May permit hunting in National Preserves (part of Park System) on three areas totaling 12.6 million acres.

Sec. 703 - Withdraws Parks, Monuments, Preserves, Wildlife Refuges and Ranges, and Wild and Scenic Rivers from all forms of appropriation under the mining laws and mineral leasing laws.

Sec. 704(a) - Native lands not selected within National Forests, Parks, Refuges and Rivers will be added to the respective area. (This could add several million more acres to Parks and Refuges and Rivers.)

Sec. 704(b) - State selections within Parks, Forests, Refuges or Rivers established by this Act are hereby revoked provided that the Secretary will make available equal acreage from other public lands but not from Forests, Parks, Refuges, or Rivers.

Sec. 705 - Provides for land acquisition.

Sec. 706 - Provides for the establishment of Administrative Sites outside established areas.

Sec. 707 - Provides Native Corporations opportunity to provide visitor facilities for areas.

Sec. 708 - Authorizes Secretary to establish areas of ecological concern adjacent to established units.

- Provides for cooperative planning.

Proposal Summary

	Millions of Acres
National Park System	64.1*
National Wildlife Refuge System	46.4*
National Wild and Scenic Rivers System (23 Rivers)	4.0*
National Forest System	1.6
Total D-2 proposal	116.1

* Designated by this Act as wilderness - 114.5 mm acres

Existing Park and Refuge Lands Designated Wilderness	27.0 million acres
Existing Forest Lands Designated Wilderness	5.0 million acres
Total Wilderness Proposed	146.5 million acres

This Act also designates the 23 mm acre Petroleum Reserve for Fish and Wildlife Service Management.

Territorial Sportsmen, Inc.

P. O. Box 761

Juneau, Alaska 99801

January 17, 1977

ALASKA'S NATIONAL INTEREST LAND CONSERVATION ACT - H.R. 39

The Territorial Sportsmen, Inc. of Juneau, a non-profit sportsmen oriented conservation organization dedicated to the principles of multiple use and proper management of our natural resources, have recently received a copy of H.R. 39 introduced by Congressman Udall. The Territorial Sportsmen have had a long, continuing interest in the matters relating to land management and allocations in Alaska. There are numerous sections of H.R. 39 which in our opinion are not in the best interests of the State or the Nation. While we have only had access to a copy for three days, after careful review, we are deeply concerned with the language contained in H.R. 39. The purpose of this release is to provide members of our organization and other interested members of the community and the State with some of the facts.

The proposal would designate 147 million acres of wilderness which would be in addition to existing withdrawals for various purposes including military withdrawals. The 147 million acres, plus the previous dedications and withdrawals, would place 46½ percent (approximately) of Alaska's entire land area of 362,516,000 acres in the wilderness classification. The designation in total of millions in acres of wilderness is greater than the combined areas of the States of California and Washington.

In addition to designation of National Park and National Wildlife areas as wilderness, all wild and scenic rivers would be managed as wilderness by the National Park Service. This would include 23 wild and scenic rivers. These rivers are outside and in addition to proposed parks and refuges. The boundaries of these designated rivers will average two miles on each side. Managed as wilderness by the National Park Service, these 23 proposed wild and scenic rivers will not be available for recreation, development, agriculture, current hunting practices, hydroelectric power site developments, timber harvesting or mining.

Under management by the National Park Service or as National Wildlife refuges, the State of Alaska (Alaska Department of Fish and Game) loses the primary responsibility for management of fish and wildlife species on these areas. The Secretary of the Interior is authorized to publish regulations, prescribe conditions and enforce such regulations and conditions for restrictions of hunting and fishing to subsistence use.

Although the Forest Service, Department of Agriculature, has currently designated approximately 2.5 million acres in seven wilderness study areas in the Chugach and Tongass National Forests and is currently managing them to protect the wilderness values, while the U.S. Geological Survey is completing the required study of mineral values, these designations are ignored by the proposed legislation or supplanted with instant designations of wilderness classification includes:

Admiralty Island.

1,030,000 acres excluding only the Angoon Native Village and related selected lands. The Goldbelt and Shee Atika, Inc. Native rights and selections on Admiralty Island are ignored.

Misty Fjords.

2,400,000 acres instant wilderness classification includes the 590,000-acre Granite Fjords wilderness study area managed by the Forest Service. Although the U.S. Geological Survey minerals survey findings are nearly ready for evaluation, instant wilderness designation precludes consideration of this information. The expanded area of 2,400,000 acres also includes the U.S.Borax Company's Quartz Mountain molybdenum project and would essentially block the development of this project.

The West Chichagof-Yakobi wilderness area proposal of 405,000 acres encompasses the Forest Service Unit Management plan for this area. A 5-year study including a formal environmental impact statement. The final impact statement based on extensive public involvement included designation of a 40,000-acre wilderness study area and management of most of the area as backcountry. The designation of the entire area as wilderness ignores the 5-year study and environmental impact statement, would block the development of Inspiration Mining Company's copper-nickel deposit on Yakobi Island. Several year-long residences and other existing recreation facilities would also be adversely affected by such classification.

The Yakutat Forelands, 300,000 acres and Stikine-LeConte 305,000 acres are also areas on the Tongass National Forest currently

under study in the Forest Service's land management planning process. Although the areas have not been studied for mineral values, instant wilderness classification would be made. Native claims, opportunities for agriculture and other forms of development are also ignored.

The Nellie Juan area on the Chugach National Forest is also designated as instant wilderness. Although this corresponds to the Forest Service's designated wilderness study area, the mineral surveys by the U.S. Geological Survey are not completed and Native claims are ignored.

Management of these National Forest wilderness area designations would be taken over by the National Park Service, eliminating the State of Alaska's responsibility for management of fish and wildlife species and restricting hunting and other opportunities for multiple use management.

The proposed legislation would also modify existing land classifications in southeast Alaska.

Copper River Delta Area.

Elimination of the Forest Service's Copper River Delta Game Management Area, where the Forest Service has a cooperative agreement with the State of Alaska Department of Fish and Game, seriously undermines the Forest Service's Multiple Use Management program. The Forest Service also has cooperative efforts underway in this area with the U.S. Fish and Wildlife Service, University of Alaska, and University of Minnesota. The Forest Service should be encouraged to continue such efforts rather than blocking such work.

H.R, 39 Fails to Recognize the Agricultural Potential in Alaska.

The agricultural potential in Alaska is not considered in the provisions of this proposed legislation. In fact, existing and potential agricultural lands are included in proposals for National Parks, National Wildlife Refuges, and Wild and Scenic Rivers preventing the use of these agricultural lands.

The Subcommittee on Agricultural Production, Marketing and Stabilization of Prices of the Committee on Agriculture and Forestry, U.S. Senate, held hearing in Palmer, Alaska on August 16, 1976, and in Fairbanks on August 17, 1976, on the agricultural potential in Alaska. The record of these hearings has been printed and clearly show the importance of these agricultural lands. The Alaska State Legislature and Governor Hammond have also recognized this important agricultural resource and additional agricultural lands have been identified.

It is essential that all of these agricultural lands be recognized and be available for use either as farmlands or as grazing lands. H.R. 39 should be referred to the Senate and House Committees on Agriculture and Forestry to assure these agricultural values are considered and will be available for use.

The Alaska National Interest Land Conservation Act - H.R. 39 also proposes to greatly modify existing land classifications in southeast Alaska and Price William Sound, severely retarding the conservation (wise use) of resources on the Tongass National Forest, Chugach National Forest, and Glacier Bay National Monument.

The Glacier Bay National Monument is enlarged to a total of 2,800,000 acres and is all designated wilderness. These lands

include highly significant and economically available minerals critical to the Nation's needs. Opportunities for developed recreation facilities, hunting, aquaculture, and timber harvesting would also be foreclosed by these designations.

Retention of and classification of additional areas as National Forest which will permit multiple use management of these various resources should be made.

In conclusion, we would again urge that everyone become familiar with this proposal. Hearings no doubt will be held. Copies of the entire Act should be available in Alaska in the near future. I suggest you contact the various offices of our State delegation to secure copies or write directly to your Congressman or Senators. We would like to point out, also, that in our opinion this proposal does not recognize the economic factors involved. Certainly the proposals for southeast Alaska would, in our opinion, put southeast Alaska in a very precarious position so far as economics are concerned. I am sure this should be of interest to all Alaskans. We will be commenting further on this legislation. We are advised that other legislation will also be introduced in the very near future. We certainly should have some options.

A. W. (BUD) BODDY
President
Territorial Sportsmen, Inc.

United States Department of the Interior
FISH AND WILDLIFE SERVICE
ALASKA AREA OFFICE
813 D STREET
ANCHORAGE, ALASKA 99501

RECEIVED
JAN 17 A.M.
PHIL E. HOLDSWORTH

13 JAN 1977

Mr. Phil Holdsworth, P.E.
Consulting Engineer
326 Fourth Street, No. 1009
Juneau, Alaska 99801

Dear Phil:

I understand Tom Dvorak of my staff discussed your letter inquiry of December 24, 1976 with you over the telephone and provided the information you were seeking concerning the refuge system in Alaska as to their status under the mining laws.

Let me again reiterate the mining law situation as it applies to the refuge system in Alaska. The only Alaska refuges now open to location and entry under the mining laws are the Clarence Rhode National Wildlife Range and Cape Newenham National Wildlife Refuge except those lands withdrawn under Section 11 of the Alaska Native Claims Settlement Act. The Secretary's proposal to Congress for refuge D-2 lands has included Clarence Rhode and Cape Newenham as part of the Yukon Delta and Togiak NWR proposals. Upon their establishment under the above proposals, they would then be closed to location and entry under the mining laws.

If I can be of further assistance, please do not hesitate to call on me.

Sincerely yours,

Gordon

Area Director

CONSERVE AMERICA'S ENERGY

Save Energy and You Serve America!

SJR

12

COMMITTEE REPORT

SENATE

XX

2/2/77

2/2/77 Date

Mr. President:

The Committee on RESOURCES has had SJR 12 under consideration. A majority of the members of the Committee

forthcoming action by U.S. Congress regarding (d)(2) land withdrawals

/ / recommends it do pass

/ / recommends it do not pass

/ / recommends it do pass with attached amendment(s)

/X/ recommends it be replaced with CS for ___ _____ and that CS for _____ do pass

/ / (and) recommends it be referred to the _____ committee

/ / reports it back without recommendation

/ / AND attaches a report of its intent

/ / (other) _____

MEMBERS SIGNING THE MAJORITY REPORT:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

MEMBERS NOT CONCURRING IN THE MAJORITY REPORT:

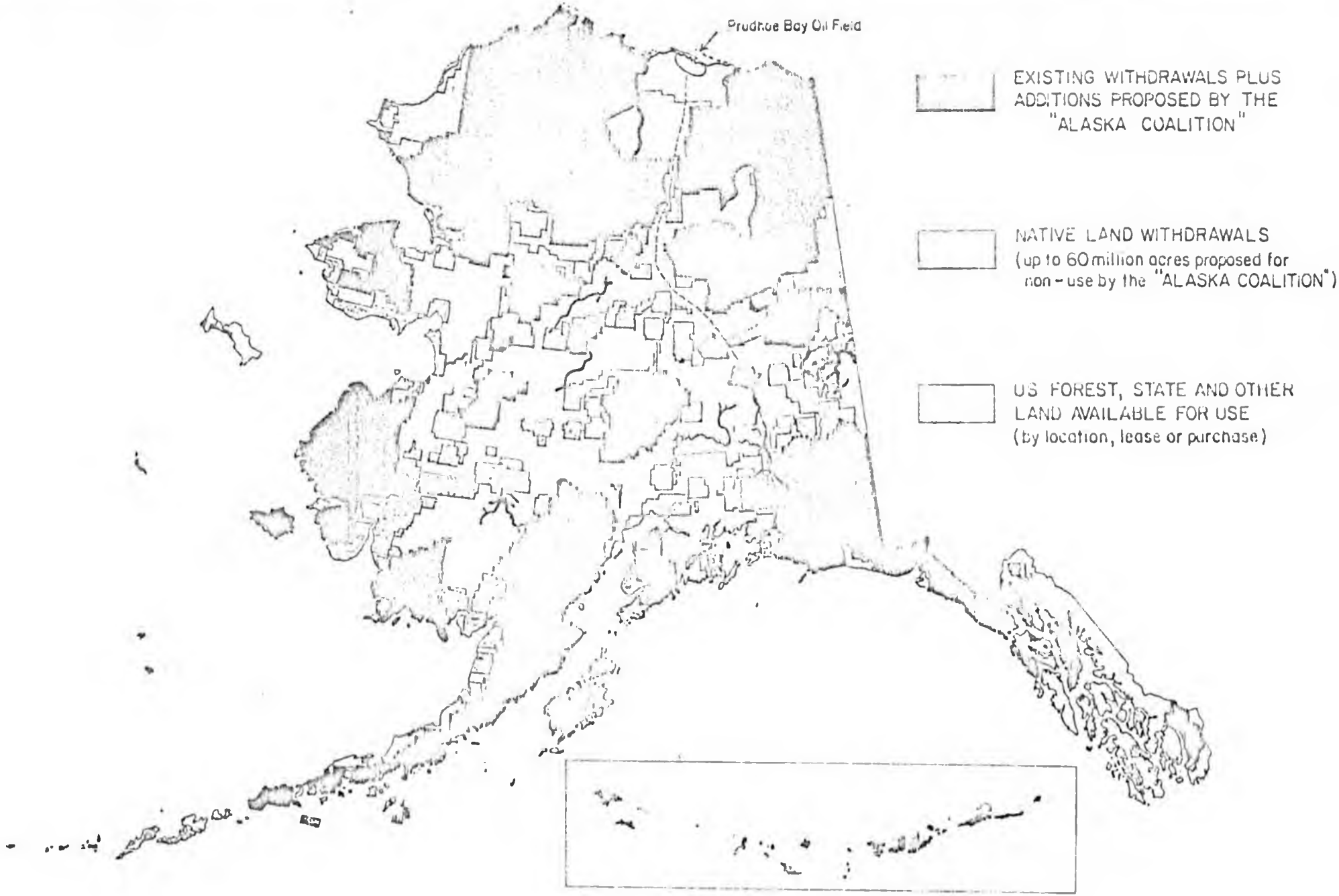
_____ recommends: _____

_____ recommends: _____

_____ recommends: _____

_____
Chairman

S 60



THE PRESERVATIONISTS' BLACKOUT

STATE OF ALASKA
One Inch = 190 Miles

ALASKA TASK FORCE

Sierra Club, 530 Bush Street,
San Francisco, CA 94108
(415)981-8634

Dear

We are looking for Sierra Club members who will participate in our campaign over the next two years to bring about permanent legislative protection for Alaska's grandest lands. You are one of those who has gone on a recent outing to that incredible country, and we hope that you have special enthusiasm for it and will want to join our Alaska Task Force and take part in its Alaska Legislative Program (ALP).

The enclosed Alaska Report outlines the situation with respect to Alaska legislation and the reprint "Great Stakes in the Great Land" describes the various areas that environmentalists seek to include in our national conservation systems. You will also find a sheet describing ALP in some detail.

We would like you to take on the responsibilities of Coordinator of legislative contact for your Congressional District or your local zone. Due to the inevitable unknowns of campaigns such as this one, we cannot precisely detail the extent of those responsibilities at this time. Basically though, as Congressional District Coordinator (CDC), they entail the recruiting of 15 or so Zone Organizers (ZO) in various towns or areas of your district. As ZO, your task also will be to recruit 15 or so people who will promise to write their Senators and Congressmen at crucial times during the campaign.

In addition to recruiting others, we will ask you to notify them very rapidly at those crucial times when letters are needed. That will be the extent of the basic job. There is much more that you could undertake if you so desire, but the vital job of generating constituent communication to their Representatives is the one that is absolutely mandatory if we are to succeed with the enactment of strong Alaska legislation.

We estimate the recruitment phase will require up to 20 hours of your time over the next two months. Perhaps another 20 hours notifying your team when you are alerted, over the next two years. Between postage and phone calls, you probably will have out-of-pocket costs of $10-20 which we cannot reimburse.

We are initiating this program in order to ensure heavy constituent contact with Senators and Representatives, without which we cannot win. District and Zone Organizers are essential to its success --- to Alaska's future.

Please undertake this job if you possibly can. It will cost you a little time and money. But it should be interesting and challenging. And very rewarding. We would appreciate hearing from you soon. In order to expedite the organization of ALP, please reply to Jo Belsey at the Alaska Task Force address. We will need both your home and business telephone numbers. Many thanks.

Cordially,

Edgar Wayburn

Edgar Wayburn, M.D.
Chairman
Alaska Task Force

P.S. Would you also let us know the name and address of good backpack equipment stores in your area that you feel would be inclined to participate in ALP? Also the name of the proprietors of those stores if you can easily obtain them.

alaska report

Sierra Club Alaska Task Force, 530 Bush Street
San Francisco, Calif., 94108 (415)981-8634 - X523)

September, 1976
Volume 3
Number 4

A REVIEW OF ACTION ON ALASKA'S PUBLIC LANDS DURING THE 1970's

This issue of the Alaska Report will review and update the situation with r spect to the disposition of Alaska's public lands -- its "unreserved public domain " which until recently amounted to more than three-quarters of the st In 1972, the Secretary of the Interior, under Congressional authority, desig ted 79 million acres as "National Interest Lands" and withdrew them from pub entry until the end of 1978. Congress must enact further legislation by tha time to place Alaska's most treasured lands in national conservation systems order to permanently protect them. Various bills were submitted in both the 93rd and 94th Congresses calling for widely differing degrees of protection. The Senate Interior Committee conducted hearings in late 1975, but no other a tion has been taken. It is now up to the 95th Congress convening in 1977 to termine the future of Alaska National Interest Lands.

STATEHOOD

Claims to Alaska's 365 million acres and threats to their fragile ecology were minimal until the territory became our 49th State in 1959 ,with a population nearly 230,000. But the Statehood Act, which Congress had passed the previou year, generously granted the infant state some 103 million acres of land ,plus another 40 million acres of tidelands. This whopping land grant (more than a been parcelled out to the seventeen western states combined) was intended to vide a base which would enable Alaska's tiny population to overcome its enor economic problems. It exceeded by some 40 million acres the amount of Alaska lands which should now be placed in trust for the benefit of all Americans.

As the State set about identifying the lands it wanted, it ran into opposition from Native Eskimos, Aleuts and Athabascan Indians ,who rejected the State's claim to their ancestral lands. By 1966 the dispute had become intense enough for then Secretary of the Interior Stewart Udall to put a "freeze" on all dev opment of, or transfer of title to, public land in Alaska. Then oil was disc vered at Prudhoe Bay in 1968, and the oil companies were denied permission to build a pipeline across Alaska's public land to carry it to markets in the lo 48. From these two separate situations developed a strange coalition of oil industry and Alaska Native lobbyists which besieged Congress, demanding settl ment of the Native claims and the thawing of the land freeze.

public domain and a cash payment of almost $1 billion, to be distributed thro 12 regional and numerous village corporations. (The regions, and the villag recognized by the Department of the Interior, were incorporated after the pa of ANCSA on December 18, 1971; as of December, 1975, most had filed their lan selections with Interior and received their first cash payments.)

In the course of the ANCSA debate, it became clear to conservationists that t state, the Natives and private industry were each to be granted a chunk of Al but no provision was being made to manage what was left in the unreserved pub domain in the best interest of the owners -- the American people. Senators J Jackson and Metcalf sponsored an amendment which became Section 17 of the Act with some important provisions:

17(a) - established a joint Federal-State Land Use Planning Commission to sure comprehensive planning for Alaska's future;

17(b)&(c) - set up a planning procedure for locating public easements and portation and utility corridors;

17(d)(1) - continued the land freeze for 90 days, during which time the Se tary of the Interior determined which of the "public lands" would be withd (i.e., temporarily reserved under federal management) in the public intere These "d-1 lands" are "multipurpose" lands and are open to metalliferous m ing unless or until Congress indicates otherwise; and

17(d)(2) - allowed the Secretary to select up to 80 million acres which he deemed suitable for inclusion in the National Park, Forest, Wildlife Refu and Wild and Scenic Rivers Systems in Alaska. Congress must decide which o "National Interest Lands" to include in the four national conservation sy by the end of 1978.

FIRST STEPS

Following the ANCSA timetable, in March of 1972 Secretary of the Interior Roy C.B. Morton recommended that 79 million acres be set aside as "d-2" lands. H also withdrew 47 million acres as "d-1" lands for further study of their pote

The State of Alaska immediately sued the Interior Department for recommending d-2 some lands the state (pursuant to the Statehood Act) had preempted in a s prise move the previous January. In an out-of-court settlement in Septembe the state relinquished approximately 35 million acres of the 79 million selec in January; Interior gave up some of its March d-2 recommendations to allow selection, and some others were changed to d-1 status.

BILLS IN CONGRESS 1973

In December, 1973 Secretary Morton officially submitted to Congress his propo for 28 d-2 areas of Alaska totalling 83.5 million acres. By special request, Senator Henry M. Jackson introduced Interior's proposal as S.2917. Also by r quest, he introduced S.2918, a proposal which conservationists felt better e ed the intent of Section 17(d)(2) of ANCSA by setting aside 106.5 million acr as d-2 lands, or "National Interest Lands".

At the same time, comparable house bills were introduced by Congressmen Udall daley. Throughout the remainder of the 93rd Congress, they languished. In t spring of 1975 Senator Jackson reintroduced his original d-2 legislation as S (Interior's) and S.1688 (conservationist - backed), while Representative Udal introduced his bill (identical to S.1688) as H.R.2963.

ANALYSIS

Conservationists back S.1688 as an alternative to Interior's proposal for a n ber of reasons, but primarily because the increased acreage allows the preser tion of complete ecosystems. As a result of the 1972 out-of-court settlement some of the d-2 proposals in S.1687 have huge gaps. Although S.1687 places of the land changed to d-1 in the settlement with the state within the perim of its d-2 proposals (the state threatened to reopen its suit), as d-1 lands could be mined and/or selected by the state before Congress has voted on and

Interior's proposals for four National Parks: Wrangel Mountains, Gates of the Arctic, Mt. McKinley (Southern Extension) and Yukon-Charley Rivers. In other proposals, crucial parts of the ecosystem are simply omitted. For example, excluded from Interior's proposal for Selawik National Wildlife Range (in S.1687) are several hundred thousand acres to the west which the draft Environmental Impact Statement called "of comparable or greater value to fish and wildlife than the proposed refuge itself". (NPS DEIS)

The Interior bill also ignores several exciting opportunities for cooperative and innovative management, such as that proposed for the Chukchi-Imuruk National Wildlands. Secretary Morton originally proposed this as an area for joint National Park Service (NPS)/Fish and Wildlife Service (F&WS) management, but S.1687 recalls for a National Reserve under sole NPS management. In the Wrangel Mountains conservationists foresee the establishment of an international park with land of equal grandeur and recreational potential in Canada. In S.1687, however, the Wrangels proposal is split between U.S. Forest Service and NPS jurisdiction, the latter getting 88% "barren rock and ice" (NPS DEIS).

S.1687 would place almost 19 million additional acres (there are already 21 million acres) under the Forest Service, whose operating code allows mining as well as clearcut logging. Only four National Wild and Scenic Rivers are proposed.

Conservationist-backed S.1688 seeks to retain cohesive units of Alaska's wilderness, thereby preventing damage to watersheds and animal habitat within the proposed. For this purpose, for instance, the bill supports an extension of existing Arctic National Wildlife Range in northeastern Alaska to incorporate migratory routes of the Porcupine caribou herd which uses the Range. It would enlarge Mt. McKinley National Park on three sides, bringing a large part of the massif and surrounding wolf, moose, caribou and grizzly habitat into the Park established in 1917.

Individual proposals in S.1688 allow a comprehensive regional approach to conservation of land and wildlife resources. For example, an Aleutian Peninsula extension of, and National Park status for, Katmai National Monument, and establishment of Aniakchak Caldera National Monument and an Alaskan Peninsula Area Brown Bear Range would protect spectacular reminders of volcanic activity, wilderness rivers and hiking country, as well as the considerable forage needed by the endangered Alaskan brown bear, one of the world's largest carnivores. In northeast Alaska, expanding the Arctic National Wildlife Range to the south, designating Yukon Flats National Wildlife Range, a Yukon-Charley Rivers National Park and Birch Creek National Wild River would join an intact unit of the Arctic ecosystem with the Subarctic. Fauna endangered elsewhere in the Arctic by oil development and exploration would be protected, as would the summer breeding grounds of millions of wildfowl which migrate annually to the wetlands of the Yukon Flats. S.1688 proposes 13 of the nation's most beautiful and exciting rivers as Part Wild and Scenic Rivers.

HOLDING PATTERN

On December 20, 1973 Senator Jackson wrote Secretary Morton asking him not to convey title to any lands which might qualify for designation by Congress as described without notifying the Interior Committees of both Houses of Congress at least 6 months in advance. The request was repeated in May and December of 1974. Meanwhile, during the summer of 1974, the state of Alaska asked for patent to the 42 million acres of its January 1972 land selection which were not relinquished in the settlement with Interior. In September, 1974 Edgar Wayburn, Chairman of the Sierra Club Alaska Task Force, protested to Senator Jackson that the apparent willingness of the Interior Department to comply with the state's request would remove 65 million acres from possible inclusion in the four conservation systems.

First Class Mail

alaska report

On December 10, 1974 a Senate Interior Committee hearing chaired by Floyd K. H heard Royston C. Hughes, Assistant Secretary of the Interior, on the state d-2 conflict. Senator Haskell and Senator Lee Metcalf, also present, agreed to fa speedy transfer of title to the state in undisputed areas; they also agreed re for compromise in some other areas, but Haskell warned: "I think the Departmen be ill-advised to go ahead where there are conflicting legislative proposals. not be your d-2, but it might be our d-2."

THE WATCH

Others concerned about the national interest in Alaska have been active in thi ing period. Conservationists protested vigorously in nationwide hearings agai October 1974 Bureau of Land Management document, "Multimodal Transportation an Corridor Systems in Alaska: A Preliminary, Conceptual Analysis". Of the 40 co carved across Alaska in this concept, only three were tentatively approved by t Secretary of the Interior.

To further study the d-2 situation, the Alaska Coalition, a group of 12 conserv groups met in Fairbanks in February, 1975 to discuss potential management and dary changes in legislation before the new 94th Congress.

94th CONGRESS 1975

And the holding pattern continued. Conservationists repeatedly urged Congress gin hearings on the complex landmark legislation, stressing the 1978 deadlin completion Congress had given itself in ANCSA. Furthermore, the situation was ing more complex -- Congressman Young of the Alaska delegation submitted a d-2 posal to the 94th Congress.

On September 3, 1975, Congressman Udall introduced H.R.9346, a bill containing the parks, monuments and wild and scenic rivers d-2 proposals of H.R.2063. Thi falls directly under the jurisdiction of the National Parks and Recreation Sub of the House Interior Committee. During the August recess, Congressmen Joan Se and Goodloe Byron and staff of the subcommittee had visited Alaska, and their will help Chairman Roy Taylor's subcommittee.

Action in the Senate began with oversight hearings on November 21 and December in the Senate Interior Committee. Edgar Wayburn, on behalf of the Alaska Coal advocated passage of S.1688 and reiterated the increasing pressures for develop of Alaska's public lands which make immediate Congressional action imperative. Committee also heard from the Interior Department, the Alaska delegation and a proposal from the state of Alaska, before issuing a white paper to be used as for future substantive hearings.

Congressmen looked at Alaska in December, 1975 from another angle in considera H.R.6644, a bill urged by Alaska Natives to amend ANCSA. Certain federal, sta Native land selections were changed which will affect the d-2 issue, particula central and southwestern Alaska. Hopefully Congress will move on to examine t posed additions to the four national conservation systems in these regions.

Below is a chart summarizing the proposals Congress must consider in the process of deciding which lands in Alaska should be added to the national conservation systems:

	S. 1688 (Conserv)	S.1687 (Interior)	HR 6848[1] (Young)	State of Alaska[2]	Fed/State LUPC
*					
National Conservation systems:					
" Park System	52.1	32.3	10.7	16.7	18.3
" Wildlife Refuge System	50.8	31.6	-	15.3	14.8
" Wild & Scenic Rivers System	1.6	.8	.5	-less than 1 mi	
" Forest System	1.6	18.8	28.3	4.6	6.0
"Alaska National Land Reserves"					58.9
Wilderness study areas					9.0
"Alaska Resource Lands"				61.9	
"Alaska Scenic Reserve System"	----	----	24.3	----	----
TOTAL:	106.1	83.5	63.8	98.5	107.0

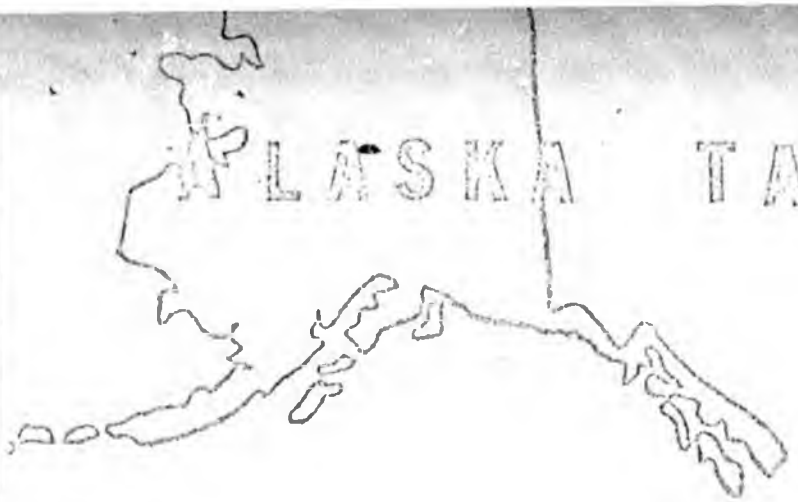
*in millions of acres

Notes:

(1) HR 6848 was introduced by Congressman Young in the 94th Congress. The 24 million acres in the so-called Alaska Scenic Reserve System would be administered by a Federal-State Commission for multiple use -- i.e., resource extraction would be permitted as it is in the National Forests. Only 11 million acres would be added to the National Park and National Wild and Scenic Rivers Systems, where recreation, open space and wildlife preservation are the major land use values. HR 6848 would also establish 8 new transportation and utility corridors in the state.

(2) Governor Jay Hammond announced the state's proposal on October 25, 1975. It is not yet final, but in general proposes 40 million acres for the four national conservation systems, while placing 62 million acres in a new category called "Alaska Resource Lands" under Bureau of Land Management administration according to recommendations of a powerful Federal-State Alaska Land Commission. It also vaguely outlines an idea for COMANS or "cooperatively managed areas" in which all owners would somehow work together to carry out the Commission's recommendation as to the best use of the land.

(3) The Joint Federal-State Land Use Planning Commission's proposal was released the same day as the state's and is similar to it. The "Alaska National Land Reserves" would be managed the same way as the state's "Alaska Resource Lands". Both proposals invest great responsibility in a Federal-State Commission which, if the state legislature so decides, could take over planning functions for state as well as federal lands, including decisions like the location and number of transportation and utility corridors in Alaska.



ALASKA TASK FORCE

Sierra Club, 530 Bush Street,
San Francisco, CA 94108
(415)981-8634

ALASKA LEGISLATIVE PROGRAM

The purpose of the Alaska Legislative Program (ALP) is to ensure that conservationists and all wilderness and wildlife enthusiasts throughout the country are aware of upcoming Congressional legislation dealing with the preservation of more than 100 million acres of Alaskan lands in our national conservation systems. ALP will keep them informed of the bill's progress toward enactment and will generate expressions of their active support to their elected representatives.

ALP is intended to supplement the dissemination of information on Alaska lands through books, Bulletin and newsletter articles ,film, filmstrips and slideshow. It will do so by reaching out primarily to people who are predisposed toward wilderness values, including customers of backpack equipment and readers of publications dealing with wilderness activities.

In addition to informing millions of interested people, ALP will make a major effort to encourage them to let their Congressmen and Senators know they want Alaska protected. A chain of communication is being established in all Congressional Districts, that will allow upwards of 200 volunteer letter-writers in each district to be notified quickly at times when contacting their Representatives is crucial.

Here's the way it will work. A Sierra Club Alaska Task Force member will serve as a Congressional District Coordinator (CDC). The CDC will recruit 15 friends of Alaska to serve as Zone Organizers (ZO) throughout the District; each of them will put together a team of 15 or more volunteer letter-writers in their vicinity who will agree to communicate to their legislator when the time is right. Each CDC and ZO should find an assistant both to aid with recruitment and to serve as a back-up in case of the organizer's absence at a time when letters are needed.

The ALP approach is based on personal involvement. It replaces computers with people! But it will require a commitment, some real work and some out-of-pocket expenses over a two year period by some 7000 volunteers. And reliable follow through by just two-thirds of the letter-writers will ensure very strong constituent contact with all Senators and Representatives when it is most needed.

People who undertake assignment as either CDC or ZO will have two sources to aid their recruitment efforts. The first is the membership list maintained by each Sierra Club Chapter and Group. The second is the retail backpack stores in their area. (One element of ALP is a petition campaign in such stores on behalf of Alaskan lands protection,

Those names will be available to Coordinators and Organizers. And most stores participating in the petition campaign would likely be willing to give Coordinaotrs the names and addresses of charge or local catalogue customers.) Backpacking outfitters are, almost without exception, personally committed (as well as financially motivated) to wilderness protection. Most of their customers are too. Those retail locations will play an important part in ALP's success.

The timing of "letter alerts" will be determined by the legislative situation. Sierra Club legislative representatives in Washington, D.C., Task Force members at the San Francisco Headquarters, or Chapter Leaders will quickly notify all 435 CDC's by phone or mail. They in turn would make every effort to alert all their ZO's within 24 hours, by phone if within toll-free or reasonable cost area; otherwise by letter/postcard. ZO's would quickly follow the same procedure with their letter writing team. Most often, general letters of support for maximum protection of Alaskan lands, in the writers own words and expressing his own philosophy or reasons, will be sufficient. But in some cases, specific points will need to be addressed; backing or opposing specific amendments referring to specific areas, urging prompt action on the Alaska National Interest Lands legislation, etc.

Coordinators can expect 5 or 6 alerts and writers will likely be asked for about 8 letters during the two year span of the 95th Congress. The key to the success of Alaska legislation will be getting it started through the laborious legislative maze. There will be enormous pressure by exploitive interests and the Alaska delegation to nit on the bill. Early constituent influence on all House members is important in order to generate maximum support from Committee members.

All volunteers in this program are requested to write both Senators and their Congressman before mid-January, 1977 (or when they become involved after that date), urging prompt action by House and Senate Interior Committees on legislation calling for protection of over a million acres in Alaska.

For further information, contact the Alaska Task Force at the above address.

P.S. Please share with us any other ideas you have on this.

SJR

37

COMMITTEE REPORT

SENATE

1/26/81

FURTHER: None

Date: _____

Mr. President:

The Committee on _____ has had _____

conservation of Bowhead Whales

under consideration and (a majority of the committee) (the committee reports it back as follows)

( ) recommends it do pass ( ) recommends it do not pass

( ) recommends it do pass with attached amendment(s)

( ) recommends it be replaced with CS for _____

and _____ ( ) new title ( ) same title

( ) AND attaches a Letter of Intent ( ) New Fiscal Note

( ) reports it back without recommendation

( ) and recommends it be referred to the _____ Committee

MEMBERS SIGNING DO PASS:

OTHER RECOMMENDATIONS:

_____ Chairman

S 60 (rev. 6/77)

U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
P. O. BOX 1668 - JUNEAU, ALASKA 99801

fee

February 7, 1978

Honorable Kay Poland
Alaska State Legislature
Juneau, AK 99801

Dear Senator Poland:

In response to the request by the Senate Resources Committee in their final day of hearings on Senate Bills 439 and 440, and Senate Joint Resolution 37, the following information is submitted:

The average yearly take of bowhead whales by all Alaskan Eskimo villages for the past ten years is 24.4 whales. The take in 1976 was 48 whales.

The average yearly take of bowhead whales in Barr ; for the past ten years is 13 whales. The take in 1976 was 23 whales.

The average yearly take of bowhead whales by Soviet natives for the past five years is 2 whales. They took no bowhead whales in 1976.

A call this morning to Dr. George Harry, Director of the Marine Mammal Division of National Marine Fisheries Service in Seattle, confirms that there has been no take of bowhead whales by Canadian Eskimos in recent years.

Bowhead whale catch statistic tables have been attached for your information. Please do not hesitate to call on us if we can be of any further assistance.

Sincerely,

Harry L. Rietze

Harry L. Rietze
Director, Alaska Region

Table 13.--Bowhead whales taken by USSR natives in recent years

Year	Chukchi Sea	Bering Sea	Total
1972	0	1	1
1973	0	2	2
1974	1	2	3
1975	2	2	4
1976	0	0	0

Source: Personal communication from Dr. V.N. Mineev.

Tables taken from: "The 1976 Catch of Bowhead Whales (Balaena Mysticetus) by Alaskan Eskimos, with a Review of the Fishery, 1973-1976, and Biological Summary of the Species." by Willman Marquette, U.S. Dept. of Commerce, May 1977

Table 14. Bowhead Whales taken by Alaskan Eskimos and shore-based stations in the western Arctic Ocean.

Year	Barrow	Pt. Hope	Wainwright	Nuigsut	Icy Cape	Kaktovik	Gambell	Savoonga	Kivalina	Misc.	Total
1852	17										17
1853	7										7
1854-79											-
1880		5									5
1881	18										18
1882	1										1
1883	2										2
1884	10										10
1885	28	12									40
1886											-
1887	6										6
1888	2										2
1889	4										4
1890	1	1									2
1891	18										18
1892	8	0									8
1893											-
1894	10										10
1895	4										4
1896	6	33									39
1897	5										5
1898	42[1/]	1									43
1899											-
1900	19										19
1901		1									1
1902		2									2
1903	4	0									4
1904	2	0									2
1905	5										5
1906	1										1
1907	9	0									9
1908	23	13			10-12						46-48
1909	11	13			1						25
1910	2+										2
1911	1	3									4

Table 14 . (continued)

Year	Barrow	Pt. Hope	Wainwright	Nuigsut	Icy Cape	Kaktovik	Gambell	Savoonga	Kivalina	Misc.	Total
1912	2	1									3
1913	4	1									5
1914	1	2			1						4
1915		3									3
1916	5	7	1							1	14
1917		3			3					2	8
1918	1	7									8
1919	1	2									3
1920		3									3
1921		2									2
1922	1	13	3								17
1923										2	2
1924		16								9	25
1925	19	10	2								31
1926	4	13									17
1927	2	3									5
1928	11										11
1929	15										15
1930	7										7
1931	11	1									12
1932	7										7
1933	5										5
1934	4										4
1935	6										6
1936	4	4									8
1937	9										9
1938	4										4
1939	6										6
1940	0	5									5
1941	2	8	1								11
1942	10		1								11
1943	6										6
1944	0		2								2
1945	3	3									6
1946	9	2									11

Table 14. (continued)

Table 14. (continued)

Year	Barrow	Pt. Hope	Wainwright	Nuigsut	Icy Cape	Kaktovik	Gambell	Savoonga	Kivalina	Misc.	Total
1947	4	6									10
1948	5	0									5
1949	0	4	1								5
1950	4	2	2							1 (Cape	9
1951	9	4								Lisburne)	13
1952	0	2+									2
1953	17	4					2				23
1954	1	3									4
1955	19	1	1				2				23
1956	2	2					1				5
1957	0	3					0				3
1958	0	2					0				2
1959	0	1									1
1960	15	4	0								19
1961	6	2	1				1				10
1962	5	6	1								12
1963	5	3	2								10
1964	11	1	1			2			1		16
1965	4	2	0								6
1966	7	5	1								13
1967	3	1	0								4
1968	10	3	2				1				16
1969	11	3	3							1 (Wales)	18
1970	15	8	0						1		24
1971	11	6	2				1		1	1 (Wales)	24
1972		14	2				2		1		39
1973	17	7	3	1		3	2	4			37
1974	9	6	1			2	2		0		20
1975	10	4	0				1		0		15
1976	23	12	3			2	1	7	0	0 (Wales)	48

1/. Combined catch of Eskimos and two vessels.

Alaska Conservation Society

Incorporated in 1960

P.O. Box 80192 College Branch, Fairbanks, Alaska 99708

September 16, 1977

Senate Resources

Mr. Robert Schoening, Director
National Marine Fisheries Service
US Department of Commerce, NOAA
Washington, DC 20235

Dear Bob:

This letter is written on behalf of the Alaska Conservation Society, to urge the United States government to file a qualified objection to the International Whaling Commission's moratorium on bowhead whale hunting by Alaska Natives.

This has not been an easy decision to make. The Society has tried to inform itself fully about the situation. We know the uncertainties about the present status of bowhead whales, the fluid and confused cultural context of the harvest, and the potential international ramifications of a U.S. objection. Having weighed the risks from every angle, we firmly believe that our Nation must support continued bowhead harvests, albeit under a much different level of control, cooperation, and study than previously.

In one sense our decision is based on the knowledge that the prime responsibility for the historic decline of bowhead whales lies not with Alaska Natives but with non-Native commercial whalers. Further, the federal government has been negligent in the extreme since 1972 and 1973 in not mounting an adequate effort to find out the status of bowheads or the effect of subsistence hunting on bowhead numbers; in failing to establish cooperative relations with hunters; and in failing to heed the repeated warnings of the International Whaling Commission. In short, both the longterm reduction in bowhead numbers and the present crisis atmosphere are largely our national responsibility. Now we need to proceed with a decision that balances careful conservation with sensitivity to human needs, and we think it would be grossly unfair to ask Native hunters and their families to bear the entire costs of that decision.

There is no doubt that Native hunters must share some of the responsibility as well. The ranks of longtime hunters have been swelled by the addition of young Eskimoes who, now wealthy enough to outfit a whaling crew, compete for the prestige of killing a whale. The overall harvest has gone up since 1974; worse, the struck-and-lost rate has increased sharply. When too many whales were beached at once, waste has occurred.

The Alaska Conservation Society offers recommendations dealing with hunting, research, and cooperation between government and citizen. We base these recommendations on two premises: 1) That the United States will have to show the world community and IWS in particular, a substantive response to the need for bowhead conservation; and 2) That Native people recognize the gravity of the situation and will not only regulate their own actions more closely but will cooperate in all phases of a bowhead conservation program.

Hunting

The Society recommends adoption of a quota and permit system for limiting the overall kill in 1978 and subsequent hunts as may be authorized. Recognizing that any number will be more or less arbitrary, we recommend a quota of twenty five whales yearly beginning in 1978, subject to change as soon as new and convincing population data indicate that a change is needed or permissible. A permit will be considered filled if a whaling crew kills and beaches a whale, or strikes and loses a whale. This should provide a strong incentive to harpoon or shoot at only those whales where chances of loss are small. The number of whales harvested (beached) under this system probably would be 10 to 15, close to the longterm average for years prior to 1975.

Each traditional whaling community would receive a block of permits in numbers proportional to the historic take in that community. The community itself, or a recognized association of whalers such as the newly formed Alaska Eskimo Whalers Commission, would then allocate the permits to specific whaling captians or cooperatives. The hunt would be monitored by both local and federal officials. If substantial abuses occurred, the US should immediately withdraw its objection to the IWC moratorium.

Hunting technology is an important aspect of the situation. Fewer whales are lost when harpoons (with attached lines and floats) are struck into the whale first, with or without later use of explosive-

shell shoulder guns. However, use of harpoons increases the risk to the whalers. A decision must be made either to require the use of harpoons or to develop much more lethal explosive projectiles; the present reliance on individual choice of a mix of weapons has contributed to the current conservation problem.

Research

A big share of the bowhead problem is that no one has convincing information on the number or composition of arctic bowhead stocks. Such information is urgently needed. Funding this research is the responsibility of the federal government.

Bowhead research should start immediately, in October 1977. The studies should consist of at least the following:

a) Re-examination of existing data. There is reason to believe that presently available data could support a firmer population estimate than given by NMFS in its Environmental Impact Statement.

b) Aerial surveys for visual observation of migrating whales.

c) Surface counts using the best available equipment for echo sounding and vocal signal reception. Equipment could be tested in the field this fall for major census in the spring of 1978.

d) Radio tagging of whales as feasible. Marking-resighting census techniques are will within the state-of-the-art and should be used whether or not radio tagging is possible.

e) Use of an icebreaker in April and May each spring for three years beginning in 1978 as a mobile base for surface research and helicopter operations.

We urge most strongly that the help of Alaska Natives be sought and used to the utmost in this research program. Such an action would pay off in better research results as well as in overall cooperative relationships.

Cooperation

Tensions are high among the various groups involved in the bowhead problem. The main reasons are that the federal government has had no

continuing cooperative presence in arctic Alaska, acting as though one could understand the whole world from Washington, DC; and, on the other hand, that some Native spokesmen have been extremely defensive and "militant". It is absolutely essential that these tensions be resolved. Day to day and face to face contacts need to be established in arctic Alaska among people with clear responsibilities for various aspects of the bowhead program. Involvement of local people in research, as I just mentioned, is important.

We understand the discomfort U.S. representatives may feel when they file an objection this fall to the IWC moratorium. Indeed, some countries may gleefully seize on this as evidence of hypocrisy in our position on whales. I am convinced, however, that the world at large will respect us if we admit to some mismanagement of bowheads but, at the same time, put our reputation on the line behind a sound program responsive to biological conservation and human needs.

Please enter this letter in the record of hearings on the bowhead whale question.

Sincerely yours,

ALASKA CONSERVATION SOCIETY

Bob

Robert B. Weeden
President

RBW/ts

Alaska Eskimo Whaling Commission

Box 570
Barrow, Alaska 99723

TESTIMONY IN SUPPORT OF SJR 37; SB 439; AND SB 440 BEFORE THE SENATE RESOURCES COMMITTEE BY JACOB ADAMS, CHAIRMAN, ALASKA ESKIMO WHALING COMMISSION

MR. CHAIRMAN, MY NAME IS JACOB ADAMS, AND I AM CHAIRMAN OF THE ALASKA ESKIMO WHALING COMMISSION. I AM HERE WITH MR. ARNOLD BROWER, PRESIDENT OF THE BARROW WHALING CAPTAINS ASSOCIATION. OUR BARROW WHALING COMMUNITY IS THE LARGEST OF EIGHT WHALING VILLAGES IN ALASKA. THE OTHERS ARE KAKTOVIK (BARTER ISLAND), WAINWRIGHT, PT. HOPE, KIVALINA, SAVOONGA AND GAMBEL. THE ALASKA ESKIMO WHALING COMMISSION WAS ORGANIZED WHEN THE BARROW WHALING CAPTAINS ASSOCIATION JOINED WITH THE NORTH SLOPE BOROUGH TO HOLD THE FIRST STATE-WIDE WHALING CAPTAINS CONFERENCE IN BARROW LAST AUGUST. THIS WAS AN HISTORIC GATHERING OF OUR WHALING CAPTAINS, IMPORTANT TO THE HISTORY OF THE ENTIRE ARCTIC, AND IMPORTANT TO THE DEVELOPMENT OF EFFECTIVE MANAGEMENT OF ALASKA'S SUBSISTENCE RESOURCES, PARTICULARLY OUR MIGRATORY SPECIES. THE MEETING WAS CALLED TO DEAL WITH THE INTERNATIONAL WHALING COMMISSION'S DECISION TO REGULATE NATIVE SUBSISTENCE WHALING, AND TO PLACE A "ZERO" SUBSISTENCE QUOTA ON THE BOWHEAD.

THE IWC IMPOSED ITS BAN LAST JUNE, AND BY AUGUST WE HAD LEARNED THAT THE NATIONAL OCEANOGRAPHIC AND ATMOSPHERIC ADMINISTRATION, WORKING WITH A FEW WASHINGTON, D.C. WHALE CONSERVATIONIST LOBBYISTS, HAD BEEN TRYING SINCE 1970 TO USE THE INTERNATIONAL WHALING COMMISSION TO BRING ALASKA'S

BOWHEAD SUBSISTENCE HUNT UNDER REGULATION. UNTIL WE WERE CONTACTED EARLY IN 1977, WE HAD RECEIVED NO WORD OF THE IWC'S CONCERN ABOUT ALASKA'S SUBSISTENCE BOWHEAD WHALING. HAD WE BEEN ASKED EARLY ON TO ORGANIZE TO HELP THE U.S. RESPOND TO IWC CONCERNS, THERE WOULD HAVE BEEN NO BOWHEAD WHALE CONTROVERSY TODAY AND MUCH OF THE POLITICAL REACTION THAT RESULTED IN THE 1978 QUOTA OF JUST 12 BOWHEAD WHALES FOR ALASKA COULD HAVE BEEN AVOIDED.

SINCE ITS ORGANIZATION, THE ALASKA ESKIMO WHALING COMMISSION, CONSTITUTED OF WHALING CAPTAINS FROM EACH OF ALASKA'S 9 WHALING COMMUNITIES, HAS MET IN BARROW TO ADOPT ITS OWN BOWHEAD WHALING REGULATIONS, COPIES OF WHICH HAVE BEEN PROVIDED YOU. THE BASIC PROVISIONS OF THE AEWC MANAGEMENT PLAN IS TO PROVIDE FOR THE MANNER IN WHICH THE BOWHEAD WHALE HARVEST WILL TAKE PLACE, REPORTING REQUIREMENTS BY WHALING CAPTAINS, METHOD OF DETERMINING THE LEVEL OF HARVEST, ATTEMPTS TO HARVEST BY EACH VILLAGE AND PROVIDING FOR PENALTIES.

LAST WEEK, THE ALASKA ESKIMO WHALING COMMISSION MET TO RESPOND TO THE NEW IWC QUOTA. A CONCENSUS WAS REACHED BY THE COMMISSION TO ABIDE BY THE QUOTA FOR THE 1978 SEASON IF SEVERAL CONDITIONS WERE MET. THE CONDITIONS SET WERE REGULATIONS BY THE AEWC IN COOPERATION WITH THE FEDERAL GOVERNMENT, IMMEDIATE RESEARCH ON WEAPONS IMPROVEMENT, COMMITMENT BY THE GOVERNMENT TO PROVIDE FOR ALTERNATIVE SUBSISTENCE RESOURCES, FULL PARTICIPATION IN FUTURE IWC DECISIONS AND A COMMITMENT BY THE U.S. GOVERNMENT TO WORK

FOR RESTORATION OF A FULL SUBSISTENCE HUNT. BECAUSE WE BELIEVE IN COOPERATIVE MANAGMENT OF SUBSISTENCE RESOURCES, THE COMMISSION DECIDED TO TRY TO COOPERATE WITH THE IWC QUOTA AND THE U.S. GOVERNMENT. OUR PROPOSAL IS NOW IN THE FEDERAL GOVERNMENT HANDS, WE WOULD ASK THE ALASKA STATE LEGISLATURE AND THE ADMINISTRATION TO REQUEST THAT THE U.S. GOVERNMENT COOPERATE WITH THE AEWC TO ACHIEVE THE BEST POSSIBLE MANAGEMENT OF THE BOWHEAD WHALE.

THE COMMISSION ALSO ENDORSED THE GOVERNMENTS RESEARCH PROGRAM WITH THE EMPHASIS THAT THE RESEARCH BE DONE IN A EXPEDITIOUS MANNER AND TO PROVIDE FOR PARTICIPATION BY THE WHALING CAPTAINS.

MR. CHAIRMAN, THE NATIONAL MARINE FISHERIES SERVICE WILL SPEND ABOUT $700,000 ON BOWHEAD RESEARCH THIS YEAR. THIS WILL ENABLE THE EMPLOYMENT OF SCIENTISTS AND WHALERS TO COOPERATE IN AIR AND SURFACE SURVEILLANCE OF THE SPRING BOWHEAD MIGRATION. MOST OF US WHALERS BELIEVE THAT THERE ARE MANY MORE WHALES THAN THE 1300 ESTIMATED BY THE GOVERNMENT. WE FEEL THAT A MORE ACCURATE COUNT WILL JUSTIFY THE RESTORATION OF OUR SUBSISTENCE EXEMPTION FROM REGULATION BY THE IWC, AND THUS THE REMOVAL OF OUR SUBSISTENCE WHALING FROM THE INTERNATIONAL POLITICS OF COMMERICAL WHALING.

WE WERE PLEASED TO HEAR THAT THE LEGISLATION BEFORE YOU HAD BEEN INTRODUCED. THIS LEGISLATION WILL PROVIDE THE STATE DEPARTMENT OF FISH AND GAME WITH THE AUTHORITY TO ACTIVELY PARTICIPATE AS WE ESTABLISH THE FIRST COOPERATE MANAGEMENT SYSTEM FOR AN IMPORTANT MIGRATORY SUBSISTENCE SPECIES. THIS WEEK, WE LEARNED THAT THE HOUSE VERSION OF THE D-2 BILL WILL

PROBABLY PROVIDE FOR STATE JURISDICTION OVER NATIVE SUBSISTENCE HUNTING IN ALASKA. THIS CONCESSION WILL NOT BE POPULAR IN RURAL ALASKA. I WOULD LIKE TO SUGGEST THAT THIS LEGISLATION WILL ENABLE THE STATE TO JOIN WITH SUBSISTENCE HUNTERS AND THE FEDERAL GOVERNMENT TO DESIGN A PROTOTYPE COOPERATIVE MANAGEMENT SYSTEM ABLE TO DEAL WITH A SINGLE MIGRATORY SPECIES THROUGHOUT ITS RANGE. THE WORK AND EXPERIENCE OF THE ALASKA ESKIMO WHALING COMMISSION WILL HAVE SIGNIFICANT IMPACT UPON THE EARLY DEVELOPMENT OF COOPERATIVE SUBSISTENCE RESOURCE MANAGEMENT REGIMES CAPABLE OF HONORING AND UPHOLDING NATIVE SUBSISTENCE HUNTING RIGHTS. ONCE SUCH A REGIME IS IN PLACE FOR THE BOWHEAD, ITS PRINCIPLES CAN BE APPLIED TO OTHER MARINE MAMMALS, AND TO THE CARIBOU. THERE HAS BEEN TALK OF TRANSFERRING JURISDICTION OVER THE SUBSISTENCE HUNTING OF OTHER MARINE MAMMALS FROM THE FEDERAL GOVERNMENT TO THE STATE. AND THERE IS THE PROBLEM OF THE MANAGEMENT OF THE U.S./CANADIAN ARCTIC CARIBOU HERDS. ALL OF THESE ARE SUBSISTENCE SPECIES MANAGEMENT PROBLEMS THE SOLUTIONS FOR WHICH COULD BE BASED UPON THE EXPERIENCE OF THE ALASKA ESKIMO WHALING COMMISSION. SUCCESSFUL STATE EXPERIENCE HERE COULD HELP REDUCE NATIVE OPPOSITION TO STATE REGULATION OF SUBSISTENCE HUNTING.

THE EXPENSES OF THE ALASKA ESKIMO WHALING COMMISSION HAVE BEEN PAID FROM A $100,000 APPROPRIATION BY THE NORTH SLOPE BOROUGH ASSEMBLY THAT WAS MADE SHORTLY AFTER THE COMMISSION WAS FORMED. HOWEVER, WE WOULD LIKE TO SEE THE COMMISSION BECOME INDEPENDENT OF THE NORTH SLOPE BOROUGH,

AND THE MONEY AUTHORIZED AND APPROPRIATED BY THE LEGISLATION BEFORE YOU WOULD MAKE THIS POSSIBLE. THE COMMISSION WOULD USE THE MONEY TO EMPLOY A SMALL STAFF TO WORK CLOSELY WITH STATE AND FEDERAL AGENCIES INVOLVED IN WHALE RESEARCH AND WHALING SURVEILLANCE; TO ORGANIZE AND DIRECT ON-GOING WHALING WEAPONS IMPROVEMENT PROGRAMS; AND IN THE PRACTICAL PROBLEMS OF ENFORCEMENT OF THE AEWC'S OWN REGULATIONS. ALL OF THIS WILL REQUIRE A SERIOUS WHALING VILLAGE EDUCATION PROGRAM AIMED AT LOCAL UNDERSTANDING OF THE NEED FOR QUOTA COMPLIANCE AND AEWC REGULATION OF OUR PREVIOUSLY UNREGULATED HUNT OF THE BOWHEAD WHALE. EARLY STATE SUPPORT OF THE AEWC WOULD STRENGTHEN OUR STATUS AND NEGOTIATIONS WITH THE NATIONAL MARINE FISHERIES SERVICE.

MR. CHAIRMAN, THE LEGISLATION BEFORE YOU WAS NOT REQUESTED BY THE ALASKA ESKIMO WHALING COMMISSION, BUT IT REFLECTS THE GOOD WILL THAT WE HAVE ENJOYED FROM ALL OF ALASKA AS WE HAVE BATTLED IN WASHINGTON, D.C. AND TOKYO TO DEFEND OUR SUBSISTENCE WHALING. THANKS TO A SENSITIVE LEGISLATURE, WE DIDN'T HAVE TO ASK FOR THE LEGISLATION, BUT WE APPRECIATE ITS INTRODUCTION AND YOUR EXPEDITIOUS HEARINGS.

THANK YOU VERY MUCH.

AEWC MANAGEMENT PLAN

Subpart A - Introduction

§100.1 Purpose of regulations

It is the purpose of the regulations contained herein to: (a) insure an efficient subsistence harvest of bowhead whales; and (b) provide a means within the Alaskan Eskimo customs and institution of limiting the bowhead whale harvest in order to prevent the extinction of such species.

§100.2 Scope of regulations

The regulations contained herein apply to the subsistence hunting of bowhead whales by Eskimos located in the State of Alaska.

Subpart B - Alaska Eskimo Whaling Commission

§100.11 Powers

(a) The Alaska Eskimo Whaling Commission (hereinafter AEWC) is empowered to administer the regulations contained herein to insure that the purposes stated in §100.1 of these regulations are attained.

(b) The AEWC is empowered to enforce these regulations by:

(1) denying any person who violates these regulations the right to participate in hunting the bowhead whale.

(2) acting as an enforcement agent for any governmental entity authorized to enforce these regulations.

(c) The AEWC is empowered to promulgate interim regulations that are in addition to, but not in lieu of, regulations contained herein.

§100.12 Duties

(a) The AEWC shall administer and enforce the regulations contained herein (including any interim regulations.)

(b) The AEWC shall conduct village educational programs to facilitate compliance with these regulations, including training programs for whaling capatains and crews.

(c) The AEWC shall initiate research for improvement of the accuracy and reliability of weapons.

Subpart C - Regulations

§100.21 Definitions

(a) "bowhead whale" means a whale whose scientific name is Baleana mysticetus and which migrates past whaling villages in Alaska.

(b) "captain" means the person in charge of a whaling crew.

(c) "harvest" means to kill and bring to shore or butchering area.

(d) "non-traditional weapons" means any instrument that could be used to harvest a bowhead whale that is not a traditional weapon.

(e) "Scientific Committee" means the committee established pursuant to §100.26 of these regulations.

(f) "traditional weapon" means a harpoon with line attached, darting gun, shoulder gun, lance or any other weapon approved by the AEWC with the concurrence of the Scientific Committee, as such a weapon in order to improve the efficiency of the bowhead whale harvest.

(i) "harpoon with line attached" means a harpoon with a rotating head which is attached to a line and float and which has no explosive charge. (See Figures 7 and 8 of Appendix E of the FEIS on the International Whaling Commission's Deletion of Native Exemption for the Subsistence Harvest of Bowhead Whales (October, 1977) (hereafter FEIS).

(ii) "darting gun harpoon" means a harpoon with an explosive charge and with a line and float attached. (See Appendix E of the FEIS in Figure 4.)

(iii) "shoulder gun" means a whaling gun, adapted from the era of commercial whaling in the 19th Century, which has an explosive charge and which has no attached line and float. (See Appendix E of the FEIS in Figure 5.)

(iv) "lance" means a non-explosive sharply pointed weapon without a harpoon head.

(g) "whaling crew" means those persons who participate directly in the harvest or attempted harvest of the bowhead whale and are under the supervision of a captain.

(h) "whaling village" means the Alaska Eskimo village in which resides a whaling captain and crew which participates in the harvest or attempted harvest of bowhead whales.

(i) "whaling season" means customary period of time during which the bowhead whale is harvested, either in the Spring or Fall.

§100.22 Registration

(a) Each captain shall register with the AEWC on forms provided by the AEWC for that purpose which discloses his name, address, age, qualifications as captain, names of crew members, and his willingness to abide by the regulations of the AEWC and to require his crew to abide by those regulations.

(b) The AEWC shall take into account any reading or language difficulties in developing procedures and forms for registration.

§100.23 Reports

(a) Each whaling captain shall be responsible for keeping a written record of the number of whales --

(1) attempted to be harvested by using traditional weapons but not harvested,

(2) harvested by the captain or his crew, and

(3) sighted by the captain or his crew.

(b) Each whaling captain shall report the date, place, and time of any striking not resulting in harvesting and shall describe --

(1) the size of the bowhead whale,

(2) any known later attempted harvest or actual harvest of said whale, and

(3) the reason for the captain or crew not harvesting the whale -- e.g. environmental factors, the failure of traditional weapons, or other reason.

(c) Each whaling captain shall make such other reports as the AEWC requires in order to accomplish the purposes of the regulations herein or in order to advance the scientific knowledge of the bowhead whale.

§100.24 Permissible harvesting methods

(a) No whaling captain or crew shall harvest or attempt to harvest the bowhead whale in any manner other than the traditional harvesting manner.

(b) "Traditional harvesting manner" means:

(1) only traditional weapons shall be used, as defined in §100.21(f).

(2) the bowhead whale may be struck with a harpoon or darting gun with line and float attached or simultaneously with harpoon and shoulder gun or darting gun.

(3) the shoulder gun may be used

(i) when accompanied by harpoon with or without a darting gun.

(ii) after a line has been secured to the bowhead whale, or

(iii) when pursuing a wounded bowhead whale with a float attached to it.

(4) the lance may be used after a line has been secured to the bowhead whale.

§100.25 Traditional proprietary claim

The bowhead whale shall belong to the captain and crew which first strikes the bowhead whale in the manner described in §100.24.

§100.26 Level of harvest

(a) The AEWC shall establish the levels of harvest and attempted harvest for each whaling village during each season. Such levels may be set by methods including, but not limited to, the following:

(i) Specification of number of whaling crews permitted to harvest or attempt to harvest bowhead whales during specified periods;

(ii) Specification of the size or age of whales which may be taken during specified periods, after consultation with the Scientific Committee.

(iii) Specification of the number of whales that may be taken by each crew.

(iv) Specification of the number of bowhead whales which may be harvested or attempted to be harvested by each village.

(b) The level of harvest supported by scientific data shall be no greater than that necessary to meet the cultural and nutritional needs of the Eskimo inhabitants of the State of Alaska.

(c) In establishing the levels of harvest and attempted harvest, the AEWC shall not establish levels of harvest or attempted harvest greater than the carrying capacity of the bowhead whale stock, supported by scientific data.

(d) The carrying capacity of the bowhead whale stock shall be determined by a Scientific Committee appointed by the Polar Research Board of the National Academy of Sciences. The Scientific Committee shall consist of nine members who are qualified by reason of their education and experience to make objective determination concerning the carrying capacity of the bowhead whale stock. Three of the nine members shall be members of the Eskimo community. The AEWC shall make recommendations to the Polar Research Board for the choice of Eskimo members.

(e) In determining the carrying capacity of the bowhead whale stock the Scientific Committee shall not consider any prospective threats to the species resulting from oil and gas development within the habitat of such species. Provided, however, that this section may be further implemented by the Scientific Committee and the AEWC at a later date in the event of actual risks.

(f) The mortality rate for attempted harvest shall be determined by the Scientific Committee.

Subpart D - Penalties

§100.31 Denial of participation in harvest:

(a) Any person who the AEWC determines has violated the regulations contained herein shall, after opportunity for a hearing before the AEWC, be prohibited from harvesting or attempting to harvest the bowhead whale for a period of not less than one whaling season nor more than five whaling seasons.

(b) Any person who willfully violates the regulations contained herein shall be subject to a fine of not more than $1,000 assessed by the AEWC. No person shall harvest or attempt to harvest the bowhead whale until such fine has been paid.

SJR

47

COMMITTEE REPORT

SENATE

FURTHER: NONE

Date: _____

Mr. President:

The Committee on _____ has had _____

under consideration and (a majority of the committee) (the committee reports it back as follows)

( ) recommends it do pass ( ) recommends it do not pass

( ) recommends it do pass with attached amendment(s)

( ) recommends it be replaced with CS for _____

and _____ ( ) new title ( ) same title

( ) AND attaches a Letter of Intent ( ) New Fiscal Note

( ) reports it back without recommendation

( ) and recommends it be referred to the _____ Committee

MEMBERS SIGNING DO PASS:

OTHER RECOMMENDATIONS:

_____

Chairman

S 60 (rev. 6/77)

SJR 47 - RELATING TO LOANS GUARANTEED BY THE FEDERAL GOVERNMENT FOR THE PURCHASE OF VESSELS CAPABLE OF HARVESTING ALASKAN BOTTOMFISH."

THIS RESOLTUION URGES OUR CONGRESSIONAL DELEGATION TO SUPPORT SENATE RESOLUTION 974 WHICH WOULD INCREASE FEDERAL GUARANTEES FROM 75% TO 87.5% ON LOANS FOR FISHING VESSELS.

THE LOANS ARE ONLY AVAILABLE TO VESSELS ENGAGED IN FISHERIES WHICH HAVE NOT YET ACHIEVED MAXIMUM ENTRY. IN ALASKA, SALMON AND KING CRAB ARE CLASSIFIED AS SUCH ("CONDITIONAL FISHERIES"). VESSELS MAY BE CONVERTED FROM SALMON OR CRAB TO OTHER FISHERIES SUCH AS BOTTOMFISH; BUT NOT THE CONVERSE.

SJR

49

COMMITTEE REPORT

SENATE

FURTHER: None

Date: _____

Mr. President:

The Committee on RESOURCES _____ has had _____

under consideration and (a majority of the committee) (the committee reports it back as follows)

( ) recommends it do pass ( ) recommends it do not pass

( ) recommends it do pass with attached amendment(s)

( ) recommends it be replaced with CS for _____

and _____ ( ) new title ( ) same title

( ) AND attaches a Letter of Intent ( ) New Fiscal Note

( ) reports it back without recommendation

( ) and recommends it be referred to the _____ Committee

MEMBERS SIGNING DO PASS:

OTHER RECOMMENDATIONS:

_____

Chairman

S 60 (rev. 6/77)

PRINCE WILLIAM SOUND
AQUACULTURE CORPORATION

A regional non profit organization for the enhancement of fisheries

P.O. Box 1110
Cordova, Alaska 99574
(907) 424-5111

APR 3 1978

DIVISION OF F.R.E.D.

March 31, 1978

The Honorable Mike Gravel
United States Senate
3121 Dirksen Senate Office Building
Washington D.C. 20510

Dear Senator Gravel:

I recently received from your office a copy of your aquaculture bill, S-2762, and I am enclosing my comments for your consideration.

We in the Prince William Sound Aquaculture Corporation are very appreciative of your efforts in regard to this subject which is of such great importance to Alaska. We have enjoyed working with your aid, Mr. Tom Roach and we commend his work on this bill.

I have restricted the majority of my comments to the subject of the National Aquaculture Development Plan and the development programs that it calls for. My primary concern in this regard is the role of the states in relation to the role of the federal government in the plan and development program formulation. I am very concerned that the present wording of the bill will result in a federal domination of these activities because too much responsibility and authority is given to the Secretary of Commerce. My recommendations to correct this situation are as follows:

1. Assign to the regional subcommittees the responsibility for identification of priority species and for the formulation of their development programs.

2. Limit the Secretary's role in regard to the development program to one of reviewing, approving and implementing.

3. Require the Secretary to consult with the appropriate regional subcommittee prior to revising or cancelling any program.

4. Provide funding for the regional subcommittees to carry out their planning activities.

I am very pleased to see the attention that you have given to the rehabilitation and enhancement of publicly owned fish and shellfish resources. Your bill corrects the deficiencies of similiar bills in this regard by identifying this subject as one of vital concern to all states with publicly owned fishery resources. Do you think that this concern might be given more funding attention in the bill? A matching federal, state and local grant program would stimulate greater efforts in these areas, and would most certainly benefit Alaska.

I have not addressed myself to the sections of the bill that deal with Contracts and Grants (section 7), Guarantees of Obligations Issued for Aquaculture Facilities (section 8), Disaster Loans (section 9), or Insurance Against Certain Losses Incurred in Aquaculture Facility Operations (section 10), because of the limitations of my expertise in these areas.

In closing, I would like to emphasize the position of my organization that Mr. Leggett's bill, H.R. 9370, as presently written is not good for Alaska. Your bill S-2762, is a great improvement on that bill and, with the additions of our recommended amendments in regards to the role and responsibilities of the regional subcommittees, will be good not only for Alaska, but for the other 49 states as well.

Sincerely yours,

PRINCE WILLIAM SOUND
AQUACULTURE CORPORATION

A. W. Hall

A. W. Hall
Business Manager

AWH:ec

Enc.

cc: Floyd Reimbuch, CIRAA
Jack Williams, SSRAA
Derek Poole, NSRAA
Shari Gross, UFA
Bob Foys, ADF&G
Bob Palmer, Office of Governor
Senator Stevens
Congressman Young

PRINCE WILLIAM SOUND AQUACULTURE CORPORATION
COMMENTS AND RECOMMENDATIONS TO S-2762
BY SENATOR MIKE GRAVEL

Section 4, National Aquaculture Development Plan.

1. Page 8, Line 5 - insert after the word "shall" the following: "have", and add a "d" to "prepare".

2. Page 8, Line 9 - "consisting of the chairmaen of the subcommittees created under subsection (a) (2) (B) of this section,"

3. Page 9, Line 19 - insert new subsection "E" renumber following subsections.

"(E) The regional subcommittees shall formulate regional aquaculture development programs for each priority species and submit them to the Secretary for his review and approval".

4. "(G) The Secretary shall provide funding for each regional advisory committee established under sub-paragraph (B) sufficient to support the activities required by this act.

5. Page 10, Line 8 - rewrite line to read: "...which the regional subcommittees determine to have a potential for.."

6. Page 10, Line 10 - strike the wording "the Secretary" and insert in lieu thereof "them".

7. Page 11, Line 1 - rewrite line to read: "(2) contain regional aquaculture development programs, ..."

8. Page 11, Line 2 - strike the word "Secretary" and insert in lieu thereof "Regional Subcommittees".

9. Page 11, Line 4 - insert the word "regional" between "the" and "aquaculture", and add an "s" to "program".

10. Page 11, Line 5 - strike the words "set forth" and insert in lieu thereof "be reviewed".

11. Page 11, Line 6 - rewrite line to read: "...and approved by the Secretary after he determines those actions which should be..."

12. Page 11, Line 7 - insert after the word "undertaken", the following: "to implement the regional plans,"

13. Page 12, Line 5 - add the following language immediately after the word "areas:" "...and the populations of fish and shellfish native to the areas".

14. Page 12, Line 17 - strike the words "In preparing" and insert in lieu thereof "prior to approving".

15. Page 12, Line 19.- rewrite line to read: "...such programs pursuant to subsections (c) and (i), the Secretary..."

16. Page 13, Line 18 - rewrite line to read: "...propiate Regional Fishery Management Council, the appropriate regional subcommittee created under Section 4 (a) (2) (B), and any ..."

17. Page 14, Line 8 - insert between the words "and" and "prepare", the following: "direct the appropriate regional subcommittee to.."

18. Page 14, Line 11 - insert between the words "Secretary" and "funds" the following: "after consultation with the appropriate regional subcommittee"

Section 7, Contracts and Grants.

1. Page 21, Line 6 - replace "(a)" with "(a) (1)".

2. Page 21, Line 15 - insert new paragraph to read: "(2) The Secretary, together with the secretary or Interior and the Secretary of Agriculture shall establish a matching grant program requiring federal and state or local government participation for the purpose of the rehabilitation and enhancement of publicly owned fish and shellfish resources".

Section 8, Guarantees of Obligations Issued for Aquaculture Facilities.

1. Page 25, Line 5 - insert between the words "fewer" and "employees" the following: "full time".

Section 11, Federal Aquaculture Assistance Fund.

1. Page 44, Line 5 - insert between "sections" and "8", the following: "4,"

2. Page 44, Line 21 - insert between "sections" and "8", the following: "4,"

3. Page 44, Line 25 - insert between "sections" and "8", the following: "4,"

Section 13, Authorization of Appropriations.

1. Page 47, Line 19 - insert between "sections" and "8", the following: "4,"

legislation.

Senate Commerce Committee
Room 5202 Dirksen Senate Office Building
Washington, D.C. 20510
Mr. Doug Anderson, Consul
202-224-5115

Committee Members

Senator Howard Cannon, Chairman
Rm 259, Russell Senate Office Bldg
Washington, D.C.

Senator Warren Magnuson
Rm 127, Russel Senate Office Bldg

Senator Russell Long
Rm 217, Russell Senate Office Bldg

Senator Ernest Hollins
Rm 115, Russell Senate Office Bldg

Senator Daniel Inouye
Rm 442, Russell Senate Office Bldg

Senator Adlai Stevenson
Rm 456, Russell Senate Office Bldg

Senator Wendell Ford
Rm 2104 Dirksen Senate Office Bldg

Senator John Durkin
Rm 3230 Dirksen Senate Office Bldg

Senator Edward Zorinsky
Rm 1407 Dirksen Senate Office Bldg

Senator Donald Riegle, Jr.
Rm 253, Russell Senate Office Bldg

Senator James Pearson
Rm 5313, Dirksen Senate Office Bldg

Senator Robert Griffin
Rm 353, Russell Senate Office Bldg

Senator Ted Stevens
Rm 411, Russell Senate Office Bldg

Senator Barry Goldwater
Rm 427 Russell Senate Office Bldg

Senator Bob Packwood
Rm 1317 Dirksen Senate Office Bldg

Senator Harrison H. Schmitt
Rm 5229 Dirksen Senate Office Bldg

Senator John C. Danforth
Rm 229 Russell Senate Office Bld

Southeast Alaska Regional
Aquaculture Association, Inc.
P.O. BOX 356 SITKA, ALASKA 99835
(907) 747-6350
RM. 205, OLD CITY HALL BLDG.

6 April 1978

The Honorable Mike Gravel
United States Senate
3121 Dirksen Senate Office Bldg.
Washington, D.C. 20510

Dear Senator Gravel:

After reviewing the "National Aquaculture Organic Act of 1978", S-2762 received from your office, I have the following comments for your consideration.

Your aide, Mr. Tom Roach, contacted me last fall at which time we briefly discussed national aquaculture legislation and the possibility of your action. Since that time, Mr. Roach has kept me informed, and I have followed the progress of the legislation with interest. Your efforts to improve the legislation which passed the House are greatly appreciated. Your bill will be much better for Alaska and our fishermen than the House bill.

I have discussed the bill with Mr. Bill Hall of the Prince William Sound Aquaculture Corporation, and I have read his comments and recommendations. I am supportive of Mr. Hall's comments and recommendations for amending the bill.

Additionally, I would like to add some comments.

(1) I am especially supportive of the regional subcommittee concept in your bill and believe funding and any other support to maximize its effectiveness should be promoted. By developing the plan close to the people, the end product will reflect their interests, experience and expertise. I know that in Southeast Alaska the Forest Service and the National Marine Fisheries Service have personnel very knowledgeable about the potential for aquaculture development. Hopefully, these people, state biologists and local fishermen will be able to either serve on a regional subcommittee or provide input directly to the subcommittee.

(2) The NSFAA Board of Directors has taken a strong position in favor of rehabilitation of natural salmon

stocks. The preferred emphasis is on cost-effective projects which complement and enhance rather than conflict with or replace natural production. A matching federal, state or local grant program to stimulate the efforts of fishermen and other groups to this area would greatly benefit Alaska.

(3) I am requesting, in a separate letter, that your Juneau office send copies of your comments in the Congressional Record prefacing introduction of S-2762 to each NSRAA Board member to keep them informed of developments on the national legislation. You may receive some additional comments from them.

Enclosed are copies of our latest informational brochures which were sent to fishermen explaining our program. These materials may give you some ideas on how to coordinate our plans with the national aquaculture plan and possibilities for our Association to work in partnership with the federal and state governments through a combination of grants, loans and insurance to enhance our fisheries.

Finally, I would like to restate my support for your bill S-2762, and the proposed changes recommended by Mr. Bill Hall. S-2762, especially with the suggested changes, will benefit Alaska more than Mr. Leggett's bill HR 9370.

Thank you for keeping us informed.

Sincerely,

Derek Poon, Ph.D.
General Manager

DP/EJ/vf

cc: Bob Palmer, Office of the Governor
Keith Specking, Office of the Governor
Dr. Ronald A. Skoog, Commissioner, ADF&G
John A. Sandor, Regional Forester, U.S.F.S.
Dr. Bill Smoker, Sr., NMFS
Jack Milnes, Southern Southeast Regional Aquaculture Assn.
Armin Koernig, Prince William Sound Aquaculture Corp.
Floyd E. Heimbuch, Cook Inlet Aquaculture Assn.
Senator Ted Stevens
Senator Henry Jackson
Senator Warren Magnusson

Enc.

TESTIMONY OF

DR. RONALD O. SKOOG

COMMISSIONER DEPARTMENT OF FISH AND GAME

STATE OF ALASKA

BEFORE SUB COMMITTEE ON:

NATIONAL AQUACULTURE ORGANIC ACT OF 1973

APRIL 18, 1978

POTENTIAL FOR AQUACULTURE IN ALASKA

ALASKA, OF ALL THE STATES, IS UNIQUE BECAUSE OF ITS TREMENDOUS SIZE, NOT ONLY IN LAND MASS, BUT IN COAST LINE. SHE IS ADJACENT TO EXTREMELY PRODUCTIVE ESTUARINE AND MARINE ENVIRONMENTS SUCH AS THE GULF OF ALASKA,, THE BERING SEA, AND THE ARCTIC OCEAN. MILLIONS OF METRIC TONS OF A VARIETY OF SPECIES ARE HARVESTED ANNUALLY IN THOSE WATERS BY UNITED STATES FISHERMEN AS WELL AS FOREIGN FLEETS. WITH THE 200 MILE EXTENSION A NEW DIMENSION HAS BEEN CREATED THAT WILL HAVE A MAJOR IMPACT ON THE FISHERMEN OF ALASKA AS WELL AS OTHER STATES.

ALASKA IS ALSO UNIQUE BECAUSE SHE POSSESSES VAST FRESH-WATER RESOURCES THAT IN SOME INSTANCES ARE HIGHLY PRODUCTIVE, SUCH AS THE MAJOR CYCLICAL RED SALMON PRODUCING LAKES ADJACENT TO BRISTOL BAY, BUT IN OTHER INSTANCES SOME OF HER FRESH-WATER ENVIRONMENTS ARE RELATIVELY NONPRODUCTIVE. LOW LEVELS OF PRODUCTIVITY IN THE FRESH-WATER ENVIRONMENTS MAY BE ATTRIBUTABLE TO MANY CAUSES, SUCH AS THE LACK OF BASIC NUTRIENTS, THE INFLUENCE OF RAPIDLY DISCHARGING GLACIERS, EXTREME FLUCTUATIONS IN TEMPERATURES, DISSOLVED OXYGEN AND WATER FLOWS, AND ABSENCE OF ESTABLISHED FISH POPULATIONS, FROM

BARTER ISLAND IN THE NORTHEAST ARCTIC WESTWARD AND SOUTHWARD TO THE NORTH SIDE OF THE ALASKA PENINSULA, WITH BUT FEW EXCEPTIONS, ALASKA'S COASTLINE IS EXPOSED DIRECTLY TO HIGH WINDS AND SEAS AND LOW WINTER TEMPERATURES. ESTABLISHMENT OF ESTUARINE AND MARINE AQUACULUTURE FACILITIES IN THIS REGION COULD BE COSTLY. HOWEVER, MAJOR PRODUCTIVE BUT UNUTILIZED FRESH-WATER RESOURCES ARE AVAILABLE FOR INCREASING THE PRODUCTION OF SALMON, TROUT, CHAR, WHITEFISH, GRAYLING, AND SHEEFISH. THOSE SPECIES HAVE EVOLVED AND ARE ADAPTED TO HARSH ARCTIC AND SUB-ARCTIC ENVIRONMENTS. THEREFORE, EFFECTIVE AQUACULTURE DEVELOPMENT IN THAT REGION OF THE STATE MUST BE TAILORED TOWARDS UTILIZING THESE FRESH-WATER ENVIRONMENTS IN CONJUNCTION WITH SPECIES NATURALLY ASSOCIATED WITH THOSE ENVIRONMENTS.

WITHIN AN ARC BEGINNING ON THE SOUTH SIDE OF THE ALASKA PENINSULA, CURVING NORTHWARD TO COOK INLET, AND THEN SOUTHERLY TO THE BORDERS OF BRITISH COLUMBIA ARE MANY FJORDS PROTECTED FROM WIND AND WAVE THAT ARE SUITABLE FOR THE ESTABLISHMENT OF ESTUARINE AND MARINE AQUACULTURE FACILITIES. FURTHERMORE, A MYRIAD OF RIVERS AND STREAMS DISCHARGE INTO THOSE FJORDS THUS PROVIDING THE OPPORTUNITY FOR THE DEVELOPMENT OF MULTIPLE SPECIES AS WELL AS MULTIPLE ENVIRONMENT FACILTIES. UNFORTUNATELY, WITH THE EXCEPTION OF SALMON AND TROUT, LITTLE RESEARCH EFFORT BY EITHER THE STATE OR FEDERAL GOVERNMENT HAS BEEN DIRECTED TOWARDS THE DEVELOPMENT OF AQUACULTURE TECHNOLOGY REQUIRED FOR OTHER INDIGENOUS SPECIES, AND ESPECIALLY FOR

THE INVERTEBRATES SUCH AS CLAMS, SCALLOPS, ABALONE AND SEA CUCUMBERS. UNDOUBTEDLY, LACK OF THAT TYPE OF BASIC RESEARCH HAS BEEN A FUNCTION OF MARKET DEMANDS, FUNDS, AND PRIORITIES.

WITH THAT BRIEF BROAD BACKGROUND OF THE POTENTIAL FOR AQUACULTURE IN ALASKA I WILL DIRECT MY TESTIMONY BRIEFLY TO THE PRESENT STATUS OF AQUACULTURE IN ALASKA.

STATUS OF AQUACULTURE

WITH PASSAGE OF THE STATEHOOD ACT THE PEOPLE OF ALASKA ASSUMED MANAGEMENT CONTROL OVER COMPLEX FRESH WATER, ESTUARINE AND MARINE ECOSYSTEMS IN WHICH A VARIETY OF VALUABLE COMMERCIAL, SPORT, AND SUBSISTENCE SPECIES DWELT. IN SOME INSTANCES, SPECIFIC STOCKS OF CRAB, SHRIMP, TROUT, CHAR, WHITEFISH, STEELHEAD, GRAYLING, SHEEFISH, AND SALMON HAD NOT BEEN OVER UTILIZED.

IN OTHER INSTANCES, PARTICULARLY IN THE CASE OF SALMON, MANY STOCKS HAD BEEN DECIMATED BY OVER-UTILIZATION. CONSEQUENTLY, FOLLOWING STATEHOOD, AND CONTINUING SINCE, EXTREMELY RESTRICTIVE REGULATIONS HAVE BEEN PASSED, WHEN DEEMED NECESSARY, IN AN EFFORT TO REBUILD OR REHABILITATE DECIMATED NATURAL SALMON STOCKS. UNFORTUNATELY MANY NATURAL STOCKS COULD NOT RECOVER IN A TIMELY MANNER THROUGH THE MECHANICS OF EITHER RESTRICTED HARVEST OR THE TOTAL ABSENCE OF HARVEST.

RECOGNIZING THAT PROBLEM, COUPLED WITH THE KNOWLEDGE THAT ALASKA ALSO POSSESSED A TREMENDOUS POTENTIAL FOR ENHANCEMENT OF THE SALMON RESOURCE AND ALSO WAS FACED WITH RAPID ACCELERATION OF TROUT AND SALMON SPORT EFFORT, THE 1971 LEGISLATURE, WITH CONCURRENCE OF THE GOVERNOR, CREATED A SPECIAL DIVISION--THE DIVISION OF FISHERIES REHABILITATION, ENHANCEMENT, AND DEVELOPMENT--WITHIN THE DEPARTMENT OF FISH AND GAME TO TACKLE AQUACULTURE PROBLEMS. THE DIVISION WAS REMOVED FROM THE REGULATION ASPECTS OF HARVEST (A MAJOR DEPARTMENTAL EFFORT) SO THAT THE DIVISION COULD CONCENTRATE ON DEVELOPING AND APPLYING REHABILITATION AND ENHANCEMENT TECHNOLOGY. SPECIFIC STATUTORY OBLIGATIONS WERE ENACTED AND ARE AS FOLLOWS:

SEC. 16.05.090. ORGANIZATION OF THE DEPARTMENT.

(A) THE COMMISSIONER MAY, WITH THE APPROVAL OF THE GOVERNOR, ESTABLISH A DEPARTMENTAL DIVISION OF COMMERCIAL FISHERIES, A DEPARTMENTAL DIVISION OF SPORT FISHERIES, A DEPARTMENTAL DIVISION OF GAME, AND OTHER DEPARTMENTAL DIVISIONS AS ARE NECESSARY.

(B) THE COMMISSIONER SHALL ESTABLISH A DEPARTMENTAL DIVISION OF FISHERIES REHABILITATION, ENHANCEMENT AND DEVELOPMENT (15 ART I CH 94 SLA 1959; AM 1 CH 113 SLA 1971).

SEC. 16.05. 092. DUTIES OF DIVISION OF FISHERIES REHABILITATION, ENHANCEMENT AND DEVELOPMENT. THE DIVISION OF FISHERIES REHABILITATION, ENHANCEMENT AND DEVELOPMENT SHALL:

(1) DEVELOP AND CONTINUALLY MAINTAIN A COMPREHENSIVE COORDINATED STATE PLAN FOR THE ORDERLY PRESENT AND LONG-RANGE REHABILITATION, ENHANCEMENT AND DEVELOPMENT OF ALL ASPECTS OF THE STATE'S FISHERIES FOR THE PERPETUAL USE, BENEFIT AND ENJOYMENT OF ALL CITIZENS AND REVISE AND UPDATE THIS PLAN ANNUALLY;

(2) ENCOURAGE INVESTMENT BY PRIVATE ENTERPRISE IN THE TECHNOLOGICAL DEVELOPMENT AND ECONOMIC UTILIZATION OF THE FISHERIES RESOURCES;

(3) THROUGH REHABILITATION, ENHANCEMENT AND DEVELOPMENT PROGRAMS DO ALL THINGS NECESSARY TO INSURE PERPETUAL AND INCREASING PRODUCTION AND USE OF THE FOOD RESOURCES OF ALASKA WATERS AND CONTINENTAL SHELF AREAS;

(4) MAKE A COMPREHENSIVE ANNUAL REPORT TO THE LEGISLATURE, CONTAINING DETAILED INFORMATION REGARDING ITS ACCOMPLISHMENTS UNDER THIS SECTION AND PROPOSALS OF PLANS AND ACTIVITIES FOR THE NEXT FISCAL YEAR, NOT LATER THAN 20 DAYS AFTER THE CONVENING OF EACH REGULAR SESSION. (2 CH 113 SLA 1971).

IN 1974, RECOGNIZING THAT THE FISHERMEN SHOULD BECOME DIRECTLY INVOLVED IN THE REHABILITATION AND ENHANCEMENT EFFORT, THE LEGISLATURE PASSED THE PRIVATE NON-PROFIT HATCHERY LOAN ACT. BY AMENDMENT IN 1977 OF THE 1974 ACT, REGIONAL PLANNING TEAMS COULD BE ESTABLISHED THROUGHOUT THE STATE. REGIONAL PLANNING TEAMS ARE COMPRISED OF DEPARTMENT PERSONNEL AND MEMBERS OF REGIONAL FISHERMEN'S ASSOCIATIONS. REGIONAL FISHERIES ASSOCIATIONS CONSIST OF A CROSS SECTION OF USER GROUPS INCLUDING COMMERCIAL, SPORT, AND OTHER INTERESTED USERS.

REGIONAL PLANNING TEAMS ARE CHARGED WITH DEVELOPING AND RECOMMENDING TO THE COMMISSIONER OF FISH AND GAME A COMPREHENSIVE REGIONAL PLAN FOR THE REHABILITATION AND ENHANCEMENT OF THE SALMON RESOURCE. FOUR REGIONAL PLANNING TEAMS PRESENTLY ARE FUNCTIONING IN THE STATE: TWO IN SOUTHEASTERN ALASKA, ONE IN PRINCE WILLIAM SOUND, AND ONE IN COOK INLET. (I HAVE FOUR COPIES OF A RECENTLY DRAFTED PROCEDURES MANUAL THAT I WILL LEAVE FOR YOUR REVIEW.)

CONCURRENT TO THOSE DEVELOPMENTS, THE CAPABILITIES OF THE DIVISION OF FISHERIES REHABILITATION, ENHANCEMENT AND DEVELOPMENT (FRED) WERE EXPANDED TO INCLUDE PATHOLOGY, GENETICS, AND ENGINEERING AS WELL AS FISH CULTURE AND BIOLOGY. A MODERN FISH PATHOLOGY LABORATORY HAS BEEN CONSTRUCTED IN ANCHORAGE WITH FULL DIAGNOSTIC CAPABILITIES. A REGIONAL PATHOLOGY

LABORATORY WAS OPENED RECENTLY IN JUNEAU. THE JUNEAU PATHOLOGY LABORATORY ALSO SERVES AS THE GENETICS LABORATORY FOR STATEWIDE WORK.

STATE REGULATIONS AND POLICIES HAVE BEEN ESTABLISHED THAT PROHIBIT MOVEMENT OF ALL LIFE HISTORY STAGES OF FISH AND WILDLIFE INTO, WITHIN, OR OUT OF THE STATE UNLESS APPROVED BY THE COMMISSIONER. INSPECTION FOR DISEASE IS MANDATORY PRIOR TO ANY TRANSPORT.

SINCE 1971, OVER 50 MILLION DOLLARS HAVE BEEN APPROPRIATED TO THE FRED DIVISION FOR THE CONSTRUCTION OF MULTI-SPECIES HATCHERIES AND FISH PASSES, HABITAT IMPROVEMENT, RESEARCH, AND DISEASE PREVENTION RESEARCH AND CONTROL.

THE STATE OF ALASKA'S LONG RANGE SALMON PLAN CALLS FOR ACHIEVING AN AVERAGE ANNUAL HARVEST OF A HUNDRED MILLION SALMON. IT IS DOUBTFUL THAT THAT LEVEL OF HARVEST MAY BE ACHIEVED WITHOUT ASSISTANCE FROM THE FEDERAL GOVERNMENT. BENEFITS FROM THE STATE'S PROGRAM ARE SHARED WITH NON-RESIDENTS. IN ADDITION, THE PRIVATE-NON PROFIT HATCHERY LOAN ACT ESTABLISHED A 200 MILLION DOLLAR REVOLVING LOAN FUND. SALMON PRODUCED BY THAT LOAN FUND WILL YIELD BENEFITS TO RESIDENTS AND NON-RESIDENTS.

THUS, MR. CHAIRMAN, SINCE 1971, THE STATE OF ALASKA HAS ACTUALLY ESTABLISHED THROUGH ITS MAJOR COMMITMENT TO THE

SALMON RESOURCES THE FRAMEWORK FOR A RATIONAL APPROACH TO ALL AQUACULTURE WITHIN THE STATE THAT COULD EASILY DOVETAIL WITH SENATE BILL 2762.

I CAN MAKE THAT STATEMENT BECAUSE:

PLANNING TEAMS ARE ALREADY BEING ESTABLISHED CONSISTING OF USERS AND RESOURCE MANAGERS. FINANCIAL ASSISTANCE EXPANSION TO SPECIES OTHER THAN SALMON IS A MINOR TRANSITION.

MATCHING MONIES WILL BE OR ARE AVAILABLE IN THE PUBLIC AS WELL AS THE PRIVATE-NON PROFIT SECTOR AS EVIDENCED BY THE LOAN PROGRAM AND CATCH ASSESSMENT PROGRAM.

EXISTING ALASKA STATUES PERMIT THE DEVELOPMENT OF AQUACULTURE.

A SPECIAL FISHERIES DIVISION HAS ALREADY BEEN CREATED TO CARRYOUT SUCH A PROGRAM AND IS STAFFED BY ALL PREREQUISITE DISCIPLINES.

PROBLEMS ASSOCIATED WITH AQUACULTURE DEVELOPMENT IN ALASKA

FIRST, THE STATE DOES POSSESS MANY VALUABLE NATURAL STOCKS OF A VARIETY OF SPECIES. THUS AQUACULTURE SHOULD BE INTEGRATED INTO THE EXISTING ECOSYSTEMS WITHOUT DAMAGE TO VALUABLE NATURAL STOCKS. AS LONG AS THE STATE MAINTAINS CONTROL OVER THE MANAGEMENT OF HER NATURAL FISH POPULATIONS AND IS ABLE TO INTEGRATE THE DEVELOPMENT AND APPLICATION OF AQUACULTURE TECHNOLOGY INTO THE NATURAL PRODUCING ECOSYSTEMS REGARDLESS OF LAND OWNERSHIP, WE ARE CONFIDENT THAT NATURAL STOCKS WILL BE ADEQUATELY PROTECTED. IF OTHER LAND OWNERS ASSUME CONTROL FOR MANAGEMENT OF AQUATIC RESOURCES WITHIN THEIR BOUNDARIES, WE CANNOT GUARANTEE PROTECTION OF WILD STOCKS THAT MAY PASS THROUGH NON-STATE CONTROLLED ECOSYSTEMS.

WITH THE DIVERSE FEDERAL AND PRIVATE LAND AND WATER OWNERSHIP PATTERNS EVOLVING IN THE STATE AS A RESULT OF ACTIONS UNDER THE ALASKA NATIVE CLAIMS SETTLEMENT ACT, SUCH AS THE PROPOSAL "D-2" LEGISLATION, IT IS DIFFICULT TO ENVISION A RATIONAL APPROACH TO AQUACULTURE IN ALASKA UNLESS ONE AGENCY IS RESPONSIBLE FOR THE DEVELOPMENT AND FINAL ADMINISTRATION OF A PLAN. THE STATE OF ALASKA, IN PARTNERSHIP WITH THE FEDERAL GOVERNMENT, IS IN THE BEST POSITION TO DEVELOP THAT PLAN AS WELL AS CONTROL ITS APPLICATION. THAT PARTNERSHIP SHOULD NOT ABROGATE THE STATE'S RIGHT TO MANAGE HER FISHERIES

RESOURCES BUT SHOULD REFLECT THE FEDERAL GOVERNMENT'S RESPONSIBILITY TO ASSIST THE STATE WHEN IT IS IN THE BEST INTERESTS OF THE PEOPLE OF THE UNITED STATES. SINCE MANY NONRESIDENT COMMERCIAL AND SPORT FISHERMEN FISH THE WATERS OF THE STATE, THE FEDERAL GOVERNMENT HAS AN OBLICATION TO SUPPLEMENT STATE EFFORTS, NOT CONTROL.

ALASKA IS THE LAST STATE IN THE UNION TO POSSESS VAST ACREAGES OF PUBLIC-OWNED, UNEXPOITED TERRESTRIAL AND AQUATIC ECOSYSTEMS. MANY OF THOSE PUBLIC-OWNED AQUATIC ECOSYSTEMS ARE HIGHLY PRODUCTIVE, OTHERS ARE NOT. MANY POTENTIAL AQUACULTURE SITES LIE WITHIN FEDERAL LANDS, WHETHER IT BE HATCHERY OR FISH-LADDER SITES OR UNDERUTILIZED LAKE SYSTEMS. WE HAVE ATTEMPTED TO IDENTIFY MANY OF THOSE POTENTIALS IN OUR TESTIMONY REGARDING PROPOSED "D-2" LEGISLATION. MANY POTENTIAL ESTUARINE AND MARINE AQUACULTURE SITES MAY LIE WITHIN BOUNDARIES NOW BEING ESTABLISHED BY CONGRESS. WITHOUT SPECIFIC KNOWLEDGE THESE SITES ARE DIFFICULT TO IDENTIFY, BUT THE BOUNDARIES ARE BEING DRAWN ANYWAY. WE BELIEVE AQUACULTURE IS A VERY REAL PART OF MULTIPLE USE. IT IS IMPERATIVE THAT THOSE WILDERNESS, REFUGE, AND PARK AREAS NOW UNDER CONSIDERATION BY CONGRESS WILL NOT PRECLUDE A RATIONAL APPROACH TO AQUACULURE IN THE FUTURE.

ONE OF THE MAJOR PROBLEMS THAT WE FACE IS LACK OF KNOWLEDGE REGARDING POTENTIAL AQUACULTURE SITES, WHETHER IT BE FRESHWATER, ESTUARINE, OR MARINE. FURTHERMORE, MUCH BASELINE DATA MUST BE COLLECTED IF AQUACULTURE IS TO BE INTEGRATED WITH

NATURAL STOCK MANAGEMENT. DEVELOPMENT OF AQUACULTURE AT THE EXPENSE OF NATURAL STOCKS IS IRRESPONSIBLE, BOTH ECONOMICALLY AND ECOLOGICALLY.

ANOTHER MAJOR PROBLEM THAT WE HAVE AS RESOURCE MANAGERS IN ALASKA RESULTS FROM COLD WATER TEMPERATURES AND HIGHLY SEASONAL FOOD AVAILABILITY. MANY OF OUR VALUABLE NON-ANADRAMOUS SPORT SPECIES ARE VERY SLOW GROWING AND EXHIBIT OLDER MATURITY SCHEDULES THAN OBSERVED IN THE LOWER-48. THUS, IF EFFORT INCREASES SUBSTANTIALLY IN THE STATE BECAUSE OF AN INFLUX OF SPORT ANGLERS, MANY TROPHY NATIVE STOCKS COULD BE HARVESTED QUICKLY AND IMPACTED ADVERSELY. WE HAVE OBSERVED THIS PROBLEM ADJACENT TO MAJOR POPULATION CENTERS IN ALASKA. THUS, THE CREATION AND ADVERTISING OF REFUGES, PARKS, AND WILDERNESS AREAS, WITH THE ATTENDANT INCREASED INTEREST IN ALASKA ANGLING, COULD HAVE A SIGNIFICANT DETRIMENTAL IMPACT ON PRESENTLY UNEXPLOITED FISH POPULATIONS.

SOUND PLANNING BASED UPON CAREFULLY DEVELOPED HARVEST STRATEGIES DERIVED FROM RELIABLE INVESTIGATIONS IS ESSENTIAL, OR OLD-AGED TROPHY FISH AREAS COULD DISAPPEAR RAPIDLY. WITHOUT CAREFUL PLANNING AND PREREQUISITE DATA, PUT-AND-TAKE FISHERIES WILL BE DEMANDED. OBVIOUSLY, AQUACULTURE PLANNING MUST CONSIDER THE NEEDS OF TROPHY ANGLERS AS WELL AS THE LESS ESTHETICALLY INCLINED ANGLERS. TROPHY AREAS SHOULD NOT BE OPENED UP TO HIGH RATES OF EXPLOITATION OR ALTERED BY SUPERIMPOSITION OF HIGH PRODUCTION AQUACULTURE SYSTEMS.

SPECIFIC COMMENTS ON AQUACULTURE BILLS NOW BEFORE THE SUBCOMMITTEE

MR. CHAIRMAN, WE HAVE REVIEWED CAREFULLY AQUACULTURE BILLS HR 9370, S 1043, S 2582, AND S 2762. THERE ARE BASIC SIMILARITIES IN ALL THOSE BILLS, BUT WE FEEL S 2762 MOST NEARLY COINCIDES WITH OUR VIEWS OF DEVELOPMENT OF AQUACULTURE IN ALASKA BECAUSE OF:

(1) THE TREMENDOUS RANGE OF ENVIRONMENTAL CONDITIONS IN ALASKA;

(2) OUR KNOWLEDGE OF THE DIVERSITY OF USER GROUPS' NEEDS, RESIDENT AND NONRESIDENT ALIKE;

(3) THE STATE'S MANAGERIAL AUTHORITY AND RESPONSIBILITY FOR MAINTAINING AND DEVELOPING THE AQUATIC RESOURCES;

(4) THE KNOWLEDGE THAT RESIDENTS AND STATE AGENCIES POSSESS REGARDING THE STATE'S WIDE-RANGING ENVIRONMENTAL CONDITIONS AND COMPLEX HARVEST PROBLEMS;

(5) THE INITIAL ESTABLISHMENT OF A COORDINATED PUBLIC-RESOURCE MANAGER PLANNING SYSTEM;

(6) THE DIVERSE STATE-FEDERAL-PRIVATE LAND OWNERSHIP WHICH ENCOMPASSES POTENTIAL AQUACULTURE SITES; AND

(7) RECOGNITION BY THE STATE OF NATIONAL INTERESTS.

THEREFORE, MY TESTIMONY AS COMMISSIONER OF THE ALASKA DEPARTMENT OF FISH AND GAME IS DIRECTED TOWARDS SPECIFIC CHANGES IN S.2762 THAT WILL YIELD THE BEST AQUACULTURE PLAN FOR ALASKAN ECOSYSTEMS. THAT PLAN MUST BE DERIVED INITIALLY FROM DATA SOURCES AND FROM PUBLIC AND PRIVATE NEEDS AS CLOSE TO THE RESOURCE AS POSSIBLE. THUS THE STATE AND HER PEOPLE SHOULD TAKE THE LEAD IN ESTABLISHING PRIORITY SPECIES, DATA-BASE NEEDS, POLICY GUIDELINES, AND REGULATIONS THAT WILL PRODUCE AND IMPLEMENT AN ACCEPTABLE PLAN.

MR. CHAIRMAN, AS POINTED OUT EARLIER, MY DEPARTMENT IS DEVELOPING A VERY CLOSE WORKING RELATIONSHIP WITH ALASKAN AQUACULTURE ASSOCIATIONS. WE HAVE CAREFULLY REVIEWED COMMENT ON S.2762 TRANSMITTED IN A LETTER OF MARCH 31 TO SENATOR GRAVEL FROM MR. A.W. HALL, BUSINESS MANAGER OF THE PRINCE WILLIAM SOUND AQUACULTURE CORPORATION. WE ENDORSED THOSE COMMENTS. WE ALSO HAVE REVIEWED A LETTER OF APRIL 6, 1978, TRANSMITTED TO SENATOR GRAVEL FROM DR. DEREK POON, GENERAL MANAGER OF THE NORTHERN SOUTHEAST REGIONAL AQUACULTURE ASSOCIATION, AND WE ENDORSE THOSE COMMENTS ON S.2762 ALSO. I WILL LEAVE A COPY OF THESE TWO LETTERS FOR THE COMMITTEE'S PERUSAL AND FOR THE RECORD.

IN ADDITION TO THOSE DEPARTMENTALLY ENDORSED COMMENTS, I OFFER THE FOLLOWING FOR YOUR CONSIDERATION:

UNDER "SEC. 4. NATIONAL AQUACULTURE DEVELOPMENT PLAN (A)(2)(C) MEMBERSHIP OF REGIONAL ADVISORY SUBCOMMITTEES...." WE SUGGEST THE ADDITION OF FISH PROCESSORS TO THE LIST OF REPRESENTATIVES.

UNDER "SEC. 5. FUNCTIONS AND POWERS (A)(3)" WE DO NOT BELIEVE, MR. CHAIRMAN, THAT IT IS IN THE BEST INTERESTS OF THE RESOURCES OF ALASKA FOR THE SECRETARY TO PRODUCE AND SELL SEED STOCK WITHOUT STATE CONTROL. THE STATE NEEDS CONTROL OVER THE SALE AND MOVEMENT OF SEED STOCK INTO, WITHIN, OR OUT OF THE STATE IN ORDER TO CARRY OUT ITS MANAGEMENT RESPONSIBILITIES FOR PROTECTING NATURAL STOCKS AND FOR MAINTAINING DISEASE AND GENETIC CONTROL. WE CONSIDER THIS AUTHORITY AS BEING ABSOLUTELY NECESSARY BECAUSE OF THE PRESENT LACK OF FEDERAL CONTROLS IN THIS AREA OF CONCERN.

UNDER "SEC. 5.(A)(4)" BECAUSE ALASKA HAS SUCH A COMPLEX LAND OWNERSHIP PROBLEM, AND BECAUSE ANADROMOUS STOCKS OF SALMON, TROUT, SHEEFISH, AND CHAR MAY PASS THROUGH SEVERAL LAND OWNERS, WE BELIEVE IT IS TO THE BEST INTERESTS

OF THE RESOURCES OF ALASKA THAT FEDERAL ENCOURAGEMENT FOR THE IMPLEMENTATION OF REHABILITATION AND ENHANCEMENT TECHNOLOGY BE GIVEN ONLY AFTER APPROVAL BY STATE REGULATORY AGENCIES. WITHOUT ADDITION OF THAT LANGUAGE IT WOULD BE POSSIBLE FOR A FEDERAL AGENCY TO ENCOURAGE THE CONSTRUCTION OF A HATCHERY OR OTHER FACILITIES THAT MAY HAVE A NEGATIVE IMPACT ON SIGNIFICANT NATURAL STOCKS PASSING THROUGH THE SAME WATERS.

UNDER "SEC. 5.(A)(5)" WE SUGGEST THE ELIMINATION OF THE WORDS "IN AREAS WHERE MULTIPLE LAND AND WATER USES EXIST" AND THE SUBSTITUTION OF THE WORDS "ON ALL FEDERAL AREAS, NOTWITHSTANDING PRESENT LAWS TO THE CONTRARY, AQUACULTURE..." ALASKA'S FISHERIES ARE OF SUCH TREMENDOUS VALUE TO THE STATE AND TO THE NATION AS A WHOLE THAT WE CANNOT AFFORD TO PRECLUDE FISHERY ENHANCEMENT WORK ON ALL OF THE RELATIVELY FEW ACCEPTABLE SITES IN ALASKA SIMPLY BECAUSE OF PRESENT CLASSIFICATIONS, E.G. "WILDERNESS" OR "WILDLIFE REFUGE".

UNDER "SEC. 5. (B)(1)(A)" WE BELIEVE IT IS TO THE BEST INTERESTS OF THE STATE'S FISHERY MANAGEMENT PROGRAM THAT RESEARCH AND DEVELOPMENT FACILITIES BE PERMITTED ONLY AFTER CONSULTATION AND APPROVAL BY THE STATE'S REGULATORY AGENCIES. ADDITION OF THAT LANGUAGE, MR. CHAIRMAN, WILL HELP TO PREVENT NEEDLESS DUPLICATION OF EFFORTS AND AGENCIES WORKING AT CROSS PURPOSES.

THANK YOU FOR THE OPPORTUNITY TO PRESENT THIS DEPARTMENT'S VIEWS. MY STAFF AND I WILL BE AVAILABLE FOR CONSULTATION AS MIGHT BE NECESSARY DURING THE COMMITTEE'S DELIBERATIONS. PLEASE LET ME KNOW IF YOU WISH OUR HELP AT ANY TIME.

Northern Southeast Regional
Aquaculture Association, Inc.

P.O. BOX 786 SITKA, ALASKA 99835
(907) 747-6850
RM. 205 OLD CITY HALL BLDG.

6 April 1978

The Honorable Mike Gravel
United States Senate
3121 Dirksen Senate Office Bldg.
Washington, D.C. 20510

Dear Senator Gravel:

After reviewing the "National Aquaculture Organic Act of 1978", S-2762 received from your office, I have the following comments for your consideration.

Your aide, Mr. Tom Roach, contacted me last fall at which time we briefly discussed national aquaculture legislation and the possibility of your action. Since that time, Mr. Roach has kept me informed, and I have followed the progress of the legislation with interest. Your efforts to improve the legislation which passed the House are greatly appreciated. Your bill will be much better for Alaska and our fishermen than the House bill.

I have discussed the bill with Mr. Bill Hall of the Prince William Sound Aquaculture Corporation, and I have read his comments and recommendations. I am supportive of Mr. Hall's comments and recommendations for amending the bill.

Additionally, I would like to add some comments.

(1) I am especially supportive of the regional subcommittee concept in your bill and believe funding and any other support to maximize its effectiveness should be promoted. By developing the plan close to the people, the end product will reflect their interests, experience and expertise. I know that in Southeast Alaska the Forest Service and the National Marine Fisheries Service have personnel very knowledgeable about the potential for aquaculture development. Hopefully, these people, state biologists and local fishermen will be able to either serve on a regional subcommittee or provide input directly to the subcommittee.

(2) The NSRAA Board of Directors has taken a strong position in favor of rehabilitation of natural salmon

stocks. The preferred emphasis is on cost-effective projects which complement and enhance rather than conflict with or replace natural production. A matching federal, state or local grant program to stimulate the efforts of fishermen and other groups to this area would greatly benefit Alaska.

(3) I am requesting, in a separate letter, that your Juneau office send copies of your comments in the Congressional Record prefacing introduction of S-2762 to each NSRAA Board member to keep them informed of developments on the national legislation. You may receive some additional comments from them.

Enclosed are copies of our latest informational brochures which were sent to fishermen explaining our program. These materials may give you some ideas on how to coordinate our plans with the national aquaculture plan and possibilities for our Association to work in partnership with the federal and state governments through a combination of grants, loans and insurance to enhance our fisheries.

Finally, I would like to restate my support for your bill S-2762, and the proposed changes recommended by Mr. Bill Hall. S-2762, especially with the suggested changes, will benefit Alaska more than Mr. Leggett's bill HR 9370.

Thank you for keeping us informed.

Sincerely,

Derek Poon, Ph.D.
General Manager

DP/EJ/vf

cc: Bob Palmer, Office of the Governor
Keith Specking, Office of the Governor
Dr. Ronald A. Skoog, Commissioner, ADF&G
John A. Sandor, Regional Forester, U.S.F.S.
Dr. Bill Smoker, Sr., NMFS
Jack Milnes, Southern Southeast Regional Aquaculture Assn.
Armin Koernig, Prince William Sound Aquaculture Corp.
Floyd E Heimbuch, Cook Inlet Aquaculture Assn.
Senator Ted Stevens
Senator Henry Jackson
Senator Warren Magnusson

Enc.

United States Senate
WASHINGTON, D.C. 20510

March 28, 1978

Honorable Jay Kerttula
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Jay:

Last week I sent to you a copy of my recently introduced Aquaculture bill, S 2762.

The accompaning letter stated that hearings on this bill will be held on April 18, 1978. That is a mistake. The hearings are scheduled for April 17, 197o in the Senate Commerce Committee hearing room. I apologize if this may have caused you any inconvenience.

With best regards,

Sincerely,

Mike Gravel

MG/tr

United States Senate

WASHINGTON, D.C. 20510

April 19, 1978

Honorable Jay Kerttula
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Jay:

Activity on the several Aquaculture bills has picked up considerably this past week in the Senate. Hearings were held on Monday and Wednesday of this week before Senate Magnuson of the Senate Commerce Committee. Hearings were also held on Tuesday and Thursday before Senator Stone of the Senate Agriculture Committee.

The Commerce Committee considered the Leggett bill (HR 9370), the Weiker Bill (S 2582) and my bill, S 2762. The Agriculture Committee focused on the Stone bill (S2218), the Bentsen bill (S 1043), which I co-sponsored last year, and my bill, too.

I have enclosed a copy of my testimony here for your interest. It seems that the two Committees are receptive to the three proposals I have initiated. General acceptance is growing for the necessity to include (1) regional input in the National Plan, (2) rehabilitation and enhancement measures, and (3) aquaculture as a coastal activity deserving of consideration along with all other competing activities.

The next step will probably be a single bill written by the staffs of both the Commerce Committee and the Agriculture Committee working together. Hopefully this cooperative Committee print will include our proposals.

This should bring you in the State up to date on where the legislation stands down here. I'll keep you informed of further developments.

Sincerely,

Mike Gravel

MG/tr
Enclosure

STATEMENT OF SENATOR MIKE GRAVEL
BEFORE THE
COMMERCE, SCIENCE, AND TRANSPORTATION
COMMITTEE
UNITED STATES SENATE
APRIL 17, 1978

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, I THANK YOU FOR THE OPPORTUNITY TO APPEAR BEFORE YOU TODAY TO COMMENT ON THE SEVERAL PIECES OF AQUACULTURE LEGISLATION WHICH ARE PRESENTLY UNDER CONSIDERATION BY THE SENATE COMMERCE COMMITTEE. AQUACULTURE IS PRACTICED IN VARYING DEGREES OF INTENSITY THROUGHOUT THE WORLD AND I BELIEVE THE TIME IS NOW RIGHT TO PROVIDE LEGISLATIVE ENCOURAGEMENT FOR AQUACULTURE ACTIVITY IN THE UNITED STATES.

AQUACULTURE - AN OVERVIEW

THE WORLD ACTIVITY IN AQUACULTURE IS WIDE AND VARIED. CHINA HAS BEEN CULTIVATING FISH FOR OVER 2000 YEARS. JAPAN NOW PRODUCES MORE THAN TEN PER CENT OF ITS SEAFOOD NEEDS THROUGH AQUACULTURE. AND RUSSIA HAS BEEN GIVING AQUACULTURE INCREASED ATTENTION.

THE UNITED STATES HAS BEEN DABBLING IN VARIOUS FORMS OF AQUACULTURE FOR A CONSIDERABLE PERIOD OF TIME, BUT A LIBRARY OF CONGRESS REPORT INDICATES THAT AQUACULTURE IN THE U.S. HAS GROWN INSIGNIFICANTLY COMPARED TO SUCH ACTIVITIES IN OTHER PARTS OF THE WORLD.

MY HOME STATE OF ALASKA HAS BEEN INVOLVED IN THE CULTIVATION OF FIN FISH SINCE THE LATE 1800s. WITH MORE THAN 50% OF THE ENTIRE U.S. COASTLINE LOCATED WITHIN THE STATE OF ALASKA, ONE CAN UNDERSTAND WHY MY INTEREST IN AQUACULTURE IS GREAT. THE POTENTIAL FOR MARINE AQUACULTURE DEVELOPMENT WITHIN ALASKA IS TRULY INCREDIBLE, NOT TO MENTION THE VAST POSSIBILITIES FOR FUTURE FRESH-WATER CULTIVATION.

AQUACULTURE - MARKET POTENTIAL

WORLD FISHERY RESOURCES WERE ONCE THOUGHT TO BE PRACTICALLY UNLIMITED. THIS HAS BEEN CLEARLY SHOWN NOT TO BE THE CASE. THE WORLD FISHERY RESOURCES ARE NOW ESTIMATED BY SOME EXPERTS TO BE

CAPABLE OF YIELDING A MAXIMUM GLOBAL HARVEST OF 100 TO 150 MILLION METRIC TONS PER YEAR. MORE CONSERVATIVE ESTIMATES RARELY EXCEED 100 MILLION METRIC TONS, INCLUDING THAT OF THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, WHICH ESTIMATES THAT THE 100 MILLION METRIC TON FIGURE WILL BE MET BY 1980. THIS SUGGESTS THAT A WORLD SHORTAGE OF FISH PRODUCTS IS POSSIBLE IN THE FORESEEABLE FUTURE.

WORLD PER CAPITA FISH CONSUMPTION HAS INCREASED OVER THE PAST SEVERAL YEARS AND IN THE U.S. ALONE HAS RISEN TO A PRESENT LEVEL OF 12.9 POUNDS PER PERSON PER YEAR. RELIABLE ESTIMATES PROJECT AMERICAN CONSUMPTION TO INCREASE TO 15.2 POUNDS BY THE YEAR 2000. A LIBRARY OF CONGRESS STUDY HAS PREDICTED THAT IN THE SAME PERIOD OF TIME OVERALL DEMAND FOR SEAFOOD PRODUCTS IN THE U.S., BOTH EDIBLE AND INDUSTRIAL, IS EXPECTED TO INCREASE BY A FULL 80%.

ALL THESE INDICATORS SUGGEST THAT THE DEMAND FOR FISH

PRODUCTS WILL ONLY CONTINUE TO INCREASE IN THE YEARS TO COME. WITH WILD FISH STOCK EXPLOITATION REACHING MAXIMUM LEVELS, PER CAPITA CONSUMPTION OF FISH PRODUCTS ON THE RISE AND THE WORLD POPULATION EXPECTED TO INCREASE FROM A LEVEL OF 4 BILLION TODAY TO 6 BILLION BY THE TURN OF THE CENTURY, AQUACULTURE MUST BE VIEWED AS A PROMISING POSSIBILITY IN HELPING TO MEET THESE FOOD DEMANDS.

AQUACULTURE - ECONOMIC POTENTIAL

FOR A NATION PRACTICALLY SURROUNDED BY WATER AND REPLETE WITH POSSIBLE SITES FOR RAISING INLAND FISH SPECIES, FISHERY IMPORTS INTO THE U.S. ARE SURPRISINGLY HIGH. IN 1976 THE U.S. IMPORTED 6.2 BILLION POUNDS OF FISHERY PRODUCTS VALUED AT $2.2 BILLION. THE U.S. FISHERY EXPORTS IN 1976 AMOUNTED TO 241 MILLION POUNDS, VALUED AT ONLY $330 MILLION.

THIS LEAVES A NET ANNUAL TRADE DEFICIT OF PRACTICALLY $2 BILLION FOR FOREIGN FISH PRODUCTS WHERE CLOSE TO 65% OF FISH

CONSUMED IN THE U.S. IS IMPORTED FROM FOREIGN COUNTRIES.

THE STUDIOUS APPLICATION OF AQUACULTURE TECHNIQUES COULD HELP TO REVERSE THIS UNFAVORABLE BALANCE OF TRADE SITUATION. A PROMOTION OF AQUACULTURE WILL RESULT IN THE CREATION OF MANY NEW JOBS, FISHERY EMPLOYMENT ON A YEAR-ROUND RATHER THAN A SEASONAL BASIS, AND AN OVERALL STABILITY TO THE HISTORICAL BOOM OR BUST FISHERY ECONOMY.

NATIONAL AQUACULTURE ORGANIC ACT - INTENT

MR. CHAIRMAN, THE NATIONAL AQUACULTURE ORGANIC ACT OF 1978 WILL PROVIDE LONG OVERDUE IMPETUS TO THE PROMOTION OF AQUACULTURE IN THE UNITED STATES. MY DESIRE IS TO ENCOURAGE THE DEVELOPMENT OF AQUACULTURE OF ALL TYPES IN ALL PARTS OF THE U.S. THIS WOULD INCLUDE ENCOURAGING AQUACULTURE FOR MARINE, AS WELL AS FRESH WATER, SPECIES: FOR AQUATIC PLANTS, AS WELL AS AQUATIC ANIMALS: FOR PRESENTLY CULTURED SPECIES, AS WELL AS SPECIES AS YET UNTESTED BY THE TECHNIQUES OF AQUACULTURE: AND FOR THE

REHABILITATION AND ENHANCEMENT OF PUBLIC FISHERIES, AS WELL AS THE PROMOTION OF OCMMERCIAL ENTERPRISES.

TO ACCOMPLISH THESE GOALS, MY LEGISLATION DESIGNATES THE DEPARTMENT OF COMMERCE AS THE AGENCY WITH ULTIMATE RESPONSIBILITY. THE COMMERCE DEPARTMENT WILL, HOWEVER, OPERATE IN CLOSE CONJUNCTION WITH THE DEPARTMENTS OF AGRICULTURE AND INTERIOR, AS BOTH THOSE DEPARTMENTS HAVE PROVEN THEMSELVES EXPERT IN MANY IMPORTANT ASPECTS OF AQUACULTURE. THERE ARE MANY FACETS TO AQUACULTURE, AND I BELIEVE NO SINGLE AGENCY CAN OR SHOULD BE NAMED THE EXCLUSIVE AUTHORITY. THE BETTER APPROACH IS TO TAP THE EXISTING EXPERTISE OF THE SEVERAL DEPARTMENTS AND COORDINATE ALL AQUACULTURE EFFORTS THROUGH THE DEPARTMENT OF COMMERCE.

AN INTERAGENCY COMMITTEE ON AQUACULTURE WILL BE FORMED TO FACILITATE AND COORDINATE INFORMATION AND ACTIVITIES AMONG THE THREE DEPARTMENTS, AS WELL AS ALL OTHER AGENCIES AND PARTIES INVOLVED.

MY LEGISLATION ALSO PROVIDES FOR THE FORMULATION OF A NATIONAL AQUACULTURE DEVELOPMENT PLAN. THIS PLAN, TO BE DRAWN UP IN THE YEAR FOLLOWING ENACTMENT, WILL EMBODY CONCRETE SUGGESTIONS ON SPECIFIC DIRECTIONS AND PRIORITIES TO PURSUE IN THE DEVELOPMENT OF AQUACULTURE IN THE U.S.

A GRANT PROGRAM WILL ENCOURAGE PARTICIPATION IN WHAT IS GENERALLY CONSIDERED A RATHER EXPENSIVE ENTERPRISE. THESE GRANTS WILL ALLOW THE PRIVATE ENTREPRENEUR TO GET INVOLVED IN A VENTURE THAT WOULD OTHERWISE, BY VIRTUE OF PROHIBITIVE START-UP COSTS, BE RESERVED FOR LARGE CORPORATIONS OR THE INDIVIDUAL OF GREAT WEALTH.

A FEDERAL AQUACULTURE ASSISTANCE FUND IS CREATED FOR THREE PURPOSES: (A) TO FACILITATE AQUACULTURE FINANCING BY GUARANTEEING LOANS MADE TO AQUACULTURE OPERATIONS SINCE SUCH LOANS HAVE HISTORICALLY BEEN UNREASONABLY DIFFICULT TO OBTAIN: (B) TO MAKE DISASTER LOANS FOR AQUACULTURE STOCKS WHICH ARE DESTROYED BY

UNAVOIDABLE DISEASES: AND (C) TO PROVIDE INSURANCE COVERAGE TO AQUACULTURE OPERATIONS IN THOSE INSTANCES WHERE INSURANCE IS NOT OTHERWISE AVAILABLE.

NATIONAL AQUACULTURE ORGANIC ACT - COMPARISON TO OTHER AQUACULTURE LEGISLATION

MR. CHAIRMAN, MY AQUACULTURE BILL, S.2762 IS IN MANY RESPECTS SIMILAR TO THE OTHER TWO PIECES OF AQUACULTURE LEGISLATION UNDER CONSIDERATION BY YOUR COMMITTEE TODAY. H.R.9370, THE HOUSE AQUACULTURE BILL, AND S.2582, THE WEICKER AQUACULTURE BILL, BOTH CONTAIN NUMEROUS POINTS WHICH COINCIDE WITH THE PROPOSALS I MAKE IN S.2762.

THERE ARE, HOWEVER, THREE IMPORTANT NEW AREAS WHICH MY BILL EMPHASIZES, AND I SHOULD LIKE BRIEFLY TO EXPLAIN THEM:

FIRST, UNLIKE THE OTHER AQUACULTURE LEGISLATION, I WOULD REQUIRE THAT THE NATIONAL AQUACULTURE DEVELOPMENT PLAN BE FORMULATED ONLY AFTER INFORMATION IS SYSTEMATICALLY GATHERED FROM ALL PARTS OF THE UNITED STATES. TO ENSURE ADEQUATE INPUT FROM INTERESTS AS DIVERSE AS

SHRIMP FARMERS IN FLORIDA, SALMON RANCHERS IN ALASKA, OYSTER RAISERS IN MAINE AND CATFISH FARMERS IN THE MID-WEST, INFORMATION MUST BE GATHERED ON A REGIONAL BASIS. ONLY AFTER THESE SUGGESTIONS ARE RECEIVED FROM ALL PARTS OF THE COUNTRY SHOULD A NATIONAL PLAN BE DRAWN UP. THIS WILL GUARANTEE THAT THE PLAN WILL BE TAILORED TO THE VARIED INTERESTS AND NEEDS OF AQUACULTURISTS THROUGHOUT ALL 50 STATES.

SECOND, I ADD THE ENHANCEMENT AND REHABILITATION OF TRADITIONAL PUBLICLY OWNED FISH STOCKS AS A MAJOR GOAL TO BE ADDRESSED BY THIS LEGISLATION. IT SEEMS OBVIOUS THAT IN ADDITION TO ENCOURAGING DEVELOPMENT OF COMMERCIAL AQUACULTURE FOR THE PRIVATE SECTOR, WE SHOULD NOT OVERLOOK THE DESIRABILITY OF REHABILITATING THE NUMEROUS DEPLETED FISH STOCKS WHICH ARE OF VITAL IMPORTANCE TO THE PUBLIC SECTOR.

THE THIRD AND FINAL ISSUE OF IMPORTANCE MY BILL ADDRESSES IS THE PROBLEM OF LAND AND WATER ACCESS FOR AQUACULTURE FACILITIES.

I BELIEVE THE CONTRIBUTIONS WHICH AQUACULTURE CAN MAKE IN HELPING TO MEET NUTRITIONAL NEEDS, STIMULATING COMMERCIAL ACTIVITY, AND ENHANCING EXISTING FISHERIES WARRANT ITS BEING GIVEN DUE CONSIDERATION IN LAND AND WATER USE MANAGEMENT DELIBERATIONS.

CONCLUSION

MR. CHAIRMAN, AQUACULTURE IS CERTAINLY AN ACTIVITY THAT HAS BEEN NEGLECTED IN THIS COUNTRY FOR TOO LONG. THE NUMEROUS BENEFITS TO BE GAINED -- COMMERCIAL, NUTRITIONAL AND CONSERVATIONAL, TO NAME BUT THREE, -- HAVE NOT YET BEEN FULLY APPRECIATED. PASSAGE OF THIS LEGISLATION WILL BE A POSITIVE STEP TOWARDS TRANSLATING THESE NUMEROUS POTENTIAL BENEFITS INTO TANGIBLE REALITIES.

TELEGRAM

[illegible] ALASKA COMMUNICATIONS, INC.
PHONE [illegible]
JUNEAU, ALASKA [illegible]

#

1978 APR 24 PM 8 10

20059 NL KENAI ALASKA 50 04-24 0300P AST

PMS SEN KAY PLAND

JUNEAU

CIAA AGREES WITH SJR49 BY SEN KERTTULA. HIS IS A REASONABLE APPROACH FOR HELPING SALMON RETURNS IN CONTRAST TO THOSE WHO WOULD CURTAIL ALL AQUACULTURE EFFORTS UNTIL THEY WERE ASSURED OPPORTUNITY TO HARVEST NOW REGARDLESS OF CONSEQUENCES. PLEASE SUPPORT THIS RESOLUTION AND HELP SALMON, NOT VESTED INTEREST GROUPS.

COOK INLET AQUACULTURE ASSN FLOYD E HEIMBUCH, MANAGER

SJR

50

COMMITTEE REPORT

SENATE

4/18/78

FURTHER: Finance

Date:

Mr. President:

The Committee on RESOURCES has had SJR 50
Alaska Power Authority / Susitna Hydroelectric Project

under consideration and (a majority of the committee) (the committee reports it back as follows)

( ) recommends it do pass ( ) recommends it do not pass

( ) recommends it do pass with attached amendment(s)

( ) recommends it be replaced with CS for _____

and _____ ( ) new title ( ) same title

( ) AND attaches a Letter of Intent ( ) New Fiscal Note

( ) reports it back without recommendation

( ) and recommends it be referred to the _____ Committee

MEMBERS SIGNING DO PASS:

OTHER RECOMMENDATIONS:

K. Poland
Chairman

S 60 (rev. 6/77)

Offered:_____
Referred:_____

BY:_____

IN THE _____

_____ JOINT RESOLUTION NO._____

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - SECOND SESSION

Relating to the Alaska Power Authority, the Phase I environmental, economic, social and engineering studies of the Susitna Hydroelectric Project and the incurring of indebtedness for Phase I.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

WHEREAS, the Alaska Power Authority pursuant to AS 44.36.180 has submitted to the Legislature and to the Commissioner of Commerce and Economic Development a statement outlining the status of the Susitna Hydroelectric Project and the Plan of Study outlining the necessary feasibility studies of the project which is planned to be designed, and may be acquired or constructed by the United States under an agreement providing for ownership of the Project by the Authority; and

WHEREAS, the Congress of the United States on October 22, 1976, enacted P.L. 94-587, the Alaska Hydroelectric Power Development Act, which Act authorized the Secretary of the Army and the U. S. Army Corps of Engineers to participate in the Susitna Hydroelectric Project; and

WHEREAS, there is now pending before the Congress a proposal which would amend P.L. 94-587 so as to authorize an agreement between the United States and the Alaska Power Authority which will provide that the United States will reimburse the Authority for any of the Authority funds expended in the Phase I stage of the Susitna Hydroelectric Project should the Phase I report not be favorable or should the Authority within three years of the completion of the report be unable to borrow money to pay the construction costs of the project, including the costs of the Phase I studies, based on the security of the project or its revenues; and

WHEREAS, the Phase I activities outlined delineate the environmental, economic, social and engineering studies requisite to informed decision making; and

WHEREAS, the cost to be incurred during Phase I is now estimated to be $25,000,000 but may exceed that amount; and

WHEREAS, it is deemed to be in the best interests of the State of Alaska to proceed with Phase I of the project through the use of Alaska Power Authority sponsored financing.

WHEREAS, Phase I studies shall provide for substantive public involvement throughout the study process; and

WHEREAS, Legislative approval of project construction is required should project feasibility and desirability result from the study process conducted under Phase I activities.

BE IT RESOLVED that the Legislature of the State of Alaska urges the passage by the Congress of the United States of the proposed amendments to P.L. 94-587 so that the Alaska Power Authority may go forward with a program of financing and may enter into any necessary agreements pursuant to the proposed amendments; and be it

FURTHER RESOLVED that, based on the plan outlined in the statement of the Alaska Power Authority to the Legislature and to the Commissioner of Commerce and Economic Development, the Legislature agrees to the incurring of indebtedness by the Alaska Power Authority contingent upon passage of amendments to P.L. 94-587 in an amount necessary to finance the cost of the Phase I feasibility studies of the Susitna Hydroelectric Project, including interest.

Attachment A

Outline of the Present Status of the Susitna Hydroelectric Project and Action to be Taken by the Alaska Power Authority for Financing of the Phase I Advanced Engineering and Design of the Project

Historical Background: The tremendous energy potential of the Susitna River has been known for many years. The Bureau of Reclamation and the Corps of Engineers, along with private institutions have conducted numerous studies of Susitna's potential. Both of the Federal agencies conducted reconnaissance level studies in the late 1940's and each published their findings in the early 1950's. The more specific and detailed early studies were performed by the Bureau of Reclamation. In fact, in a 1960 feasibility report, the Bureau of Reclamation outlined a plan of development in the Upper Susitna River Basin consisting of four high-head dams with a combined firm annual energy capability of roughly 6.3 billion kilowatt hours. The Bureau studies were backed up by limited foundation exploration for three of the four damsites (Devil Canyon, Vee and Denali were drilled, Watana was not drilled). However, with the discovery of Cook Inlet natural gas, the economic attractiveness of the Susitna project plummeted. With the formation of the international oil cartel and the dramatic rise in fuel costs during the 1970's, Congress requested that the Corps of Engineers re-evalua[illegible] the Bureau of Reclamation proposal for developing the Upper Susitna River and to report its recommendations and findings to Congress. Because of questionable foundation conditions at the upper two damsites (Vee and Denali), and the attendant environmental impact associated with those two projects, the Corps modified the proposed development by raising the height of the second upstream dam, Watana, and deleting the Vee and Denali dams. The two-dam Devil Canyon-Watana scheme of development would provide 6.1 billion kilowatt hours firm annual energy but at a lesser cost and environmental impact than the four dam scheme. The Corps evaluated a number of energy alternatives and concluded that coal fired generation and Susitna hydroelectric are the most feasible long range options for the railbelt energy demand. Of the two options, the economic attractivness of the Susitna project appears to be significantly greater than coal fired steam generation. In October 1977 dollars, the estimated construction cost of the two dam scheme and attendant transmission facilities is $2.1 billion. The average annual energy cost from Susitna is estimated to be at least 30 percent less than that of its coal counterpart.

Project Description: The Upper Susitna River Basin is a 5810 square mile area bordered on the North and West by the Alaskan Mountain range, and on the South by the Talkeetna Mountains.

Primary wildlife within the basin consists of moose, bear, dall sheep, caribou, wolf, raptors, and resident fish. Anadromous fish do not migrate into the Upper Susitna, but they do spawn in the streams and sloughs downstream from the basin outlet. The river is glacially fed and averages 7.1 million acre feet of runoff annually. The plan of development includes an 810 foot high earthfill dam at the Watana site, a 635 foot high thin-arch dam at Devil Canyon and 365 miles of transmission line. The Watana project would inundate 43,000 acres of land and 54 miles of natural river. Devil Canyon would flood 7500 acres of land and 28 miles of river. In tandum, the projects would produce a total of 6.1 billion kilowatt hours of firm annual energy and an average of 0.8 billion kilowatt hours of annual secondary energy. It is estimated that Watana could be on line by 1990 and as demand dictates, presumably five years later, Devil Canyon would be brought on line. Based on the preliminary design, the two projects would be capable of withstanding the effects of an 8.5 magnitude earthquake with an epicenter of 40 miles from the projects.

Present Status: The Corps of Engineers submitted their Susitna feasibility report to Congress in 1976. Pending the Chief of Engineers final report to Congress, the project was given conditional authorization to proceed to Phase I Advanced Engineering and Design as a federal project. (Section 160, Water Resources Development Act of 1976, P.L. 94-587). Contained in the same bill is Section 203 known as the Alaska Hydropower Development Fund. This section provides for a joint venture in developing hydropower projects in Alaska in which, for previously authorized hydropower projects, the Corps of Engineers would design and construct the project using state financing and the state would own and operate the project. Bradley Lake and Snettisham are the only authorized projects in the state which qualify for development under this program. Because the Office of Management and Budget (OMB) felt that there was insufficient field exploration to substantiate the project cost estimate contained in the Corps 1976 feasibility report, the Chief of Engineers did not make his final report to Congress. Thus, Susitna remains an unauthorized project, disqualifying it for participation under Section 203. However, in order to provide the necessary explorations the Corps has made $3.0 million available for a twelve month foundation exploration program which should lead to final authorization of the project. That twelve month effort began on January 1, 1978, and the Corps is presently conducting its explorations at the Watana damsite.

1978 Water Resources Development Act: Since Section 203, as it presently reads, makes it difficult for the state to provide

the necessary financing for Phase I studies, the Act will be amended under the 1978 Water Resources Development Act. State and federal personnel, along with their bond counsel and financial and legal advisors have agreed upon the proper language which should be contained in Section 203. Also included in the pending bill will be direct authorization of the Susitna Project thus making it eligible for Section 203 participation exclusive of the OMB desire for the $3.0 million twelve month exploration program. The bill should reach the Senate Water Resources Subcommittee in latter April. The House version of the bill will probably not contain the amending language for Section 203 nor direct authorization for Susitna. Thus, these items will have to be added in conference committee. Considering the other national issues, it is estimated that the bill will not be authorized before July, 1978. Thus the Phase I Studies could begin by the latter part of the 1978 field season.

Alaska Power Authority Action: It is the intention of the Alaska Power Authority to participate under Section 203 for the Phase I studies. Financing for the studies would come from the sale of tax exempt municipal bonds; thus, the debt would not become a general obligation of the state. Should the $25,000,000 plus Phase I studies indicate that the project is not feasible, the Federal Government would repay the cost and interest of the bonds. At the conclusion of the Phase I studies, the State would have the option to proceed into construction with the Corps of Engineers or to use the services of a private engineering firm. Many of the studies to be conducted under Phase I would be managed by the Power Authority rather than the Corps of Engineers.

Plan of Study: The Alaska Power Authority made $100,000 available to the Alaska District Corps of Engineers in July, 1977 for the purpose of developing the Phase I Study program. The Corps submitted their first draft to the State in September, 1977. Based on the State's review comments, the Corps is now finalizing the Susitna Plan of Study.

Land Status: The Susitna project would flood roughly 50,000 acres of land of which roughly 24,000 acres have been classified as power withdrawal lands. This land, along with most of the remainder needed for the two proposed dams and reservoirs, has been claimed by the Cook Inlet Native Corporation and four native villages. Until the land can be transferred to the Natives, the Bureau of Land Management retains custody for the Federal Government. Prior to entry for Phase I studies, access permission would be necessary from either BLM or the Native Associations depending on the owners at that time. The Cook Inlet Region is presently

negotiating with the four villages to trade them out of the Susitna land. Presumably, the region would then negotiate the Susitna land for possible excess military land on Fort Richardson. The State could then claim the Susitna land under the terms of the Statehood Act, if it so desired.

D-2 Classification: Although the Susitna River was included as one of twenty rivers that should be studied by the BLM for possible classification as a Wild and Scenic River in 1972, Susitna was dropped from the list during the early screening. It was suggested in the study, however, that Susitna should be studied further. The House Interior Committee has drafted their version of the D-2 Land Classification Bill and has excluded Susitna from any D-2 classification. If the project is classified as a river to be studied for Wild and Scenic River classification, without special exemption, the Phase I studies would not be permitted until the completion of the study.

Funding: $5.45 million has been included in the federal appropriation for input to the Alaska Hydroelectric Power Development Fund. This is the estimated cost of financing the first year of the four year Phase I study. However, since the total estimated cost including interest is in excess of $25.0 million, it would be desirable that the entire amount be placed in the Fund. As a show of good faith, upon enactment of the 1978 Water Resources Development Act, the Power Authority, through the sale of revenue bonds, would make available the full study cost amount. This would be held in escrow and could only be used to finance the Phase I studies to the extent that matching funds are made available from federal funds. This show of good faith should provide the leverage for the Federal Government to put up the remainder of matching funds needed for Phase I.

Agreement: A mutual agreement between the Alaska Power Authority and the Corps of Engineers for the Phase I studies would be developed and signed pursuant to passage of the 1978 Water Resources Omnibus Bill.

5/4/78 Anch. News

Dam project closer to realization, Gravel says

By the Associated Press

U.S. Senate approval Wednesday of two amendments to the Waterway Users Bill brings Alaska's proposed Susitna hydroelectric project closer to realization, according to the office of Senator Mike Gravel.

The Alaska Democrat wrote both amendments, which were accepted without a vote. They change the Alaska Hydroelectric Power Development Act of 1976, also written by Gravel. That act originally authorized the Alaska dams.

The project would involve construction of two dams on the Susitna River between Anchorage and Fairbanks. It would have a capacity of 1,500 megawatts and would provide about 60 percent of electricity needs in Alaka's railbelt cities. The project could be completed as early as 1990, Gravel's office reports.

One of Gravel's amendments would allow the Army Corps of Engineers to go ahead with phase one planning work. Under the 1976 act, the Office of Management and Budget was to approve the corps' feasibility studies before phase one work began. But Gravel contends favorable studies of the Alaska project and three others in the lower 48 have been held up by the OMB.

Senate Kills Gravel's Push Of New Canal

By BETTY MILLS
Times Washington Bureau

WASHINGTON — The Senate today defeated, 49-43, an amendment offered by Sen. Mike Gravel, D-Alaska, authorizing a study of the feasibility of a new sea-level Panama Canal.

Gravel offered the amendment to the waterway users bill now being considered by the Senate.

The Alaska Democrat, the leading champion in the Senate of the sea-level canal concept, pointed out that the present canal is obsolete, saying "we're wasting money."

"To not move forward to acquire knowledge is not very foresighted," he added. The amendment would authorize $8 million for the study.

Sen. Pete Domenici, R-N.M., spoke against the amendment, saying the Panama Canal treaties ratified by the Senate provide for a study on the possibility of a new canal.

Alaska Republican Ted Stevens voted against Gravel's amendment.

The amendment was subject only to brief debate, with Gravel, the floor manager of the waterways bill in his capacity as chairman of the water resources subcommittee, telling the Senate that the issue had been discussed extensively during the canal treaties debate.

Gravel brought the amendment up late Tuesday and said, "I know of no objection to but put the issue over for a vote today "because of the recent controversy involved over the treaty."

In other action on the waterways bill, the senate accepted two Gravel amendments which moved the Susitna hydroelectric project closer to realization. One amendment allows the Corps of Engineers to proceed with phase one work on the project, which involves the construction of twin dams on the Susitna River.

When completed, the project would provide some 60 percent of the electricity needs in Alaska's railbelt region.

Also adopted were improvements in the technical language dealing

(See Page 2, Col. 1)

Senate Rejects Bid For New Canal Study

(Continued from Page One)

with financing of the project.

Both amendments were adopted unanimously by voice vote Monday.

The 1976 law authorizing the Susitna project, which was sponsored by Gravel, provided for a preliminary feasibility study by the Corps of Engineers, assessing the project. After a review of the feasibility study by the White House Office of Management and Budget, the corps would proceed to phase one work — design, cost/benefit analysis and final environmental impact statements.

Gravel sponsored the new amendment since the budget office has held up the favorable feasibility study on the Susitna project.

The 1976 law also provided for state bonding to pay for the project, with federal guarantees for phase one work. The state would own the dams, with the corps constructing them as contractors for the state.

The second amendment improved problems in the language of the 1976 law dealing with state bonding and the federal guarantees. They included time limitations on the corps work; necessary congressional appropriations, congressional approval of a corps-state contract; and state bonding.

Gravel believes that state bonding to pay for major water projects will overcome objections to the projects.

"If we're successful in bringing this about in Alaska, it will probably be the way all future hydro projects will be funded," Gravel said.

Also adopted unanimously by the Senate was an amendment offered by Stevens to provide for a Corps of Engineers study of an erosion control project in Bethel. The amendment sparked a brief discourse between Alaska's two senators.

Stevens said the project "is desperately needed to protect the property and lives of the people who live in this growing community in Alaska."

Gravel said the Public Works Committee authorized a similar study last September.

"Let us put it in, and the senator can drop it in conference if it is not needed," Stevens told Gravel.

Gravel responded: "I think my colleague will recognize that I would not want the impression left in Bethel that I was not Johnny-on-the-spot in taking care of their interests."

"We are both Johnnies-on-the-spot. We just want to make sure the corps tells us the same thing," Stevens said.

Gravel replied: "The Public Works Committee has already done this, but if it takes redundancy to get the attention of the corps, I do not mind it."

The Anchorage Times

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CHILKOOT CHARLIE
SEZ

Old-timer: one who remembers when a man did his own withholding on his take-home pay.

THE QUALITY JEWELRY STORE TO SERVE YOU
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YOUR JEWELRY HEADQUARTERS
REMEMBER!!
"If We Can't Repair Your Watch or Jewelry THROW IT AWAY"
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AND GIFTS
Main Store Northern Lights Shopping Center 279-2722
Carl's Benfaco 5520 E. Northern Lights 333-4222
Carl's Golden Lion Hotel 36th & N. Spenard 278-4561 Ext. 271

SJR

54

COMMITTEE REPORT

SENATE

6/1/78

FURTHER: None

Date: 6/2/78

Mr. President:

The Committee on RESOURCES has had SJR 54
exemption of Alaska from section 603 of the BLM Organic Act

under consideration and (a majority of the committee) (the committee reports it back as follows)

(X) recommends it do pass ( ) recommends it do not pass

( ) recommends it do pass with attached amendment(s)

( ) recommends it be replaced with CS for _____

and _____ ( ) new title ( ) same title

( ) AND attaches a Letter of Intent ( ) New Fiscal Note

( ) reports it back without recommendation

( ) and recommends it be referred to the _____ Committee

MEMBERS SIGNING DO PASS:

OTHER RECOMMENDATIONS:

Chairman

S 60 (rev. 6/77)

PHIL R. HOLDSWORTH, P.E.
CONSULTING ENGINEER & LEGISLATIVE COUNSEL
MINING – GEOLOGY – LANDS

PHONE 907-586-1383

326 FOURTH STREET No. 1009
JUNEAU, ALASKA 99801

May 31, 1978

The Honorable Ted Stevens
United States Senate
411 Russell Senate Office Building
Washington, D.C. 20510

Dear Ted:

Enclosed is a copy of my comments on the BLM's draft Wilderness Review Procedures. Am sure you are familiar with Sec. 1307 of H.R. 39 as it moved between House Committees. I believe every effort should be made to see that a similar provision remains in the final bill as it passes the Congress.

As you may know, WGM has been denied a permit to construct an airstrip to serve two very promising deposits north of Kotzebue; one held by General Crude and Houston Oil & Minerals, and the other by Cominco. These deposits are near enough to each other to be served by a common airstrip. They are on 17(d)(1) lands. This action is, in effect, denying the right of reasonable access to develop valid existing mining claims which is guaranteed under the mining laws.

In another case, a supply train with tracked vehicles and sleds moving fuel and other supplies over the snow early this spring, and on an existing mine road along the upper Tok River southeast of Fairbanks, was stopped by BLM in the field. The destination was valid claims staked on state selected lands. In both cases the movement of needed materials by helicopter would be economically prohibitive, considering the advanced stage of development and the distances involved.

It is because of these incidents, and the policies of BLM as applied in the field, even before finalization of their Wilderness Review Procedures and the application of Sec. 603 of FLMPA, that serious consideration should be given to amending FLMPA. The provisions of Sec. 603 should not apply to the remainder of Alaska public lands following the final identification of the National Interest Lands.

Your comments on the above suggestion, and critique of the enclosed statement, would be appreciated.

Sincerely,

Phil R. Holdsworth

Phil R. Holdsworth, P.E.

cc: Senator Poland ✓
Representative Osterback

HB

2

4/27/77

COMMITTEE REPORT

**Finance

SENATE

5/2/77 Date

Mr. President:

The Committee on RESOURCES has had CSHB 2 am authorizing state land to be made available as homesites under consideration. A majority of the members of the Committee

/ / recommends it do pass

/ / recommends it do not pass

/ / recommends it do pass with attached amendment(s)

/X/ recommends it be replaced with CS for CSHB 2 (Res. am) and that CS for CSHB 2 (Resources) do pass

/ / (and) recommends it be referred to the _____ committee

/ / reports it back without recommendation

/ / AND attaches a report of its intent

/ / (other) _____

MEMBERS SIGNING THE MAJORITY REPORT:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

MEMBERS NOT CONCURRING IN THE MAJORITY REPORT:

_____ recommends: _____

_____ recommends: _____

_____ recommends: _____

R. Palmer

Chairman

S 60

Senator John L. Rader

ALASKA STATE SENATE
OFFICE OF THE PRESIDENT
[redacted]

POUCH V
JUNEAU, ALASKA 99901
OR
P.O. BOX 2068
ANCHORAGE, ALASKA 99510

HB2

April 12, 1977

Ms. Arlayne Klein, Coordinator
League of Women Voters of Alaska
S. R. Box 20809
Fairbanks, Alaska 99701

Dear Ms. Klein:

Thank you very much for providing me the position of the League of Women Voters, Land Use Resource Committee, regarding various legislative proposals on homesteading.

Your suggestion regarding very clear language to ascertain actual land use has great merit, and I am confident your letter to the Legislature will be very seriously considered.

Sincerely,

John L. Rader, President
Alaska State Senate

JLR:jm

bcc: Senator Kay Poland

League of Women Voters of Alaska
S.R. Box 20809, Fairbanks, Alaska 99701

April 2, 1977

Senator John Rader
Pouch V
Juneau, Alaska 99811

Dear Senator Rader,

Once again the State Legislature has raised the subject of homesteading in Alaska with House Joint Resolution No. 10 addressing the availability of public land for homesteading and other residential uses. In 1974, many Alaskans regretfully saw the remaing unreserved public lands closed to homesteading with the enactment of Public Land Order 5418. Those people awaiting patents to their lands were granted them, the last being issued in 1976.

Land was brought into residential use with the aid of the Homestead Act. Wilderness areas were settled, as were areas within close proximity to towns. During the past few years, for various reasons, many homesteaders have developed their tracts of land, providing acreage and subdivision areas for the growing state population.

There now exists more than one reason for opening lands as happened under the Homestead Act. The original idea of settling lands and providing families with income and shelter has taken second place to the more prevalent idea of gaining large tracts of land at relatively little cost in order to sell the land at a profit. Individuals seeking homesteading land with such development ideas bend the intent of the law.

When land is again classified and made available for settlement, whether by state or federal agencies, it seems appropriate to take a truthful look at the use of the word "homesteading."

For many, "homesteading" still brings to mind obtaining 160 acres with 20 acres under cultivation, a chance to be self-sufficient and to build a life away from the crowding cities. For others, it still means a tract of land - but with a different slant on the "proving up" of the land. To these, the land is to be held just long enough to subdivide and sell to a willing public at a profitable price.

Since these differing ideas exist, the League of Women Voters of Alaska suggests that terms be used that more accurately reflect

TELEGRAM

ACA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

02 013 NL ANCH AK 50 4-5 1145P AST

PMS SEN POLAND

JUN

THE MEMBERS OF THE SPORTSMAN GAME PRESERVATION ASSOC.

URGES YOU TO VOTE FOR THE APPROVAL OF BILL HB20

INTRODUCED BY RED SWANSPON TO BAN THE KILLING OF FEMALE MOOSE

DON RAMSEY PRESIDENT

SPORTSMAN GAME PRESERVATION ASSOC.

BOX 427 EAGLE RIVER AK

the actual use intended for the land. We believe that realistic classifications of intended use - residential, commercial, park, industrial or whatever, will help foster a better understanding of how lands can be, and are being, used in Alaska.

Yours truly,

Arlayne Klein

Land Use Resource Committee
League of Women Voters of Alaska
Arlayne Klein, Coordinator

HB-2

LA21 3622 17.32 04/25/77 JA01 0001 07.40 04/26/77

TO: CINDY, JNU
FROM: APRIL, FBX

PLEASE DELIVER THE FOLLOWING MESSAGE:

TO: ALL LEGISLATORS
FROM: BOB BRILEY, P.O. BOX 2335, FBKS, AK 99707

DEAR LEGISLATOR,
IN REGARDS TO HB 359, I AM FOR THE MOST PART OF THIS BILL. BUT SECTION 38.05. 430 AS A PERSON WHO HAS TO BE IN THE STATE FOR THREE CONSECUTIVE YEARS I COULD NOT BE FOR THIS BUT WOULD BE IN THE PLACE OF THIS ANYONE THAT HAD BEEN IN THE STATE FOR OVER A YEAR AND HAD LIVED HERE PREVIOUSLY FROM TWO TO FIVE YEARS OR MORE SHOULD BE IN MY EYES ABLE TO HOMESTEAD UNDER THIS ACT. I CAME TO ALASKA TO LIVE IT THE FALL OF 1968 AND WAS HERE UNTIL JUNE OF 1974 AND WENT OUT FOR ONE YEAR AND THEN RETURNED TO LIVE THE REST OF MY LIFE IN ALASKA. I AM AN ALASKAN THAT FEELS THAT I SHOULD NOT BE DEPRIVED OF THE RIGHT TO HOMESTEAD. I HAVE BEEN BACK OVER A YEAR AND A HALF IN ALASKA AT THIS TIME. AND LIKE I SAID PREVIOUSLY, I PLAN TO STAY FOR THE REST OF MY LIFE. IF IT HAD THIS IN IT I WOULD LIKE TO SEE IT ON THE BALLOT SO THE PEOPLE COULD VOTE IT IT AND I'M SURE IT WOULD GET VOTED IN.
SINCERELY,
/S/ BOB BRILEY BOM

PLEASE ACK WHEN MESSAGE DELIVERED. THANKS. /A/ BOM

HB

54

COMMITTEE REPORT

SENATE

FURTHER: None

5/19/78

Date: 5/24/78

Mr. President:

The Committee on RESOURCES has had 3rd CSHB 54 administration of state land

under consideration and (a majority of the committee) (the committee reports it back as follows)

(X) recommends it do pass ( ) recommends it do not pass

( ) recommends it do pass with attached amendment(s)

( ) recommends it be replaced with CS for _____

and _____ ( ) new title ( ) same title

( ) AND attaches a Letter of Intent ( ) New Fiscal Note

( ) reports it back without recommendation

( ) and recommends it be referred to the _____ Committee

MEMBERS SIGNING DO PASS:

OTHER RECOMMENDATIONS:

AGO 546624

K. Poland

Chairman

Do Pass

S 60 (rev. 6/77)

Kay desk

Alaska State Legislature

House of Representatives

Office of the Majority Leader

Pouch V
State Capitol
Juneau, Alaska 99811

Official Business

June 1, 1978

M E M O R A N D U M

TO: Kay Poland
FROM: Mike Miller

Kay--

This is a follow up to our brief conversation yesterday in which I indicated that there was a fiscal impact which should be considered in conjunction with House Bill 54.

The fiscal impact represents a net revenue gain. When the bill passes, it will be necessary to hire three full-time and one part-time employee at a cost of $130,000. Please note however, thai the stumpage sales would generate $300,000 in direct revenue to the state plus $600,000 worth of improvements (mostly in new road construction).

AGO 546625

THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. 2d CS, HB 54
Title An Act relating to State land and providing an effective date
Requested by Representative Mike Miller Date May 30, 1978

II. FISCAL DETAIL
Agency Affected Natural Resources
Program Category Affected NREC
Budget Request Unit(s) Affected Division of Land and Water Mgmt., Southeast District

EXPENDITURES (Thousands of Dollars)

		FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
100	PERSONAL SERVICES		95.407	100.178	105.187	110.446	
200	TRAVEL		15.000	15.000	16.500	18.000	
300	CONTRACTUAL		16.800	21.800	25.070	28.830	
400	COMMODITIES		1.000	1.000	1.150	1.325	
500	EQUIPMENT		2.000	2.000	4.000	2.000	
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL		130.207	139.978	151.907	160.601	

FUNDING (Thousands of Dollars)

GENERAL FUND		130.207	139.978	151.907	160.601	
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

FULL TIME		3	3	3	3	
PART TIME		1	1	1	1	
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

It is anticipated that 2d CS, HB 54 will directly affect the timber sales program for the Haines-Skagway area.

Currently the Haines forestry program is understaffed which has made it impossible for the State to achieve its allowable cut objectives as well as adequately prepare and administer timber sales to minimize adverse economic and environmental impacts. Due to inadequate staff, past timber harvests were conducted with a minimum of road and sale layout preparation, resulting in environmental degradation and poorly planned and designed road systems and harvest units.

Sale access is considered among the most difficult in Southeast Alaska, necessitating a greater effort to locate and design transportation routes to optimize transportation benefits to the State and reduce adverse environmental affects. Remote, unroaded sale locations of future harvests as well as (continued)

IV. DATE May 30, 1978 PREPARED BY William J. Zufelt
AGENCY Division of Land & Water Mgmt.
PHONE 465-2419

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

AGO 546626

the necessity of harvesting in small scattered cuts to minimize environmental impacts, requires a large team effort to design and locate numerous miles of new access road as well as numerous individual cutting units, to achieve the allowable cut and environmental objectives.

Currently there are two permanent forester positions and one seasonal forestry technician position in Haines. This fiscal note adds three permanent forester positions and 1 temporary forestry technician position. These positions will permit preparation and sale of an estimated 15 million board feet of timber annually which will result in an estimated $600,000 of improvements (mostly new road construction) and $300,000 of direct revenue to the State, as opposed to a total estimated expenditure of $230,000 ($100,000 presently). In addition, there are economic benefits to the Haines community through direct employment and trade in the woods products industry as well as the indirect economic benefits of support services.

HB
133

COMMITTEE REPORT

SENATE

FURTHER: COMMUNITY & REGIONAL AFFAIRS AND FINANCE

Date: 4/6/78

Mr. President:

The Committee on S.SCR 25 has had CSHB 163 (Fin) and selection and transfer of state land to municipalities under consideration and (a majority of the committee) (the committee reports it back as follows)

( ) recommends it do pass ( ) recommends it do not pass

( ) recommends it do pass with attached amendment(s)

( ) recommends it be replaced with CS for _____

and _____ ( ) new title ( ) same title

( ) AND attaches a Letter of Intent ( ) New Fiscal Note

( ) reports it back without recommendation

( ) and recommends it be referred to the _____ Committee

MEMBERS SIGNING DO PASS:

OTHER RECOMMENDATIONS:

Chairman

S 60 (rev. 6/77)

from being taken away from its owners by the force of its invasion.[36] This being the case, property acquired by the exercise of eminent domain power and strictly devoted to the authorized purpose for which it was condemned can be taken away from the first taker by another who has been adequately armed by the legislature with eminent domain power to do so,[37] and, likewise, it is possible to take property received through grant or franchise from the government and used in fulfillment of its public purpose obligations,[38] and property voluntarily devoted to public use or purpose.[39] All must submit to acquisition through the exercise of the power of eminent domain, upon the principle of the prerogative power of sovereignty. If this were not so, it has been said by a learned judge, "great public improvements rendered necessary by the increasing wants of society in the development of civilization and the progress of the arts might be prevented".[40]

However, the "due process" clause of the federal and state constitutions enunciates another principle in behalf of the individual property owner, and, when it has come in conflict with the principle of the prerogative of sovereign eminent domain, the latter sometimes has had to give way. It has been held that eminent domain power cannot be employed to take property by the kind of undue process of law whose description has found expression in the classical example of "taking the property from *A* to convey it to *B*".[41] The fact that the taking has behind it the prestige and power of eminent domain, and that the property is to be paid for by ample compensation, has not been allowed to impair the integrity and applicability of this ancient example. In an early case before the Supreme Court of the United States, Mr. Justice Story said:

[36] See the list of cases in 20 C. J. 599, n. 77 (1920).

[37] New York, etc., R. R. v. Boston, etc., R. R., *supra* note 35.

[38] COOLEY, CONSTITUTIONAL LIMITATIONS (6th ed. 1890) 337.

[39] Starr Burying Ground Ass'n v. North Lane Cem. Ass'n, 77 Conn. 83, 58 Atl. 467 (1904). This does not include certain dedicated property devoted to public use under trust conditions previously referred to in this article.

[40] Bigelow, J., in Central Bridge Corporation v. Lowell, *supra* note 8, at 482.

[41] West River Bridge Co. v. Dix, *supra* note 35, at 537.

> "Although the sovereign power in free government may appropriate all the property, public as well as private, for public use, making compensation therefor, yet it has never been understood, at least never in our Republic, that the sovereign power can take the private property of A and give it to B by the right of eminent domain."[42]

Mr. Justice Story's statement, made in 1837, very well expresses what should be the correct rule today.[43] The word "private" refers to ownership and not to use, so that if *A*, as an individual or corporation, is devoting his or its property to a public use, it would still be "private property" under the relations which we are discussing.[44] Under the above rule it could not be taken away from *A* merely in order to give it to *B*, and it has been held that this could not be done even though *B* was attempting to acquire it by eminent domain power for a recognized public use or purpose, which was the same use or purpose to which *A* had been devoting the property.[45] This would amount to nothing more than the compulsory change of hands in the property and would result in eminent domain power's taking it from *A* merely in order to give it to *B*.[46] Property in public use cannot be taken to be used for the same purpose and in the same manner.[47] This being a constitutional prohibition, under the due process clause, it is not only a prohibition on the one to whom the power of eminent domain has been delegated by the legislature, but it is a restriction upon the legislature itself, and any law authorizing generally or specifically such a taking is unconstitutional and should so be held.[48]

[42] Charles River Bridge v. Warren Bridge, *supra* note 35, at 642.

[43] 2 Lewis, *op. cit. supra* note 9, § 440.

[44] Lake Shore and Mich. So. Ry. v. Chicago & Western Ind. R. R., 97 Ill. 506 (1881); West River Bridge Co. v. Dix, *supra* note 35.

[45] Lake Shore & Mich. So. Ry. v. Chicago & Western Ind. R. R., *supra* note 44.

[46] Suburban R. R. v. Metropolitan West Side El. R. R., 193 Ill. 217, 61 N. E. 1020 (1901).

[47] See cases cited *infra* note 48.

[48] West River Bridge Co. v. Dix, *supra* note 35; Starr Burying Ground Ass'n v. [illegible] Cem. Ass'n, *supra* note 39; Marsh Min. Co. v. Inland Empire Min. [illegible], 30 Idaho [illegible], 165 Pac. 1128 (1916); Suburban R. R. v. Metropolitan West Side El. R. R., *supra* note 46; St. Louis, etc., R. R. v. Belleville City Ry., 158 Ill. 390, 41 N. E. 916 (1895); Chicago West Div. Ry. v. Metropolitan West Side El. R. R., 152 Ill. 519, 38 N. E. 736 (1894); Chicago & N.

COLE, HARTIG, RHODES, NORMAN & MAHONEY
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
SUITE 201
717 K STREET
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HOYT M. COLE
ROBERT L. HARTIG
JAMES D. RHODES
JOHN K. NORMAN
ROBERT J. MAHONEY
BERNARD J. DOUGHERTY
MICHAEL W. SHARON
G. RODNEY KLEEDEHN
J. MICHAEL ROBBINS
ROGER H. BEATY
STEPHEN D. ROUTH
WEV W. SHEA

OF COUNSEL:
G. KENT EDWARDS

KODIAK OFFICE:
KODIAK PLAZA, BOX 503
KODIAK, ALASKA 99615
(907) 486-3143
(907) 486-3144

April 13, 1978

REPLY TO: Anchorage

Honorable Kay Poland
Chairman, Senate Resources Committee
Pouch V
Juneau, AK 99811

Re: CSHB 133 (Finance)am
Our File 101-28

Dear Kay:

Enclosed is a copy of the amendments and additions to CSHB 133 (Finance)am, which were approved by a working group which met last week, pursuant to your suggestion.

Present at the meeting, in addition to myself, were:

Jim Nordale, representing the Fairbanks North Star Borough

Donald Thomas, representing the Kenai Peninsula Borough

Donald Gilman, Mayor of the Kenai Peninsula Borough

Kim A. Hutchinson, representing the North Slope Borough

Lee Sharp, representing the City and Borough of Juneau

George E. Gee, representing the Ketchikan Borough

Wesley Howe, representing the Mat-Su Borough

Ted Berns, representing the Municipality of Anchorage

Dale P. Tubbs, representing the Kodiak Island Borough

In addition, Ted Berns, Dale Tubbs and I met pursuant to the direction of the group to draft the necessary language to accommodate the unique problems of Kodiak and Anchorage. Essentially, the group sought to use the draft of the bill as it passed from the House Finance Committee with the exception of certain amendments which were added on the House floor.

Also enclosed is a copy of the letter sent to all of the individuals who were in attendance at the working group meeting. A copy of this letter has also been provided to Mike Smith, Director, Division of Lands.

It is my understanding that Dale Tubbs and I will be meeting informally with you on Tuesday, April 18th, and I plan to present testimony on this bill during the hearing on the 19th.

We have not retyped the entire bill, as it is our understanding that the Legislative Affairs Agency discourages this practice and that it is already on mag cards.

I look forward to discussing these changes with you next week.

Yours truly,

COLE, HARTIG, RHODES,
NORMAN & MAHONEY
Counsel for Kodiak Island Borough

By: Bob
Robert L. Hartig

RLH:kh

Enclosures

cc: Client

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

323 E. 4TH AVENUE – ANCHORAGE 99501

April 14, 1978

The Honorable Kay Poland, Chairman
Senate Resources Committee
Pouch V
Juneau, AK 99811

Re: Municipal Land Selection Regulations

Dear Senator Poland:

As you know, despite agreement last year by the State and almost all municipalities concerning the municipal land selection question, manifested originally in CSHB 133, that legislation has had a very checkered and sporadic history. Because settlement of this issue is of critical importance to both the State and the municipalities with respect to future land and resource management, particularly land disposals, both the State and the municipalities are concerned that the issue be settled in the very near future. While we would still prefer that appropriate legislation be enacted, the State is looking at the alternative of individual settlements with each municipality under existing law to address this matter if legislation presently before the Senate Resources Committee is not adopted this session.

Attached is a copy of draft regulations, as sent to each municipality, which would serve as the basis for any such settlements. These regulations will be needed whether or not the present legislation is enacted and, as discussed in the attached cover letter to each municipality, we are requesting a review of these regulations at this time to ensure that they meet with municipal approval and can serve as the basis for individual settlements should pending legislation not be enacted.

If you have any questions concerning these regulations, please do not hesitate to ask.

Sincerely,

Michael C. T. Smith
Assistant Commissioner

Enclosures

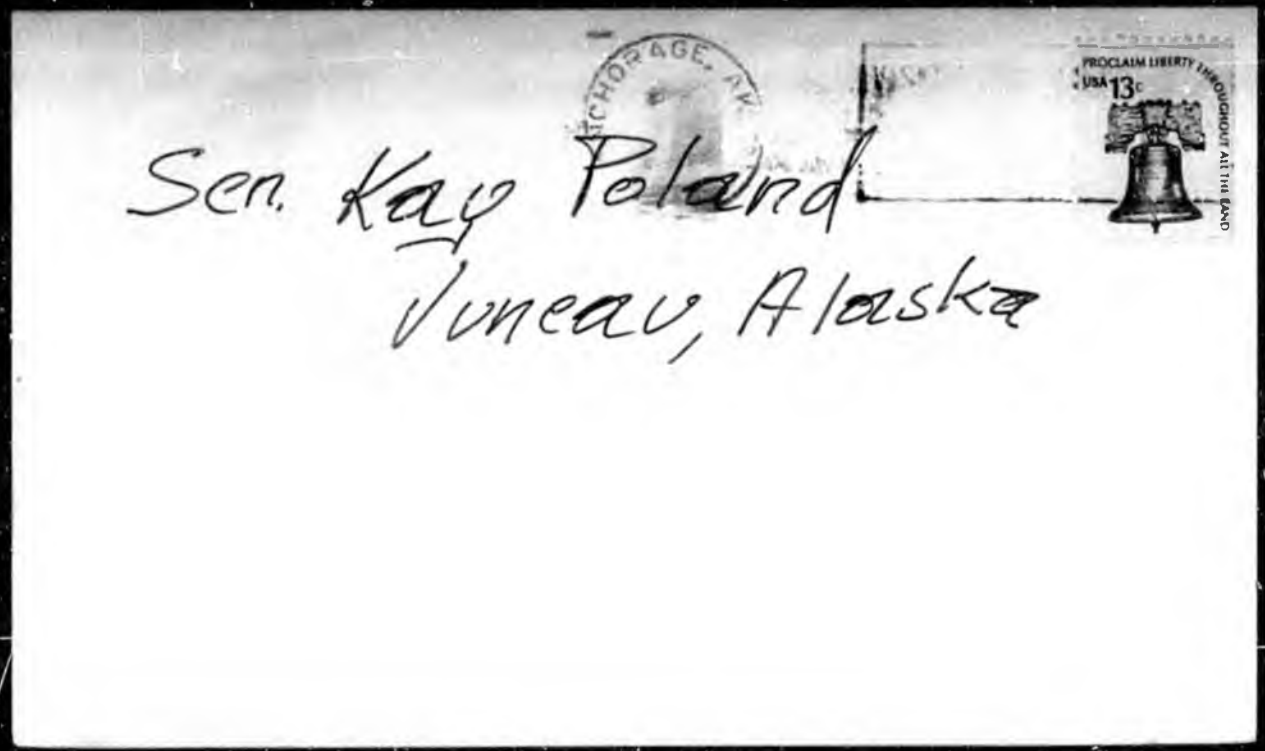
Sen. Kay Poland

Juneau, Alaska

Please don't let
any more land
be given to Boroughs.
We are poor now,
we don't want to
pay any taxes to
Boroughs, or let
them tie it up.

Bobby Yako

Sleetmute Alk
99668



Sen. Kay Poland

Juneau, Alaska

As you and I know we are ruled by to many laws.
I am not in favor in any Bourougins recieving any more land. They only want to control the land, tax it, and only the rich get it.

Mauri Elving
Sleetmute, Ak
99668

From The Desk Of:

Michael C. T. Smith 9/9/77

KAY,

BOB HARTIG IS RIGHTFULLY CONCERNED ABOUT KODIAK'S PROBLEMS WITH ANCSA IMPLEMENTATION. I'VE SUGGESTED THAT WE WORK WITH YOU TO EXPLAIN SOME OF THOSE PROBLEMS MORE SPECIFICALLY AS THEY RELATE TO THE MUNICIPAL LAND EXCHANGE LEGISLATION NOW IN THE LEGISLATURE. IT'S JUST THE CRITICAL POINT THAT WE GET THE MATTER SETTLED DURING THE COMING SESSION.

IF I CAN HELP, PLEASE LET ME KNOW.

Mike

Director, Alaska Division Of Lands

10-J2LH

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER / 323 E. 4TH AVENUE – ANCHORAGE 99501

September 12, 1977

Mr. Robert L. Hartig
Cole, Hartig, Rhodes, Norman and Mahoney
Suite 201
717 "K" Street
Anchorage, Alaska 99501

Dear Bob:

I enjoyed the opportunity last week to discuss with you the problems and conflicts of land ownership within the Kodiak Island Borough. Following that conversation I thought it appropriate to reiterate the Department of Natural Resources's view of its role with respect to those conflicts.

We are very much aware of the problems resulting from conflicts between the existing municipal land selection statute and implementation of the Alaska Native Claims Settlement Act. On several occasions we have discussed these problems at length with members of the Borough Administration, the Assembly, and various Native and non-Native members of the public. Kodiak's land problems are among the most difficult in Alaska with respect to the implementation of ANCSA.

As you know, Section 11(a)(2) of the Act permits a Native village corporation to select up to three townships of state-selected or tentatively-approved lands. With respect to such Native 11(a)(2) Selections, lands selected by, approved to, or patented to the Kodiak Borough by the State will continue to be defended by the State as we believe these interests supercede ANCSA. Specifically, lands to which the State of Alaska holds tentative approval or patent from the federal government, and which have been approved to or patented to the Borough, will be defended by the State as valid existing rights in any attempted transfer by the United States to a Native corporation under ANCSA. The State has not yet appealed a BLM decision to convey lands which have only been selected by the State.

As you know, one of the major obstacles faced by most municipalities with respect to the implementation of the Claims Act is a final determination of exactly what each municipality's land selection entitlement is under the existing municipal selection law (AS 29.18.190). As we

discussed, the Administration made a very determined effort last year, in close coordination with five of the major boroughs, including Kodiak, to secure legislation which would establish those final entitlements statewide. However, it did not pass the Legislature. We intend to push equally hard this session for similar legislation. With your [illegible] representing the Borough I am sure their interests will [illegible] taken into consideration as they were last year. Concerning the legislation, I believe it would be appropriate for yourself and/or others in the Borough Administration or with the Assembly to work closely with Senator Kay Poland on this matter. As chairman of the Senate Resources Committee, Senator Poland is in an excellent position to insure that the legislation is acted upon this session, and to represent Kodiak's unique needs.

Regarding your question concerning land exchanges, the State is very willing to consider exchanges which will simplify the land ownership problems within the Borough. If the Borough and/or Native corporations are considering a specific exchange, we would be very happy to participate at an early time. One of the problems with land exchanges at this time is that ownership to a considerable amount of land within the Borough is still not settled, therefore, exchanges may be very difficult until clear ownership is established. One of the biggest unknowns affecting this question will be settled when the Washington, D. C. circuit court rules on the "Eleven-Village Eligibility Case." At that time, the issue of the eligibility of several Kodiak villages will be substantially clarified. That decision could come at any time.

I look forward to working with you during the coming session on the municipal land exchange legislation and hope that its passage will substantially alleviate many of the problems faced by the Borough today.

Sincerely,

MICHAEL C. T. SMITH
Assistant Commissioner

bcc: Senator Kay Poland
Tom Meacham
Ron Swanson
Ted Smith
Larry Dutton
Michael Whitehead
Bob LeResche

TELECON W/ BOB HARTIG
(9/1/77 @ 1115 HRS.)

BOB WILL REPRESENT KODIAK THIS YEAR

WOULD PREFER:

① STATE PAY KODIAK FOR LOSS OF ENTITLEMENT

② " GIVE OTHER LANDS

Will write a letter to Bob requesting that we resurvey the Cafeteria

- Bryant on payroll for legislative consultation
- Can't keep up the speed
- Land Exchanges possible.
- We'll support title ~~bill~~ WE'VE passed to Bob

File
Gov's Letter

August 19, 1977

Mr. Robert L. Hartig
Cole, Hartig, Rhodes,
Norman and Mahoney
Suite 201
717 "K" Street
Anchorage, Alaska 99501

Dear Mr. Hartig:

Thank you for your letter of July 19 outlining the Kodiak Borough's desire to protect its land interests while minimizing conflict with Native selections under ANCSA. I am aware of the problems and conflicts you cited and am pleased to hear of the Borough's interest in expediting conveyances under the claims act.

The State, as in the past, is very willing to do anything it can to assist in solving these knotty problems. As you know, in response to requests from the Kodiak Borough, and Koniag, Inc., the Division of Lands spent considerable time this winter preparing detailed land status maps of Kodiak Island. Representatives from the Division of Lands, as well as the Department of Community and Regional Affairs and the Department of Fish and Game also attended the excellent workshop discussions sponsored by the Kodiak Borough Assembly in March.

I have asked Assistant Commissioner of Natural Resources Mike Smith to contact you directly concerning the meeting you request, and for any other followup which may be appropriate. If you feel that representation from other state departments would facilitate in solving the problems you mentioned, please feel free to contact them directly.

Sincerely,

Jay S. Hammond
Governor

cc: The Honorable Ted Stevens
The Honorable Mike Gravel
The Honorable Don Young

274-3576

bcc: Commissioner LeResche
Mike Smith
Kevin Waring
NATURAL RESOURCES/LANDS/REL/cb

COLE, HARTIG, RHODES,
NORMAN & MAHONEY
A PROFESSIONAL CORPORATION
717 K STREET, SUITE 201
ANCHORAGE, AK 99501

DEPT OF LAW
AUG 17 1977
STATE OF ALASKA

Memorandum
LETTER

The Honorable Jay S. Hammond
Governor of Alaska
MacKay Building
338 Denali
Anchorage, AK 99501

DATE August 3, 1977

SUBJECT Conflicts in Land Selection
Kodiak Island Borough
Our Reference 101-30

MESSAGE: Enclosed is a copy of a letter mailed today by our office to the mayor of the Kodiak Island Borough regarding the subject matter.

COLE, HARTIG, RHODES,
NORMAN & MAHONEY

BY Robert L. Hartig

ANCHORAGE:
HOYT M. COLE
ROBERT L. HARTIG
JAMES D. RHODES
JOHN K. NORMAN
ROBERT J. MAHONEY
BERNARD J. DOUGHERTY

G. RODNEY KLEEDEHN
J. MICHAEL ROBBINS
ROGER H. BEATY
STEPHEN D. ROUTH

KODIAK:
MICHAEL W. SHARON

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(907) 274-3576

KODIAK OFFICE:
KODIAK PLAZA, BOX 503
KODIAK, ALASKA 99615
(907) 486-3141
(907) 486-3144

August 3, 1977

REPLY TO: Anchorage

The Honorable Wayne Kotula
Mayor, Kodiak Island Borough
P. O. Box 1246
Kodiak, AK 99615

Re: Conflicts in Land Selections
Kodiak Island Borough
Our Reference 101-30

Dear Mayor Kotula:

The purpose of this letter is to provide you and the Borough Assembly members a status report of the problems surrounding the land selections made by the borough and the native corporations, in preparation for the forthcoming meetings by the assembly persons with our congressional leaders and state officials.

Pursuant to Alaska Statute 29.18.190, which permits the boroughs the right to select ten per cent of the vacant, unappropriated, unreserved state land located within their boundaries, the Kodiak Island Borough has selected some 36,000 acres of land. Of that 36,000 acres of land, approximately 2,000 acres have been patented to the borough, some 7,000 acres have been approved for selection by the borough*, and approximately 27,000 acres have not received any adjudication by the state. It should be noted, however, that the individual native corporations, pursuant to the Alaska Native Claims Settlement Act, have also selected a majority of the same land, and have voiced their opposition to some of the patent grants to the borough made by the state. It should also be noted that, according to the maps prepared by the Division of Lands for the state, there exist approximately 150,000 acres of state land* within the Kodiak Island Borough which, under present state law, would permit the borough to select, at the present time, approximately 45,000 acres of land.

*probably means have been approved for patent by the state
* "vacant, unappropriated, unreserved" land

As implementation of the Alaska Native Claims Settlement Act proceeds, conflicts between the borough and the native corporations have developed in regard to land selections. Specifically, as a result of the ability of the native groups to select tentatively approved state lands, the amount of state land which would be available for selection by the borough is drastically reduced, and the ten per cent entitlement is lessened. As an example, under present circumstances with state ownership of some 450,000 acres of land, the Kodiak Island Borough would be permitted to select an additional 9,000 acres of land; however, under the freeze imposed by the Alaska Native Claims Settlement Act, it is questionable whether this 9,000 acres of land could be selected. In addition, as adjudication proceeds with regard to the native corporations and the Bureau of Land Management proceeds to "vacate" tentatively approved state lands, the 450,000 acres of state land continues to be reduced, thus reducing the ten per cent entitlement.

NOT IF THE 10% ATTACHES AT THE POINT OF "WITHDRAWAL" MAX. LAND ALLOWED IN THE ADMIN. BILL.

Also, the borough cannot take comfort in the fact that their land selections were made prior to the passage of the Settlement Act. In that regard, and, while borough selections for the Monashka watershed were made in October of 1967, and both the borough and city governments have expended considerable time and money in the planned development of that watershed, the Bureau of Land Management, in its proposed order dated May 6, 1977, stated that those lands would be conveyed to the village of Ouzinkie in the near future. It can thus be expected that there will be continued confrontation with the native groups with regard to the selected lands.

Recent oversight hearings were held in Washington, D.C., by Congressman Sieberling in an effort to determine the causes for delay in transferring land entitlements to the natives under the Alaska Native Claims Settlement Act. On behalf of the Kodiak Island Borough, I filed a statement before that committee, outlining the predicament that we face with regard to possible delays; i.e., that, in order to protect its interests, the borough is required to file appeals in most of the land selection decisions and would be required to file subsequent actions in the courts, appealing those decisions which it felt did not conform to the law. As a result, it could be expected that land entitlements would be delayed for several years.

Following the meeting of the borough assembly this past month, and their direction to me to attempt a meeting of our congressional leaders and the governor, I contacted their respective offices in Anchorage and mailed a letter to them, outlining the problems.

In your discussion with these leaders, it might be helpful to review the possibility of obtaining additional federal lands for native or borough selections and to inquire of the state whether or not they would support legislation such as was considered in the first session of the Tenth State Legislature (CSSB 241) which sought to compensate municipal governments for the lands which were selected but not granted, or for lands which were not available for selection as a result of the claims act. As you are aware, that particular legislation did not receive favorable action during the first session, but, hopefully, will be again considered in the second session of the legislature.

YES WE SUPPORT THE BILL.

If you have any questions concerning these matters, please do not hesitate to call or write.

Yours truly,

COLE, HARTIG, RHODES,
NORMAN & MAHONEY

By: Robert L. Hartig
Robert L. Hartig

RLH:kh

Form 01-006

STATE OF ALASKA
OFFICE OF THE GOVERNOR

TO: Department of

- [ ] Administration
- [ ] Commerce & Econ. Develop.
- [ ] Community & Regional Aff.
- [ ] Education
- [ ] Env. Conservation
- [ ] Fish and Game
- [ ] Health & Social Svcs.
- [ ] Highways
- [ ] Labor
- [ ] Law
- [ ] Military Affairs
- [ ] Natural Resources
- [ ] Public Safety
- [ ] Public Works
- [ ] Revenue

ATTN: Comm. LeResche

- [ ] Return letter w/draft final
- [ ] Return letter w/comment
- [ ] Reply direct
- [ ] Your information
- [ ] Call me
- [ ] Appropriate action
- [ ] As requested
- [ ] _____

REMARKS:

RECEIVED
JUL 27 1977
Department of
Natural Resources

From: _____ Date: 7/25

DEPARTMENT OF NATURAL RESOURCES
10-002
(12-23-70)
INTRA-DEPARTMENT ROUTE SLIP

TO: DIV/SEC: _____ LOCATION: _____

ATTN: _____

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:

RECEIVED
JUL 28 1977
Division of
Dept. of
Natural Resources

FROM: _____ DATE: 7/27
BY: _____
DIV/SEC: _____ LOCATION: _____

ANCHORAGE:
HOYT M. COLE
ROBERT L. HARTIG
JAMES D. RHODES
JOHN K. NORMAN
ROBERT J. MAHONEY
BERNARD J. DOUGHERTY

G. RODNEY KLEEDEHN
J. MICHAEL ROBBINS
ROGER H. DEATY
STEPHEN D. ROUTH

KODIAK:
MICHAEL W. SHARON

COLE, HARTIG, RHODES, NORMAN & MAHONEY
A PROFESSIONAL CORPORATION
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SUITE 201
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ANCHORAGE, ALASKA 99501
(907) 274-3576

KODIAK OFFICE:
KODIAK PLAZA, BOX 503
KODIAK, ALASKA 99615
(907) 486-3143
(907) 486-3144

response
cc: Ted S

July 19, 1977

REPLY TO: Anchorage

The Honorable Jay S. Hammond
Governor of Alaska
MacKay Building
338 Denali
Anchorage, AK 99501

Re: Conflicts in Land Selections Kodiak Island Borough
Our Reference 101-30

Dear Governor Hammond:

As implementation of the Alaska Native Claims Settlement Act progresses, numerous conflicts regarding land selections by the native corporations and the Borough of Kodiak have developed. As a result, the borough, in an effort to protect its interests, has been forced to file protests with regard to certain village land selections which cover the same lands previously selected by the borough. In addition, as the Bureau of Land Management makes its findings for the village corporations with regard to these selections, the borough is forced to file administrative appeals and to further consider legal action in the event the appeals are not successful.

Several meetings of the borough assembly and the city council have been held in an effort to resolve the land conflicts problem and in an effort to prevent direct confrontation between the native groups and the local governments. A resolution passed by the Kodiak Island Borough this past week, in addition to recommending other actions, has requested that an early meeting be established between a representative of the borough, the Alaska congressional leaders, the Governor of Alaska and representatives of the individual native corporations, in order to review the land selection conflicts towards a view to attempting to resolve them in an amicable manner. In the past, the borough and city have attempted to work with the native corporations, in an effort to assist, at an early date, the transfer of lands

to them under the settlement act. But as a result of the need to protect their own interests, they have been placed into a position which has resulted, and may continue to result, in delays in the transfer of the lands to which they are entitled.

On behalf of the Borough and City of Kodiak, I would appreciate it if you would review the matter of the land conflicts within the Kodiak Island Borough and be willing to meet with the other representative groups at an early date to attempt resolution of these problems.

Yours truly,

COLE, HARTIG, RHODES,
NORMAN & MAHONEY

By: Robert L. Hartig
Robert L. Hartig

RLH:kjb

cc: Senator Ted Stevens
Senator Mike Gravel
Congressman Don Young

COLE, HARTIG, RHODES
NORMAN & MAHONEY
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
717 K STREET, SUITE 201
ANCHORAGE, ALASKA 99501

James Wickersham

The Honorable Jay S Hammond
Governor of Alaska
MacKay Building
338 Denali
Anchorage, AK 99501

Mr. Robert L. Hartig

Cole, Hartig, Rhodes, Norman & Mahoney

Suite 201

717 K Street

Anchorage, AK 99501

Dear Mr. Hartig:

Thank you for your letter of July 19 outlining the Kodiak Borough's desire to protect its land interests while minimizing conflict with Native selections under ANCSA. I am aware of the problems and conflicts you cited and am pleased to hear of the Borough's interest in expediting conveyances under the claims act.

The State, as in the past, is very willing to do anything it can to assist in solving these knotty problems. As you know, in response to requests from the Kodiak Borough, and Koniag, Inc., the Division of Lands spent considerable time this winter preparing detailed land status maps of Kodiak Island. Representatives from the Division of Lands, as well as the Department of Community and Regional Affairs and the Department of Fish and Game also attended the excellent workshop discussions sponsored by the Kodiak Borough Assembly in March.

I have asked Assistant Commissioner of Natural Resources Mike Smith to contact you directly concerning the meeting you request, and for any other followup which may be appropriate. If you feel that representation from other state departments would facilitate in solving the problems you mentioned, please feel free to contact them directly.

Sincerely,

JAY S. HAMMOND

Governor

cc: Honorable Ted Stevens

Honorable Mike Gravel

bcc: Bob LeResche

Mike Smith

Kevin Waring - CRA/Juneau

CITY OF SKAGWAY

GATEWAY TO THE GOLD RUSH OF "98"

P. O. BOX 415 SKAGWAY, ALASKA 99840

April 4, 1978

Senator Kay Poland, Chairman
Senate Resource Committee
Pouch V Mail Stop 3100
Juneau, Alaska 99811

Dear Senator Poland:

The subjects here are proposed legislation concerning selection and transfer of State land to municipalities - S.B. No. 241 and C.S. for H.B. No. 133 - and H.B. No. 886 - State Aid for Municipal Capitol Improvements. The Common Council of the City of Skagway submits for consideration the following comments and recommendations on these pieces of legislation:

S.B. No. 241, Sec. 29.18.202 states "---For purposes of determination of entitlement, the boundaries of each municipality are those which existed on the initial date of eligibility under former Secs. 190 - 220."

The boundaries of the City of Skagway on the "initial date of eligibility" were established early in the century and do not encompass any significant amount of vacant, unappropriated, unreserved general grant land, 10% of which might be transferred to the City. Although the City has recently extended its boundaries through annexation, the new municipal limits include very little land that is suitable for development by the City. Even if transfer were permitted, there is a dearth of developable land in the Skagway area. There are some State and Federal lands, tentatively allocated for State selection, adjacent to the City which, subject to future annexation, could be selected by and transferred to the City and, subsequently, developed by the City or sold or leased to private enterprise. It is the City's view that this course of action offers the most practicable means of resolving the land shortage problem yet it appears that S.B. 241 will preclude this approach.

The C.S. for H.B. 133 contains much of the same material and, more specifically, limits the land entitlements or payments in lieu thereof to several boroughs and the Municipality of Anchorage. Is the omission of consideration of the land needs of other municipalities, such as Skagway for example, an oversight or is it the intent of the legislation?

H.B. No. 886: The City Council supports this legislation.

It is suggested that, as presently drafted, S.B. 211 and C.S. for H.B. 133 do not fulfill their Statements of Purpose and it is recommended that these two pieces of legislation be reviewed and revised so as to include equitable consideration of the needs for land or in lieu payments for all of the municipalities in Alaska.

Sincerely,

G.D. Acker
City Manager

cc: Senator Bill Ray
Representative Mike Miller
Representative Jim Duncan
DCRA - Pritchard
City Attorney - Ruddy
Senate DCRA Committee- J. Orsini

GDAcp

Matanuska-Susitna Borough, Inc.

BOX B, PALMER, ALASKA 99645 • PHONE 745-3246

DEPARTMENT OF ADMINISTRATION

March 29, 1978

The Honorable Kay Poland, Chairman
Senate Resources Committee
Pouch V
Juneau, Alaska 99811

Dear Senator Poland:

Subject: CSHB 133--Municipal Land Selections

This Borough favors the enactment of the subject bill, but, with the restoration of subsection (g) which was deleted by the House. This section sets forth criteria to be used by the State in determining whether municipal selections are primarily of State concern. These provisions and other provisions of that section protect municipalities from arbitrary denial of selections by the State.

We also favor restoration of that section because it appears that the bill would not have much chance of passage without it, since without the section the bill will logically be opposed by the State administration.

We urge that section (g) be restored to the bill and that it be reported favorably by the Senate Resources Committee.

Very truly yours,

Wesley M. Howe

Wesley M. Howe
Borough Manager

WMH:er

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

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

April 19, 1978

Honorable Clem Tillion
Alaska Senate
Pouch "V"
Juneau, Alaska 99811

Dear Senator Tillion:

This letter is in response to your request for information about the number of acres of land the State of Alaska owns within the municipality of Anchorage which could be made available to fulfill Anchorage's municipal land entitlement of 20,865 acres.

The figures below, for lands to which the State presently has either patent or tentative approval, are for lands which are not in Chugach State Park and are not affected by Eklutna Native Village land selections under ANCSA. The acreages listed as selected are for lands which the State has already selected and has a high probability of receiving from the federal government within the next few years. They also are not included within Chugach State Park and will not be affected by Native selections.

The lands listed as coming to the State under the Cook Inlet Land Exchange will definitely come to the State, and are generally of a nature more suitable for municipal management than State management.

Types of Land	Acres	
I. General Selection		
A. Patent and Tentative Approval	6,728	
B. Selected	240,280	
		247,008
II. Trust		
A. Patent or Tentative Approval	28,475	
B. Selected	6,998	
		35,473

	Types of Land	Acres	
III.	Cook Inlet Land Exchange		
	A. Goose Lake	20	
	B. Point Woronzoff	325	
	C. Campbell Tract	4,892	
	D. Point Campbell	1,282	
			6,519
IV.	Totals		
	A. Presently Available for Early Transfer	6,720	
	B. Available After Exchange for Trust Lands*	28,475	
	C. Available Upon Receipt via Cook Inlet Land Exchange	6,519	
			41,714
	D. Selected Lands Available When Transfered From Federal Government	247,278	
V.	Anchorage's Existing Situation		
	A. Entitlement	20,865	
	B. Patented or Approved to Anchorage	6,728	
	C. Remaining Entitlement	14,137	
	D. Remaining Entitlement After Conveyance of Existing Lands Available for Early Transfer	7,417	

It should also point out that in the future the State will certainly receive substantial land from the Elmendorf and Fort Richardson military bases within the municipality. In most cases, these lands will be more suitable for municipal than State ownership. As an example, as part of their land exchange entitlement Cook Inlet Region, Inc., is currently working with the Departments of Interior and Defense, as well as the State, to have a parcel of about 5,700 acres removed from Fort Richardson. Since portions of that parcel are not suitable for private ownership, the State will seek to receive title to those areas (e.g., green belts, aquifer recharge, etc.).

*Approx. 3,000 acres are prime lands within the Anchorage Bowl.

Because of their location and local importance, these lands would be best conveyed to the Anchorage municipality for management. The acreage would probably be a minimum of 500 to 800 acres.

I hope this information answers your requests. Please let me know if you have any questions.

Sincerely,

Michael C. T. Smith
Assistant Commissioner

Kodiak Island Borough

Classification Order #	Date of Class. Order	Total Acres Involved	classification
130	11/2/62	11070	Grazing - Timber
315	10/28/65	183	Public Recreation
380	5/23/66	7630	Watershed
479	2/7/68	50342	Timber
656	9/27/69	4316	Watershed
715 (A-4)	1/24/72	1990	Resource Mgmt
715 (A-6)	8/23/73	5242	Resource Mgmt
805	3/10/72	11300	Resource Mgmt
		92073	

Total TA'ed Acres in State — 623997 acres

Less Fort Abercrombie #315 — 183

623,814

10% rounded — 62,400 acres.

Total TA'ed Acres to State — 623,997 acres

Less	Fort Abercrombie	# 315	183 acres	
Less	Marmot Island	# 130	11070	
Less	Red Meat Lease	# 805	11300	
			22,553	22553

601,444 acres.

10% rounded — 60,100 acres

Total TA'ed Acres to State — 623997 acres

Less Fort Abercrombie	183	
Less Red Meat Lease	11300	
	11,483	11483

612514 acres.

10% rounded — 61,250 acres

29.18.201(9) should be amended to delete the portion in brackets and add the underlined portion, as follows:

Kodiak Island Borough -- [45,200] 56,500 ~~62,400~~ acres;

29.18.202(e): Add wording which is underlined:

The requirements of (c) and (d) of this section shall be waived by the director as to a home rule or unified municipality which so requests and as to any other municipality which manifestly demonstrates that a commitment of acreage to residential or commercial purposes required by this section as a condition of election of an entitlement

29.18.205(d): Delete portion in brackets:

On the effective date of this Act and for five years thereafter, no classification of a parcel of general grant land in excess of 3,200 acres under AS 38.05.300 shall be effective, unless otherwise required by law, if the municipality in which the parcel is located, within 30 days after receipt of notice of the proposed classification, advises the director in writing that it does not consent to the classification and indicates the reasons for its nonconsent. [This subsection applies only to land to which the state has received patent from the federal government prior to the effective date of this Act.]

29.18.205(e): Add wording which is underlined:

Each eligible municipality and the director shall jointly consider which vacant, unappropriated, unreserved land, including federal land of interest to a municipality which may be selected by the state as general grant land, located within the boundaries of the municipality, is appropriate for municipal selection and approval by the director to fulfill any remaining municipal general grant lard entitlement. <u>The joint consideration made by the parties shall include a cooperative land planning process which will, in addition to the normal objectives of such a process, seek to identify both local and state interests in tracts of vacant, unappropriated and unreserved land remaining within the municipality</u>. Adjacent tracts shall be considered simultaneously except when such simultaneous consideration would cause significant delay or expense. Once a tract has been jointly considered, it may be selected by a municipality.

29.18.205(f) should be amended to read as follows, adding the portion which is underlined:

Each selection must be approved or disapproved for patent by the director under (g) of this section within nine months of its selection by a municipality, and a patent shall be issued to the municipality within three months after approval by the director of a plat of survey.

29.18.205(g) should be amended in toto, deleting the section in brackets and adding the underlined section:

[A municipality may appeal an adverse decision by the director to the superior court under AS 44.62.560 - 44.62.570.]

In reviewing a municipal selection, the director shall consider the state's responsibilities for developing and protecting values which are of greater than local concern, including development which will have statewide impact, and critical environmental concerns. Specific state responsibilities to be considered, if such responsibilities have not been authorized or delegated by the state to a municipality, include air quality; water; minerals and

energy; timber; agriculture; fish and wildlife and their habitat; public recreation, natural, historical, and archaeological areas of greater than local concern; access to public land and water; transportation; communications; and public safety. Specific municipal responsibilities to be considered include residential, commercial and industrial needs; support of municipal services; education; local transportation; private recreation; public recreation, natural, historical and archaeological areas of local concern; and other responsibilities authorized or delegated by the state to a municipality. A selection by a municipality of land which is primarily of local concern shall be approved. When the interests of the state may be protected through the conveyance of title that is less than a fee title, the municipality, at its option, may accept the title in acre-for-acre fulfillment of its entitlement.

29.18.205(h): A new paragraph should be added, to read as follows:

Every decision of approval or disapproval of a municipal selection by the director under (f) of this section shall include a written explanation of the decision based upon the criteria of (g) of this section. Before issuing any decision to disapprove a selection, the director

shall notify the affected municipality in writing, by certified mail, of his reasons for the proposed decision. The municipality shall have 30 days from receipt of the proposed decision to respond to the director in writing enumerating the reasons for which the municipality believes the proposed decision to be in error. After receipt of the municipality's statement of reasons, or after expiration of the period in which the municipality may respond to the proposed decision, the director shall, within 30 days, affirm, modify or reverse his proposed decision in writing and give written notice of his decision to the municipality. The decision of the director constitutes final administrative action in the matter.

29.18.206(d): Delete portion in brackets:

No selection of school, university or mental health land may be approved [by the director] under this section without the concurrence of

29.18.206(e) should be amended to read as follows, deleting the portion in brackets and adding the underlined portion:

[Within three years after the approval under (d) of this section of a municipal selection of school, university or mental health land, the director, with the concurrence of the respective board, shall designate appropriate state general grant land of approximately equal value as school, university or mental health replacement land.] Within six months after request by a municipality for selection of school, university or mental health land, the director shall identify state general grant land of approximately equal value to the land requested by the municipality, and shall propose such replacement land for the concurrence of the appropriate board under (d) of this section. If a proposal by the director is rejected by the board, the director shall meet with the board as often as necessary to determine the type and amount of equal value replacement land that would be required to obtain the board's concurrence under (d) of this section, and shall propose such land for consideration by the board. The replacement land shall thereafter be managed for the purposes for which the land selected by the municipality was acquired

by the Territory and the State of Alaska. Nothing in this subsection shall preclude the appropriate board from approving a municipality's selection of school, university or mental health land prior to the identification of specific replacement land.

29.18.208(c) should be amended as follows, adding the underlined portion:

A municipality eligible for payment under this section may, by October 1 of each fiscal year of eligibility, notify the director of its election to accept payment in lieu of land from the account. A municipality may accept payment for not more than 15 per cent of its entitlement under secs. 201 - 203 of this chapter, to a maximum of 10,000 acres, in each fiscal year. A municipality which chooses to accept payment in lieu of land shall be entitled to an amount based on the cumulative total number of acres of remaining entitlement which it relinquishes or which were selected and to which title vested in another entity under (g) of this section. Payment shall be made according to the following schedule:

29.18.208(e) should be amended as follows, adding the underlined portion:

If the total appropriation is not sufficient to meet the amount due to all municipalities which have elected to accept payment in lieu of land under (c) of this section, the governor shall apportion the appropriation among the municipalities in proportion to the payment calculated for each municipality for that year. When a distribution of payments is made under this subsection, the remaining entitlement of a municipality to which payment is made shall be reduced in an amount equal to the number of acres for which payment was received. An apportionment may correspondingly increase the acreage for which a municipality may request payment in a succeeding year, but this increase in acreage does not authorize a municipality to request payment in lieu of land of more than 10,000 acres in any one year. <u>All such appropriations shall be in addition to other grants and entitlements authorized for a municipality</u>.

29.18.208(f) should be amended as follows, adding the underlined portion and deleting the portion in brackets:

The total payment to a municipality under this section, except as provided in (g), may not exceed [$100] $250 per capita for each person resident in the municipality on the July 1 preceding the effective date of this Act, as determined by the Department of Community and Regional Affairs.

29.18.208(g): A new paragraph should be added, to read as follows:

If a municipality has selected state lands on or before December 18, 1971, to which the state has received tentative approval or patent and such lands are also selected by a Native corporation under the Alaska Native Claims Settlement Act (Pub. L. No. 92-203) and title to that land is ultimately vested in that Native corporation, the municipality shall be entitled to payment under subparagraph (c) of this section. Acceptance of payment pursuant to this subparagraph shall constitute a relinquishment of any other right, title or claim to such land by the municipality.

29.18.211(a) should be amended, to add the underlined wording, as follows:

Except as to those lands to which section 208(g) of this chapter applies, a municipality which on the effective date of this Act is engaged in litigation, or which becomes engaged in litigation, regarding a claim to state land under former secs. 190 - 200 of this chapter shall elect either to obtain the benefits provided in secs. 201 - 215 of this chapter or to pursue the litigation and thereby waive any claim to entitlement under secs. 201 - 215 of this chapter. An election shall be made by filing a motion for dismissal with prejudice in the court in which the litigation is pending. If the claim involves a municipality identified in secs. 201(a) or 202(a) of this chapter, the municipality shall file its motion for dismissal within 60 days of the effective date of this Act. If the claim involves a municipality not listed in secs. 201(a) or 202(a) of this chapter, the municipality shall file its motion for dismissal within 60 days after receiving the certificate of entitlement provided by the director under sec. 203(b) of this chapter. Failure of the municipality to file a motion for dismissal during the time period provided in this subsection shall be considered a waiver of entitlement under secs. 201 - 215 of this chapter.

29.18.213(11)(C): Amend by adding the underlined portion:

is unclassified or, if classified under AS 38.05.300, is classified for agricultural, grazing, commercial, industrial, private recreational, residential, utility or open-to-entry purposes, or where classified pursuant to state and municipality management agreements.

38.05.321: Delete portion in brackets:

RESTRICTION ON SALE, LEASE OR OTHER DISPOSAL OF AGRICULTURAL [AND GRAZING] LAND. (a) The sale, lease or other disposal of state land classified as agricultural [or grazing] land transfers only rights for agricultural [and grazing] purposes, and all other interests in the land remain with the state unless otherwise required by law.

(b) State land classified as agricultural [or grazing] land which has been selected by a municipality under AS 29.18.190 - 29.18.200 or 29.18.205(e) may be approved by the director for patent under AS 29.18.205(f); however, only rights in the land for agricultural [or grazing] purposes may be transferred and all other interests in the land will remain with the state. Agricultural [or grazing] land approved for patent to a municipality under

AS 29.18.205(f) shall be credited, acre for acre, toward fulfillment of that municipality's entitlement under AS 29.18.201 - 29.18.203. If the director later determines it to be in the best interests of the state to transfer some or all of the additional rights in that approved or patented agricultural [or grazing] land, those rights shall pass without consideration to the municipality in which the land is located.

(c) The provisions of this section do not apply to state land classified as agricultural [or grazing] land which has been selected by a municipality under the provisions of AS 29.18.190 - 29.18.200 if the selection is an approved selection before the date of enactment of this Act and is otherwise valid under AS 29.18.205(b).

Sec. 4 should be amended as follows, adding the underlined portion:

It is the intention of the legislature that future municipalities shall have the benefit of * Sec. 2. of this Act. Within 90 days of passage of this Act, the Department of Natural Resources shall adopt regulations which shall, as closely as is practicable, apply the provisions of * Sec. 2. of this Act to future municipalities. After adoption of

such regulations, the department shall transfer all lands to which a municipality is entitled under this section to such municipality within three years of the date upon which the municipality assumes a legal existence. Consistent with the best interests of the state, in the selection of general grant land it is the policy of the state to make available the maximum land area from which municipalities may fulfill land entitlements under AS 29.18.201 - 29.18.215.

MANAGEMENT AGREEMENT

This agreement made and entered into this 17 day of June, 1965 between the State of Alaska, Department of Natural Resources, Division of Lands, hereinafter referred to as the State and the Kodiak Island Borough, organized and existing pursuant to the laws of the State of Alaska, hereinafter referred to as the Borough.

WITNESSETH:

WHEREAS, Title 7 - Article 2 - Sec. 07.10.150, Alaska Statutes vests the Borough with the authority to select certain of those state-owned lands which lie within the Borough boundaries, and,

WHEREAS, the aforementioned statute further provides that the Borough is vested with the authority to manage, lease or sell the lands so selected, and,

WHEREAS, the Borough does not at this time have the financial ability nor the manpower to initiate and maintain an efficient land management program, and,

WHEREAS, the State, through the Division of Lands, does maintain the staff capability and is willing to enter into an agreement for the management of Borough selected lands, NOW THEREFORE,

The Borough does by these presents delegate to the State the authority to manage Borough selected lands and the State, through the Division of Lands, agrees to accept management authority over said lands upon the following terms and conditions to wit:

1. All lands disposed of by the State, pursuant to this agreement, shall first be subjected to a land use plan and such plan shall, prior to becoming final, be reviewed jointly and agreed upon by the Borough and the State.

2. Prior to disposal by the State of any lands selected pursuant to Section 6(b) Public Law 85-508, General Grant lands, the Borough shall first be afforded the opportunity to select the same for its use or disposal in accordance with the terms of this agreement.

3. Upon selection of eligible lands by the Borough, the State shall, without delay, note the same on the records to be maintained by the Division of Lands, and the State shall periodically thereafter make an accounting to the Borough revealing acreage entitlement, acreage selected, acreage disposed of and such other information as shall be deemed necessary for the purpose of keeping the Borough properly informed.

4. All leases, sales or other disposals which are made by the State on behalf of the Borough pursuant to this agreement shall be made only with consent of the Borough and shall be conducted in accordance with the Alaska Land Act (Title 38, A.S.) and the regulations promulgated by the State pursuant thereto. All lands which have been selected by the Borough, as herein provided, and which the Borough may wish to sell, lease or otherwise dispose of shall be sold, leased or disposed of in accordance with the provisions of this agreement for so long as the agreement shall remain in full force and affect.

5. All monies received by the State from the sale, lease or other disposal of Borough lands shall be deposited with the Department of Revenue, State of Alaska. Upon request of Borough Assembly and certification by the Director that payment is in order, the monies so deposited shall be transferred to the Borough. The State shall, during the month of January of each year that this agreement is in effect, render an accounting of all monies received from disposals conducted during the course of the year. Concurrent with the final accounting the State shall withhold survey, appraisal and other appropriate direct management costs, exclusive of overhead costs, from the total receipts.

6. To preserve the principle and integrity of sustained yield forest management and protection, those forest and grazing lands selected by the Borough shall remain under the direct management of the Division of Lands with all revenues from such forest and grazing lands or forest products being transferred to the Borough at the same time and in the same manner as stipulated in Item #5 of this agreement.

Nothing in this agreement shall prevent, through mutual agreement, the reclassification of any lands subject to this contract as provided in the Classification regulations of the Division of Lands, State of Alaska.

This agreement shall remain in full force and effect until such time as it may be cancelled or modified by mutual agreement between the parties. This agreement may also be cancelled by one party provided it gives the other party one (1) year notice of such cancellation.

KODIAK ISLAND BOROUGH

By _____
President of the Assembly

By _____
Borough Chairman

ATTEST:

_____
Borough Assembly Clerk

STATE OF ALASKA

By _____
Director, Division of Lands

CONCURRED:

_____
Commissioner, Department of Natural Resources

APPROVED AS TO FORM:

for _____
Attorney General, State of Alaska

ADDENDUM TO
LAND MANAGEMENT AGREEMENT

WHEREAS, the Kodiak Island Borough and the State of Alaska Department of Natural Resources Division of Lands entered into a Land Management Agreement dated June 17, 1965, and

WHEREAS, the parties hereto desire to amend said Agreement by adding thereto a new paragraph to be entitled Paragraph 7.

NOW, THEREFORE, it is hereby agreed by and between the parties hereto that the Land Management Agreement be and the same is hereby amended by adding thereto Paragraph 7 to read as follows:

"7. In the event that specific parcels of Borough selected lands, adjudicated by the Alaska Division of Lands to be eligible for patent to the Borough, are desired by the Borough for exclusive Borough use and/or management, the same, upon proper notice to the Division shall be patented to the Borough and the management thereof, including subsequent disposal, shall no longer be subject to this Agreement.

When lands have been patented to the Borough as provided in this Section, the Borough agrees that, prior to any disposal of such borough lands, where the same lie adjacent to or are interspersed with State-owned lands, the proposed program of disposal will be subject to joint review between the Borough and the Division, and likewise, State-owned land disposals will be subject to such joint review."

In all other respects the original agreement will remain the same.

KODIAK ISLAND BOROUGH

By _____
Presiding Officer

By _____
Borough Chairman

LANDS SELECTED PRIOR TO DECEMBER 18, 1971

Selection Number	Acres Selected	Acres Tentatively Approved to Borough	Acres Patented to Borough	Acres of Borough Selections on State Tentatively Approved Land Involved in Native Selections	Remarks
1	16.51	16.51	16.51	0	
2	46.26	46.26	46.26	0	
3	15 ±	-	-	0	Within 2 miles of Kodiak
4	175.12	175.12	175.12	0	
5	3.59	3.59	3.59	0	
6	159.75	159.75	159.75	0	
7	15.85	15.85	15.85	0	
8	210.06	177.57	170.36	0	
9	39.29	39.29	19.85	19.44	Port Lions area
10	69.61	69.61	0	0	
11	17.84	17.84	17.84	0	
12	7,189.	7,459.	788.4	7,459.	Bells Flat area
13	387.88	387.88	387.88	0	Within 2 mile limit
14	58.01	0	0	58.01	Port Lions
15	14,331.	0	0	8,900.	Shuyak
16	0.17	0.17	0.17	0	Within 2 mile limit
17	4.85	4.85	4.85	0	Within 2 mile limit
18	202.51	202.51	202.51	0	Within 2 mile limit
19	110.78	110.78	110.78	0	Within 2 mile limit
20	0	0	0	0	Not applicable to AS 29.18.190
21	0.92	0.92	0.92	0	Within 2 mile limit
22	250.	120.	0	250.	Chiniak
23	11,451.52	0	0	6,440.	Monashka Bay
24	310.	0	0	0	Within 2 mile limit
25	2,000.	0	0	2,000.	Chiniak
26	840.	800.	0	840.	Chiniak
27	0.184	-	-	0	Not applicable
	38,187.70	9,807.5	2,120.67	25,966.45	

LANDS SELECTED AFTER DECEMBER 18, 1971

28	2,611.	0	0	965.
29	2,330.	0	0	2,330.
30	5,750.	0	0	5,750.
31	2,590.	0	0	1,680.
32	2,940.	0	0	2,090.
33	1,735.	0	0	820.
34	2,500.	0	0	1,220.
35	2,020.	0	0	2,020.
36	540.	0	0	540.
37	2,490.	0	0	1,940.
38	1,925.	0	0	0
39	1,655.	0	0	0
40	1,920.	0	0	1,920.
41	22,545.	0	0	0
Total	53,551.	0	0	21,275.
Total From Above:	38,187.70	9,807.5	2,120.67	25,966.45
Grand Total:	91,738.70	9,807.5	2,120.67	47,241.45

Note: Total tentatively approved lands to State on Kodiak Island are in the amount of 623,997.12 acres.

Compiled by Alaska Division of Lands — Kodiak Island Borough — 2/10/78

Date	Tentative Approval TA (1)	Lands Selected by ANCSA Corporations (A) (2)	Net Tentative Approval (TA) (3)	Occupied (B) (4)	Net Vacant (NV1) (NV1)=(TA)-(B) (5)	Classified at Boro Request & Boro Selected (By Selec. date) (C) (6)	Net Vacant (NV2) (NV2)=(TA)-[(B)-(C)] (7)	Classified at Boro request, not Boro Selected (by Cl. date) (D) (8)	Net Vacant (NV3) (NV3)=(TA)-[[(B)(C)]-(D)] (9)
			1-2=3		3-4=5		3-4+6=7		3-4+6+8=9
6/30/60	0	0	0	0	0	0	0	0	0
12/31/60	0	0	0	0	0	0	0	0	0
6/30/61	0	0	0	0	0	0	0	0	0
12/31/61	0	0	0	0	0	0	0	0	0
6/30/62	0	0	0	0	0	0	0	0	0
12/31/62	11,070	0	11,070	#130 11,070	0	0	0	0	0
6/30/63	11,070	0	11,070	11,070	0	0	0	0	0
12/31/63	229,898	0	229,898	11,070	218,828	0	218,828	0	218,828
6/30/64	361,738	0	361,738	11,070	350,688	0	350,688	0	350,688
12/31/64	435,176	0	435,176	11,070	424,106	0	424,106	0	424,106
6/30/65	435,194	0	435,194	11,070	424,124	0	424,124	0	424,124
12/31/65	435,194	0	435,194	# 315 11,315	423,879	? 0	423,879	? 0	423,879
6/30/66	435,475	0	435,475	# 390 19,166	416,309	? 0	416,309	? 0	416,309
12/31/66	464,788	0	464,788	19,221	445,567	10	445,577	0	445,577
6/30/67	525,396	0	525,396	19,426	505,970*	23	505,993*	0	505,993*
12/31/67	525,396	0	525,396	19,876	505,520	343	505,863	0	505,863
6/30/68	525,396	0	525,396	# 479 77,685	447,711	14,675	462,386	36,012	498,098
12/31/68	525,396	0	525,396	77,672	447,724	14,675	462,399	36,012	498,111

designates land classification order number

Compiled by Alaska Division of Lands — Kodiak Island Borough — 2/10/78

Date	Tentative Approval TA (1)	Lands Selected by ANCSA Corporations (A) (2)	Net Tentative Approval (TA) (3)	Occupied (B) (4)	Net Vacant (NV1) (NV1)=(TA)-(B) (5)	Classified at Boro Request & Boro Selected (By Selec. date) (C) (6)	Net Vacant (NV2), (NV2)=(TA)-[(B)-(C)] (7)	Classified at Boro request, not Boro Selected (by Cl. date) (D) (8)	Net Vacant (NV3) (NV3)=(TA)-[[(B)-(C)]-(D)] (9)
		1-2=3			3-4=5		3-4+6=7		3-4+6+8=9
6/30/69	525,396	0	525,396	77,695	447,701	14,675	462,376	36,012	498,388
12/31/69	525,396	0	525,396	#656 82,028	443,368	14,675	458,043	40.327	498,370
6/30/70	525,396	0	525,396	82,342	443,054	14,675	457,729	40,327	498,056
12/31/70	525,396	0	525,396	82,342	443,054	14,675	457,729	40,327	498,056
6/30/71	525,396	0	525,396	82,342	443,054	14,675	457,729	40,327	498,056
12/31/71	525,396	300,000	225,396	82,342	143,054	14,675	157,729	40,327	198,056
6/30/72	525,396	300,000	225,396	#805 95,633	129,763	14,675	144,438	40,327	184,765
12/31/72	525,396	300,000	225,396	95,633	129,763	22,180	151,943	40,327	192,270
6/30/73	525,396	300,000	225,396	# 715 A-4 96,545	128,851	22,180	151,031	40,327	198,358 ?
12/31/73	525,396	300,000	225,396	# 715 A-6 102,152	123,244	22,180	145,424	40,327	185,751
6/30/74	525,396	300,000	225,396	102,152	123,244	22,180	145,424	40,327	185,751
12/31/74	525,396	300,000	225,396	102,152	123,244	22,180	145,424	40,327	185,751
6/30/75	525,396	300,000	225,396	102,152	123,244	22,180	145,424	40,327	185,751
12/31/75	623,997	300,000	323,997	102,152	221,845	22,180	244,025	40,327	284,352
6/30/76	620,163	300,000	320,163	102,152	218,011	22,180	240,191	40,327	280,518
12/31/76	620,163	300,000	320,163	102,152	218,011	22,180	240,191	40,327	280,518
6/30/77	611,734	300,000	311,734	102,152	209,582	22,180	231,762	40,327	272,089
12/31/77	611,734	300,000	311,734	102,152	209,582	25,829	235,411	40,327	275,738
							66,156		

* Maximum Net Vacant Per Column

Note: The figures shown in Column "A" are:
Those lands that are actually selected up to the maximum allowed by the affected Native Corporations. This figure is shown as a minimum which could go as high as 350,000 acres.

CS HB 133am (Finance)

GUIDE TO SENATE RESOURCES MARK-UP
Based on testimony through April 7
Prepared by Reed Stoops, Asst.

PAGE	SECTION	SUGGESTED CHANGE
(1)	29.18.201	(9) KODIAK - request 62,400 acres instead of 45,200 acres RATIONALE - The higher figure is 10% of all tentatively approved state land selected within the borough (re. Hartig letter) COMMENTS - DNR feels this ignores the language in the existing statute - 10% of vacant, unappropriated, unreserved state lands (re. Smith letter)
(2)	29.18.202	(2) 30% requirement for disposal to private ownership be eliminated. RATIONALE - Should be a local option, not a requirement (re. Rolle testimony - Alaska Municipal League) COMMENTS - Expressed fear that municipalities will not dispose of lands at a significant rate in order to protect high land values. - Administration takes "no final position".
(5)	29.18.205 (b)	Delete the following: line 9 from the word (SHALL) to line 12 to the word (SELECTION) RATIONALE - Eliminates possibility of director reclassifying land already selected into a non-selectable category (re. Hartig letter) COMMENTS - "that specific language was agreed upon by eight municipalities, including Kodiak, because a very limited number of approvals were given for lands with a classification under which the state could not legally approve selections" (re. Smith letter).

CS HB 133am Finance
Guide Mark-up

PAGE	SECTION	SUGGESTED CHANGE
(5)	29.18.205(b)	Delete the following: line 18 from the word (ANY) to line 23 to the word (AS 38.05.321). RATIONALE - Would allow the the director to make present decisions for past acts of the Division of Lands; also full title to agricultural lands (re. Hartig letter). COMMENTS - Eliminating reference to AS 38.05.321 would give full title - not just agricultural rights - to the boroughs. Conflict with existing state law and policy.
(6)	29.18.205(d)	Delete entire subsection RATIONALE - Subsection is in conflict with AS 38.05.305 as .305 requires the state to go back to the boroughs on all classifications. COMMENTS - Agreed to last year by all parties including Kodiak. Administration would not oppose deletion (re. Smith letter).
(6)	29.18.205(e)	Insert additional language which would require review of classified land evey 2 years for possible reclassification. RATIONALE - New conditions might warrant future change in classification (re. Hartig letter) COMMENTS - Should be handled through regulation (re. Smith letter).
(6)	29.18.205 (e-f-g-h)	Reinsert language deleted on House floor from CS HB 133 Finance version. RATIONALE - This language was "agreed to by all parties because it was felt that the criteria adequately protected both the state and municipal interests in deciding which lands should be made available for municipal selection and which should remain in state ownership." Removes tremendous discretion by DNR in approving selections (re. Smith letter).

PAGE	SECTION	SUGGESTED CHANGE
(6)	29.18.205 (e-f-g-h)	Continued COMMENTS - This argument also concurred with by Holdsworth, Gilman (possibly others).
(7)	29.18.206(c)	Delete director's authority to approve selection of trust lands. RATIONALE - Should be a local decision (Sharp testimony - Bern testimony). COMMENTS - Reference to prior language made by Mr. Smith which ties this to former section (g). Should be reinserted whether or not the director has authority to approve selections of trust lands (re. Smith letter).
(7)	29.18.206(d)	Set a time limit in which trustees must act on selections. RATIONALE - Trustees should not be able to delay action for an unreasonable length of time (Bern testimony).
(8)	29.18.207(a)	Delete the following: line 10 from the word (TAKING) to line 12 to the word (USES). RATIONALE - Would further reduce the borough's right to select land (re. Hartig letter).
(9)	29.18.207(b)	Substitute 150% for 110% RATIONALE - Higher figure necessary because the federal government hasn't defined navigability of waters within selections. COMMENTS - 110% is ample. Additional 40% over-selection would severly impact state's ability to manage land (re. Smith letter).

CS HB 113am Finance
Guide for Mark-up

PAGE	SECTION	SUGGESTED CHANGE
(10)	29.18.208 (f)	Change $100 per capita limit to $250 per capita RATIONALE - Is inequitable for Anchorage as it would only receive $20,000,000 instead of $43,102,050 because of the limit (re. Bern letter). COMMENTS - Opposed by Administration due to fiscal impact (re. Smith letter).
(10)	29.18.208	Add new paragraph to include payment in lieu of land to municipalities with ANCSA claims top filed over state selections (i.e Kodiak) RATIONALE - State breached its trust with municipalities by "entering into a compact" with Congress allowing ANCSA claims to have precedence (re Hartig) COMMENTS - Provision should also be made to exempt Kodiak from 208 (f). Opposed by Administration due to fiscal impact, also because there is sufficient state land for Kodiak to select from.

CS HB 133am Finance
Guide for Mark-up

PAGE	SECTION	SUGGESTED CHANGE
(11)	29.18.211	Delete entire section. RATIONALE - Kodiak wants option to litigate if they do not receive payment in lieu of land option (Hartig letter) COMMENT - Kodiak is free to litigate if they are not satisfied. But they should then have to accept the verdict of the judicial system. The purpose of the bill is to make a settlement (Smith letter)
(15)	29.18.213(11)(c)	Amend to read: "Is unclassified or, if classified under AS 38.05.300, is classified for agricultural, commercial, industrial, private recreational, residential, utility, or open to entry purposes, or where classified pursuant to state and municipality management agreements." RATIONALE - Kodiak wants option to select grazing lands or lands classified at the request of the borough. COMMENT - Administration not opposed to this amendment.
(15)	38.05.321	Remove all reference to grazing. RATIONALE - Kodiak finds it should have full title to grazing lands if they are selected-not simply grazing rights (re. Hartig letter) COMMENT - Administration takes no position (re. Smith letter)

CS HB 133 am Finance
Guide for Mark-up

PAGE	SECTION	SUGGESTED CHANGE
(16)	Sec. 4	Change 90 days to 180 days RATIONALE - 90 days insufficient time to adopt regulations (re Smith letter) COMMENT - None
(16)	Sec. 4	Delete final sentence; begin with (after) on line 8 - end with (existence) line 11. RATIONALE - Forces beyond the state control may make it impossible to transfer land to future municipalities within a three year period (re Smith letter)

Federal-State
Land Use Planning Commission
For Alaska

April 12, 1978

Honorable Kay Poland
Senate Resources Committee
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Kay:

Pursuant to the request made by you and other members of the Senate Resources Committee, we are enclosing several copies of our recent correspondence to Senator Jackson concerning the need to develop an alternative vehicle for marking up D-2 legislation in the Senate. If you have any questions or comments relative to this enclosure, please let us know.

On behalf of the Commission, we want to thank you for the opportunity to talk with the Resources Committee about the pending D-2 legislation and the other issues which were considered during last week's briefing.

Sincerely,

Walter B. Parker

Walter Parker
State Co-Chairman

Enclosure (1)
1. Letter to Senator Jackson

733 W. FOURTH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99501

Federal-State
Land Use Planning Commission
For Alaska

March 17, 1978

Honorable Henry M. Jackson
Chairman
Committee on Energy and Natural Resources
3106 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Jackson:

Over the past five years, the Commission has identified the major policy issues associated with the (d)(2) lands in particular and statewide land use and management in Alaska in general. We have made recommendations on these major policy issues to Federal and State decision makers. In so doing, the Commission placed the use and management of (d)(2) lands within the statewide context of other Federal, State, and private lands in Alaska, as well as within the context of the management systems which apply on Federal lands nationwide.

As one of the architects of the three major pieces of legislation which will set the future of Alaska, you are very conscious of the interrelationship between the rights of Alaska Native corporations and Alaska Native individuals to lands under the Alaska Native Claims Settlement Act and the rights of the State of Alaska to lands under the terms of the Alaska Statehood Act. Underlying both of these acts was the considered Congressional policy to bring Alaska into the Union fully and completely.

We do not intend this letter to be a substitute for our testimony before your committee. But, aware of the amendments made in the House Interior Committee, we wish to express our concern that H.R. 39, as amended, may be the markup document selected by your committee.

We feel that the attempts in the House Committee to accommodate and resolve the many conflicts that were generated by the original H.R. 39 have resulted in such modifications of the National Wilderness System, the National Wild and Scenic Rivers System, the National Park System, and the National Wildlife Refuge System that we feel that it would be impossible by amendment to rectify these major defects of the bill.

733 W. FOURTH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99501

Of even greater importance, we feel that in attempting to resolve conflicts between developers and conservationists, Natives and sport hunters, Federal energy policy and wilderness, and State and Native land selections, several sections of H.R. 39 instead institutionalize conflict over the next half century in Alaska by trying to perpetuate what are essentially the perceived conflicts of today. These conflicts can only be resolved or mitigated over time by strong cooperation between the Federal and State governments. The management policies of both governments must retain sufficient flexibility to deal with the future and not carry the burden of today's ills into that future in the form of statutory language.

We know of your concern to treat Alaska totally as a full member of the United States; we know of your concern that the settlement of Alaska Native claims be implemented promptly and with certainty; and we know of your concern to protect those nationally significant natural values which exist in Alaska. We are also aware of your interest in meeting the nation's energy needs, and your interest in seeing that Alaska's land ownership and land-use patterns be achieved in a rational and planned manner. Because we share these concerns, we recommend that a new bill be drafted.

In that connection, we would like to compliment you and the members of the Committee staff for your reasoned, systematic, and scientific approach toward accumulating resource information from persons knowledgeable in Alaska resources. From your staff workshop, your committee, in our opinion, will have compiled one of the best records with respect to the resources involved in resolving the (d)(2) question.

There is a great deal to build on in the drafting of such a new bill. Such a bill could certainly incorporate a good deal that has been learned in the public hearing process with H.R. 39 and could benefit from the substantial discussions that have already occurred between the Federal executive, the State of Alaska, and the Federal-State Land Use Planning Commission. Such a bill could also incorporate the best legislative approaches to the issues of transportation access, Federal-State relationships on fish and game management including the need to meet subsistence needs, and cooperative institutions to plan and manage Alaska lands. There is language available in S. 2465, H.R. 10888, as well as parts of H.R. 39 which could better respond to these policy needs.

We would like again to emphasize our belief that drafting of a new bill in the Senate is essential in order to secure the best possible final outcome of this legislation.

Thank you for your consideration of this correspondence.

Sincerely,

Walter B. Parker

Walter B. Parker
State Co-Chairman

Sincerely,

Esther C. Wunnicke

Esther C. Wunnicke
Federal Co-Chairman

Honorable Henry M. Jackson
Chairman
Committee on Energy and Natural Resources
3106 Dirksen Senate Office Building
Washington, D.C. 20510

Honorable Henry M. Jackson
United States Senate
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Mr. Joe Nagle
Special Assistant to the Secretary
Office of the Secretary
U.S. Department of the Interior
Washington, DC 20240

Honorable Jay S. Hammond
Governor
State of Alaska
Pouch A
Juneau, AK 99811

Honorable Ted Stevens
United States Senate
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Honorable Mike Gravel
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Anchorage, AK 99502

Honorable John F. Seiberling
U.S. House of Representatives
1225 Longworth House Office Bldg.
Washington, D.C.

Commissioner

STATE OF ALASKA

Inter-Department Route Slip

TO:
MAIL STATION NUMBER 3100

DEPARTMENT _____

ATTENTION Kay Poland

☐ Approval	☐ Note & Return
☐ Signature	☐ Initial & Return
☐ Comment	☐ Return As Requested
☐ Contact Me	☐ Return For Approval
☐ Prepare Reply	☐ Necessary Action
☐ For Your File	☑ Your Information

Remarks:

FROM:
MAIL STATION NUMBER _____

DEPARTMENT DNR

BY Renee DATE 4/4

02-002 (REV.10/73)

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

323 E. 4TH AVENUE – ANCHORAGE 99501

April 4, 1978

The Honorable Kay Poland, Chairman
Senate Resources Committee
Pouch V
Juneau, AK 99811

Re: Municipal Land Selection Bill
CSHB 133 (Finance) am

Dear Senator Poland:

To assist your committee in its mark up of the Municipal Land Selection Bill I felt it appropriate to submit to you the Administration's comments both on the amended Finance Committee version of the bill before your committee, as well as selected responses to testimony presented to your committee on March 29th and March 31st. The comments below are in the order that one would read the legislation. Many of the comments respond specifically to the testimony of Mr. Robert Hartig, Counsel for the Kodiak Island Borough. This has been done because Mr. Hartig was the only one to testify who, to my knowledge, submitted his testimony in writing (by letter of March 23, 1978), and also because some of his comments were echoed by others in their testimony.

With respect to the general grant land entitlements listed in Section 201, our only comment concerns Mr. Hartig's assertion of a 62,400 acre entitlement for Kodiak. The disagreement between the Kodiak Borough and the Department of Natural Resources on this matter is somewhat complicated and a detailed explanation would not be appropriate here. I believe it is appropriate, however, to point out that the 62,400 acre figure for Kodiak is exactly 10 percent of the total amount of tentatively approved land which the State has ever received within the Kodiak Borough. Simply stated, Mr. Hartig is contending that since January 1, 1964, when the existing legislation went into effect, not one acre of state land within the Kodiak Island Borough has ever been appropriated or reserved. In other words, unlike every other community in the state, Mr. Hartig would give no credence to the Legislature's inclusion of the words "vacant, unappropriated, unreserved lands in the statute." As an

example, Mr. Hartig would have to argue that the creation of the Fort Abercrombie Historical Park was not a reservation of those lands, but rather they remained vacant, unappropriated, and unreserved even after the legislative action, open to borough selection or otherwise available under the State's disposal laws.

In Section 202, with respect to the requirement for municipalities to dispose of not less than 30 percent of the difference in entitlements between Sections 201 and 202, the Administration takes no formal position. However, we are very sympathetic to the legitimate concerns of the municipalities which wish to dispose of those lands within time frames appropriate to each municipality's specific situation.

In Section 205(b), Mr. Hartig suggested that certain language be deleted which would require the Director to review past approvals of borough land selections. He indicated that the reason for this was that the Division of Lands would like to reconsider many of those selections, and reclassify the land in a non-selectable category and thus preclude the borough from selections. This is not the case. That specific language was agreed upon last year by eight municipalities, including Kodiak, because a very limited number of approvals were given for lands with a classification under which the State could not legally approve selections. In addition to the State's concerns with this situation, some municipalities were worried that such a transfer would put a cloud on the title.

In this same subsection, Mr. Hartig also suggested that the language, which indicates that transfers of land to municipalities under this chapter are subject to AS 38.05.321, should be deleted. Such a deletion would mean that agricultural lands transferred to municipalities would include the transfer all title, not just agricultural rights, and would be in contravention of existing state law and policy. The Legislature can, of course, change this existing requirement. However, it would put the Department in a very untenable position in that we might simultaneously be required to transfer several tens-of-thousands of agricultural lands to municipalities, while at the same time trying to meet the very difficult requirement of AS 38.05.362 which requires the Department to classify an additional 650,000 acres of land for agricultural purposes within the next 18 months.

With respect to Section 205(d), I would point out again that this was language agreed to by all parties last year, including the Kodiak Borough. However, we would not oppose this deletion as suggested by Mr. Hartig.

With respect to Mr. Hartig's comment regarding Section 205(e), I concur that most of this section, as well as most of this proposed legislation, could be handled through regulations. However, it was agreed to by all municipalities last year that since there was general agreement with the "settlement," it would be best to have legislative sanction. The Administration, and I believe a majority of the municipalities, would support the settlement of this matter through adoption of appropriate regulations closely parallelling the original legislation.

At this point it is appropriate to bring up the matter of Subsections (g) and (h), which were deleted on the floor of the House. These subsections are found at page 6, line 28, and page 7, line 19, respectively, of the CSHB 133 (Finance) version. As I stressed in my testimony, and as was echoed by the large majority of municipalities which testified, the reinsertion of these two subsections is most important to permit the municipal land selection settlement to work properly. That specific language was agreed to by all parties because it was felt that the criteria adequately protected both state and municipal interests in deciding which lands should be made available for municipal selection and which land should remain in state ownership. The criteria are based upon the general concept found in similar legislation, for example Alaska's Coastal Zone Management Act, which defines matters of local concern versus matters of greater than local concern. The adoption of these criteria removes the tremendous discretion which now exists within the Department of Natural Resources to decide which municipal selections should be approved and which should not. As was pointed out by Representative Jim Duncan on the House floor, not a single municipality had raised one word of protest that these criteria did not protect both municipal as well as state concerns. If these two subsections are reinserted in the bill, certain other references to these subsections found in the House Finance Committee version of the bill must also be added to make sense. These deletions were made in Sections 205(e) (page 6, lines 16-20) and (f) (page 6, lines 24-25), and Section 206(c) (page 8, lines 22-24), all from CSHB 133 (Finance).

In Section 206(c), as mentioned in the last paragraph, the Administration supports the inclusion of the reference to the criteria omitted in Section 205(g). Without these criteria, the Director and the respective trust board will have no criteria with which to approve or disapprove of selections. Even if the ultimate approval decision rests completely with the trust board, without criteria they may

well be faced with many situations where they must decide, without criteria, whether a municipality's reasons for selection are superior to the Director's argument that the land should remain in state ownership to protect some state interest. Whether or not the Director has the authority to approve also, he will certainly have the responsibility to point out the state interest in retaining those lands. Inclusion of the reference to the state and municipal interest criteria would solve this problem.

Section 206(e) permits the director three years, after the approval by the appropriate trust board, to locate and propose replacement lands of approximately equal value to be conveyed to the particular trust. The purpose of this time period was to allow quick approvals of municipal selections without having to wait for an understaffed division to locate suitable replacement lands. If the municipalities would like to see the time period deleted and require that replacement lands be identified at the time of approval by the board, we certainly will not oppose this. However, I believe this may significantly lengthen the process of conveyance of trust lands to municipalities.

Mr. Hartig's testimony suggested that Section 207(b) of the House Finance Committee version should be changed to reflect an overselection of 150 percent rather than 110 percent of remaining entitlement. The purpose of this section, deleted on the House floor, was to stop the problem of overselections which presently exist under the Alaska Native Claims Settlement Act, a problem which is already impacting Kodiak more severely than any other municipality in the State. The 10 percent overselection factor originally proposed is ample, particularly in Kodiak's situation, to handle any navigability determinations. An additional 40 percent overselection, as suggested, would severely impact all state land management in that several hundred thousand overselected acres of state lands would remain in limbo, not available for conveyance to municipalities since their entitlements would be considerably lower, yet not available for state management since some of the land might ultimately go to municipalities. For precisely this reason, we are unable to do anything with respect to managing almost one million acres of state land because of such unnecessary overselection by Native corporations under ANCSA. The 110 percent figure amply protects a municipality from navigability or third party interest adjudications.

With respect to payments in lieu of land, Section 208, the Administration's position has been from the beginning that the municipal land selection legislation was to be a land settlement, not a monetary settlement. With all communities

except Anchorage, there remains ample lands from which each municipality may fulfill its entitlement. Because of Anchorage's somewhat unique situation, a revenue provision was incorporated. It is obvious to everyone, particularly Anchorage, that the original agreement was not, and was never intended to be, a full monetary reimbursement for unavailable land. Rather, it was to be a payment in lieu of land which could provide some basis for land acquisition for public purposes under Anchorage's existing land trust ordinance. Originally, this section would have provided Anchorage with approximately $12 million. As a result of House Finance Committe action, this total was lifted to approximately $20 million. The Administration's position is that this total has reached the upper limits of what the State can responsibly be expected to pay in what is a settlement of outstanding land legislation. Therefore, the Administration opposes the lifting of the $100 per capita limit found in Section 208(f). Certainly, the request by Mr. Hartig that the Kodiak Island Borough be permitted to receive revenue in lieu of land payments for approximately 26,000 acres, a value of approximately $24.6 million if the $100 per capita limit is lifted, is unreasonable at best. This concern becomes even more valid when it is recognized that there is more than ample acreage within the Kodiak Island Borough from which the Borough may fulfill its entitlement. If the $100 per capita limit is raised to $250, as requested by Anchorage, this would mean a total for Anchorage of approximately $42.8 million and for Kodiak approximately $2 million, or a total of approximately $45 million. If there is no dollar limit per capita, as requested by Mr. Hartig, the combined Anchorage and Kodiak totals would be in excess of $67 million.

With respect to Section 211, election of benefits, this section need not be deleted to protect Kodiak's interest in being able to seek a judicial solution if it feels it has not received equity through this legislation. Section 211 requires a municipality to either accept the tenets of this legislation, or to rely instead upon the existing municipal land selection statute. It merely does not permit a municipality to participate both ways. If Kodiak, or any other municipality, is satisfied with the present legislation, it will have no need to litigate. If, however, it is not satisfied with the present legislation, it will obviously indicate that it is unsatisfied and that it does not wish to obtain benefits under the present legislation by entering into litigation within 60 days of the effective date of the act. It is, therefore, perfectly free to litigate on the basis of the existing Municipal Land Selection Law.

In Section 213(11)(C), which is part of the definition of the term "vacant, unappropriated, unreserved land," Mr. Hartig has recommended the deletion of the word "grazing." As discussed later, this is a legislative decision. The

Administration would not oppose its deletion here. In addition, Mr. Hartig would add the phrase "or where classified pursuant to state and municipal management agreements" at the end of Subsection (C). As I stated to Mr. Hartig in a letter dated February 14, 1978, the State is sympathetic to the Borough's position that lands classified pursuant to state and municipal management agreements should not be deducted from the acreage base figure from which the ten percent entitlement is determined, nor otherwise made unavailable strictly because such classifications placed those lands outside the category of "vacant, unappropriated, unreserved land." Therefore, we do not oppose the inclusion of this language as suggested by Mr. Hartig.

In Section 3 of the bill before you, on page 15, Mr. Hartig recommends that all reference to "grazing" be removed from the proposed reenactment of Section 38.05.321. As mentioned earlier, this is a legislative decisicn as to whether the State wishes to retain the relatively small grazing resource base which exists in Alaska.

Finally, Section 4 of the bill before you, on page 16, line 4, directs the Department of Natural Resources to adopt regulations which would permit future municipalities to receive a general grant land entitlement. The Administration supports this section, but feels two technical changes need to be made to the existing language. First, existing statutory requirements for public notice and hearings, in addition to necessary legal review by the Department of Law and the Lieutenant Governor's Office, make it virtually impossible to adopt regulations within only a 90-day period. Therefore, we recommend that the 90-day time period found at line 5 on page 16 be extended to 180 days.

The second problem concerns the last sentence of Section 4 beginning on line 8. This directs the Department to transfer all lands to which a future municipality is entitled to such municipality within 3 years of the date upon which the municipality assumes a legal existence. This directive would place an onus upon the Department which is not found any where else in this legislation, even for existing municipalities. In many if not all cases it will not be possible to adhere to such a directive because of forces totally beyond the State's control. For instance, while vesting of an entitlement will occur as soon as a new municipality is created, if the municipality decides not make land selections the State cannot of course transfer the lands to the municipality. In addition, existing law as well as Section 207(b) of this legislation requires the municipality to bear the cost of survey before land is transferred. Immediately after creation of any new municipality, municipal revenues will unlikely be insufficient to permit survey of its entitlement within a three-year period. Alternatively, this sentence would direct that the State assume the full cost of survey in order to meet the

transfer deadline. Since any new municipalities would be treated in virutally an identical manner as existing municipalities under this bill, we see no reason why the well-thought out procedures and time limits in the existing legislation need be changed for future municipalities. Their interests will be protected through the directives which require specific time deadlines after municipalities make their selections and after they present a plat of survey. Therefore, we recommend that this sentence be deleted.

I would like to thank you for this opportunity to comment on this legislation, and if the Department of Natural Resources may be of any further assistance, please do not hesitate to ask.

Sincerely,

Michael C. T. Smith
Assistant Commissioner

29.18.201(9) should be amended to delete the portion in brackets and add the underlined portion, as follows:

Kodiak Island Borough -- [45,200] 62,400 acres;

29.18.202(e): Add wording which is underlined:

The requirements of (c) and (d) of this section shall be waived by the director as to a home rule or unified municipality which so requests and as to any other municipality which manifestly demonstrates that a commitment of acreage to residential or commercial purposes required by this section as a condition of election of an entitlement

29.18.205(d): Delete portion in brackets:

On the effective date of this Act and for five years thereafter, no classification of a parcel of general grant land in excess of 3,200 acres under AS 38.05.300 shall be effective, unless otherwise required by law, if the municipality in which the parcel is located, within 30 days after receipt of notice of the proposed classification, advises the director in writing that it does not consent to the classification and indicates the reasons for its nonconsent. [This subsection applies only to land to which the state has received patent from the federal government prior to the effective date of this Act.]

29.18.205(e): Add wording which is underlined:

Each eligible municipality and the director shall jointly consider which vacant, unappropriated, unreserved land, including federal land of interest to a municipality which may be selected by the state as general grant land, located within the boundaries of the municipality, is appropriate for municipal selection and approval by the director to fulfill any remaining municipal general grant land entitlement. <u>The joint consideration made by the parties shall include a cooperative land planning process which will, in addition to the normal objectives of such a process, seek to identify both local and state interests in tracts of vacant, unappropriated and unreserved land remaining within the municipality</u>. Adjacent tracts shall be considered simultaneously except when such simultaneous consideration would cause significant delay or expense. Once a tract has been jointly considered, it may be selected by a municipality.

29.18.205(f) should be amended to read as follows, adding the portion which is underlined:

Each selection must be approved or disapproved for patent by the director under (g) of this section within nine months of its selection by a municipality, and a patent shall be issued to the municipality within three months after approval by the director of a plat of survey.

29.18.205(g) should be amended in toto, deleting the section in brackets and adding the underlined section:

[A municipality may appeal an adverse decision by the director to the superior court under AS 44.62.560 - 44.62.570.]

In reviewing a municipal selection, the director shall consider the state's responsibilities for developing and protecting values which are of greater than local concern, including development which will have statewide impact, and critical environmental concerns. Specific state responsibilities to be considered, if such responsibilities have not been authorized or delegated by the state to a municipality, include air quality; water; minerals and

energy; timber; agriculture; fish and wildlife and their habitat; public recreation, natural, historical, and archaeological areas of greater than local concern; access to public land and water; transportation; communications; and public safety. Specific municipal responsibilities to be considered include residential, commercial and industrial needs; support of municipal services; education; local transportation; private recreation; public recreation, natural, historical and archaeological areas of local concern; and other responsibilities authorized or delegated by the state to a municipality. A selection by a municipality of land which is primarily of local concern shall be approved. When the interests of the state may be protected through the conveyance of title that is less than a fee title, the municipality, at its option, may accept the title in acre-for-acre fulfillment of its entitlement.

29.18.205(h): A new paragraph should be added, to read as follows:

Every decision of approval or disapproval of a municipal selection by the director under (f) of this section shall include a written explanation of the decision based upon the criteria of (g) of this section. Before issuing any decision to disapprove a selection, the director

shall notify the affected municipality in writing, by certified mail, of his reasons for the proposed decision. The municipality shall have 30 days from receipt of the proposed decision to respond to the director in writing enumerating the reasons for which the municipality believes the proposed decision to be in error. After receipt of the municipality's statement of reasons, or after expiration of the period in which the municipality may respond to the proposed decision, the director shall, within 30 days, affirm, modify or reverse his proposed decision in writing and give written notice of his decision to the municipality. The decision of the director constitutes final administrative action in the matter.

29.18.206(d): Delete portion in brackets:

No selection of school, university or mental health land may be approved [by the director] under this section without the concurrence of

29.18.206(e) should be amended to read as follows, deleting the portion in brackets and adding the underlined portion:

[Within three years after the approval under (d) of this section of a municipal selection of school, university or mental health land, the director, with the concurrence of the respective board, shall designate appropriate state general grant land of approximately equal value as school, university or mental health replacement land.] Within six months after a request by a municipality for selection of school, university or mental health land, the director shall identify state general grant land of approximately equal value to the land requested by the municipality, and shall propose such replacement land for the concurrence of the appropriate board under (d) of this section. If a proposal by the director is rejected by the board, the director shall meet with the board as often as necessary to determine the type and amount of equal value replacement land that would be required to obtain the board's concurrence under (d) of this section, and shall propose such replacement land for consideration by the board. The replacement land shall thereafter be managed for the purposes for which the land selected by the municipality was acquired

by the Territory and the State of Alaska. Nothing in this subsection shall preclude the appropriate board from approving a municipality's selection of school, university or mental health land prior to the identification or approval of specific replacement land.

29.18.208(c) should be amended as follows, adding the underlined portion:

A municipality eligible for payment under this section may, by October 1 of each fiscal year of eligibility, notify the director of its election to accept payment in lieu of land from the account. A municipality may accept payment for not more than 15 per cent of its entitlement under secs. 201 - 203 of this chapter, to a maximum of 10,000 acres, in each fiscal year. A municipality which chooses to accept payment in lieu of land shall be entitled to an amount based on the cumulative total number of acres of remaining entitlement which it relinquishes, or on the number of acres which were selected and to which title vested in another entity under (g) of this section. Payment shall be made according to the following schedule:

29.18.208(e) should be amended as follows, adding the underlined portion:

If the total appropriation is not sufficient to meet the amount due to all municipalities which have elected to accept payment in lieu of land under (c) of this section, the governor shall apportion the appropriation among the municipalities in proportion to the payment calculated for each municipality for that year. When a distribution of payments is made under this subsection, the remaining entitlement of a municipality to which payment is made shall be reduced in an amount equal to the number of acres for which payment was received. An apportionment may correspondingly increase the acreage for which a municipality may request payment in a succeeding year, but this increase in acreage does not authorize a municipality to request payment in lieu of land of more than 10,000 acres in any one year. <u>All such appropriations shall be in addition to other grants and entitlements authorized for a municipality.</u>

29.18.208(f) should be amended as follows, adding the underlined portion and deleting the portion in brackets:

29.18.211(a) should be amended, to add the underlined wording, as follows:

Except as to those lands to which section 208(g) of this chapter applies, a municipality which on the effective date of this Act is engaged in tigation, or which becomes engaged in litigation, regarding a claim to state land under former secs. 190 - 200 of this chapter shall elect either to obtain the benefits provided in secs. 201 - 215 of this chapter or to pursue the litigation and thereby waive any claim to entitlement under secs. 201 - 215 of this chapter. An election shall be made by filing a motion for dismissal with prejudice in the court in which the litigation is pending. If the claim involves a municipality identified in secs. 201(a) or 202(a) of this chapter, the municipality shall file its motion for dismissal within 60 days of the effective date of this Act. If the claim involves a municipality not listed in secs. 201(a) or 202(a) of this chapter, the municipality shall file its motion for dismissal within 60 days after receiving the certificate of entitlement provided by the director under sec. 203(b) of this chapter. Failure of the municipality to file a motion for dismissal during the time period provided in this subsection shall be considered a waiver of entitlement under secs. 201 - 215 of this chapter.

The total payment to a municipality under this section, except as provided in (g), may not exceed [$100] $250 per capita for each person resident in the municipality on the July 1 preceding the effective date of this Act, as determined by the Department of Community and Regional Affairs.

29.18.208(g): A new paragraph should be added, to read as follows:

vacant, unappropriated, unreserved general grant

If a municipality ~~has~~ selected ~~state~~ lands on or before December 18, 1971, to which the state has received tentative approval or patent, and such lands ~~are~~ were also selected by a Native corporation under the Alaska Native Claims Settlement Act (~~Pub~~. L. No. 92-203) and title to ~~that~~ such lands is ultimately vested in that Native corporation, the municipality shall be entitled to payment under ~~subparagraph~~ (c) of this section. Acceptance of payment pursuant to this ~~subparagraph~~ subsection shall constitute a relinquishment of any other right, title or claim to such land by the municipality.

29.18.213(11)(C): Amend by adding the underlined portion:

is unclassified or, if classified under AS 38.05.300, is classified for agricultural, grazing, commercial, industrial, private recreational, residential, utility or open-to-entry purposes, or where classified pursuant to state and municipality management agreements.

38.05.321: Delete portion in brackets:

RESTRICTION ON SALE, LEASE OR OTHER DISPOSAL OF AGRICULTURAL [AND GRAZING] LAND. (a) The sale, lease or other disposal of state land classified as agricultural [or grazing] land transfers only rights for agricultural [and grazing] purposes, and all other interests in the land remain with the state unless otherwise required by law.

(b) State land classified as agricultural [or grazing] land which has been selected by a municipality under AS 29.18.190 - 29.18.200 or 29.18.205(e) may be approved by the director for patent under AS 29.18.205(f); however, only rights in the land for agricultural [or grazing] purposes may be transferred and all other interests in the land will remain with the state. Agricultural [or grazing] land approved for patent to a municipality under

AS 29.18.205(f) shall be credited, acre for acre, toward fulfillment of that municipality's entitlement under AS 29.18.201 - 29.18.203. If the director later determines it to be in the best interests of the state to transfer some or all of the additional rights in that approved or patented agricultural [or grazing] land, those rights shall pass without consideration to the municipality in which the land is located.

(c) The provisions of this section do not apply to state land classified as agricultural [or grazing] land which has been selected by a municipality under the provisions of AS 29.18.190 - 29.18.200 if the selection is an approved selection before the date of enactment of this Act and is otherwise valid under AS 29.18.205(b).

Sec. 4 should be amended as follows, adding the underlined portion:

It is the intention of the legislature that future municipalities shall have the benefit of * Sec. 2. of this Act. Within ~~90~~ 180 days of passage of this Act, the Department of Natural Resources shall adopt regulations which shall, as closely as is practicable, apply the provisions of * Sec. 2. of this Act to future municipalities. [After adoption of

such regulations, the department shall transfer all lands to which a municipality is entitled under this section to such municipality within three years of the date upon which the municipality assumes a legal existence.] Consistent with the best interests of the state, in the selection of general grant land it is the policy of the state to make available the maximum land area from which municipalities may fulfill land entitlements under AS 29.18.201 - 29.18.215.

HB

137

COMMITTEE REPORT

SENATE

**Judiciary

4/27/77

5/24/77
Date

Mr. President:

The Committee on RESOURCES has had CSHB 137 (Jud) am civil penalties for discharges of oil under consideration. A majority of the members of the Committee

- [ ] recommends it do pass
- [ ] recommends it do not pass
- [ ] recommends it do pass with attached amendment(s)
- [x] recommends it be replaced with SCS for CSHB 137 and that SCS for CSHB 137 do pass
- [ ] (and) recommends it be referred to the _____ committee
- [ ] reports it back without recommendation
- [ ] AND attaches a report of its intent
- [ ] (other) _____

MEMBERS SIGNING THE MAJORITY REPORT:

MEMBERS NOT CONCURRING IN THE MAJORITY REPORT:

_____ recommends: _____

_____ recommends: _____

_____ recommends: _____

K. Poland
Chairman

S 60

Field studies show oil production and environment remain compatible

EDWARD W. MERTENS
Chevron Research Co.
Richmond, Calif.

EXTENSIVE field studies on the effects of chronic low-level exposure of marine life to oil show:

- Low-level chronic exposure to crude oil has, at most, negligible effect on marine life.
- Platforms provide a structure whereby a thriving, highly complex community of marine life can develop.

Supporting data have been obtained from field studies conducted at Santa Barbara, Calif.; Lake Maracaibo, Venezuela; Bermuda; and Timbalier Bay, La., in the Gulf of Mexico.

No measurable effects have been observed on such indicators of the health of the local marine communities as population levels of various organisms, species diversity, and size, growth rate, or reproducibility of various organisms.

Moreover, there is no evidence of adverse effects such as abnormal growths and biomagnification of petroleum fractions in the food chain.

Available information. Surprisingly, the volume of literature concerning the effects of oil on marine life is extensive. Several comprehensive summaries of the literature have been published.[1,2,3,4] Whether one reviews the literature directly or the summaries that are available, it is apparent that most of the published work concerns laboratory work. Only a few field studies have been conducted.

Laboratory work has proven generally unsatisfactory because its results correlate poorly with field observations. Fortunately, in recent years, some work has been directed toward investigating the effects of chronic exposure of oil on marine life under field conditions. Results of field studies are summarized in Table 1.

Table 1

Conclusions of field studies of oil's impact on marine life

NATURAL OIL SEEPS, SANTA BARBARA:

All organisms are present that would be expected to be in that environment if oil seepage were not there.

Exposure to the natural oil seepage has no effect on either the growth rate or reproductivity of the resident organisms.

No abnormal growths in organisms were observable either by external examination or by dissection.

There is no evidence of bioaccumulation (increase in concentration) of hydrocarbons by transfer up the food chain.

TAR BALLS, BERMUDA:[5]

There is no measurable effect of tar influx on the number of organisms of any species at any locality.

All species identified as native to Bermuda shores prior to the tar-ball influx still remain.

Exposure to the tar influx has no effect upon the reproductivity of the organisms.

Size of organisms is not affected by the exposure to tar influx.

LAKE MARACAIBO, VENEZUELA:

Despite significant discharges of oil into Lake Maracaibo from production of oil and from natural seeps, both laboratory and field data show that the presence of oil has caused no discernible damage to the local ecosystem.

Although low concentrations of oil exist in the lake water, there is no evidence of a buildup of hydrocarbons in selected commercial species of fish or shrimp.

Although fisheries data are limited, no evidence exists that suggests this important renewable resource has yet been diminished.

However, discharge of nonpetroleum wastes, both domestic and industrial, are approaching such levels as to impair water quality. The biological resources of the lake may decline in future years.

TIMBALIER BAY, GULF OF MEXICO:[12,13,14]

Seasonal changes, especially in temperature and salinity, have a far more significant effect on species diversity of marine life and on the population of a given species than does the presence of low-level concentrations of oil.

Even the effects of other less-important natural phenomena, such as floods, upwellings, and turbidity, affect the ecosystem markedly. Their influences completely obliterate whatever effect, if any, results from exposure to oil.

No known biological hazard could be related to any compound or material used in drilling and production.

Timbalier Bay has not undergone significant ecological change. Every indication of good ecological health is present.

Evidently, the platforms have increased the total quantity of marine life. These structures provide surfaces where planktonic larvae of organisms such as barnacles, mussels, sea anemones, and others forms of sessile marine life may settle and flourish to become highly productive, complex communities.

OFFSHORE PLATFORMS, SANTA BARBARA CHANNEL:[14]

A highly complex community has developed under each platform. Communities on either the soft or hard bottom control areas are far less complex and far less abundant.

The pelagic fish population inhabiting the area under the platforms is estimated to be 20,000-30,000 per platform.

Positively identified are at least 50 species of fish, 110 species of invertebrates living on or near the structures, and 77 species of worms inhabiting the nearby sediments.

All sea life appears to be extremely healthy. Mussels 8-10 in. in length are numerous; larger ones have been observed.

Every available underwater surface of the platforms is heavily encrusted with mussels, barnacles, aggregate anemones, or other types of sessile sea life.

Drill cuttings were deposited at the base of the platform. Being sterile, they did not support marine life for 2 to 3 years after the platforms were constructed. Today this pile is covered by a depth of 37 in. of shells and now supports a teeming community of seastars, anemones, nudibranches, and other benthic organisms.

Santa Barbara seeps. D. Straughan and her associates at the University of Southern California recently concluded a 3-year study concerning the sublethal effects of natural chronic exposure of oil to marine life. Her laboratory was the marine waters at Coal Oil Point near Santa Barbara where natural oil seeps have been known to exist for centuries. The natural seepage there is 50-100 b/d.[5]

Extensive control data were obtained from studies conducted at Pismo Beach (north of Santa Barbara), Gull Island (near Santa Barbara), and Santa Catalina Island

Paper presented at Symposium "Sources, Effects & Sinks of Hydrocarbons in the Marine Environment," American Univ., Washington, D.C., August 1976.

(near Los Angeles).

Tar balls, Bermuda. A relatively recent phenomenon is the influx of tar balls washing ashore along the Bermuda coastline.[7,8] The Bermuda Biological Station for Research has just concluded a 2-year study to determine whether the influx of tar balls was having any effect upon the local intertidal life.

Control data were obtained by studying beaches that were slightly impacted. Also used were the extensive base-line data developed by annual studies extending back to the 1890's.

These results provide an insight into the potential threat of offshore spills washing ashore to intertidal life. This is especially valid for spills, if they should occur, from platforms in areas 50 or more miles offshore in outer-continental shelf waters.

Such potential production areas exist along the Atlantic Coast. The weathered oil that would wash ashore would be similar in composition and properties to the tar balls appearing on the Bermuda beaches.

Lake Maracaibo. A 3-year study was completed in 1974 by Battelle-Northwest Laboratories (Richland, Wash.) on the impact of offshore production in Lake Maracaibo, Venezuela. Approximately 6,500 wells have been drilled in this lake over a period spanning 4 decades.

Sites in those sections of the lake where oil production does not occur were also studied to obtain control data.

Timballer Bay. The Gulf Universities Research Consortium (GURC) studied the impact of offshore drilling and production of oil on the estuarine and marine environment in the coastal waters of Louisiana, specifically, in Timballer Bay.

The study involved 23 principal scientists from the 20 Gulf Coast universities that comprise GURC. Conducted over a period of 2 years, 1972-74, and at a cost of $1.5 million, this study is undoubtedly the most comprehensive study concerning the effects of chronic exposure of oil to marine life ever attempted.

Timballer Bay contains about 400 oil and gas wells. The first well was drilled in 1937. Several stations within this area were studied. Stations were also studied in adjoining areas, where there never had been oil drilling or production, to obtain control data.

Santa Barbara Channel. Platforms Hilda and Hazel were constructed in the Santa Barbara Channel in 1959 and 1960. During their construction, a survey revealed that the surfaces of these structures quickly became encrusted and a complex marine community including sessile, benthic, and pelagic forms developed.[15]

A year's survey was initiated early in 1975 to assess the extent and complexity of the marine community under the two platforms. This study was conducted by the Southern California Coastal Water Research Project under the direction of the Scripps Institution of Oceanography near San Diego.

The major observations resulting from this survey are also included in Table 1.

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Urethane doughnuts used to protect offshore platform

TWO HUNDRED huge bright-orange doughnut-shaped protectors, made of impact-absorbent urethane are being used to absorb shocks from open-sea docking of tugs, barges and workboats on a new offshore platform.

They are made for Oreco Inc., Lafayette, La., by Goodyear. The 142-lb toroids form a tough 6-in.-thick layer around the steel-platform pilings. Goodyear says that urethane is ideal for fendering material as it converts impact energy into heat which gradually dissipates.

Urethane is also unaffected by saltwater corrosion and can be molded with integral color for high visibility.

The devices, called Bargegard protectors, are installed on the recently placed Pennzoil platform which stands in 180 ft of water, 125 miles southeast of Galveston, Tex. The toroidal protectors measure 9 in. high and have a 31-in. diameter. Twenty of them are slipped over each of the platform's 10 fender pilings. The pilings are mounted so they can deflect and rotate in the horizontal plane for added shock absorbency.

The platform was assembled in two large pieces in the J. Ray McDermott fabrication facilities at Morgan City, La., then towed to the drilling site in the High Island area. The 1,200-ton platform jacket stands on the sea bottom with only 12 ft showing above water. A 1,120-ton work deck is mounted atop the jacket. END

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Introduced: 1/28/77
Referred: Resources and Judiciary

IN THE HOUSE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

HOUSE BILL NO. 137

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to civil penalties for discharges of oil."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 46.03 is amended by adding a new section to read:

Sec. 46.03.758. CIVIL PENALTIES FOR DISCHARGES OF OIL. (a) The legislature finds that the discharge of oil causes significant harm to the economy and environment of the state which is often difficult to detect and incapable of quantification, and that, in order to protect the public welfare and insure adequate recourse for the discharge of oil, and to provide an incentive for the safe production, handling and transporting of oil, it is necessary to establish a regulatory mechanism which recognizes and meets the realities of oil pollution.

(b) No later than January 1, 1978, the department shall adopt, and may periodically revise, regulations establishing a schedule of fixed penalties for discharges of oil of ~~not less than $5 nor~~ more than $50 per gallon of oil discharged. The schedule shall vary according to the toxicity, degradability and dispersal characteristics of the oil. The schedule shall vary according to the sensitivity of the receiving environment. Variations under this subsection may be by category of receiving environments, specific receiving environments, or both.

(c) Upon the effective date of regulations adopted under (b) of this section, if a discharge of oil not permitted under applicable state and federal law occurs within the territorial jurisdiction of

the state, or into or upon the adjacent outer continental shelf of the state, the following persons, in addition to the person causing or permitting the discharge, are jointly and severally liable to the state, in a civil action, for the full amount of penalties established in the regulations:

(1) if the discharge occurs from any commercial or industrial facility other than a vessel or offshore platform, the owner, lessee (or permittee), and operator of the facility;

(2) if the discharge occurs from a vessel:

(A) the owner and the operator of the vessel; and

(B) the bailor of the oil discharged, if the bailment occurred within the territorial jurisdiction of the state; and

(3) if the discharge occurs from an offshore platform, the lessee (or permittee) of the tract or acreage upon which the platform is situated, and the operator of the platform.

(d) The entire penalty specified in the regulations shall be imposed, and no portion of the penalty for which a person is liable under this section may be suspended or deferred.

(e) A person otherwise liable for penalties under (c) of this section is not liable if he demonstrates, by a preponderance of the evidence, that the discharge occurred solely as a result of:

(1) an act of God;

(2) an act of a third person with intent to cause a discharge of oil, unless the third person is a person with whom the person charged is made jointly and severally liable under (e)(1) - (3) of this section;

(3) a negligent or intentional act of the State of Alaska or the United States; or

(4) an act of war.

50 - 100,000

(f) Notwithstanding sec. 875 of this chapter, a person liable under this section is not also liable for the discharge of oil under sec. 760(a) of this chapter.

(g) If the application of this section to discharges of oil solely into and upon the adjacent outer continental shelf of the state is held invalid, the application of this section to discharges of oil into and upon the water or land within the territorial jurisdiction of the state is not affected by that holding. This severability provision is intended to clarify, and not limit the severability provision of AS 01.10.030.

(h) As used in this section:

(1) "adjacent outer continental shelf" means that portion of the outer continental shelf which would be within the territorial jurisdiction of the state if its boundaries were extended seaward to the outer margin of the outer continental shelf;

(2) "discharge of oil" means the entry of oil into or upon the water or land of the state, regardless of causation;

(3) "offshore platform" means an offshore structure, whether floating or temporarily or permanently secured to the floor of the ocean or other water body, which is used primarily for the exploration for or production of oil or natural gas;

(4) "oil" means petroleum, crude oil, and any substance refined from petroleum or crude oil;

(5) "operator" means the person who, through contract, lease, sublease or otherwise, exerts general supervision and control of activities at the facility; the term includes, by way of example and not limitation, prime or general contractors, the master of a vessel (and his employer), or any other person who, through himself, his agents, or contractors, undertakes the general functioning of the

facility; and

(6) "vessel" means any form or manner of watercraft, whether or not capable of self-propulsion, except offshore platforms.

* Sec 2. AS 46.03.900 is amended by adding a new subsection to read:

(23) "facility" means any offshore or onshore structure, improvement, vessel, vehicle, land, enterprise, or endeavor.

create oil ledgation account -
replacing
Ho-
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E. Conservation -

House Bill 137 An Act relating to civil penalties for discharges of oil."

Alaska currently imposes unlimited strict liability for Damages
*AS 46.03

PROBLEM with this , is receiving compensation for "Damages" will be
Burden of proff

i.e. The plaintiff must prove actual loss
precise economic value of loss
causation

With oil spills it is impossible to determine the acutal loss/economic value oil spill damage has on the environment. Cases under this law have languished in cts for years, arguing- negotiatin $ liability

Destruction of Food sources of higher organisms with probable cause of them leaving polluted areas entirely.

Direct Kill.

Inability of state to put a dollar figure on loss and harm of oil spill.

AS 46.03
Provides an assement of not less than 500. nor mor than 100,000 based on toxicity and rcvinb environment. Although damage maybe more than 100,000 in a given spillage they can only recover the upper limit of 100,000.

HB 137 amending AS 46.03 is titled An Act relating to Civil Penalties it is designed to constitute a mean ingful stimulus to comply with laws which they enforce instead , As: 46.03 which had a visible Maximum potential fine of 100,000 which fails to even register in the cost benefit analysis of oil handling operations in both intent and nature HB is remedial and regulatory rather than punitive (ie. fines alone)

HB 137 allows for the legisl ature to establish amount of penalty and c criteria for its application with an administrative agency establishing the dollars per gallon schedule by the ranking of releative toxicity of various types of oil. (the technical application of the bill)

The total limit amount of liability depends upon the total amt. of oil spilled.. Amended to 0 - 50 per gallon depending on toxicity, type of oil and sensitivity of receiving environment. Originial 5 - 50 per gal.

The bill establishes vicarious liability.

To extend liabilty for the penalty to certain persons who are in a posiition to control the integrity of operations from which the dschg occured.

*Those who induce and profit from oil handling activities, and who in fact have the ability to control the integrity of those activites, Duty to see that s those operations are conducted in as safe as possible a manner.

HB 137

B10

EFFECTS OF OIL ON MARINE ECOSYSTEMS: A REVIEW FOR ADMINISTRATORS AND POLICY MAKERS

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ABSTRACT

A broad selection of recent literature on the effects of oil on marine ecosystems is reviewed. The focus is on studies on crude oil, and the results are discussed with the purpose of providing a summary of findings that will be a useful reference for administrators and policy makers involved in decisions concerning petroleum developments and related activities. The characteristics of crude oil and factors modifying its impact on the marine environment are discussed. Most research on the toxicity of oil has dealt with acute effects and data on long-term impacts at the community level are inconclusive. It is concluded that chronic low-level pollution is potentially more damaging to ecosystems than isolated catastrophic spills. Decision makers are forced to rely on interpretative judgments rather than conclusive data.

Much of the material in this report was gathered as background material for use in preparing the marine section of the final environmental impact statement on the proposed trans-Alaska pipeline system (U.S. Department of the Interior, 1972). Some of the statements are essentially unchanged from the way they were presented in the appendix to volume IV of the impact statement. The impact statement made it clear that not enough data are available to analyze conclusively all of the potential environmental impacts of operation of the pipeline marine terminal facilities at Port Valdez, Alaska, and the transshipment of crude oil by tankers to west coast ports. A conclusion that can be drawn, however, and a message of the impact statement, is that oil poses a significant hazard to marine ecosystems, and a good deal of intensive research is necessary if these hazards are to be quantified and fully understood.

Research on oil pollution published since the impact statement on the pipeline was issued reveals that scant progress has been made, particularly with regard to the effects of chronic low-level oil pollution. Current and projected demands for energy in the United States are prompting accelerated development of offshore petroleum reserves, expanded oil tanker traffic, and proposals for construction of deepwater port facilities to handle the increasing number of supertankers. These developments will not wait for conclusive answers to questions on oil pollution. Recognizing this, we feel it is important that public administrators and policy makers be made aware of the inferences and trends evident in the research findings to date. These findings present a persuasive case that decisions regarding the handling of crude oil and petroleum products should be conservative and in favor of protecting the natural environment. While this report is by no means a complete review of the literature, it is sufficient to illustrate the potential danger of oil pollution to marine ecosystems and provide some guidance for policy decisions.

History is replete with examples of man's scientific and technological advances carrying him into situations he did not fully comprehend and with consequences he could not evaluate. Bella (1970) noted that "our ability to change this world is going to increase faster than our ability to predict what that change is going to be." He concludes that our management procedures must recognize the degree of ignorance we have about this world in which we live.

Pollution of the ocean by oil is a worldwide problem of growing concern to many nations. Spills like the *Torrey Canyon*, the *Arrow*, the Santa Barbara Channel blowout, and other spectacular incidents have helped stimulate international organizations of governments and industry to react to the problem. Viewed pragmatically, international response has been at least as adequate as domestic programs. Predicting the impact of an oil spill on the environment requires an understanding of the complex interactions involved. What

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appears to be universally lacking is the difficult research leading to an understanding of chronic and sublethal effects of oil at the biological community level. The following discussion outlines these complexities and points out how they make most generalizations invalid and the extrapolation of most data dangerous.

DESCRIPTION OF OIL

Crude oil is a complex mixture of many different specific hydrocarbons and a variety of compounds containing sulfur, oxygen, nitrogen, and some trace metals. Hydrocarbons make up the bulk of crude oil and can roughly be placed into one of three classes: paraffinic, naphthenic, and aromatic. From one area to another, crude oils vary in their composition and in density, volatility, and solubility. Their relative toxicity will vary (Ottway, 1971) but is roughly proportional to their aromatic content.

Paraffinic (or aliphatic) hydrocarbons are straight or branched carbon chains and are saturated (thus no carbon-carbon double bonds) with hydrogen or other groups. These hydrocarbons are the least toxic, although they may have an anesthetic or narcotic effect if concentrations are great enough.

Naphthenic compounds (cycloparaffins) contain at least one ring structure that is saturated. With this base, more rings or chains may be attached to form a variety of complex molecules.

Aromatic hydrocarbons also contain a ringed structure, but the ring is unsaturated with hydrogen and contains carbon-carbon double bonds (benzene ring). The simplest aromatic is benzene, which is very toxic and relatively water soluble in comparison to most hydrocarbons found in crude oil. Benzene and other low-boiling aromatics are the most toxic petroleum fractions. High-boiling aromatics act as slower poisons than low-boiling aromatics, but they are equally severe in their effect. In addition, some are known to induce cancer; 3,4-benzpyrene, 1,2-benzanthracene, and some alkylbenzanthracenes have been isolated from crude oil, and their carcinogenic effects on animals and man have been demonstrated (Blumer, 1970).[3]

Olefinic hydrocarbons (paraffinlike but unsaturated and containing reactive carbon-carbon double bonds) are not generally found in crude oils but are plentiful in certain gasolines and other refined products. The fate of olefins in the marine environment is poorly understood, but this class of compounds may be quite reactive under certain conditions and may combine readily with hydrogen, oxygen, chlorine, sulfur, and other elements to produce toxic substances. Once incorporated into organisms, olefins may remain intact for surprisingly long times (Blumer, 1967). The full range of olefinic hydrocarbons probably interferes with the reception of chemical messengers, or odors, in the sea by certain marine organisms (Blumer, 1970, see footnote 3).

When crude oil is processed ("cracked"), olefins and other compounds for gasoline and fuel oils may be formed or separated. Fuel oils, commonly involved in spills, are rated from 1 to 6. Those rated 1 are the lightest, most volatile, and most toxic and have the greatest aromatic concentrations; those rated 6 are the least volatile, least soluble, and least toxic and are asphaltic (tarlike).

Hydrocarbons are not foreign to the marine environment; normal paraffins are synthesized by most, if not all, living organisms. Blumer, Guillard, and Chase (1971) characterized the natural hydrocarbon content of 22 species of phytoplankton and cited literature for zooplankton. There are certain characteristic differences, however, between hydrocarbons native to organisms and the hydrocarbons in petroleum, particularly in the relative distribution of the various hydrocarbons. Crude oils and certain petroleum products are complex mixtures that contain molecules of different sizes in ratios not found in any one species of organism. Certain specific paraffins, and some naphthenic and aromatic compounds, are rarely found in organisms not exposed to oil pollution. These characteristic differences have been the basis for several scientific papers (Blumer, Souza, and Sass, 1970; Ehrhardt, 1972; Clark and Finley, 1973; and others).

FACTORS INFLUENCING THE IMPACT OF OIL

The impact of oil on the marine environment is governed by several factors—physical, chemical, and biological—in addition to the inherent complexity of crude oil and refined products. The behavior, effects, and fate of an oil spill involve all of

[3]Blumer, M. 1970. Scientific aspects of the oil spill problem. Presented at NATO Conference, Brussels, 6 Nov. 1970, 21 p., Woods Hole Oceanogr. Inst., Woods Hole, Mass.

these factors; and because they are interdependent, the reliability of our predictions concerning the impact of a spill is limited by our knowledge of the least understood variable.

Straughan (1972) noted our general inability to predict the environmental impact of a spill because of the complexity of the matter, and identified several factors that govern biological damage caused by a spill: 1) type of oil spilled, 2) dose of oil, 3) physiography of the area of the spill, 4) weather conditions at the time of the spill, 5) biota of the area, 6) season of the spill, 7) previous exposure of the area to oil, 8) exposure to other pollutants, and 9) treatment of the spill. Several of these factors are touched upon below.

Natural Physical Processes Affecting Oil in the Water Column

Once oil is spilled, it is dissipated by evaporation, dissolution, and mixing or dilution in the water column. The natural processes are speeded by wind action and by waves and currents that increase spreading and vertical mixing. Various fractions respond differently to these processes, and the weathered residue behaves differently than the material originally spilled. A contaminated bay may be flushed by freshets, tidal action, or longshore currents. Some oil sinks directly to the bottom, especially in fresh water, where some oil fractions have densities approaching that of fresh water, and in water with high sediment loads. Certain fractions may undergo autoxidation.

Conover (1971) reported that sedimentation of fecal-bound oil that had been ingested by zooplankton may have accounted for up to 20% of the spilled oil entering the water column at Chedabucto Bay, Nova Scotia. Oil can also be removed from the water column by absorption within organisms and accumulation within the food chain. Suspended sediments carried by runoff from a major flood entered the Santa Barbara Channel area immediately before and after the well blowout (Kolpack, 1971). Kolpack noted that adsorption of oil on the flocculated suspended particles followed by decomposition was a major factor in carrying much of the oil to the sea floor. Kinney et al. (1970) reported, however, that in Cook Inlet, Alaska, glacial silt from the inlet had no apparent effect on the emulsion properties or the sinking of the type of crude oil found in that area.

Forrester (1971) noted the extensive distribution of oil particles stirred into the water by wave action after a bunker C oil spill in Chedabucto Bay. Oil particles were found to a depth of 80 m inside the bay and to depths of 45 m at a distance of 65 km outside the bay. Near-surface distribution of particles extended 250 km southwest along Nova Scotia in a band extending up to 25 km offshore. Berridge, Thew, and Loriston-Clark (1969) indicated that the stabilization of emulsions like those observed at Chedabucto Bay and elsewhere was caused by complex chemical components in the nonvolatile residues and not by bacterial activity, marine organisms, or suspended solid matter.

Environmental Differences

The fate and effects of oil spilled in the marine environment are difficult to generalize because several types of environments may be involved. Some extreme comparisons are tropics versus arctic, open ocean versus estuaries, and the differences between the intertidal and subtidal zones.

Within these environments are several diverse physical conditions such as temperature, salinity, oxygen, and nutrient concentrations, as well as biological differences such as species composition, diversity and density, and community metabolic rate. The prediction or assessment of pollution effects on the basis of observations extrapolated from one environment to another is seldom supported by adequate data. Unfortunately, however, few data on pollution effects exist for most areas and species, which has led to the use of information from areas that may be dissimilar in critical respects.

There are arguments as to which environment is the most stable and capable of withstanding attacks by additional pollution stresses. Copeland (1970), discussing the response of ecological systems to stress, suggested the principle that "...those systems already subjected to energy-requiring stresses are more likely to resist the changes than those (such as tropical systems) adapted to relatively constant environments." He concluded that estuarine ecosystems composed of organisms capable of wide adaptations and generalizations, such as north temperate systems, would be relatively unaffected by the same magnitude of disturbance that would drastically alter

a tropical system. Odum (1970) noted, however, that many estuarine species are living near the limit of their tolerance range and that any alteration in the environment, such as additional stresses caused by low levels of pollution, could exclude these animals permanently from the estuary.

All healthy balanced ecosystems are generally functioning at or near some critical tolerance limit. In an ecosystem with a variable environment, such as a north temperate estuary, responses to additional stress might not always be the same. For example, even though factors surrounding an oil pollution incident might be outwardly similar in respects to another spill in a comparable area, the biological impacts may differ. The ability of the local community to absorb the additional stress will be influenced by the coincidence of seasonal variability of natural stresses, the differences in vulnerability of stages in an organism's life cycle, and many other dynamic features of the ecosystem.

Biological Differences

The effects of oil pollution on many different organisms in various habitats may vary from no effect to responses of avoidance and decreased activity, to nonadaptive responses of panic and physiological stress. What kills one species may have little or no effect on another. Affected organisms vary from single cells, to sedentary clams, to highly mobile predators, each of which has different behavioral and physiological interactions with the environment.

Just as different species are affected differently, so may individuals within a species be affected differently. In particular, different life stages such as eggs, hatched larvae, and newly molted individuals may have different sensitivity to the same level of pollution. Mironov (1968), for example, reported that prelarval stages of barnacle, *Balanus* sp., were 100 times more sensitive to oil pollution than the adult form. This contrasts with the relative lack of sensitivity to crude oil by pink salmon eggs and sac fry, which were 10 times more tolerant than older fry (Stanley D. Rice and Adam Moles, Auke Bay Fisheries Laboratory, National Marine Fisheries Service (NMFS), NOAA, Auke Bay, AK 99821, pers. commun.).

Renzoni (1973) conducted a series of experiments on the toxicity of several crude oils and petroleum products to the sperm, eggs, and larvae of the oysters *Crassostrea angulata* and *C. gigas* and the mussel *Mytilus galloprovincialis*. He found a relatively high degree of tolerance by eggs and larvae but reported that the fertilizing capacity of sperm was markedly affected by similar exposures.

Biodegradation

Quantitative data describing the biodegradation of various components of crude oil, especially in arctic and subarctic areas, are limited.

ZoBell (1973a) briefly reviewed the current understanding of microbial degradation of oil, including interactions, limiting factors, problems, and perspectives. Ahearn (1973) stated that research on microbial utilization of hydrocarbons for treatment of oily pollutants in the environment, though more intensive in recent times, is still in an early stage of development. It is known that microorganisms can degrade much of a crude oil, particularly the less toxic paraffinic compounds. No single species can degrade all the compounds, but many different species together can metabolize a large number of the compounds, if not all. The rate of microbial degradation, which is principally aerobic, decreases with a decrease in temperature. Large quantities of oxygen are needed. It has been estimated, for instance, that complete oxidation of 1 gallon of crude oil would require all of the dissolved oxygen in 320,000 gallons of water. This comparison may be unrealistic because most oil is at the surface of water in contact with air and only the outer surfaces of oil can be attacked at any one time. It is reasonable to assume, however, that an oxygen-deficient environment may well occur under some oil slicks and in oil-contaminated sediments.

Glaeser and Vance (1971) studied the behavior of Prudhoe Bay crude oil in controlled spills in the Chukchi Sea but were not able to isolate any microorganisms which could degrade hydrocarbons at the ambient temperatures of the Arctic, although some emulsification of the crude oil was observed. However, ZoBell and Agosti (1972) collected oil-oxidizing bacteria near natural oil seeps from the Alaska North Slope and observed oxidation rates of mineral oil at −1°C and above. They noted that the solid surfaces of the ice crystals appeared to facilitate bacterial growth, because the rate at −1°C was substantial and near the 4°C rate.

The apparent contradiction between the studies is probably best explained by ZoBell's (1973b) continued observations with North Slope bacteria. He

found that the nine different crude oils were not degraded as rapidly as purified mineral oil. Glaeser and Vance's studies were with microorganisms from the surface water of the Chukchi where small numbers of bacteria may have been present. Furthermore, the observations of Straughan (1971), who noted the apparent lack of biological damage by the Santa Barbara blowout, may apply here. She discussed the possibility that the fauna had an unusually high tolerance for oil, probably because of adaptation from chronic low-level oil exposures from local natural seepages. The observations of ZoBell and Agosti (1972) on the oxidation rates of oil at −1°C may be an example of similar adaptive response by the North Slope bacteria collected near natural seeps. These oxidation rates and other adaptive responses might not occur from organisms that have not been preacclimated to chronic low-level exposures of oil and may explain why Glaeser and Vance obtained reports of negligible oxidation rates at 0°C from microorganisms from surface water of the Chukchi Sea. Robertson et al. (1973) estimated hydrocarbon-oxidizing bacteria populations were in the order of 1/ml in Cook Inlet and Port Valdez, but less in the Arctic Ocean. Numbers decreased with salinity in Cook Inlet and with depth in Port Valdez.

ZoBell (1963) reported that oil is readily adsorbed by clay and silt and suggests that although adsorption of oil by solids renders the oil more susceptible to autobial and microbial oxidation, almost no bacterial decomposition occurs after burial in the bottom sediments, probably because the environment is anaerobic. Blumer and Sass (1972) found that some paraffinic hydrocarbons remained in bottom sediments 2 yr after the West Falmouth oil spill and aromatic hydrocarbons were prominent, which suggests that these more toxic compounds are utilized by bacteria to a minimum degree.

Oil in Sediments

The effect of oil in sediments is poorly understood, although several authors have quantitated oil concentrations and noted its persistence. Scarratt and Zitko (1972) observed little diminution of bunker C oil concentration from soft sediments 26 mo after the wreck of the tanker *Arrow*. The oil reached maximum concentrations in coarse sediments 1 yr after the spill, but the concentrations reduced thereafter. Chemical degradation can occur but is normally restricted to the surface layer of the bottom penetrated by ultraviolet light. Blumer and Sass (1972) noted that "The preservation of hydrocarbons in marine sediments for geologically long time spans is one of the accepted key facts in current thought on petroleum formation." However, in spite of the stability of hydrocarbons in marine sediments, there are characteristic differences between the hydrocarbons in polluted and unpolluted areas. Tissier and Oudin (1973) found that hydrocarbons in polluted sediments differed from those of unpolluted sediments by having lower percentages of heavy components, by not having an odd carbon dominance in the n-alkanes, and by having polycyclic aromatic hydrocarbons with alkyl chains.

Oil residues were observed on sandy beaches by ZoBell (1963) and in marshes and in sediments of the deepest area (15.3 m) near the West Falmouth spill by Blumer, Sass, Souza, Sanders, Grassle, and Hampson (1970).[4] About 2 wk after fuel oil was spilled at Resolute Bay, Northwest Territory, in August 1970, casual sampling revealed that oil penetrated into beach material to a depth of about 3 inches (7.6 cm) (Barber, 1971). Oil may be buried and stay intact for a considerable time, even at the higher temperature of the California coast (ZoBell, 1963). During laboratory experiments, Johnston (1970) determined oil decay rates in sand columns contaminated with various concentrations of oil. Ten percent of the oil was oxidized over a period of several months; the remaining 90% decayed much slower.

The West Falmouth spill provided a unique opportunity for a study of the immediate and long-term effects of an oil spill on an area where the previously existing environmental base was well known (Blumer, Sanders, Grassle, and Hampson, 1971). One effect of the oil was to reduce the cohesion of bottom sediments of tidal marshes and the estuary by killing the benthic plants and animals (Blumer, Sass, Souza, Sanders, Grassle, and Hampson, 1970, see footnote 4). The resulting erosion spread hydrocarbons to new areas, where the process was repeated. Because of the stability and persistence of the hydrocarbons in marine bottom sediments, Blumer, Souza, and Sass (1970) noted that hydrocarbons may be returned to the biosphere by organisms living and feeding in the sediments. This redistribution of hydrocarbons can be

[4]Blumer, M., J. Sass, G. Souza, H. Sanders, F. Grassle, and G. Hampson. 1970. The West Falmouth oil spill. Unpubl. manuscr. Woods Hole Oceanogr. Inst., Ref. No. 70-44, 32 p.

the source of a chronic pollution problem near that spill.

It is quite possible that normal functions of sediments will be disrupted when contaminated by oil. Changes in the sediments that are subtle and difficult to detect, such as decreased nutrient recycling and community metabolism, could result in the loss of significant contributions to the productivity and stability of an area. Although oil in sediments has been monitored and measured after several spills, other aspects of the oil–sediment relation have yet to be studied.

BIOLOGICAL EFFECTS OF OIL POLLUTION

Blumer (1970, see footnote 3) summarizes the potential damage to organisms from pollution by crude oil and oil fractions as follows:

1. Direct kill of organisms through coating and asphyxiation.
2. Direct kill through contact poisoning of organisms.
3. Direct kill through exposure to the water-soluble toxic components of oil at some distance in space and time from the accident.
4. Destruction of the generally more sensitive juvenile forms of organisms.
5. Destruction of the food sources of higher species.
6. Incorporation of sublethal amounts of oil and oil products into organisms (resulting in reduced resistance to infection and other stresses—the principal cause of death in birds surviving immediate exposure to oil).
7. Incorporation of carcinogenic and potentially mutagenic chemicals into marine organisms.
8. Low-level effects that may interrupt any of numerous events (such as prey location, predator avoidance, mate location or other sexual stimuli, and homing behavior) necessary for the propagation of marine species and for the survival of those species higher in the marine food web.

Some of the potential effects described by Blumer may be obvious, such as the direct deaths from acute exposures. Less obvious indirect deaths may occur from effects at either the individual or population level. Individual organisms subjected to sublethal exposures may undergo an "ecological death" if they are less capable of adjusting to and responding to natural changes (stresses) in their physical and biological environments. For example, postmolt Tanner (snow) crab, *Chionoecetes bairdi*, lost legs during short exposures to crude oil (Karinen and Rice, in press). Even though the crabs lived through the exposure, they probably could not have survived in the natural environment because some of them lost as many as seven legs, including both chelae. Moreover, crabs or other adversely but sublethally affected organisms would be more likely to be eliminated by natural selection.

Effects from chronic exposure may be adverse to a population over a period of time if exposed but normal-appearing adults have their ability to reproduce seriously impaired. This loss may be due to physiological changes such as reduced fecundity and delayed ovary development or to impaired behavioral mechanisms which could prevent mate location and identification or homing and timing of spawning. Although the effects at this level might not result in death of the adult, they could induce a trend of decreasing numbers that might eventually eliminate the population or race.

Hydrocarbons in the Marine Food Web

Blumer (1967, 1969) and Blumer, Guillard, and Chase (1971) studied the fate of organic compounds in the marine food web. They found that certain hydrocarbons, even highly unsaturated ones, are stable once they are incorporated into a particular marine organism and that they may pass through many members of the marine food web without alteration and may actually be concentrated in tissue. Most hydrocarbons are lipid soluble and thus may accumulate in food webs to the point where toxic levels are reached. This pathway is illustrated by the well-documented chlorinated hydrocarbon group of pesticides.

The entrance of oil-derived hydrocarbons into marine food webs has been observed several times at several trophic levels. Conover (1971) reported that 10% of the bunker C oil in the water column after the Chedabucto Bay spill was combined with zooplankton and that their feces contained up to 7% oil. Mironov (1968) also noted the ability of some zooplankters to accumulate hydrocarbons. The incorporation of hydrocarbons into the food web at these primary levels assures exposure at all higher trophic levels.

Blumer, Souza, and Sass (1970) and Ehrhardt (1972) reported pollution-derived hydrocarbons in shellfish. Uptake and retention of labeled hydrocarbons of several classes by a marine mussel,

Mytilus edulis, was noted by Lee, Sauerheber, and Benson (1972). Smith (1968) reported the presence of oil and benzene-ring compounds in the feces of limpets browsing on an oily deposit, and in top shells, *Monodonta*, and limpets, *Patella*, living on oiled rocks. He reported that analysis of the gut indicated "the proportion of oil in material ingested by these animals was estimated as about 20-30 percent in *Patella* and 5-50 percent in *Monodonta*."

Organisms at the highest trophic levels may be affected directly by the oil itself or indirectly by hydrocarbons that have reached them through the food web. Horn, Teal, and Backus (1970) found large amounts of tar in the stomachs of three saury, *Scomberesox saurus*, from a sample of ten in the Mediterranean Sea near Gibraltar. Although saury are generally considered to be carnivorous, the occurrence of tar and also of "vegetable debris" in one of the stomachs examined by Horn et al. (1970) suggests that the species is not a very discriminate feeder. Although all ingested oil was obviously not incorporated into the tissues (some oil was found in feces), such feeding behavior does describe a pathway for hydrocarbons to be directly taken up into the tissues of the organism. Thus, oil ingested, absorbed, and even adsorbed may enter the food chain when contaminated organisms are eaten.

Carcinogenicity

Some doubt may remain as to the direct carcinogenicity to man of crude oil and crude oil residues in marine organisms (Blumer, 1969), but evidence pointing toward this is accumulating (Blumer, 1970, see footnote 3; 1972). A literature search and evaluation conducted for the U.S. Coast Guard by Battelle Memorial Institute (1967) noted that shellfish, although alive, may have been unfit for consumption because of the carcinogenic hydrocarbon 3,4-benzpyrene in their bodies. Oysters that were heavily polluted and contaminated with ship fuel oil were reported to contain 3,4-benzpyrene. The Battelle review also reported that barnacles attached to creosoted poles contained the same carcinogenic hydrocarbon (3,4-benzpyrene). Sarcomas were elicited when extracts from the barnacles were injected into mice. The endemic occurrence of papillary tumors around the rectal opening of soft-shell clam, *Mya arenaria*, was reported, but the author (Battelle Memorial Institute, 1967) did not feel these were due to oil pollution, even though the clams were taken from waters adjacent to areas highly polluted by ship fuel oil. Hyperplasia in reproductive cells of a bryozoan in response to coal tar derivatives was observed by Powell, Sayce, and Tufts (1970). They noted that similar abnormalities may also have occurred in coastal faunas exposed to spills such as the *Torrey Canyon* and the Santa Barbara blowout. However, most observations on these spills were concerned with gross mortality and may not have detected the sublethal effects.

ZoBell (1971) reported the natural synthesis and metabolism of carcinogenic hydrocarbons by several marine organisms. Thus, oil pollution is certainly not the only source for carcinogenic hydrocarbon introduction into marine food webs. Suess (1972) recognized that carcinogens were in seafoods but concluded that they would probably not be dangerous unless the foods contained an excess amount of polynuclear aromatic hydrocarbon carcinogens. Carcinogenesis from oil-contaminated marine organisms has not been proved, but Ehrhardt (1972) expressed a need for carcinogenic testing of hydrocarbon fractions extracted from marine organisms contaminated by exposure to oil.

Observed Toxic Effects

A study of the available information on potential toxic effects of oil pollution reveals more unknowns than proven conclusions. Only a decade ago, ZoBell (1963) reviewed the literature on the effects of oil on bacteria and higher organisms and concluded that oil pollution had no great adverse impact on fishery resources in general. He did point out, however, a few reports of toxic effects, tainting of flesh, and damage to vessels and fishing gear.

The quantity of literature on effects of oil spills has increased since the *Torrey Canyon* incident of 1967. Most of the recent work has depended on onsite visual surveys after occurrence of an oil spill rather than on experiments and detailed study. The surveys have been limited mostly to the effects of oil and of cleaning or dispersing agents on primarily adult intertidal organisms and populations. These observations on a restricted segment of the affected ecosystem include only a few of the factors that influence the total impact of oil. Wilson, Cowell, and Beynon (1973) noted that the absence of results from studies at the com-mu-

nity level make the interpretation, extrapolation, and use of many observations very difficult. Further, the differences between various crude oils and between the hundreds of petroleum products in their physical and biological effects must always be kept in mind. Comparative data generally are far too few to permit attaching any relative significance to production area or product formulation in this review.

Field Investigations

The utility of many "after-the-fact" studies is limited because of the lack of knowledge of prespill conditions. Data are often collected without proper controls for comparison, and knowledge of natural local fluctuations and species composition of animal populations is usually quite limited. For these reasons conclusions about the impact of a particular spill may vary.

Ehrsam (1972) reported substantial immediate kills of marine life from a fuel oil spill at Anacortes, Wash., and concluded that if larval and juvenile forms of certain organisms were killed, the full impact of the spill may not be known for some time. Katz (1972) observed intertidal transects of the same affected area and concluded that the effects were minor and long-term effects would be unlikely. Webber (1972) pointed out, however, that these after-the-fact studies observed only a small wedge of the total biota. Knowledge of subtidal and benthic organisms as well as larvae and juveniles was lacking.

Other large spills have been studied in greater detail and have contributed significantly to our understanding of the gross effects of oil. Yet, they have been unable to answer many important questions on the effect of pollutant hydrocarbons in the marine environment, and generalizations learned from one spill may not apply to another because each is different.

Field observations of behavior and effects of oil in Arctic ice environments are few. The U.S. Coast Guard investigations in the Arctic have primarily been directed toward gaining knowledge to improve cleanup methods (Glaeser and Vance, 1971; McMinn and Golden, 1973). Campbell and Martin (1973) discussed possible large-scale movements and persistence of oil spilled in the Beaufort Sea. They suggested that the surface waters of the Arctic Ocean and the winter waters of Chedabucto Bay, Nova Scotia, might be comparable, particularly with regard to the physical behavior of oil. Chedabucto Bay is the site of the grounding of the tanker *Arrow* in February 1970 with 2.8 million gallons of bunker C oil aboard. Campbell and Martin (1973) found that highly stable oil-water emulsions formed to a depth of 50 m throughout Chedabucto Bay. They described conditions by which oil reaching the edge of the pack ice could be distributed under the ice.

Thomas (1973) also suggested that results of the studies at Chedabucto Bay might in some respects be applicable to spills in the Arctic. He observed remobilization of oil from beneath the weathered surface of deposits during the summers following the *Arrow* spill and the subsequent re-oiling of some intertidal areas, adding a chronic pollution aspect to the spill. Extensive mortalities of soft-shell clams and salt marsh cord grass, *Spartina alterniflora*, resulted where this occurred. In other areas, clams were visibly contaminated with oil and clam fishing was closed, at least through the summer of 1972 (Thomas, 1973).

When the *Torrey Canyon* broke up near the southwest coast of England in 1967, 15 million gallons of Kuwait crude oil with a high aromatic content were released. Efforts to cope with this first super disaster depended principally upon 2 million gallons of toxic dispersant, which probably caused more damage than the oil, most of which had weathered at sea for a week or more before reaching the shores. Many techniques for oil containment and control on the seas were attempted during the time oil leaked from the tanker; the fact that they all failed reveals the inadequacies of our technology and preparedness for such emergencies.

Extensive investigations of the West Falmouth spill by Blumer and his associates at Woods Hole provide one of the best documentaries of an oil spill. A total of 185,000 gallons of no. 2 fuel oil (41% aromatic content) were spilled in 1969 from a ruptured barge. Intertidal and subtidal benthic organisms of all phyla were killed during the first few days (Blumer and Sass, 1972). Blumer, Souza, and Sass (1970) showed that the uptake of fuel oil hydrocarbons by shellfish left them unfit for human consumption later. Blumer and Sass (1972) reported the continued persistence of fuel oil hydrocarbons in the sediments after 2 yr. Although there had been some degradation, the boiling range and composition of the hydrocarbon mixture was basically unchanged.

The 1969 Santa Barbara blowout released an estimated 5,000 barrels of crude oil per day ini-

tially (Foster, Charters, and Neushul, 1971), yet biological damage was not reported widespread and the area has started to recover. Foster, Neushul, and Zingmark (1971) observed that much of the damage to intertidal areas corresponded to sand movement, probably from storm damage. Cimberg, Mann, and Straughan (1973) concluded that the blowout had less effect on intertidal marine organisms than did sand movement and substrate stability. Straughan (1971), reporting on investigations at Santa Barbara, noted factors unique to that accident: 1) the long history of natural oil seepage in the Santa Barbara Channel and 2) the unusually heavy winter runoff at the time of the spill, which reduced salinities, increased sedimentation, and possibly increased pesticides in the channel. R. L. Kolpack (pers. commun. cited by Kanter, Straughan, and Jessee (1971)) noted that Santa Barbara crude oil is relatively insoluble in seawater and contains a very low percentage of the toxic aromatic compounds. Thus, information gathered on the effect of the Santa Barbara spill or any other is of limited utility in predicting the ecological effects of crude oil spills or of other oils in other areas.

Several studies have provided encouraging reports of varying degrees of recovery after some of the recent larger spills. Investigations about 1½ yr after the *Torrey Canyon* spill revealed that at least the affected shoreline areas were recolonizing and recovering, although recovery was not yet complete at that time (Spooner, 1969). The areas affected by the 1969 Santa Barbara blowout were recently reported to be recovering (Cimberg et al., 1973), as was a reef affected by bunker C oil spilled from a tanker collision in San Francisco Bay in January 1971 (Chan, 1973).

Too few of the controlled field investigations have been designed to bridge the gap between field surveys after spills and simulative laboratory experiments. Perkins (1970) exposed periwinkles and other intertidal organisms to the oil dispersant BP1002 in the laboratory and then released marked individuals in the natural environment. After recapture of the individuals exposed, he found that survival from doses as low as one three-thousandth of the 24 h LC_{50}[5] was lower than among the recaptured controls. Crapp (1971a) conducted field experiments by applying crude oil and oil emulsifiers to the intertidal zone. Physical damage by the oil was observed, but toxicity damage was not great because the oil had previously been exposed to air; in contrast, the oil-emulsifier mixtures were toxic. Baker (1970) applied a crude oil to salt-marsh plots at different times of the year and monitored the effects on plants. Summer applications of oil severely affected annuals but not perennials.

[5]24 h LC_{50} equals that dose of toxicant that resulted in 50% survival after 24 h exposure.

Laboratory Studies

Experiments in the laboratory also do not provide all the answers about how an oil spill will affect a marine organism or its environment. Laboratory research has demonstrated the toxicity of various crude oils and petroleum products on several forms of marine life. Much of this research has focused on the planktonic life history stages of pelagic and benthic animals. Many of these planktonic larvae are phototactic at their earliest stages and concentrate in the surface layer of the sea. This community of the surface 5 cm, the neuston, is the first affected by most oil entering the water. Thus, many organisms are most sensitive to oil pollution at the time of their greatest likelihood of exposure.

Studies by Mironov (1968) on the development of fertilized eggs of the plaice, *Rhombus macoticus*, showed extreme sensitivity of the eggs to the influence of the oil products in seawater. He noted that injury to the eggs occurred at concentrations of 10^{-4} to 10^{-5} ml/liter (0.1 to 0.01 ppm). In these concentrations of oil products, 40 to 100% of the hatched prelarvae showed some signs of degeneration during development and perished. Mironov (1969a) also demonstrated that 0.001 ml of crude oil per liter was toxic to the eggs of anchovy, scorpionfish, and sea parrots from the Black Sea.

Newly set spat of *Elinius modestus*, an Australian barnacle introduced to Europe, were tolerant of 100 ppm crude oil but showed reduced cirral activity and retarded shell growth (Corner, Southward, and Southward, 1968). Adults of this species also showed reduced activity at 100 ppm (Corner et al., 1968).

Mironov (1969b) tested crude oil on several copepods and a cladoceran, and found that 0.001 ml/liter accelerated death in all forms and that 0.1 ml/liter caused death in less than 1 day. *Acartia* and *Calanus* died at 0.01 ml/liter oil in seawater in 72 to 96 h (Mironov, 1968). Larvae of crab and shrimp died at 1 ppm (Mironov, 1969c).

Little is known of the mechanisms of various

toxic effects. Damage to cell membranes and the cellular contents of planktonic larvae may occur. Goldacre (1968) demonstrated such cytological damage and death to the freshwater protozoan, *Amoeba proteus*, exposed to crude oil fractions. Brocksen and Bailey (1973) measured increased respiratory response of striped bass and chinook salmon to sublethal concentrations of benzene. The fish recovered to normal activity when they returned to noncontaminated water for several days. Rice and Short were unable to demonstrate changes in the enzyme activity of cholinesterase or Na-K stimulated ATPase in juvenile pink salmon, *Oncorhynchus gorbuscha*, after in vivo and in vitro exposures to Prudhoe Bay crude oil (Stanley D. Rice and Jeffrey Short, Auke Bay Fisheries Laboratory, NMFS, NOAA, Auke Bay, AK 99821, pers. commun.). This is somewhat surprising because various hydrocarbon pesticides have been shown to affect both enzymes.

Cellular membranes of phytoplankton are also damaged by the penetration of hydrocarbon molecules. The cellular contents are extruded, and oil penetrates into the cell. Detergents administered in a concentrated solution also penetrate the plant cells and cause the dissolution of cellular membranes and the extrusion of cellular fluid (Ruivo, 1972). The effects of oils on plant respiration are variable, but an increase of respiration is frequently observed, probably because of an alteration of the mitochondria. This could result in an uncoupling of the oxidative phosphorylation enzymes from the electron transport enyzmes, and the energy release would be lost as heat.

All marine animals ultimately depend on the photosynthetic activity of phytoplankton and algae for the production of biomass. Baker (1971), reviewing the literature, noted that weathered *Torrey Canyon* oil had no apparent effect on the photosynthetic activity of green algae. He did find, however, that green algae treated with fresh crude oil died and that photosynthesis in kelp, *Macrocystis* sp., was reduced when the kelp was exposed to various petroleum products. Kauss et al. (1973) determined the effects of crude oil on several species of freshwater algae in both field and laboratory experiments. In their field studies, response of the algae to a spill varied from suppression of growth to its stimulation. In their laboratory studies, they noted depressed photosynthetic rates in one algal species after it had been exposed to aqueous crude oil and other selected aromatics.

Growth of phytoplankton from axenic cultures and mixed cultures of natural populations was inhibited by water-soluble extracts from no. 2 fuel oil in a laboratory study by Nuzzi (1973). Mironov and Lauskaya (1968) demonstrated that marine phytoplankton vary several orders of magnitude in sensitivity to crude oils and kerosene in oil concentrations ranging from 0.1 to 1,090 ppm. Of the 20 species tested, a diatom, *Ditylum brightwellii*, was the most sensitive. The wide variation in susceptibility may account for the statements in other reviews of low toxicity of crude oils to phytoplankton (Føyn, 1965; Nelson-Smith, 1970) and supports the premise that biological response will differ among species.

Sublethal and Chronic Effects of Oil Pollution

While data are scarce in some of the areas previously discussed, information on the ecological effects of chronic sublethal oil pollution is essentially nonexistent. Observing these effects is difficult because they are not dramatic and may pass unnoticed by the casual observer. A full description would require observations extending over a long period of time.

Lewis (1972), commenting on approaches to the study of chronic pollution, contends "... that without a massive expansion of ecological and reproductive data by simultaneous multidisciplinary studies not only will we be unable to detect the significant long-term changes, but we will even remain unaware of the most suitable or important species and methods to build into a monitoring program."

A few studies concerning sublethal effects on organisms have appeared in the literature. Wells (1972) reported deaths of lobster larvae to exposures of 0.1 ml of Venezuelan crude oil per liter, while larvae exposed to 0.01 ml/liter had poor survival rates and were unable to molt to the fourth stage. Decreased limb (cirral) activity of marine larvae exposed to oil has been reported (Smith, 1968). Kuhnhold (1972), while observing toxic effects of crude oils to eggs of cod and to larvae of cod, plaice, and herring noted that the larvae exposed to oil-contaminated water were unable to avoid well-defined milky clouds of toxic oil dispersions. Blanton and Robinson (1973) observed damage to the gills of specimens of seven species of fish that had apparently been exposed to an oil spill off the Louisiana coast.

Crapp (1971b) observed that fucoid algae replaced barnacle and limpet populations near an outfall where the effluent contained about 20-25 ppm oil from treated ballast water of tankers unloading at Milford Haven. Although the relative oil content was low, the cumulative volume discharged was large (20,000 gallons of oil per year), a situation similar to that which may occur at Port Valdez, Alaska, when the trans-Alaska pipeline is completed.

Blumer (1972) discussed how low-level chronic effects of oil may damage marine organisms because of their dependence on natural organic chemical clues for a variety of functions. Salmon and other fishes utilize organic chemical clues in migrations; predators are attracted to prey by organic compounds at the parts-per-billion level (Whittle and Blumer, 1970); and other organisms may use chemical clues for predator avoidance, selection of habitat, and sex attraction. Blumer (1972) discussed the fears that oil pollution may interfere with these fundamental biological processes by masking or blocking, or by mimicking natural stimuli (resulting in false responses). He cited literature discussing the attraction of lobsters to kerosene and to purified hydrocarbon fractions derived from kerosene and noted that many dead lobsters were washed ashore after the West Falmouth spill. Blumer's fears about interference with chemoreception are further substantiated by the observations of Takahashi and Kittredge (1973) on crab behavior. Crabs, *Pachygrapsus crassipes*, exposed to water-soluble extracts of crude oil failed to exhibit feeding behavior or mating behavior responses when given appropriate chemical stimuli. Inhibition of chemoreception of some motile marine bacteria by a crude oil and several other hydrocarbons has been demonstrated by Walsh and Mitchell (1973).

Rice (1973) performed laboratory tests of avoidance of pink salmon fry to Prudhoe Bay crude oil and observed avoidance of oil at concentrations as low as 1.6 mg/liter. He concluded that salmon fry had the capability of detecting sublethal concentrations of oil and that they might avoid areas contaminated with sublethal levels of oil, which would result in confused and nonadaptive migratory behavior. The effect of chronic low-level pollution in areas such as Port Valdez, the terminus of the trans-Alaska oil pipeline, could be as severe as the total loss of all salmon runs in the local area because of altered behavioral responses to sublethal oil pollution.

CONCLUSIONS

Although crude oil generally should be considered toxic to marine organisms and harmful to their environment, most ecosystems can tolerate some pollution because oil can be dissipated or removed by processes like evaporation, autoxidation, dilution, and biodegradation. However, each organism and environment has a limit to how much oil can be absorbed and metabolized. Catastrophic spills are obviously pollution at a level that ecosystems cannot tolerate without damage. However, if the spills are not continued, the oil will slowly be removed and recovery of the area, at least to some degree, will likely occur. There is some evidence for recovery of some affected individuals.

Assessments of the impact of oil pollution cannot depend solely on evaluation of immediate kills of organisms from acute exposures. Chronic low-level oil pollution can cause subtle changes in organisms and is potentially more dangerous to the ecosystem than dramatic catastrophic spills. For this reason, the effects of chronic pollution warrant intensive study so that they will not be underestimated. The cumulative impact of "ecological death" of individuals which have impaired functions may be quite significant, yet difficult to assess because the death is not tied directly to an acute oil exposure. Equally as dangerous is the potential impact on populations where reproductive processes, adversely affected through physiological or behavioral mechanisms, result in fewer progeny. Chronic pollution may eliminate a species from an area entirely, and once eliminated that species may remain suppressed and may not repopulate the area because of continuing pollution or because its niche has been filled by a more tolerant, possibly less desirable, species.

The adverse effects of oil on animal populations has been of wide concern when stocks of special interest, such as those providing the basis of a sport or commercial fishery, have been involved. It should be remembered that changes in populations of lesser apparent significance will also cause changes in the community because each species population interacts with and is dependent on the rest of the community.

The foregoing review of information does little to simplify or ease the problems of policy makers concerned with marine production and transportation of oil and petroleum products. The weight of

the evidence leaves little doubt that oil poses a serious hazard to living marine resources, that spills and chronic pollution have happened and will continue to occur, and that the interests of the marine environment are best preserved if marine transportation of oil and petroleum products is minimized. The continuing need for new sources and increased amounts of energy, however, limits many of the conservative and prudent alternatives to these hazards. Until research has provided conclusive data, policy makers must continue to rely on these interpretative judgments for much of their guidance in making decisions that can profoundly affect the well being of marine ecosystems.

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HB 137 Alvin

Sponsor Analysis of HB 137

1. Need for the legislation

Oil pollution can and does cause a wide range of harm to renewable resources, and the environment in general. Many types of harm, which can have devastating long-term effects on important marine resources, cannot be quantified. Included within this category are mortality to fish and shellfish larvae, food chain contamination, carcinogenic effects, and chronic toxicity. (See "Effects of Oil on Marine Ecosystems: A Review for Administrators and Policy Makers," Evans and Rice (1974), copy of which is attached to this analysis.)

Much of the damage caused by oil pollution can at least partially be seen -- oil-smothered beaches and intertidal areas, dead birds, marine mammals and the like. Yet even here, under existing state and federal law, the public, and the industries which depend upon the productivity of the sea, must bear these damages without compensation. As impressive as oil spill liability statutes may seem on their face, the fact of the matter is that traditional concepts of burden of proof will normally pose an insurmountable barrier to effective redress for the great bulk of harm caused by oil pollution.

In Alaska, the primary remedy for recoving damages for oil pollution is AS 46.03.822, which provides a strict liability remedy for those damaged by oil discharges. Yet it must be remembered that, to receive any compensation under the statute, the plaintiff must prove actual loss, the precise economic value of the loss, and causation. It is naive to believe that in any but the most basic cases can that burden be met. For example, let us suppose that, two years after a major oil spill, the salmon run in the area declines by 30%. Is that decline attributable to the oil spill? Natural fluctuation? Hard winters? Overfishing? A little of each? An even greater problem, of course, arises with regard to the subsistence user, who must prove not only causation, but must also meet his burden of establishing an exact dollar figure for lost subsistence opportunities. As the Court of Appeals for the Ninth Circuit warned in Union Oil Co. v. Oppen, 501 F. 2nd 559 (1974), after holding that commercial fishermen could sue for lost profits due to oil pollution:

> "To [recover any damages] it must be shown [by the fishermen] that the oil spill did in fact diminish aquatic life, and that this diminution reduced the profits the plaintiffs would have realized from their commercial fishing in the absence of the spill. The reduction of profits must be established with certainty and must not be remote, speculative or conjectural. . . . These are not small burdens, nor can they be eased by our abhorrence of massive oil spills. All that we do here is to permit plaintiffs to attempt to prove their case. . ." Id at 570.

The problem, of course, reaches unmanageable proportions when the state, on behalf of the public, seeks redress for harm caused to its natural resources. Here we deal not with lost profits, but with the diminution of the quality of the state -- lost recreational opportunities, decreased tourism, loss of heritage and the like.

The State of Maine considered it a major victory when a federal district court ruled in Maine v. M/V Tamano, 357 F. Supp. 1097 (D.Me. 1973) that the state could sue for these kinds of damages. The diffi ulty, of course, came afterwards -- in translating the harm from the spill into a dollar figure. Maine was fortunate in this instance. The primary visible harm was the direct coating of commercially valuable clams. The state actually conducted an on-site survey, and counted the dead clams. Yet even here, the inability of the state to put a dollar figure on the value of "in place" clams forced an out-of-court settlement of $750,000.

In most cases, however, the burden on the state will be far more formidable. While dead clams can be more or less effectively surveyed, most species cannot. And what of the indirect damages to commercial species -- such as food chain contamination? And the problem of valuation of non-commercial species? What is the "in place" value of a trumpeter swan, or a whale?

Alaska's answer to this problem has been the modest civil assessment provision of AS 46.03.760, which provides for an assessment of not less than $500, nor more than $100,000 for oil spills, based on the toxicity of the substance discharged, and the receiving environment. The statute is intended to provide "liquidated damages" for harm caused by oil pollution.

The most glaring problem with the statute is the $100,000 upper limit. In light of the fact that in many situations, the only recovery the state will make will be under sec. 760, the $100,000 figure seems ludicrous when applied to a Torrey Canyon or Santa Barbara.

The $100,000 figure is unreasonably low for another reason. Any civil penalty scheme should be regulatory as well as remedial. The penalties should be sufficiently high to constitute a meaningful stimulus to comply with the laws which they enforce. A potential maximum exposure of $100,000 no doubt fails to even register in the cost-benefit analysis of oil handling operations. An illustrative anecdote might be provided here. Last summer, Exxon Corporation willingly paid the U. S. Environmental Protection Agency $100,000 in civil penalties for a 200-400 gallon discharge of oil into the Beaufort Sea, to protect a "tight hole" from potential exposure in litigation. With regard to oil spills, sec. 760 fails its regulatory, as well as its compensatory role.

Sec. 760 is primarily addressed to continuing acts of pollution -- by depriving the discharger of the economic incentive of continuing to violate state law. It is not an appropriate enforcement mechanism for single-act oil spills. Even with the presence of the toxicity and receiving environment criteria, it is still exceptionally difficult to apply to any given oil spill. A person simply has no means of assessing his potential liability under the law. A trial to set the amount of the assessment remains largely potluck, and, as a result, there have been none. Cases under the law languish for years, while the private and public bar argue across the negotiating table as to whether the spill in question is a $500, or $50,000 discharge. There are more efficient, as well as more effective ways of protecting the public interest.

2. Major issues regarding HB 137

A. What is a civil penalty?

Although called a "penalty," the primary purpose of a civil penalty is to compensate for public harm, and to effectively encourage the regulated industry to comply with the laws which it enforces. See U.S. v. Mar.-Tee Contractors. _____F. Supp. _____, 8 ERC 1925 (D.N.J. 1976). In both intent and operation, HB 137 is remedial and regulatory, rather than punitive in nature.

B. Why dollars per gallon?

Civil penalty schemes are usually open-ended -- like current sec. 760 -- with a broad range between the lower and upper limits. This inevitably leads to the problems the state has faced with sec. 760.

The consequences of oil pollution should be definitively and unequivocally established from the outset. The dollars per gallon approach objectively grades the penalty according to the legree of public harm caused. The approach also furthers the regulatory purposes of the bill, by increasing the incentives for safe operation according to the amount of oil handled.

C. Why should an administrative agency establish the dollars per gallon schedule?

In the bill, the legislature establishes both the amount of the penalty, and the criteria for its application. What remains is a ranking of the relative sensitivity of receiving environments, and the relative toxicity of various types of oil. That is a technical effort which is properly vested in an administrative agency.

It might be argued that the establishment of a particular dollars per gallon figure should be established on a spill-by-spill basis by the courts. That, of course, would lead to precisely the same problem faced in utilizing current sec. 760. Moreover, courts are simply not equipped to make these kinds of relative judgments.

D. Why $5 to $50 per gallon?

We believe that $5-$50 per gallon is reasonably related to the gravity of the harm caused by oil pollution. In arriving at the figure, we of course recognize that it is impossible to quantify the environmental harm caused by oil pollution. But this bill is not an attempt to rigidly pre-establish damages. It is a penalty scheme in lieu of damages for which the public will never recover. It is also, of course, intended to serve as a meaningful incentive for safe operations.

On this point, it should be noted that a significantly lower range would result in unreasonably low assessments at the low end of the scale. For example, at a maximum range of $1 per gallon, the discharge of 100 gallons of oil to a salmon stream would result in a penalty of $100 -- a sum hardly commensurate with the gravity of that kind of incident.

E. Shouldn't there be an upper limit on liability?

Under HB 137, an upper limit does exist -- $50.00 per gallon. The total limit of liability thus depends upon the total amount of oil spilled.

To place a dollar limit on the total amount that may be assessed would represent a policy judgment that, at a given point, the harm caused by oil pollution should be

borne by the public, rather than the discharger. The administration is not prepared to make that judgment. In this regard, it should be noted that Alaska currently imposes unlimited strict liability for actual damages -- as do Maine and Florida. See AS 46.03.822.

Admittedly, the recoveries which might be had under HB 137 are conceptually very high. So, it should be added, is the level of impact which an oil spill catastrophe can cause, as well as the figures which enter into industry's calculations in determining what level of safety is economically justifiable.

F. Why is it necessary to establish vicarious liability?

HB 137 does extend liability for the penalty to certain persons who are in a position to control the integrity of operations from which the discharge occurred. For example, oil terminals are made vicariously liable for spills caused by vessels which load at their facilities. Similarly, the lessee of an offshore platform is made vicariously liable for discharges caused from his platform, even though the actual cause of the discharge may be due to the acts of an independent contractor.

Focusing on the question of vicarious liability for terminals, it should be stressed that the owners of the transported oil are the ones who choose the carriers which

handle their products. Because of the terminal's ability to insure that only the safest vessels, and most experienced crews enter Alaska waters, it simply makes sense, as a matter of equity, to hold the terminal responsible for the vessels' actions, while they are in state waters.

It is this philosophy which motivated §204 of the Trans-Alaska Pipeline Authorization Act (43 USC §1653(c)) which makes the owners of the TAPS oil, through the Trans-Alaska Pipeline Liability Fund, vicariously liable for damages (above $14 million) caused by oil spills from vessels which service the terminal. It is this same philosophy which led the State of Maine, in its Oil Discharge Prevention and Pollution Control Act of 1970, to make oil terminals vicariously liable for oil spills caused by "vessels destined for the licensee's facilities." 38 M.R.S.A. §552. This vicarious liability provision was upheld by the Maine Supreme Court in Portland Pipe Line Corporation vs. Environmental Improvement Commission, 307 A 2nd 1 (1973).

There are very real practical reasons for creating vicarious liability, aside from the amount of control which the terminal exercises over the quality of the vessel and its crew. First, the "independent contractor" defense -- which may be available if vicarious liability were not created -- has generally caused severe problems in oil spill

enforcement. For example, the dogged insistence of Alyeska Pipeline Service Company that it is not responsible for oil spills caused by independent contractors engaged in Trans-Alaska Pipeline work has frustrated state enforcement efforts in that regard.

Litigation against the owner of the vessel will often be fruitless. The vessel's owner or charterer will often be protected under the federal Limited Liability Act (46 USC §183, 186), which provides that the liability for damages of the vessel's owner or bareboat charterer as a result of a maritime incident will often be limited to the value of the vessel and freight on board after the incident. After a tanker grounding, of course, that value will be rather small. Of course, since HB 137 imposes liability for penalties, and not damages, it will be the state's position that the Limited Liability Act is inapplicable. It is, however, far from certain how the federal courts will treat this hybrid regulatory approach vis-a-vis that act.

The Torrey Canyon disaster provides a tragi-comic example of precisely this problem. On March 18, 1967, the Italian master of this Liberian registered flagship ran aground off the coast of England, spilling, over a period of days, most of her 119,000 tons of crude oil. On March 28, the vessel was sunk by RAF bombers.

The Torrey Canyon was owned by Barracuda Tanker Corp., a subsidiary of Union Oil Co. of California. Barracuda owned the boat pursuant to a sale-lease back arrangement with Union.

Barracuda immediately sued to limit its liability. The federal court obliged, limiting Barracuda's liability to $50 -- the value of one lifeboat which survived the bombing. See In Re Barracuda Tanker Corp., 281 F. Supp. 228, 232 (S.D.N.Y. 1968).

The frustrated British and French governments finally resorted to a remedy unavailable to Alaska -- they seized the Torrey Canyon's sister ships in Singapore and Rotterdam and, in a very real sense, held them for ransom. Barracuda's insurers then paid the governments 3 million pounds sterling -- about one-sixth of the clean-up costs incurred as a result of the spill.

Vicarious liability is nothing new to hazardous undertakings -- particularly the handling of oil. Both as a matter of equity, and practical necessity, we believe it is imperative that those who induce, and profit from oil handling activities, and who in fact have the ability to control the integrity of those activities if they so desire, be impressed with a non-delegable duty to see that those operations are conducted in as safe as possible a manner.

Finally, it should be stressed that those upon whom vicarious liability is imposed are not without recourse if the penalty is assessed against them. As the Maine Supreme Court stressed in Portland Pipe Line Corp., supra, we are dealing here with a "mutually beneficial relationship [i.e. between terminal and vessels, and owners and operators where] there is, in the relationship, adequate opportunity to locate, among the business associates, the primary liability."

G. Will federal admiralty law let us do this?

The short answer is yes. Following the United States Supreme Court decision in Askew v. American Waterways Operators, 411 US 325 (1973), which upheld Florida's strict liability oil spill statute, it was argued by some that certain implications in that opinion might limit the state's ability to impose strict liability for sanctions or damages beyond the limits established in the Federal Water Pollution Control Act -- i.e. $14 million dollars for vessels. In upholding Maine's unlimited strict liability oil spill law, the Maine Supreme Court, in Portland Pipe Line Cement, supra, specifically rejected that argument, and Congress has since made it clear that the Maine Supreme Court correctly interpreted its intent with regards to the state's power to enter the domain of admiralty, to seek redress for oil pollution. For example, in establishing the Trans-Alaska Pipeline Liability Fund, Congress stated with regard to vessels:

> "This subsection shall not be interpreted to preempt the field of strict liability or preclude any state from imposing additional requirements." 43 USC § 1653(c)(9).

To the same effect is the following provision in the federal law creating the Deep Water Port Liability fund:

> "This section shall not be interpreted to preempt the field of liability or to preclude any state for imposing additional requirements or liability for discharges of oil from a deep water port or a vessel within a safety zone." P.L. 93-697, § 18(k)(1).

Similar provisions are contained in comprehensive oil spill liability legislation now pending before Congress. It is clear that states have a "wide scope" in enacting laws pertaining to admiralty matters, as long as the law does not concern a matter requiring uniformity, or impair the harmony of the admiralty system. See Romero v. International Terminal Operating Co., 358 U. S. 354; Askew, supra. Both the courts and Congress have made it clear that the states' power to legislate in admiralty with regard to oil pollution is particularly broad.

H. Where does the money go?

The administration made a conscious decision, in submitting HB 137, not to specify how the penalties received should be allocated. If the bill is left untouched in this

regard, penalties collected would, pursuant to AS 30.25-.220(b), be deposited in the coastal protection fund. We believe it would serve no purpose to over-load the coastal protection fund with the substantial penalties which may be collected under this bill.

We would submit, for the legislature's consideration, that it would be more appropriate to return the penalties to the general fund, providing at the same time that the legislature may annually appropriate an amount equal to the penalties collected for the previous year for the purpose of financing renewable resource enhancement efforts in areas affected by oil pollution. These efforts, of course, could specifically include fish hatcheries. It is our belief that, in light of the extreme unlikelihood of effective recovery by fishermen for the full amount of damages actually caused to them as the result of oil pollution, that this mechanism would come as close as possible to, in fact, making the fishing industry whole after a catastrophe occurs. The department of law will be glad to assist the legislature in drafting a new subsection in this regard if that is the legislature's desire.

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K — STATE CAPITOL
JUNEAU 99811

May 5, 1977

The Honorable Kay Poland
Senator
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: HB 137

Dear Senator Poland:

The above-entitled bill is presently pending in the Senate Resources Committee. It is a measure which establishes civil penalties for oil pollution. I am writing to you in the hope that you and other members of the Senate will act favorably on this bill before adjournment, since if you do not there will be no meaningful tool available to deal with a major oil spill in Alaska.

Right now, if we had a tanker accident and millions of gallons entered Alaskan waters, we would have three options:

1. We could proceed criminally and obtain a fine of up to $25,000.

2. We could seek a civil fine for liquidated damages of up to $100,000.

3. Finally, if we could prove actual damages to the environment, we could recover for those damages.

On the surface, the final option seems to provide a means for dealing with massive spills. But the problem is that in all the years of statehood this statute has been only used once, and that was for damage to nets as the result of a spill. No one has ever been able to show damages to the environment for the simple reason that our level of scientific knowledge has not reached the point where such damages can be shown to the satisfaction of a

court. If, for instance, we had a major oil spill in a productive salmon area, there is no way for us to tell how many salmon fry or eggs were destroyed, what other marine life was affected, such as marine life which would form an essential link in the food chain for salmon, and no way to prove with certainty, even were runs to drastically decrease years later, that the proximate cause of that decrease was the oil spill. I think nearly every marine biologist would agree that major oil spills cause substantial damage, but they would also all agree that there is no way we could quantify that damage under present judicially established rules of evidence.

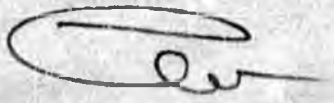
In the end, it boils down to the fact that we have no meaningful deterrent for those who would cause a massive oil spill in state waters. Legislation adopted last year set stringent standards for tankers which will go a long way toward helping us prevent spills, but there is still the factor of human error which, in spite of the most rigid safety devices, may still lead to massive damage. Once that spill occurs, the state should have some means of proceeding against the company that caused the spill. HB 137 provides that means. The bill is extremely important from the administration's standpoint, since this year will see the commencement of major tanker traffic through Alaskan waters, and if we do have a major accident the state should have the power to take significant steps against those who caused the pollution.

The bill as it passed the House has been substantially changed from the bill which was originally introduced by the administration. The House eliminated from the provisions of the bill all spills of under 10,000 gallons, so as to make the bill applicable to major tanker type spills rather than those from fishing boats. A maximum limit of $100 million has been placed on the fine, which may seem large until you consider the magnitude of profit involved in a single tanker voyage. The house bill also bases the civil fine on the amount of oil spilled less the amount of oil cleaned up, providing a major incentive for cleanup activities.

The basic theory of the house bill is for the Commissioner of Environmental Conservation to establish a sliding scale of penalties for oil spills up to a maximum set by the Legislature, dependent upon the type of oil spill (crude, jet fuel, etc.), and the sensitivity of the receiving environment (open ocean, confined salt water system, etc.). The schedule would be subject to legislative review after it is established. The theory is that penalties for oil pollution should depend on how serious that pollution is and, while we cannot fix damages with the certainty required by law, we can predict with certainty that certain types of oil in certain types of environments cause more serious damage than other types of oil in different environments.

I am enclosing with this letter a section-by-section analysis of the bill so that you will have a basic understanding of the structure of the bill that passed the House. Again I reiterate that we have no effective tool to deal with major oil spills now, and as the administration officer with the responsibility to enforce pollution laws, I want very much to have that kind of a tool before, rather than after, a major spill occurs in state waters. I therefore ask you to please consider this bill seriously in the closing days of this session. Members of my office and all other members of the administration stand available to provide information and to help you in any way in your deliberations on the subject.

Yours very truly,



Avrum M. Gross
Attorney General

AMG:as
Enclosure

SECTION-BY-SECTION ANALYSIS OF CSHB 137 (Judiciary) am

1. Introduction

HB 137 would create a schedule of civil penalties for the discharge of oil on a per gallon basis. It is patterned in large measure on Section 311(b)(2)(B)(iv) of the Federal Water Pollution Control Act. Although the mechanics of the bill are new, its concepts and purposes are consistent with Alaska's existing strict liability civil penalty law.

Under the bill, the Department of Environmental Conservation is to establish, under detailed legislative guidance, a schedule of penalties based, essentially, on the type of oil spilled, and the sensitivity of the receiving environment. Maximum per gallon assessments for various classes of receiving environments are set out in the bill.

Dischargers are strictly liable for the penalties, as they now are under AS 46.03.760 and AS 46.03.822 and the state is required to prove its case at trial both as to liability and the size of the spill. Moreover, penalties will only be assessed on that amount of oil not cleaned up.

2. Subsection (a)

This subsection articulates the purposes of the bill. Paragraphs (1) and (2) stress that, because of the long-term, subtle and unquantifiable nature of oil pollution impact, traditional liability and damage concepts are ineffective in compensating for oil spills.

Paragraph (3) highlights the important incentive aspects of the bill. It recongizes that the per gallon assessment for small oil handlers does not need to be as high as for large handlers in order to induce safe operations.

3. Subsections (b), (c) and (d)

The standards for the establishment of the penalty schedule are set out in these subsections. First, maximum assessments, ranging from $10 per gallon in freshwater to $1 per gallon in salt water, are established. We stress that these figures are maximums -- penalties for unproductive freshwater environments, for example, would be substantially lower than $10 per gallon.

There is nothing magical about the figures used. These are civil penalties, not rigidly pre-established actual damages. In setting penalties, a judgment must be made as to whether the amount chosen bears a reasonable relationship to the purposes of the legislation. We believe the amounts chosen meet that standard.

The base penalties themselves are modest. For example, a 10,000 gallon spill into Kachemak Bay would result in liability of, at the most, $25,000 -- as opposed to potential $100,000 exposure under existing law (AS 46.03-.760). The base penalties, however, increase with the size of the spill, according to a multiplier factor spelled out in subsection (b)(2). The factor is 1 for spills of 10,000 gallons, and reaches 5 for spills of 100,000 gallons or more according to a formula. Thus, our same hypothetical spill in Kachemak Bay, if increased to 100,000 gallons, would result in liability of $1.25 million. In an unproductive environment, this figures would be substantially lower. This formula approach implements the findings of subsection (a)(3) -- that the level of incentive should increase according to the size of the oil handling operation.

Subsection (e)

This subsection establishes liability for the penalties. At the outset, a liability ceiling of $100 million is established. This provision was inserted in the House Judiciary Committee, in response to concerns over the otherwise unlimited nature of liability. The subsection also exempts entirely spills less than 10,000 gallons from the bill's coverage. This admendment was inserted on the House floor.

The subsection also alleviates the problem of the "independent contractor" defense. Usually, an oil company will conduct operations through a contractor. If a mishap occurs, the oil company may disclaim responsibility. Subsection (e) imposes a duty on industry to choose its contractors and carriers well, and to maintain strict quality control, by making, for example, the owner of the oil liable for spills from the vessel carrying its oil, and the offshore lessee liable for the activities of its contractors on the drilling rig.

Liability is extended to spills in the Alaska Outer Continental Shelf. Our state supreme court has strongly indicated that, because of the state's strong interest in the productivity of the OCS, this exercise of authority may be permissible. As a safeguard, however, a specific severability provision with regard to this aspect of the bill has been provided in section 2.

Subsection (f)

This subsection provides that only that amount of oil not cleaned up will be utilized in computing the penalties. It also provides that the court may estimate the amount of oil removed. This latter provision was inserted at the behest of industry, which correctly pointed out that the amount of oil removed cannot be proven with precision.

Subsections (h) and (j)

These subsections set out the available defenses to liability. They include the "normal" strict liability defenses -- act of war, governmental negligence and act of God. The act of God defense will only be available if the act of nature was unavoidable, unpredicatable, and unique to the area in which it occurred.

Acts of sabotage and other intentional acts by a third party constitute a complete defense under the bill. However, if a spill is occasioned by third-party negligence, the penalty may only be reduced by half. This is more generous than most strict liability statutes, where third-party negligence is not a defense at all.

Subsection (k)

This subsection provides that penalties received under the bill will be credited to a special account. The legislature may appropriate funds from this account to finance renewable resource enhancement projects in areas affected by oil pollution.

HB
192

COMMITTEE REPORT

SENATE

**Finance

2/25/77

4/11/77 Date

Mr. President:

The Committee on RESOURCES has hau HB 192 supplemental appropriation, Department of Natural Resources for ch. 113, SLA 1976 under consideration. A majority of the members of the Committee

☐ recommends it do pass

☐ recommends it do not pass

☐ recommends it do pass with attached amendment(s)

☒ recommends it be replaced with CS for HB 192 and that CS for HB 192 do pass individual recommendations

☐ (and) recommends it be referred to the _____ committee

☐ reports it back without recommendation

☐ AND attaches a report of its intent

☐ (other) _____

MEMBERS SIGNING THE MAJORITY REPORT:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ DO NOT PASS _____

MEMBERS NOT CONCURRING IN THE MAJORITY REPORT:

_____ recommends: _____

_____ recommends: Do Pass

_____ recommends: _____

_____
Chairman

S 60

Homer people want
fish, not oil slow growth
not boom, Read under line
statemen Ts.
Read page 13, 7, 9, 11, 12 + 14

HOMER AREA SURVEY:

ATTITUDES TOWARD LOCAL GROWTH AND DEVELOPMENT

by Michael Baring-Gould and Robert Measley
Department of Sociology
University of Alaska, Anchorage

with assistance from:
Homer High School
City of Homer, Planning and Zoning Commission
Institute of Social and Economic Research of the University of Alaska
University of Alaska students: Pansy Herring, Gloria Beckley, Monica Deife and June Covert

Financial support for this project was provided by a grant from the Alaska Humanities Forum.

Pass House B. 11 192
North Pacific Fisheries Ass.

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INTRODUCTION

The following survey, conducted primarily by several members of the Sociology Department at the University of Alaska, Anchorage with the assistance of a small grant from the Alaska Humanities Forum, was performed to provide an accurate assessment of attitudes toward growth and development in the Homer, Kachemak Bay area. Its primary and sole purpose was to attain a scientific assessment of public opinion on a diverse variety of local issues and concerns over which the community can take action. It is hoped, however, that this information can be used both by community leaders in the development of local decisions and policies for the future enhancement of the community, and by individual residents as they evaluate and influence the changes occurring about them. This report provides an overview of some of the major findings of this survey; it is not intended to be complete in that approximately 300 individual questions were asked of each person on the survey, and few readers would want to subject themselves to a full review of these. For individuals or groups who desire more specific information or detailed questions, we hope that they will contact us directly at the University of Alaska, Anchorage.

PART I: METHODOLOGY OF THE STUDY

The survey of Homer area residents was a coordinated effort undertaken by the City of Homer, several teachers and students at the Homer High School, and several staff at the University of Alaska, Anchorage. With the assistance of the city manager and members of the Planning and Zoning Commission, a questionnaire was written based on policy issues relevant to the Homer community. Members of Bill Johnson's class at the Homer High School designed a map of the city for the purpose of locating all residences, and students in his and Frank Libal's classes performed the vast majority of interviews with residents within the city limits. University staff with backgrounds in social research gave these students training in interviewing and supervised their work. They also conducted a minority of the interviews within the city, all the interviews outside the city limits, and were totally responsible for the tabulation and writing of results.

The region encompassed by the survey included that area of the southern Kenai Peninsula south of Ninilchik, including that community, Seldovia, Port Graham and English Bay. The results contained in this report include just those of the immediate Homer area, namely the City of Homer, residences outside the city limits, Anchor Point (south of Starisky Tower), Nikolaevsk and residents living at the head or across Kachemak Bay. All interviewing in this area was conducted in the spring and summer of 1976. All people interviewed were permanent residents of the area; sum-

mer time residents and/or those living in the area for less than a month were intentionally excluded. All interviews were conducted with the male or female head of household, and a total of 55% males and 45% females were interviewed.

All households were selected for interviewing on a purely random basis, in order to avoid any possibility of bias and to ensure representativeness for the entire community. Inside the city limits 173 interviews were conducted which represented a 50% sample, or the equivalent of every other household. Outside the city limits but in the immediate Homer area and extending beyond the end of East End Road, 61 interviews were conducted from a 25% sample of one household in every four. In the Anchor Point area one household in every eight was interviewed and in Nikolaevsk the equivalent of one in four; whereas in all other areas interviews were performed individually with a separate household head, in Nikolaevsk the interviewing was conducted in a single group meeting of men in one of the elder's homes. Finally interviews were mailed to 23 residents whose residences were inaccessible by road or trail, predominantly at Fox River, Bear Cove and Halibut Cove. Eleven of these were returned, which constituted an approximate 50% sample. The results contained in this report are consequently drawn from a total of 286 interviews, exclusive of those from Ninilchik, Seldovia, English Bay and Port Graham. In addition 13 potential respondents declined to be interviewed, and their cases are obviously excluded from the results. Because

people interviewed were selected on a strictly random basis, the results from the sample can be generalized to the entire community within 4-5 percentage points of accuracy. When we say, for example, that 78% of the 286 interviewed would like to see commercial fish and fish processing receive priority in terms of land use on the Spit, we are 95% sure that between 74% and 82% would have answered this way if every household in the total area had been questioned.

In writing this preliminary report we have attempted to minimize our analysis or interpretation of the results. Instead we have preferred to maintain a format of stating the questions (in summary form) and the percent response to each question. Under each question we have in most cases broken down the responses into three distinct categories: responses from those residents living within the city limits of Homer, responses from all those living outside the city limits, and the total responses from the combined areas. Because different proportions of people were sampled and interviewed outside the city, responses in the last two categories have been weighted to ensure equal representation. This is done by multiplying the responses to the Homer City interviews (a 50% sample) by 2, the Homer environs responses (a 25% sample) by 4, etc.

For purposes of organization we have divided this report into the five sections which follow. In the first we describe the general characteristics of the people interviewed: their ages, edu-

PART II: SURVEY RESULTS

SECTION I: CHARACTERISTICS OF THOSE INTERVIEWED AND THE HOMER COMMUNITY

In terms of general background characteristics, the household heads whom we interviewed in the Homer area were overwhelmingly white (93%), had a median age of 35 years, an average education of one year of college, had resided in the Homer area for five years or longer (53%), and were most predominantly from the Pacific Coast or Rocky Mountain states (47%). More specifically, and by area, they had the following characteristics:

	Homer City	Outside City	Total Homer Area
1. RACE:			
WHITE	97.7%	97.7%	97.7%
ESKIMO	1.7	0.0	0.7
ALEUT	0.6	1.6	1.1
INDIAN	0.0	0.7	0.5
2. AGE:			
18-29 Years	24.1%	28.1%	26.2%
30-45 Years	41.0	38.6	39.5
46-64 Years	26.3	26.5	26.4
65 & Older	9.6	6.8	7.9
3. EDUCATIONAL LEVELS:			
4-11 Grades	17.5%	11.1%	13.6%
12th Grade	31.2	47.6	41.2
1-3 Years of College	24.7	19.9	21.8
Completed College	15.2	13.5	14.1
Post-Graduate	11.4	7.9	9.3
4. LENGTH OF RESIDENCE IN HOMER AREA:			
Up to One Year	15.2%	14.8%	15.0%
1-2 Years	13.5	15.2	14.5
3-4 Years	22.8	13.8	17.2
5-8 Years	15.2	19.6	17.9
9-20 Years	22.2	18.1	19.7
More than 20	11.0	18.5	15.7

5. PLACE OF ORIGIN:

	Homer City	Outside City	Total Homer Area
Kenai Peninsula	1.2%	0.7%	0.9%
Elsewhere in Alaska	19.0	8.8	12.6
Pacific Coast States	26.2	35.1	31.8
Rocky Mt. States	11.9	17.0	15.1
Central & North Plains States	11.3	12.4	11.9
South & Southern Atlantic States, Texas & Okla.	10.2	5.8	7.4
New England & North Atlantic	9.0	7.2	7.9
Midwest States	8.3	9.4	9.0
Foreign Countries	3.0	3.6	3.4

In spite of the fact that only 14% of the residents were originally from Alaska, half had lived elsewhere in Alaska prior to moving to Homer. Of these, almost one-half had moved to Homer from the Anchorage area while a third had moved from elsewhere on the Peninsula or other rural areas of the state.

In terms of jobs and employers, the male heads of the households held the following characteristics:

6. PRIMARY OCCUPATION (MALE):

Professionals, (doctors, teachers, etc)	17.2%	4.7%	9.3%
Managers & Owners (inc. public & private business)	8.3	5.9	6.7
Technical & Protective Service (ie, police)	13.7	7.1	9.4
Clerical & Sales	2.8	3.9	3.5
Craftsmen	11.0	18.4	15.8
Operators, Truckdrivers	7.6	9.0	8.5
Laborers	4.9	8.2	6.9
Service Workers (ie, cleaning, food service)	4.8	3.1	3.7
Fishing Boat Owner/Operator	9.0	12.8	11.5
Cannery Worker/Fishery Crew	8.3	4.7	6.1
Homesteader, Farmer	0.0	8.6	5.4
No Occupation	1.4	0.0	0.5
Retired	11.0	13.6	12.7

In addition to their primary jobs, one-third of the male heads held secondary or other seasonal jobs; of these 23% were as laborers and 18% involved fishing or fish processing.

7. PRIMARY EMPLOYERS (MALE):

	Homer City	Outside City	Total Homer Area
Self Employed	32.6%	42.8%	39.1%
Federal Gov. & Agencies	10.6	1.6	4.9
State Gov. & Agencies	2.8	4.8	4.1
City & Borough Gov., incl. Schools & Hospitals	14.2	4.8	8.2
Local Commercial Business	13.5	5.6	8.4
Construction Companies	5.0	15.2	11.5
Oil Companies	5.0	3.2	3.8
Canneries	3.6	6.8	5.7
Social Groups (ie.Churches)	1.4	0.8	1.0
Retired	10.6	10.8	10.7
Unemployed	0.7	3.6	2.6

Among women and female heads of households, exactly 50% worked; among those who held jobs the major occupational categories were service workers (26%), clerical work (18%), and professionals (17%). The median annual reported family income for the total area was $13,400; reported family income was considerably higher, however, for residents living within the city ($17,100) than for those families outside the city ($11,300):

8. REPORTED ANNUAL FAMILY INCOME:

Less than $5,000	7.7%	18.9%	14.6%
$5,000 to 11,999	19.3	28.7	25.0
$12,000 to 19,999	23.9	21.8	22.6
$20,000 to 34,999	34.6	23.3	27.6
$35,000 to 49,999	10.8	4.4	6.9
Over $50,000	3.8	2.9	3.3

As possible compensation for this difference in income, residents outside the city placed a greater reliance or subsistence activities for obtaining fish and meat. Of probably greater significance is the fact that both groups derived

significant benefits from subsistence activities. Although fishing may be done largely for sport, over 80% of the people in the total area fished in Kachemak Bay. Only in shrimping (47%) and crabbing (45%) were less than a majority active.*

9. PROPORTION OF FAMILY FISH AND MEAT SUPPLY COMING FROM SUBSISTENCE:

	Homer City	Outside City	Total Homer Area
None	25.8%	9.4%	15.6%
Little	35.9	25.3	29.2
Around Half	19.3	27.4	24.3
Most	15.9	28.2	23.4
All	3.0	9.7	7.1

Various other factors might be used to describe characteristics of the population and area.** One which appears particularly relevant is the close tie existent between the rural residents and city of Homer. Among men, 34% were in town on a regular daily basis, the majority working; only 36% went into Homer on less than a two or three times per week basis. Women approximated the same statistics; 20% going to town on a daily basis and only 44% less than three times per week. Shopping, in addition to work, was primary justification for this. Those rural residents living close to Homer differ very little from city residents in many local activities, such as voter registration and percent voting, use of the small boat harbor, attendance at hearings and School Board meetings, and even attendence at City Council meetings.*** A strong degree of identification and involvement

---

*In commercial fishing, 15% of the families in the area had members active in crabbing; 14% in halibut, 13% in shrimping, and 11% in salmon.

**Many of these were collected in the interviews, such as type of housing, size and type of family, organizational membership, activities, etc., but are not reported here for sake of brevity.

***16% of the rural families had attended at least several Council meetings, during the previous year, as compared to 19% of the residents in the city.

with the Homer community is obvious and by necessity justifies their inclusion in this survey, in spite of their equally strong desires to maintain autonomy from the city in terms of incorporation and utility districts, etc.

Finally, basic values of the community are seen by examining reasons given for moving to the Homer area and factors they like best about living in the community. In summary form these include:

10. REASONS GIVEN FOR MOVING TO HOMER AREA:

Please Read,

	Homer City	Outside City	Total Homer Area
Small Town Qualities/Lifestyle	31.0%	52.2%	44.4%
Employment & Job Reasons	36.1	13.9	22.0
Aesthetic Values	17.7	24.1	21.8
Homesteading, Farming	3.2	28.1	19.0
Family & Friendship Reasons	11.4	14.6	13.4
Climate	6.3	3.7	4.6
Retirement	4.4	1.1	2.3
Commercial Fishing	2.5	1.5	1.9
Initiating Business	2.5	1.1	1.6
Other	7.0	5.1	5.8

Please Read,

11. WHAT PEOPLE VALUE MOST ABOUT LIVING IN THE HOMER AREA:

Small Town Qualities/Lifestyle	65.8%	69.2%	68.2%
Aesthetic Values	55.7	48.1	51.2
Farming, Homesteading	0.0	15.4	9.7
Climate	4.4	9.0	7.3
Family & Friendship	3.8	6.8	5.7
Work Reasons, inc. Business & Fishing	2.6	5.4	4.2
Money, Salary Reasons	1.3	3.8	2.8
Other	2.5	6.4	5.0
Nothing Valued	1.3	1.5	1.4

From the above it is obvious how important the small town environment and natural beauty of the region are to residents. These same values are expressed in a variety of other questions. For example, a majority of residents all considered as very important living in a quiet community, having multi-age friends, participating in subsistence activities, and being able to make or fix many of

the things needed by a family, while holding a high paying job was rated as only somewhat important, or unimportant. The importance of these values is indicated by the fact that less than 10% of the area residents planned on moving away from Homer within the next seven years, and majorities in both city and rural areas plan to remain permanently. Another 10% stated that they would remain permanently unless the community underwent significant growth and changes.

Read.

Section II: ATTITUDES TOWARD COMMUNITY SIZE, GROWTH AND DEVELOPMENT ACTIVITIES

A variety of questions were asked to determine residents' attitudes toward growth in the Homer area. These ranged from fairly general questions, such as the size in numbers that they would like to see Homer achieve and the types of new people they would like to see living in the community, to more specific questions on different types of economic activities which they would like the city to encourage or discourage. On an even more specific level questions were asked on development preferences and land use priorities for a specific location where land is limited and choices critical, namely the Spit. The range of answers to these questions, both by city and outside city residents are given below.

1. IDEAL COMMUNITY SIZE: Considering that the City now has a population of about 1500, how big a community would you like Homer to be in 10-15 years?

Read

	Homer City	Outside City	Total Homer Area
1500 People or less	36.6%	57.1%	43.9%
1501 to 2,000	12.4	4.1	7.4
2,001 to 3,000	16.1	9.5	12.2
3,001 to 5,000	19.3	13.2	15.6
5,001 to 10,000	2.5	3.7	3.2
10,001 to 20,000	2.5	1.7	2.0
20,001 Or More	2.5	0.8	1.5
Doesn't Matter - Undecided:	8.1	9.9	9.2

2. PREFERRED TYPES OF NEW RESIDENTS: Considering new jobs and growth will bring more people to live in Homer, which type of new resident would you like to see living here?

	Homer City	Outside City	Total Homer Area
a. Permanent population composed of just the present residents:			
Favor:	48.2%	65.5%	59.0%
Opposed:	44.5	29.1	34.9
Undecided:	7.3	5.5	6.1
b. A growing population of new permanent residents:			
Favor:	72.8%	55.6%	62.1%
Opposed:	20.7	40.1	32.7
Undecided:	6.5	4.3	5.1
c. A growing population of seasonal residents (ie, tourists) who would make Homer their summer home:			
Favor:	33.3%	22.5%	26.9%
Opposed:	59.5	68.7	65.0
Undecided:	7.1	8.8	8.1
d. A growing population of new residents (ie, oil or construction related) who would probably not make Homer their permanent home:			
Favor:	18.3%	12.0%	14.5%
Opposed:	72.0	77.7	75.4
Undecided:	9.7	10.3	10.1

3. PREFERRED TYPES OF JOB EXPANSION:

a. A large proportion of seasonal employment (as at present) or more permanent forms of year-round employment:			
Favor Seasonal Jobs:	20.1%	43.3%	34.5%
Favor More Permanent Jobs:	76.3	48.7	59.2
Undecided:	3.6	8.0	6.3

	Homer City	Outside City	Total Homer Area
b. That job opportunities should be expanded rapidly, slowly, or few new jobs opened:			
Favor Rapid Job Expansion:	13.8%	19.9%	17.6%
Favor Slow Job Expansion:	72.5	63.2	66.7
Favor Few or No Job Expansion:	12.0	15.2	14.0
Undecided:	1.7	1.8	1.8
c. That new jobs to be added should be permanent jobs, short term construction jobs, or both:			
Favor Permanent Jobs:	45.2%	35.6%	39.5%
Favor Short-Term Jobs:	3.2	8.0	6.1
Favor Both:	48.4	52.0	50.5
Undecided:	3.2	4.4	3.9

4. TYPES OF ECONOMIC AND DEVELOPMENT ACTIVITIES: Choices for development in most communities are limited: most often they are either thrust upon them by outside interests or restricted by a narrow variety of local resources or potential developments. Homer would appear to be an exception to this case in that a considerable range of resources are available on which growth might be based. Because the kind of economic base will obviously affect the type of community which Homer is to become, people were given a full list of economic activities and asked "which (of those) do you think should be encouraged or discouraged for the future of Homer?" Although the potential for developing policies that would enhance certain of these activities are limited, it is important that decisions be made that are consistent with basic values of people residing in the town. The range of attitudes towards each activity are as follows, with the list ordered from most to least desirable:

	Homer City	Outside City	Total Homer Area
a. Agriculture:			
Should Encourage:	*	92.3%	*
Should Discourage:	*	4.4	*
Undecided:	*	3.3	*

*Agriculture was not listed on questionnaires given within city limits; totals are consequently excluded for both within the city and total area groups.

Fishing is on Top. Oil No

	Homer City	Outside City	Total Homer Area
b. Commercial fishing & fish processing:			
Should Encourage:	91.8%	86.2%	88.3%
Should Discourage:	4.1	8.0	6.5
Undecided:	4.1	5.9	5.1
c. Light manufacturing, involving small & locally based industries:			
Should Encourage:	77.1%	87.8%	83.7%
Should Discourage:	18.2	10.0	13.2
Undecided:	4.7	2.2	3.1
d. Education & research facilities:			
Should Encourage:	87.7%	80.2%	83.3%
Should Discourage:	5.8	15.0	11.3
Undecided:	6.5	4.8	5.4
e. Transportation & storage facilities:			
Should Encourage:	70.8%	55.3%	61.5%
Should Discourage:	21.1	36.1	30.0
Undecided:	8.1	8.6	8.4
f. Tourism:			
Should Encourage:	61.6%	57.6%	59.2%
Should Discourage:	26.7	33.9	31.0
Undecided:	11.7	8.6	9.8
g. On-shore oil facilities:			
Should Encourage:	36.6%	26.7%	30.7%
Should Discourage:	54.7	68.5	62.9
Undecided:	8.7	4.8	6.4
h. Heavy industry, such as pulp mills, lumber products:			
Should Encourage:	24.4%	26.7%	25.8%
Should Discourage:	70.3	67.8	68.9
Undecided:	5.3	5.5	5.4
i. Petrochemical industries, such as refineries:			
Should Encourage:	23.8%	23.1%	23.4%
Should Discourage:	68.5	68.2	68.3
Undecided:	7.7	8.7	8.3

In addition to rating each activity separately, people were asked which types of developments they would most (and least) like to see occur in Homer. The attitudes are virtually identical to the ordering shown above: an expansion in

fishing and fish processing, followed by light manufacturing and educational and research facilities (and agriculture for those outside the city) were mentioned in that order as the most desirable. Rated as least desirable were petrochemical industries, followed by on-shore oil facilities and heavy industry.

5. ON-SHORE OIL DEVELOPMENT: Because of the importance of decisions related to oil development, more detailed questions were asked concerning the use of Homer as an on-shore facility. Four particular questions were asked: 1) Assuming that oil development does occur in the Lower Cook Inlet, would you like to see Homer used as a supply port for this; 2) which type of facilities (fishing and fish processing, tourism or industrial) would you like to see receive priority in terms of land use on the Homer Spit; 3) would you favor or oppose oil storage and tanking facilities on the Spit; and 4) would you favor or oppose the warehousing and storage of equipment on the Spit for off-shore oil exploration. As seen below, public opinion is opposed to on-shore development in all cases. The single exception is city residents who narrowly favor use of Homer as a general supply port if Lower Cook Inlet development actually occurs; however even they are opposed to utilization which would entail the specific storage of oil or equipment on the Spit:

	Homer City	Outside City	Total Homer Area
a. Use of Homer as supply port if Cook Inlet oil development occurs:			
Favor Supply Port:	53.2%	28.3%	38.0%
Oppose Supply Port:	42.7	63.6	55.5
Undecided:	4.1	8.1	6.5
b. Preferences for facilities on the Homer Spit:			
Fish & Fish Processing:	73.6%	77.6%	76.3%
Tourism:	13.0	9.1	10.8
Industrial:	9.5	8.3	8.8
Undecided:	3.9	5.0	4.1

	Homer City	Outside City	Total Homer Area
c. Location of oil storage and tanking facilities on the Spit:			
Favor Oil Storage:	23.8%	13.8%	17.7%
Oppose Oil Storage:	70.9	82.5	78.1
Undecided:	5.2	3.6	4.3
d. Location of warehouse and equipment storage facilities for oil exploration on Spit:			
Favor Warehousing:	29.7%	18.2%	22.6%
Oppose Warehousing:	64.0	73.1	69.6
Undecided:	6.3	8.7	7.8

In summary, opinions of residents are opposed to on-shore oil development both in situations where they are given an open range of economic activities from which to choose and where it is already assumed that oil development will occur in the area. On-shore facilities that would tend to conflict with other land usages are more strongly opposed. From the above figures it is also obvious that residents living outside the city are consistently more opposed to oil development than those within the city. Other reasons frequently advanced to account for these differences in attitudes toward oil are the ages of individuals, their particular jobs and length of residence in the area. These figures for those groups are given below in terms of whether they feel the city should encourage or discourage on-shore oil facilities.

e. Age of the Population: (Total Area)

	Encourage On-shore Development	Discourage On-shore Development	Undecided	Total
18-29 Years Old:	12.3%	81.1%	6.6%	100.0%
30-44 Years:	21.9	73.1	5.0	100.0
45-64 Years:	49.5	44.9	5.6	100.0
65 or Older:	57.7	26.9	15.4	100.0

f. Length of Residence in Homer: (Total Area)

Two Years or Less:	16.9%	76.1%	7.0%	100.0
Three-Four Years:	24.7	72.7	2.6	100.0
Five-Eight Years:	25.0	65.8	9.2	100.0
Nine Years-Longer	48.9	44.6	6.5	100.0

g. Occupation of Household Head (Male, Total Area):

	Encourage On-Shore Development	Discourage On-Shore Development	Undecided	Total
Professional:	10.8%	83.8%	5.4%	100.0
Managers, Owners:	60.0	36.0	4.0	100.0
Technical	38.5	57.7	3.8	100.0
Craftsmen & Laborers:	24.6	69.4	6.0	100.0
Fishermen:	5.0	92.5	2.5	100.0
Cannery Workers & Fishing Crew:	6.3	87.5	6.2	100.0
Farmers, Homesteaders:	36.4	63.6	0.0	100.0
Retired, Unemployed:	56.3	27.1	16.6	100.0

Significant relationships are found in each case, with the older people of longer residence, and particularly those who are retired or with jobs as managers or business owners, most supportive of on-shore facilities. The younger and newer resident, including those with jobs in fishing and professional work, are most consistent in their opposition to local oil development. It should be noted, however, that these latter attitudes of discouraging on-shore facilities are shared by a majority of the "average" Homer residents, namely those adults with a median age of 35 and five years of residence in the area. Finally, certain unanticipated results are seen in the relationship of jobs to attitudes when one considers the potential impacts that would occur from oil development: among those who would discourage oil are the craftsmen and laborers who might anticipate the most direct economic benefits, whereas the favorably inclined retired people are most likely to experience the negative effects from an inflationary local economy. Some changes in the attitudes of these groups might be anticipated if the actual effects of on-shore development were to begin to be realized.

SUMMARY: A majority of residents would like to see Homer undergo minimal or limited growth of a slow and gradual nature, with the addition of permanent jobs as a base for a permanent resident population. That Homer residents would favor an

absolute "no growth" economy is erroneous, in that a majority of development activities are favored by most residents. Those activities which they would most like to see encouraged, however, are either those traditional to the local economy (fishing, farming and to a lesser degree tourism) or those based on the concept of permanent employment (light manufacturing, education and research). Rapid growth and heavy industry, a transient population and oil development in general, are opposed. Although these attitudes are most prevalent amid the younger, more recent and rural residents, they are also held by the average resident of Homer.

SECTION III: ATTITUDES TOWARD CITY SERVICES

Four types of questions were asked about services provided in the city. Included was a ranking or evaluation of the adequacy of individual services, preferences for the expansion of individual services in comparison to other services, the public assessment of needs within particular services, and priorities for local funding of service expansion. The format of presenting the information here is to first provide tabulations on evaluations and service priorities; a very brief description is then provided of each service in terms of publicly expressed needs. Since most of the services pertain only to city residents, calculations are based on the sample from within the city limits. All exceptions to this are specifically noted in the tabulations.

1. EVALUATION RATINGS: (How would you rate the following services in Homer - City residents only)

	Less Than Adequate	Adequate	More Than Adequate	Undecided
Police Protection:	16.2%	53.6%	23.7%	6.5%
Elementary Schools:*	7.1	17.6	36.5	38.8
Hospital-Health Svcs:	24.3	61.8	9.8	4.1
Fire Protection:	26.0	60.1	2.3	11.6
Water Service:	31.4	59.3	2.3	7.0
Sewer Service:	30.8	56.4	1.7	11.1
High School:*	25.0	23.2	17.3	34.5
Recreation Facilities:	55.5	34.1	3.5	6.9
Streets:	68.8	29.5	1.7	0.0

(*Obviously not services for which the city is responsible.)

2. SERVICES EXPANSION: Are you in favor of having the city expand the level of services it now provides, maintain these at their present level, or cut back on the services which it now provides:

Cut Back on Services:	3.0%
Maintain At Current Level:	44.0
Expand Level of Services:	47.6
Undecided:	5.4

In contrast to residents in the city, a strong majority of the rural residents (70%) preferred a maintenance of services at their present level; half as many wanted to cut back on the level of services as actually increase them.

3. PREFERENCES FOR TYPES OF SERVICES: Both city and rural residents were asked to list those three city services which they would most like to see expanded, and also those which they would least like to see expanded. Among those which people would most like to see expanded, listed in order of preference by city residents, were:

	Order of Most Preferred:		Order of Least Preferred:
(high)	1. Road & Street Improvements**	(low)	13. Fire Protection
	2. Harbor & Port Facilities		12. Ambulance Service
	3. Recreation Facilities		11. Roads & Streets
	4. Sewer System		10. Health Facilities
	5. Tourist & Camper Facilities		9. Sewer System
	6. Water System		8. Harbor & Port Facilities
	7. Cultural Facilties		7. Water System
	8. Fire Protection		6. Recreation Facilities
	9. Local Government Facilities		5. Cultural Facilities
	10. Police Department		4. Police Department
	11. Health Facilities		3. Local Government Facilities
	12. Ambulance Services		2. Garbage Disposal
(low)	13. Garbage Disposal	(high)	1. Tourist & Camper Facilities

**Survey was taken prior to completion of paving of Main Street.

b. Rural Residents (Outside City):

	Order of Most Preferred:		Order of Least Preferred:
(high)	1. Harbor & Port Facilities	(low)	13. Health Facilities
	2. Cultural Facilities		12. Fire Protection
	3. Fire Protection		11. Cultural Facilities
	4. Roads & Streets		10. Roads & Streets
	5. Health Facilities		9. Ambulance Service
	6. Recreation Facilities		8. Harbor and Port Facilities
	7. Tourist & Camper Facilities		7. Recreational Facilities
	8. Police Department		6. Garbage Disposal
	9. Ambulance Service		5. Sewer System
	10. Sewer System		4. Water System
	11. Water System		3. Police Department
	12. Garbage Disposal		2. Local Government Facilities
(low)	13. Local Government Facilities	(high)	1. Tourist Facilities

Among conclusions that could be drawn from the above lists are: 1) the high preference given to road and street improvements, particularly within the city where over one-half listed this as among their top three choices; 2) the high priority given to improved port and harbor facilities by residents both within and outside the city; 3) the relatively high priority given to recreational and cultural facilities by both groups; 4) the low priority given to local government facilities (city hall) and expansion in the police department by both groups; 5) the low priority for water and sewage systems expansion outside the city; and finally 6) disagreement over expansion of tourist and camper facilities. Whereas some residents both within and outside the city consider this a relatively high priority, others consider it the least preferred of all services for potential expansion.

4. INDIVIDUAL CITY SERVICES:

a. Roads and Streets: Over one-half the city residents stated the need for improvement in city streets and roads, a priority rating that was close to double that given any other single service. This priority is consistent with the low evaluative rating given to streets, where 69% of the residents felt them to be less

than adequate. On separate questions, over 85% expressed the opinion that more streets should be paved and gravelled, and over 70% expressed favor for the building of storm drains and sidewalks for walking and bicycling. When residents both within and outside the city were asked to state their top two priorities in terms of street improvements, the following responses were recorded:

Type of Street Improvements:

	Homer City	Outside City
Paving Streets:	49.2%	21.8%
Gravelling Streets:	48.6	29.6
Sidewalks and Bikepaths:	41.7	25.7
Storm Drains:	25.5	9.3
Improved Snow Removal:	9.8	14.0
Street Parking:	9.1	38.9
Street Lights:	8.1	3.1
Other:	6.4	7.8

Finally, by a three-to-one ratio, city residents favored the maintenance of off-street parking, as compared to on-street. Although strong preferences were shown for the paving of Pioneer Avenue and the downtown area, priorities were also stated for West Hill Road and other residential streets in the downtown area.

b. Recreational Facilities: The recreational facilities provided by the city were also assessed by the majority of residents as less than adequate, and in need of improvement. Among the recreational and cultural facilities used by most city families were the museum (75% of all families), the school swimming pool (73%), library (60%), High School gym (54%), small boat harbor (52%, excluding commercial use), and the Fairgrounds (47%). Although usage by families living outside the city was lower, it was still significant and indicates the strong ties to the community by these residents: library (52%), swimming pool (50%), museum (46%), small boat harbor (36%, only recreational), gym (33%) and Fairgrounds (13%). New recreational facilities which residents stated they would most like to see are, in order

of priority: outdoor general use parks, a community center, tennis courts, teen center, indoor sports facilities such as a covered hocky rink, and an auditorium. Finally, 82% of the total area residents were in favor of reopening the wharf for public fishing and shrimping, and 73% to the maintenance of the Pier I Theater.

c. Sewer and Water Systems: Sixty-five percent of the city residents were using the city water system and 53% stated that they were on the city sewer system. For city residents not on these systems, wells and septic tanks were used by a large majority. Among all city residents, general attitudes were favorable toward expansion of both water and sewer systems (59%); however, only minorities were in favor of either increased taxes to pay for expansion (43%) or increased development to reduce the unit costs of expansion (37%). Surprisingly, the attitudes of residents within the city who are not on water or sewer systems differ little from those who have these services. Although majorities would like to have water and sewer systems expanded (58% and 60%), they are less favorable toward the assessment of taxes as payment for these (47% and 49% respectively), and even less favorable to an increase in local development for the purpose of reducing unit costs (25% and 24%).

Residents outside the city, even excluding those in Anchor Point, Nikolaevsk and across the Bay, were strongly opposed to the expansion of water or sewer systems to incorporate their areas (77% and 82% respectively); even larger proportions opposed both taxation and increased development to offset costs of these potential utility expansions.

d. Fire Protection: Probably due to its high "adequate" rating, no major endorsements were given for changes in fire protection. Two-thirds of the city residents preferred to see the fire department maintained on a volunteer basis

rather than with professional staff. However, 46%, with another 29% undecided, favored the addition of more equipment to the fire department, with the largest proportion of these citing the need for a new or additional truck. Opinions were evenly divided pro and con on the addition of more staff or equipment to the ambulance service, although there was also a large proportion of no opinion answers. Almost two-thirds of the residents in the immediate area outside the city limits considered themselves outside of a fire protection service area, and slightly over half of these would like to be affiliated to such a service area.

e. Hospital and Health Services: No strong concerns were voiced regarding changes in health care, although 32% of those expressing opinions stated the need for additional doctors. The addition of specialists to the hospital staff, more emergency equipment and a community health program were also cited as needs by over 15% of those who responded. A wide variety of responses were generated concerning what should be done with the old hospital. Included among these were: utilizing it for office space for the city and borough (19%); a community health center (16%); nursing home (16%); free clinic (15%); and community center (10%).

f. Police Protection: Probably due to its high adequacy rating, the police department was also ranked low in terms of priorities for expansion. Among city residents, for example, only 16% felt that the number of police on the city force should be increased. In spite of this, a plurality of city residents felt that more police time should be spent on crime prevention and patrolling, particularly in terms of security on the Spit, and over one-third that they should increase time on criminal investigations and the enforcement of civil regulations such as trespassing and drinking by minors. There were no activities, including traffic control, where significant numbers felt that police attention should be reduced.

Felony offenses, particularly theft, and drug related crimes constituted those types of crimes of greatest concern to the city public. In contrast, over 60% of the rural residents would like to see more police serving areas outside the city limits, although there was overwhelming agreement that this should be performed by the state police (90%). In these areas, theft and vandalism were the crimes of greatest concern.

g. Port and Harbor Facilities: Along with roads, harbor and port facilities were those given the highest overall ranking for expansion, particularly by rural residents. Widespread use of the harbor facilities obviously accounts for this: 59% of the city residents use the small boat harbor (27% on a commercial basis), but it is also used by 52% of the rural residents (32% commercially). In addition, a full 70% of the total area residents stated that they anticipated using the harbor within the next five years.

As stated in Section II, strong preferences exist for giving fish and fish processing priority for development on the Spit, followed by tourism and finally non-fishing industry. These attitudes are held even more strongly by actual users of the small boat harbor. In general, development facilities were encouraged as long as they did not compete with this primary utilization of the limited land and port facilities. As such, wharf fishing and the Pier I Theater are strongly favored by harbor users; potentially competitive usages are not, such as private campgrounds (51%), an amusement park (18%), storage facilities for off-shore oil exploration (18%), general shopping mall (16%), oil storage and tanking facilities (16%), and large commercial hotels (13%). Facilities that will contribute to the commercial use and conservation of the small boat harbor are strongly endorsed by users, such as dry dock and boat repair facilities (34%), additional fish proces-

sing facilities (92%), installation of storage and treatment tanks for bilge slops (85%), dry boat storage facilities (83%), stronger enforcement on oil and sewage discharge (79%, also favored by 82% of the commercial users), and warehouse facilities for commercial port usage(60%).

Residents using the habor on a commercial basis favor these latter items to a slightly stronger degree, while the attitudes of residents who do not use the small boat harbor tend to be generally less supportive, and somewhat more favorable to general industrial and petroleum use. This is particularly true of the development of a new deep water off-shore harbor, favored by 63% of the general public but by only 54% of both the commercial and recreational harbor users. Minimal differences exist in attitudes between city and rural users of the harbor, outside of the fact that 59% (with an additional 20% undecided) of the non-city commercial users favor greater representation from the rural area on the present Port Commission.

h. Education: Although education is not a function provided by the city, its local importance merits inclusion. However, no conclusive changes in policy were noted from the survey, other than a strong desire for more vocational training at the high school level (74% of the city residents expressing an opinon; as compared to "less" or "current" levels of vocational training). Smaller majorities of those responding favored the retention of present class sizes (54%) and an expansion in cultural programs and activities (51%). Only a small minority favored the present level of student planning and choice in curriculum, however present policy apparently represents a good compromise in that equal numbers endorsed less, and more, choice in student planning of their own curriculum. On all questions attitudes of rural residents in the Homer attendance area very closely paralleled

those within the city, although they showed less conclusive support for the construction of new school buildings than city residents (42% and 54% respectively, although with a large proportion of undecided residents). Both groups had also been equally active in the community school program, in which over one-third of the residents had been involved. The only potential area of disagreement was the attitude of 60% of the rural residents that their representation on the Advisory School Board should be increased.

4. TAXES AND FUNDING OF SERVICES: Although residents stated a desire to maintain the current level of many services, definite preferences were expressed for the expansion of certain ones, and the costs of these generally are bound to increase. To assess attitudes toward mechanisms for raising additional revenues, residents were simply asked which method of taxation they most and least preferred. The attitudes, which show a preference for sales taxes and service rate charges, and opposition to increases in personal property taxes, are shown below:

a. Most Preferred Method of Raising Additional City Revenues:

	Homer City	Outside City	Total Homer Area
Real & Personal Property Tax:	6.4%	11.7%	9.5%
Sales Tax:	50.0	38.5	43.3
Service Rate Charges:	26.4	32.5	29.9
Other:	7.4	6.1	6.6
Undecided:	9.8	11.2	10.7

b. Least Preferred Method of Raising Additional Revenues:

Real & Personal Property Tax:	60.4%	63.4%	62.3%
Sales Tax:	13.0	24.6	19.6
Service Rate Charges:	17.1	10.2	13.1
Undecided:	9.5	1.8	5.0

In addition, residents felt strongly that the city should charge for services, particularly to outsiders. For example, although 76% of the total area supported

the maintenance of public camp grounds by the city where a fee is paid, only 19% supported the maintenance of such areas without fees.

SECTION IV: ZONING AND LAND PLANNING

Questions related to land use on the Spit have already been presented and will not be repeated here. However, a variety of other land use policies are important to the community and questions were asked on a number of these. As areas they included: 1) the maintenance of natural park lands in the Homer - Kachemak Bay area; 2) industrial and residential zoning within the city; 3) the location of potential on-shore oil facilities; and 4) several final comments on tourism.

1. PARKLANDS: The natural beauty of the open lands surrounding Homer is obviously great, and 87% of the combined city and rural residents stated that this was very important to them. An identical proportion, equal for both city and rural, felt that state parks or other means should be maintained to protect these lands in their undeveloped state. Attitudes of area residents toward logging and mining on these lands are given below:

a. Attitudes Toward Park Land Use:

	Favor	Oppose	Undecided
Should Be Open to Logging:	33.5%	59.8%	6.7%
Should Permit Clearcutting:	10.6	82.0	7.4
Should be Open To Mining:	42.0*	51.7	8.3

*(Many of the favorable answers were stated conditionally, favoring prospecting and placer mines, and opposing open or strip mining.)

As seen below, a majority felt that these lands should be managed and controlled by the state, although there was considerable support for joint management or input from the city and Kenai Borough levels, in addition to opposition for the autonomy of federal management:

b. Control and Managment of Park Lands: Who should perform this?

	Opposed	Favor	Undecided
City (Homer):	68.1%	24.2%	7.7%
Kenai Borough:	69.1	23.3	7.7
State of Alaska:	30.2	62.1	7.7
Federal:	82.5	9.8	7.7

2. ZONING WITHIN THE CITY: As seen below, overall attitudes toward city zoning appear to be favorable, with a majority stating preference for a moderate zoning policy and only a very small number for an absence of zoning:

a. Type of City Zoning Preferred:

	Homer City	Outside City	Total Homer Area
No Zoning:	6.0%	11.9%	9.4%
Very Weak or Limited Zoning:	9.5	9.3	9.4
Moderate Zoning:	54.8	60.2	57.9
Strong Zoning:	26.2	12.7	18.3
Undecided:	3.6	5.9	5.0

These attitudes, however, tend to be specific, favoring zoning for an industrial site and for multiple unit dwellings, but without placing locational controls on businesses and individual residences:

b. Establishment of Industrial Site Area for All New Industry:

	Homer City	Outside City	Total Homer Area
Favor Industrial Site:	79.4%	71.2%	67.3%
Oppose Industrial Site:	14.7	19.5	15.8
Undecided:	5.9	9.3	7.1

c. Residential Zoning for Multiple Unit Dwellings:

Favor Multiple Unit Zoning:	71.2%	71.8%	71.5%
Oppose Multiple Unit Zoning:	24.1	23.9	24.0
Undecided:	4.7	4.3	4.5

d. Zoning to Encourage All New Businesses to Locate Downtown:

Favor Business Centralization:	44.0%	39.5%	41.3%
Permit Businesses to Decide:	48.8	51.3	50.2
Undecided:	7.2	9.2	8.4

e. Encouragement of Locating New Residential Areas in Downtown Area:

	Homer City	Outside City	Total Homer Area
Encourage Downtown Development:	14.3%	20.7%	18.0%
Permit Residences Where People Choose:	80.4	73.3	76.3
Undecided:	5.4	6.0	5.8

f. City Encouragement of Subdivision Development:

Encourage Subdivisions:	56.0%	31.8%	42.2%
Discourage Subdivisions:	31.9	58.2	46.9
Undecided:	12.0	9.9	10.9

Even though the attitudes of rural residents are favorable toward some aspects of zoning within the city, their attitudes are quite different in regard to zoning in rural areas. Here 43% of the rural residents favor no overall zoning restrictions on the part of the Borough, and only 37% favor moderate or strong zoning policies. This should not, however, be interpreted as opposition on the part of rural residents to all forms of Borough regulations, since the question did not address itself to specific areas of industrial zoning.

3. POTENTIAL ON-SHORE OIL FACILITIES: Although local public attitudes are opposed to oil facilities in Homer in general, and on the Spit in particular, zoning questions were asked, should on-shore development take place. Responses for both city and rural residents showed preferences for having the oil facilities themselves located outside or away from town, and on land leased to the oil companies by the city or Borough; on the other hand preferences were also stated for oil company workers to actually live in Homer.

a. Preferences for Facility Locations, Should Oil Development Occur Locally:

	Homer City	Outside City	Total Area
Located In City Limits:	24.4%	27.7%	26.4%
Located Outside City:	57.6	41.9	48.1
Won't Consider Option:*	11.0	13.8	12.7
Undecided:	7.0	16.5	12.7

b. Preferences for Oil Facility Leases on Private or Public Land:

	Homer City	Outside City	Total Area
Private Land, Owned or Leased to Companies:	19.5%	17.3%	18.1%
Publicly Leased Land (City or (Borough):	57.9	61.0	59.8
Won't Consider Option:*	6.5	12.8	10.2
Undecided:	16.4	8.8	11.9

c. Preferences for Oil Workers Living in City or Away From City:

Living In Homer:	43.8%	43.5%	43.6%
Living Away from Homer:	22.5	25.2	24.1
Won't Consider Option:*	15.9	20.8	18.8
Undecided:	17.8	10.6	13.5

(* This category composed primarily of individuals strongly opposed to oil development who are against facilities being built either in or outside the city.)

Finally two questions were asked of slightly different samples. The first recognizes the use of Homer as the major service center for the southern Kenai Peninsula and consequently the importance of attitudes of residents outside of the area encompassed by the city and survey-defined rural area. Exclusive of Seldovia, where the question was not asked, the combined residents of Ninilchik, English Bay and Port Graham opposed the location of on-shore facilities in Homer in the following proportions:

d. Preferences for Location of On-Shore Oil Facilities in Homer by Residents of Ninilchik, English Bay and Port Graham:

City Should Encourage Oil Facilities in Homer:	31.8%
City Should Discourage Oil Facilities in Homer:	54.6
Undecided or No Opinion:	13.6

In addition a question was added to the questionnaire following completion of the Homer City interviews, asking all rural residents their preference for the centralization of all Lower Cook Inlet on-shore facilities in a single community such as Kenai, or the dispersal of these facilities into various communities

of the southern peninsula in accordance with individual community choice. The results showed a fairly strong preference for the centralization in Kenai among rural Homer area residents, and also a weaker preference for this among the combined residents of Ninilchik, Seldovia, English Bay and Port Graham. It should be cautioned, however, that these tabulations do not include the city residents of Homer, who if consistent with other attitudes would have been less favorable than the rural residents to on-shore centralization in Kenai:

e. Preference for Location/Centralization of Lower Cook Inlet On-Shore Oil Facilities:

	Homer Rural Area	Non-Homer Rural Area
Centralization in Kenai:	67.9%	53.2%
Dispersal to Various Communities in Accordance With Choice:	28.1	39.9
Undecided:	4.0	6.9

Taken together, the answers to all oil facility questions indicate that public opinion was consistently opposed to on-shore facilities at the time the survey was taken.* This does not of course mean that attitudes cannot change. Changes in the technology or policies of oil companies could conceivably change the perceptions which some residents hold. However one factor appears to be crucially important at present. This is that opposition to oil represents a divisive force within the community and that any immediate action taken to initiate facilities would probably only serve to increase this level of antagonism. Two options appear possible, assuming Lower Cook Inlet exploration and development actually occurs. The first would be to follow majority opinion and oppose the establishment of on-shore facilities in Homer, while encouraging the location of these in a community such as Kenai. The second would be to achieve a greater

*It should be noted that interviewing in Homer was completed just prior to the initial unsuccessful effort to remove the Ferris.

consensus in support of those facilities that might be located in the local area. Essential to this would be public discussion and the elaboration of local regulations that would control the oil industry and thereby provide safeguards to guarantee maintenance of the present quality of life. A fairly strong concensus appears to exist that if oil development should occur in Homer, that it must be closely controlled and regulated. Answers to various questions indicate that the city should play a very active role in determining the specific conditions and locations under which on-shore facilities might be developed.

4. TOURISM: Although tourism ranked relatively low in terms of economic activities that residents felt should be encouraged, a majority of residents favored its development, albeit city residents more so than rural. Attitudes on developments related to tourism, particularly on the Spit, have already been mentioned and need not be repeated. What does appear relevant are the generally favorable attitudes toward land use and facilities that would cater rather specifically to the tourist (such as private and public campgrounds, as long as payment was received for the latter) and their overlapping with other local activities strongly favored by the Homer resident. The mutual participation in outdoor recreational activities are one example of this. Another not mentioned previously is the strong local preference stated for the small owner-operated business over the larger corporate stores, which would also be consistent with tourist use. However, many other issues exist, such as strong local participation and/or preference for outdoor parks, the Pier I Theater, dry boat storage facilities, the Museum and library, public wharf fishing, and sidewalks and bike trails. Sponsorship of these type facilities would not only meet needs expressed by the local public but provide attractions for the visiting and summer tourist, and they might well be given consideration for additional attention and development by the city. On the

other hand, opposition would be expected to the development of a large scale tourist industry that lacked consistency with local recreational life styles and which competed for limited land use.

SECTION V: SUMMARY

In brief form this concludes the information provided by the survey. As stated in the introduction, it is not our intention to pursue an analysis of this and it would be overly precocious for us to make policy recommendations on the basis of it. Our intention has been merely to provide a systematic assessment of attitudes which we hope many will be able to utilize and from which we believe specific policies can be generated. To a very limited degree, this may already have occurred, in that high school students who did much of the interviewing emerged with greater knowledge about their town. It is neither assumed nor anticipated that the attitudes described here will remain constant. It is hoped, however, that they will help promote both knowledge about the community and the discussion or thought that is essential for creative planning to occur. Only in this way can change be self-promoted and meet the common human needs of the community.

The population of Homer is a relatively new and young population with a strong tenacity for individual life styles deeply influenced by the traditional resource base. It would be very erroneous to imply that many of the attitudes expressed in the survey are totally negative, particularly those associated with on-shore oil, or that they merely reflect an idealistic desire to preserve traditional life styles alone. A small minority of individuals may hold these, and they would probably be paired with as many others who would oppose them vehemently on every issue. A more representative element of the public, however, appears

to be one positively oriented toward changes that will selectively enhance those elements of the community that are consistent with basic values. From the survey, many of these values are closely tied to aesthetic appreciation of the land and Bay, its fishing economy and recreational - subsistence use, and close affinity for qualities of small town life. If residents in Homer are to maintain control over the future of their town, potential developments that are endorsed must be consistent with these resources and values.

Testimony given before the Senate Resources Committee in consideration of Senate Version of House Bill 192 and Senate Bill 199 regarding the repurchase of oil leases in Kachemak Bay on the Kenai Peninsula.

Prepared by: Michael Baring-Gould, Ph.D.
Department of Sociology
University of Alaska, Anchorage

Robert B. Heasley
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University of Alaska, Anchorage

April 1, 1977

We have prepared the following testimony at the request of Senator Chancy Croft. The information which we are presenting is derived from a survey of attitudes toward growth and development in communities of the Lower Kenai Peninsula.

The survey was conducted during the summer of 1976 under a grant from the Alaska Humanities Forum and administered through the Institute for Social and Economic Research. It was coordinated through the Kenai Peninsula Borough and through local community or city administrations and Planning and Zoning Commissions. Respondents were selected through scientific random sampling methods and were all interviewed in person by university-trained interviewers. In total 395 individual household heads were interviewed from the communities of Ninilchik, Anchor Point, Nikolaevsk, Homer, Seldovia, Pt. Graham, English Bay and various outlying homesteads of the Kachemak Bay area. Although the survey dealt specifically with attitudes toward growth and development, including on-shore facilities from OCS development in the Lower Cook Inlet, and not the Kachemak Bay leases themselves, we feel that responses to questions can be used to reflect local attitudes toward repurchase of the leases. For your information we have included copies of two reports written from this survey pertinent to the communities of Homer and Seldovia.

The results of the survey indicated an overwhelming preference for the preservation and development of fishing resources in Kachemak Bay. Over 95% of the residents interviewed favored local community encouragement of fishing and fish processing, and when asked to prioritize development alternatives (such as tourism, light manufacturing, transport and oil development, etc.), the top priority was again overwhelmingly given to fishing. In contrast, a majority of 61% (with 8% undecided) of the area residents opposed the encouragement of on-

shore supply facilities in the Kachemak Bay area for off-shore oil development; even larger proportions opposed more extensive on-shore facilities such as liquification or refining plants. Similarly, on-shore oil developments were consistently cited by a majority of local residents as the least desireable type of local economic activity. Although the questions were asked in reference to Lower Cook Inlet oil development on potential federal off-shore leases, the results would have in all probability been stronger in relation to state leases in the Bay; various residents who favored on-shore oil development from the off-shore leases stated as asides that they had been opposed to exploration and drilling within Kachemak Bay.

Answers to various other questions on the survey validate those already mentioned. In the Homer area, for example, 76% of the residents stated that preferences should be given on the Homer Spit for fishing and fish processing facilities, as compared to 9% who favored industrial usage such as that related to oil development. Similarly 78% opposed the location of oil storage and tanking facilities on the Spit, and 70% opposed warehousing and equipment storage facilities on the Spit for oil exploration.

We feel confident in saying therefore that a strong majority are opposed to oil development in the Kachemak Bay area. In addition, the results were found to be suprisingly uniform across the various community, population and occupational groups in the area. Naturally, fishermen are strongest in their opposition, but these attitudes were also shared by a majority of natives, professionals, technicians, and even laborers. The only groups showing relatively consistent preference for on-shore development were the older and longer-term residents of the area, and those whose occupations are managers or owners of businesses in the area. Among these particular groups significant support

does exist for off-shore oil development and local on-shore facilities, and in all probability similar attitudes would prevail toward oil development within Kachemak Bay. However, these positive attitudes toward oil development appear to be specific to quite particular groups and are definitely not reflective of the overall public opinion of maintaining the local economy on its present resource base. As a final comment it should be added that whereas the study showed that a minority within the Kachemak Bay area are opposed to any type of economic growth, the vast majority expressed attitudes in support of growth as long as the economic activities were consistent with maintenance of the present resource base.

On the basis of the attitudes determined through the survey, we would obviously conclude that a strong majority of local residents favor maintenance of Kachemak Bay in its present state, and consequently repurchase of the state leases. We hope that the opinions obtained from this research are useful to you and the Senate in the making of decisions concerning Kachemak Bay.

Oral Statement
Nicholas J. Gangl
Senate Resources Committee
Juneau, Alaska
April 1, 1977

MADAME CHAIRMAN, MEMBERS OF THE COMMITTEE:

MY NAME IS NICHOLAS GANGL. I came to Alaska in 1962 from Wyoming. I worked on the White Alice Communications System as a technician. In 1962 I was assigned to the site at Kotzebue where, along with several of my co-workers, we operated a set net site for salmon. During the summers of that time we sold the fish for 12¢ each. Now these same fish are selling for 65¢ a pound.

In 1965, I had the opportunity to transfer to Homer. The company also had openings for me in Anchorage and Madrid, Spain which I declined because I wanted to make Homer my home. I have subsequently acquired and developed real estate property in the area, including cemetery lots for myself and my wife. I expect to be here for some time.

I am a member of the Homer Advisory Planning Commission, a member of the Kenai Peninsula Borough Planning Commission, and a member of the Parks and Recreation Council, Kachemak.

I am sincerely concerned with the economic welfare and the best interests of the whole community, and the highest and best uses of our land and resources for the benefit of all.

The repurchase of the Kachemak Bay Leases would be a tremendous loss due to the following:

1. Loss of the moneys to buy back the leases which come from the General Fund, thus depriving the citizens of the State of Alaska the benefits that could otherwise be derived from that amount of money, such as additional roads and road improvements, harbor and port facilities, fishery improvements, etc. which are so badly needed.

2. If the Kachemak Bay Leases produced the oil and gas that is estimated to be there, it would benefit the local community immeasurably, due to the availability of these energies to generate electricity. It would double the useful efficiency of the fishing industry, providing the economical energy for drying the fish wastes. Thus the wastes could be processed and ground into commercially useable fertilizers. These wastes now present a disposal problem and add to the pollution of our environment and could be a boon to the local agricultural community for the development of heated green houses for year around commercial produce production, which has been demonstrated as being feasible by way of experiments in Soldotna.

3. Loss of royalty income to the State, which would be generated from these leases.

4. Loss of the tax revenue which would accrue to the borough by way of assessed taxes on this oil field equipment.

5. If the buy-back funding is approved the federal land adjacent to the Kachemak Bay Leases are going to be leased anyway. The oil in the state land will be drawn off through production on these federal lands and the state will receive nothing from it. Not to mention, the potential losses of economic benefits to the community as a result.

If HB 192 is approved, there are still some 16 other leases to other companies and individuals that have not been settled.

The oil industry does have the technological ability to properly protect the critical habitat area and drill safely without damaging the environment. The state does have the enforcement capabilities to see to it that it is properly done.

It is unfortunate that the accident of the Ferris and the excessive over exageration of the small amount of oil lost or spilled from the Ferris has resulted in the buy-back action. However the unrecovered

oil lost from the Ferris was less than 200 gallons. It is interesting to note that the amount of two-cycle outboard oil distributed by Standard Oil in Homer for one season is 1300 gallons, which is less than one-fifth of that sold, or used in this area. Some 5,000 gallons of outboard oil is spewed out into the bay each year from the Homer area. This is 25 times more than that lost from the Ferris alone. Not to mention that the fishing boats are now buying large quantities of detergents to flush and clean their bilges, and mix with their waste oils. This holds the waste oil in suspension and is not seen or detected as a sheen when pumped out.

I believe it would be irresponsible to buy back these leases, and a misuse of state funds to do so.

In the best interests of the community, the state, and the nation, I sincerely urge you to reject funding for HB 192.

Thank You,

R Andy Johnson

April 1, 1977

Senator Kay Polland, Chairman
Senate Resources Committee

TESTIMONY ON A.B. 192, SENATE BILL 199

I am against the present policy on regulating and preserving the natural resources in Kachemak Bay for two reasons:

1. The limited entry law was passed, using half truths and false advertising. In no way does this law limit or preserve the fish resources in the Bay. It only limits the number of fishermen.

   The only way to preserve the fishery is to see that an adequate number of each specie gets to spawn. After that, it should be up for grabs as to who catches each fish. If the State is going to limit the number of commercial fishermen, it should also limit the number of sport fishermen. In either case, I do not feel the State has the right to tell me I cannot fish, but you can.

2. The oil lease buy-back is justified by innuendo and supposition, not fact. There is no place on the surface of this world where the development of an oil industry, offshore, has depleted a fishery. The North Sea is a much larger and diverse fishery than Kachemak Bay, and yet none of the people who are against the Kachemak Bay development have been able to show where oil development has hurt that fishery. The same is true about the Gulf of Mexico. In fact, the shellfish production is more since the oil platforms have moved in.

   A big hullabaloo was made when the Ferris was to be moved out of the Bay. Under the worst possible circumstances, the barge sinking, the legs of the rig having to be blasted off, and oil having to be transferred and hauled ashore, the control was so good that there is more oil spilled by the fishermen in the small boat harbor each day than was lost on the Ferris.

   The only leases that the State can stop are those within the area the State controls; hence, the Inlet is going to be developed in spite of the State. It is always more reasonable to encourage and control development than to have someone else control it and shove it down your throat. There is no way Alaska can stop potential oil development in this energy-hungry world.

Last, the worst accident that could happen, as far as Kachemak Bay is concerned, is for a super-tanker to be wrecked in the Lower Inlet. With controlled development in the Inlet, there will be containment equipment available to take care of a spill, and limit the contamination. With no development, this equipment will not be here.

If such a spill did take place, and 75% of all the shrimp, crab and clam fishery in the Inlet was destroyed, with modern hatchery methods and shutting down the season for three or four years would build it back to normal.

It would be far more economical if such a catastrophe did happen to charge the perpetrator for the loss of income than for the State to pick up the tab before anything happens, betting that it will, and charging us taxpayers for the cost.

Thank you for listening.

R. Andy Johnson

SENATE RESOURCES COMMITTEE
TESTIMONY REGARDING REACUISITION OF LEASES IN KATCHEMAK BAY
SHARRON LOBAUGH

ALASKA CONSERVATION SOCIETY
APRIL 1, 1977

LAST YEAR, I SAT IN ON ALL HEARINGS ON THIS SISUE WHICH CONSUMED ABOUT A FULL TWO WEEKS OF LEGISLATIVE TIME. I DID NOT TESTIFY PRIMARILY BECAUSE THERE WERE COUNTELSS WITNESSES ON BOTH SIDES AND THE CONSERVATION POSITION WAS WELL KNOWN BY MANY PIECES OF CORRESPONDENCE.

I AM HOPING TODAY, TO TAKE A FEW MINUTES OF YOUR TIME TO RESTATE SOME OF THE TESTIMONY OF LAST YEAR PRIMARILY BECAUSE THE SENATE DID NOT HAVE THE FULL BENEFIT OF THE RATIONAL AS MOST OF THE HEARINGS WERE HELD IN THE HOUSE RESOURCES COMMITTEE.

THE MOST IMPORTANT THING NOW SEEMS TO BE THAT THE LEGISLATURE DED ENACT ENABLING LEGISLATION FOR THE REACQUISITION OF THE LEASES AND THE STAT AND STANDARD OIL THE MAJOR LEASE HOLDER, HAVE NEGOTIATED IN GOOD ON AN AGREEMENT THAT SHOULD BE HONORED. THE ACTU L COST OF THIS AGREEMENT TO THE STATE IS 12 M. AND THE RE AINING 92 M. WILL BE USED FOR TAX CREDITS.

BRIEFLY, THE HISTORY IS ONE OF FLAGRENT ABUSE OF GOVERNMENTAL POWER. THE PEOPLE OF KATCHEMAK BAY HEARD RUMORS IN THE FALL OF 73 THAT THERE WAS A PROPOSED LEASE SALE IN COOK INLET. GOVERNOR EGAN TOLD THE MAYOR AT THAT TIME PAUL JONES THAT THE LEASE SALE WAS NOT GOING TO INCLUDE KATCHEMAK BAY AT THIS TIME. HOWEVER, ONLY 10DAYS BEFORE THE LEASES WERE SOLD ON DEC. 13 THE RESIDENTS LEARNED THE BIDS HAD BEEN SOLICITED WITHOUT A PUBLIC HEARING. 300 PERSONS PETITIONED FOR A HEARING IMMEDIATELY.

THEIR PETITION WAS IGNORED.

THE ASSEMBLY OF HOMER NOR THE PLANNING COMMISSION HAD EVER BEEN CONTACTED REGARDING THE PLANNED IMPACE.
FISH AND GAME WAS ONLY GIVEN 3 DAYS TO RESPOND TO THE PLANNED SALE **OBVIOUSLY THEIR COMMENTS WOULD BE IGNORED.

AFTER THE SALE THE LEGISLATURE HELD HEARINGS AND WAS TOLD BY THE GOVERNORS OFFICE THAT THERE WAS A "CLOUD OF DOUBT" ABOUT THE APPROPRIATENESS OF THE SALE BUT THE GOVERNOR JUST COULDN'T FIND THE MONEY TO REPURCHASE THE LEASES. WHEN ASKED WHY THE PETIONERS WERE DENIED A HEARING THE GOVERNORS OFFICE REPLIED: "THEY MADE NO SPECIFIC COMPLAINT IN THE TELEGRAM."

COMMISSIONER HERBERT WHEN ASKED WHE HE WOULD JEPRODIZE THE FRAGILE BLUFF POINT HABITAT REPLIED THAT HE WAS NOT AWARE OF THE VALUE OF THE FISHERIES OF THE AREA.

THE LEGISLATURE ENACTED CRITICAL HABITAT LEGISLATION ØOR KATCHEMAK BAY .

WHILE MOST OF YOU ARE KEENLY AWARE OF THIS HISTORY, MANY OF YOU MAY NOT BE AWARE OF WHAT HAPPENED LAST YEAR WHICH CHANGED THE CIRCUMSTANCES. AS ONE HOUSE MEMBER ASKED "WHAT DO WE KNOW NOW THAT THEY DIDN'T KNOW IN 1973?"

ALOT MORE INFORMATION IS KNOWN TO VERIFY THE CRITICAL HABITAT STATUS OF KATCHEMAK BAY, ALOT MORE IS KNOWN ABOUT THE PRODUCTIVITY ADD ALOT MORE IS NNOWN ABOUT THE VALUE TO THE ECONOMY.

COMMERCIAL FISHERMEN ROSILEE MOORE MADE THESE ASSESMENTS:

IN WHOLESALE VALUE 3.2 MILLION POUNDS OF FISH PRODUCCTS WERE CAUGHT LAST YEAR. $7.3 MILLION DOLLARS OF WHOLESALE VALUE BRINGS $3.5 MILLION IN REVENUE TO THE STATE FOR THE FISH TAX.

THE CATCH INCLUDED:

70,000 # dungeness (56 vessels)
160,000 # king crab (80 vessels)
1,100,000 # tanner (53 vessels)
7,100,00 # shrimp (40 vessels)
900,000 # salmon (60 vessels)
halibut (13 vessels)
48,000 # shrimp (L1 vessels)

5-10,000 persons are directly employed by the fishing industry.

LIMITED ENTRY PERMITS INCLUDE:

511 gillnetters
251 seiners
100 crabs
800 kelp
100 herring

HER SUMMARY STATEMENT WAS THAT ~~WE ARE~~ Fishing is JUST AS VALUABLE AN INDUSTRY TO THE STATE IN THE LONG RUN.

THE PRODUCTIVITY OF THE BAY WAS ATTESTED TO BY THE DEPARTMENT OF FISH AND GAME BIOLOGIST LOREN FLAGG. THESE ARE SOME OF HIS COMMENTS:

500 Million shrimp LIE OFF THE BLUFF POINT AREA. BIOASSESSMENT STUDIES OF PLANKTON IN APRIL AND MAY SHOW 507 BILLION LARVA ARE ANNUALLY RELEASED IN THIS AREA WHICH MIGRATE OUT INTO THE BAY. BECAUSE LARVAL FORMS ARE NOW SPECIFICALLY IDENTIFIABLE, WE HAVE DETERMINED THAT POST LARVAL NUMBERS AVERAGE 35 MILLION PER SQUARE MILE IN THE BAY. WE HAVE REASON TO BELEIVE THAT THIS PARTICULAR BODY OF WATER MAY BE ONE OF THE MOST PRODUCTIVE ~~IF NOT THE MOST PRODUCTIVE~~ FOR SHELLFISH IN THE WORLD.

NOT ONLY IS THIS AREA SIGNIFICANT FOR THE REAARING GROUNDS FOR 3 SPECIES OF CRAB,&SHRIMP BUT IT ALSO SUPPORTS REARING AREAS FOR 5 SALMON SPECIES AS WELL AS HALIBUT AND HERRING. TAGGING HAS ALLOWED US TO SHOW THAT SOME OF THESE FISH ARE CAUGHT OFF BANNER POINT ISLANDS.

HOWEVER, BEDAUSE OF A PARTICULAR TIDAL SITUATION WHICH EXISTS
I

DUE TO THE SWIFTNESS OF THE COOK INLET EXCHANGE, THE WATER IS ESSENTIALLY THE SAME WITHIN THE BAY AT ALL TIMES. IN OTHER WORDS IT DOES NOT MIX WITH THE COOK INLET WATERS BUT WILL RE*-CIRCULATE WITHIN THE WATER COLUMN OF KATCHEMAK BAY.

2.6% OF THE WATER OF COOK INLET THEREFOR PRODUCES OVER 60% of the FISH.

MANY TIMES WE HAVE HERRD THAT OIL IS COMPATABLE WITH the ENVIRONMENTAL ~~CONCERNS~~ AND SOME HAVE EVEN CLAIM THAT THE BIODEGRADABILITY OF CRUDE OIL ACTUALY ENHANCES THE PRODUCTIVITY.

WE BELIEVE THERE IS SUBSTANTIAL EVIDENCE TO THE CONTRARY. THE MOST CURRENT RESEARCH WITH THE NORTHERN ENVRIONMENTAL CONDIDTIONS IS THE WORK DONE BY RICE OF NATIONAL MARINE FISHERIES THROUGH A GRANT FROM STANDARD, MARATHON, PHILLIPS AND TEXACO AND RELEASED ON APRIL 5 OF LAST YEAR.

DR. RICE TESTIFIED THAT THE VOLUME OF OIL IS NOT AS IMPORTANT A MARIABLE AS THE MIX OF TOXINS IN THE WATER COLUMN. THE RESEARCH INDICATES THAT AMOUNTS OF LESS THAN .1 ppm KILLS LARVAL FORMS OF SHELLFISH. WHILE THERE IS NOT ENOUGH INFORMATION

AT THIS TIME AS TO HOW MUCH OIL CAN BE EXPECTED TO PRODUCE THIS RESPONSE IN THAT PARTICULAR BAY, IT CAN BE ASSUMED FROM THIS STUDY THAT A VERY ~~VERY~~ MINUTE AMOUNT IS HIGHLY TOXIC TO LARVAL FORMS. MANY VARIABLES SUCH AS SEASON OF THE YEAR, TIDE, TEMPERATURE OF THE WATER , WIND, WEATHER ETC WILL AFFECT THE DISPURSEMENT OF OIL.

OF THE 260 REPORTED SPILLS IN COOK INLET WHICH HAVE BEEN RECORDED BY EPA, 142 WERE CAUSED BY INDUSTRAIL CARELESSNESS. THE 10,000 GAL TRADING BAY SPILL DEMONSTRATED THE DIFFICULTIES OF CLEANUP ACTIVITIES BECAUSE OF ICE, WAVES AND WIND. PARTICULAR RISKS TO ESTRUARIAN AREAS ARE EVIDENT AS MOST OIL WINDS UP ON THE BEACH WITHIN 15 MINUTES. THE TORREY CANYON SPILL IN 1967 KILLED A CONSERVATIVE ESTIMATE OF 10,000 BIRDS. HATCHING OF EGGS HAS BEEN SERIOUSLY AFEECTED SINCE THIS DISASTER. FOLLOW UP STUDIES OF THE MARINE LIFE WHOW THAT THE FLESH of fish, shellfish, turtles, ABSORBS THE OIL FLAVORS. HOWEVER A VITAL GAP IN KNOWLEDGE EXISTS AS TO ITS LONG RANGE AFFECT ON PHYTOPLANKTON. KELP FOR EXAMPLE IS DESTROYED BECAUSE PHOTOSYNTHESIS IS REDUCED. OIL AT VERY LOW CONCENTRATIONS MAY NOT AFFECT THE ADULT SPECIES BUT GREATLY AFFECT WHOLE ECOSYSTEMS**SENSITIVE SPECIES MAY EVENTUALLY DECLINE WHILE RESISTENT ONES FLOURISH[1]

THE SPILL OF THE METULA ON AUG. 9 1974 PROVIDED A SUPERTANKER SPILL WHICH CAN BE USED FOR COMPARISON TO ALASKAS SITUATION BECAUSE IT OCCURRED IN A SPARCLY POPULATED S.AMERICAN BAY WHOSE WATERS RECIRCULATE MUCH THE SAME AS THOSE IN KATCHEMAK BAY. 53,550 TONS OF OIL WERE SPILLED. OIL COMPANY BIOLOGISTS INDICATED THAT THE OIL WAS CARRIED BY CURRENTS OUT TO SEA BUT ~~OTHER~~ EPA BIOLOGISTS CONFIRMED THAT MOST OF THE OIL WENT DIRECTLY SHORE AND HAS REMAINED THERE. "THIS OIL WILL CONTINUE TO ERODE, LEACH INTO THE WATER OR BE FLUSHED FROM THE ESTURARIES AS A CHRONIC SOURCE OF POLLUTION FOR A LONG TIME TO COME." (Hann) The METULLA SPILL WAS NEVER CLEANED UP * IT WOULD TAKE 12,000 DUMP TRUCKS TO MOVE THAT MUCH OIL UP OFF THE BEACH. PRESENT BIOLOGICAL WORK DONE BY AMERICAN SCIENTISTS A YEAR LATER FOUND CONTINUAL BIRD KILS, NO CRUSTACEANS, MUSSELS, LIMPETS were found ~~EPA ESTIMATES 40,000 DIED~~ Birds.

1 Audubon Magazine page 27, May 1975

A DOW CHEMICAL STUDY OF AN CIL SPILL WHICH OCCURRED IN MAINE IN 1963 ('870,000 gallons) THAT 200 ppm RESIDED IN CLAMS 10 years LATER.

DR. BLOOMER OF WOODS HOLE SHOWED THAT IN 1973 THE OIL SPILL ELIMINATED BOTTOM DEELLERS FOLLOWING THE DISASTER IN SANTA BARBARA WITH SATURATION OF 1FT BEPTH. MARGINAL RETURNS HAVE BEEN RECORDED.

BY NOW MOST OF YOU ARE CRYING "ENOUGH" "ENOUGH" AND SOME ARE PROBABLY STILL THINKING THAT THISGS WILL BE DIFFERENT BECAUSE WE HAVE HE BEST TECHNOLOGY FOR ALASKAS OIL DEVELOPMENT, WE HAVE COMPLETET ASSURENCE BECAUSE WE HAVE LAWS THAT PROTECT THIS TYPE OF OCCURRANCE, OUR OEL: COMPANIES ARE "COOPERATEOG" AND WILL DO THEIR UTMOST.

THIS THEN BRINGS THE ISSUE CLOSER TO THE FORE? HAVE WE REALLY AD THE BEST AVAILABE TECHNOLOGY? DO THEY REALLY PLAN TO DO THINGS DIFFERENTLY HERE?

THE GEORGE FERRIS STANDS TODAY AS A MONUMENT TO DISBLEAVEERS. ON ITS INNITIEAL VOYAGE INTO THE HARBOR, KEN DOORE REPORTED THIS: "I COULDN'T BELIEVE IT, I WAS FISHING LATE TOWARDS EVENTNG AND I LOOKED DOWN THE CHANNEL AND THERE WAS THIS HUGE PLATFORM HEADING STRIGHT FOR MY CRAB POTS, I SPED TO THESCENE BUT TO NO AVAIL, THE FERRIS CAM INEO THE BAY UNLIGHTED UNANNOUNCED AND DESTROYED 85 CRAB POTS." HE FURTHER TRIED TO OBTAIN REIMBURSEMENT SINCE EACH POT IS WORTH $2,000 BUT ~~WHEN DENIED~~ THE COMPANIES WOULD NOT SUBSIDIZE THE LOSS OF EVEN 1 1 DAYS CRAB FISHING BECAUSE IT WOULD ESTABLISH PRECIDENT. "I LOST 7 POTS AND OVER A WEEKS FISHING. EACH YEAR ABOUT 20 POTS ARE LOST OF A TOTAL OF 80. MOST OF THESE ARE DUE TO BIG VESSELS. THE FERRIS DRAWS 35' AND THE POSS ARE IN THE MIDDLE OF THE BAY WHICH IS NATURALLY WHERE THE BIG SHIPS WANT TO GO. 3000 POTS WERE FISHED IN THIS BAY LAST YEAR. L MOST

fishermen
LOOSE $30,900 A YEAR JUST TO CRAB POT LOSSES AND SOME NEVER RECOVER THIS LOSS. A FULL STRING OF GEAR RUNS ABOUT $40,000. THIS: DOES NOT INCLUDE LOSS OF CATCH. THE SEASON IS FROM AUG TO JAN AND THEN BETWEEN JAN AND MARCH FISHERMEN FISH FOR DIFFERENT SPECIES * DUNGENESS FROM JULY TO DEC.

FINALLY, WHEN THE FERRIS, became stuck SPILLED OVER LAST MAY AND DEMONSTRATED THAT IT DID NOT EVEN HAVE ACCESS TO OIL POLLUTION EQUIPMENT SINCE ITS HYDROLIC RELEASE WAS SUBMERGED, IT FULLY DEMONSTRATED THE OVERDONFIDENCE SOME PERSONS PLACE ON TECHNOLOGY. NOTHING FURTHER NEEDS TO BE SAID REGARDING THE POINT.

IN SUMMARY, THE LEGISLATURE WAS VERY BRAVE TO, FOR HE FIRST TIME IN HISTORY, REVERSE A VERY OBVIOUS MISTAKE IN BEHALF OF THE ENVIRONMENT. YOU AS OUR LEADERS HAVE AS MUCH RESPONSIBLLITY TO PROTECT THIS GREAT LAND FOR THE FUTURE AS YOU DO TO PROVIDE JOBS FOR THE PRESENT. WE URGE YOU TO AGAIN REAFFIRM YOUR EARLER ACTION AND PASS HB 192.

Sharon Fosbrough

ORAL STATEMENT OF

BARBARA C. MANLEY
Homer, Alaska

on

SUPPORT OF SB 199 TO REPEAL HCS CSSB 720, 1976

and

OPPOSE HB 192, AN APPROPRIATION OF $12,000,000.00 FOR PAYMENT TO CHEVRON, U.S.A. FOR KACHEMAK BAY LEASES

presented at

HEARING

before the

SENATE RESOURCE COMMITTEE
STATE OF ALASKA
JUNEAU, ALASKA
APRIL 1, 1977

I am Barbara Manley. I have lived in Homer for eleven years, and Alaska has been my state of residency for fourteen years. My husband is retired from the Air Force. In our thirty-two years of marriage, Homer was our first opportunity to choose for ourselves where "home" would be.

As an Air Force wife, I accumulated 2800 hours of volunteer service with the Air Force Dependents Assistance and Family Service Program and 3600 volunteer hours with the American Red Cross. I have been a girl scout leader and cub scout den mother; had years of PTA and serving as "room mother". I have not been a career business woman, but perhaps a career volunteer.

Since I have been in Homer, I have served on the Advisory School Committee and the City Planning Commission. I am currently vice-chairman of the City Board of Health and Safety and Secretary of the Board of Directors of the South Central Health Planning and Development, Inc., Central Alaska Health Systems Agency.

As a volunteer I believe a person has an opportunity to see and recognize many of the social disparities that are created by the selfishness of a few.

I believe the 1976 legislators passing HCS CSSB 720 is a prime example of a selfish few plying emotions with exaggerations of impending disasters and half-truths to achieve their own personal goals. If this bill is not repealed, the expenditures of these millions of dollars, not only for Chevron, but all of the millions of dollars for the remaining leases, will certainly create great inequities for many, many Alaskans, far more than the number who will reap benefits from the buy-back of the Kachemak Bay leases.

There are those who perpetuate the cry: We must preserve our "Quality of Life." and "We must preserve our Life Style." But WHOSE quality of life? WHOSE life style? Quality is a degree of excellence. Life is animate existence, time between birth and death. Style is a manner of doing.

My husband and I have our health, a long, lasting marriage, our children, grandchildren, our home and the necessities of life. I believe that I have a good "Quality of Life".

As for life style, I have seen people who were testifying at public hearings who lived in make-shift visquine tents anchored to driftwood along the beach of the Homer Spit. They performed body functions along the side of a public highway, and if and when they had a desire for a bath they could patronize the local public showers. All of their worldly possessions they carried in their backpacks. They are entitled to their life style. However, for myself, I prefer a permanent structure with a roof over my head; a closet for my clothes and a bathroom in the privacy of my own home. I believe that I too am entitled to my life style.

I also believe that all of the people in the Kachemak Bay communities are equally entitled to the right to earn their livings.

In the Homer Small Boat Harbor, there are 26 crab boats, 72 crab and shrimp boats, 45 seine and drift boats, and 65 halibut boats, a total 208 commercial fishing vessels who have reserved boat stalls. There are 117 daily transit boats (who pay rental fees on a daily basis), 51 6-months transit boats (who pay rental fees only six months) and 64 12-months transit boats (who pay

rental fees the full year). I might explain that the transit rentals are paid for use of any stall that happens to be empty as permanent stalls are not available. (There are 465 boat owners on the waiting list for stalls) Since the 232 transit boats are "commercial vessels", it is assumed that they are fishing boats.

For an hypothesis, assume that each of the 440 commercial fishing boats has three people engaged in fishing. This represents 1320 people. It is reported that the Homer Conservation Society has a membership of 25. (I am using these two groups because it is the North Pacific Fisheries Association, representing the fishermen, and the Homer Conservation Society who are plaintiffs in the lawsuit against the Department of Interior in opposing the Lower Cook Inlet lease sale. It is the same segement of people in our community who opposed the Kachemak Bay leases.)

This represents a total of 1345 people. By far, not all of the fishermen nor Conservation Society members are opposed to development of the Bay leases. Also, the total number of fishing boats includes the fishermen from Anchor Point and many others who do not fish the Cook Inlet Region.

The population of only the Homer area is approximately 4200 people. The other 2855 citizens need homes, food and clothing and some means whereby they can earn them. They can't be fishermen. There are not enough fish to support them all, nor does the limited entry law allow them to try.

I submit that Senate Bill 199 should be passed to repeal HCS CSSB 720 for these reasons:

1. There should not have been <u>any</u> legislation dealing with

Kachemak Bay leases. The case of these leases was before the Alaska Supreme Court. The legislature should have waited for the Court's decision, and thereafter, abided by that decision.

2. The majority opinion of the Supreme Court remanded this case to Superior Court for determination on the legal area in question. There should be an expedient hearing in Superior Court, and the judgement of that Court should prevail.

3. From the onset of the Kachemak Bay issue, the invalidation of the leases has been promulgated by a select few.

4. Volumes of evidence was presented to the ninth legislature from the residence of Kachemak Bay communities. The preponderence of this was against the invalidation of the leases by any action other than the court's decision declaring the December 13, 1973 28th Competitive Oil and Gas Lease Sale illegal.

5. To establish the precedent of one administration to resending the decision of the prior administration, without judicial justification, can lead to a vacillating government totally without continuity or stability.

I further submit that House Bill 192 shoud be defeated for these reasons:

1. The money to be used is tax dollars. It matters not whether it is cash payment or tax credit toward future liabilities, it is money from the state treasury. This deficit will have to be made up with dollars from every taxpayer in the entire State of Alaska, not just one segement of the people nor one area of the state.

2. The people of Alaska have been misinformed by the admin-

istration and many legislators in their statements that the buy back of Kachemak Bay lease is "merely a refund" of the money paid to the state for the leases in 1973. The price to be paid to re-acquire leases from Chevron, U.S.A. is $21.1 million and the contract to purchase Texaco's leases is $3.5 million. This is $24.6 million and subtracted from the approximately $25 million the state received from the TOTAL sale, including the leases near Beluga, leaves $400 thousand to buy back the remaining leases owned by four other major oil companies and a number of individuals. This is ridiculous! I highly suspect that IF negotiations should occur with the remaining oil companies, the cost will be equal to, if not more than, the combined amounts negotiated with Chevron and Texaco. This is not a "refund"; it's a rip-off of the taxpayers! Not only is the buy back of the leases a needless expenditure of money, it also deprives the state of future revenues in royalties and future taxes.

3. In view of the close proximity of the Kachemak leases to federal waters, it seems ironic than the state will deny itself the revenue and closer control over explorating and development to have the same body of water exposed to virtually the same hazards but without jurisdiction to implement any control.

4. The money proposed to be spent to reaquire these leases should be spent to benefit the majority of the taxpayers. There are many medically underprivileged areas throughout the state. (The City of Anchorage applied for federal funds as a medically underprivileged area in February this year.) The entire state needs roads and road improvements. With projects that have

federal matching funds, how many projects this money, as the state's share, could accomplish! For example, with a project qualifying for 90% federal funds on highways, how many miles could be built with $211 million? Or, on dock projects that may qualify for only 50%, how much dock improvement or construction could be done with $42.2 million? You are as aware as I of the medical needs, the lack of dock facilities, airstrips, court facilities, schools and many things in the Interior, on the Chain, in Central Alaska and in Southeastern , throughout the state, where these millions of dollars are badly needed, and should be spent.

I ask each of you to please pass Senate Bill 199, and to defeat House Bill 192. Truly help to make Alaska a better place for all Alaskans.

Thank you.

HOMER S. THOMPSON

IN TESTIMONY BEFORE THE

SENATE RESOURCES COMMITTEE

OF THE

ALASKA STATE LEGISLATURE

APRIL 1, 1977

30, March 1977
Box 116
Homer, Alaska 99603

Senator Kay Poland, Chairman
and members of the
Senate Resources Committee
Alaska State Legislature
Juneau, Alaska

Dear Senator Poland and members of the Senate Resources Committee:

I wish to testify as a resident of Homer, Alaska, in opposition to the House Bill No. 192, for the funding and the purchase of the oil leases in the Kachemak Bay area.

My name is Homer S. Thompson, I am 57 year of age, married over 35 years, and my wife and I have resided in Alaska since 1946 and at Homer, Alaska since 1953. We have four children all of whom have reached majority but only one, resides temporarily in Alaska.

After almost 12 years of military service, I resigned to move to Alaska and landed in Homer, Alaska, upon the advice of a former banker in Anchorage, Bob Baker. I am pleased that I heeded his advice to go to Homer and see whether I liked it or not. Upon arrival I liked what I saw and have been in Homer ever since, primarily, because I felt that Homer, Alaska had a great future, that was reachable within my lifetime.

I was unable to find any kind of employment for six months and then was fortunate to be employed as manager for the then local government, the Kenai Peninsula Public Utility District. In such position, I was also the tax assessor, tax collector, and a whole raft of other titles including disposer of dead animals. I was able to work successfully for a few things for the community, i.e. the funding for the Homer Small Boat Harbor, improvements to the Homer Airport, paving of the Sterling Highway, port improvements, and for the authorization of the Bradley Lake hydro-electric project, 23 miles northeast of Homer. I wrote the first resolution for this project, passed by the Alaska State Legislature, which has been repeated several times to obtain appropriations by the Congress of the United States.

Subsequent to employment as PUD manager, I have been employed

as a real estate broker, and continue in this field, along with operating a small business, a second hand store.

In the 23-plus years we have lived in Homer, it has been my observance that fishing has been the mainstay of the economy, backed up by government employment and a few months of tourists each year. I have also observed that the fishermen obtain a very small return from their investment in boats and gear, with few exceptions.

Recently, I was informed by our city manager that the current unemployment rate is between 19 and 20% of the employable force, not counting those who aren't looking for work. Over the years this has been singularly true, and Homer has so been classified by various government agencies, as an area of High unemployment and underemployment.

In recent years the population growth in Homer has come from the younger age group with entirely different ideas about life styles and programs than the age group I am a part of. There is this big kick about conserving everything in sight. I strongly suspect that if the radical proponents of environmental controls would have their way, there would be a crew of them employed installing refrigeration equipment in the nearby Harding ice field or perhaps the Malaspina and Taku Glaciers ... So that future generations might have the opportunity to view a glacier before they all melted away.....

I believe in conservation and in preservation too. In fact I was the leading proponent for setting aside the Yukon Island landmark property, when the Bureau of Land Management wished to let it all be homesteaded. While the preservation of this site may not mean much to most people sitting here today, it is recognized by leading anthropologists as one of the oldest continuing sources of artifacts of native people dating back some 3000 years, in Alaska, according to Frederica de Laguna, who wrote the Anthropology of Cook Inlet.

The concept that oil and fish can't live together is one without a factual basis, as evidenced throughout the world. That both must be disciplined is now well recognized. So... why all the hysteria? Someone once said, "Man is moved by the noblest of all human emotions .... greed."

The oil and gas companies drill to obtain oil to sell to show a profit, and the fisherman fishes to obtain the fish to sell for a profit. Why can't we have both??? at the same time??? in the same area??? We need both, though we do have alternative sources of food, there are few alternatives for oil that are currently available. Seventeen years have passed since the Bradley Lake Hydro project was authorized by Congress, yet no appropriations have been forthcoming, and as you all know the good Lord hasn't changed the rates for rain in a thousand years!

It is my fervent belief that the United States of America needs the oil that can be produced in Alaska, if America is to continue our various life styles as we know and experience them now.... America also needs other resources that Alaska holds in the ground and under the water.

The legislators of the State of Alaska made a precedent setting mistake last session, I believe, when they provided the enabling legislation for buying back the leases purchased by various oil companies. The loss in revenues to the State must be tremendous by whatever calculation. The revenue loss to the Kenai Peninsula Borough and the community of Homer corresponds and the non-availability of the oil and gas will be reckoned with in the future.

Maybe some of you are stamp collectors? And perhaps some remember the dark blue Statehood stamp that received its first day of issue right here in Juneau? I was the one who proposed this inovation, since there had never been a United States stamp ever issued when a Territory became a State. Like the coupling of Alaska and Hawaii to obtain Statehood, the same pattern followed and Hawaii

was the second State to be honored with a stamp in the name of Statehood. This one-day event brought $40,000 to Juneau. I like to think that I am part of a group that causes things to happen, rather than with the larger groups who don't know what's happening or worse, don't care.

Most of us who live in Homer, Alaska, believe we have one of the most beautiful locations in the world. There is also an old saying in Homer that I heard when I arrived, and experienced, "The scenery is beautiful, but you can't eat the view."

According to the most recent survey of communities on the Kenai Peninsula, Homer, Alaska has the lowest standard of living, primarily due to lack of employment.

An examination of the pictures of the graduating classes of the local high school reveals the fact that our young people have to go elsewhere to find work, because as one examines the pictures you find the majority of those former students are no longer resident in our community. By failing to mine the oil in our area, we are in effect failing to utilize a resource that will provide employment for our youth. By this failing we are wasting the talents and local experience of our young people and their leadership in the future.

Please deliberate to deny the funds for buying back the Kachemak Bay leases, and reaffirm the leases to companies who paid their money in good faith. The need for employment is great! The time is now!

Sincerely,

Homer S. Thompson

Burt Vahlbusch
Box 458
Homer, Alaska 99603

April 1, 1977

Senator Kay Poland, Chairman
and members of the
Senate Resources Committee
Alaska State Legislature
Juenau, Alaska

I landed in Anchorage in May of 1942 as an employee of the Army Engineers. Was signed up for a one-year hitch but decided I liked the country and stayed.

I was hired as an electrician, but spent most of my time operating tug boats in and around the Port of Anchorage. Later I ran MST tug boats in all Alaskan waters, mostly the Aleutian Chain.

The years of '48 to '50, I operated a truck freight line from Anchorage to all points in the Alaska Highway System and over the Alcan Highway. I also pulled several cat trains through the interior.

The year 1950 through 1951, I operated a pumice stone mine on Augustine Island. Since that time (with the exception of a short time when I drove a bus for Anchorage City Transit and Matunuska Valley Lines) I have sailed boats over all Alaskan waters, hauling freight, contractors equipment and supplies, and tendering oil rigs,etc.

I have been very closely associated with oil exploration and production in Cook Inlet, Bristol Bay and the Bering Sea.

In the early part of 1951, I moved to Cordova in the employ of Captain Bob Logans, Kodiak Aleutian Salvage Co. Worked for this company as a salvage boat operator and port engineer until the company went out of business in 1957, after which I opened my own marine repair shop until 1961.

I then went to work for Ira (Rocky) Rothwell, owner of Rothwell Tug and Barge. Mr. Rothwell moved me to Homer in January of 1963 to take care of and operate his vessels which were operating in Cook Inlet, servicing oil rigs and doing exploratory work. My offical title was "Port Engineer"... But I spent most of my time at sea as an operator and mechanic. After Mr. Rothwell passed away and his company was sold peicemeal, I went to work for the Krystal Corporation in much the same capacity and doing the same work.

I terminated with the Krystal Corporation in January of 1976 and purchased the Inlet Taxi Company of Homer. In September, 1976 my wife and I took over the Inlet Hotel in Homer. Last month, we purchased a restaurant and set it up at the hotel to stimulate business.

To do all of this we have had to use all our savings and beg, borrow and steal. We did not worry until it began to look as tho the expected impact from the Kachemak and Lower Cook Inlet oil activity was not going to come about because of the closing of Kachemak Bay and the oil leases were to be broken.

We are definitely against the buy-back of these leases, especially with our money. No matter what is said, this money will come out of the taxpayers pocket. These leases were let by the State in as legal manner as any lease that was ever written and were paid for in good faith by the oil companies. Therefore, it would behoove the State to stand by the agreement and let the oil companies perform.

It has been my observation that oil activity increases (if anything) the fish activity.

As in the year, 1963 when the fishermen were not doing much in the trade of their choice, we would have a small section of web astern while tied to a drill rig and catch more fish in 30 minutes than we could handle.

We have a million more arguments in favor of the oil companies, but rather than to use up the time, I will use the space to answer some very insiped letters received from some of our so called intellignet Senators in reply to the telegrams sent by us a few weeks ago.

Mr. Croft states that he has concern over the inconsistent and unfortunate way the Hammond administration has handled the entire situation, but he thinks that to defeat the funding would continue and magnify the confusion.

Let me say this, the only way to combat such high-handed and dictatorial tactics is to vote them down. There should be no problem, make the state stand on the original lease agreement and let the oil companies go to work.

Mr. Tillion states something about the liability of the George Ferris. I have no idea what this could be, a party of four of us flew over the George Ferris and most of Kachemak Bay taking pictures of the whole operation during the days of their leg problem and could not see an oil slick in the area. However, there was a large slick coming from the Seldovia Boat Harbor, but it was not the Ferris.

As to the pay-back to Standard Oil, I don't consider 21.1 million dollars a small fee, especially when the taxpayer is the one who will suffer for it. Also I would like to see a popular vote on the issue of whether or not to drill in Kachemak Bay. So let's just knock-off House Bill 192.

Mr. Rodey seems to be on the fence (I don't know why), as there is only one answer and that is to let the oil companies go ahead. I have yet to see where a drill rig has done as much harm to the fishing industry as the fisherman himself.

Chairman Poland, if you should have the opportunity or had the opportunity to look in any of the Alaska's boat harbors, you will find more oil on the water there than around any drill rig. The slick in the harbors is from the bilges of the fishing boats.

I know that the George Ferris alone contributed more than eight million dollars to the Homer economy in one year and did not do five thousand dollars in damages to our environment or the local fishermen. I do not know what the fish industry contributes, but from what I can gather it will average less than half.

I could go on forever on this subject, but I know you are terribly busy and I will not take any more of your time, except that I have one more point that I would like to make and that is, who is going to give us and a lot of other people in this town the money back that we have invested in preparation and anticipation of the oil activity.

Thank you for your patience and time.

Oral Statement
Gus Weber
Senate Resource Committee
Juneau, Alaska
April 1, 1977

MADAME CHAIRMAN, MEMBERS OF THE COMMITTEE:

MY NAME IS GUS WEbER. I came to Homer with my wife and two little girls on June 6, 1959 from Switzerland. That was my first trip on a big airplane and my first trip to the United states.

I had been a civil engineer for 24 years in Switzerland and decided it was time for a change. I had a position as manager with a firm in Canada when I decided to leave Switzerland, but at the last minute the company changed their policy about paying the transportation of families and their household goods. I decided to heck with it, if I had to pay for my own expenses, I would just move to the United States. I had seen some movies made by another Swiss who had homesteaded in Homer, so I decided that's where I would come.

For the first 10 months we were here, we lived in a small cabin that I built on the property of my Swiss acquaintance. He did not charge me rent, and he agreed to pay me $80.00 a month for working on his homestead for him. I built a basement under his house, took care of his horses and cows, pitched hay, picked coal on the beach, worked his garden and any other chores or flunky jobs he had for me. I never did get paid all of the money, in fact, not much of it, that he was supposed to pay me. I had been lucky to have savings from my homeland that I used to buy the material to build the house for my family and to support them while I was learning about some of the people I could not trust to keep their word.

In 1960 I went fishing. I fished four years with three different old-time commercial fishermen. They had all fished in the Cook Inlet Region for over 30 years. We drift-fished for salmon and fished king crab.

I made $800.00 that year. The next year I made $1200.00. I made a living for my family the same way that all of the fishermen survived. I worked as a longshoreman, did some construction work and any odd jobs that I could get between fishing seasons.

One thing we looked forward to was the seismic boats working in the Cook Inlet. The company would charter four or five fishing boats to carry the Fish and Game employees. This paid the boat owner $350.00 a day and we were happy to be guaranteed work for a month or two while they were blasting. In those days the siesmic crews dropped charges into the water with a balloon floating on top. After the blast, the balloon would sink and our boat would follow the path of the blast wake and the Fish and Game man would count the number of dead fish floating on top of the water. Sometimes there would not be any fish and most of the fish we found were little herring and one or two inch cod. If the balloon did not sink it meant the charge did not go off. We would shoot the balloon with a .22 rifle and sink it, then the siesmic boat would circle around and come back to set another charge.

Nowadays, the seismic boats do not use any blasting. They do all of their exploration with electronics by laying out a line of cable and the information is recorded on seismic tape in the boat. This is an example of the improvement in exploration technology to protect the environment. And the oil companies have improved their technology as much, and probably more, in drilling to protect the environment.

Homer was not a City in those days, it was the old PUD. We had the Alaskan Steam ships that brought in everybody's supplies. Everybody was glad to have the dock work. Standard Oil Company sure helped when they started coming in with the drilling pipe and equipment for the

oil development in the Cook Inlet. In those days the dock supported the community; now the community has to support the dock.

In 1965 I decided I could not make a living in the fishing business so I quit and became self-employed. I contracted building houses and specialized in cement work. I am an artist, and I taught art classes one year for more income. I also began working with the other volunteers in the community to build the Homer Ski Tow just below Ohlson Mountain. In Switzerland I had taught mountain climbing and was a ski instructor, so I volunteered to work with the school ski program. I am very proud of two of my ski students who graduated from the Homer High School and received four-year scholarships on their skiing ability. One, Larry Martin, is a member of the U.S. Olympic Ski Team.

In the almost 18 years I have lived in Homer I have been able to support my family by doing every kind of job there was in Homer. Since 1973 I have been a licensed Masonry Contractor, the only one in Homer. But people have to have jobs to make money to build. I still take any job I can get to make a living, but there are a lot more people in Homer now and there are not so many jobs, and more people keep moving to Homer. Even in the summertime, there is not construction like after the earthquake. The only fishermen who can make a living at just fishing are the ones who can get a cannery to finance their boats and gear so they can do all kinds of fishing the year 'round, or the ones who can get state or federal loans to fishermen to do the same thing. Most of the fishermen are still competing for the odd jobs between fishing seasons.

Some people keep talking about the oil companies damaging the fishing industry. I think the fishemen do more damage to their own industy than the oil companies would. When we fish crab, the pots are dropped into

the water of different depths, but the lines on them are always long enough for the deepest water. When they are dropped in shallow water, the pots are going to drag over the sea floor when the pots are winched into the boat. I know we had crab pots with mud, rocks and all kinds of shells in them when we pulled in pots. I don't know how many little fish and larva are killed from pulling in just one pot. Fish and Game keeps talking about just the least bit of oil that could be spilled from a drilling platform would kill all of the shrimp and crab. When I was fishing in the Cook Inlet we would fish around the oil platforms. Sometimes we could see a little oil slick around the platform, but we would look behind the fishing fleet and there was an oil slick behind almost every boat. All of the fishermen would change the oil in their engines and dump the old oil in the water. If just a tiny bit of oil was going to kill all of the fish, there wouldn't be any fish left now.

All of the talk about how many king crab are caught in Kachemak Bay; they don't all come just from Kachemak Bay. Boats bring in their crab from Kamashak Bay, even as far as Cape Douglas and off the southern tip of South Kodiak Island. Big crab tender boats bring in crab from the Bering Sea area to sell in Homer. It looks like a lot, but it really isn't.

I think the legislature should take another look at the buy-back of the oil and gas leases in Kachemak Bay. In the first place, there are not enough fish for everybody to make a living at even year 'round fishing. Not everybody can fish because the state has a limited entry law. The rest of us have to live too, and there is even more of us trying to find a job than there are fishermen. I think it is the American system that the government is supposed to represent the majority of the people, not only a few. It is not good for the people to have just a little bit of seasonal work and be able to pay off bills, then have to start going in

debt again and worry about earning enough money the next season, whether it is fishing or construction, to get out of debt again.

Homer and the surrounding area needs some kind of regular work for all of the people. I think the law from last year should be repealed and the money you want to spend to pay for the leases should be spent to build some roads and schools, some docks and airports that all of us need. We need these things and building them would give some people work too. Let the oil companies drill in Kachemak Bay. Those leases would have been drilled a long time ago if it had not been for the fight between the state and federal government over who owned Lower Cook Inlet. Ten years ago nobody worried about having drilling in Kachemak Bay. There is not as much danger to the Bay now as there was then. We just have a lot more newcomers who moved to Homer and want to cause trouble now.

I ask you to repeal the law from last year and let the court decide if the whole sale was legal or not. If it was legal, then let the oil compaines go to work. Save our money for some useful things we need in Alaska.

Thank you.

Barbara C. Manley
PO Box 955
Homer, Alaska 99603

February 28, 1977

The Honorable Kay Poland
Chairman
Senate Resource Committee
Pouch V
Juneau, Alaska 99801

Kachemak Bay

Dear Senator Poland:

In our telephone conversation Thursday you asked if there will be anyone from this area to attend the hearing on House Bill 192 when it comes before your committee.

We will have representation at the hearing. We will appreciate your letting us know the date of the hearing so that we can make arrangements for the flight and hotel reservations.

Also, since the buy-back of all of the Kachemak Bay leases will involve a great many millions of tax dollars, over and above the original bonus money, and Anchorage is the largest tax base and most populated, is it possible that a public hearing might be held in Anchorage?

There has been so little public information on HB192. Most people are unaware of what is going on. (This may be advantageous for the proponents of the buy-back, i.e., Clem Tillion!)

Again, thank you for your cooperation and your concern for our communities.

Sincerely,

Barbara C. Manley

Manley Terminals, Inc.

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BOX 955 HOMER, ALASKA 99603

JAMES C. MANLEY
PRESIDENT

(907) 235-8535
(907) 235-8536

February 28, 1977

The Honorable John Rader
President
Alaska State Senate
Pouch V
Juneau, Alaska 99801

Dear Senator Rader:

We would like to compliment you on your wise decision to appoint a committee to fight the high rate of unemployment in our state. Senator Sumners and his committee, Senators Sackett, Ziegler, Poland and Ferguson, have a hard road ahead, but it is a great step forward. We hope there will be many beneficial and positive results.

We, as well as others, are deeply concerned over the extremely high rate of unemployment in the Homer area. More people are coming to Homer looking for employment adding to the number of unemployed, long-time residents. The unemployment lines and food stamp lines are out in the street, and there is no immediate hope in sight for employment.

The fish processing plants are shut down for lack of raw products, or closed seasons. One plant is buying some Tanner crab, which has helped a few boats. The area has been so overfished that few fishermen can make a full-time living from fishing. The Limited Entry Law precludes newcomers from entering the salmon fishing business, and it is only a matter of time before all fish come under the Limited Entry program, thus restricting any other people from working in the fishing industry.

Except for a few government, power company, fish processing, and school teaching jobs there is no other sizeable pay roll. In essence the employment situation in this area is "sick".

We own and operate a transportation company that handles 90% of all freight coming in or going out of Homer. The amount of cargo processed through our terminal has been the lowest in years. If you catch fish or have a job, you have money to buy things from lumber to groceries. The cargo movement at this time indicates a horribly depressed economic condition. This cargo index is an excellent indicator at this time. Our company has more unpaid accounts receivable and we have received more bad checks than ever before. We are also holding more undeliverable freight collect and C.O.D. shipments than in the past.

A day doesn't pass that people come to our office seeking employment. Our work force is down 50%. This is the first time since we started in business that we have had to lay off employees.

Last year was a good employment year, based mainly on work generated by the drilling barge Ferris, which spent over $14,000,000 on employment and purchasing of supplies in Alaska. Everyone benefited from this activity. Many of those employed were fishermen who fortunately made enough to help carry them through part of this bad winter.

Your passage of SB 720 to reacquire the Kachemak Bay Leases, killed one big employment possibility for this town. As you certainly must recall, this bill was pushed through based on half truths and emotionalism; plus inaccurate press releases: "The Ferris Has Sunk in Kachemak Bay" and "Worst Oil Spill in Alaska's History". The fact being that the Coast Guard environmental protection office issued a final official statement that less than 300 gallons of fuel were spilled overboard. Most of this was actually grease and oil from the equipment.

The best way for your committee to increase employment in Homer is to oppose HB 192. Save this 21.1 million dollars and use it for public projects. Homer alone needs docks, sewers, water lines, roads, and school buildings. Certainly this same situation exists throughout Alaska. This money, the 21.1 million dollars plus all of the additional buy-back millions, should be used for the benefit of all of the people of Alaska, not just a few local commercial fishermen and conservationists.

It has never been proven by the state that oil development in the area would hurt the fishing industry. The same few individuals and organizations that sued the state over the Kachemak Bay Leases have now sued the Federal Government over the Lower Cook Inlet Lease Sale. However, now the Alaska Conservation Society has openly become a plaintiff in the suit where previously they, and the Sierra Club, had donated funds to the Kachemak Bay Defense Fund.

You must keep in mind, HB 192 to buy back Chevron's leases is only the first, piece-meal step by the administration. Then comes Texaco, for about four million, then the others if they can be forced to sell. Think what you could do with 40 or 50 million dollars worth of public projects which would benefit all of us, not just a select few.

We are sure you have received many wires and letters opposing HB 192. You also must recognize that many of us in Homer are going to fight the administration's attempt to put us on a food stamp economy. We want to work for a living and maintain our dignity, which can only be done by increasing the local employment and giving people jobs.

In addition to opposing HB 192, the best thing you and your committee can do is to submit a Senate Bill to repeal CSESSB 220 in it's entirety. This is the most unjust legislation ever forced upon a segment of the Alaskan Society--the working man.

We would like to recommend that you take time to call any, or all of the following cross section of individuals from Homer to find out first hand the factors about the economic conditions in Homer and their opposition to HB 192:

Mr. Dave Derry, President of Homer Chamber of Commerce, member of Hillas Real Estate Appraisal Company, and former Manager of National Bank of Alaska, Homer Branch 235-8545

Mr. W. C. Rhodes, Manager of Homer Electric Association 235-8552

Mr. Chuck Hendrix, Manager of Seward Fisheries Homer Processing Plant 235-8527 or 235-8578

Mr. Jim Saling, Fisherman, tender boat and barge owner 235-8775

Mr. Larry Farnen, City Manager 235-8767

Mr. John Pate, City Councilman 235-8575

We appreciate the opportunity to present this information and sincerely hope that you oppose HB 192 and give favorable consideration to submitting a bill to repeal CSCSSB 220.

Respectfully,

MANLEY TERMINALS, INC.

James C. Manley

JAMES C. MANLEY
President and General Manager

JCM:sf

cc: Hon. Bill Sumner
Hon. John Sackett
Hon. Robert Ziegler
Hon. Kay Poland
Hon. Frank Ferguson

Barbara C. Manley
P.O. Box 955
Homer, Alaska 99603

February 28, 1977

The Honorable Kay Poland
Alaska State Senate
Pouch V
Juneau, Alaska 99801

Dear Senator Poland:

Reference HB 192

I respectfully ask that you will vote to oppose the appropriation of 12 million dollars, the cash portion of the total 21.1 million dollars to be paid to buy back the Chevron, USA oil leases in Kachemak Bay, for these reasons:

1. The legislative authority for the buy-back of these leases, HOUSE CS FOR CS FOR SENATE BILL NO 720, was passed under emotional duress. No legislation based on emotionalism (i.e. misinformation and half-truths reported on the GEORGE F. FERRIS, drilling rig, incident in Kachemak Bay May-June, 1976) can be good legislation; nor can it be in the best interest of the state nor the people whom you represent.

2. The close proximity of the Kachemak Bay leases to federal lease jurisdiction. The Kachemak Bay area will be exposed to virtually the same calculated risks from federal lease exploration, but without producing revenue to the State of Alaska.

3. The 1973 sale was slightly under 25 million dollars in lease bonus for 64 tracts, 32 of which are located in Kachemak Bay. The purchase price to buy back the Chevron, USA leases (15 tracts) is 21.1 million dollars. Presumably, Texaco will agree to the sale price of 3.5 million dollars. This is 24.6 million dollars to buy back leases from two companies.

Shell Oil Company paid 5.3 million dollars for their tracts. They will have this amount due them, plus unknown millions of dollars in interest, exploration expense and a drilling rig contract. Also, leases are owned by Union Oil Company, Texas International Petroleum, Simasko Production Company and a number of private individuals.

These millions of dollars are not "refunds" from the original approximately 25 million dollars bonus money as the administration and many legislators would have the taxpayers be dupes enough to believe.

These are millions of tax dollars to be taken from the general fund; they are dollars that will become a deficit for the taxpayers to pay. These are tax dollars to be spent for the benefit of a few privileged elitists and selfish, special interest groups. It is money that should be spent to benefit Alaskans of all classes and all interests.

4. It is millions of tax dollars that could:
   (a) Provide docks and airports on the Alaska Peninsula,

the Aleutian Islands, to handle fish products, the groceries and general supplies needed for sheer survival for the residents in those outlying communities.

(b) Provide judicial facilities in our remote areas.

(c) Provide facilities to offer a little comfort for our senior citizens; permit them a little pride and dignity in their few remaining years.

(d) Provide means for a better quality education for our children.

(e) Provide means to meet health needs of many of our Alaskan residents.

(f) Provide means to help re-new our renewable resources, especially the salmon fisheries.

(g) Deny spending these tax dollars and help provide a divers viable economy in the Kachemak Bay communities so that many can be employed. Help them to maintain pride and self reliance.

Thank you for your consideration. Please oppose HB 192 and use these millions of dollars to truly make Alaska a better place to live for many Alaskans.

Sincerely,

Barbara Manley

BARBARA C. MANLEY

P.S. It has been recommended by many people in this area that HCS CSSB 720 should be repealed.

JAY S. HAMMOND
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 1, 1977

The Honorable Kay Poland
Chairman
Senate Resources Committee
Alaska State Legislature
Juneau, Alaska 99811

Re: HB 192
Supplemental Appropriation
for Kachemak Bay

Dear Senator Poland:

On February 8, 1977, I transmitted a bill to the House of Representatives for an appropriation of $12,000,000 to fulfill obligations of the State of Alaska under a contract to repurchase leases held by Chevron, U.S.A. in Kachemak Bay. The agreement was negotiated, and executed by the Commissioner of Natural Resources and myself, pursuant to ch. 113 SLA 1976. The bill passed the House and is presently before the Senate Resources Committee.

On February 25, 1977, I executed a second agreement with Texaco, Inc., and respectfully request the Senate Resources Committee to amend HB 192 to include an additional sum of $2,500,000 to cover the Texaco agreement. This would make the total appropriation under this bill $14,500,000. A copy of the Texaco agreement is enclosed, together with an attachment showing the breakdown of items which are included in the total purchase price. That purchase price is in the approximate amount of $3,400,000, nearly all of which is composed of money previously paid by Texaco to the State, together with interest on those amounts.

Ch. 113 SLA 1976 specifically authorized the Commissioner of Natural Resources to utilize credits for taxes and royalties owed by Texaco to the State as part of the purchase price and the agreement of repurchase includes such a provision. During the next two years, we anticipate that approximately $900,000 will be credited from payments due the State, leaving a balance of $2,500,000, the amount of the requested additional appropriation.

The agreements with Texaco and Chevron together represent roughly 85 per cent of the Kachemak Bay leases issued on the basis of percentage of the original bonuses paid. We recently sent out letters to the remaining lessees in an effort to conclude agreements with them as well.

Sincerely,

Jay S. Hammond
Governor

Enclosures

SHELL OIL COMPANY
601 W. 5TH AVENUE, SUITE 810
ANCHORAGE, ALASKA 99501

March 1, 1977

Dear Senator:

You will soon be considering House Bill 192, which, if approved, will appropriate $12 million for the re-purchase by the State of Chevron's oil and gas leases in Kachemak Bay, Lower Cook Inlet. The total acquisition cost will actually be about $21 million. Further, we assume that you will soon be asked to appropriate another $3.5 million to re-acquire the leases of Texaco.

We have been asked to inform you of Shell Oil Company's position concerning our leases in Kachemak Bay which we acquired for $5.4 million in the 1973 sale.

We are not seeking negotiations with the State at this time in hopes that the State will not see fit to complete the execution of its option to re-acquire the leases.

Our hopes in this respect are derived from the language in the Act which imposed the moratorium. The Act provides that the Commissioner of Natural Resources "may" enter into negotiations to reacquire the leases. Also, in reference to possible condemnation action after the moratorium expires, the word "may" is again used.

We interpret the language to mean that there is a reasonable chance that the State will not find it necessary or appropriate to reacquire the leases, and that drilling could proceed if and when the validity of the leases is established by the pending court proceedings. In fact, the 1976 Act establishing the drilling moratorium states that one purpose of the moratorium is to "permit the Department of Fish and Game a reasonable time to develop plans to insure protection for the living resources of the bay from possible pollution incidental to drilling activities." Perhaps this has now been done.

Our prime objective remains to drill under our Kachemak Bay leases. These leases were purchased in good faith after expending considerable sums in preparation for the lease sale. Thereafter, additional sizeable expenditures were invested in preparing to drill and in assisting in the defense of the court attack on the leases.

We are convinced that we can operate in Kacherak Bay without significant harmful effects on the environment and without detriment to the fishing industry. We further believe that the development of the hydrocarbon resources under the Bay will inure to the benefit of all of the citizens of Alaska, as well as the nation.

Yours very truly,

T. S. Cate
Land Representative

TSC/rrp

Alaska State Legislature

SENATOR
MIKE COLLETTA
P. O. BOX 3188
ANCHORAGE, ALASKA 99501

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811

Senate

Minority Leader

HEALTH & SOCIAL SERVICES
COMMERCE
STATE AFFAIRS

March 2, 1977

Barbara C. Manley
P.O. Box 955
Homer, AK 99603

Dear Ms Manley:

Thank you for your letter of February 28 stating your reasons for opposing the buy-back of the Kachemak Bay leases.

The Supreme Court has declared the Kachemak Bay leases invalid. The only decision I can make based on the decision of the Supreme Court is compensation to the firms and individuals for the initial cost as well as out-of-pocket expenses.

Again, thank you for your concern.

Sincerely,

Mike Colletta

Mike Colletta
Senate Floor Leader

dsf

Janet V. O'Meara
P. O. Box 1125
Homer, Alaska 99603

March 17, 1977

Hon. Kay Poland
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Poland:

I would like to ask for your earnest consideration of SB 192, and any future buy-back bills for Kachemak Bay oil leases.

Last year the legislature, in its wisdom, officially recognized the extreme value of the Bay in terms of marine and other biologic, scenic, and aesthetic resources, when it voted to repeal the leases so inadvisedly sold by the Egan administration. I am aware that you opposed that action, but I hope that you are not too proud to consider reversing that stand.

The Bay is of critical importance to residents of this area. In a recent public survey conducted by members of the University of Alaska, Anchorage (known unofficially as the Baring-Gould study), it was revealed that some 98% of Homer area residents favor encouragement of the local fishing industry, and that at least 75% were opposed to petrochemical development of any kind in this area. We need the Bay. It provides our physical and spiritual livelihood.

If you have read the Dept. of Interior's Environmental Impact Statement regarding social and environmental impact upon local residents should the federal government proceed with OCS development of lower Cook Inlet, you know what a black picture is presented. The picture is at least as bleak should oil development occur within the Bay itself: massive destruction of Bay environs and of a way of life for area residents.

If you have not read that Statement, I request that you at least review Section III.E.5 (Impact on Community Social Structure) and Section V (Adverse Environmental Effects Which Cannot be Avoided). Once you have seen the alternative proposed, I am sure you will, in good conscience, be able to lend your full support to this and later similar buy-back bills.

Thank you for your consideration in this matter.

Sincerely,

Janet V. O'Meara

JANET V. O'MEARA

jo

Barbara C. Manley
P.O. Box 955
Homer, Alaska 99603
March 18, 1977

The Honorable Mike Colletta
Senator
Alaska State Legislature
Pouch V.
Juneau, Alaska 99801

Dear Senator Colletta:

Your letter of March 2, 1977 in which you state: "The Supreme Court has declared the Kachemak Bay leases invalid.", reflects your lack of discernible judgmatic ability in making your decision concerning the Kachemak Bay leases. Your statement is totally erroneous as per the Supreme Court Opinion 1284, July 9, 1976.

In the event that your time has not permitted you to give attention to the copy of the Supreme Court Opinion 1284 sent to you on March 14, 1977 from the office of Chief Justice Robert Boochever, extracts from that Opinion are attached.

Although I am not a constituent from your district, you are one of the twenty senators who will vote on enacting a bill that will affect me, my family, my livelihood, my community, my state and my nation.

It distrubs me that you state you have made your decision on House Bill 192, based on a false statement. I cannot believe that you are generally uninformed on issues requiring your decision to, or not to, enact laws which will affect the lives of all Alaska residents. Rather, I suspect that in this instance, you have relied upon information that the Administration, and for personal reasons, some legislators, have promulgated.

In view of the TRUE fact of the Supreme Court Opinion, I implore you to please reconsider your position on paying the oil companies twice the original amount paid to the state for the leases. Please consider:

a. The majority of Kachemak Bay residents were opposed to HCS CSSB 720. It was passed only after the legislators' emotions were plied with the prejudiced news media and half truths, assisted by the special interest groups, over the George F. Ferris incident in Kachemak Bay, May 1976.

b. The purchase price for only Chevron leases, 21.1 million dollars, combined with Federal matching funds..a total 211 million dollars, could do a lot for Alaskans. How many of the badly needed roads, docks, airports, would this amount construct?

c. I am sure that the over seven thousand residents on the Chain would appreciate a few small airstrips, docks, so that they could load their fish, get their supplies and air-evac their sick and injuried. The 12 million dollars cash requested for Chevron could provide medical personnel to that same area where they now have none, not even a public health nurse. This could save paying $2400.00 or so, after boating for

hours to the nearest airfield, for a charter flight into Anchorage. It could also save a life.

d. There are many other bush areas, the interior and rural areas that could be benefitted by these millions of tax dollars that are to be paid to buy back the leases. Yet none of the people who are being deprieved of these benefits are being consulted for their opinions.

e. The Kenai Peninsula desperately needs energy. It costs 1¢ p/KW electricity generated by natural gas; 5¢ p/KW electricity generated by oil. Is it right that all Kenai Penisula residents be further penalized economically?

Again, I ask that you will give consideration to the justice for ALL Alaskans. Please abide by the opinion of the Supreme Court: "We have no desire in this area, to upset settled transactions which were entered into in good faith."

Please support the repeal of HCS CSSB 720. Let the Superior Court make its decision; let our Judicial Branch perform its distinct assigned function in our democratic government. Thank you for your consideration.

Sincerely,

Barbara C Manley

BARBARA C. MANLEY

ATTACHS:

cc: The Honorable Kay Poland
Chairman, Senate Resource Committee

The Honorable John C. Sackett
Chairman, Senate Finance Committee

The Honorable George H. Hohman
Chairman, Legislative Budget & Audit Committee

The Honorable Frank R. Ferguson
Chairman, Labor & Management

Alaska State Legislature

SENATOR
MIKE COLLETTA
P. O. BOX 3788
ANCHORAGE, ALASKA 99501

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811

Senate

Minority Leader

HEALTH & SOCIAL SERVICES
COMMERCE
STATE AFFAIRS

March 2, 1977

Barbara C. Manley
P.O. Box 955
Homer, AK 99603

Dear Ms Manley:

Thank you for your letter of February 28 stating your reasons for opposing the buy-back of the Kachemak Bay leases.

The Supreme Court has declared the Kachemak Bay leases invalid. The only decision I can make based on the decision of the Supreme Court is compensation to the firms and individuals for the initial cost as well as out-of-pocket expenses.

Again, thank you for your concern.

Sincerely,

Mike Colletta
Senate Floor Leader

dsf

IN THE SUPREME COURT FOR THE STATE OF ALASKA

KENNETH D. MOORE, BILL A. BLEDSOE, PAUL E. JONES, LARRY J. HOLLINSHEAD, KENNETH A. SWICK, JAMES WICKERSHAM, and MICHAEL P. McBRIDE,

Appellants,

v.

STATE OF ALASKA, LORNA CALL, SIMASKO PRODUCTION CO., PHILLIP RAHOI, TEXAS INTERNATIONAL PETROLEUM CORPORATION, STANDARD OIL COMPANY OF CALIFORNIA, SHELL OIL COMPANY, TEXACO, INC., AND UNION OIL COMPANY OF CALIFORNIA,

Appellees.

File No. 2551

STANDARD OIL COMPANY OF CALIFORNIA,

Cross-Appellant,

v.

KENNETH D. MOORE, BILL A. BLEDSOE, PAUL E. JONES, LARRY J. HOLLINSHEAD, KENNETH A. SEICK, JAMES WICKERSHAM, and MICHAEL P. McBRIDE,

Cross-Appellees.

File No. 2587

O P I N I O N

[No. 1284 - July 9, 1976]

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Thomas L. Schulz, Judge.

that the trial court erred in granting summary judgment on laches, we now turn to the other arguments presented to the trial court on the cross-motions for summary judgment to see if grounds exist for upholding its judgment. The issues we must consider include the claims advanced by plaintiffs below, comprising the merits of their case.

III.

The first such question we will consider is whether the Division of Lands complied with legal requirements concerning the publication of notice. Plaintiffs asserted below that the sale was invalid on the ground that the publication of notice of the sale in the Anchorage Times and the Kenai Cheechako News failed to satisfy the relevant constitutional and statutory mandates. As noted above the trial court did not rule on the issue.

Article VIII, § 10, of the Alaska Constitution provides:

> "No disposals or leases of state lands, or interests therein, shall be made without prior notice and other safeguards of the public interest as may be prescribed by law."

Pursuant to this constitutional provision, the legislature enacted the Alaska Land Act, the provisions of which are now found in AS 38.05.005-.370. AS 38.05.345 provides in pertinent part:

> "(a) Public notice of a sale, lease or disposal of land or interest in it, except grants under § 330 of this chapter and preference right grazing leases under §§ 75 and 80 of this chapter, when required, shall be substantially as follows.
>
> (b) Notice shall be published once a week for three consecutive weeks preceding the time of sale stated in the

At the time the notice was published, the population of the Homer area was approximately 3,500. The circulation of the Anchorage Times in the area was approximately 130. The number of readers, albeit small,[21] was not so insignificant that the newspaper would fail to reach a diverse group of people in the community. Therefore, it must be said that the Anchorage Times was a newspaper of "general circulation" in the Homer area.

The foregoing determination precludes plaintiffs from successfully arguing that the Division of Lands failed to give adequate notice of the 28th Competitive Oil and Gas Sale as required by AS 38.05.345.

IV.

Plaintiffs' second claim on the merits was that the sale was unlawful because it was not preceded by a reasoned finding made by the Director of the Division of Lands that the sale would best serve the interests of the state.

21/ The plaintiffs contend that this small percentage of readership mandates a finding that the Anchorage Times does not comply with the statutory requirements. However, Times Printing Co. v. Star Publishing Co., 99 P. 1040, 1041-43 (Wash. 1909), is distinguishable. Indeed, a statistical analysis for the issue at hand would be most inappropriate because size of readership is only one factor which must be considered in determining whether a particular newspaper is one of general circulation.

AS 38.05.035(a)(14) provides:

"The director shall . . .

(14) when he finds that the interests 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 . . . ."

A majority of this court believes that no formal, written finding is necessary under this statutory language. However, a majority of the court also believes that the determination of the director should be judicially reviewable.[22] Accordingly, this case must be remanded to the superior court for appropriate further proceedings on this question.[23]

22/ This subject is treated in the separate opinion filed herein by Justice Rabinowitz.

23/ I must dissent from the court's remand of this case.

I find nothing in this statute requiring a public hearing or formal written finding in order to determine that state lands shall be leased. I am not unmindful of the dangers in assuming that a general award or finding implies a finding of all the specific facts needed to support it. However,

> "Implying ultimate findings from the action taken is quite different. If a statute provides that the agency shall grant the certificate if it finds that the grant is in the public interest, and if the agency grants the certificate without saying anything about the public interest, good sense requires that the reviewing court should imply the ultimate finding of public interest. The courts usually so hold." 2 K. Davis, Administrative Law Treatise § 16.07, at 456 (1958).

Here, the statute makes no mention of a formal, written "finding." It merely says that when the director "finds" it to be in the best interests of the state, he may issue leases. The statute could, to the same effect, have read "when the director believes" or "when the director is of the opinion" that the state's interest is best served, he may lease the lands.

First, to be applied prospectively, the decision "must establish a new principle of law, either by overruling clear past precedent on which litigants may have relied, or by deciding an issue of first impression whose resolution was not clearly foreshadowed."[44/] Second, we must evaluate the merits of retroactive or prospective application of the rule in light of its prior history, purpose and effect. Third, we must weigh the hardship and injustice of applying the rule to the litigants in the instant case.

In applying these standards to the case at bar, we are persuaded that our holding should be applied solely prospectively. The issue before us represents a question of first impression in an area of statutory law which was admittedly not as clear as it might have been.[45/] A primary purpose underlying the statute is to give members of the public who will be affected by a particular disposal of state lands a voice in the disposition of those lands. However, once the disposition has occurred, the new owners or lessors also have a paramount interest in maintaining their rights to the land. We have no desire in this area, to upset settled transactions which were entered into in good faith. The title conflicts which would be engendered if every mineral lease or sale

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44/ Schreiner v. Fruit, 519 P.2d at 466, quoting Chevron Oil Co. v. Huson, 404 U.S. at 106.

45/ See State v. Aleut Corp., 541 P.2d at 740 n.25.

which was executed in the past became vulnerable to attack under the rule we have announced today would be enormous. If allowed, this would create insurmountable problems for the state and numerous individuals. Finally, we believe the oil company defendants in this case were entitled to rely on the Division of Lands' long-standing interpretation of § 305. Unlike our dissenting colleagues, we do not believe that the state's interpretation of the statute was implausible. Ultimately the question of prospectivity must be decided upon a broad basis. In this regard the United States Supreme Court per Cardozo, J., observed:

> "The choice for any state may be determined by the juristic philosophy of the judges of her courts, their conceptions of law, its origin and nature." Great N. Ry. v. Sunburst Oil & Refining Co., supra, at 365.

In order to avoid any injustice, the rule we state in this case shall apply only to actions arising out of occurrences after the date of this opinion.[46/]

46/ See City of Fairbanks v. Schaible, 375 P.2d 201, 211 (Alaska 1962); cf. Scheele v. City of Anchorage, 385 P.2d 582 (Alaska 1963).

Anchorage

CHAMBER of COMMERCE

Crossroads of the Air World

President
Robert L. Hartig
Executive Vice President
Claire O. Banks
Pres.-Elect
Thomas E. Kelly
Vice President
Elaine Atwood
Vice President
Ray Waters
Secretary-Treasurer
George Easley
At Large
John Sanders
At Large
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Immed. Past President
Loren H. Lounsbury
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Jack Anderson
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Walter Hickel, Jr.
Moe Kadish
Bob Larsen
Connel Murray
Dick Shepherd
Appointed Directors
Millett Keller
Rose Golik
Roy Huhndorf
Don Schroer
Ben Agee
Col. David Klinger
Col. Wm. Campfield, Jr.
Manager
Dean Ehrich

March 22, 1977

Honorable Kay Poland
Chairman, Senate Resources Committee
Alaska State Senate
Pouch V, State Capitol Bldg.
Juneau, Alaska 99811

Dear Kay:

We enclosed an informational copy of a recent Chamber of Commerce news release regarding positions adopted by the Chamber on several pending legislative issues.

We would particularly like to draw your attention to our position on HB 192 relating to the repurchase by the State of certain Kachemak Bay leases. As you will note, we recommend opposition to any appropriation of State funds to repurchase leases, not because we object to proper reimbursement of the oil companies involved but because we oppose any State action designed to cancel the leases at all. Our position was developed in the hope that the leaseholders will eventually be able to produce; this in view of the existing serious energy shortages in the nation.

Sincerely,

Dean Ehrich
Manager

DE/mlw

Enclosures

NEWS/MEDIA RELEASE

Greater Anchorage
CHAMBER of COMMERCE

Crossroads of the Air World

Press Release: Chamber of Commerce States Positions on Several Legislative Issues 3-21-77

During it's regular meeting on March 18, The Anchorage Chamber of Commerce Board of Directors adopted positions on several issues now pending before The Alaska State Legislature, according to Chamber President Bob Hartig.

One of the most controversial of these was a proposal which, as now amended, would provide that the State Government pay 90% of the principal and interest on bonds or other indebtedness incurred by organized local governments to pay costs of school construction. Under present law, organized local governments pay 50% of their costs while unorganized areas receive 100% funding from the state.

After a great deal of study and deliberation, The Chamber Board voted to adopt a position in opposition to increased state funding of school construction. During discussion prior to this action, it was stated that, while such state aid for local school construction appears attractive at first glance, it was doubtful as to whether Anchorage taxpayers would benefit in the long run. It is likely that State taxes might very well increase eventually and local governments could lose much of the control over their school construction programs. Opponents of increased state funding also pointed out the possibility that unnecessary construction might be encouraged.

The Chamber Board also adopted a general position opposing any appropriation of state funds to repurchase Kachemak Bay Oil Leases; and instead, recommended that the Legislature take action to eliminate the eminent domain clause contained in the 1976 action originally cancelling the leases. A spokesman for the Chamber emphasized the Board's action was because of the Chamber's opposition to the State's attempt to cancel the leases and not because it opposes reimbursement for the oil companies involved in Kachemak Bay. It is hoped by the Chamber that exploration and production will eventually be allowed to proceed on the leases in question.

NEWS/MEDIA RELEASE

Greater Anchorage
CHAMBER of COMMERCE

Crossroads of the Air World

In other action, The Chamber expressed it's support of a measure (HB 302) which would prohibit attorneys from representing parties in civil actions before the small claims courts. The Chamber supports the concept that small claims court was originally designed to settle uncomplicated civil disputes between private citizens in an atmosphere of informality and at the least possible expense to the parties involved. More complicated matters may be heard in regular District Court or in Superior Court where formal rules of evidence would apply.

The present small claims dollar limit is $1,000. The Chamber is already on record in support of a measure (SB 137) which would raise that limit to $2,000. That bill recently passed the State Senate by a vote of 20-0.

The positions taken by the Chamber on these and other legislative matters were developed after research and study by The Chamber's State Legislative Affairs Committee. Presenting recommendations to the Board on behalf of the Committee was Committee Vice Chairman Walt Bonnett.

CINDY HUSEMAN
THE ANCHORAGE CHAMBER OF COMMERCE
3-77-33
272-2401

UNITED FISHERMEN OF ALASKA

MAILING ADDRESS:
P O BOX 1352
JUNEAU ALASKA 99802

OFFICE:
197 S FRANKLIN ST
907 586-2820

April 1, 1977

The Honorable Kay Poland, Chairman
Senate Resources Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Poland:

Due to unforeseen circumstances Philip Daniel, Executive Secretary of the United Fishermen of Alaska, is unable to testify before the Senate Resources Committee on House Bill 192. For this reason I am writing to express the views of the UFA.

The United Fishermen of Alaska strongly support the passage of House Bill 192. As there are areas in which the possibility of damage and head-on conflict are low, there are areas where they are high. We feel that Kachemak Bay is one of the latter.

We expect that had the State investigated as provided by law, assessed the fishery of the Bay and taken into account the biological importance of the fishery, the leases would never have been let. Kachemak Bay is one of the cases where mere amount of surface area and location of the fisheries point to head-on conflict.

In short, by asking for passage of this bill, we are also asking that a precedent be set, that fisheries and other renewable resources be given careful study and consideration before decisions are made to lease.

Sincerely,

Kenneth Moore

Kenneth Moore
First Vice President
United Fishermen of Alaska

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K – STATE CAPITOL
JUNEAU 99811

April 1, 1977

Honorable Kay Poland
Chairman
Senate Resources Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: HB 192 - Supplemental Appropriation for Kachemak Bay

Dear Senator Poland:

In a previous letter to you dated March 1, 1977, the administration outlined the status of negotiations for repurchase of the outstanding oil and gas leases in Kachemak Bay. Briefly, the letter said we had concluded agreements with Chevron, U.S.A and with Texaco, Inc. for roughly 85% of the leases in the Bay. The total cost to the state for these leases would be about $24.6 million; however, using tax credit procedures authorized by ch. 113 SLA 1976, as outlined in the letter, the actual appropriation would be only $14.5 million.

Yesterday, we concluded a third repurchase agreement with Lorna Call, Brian Burglin and Nina Burglin for their six tracts in Kachemak Bay. These lessees owned six of the less expensive tracts close to shore. The total purchase price for these tracts would be approximately $36,500 to be paid in cash. The agreement, concluded a day ago, has not yet been reduced to writing, but I am attaching to this letter a breakdown of the price. I respectfully request that the Senate Resource Committee amend HB 192 to include additional sums to cover the agreements with Texaco and with Lorna Call and her associates. I have attached to this letter a proposed Committee Substitute which would accomplish that end.

Sincerely,

Avrum M. Gross
Attorney General

AMG:jeh

LORNA CALL (6 TRACTS)

1.	Bonuses	6,218
2.	Rent	22,620
3.	Brokers Fee	750
4.	Related Expenses */	1,442
		$31,030
5.	Estimated interest on bonuses and rent at 8% per annum, compounded annually, until paid	5,500
6.	TOTAL	$36,530

* Includes personal time spent in bid preparation and submittal, telephone, travel, etc., estimated at 5% of bonuses and rental

Total 147

KATCHEMAK BAY

FOR HB 192

Paul Jones Box 697 ~~Palmer~~ HOMER 99603

Thomas Schroeder Box 636 Homer 99603

Nancy Lord Box 846 "

Al Davis Box 598 "

Scott Kyle Box 1454 "

Ralph Brosches Box 1445 "

Jean Calhoon Box 566 "

8. Jean Schroeder Box 636 "

9. Chris & Pat Moss Box 1115 "

10. Charles & Margaret Evans Box 1621 SRA 99507

11. Beaver & Jeffie Nelson Box 1113 Homer

12. Judy & Peter Gould Anchorage

13. Kenneth Swick Box 214 Seldovia

14. Robert Haynes Box 665 Homer

15. Cleo Swick Box 214 Seldovia

16. Robert & Carol Moss Box 774 Homer

17. Mr. & Mrs. Adolph Curry Box 461 Homer

18. Hank & Jean Gain Box 132 Seldovia

19. Clarence Platt Box SRA Box 90 B Homer

20. Kenneth Moore Box ~~946~~ 796 Homer

21. Kenneth Moore Box 90 B Homer (SRA)

22. Roseleen Moore Box SRA 90 B Homer

23. Sharon Hallett Box 696 Homer

24. Mr. & Mrs. C.L. Calkins SRA Box 20 Kachemak via Homer

25. Ron Berglund Box 696 Homer

26. Ann B. Robinson Box 867 Homer

27. Richard W. Robinson Box 867 Homer

28. Mr. & Mrs. Gerald Brookman 1220 F Street Anchorage 99501

KACHEMAK BAY

FOR HB 192

29. Maxine Holliday, P. O. Box 939, Cordova, Ak.
30. Anabelle Lund, Box 1168, Homer, Ak 99603
31. Knute Johnson, Box 414, Cordova, Ak.
32 Richard W. Robinson, Box 867, Homer, Ak. 99603
33. Marvin Collins, Box 504, Homer, Ak. 99603
34. Woody Clay, Box 8564, Ketchikan, Ak.
35. Dexter Kyle, Box 84, Sitka, Ak. 99835
36. Gary Peterson, Box 822, Homer, Ak.
37. George Smith, Sr. 3825 Denali Street, Anch.
38. Ken Castner, Box 558, Homer, Ak.
39. Tom Gerstner, Box 588, Homer, Ak.
40. Don Miller, P. O. Box 1000, Homer
41. George Pollard, Box 40, Kasilof
42. Karen Gerstner, Box 588, Homer
43. Don Wakefield, Box 1292, Homer
44. Mevin May, Box 3160, Ketchikan
45. Richard Bremicker, Red Mountain, Ak.
46. Greg Christenson, Red Mountain, Ak.
47. Asaiah Bateso, 504, Homer 99603
48. Marc Blackman, Box 1182, Homer, Ak.
49. Martin Friedman, Box 337, Homer
50. Douglas Brimicker, Red Mountain, Ak.
51. Marsha Bremicker, Red Mountain, Ak.
52. Marilee Blackman, Box 1182, Homer, Ak.

KACHEMAK BAY

FOR HB 192

53. Mike Kennedy, General Delivery, Homer
54. Diana Wakefield, Box 1292, Homer
55. Ann Robinson, Box 867, Homer
56. Roy Parkinson, Box 1116, Homer
57. Mike Thomas, Box 1182, Homer
58. Lu Lovelace, General Delivery, Homer
59. Peggy Cochran, Box 374, Homer
60. Alan and Susan Babboni, 2126 First Ave., Ketchikan
61. Annette Parks, Box 1302, Homer
62. Daniel B. Winn, Jr., Box 1272, Homer
63. Judith A. Winn, Box 1272, Homer
64. Ralph Galiano, Box 232, Homer.
65. Daniel B. Winn, Box 1272, Homer
66. Charles Smith, SRA Box 34, Homer
67. Carlos and Karla Freeman, Box 62 SRA, Homer
68. Jane C. Calhoon, Box 1224, Homer
69. F. E. Lowry, Box 812, Homer
70. Martin Friedman, Box 337, Homer
71. Dr. Ralph Broshes, Box 1445, Homer
72. Marvin Bellamy, P. O. Box 1302, Homer
73. Gregory Tikka, 2728 McCauley, Anchorage
74. Nancy Lord, President, Kachemak Bay Conservation Society
75. Roseleen Moore, Star Route A, Box 90B, Homer
76. Kenneth Moore, Star Route A, Box 90B, Homer
77. Lynn Bennett, Box 746, Homer

KACHEMAK BAY

FOR HB 192

78. Sharon Hallett, Star Route A, Box 90B, Homer
79. Joe Bennett, Box 746, Homer
80. Ann Haynes, Box 665, Homer
81. Bob Haynes, Box 665, Homer
82. Tom and Karen Maloney
83. G. O. Smith
84. Louella Smith
85. Erwin Ravin
86. Betsy Freedman
87. Carolyn and Kent Johnson
88. Elliot and Terry Freedmann
89. Danaan Smith
90. Kathy Steberl
91. Larry Smith
92. Karen Digiorgio
93. Maynard Ransom Smith
94. Kathy Smith
95. Bill Choate
96. Cathy Choate
97. William Smith
98. Tracy Thomas
99. Lottie Edelman, Secretary, Kenai Peninsula Fisheries Assoc.
100. Bob Blacke, Cordova City Councilman, Box 94, Cordova
101. Dennis Nolan, Box 806, Cordova

KACHEMAK BAY

FOR HB 192

102. Pete Isleib, Box 139, Cordova

103. Alvin and Elizabeth Taeschner, P. O. Box 56, Soldotna

104. Mary A. Miller, Box 1, Kasilof

105. Janis Mullen, Box 805, Soldotna

106. Larry Hollinshead, P. O. Box 1055, Homer

107. Margaret Mullen, Box 602, Soldotna

108. Eben Hopson, North Slope Borough

~~109. Bill and Elizabeth Johnson, P. O. Box 658, Homer~~

110. Loren and Sandra Flagg, Box 621, Homer

111. Richard M. Dixon, Box 596, Homer

112. Pat and Mary Joe McElroy, Rt. 2, Box 705, Kasilof, Ak. 99610

113. Dr. Calvin M. Fair, P. O. Box 369, Soldatna 99669

114. Mary Mullen, Box 602, Soldatna 99669

115. Ellen Mullen, Box 181, Kasilof, Ak.

116. Geron Bruce, 328 W. 10th St., Jnu. 99801

117. C. Neil McArthur, P. O. Box 764, Homer 99603

118. Mrs. Davidson, Box 62A, Homer, Ak. 99603

~~119. Sandra Jerkovich, 317 No., Klevin Ave., Aneh., Ak. 99504~~

~~120. R. Ruth Brooking, 7524 Arthur Ct., Anch., Ak. 99502~~

~~121. Alfred Strawn, P. O. Box 210, Palmer, Ak. 99645~~

~~122. Edward M. Wilkerson~~

~~123. Darlo D. Dayton, Box 556, Kodiak, Ak. 99615~~

~~124. Fred Elfohnso, Box 6341, Anchorage, Ak. 99502~~

~~125. William R. McCullough~~

~~126. George Rideus~~

~~127. Jean Yonaha~~

KACHEMAK BAY

FOR HB 192

119. David R. Miles, 1 Mile, Bennett Rd., SR Box 51502, Fbx.

120. Tina Stonorov, 1502 Second Ave., Fairbanks, Ak. 99701

121. Rudy Vetter, Box 342, Fairbanks, Ak. 99701

122. Bob Weeden, Box 80425, College, Ak. 99703

123. Janet Lokken, S.R. Box 20661, Fairbanks, Ak. 99701

124. Judy Smith, Box 81071, College, Ak. 99708

125. Zin Kittredge, 15 Timberland Drive, Fairbanks, Ak. 99701

126. Liz Holloway, Rainbow Valley, Indian, Alaska 99540

127. Henry E. Smith

128. Roman J. Matyka and Virginia M. Ferrell, Box 81353, Fbx., Ak. 99708

129. Paul E. Jones, Box 697, Homer, Ak. 99603

130. Mary Ellen Culbreathson, Box 2778, Juneau, Ak.

131. Dr. Pat Taylor, Mile 13 Glacier Highway, Jnu., Ak.

132. Mr. and Mrs. Bob Scott, 1703 Willow Drive, Jnu., Ak.

133. B. McGinnis, Rt. 3, Box 3552, Juneau, Ak.

134. Mrs. K. Greenough, 527 W. 11th St., Jnu., Ak.

135. David McDonald, 3411 Oregon Dr., Apt. #7, Anch.

136. Colleen Handel, P. O. Box 163, Kasilof, Ak. 99610

137. Sandy Lagrone, 607 Bentley Dr., West, Fbx, Ak.

138. Patty Lane, SR Box 10612, Fairbanks, Ak.

139. Jeff Weltzin, 820 Moore Hall, U. of A., Fbx., Ak.

140. Christopher Pearson, c/o Geophysical Institute, U. of A. Fairbanks, Ak. 99701

141. Anne and Will Harrison, c/o Geophysical Institute, U. of A. Fairbanks, Ak. 99701

142. Lawrence Katkin, SR Box 10612, Fbx., Ak. 99701

KACHEMAK BAY

FOR HB 192

143. Kevin Harun, Box 73339, Fairbanks, Ak. 99707

144. Pon Johnson, #4 Stuart Hall, U. of A., Fairbanks, Ak.

145. Larry Schmueser, Box 1267, Fairbanks, Ak. 99701

146. Joan Forshaug, Box 81847, College, Ak. 99708

147. Judy and Kermit Johnson, 1049 Pedro St., Fairbanks 99701

Total 346

KACHMEAK BAY

AGAINST HB 192

1. Ralph Jonson Box 7031 Kenai (North) 99601
2. Milton Lewis Box 277 Homer
3. Don E. Knighton Box 117 Anchor Point 99556
4. Ken Arndt Box 133 Homer
5. Roger Painter Box 8585 I dian 99540
6. George & Alice Dandy Box 582 Homer
7. Harry N. Olson Box 52 Anchor Point 99556
8. Homer Egbert Box 605 Homer
9. Eugene E. Robinson Box 828 Homer
10. Thomas S. Crosbie Box 571 Homer 99603
11. Elizabeth Aprill Box 127 Anchor Point 99556
12. Angelo & Melva Hillas Box 102 Homer
13. Jim Jacobs Sterling Route Homer
14. Don Ledger Drawer 1150 Kenai 99699
15. Jerry Anderson Box 1263 Homer
16. John Kosch Box 1163 Homer
17. Freddie T. Gallant 715 Rappie Court Anchorage 99503
18. Floyd Beach Box 216 Homer
19. Robert Hodel Box 672 Homer
20. Robert Connelly SRA Box 26 Homer
21. Chuck Hendricks Box 620 Homer
22. Bob Gillis SRA Box 44 Homer
23. Susie Franklin Box 1099 Homer
24. Larry Debrock Box 997 Homer
25. Don & Carol Crossen Drawer A Seldovia 99663
26. James Crude SRA Box 636 Chugiak 99567
27. Ted L. Wythe Box 1348 Homer
28. Sandra Glidden Box 182 Homer

29. Edna Morris Box 758 Homer
30. Dennis Hoffman Box 151 Seldovia
31. Bill & Georgia Nelson Drawer C Seldovia
32. Clyde Woodhead SRA Box 9 Homer
33. Richard L. Besse 941 West 77th Ave., Anchorage 99502
34. Helen Alm Box 121 Homer
35. Floyd Ward Box 192 Homer
36. Lewis A. Gjosund Sr. SRA Box 21 Homer
37. ~~Mr. & Mrs. Gerald Brookman 1220 F Street Anchorage 99501~~
38. ~~Richard W. Robinson P. O. Box 867 Homer Alaska 99603~~
37. Madeline Woodhead SRA Box 9 Homer
38. Lawrence Rogers Box 849 Homer
39. Robert Breakfield Box 454 Homer
40. Pearl Saling Box 488 Homer
41. Alex Flyum Box 627 Homer
42. Dave Gibbons 928 West 8th Anchorage 99501
43. Phyllis Abbott Box 111 Homer
44. Jim Boyles 4001 Garfield Anchorage 99501
45. Ron Hoffman Box 151 Seldovia
46. Arthur Kolar Box 294 Homer
47. Mickey Clauss SRA Box 20B Homer
48. Jim Clauss SRA Box 20 B "
49. Howard Myhill Rexall Drugs Box 314 Homer
50. John A. Pace Box 392 Homer
51. Dale Johnson Box 1047 Homer
52. Sam Matthews Box 1235 Homer
53. Ron Eilcher SRA Homer

54. Donald G. Sheets SRA Box 1655 Anchorage

55. Myram Hilscher 2224 Foraker Anchorage 99503

56. Barbara Manly Box 955 Homer

57. Robert Ditton Box 492 Homer

~~58. Richard Dixon, Box 271 Homer~~

59. Sam McDowell Chugiak

60. William B. Edens Box 114 Homer

61. John H. Daley 335 East 23rd Avenue, Anchorage 99503

62. Jim Manly Box 955 Homer

63. Joseph Goodrich 7509 Old Harbor Avenue, Anchorage 99504

64. Bert Valbusch Box 458 Homer

65. Leo Rollins Box348 Homer

66. Nicholas J. Gangl Box 1297 Homer

67. Eunice Bergland Box 453 Homer

68. Daniel Hennick SRA Box 28A Homer

69. Robert Herring Box 667 Homer

70. Harry Vick SRA Box 7 Homer

71. Carl Jones Box 6060 Homer

72. Gary Daley Box 1017 Homer

73. David Derry Box 951 Homer

74. Vern Mutch Box 425 Homer

75. Jack Sibson Box 1221 Homer

76. Erlin Broderson Box 151 Homer

77. Loretta Valbusch Box 458 Homer

78. Nicholas J. Gangl Box 465 Homer

79. Duane & Helen Belnat Sterling Route Homer

80. Spud & Val Dillon Box 591 Homer

81. Ken and Roberta Harris, Box 663, Homer
82. Jack and Susan English, Seldovia
83. Ash W. Helgoe, SRA, Box 1770, Anchorage 99507
84. Evan and Virginia Cundiff, Serling Route, Homer
85. David Schacht, Box 8332, Anchorage
86. Ray and Pam Birkey, Box 921, Homer
87. Vic Boreum, Box 483, Homer
88. Jack and Mary Epp son, Box 221, Homer
89. Dicky Gergiore, Box 1204, Homer
90. Jim Doyle, Box 582, Kenai 99611
91. Dale and Fran Van Sandt, SRA, Box 21A, Homer
92. Earl Billingslea, Box 76, Soldotna 99669
93. Bill Gates, SRA, Box 1572X, Anchorage 99507
94. Kenneth M. Ridder, SRA 1562G, Anchorage
95. Jack and Ethel Scott, Box 518, Homer
96. George and Joyce Kirkpatrick, Box 702, Homer
97. Ray Hofmeister, Box 674, Cooper Landing, Ak. 99572
98. George and Carol Cartright, Box 513, Homer
99. Kostantinos Macheras, Box 178, Kenai 99611
100. Bill Allen, 6081 Yukon Road, Anchorage, Ak. 99503
101. Bob Edler, Box 73, Soldotna, Alaska 99669
102. Larry and Helena Borelius, Box 413, Homer
103. Nick Monsen, 7120 Jester Cr., Anchorage 99503
104. James H. Saling, Box 448, Homer, Ak.
105. Bill Whitsitt, 1718 Diomede, Anchorage, Ak. 99504

KACHEMAK BAY

AGAINST HB 192

106. LeRoy and Rita Shoulz, P. O. Box 873, Homer, Ak.

107. Jerry and Rita Jeppeson, P. O. Box 108, Anchor Pt., Ak. 99566

108. Lloyd and Roxie Schade, SR A, Homer, Alaska 99603

109. Harry Bjerregaard, Box 585, Homer, Ak. 99603

110. Fred L. Elvsaas, President, Seldovia Native Assoc, Seldovia

111. Homer S. Thompson, Box 116, Homer

112. Barbara and Ralph Strardin

113. Bob and Gail Simcoe, P. O. Box 1213, Homer

114. Michael Hart, P. O. Box 6063, Anchorage 99502

115. Bill and Elizabeth Johnson, P. O. Box 658, Homer

116. Keneth Carlton, 1900 E 56th, Anchorage, Ak. 99507

117. Gordon P. Samel, Box 387B, SRA, Anchorage, Ak.

118. Theresa A. Palmer, Box 4461, Anch. Ak. 99509

119. James N. Stefeth, 1911 Alder Dr., Anch., Ak. 99504

120. A. Helgoe, SRA, Box 1770K, Anchorage, Ak. 99507

121. Vicki Watts, 321 E. 46th , Apt. #1, Anch. 99502

122. W. Meehan, 2941 Madison Way, Anchorage, Ak. 99504

123. Joseph K. Goodrich, 7509 Old Harbor Ave., Anch. 99504

124. Ron Engley, 1241 West 26th Ave., Anchorage

125. Joseph C. Jerkovich, 317 N. Klevin, Anch. 99504

126. Ted Rasmussen, P. O. Box 8571, Anch. 99508

127. John M. Osmin, 840 West 70th, Anch., Ak. 99502

128. Carl J. Brenner, 8137 East 5th, Anch. AK. 99504

129. Wayne D. Mitchell, 2719 E. 17th St., Anchorage

KACHEMAK BAY

AGAINST HB 192

130. W. D. Esorts, 4147 W. 88th Ave., Anch. Ak. 99502

131. Martha Gore, 1542 E. 26th Ave., Anch., Ak. 99504

132. Robert W. Meier, 701 W 71st, Anch., Ak.

133. Al Groller, 3301 West 79th, Anch.

134. Jane R. Lindsey, 3514 Vassar, Anch. 99504

135. R. H. McDonald, 3307 Boniface SP 110X, Anch. Ak. 99504

136. Kenneth L. Wiccits, 3740 Mt. Blane Circle, Anch. 99504

137. Paul R. Crippen, P. O. Box 299, Palmer, Ak. 99645

138. Margie Hurley, P. O. Box 1054, Anch., Ak. 99510

139. Pat Hurley, 1708 Wickersham Dr., Anchorage 99503

140. Bill J. Taylor, 3900 Malaspina Circle, Anchorage

141. William R. Gates, SRA, 1572-X, Anchorage

142. Lillian P. symus, 7420 Augustine Drive, Anch., Ak.

143. Suzanne Wolcutt, 4927 Marion Ave., Anch., 99504

144. Linda Eazley, 1241 W. 26th Ave., Anch., Ak. 99503

145. James Bascre, 1321 W. 72nd, Anchorage, Ak.

146. Barbara Melnick, 705 Muldoon #184, Anch., Ak. 99503

147. Jack Anderson, 1430 W. 12th, Anchorage, Ak.

148. Carol L. Doyle, 4261 Edinburgh Dr., Anch. 99502

149. Edna L. Czerski, P. O. Box 354, Eagle River, Ak.

150. Charles L. Christy, 4112 Westwood Drive, Anch., Ak. 99503

151. Gary Tanghe, 3412 Glenn-Don Drive, Anchorage, Ak. 99504

152. George A. Morris, 5924 Prosperity Drive, Anch. 99504

153. Geneva Peart, SRA, Box 1459-J, Anch.

154. Jan D. Schommer, SR Box 230J, Eagle River 99577

KACHEMAK BAY

AGAINST HB 192

155. Marion C. Hudson, 3807 McCain Road, Anch. 99503

156. F. J. Cummings, 5901 E. 6th, #3 Anchorage

157. Sandra L. Carlton, 1900 E 56th, Anch. 99507

158. K. A. Neuman, 1048 Whitney Road, Anch.

159. P. H. Miller, 1329 1/2 Cedar St., Anchorage 99501

160. Dane P. Terry, 1117 Chugach Way, Apt. #1, Anch., Ak. 99503

161. Irwin P. Cook, Jr., 1414 Wolverine St., Anch., Ak. 99504

162. Robert D. Ouer, SRA Box 377-K, Anch., Ak.

163. Lawrence S. Gertzen, SRA Box 456, Anchorage, Ak.

164. Jack L. Anderson, 7200 Ticonderoga Place, Anch., Ak.

165. D. Donns, 1541 W. 12th, Anchorage

166. Fred Gallant, 715 Rappe Ct., Anch., Ak.

167. Kerney F. Peart, SRA Box 1459-J, Anch. Ak.

168. Pat Faherty, SRA Box 377-K, Anch. Ak.

169. Kenneth M. Ridder, SRA 1562 G, Anch. 99507

170. Frank LaFazio, STA 1725 B, Anch, Ak. 99507

171. Tom Keigley, 124 E. Third Ave., #307, Anch 99501

172. J. B. Long, 124 East 3rd, Apt. 307, Anch., Ak. 99501

173. R. L. Cavalero, 2600, Anchorage, Ak.

174. William C. Brunens, 513 E. 10th Ave., Anch., Ak.

175. Helen S. Montague, 1903 Aleutian St., Anch., Ak. 99504

176. Robert W. Dunsmore, Sr., 3205 Oregon Dr., Apt. B, Anch.

177. R. W. Beatty, 3104 Northwood, Anch., Ak.

178. Woody Snell, Box 556, Kodiak, Ak. 99615

179. Elvin A. Parker, Box 556, Kidiak, Ak. 99615

180. Peter W. Shaw, SRA Box 33-C, Anch., Ak. 99501

KACHEMAK BAY

AGAINST HB 192

119. Sandra Jerkovich, 317 Klevin Ave., Anch, Ak. 99504
120. R. Ruth Brooking, 7524 Arthur Ct., Anch., Ak. 99502
121. Alfred Strawn, P. O. Box 210, Palmer, Ak. 99645
122. Edward M. Wilkerson
123. Darlo D. Dayton, Box 556, Kodiak, Ak. 99615
124. Fred Elfohnso, Box 6341, Anchorage, Ak. 99502
125. William B. McCullough
126. George Rideus
127. Jean Yonaha
128. Beverly A. Webb, Star Route A, Box 1463 Q, Anch., Ak.
129. Brenda Hanson
130. John C. Onhard
131. Bruce Barber, 9010 Noble Circle, Anch., Ak.
132. Lloyd E. Weeks, Vickie M. Acton
133. Robert F. Jensen, Box 107, Sterling, Ak.
134. Marion L Jensen, Box 107, Sterling, Ak. 99672
135. Tom Rohne, 1601 West 15th Avenue, Anchorage, Ak.
136. Kurt Nelson, P. O. Box 1535, Soldotna, Ak. 99669
137. Nancy Nelson, Box 1535, Soldotna, Ak. 99669
138. Albert T. Cooper, Jr., 3431 Kachemak Circle, Anchorage, Ak.
139. Steven C. Tressle, P. O. Box 3207, Kenai, Ak. 99611
140. Bill Starne, P. O. Box 9001, Kenai, Ak.
141. Michael H. Balick, 6937 Bugle Ct., Anch., Ak. 99507
142. Maureen E. Schwaub, 3701 Eureka, Sp. 89-A, Anch., Ak 99503
143. Richard O. Elielsen, Box 911, Kenai, Ak.

KATHEMAK BAY

AGAINST HB 192

144. Barbara J. Simpson, 511 E. 46th Place, Anch., Ak. 99503

145. John H. Mark, Box 238, Soldotna, Ak. 99669

146. Ronald Rowell, Box 841, Kenai, Ak. 99611

147. Rockwell G. Smith, Box 951, Kenai, Ak.

148. Larry Brooking, 917 Cordova, Anch., Ak.

149. Dale H. Auldridge, Box 606, Sterling, Ak. 99672

150. Donald G. Wyckoff, Box 477, Kenai, Ak. 99611

151. William C. Lindsey, 3514 Vasser Drive, Anch., Ak. 99504

152. Jean Brooking, 917 Cordova, Anchorage, Ak. 99501

153. Patricia Lynne Hunt, 2141 Duvoy Court, Anch., Ak. 99502

154. A. D. Call, Box 4-1119, Anch., Ak. 995[illegible]

155. C. R. Lang, 3231 Briarcliff, Anch., Ak.

156. Terri Lee Wren, 937 West 19th, Anch., Ak. 99503

157. Timothy Murphy, P. O. Box 3545, Kodiak, Ak. 99615

158. Marion Webb, SRA 1414 D, Anchorage, Ak. 99502

159. Hilton V. Jones, 3500 Kachemak Pl., Anch., Ak. 99502

160. Linda Frison, P. O. Box 1301, Soldotna, Ak.

161. Lyle R. Lybbert, P. O. Box 3486, Kenai, Ak.

162. R. A. Gill, 7208 Turnagain Highway, Anchorage, Ak. 99503

163. Norma Spoonts, Box 1241, Kenai, Alaska 99611

164. Gary L. Foster, Box 395, Soldotna, Alaska 99669

165. Don A. Martin, Box 204, Kasilof, Alaska

166. Howard Beck, Box 2884, Kenai, Alaska

167. Paul McBride, General Delivery, Kenai, Ak.

168. Joel T. Superman, P. O. Box 2842, Kenai, Ak. 99611

KACHEMAK BAY

AGAINST HB 192

169. E. M. Brooking, 7524 Arthur Court, Anchorage, Ak. 99502

170. C. V. Wellen, P. O. Box 937, Kenai, Ak. 99611

171. R. F. Krause, 7135 Whitehall Rd., Anch., Ak.

172. Frances S. Dely, 7609 E. 20th Avenue, Anch., Ak 99504

173. Charles H. Goodson, 7019 Linden Circle, Anch., Ak.

174. Debra Anne Goodson, 7019 Linden Circle, Anch., Ak.

175. Nellie Goodson, 7019 Linden Circle, Anch., Ak.

176. D. I. Daley, 5913 Prosperity Drive, Anch., Ak. 99504

177. Louise M. Reynolds, 3617 Strawberry Road, Anch., Ak. 99502

178. Kent M. Reynolds, 3617 Strawberry Road, Anch., Ak. 99501

179. Jerry Alyea, SRA Box 1462 B, Anch., Ak. 99501

180. Dora K. Ray, 1625 Sonja Circle, Anchorage, Ak. 99504

181. Debi Banks, 3101 W. 31st #2, Anch., Ak.

182. Philip W. Reynolds, 3617 Strawberry Road, Anch. Ak.

183. Mark Strub, 2432 Card Baranof

184. Harold Ottler, 7744 Old Harbor, Anchorage, Ak.

185. Cordelia J. Goodrich, 7509 Old Harbor Ave., Anch , Ak.

186. Cire Gray, P. O. Box 371, Palmer, Ak.

187. Gordon V. Gladson, Box 414, Palmer, Ak.

188. Maybelle German, 1455 W. 25th, Anchorage, Ak. 99503

189. Kevin Mattfield, Box 269, Kenai, Ak.

190. Helen Houler, SRA 1587-S, Anch., Ak.

191. Ralph Soller, P. O. Box AB, Plamer, Ak.

192. J. F. Voteva, SRA Box 1585 K., Anchorage, Ak.

193. Elaine Cole, 6909 Cutty Sark, Anch., Ak. 99502

194. Donald E. Cole, 6909 Cutty Sark, Anch., Ak. 99502

KACHEMAK BAY

AGAINST HB 192

194. David Beeman, SRA Box 1600-R, Anch., Ak. 99507

195. Sharon A. Roberds, 117 Grand Larry, Anchorage, Ak. 99504

196. Diane Sciscinte, 4300 Arctic Blvd. #15, Anch., Ak. 99503

197. Vatrice Wells, 1900 "K" Street, Anch., Ak. 99503

198. Ivan R. Rice, SRA Box 4126, Anch., Ak. 99502

199. Wm. Mark Starkweather, 7037 Arctic Blvd., Anch., Ak.

200. Cora Starkweather, 2034 Eastridge Dr., Anch., Ak.

201. John P. Suter, Box 610, West Lockridge, Eagle River 99517

202. Arlyn J. Hanson, Box 186, Palmer, Ak. 99645

203. Donald Hennessey, 8244 Seaview, Anchorage, Ak.

204. Jerry Brown, Box 374, Palmer, Ak. 99645

205. Doris Ayres, SR 1, Box 130 Whirlaway Road, Eagle River, Ak.

206. Edith B. Cooper, 3431 Kachemak Circle, Anchorage, Ak.

207. Sharon Storm, P. O. Box 7001, Kenai, Ak.

208. M. J. Catlin, P. O. Box 543, Chugiak, Ak.

209. Ruthann Rich, 7509 Old Harbor Rd., Anchorage, Ak. 99504

210. James K. Meister, 1434 "I" Street, Anch., Ak. 99501

211. Robert B. Frank, 7031 Altoona Drive, Anch. Ak.

212. J. R. Perron, 124 E. 3rd, Anchorage, Ak.

213. John Irvine, 340 Mumford, Apt. #1, Anch., Ak.

214. Ben Mead, 277 East Potter Drive, Anch., Ak. 99502

215. Douglas Callison, P. O. Box 4-510, Spenard, Ak. 99509

216. Larry Delahoussage, 1200 W. Dimond, Sp. 505, Anch., Ak.

217. John E. Anderson, 7420 Abbott Loop Rd., Anch., Ak.

218. Fae M. Kuebnoel, Box 183 Man O'War Road, Eagle River, Ak.

KACHEMAK BAY

AGAINST HB 192

219. N. Crose, SRA, Box 1625 M, Anch., Ak. 99507

220. Michael Kush, 6840 E. 3rd, Anchorage, Ak. 99501

221. Mrs. Lynn A. Hudson, 2852 Telequana #3, Anchorage, Ak. 99501

222. Irvin F. Tolbet, 1545 Sunrise Dr., Anch., Ak. 99504

223. John T. Andrews, Box 4-179, Anch., Ak. 99509

224. Edwin R. Seaman, 1446 E. 27th, Anch., Ak. 99504

225 Lynn A. Hudson, 2852 Telequana #3, Anch., Ak. 99504

226. Dorothy Ford, 6314 E. 31st., Anch., Ak. 99501

227. Mrs. John D. Andrews, Box 4-179, Anch., Ak. 99509

228. John Tyhuis, Box 2392, Kodiak, Ak.

229. Fred Johnston, Box 4-972, Anch., Ak. 99503

230. Laura Wandersee, c/o General Delivery, Kodiak, Ak. 99615

231. Dayton Wandersee, c/o General Delivery, Kodiak, Ak. 99615

232 William J. Deen, 3441 Kachemak, Anch., Ak. 99501

233. William O. Ford, 6314 E. 31st, Bldg. A, #4, Anch., Ak.

234. Glenn D. Miller, 2921 Wiley Post Ave., Anch., Ak. 99503

235. Kelly J. Booker, Box 4, Kenai

236. Stephen Garner, P. O. Box 7174 NRB, Kenai, Ak.

237. William L. Crose, Box 7022, NRB, Kenai, Ak. 99611

238. R. L. Harrison, Box 3936, Kenai, Ak.

239. W. H. Curry, P. O. Box P, Kenai, Ak. 99611

240. Philip Seaberg, Box 1175, Soldotna, Ak. 99669

241. Jack Hayes, Box #45, Kenai, Alaska 99611

242. Joseph DuPaul, P. O. Box 2929, Kenai, Ak.

243. Robert G. Garner, Box 1177, Kenai, Ak. 99611

KACHEMAK BAY

AGAINST HB 192

244. Mr. and Mrs. Harry McCurdy, Box 1349, Kenai, Ak. 99611

245. L. Dean Fritz, Box 3679, Kenai, Ak. 99611

246. Clyde Ckess, Box 71, Kenai, Ak.

247. James M. Voyle, 4001 Garfield, Anch., Ak.

248. Ida Stoddard, 7800 Dover Ave., Anch., Ak. 99504

249. David VanHorn, 2310 W. Tudor, Anchorage, Ak.

250. obert S. Wilmarth, 5349 E. 41 Ave., Anch., Ak.

251. Tom Brown, P. O. Box 4-2874, Anch., Ak. 99509

252. Sol Nicholson, 3101 Sleeping Lary Drive, Anch., Ak.

253. Marlow Kramer, P. O. Box 3554, Anch., Ak.

254. Gordon C. Corbeil, 1114 E. 5th Ave., Anch., Ak. 99501

255. Steve J. Kile, 2940 Sunflower, Anch., Ak. 99504

256. Alvin G. Alb, 1518 Wolverine St., Anch., Ak. 99504

257. Judith A. Bennett, 1402 W 27th, Anch., Ak. 99501

258. Gloria Juliussen, P. O. Box 985, Kenai, Ak.

259. Virginia Foster, P. O. Box 7132 NRB, Kenai, Ak. 99611

260. Nelly Foster, P. O. Box 7132, NRB, Kenai, Ak. 99611

261. Joe DuCosto, 1210 W. 47th, Anchorage, Ak. 99502

262. Shirley Corbeil, 1114 E. 5th, Anch., Ak. 99501

263. Steve Jansen, 3.7 Mile Chena Pump Rd., Fairbanks, Ak. 99701

264. Jim Jansen, Box 471, Fairbanks, Ak. 99701

265. Kelly Pleas, P. O. Box 850, Juneau, Ak.

266. Clint Finstad, P. O. Box 60547, Fairbanks, Ak.

267. Dave Johnsen, 3320 Admiralty Bay Drive, Anch., Ak. 99502

268. Larry Foster, 1502 Turpin, Anch., Ak. 99504

KACHEMAK BAY

AGAINST HB 192

269. Robert C. Jackson, Rt. 3, Linwood Lane, Kenai, Ak.

270. M. Graves, Box 88, Kenai, Ak. 99611

271. R. M. Grages, Box 88, Kenai, Ak. 99611

272. David Hempshall, Box 955, Soldotna

273. Bill Sipple, 900 Kathy Drive, Anch., Ak. 99504

274. R. M. Edwin Fletcher, Box 1124, Homer, Ak. 99603

275. Lawrence A. Delef, 7609 E. 20th Ave., Anch., Ak. 99504

276. Mrs. Kay Crose, Box 7022, NRB, Kenai, Ak. 99611

277. R. J. Gillas, SRA, Box 44, Homer, Ak. 99603

278. Thomas N. Johnson, 3001 Spenard Rd., Anch., Ak.

279. R. H. Howell, 6538 Notting Hill Drive, Anch., Ak.

280. Mrs. Dorothy C. Howell, 6538 Notting Hill Dr., Anch. Ak.

281. Margaret J. Benson, 3307 W. 80th, Anch., Ak.

282. Carlee Mertz, P. O. Box 938, Kenai, Ak. 99611

283. Alice M. Jardine, 4000 Caravelle Ave., Anch., Ak. 99502

Total 346

KACHMEAK BAY

AGAINST HB 192

1. Ralph Jonson Box 7031 Kenai (North) 99601
2. Milton Lewis Box 277 Homer
3. Don E. Knighton Box 117 Anchor Point 99556
4. Ken Arndt Box 133 Homer
5. Roger Painter Box 8585 Indian 99540
6. George & Alice Dandy Box 582 Homer
7. Harry N. Olson Box 52 Anchor Point 99556
8. Homer Egbert Box 605 Homer
9. Eugene E. Robinson Box 828 Homer
10. Thomas S. Crosbie Box 571 Homer 99603
11. Elizabeth Aprill Box 127 Anchor Point 99556
12. Angelo & Melva Hillas Box 102 Homer
13. Jim Jacobs Sterling Route Homer
14. Don Ledger Drawer 1150 Kenai 99699
15. Jerry Anderson Box 1263 Homer
16. John Kosch Box 1163 Homer
17. Freddie T. Gallant 715 Rappie Court Anchorage 99503
18. Floyd Beach Box 216 Homer
19. Robert Hodel Box 672 Homer
20. Robert Connelly SRA Box 26 Homer
21. Chuck Hendricks Box 620 Homer
22. Bob Gillis SRA Box 44 Homer
23. Susie Franklin Box 1099 Homer
24. Larry Debrock Box 997 Homer
25. Don & Carol Crossen Drawer A Seldovia
26. James Crude SRA Box 636 Chugiak 99567
27. Ted L. Wythe Box 1348 Homer
28. Sandra Glidden Box 182 Homer

29. Edna Morris Box 758 Homer
30. Dennis Hoffman Box 151 Seldovia
31. Bill & Georgia Nelson Drawer C Seldovia
32. Clyde Woodhead SRA Box 9 Homer
33. Richard L. Besse 941 West 77th Ave., Anchorage 99502
34. Helen Alm Box 121 Homer
35. Floyd Ward Box 192 Homer
36. Lewis A. Gjosund Sr. SRA Box 21 Homer
37. ~~Mr. & Mrs. Gerald Brookman 1220 F Street Anchorage 99501~~
38. ~~Richard W. Robinson P. O. Box 867 Homer Alaska 99603~~
37. Madeline Woodhead SRA Box 9 Homer
38. Lawrence Rogers Box 849 Homer
39. Robert Breakfield Box 454 Homer
40. Pearl Saling Box 488 Homer
41. Alex Flyum Box 627 Homer
42. Dave Gibbons 928 West 8th Anchorage 99501
43 Phyllis Abbott Box 111 Homer
44. Jim Boyles 4001 Garfield Anchorage 99501
45. Ron Hoffman Box 151 Seldovia
46. Arthur Kolar Box 294 Homer
47. Mickey Clauss SRA Box 20B Homer
48. Jim Clauss SRA Box 20 B "
49. Howard Myhill Rexall Drugs Box 314 Homer
50. John A. Pace Box 392 Homer
51. Dale Johnson Box 1047 Homer
52. Sam Matthews Box 1235 Homer
53. Ron Eilcher SRA Homer

54. Donald G. Sheets SRA Box 1655 Anchorage
55. Myrom Hilscher 2224 Foraker Anchorage 99503
56. Barbara Manly Box 955 Homer
57. Robert Ditton Box 492 Homer
58. ~~Richard Dixon, Box 271 Homer~~
59. Sam McDowell Chugiak
60. William B. Edens Box 114 Homer
61. John H. Daley 335 East 23rd Avenue, Anchorage 99503
62. Jim Manly Box 955 Homer
63. Joseph Goodrich 7509 Old Harbor Avenue, Anchorage 99504
64. Bert Valbusch Box 458 Homer
65. Leo Rollins Box348 Homer
66. Nicholas J. Gangl Box 1297 Homer
67. Eunice Bergland Box 453 Homer
68. Daniel Hennick SRA Box 28A Homer
69. Robert Herring Box 667 Homer
70. Harry Vick SRA Box 7 Homer
71. Carl Jones Box 6060 Homer
72. Gary Daley Box 1017 Homer
73. David Derry Box 951 Homer
74. Vern Mutch Box 425 Homer
75. Jack Sibson Box 122 Homer
76. Erlin Broderson Box 151 Homer
77. Loretta Valbusch Box 458 Homer
78. Nicholas J. Gangl Box 465 Homer
79. Duane & Helen Belnat Sterling Route Homer
80. Spud & Val Dillon Box 591 Homer

KACHEMAK BAY

AGAINST HB 192 Page 4

81. Ken and Roberta Harris, Box 663, Homer
82. Jack and Susan English, Seldovia
83. Ash W. Helgoe, SRA, Box 1770, Anchorage 99507
84. Evan and Virginia Cundiff, Serling Route, Homer
85. David Schacht, Box 8332, Anchorage
86. Ray and Pam Birkey, Box 921, Homer
87. Vic Boreum, Box 483, Homer
88. Jack and Mary Epperson, Box 221, Homer
89. Dicky Gergiore, Box 1204, Homer
90. Jim Doyle, Box 582, Kenai 99611
91. Dale and Fran Van Sandt, SRA, Box 21A, Homer
92. Earl Billingslea, Box 76, Soldotna 99669
93. Bill Gates, SRA, Box 1572X, Anchorage 99507
94. Kenneth M. Ridder, SRA 1562G, Anchorage
95. Jack and Ethel Scott, Box 518, Homer
96. George and Joyce Kirkpatrick, Box 702, Homer
97. Ray Hofmeister, Box 674, Cooper Landing, Ak. 99572
98. George and Carol Cartright, Box 513, Homer
99. Kostantinos Macheras, Box 178, Kenai 99611
100. Bill Allen, 6081 Yukon Road, Anchorage, Ak. 99503
101. Bob Edler, Box 73, Soldotna, Alaska 99669
102. Larry and Helena Borelius, Box 413, Homer
103. Nick Monsen, 7120 Jester Cr., Anchorage 99503
104. James H. Saling, Box 448, Homer, Ak.
105. Bill Whitsitt, 1718 Diomede, Anchorage, Ak. 99504

KACHEMAK BAY

AGAINST HB 192

106. LeRoy and Rita Shoulz, P. O. Box 873, Homer, Ak.

107. Jerry and Rita Jeppeson, P. O. Box 108, Anchor Pt., Ak. 99566

108. Lloyd and Roxie Schade, SR A, Homer, Alaska 99603

109. Harry Bjerregaard, Box 585, Homer, Ak. 99603

110. Fred L. Elvsaas, President, Seldovia Native Assoc, Seldovia

111. Homer S. Thompson, Box 116, Homer

112. Barbara and Ralph Strardin

113. Bob and Gail Simcoe, P. O. Box 1213, Homer

114. Michael Hart, P. O. Box 6063, Anchorage 99502

115. Bill and Elizabeth Johnson, P. O. Box 658, Homer

116. Keneth Carlton, 1900 E 56th, Anchorage, Ak. 99507

117. Gordon P. Samel, Box 387E, SRA, Anchorage, Ak.

118. Theresa A. Palmer, Box 4461, Anch. Ak. 99509

119. James N. Stefeth, 1911 Alder Dr., Anch., Ak. 99504

120. A. Helgoe, SRA, Box 1770K, Anchorage, Ak. 99507

121. Vicki Watts, 321 E. 46th , Apt. #1, Anch. 99502

122. W. Meehan, 2941 Madison Way, Anchorage, Ak. 99504

123. Joseph K. Goodrich, 7509 Old Harbor Ave., Anch. 99504

124. Ron Engley, 1241 West 26th Ave., Anchorage

125. Joseph C. Jerkovich, 317 N. Klevin, Anch. 99504

126. Ted Rasmussen, P. O. Box 8571, Anch. 99508

127. John M. Osmin, 840 West 70th, Anch., Ak. 99502

128. Carl J. Brenner, 8137 East 5th, Anch. AK. 99504

129. Wayne D. Mitchell, 2719 E. 17th St., Anchorage

KACHEMAK BAY

AGAINST HB 192

130. W. D. Esorts, 4147 W. 88th Ave., Anch. Ak. 99502

131. Martha Gore, 1542 E. 26th Ave., Anch., Ak. 99504

132. Robert W. Meier, 701 W 71st, Anch., Ak.

133. Al Groller, 3301 West 79th, Anch.

134. Jane R. Lindsey, 3514 Vassar, Anch. 99504

135. R. H. McDonald, 3307 Boniface SP 110X, Anch. Ak. 99504

136. Kenneth L. Wiccits, 3740 Mt. Blane Circle, Anch. 99504

137. Paul R. Crippen, P. O. Box 299, Palmer, Ak. 99645

138. Margie Hurley, P. O. Box 1054, Anch., Ak. 99510

139. Pat Hurley, 1708 Wickersham Dr., Anchorage 99503

140. Bill J. Taylor, 3900 Malaspina Circle, Anchorage

141. William R. Gates, SRA, 1572-X, Anchorage

142. Lillian P. Asymus, 7420 Augustine Drive, Anch., Ak.

143. Suzanne Wolcutt, 4927 Marion Ave., Anch., 99504

144. Linda Eazley, 1241 W. 26th Ave., Anch., Ak. 99503

145. James Bascre, 1321 W. 72nd, Anchorage, Ak.

146. Barbara Melnick, 705 Muldoon #184, Anch., Ak. 99503

147. Jack Anderson, 1430 W. 12th, Anchorage, Ak.

148. Carol L. Doyle, 4261 Edinburgh Dr., Anch. 99502

149. Edna L. Czerski, P. O. Box 354, Eagle River, Ak.

150. Charles L. Christy, 4112 Westwood Drive, Anch., Ak. 99503

151. Gary Tanghe, 3412 Glenn-Don Drive, Anchorage, Ak. 99504

152. George A. Morris, 5924 Prosperity Drive, Anch. 99504

153. Geneva Peart, SRA, Box 1459-J, Anch.

154. Jan D. Schommer, SR Box 230J, Eagle River 99577

KACHEMAK BAY

AGAINST HB 192

155. Marion C. Hudson, 3807 McCain Road, Anch. 99503

156. F. J. Cummings, 5901 E. 6th, #3 Anchorage

157. Sandra L. Carlton, 1900 E 56th, Anch. 99507

158. K. A. Neuman, 1048 Whitney Road, Anch.

159. P. H. Miller, 1329 1/2 Cedar St., Anchorage 99501

160. Dane P. Terry, 1117 Chugach Way, Apt. #1, Anch., Ak. 99503

161. Irwin P. Cook, Jr., 1414 Wolverine St., Anch., Ak. 99504

162. Robert D. Ouer, SRA Box 377-K, Anch., Ak.

163. Lawrence S. Gertzen, SRA Box 456, Anchorage, Ak.

164. Jack L. Anderson, 7200 Ticonderoga Place, Anch., Ak.

165. D. Donns, 1541 W. 12th, Anchorage

166. Fred Gallant, 715 Rappe Ct., Anch., Ak.

167. Kerney F. Peart, SRA Box 1459-J, Anch. Ak.

168. Pat Faherty, SRA Box 377-K, Anch. Ak.

169. Kenneth M. Ridder, SRA 1562 G, Anch. 99507

170. Frank LaFazio, STA 1725 B, Anch, Ak. 99507

171. Tom Keigley, 124 E. Third Ave., #307, Anch 99501

172. J. B. Long, 124 East 3rd, Apt. 307, Anch., Ak. 99501

173. R. L. Cavalero, 2600, Anchorage, Ak.

174. William C. Brunens, 513 E. 10th Ave., Anch., Ak.

175. Helen S. Montague, 1903 Aleutian St., Anch., Ak. 99504

176. Robert W. Dunsmore, Sr., 3205 Oregon Dr., Apt. B, Anch.

177. R. W. Beatty, 3104 Northwood, Anch., Ak.

178. Woody Snell, Box 556, Kodiak, Ak. 99615

179. Elvin A. Parker, Box 556, Kidiak, Ak. 99615

180. Peter W. Shaw, SRA Box 33-C, Anch., Ak. 99501

KACHEMAK BAY

AGAINST HB 192

119. Sandra Jerkovich, 317 Klevin Ave., Anch, Ak. 99504
120. R. Ruth Brooking, 7524 Arthur Ct., Anch., Ak. 99502
121. Alfred Strawn, P. O. Box 210, Palmer, Ak. 99645
122. Edward M. Wilkerson
123. Darlo D. Dayton, Box 556, Kodiak, Ak. 99615
124. Fred Elfohnso, Box 6341, Anchorage, Ak. 99502
125. William B. McCullough
126. George Rideus
127. Jean Yonaha
128. Beverly A. Webb, Star Route A, Box 1463 Q, Anch., Ak.
129. Brenda Hanson
130. John C. Onhard
131. Bruce Barber, 9010 Noble Circle, Anch., Ak.
132. Lloyd E. Weeks, Vickie M. Acton
133. Robert F. Jensen, Box 107, Sterling, Ak.
134. Marion L. Jensen, Box 107, Sterling, Ak. 99672
135. Tom Rohne, 1601 West 15th Avenue, Anchorage, Ak.
136. Kurt Nelson, P. O. Box 1535, Soldotna, Ak. 99669
137. Nancy Nelson, Box 1535, Soldotna, Ak. 99669
138. Albert T. Cooper, Jr., 3431 Kachemak Circle, Anchorage, Ak.
139. Steven C. Tressle, P. O. Box 3207, Kenai, Ak. 99611
140. Bill Starne, P. O. Box 9001, Kenai, Ak.
141. Michael H. Balick, 6937 Bugle Ct., Anch., Ak. 99507
142. Maureen E. Schwaub, 3701 Eureka, Sp. 89-A, Anch., Ak 99503
143. Richard O. Elielsen, Box 911, Kenai, Ak.

KATHEMAK BAY

AGAINST HB 192

144. Barbara J. Simpson, 511 E. 46th Place, Anch., Ak. 99503

145. John H. Mark, Box 238, Soldotna, Ak. 99669

146. Ronald Rowell, Box 841, Kenai, Ak. 99611

147. Rockwell G. Smith, Box 951, Kenai, Ak.

148. Larry Brooking, 917 Cordova, Anch., Ak.

149. Dale H. Auldridge, Box 606, Sterling, Ak. 99672

150. Donald G. Wyckoff, Box 477, Kenai, Ak. 99611

151. William C. Lindsey, 3514 Vasser Drive, Anch., Ak. 99504

152. Jean Brooking, 917 Cordova, Anchorage, Ak. 99501

153. Patricia Lynne Hunt, 2141 Duvoy Court, Anch., Ak. 99502

154. A. D. Call, Box 4-1119, Anch., Ak. 99509

155. C. R. Lang, 3231 Briarcliff, Anch., Ak.

156. Terri Lee Wren, 937 West 19th, Anch., Ak. 99503

157. Timothy Murphy, P. O. Box 3545, Kodiak, Ak. 99615

158. Marion Webb, SRA 1414 D, Anchorage, Ak. 99502

159. Hilton V. Jones, 3500 Kachemak Pl., Anch., Ak. 99502

160. Linda Frison, P. O. Box 1301, Soldotna, Ak.

161. Lyle R. Lybbert, P. O. Box 3486, Kenai, Ak.

162. R. A. Gill, 7208 Turnagain Highway, Anchorage, Ak. 99503

163. Norma Spoonts, Box 1241, Kenai, Alaska 99611

164. Gary L. Foster, Box 395, Soldotna, Alaska 99669

165. Don A. Martin, Box 204, Kasilof, Alaska

166. Howard Beck, Box 2884, Kenai, Alaska

167. Paul McBride, General Delivery, Kenai, Ak.

168. Joel T. Superman, P. O. Box 2842, Kenai, Ak. 99611

KACHEMAK BAY

AGAINST HB 192

169. E. M. Brooking, 7524 Arthur Court, Anchorage, Ak. 99502
170. C. V. Wellen, P. O. Box 937, Kenai, Ak. 99611
171. R. F. Krause, 7135 Whitehall Rd., Anch., Ak.
172. Frances S. Dely, 7609 E. 20th Avenue, Anch., Ak 99504
173. Charles H. Goodson, 7019 Linden Circle, Anch., Ak.
174. Debra Anne Goodson, 7019 Linden Circle, Anch., Ak.
175. Nellie Goodson, 7019 Linden Circle, Anch., Ak.
176. D. I. Daley, 5913 Prosperity Drive, Anch., Ak. 99504
177. Louise M. Reynolds, 3617 Strawberry Road, Anch., Ak. 99502
178. Kent M. Reynolds, 3617 Strawberry Road, Anch., Ak. 99501
179. Jerry Alyea, SRA Box 1462 B, Anch., Ak. 99501
180. Dora K. Ray, 1625 Sonja Circle, Anchorage, Ak. 99504
181. Debi Banks, 3101 W. 31st #2, Anch., Ak.
182. Philip W. Reynolds, 3617 Strawberry Road, Anch. Ak.
183. Mark Strub, 2432 Card Baranof
184. Harold Ottler, 7744 Old Harbor, Anchorage, Ak.
185. Cordelia J. Goodrich, 7509 Old Harbor Ave., Anch., Ak.
186. Cire Gray, P. O. Box 371, Palmer, Ak.
187. Gordon V. Gladson, Box 414, Palmer, Ak.
188. Maybelle German, 1455 W. 25th, Anchorage, Ak. 99503
189. Kevin Mattfield, Box 269, Kenai, Ak.
190. Helen Houler, SRA 1587-S, Anch., Ak.
191. Ralph Soller, P. O. Box AB, Plamer, Ak.
192. J. F. Voteva, SRA Box 1585 K., Anchorage, Ak.
193. Elaine Cole, 6909 Cutty Sark, Anch., Ak. 99502
194. Donald E. Cole, 6909 Cutty Sark, Anch., Ak. 99502

KACHEMAK BAY

AGAINST HB 192

194. David Beeman, SRA Box 1600-R, Anch., Ak. 99507

195. Sharon A. Roberds, 117 Grand Larry, Anchorage, Ak. 99504

196. Diane Sciscinte, 4300 Arctic Blvd. #15, Anch., Ak. 99503

197. Vatrice Wells, 1900 "K" Street, Anch., Ak. 99503

198. Ivan R. Rice, SRA Box 4126, Anch., Ak. 99502

199. Wm. Mark Starkweather, 7037 Arctic Blvd., Anch., Ak.

200. Cora Starkweather, 2034 Eastridge Dr., Anch., Ak.

201. John P. Suter, Box 610, West Lockridge, Eagle River 99517

202. Arlyn J. Hanson, Box 186, Palmer, Ak. 99645

203. Donald Hennessey, 8244 Seaview, Anchorage, Ak.

204. Jerry Brown, Box 374, Palmer, Ak. 99645

205. Doris Ayres, SR 1, Box 130 Whirlaway Road, Eagle River, Ak.

206. Edith B. Cooper, 3431 Kachemak Circle, Anchorage, Ak.

207. Sharon Storm, P. O. Box 7001, Kenai, Ak.

208. M. J. Catlin, P. O. Box 543, Chugiak, Ak.

209. Ruthann Rich, 7509 Old Harbor Rd., Anchorage, Ak. 99504

210. James K. Meister, 1434 "I" Street, Anch., Ak. 99501

211. Robert B. Frank, 7031 Altoona Drive, Anch. Ak.

212. J. R. Perron, 124 E. 3rd, Anchorage, Ak.

213. John Irvine, 340 Mumford, Apt. #1, Anch., Ak.

214. Ben Mead, 277 East Potter Drive, Anch., Ak. 99502

215. Douglas Callison, P. O. Box 4-510, Spenard, Ak. 99509

216. Larry Delahoussage, 1200 W. Dimond, Sp. 505, Anch., Ak.

217. John E. Anderson, 7420 Abbott Loop Rd., Anch., Ak.

218. Fae M. Kuebnoel, Box 183 Man O'War Road, Eagle River, Ak.

KACHEMAK BAY

AGAINST HB 192

219. N. Crose, SRA, Box 1625 M, Anch., Ak. 99507

220. Michael Kush, 6840 E. 3rd, Anchorage, Ak. 99501

221. Mrs. Lynn A. Hudson, 2852 Telequana #3, Anchorage, Ak. 99501

222. Irvin F. Tolbet, 1545 Sunrise Dr., Anch., Ak. 99504

223. John T. Andrews, Box 4-179, Anch., Ak. 99509

224. Edwin R. Seaman, 1446 E. 27th, Anch., Ak. 99504

225. Lynn A. Hudson, 2852 Telequana #3, Anch., Ak. 99504

226. Dorothy Ford, 6314 E. 31st., Anch., Ak. 99501

227. Mrs. John D. Andrews, Box 4-179, Anch., Ak. 99509

228. John Tyhuis, Box 2392, Kodiak, Ak.

229. Fred Johnston, Box 4-972, Anch., Ak. 99503

230. Laura Wandersee, c/o General Delivery, Kodiak, Ak. 99615

231. Dayton Wandersee, c/o General Delivery, Kodiak, Ak. 99615

232. William J. Deen, 3441 Kachemak, Anch., Ak. 99501

233. William O. Ford, 6314 E. 31st, Bldg. A, #4, Anch., Ak.

234. Glenn D. Miller, 2921 Wiley Post Ave., Anch., Ak. 99503

235. Kelly J. Booker, Box 4, Kenai

236. Stephen Garner, P. O. Box 7174 NRB, Kenai, Ak.

237. William L. Crose, Box 7022, NRB, Kenai, Ak. 99611

238. R. L. Harrison, Box 3936, Kenai, Ak.

239. W. H. Curry, P. O. Box P, Kenai, Ak. 99611

240. Philip Seaberg, Box 1175, Soldotna, Ak. 99669

241. Jack Hayes, Box #45, Kenai, Alaska 99611

242. Joseph DuPaul, P. O. Box 2929, Kenai, Ak.

243. Robert G. Garner, Box 1177, Kenai, Ak. 99611

KACHEMAK BAY

AGAINST HB 192

244. Mr. and Mrs. Harry McCurdy, Box 1349, Kenai, Ak. 99611

245. L. Dean Fritz, Box 3679, Kenai, Ak. 99611

246. Clyde Ckess, Box 71, Kenai, Ak.

247. James M. Voyle, 4001 Garfield, Anch., Ak.

248. Ida Stoddard, 7800 Dover Ave., Anch., Ak. 99504

249. David VanHorn, 2310 W. Tudor, Anchorage, Ak.

250. Robert S. Wilmarth, 5349 E. 41 Ave., Anch., Ak.

251. Tom Brown, P. O. Box 4-2874, Anch., Ak. 99509

252. Sol Nicholson, 3101 Sleeping Lary Drive, Anch., Ak.

253. Marlow Kramer, P. O. Box 3554, Anch., Ak.

254. Gordon C. Corbeil, 1114 E. 5th Ave., Anch., Ak. 99501

255. Steve J. Kile, 2940 Sunflower, Anch., Ak. 99504

256. Alvin G. Alb, 1518 Wolverine St., Anch., Ak. 99504

257. Judith A. Bennett, 1402 W 27th, Anch., Ak. 99501

258. Gloria Juliussen, P. O. Box 985, Kenai, Ak.

259. Virginia Foster, P. O. Box 7132 NRB, Kenai, Ak. 99611

260. Nelly Foster, P. O. Box 7132, NRB, Kenai, Ak. 99611

261. Joe DuCosto, 1210 W. 47th, Anchorage, Ak. 99502

262. Shirley Corbeil, 1114 E. 5th, Anch., Ak. 99501

263. Steve Jansen, 3.7 Mile Chena Pump Rd., Fairbanks, Ak. 99701

264. Jim Jansen, Box 471, Fairbanks, Ak. 99701

265. Kelly Pleas, P. O. Box 850, Juneau, Ak.

266. Clint Finstad, P. O. Box 60547, Fairbanks, Ak.

267. Dave Johnsen, 3320 Admiralty Bay Drive, Anch., Ak. 99502

268. Larry Foster, 1502 Turpin, Anch., Ak. 99504

KACHEMAK BAY

AGAINST HB 192

269. Robert C. Jackson, Rt. 3, Linwood Lane, Kenai, Ak.

270. M. Graves, Box 88, Kenai, Ak. 99611

271. R. M. Grages, Box 88, Kenai, Ak. 99611

272. David Hempshall, Box 955, Soldotna

273. Bill Sipple, 900 Kathy Drive, Anch., Ak. 99504

274. R. M. Edwin Fletcher, Box 1124, Homer, Ak. 99603

275. Lawrence A. Delef, 7609 E. 20th Ave., Anch., Ak. 99504

276. Mrs. Kay Crose, Box 7022, NRB, Kenai, Ak. 99611

277. R. J. Gillas, SRA, Box 44, Homer, Ak. 99603

278. Thomas N. Johnson, 3001 Spenard Rd., Anch., Ak.

279. R. H. Howell, 6538 Notting Hill Drive, ., Ak.

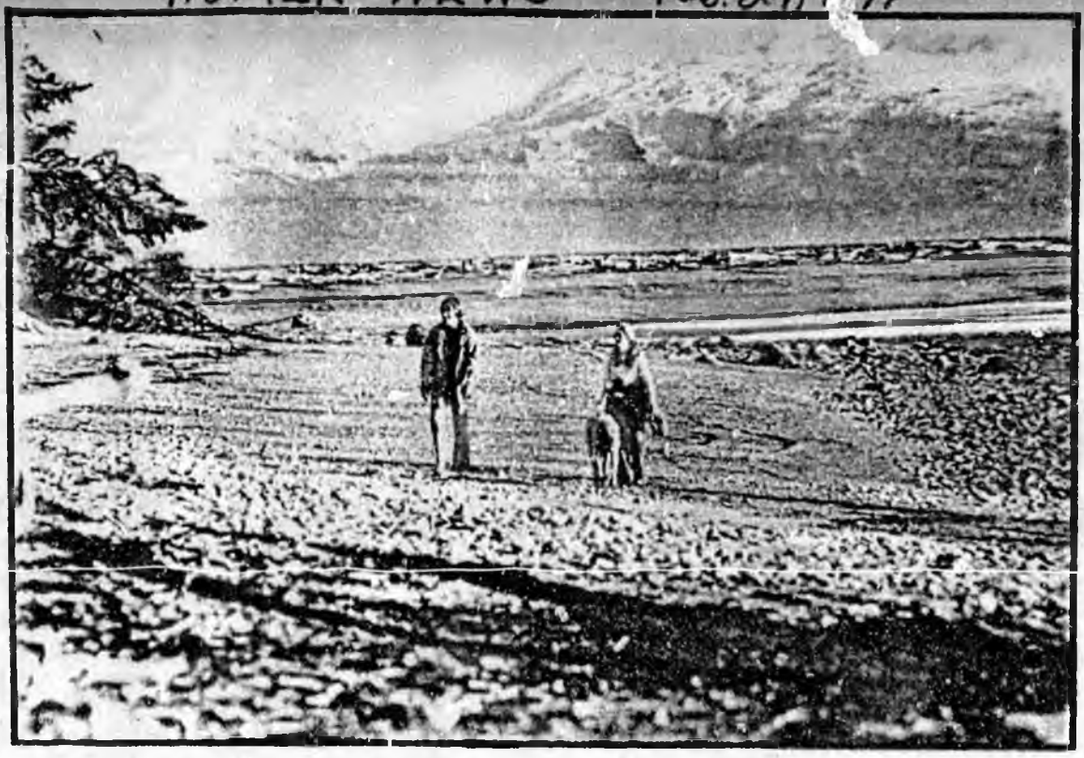
280. Mrs. Dorothy C. Howell, 6538 Notting Hill Dr., Anch. Ak.

281. Margaret J Benson, 3307 W. 80th, Anch., Ak.

282. Carlee Mertz, P. O. Box 938, Kenai, Ak. 99611

283. Alice M. Jardine, 4000 Caravelle Ave., Anch., Ak. 99502

HOMER NEWS Feb. 24, 1977



Strolling on Homer's warm beaches in winter is growing in popularity. Gary Williams — photo

Complete study released

Kachemak Bay

Baring-Gould study out

The final report on a attitudinal and demographic survey of Homer has been released to the public. The report, "Homer Area Survey: Attitudes Toward Growth and Deveopment" was officially presented to the Homer City Council at their February 14 meeting by one of the surve 's authors, Dr. Michael Baring-Gould of the University of Alaska.

Parts of the study have appeared in another recently released survey of the five first class cities on the Kenai Peninsula, Homer, Kenai, Soldotna, Seward and Seldovia. The study supervised by Dr. Baring-Gould, and conducted with the help of Homer high school students, concerned itself only with Homer and the immediate surrounding area.

The survey questioned about 40% of the households in and about 25% of the households in the Homer area outside the city limits. According to the report the results are accurate within 5 percentage points, plus or minus.

The study gives a profile of the persons it interviewed as being 98% white, with an average age of 35 years and an average education of one year of college. More than half had resided in Homer five years or longer. The average family income for the total area was $13,400 which broke down to averages of $17,100 Homer and $11,300 outside the city.

Residents conpensated their income through relying on sub sistence to varying degrees, more so outside the city than within it. Those who obtained at least half their meat and fish supply through subsistence fishing and hunting amounted to 38% of Homer residents and 65% of those outside Homer, for a combined Homer area average of 54%.

In further profiling the respodents to the survey, the report shows that the attraction of living in Homer is predominately the lifestyle found here. More than twice as many people chose that option than chose employment or job reasons, and as many people came for the aesthetic qualities of the area as came for job opportunities. When asked what they like best about Homer, lifestyle and aesthetic values were the overwhelmi g choice.

The study says, "These same values are expressed in a variety of other questions. For a majority of residents all considered very important living in a quiet community, having aged friends, participating in subsistence activities, and being able to make or fix many of the things needed by a family, while holding a high paying job was rated as only somewhat important. The importance of these values is indicated by the fact that less than 10% of the area residents planned on moving away from Homer within the next seven years, and majorities in both city and rural areas plan to remain permanently. Another 10% stated that they would remain permanently unless the community underwent significant growth and change."

The survey also questioned people on their attitudes toward Homer's size, growth, and development activities.

When asked what size they would like to see Homer in the next 10-15 years, nearly half of those asked picked the town's present size. Those within the city limits favored more growth than those outside. Still, 65% of city residents wanted to see a

See "Study" page 2

New grou

Homer's a

A new community based alcoholism and drug abuse program has begun in Homer which will serve the lower Kenai Peninsula area. The program, called Lifeline, is run by local volunteers, and will provide counseling, referal, and information on drug and alcohol related problems, as well as crisis-intervention.

The establishment of the center in Homer, which in the past has had to rely on services from the Kenai branch of the Cook Inlet Council on Alcoholism, reflects a growing awareness here, and in the state, of the magnitude of the alcoholism problem in Alaska. In 1976 the Governor's Advisory Board on Alcoholism said alcoholism was the number one health problem in Alaska.

Last week Governor Hammond asked the legislature to make major reforms in state liquor laws, aimed at reducing per capita consumption of alcohol. The proposals would forbid certain kinds of liquor advertising, strengthen anti-bootlegging laws, give communities under 12,000 people the right to outlaw all but community operated retail liquor stores, and establish limits on the amount of alcohol a person

Flushing hydrants will bring. . .

Muddy water here

For the next week or two Homer residents may start their days with an unappetizing morning sight. Muddy tap water. Beginning next Monday or Tuesday the city will begin flushing fire hydrants in order to clear sediment out of the city's water mains.

The flushing will be done in the late evening hours, beginning around 11:00 p.m. and continuing for several hours. Most of the work will be down in the central area of town covered by the original town water system.

Charles Mortimer, Director of Public Works, explained that the flushing at night will probably cause the muddy morning water, although they will try to flush hydrants until the water becomes clear.

The original water source for the water system was wells, which had a high organic iron content. The only treatment this water received was chlorination. The non-treated residue in the pipes percipitate out to settle along the bottoms of water pipes. Mr. Mortimer said there have been some complaints this winter of muddy water, and that flushing the mains should clear the water eventually.

The water tank by the hospital will also be emptied and cleaned, but that should not affect the quality of city water.

Flushing the mains causes muddy water because the hydrants draw much more water faster through the pipes than does residential use, and stirs up the sediment in the pipes. The idea is to get that water full of dirt out through the hydrants, but it's not always possible to be 100 per cent effective.

Study Out

Continued from page 1

size of less than 3,000, or double the city's present popluation.

When asked what types of industrial development was most desirable to them, more than 75% of city residents chose commercial fishing and fish processing, light manufacturing, and education and research, between 75% and 50% chose transportation and storage facilities and tourism, 37% chose on shore oil facilities, and less than 25% chose heavy industry or petrochemical industries.

The study also asked four questions about onshore oil development assuming development does occur in Lower Cook Inlet. (see accompanying chart). The study also found that the older the respondent was, and the longer his or her residency in Homer was, the more favorably that person viewed on shore oil facilities. Groups that tended to favor onshore oil development were managers/owners and retired and unemployed people. Those who wan wanted to discourage onshore oil development were professionals, techinical workers, craftsmen and laborers, fishermen, cannery workers, and farmers and homesteaders.

The study also noted, with surprise, that, "among those who would discourage oil are the craftsmen and laborers who might anticipate the most direct economic benefits, whereas the favorably inclined retired people are most likely to experience the negative effects from an inflationary local economy."

In a telephone interview, Dr. Baring-Gould cautioned against looking only at the question of oil development in Homer.

"People shouldn't look at the study exlusively from an oil standpoint," he said. "That's one of my fears. There are a lot of areas in the study not dealing with oil."

"Homer can use the study to help establish priorities and plan the types of projects to be developed in the city. I hope

and street improvements, harbor and port facilities, recreation facilities, sewer system, and tourist and camper facilities. Residents favor first a sales tax, then service charges for financing any expansion in city services.

Finally the survey asked several questions related to zoning and land use. It found that 87% of the people in the Homer area felt the beauty of the surrounding open lands was very important to them and wanted state parks, or some other mean to protect these lands in their undeveloped states.

Those surveyed expressed their feelings about zoning within the city limits. About half of the city's residents favored moderate zoning, and a quarter ed strong zoning. Respondents were strongly in favor of zoning industrial and multiple unit dwellings, evenly divided on commercial zoning, and strongly opposed to residential zoning.

Residents also wanted to see oil facilities be developed outside the city limits on publicly leased land, if development occurs.

On the question of oil facilities questions indicate that

1) Homer used as supply port:
   Favor
   Oppose
   Undecided
2) Preferenced for facilities on Homer Spit:
   Fish & fish processing
   Tourism
   Industrial
   Undecided
3) Oil storage & tanking faciliti on Spit:
   Favor
   Oppose
   Undecided
4) Warehouse storage for oil exploration on Spit:
   Favor
   Oppose
   Undecided

Source: "Homer Area S Local Growth a

ONSHORE OIL DEVELOPMENT

	HOMER	TOTAL AREA
1) Homer used as supply port:		
Favor	53.2%	38.0%
Oppose	42.7	55.5
Undecided	4.1	6.5
2) Preferenced for facilities on Homer Spit:		
Fish & fish processing	73.6	76.3
Tourism	13.0	10.8
Industrial	9.5	8.8
Undecided	3.9	4.1
3) Oil storage & tanking facilities on Spit:		
Favor	23.8	17.7
Oppose	70.9	78.1
Undecided	5.2	4.3
4) Warehouse storage for oil exploration on Spit:		
Favor	29.7	22.6
Oppose	64.0	69.6
Undecided	6.3	7.8

Source: "Homer Area Survey: Attitudes Toward Local Growth and Development"

See our all new service center with 40 bran Chevrolet units on display inside. Enjoy tasty turnovers, hot dogs, soft drinks and milk ar take home a picture of the Peninsula oilers ba

Study out

Continued from proceeding page

public opinion was consistently opposed to on-shore facilities at the time the survey was taken. This does not of course mean that attitudes cannot change. Changes in the technology or policies of oil companies could conceivably change the perceptions which some residents hold. However, one factor appears to be crucially important at present This is that opposition to oil represents a divisive force within the community and that any immediate action taken to initiate facilities would probably only serve to increase this level of antagonism."

Dr. Baring-Gould commented further, "Sure, attitudes do change," he said. "But in Homer, where these topics have been discussed for some time, these attitudes are fairly concrete."

One thing strikes me. Where questions were asked about on shore oil development that assumed competition with existing uses of area, people became opposed to it. Not just oil, but tourism also. When tourism questions did not assume competitive uses, they were viewed favorably."

Dr. Baring-Gould continued, "Overall the study does constitute a referendum.

"You believe in a survey when you ask four or five questions and get a consistant result You can see this in that people value a quiet community more than they value a high paying job, or by looking at the reasons people came to Homer and what they value most about it.

"There's another area that indexes that kind of thing. People wanted to enhance and safeguard the aesthetic qualities and lifestyle that Homer is, even though that might not be in their own self-interests.

"For example, fishermen favored stricter control of oil discharge in the small harbor and stricter environmental controls in the harbor and Kachemak Bay, even though this might cost them money."

In response to a question about how the city government might use the study, Dr. Baring-Gould replied, "It seems to me the city council has two One is deciding not to go for oil. A majority of the people, now, would like them to say that.

"Or two, they could specify the conditions under which oil companies can come in, and then get feedback from the public on those conditions before the development occurs."

The report is only a partial summary of the data the survey gathered. Dr. Baring-Gould pointed out that those desiring information about specific areas, or questions on the survey not covered in the report, could obtain the information from him.

"It is neither assumed nor anticipated that the attitudes described here will remain constant. It is hoped, however, that they will help promote both knowledge about the community and the discussion or thought that is essential for creative planning to occur. Only in this way can change be self-promoted and meet the common human needs of the community.

The population of Homer is a relatively new and young population with a strong tenacity for individual life styles deeply influenced by the traditional resource base. It would be very erroneous to imply that many of the attitudes expressed in the survey are totally negative, particularly those associated with on-shore oil, or that they merely reflect an idealistic desire to preserve traditional life styles alone. A small minority of individuals may hold these, and they would probably be paired with as many others who would oppose them vehemently on every issue. A more representative element of the public, however, appears to be one positively oriented toward changes that will selectively enhance those elements of the community that are consistent with basic values. From the survey, many of these values are closely tied to aesthetic appreciation of the land and Bay, its fishing economy and recreational-subsistence use, and close affinity for qualities of small town life. If residents in Homer are to maintain control over the future of their town, potential developments that are endorsed must be consistent with these resources and values."

"Homer Area Survey: Attitudes Toward Local Growth and Development"

4-HER'S for H

Twenty-eight Alaskans will be early in March. This will be the home exchange visit between t Hawaii, and 4-H'ers from Ninilch the exchange took place in Aug Hawaii visited, toured, fished, h Peninsula.

In Hawaii the Alaskans will be ese descent who will house and fe ing, snorkeling, swimming, body There will also be time for shop will be spent in Hilo and two in H

The travelers are now collecting things to take with them when Alaskan products will be given to gifts. Donations have been and wil

4-H'ers making the trip are Helena Pinnow, Margie Macaule Demidoff, Ninilchik; Kevin Wal Martin, Soldotna; Wendy and Jan are 4-H leaders or parents or peo during their visit here. These inc Cooperative Extension Service, Martin, Josie Blair, and Steve family, Mr. and Mrs. Ernest Suo and Noel Holt, Homer; Reatha Jo son, Anchor Point.

DEPARTMENT OF N
DIVISION
323 E.
Anchorage,

PUBLIC NOTICE

Subject to the provisions of lations promulgated thereunder grant a right-of-way permit to under AS 38.05.035 the followi

Within SE 1/4 SE 1/4 Sectio

Any comments, objections, to the proposed permit must be at the above address on or bef order to be considered. Please attention of the Southcentral Di

The Division of Lands reserv fects in this publication.

/s
D
Sc

PUB: Feb. 17, 24, & Mar. 3, 19

ATTENTION

Native Alaskans living in Homer.

(ADULTS THIS TIME)

You are welcome to attend an informal get-together at the Oskolkoff Residence on City-View Street near the Dental Office. Please come on March 10th, Thursday, 7:00 p.m.

For further information call 235-7184 or 235-8344.

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UNITED FISHERMEN OF ALASKA

MAILING ADDRESS:
P.O. BOX 1352
JUNEAU, ALASKA 99802

OFFICE:
197 S. FRANKLIN ST.
907 586-2820

April 1, 1977

The Honorable Kay Poland, Chairman
Senate Resources Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Poland:

Due to unforeseen circumstances Philip Daniel, Executive Secretary of the United Fishermen of Alaska, is unable to testify before the Senate Resources Committee on House Bill 192. For this reason I am writing to express the views of the UFA.

The United Fishermen of Alaska strongly support the passage of House Bill 192. As there are areas in which the possibility of damage and head-on conflict are low, there are areas where they are high. We feel that Kachemak Bay is one of the latter.

We expect that had the State investigated as provided by law, assessed the fishery of the Bay and taken into account the biological importance of the fishery, the leases would never have been let. Kachemak Bay is one of the cases where mere amount of surface area and location of the fisheries point to head-on conflict.

In short, by asking for passage of this bill, we are also asking that a precedent be set, that fisheries and other renewable resources be given careful study and consideration before decisions are made to lease.

Sincerely,

Kenneth Moore

Kenneth Moore
First Vice President
United Fishermen of Alaska

Janet V. O'Meara
P. O. Box 1125
Homer, Alaska 99603

March 17, 1977

Hon. Kay Poland
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Poland:

I would like to ask for your earnest consideration of SB 192, and any future buy-back bills for Kachemak Bay oil leases.

Last year the legislature, in its wisdom, officially recognized the extreme value of the Bay in terms of marine and other biologic, scenic, and aesthetic resources, when it voted to repeal the leases so inadvisedly sold by the Egan administration. I am aware that you opposed that action, but I hope that you are not too proud to consider reversing that stand.

The Bay is of critical importance to residents of this area. In a recent public survey conducted by members of the University of Alaska, Anchorage (known unofficially as the Baring-Gould study), it was revealed that some 98% of Homer area residents favor encouragement of the local fishing industry, and that at least 75% were opposed to petrochemical development of any kind in this area. We need the Bay. It provides our physical and spiritual livelihood.

If you have read the Dept. of Interior's Environmental Impact Statement regarding social and environmental impact upon local residents should the federal government proceed with OCS development of lower Cook Inlet, you know what a black picture is presented. The picture is at least as bleak should oil development occur within the Bay itself: massive destruction of Bay environs and of a way of life for area residents.

If you have not read that Statement, I request that you at least review Section III.E.5 (Impact on Community Social Structure) and Section V (Adverse Environmental Effects Which Cannot be Avoided). Once you have seen the alternative proposed, I am sure you will, in good conscience, be able to lend your full support to this and later similar buy-back bills.

Thank you for your consideration in this matter.

Sincerely,

Janet V. O'Meara

JANET V. O'MEARA

jo

SHELL OIL COMPANY
601 W. 5TH AVENUE, SUITE 810
ANCHORAGE, ALASKA 99501

March 1, 1977

Dear Senator:

You will soon be considering House Bill 192, which, if approved, will appropriate $12 million for the re-purchase by the State of Chevron's oil and gas leases in Kachemak Bay, Lower Cook Inlet. The total acquisition cost will actually be about $21 million. Further, we assume that you will soon be asked to appropriate another $3.5 million to re-acquire the leases of Texaco.

We have been asked to inform you of Shell Oil Company's position concerning our leases in Kachemak Bay which we acquired for $5.4 million in the 1973 sale.

We are not seeking negotiations with the State at this time in hopes that the State will not see fit to complete the execution of its option to re-acquire the leases.

Our hopes in this respect are derived from the language in the Act which imposed the moratorium. The Act provides that the Commissioner of Natural Resources "may" enter into negotiations to reacquire the leases. Also, in reference to possible condemnation action after the moratorium expires, the word "may" is again used.

We interpret the language to mean that there is a reasonable chance that the State will not find it necessary or appropriate to reacquire the leases, and that drilling could proceed if and when the validity of the leases is established by the pending court proceedings. In fact, the 1976 Act establishing the drilling moratorium states that one purpose of the moratorium is to "permit the Department of Fish and Game a reasonable time to develop plans to insure protection for the living resources of the bay from possible pollution incidental to drilling activities." Perhaps this has now been done.

Our prime objective remains to drill under our Kachemak Bay leases. These leases were purchased in good faith after expending considerable sums in preparation for the lease sale. Thereafter, additional sizeable expenditures were invested in preparing to drill and in assisting in the defense of the court attack on the leases.

We are convinced that we can operate in Kachemak Bay without significant harmful effects on the environment and without detriment to the fishing industry. We further believe that the development of the hydrocarbon resources under the Bay will inure to the benefit of all of the citizens of Alaska, as well as the nation.

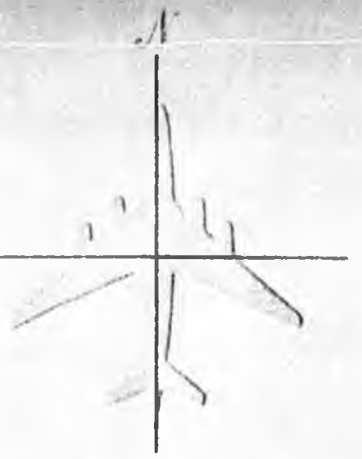
Yours very truly,

T. S. Cate
Land Representative

TSC/rrp

Anchorage

CHAMBER of COMMERCE



Crossroads of the Air World

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Dean Ehrich

March 22, 1977

Honorable Kay Poland
Chairman, Senate Resources Committee
Alaska State Senate
Pouch V, State Capitol Bldg.
Juneau, Alaska 99811

Dear Kay:

We enclosed an informational copy of a recent Chamber of Commerce news release regarding positions adopted by the Chamber on several pending legislative issues.

We would particularly like to draw your attention to our position on HB 192 relating to the repurchase by the State of certain Kachemak Bay leases. As you will note, we recommend opposition to any appropriation of State funds to repurchase leases, not because we object to proper reimbursement of the oil companies involved but because we oppose any State action designed to cancel the leases at all. Our position was developed in the hope that the leaseholders will eventually be able to produce; this in view of the existing serious energy shortages in the nation.

Sincerely,

Dean Ehrich
Manager

DE/mlw

Enclosures

NEWS/MEDIA RELEASE

Greater Anchorage
CHAMBER of COMMERCE

Crossroads of the Air World

Press Release: Chamber of Commerce States Positions on Several Legislative Issues 3-21-77

During it's regular meeting on March 18, The Anchorage Chamber of Commerce Board of Directors adopted positions on several issues now pending before The Alaska State Legislature, according to Chamber President Bob Hartig.

One of the most controversial of these was a proposal which, as now amended, would provide that the State Government pay 90% of the principal and interest on bonds or other indebtedness incurred by organized local governments to pay costs of school construction. Under present law, organized local governments pay 50% of their costs while unorganized areas receive 100% funding from the state.

After a great deal of study and deliberation, The Chamber Board voted to adopt a position in opposition to increased state funding of school construction. During discussion prior to this action, it was stated that, while such state aid for local school construction appears attractive at first glance, it was doubtful as to whether Anchorage taxpayers would benefit in the long run. It is likely that State taxes might very well increase eventually and local governments could lose much of the control over their school construction programs. Opponents of increased state funding also pointed out the possibility that unnecessary construction might be encouraged.

The Chamber Board also adopted a general position opposing any appropriation of state funds to repurchase Kachemak Bay Oil Leases; and instead, recommended that the Legislature take action to eliminate the eminent domain clause contained in the 1976 action originally cancelling the leases. A spokesman for the Chamber emphasized the Board's action was because of the Chamber's opposition to the State's attempt to cancel the leases and not because it opposes reimbursement for the oil companies involved in Kachemak Bay. It is hoped by the Chamber that exploration and production will eventually be allowed to proceed on the leases in question.

NEWS/MEDIA

RELEASE

Greater Anchorage

CHAMBER of COMMERCE

Crossroads of the Air World

In other action, The Chamber expressed it's support of a measure (HB 302) which would prohibit attorneys from representing parties in civil actions before the small claims courts. The Chamber supports the concept that small claims court was originally designed to settle uncomplicated civil disputes between private citizens in an atmosphere of informality and at the least possible expense to the parties involved. More complicated matters may be heard in regular District Court or in Superior Court where formal rules of evidence would apply.

The present small claims dollar limit is $1,000. The Chamber is already on record in support of a measure (SB 137) which would raise that limit to $2,000. That bill recently passed the State Senate by a vote of 20-0.

The positions taken by the Chamber on these and other legislative matters were developed after research and study by The Chamber's State Legislative Affairs Committee. Presenting recommendations to the Board on behalf of the Committee was Committee Vice Chairman Walt Bonnett.

CINDY HUSEMAN
THE ANCHORAGE CHAMBER OF COMMERCE
3-77-33
272-2401

Barbara C. Manley
P.O. Box 955
Homer, Alaska 99603

February 28, 1977

The Honorable Kay Poland
Alaska State Senate
Pouch V
Juneau, Alaska 99801

Dear Senator Poland:

Reference HB 192

I respectfully ask that you will vote to oppose the appropriation of 12 million dollars, the cash portion of the total 21.1 million dollars to be paid to buy back the Chevron, USA oil leases in Kachemak Bay, for these reasons:

1. The legislative authority for the buy-back of these leases, HOUSE CS FOR CS FOR SENATE BILL NO 720, was passed under emotional duress. No legislation based on emotionalism (i.e. misinformation and half-truths reported on the GEORGE F. FERRIS, drilling rig, incident in Kachemak Bay May-June, 1976) can be good legislation; nor can it be in the best interest of the state nor the people whom you represent.

2. The close proximity of the Kachemak Bay leases to federal lease jurisdiction. The Kachemak Bay area will be exposed to virtually the same calculated risks from federal lease exploration, but without producing revenue to the State of Alaska.

3. The 1973 sale was slightly under 25 million dollars in lease bonus for 64 tracts, 32 of which are located in Kachemak Bay. The purchase price to buy back the Chevron, USA leases (15 tracts) is 21.1 million dollars. Presumably, Texaco will agree to the sale price of 3.5 million dollars. This is 24.6 million dollars to buy back leases from two companies.

Shell Oil Company paid 5.3 million dollars for their tracts. They will have this amount due them, plus unknown millions of dollars in interest, exploration expense and a drilling rig contract. Also, leases are owned by Union Oil Company, Texas International Petroleum, Simasko Production Company and a number of private individuals.

These millions of dollars are not "refunds" from the original approximately 25 million dollars bonus money as the administration and many legislators would have the taxpayers be dupes enough to believe.

These are millions of tax dollars to be taken from the general fund; they are dollars that will become a deficit for the taxpayers to pay. These are tax dollars to be spent for the benefit of a few privileged elitists and selfish, special interest groups. It is money that should be spent to benefit Alaskans of all classes and all interests.

4. It is millions of tax dollars that could:
   (a) Provide docks and airports on the Alaska Peninsula,

the Aleutian Islands, to handle fish products, the groceries and general supplies needed for sheer survival for the residents in those outlying communities.

(b) Provide judicial facilities in our remote areas.

(c) Provide facilities to offer a little comfort for our senior citizens; permit them a little pride and dignity in their few remaining years.

(d) Provide means for a better quality education for our children.

(e) Provide means to meet health needs of many of our Alaskan residents.

(f) Provide means to help re-new our renewable resources, especially the salmon fisheries.

(g) Deny spending these tax dollars and help provide a divers viable economy in the Kachemak Bay communities so that many can be employed. Help them to maintain pride and self reliance.

Thank you for your consideration. Please oppose HB 192 and use these millions of dollars to truly make Alaska a better place to live for many Alaskans.

Sincerely,

Barbara Manley

BARBARA C. MANLEY

P.S. It has been recommended by many people in this area that HCS CSSB 720 should be repealed.

Barbara C. Manley
P.O. Box 955
Homer, Alaska 99603
March 18, 1977

The Honorable Mike Colletta
Senator
Alaska State Legislature
Pouch V.
Juneau, Alaska 99801

Dear Senator Colletta:

Your letter of March 2, 1977 in which you state: "The Supreme Court has declared the Kachemak Bay leases invalid.", reflects your lack of discernible judgmatic ability in making your decision concerning the Kachemak Bay leases. Your statement is totally erroneous as per the Supreme Court Opinion 1284, July 9, 1976.

In the event that your time has not permitted you to give attention to the copy of the Supreme Court Opinion 1284 sent to you on March 14, 1977 from the office of Chief Justice Robert Boochever, extracts from that Opinion are attached.

Although I am not a constituent from your district, you are one of the twenty senators who will vote on enacting a bill that will affect me, my family, my livelihood, my community, my state and my nation.

It distrubs me that you state you have made your decision on House Bill 192, based on a false statement. I cannot believe that you are generally uninformed on issues requiring your decision to, or not to, enact laws which will affect the lives of all Alaska residents. Rather, I suspect that in this instance, you have relied upon information that the Administration, and for personal reasons, some legislators, have promulgated.

In view of the TRUE fact of the Supreme Court Opinion, I implore you to please reconsider your position on paying the oil companies twice the original amount paid to the state for the leases. Please consider:

a. The majority of Kachemak Bay residents were opposed to HCS CSSB 720. It was passed only after the legislators' emotions were plied with the prejudiced news media and half truths, assisted by the special interest groups, over the George F. Ferris incident in Kachemak Bay, May 1976.

b. The purchase price for only Chevron leases, 21.1 million dollars, combined with Federal matching funds..a total 211 million dollars, could do a lot for Alaskans. How many of the badly needed roads, docks, airports, would this amount construct?

c. I am sure that the over seven thousand residents on the Chain would appreciate a few small airstrips, docks, so that they could load their fish, get their supplies and air-evac their sick and injuried. The 12 million dollars cash requested for Chevron could provide medical personnel to that same area where they now have none, not even a public health nurse. This could save paying $2400.00 or so, after boating for

hours to the nearest airfield, for a charter flight into Anchorage. It could also save a life.

d. There are many other bush areas, the interior and rural areas that could be benefitted by these millions of tax dollars that are to be paid to buy back the leases. Yet none of the people who are being deprieved of these benefits are being consulted for their opinions.

e. The Kenai Peninsula desperately needs energy. It costs 1¢ p/KW electricity generated by natural gas; 5¢ p/KW electricity generated by oil. Is it right that all Kenai Penisula residents be further penalized economically?

Again, I ask that you will give corsideration to the justice for ALL Alaskans. Please abide by the opinion of the Supreme Court: "We have no desire in this area, to upset settled transactions which were entered into in good faith."

Please support the repeal of HCS CSSB 720. Let the Superior Court make its decision; let our Judicial Branch perform its distinct assigned function in our democratic government. Thank you for your consideration.

Sincerely,

Barbara C Manley

BARBARA C. MANLEY

ATTACHS:

cc: The Honorable Kay Poland
Chairman, Senate Resource Committee

The Honorable John C. Sackett
Chairman, Senate Finance Committee

The Honorable George H. Hohman
Chairman, Legislative Budget & Audit Committee

The Honorable Frank R. Ferguson
Chairman, Labor & Management

Alaska State Legislature

SENATOR
MIKE COLLETTA
P.O. BOX 3188
ANCHORAGE, ALASKA 99501

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811

Senate

Minority Leader

HEALTH & SOCIAL SERVICES
COMMERCE
STATE AFFAIRS

March 2, 1977

Barbara C. Manley
P.O. Box 955
Homer, AK 99603

Dear Ms Manley:

Thank you for your letter of February 28 stating your reasons for opposing the buy-back of the Kachemak Bay leases.

The Supreme Court has declared the Kachemak Bay leases invalid. The only decision I can make based on the decision of the Supreme Court is compensation to the firms and individuals for the initial cost as well as out-of-pocket expenses.

Again, thank you for your concern.

Sincerely,

Mike Colletta

Mike Colletta
Senate Floor Leader

dsf

IN THE SUPREME COURT FOR THE STATE OF ALASKA

KENNETH D. MOORE, BILL A. BLEDSOE, PAUL E. JONES, LARRY J. HOLLINSHEAD, KENNETH A. SWICK, JAMES WICKERSHAM, and MICHAEL P. McBRIDE, Appellants, v. STATE OF ALASKA, LORNA CALL, SIMASKO PRODUCTION CO., PHILLIP RAHOI, TEXAS INTERNATIONAL PETROLEUM CORPORATION, STANDARD OIL COMPANY OF CALIFORNIA, SHELL OIL COMPANY, TEXACO, INC., AND UNION OIL COMPANY OF CALIFORNIA, Appellees.	File No. 2551
STANDARD OIL COMPANY OF CALIFORNIA, Cross-Appellant, v. KENNETH D. MOORE, BILL A. BLEDSOE, PAUL E. JONES, LARRY J. HOLLINSHEAD, KENNETH A. SEICK, JAMES WICKERSHAM, and MICHAEL P. McBRIDE, Cross-Appellees.	File No. 2587 OPINION [No. 1284 - July 9, 1976]

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Thomas B. Schulz, Judge.

that the trial court erred in granting summary judgment on laches, we now turn to the other arguments presented to the trial court on the cross-motions for summary judgment to see if grounds exist for upholding its judgment. The issues we must consider include the claims advanced by plaintiffs below, comprising the merits of their case.

III.

The first such question we will consider is whether the Division of Lands complied with legal requirements concerning the publication of notice. Plaintiffs asserted below that the sale was invalid on the ground that the publication of notice of the sale in the Anchorage Times and the Kenai Cheechako News failed to satisfy the relevant constitutional and statutory mandates. As noted above the trial court did not rule on the issue.

Article VIII, § 10, of the Alaska Constitution provides:

> "No disposals or leases of state lands, or interests therein, shall be made without prior notice and other safeguards of the public interest as may be prescribed by law."

Pursuant to this constitutional provision, the legislature enacted the Alaska Land Act, the provisions of which are now found in AS 38.05.005-.370. AS 38.05.345 provides in pertinent part:

> "(a) Public notice of a sale, lease or disposal of land or interest in it, except grants under § 330 of this chapter and preference right grazing leases under §§ 75 and 80 of this chapter, when required, shall be substantially as follows.
>
> (b) Notice shall be published once a week for three consecutive weeks preceding the time of sale stated in the

At the time the notice was published, the population of the Homer area was approximately 3,500. The circulation of the Anchorage Times in the area was approximately 130. The number of readers, albeit small,[21] was not so insignificant that the newspaper would fail to reach a diverse group of people in the community. Therefore, it must be said that the Anchorage Times was a newspaper of "general circulation" in the Homer area.

The foregoing determination precludes plaintiffs from successfully arguing that the Division of Lands failed to give adequate notice of the 28th Competitive Oil and Gas Sale as required by AS 38.05.345.

IV.

Plaintiffs' second claim on the merits was that the sale was unlawful because it was not preceded by a reasoned finding made by the Director of the Division of Lands that the sale would best serve the interests of the state.

21/ The plaintiffs contend that this small percentage of readership mandates a finding that the Anchorage Times does not comply with the statutory requirements. However, Times Printing Co. v. Star Publishing Co., 99 P. 1040, 1041-43 (Wash. 1909), is distinguishable. Indeed, a statistical analysis for the issue at hand would be most inappropriate because size of readership is only one factor which must be considered in determining whether a particular newspaper is one of general circulation.

AS 38.05.035(a)(14) provides:

"The director shall . . .

(14) when he finds that the interests 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 . . . ."

A majority of this court believes that no formal, written finding is necessary under this statutory language. However, a majority of the court also believes that the determination of the director should be judicially reviewable.[22] Accordingly, this case must be remanded to the superior court for appropriate further proceedings on this question.[23]

22/ This subject is treated in the separate opinion filed herein by Justice Rabinowitz.

23/ I must dissent from the court's remand of this case.

I find nothing in this statute requiring a public hearing or formal written finding in order to determine that state lands shall be leased. I am not unmindful of the dangers in assuming that a general award or finding implies a finding of all the specific facts needed to support it. However,

> "Implying ultimate findings from the action taken is quite different. If a statute provides that the agency shall grant the certificate if it finds that the grant is in the public interest, and if the agency grants the certificate without saying anything about the public interest, good sense requires that the reviewing court should imply the ultimate finding of public interest. The courts usually so hold." 2 K. Davis, Administrative Law Treatise § 16.07, at 456 (1958).

Here, the statute makes no mention of a formal, written "finding." It merely says that when the director "finds" it to be in the best interests of the state, he may issue leases. The statute could, to the same effect, have read "when the director believes" or "when the director is of the opinion" that the state's interest is best served, he may lease the lands.

First, to be applied prospectively, the decision "must establish a new principle of law, either by overruling clear past precedent on which litigants may have relied, or by deciding an issue of first impression whose resolution was not clearly foreshadowed."[44/] Second, we must evaluate the merits of retroactive or prospective application of the rule in light of its prior history, purpose and effect. Third, we must weigh the hardship and injustice of applying the rule to the litigants in the instant case.

In applying these standards to the case at bar, we are persuaded that our holding should be applied solely prospectively. The issue before us represents a question of first impression in an area of statutory law which was admittedly not as clear as it might have been.[45/] A primary purpose underlying the statute is to give members of the public who will be affected by a particular disposal of state lands a voice in the disposition of those lands. However, once the disposition has occurred, the new owners or lessors also have a paramount interest in maintaining their rights to the land. We have no desire in this area, to upset settled transactions which were entered into in good faith. The title conflicts which would be engendered if every mineral lease or sale

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44/ Schreiner v. Fruit, 519 P.2d at 466, quoting Chevron Oil Co. v. Huson, 404 U.S. at 106.

45/ See State v. Aleut Corp., 541 P.2d at 740 n.25.

which was executed in the past became vulnerable to attack under the rule we have announced today would be enormous. If allowed, this would create insurmountable problems for the state and numerous individuals. Finally, we believe the oil company defendants in this case were entitled to rely on the Division of Lands' long-standing interpretation of § 305. Unlike our dissenting colleagues, we do not believe that the state's interpretation of the statute was implausible. Ultimately the question of prospectivity must be decided upon a broad basis. In this regard the United States Supreme Court per Cardozo, J., observed:

> "The choice for any state may be determined by the juristic philosophy of the judges of her courts, their conceptions of law, its origin and nature." Great N. Ry. v. Sunburst Oil & Refining Co., supra, at 365.

In order to avoid any injustice, the rule we state in this case shall apply only to actions arising out of occurrences after the date of this opinion.[46/]

46/ See City of Fairbanks v. Schaible, 375 P.2d 201, 211 (Alaska 1962); cf. Scheele v. City of Anchorage, 385 P.2d 582 (Alaska 1963).

Manley Terminals, Inc.
COMPLETE FREIGHT SERVICE
MOVING & STORAGE
OCEAN DRIVE & FAA SPUR ROAD
BOX 955 HOMER, ALASKA 99603

JAMES C. MANLEY
PRESIDENT

(907) 235-8535
(907) 235-8536

February 28, 1977

The Honorable John Rader
President
Alaska State Senate
Pouch V
Juneau, Alaska 99801

Dear Senator Rader:

We would like to compliment you on your wise decision to appoint a committee to fight the high rate of unemployment in our state. Senator Summers and his committee, Senators Sackett, Ziegler, Poland and Ferguson, have a hard road ahead, but it is a great step forward. We hope there will be many beneficial and positive results.

We, as well as others, are deeply concerned over the extremely high rate of unemployment in the Homer area. More people are coming to Homer looking for employment adding to the number of unemployed, long-time residents. The unemployment lines and food stamp lines are out in the street, and there is no immediate hope in sight for employment.

The fish processing plants are shut down for lack of raw products, or closed seasons. One plant is buying some Tanner crab, which has helped a few boats. The area has been so overfished that few fishermen can make a full-time living from fishing. The Limited Entry Law precludes newcomers from entering the salmon fishing business, and it is only a matter of time before all fish come under the Limited Entry program, thus restricting any other people from working in the fishing industry.

Except for a few government, power company, fish processing, and school teaching jobs there is no other sizeable pay roll. In essence the employment situation in this area is "sick".

We own and operate a transportation company that handles 90% of all freight coming in or going out of Homer. The amount of cargo processed through our terminal has been the lowest in years. If you catch fish or have a job, you have money to buy things from lumber to groceries. The cargo movement at this time indicates a horribly depressed economic condition. This cargo index is an excellent indicator at this time. Our company has more unpaid accounts receivable and we have received more bad checks than ever before. We are also holding more undeliverable freight collect and C.O.D. shipments than in the past.

A day doesn't pass that people come to our office seeking employment. Our work force is down 50%. This is the first time since we started in business that we have had to lay off employees.

Last year was a good employment year, based mainly on work generated by the drilling barge Ferris, which spent over $14,000,000 on employment and purchasing of supplies in Alaska. Everyone benefited from this activity. Many of those employed were fishermen who fortunately made enough to help carry them through part of this bad winter.

Your passage of SB 720 to reacquire the Kachemak Bay Leases, killed one big employment possibility for this town. As you certainly must recall, this bill was pushed through based on half truths and emotionalism; plus inaccurate press releases: "The Ferris Has Sunk in Kachemak Bay" and "Worst Oil Spill in Alaska's History". The fact being that the Coast Guard environmental protection office issued a final official statement that less than 300 gallons of fuel were spilled overboard. Most of this was actually grease and oil from the equipment.

The best way for your committee to increase employment in Homer is to oppose HB 192. Save this 21.1 million dollars and use it for public projects. Homer alone needs docks, sewers, water lines, roads, and school buildings. Certainly this same situation exists throughout Alaska. This money, the 21.1 million dollars plus all of the additional buy-back millions, should be used for the benefit of all of the people of Alaska, not just a few local commercial fishermen and conservationists.

It has never been proven by the state that oil development in the area would hurt the fishing industry. The same few individuals and organizations that sued the state over the Kachemak Bay Leases have now sued the Federal Government over the Lower Cook Inlet Lease Sale. However, now the Alaska Conservation Society has openly become a plaintiff in the suit where previously they, and the Sierra Club, had donated funds to the Kachemak Bay Defense Fund.

You must keep in mind, HB 192 to buy back Chevron's leases is only the first, piece-meal step by the administration. Then comes Texaco, for about four million, then the others if they can be forced to sell. Think what you could do with 40 or 50 million dollars worth of public projects which would benefit all of us, not just a select few.

We are sure you have received many wires and letters opposing HB 192. You also must recognize that many of us in Homer are going to fight the administration's attempt to put us on a food stamp economy. We want to work for a living and maintain our dignity, which can only be done by increasing the local employment and giving people jobs.

In addition to opposing HB 192, the best thing you and your committee can do is to submit a Senate Bill to repeal CSESSB 220 in it's entirety. This is the most unjust legislation ever forced upon a segment of the Alaskan Society—the working man.

We would like to recommend that you take time to call any, or all of the following cross section of individuals from Homer to find out first hand the factors about the economic conditions in Homer and their opposition to HB 192:

Mr. Dave Derry, President of Homer Chamber of Commerce, member of Hillas Real Estate Appraisal Company, and former Manager of National Bank of Alaska, Homer Branch 235-8545

Mr. W. C. Rhodes, Manager of Homer Electric Association 235-8552

Mr. Chuck Hendrix, Manager of Seward Fisheries Homer Processing Plant 235-8527 or 235-8578

Mr. Jim Saling, Fisherman, tender boat and barge owner 235-8775

Mr. Larry Farnen, City Manager 235-8767

Mr. John Pate, City Councilman 235-8575

We appreciate the opportunity to present this information and sincerely hope that you oppose HB 192 and give favorable consideration to submitting a bill to repeal CSCSSB 220.

Respectfully,

MANLEY TERMINALS, INC.

James C. Manley

JAMES C. MANLEY
President and General Manager

JCM:sf

cc: Hon. Bill Sumner
Hon. John Sackett
Hon. Robert Ziegler
Hon. Kay Poland
Hon. Frank Ferguson

Homer people want fish, not oil slow growth not boom. Read under line statemen Ts.

Read page 3, 7, 9, 11, 12 + 14

HOMER AREA SURVEY:

ATTITUDES TOWARD LOCAL GROWTH AND DEVELOPMENT

by Michael Baring-Gould and Robert Heasley
Department of Sociology
University of Alaska, Anchorage

with assistance from:
Homer High School
City of Homer, Planning and Zoning Commission
Institute of Social and Economic Research of the University of Alaska
University of Alaska students: Pansy Herring, Gloria Beckley, Monica Deife and June Covert

Financial support for this project was provided by a grant from the Alaska Humanities Forum.

Pass House B. 11 192
North Pacific Fisheries Ass.

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INTRODUCTION

The following survey, conducted primarily by several members of the Sociology Department at the University of Alaska, Anchorage with the assistance of a small grant from the Alaska Humanities Forum, was performed to provide an accurate assessment of attitudes toward growth and development in the Homer, Kachemak Bay area. Its primary and sole purpose was to attain a scientific assessment of public opinion on a diverse variety of local issues and concerns over which the community can take action. It is hoped, however, that this information can be used both by community leaders in the development of local decisions and policies for the future enhancement of the community, and by individual residents as they evaluate and influence the changes occurring about them. This report provides an overview of some of the major findings of this survey; it is not intended to be complete in that approximately 300 individual questions were asked of each person on the survey, and few readers would want to subject themselves to a full review of these. For individuals or groups who desire more specific information or detailed questions, we hope that they will contact us directly at the University of Alaska, Anchorage.

PART I: METHODOLOGY OF THE STUDY

The survey of Homer area residents was a coordinated effort undertaken by the City of Homer, several teachers and students at the Homer High School, and several staff at the University of Alaska, Anchorage. With the assistance of the city manager and members of the Planning and Zoning Commission, a questionnaire was written based on policy issues relevant to the Homer community. Members of Bill Johnson's class at the Homer High School designed a map of the city for the purpose of locating all residences, and students in his and Frank Libal's classes performed the vast majority of interviews with residents within the city limits. University staff with backgrounds in social research gave these students training in interviewing and supervised their work. They also conducted a minority of the interviews within the city, all the interviews outside the city limits, and were totally responsible for the tabulation and writing of results.

The region encompassed by the survey included that area of the southern Kenai Peninsula south of Ninilchik, including that community, Seldovia, Port Graham and English Bay. The results contained in this report include just those of the immediate Homer area, namely the City of Homer, residences outside the city limits, Anchor Point (south of Starisky Tower), Nikolaevsk and residents living at the head or across Kachemak Bay. All interviewing in this area was conducted in the spring and summer of 1976. All people interviewed were permanent residents of the area; sum-

mer time residents and/or those living in the area for less than a month were intentionally excluded. All interviews were conducted with the male or female head of household, and a total of 55% males and 45% females were interviewed.

All households were selected for interviewing on a purely random basis, in order to avoid any possibility of bias and to ensure representativeness for the entire community. Inside the city limits 173 interviews were conducted which represented a 50% sample, or the equivalent of every other household. Outside the city limits but in the immediate Homer area and extending beyond the end of East End Road, 61 interviews were conducted from a 25% sample of one household in every four. In the Anchor Point area one household in every eight was interviewed and in Nikolaevsk the equivalent of one in four; whereas in all other areas interviews were performed individually with a separate household head, in Nikolaevsk the interviewing was conducted in a single group meeting of men in one of the elder's homes. Finally interviews were mailed to 23 residents whose residences were inaccessible by road or trail, predominantly at Fox River, Bear Cove and Halibut Cove. Eleven of these were returned, which constituted an approximate 50% sample. The results contained in this report are consequently drawn from a total of 286 interviews, exclusive of those from Ninilchik, Seldovia, English Bay and Port Graham. In addition 13 potential respondents declined to be interviewed, and their cases are obviously excluded from the results. Because

people interviewed were selected on a strictly random basis, the results from the sample can be generalized to the entire community within 4-5 percentage points of accuracy. When we say, for example, that 78% of the 286 interviewed would like to see commercial fish and fish processing receive priority in terms of land use on the Spit, we are 95% sure that between 74% and 82% would have answered this way if every household in the total area had been questioned.

In writing this preliminary report we have attempted to minimize our analysis or interpretation of the results. Instead we have preferred to maintain a format of stating the questions (in summary form) and the percent response to each question. Under each question we have in most cases broken down the responses into three distinct categories: responses from those residents living within the city limits of Homer, responses from all those living outside the city limits, and the total responses from the combined areas. Because different proportions of people were sampled and interviewed outside the city, responses in the last two categories have been weighted to ensure equal representation. This is done by multiplying the responses to the Homer City interviews (a 50% sample) by 2, the Homer environs responses (a 25% sample) by 4, etc.

For purposes of organization we have divided this report into the five sections which follow. In the first we describe the general characteristics of the people interviewed: their ages, edu-

PART II: SURVEY RESULTS

SECTION I: CHARACTERISTICS OF THOSE INTERVIEWED AND THE HOMER COMMUNITY

In terms of general background characteristics, the household heads whom we interviewed in the Homer area were overwhelmingly white (93%), had a median age of 35 years, an average education of one year of college, had resided in the Homer area for five years or longer (53%), and were most predominantly from the Pacific Coast or Rocky Mountain states (47%). More specifically, and by area, they had the following characteristics:

	Homer City	Outside City	Total Homer Area
1. RACE:			
WHITE	97.7%	97.7%	97.7%
ESKIMO	1.7	0.0	0.7
ALEUT	0.6	1.6	1.1
INDIAN	0.0	0.7	0.5
2. AGE:			
18-29 Years	23.1%	28.1%	26.2%
30-45 Years	41.0	38.6	39.5
46-64 Years	26.3	26.5	26.4
65 & Older	9.6	6.8	7.9
3. EDUCATIONAL LEVELS:			
4-11 Grades	17.5%	11.1%	13.6%
12th Grade	31.2	47.6	41.2
1-3 Years of College	24.7	19.9	21.8
Completed College	15.2	13.5	14.1
Post-Graduate	11.4	7.9	9.3
4. LENGTH OF RESIDENCE IN HOMER AREA:			
Up to One Year	15.2%	14.8%	15.0%
1-2 Years	13.5	15.2	14.5
3-4 Years	22.8	13.8	17.2
5-8 Years	15.2	19.6	17.9
9-20 Years	22.2	18.1	19.7
More than 20	11.0	18.5	15.7

5. PLACE OF ORIGIN:

	Homer City	Outside City	Total Homer Area
Kenai Peninsula	1.2%	0.7%	0.9%
Elsewhere in Alaska	19.0	8.8	12.6
Pacific Coast States	26.2	35.1	31.8
Rocky Mt. States	11.9	17.0	15.1
Central & North Plains States	11.3	12.4	11.9
South & Southern Atlantic States, Texas & Okla.	10.2	5.8	7.4
New England & North Atlantic	9.0	7.2	7.9
Midwest States	8.3	9.4	9.0
Foreign Countries	3.0	3.6	3.4

In spite of the fact that only 14% of the residents were originally from Alaska, half had lived elsewhere in Alaska prior to moving to Homer. Of these, almost one-half had moved to Homer from the Anchorage area while a third had moved from elsewhere on the Peninsula or other rural areas of the state.

In terms of jobs and employers, the male heads of the households held the following characteristics:

6. PRIMARY OCCUPATION (MALE):

Professionals, (doctors, teachers, etc)	17.2%	4.7%	9.3%
Managers & Owners (inc. public & private business)	8.3	5.9	6.7
Technical & Protective Service (ie, police)	13.7	7.1	9.4
Clerical & Sales	2.8	3.9	3.5
Craftsmen	11.0	18.4	15.8
Operators, Truckdrivers	7.6	9.0	8.5
Laborers	4.9	8.2	6.9
Service Workers (ie, cleaning, food service)	4.8	3.1	3.7
Fishing Boat Owner/Operator	9.0	12.8	11.5
Cannery Worker/Fishery Crew	8.3	4.7	6.1
Homesteader, Farmer	0.0	8.6	5.4
No Occupation	1.4	0.0	0.5
Retired	11.0	13.6	12.7

In addition to their primary jobs, one-third of the male heads held secondary or other seasonal jobs; of these 23% were as laborers and 18% involved fishing or fish processing.

7. PRIMARY EMPLOYERS (MALE):

	Homer City	Outside City	Total Homer Area
Self Employed	32.6%	42.8%	39.1%
Federal Gov. & Agencies	10.6	1.6	4.9
State Gov. & Agencies	2.8	4.8	4.1
City & Borough Gov., incl. Schools & Hospitals	14.2	4.8	8.2
Local Commercial Business	13.5	5.6	8.4
Construction Companies	5.0	15.2	11.5
Oil Companies	5.0	3.2	3.8
Canneries	3.6	6.8	5.7
Social Groups (ie.Churches)	1.4	0.8	1.0
Retired	10.6	10.8	10.7
Unemployed	0.7	3.6	2.6

Among women and female heads of households, exactly 50% worked; among those who held jobs the major occupational categories were service workers (26%), clerical work (18%), and professionals (17%). The median annual reported family income for the total area was $13,400; reported family income was considerably higher, however, for residents living within the city ($17,100) than for those families outside the city ($11,300):

8. REPORTED ANNUAL FAMILY INCOME:

Less than $5,000	7.7%	18.9%	14.6%
$5,000 to 11,999	19.3	28.7	25.0
$12,000 to 19,999	23.9	21.8	22.6
$20,000 to 34,999	34.6	23.3	27.6
$35,000 to 49,999	10.8	4.4	6.9
Over $50,000	3.8	2.9	3.3

As possible compensation for this difference in income, residents outside the city placed a greater reliance on subsistence activities for obtaining fish and meat. Of probably greater significance is the fact that both groups derived

significant benefits from subsistence activities. Although fishing may be done largely for sport, over 80% of the people in the total area fished in Kachemak Bay. Only in shrimping (47%) and crabbing (45%) were less than a majority active.*

9. PROPORTION OF FAMILY FISH AND MEAT SUPPLY COMING FROM SUBSISTENCE:

	Homer City	Outside City	Total Homer Area
None	25.8%	9.4%	15.6%
Little	35.9	25.3	29.2
Around Half	19.3	27.4	24.3
Most	15.9	28.2	23.4
All	3.0	9.7	7.1

Various other factors might be used to describe characteristics of the population and area.** One which appears particularly relevant is the close tie existent between the rural residents and city of Homer. Among men, 34% were in town on a regular daily basis, the majority working; only 36% went into Homer on less than a two or three times per week basis. Women approximated the same statistics; 20% going to town on a daily basis and only 44% less than three times per week. Shopping, in addition to work, was primary justification for this. Those rural residents living close to Homer differ very little from city residents in many local activities, such as voter registration and percent voting, use of the small boat harbor, attendance at hearings and School Board meetings, and even attendence at City Council meetings.*** A strong degree of identification and involvement

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*In commercial fishing, 15% of the families in the area had members active in crabbing; 14% in halibut, 13% in shrimping, and 11% in salmon.

**Many of these were collected in the interviews, such as type of housing, size and type of family, organizational membership, activities, etc., but are not reported here for sake of brevity.

***16% of the rural families had attended at least several Council meetings, during the previous year, as compared to 19% of the residents in the city.

with the Homer community is obvious and by necessity justifies their inclusion in this survey, in spite of their equally strong desires to maintain autonomy from the city in terms of incorporation and utility districts, etc.

Finally, basic values of the community are seen by examining reasons given for moving to the Homer area and factors they like best about living in the community. In summary form these include:

10. REASONS GIVEN FOR MOVING TO HOMER AREA:

Please Read (

	Homer City	Outside City	Total Homer Area
Small Town Qualities/Lifestyle	31.0%	52.2%	44.4%
Employment & Job Reasons	36.1	13.9	22.0
Aesthetic Values	17.7	24.1	21.8
Homesteading, Farming	3.2	28.1	19.0
Family & Friendship Reasons	11.4	14.6	13.4
Climate	6.3	3.7	4.6
Retirement	4.4	1.1	2.3
Commercial Fishing	2.5	1.5	1.9
Initiating Business	2.5	1.1	1.6
Other	7.0	5.1	5.8

Please Read,

11. WHAT PEOPLE VALUE MOST ABOUT LIVING IN THE HOMER AREA:

Small Town Qualities/Lifestyle	65.8%	69.2%	68.2%
Aesthetic Values	55.7	48.1	51.2
Farming, Homesteading	0.0	15.4	9.7
Climate	4.4	9.0	7.3
Family & Friendship	3.8	6.8	5.7
Work Reasons, inc. Business & Fishing	2.6	5.4	4.2
Money, Salary Reasons	1.3	3.8	2.8
Other	2.5	6.4	5.0
Nothing Valued	1.3	1.5	1.4

From the above it is obvious how important the small town environment and natural beauty of the region are to residents. These same values are expressed in a variety of other questions. For example, a majority of residents all considered as very important living in a quiet community, having multi-age friends, participating in subsistence activities, and being able to make or fix many of

the things needed by a family, while holding a high paying job was rated as only somewhat important, or unimportant. The importance of these values is indicated by the fact that less than 10% of the area residents planned on moving away from Homer within the next seven years, and majorities in both city and rural areas plan to remain permanently. Another 10% stated that they would remain permanently unless the community underwent significant growth and changes.

Read

Section II: ATTITUDES TOWARD COMMUNITY SIZE, GROWTH AND DEVELOPMENT ACTIVITIES

A variety of questions were asked to determine residents' attitudes toward growth in the Homer area. These ranged from fairly general questions, such as the size in numbers that they would like to see Homer achieve and the types of new people they would like to see living in the community, to more specific questions on different types of economic activities which they would like the city to encourage or discourage. On an even more specific level questions were asked on development preferences and land use priorities for a specific location where land is limited and choices critical, namely the Spit. The range of answers to these questions, both by city and outside city residents are given below.

1. IDEAL COMMUNITY SIZE: Considering that the City now has a population of about 1500, how big a community would you like Homer to be in 10-15 years?

Read

	Homer City	Outside City	Total Homer Area
1500 People or Less	36.6%	57.1%	48.9%
1501 to 2,000	12.4	4.1	7.4
2,001 to 3,000	16.1	9.5	12.2
3,001 to 5,000	19.3	13.2	15.6
5,001 to 10,000	2.5	3.7	3.2
10,001 to 20,000	2.5	1.7	2.0
20,001 Or More	2.5	0.8	1.5
Doesn't Matter - Undecided:	8.1	9.9	9.2

2. PREFERRED TYPES OF NEW RESIDENTS: Considering new jobs and growth will bring more people to live in Homer, which type of new resident would you like to see living here?

	Homer City	Outside City	Total Homer Area
a. Permanent population composed of just the present residents:			
Favor:	48.2%	65.5%	59.0%
Opposed:	44.5	29.1	34.9
Undecided:	7.3	5.5	6.1
b. A growing population of new permanent residents:			
Favor:	72.8%	55.6%	62.1%
Opposed:	20.7	40.1	32.7
Undecided:	6.5	4.3	5.1
c. A growing population of seasonal residents (ie, tourists) who would make Homer their summer home:			
Favor:	33.3%	22.5%	26.9%
Opposed:	59.5	68.7	65.0
Undecided:	7.1	8.8	8.1
d. A growing population of new residents (ie, oil or construction related) who would probably not make Homer their permanent home:			
Favor:	18.3%	12.0%	14.5%
Opposed:	72.0	77.7	75.4
Undecided:	9.7	10.3	10.1

3. PREFERRED TYPES OF JOB EXPANSION:

a. A large proportion of seasonal employment (as at present) or more permanent forms of year-round employment:			
Favor Seasonal Jobs:	20.1%	43.3%	34.5%
Favor More Permanent Jobs:	76.3	48.7	59.2
Undecided:	3.6	8.0	6.3

	Homer City	Outside City	Total Homer Area
b. That job opportunities should be expanded rapidly, slowly, or few new jobs opened:			
Favor Rapid Job Expansion:	13.8%	19.9%	17.6%
Favor Slow Job Expansion:	72.5	63.2	66.7
Favor Few or No Job Expansion:	12.0	15.2	14.0
Undecided:	1.7	1.8	1.8
c. That new jobs to be added should be permanent jobs, short term construction jobs, or both:			
Favor Permanent Jobs:	45.2%	35.6%	39.5%
Favor Short-Term Jobs:	3.2	8.0	6.1
Favor Both:	48.4	52.0	50.5
Undecided:	3.2	4.4	3.9

4. TYPES OF ECONOMIC AND DEVELOPMENT ACTIVITIES: Choices for development in most communities are limited: most often they are either thrust upon them by outside interests or restricted by a narrow variety of local resources or potential developments. Homer would appear to be an exception to this case in that a considerable range of resources are available on which growth might be based. Because the kind of economic base will obviously affect the type of community which Homer is to become, people were given a full list of economic activities and asked "which (of those) do you think should be encouraged or discouraged for the future of Homer?" Although the potential for developing policies that would enhance certain of these activities are limited, it is important that decisions be made that are consistent with basic values of people residing in the town. The range of attitudes towards each activity are as follows, with the list ordered from most to least desirable:

	Homer City	Outside City	Total Homer Area
a. Agriculture:			
Should Encourage:	*	92.3%	*
Should Discourage:	*	4.4	*
Undecided:	*	3.3	*

*Agriculture was not listed on questionnaires given within city limits; totals are consequently excluded for both within the city and total area groups.

Fishing is on Top - 13 - Oil No

	Homer City	Outside City	Total Homer Area
b. Commercial fishing & fish processing:			
Should Encourage:	91.8%	86.2%	88.3%
Should Discourage:	4.1	8.0	6.5
Undecided:	4.1	5.9	5.1
c. Light manufacturing, in ing small & locally based in ries:			
Should Encourage:	77.1%	87.8%	83.7%
Should Discourage:	18.2	10.6	13.2
Undecided:	4.7	2.2	3.1
d. Education & research facilities:			
Should Encourage:	87.7%	80.2%	83.3%
Should Discourage:	5.8	15.0	11.3
Undecided:	6.5	4.8	5.4
e. Transportation & storage facilities:			
Should Encourage:	70.8%	55.3%	61.5%
Should Discourage:	21.1	36.1	30.0
Undecided:	8.1	8.6	8.4
f. Tourism:			
Should Encourage:	61.6%	57.6%	59.2%
Should Discourage:	26.7	33.9	31.0
Undecided:	11.7	8.6	9.8
g. On-shore oil facilities:			
Should Encourage:	36.6%	26.7%	30.7%
Should Discourage:	54.7	68.5	62.9
Undecided:	8.7	4.8	6.4
h. Heavy industry, such as pulp mills, lumber products:			
Should Encourage:	24.4%	26.7%	25.8%
Should Discourage:	70.3	67.8	68.9
Undecided:	5.3	5.5	5.4
i. Petrochemical industries, such as refineries:			
Should Encourage:	23.8%	23.1%	23.4%
Should Discourage:	68.5	68.2	68.3
Undecided:	7.7	8.7	8.3

In addition to rating each activity separately, people were asked which types of developments they would most (and least) like to see occur in Homer. The attitudes are virtually identical to the ordering shown above: an expansion in

fishing and fish processing, followed by light manufacturing and educational and research facilities (and agriculture for those outside the city) were mentioned in that order as the most desirable. Rated as least desirable were petrochemical industries, followed by on-shore oil facilities and heavy industry.

5. ON-SHORE OIL DEVELOPMENT: Because of the importance of decisions related to oil development, more detailed questions were asked concerning the use of Homer as an on-shore facility. Four particular questions were asked: 1) Assuming that oil development does occur in the Lower Cook Inlet, would you like to see Homer used as a supply port for this; 2) which type of facilities (fishing and fish processing, tourism or industrial) would you like to see receive priority in terms of land use on the Homer Spit; 3) would you favor or oppose oil storage and tanking facilities on the Spit; and 4) would you favor or oppose the warehousing and storage of equipment on the Spit for off-shore oil exploration. As seen below, public opinion is opposed to on-shore development in all cases. The single exception is city residents who narrowly favor use of Homer as a general supply port if Lower Cook Inlet development actually occurs; however even they are opposed to utilization which would entail the specific storage of oil or equipment on the Spit:

	Homer City	Outside City	Total Homer Area
a. Use of Homer as supply port if Cook Inlet oil development occurs:			
Favor Supply Port:	53.2%	28.3%	38.0%
Oppose Supply Port:	42.7	63.6	55.5
Undecided:	4.1	8.1	6.5
b. Preferences for facilities on the Homer Spit:			
Fish & Fish Processing:	73.6%	77.6%	76.3%
Tourism:	13.0	9.1	10.8
Industrial:	9.5	8.3	8.8
Undecided:	3.9	5.0	4.1

	Homer City	Outside City	Total Homer Area
c. Location of oil storage and tanking facilities on the Spit:			
Favor Oil Storage:	23.8%	13.8%	17.7%
Oppose Oil Storage:	70.9	82.5	78.1
Undecided:	5.2	3.6	4.3
d. Location of warehouse and equipment storage facilities for oil exploration on Spit:			
Favor Warehousing:	29.7%	18.2%	22.6%
Oppose Warehousing:	64.0	73.1	69.6
Undecided:	6.3	8.7	7.8

In summary, opinions of residents are opposed to on-shore oil development both in situations where they are given an open range of economic activities from which to choose and where it is already assumed that oil development will occur in the area. On-shore facilities that would tend to conflict with other land usages are more strongly opposed. From the above figures it is also obvious that residents living outside the city are consistently more opposed to oil development than those within the city. Other reasons frequently advanced to account for these differences in attitudes toward oil are the ages of individuals, their particular jobs and length of residence in the area. These figures for those groups are given below in terms of whether they feel the city should encourage or discourage on-shore oil facilities.

e. Age of the Population: (Total Area)	Encourage On-shore Development	Discourage On-shore Development	Undecided	Total
18-29 Years Old:	12.3%	81.1%	6.6%	100.0%
30-44 Years:	21.9	73.1	5.0	100.0
45-64 Years:	49.5	44.9	5.6	100.0
65 or Older:	57.7	26.9	15.4	100.0
f. Length of Residence in Homer: (Total Area)				
Two Years or Less:	16.9%	76.1%	7.0%	100.0
Three-Four Years:	24.7	72.7	2.6	100.0
Five-Eight Years:	25.0	65.8	9.2	100.0
Nine Years-Longer	48.9	44.6	6.5	100.0

g. Occupation of Household Head (Male, Total Area):

	Encourage On-Shore Development	Discourage On-Shore Development	Undecided	Total
Professional:	10.8%	83.8%	5.4%	100.0
Managers, Owners:	60.0	36.0	4.0	100.0
Technical	38.5	57.7	3.8	100.0
Craftsmen & Laborers:	24.6	69.4	6.0	100.0
Fishermen:	5.0	92.5	2.5	100.0
Cannery Workers & Fishing Crew:	6.3	87.5	6.2	100.0
Farmers, Homesteaders:	36.4	63.6	0.0	100.0
Retired, Unemployed:	56.3	27.1	16.6	100.0

Significant relationships are found in each case, with the older people of longer residence, and particularly those who are retired or with jobs as managers or business owners, most supportive of on-shore facilities. The younger and newer resident, including those with jobs in fishing and professional work, are most consistent in their opposition to local oil development. It should be noted, however, that these latter attitudes of discouraging on-shore facilities are shared by a majority of the "average" Homer residents, namely those adults with a median age of 35 and five years of residence in the area. Finally, certain unanticipated results are seen in the relationship of jobs to attitudes when one considers the potential impacts that would occur from oil development: among those who would discourage oil are the craftsmen and laborers who might anticipate the most direct economic benefits, whereas the favorably inclined retired people are most likely to experience the negative effects from an inflationary local economy. Some changes in the attitudes of these groups might be anticipated if the actual effects of on-shore development were to begin to be realized.

SUMMARY: A majority of residents would like to see Homer undergo minimal or limited growth of a slow and gradual nature, with the addition of permanent jobs as a base for a permanent resident population. That Homer residents would favor an

absolute "no growth" economy is erroneous, in that a majority of development activities are favored by most residents. Those activities which they would most like to see encouraged, however, are either those traditional to the local economy (fishing, farming and to a lesser degree tourism) or those based on the concept of permanent employment (light manufacturing, education and research). Rapid growth and heavy industry, a transient population and oil development in general, are opposed. Although these attitudes are most prevalent amid the younger, more recent and rural residents, they are also held by the average resident of Homer.

SECTION III: ATTITUDES TOWARD CITY SERVICES

Four types of questions were asked about services provided in the city. Included was a ranking or evaluation of the adequacy of individual services, preferences for the expansion of individual services in comparison to other services, the public assessment of needs within particular services, and priorities for local funding of service expansion. The format of presenting the information here is to first provide tabulations on evaluations and service priorities; a very brief description is then provided of each service in terms of publicly expressed needs. Since most of the services pertain only to city residents, calculations are based on the sample from within the city limits. All exceptions to this are specifically noted in the tabulations.

1. EVALUATION RATINGS: (How would you rate the following services in Homer - City residents only)

	Less Than Adequate	Adequate	More Than Adequate	Undecided
Police Protection:	16.2%	53.6%	23.7%	6.5%
Elementary Schools:*	7.1	17.6	36.5	38.8
Hospital-Health Svcs:	24.3	61.8	9.8	4.1
Fire Protection:	26.0	60.1	2.3	11.6
Water Service:	31.4	59.3	2.3	7.0
Sewer Service:	30.8	56.4	1.7	11.1
High School:*	25.0	23.2	17.3	34.5
Recreation Facilities:	55.5	34.1	3.5	6.9
Streets:	68.8	29.5	1.7	0.0

(*Obviously not services for which the city is responsible.)

2. SERVICES EXPANSION: Are you in favor of having the city expand the level of services it now provides, maintain these at their present level, or cut back on the services which it now provides:

Cut Back on Services:	3.0%
Maintain At Current Level:	44.0
Expand Level of Services:	47.6
Undecided:	5.4

In contrast to residents in the city, a strong majority of the rural residents (70%) preferred a maintenance of services at their present level; half as many wanted to cut back on the level of services as actually increase them.

3. PREFERENCES FOR TYPES OF SERVICES: Both city and rural residents were asked to list those three city services which they would most like to see expanded, and also those which they would least like to see expanded. Among those which people would most like to see expanded, listed in order of preference by city residents, were:

	Order of Most Preferred:		Order of Least Preferred:
(high)	1. Road & Street Improvements**	(low)	13. Fire Protection
	2. Harbor & Port Facilities		12. Ambulance Service
	3. Recreation Facilities		11. Roads & Streets
	4. Sewer System		10. Health Facilities
	5. Tourist & Camper Facilities		9. Sewer System
	6. Water System		8. Harbor & Port Facilities
	7. Cultural Facilties		7. Water System
	8. Fire Protection		6. Recreation Facilities
	9. Local Government Facilities		5. Cultural Facilities
	10. Police Department		4. Police Department
	11. Health Facilities		3. Local Government Facilities
	12. Ambulance Services		2. Garbage Disposal
(low)	13. Garbage Disposal	(high)	1. Tourist & Camper Facilities

**Survey was taken prior to completion of paving of Main Street.

b. Rural Residents (Outside City):

	Order of Most Preferred:		Order of Least Preferred:
(high)	1. Harbor & Port Facilities	(low)	13. Health Facilities
	2. Cultural Facilities		12. Fire Protection
	3. Fire Protection		11. Cultural Facilities
	4. Roads & Streets		10. Roads & Streets
	5. Health Facilities		9. Ambulance Service
	6. Recreation Facilities		8. Harbor and Port Facilities
	7. Tourist & Camper Facilities		7. Recreational Facilities
	8. Police Department		6. Garbage Disposal
	9. Ambulance Service		5. Sewer System
	10. Sewer System		4. Water System
	11. Water System		3. Police Department
	12. Garbage Disposal		2. Local Government Facilities
(low)	13. Local Government Facilities	(high)	1. Tourist Facilities

Among conclusions that could be drawn from the above lists are: 1) the high preference given to road and street improvements, particularly within the city where over one-half listed this as among their top three choices; 2) the high priority given to improved port and harbor facilities by residents both within and outside the city; 3) the relatively high priority given to recreational and cultural facilities by both groups; 4) the low priority given to local government facilities (city hall) and expansion in the police department by both groups; 5) the low priority for water and sewage systems expansion outside the city; and finally 6) disagreement over expansion of tourist and camper facilities. Whereas some residents both within and outside the city consider this a relatively high priority, others consider it the least preferred of all services for potential expansion.

4. INDIVIDUAL CITY SERVICES:

a. Roads and Streets: Over one-half the city residents stated the need for improvement in city streets and roads, a priority rating that was close to double that given any other single service. This priority is consistent with the low evaluative rating given to streets, where 69% of the residents felt them to be less

than adequate. On separate questions, over 85% expressed the opinion that more streets should be paved and gravelled, and over 70% expressed favor for the building of storm drains and sidewalks for walking and bicycling. When residents both within and outside the city were asked to state their top two priorities in terms of street improvements, the following responses were recorded:

Type of Street Improvements:

	Homer City	Outside City
Paving Streets:	49.2%	21.8%
Gravelling Streets:	48.6	29.6
Sidewalks and Bikepaths:	41.7	25.7
Storm Drains:	25.5	9.3
Improved Snow Removal:	9.8	14.0
Street Parking:	9.1	38.9
Street Lights:	8.1	3.1
Other:	6.4	7.8

Finally, by a three-to-one ratio, city residents favored the maintenance of off-street parking, as compared to on-street. Although strong preferences were shown for the paving of Pioneer Avenue and the downtown area, priorities were also stated for West Hill Road and other residential streets in the downtown area.

b. Recreational Facilities: The recreational facilities provided by the city were also assessed by the majority of residents as less than adequate, and in need of improvement. Among the recreational and cultural facilities used by most city families were the museum (75% of all families), the school swimming pool (73%), library (60%), High School gym (54%), small boat harbor (52%, excluding commercial use), and the Fairgrounds (47%). Although usage by families living outside the city was lower, it was still significant and indicates the strong ties to the community by these residents: library (52%), swimming pool (50%), museum (46%), small boat harbor (36%, only recreational), gym (33%) and Fairgrounds (18%). New recreational facilities which residents stated they would most like to see are, in order

of priority: outdoor general use parks, a community center, tennis courts, teen center, indoor sports facilities such as a covered hocky rink, and an auditorium. Finally, 82% of the total area residents were in favor of reopening the wharf for public fishing and shrimping, and 73% to the maintenance of the Pier I Theater.

c. Sewer and Water System: Sixty-five percent of the city residents were using the city water system and 53% stated that they were on the city sewer system. For city residents not on these systems, wells and septic tanks were used by a large majority. Among all city residents, general attitudes were favorable toward expansion of both water and sewer systems (59%); however, only minorities were in favor of either increased taxes to pay for expansion (43%) or increased development to reduce the unit costs of expansion (37%). Surprisingly, the attitudes of residents within the city who are not on water or sewer systems differ little from those who have these services. Although majorities would like to have water and sewer systems expanded (58% and 60%), they are less favorable toward the assessment of taxes as payment for these (47% and 49% respectively), and even less favorable to an increase in local development for the purpose of reducing unit costs (25% and 24%).

Residents outside the city, even excluding those in Anchor Point, Nickolaevsk and across the Bay, were strongly opposed to the expansion of water or sewer systems to incorporate their areas (77% and 82% respectively); even larger proportions opposed both taxation and increased development to offset costs of these potential utility expansions.

d. Fire Protection: Probably due to its high "adequate" rating, no major endorsements were given for changes in fire protection. Two-thirds of the city residents preferred to see the fire department maintained on a volunteer basis

rather than with professional staff. However, 46%, with another 29% undecided, favored the addition of more equipment to the fire department, with the largest proportion of these citing the need for a new or additional truck. Opinions were evenly divided pro and con on the addition of more staff or equipment to the ambulance service, although there was also a large proportion of no opinion answers. Almost two-thirds of the residents in the immediate area outside the city limits considered themselves outside of a fire protection service area, and slightly over half of these would like to be affiliated to such a service area.

e. Hospital and Health Services: No strong concerns were voiced regarding changes in health care, although 32% of those expressing opinions stated the need for additional doctors. The addition of specialists to the hospital staff, more emergency equipment and a community health program were also cited as needs by over 15% of those who responded. A wide variety of responses were generated concerning what should be done with the old hospital. Included among these were: utilizing it for office space for the city and borough (19%); a community health center (16%); nursing home (16%); free clinic (15%); and community center (10%).

f. Police Protection: Probably due to its high adequacy rating, the police department was also ranked low in terms of priorities for expansion. Among city residents, for example, only 16% felt that the number of police on the city force should be increased. In spite of this, a plurality of city residents felt that more police time should be spent on crime prevention and patrolling, particularly in terms of security on the Spit, and over one-third that they should increase time on criminal investigations and the enforcement of civil regulations such as trespassing and drinking by minors. There were no activities, including traffic control, where significant numbers felt that police attention should be reduced.

Felony offenses, particularly theft, and drug related crimes constituted those types of crimes of greatest concern to the city public. In contrast, over 60% of the rural residents would like to see more police serving areas outside the city limits, although there was overwhelming agreement that this should be performed by the state police (90%). In these areas, theft and vandalism were the crimes of greatest concern.

g. Port and Harbor Facilities: Along with roads, harbor and port facilities were those given the highest overall ranking for expansion, particularly by rural residents. Widespread use of the harbor facilities obviously accounts for this: 59% of the city residents use the small boat harbor (27% on a commercial basis), but it is also used by 52% of the rural residents (32% commercially). In addition, a full 70% of the total area residents stated that they anticipated using the harbor within the next five years.

As stated in Section II, strong preferences exist for giving fish and fish processing priority for development on the Spit, followed by tourism and finally non-fishing industry. These attitudes are held even more strongly by actual users of the small boat harbor. In general, development facilities were encouraged as long as they did not compete with this primary utilization of the limited land and port facilities. As such, wharf fishing and the Pier I Theater are strongly favored by harbor users; potentially competitive usages are not, such as private campgrounds (51%), an amusement park (18%), storage facilities for off-shore oil exploration (18%), general shopping mall (16%), oil storage and tanking facilities (16%), and large commercial hotels (13%). Facilities that will contribute to the commercial use and conservation of the small boat harbor are strongly endorsed by users, such as dry dock and boat repair facilities (94%), additional fish proces-

sing facilities (92%), installation of storage and treatment tanks for bilge slops (85%), dry boat storage facilities (83%), stronger enforcement on oil and sewage discharge (79%, also favored by 82% of the commercial users), and warehouse facilities for commercial port usage(60%).

Residents using the habor on a commercial basis favor these latter items to a slightly stronger degree, while the attitudes of residents who do not use the small boat harbor tend to be generally less supportive, and somewhat more favorable to general industrial and petroleum use. This is particularly true of the development of a new deep water off-shore harbor, favored by 63% of the general public but by only 54% of both the commercial and recreational harbor users. Minimal differences exist in attitudes between city and rural users of the harbor, outside of the fact that 59% (with an additional 20% undecided) of the non-city commercial users favor greater representation from the rural area on the present Port Commission.

h. Education: Although education is not a function provided by the city, its local importance merits inclusion. However, no conclusive changes in policy were noted from the survey, other than a strong desire for more vocational training at the high school level (74% of the city residents expressing an opinon; as compared to "less" or "current" levels of vocational training). Smaller majorities of those responding favored the retention of present class sizes (54%) and an expansion in cultural programs and activities (51%). Only a small minority favored the present level of student planning and choice in curriculum; however present policy apparently represents a good compromise in that equal numbers endorsed less, and more, choice in student planning of their own curriculum. On all questions attitudes of rural residents in the Homer attendance area very closely paralleled

those within the city, although they showed less conclusive support for the construction of new school buildings than city residents (42% and 54% respectively, although with a large proportion of undecided residents). Both groups had also been equally active in the community school program, in which over one-third of the residents had been involved. The only potential area of disagreement was the attitude of 60% of the rural residents that their representation on the Advisory School Board should be increased.

4. TAXES AND FUNDING OF SERVICES: Although residents stated a desire to maintain the current level of many services, definite preferences were expressed for the expansion of certain ones, and the costs of these generally are bound to increase. To assess attitudes toward mechanisms for raising additional revenues, residents were simply asked which method of taxation they most and least preferred. The attitudes, which show a preference for sales taxes and service rate charges, and opposition to increases in personal property taxes, are shown below:

a. Most Preferred Method of Raising Additional City Revenues:

	Homer City	Outside City	Total Homer Area
Real & Personal Property Tax:	6.4%	11.7%	9.5%
Sales Tax:	50.0	38.5	43.3
Service Rate Charges:	26.4	32.5	29.9
Other:	7.4	6.1	6.6
Undecided:	9.8	11.2	10.7

b. Least Preferred Method of Raising Additional Revenues:

Real & Personal Property Tax:	60.4%	63.4%	62.3%
Sales Tax:	13.0	24.6	19.6
Service Rate Charges:	17.1	10.2	13.1
Undecided:	9.5	1.8	5.0

In addition, residents felt strongly that the city should charge for services, particularly to outsiders. For example, although 76% of the total area supported

the maintenance of public camp grounds by the city where a fee is paid, only 19% supported the maintenance of such areas without fees.

SECTION IV: ZONING AND LAND PLANNING

Questions related to land use on the Spit have already been presented and will not be repeated here. However, a variety of other land use policies are important to the community and questions were asked on a number of these. As areas they included: 1) the maintenance of natural park lands in the Homer - Kachemak Bay area; 2) industrial and residential zoning within the city; 3) the location of potential on-shore oil facilities; and 4) several final comments on tourism.

1. PARKLANDS: The natural beauty of the open lands surrounding Homer is obviously great, and 87% of the combined city and rural residents stated that this was very important to them. An identical proportion, equal for both city and rural, felt that state parks or other means should be maintained to protect these lands in their undeveloped state. Attitudes of area residents toward logging and mining on these lands are given below:

a. Attitudes Toward Park Land Use:

	Favor	Oppose	Undecided
Should Be Open to Logging:	33.5%	59.8%	6.7%
Should Permit Clearcutting:	10.6	82.0	7.4
Should be Open To Mining:	42.0*	51.7	8.3

*(Many of the favorable answers were stated conditionally, favoring prospecting and placer mines, and opposing open or strip mining.)

As seen below, a majority felt that these lands should be managed and controlled by the state, although there was considerable support for joint management or input from the city and Kenai Borough levels, in addition to opposition for the autonomy of federal management:

b. Control and Managment of Park Lands: Who should perform this?

	Opposed	Favor	Undecided
City (Homer):	68.1%	24.2%	7.7%
Kenai Borough:	69.1	23.3	7.7
State of Alaska:	30.2	62.1	7.7
Federal:	82.5	9.8	7.7

2. ZONING WITHIN THE CITY: As seen below, overall attitudes toward city zoning appear to be favorable, with a majority stating preference for a moderate zoning policy and only a very small number for an absence of zoning:

a. Type of City Zoning Preferred:

	Homer City	Outside City	Total Homer Area
No Zoning:	5.0%	11.9%	9.4%
Very Weak or Limited Zoning:	9.5	9.3	9.4
Moderate Zoning:	54.8	60.2	57.9
Strong Zoning:	26.2	12.7	18.3
Undecided:	3.6	5.9	5.0

These attitudes, however, tend to be specific, favoring zoning for an industrial site and for multiple unit dwellings, but without placing locational controls on businesses and individual residences:

b. Establishment of Industrial Site Area for All New Industry:

	Homer City	Outside City	Total Homer Area
Favor Industrial Site:	79.4%	71.2%	67.3%
Oppose Industrial Site:	14.7	19.5	15.8
Undecided:	5.9	9.3	7.1

c. Residential Zoning for Multiple Unit Dwellings:

Favor Multiple Unit Zoning:	71.2%	71.8%	71.5%
Oppose Multiple Unit Zoning:	24.1	23.9	24.0
Undecided:	4.7	4.3	4.5

d. Zoning to Encourage All New Businesses to Locate Downtown:

Favor Business Centralization:	44.0%	39.5%	41.3%
Permit Businesses to Decide:	48.8	51.3	50.2
Undecided:	7.2	9.2	8.4

e. Encouragement of Locating New Residential Areas in Downtown Area:

	Homer City	Outside City	Total Homer Area
Encourage Downtown Development:	14.3%	20.7%	18.0%
Permit Residences Where People Choose:	80.4	73.3	76.3
Undecided:	5.4	6.0	5.8

f. City Encouragement of Subdivision Development:

Encourage Subdivisions:	56.0%	31.8%	42.2%
Discourage Subdivisions:	31.9	58.2	46.9
Undecided:	12.0	9.9	10.9

Even though the attitudes of rural residents are favorable toward some aspects of zoning within the city, their attitudes are quite different in regard to zoning in rural areas. Here 43% of the rural residents favor no overall zoning restrictions on the part of the Borough, and only 37% favor moderate or strong zoning policies. This should not, however, be interpreted as opposition on the part of rural residents to all forms of Borough regulations, since the question did not address itself to specific areas of industrial zoning.

3. POTENTIAL ON-SHORE OIL FACILITIES: Although local public attitudes are opposed to oil facilities in Homer in general, and on the Spit in particular, zoning questions were asked, should on-shore development take place. Responses for both city and rural residents showed preferences for having the oil facilities themselves located outside or away from town, and on land leased to the oil companies by the city or Borough; on the other hand preferences were also stated for oil company workers to actually live in Homer.

a. Preferences for Facility Locations, Should Oil Development Occur Locally:

	Homer City	Outside City	Total Area
Located In City Limits:	24.4%	27.7%	26.4%
Located Outside City:	57.6	41.9	48.1
Won't Consider Option:*	11.0	13.8	12.7
Undecided:	7.0	16.5	12.7

b. Preferences for Oil Facility Leases on Private or Public Land:

	Homer City	Outside City	Total Area
Private Land, Owned or Leased to Companies:	19.5%	17.3%	18.1%
Publicly Leased Land (City or (Borough):	57.9	61.0	59.8
Won't Consider Option:*	6.5	12.8	10.2
Undecided:	16.4	8.8	11.9

c. Preferences for Oil Workers Living in City or Away From City:

Living In Homer:	43.8%	43.5%	43.6%
Living Away from Homer:	22.5	25.2	24.1
Won't Consider Option:*	15.9	20.8	18.8
Undecided:	17.8	10.6	13.5

(* This category composed primarily of individuals strongly opposed to oil development who are against facilities being built either in or outside the city.)

Finally two questions were asked of slightly different samples. The first recognizes the use of Homer as the major service center for the southern Kenai Peninsula and consequently the importance of attitudes of residents outside of the area encompassed by the city and survey-defined rural area. Exclusive of Seldovia, where the question was not asked, the combined residents of Ninilchik, English Bay and Port Graham opposed the location of on-shore facilities in Homer in the following proportions:

d. Preferences for Location of On-Shore Oil Facilities in Homer by Residents of Ninilchik, English Bay and Port Graham:

City Should Encourage Oil Facilities in Homer:	31.8%
City Should Discourage Oil Facilities in Homer:	54.6
Undecided or No Opinion:	13.6

In addition a question was added to the questionnaire following completion of the Homer City interviews, asking all rural residents their preference for the centralization of all Lower Cook Inlet on-shore facilities in a single community such as Kenai, or the dispersal of these facilities into various communities

of the southern peninsula in accordance with individual community choice. The results showed a fairly strong preference for the centralization in Kenai among rural Homer area residents, and also a weaker preference for this among the combined residents of Ninilchik, Seldovia, English Bay and Port Graham. It should be cautioned, however, that these tabulations do not include the city residents of Homer, who if consistent with other attitudes would have been less favorable than the rural residents to on-shore centralization in Kenai:

e. Preference for Location/Centralization of Lower Cook Inlet On-Shore Oil Facilities:

	Homer Rural Area	Non-Homer Rural Area
Centralization in Kenai:	67.9%	53.2%
Dispersal to Various Communities in Accordance With Choice:	28.1	39.9
Undecided:	4.0	6.9

Taken together, the answers to all oil facility questions indicate that public opinion was consistently opposed to on-shore facilities at the time the survey was taken.* This does not of course mean that attitudes cannot change. Changes in the technology or policies of oil companies could conceivably change the perceptions which some residents hold. However one factor appears to be crucially important at present. This is that opposition to oil represents a divisive force within the community and that any immediate action taken to initiate facilities would probably only serve to increase this level of antagonism. Two options appear possible, assuming Lower Cook Inlet exploration and development actually occurs. The first would be to follow majority opinion and oppose the establishment of on-shore facilities in Homer, while encouraging the location of these in a community such as Kenai. The second would be to achieve a greater

---

*It should be noted that interviewing in Homer was completed just prior to the initial unsuccessful effort to remove the Ferris.

consensus in support of those facilities that might be located in the local area. Essential to this would be public discussion and the elaboration of local regulations that would control the oil industry and thereby provide safeguards to guarantee maintenance of the present quality of life. A fairly strong concensus appears to exist that if oil development should occur in Homer, that it must be closely controlled and regulated. Answers to various questions indicate that the city should play a very active role in determining the specific conditions and locations under which on-shore facilities might be developed.

4. TOURISM: Although tourism ranked relatively low in terms of economic activities that residents felt should be encouraged, a majority of residents favored its development, albeit city residents more so than rural. Attitudes on developments related to tourism, particularly on the Spit, have already been mentioned and need not be repeated. What does appear relevant are the generally favorable attitudes toward land use and facilities that would cater rather specifically to the tourist (such as private and public campgrounds, as long as payment was received for the latter) and their overlapping with other local activities strongly favored by the Homer resident. The mutual participation in outdoor recreational activities are one example of this. Another not mentioned previously is the strong local preference stated for the small owner-operated business over the larger corporate stores, which would also be consistent with tourist use. However, many other issues exist, such as strong local participation and/or preference for outdoor parks, the Pier I Theater, dry boat storage facilities, the Museum and library, public wharf fishing, and sidewalks and bike trails. Sponsorship of these type facilities would not only meet needs expressed by the local public but provide attractions for the visiting and summer tourist, and they might well be given consideration for additional attention and development by the city. On the

other hand, opposition would be expected to the development of a large scale tourist industry that lacked consistency with local recreational life styles and which competed for limited land use.

SECTION V: SUMMARY

In brief form this concludes the information provided by the survey. As stated in the introduction, it is not our intention to pursue an analysis of this and it would be overly precocious for us to make policy recommendations on the basis of it. Our intention has been merely to provide a systematic assessment of attitudes which we hope many will be able to utilize and from which we believe specific policies can be generated. To a very limited degree, this may already have occurred, in that high school students who did much of the interviewing emerged with greater knowledge about their town. It is neither assumed nor anticipated that the attitudes described here will remain constant. It is hoped, however, that they will help promote both knowledge about the community and the discussion or thought that is essential for creative planning to occur. Only in this way can change be self-promoted and meet the common human needs of the community.

The population of Homer is a relatively new and young population with a strong tenacity for individual life styles deeply influenced by the traditional resource base. It would be very erroneous to imply that many of the attitudes expressed in the survey are totally negative, particularly those associated with on-shore oil, or that they merely reflect an idealistic desire to preserve traditional life styles alone. A small minority of individuals may hold these, and they would probably be paired with as many others who would oppose them vehemently on every issue. A more representative element of the public, however, appears

to be one positively oriented toward changes that will selectively enhance those elements of the community that are consistent with basic values. From the survey, many of these values are closely tied to aesthetic appreciation of the land and Bay, its fishing economy and recreational - subsistence use, and close affinity for qualities of small town life. If residents in Homer are to maintain control over the future of their town, potential developments that are endorsed must be consistent with these resources and values.

HB
192
(FOR)

KATCHEMAK BAY

FOR HB 192

Paul Jones Box 697 ~~Palmer~~ Homer 99603

Thomas Schroeder Box 636 Homer 99603

Nancy Lord Box 846 "

Al Davis Box 598 "

Scott Kyle Box 1454 "

Ralph Brosches Box 1445 "

Jean Calhoon Box 566 "

8. Jean Schroeder Box 636 "

9. Chris & Pat Moss Box 1115 "

10. Charles & Margaret Evans Box 1621 SRA 99507

11. Beaver & Jeffie Nelson Box 1113 Homer

12. Judy & Peter Gould Anchorage

13. Kenneth Swick Box 214 Seldovia

14. Robert Haynes Box 665 Homer

15. Cleo Swick Box 214 Seldovia

16. Robert & Carol Moss Box 774 Homer

17. Mr. & Mrs. Adolph Curry Box 461 Homer

18. Hank & Jean Gain Box 132 Seldovia

19. Clarence Platt Box SRA Box 90 B Homer

20. Kenneth Moore Box ~~946~~ 796 Homer

21. Kenneth Moore Box 90 B Homer (SRA)

22. Roseleen Moore Box SRA 90 B Homer

23. Sharon Hallett Box 696 Homer

24. Mr. & Mrs. C.L. Calkins SRA Box 20 Kachemak via Homer

25. Ron Berglund Box 696 Homer

26. Ann B. Robinson Box 867 Homer

27. Richard W. Robinson Box 867 Homer

28. Mr. & Mrs. Gerald Brookman 1220 F Street Anchorage 99501

KACHEMAK BAY

FOR HB 192

29. Maxine Holliday, P. O. Box 939, Cordova, Ak.
30. Anabelle Lund, Box 1168, Homer, Ak 99603
31. Knute Johnson, Box 414, Cordova, Ak.
32 Richard W. Robinson, Box 867, Homer, Ak. 99603
33. Marvin Collins, Box 504, Homer, Ak. 99603
34. Woody Clay, Box 8564, Ketchikan, Ak.
35. Dexter Kyle, Box 84, Sitka, Ak. 99835
36. Gary Peterson, Box 822, Homer, Ak.
37. George Smith, Sr. 3825 Denali Street, Anch.
38. .en Castner, Box 558, Homer, Ak.
39. Tom Gerstner, Box 588, Homer, Ak.
40. Don Miller, P. O. Box 1000, Homer
41. George Pollard, Box 40, Kasilof
42. Karen Gerstner, Box 588, Homer
43. Don Wakefield, Box 1292, Homer
44. Mevin May, Box 3160, Ketchikan
45. Richard Bremicker, Red Mountain, Ak.
46. Greg Christenson, Red Mountain, Ak.
47. Asaiah Bateso, 504, Homer 99603
48. Marc Blackman, Box 1182, Homer, Ak.
49. Martin Friedman, Box 337, Homer
50. Douglas Brimicker, Red Mountain, Ak.
51. Marsha Bremicker, Red Mountain, Ak.
52. Marilee Blackman, Box 1182, Homer, Ak.

KACHEMAK BAY

FOR HB 192

53. Mike Kennedy, General Delivery, Homer
54. Diana Wakefield, Box 1292, Homer
55. Ann Robinson, Box 867, Homer
56. Roy Parkinson, Box 1116, Homer
57. Mike Thomas, Box 1182, Homer
58. Lu Lovelace, General Delivery, Homer
59. Peggy Cochran, Box 374, Homer
60. Alan and Susan Babboni, 2126 First Ave., Ketchikan
61. Annette Parks, Box 1302, Homer
62. Daniel B. Winn, Jr., Box 1272, Homer
63. Judith A. Winn, Box 1272, Homer
64. Ralph Galiano, Box 232, Homer.
65. Daniel B. Winn, Box 1272, Homer
66. Charles Smith, SRA Box 34, Homer
67. Carlos and Karla Freeman, Box 62 SRA, Homer
68. Jane C. Calhoon, Box 1224, Homer
69. F. E. Lowry, Box 812, Homer
70. Martin Friedman, Box 337, Homer
71. Dr. Ralph Broshes, Box 1445, Homer
72. Marvin Bellamy, P. O. Box 1302, Homer
73. Gregory Tikka, 2728 McCauley, Anchorage
74. Nancy Lord, President, Kachemak Bay Conservation Society
75. Roseleen Moore, Star Route A, Box 90B, Homer
76. Kenneth Moore, Star Route A, Box 90B, Homer
77. Lynn Bennett, Box 746, Homer

KACHEMAK BAY

FOR HB 192

78. Sharon Hallett, Star Route A, Box 90B, Homer
79. Joe Bennett, Box 746, Homer
80. Ann Haynes, Box 665, Homer
81. Bob Haynes, Box 665, Homer
82. Tom and Karen Maloney
83. G. O. Smith
84. Louella Smith
85. Erwin Ravin
86. Betsy Freedman
87. Carolyn and Kent Johnson
88. Elliot and Terry Freedmann
89. Danaan Smith
90. Kathy Steberl
91. Larry Smith
92. Karen Digiorgio
93. Maynard Ransom Smith
94. Kathy Smith
95. Bill Choate
96. Cathy Choate
97. William Smith
98. Tracy Thomas
99. Lottie Edelman, Secretary, Kenai Peninsula Fisheries Assoc.
100. Bob Blacke, Cordova City Councilman, Box 94, Cordova
101. Dennis Nolan, Box 806, Cordova

KACHEMAK BAY

FOR HB 192

102. Pete Isleib, Box 139, Cordova

103. Alvin and Elizabeth Taeschner, P. O. Box 56, Soldotna

104. Mary A. Miller, Box 1, Kasilof

105. Janis Mullen, Box 805, Soldotna

106. Larry Hollinshead, P. O. Box 1055, Homer

107. Margaret Mullen, Box 602, Soldotna

108. Eben Hopson North Slope Borough

~~109. Bill and Elizabeth Johnson, P. O. Box 658, Homer~~

110. Loren and Sandra Flagg, Box 621, Homer

111. Richard M. Dixon, Box 596, Homer

112. Pat and Mary Joe McElroy, Rt. 2, Box 705, Kasilof, Ak. 99610

113. Dr. Calvin M. Fair, P. O. Box 369, Soldatna 99669

114. Mary Mullen, Box 602, Soldatna 99669

115. Ellen Mullen, Box 181, Kasilof, Ak.

116. Geron Bruce, 328 W. 10th St., Jnu. 99801

117. C. Neil McArthur, P. O. Box 764, Homer 99603

118. Mrs. Davidson, Box 62A, Homer, Ak. 99603

~~119. Sandra Jerkovich, 317 No., Klevin Ave., Anch., Ak. 99504~~

~~120. R. Ruth Brooking, 7524 Arthur Ct., Anch., Ak. 99502~~

~~121. Alfred Strawn, P. O. Box 210, Palmer, Ak. 99645~~

~~122. Edward M. Wilkerson~~

~~123. Darlo D. Dayton, Box 556, Kodiak, Ak. 99615~~

~~124. Fred Elfohnso, Box 6341, Anchorage, Ak. 99502~~

~~125. William B. McCullough~~

~~126. George Rideus~~

~~127. Jean Yonaha~~

KACHEMAK BAY

FOR HB 192

119. David R. Miles, 1 Mile, Bennett Rd., SR Box 51502, Fbx.

120. Tina Stonorov, 1502 Second Ave., Fairbanks, Ak. 99701

121. Rudy Vetter, Box 342, Fairbanks, Ak. 99701

122. Bob Weeden, Box 80425, College, Ak. 99703

123. Janet Lokken, S.R. Box 20661, Fairbanks, Ak. 99701

124. Judy Smith, Box 81071, College, Ak. 99708

125. Zin Kittredge, 15 Timberland Drive, Fairbanks, Ak. 99701

126. Liz Holloway, Rainbow Valley, Indian, Alaska 99540

127. Henry E. Smith

128. Roman J. Matyka and Virginia M. Ferrell, Box 81353, Fbx., Ak. 99708

129. Paul E. Jones, Box 697 Homer, Ak. 99603

130. Mary Ellen Culbreathson, Box 2778, Juneau, Ak.

131. Dr. Pat Taylor, Mile 13 Glacier Highway, Jnu., Ak.

132. Mr. and Mrs. Bob Scott, 1703 Willow Drive, Jnu., Ak.

133. B. McGinnis, Rt. 3, Box 3552, Juneau, Ak.

134. Mrs. K. Greenough, 527 W. 11th St., Jnu., Ak.

135. David McDonald, 3411 Oregon Dr., Apt. #7, Anch.

136. Colleen Handel, P. O. Box 163, Kasilof, Ak. 99610

137. Sandy Lagrone, 607 Bentley Dr., West, Fbx, Ak.

138. Patty Lane, SR Box 10612, Fairbanks, Ak.

139. Jeff Weltzin, 820 Moore Hall, U. of A., Fbx., Ak.

140. Christopher Pearson, c/o Geophysical Institute, U. of A. Fairbanks, Ak. 99701

141. Anne and Will Harrison, c/o Geophysical Institute, U. of A. Fairbanks, Ak. 99701

142. Lawrence Katkin, SR Box 10612, Fbx., Ak. 99701

KACHEMAK BAY

FOR HB 192

143. Kevin Harun, Box 73339, Fairbanks, Ak. 99707

144. Ron Johnson, #4 Stuart Hall, U. of A., Fairbanks, Ak.

145. Larry Schmueser, Box 1267, Fairbanks, Ak. 99701

146. Joan Forshaug, Box 81847, College, Ak. 99708

147. Judy and Kermit Johnson, 1049 Pedro St., Fairbanks 99701

148. Elena Sparrow

149. Henry Cunningham, Box 81647, College, Ak. 99708

150. Patrick Fisher, P. O. Box 81486, College, Ak. 99708

151. Richard Joy, Box 1205, Fairbanks, Ak. 99707

152. Carole and Greg Demers, S.R. Box 50338, Fairbanks, Ak.

153. Mr. and Mrs. Keith Hart, Jnu.

154. Don and Mary Muller, Old Harbor Books, Box 1827, Sitka, Ak.

155. Paul Peyton, Box 1370, Sitka, Ak. 99835

156. Dennis and Marlene Lund, Box 479, Sitka, Ak. 99835

157. Larry Edwards, Sitka, Ak.

158. Bill Schrier, P. O. Box 563, Soldotna, Ak. 99669

159. Tom Griffith, Box 80105, College, Ak. 99708

160. Jay Stelzenmuller, P. O. Box 631, Sitka, Ak. 99835

161. Al. George, S.R. Box 50551, Fairbanks, Ak. 99701

162. Janet and Larry Johnson, 1 Mile Dalton Trail, SR 20022-A Fairbanks, Ak.

163. Sheree Sandifur, 800 Airport Way, Fairbanks, Ak.

164. Barry Correll, Box 1267, Fairbanks, Ak. 99707

165. David R. Miles, 1 Mile Bennett Rd., S.R. Box 51502, Fbx., Ak.

Senate Resources Commitee,

I am writing to show my support of H.B,192 to buy back the leases from the oil companies. It seems to me that Kachemak is not one of the places in Alaska for oil developement. Fishing is important in this beautiful area. Maybe in the future when the earth is out of oil and the oil companies are more responsible and experienced, and through public hearings you find local support, will be the time for this kind of developement in Kachemak Bay.

Sincerely,

David R. Miles

David R Miles

1 Mi. Bennett Rd.
S.R. Box 51502
Fairbanks, AK 99701

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC
PHONE: 586-9440
JUNEAU, ALASKA 99801

02072 POM ANCHORAGE ALASKA 15 03-30 200P AST

PMS SENATOR KAY POLAND

JUN

PLEASE HELP SAVE THE CRITICAL RESOURCES OF

KACHEMAK BAY BUY BACK THE OIL LEASES

COLLEEN HANDEL PO BOX 163 KASILOF AK 99610

1577 MAR 30 PM 6 01

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

02076 POM ANCHORAGE ALASKA 15 03-30 120P AST

PMS SENATOR KAY POLAND

JUN

HELP SAVE KACHEMAK BAY PLEASE SUPPORT BUY BACK BILL

DAVID MCDONALD 3411 OREGON DR APT 7 ANCHORAGE

1977 MAR 30 PM 6 06

S27 to H-St.
Juneau

JUNEAU, AK
MAR 30
PM
1977
99801

Alaska State Legislature
Honorable Hay Poland
Chm.
Senate Resources Com.
Juneau Alaska

Members of the Committee

I strongly urge you to appropriate the necessary dollars to purchase the leases from Standard Oil Co. at Ratchemak Bay.

This fishery is far more valuable to the State in the long run

Support H.B 192

Mrs. H. Greenough

HNB. K. POLAND
CHM.

MAR, 17 '7

SENATE RESOURCES:
I SUPPORT KATCHEMACK
BAY REAQUITION OF LEASES
FROM S. OIL. CO. HB 149.

STRONGLY URGE YOUR
SUPPORT - DO PASS!

B. MCGINNIS
RT 3 BX 3552
JUNEAU

HNB. K. POLAND
CHM.

MAR, 17 '77

SENATE RESOURCES:
I SUPPORT KATCHEMACK
BAY REAQUITION OF LEASES
FROM S. OIL. CO. HB 149.

STRONGLY URGE YOUR
SUPPORT - DO PASS!

B. McGINNIS
RT 3 BX 3552
JUNEAU

SENATE RESOURCES
STATE CAPITOL
JUNEAU ALASKA

B. McGIMMIS
RT. 3, BOX 3552, JUNEAU, ALASKA 99801

ENERGY

Alternate Energy Resources Com.
Juneau Alaska

Mr. B. Thomas Hawthorne
Juneau Alaska

CONSERVATION

is the cheapest new energy source

Mar 27 AM 7

Senate Resources committee

It is important for the future generations of Alaskans that the leases of Katchemak Bay be repurchased by the State.

Many persons are aware of the harmful affects of even the minutest partical of oil on the shellfish fishery. This has been studied carefully by National Marine Fisheries Lab. This fishery should be protected from development

Dr Pat Taylor
Homer

Senate Resources Committee
Honorable Ray Polan
We are supporting
of the buyback of
the leases in Katchemak
Bay.
Because this passed
last year we feel it
should be funded.
Mr + Mrs. Bob Scott
Juneau Alaska

ANOTHER ...
JUNEAU, ALASKA
MAR 30 P
1977
99801
"alaska joe"
ORIGINAL
ALASKA SCENIC P. O. BOX 1466, ANCHORAGE, ALASKA 99501

Honorable Ray Polan
Senate Resources
Committee
Juneau
Alaska

BEAUYIFUL GREEK RUSSIAN ORTHODOX CHURCH
Kodiak, Alaska
Old bell tower may be seen at right.

C-KOD-1
Plastichrome
BOSTON

10¢

March 29, 1977

Senate Resources Committee
Kay Poland, Chairman
Alaska State Legislature

Dear Senators;

As you know, Katchemak bay bioassey studies conducted at the Auke Bay Lab indicate that very low levels of crude oil: .1 to 1 part per million is toxic to larval stages of shellfish.

Larval studies by the National Marine Fisheries Assoc. indicate that upwards to 507 billion larva are released in this bay annually and settle on the North Shore of Katchemak bay. (Bluff Point). This is 35 million per square mile of the bay.

The legislature, in its wisdom, passed last year, the necessary act to reacquire these leases and the State and Standard Oil have negotiated in good faith to arrive at a satisfactory settlement.

We strongly urge you to support this appropriation for reacquisition in HB 192.

E.P.A. records show that out of 260 recorded spills in Cook Inlet, 143 were caused by industrial carelessness. There is too great a risk to allow this fishery to be destroyed.

Sincerely,

Mary Ellen Culbreathson

Miss Mary Ellen Culbreathson
Box 2778
Juneau, Alaska

Box 697
Homer, Alaska 99603

The Honorable Kay Poland
Chairman, Senate Resources Committee
Pouch V
Juneau, Alaska 998II

Dear Senator,

In the near future your committee will be holding hearings on the Kachemak Bay buy back bill. This issue is of extreme importance to the fishermen of Kachemak Bay. The majority of these fishermen are either heading for the herring grounds or involved in other fisheries and will not be able to attend the hearing. Those opposed to the buy back have chartered a plane and will be giving testimony. We hope that our absence is not taken as a lack of concern since we have all worked very hard to insure that Kachemak Bay will not be risked to oil development and we strongly favor the buy back program.

We ask that the following be considered in your decision concerning the buy back program;

(I) Kachemak Bay is well documented as having the richest marine environment in the world.

(2) The first wholesale value of fishery resources harvested in I976 was $IO,772,000.00.

(3) Kachemak Bay is a spawning and rearing area for much of the fishery resources of Cook Inlet, and as such, is a critical habitat area.

(4) The final Cook Inlet E.I.S. section 3D fully illustrates and defines the effects of oil development on the fishery resources and shows clearly the need to protect Kachemak Bay.

(5) The Federal leasing has been withdrawn to establish a I3 mile buffer zone adjacent to Kachemak Bay.

(6) There is not adequate facilities to utilize oil from the pipeline and the problem of what to do with the excess oil has not been solved. Any oil development that poses a high risk to renewable resources should be delayed until the oil can be used to satisfy the energy needs of the U.S. and not for export. The U.S. needs to develope an energy plan that will insure wise use of all our energy resources.

(7) There is not available anywhere adequate clean up equipment that could be used successfully to clean up an oil spill where wind and tide are present. This fact was very evident from the recent experience on the East coast of the U.S..

(8) Should there be oil on the leases involved in the buy back it's value will increase and the risk imposed by it's extraction will be decreased by the development of better technology. This approach to energy resource development is now being undertaken by the people responsible and is being endorsed by the majority of Americans.

to share this hardship by paying an assessment on fish products harvested in Kachemak Bay. We also know that we will be the most affected by oil development because of our dependency on the fishery resources. Therefore we ask that you carefully consider what we have stated and support the buy back program.

Sincerely,

Paul E. Jones

Paul E. Jones; Vice President, North Pacific Fisheries Association

P.S. I am a 38 year resident and a registered voter of the Fritz Creek Precinct. I'm also the Mayor of Kachemak City.

We also wish to express our strong desire, not only to stop any oil development in Kachemak Bay, but also to severely control oil development in any other coastal region of Alaska, especially where fisheries are threatened.

Sincerely,

Roman J. Motyka

Virginia M. Ferrell

Box 81353

Fairbanks, Alaska 99708

27 March 77

Senator Kay Poland
Chairperson
Senate Resounces Committee

Hello,

I am a four year resident of Alaska and a commercial fisherman for three years. I fish in the waters of Kachemak and Kamishak Bay, both adjacent to the oil lease areas of Lower Cook Inlet. I am against any hydrocarbon exploitation in those areas, not because I derive a portion of my income from fishing, but because of the richness of life in those areas. Hugh salmon runs, crab (king, tanner, and dungeness), shrimp, halibut,cod, and a variety of sea mammals make their home in these waters. The outer Kachemak Bay area is an important breeding ground for king crab and shrimp. Kachemak Bay has been called the richest food producing area in the world. The State has wisely bought back the oil leases in that area.

Oil operations are not fail-safe. And, despite the scantily progressive spill clean-up technology, this area would be in special danger due to the second highest tides in the world. Oil dispursment would be rapid.(this tidal cleansing action is one reason why the waters are so rich). Also, The Lower Cook Inlet is subject to intense seismic and volcanic activity. In January, 1976 Mt. St. Augustine erupted sending ash over a hugh area. From a Feb. 2 UPI print-out, "Professor Juergen Kienle of the University Of Alaska says the volcanic explosion that shook Mount St. Augustine last month gave off a strange heat wave similar to that of an atomic explosion. He says trees on a nearby island were burned on the side facing the mountain, but remained green on the opposite side." This mountain is a stone's throw from the oil lease area in question.

Who would pay for a disaster? We all would. Can we risk any possible depletion in an important food resource? Is it worth a few months supply of oil? I say NO!

In a 1976 poll taken by the U. of A. 70% of Kachimak Bay residents said NO to oil development in Lower Cook Inlet. 10,000 other Alaskans, in the same poll, spoke out in opposition.

President Carter has recently expressed similar concerns for certain Alaskan waters, Cook Inlet Among them. I hope, in the upcoming hearings that Lower Cook Inlet be nominated a marine sanctuary and oil exploitation be banned.

Sincerely,

Henry E. Bendl

Rainbow Valley
Indian, Alaska 99540
March 23, 1977

Sen. Kay Poland
Pouch V
Juneau, Alaska 99811

Dear Sen. Poland:

Please pass the Kachemak Buy Back Bill (HB192) out of the Resources Committee and support it when it comes to a floor vote.

Kachemak Bay should be protected for biological reasons and for the long term economic benefits fishing will bring the area.

Thank you.

Sincerely,

Liz Holloway

March 23, 1977

Senate Resources Comm.
Alaska State Legislature
Pouch 5
Juneau, Alaska 99811

Dear Sirs,

The only way our fisheries will be assured their future is if our waters can support fish. There is a bill (H.B. 192) which favors the buy back of Kachemak Bay from the oil companies. There is no alternative. This must be done. We are jeopardising the future of our own fisheries if we leave them in the hands of the oil concerns.

I urge you to support the Kachemak Bay buy back.

Sincerely,

Zin Kittredge

Zin Kittredge
15 Timberland Dr.
Fairbnaks, Ak, 99701

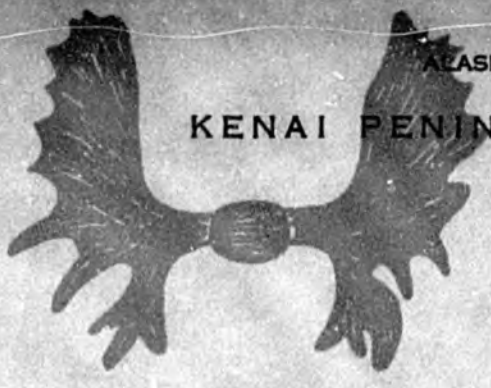
Mar 23 '77

Honorable Kay Poland
Chairman Senate Resources
Juneau Alaska

Dear Senators

We support HB 192 because we believe the fisheries resource of Ketchemak Bay far exceeds the potential for the long term benefit for Alaskans and should not be jiprodized by the hazards of oil pollution.

Mr & Mrs. Keith Hart
Juneau Alaska



ALASKA CONSERVATION SOCIETY

KENAI PENINSULA CHAPTER

P. O. BOX 563
SOLDOTNA
ALASKA 99669

March 30, 1977

Senator Kay Poland
Senate Resources Committee
Juneau, Alaska

Dear Senator Poland;

The Kenai Peninsula Chapter, Alaska Conservation Society, would like to urge your committee to approve the Senate version of the Kachemak Bay "buy-back" bill, H.B. 192.

While we obviously do not know the "politics" behand the procrastination in funding, the concept of "buy-back" had already been approved by both Senate and House.

We continue to maintain what has already been repeated many times; the Bay has both rare scenic beauty and important marine habitat value, which should not be disrupted by oil development.

Sincerely,

Bill Schrier

Bill Schrier, President
Kenai Peninsula Chapter

Margaret T. Mullen
Box 602
Soldotna, Alaska 99669

March 2, 1977

Senator ~~John Sackett~~ Kay Pollard
Chairman Finance Committee
Alaska State Senate
Pouch V
Juneau, Alaska 99801

Dear Senator Pollard

As a thirty one year resident of the Kenai Peninsula I strongly favor the passage of HB 192 - Kachemak Bay Lease Buy Back Bill.

Critical habitat areas are to be protected at ANY cost..

Sincerely,

Margaret T. Mullen

Margaret T. Mullen

Re: HB 192 - Kachemak Boy Back
In Support of.

Mar 2. 77

Dear Senator Poland,

I am writing in support of HB 192. I feel Kachemak Bay is important to Alaska for its rich & abundant sea life, and any possibility of harming this should be avoided at any cost. The money should be appropriated to buy back the leases as planned.

Sincerely,

James Muller
Soldotna, AK
Box 20

P.O. Box 56
Soldotna, AK 99669
March 2, 1977

Senator John Sackett
Chairman, Senate Finance Committee
Pouch V
Juneau, AK 99801

Dear Senator Sackett:

As fisherpersons and concerned year-around residents of 30 and 19 years respectively, we are vitally interested in passage of HB 192 Kachemak Bay Buy Back Bill.

It seems as though there are enough other areas of the State in which to explore and/or develop oil without disturbing a critical habitat area.

We urge your support of passage for HB 192.

Very truly yours,

Alvin and Elizabeth Taeschner

ET:pb

cc: John Huber
Kay Poland
George Hohman
Pete Melan
Mike Coletta
Joe Orsini
Robert Bradley
Robert Zeigler

ALASKA
STATE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

120 Cap.

State Capitol

INTER-AGENCY ROUTING SLIP

TO: Senate Resources

ATTN: Committee

REMARKS:

FROM: Senator Tillion DATE: 3-14

CALVIN M. FAIR, D.D.S.
P.O. BOX 369
SOLDATNA, ALASKA 99669

Senator Clem Tillion
Ponch V
Juneau, Alaska

3-3-77

Dear Clem,

I find that I just do not have the time right now to write personal letters to all the members of Senate so if you wish you may pass my comments on this matter on to them.

I have lived in Alaska with my family for a good many years now, nearly all of which have been in Soldotna. During this time we have enjoyed the many wonderful recreational opportunities available to us in this general area. A fair portion of this recreational enjoyment (and subsistence use) has come from utilizing Kachemak Bay and its surroundings.

We have utilized the Bay for fishing, shrimping, crabbing, Boating and just plain sight-seeing. We would certainly oppose any activity that might in any way damage any of these resources. Unfortunately oil development has proven to be one of the most detrimental uses in our age.

In addition to the personal enjoyment of the Bays resources I feel a vested economic interest in preserving its marine life. I have in my practice many active fishermen who make all or most of their living from harvesting these same resources. These people are a valuable asset to my practice as well as a personally satisfying asset through their friendships.

What I am really trying to say, in a long way, is that I strongly support the Kachemak Bay Buy-Back Bill now before the legislature. This would remove the potentially destructive oil development from the Bay area. I believe in this case that the marine resources are saved.

Warm Regards,

Calvin Tani

Box 181
Kasilof, Alaska
March 9, 1977

Dear Kay Polland,

As a lifetime resident of the Kenai Penninsula, and a fisherman of 8 years, I urge you to buy back the Kachemak Bay leases. (HB 192) Then, when the rigs spread from here to Kodiak, the crabs may find a refuge ... and ourselves a mountain scene unhampered by oil flares.

Sincerely,
Eileen Mullen

precinct Tustumena 00630160

Box 602
Soldotna, Alaska 99669
10 March 1977

Dear Senator Poland:

I urge you to work for the immediate passage of the Kachemak Bay buy back bill. PLEASE don't sit on that bill until it gets lost in the shuffle!! We, the residents of the Kenai Peninsula (I've been one for 25 yrs.) need the passage of that bill to protect our renewable resources. It is <u>not</u> an anti-oil bill - the oil companies are getting a fair deal on this one. It is a bill that insures that our children's children will have a resource with which to work, produce, and eat... long after you and I will have died.

Since you are from the strong fishing community of Kodiak, I find it absolutely amazing that you aren't backing this bill 100%. I don't care if you hate Hammond and love Egan - push your ego aside and let your foresight have the power.

Most respectfully,
Mary Mullen

P.O. Box 764
Homer, Alaska 99603
28 February 1977

Dear Senator Poland:

Please support the bill to buy back the Standard Oil leases in Kachemak Bay, and any further bills for re-purchase of other oil leases in the Bay.

Sincerely,

C. Neil McArthur

Rt 2, Box 705
Kasilof, AK 99610
March 4, 1977

The Honorable Kay Poland
AK State Legislature
Pouch V
Juneau, AK 99801

Dear Sir:

Please support HB 192 in favor of the buy-back of Kachemak Bay oil leases. Thank you.

Sincerely,

Pat + Mary Joe McElroy

Pat & Mary Joe McElroy

TELEGRAM

ACA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
#CJ JUNEAU, ALASKA 99801

06033 POM TDJU SITKA AK 15 04-01 434P PST

PMS SEN POLAND

JUN

I AM IN FAVOR OF THE BUY-BACK PROGRAM OF THE

KACHEMAK BAY OIL LEASE.

JAY STELZENMULLER POB 631 SITKA 99835

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

02079 POM TDA HOMER ALASKA 15 03-15 1132A AST

PMS SENATOR POLAND

JUN

PLEASE SUPPORT THE KACHEMAK BAY BUY BACK BILL

MRS DAVIDSON BOX 62A HOMER ALASKA 99603

1977 MAR 15 PM 7 19

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#CJ

02596 POM TDA HOMER ALASKA 15 03-01 1150P AST

PMS SEN KAY POLAND

JUN

SOLOR ENERGY IS OOON THE WAY KEEP OIL OUT AND SAVE THE BAY

ANABELLE LUND BOX 1168 HOMER 99603

1977 MAR 2 PM 5 53

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

1977 FEB 24 AM 11 00

02012 ANCHORAGE AK 27 02-24 805A AST

PMS SENATOR KAY POLAND

JUN 2598

APPEALING TO YOUR WISDOM SENSITIVITY AND FORESIGHT TO RESCUE FOR PRESENT AND FUTURE GENERATIONS K-BAYS VULNERABLE NATURAL RESERVES AND SCENIC MAGNIFICENCE BY NURTURING LEASE BUY BACK APPROPRIATIONS.

JUDY AND PETER GOULD

TELEGRAM

ITA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

1977 MAR 7 PM 2 04

02013 TDA BARROW ALASKA 69 03-07 958A AST

PM SEN KAY POLAND

1133

JUN

I STRONGLY URGE THAT YOU SUPPORT AND WORK ACTIVELY ON MEASURES TO BUY BACK THE OIL LEASES AT KACHEMAK BAY. THE STATE MUST ASSESS THE FULL SOCIAL AND ECONOMIC RAMIFICATIONS ON OCS DEVELOPMNT AS THEY CAN EFFECT THEIR PEOPLE AND THEIR RENEWABLE NATURAL RESOURCE. MANAGEMENT PROGRAM OF OUR NATURAL RESOURCES MUST BE PREDICTED ON THE INTEREST OF THOSE MOST DIRECTLY INVOLVED AND IN CONJUNCTION WITH THE LOCAL GOVERNING BODIES.

EBEN HOPSON NORTH SLOPE BOROUGH

TELEGRAM

ALASKA COMMUNICATIONS, INC
PHONE: 586-6440
JUNEAU, ALASKA 99801

#CJ

20020 NL KENAI ALASKA 118 03-01 115P AST

PMS SENATOR KAY POLAND

0521

POUCH V

JUNEAU

1977 MAR 1 PM 10 23

REQUEST HB192 BE PASSED. SERVICE HOMER AREA BY MICHAEL GULD AND ROBERT HEASLEY DEPT OF SOCIOLOGY UNIVERSITY ALASKA, ANCHORAGE WITH ASSISTANCE HOMER HIGH SCHOOL, CITY OF HOMER PLANNING AND ZONING COMMISSION, SOCIAL AND ECONOMIC RESERACH UNIVERSITY ALASKA AND SEVERAL UNIVERSITY STUDENTS SHOWED 54 AND SEVEN TENTHS PER CENT INSIDE CITY AND 68 AND FIVE TENTHS PER CENT OUTSIDE CITY WANTED OIL DEVELOPMENTS DISCOURAGED. 68 AND FIVE TENTHS PER CENT INSIDE CITY AND 68 AND TWO TENTH PER CENT OUTSIDE CITY WANTED PETRO CHEMICAL INDUSTRY ETC DISCOURAGED. IT SHOULD BE NOTED THAT INTERVIEWING IN HOMER AREA COMPLETED JUST PRIOR TO A SUCCSEEFUL EFFORT TO REMOVE FERRIS. AS STATE SENATORS THE VOICE OF THE MAJORITY SHOULD BE ADHERED.

LOTTIE EDELMAN SECRETARY KENAI PENINSULA FISHERIES ASSOC.

TELEGRAM

ALASKA COMMUNICATIONS, INC
PHONE: 586-6440
JUNEAU, ALASKA 99801

06219 POM JUNEAU ALASKA 15 03-01 1204P PST

PMS SEN POLAND

JUN 0265

FISH ARE IMPORTANT RESOURCE DO NOT DELAY ANY LONGER

PASS HB192

ROSELEEN MOORE STAR ROUTE A BOX 90B HOMER ALASKA

1977 MAR 1 PM 2 33

TELEGRAM

ACA ALASKA COMMUNICATIONS, INC.
PHONE 586-6440
JUNEAU, ALASKA 99801

#CJ

02082 POM TDA HOMER AK 15 03-01 1035 A AST

PMS SENATOR KAY POLAND

JUN 0447

PLEASE SUPPORT THE APPROPRIATIONS FOR KACHEMAK BUY BACK

ALASKANS HAVE ALREADY GIVEN STRONG SUPPORT

KACHEMAK BAY CONSERVATION SOCIETY

NANCY LORD, PRESIDENT

1977 MAR 1 PM 9 18

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC
PHONE: 586-6440
JUNEAU, ALASKA 99801

1977 MAR 1 PM 6 58

#CJ

02159 POM TDA HOMER ALASKA 15 03-01 1039A AST

PMS SEN KAY POLAND

JUN 0339

STAND BY THE FISHERMEN BUY BACK KACHEMAK BAY LEASES

JANE C CALHOON BOX 1224 HOMER 99603

TELEGRAM

ACA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#CJ

02054 POM TDA HOMER AK IS 03-01 950A AST

PMS SENATOR KAY POLAND

JUN 0408

STAND BY YOUR DECISION ON KACHEMAK BAY BUY BACK NOW

CHARLES SMITH

SRA BOX 34

HOMER AK 99603

1977 MAR 1 PM 8 58

TELEGRAM

ACA ALASKA COMMUNICATIONS, INC.
PHONE 586-6440
JUNEAU, ALASKA 99801

1977 MAR 1 PM 9 03

#

02139 POM TDA HOMER ALASKA 15 03-01 1030A AST

PMS SEN KAY POLAND

JUN 0439

SUPPORT ALASKAS FISHING INDUSTRY BUY BACK THE KACHEMAK BAY

LEASES

RALPH GALIANO BOX 232 HOMER 99503

TELEGRAM

POM ALASKA COMMUNICATIONS, INC
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

02576 POM TDA HOMER AK 15 03-01 1150P AST

PMS SENATOR KAY POLAND

JUN

FOOD IS AS IMPORTANT AS OIL SUPPORT HB192

ANN ROBINSON

BOX 867

HOMER AK 99603

1977 MAR 2 PM 6 15

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

1977 MAR 2 PM 1 44

#CJ

02276 POM TDA HOMER ALASKA 15 03-01 1150P AST

PMS SEN KAY PLAND

JUN

FISHING IS MORE IMPORTANT THAN OIL VOTE FOR HB192

TOM GERSTNER BOX 588 HOMER 99603

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#CJ

02213 POM TDA HOMER ALASKA 15 03-02 920A AST

PMS SEN KAY POLAND

JUN

IN 30 YEARS WE WILL STILL NEED FOOD. DONT RISK KACHEMAK BAY

SUPPORT APPROPRIATIONS

KEN CASTNER BOX 558 HOMER

1977 MAR 2 PM 40

TELEGRAM

ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

CJ

24003 POMS SITKA ALASKA 13 03-31 1004A PST

PMS SENATOR KAY POLAND SENATE RESOURCES COMMITTEE

2745

POUCH V

JUNEAU

AS BOOKSELLERS MY WIFE AND I STRONGLY FAVOR THE KATCHAMAK BAY

BUY-PACK. SINCERELY

DON AND MARY MULLER OLD HARBOR BOOKS BOX 1827 SITKA

#

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

06245 POM TDJU SITKA ALASKA 15 03-31 830P PST

PMS SEN POLAND

JUNEAU

I WOULD LIKE TO EXPRESS SUPPORT FOR KACHEMAK BAY

APPROPRIATION FOR GOOD OF RENEWABLE RESOURCES

PAUL PEYTON BOX 1370 SITKA 99835

1977 MAR 31 PM 8 54

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

06247 POM TDJU SITKA ALASKA 15 03-31 830P PST

PMS SEN POLAND

JUNEAU

PLEASE EXPEDITE BUY BACK OF KACHEMAK BAY OIL LEASES

DENNIS AND MARLENE LUND BOX 479 SITKA 99835

1977 MAR 31 PM 8 54

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

1977 MAR 31 PM 8 54

Ø Ø6244 POM TDJU SITKA ALASKA 15 03-31 829P PST

PMS SENATOR KAY POLAND

JUNEAU

HAVE FOLLOWED THE KACHEMAK BAY LEASE SINCE GRANTED AND

SUPPORT BUY BACK WHOLEHEARTEDLY

LARRY EDWARDS SITKA ALASKA 99835

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE 586-6440
JUNEAU, ALASKA 99801

1977 FEB 24 AM 1 12

#

025 35 POM ANCHORAGE ALASKA 15 02-23 1040P AST

PMS SEN KAY PLAND 2574

JUN

URGE YOU SUPPORT APPROPRIATION TO BUY-BACK KACHEMAK

BAY OUL LEASES REQUESTED BY GOVERNOR.

MR AND MRS GERALD BROOKMAN 1220 F ST ANCHORAGE AK 99501

TELEGRAM

:CA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

1977 FEB 24 AM 12 38

02475 POM TDA HOMER ALASKA 15 02-23 0910P AST

PMS SEN KAY POLAND

JUN 2517

IMPERATIVE THAT LEGISLATURE PASS BILL FUNDING

REPURCHASE KACHEMAK BAY OIL LEASES. PLEASE SUPPORT.

RICHARD W ROBINSON PO BOX 867 HOMER ALASKA 99603

TELEGRAM

ACA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

1977 FEB 24 AM 12 38

02480 POM TDA HOMER ALASKA 15 02-23 0910P AST

PMS SEN KAY POLAND

2522

JUN

URGE YOU SUPPORT BILL FUNDING REPURCHASING

KACHEMAK BAY LEASES. DO NOT LISTEN TO RHODE.

ANN B ROBINSON BOX 867 HOMER ALASKA 99603

TELEGRAM

CA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

1977 FEB 24 AM 12 39

#

02501POM TDA HOMER ALASKA 15 02-23 0935P AST

PMS SEN KAY POLAND

2526

JUN

DONT RISK MY LIVELIHOOD SUPPORT HB192

RON BERGLUND BOX 696 HOMER ALASKA 99603

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

1977 FEB 24 AM 12 39

#

02488 POM TDA HOMER ALASKA 15 02-23 0935P AST

PMS SEN KAY PLAND 2531

JUN

SUPPORT LAST YEARS LEGISLATION RE KACHEMAK BAY OIL LEASES.

VOTE FOR HB192.

MR AND MR C L CALKINS SRA BOX 20 KACHEMAK VIA HOMER ALASKA

99603

TELEGRAM

ROA ALASKA COMMUNICATIONS, INC
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

377 FEB 24 AM 12 39

02496 POM TDA HOMER ALASKA 15 02-23 0928P AST

PMS SEN KAY POLAND

JUN 2539

SUPPORT HB192 FISHERIES AND LIFE STYLE AT STAKE

ROSELEEN MOORE SRA BOX 90B HOMER ALASKA 99603

TELEGRAM

ACA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

1977 FEB 24 AM 12 39

#

02504 POM TDA HOMER ALASKA 15 02-23 0935P AST

PMS SEN KAY POLAND

2544

JUN

SAVE OUR FISHERIES SUPPORT HB192 WRONG PLACE TO

TAKE THIS RISK

KENNETH MOORE SRA BOX 90B HOMER ALASKA 99603

TELEGRAM

ALASKA COMMUNICATIONS
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

02493 POM TDA HOMER ALASKA 15 02-23 0900P AST 1977 FEB 24 AM 12 39

PMS SEN KAY POLAND

JUN 253.

PLEASE SUPPORT HB 192

SHARON HALLETT BOX 696 HOMER ALASKA 99603

TELEGRAM

ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

02509 POM TDA HOMER ALASKA 15 02-23 0934P AST 77 FEB 24 AM 12 40

PMS SEN KAY PLAND

2550

JUN

SUPPORT HB192 FOR OUR 90 MEMBERS AND THE PEOPLE OF ALASKA.

PRESIDENT NORTH PACIFIC FISHERMAN ASSOCIATION

KENNETH MOORE BOX 796 HOMER ALASKA 99603

TELEGRAM

ACA ALASKA COMMUNICATIONS, INC.
PHONE: 586-5440
JUNEAU, ALASKA 99801

77 FEB 24 AM 12 40

#

025 14 POM TDA HOMER ALASKA 15 02-23 0940P AST

PMS SEN KAY PLLAND 2555

JUN

SUPPORT HB 192 KACHEMAK FISHERIES IMPORTANT

CLARENCE PLATT SRA BOX 90B HOMER ALASKA 99603

TELEGRAM

TDA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

02522 POM TDA SELDOVIA ALASKA 15 02-23 1000P AST

PMS SEN KAY POLAND

2562

JUN

WE URGE YOUR SUPPORT ON HB192. PLEASE HELP US PROTECT KACHEMAK BAY AND OUR LIVELIHOOD.

HANK AND JEAN GAIN BOX 132 SELDOVIA AK

1971 FEB 24 AM 12 50

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

1977 FEB 23 PM 11 46

#

02462 POM TDA HOMER ALASKA 15 02-23 0830P AST

PMS SEN KAY POLAND 2510

JUN

PLEASE BUY BACK KACHEMAK BAY OIL LEASES. RE HB192

MR AND MRS ADOLPH CURRY PO BOX 461 HOMER AK

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

977 FEB 23 PM 11 36

#

024 63 POM TDA HOMER ALASKA 15 02-23 0908P AST

PMS REP KAY POLAND

JUN 2503

STRONGLY URGE YOU SUPPORT KACHEMAK BAY BUY

BACK LEGISLATION

ROBERT AND CAROL MOSS BOX 774 HOMER ALASKA 99603

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

1977 FEB 23 PM 11 10

02449 POM TDA SELDOVIA ALASKA 15 02-23 0815P AST

PMS SEN KAY POLAND

2489

JUN

PLEASE SUPPORT HB192. DONT LET THEM DESTROY KACHEMAK BAY

CLEO SWICK BOX 214 SELDOVIA AK

TELEGRAM

ACA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

02454 POM TDA SELDOVIA ALASKA 15 02-23 0315P AST

PMS SEN KAY POLAND

JUN 2494

PLEASE SUPPORT HB192. DONT LET THEM DESTROY KACHEMAK BAY.

KENNETH SWICK BOX 214 SELDOVIA AK

TELEGRAM

ACA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

1977 FEB 23 PM 11 35

#

024 66 POM IDA HOMER ALASKA 15 02-23 0835P AST

PMS SEN KAY POLAND
2501
JUN

RHODES IS WRONG, SAVE OUR BAY. SUPPORT HB192.

ROBERT HAYNES BOX 665 HOMER AK 99603

TELEGRAM

ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

77 FEB 24 AM 11 02

#

02013 POM TDA HOMER K 15 02-24 815A AST

PMS SENATOR KAY POLAND

JUN 2601

PLEASE SUPPORT AND VOTE FOR HB192

BEAVER AND JEFFIE NELSON

BOX 1113 HOMER AK 99603

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

77 FEB 24 AM 11 27

#

02 025 ØPOM ANCHORAGE ALASKA 2-24 902A AST

PMS SEN KAY POLAND

JUN 2612

WE SUPPORT APPROPRIATIONS FOR BUY BACK OF KACHEMAK BAY LEASES

CHARLES AND MARGARET EVANS

BOX 1621 SRA 99507

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

1977 FEB 24 PM 6 28

#

02 189 POM TDA HOMER ALASKA 15 02-24 1130A AST

PMS SENATOR KAY POLAND

2783

JUN

DISAGREE WITH RRR HODES NEWSCAST ON FEBRUARY 23RD URGE PASSAGE

OF HB 192

JEAN CALHOON BOX 566 HOMER 99603

TELEGRAM

ALASKA COMMUNICATIONS, INC.

PHONE: 586-6440

JUNEAU, ALASKA 99801

#

02 162 POM TDA HOMER AK 15 02-24 1150A AST

PMS SENATOR KAY POLAND

2801

JUN

RHODES NEWSCAST OF FEBRUARY 23 COMPLETELY INACCURATE.

URGE PASSAGE OF HB 192.

JEAN M SHROEDER

79/ 636

HOMER AK 99603

1977 FEB 24 PM 9 59

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

02182 POM TDA HOMER ALASKA 15 02-24 1145A AST

PMS SENATOR KAY POLAND

JUN 2775

RHODES NEWSCAST OF FEBRUARY 23RD COMPLETELY INACCURATE

URGE PASSAGE OF HB192

THOMAS SCHROEDER BOX 636 HOMER 99603

1977 FEB 24 PM 6 25

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC

PHONE: 586-6440

JUNEAU, ALASKA 99801

02157 POM TDA HOMER AK 15 02-24 1122A AST

PMS SENATOR KAY POLAND

2736

JUN

PLEASE SUPPORT HB192 APPROPRIATION FOR KACHEMAK LEASES.

KACHEMAK BAY CONSERVATION SOCIETY NANCY LORD

BOX 846

HOMER AK 99603

1977 FEB 24 PM 6 55

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.

PHONE: 586-6440

JUNEAU, ALASKA 99801

#

02 146 POM TDA HOMER ALASKA 15 02-24 1100A AST

PMS SENATOR KAY POLAND

JUN 2769

SAVE OUR FISHERY IN KACHEMAK BAY SUPPORT HB192

PAUL JONES BOX 697 HOMER 99603

1977 FEB 24 PM 6 10

#

02276 POM TDA HOMER ALASKA 15 02-24 0930P AST

PMS SEN KAY POLAND 2901

1977 FEB 25 AM 12 10

JUN

WE URGE YOUR SUPPORT ON THE KACHEMAK BAY BUY BACK LEGISLATION

CHRIS AND PAT MOSS BOX 1115 HOMER AK 99603

TELEGRAM

ACA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.

PHONE: 586-6440

JUNEAU, ALASKA 99801

02181 POM TDA HOMER AK 15 02-24 1239P AST

PMS SENATOR KAY POLAND

JUN 2820

PLEASE SUPPORT HB192 APPROPRIATION FOR KACHEMAK BUYBACK

RALPH BROSHES

BOX 1445

HOMER AK 99603

1977 FEB 24 PM 7 21

TELEGRAM

GCA ALASKA COMMUNICATIONS INC

PHONE: 586-6440

JUNEAU, ALASKA 99801

#

02207 POM TDA HOMER ALASKA 15 02-24 0555P AST

PMS SEN KAY POLAND

JUN 2833

DISAGREE WITH GHOES NEWSCAST OF FEBRUARY 23 URGE PASSAGE

OF HB192.

SCOTT KYLE BOX 1454 HOMER ALASKA 99603

77 FEB 24 PM 9 11

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

02169 POM TDA HOMER AK 15 02-24 1150A AST

PMS SENATOR KAY POLAND

2808

JUN

DISAGREE WITH RHODES NEWSCAST FEBRUARY 23RD

URGE PASSAGE OF HB192

AL DAVIS

BOX 598

HOMER AK 99603

1977 FEB 24 PM 7 12

TELEGRAM

ALASKA COMMUNICATIONS, INC
PHONE: 586-6440
JUNEAU, ALASKA 99801

1977 MAR 3 PM 1 14

#

20019 POM KENAI ALASKA 15 03-03 1046A AST

PMS SEN KAY POLAND

POUCH V 0835

JUNEAU

PLEASE SUPPORT HB191

MARY A MILLER BOX 1 KASILOF

#

19022 FOM CORDOVA ALASKA 15 03-03 430P AST

PMS SEN POLAND

JUN

WE SUPPORT BUY BACK OF KACHEMAK BAY OIL LEASES

HB192

MAXINE HOLLIDAY EXEC SECRETARY CORDOVA DISTRICT

FISHERIES UNION PO BOX 939 CORDOVA ALASKA

1977 MAR 4 PM 1 30

#

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

020296 POM TDA HOMER AK 15 03-01 1150P AST

PMS SENATOR KAY POLAND

JUN

IGNORE EFFORTS OF GREEDY LAND SPECULATORS TO STOP HB192

PLEASE SAVE BAY PASS HB192

RICHARD W ROBINSON

BOX 867

HOMER AK 99603

1977 MAR 2 PM 1 29

TELEGRAM

ACA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#CJ

02256 POM TDA HOMER ALASKA 15 03-01 1150P AST

PMS SEN KAY POLAND

JUN

KEEP OIL OUT OF KACHEMAK BAY VOTE FOR HB192

KAREN GERSTNER BOX 588 HOMER AK 99603

RECEIVED
MAR 2 1 1989

TELEGRAM

POA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

2263 POM TDAHOMER ALASKA 15 03-01 0226P AST 1977 MAR 2 AM 5 00

SEN KAY POLAND
0586

PORT BILL FOR APPROPRIATIONS FOR KACHEMAK BAY BUY

K

R RALPH BROSHES BOX 1445 HOMER ALASKA 99603

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

1977 MAR 2 AM 5 00

022 669 POM TDA HOMER ALASKA 15 03-01 0226P AST

PMS SEN KAY POLAND

0587

JUN

SUPPORT BILL FOR APPROPRIATIONS FOR KACHEMAK BAY BUY

BACK

DR RALPH BROSHES BOX 1445 HOMER ALASKA 99603

TELEGRAM

ALASKA COMMUNICATIONS, INC
PHONE: 586-6440
JUNEAU, ALASKA 99801

07 MAR 1 PM 2 24

06199 POM JUNEAU ALASKA 15 03-01 1204P PST

PMS SEN POLAND

0245

JUN

FISH ARE IMPORTANT RESOURCE DO NOT DELAY ANY LONGER

PASS HB192

KENNETH MOORE STAR ROUTE A BOX 90B HOMER ALASKA

TELEGRAM

A ALASKA COMMUNICATIONS, INC.
PHONE 586-6440
JUNEAU, ALASKA 99801

06139 POM JUNEAU ALASKA 15 03-01 1204P PST

PMS SEN POLAND

JUN 0183

KATCHAMAK BAY CRITICAL FISHERIES AREA PASS HOUSE BILL 192

SHARON HALLETT STAR ROUTE A BOX 90B HOMER ALASKA

1977 MAR 1 PM 1 17

TELEGRAM

'A ALASKA CO[illegible]
PHONE [illegible]
JUNEAU, ALASKA [illegible]

06159 POM JUNEAU ALASKA 15 03-01 1204P PST

PMS SEN POLAND

JUN 0205

SAVE OUR FISHERIES KATCHAMAK BAY FISHERIES IMPORTANT

PASS HOUSE BILL 192

ANN HAYNES BOX 665 HOMER

1977 MAR 1 PM 1 32

TELEGRAM

'A ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU ALASKA 99801

06119 POM JUNEA ALASKA 15 03-01 1204P PST

PMS SEN POLAND

JUN 0160

KATCHAMAK BAY CRITICAL FISHERIES AREA PASS HOUSE BILL 192

ANN HAINES BOX 665 HOMER ALASKA

1977 MAR 1 PM 1 03

TELEGRAM

06079 POM JUNEAU ALASKA 15 03-01 1204P PST

PMS SEN POLAND

JUN 0120

KATCHAMAK BAY FISHERIES TOO VALUABLE TO LOOSE. PASS HOUSE

BILL 192 NOW

BOB HAINES BOX 665 HOMER ALASKA

1977 MAR 1 PM 12 42

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

1977 MAR 2 AM 4 47

02254 NL ANCHORAGE ALASKA 50 03-01 1120A AST

PMS SEN KAY POLAND

JUN 0572

WE THE BELOW LISTED HOMER RESIDENTS SUPPORT

KACHEMAK BAY BUY BACK BILL.

TOM AND KAREN MALONEY, G O SMITH, LOUELLA SMITH,

ERWIN RAVIN, BETSY FREEDMAN, CAROLYN AND KENT JOHNSON,

ELLIOT AND TERRY FREEDMANN DANAAN SMITH,

KATHY STEBERL, LARRY SMITH, KAREN DIGIORGIO,

MAYNARD RANSOM SMITH, KATHY SMITH, BILL CHOATE,

CATHY CHOATE, WILLIAM SMITH, TRACY THOMAS

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

1977 MAR 3 PM 7 07

19002 POM CORDOVA ALASKA 15 03-03 430P AST

PMSSEN POLAND

JUN

PLEASE SUPPORT SENATE ACTION TO REPURCHASE

KACHEMACK BAY LEASES (HB-192).

KNUTE JOHNSON BOX 414 CORDOVA ALASKA

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#CJ

02354 POM TDA HOMER ALASKA 15 03-01 1150P AST

PMS SEN KAY POLAND

JUN

URGENT WE KEEP OIL OUT OF KACHEMAK BAY VOTE FOR HB192

MARVIN COLLINS BOX 504 HOMER 99603

1977 MAR 2 PM 2 33

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

13021 POM KETCHIKAN ALASKA 15 03-02 145P PST

PMS SENATOR POLAND

JUN

URGE SUPPORT HB192 APPROPRIATION BILL FOR BUYING BACK OF

KATCHAMAC BAY OIL LEASES

WOODY CLAY BOX 8564 KETCHIKAN

1977 MAR 2 PM 2 03

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

24008 POM SITKA ALASKA 9 03-02 116P PST

PMS SENATOR KAY POLAND

JUNEAU

FISHERMAN SUPPORT HOUSE BILL 192 TO BUY BACK KATCHAMAK BAY

DEXTER KYLE FISHERMAN BOX 84 SITKA ALASKA 99835

MAR 2 RECD 227

TELEGRAM
CA ALASKA COMMUNICATIONS, INC
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

02315 POM TDA HOMER AK 15 03-01 1150P AST

PMS SENATOR KAY POLAND

JUN

PLEASE SUPPORT FUNDING REPURCHASE OF KACHEMAK BAY LEASES

GARY PETERSON

BOX 822

HOMER AK 99603

'87 MAR 2 PM 2 24

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

1977 MAR 2 PM 12 47

13013 POM KETCHIKAN ALASKA 15 03-02 1235P PST

PMS SENATOR POLAND

JUN

URGE YOU SUPPORT HB192 APPROPRIATIONS BILL TO BUY BACK

KATCHEMAK BAY OIL LEASES

GEORGE SMITH SR EXEC BOARD MEMBER ATA 3825 DENALI ST

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC

PHONE: 586-6440

JUNEAU, ALASKA 99801

#CJ

02334 POM TDA HOMER ALASKA 15 03-01 1150P AST

PMS SEN KAY POLAND

JUN

SUPPORT HB192 KEEP OIL OUT OF KACHEMAK BAY

DON MILLER PO BOX 1000 HOMER 99603

1977 MAR 2 PM 2 00

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

1977 MAR 2 PM 1 22

20006 POM KENAI ALASKA 15 03-02 1105A AST

PMS SEN. KAY POLAND

POUCH V

JUNEAU

PLEASE SUPPORT KACHEMAK BAY OIL LEASE BUY BACK HB192

GEORGE POLLARD BOX 40 KASILOF

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#CJ

02236 POM TDA HOMER ALASKA 15 03-01 1150P AST

PMS SEN KAY POI ND

JUN

IT IS IMPERATIVE YOU PASS HB192 FUNDING KACHEMAK BAY LEASES

DON WAKEFIELD BOX 1292 HOMER AK 99603

1977 MAR 2 PM 05

TELEGRAM

TDA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

02675 POM TDA HOMER AK 15 03-01 1150P AST

PMS SENATOR KAY POLAND

JUN

IMPERATIVE YOU SUPPORT HB192 TO FUND KACHEMAK BAY LEASES

DIANA WAKEFIELD

BOX 1292

HOMER AK

377 MAR 2 PM 11 50

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

13017 POM KETCHIKAN ALASKA 15 03-02 135P PST

PMS SENATOR POLAND

JUN

URGE YOUR SUPPORT OF HB192 AREA TOO VALUABLE FOR OIL DRILLING

NEVIN MAY BOX 3160 KETCHIKAN

1977 MAR 2 PM 2 03

TELEGRAM

ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#CJ

02532 POM TDA HOMER ALASKA IS 03-01 1150P AST

PMS SEN KAY POLAND

JUN

KEEP OUR BAY FOR FISHING VOTE FOR HB 192

GREG CHRISTENSON RED MOUNTAIN

1977 MAR 2 PM 5 16

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

1977 MAR 2 PM 5 19

02494 POM TDA HOMER AK 15 03-01 1150P AST

PMS SENATOR KAY POLAND

JUN

SAVE THE RICHEST BAY IN THE WORLD VOTE FOR HB192

RICHARD BREMICKER

RED MOUNTAIN ALASKA

TELEGRAM

ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

02513 POM TDA HOMER AK 15 03-01 1150P AST

PMS SENATOR KAY POLAND

JUN

VOTE FOR HB192 SAVE KACHEMAK BAY

MARSHA BREMICKER

RED MOUNTAIN ALASKA

1977 MAR 2 PM 3 47

TELEGRAM

TDA ALASKA COMMUNICATIONS INC
PHONE [illegible]
HOMER ALASKA 99603

1977 MAR 2 PM 3 51

#CJ

02430 POM TDA HOMER ALASKA 15 03-01 1150P AST

PMS SEN KAY POLAND

JUN

URGENT YOU VOTE FOR HB192 AND BUY BACK KACHEMAK BAY LEASES

DOUGLAS BRIMICKER RED MOUNTAIN ALASKA

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#CJ

02636 POM TDA HOMER ALASKA 15 03-01 1150P AST

PMS SEN KAY POLAND

JUN

OIL IN KACHEMAK BAY IS RIDICULOUS SUPPORT HB 192

MARTIN FRIEDMAN BOX 337 HOMER 99603

917 MAR 2 PM 7 53

TELEGRAM

RCA ALASKA COMMUNICATIONS INC
PHONE
BUREAU

#CJ

02099 POM TDA HOMER AK 15 03-01 1115A AST

PMS SENATOR KAY POLAND

JUN 0470

WE SUPPORT THE BUY-BACK BILL.

ASK YOUR VOTE TO KEEP KACHEMAK BAY AS IS

MARTIN FRIEDMAN

BOX 337

HOMER AK 99603

RECEIVED
MAR 1 AM 9 39

TELEGRAM

ACA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

1977 MAR 2 PM 4 47

#CJ

02469 POM TDA HOMER ALASKA 15 03-01 1150P AST

PMS SEN KAY POLAND

JUN

IMPORTANT TO HAVE YOUR SUPPORT FOR HB192 TO FUND

KACHEMAK BAY LEASES

ASAIAH BATESO 504 HOMER 99603

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

02655 POM TDA HOMER AK 15 03-01 1150P AST

PMS SENATOR KAY POLAND

JUN

PLEASE FUND PURCHASE OF KACHEMAK BAY LEASES KEEP OIL

OUT OF BAY

MARC BLACKMAN

BOX 1182

HOMER AK 99603

1977 MAR 2 PM 8 55

TELEGRAM

TA ALASKA COMMUNICATIONS, INC
PHONE: 586-6440
JUNEAU, ALASKA 99801

#CJ

02705 POM TDA HOMER ALASKA 15 03-01 1150P AST

PMS SEN KAY POLAND

JUN

KEEP KACHEMAK BAY FREE OF OIL SUPPORT HB192

MARILEE BLACKMAN BOX 1182 HOMER AK 99603

977 MAR 2 PM 8 13

TELEGRAM

FROM ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

02556 POM TDA HOMER AK 15 03-01 1150P AST

PMS SENATOR KAY POLAND

JUN

SUPPORT HB192 FOOD IS AS IMPORTANT AS OIL

MIKE KENNEDY

GENERAL DELIVERY

HOMER AK 99603

TELEGRAM

ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#CJ

02616 POM TDA HOMER ALASKA 15 03-01 1150P AST

PMS SEN KAY POLAND

JUN

SAVE THE BAY KEEP OIL OUT VOTE FOR HB192

ROY PARKINSON BOX 1116 HOMER

1977 MAR 2 PM 6 15

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

1977 MAR 2 AM 7 06

024 17 FOM TDA HOMER ALASKA 15 03-01 0535P AST

PMS SEN POLAND

0679

JUN

I HAVE LIVED IN HOMER ALL MY LIFE AND NOW IM FOR BUY BACK

KACHEMAK LEASES.

DANIEL B WINN JR BOX 1272 HOMER AK 99603

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

02428 POM TDA HOMER ALASKA 15 03-01 0545P AST

PMS POLAND

06691

JUN

AS A FISHING BOAT OWNER I AM FOR BUYING BACK KACHEMAK LEASES.

JUDITH ANN WINN BOX 1272 HOMER ALASKA 99603

1977 MAR 2 AM 7 16

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE 586-6440
JUNEAU, ALASKA 99801

#

02443 POM TDA HOMER ALASKA 15 03-01 0550P AST

PMS SEN KAY POLAND

078

JUN

AS A HOMER COUNCILMAN I AM FOR BUYING BACK

KACHEMAK LEASES AS LOCAL SURVEY WANT

DANIEL B WINN BOX 1272 HOMER ALASKA 99603

MAR 2 AM 7 41

TELEGRAM

A ALASKA COMMUNICATIONS, INC.

1977 MAR 1 PM 1 56

06179 POM JUNEAU ALASKA 15 03-01 1204P PST

PMS SEN POLAND

02225

JUN

SAVE OUR FISHERIES KATCHAMAK BAY FISHERIES IMPORTANT

PASS HOUSE BILL 192

LYNN BENNETT BOX 746 HOMER ALASKA

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6[illegible]
JUNEAU, ALASKA [illegible]

06099 POM JUNEAU ALASKA 15 03-01 1204P PST

PMS SEN POLAND
0140
JUN

KATCHAMAK BAY FISHERIES TOO VALUABLE TO LOOSE. PASS HOUSE BILL 192 NOW.

JOE BENNETT BOX 746 HOMER

1977 MAR 1 PM 12 54

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

1977 MAR 2 PM 4 02

#CJ

02450 POM TDA HOMER ALASKA 15 03-01 1150P AST

PMS SEN KAY POLAND

JUN

IMPORTANT YOU SUPPORT HB192 FOR FUNDING KACHEMAK BAY LEASES

MIKE THOMAS BOX 1182 HOMER 99603

TELEGRAM

'A ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

02373 POM TDA HOMER AK 15 03-01 1150P AST

PMS SENATOR KAY POLAND

JUN

PLEASE SUPPORT HB192 FUNDING KACHEMAK BAY LEASES

LU LOVELACE

GENERAL DELIVERY

HOMER AK 99603

1977 MAR 2 PM 4 38

TELEGRAM

TDA ALASKA COMMUNICATIONS, INC
PHONE: 586-6440
JUNEAU, ALASKA 99801

1977 MAR 2 PM 4 41

02394 POM TDA HOMER AK 15 03-01011650P AST

PMS SENATOR KAY POLAND

JUN

URGENT YOU SUPPORT KACHEMAK BAY REPURCHASE SUPPORT HB192

PEGGY COCHRAN

BOX 374

HOMER AK 99603

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC
PHONE: 586-6440
JUNEAU, ALASKA 99801

13006 POM KETCHIKAN ALASKA 15 03-02 1005A PST

PMS SENATOR POLAND
0760
JUN

WE SUPPORT HB192 APPROPIATION BILL TO BUY BACK KATCHAMACK
BAY OIL LEASES

ALAN AND SUSAN BARBONI 2126 FIRST AVE KETCHIKAN

RECEIVED
MAR 2 10 17 AM '83

TELEGRAM

ACA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

024 02 POM TDA HOMER ALASKA 15 03-01 0305P AST 1977 MAR 2 AM 6 57

PMS SEN KAY POLAND

0668

JUN

AS A FISHING BOAT OWNER IN HOMER, I AM FOR

BUYING BACK KACHEMAK BAY LEASES.

ANNETTE PARKS BOX 1302 HOMER ALASKA 99603

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#CJ

02120 POM TDA HOMER ALASKA 15 03-01 1120A AST

PMS SENATOR KAY POLAND 0498

JUN

WE SUPPORT THE BUY-BACK BILL. ASK YOUR VOTE KEEP KACHEMAK BAY AS IT IS

CARLOS AND KARLA FREEMAN BOX 62 SRA HOMER ALASKA

1977 MAR 1 PM 9 54

TELEGRAM

ACS ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#CJ

02170POM TDA HOMER AK 15 03-01 1040A AST

PMS SENATOR KAY POLAND

0350

JUN

IMPERATIVE FUNDS BE MADE AVAILABLE FOR PURCHASE OF KACHEMAK

LEASES

F E LOWRY

BOX 812

HOMER AK 99603

77 MAR 1 PM 7 09

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

02390 POM TDA HOMER ALASKA 15 03-01 0315P AST 1977 MAR 2 AM 6 43

PMS SEN KAY POLAND

JUN 0656

AS A THIRTY YEAR RESIDENT OF HOMER I AM FOR BUYING
BACK KACHEMAK BAY LEASES.

MARVIN BELLAMY PO BOX 1302 HOMER ALASKA 99603

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE 586-6440
JUNEAU, ALASKA 99801

#CJ

02183 POM ANCHORAGE AK 15 03-01 1039A AST

PMS SENATOR KAY POLAND

JUN 0364

STAND BY THE FISHERMEN

BUY BACK KACHEMAK BAY LEASES

GREGORY TIKKA

2728 MCCAULEY

ANCHORAGE AK 99503

1977 MAR 1 PM 7 14

TELEGRAM

ACME ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

1977 MAR 4 PM 1 06

19012 POM CORDOVA ALASKA 15 03-03 430P AST

PMS SEN POLAND

JUN

SUPPORT HB-192 AND SENATE ACTIONS TO REPURCHASE

KACHEMAK BAY LEASES

BOB BLACKE CORDOVA CITY COUNCILMAN BOX 94 CORDOVA

ALASKA

#

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

1977 MAR 4 PM 12 58

19007 POM CORDOVA ALASKA 03-03 430P AST

PMS SEN POLAND

JUN

URGING YOUR SUPPORT OF ACTIONS BY THE SENATE TO

REPURCHASE KACHEMAK BAY LEASES.

DENNIS NOLAN BOX 806 CORDOVA ALASKA

TELEGRAM

FROM ALASKA COMMUNICATIONS INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

19017 POM CORDOVA ALASKA 15 03-03 430P AST

PMS SEN POLAND

JUN

FORWARDING MY SUPPORT FOR HB 192 AND ACTIONS TO

REPURCHASE KACHEMAK BAY LEASES.

PETE ISLEIB CORDOVA CITY COUNCILMAN CHAIRMAN COPER

RIVER-PRINCE WILLIAM SOUND ADVISORY COMMITTEE

BOX 139 CORDOVA ALASKA

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

377 MAR 8 PM 4 53

#

02095 TDA HOMER ALASKA POM 3-8 1115A AST

PMS SEN POLAND

JUN

CONTRARY TO FIRST TELEGRAM, AM IN FAVOR OF KACHEMAK BY LEASE

PURCHASES BY STATE

RICHARD M DIXON

BOX 596 99603

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC
PHONE: 586-6440
JUNEAU, ALASKA 99801

02114 POM TDA HOMER ALASKA 15 02-08 250P AST

PMS SENATOR KAY POLAND

JUN

KACHEMAK BAY AND HER RESIDENTS NEED YOUR SUPPORT PLEASE

PASS HB192 THANK YOU

LOREN AND SANDRA FLAGG BOX 621 HOMER 99603

1977 MAR 8 PM 5 39

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

E 06061 POM JUNEAU ALASKA 15 03-10 130P PST

1977 MAR 10 PM 2 29

PMS SENATOR POLAND

1273

JUNEAU AK

PROTECT KACHAMAK BAY. PASS HOUSE BILL 192

GERON BRUCE 328 W. 10TH ST JUNEAU 99801

P.O. Box 1055
Nome, AK
99603

Senator Pollard
Buck V
Juneau, AK.
99811

3/2/77

Dear Senator Golland -

Urgently request your support of H.B. 192

Sincerely,

Larry J. Hollinshead Sec.
North Pacific Fisheries Assoc.

Sandra Hollinshead

FAIRBANKS DELEGATION

Reps.

Bennett	202A	Brown	207A
Carpenter	202A	Cowper	411
Parr	110	Smith	612

Senators

Butrovich	525	Hackney	105A
Huber	114		

SENATE RESOURCES

POLAND	120	Butrovich	525
Croft	106	Huber	114
Meland	205	Colletta	107
Tillion	109		

LA21 2776 16.14 JA01 0025 16.20 03/30/77

TO: CINDY OR MERLE, JNU.
FROM: SUSAN, FBX.

THESE THREE MESSAGES ALL ARE TO: ALL FAIRBANKS AREA LEGISLATORS AND THE SENATE RESOURCES COMMITTEE:

1. FROM: SANDY LAGRONE/ 607 BENTLEY DRIVE, WEST/ FAIRBANKS, AK. 99701/ PHONE: 452-5584:
I WANT YOU TO LEAVE KACHEMAK BAY AS IT IS. DON'T NEED ANY OIL. THE OIL IS GOING TO COST MORE THAN THE FISHING IS BRINGING IN DOWN THERE.

2. FROM: PATTY LANE/ SR BOX 10612/ FAIRBANKS, ALASKA 99701/ PHONE: 479-2698 :
I AM A FAIRBANKS CITIZEN WHO IS IN FAVOR OF THE KACHEMAK BAY "BUY BACK" BILL, HB 192.

3. FROM JEFF WELTZIN/ 320 MOORE HALL/ U. OF A./ FAIRBANSK, ALASKA 99701:
I URGE SUPPORT OF HB 192, THE KACHEMAK BAY "BUY BACK" BILL.

THAT'S ALL THIS TIME.
IS THIS A MORE EASY-TO-HANDLE FORMAT FOR YOU IN JUNEAU?

ALSO, I GUESS APRIL IS NOT AS SICK AS I THOUGHT; SHE HAS BEEN AT WORK TODAY (AS YOU KNOW) ...SO, UNTIL LATER.../S/ EOM

SENATE RESOURCES

POLAND	120	Butrovich	525
Croft	106	Huber	114
Meland	205	Colletta	107
Tillion	109		

LA21 3293 16.22 JA01 0023 16.22 03/31/77

TO: CINDY, JNU
FROM: APRIL, FBX

PLEASE DELIVER THE FOLLOWING MESSAGES:

TO: SENATE RESOURCES
FROM: KEVIN HARUM, BOX 73332, FBX, 99707, PH 452-2477
I STRONGLY SUPPORT THE REPURCHASE OF LEASES IN KACHEMAK BAY.
THANK YOU FOR YOUR CONSIDERATION. EOM.

TO: SENATE RESOURCES
FROM: RON JOHNSON, #4 STUART HALL, U OF A, FBX, 99701, PH 479-7777
I URGE YOU TO PASS HB 192. EOM.

TO: FBX DELEGATION & SENATE RESOURCES
FROM: LARRY SCHMUSER, BOX 1267, FBX, PH 452-4761
I AM IN FAVOR OF HB 192 FOR ENVIRONMENTAL AND ECONOMIC REASONS
TO THE STATE OF ALASKA. I THINK THE ALASKA FISHERMAN HAS HIS
RIGHTS TO. ONE INDUSTRY OR RESOURCE IS ENOUGH AT A TIME. EOM.

TO: FBX DELEGATION AND SENATE RESOURCES
FROM: JOAN FORSHAUG, BOX 81847, COLLEGE, AK, 99708, PH: 479-7285
I WOULD LIKE TO SEE HB 192 PASSED. EOM.

TO: FBX DELEGATION & HOUSE AND SENATE RESOURCES
FROM: JUDY & KERMIT JOHNSON, 1042 PEDRO ST., FBX, 99701, PH: 456-5773
WE URGE YOU NOT TO RECONFIRM THE APPOINTMENTS OF NICK SZABO AND
DANNIE GARROUTTE TO THE BOARD OF FISHERIES. TO MAINTAIN A DEMOCRACY,
WE MUST HAVE REPRESENTATIVES OF SPORT FISHING INTERESTS. START BY
DENYING THESE MEN THEIR POSITIONS ON THE BOARD. EOM.

MORE TO FOLLOW, CINDY. /A/ EOM

SENATE RESOURCES

POLAND	120	Butrovich	525
Croft	106	Huber	114
Meland	205	Colletta	107
Tillion	109		

LA21 3103 17.24 03/30/77 JA01 0001 07.42 03/31/77

TO: CINDY, JNU.
FROM: SUSAN, FBX.

A COUPLE MORE MESSAGES WHICH I'LL SEND THIS AFTERNOON AND YOU'LL RECEIVE IN THE A.M.

BOTH ARE TO: ALL FAIRBANKS AREA LEGISLATORS, TO SENATOR KAY POLAND, AND OTHER MEMBERS OF SENATE RESOURCES COMMITTEE:

1. I URGE YOU TO SUPPORT THE KACHEMAK BAY "BUY BACK" BILL, HB 192. SIGNED CHRISTOPHER PEARSON/ C/O GEOPHYSICAL INSTITUTE/ U. OF A./ FAIRBANKS, AK. 99701.

2. WE ARE AGAINST SB 199 AND FAVOR BUYING BACK THE KACHEMAK BAY OIL AND GAS LEASES. SIGNED: ANNE & WILL HARRISON/ C/O GEOPHYSICAL INSTITUTE/ U.OF A./ FAIRBANKS, AK. 99701 (PH: 479-3594).

THAT'S ALL FOR NOW; THO THERE WILL PROBABLY BE MORE, LATER.

I THINK THAT A WHOLE BUNCH OF NEW PEOPLE MUST HAVE JUST DISCOVERED US, HERE, AND ARE MAKING GOOD USE OF THEIR FIND!!! THANKS MUCH FOR ALL YOUR TIME AND TROUBLE. /S/ EOM

LA21 3310 18.14 03/30/77 JA01 0002 07.42 03/31/77

TO: CINDY OR MERLE, JNU.
FROM: SUSAN, FBX.

1.TO SENATOR KAY POLAND AND OTHER MEMBERS OF THE SENATE RESOURCES COMMITTEE:
I STRONGLY SUPPORT THE BUYING BACK OF THE KACHEMAK BAY OIL AND GAS LEASES, AS IS STIPULATED IN HB 192.
SIGNED: LAWRENCE KATKIN/ S.R.BOX 10612/ FAIRBANKS, AK. 99701.
PHONE)

FAIRBANKS, ALASKA 99701.

2. TO SENATOR JOHN HUBER, AND TO: SENATOR KAY POLAND AND OTHER MEMBERS OF THE SENATE RESOURCES COMMITTEE, AND TO ALL FAIRBANKS AREA LEGISLATORS:

Sen Poland

I STRONGLY OPPOSE SB 199. ALL ALASKA WILL BENEFIT GREATLY IF WE BUY BACK THE OIL AND GAS LEASEHOLD INTERESTS IN KACHEMACK BAY. SIGNED: JANET LOKKEN/ S.R. BOX 20661/ FAIRBANKS, ALASKA 99701.

3. TO: SENATOR JOHN HUBER, SENATOR KAY POLAND, AND ALL OTHER MEMBERS OF SENATE RESOURCES COMMITTEE, AND TO ALL FAIRBANKS AREA LEGISATORS:

I STRONGLY URGE THAT YOU VOTE DOWN SB 199. THE PEOPLE OF ALASKA NEED THE FISHING AND RECREATIONAL BENEFITS OF KACHEMAK BAY. WE SHOULD BUY BACK THE OIL AND GAS LEASES. SIGNED JUDY SMITH/BOX 81071/ COLLEGE , ALASKA 99708.

THANKS. /S/ EOM

SENATE COMMERCE:

SEN. BRADLEY	207
SEN. SUMNER	104 A
SEN. POLAND	120
SEN. RAY	103
SEN. HACKNEY	105 A

LA21 2122 16.52 JA01 0030 16.52 03/29/77

TO: CINDY OR MERLE, JNU.
FROM: SUSAN, FBX.

1. TO SENATOR BRADLEY AND MEMBERS OF SENATE COMMERCE COMMITTEE:
I URGE YOU TO OPPOSE SB 199 BY SENATOR JOHN HUBER.
WE ALL WANT TO SEE HOMER KEEP ITS CHARM AND ITS DIVERSE ECONOMY: NOT TO BE SUBMERGED BY OIL.
SIGNED: BOB WEEDEN/ BOX 80425/ COLLEGE, ALASKA 99703.

SENATE RESOURCES:

SEN. POLAND	120
SEN. BUTROVICH	525
SEN. CROFT	106
SEN. HUBER	114
SEN. MELAND	205
SEN. COLLETTA	107
SEN. TILLION	109

LA21 2122 16.52 JA01 0030 16.52 03/29/77

TO: CINDY OR MERLE, JNU.
FROM: SUSAN, FBX.

4.TO THE SENATE RESOURCES COMMITTEE: I VERY STRONGLY URGE A "NO" VOTE ON SB 199. SIGNED: SHIRLEY LISS/ SR. 20125/ FAIRBANKS, ALASKA 99701.

THAT'S ALL FOR A FEW MINUTES, ANYWAY.
(AND SOMEONE HAD THE GALL TO ASK ME IF I KNEW HOW TO SPELL "KACHEMAK"!!! /S/ EOM

LA21 2507 18.31 03/29/77 JA01 0001 07.36 03/30/77

TO: CINDY OR MERLE, JNU.
FROM: SUSAN, FBX.

MESSAGE, TO: SENATOR KAY POLAND AND ALL OTHER MEMBERS OF SENATE RESOURCES COMMITTEE:
I HOPE YOU WILL SUPPORT HB 192 ON THE KACHEMAK BAY BUY BACK. SIGNED: TINA STONOROV/ 1502 SECOND AVE./ FAIRBANKS, ALASKA 99701.

MESSAGE: TO SENATOR KAY POLAND, AND OTHER MEMBERS OF THE SENATE RESOURCES COMMITTEE:
I BELIEVE YOU SHOULD HONOR THE STATE LEGISLATURE AND THE GOVERNOR IN THE QUESTION OF OUR NATURAL RESOURCES. DO NOT BUY BACK THE OIL AND GAS LEASES IN KACHEMAK BAY. SIGNED: RUDY VETTER/ BOX 342/ FAIRBANKS, ALASKA 99701.

THANKS AND LATER. /S/ EOM

SENATE RESOURCES

POLAND	120	Butrovich	525
Croft	106	Huber	114
Meland	205	Colletta	107
Tillion	109		

LA21 1821 13.05 JA01 0016 13.05 01/01/77

TO: CINDY, JNU
FROM: APRIL, FBX

PLEASE DELIVER THE FOLLOWING MESSAGES:

TO: SENATE RESOURCES
FROM: ELENA SPARROW, PH 479-6458
I WOULD LIKE HB 192 PASSED. EOM.

TO: SENATE RESOURCES
FROM: HENRY CUNNINGHAM, BOX 81647, COLLEGE, AK, 99708
I AM IN FAVOR OF HB 192. EOM

PLEASE ACK WHEN MESSAGES DELIVERED. THANKS. /A/ EOM

Sen Poland

FAIRBANKS DELEGATION:

REP. BENNETT	202 A
REP. BROWN	207 A
REP. CARPENTER	202 A
REP. COWPER	411
REP. PARR	110
REP. SMITH	612 C
SEN. BUTROVICH	525
SEN. HACKNEY	105 A
SEN. HUBER	114

LA21 1293 13.19 JA01 0016 13.19 03/29/77

TO: CINDY OR MERLE, JNU.
FROM: SUSAN, FBX.

MESSAGE: TO SENATOR JOHN HUBER, SENATOR KAY POLAND
AND ALL OTHER MEMBERS OF SENATE RESOURCES COMMITTEE,
AND TO ALL FAIRBANKS AREA LEGISLATORS:

I WANT TO SUBMIT A VERY STRONG PROTEST AGAINST SB 199.
IT IS VERY IMPORTANT TO ALL ALASKANS THAT WE DO BUY BACK
THE OIL AND GAS LEASES IN KATCHEMAK BAY.
SIGNED: PATRICK FISHER/ P.O. BOX 81436/ COLLEGE, ALASKA
99708.

THANKS. /S/ EOM

LA21 1437 13.47 JA01 0017 13.47 03/29/77

TO: CINDY OR MERLE, JNU.
FROM: SUSAN, FBX.

WELL, LAST WEEK IT WAS THE CHITINA DIP NETTERS; THIS
WEEK IT SEEMS TO BE "PEOPLE AGAINST SB 199"!!

MESSAGE: TO SENATOR JOHN HUBER, TO SENATOR KAY POLAND,
AND ALL THER MEMBERS OF SENATE RESOURCES COMMITTEE,
AND TO ALL FAIRBANKS AREA LEGISLATORS:

I STRONGLY OPPOSE SB 199. I FEEL IT IS VERY IMPORTANT
TO EVERYONE IN ALASKA THAT WE DO BUY BACK THE OIL AND
GAS LEASEHOLD INTERESTS IN KATCHEMAK BAY.
SIGNED: RICHARD JOY/ BOX 1205/ FAIRBANKS, ALASKA 99707.

Sen. Poland

LA21 1250 13.08 JA01 0012 13.14 03/29/77

TO: MERLE OR CINDY, JNU.
FROM: SUSAN, FBX.

MESSAGE TO:: SENATOR JOHN HUBER,;SENATOR KAY POLAND
AND OTHER MEMBERS OF THE SENATE RESOURCES COMMITTEE,
AND TO ALL FAIRBANKS AREA LEGISLATORS:

WE VERY STRONGLY OPPOSE SB 199. IT IS OF VITAL IMPORTANCE
TO ALL OF ALASKA THAT WE BUY BACK THE OIL AND GAS
LEASEHOLD INTERESTS IN KATCHEMAK BAY.
SIGNED: CAROLE AND GREG DEMERS/S.R.BOX 50338/ FAIRBANKS,
ALASKA 99701.

THANKS, AND PLEASE ACK. /S/ BOB

SENATE RESOURCES

POLAND	120	Butrovich	525
Croft	106	Huber	114
Meland	205	Colletta	107
Tillion	109		

FAIRBANKS DELEGATION

Reps.

Bennett	202A	Brown	207A
Carpenter	202A	Cowper	411
Parr	110	Smith	612

Senators

Butrovich	525	Hackney	105A
Huber	114		

HELLO CINDY.....APRIL HERE. PLEASE DELIVER THE FOLLOWING MESSAGE:
TO: FBX DELEGATION AND SENATE RESOURCES
FROM: TOM GRIFFITH, BOX 80105, COLLEGE, AK, 99708 PH: 479-2513
SB 199 IS TOTALLY UNACCEPTABLE. OIL AND SEAFOOD DO NOT MIX. PLEASE SUPPORT SOUND MANAGEMENT. SAVE KACHEMAK BAY FROM FURTHER DEGRADATION.

PLEASE ACK WHEN DELIVERED. THANKS CINDY. //A// EOM

HOUSE RESOURCES

OSTERBACK	118	Snider	648
Malone	210	Miller	216
Smith	612	Akers	211A
Bennett	202A	Eliason	201A
Urion	204		

Sen. Poland
1:30

LA21 2004 13.43 JA01 0011 13.44 03/30/77

TO: CINDY, JNU
FROM: APRIL, FBX

PLEASE DELIVER THE FOLLOWING MESSAGES:

TO: SENATE & HOUSE RESOURCES
FROM: AL GEORGE, SR BOX 50551, FAIRBANKS, ALASKA 99701
I DISAPPROVE OF THE REAPPOINTMENT OF NICK SZABO AND DANNIE GARROUTTE TO THE BOARD OF FISHERIES. EOM.

TO: SENATE RESOURCES
FROM: JANET & LARRY JOHNSON, 1 MILE DALTON TRAIL, SR 20022-A, FAIRBANKS, ALASKA 99701
WE URGE YOU TO SPEEDILY PASS HB 192. WE MUST NOT RISK THE TREMENDOUS MARINE RESOURCES OF KACHEMAK BAY. EOM.

TO: SEN JOHN HUBER & SENATE RESOURCES
FROM: SHEREE SANDIFUR, 800 AIRPORT WAY, FAIRBANK , ALASKA 99701
I STRONGLY PROTEST SENATE BILL 199. EOM.

TO: FBX DELEGATION & SENATE RESOURCES
FROM: BARRY CORRELL, BOX 1267, FAIRBANKS, AK, 99707, PH: 452-4761
I PROTEST SB 199. I AM STRONGLY IN FAVOR OF THE REPURCHASE OF THE KACHEMAK BAY OIL LEASES. EOM.

PLEASE ACK WHEN MESSAGES DELIVERED. THANKS. /A/ EOM

HB
192
(AGAINST)

KACHMEAK BAY

AGAINST HB 192

1. Ralph Jonson Box 7031 Kenai (North) 99601
2. Milton Lewis Box 277 Homer
3. Don E. Knighton Box 117 Anchor Point 99556
4. Ken Arndt Box 133 Homer
5. Roger Painter Box 8585 Indian 99540
6. George & Alice Dandy Box 582 Homer
7. Harry N. Olson Box 52 Anchor Point 99556
8. Homer Egbert Box 605 Homer
9. Eugene E. Robinson Box 828 Homer
10. Thomas S. Crosbie Box 571 Homer 99603
11. Elizabeth Aprill Box 127 Anchor Point 99556
12. Angelo & Melva Hillas Box 102 Homer
13. Jim Jacobs Sterling Route Homer
14. Don Ledger Drawer 1150 Kenai 99699
15. Jerry Anderson Box 1263 Homer
16. John Kosch Box 1163 Homer
17. Freddie T. Gallant 715 Rappie Court Anchorage 99503
18. Floyd Beach Box 216 Homer
19. Robert Hodel Box 672 Homer
20. Robert Connelly SRA Box 26 Homer
21. Chuck Hendricks Box 620 Homer
22. Bob Gillis SRA Box 44 Homer
23. Susie Franklin Box 1099 Homer
24. Larry Debrock Box 997 Homer
25. Don & Carol Crossen Drawer A Seldovia 99663
26. James Crude SRA Box 636 Chugiak 99567
27. Ted L. Wythe Box 1348 Homer
28. Sandra Glidden Box 182 Homer

29. Edna Morris Box 758 Homer
30. Dennis Hoffman Box 151 Seldovia
31. Bill & Georgia Nelson Drawer C Seldovia
32. Clyde Woodhead SRA Box 9 Homer
33. Richard L. Besse 941 West 77th Ave., Anchorage 99502
34. Helen Alm Box 121 Homer
35. Floyd Ward Box 192 Homer
36. Lewis A. Gjosund Sr. SRA Box 21 Homer
37. ~~Mr. & Mrs. Gerald Brookman 1220 F Street Anchorage 99501~~
38. ~~Richard W. Robinson P. O. Box 867 Homer Alaska 99603~~
37. Madeline Woodhead SRA Box 9 Homer
38. Lawrence Rogers Box 849 Homer
39. Robert Breakfield Box 454 Homer
40. Pearl Saling Box 488 Homer
41. Alex Flyum Box 627 Homer
42. Dave Gibbons 928 West 8th Anchorage 99501
43. Phyllis Abbott Box 111 Homer
44. Jim Boyles 4001 Garfield Anchorage 99501
45. Ron Hoffman Box 151 Seldovia
46. Arthur Kolar Box 294 Homer
47. Mickey Clauss SRA Box 20B Homer
48. Jim Clauss SRA Box 20 B "
49. Howard Myhill Rexall Drugs Box 314 Homer
50. John A. Pace Box 392 Homer
51. Dale Johnson Box 1047 Homer
52. Sam Matthews Box 1235 Homer
53. Ron Eilcher SRA Homer

54. Donald G. Sheets SRA Box 1655 Anchorage

55. Myram Hilscher 2224 Foraker Anchorage 99503

56. Barbara Manly Box 955 Homer

57. Robert Ditton Box 492 Homer

~~58. Richard Dixon, Box 271 Homer~~

59. Sam McDowell Chugiak

60. William B. Edens Box 114 Homer

61. John H. Daley 335 East 23rd Avenue, Anchorage 99503

62. Jim Manly Box 955 Homer

63. Joseph Goodrich 7509 Old Harbor Avenue, Anchorage 99504

64. Bert Valbusch Box 458 Homer

65. Leo Rollins Box348 Homer

66. Nicholas J. Gangl Box 1297 Homer

67. Eunice Bergland Box 453 Homer

68. Daniel Hennick SRA Box 28A Homer

69. Robert Herring Box 667 Homer

70. Harry Vick SRA Box 7 Homer

71. Carl Jones Box 6060 Homer

72. Gary Daley Box 1017 Homer

73. David Derry Box 951 Homer

74. Vern Mutch Box 425 Homer

75. Jack Sibson Box 1221 Homer

76. Erlin Broderson Box 151 Homer

77. Loretta Valbusch Box 458 Homer

78. Nicholas J. Gangl Box 465 Homer

79. Duane & Helen Belnat Sterling Route Homer

80. Spud & Val Dillon Box 591 Homer

81. Ken and Roberta Harris, Box 663, Homer
82. Jack and Susan English, Seldovia
83. Ash W. Helgoe, SRA, Box 1770, Anchorage 99507
84. Evan and Virginia Cundiff, Serling Route, Homer
85. David Schacht, Box 8332, Anchorage
86. Ray and Pam Birkey, Box 921, Homer
87. Vic Boreum, Box 483, Homer
88. Jack and Mary Epperson, Box 221, Homer
89. Dicky Gergiore, Box 1204, Homer
90. Jim Doyle, Box 582, Kenai 99611
91. Dale and Fran Van Sandt, SRA, Box 21A, Homer
92. Earl Billingslea, Box 76, Soldotna 99669
93. Bill Gates, SRA, Box 1572X, Anchorage 99507
94. Kenneth M. Ridder, SRA 1562G, Anchorage
95. Jack and Ethel Scott, Box 518, Homer
96. George and Joyce Kirkpatrick, Box 702, Homer
97. Ray Hofmeister, Box 674, Cooper Landing, Ak. 99572
98. George and Carol Cartright, Box 513, Homer
99. Kostantinos Macheras, Box 178, Kenai 99611
100. Bill Allen, 6081 Yukon Road, Anchorage, Ak. 99503
101. Bob Edler, Box 73, Soldotna, Alaska 99669
102. Larry and Helena Borelius, Box 413, Homer
103. Nick Monsen, 7120 Jester Cr., Anchorage 99503
104. James H. Saling, Box 448, Homer, Ak.
105. Bill Whitsitt, 1718 Diomede, Anchorage, Ak. 99504

KACHEMAK BAY

AGAINST HB 192

106. LeRoy and Rita Shoulz, P. O. Box 873, Homer, Ak.

107. Jerry and Rita Jeppeson, P. O. Box 108, Anchor Pt., Ak. 99566

108. Lloyd and Roxie Schade, SR A, Homer, Alaska 99603

109. Harry Bjerregaard, Box 585, Homer, Ak. 99603

110. Fred L. Elvsaas, President, Seldovia Native Assoc, Seldovia

111. Homer S. Thompson, Box 116, Homer

112. Barbara and Ralph Strardin

113. Bob and Gail Simcoe, P. O. Box 1213, Homer

114. Michael Hart, P. O. Box 6063, Anchorage 99502

115. Bill and Elizabeth Johnson, P. O. Box 658, Homer

116. Keneth Carlton, 1900 E 56th, Anchorage, Ak. 99507

117. Gordon P. Samel, Box 387B, SRA, Anchorage, Ak.

118. Theresa A. Palmer, Box 4461, Anch. Ak. 99509

119. James N. Stefeth, 1911 Alder Dr., Anch., Ak. 99504

120. A. Helgoe, SRA, Box 1770K, Anchorage, Ak. 99507

121. Vicki Watts, 321 E. 46th , Apt. #1, Anch. 99502

122. W. Meehan, 2941 Madison Way, Anchorage, Ak. 99504

123. Joseph K. Goodrich, 7509 Old Harbor Ave., Anch. 99504

124. Ron Engley, 1241 West 26th Ave., Anchorage

125. Joseph C. Jerkovich, 317 N. Klevin, Anch. 99504

126. Ted Rasmussen, P. O. Box 8571, Anch. 99508

127. John M. Osmin, 840 West 70th, Anch., Ak. 99502

128. Carl J. Brenner, 8137 East 5th, Anch. AK. 99504

129. Wayne D. Mitchell, 2719 E. 17th St., Anchorage

KACHEMAK BAY

AGAINST HB 192

130. W. D. Esorts, 4147 W. 88th Ave , Anch. ak. 99502

131. Martha Gore, 1542 E. 26th Ave., Anch., Ak. 99504

132. Robert W. Meier, 701 W 71st, Anch., Ak.

133. Al Groller, 3301 West 79th, Anch.

134. Jane R. Lindsey, 3514 Vassar, Anch. 99504

135. R. H. McDonald, 3307 Boniface SP 110X, Anch. Ak. 99504

136. Kenneth L. Wiccits, 3740 Mt. Blane Circle, Anch. 99504

137. Paul R. Crippen, P. O. Box 299, Palmer, Ak. 99645

138. Margie Hurley, P. O. Box 1054, Anch., Ak. 99510

139. Pat Hurley, 1708 Wickersham Dr., Anchorage 99503

140. Bill J. Taylor, 3900 Malaspina Circle, Anchorage

141. William R. Gates, SRA, 1572-X, Anchorage

142. Lillian P. Asymus, 7420 Augustine Drive, Anch., Ak.

143. Suzanne Wolcutt, 4927 Marion Ave., Anch., 99504

144. Linda Eazley, 1241 W. 26th Ave., Anch., Ak. 99503

145. James Bascre, 1321 W. 72nd, Anchorage, Ak.

146. Barbara Melnick, 705 Muldoon #184, Anch., Ak. 99503

147. Jack Anderson, 1430 W. 12th, Anchorage, Ak.

148. Carol L. Doyle, 4261 Edinburgh Dr., Anch. 99502

149. Edna L. Czerski, P. O. Box 354, Eagle River, Ak.

150. Charles L. Christy, 4112 Westwood Drive, Anch., Ak. 99503

151. Gary Tanghe, 3412 Glenn-Don Drive, Anchorage, Ak. 99504

152. George A. Morris, 5924 Prosperity Drive, Anch. 99504

153. Geneva Peart, SRA, Box 1459-J, Anch.

154. Jan D. Schommer, SR Box 230J, Eagle River 99577

KACHEMAK BAY

AGAINST HB 192

155. Marion C. Hudson, 3807 McCain Road, Anch. 99503

156. F. J. Cummings, 5901 E. 6th, #3 Anchorage

157. Sandra L. Carlton, 1900 E 56th, Anch. 99507

158. K. A. Neuman, 1048 Whitney Road, Anch.

159. P. H. Miller, 1329 1/2 Cedar St., Anchorage 99501

160. Dane P. Terry, 1117 Chugach Way, Apt. #1, Anch., Ak. 99503

161. Irwin P. Cook, Jr., 1414 Wolverine St., Anch., Ak. 99504

162. Robert D. Ouer, SRA Box 377-K, Anch., Ak.

163. Lawrence S. Gertzen, SRA Box 456, Anchorage, Ak.

164. Jack L. Anderson, 7200 Ticonderoga Place, Anch., Ak.

165. D. Donns, 1541 W. 12th, Anchorage

166. Fred Gallant, 715 Rappe Ct., Anch., Ak.

167. Kerney F. Peart, SRA Box 1459-J, Anch. Ak.

168. Pat Faherty, SRA Box 377-K, Anch. Ak.

169. Kenneth M. Ridder, SRA 1562 G, Anch. 99507

170. Frank LaFazio, STA 1725 B, Anch, Ak. 99507

171. Tom Keigley, 124 E. Third Ave., #307, Anch 99501

172. J. B. Long, 124 East 3rd, Apt. 307, Anch., Ak. 99501

173. R. L. Cavalero, 2600, Anchorage, Ak.

174. William C. Brunens, 51[illegible] E. 10th Ave., Anch., Ak.

175. Helen S. Montague, 1903 Aleutian St., Anch., Ak. 99504

176. Robert W. Dunsmore, Sr., 3205 Oregon Dr., Apt. B, Anch.

177. R. W. Beatty, 3104 Northwood, Anch., Ak.

178. Woody Snell, Box 556, Kodiak, Ak. 99615

179. Elvin A. Parker, Box 556, Kidiak, Ak. 99615

180. Peter W. Shaw, SRA Box 33-C, Anch., Ak. 99501

KACHEMAK BAY

AGAINST HB 192

119. Sandra Jerkovich, 317 Klevin Ave., Anch, Ak. 99504
120. R. Ruth Brooking, 7524 Arthur Ct., Anch., Ak. 99502
121. Alfred Strawn, P. O. Box 210, Palmer, Ak. 99645
122. Edward M. Wilkerson
123. Darlo D. Dayton, Box 556, Kodiak, Ak. 99615
124. Fred Elfohnso, Box 6341, Anchorage, Ak. 99502
125. William B. McCullough
126. George Rideus
127. Jean Yonaha
128. Beverly A. Webb, Star Route A, Box 1463 Q, Anch., Ak.
129. Brenda Hanson
130. John C. Onhard
131. Bruce Barber, 9010 Noble Circle, Anch., Ak.
132. Lloyd E. Weeks, Vickie M. Acton
133. Robert F. Jensen, Box 107, Sterling, Ak.
134. Marion L. Jensen, Box 107, Sterling, Ak. 99672
135. Tom Rohne, 1601 West 15th Avenue, Anchorage, Ak.
136. Kurt Nelson, P. O. Box 1535, Soldotna, Ak. 99669
137. Nancy Nelson, Box 1535, Soldotna, Ak. 99669
138. Albert T. Cooper, Jr., 3431 Kachemak Circle, Anchorage, Ak.
139. Steven C. Tressle, P. O. Box 3207, Kenai, Ak. 99611
140. Bill Starne, P. O. Box 9001, Kenai, Ak.
141. Michael H. Balick, 6937 Bugle Ct., Anch., Ak. 99507
142. Maureen E. Schwaub, 3701 Eureka, Sp. 89-A, Anch., Ak 99503
143. Richard O. Elielsen, Box 911, Kenai, Ak.

KATHEMAK BAY

AGAINST HB 192

144. Barbara J. Simpson, 511 E. 46th Place, Anch., Ak. 99503

145. John H. Mark, Box 238, Soldotna, Ak. 99669

146. Ronald Rowell, Box 841, Kenai, Ak. 99611

147. Rockwell G. Smith, Box 951, Kenai, Ak.

148. Larry Brooking, 917 Cordova, Anch., Ak.

149. Dale H. Auldridge, Box 606, Sterling, Ak. 99672

150. Donald G. Wyckoff, Box 477, Kenai, Ak. 99611

151. William C. Lindsey, 3514 Vasser Drive, Anch., Ak. 99504

152. Jean Brooking, 917 Cordova, Anchorage, Ak. 99501

153. Patricia Lynne Hunt, 2141 Duvoy Court, Anch., Ak. 99502

154. A. D. Call, Box 4-1119, Anch., Ak. 99509

155. C. R. Lang, 3231 Briarcliff, Anch., Ak.

156. Terri Lee Wren, 937 West 19th, Anch., Ak. 99503

157. Timothy Murphy, P. O. Box 3545, Kodiak, Ak. 99615

158. Marion Webb, SRA 1414 D, Anchorage, Ak. 99502

159. Hilton V. Jones, 3500 Kachemak Pl., Anch., Ak. 99502

160. Linda Frison, P. O. Box 1301, Soldotna, Ak.

161. Lyle R. Lybbert, P. O. Box 3486, Kenai, Ak.

162. R. A. Gill, 7208 Turnagain Highway, Anchorage, Ak. 99503

163. Norma Spoonts, Box 1241, Kenai, Alaska 99611

164. Gary L. Foster, Box 395, Soldotna, Alaska 99669

165. Don A. Martin, Box 204, Kasilof, Alaska

166. Howard Beck, Box 2884, Kenai, Alaska

167. Paul McBride, General Delivery, Kenai, Ak.

168. Joel T. Superman, P. O. Box 2842, Kenai, Ak. 99611

KACHEMAK BAY

AGAINST HB 192

169. E. M. Brooking, 7524 Arthur Court, Anchorage, Ak. 99502
170. C. V. Wellen, P. O. Box 937, Kenai, Ak. 99611
171. R. F. Krause, 7135 Whitehall Rd., Anch., Ak.
172. Frances S. Dely, 7609 E. 20th Avenue, Anch., Ak 99504
173. Charles H. Goodson, 7019 Linden Circle, Anch., Ak.
174. Debra Anne Goodson, 7019 Linden Circle, Anch., Ak.
175. Nellie Goodson, 7019 Linden Circle, Anch., Ak.
176. D. I. Daley, 5913 Prosperity Drive, Anch., Ak. 99504
177. Louise M. Reynolds, 3617 Strawberry Road, Anch., Ak. 99502
178. Kent M. Reynolds, 3617 Strawberry Road, Anch., Ak. 99501
179. Jerry Alyea, SRA Box 1462 B, Anch., Ak. 99501
180. Dora K. Ray, 1625 Sonja Circle, Anchorage, Ak. 99504
181. Debi Banks, 3101 W. 31st #2, Anch., Ak.
182. Philip W. Reynolds, 3617 Strawberry Road, Anch. Ak.
183. Mark Strub, 2432 Card Baranof
184. Harold Ottler, 7744 Old Harbor, Anchorage, Ak.
185. Cordelia J. Goodrich, 7509 Old Harbor Ave., Anch., Ak.
186. Cire Gray, P. O. Box 371, Palmer, Ak.
187. Gordon V. Gladson, Box 414, Palmer, Ak.
188. Maybelle German, 1455 W. 25th, Anchorage, Ak. 99503
189. Kevin Mattfield, Box 269, Kenai, Ak.
190. Helen Houler, SRA 1587-S, Anch., Ak.
191. Ralph Soller, P. O. Box AB, Plamer, Ak.
192. J. F. Voteva, SRA Box 1585 K., Anchorage, Ak.
193. Elaine Cole, 6909 Cutty Sark, Anch., Ak. 99502
194. Donald E. Cole, 6909 Cutty Sark, Anch., Ak. 99502

KACHEMAK BAY

AGAINST HB 192

194. David Beeman, SRA Box 1600-R, Anch., Ak. 99507

195. Sharon A. Roberds, 117 Grand Larry, Anchorage, Ak. 99504

196. Diane Sciscinte, 4300 Arctic Blvd. #15, Anch., Ak. 99503

197. Vatrice Wells, 1900 "K" Street, Anch., Ak. 99503

198. Ivan R. Rice, SRA Box 4126, Anch., Ak. 99502

199. Wm. Mark Starkweather, 7037 Arctic Blvd., Anch., Ak.

200. Cora Starkweather, 2034 Eastridge Dr., Anch., Ak.

201. John P. Suter, Box 610, West Lockridge, Eagle River 99517

202. Arlyn J. Hanson, Box 186, Palmer, Ak. 99645

203. Donald Hennessey, 8244 Seaview, Anchorage, Ak.

204. Jerry Brown, Box 374, Palmer, Ak. 99645

205. Doris Ayres, SR 1, Box 130 Whirlaway Road, Eagle River, Ak.

206. Edith B. Cooper, 3431 Kachemak Circle, Anchorage, Ak.

207. Sharon Storm, P. O. Box 7001, Kenai, Ak.

208. M. J. Catlin, P. O. Box 543, Chugiak, Ak.

209. Ruthann Rich, 7509 Old Harbor Rd., Anchorage, Ak. 99504

210. James K. Meister, 1434 "I" Street, Anch., Ak. 99501

211. Robert B. Frank, 7031 Altoona Drive, Anch. Ak.

212. J. R. Perron, 124 E. 3rd, Anchorage, Ak.

213. John Irvine, 340 Mumford, Apt. #1, Anch., Ak.

214. Ben Mead, 277 East Potter Drive, Anch., Ak. 99502

215. Douglas Callison, P. O. Box 4-510, Spenard, Ak. 99509

216. Larry Delahoussage, 1200 W. Dimond, Sp. 505, Anch., Ak.

217. John E. Anderson, 7420 Abbott Loop Rd., Anch., Ak.

218. Fae M. Kuebnoel, Box 183 Man O'War Road, Eagle River, Ak.

KACHEMAK BAY

AGAINST HB 192

219. N. Crose, SRA, Box 1625 M, Anch., Ak. 99507

220. Michael Kush, 6840 E. 3rd, Anchorage, Ak. 99501

221. Mrs. Lynn A. Hudson, 2852 Telequana #3, Anchorage, Ak. 99501

222. Irvin F. Tolbet, 1545 Sunrise Dr., Anch., Ak. 99504

223. John T. Andrews, Box 4-179, Anch., Ak. 99509

224. Edwin R. Seaman, 1446 E. 27th, Anch , Ak. 99504

225. Lynn A. Hudson, 2852 Telequana #3, Anch., Ak. 99504

226. Dorothy Ford, 6314 E. 31st., Anch., Ak. 99501

227. Mrs. John D. Andrews, Box 4-179, Anch., Ak. 99509

228. John Tyhuis, Box 2392, Kodiak, Ak.

229. Fred Johnston, Box 4-972, Anch., Ak. 99503

230. Laura Wandersee, c/o General Delivery, Kodiak, Ak. 99615

231. Dayton Wandersee, c/o General Delivery, Kodiak, Ak. 99615

232. William J. Deen, 3441 Kachemak, Anch., Ak. 99501

233. William O. Ford, 6314 E. 31st, Bldg. A, #4, Anch., Ak.

234. Glenn D. Miller, 2921 Wiley Post Ave., Anch., Ak. 99503

235. Kelly J. Booker, Box 4, Kenai

236. Stephen Garner, P. O. Box 7174 NRB, Kenai, Ak.

237. William L. Crose, Box 7022, NRB, Kenai, Ak. 99611

238. R. L. Harrison, Box 3936, Kenai, Ak.

239. W. H. Curry, P. O. Box P, Kenai, Ak. 99611

240. Philip Seaberg, Box 1175, Soldotna, Ak. 99669

241. Jack Hayes, Box #45, Kenai, Alaska 99611

242. Joseph DuPaul, P. O. Box 2929, Kenai, Ak.

243. Robert G. Garner, Box 1177, Kenai, Ak. 99611

KACHEMAK BAY

AGAINST HB 192

244. Mr. and Mrs. Harry McCurdy, Box 1349, Kenai, Ak. 99611

245. L. Dean Fritz, Box 3679, Kenai, Ak. 99611

246. Clyde Ckess, Box 71, Kenai, Ak.

247. James M. Voyle, 4001 Garfield, Anch., Ak.

248. Ida Stoddard, 7800 Dover Ave., Anch., Ak. 99504

249. David VanHorn, 2310 W. Tudor, Anchorage, Ak.

250. Robert S. Wilmarth, 5349 E. 41 Ave., Anch., Ak.

251. Tom Brown, P. O. Box 4-2874, Anch., Ak. 99509

252. Sol Nicholson, 3101 Sleeping Lary Drive, Anch., Ak.

253. Marlow Kramer, P. O. Box 3554, Anch., Ak.

254. Gordon C. Corbeil, 1114 E. 5th Ave., Anch., Ak. 99501

255. Steve J. Kile, 2940 Sunflower, Anch., Ak. 99504

256. Alvin G. Alb, 1518 Wolverine St., Anch., Ak. 99504

257. Judith A. Bennett, 1402 W 27th, Anch., Ak. 99501

258. Gloria Juliussen, P. O. Box 985, Kenai, Ak.

259. Virginia Foster, P. O. Box 7132 NRB, Kenai, Ak. 99611

260. Nelly Foster, P. O. Box 7132, NRB, Kenai, Ak. 99611

261. Joe DuCosto, 1210 W. 47th, Anchorage, Ak. 99502

262. Shirley Corbeil, 1114 E. 5th, Anch., Ak. 99501

263. Steve Jansen, 3.7 Mile Chena Pump Rd., Fairbanks, Ak. 99701

264. Jim Jansen, Box 471, Fairbanks, Ak. 99701

265. Kelly Pleas, P. O. Box 850, Juneau, Ak.

266. Clint Finstad, P. O. Box 60547, Fairbanks, Ak.

267. Dave Johnsen, 3320 Admiralty Bay Drive, Anch., Ak. 99502

268. Larry Foster, 1502 Turpin, Anch., Ak. 99504

KACHEMAK BAY

AGAINST HB 192

269. Robert C. Jackson, Rt. 3, Linwood Lane, Kenai, Ak.

270. M. Graves, Box 88, Kenai, Ak. 99611

271. R. M. Grages, Box 88, Kenai, Ak. 99611

272. David Hempshall, Box 955, Soldotna

273. Bill Sipple, 900 Kathy Drive, Anch., Ak. 99504

274. LrRoy Bass, 2642 Lovejoy Drive, Anch., Ak. 99504

275. Pete Wylie, 6920 E 12th, Anch., Ak. 99504

276. Bob Blodgett, Teller, Alaska 99778

277. Gary L. Bettis, 7141 Old Harbor Rd., Anch.

278. John C. Nordby, SRA Box 1446J, Anch., Ak. 99502

279. William C. Anglen, 3137 Carseus Ct., Anch.

280. D. L. McWhorter, 2221 Muldoon Rd., Anch., Ak.

281. James R. Stevason, 940 W 77th, Anch., Ak. 99502

282. Douglas Lingafelt, P. O. Box 1886, Soldotna, Ak.

283. Patricia Tressler, Box 3207, Kenai, Ak.

284. Ernest J. Trujillo, SRA Box 391A, Anch., 99507

285. Grady L. Thomas Jr., P. O. Box 699, Kenai, Ak.

286. Julie and Dave Derry

287. Wanda and Floyd Ward

288. Marianne Wall, 10111 Goodnews Lane, Anchorage, Ak. 99502

289. John C. Miller, 3445 Fordham Drive, Anch., Ak. 99504

290. Gerard G. Brown, 8615 9th, Everett, Washington 98204

291. Robert W. Rude, 4119 Vista Court, Anch., Ak. 99504

292. Larry M. Oskolhoff, 1206 43rd Ave., Sacramento, Cal. 95822

293. Alan R. Chase, SR A, Box 206-C, Anch., Ak. 99507

294. John N. Calbrry, Box 140, Seldovia, Ak. 99663

KACHEMAK BAY

AGAINST HB 192

295. Charles John, Box 7031, N. Kenai, Ak. 99661

296. Charles Koehler, Rt. 1, Box 720, Kenai, Ak. 99611

297. Tim Miller, 7706 Brentwood Cr., Anch., Ak.

298. Alice [illegible]. Emerich, 8222 Seaview St., Anch., Ak.

299. Keith Calderwood, 7900 Honeysuckle Dr., Anch., Ak.

300 Kenneth E. Calderwood, 7900 Honeysuckle Dr., Anch., Ak.

301. W. R. Stewart, 3530 W 31st Sve., Anch., Ak. 99503

302. Nadine M. Calderwood, 7900 Honeysuckle Dr., Anch., Ak. 99502

303. Karen C. Ellis, P. O. Box 495, Kenai, Ak. 99611

Date April 1977

#B 192

The Honorable Members of the Senate
Alaska State Legislature
Juneau, Alaska

Dear Senators:

We, the undersigned voters and taxpayers of Alaska, oppose the state spending the millions of tax dollars proposed by the Administration to buy back the oil and gas leases in Kachemak Bay.

The Kachemak Bay leases are valid and should be honored by the State of Alaska. This is the opinion issued by the Supreme Court and should not be violated by the Administration nor the Legislature.

These millions of dollars are needed in many more areas to provide funding for projects for the ALASKAN PEOPLE in the entire state. We do not want our taxes spent to satisfy a few who are mostly "johnny come lately" and transient residents.

We strongly urge the repeal of the moratorium and condemnation bill that was passed in poor judgement by the legislators in 1976.

NAME	ADDRESS
Gerard G Brown	8618 9th Everett Wa 98204
Robert W. Reule	4119 Vista Court Anchorage 99504
Larry [illegible]	1206 43rd Ave Sacramento Calif 95822
[illegible]	SRA Box 216 C Anchorage 99507
[illegible]	8321 Enabrott St. Anch. AK 99502
[illegible]	Box 140 Seldovia AK 99663
[illegible]	Box 1831 N Kenai Alk 99611

Copy to all senators

March 28, 1977
Homer, Ak.

Senator Kay Poland
Chairman Resources Committee
Pouch Y
Juneau, Alaska 99811

Dear Senator Poland:

Thank you for your letter of March 24 regarding repurchase of Kachemak Bay leases.

You are aware we are strongly opposed to repurchase and have been from the beginning.

We appreciate your scheduling a hearing on April 1. Barbara Fenley will head a delegation, which we support, at that time to make an opposition report.

Thank you for your efforts.

R. J. Gillas
SRA, Box 44
Homer, Ak
99603

The Honorable Kay Poland
Chairman
The Honorable Members
Senate Resource Committee
Pouch V
Juneau, Alaska 99801

Dear Senator Poland and Resource Committee Members:

As a resident and taxpayer of Alaska I am not in favor of Governor Hammond's program to buy back all of the oil leases in Kachemak Bay.

This bill now to pay off Standard Oil and the next one to pay off Texaco is almost all of the 25 million dollars that everybody keeps saying is just a "refund" to the oil companies for what they paid. What about those other companies? Where will the millions of dollars come from to pay them? Out of the taxpayers pocket, that's where.

All of this money could maintain the haul road they say will cost so much to let people use. It could build a lot of other roads we need in Alaska and make some we already have a lot better and a lot safer. It could build some of the schools, jails, court houses and docks they keep putting on bond issues asking the voters to approve.

I ask all of you to do what you can to defeat HB 192. And I think you ought to do everything possible to help pass the bill, SB 199, to repeal the first law that allowed the Governor to buy back these leases in the first place. Let the courts decide what is right on them. That's where it started and that's were the decision should be made, not laws from the Governor and the Legislature.

Again I don't want my tax dollars spent to pay off the oil companies. Let them find out what they bought. Some people think there is more natural gas than oil in Kachemak Bay anyway. They need gas on the Kenai Peninsula. Let the people have a chance to work and let them have the energy they need for a little progress.

Sincerely,

John E Anderson

7920 ABBOTT LOOP RD
ANCHORAGE, ALASKA 99507

The Honorable Kay Poland
Chairman
The Honorable Members
Senate Resource Committee
Pouch V
Juneau, Alaska 99801

Dear Senator Poland and Resource Committee Members:

As a resident and taxpayer of Alaska I am not in favor of Governor Hammond's program to buy back all of the oil leases in Kachemak Bay.

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Sincerely,

Jae M Kuehnoel
Box 183 Man O' War Rd
Eagle River, Alaska 99577

The Honorable Kay Poland
Chairman
The Honorable Members
Senate Resource Committee
Pouch V
Juneau, Alaska 99801

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Sincerely,

SRA Box 1625 M
Anchorage ak
99507

The Honorable Kay Poland
Chairman
The Honorable Members
Senate Resource Committee
Pouch V
Juneau, Alaska 99801

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Sincerely,

Donald Lee

Dear Kay Poland.

I am writting to you in Hopes that you will support John Huber's Senate House Bill #99 "An Act repealing the Authorization to reaquire oil & Gas leaseholds interests in Kachemak Bay.

We want the oil Company here and we think oil & fishermen can get along.

Homer needs the oil for economic reasons there is Nothing to support this town as it is.

Thank you,
Barbara & Ralph Hoskin

The Honorable Kay Poland
Chairman
The Honorable Members
Senate Resource Committee
Pouch V
Juneau, Alaska 99801

Dear Senator Poland and Resource Committee Members:

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Sincerely,

Alice Parker

The Honorable Kay Poland
Chairman
The Honorable Members
Senate Resource Committee
Pouch V
Juneau, Alaska 99801

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Sincerely, Woody Snell

The Honorable Kay Poland
Chairman
The Honorable Members
Senate Resource Committee
Pouch V
Juneau, Alaska 99801

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Sincerely,

Edward M. Wilkinson

The Honorable Kay Poland
Chairman
The Honorable Members
Senate Resource Committee
Pouch V
Juneau, Alaska 99801

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Sincerely,

Carla D Dayton

Box 556
Kodiak, Ak 99615

The Honorable Kay Poland
Chairman
The Honorable Members
Senate Resource Committee
Pouch V
Juneau, Alaska 99801

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Sincerely,

Fred E. Johnson

Box 6341
Anc, Alk 99502

The Honorable Kay Poland
Chairman
The Honorable Members
Senate Resource Committee
Pouch V
Juneau, Alaska 99801

Dear Senator Poland and Resource Committee Members:

As a resident and taxpayer of Alaska I am not in favor of Governor Hammond's program to buy back all of the oil leases in Kachemak Bay.

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Sincerely,

William K. Spencer

The Honorable Kay Poland
Chairman
The Honorable Members
Senate Resource Committee
Pouch V
Juneau, Alaska 99801

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The Honorable Members
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Pouch V
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Sincerely,

Wm B. McCullough

The Honorable Kay Poland
Chairman
The Honorable Members
Senate Resource Committee
Pouch V
Juneau, Alaska 99801

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Sincerely,

George Pedersen

The Honorable Kay Poland
Chairman
The Honorable Members
Senate Resource Committee
Pouch V
Juneau, Alaska 99801

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Sincerely,

Jean Yonaka

The Honorable Kay Poland
Chairman
The Honorable Members
Senate Resource Committee
Pouch V
Juneau, Alaska 99801

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Sincerely,

Bruce Barker
7010 Noble Cir.
Anch. AK.

The Honorable John C. Sackett
Chairman
The Honorable Members
Senate Finance Committee
Pouch V
Juneau, Alaska 99801

Dear Senator Sackett and Finance Committee Members:

As a resident and taxpayer of Alaska I am not in favor of Governor Hammond's program to buy back all of the oil leases in Kachemak Bay.

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Sincerely,

Beverly A. Webb
SR A
Box 1463 G
Anchorage, Ak.

The Honorable Kay Poland
Chairman
The Honorable Members
Senate Resource Committee
Pouch V
Juneau, Alaska 99801

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Sincerely,

Brenda Hanson

The Honorable Kay Poland
Chairman
The Honorable Members
Senate Resource Committee
Pouch V
Juneau, Alaska 99801

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John C Ouland

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Chairman
The Honorable Members
Senate Resource Committee
Pouch V
Juneau, Alaska 99801

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Sincerely,

Lloyd E Weeks

The Honorable Kay Poland
Chairman
The Honorable Members
Senate Resource Committee
Pouch V
Juneau, Alaska 99801

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Sincerely,

Vickie M. Acton

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

1977 APR 1 AM 2 41

02142 NL TDA HOMER ALASKA 50 03-31 0820P AST

PMS SEN KAY POLAND 0067

JUN

WE OPPOSE THE APPROPRIATION OF FUNDS FOR BUY BACK OF KACHEMAK BAY LEASES. BASED ON THE CONCEPT OF BREACH OF CONTRACT BY THE STATE OF ALASKA. WE FEEL THAT THE APPROPRIATION OF FUNDS TO BUY BACK THESE LEASES WILL BE TO THE DETRIMENT OF THE ENTIRE STATE.

JULIE AND DAVE DERRY

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

1977 APR 1 PM 4 06

02031 TDA HOMER ALASKA 27 04-01 110P AST

PMS SENATOR K POLAND URGENT

JUN

ITS SHAMEFUL WHEN THE GREATEST STATE IN THE UNION WONT HONOR A CONTRACT. SAVE OUR HONOR AND 21 MILLION VOTE NO TO BUY BACK LEASES

WANDA AND FLOYD WARD

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

77 MAR 21 PM 10 00

02157 POM TDA HOMER ALASKA 15 03-21 0514P AST

PMS SEN POLAND

JUN

PLEASE OPPOSE HB 192. WE ARE STARVING TO DEATH IN HOMER AND SURROUNDING TERRITORIES.

THE PORPOISE PM EDWIN FLETCHER

BOX 1124 HOMER AK 99603

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC
PHONE: 586-6440
JUNEAU, ALASKA 99801

02774 NL TDA NORTH KENAI ALASKA 50 02-28 0835P AST

PMS SEN KAY POLAND

0033

JUN

THE FERRIS FIASCO PROVED REGULATED OIL AND FISHING

ARE COMPATIBLE THE FUTURE OF ALASKA DEPENDS UPON OUR SHOWING

WE ARE FISCAL RESPONSIBLE ADULTS STOP LEASE BUY BACKS

RALPH JOHNSON BOX 7031 NORTH KENAI AK 99601

1977 FEB 28 PM 11 52

TELEGRAM

RCA ALASKA COMMUNICATIONS, IN

PHONE: 586-6440

JUNEAU, ALASKA 99801

#

1977 FEB 28 PM 7 49

02459 POM ANCHORAGE ALASKA 15 02-28 0400P AST

PMS SEN KAY POLAND

4307

JUN

VOTE NO HB192 DO NOT WASTE MY MONEY TO PAY FOR STANDARD

OIL'S MISTAKE

FREDDY T GALLANT 715 RAPPI CT ANCHORAGE AK 99503

TELEGRAM

TDA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

02419 POM TDA HOMER AK 15 02-25 525P AST

77 FEB 25 AM 12 30

PMS SEN KAY POLAND 3675

JUN

VOTE NO HB 192 REPRESENT THE PEOPLE NOT THE

HAMMOND ADMINISTRATION

ROBERT CONNELLEY SRA BOX 2S HOMER AK 99603

TELEGRAM

ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

02400 POM TDA HOMER AK 15 02-25 510P AST

077 FEB 26 AM 12 23

PMS SEN KAY POLAND 3655

JUN

OPPOSE HB192 THE REVENUE COULD BE BETTER SPENT WE CARE WHAT

HAPPENS

SUSIE FRANKLIN BOX 1099 HOMER AK 99603

TELEGRAM

ROM ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

077 FEB 25 PM 11 46

02339 POM TDA CHUGIAK ALASKA 15 02-25 0430P AST

PMS SEN KAY POLAND

3611

JUN

VOTE NO HB 192 TAX DOLLARS DONT PAY MY WAGES I WORK

FOR A LIVING

JAME C RUDE STAR ROUTE BOX 636 CHUGIAK 99567

TELEGRAM

ACA ALASKA COMMUNICATIONS, INC.
PHONE: 586-5440
JUNEAU, ALASKA 99801

'77 FEB 25 PM 9 56

#

02237 POM TDA HOMER AK 15 02-25 355P AST

PMS SEN KAY POLAND

JUN 3449

VOTE NO ON HB 192 DONT WASTE OUR TAX MONEY LISTEN AND THINK

EDNA MORRIS BOX 758 HOMER 99603

TELEGRAM

:CA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

02164 POM TDA HOMER AK 15 3-3 615P AST

PMS SEN POLAND

JUN

PLEASE OPPOSE HB192 AMERICA NEEDS GAS

RAY AND PAM BIRKEY

BOX 921 HOMER 99603

77 MAR 3 PM 10

#

1977 MAR 5 TELEGRAM

ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

02018 TDA SELDOVIA ALASKA POM 3-5 850A AST

PMS SEN KAY POLAND

JUN

PLEASE CONSIDER YOUR CONSTITUENTS THE ALASKAN

TAX PAYERS. VOTE AGAINST THE IRRESPONSIBLE HB192

FRED L ELVSAAS PRESIDENT

SELDOVIA NATIVE ASSOCIATION

SELDOVIA ALASKA

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

1977 FEB 25 PM 9 03

#

022 14 POM TDA SELDOVIA ALASKA 15 02-25 1236P ST

PMS SEN KAY POLAND

3361

JJN

VOTE NO ON HB192 WE WANT CHEVRON TO DRILL NOT SELL THEIR LEASES.

RON HOFFMAN BOX 151 SELDOVIA 99663

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

02 134 POM AN#

77 FEB 25 AM 7 31

02 134 POM ANCHORAGE AK 2-24 1157P AST

PMS SEN KAY POLAND 3082

JUN

VOTE NO HB 192

TAX PAYEES NEED REPRESENTATION NOT DEVESTATION.

BARBARA MANLY BOX 955 HOMER AK 99603

TELEGRAM

ACA ALASKA COMMUNICATIONS, INC
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

02117 NL TDA CHUGIAK ALASKA 50 02-24 930A AST

PMS SENATOR KAY POLAND

JUN 2746

PROUDLY, OLD TIME ALASKANS WOULD SAY A MANS WORD IS HIS BOND. NOW SOME POLITICAL LEADERS ARE CONSIDERING NOT EVEN HONORING A STATE CONTRACT. STOP AND THINK, DONT DISGRACE ALASKANS BY WELCHING. SEBSTER SAYS TO WELCH IS TO CHEAT OR SWINDLE BY FAILING TO FULFILL AN OBLIGATION VOTE NO HB192

SAM E MCDOWELL LONG TIME ALASKAN AND CONCERNED CITIZEN

1977 FEB 24 PM 5 47

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

1977 FEB 24 PM 9 25

02224 POM TDA HOMER ALASKA 15 02-24 0545P AST

PMS SEN KAY POLAND

2851

JUN

PLEASE OPPOSE HB192 WHY SHOULD MY TAX DOLLARS BAIL OUT HAMMOND.

WILLIAM B EDENS BOX 114 HOMER ALASKA 99603

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

077 FEB 24 PM 11 13

#

0226 NL ANCHORAGE ALASKA 50 02-24 0330P AST

PMS SEN KAY POLAND

JUN 2891

CONDEMNATION OF KACHEMAK LEASES WILL FOREVER PLACE ALASKANS NAME IN SHAME. ARE YOU LAWMAKERS OR LAW BREAKER? VOTE NO.

JOHN H DALEY 335 EAST 23RD AVE ANCHORAGE ALASKA 99503

TELEGRAM

ACA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

1977 FEB 25 AM 6 53

02 114 POM ANCHORAGE AK 15 2-24 1156P AST

PMS SEN KAY POLAND 3062

JUN

VOTE NO HB192

REPRESENT THE PEOPLE NOT THE HAMMOND CLICK.

NICHOLAS J GANGL

BOX 1297

HOMER AK 99603

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

1977 FEB 25 AM 8 21

#

02154 POM TDA HOMER AK 15 2-24 1158P AST

PMS SEN KAY POLAND

3102

JUN

OPPOSE HB 192

THESE ARE TAX DOLLARS. LET THE TAX PAYERS VOTE.

LORETTA VALBUSCH BOX 458 HOMER AK 99603

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

02034 POM ANCHORAGE AK 15 2-24 1155P AST

PMS SEN KAY POLAND 2983

077 FEB 25 AM 3 51

JUN

VOTE NO HB192

LET VOTERS DECIDE ON 21 MILLION DOLLARS.

BERT VALBUSCH

BOX 453

HOMER AK 99603

TELEGRAM

ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

02214 POM TDA HOMER ALASKA 2-25 1247A AST

PMS SEN KAY POLAND

JUN 3183

1977 FEB 25 PM 12 15

PLEASE OPPOSE HOUSE BILL 192. LETS BUILD ROADS.

DO NOT DISCOURAGE OIL

NICHOLAS J GANGL

BOX 465

HOMER ALASKA 99603

TELEGRAM

ALASKA COMMUNICATIONS, INC
PHONE: 586-6440
JUNEAU, ALASKA 99801

02 135 POM TDA HOMER ALASKA 15 02-22 900P AST

PMS SENATOR KAY POLAND

JUN 2101

CHB192 NO GOOD. PLEASE VOTE NO. WHY SHOULD WE PAY

FOR ADMINISTRATIVE INCOMPETENCE

HOMER S THOMSPON BOX 116 HOMER ALASKA

Kashevaroff
Gary

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440

K #

1977 MAR 2 AM 5 35

02294 NL ANCHORAGE ALASKA 50 03-01 0730P AST

PMS SEN KAY POLAND

C6(3

JUN

WE OPPOSE HB192 DUE TO THE ECONOMIC LOSSES IT WILL CAUSE

TO PRIVATE CITIZENS AND COMMERCE ALIKE.

SIGNATURES:

JIM JANSEN PRESIDENT KNIK CONSTRUCTION

1 MILE PETER ROAD FAIRBANKS ALASKA 99707

LYNDEN TRANSPORT 3027 RAMPART DRIVE ANCHORAGE ALASKA 99504

JACK HELTON CEN MGR ALASKA MARINE TRUCKING 3213

ANCHORAGE ALASKA 99504

BILL WHITSITT VICE PRESIDENT PIONEER MILK COMPANY

1713 DIOMEDE ANCHORAGE ALASKA 99504

BILL WEBB MANAGER

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

1977 MAR 7 PM 6 28

#

02055 POM TDA HOMER ALASKA 15 03-07 138P AST

PMS SENATOR POLAND

JUN

PLEASE OPPOSE HB192. PLEASE SUPPORT SB199

LEROY AND RITA SHOULZ PO BOX 873 HOMER AK 99603

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

1977 MAR 7 PM 6 29

#

02075 POM TDA HOMER ALASKA 15 03-07 138P AST

PMS SENATOR POLAND

JUN

PLEASE OPPOSE HB192. PLEASE SUPPORT SB199

JERRY AND RITA JEPPESON PO BOX 108 ANCHORAR PT ALASKA 99566

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

022Ø3 POM TDA HOMER ALASKA 15 Ø3-Ø4 Ø55ØP AST

PM SEN POLAND

JUN

VOTE NO HB192 OPPOSE ALL LEASE BUY BACKS

LLOYD AND ROXIE SCHADE

STAR ROUTE A HOMER ALASKA 99603

1977 MAR 5 AM 1 25

02223 POM TDA HOMER ALASKA 15 03-04 0553PAST

PMS SEN KAY POLAND

JUN

VOTE NO HB192 OPPOSE ALL LEASE BUY BACKS

1977 MAR 5 AM 1 38

HARRY BJERREGAARD BOX 585 HOMER AK 99603

TELEGRAM

A ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

02055 TDA HOMER ALASKA POM 3-8 845A AST

PMS SEN POLAND

JUN

PLEASE OPPOSE HB192. SUPPORT SB199

BILL AND ELIZABETH JOHNSON

PO BOX 658

HOMER ALASKA 99603

1977 MAR 8 PM 3 20

TELEGRAM

ACA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

1977 MAR 3 PM 11 08

#

02220 POM TDA HOMER AK 15 3-3 626P AST

PMS SEN POLAND

JUN

VOTE NO HB192 OPPOSE ALL LEASE BUY BACKS

KEN AND ROBERTA HARRIS

BOX 663 HOMER AK 99603

1977 MAR 3 PM 9 59

#

02130 POM TDA SELDOVIA ALASKA 15 03-03 0612P AST

PMS SEN POLAND

JUN

VOTE NO HB192 OPPOSE ALL LEASE BUY BACKS

JACK AND SUSAN ENGLISH

SELDOVIA AK 99663

#

1977 MAR 3 PM 9 57

02110 POM ANCHORAGE ALASKA 15 03-03 0600P AST

PMS SEN POLAND

JUN

VOTE NO HB192 OPPOSE ALL LEASE BUY BACKS.

ASH W HELGOE

SRA BOX 1770 K ANCHORAGE AK 99507

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

02200 POM TDA HOMER AK 15 3-3 622P AST

PMS SEN POLAND

JUN

VOTE NO HB192 OPPOSE ALL LEASE BUY BACKS

EVAN AND VIRGINIA CUNDIFF SERLING ROUTE HOMER 99603

1977 MAR 3 PM 10 26

TELEGRAM

CA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

1977 MAR 3 PM 10 00

#

02150 POM ANCHORAGE AK 15 03-03 620P AST

PMS SEN POLAND

JUN

VOTE NO HB192 OPPOSE ALL LEASE BUY BACKS

DAVID SCHACHT BOX 8332 ANCHORAGE AK 99508

TELEGRAM

VIA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

02180 POM TDA HOMER AK 15 3-3 622P AST

PMS SEN POLAND

JUN

VOTE NO HB192 OPPOSE ALL LEASE BUY BACKS

VIC BOREUM BOX 433 HOMER A99603

MAR 3 PM 10 17

TELEGRAM

ACA ALASKA COMMUNICATIONS, INC
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

02256 POM TDA HOMER ALASKA 15 03-03 0630P AST

PMS SEN POLAND

JUN

VOTE NO HB 192 OPPOSE ALL LEASE BUY BACKS

JACK AND MARY EPPERSON BOX 221 HOMER 99603

1977 MAR 3 PM 11 02

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

02276 POM TDA HOMER AK 15 3-3 633P AST

PMS SEN POLAND

JUN

VOTE NO HB192 OPPOSE ALL LEASE BUY BACKS

DICKY GERGIORE BOX 1204 HOMER 99603

1977 MAR 4 AM 12 02

TELEGRAM

TDA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

02315 POM TDA KENAI AK 15 3-3 633P AST

PMS SEN POLAND

JUN

VOTE NO HB 192 OPPOSE ALL LEASE BUY BACKS

JIM DOYLE BOX 582 KENAI AK 99611

1977 MAR 4 AM 12 20

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

1977 MAR 3 PM 11 25

#

02295 POM TDA HOMER AK 15 3-3 630P AST

PMS SEN POLAND

JUN

VOTE NO HB192 OPPOSE ALL LEASE BUY BACKS

DALE AND FRAN VAN SANDT SRA BOX 21A HOMER 99603

TELEGRAM

ROM ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#CJ

02037 POM TDA SOLDOTNA AK 15 03-01 800P AST

PMS SENATOR KAY POLAND

JUN

OPPOSE HB192 OPPOSE ALL LEASE BUY BACKS

EARL BILLINGSLEA

BOX 76

SOLDOTNA AK 99669

MAR 2 AM 11 00

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

02192 POM ANCHORAGE AK 15 03-01 810P AST

PMS SENATOR KAY POLAND

JUN

OPPOSE HB192 OPPOSE ALL LEASE BUY BACKS

BILL GATES

SRA BOX 1572X

ANCHORAGE AK 99507

RECEIVED
MAR 2 PM 12 56

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

02172 POM ANCHORAGE ALASKA 15 03-01 830SP AST

MS SEN KAY POLAND

JUN

OPPOSE HB 132 OPPOSE ALL LEASE BUY BACKS

KENNETH M RIPPER SRA 1552C ANCHORAGE 99507

77 MAR 2 PM 12 34

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

020106 POM TDA HOMER AK 15 03-01 803P AST

PMS SENATOR KAY POLAND

JUN

OPPOSE HB912 OPPOSE ALL LEASE BUY BACKS

JACK AND ETHEL SCOTT

BOX 518

HOMER AK 99603

MAR 2 PM 12 28

TELEGRAM

FROM ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#CJ

02819 POM ANCHORAGE AK 15 03-02 624P AST

PMS SEN KAY POLAND

JUN

OPPOSE HB192 OPPOSE ALL LEASE BUY BACKS

GEORGE AND JOYCE KIRKPATRICK

BOX 702

HOMER ALASKA 99603

07 MAR 03 AM 12 58

TELEGRAM

ACA ALASKA COMMUNICATIONS, INC.
PHONE: 522-6140
ANCHORAGE, ALASKA 99501

02857 POM ANCHORAGE ALASKA 15 03-02 0624P AST

PMS SEN KAY POLAND

JUN

OPPOSE HB192 OPPOSE ALL LEASE BUY BACKS

RAY HOFMEISTER BOX 674 COOPER LANDING AK 99572

RECD MAR 3 AM 1 29

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.

PHONE 835-3441

#

02839 POM TDA HOMER ALASKA 15 03-02 0624P AST

PMS SEN KAY POLAND

JUN

OPPOSE ALL LEASE BUY BACKS

GEORGE AND CAROL CARTRIGHT BOX 513 HOMER ALASKA 99603

1977 MAR 3 AM 1 29

TELEGRAM

ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

02879 POM ANCHORAGE ALASKA 15 03-02 0624P AST

PMS SEN KAY POLAND

JUN

OPPOSE HB192 OPPOSE ALL LEASE BUY BACKS

KOSTANTINOS MACHERAS BOX 178 KENAI ALASKA 99611

1977 MAR 3 AM 2 50

TELEGRAM

ACA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

*CJ

02799 POM ANCHORAGE AK 15 03-02 624P AST

BMS SEN KAY POLAND

OPPOSE HB192 OPPOSE ALL LEASE BUY BACKS

BILL ALLEN

6081 YUKON RD

ANCHORAGE ALASKA 99503

1977 MAR 3 AM 12 57

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#CJ

02130 POM TDA SOLDOTNA ALASKA 15 03-01 804P AST

PMS SEN KAY POLAND

JUN

OPPOSE HB192 OPPOSE ALL LEASE BUY BACKS

BOB EDLER BOX 73 SOLDOTNA AK 99669

MAR 2 PM 12 00

TELEGRAM

ACA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

1977 MAR 2 AM 11 46

02086 POM TDA HOMER AK 15 0301 802P AST

PMS SENATOR KAY POLAND

JUML

OPPOSE HB 912 OPPOSE ALL LEASE BUY BACKS

LARRY AND HELENA BORELIUS

BOX 413

HOMER AK 99603

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
#CJ JUNEAU, ALASKA 99801

02152 POM ANCHORAGE ALASKA 15 03-01 805P AST

PMS SEN KAY POLAND

JUN

OPPOSE HB192 OPPOSE ALL LEASE BUY BACKS

NICK MONSEN 7120 JESTER CR ANCHORAGE 99503

1977 MAR 2 PM 12 17

TELEGRAM

ACA ALASKA COMMUNICATIONS, INC
PHONE: 586-6440
JUNEAU, ALASKA 99801

#CJ

02066 POM TDA HOMER AK 15 03-01 801P AST

PMS SENATOR KAY POLAND

0798

JUN

OPPOSE HB 192 OPPOSE ALL LEASE BUY BACKS

JAMES H SALING

BOX 448

HOMER AK 99603

'77 MAR 2 AM 11 19

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

02 194 POM TDA HOMER ALASKA 2-24 1159P AST

PMS SEN KAY POLAND

3154

JUN

VOTE NO HB 192

SPUD AND VAL DILLON

BOX 591

HOMER ALASKA 99603

'77 FEB 25 AM 11 11

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

02174 POM TDA HOMER AK 15 2-24 1159P AST

PMS SEN KAY F[illegible]AND

1977 FEB 25 AM 9 56

JUN 3122

OPPOPPOSE HB192

DUANE AND HELEN BELNAT STERLING RTE HOMER AK 99603

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC
PHONE: 276-5440
JUNEAU, ALASKA 99801

1977 FEB 28 AM 8 46

02153 POM ANCHORAGE ALASKA 15 02-27 1149P AST

PMS SEN KAY POLAND

3969

JUN

OPPOSE HB192 CONSIDER REPEALING CSCSSB720

ERLIN BRODERSON

BOX 151

HOMER ALASKA 99603

TELEGRAM

ALASKA COMMUNICATIONS, INC
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

02233 POM TDA HOMER ALASKA 15 02-27 1159P AST

PMS SENATOR KAY POLAND

JUN 4852

OPPOSE HB192 COONSIDER REPEALING CSCSSB720

JACK SIBSON BOX 1221 HOMER AK 99603

077 FEB 28 AM 10 26

TELEGRAM

TDA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

02313 TDA HOMER ALASKA POM 2-27 1159P AST

PMS SEN KAY POLAND

JUN 4135

OPPOSE HB192 CONSIDER REPEALING CSCSSB720

VERN MUTCH

BOX 425 99603

1977 FEB 28 AM 11 17

TELEGRAM

ALASKA COMMUNICATIONS, INC
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

02 193 POM ANCHORAGE AK 15 02-27 1149P AST

PMS SEN KAY POLAND

4913

JUN

OPPOSE HB 192 CONSIDER REPEALING CSCSSB 720

DAVID DERRY

BOX 951

HOMER ALASKA 99603

1977 FEB 28 AM 9 36

TELEGRAM

ACA ALASKA COMMUNICATIONS INC
PHONE: 523-6440
JUNEAU ALASKA

#

02173 POM ANCHORAGE AK 15 02-27 1149P AST

PMS SEN KAY POLAND

JUN 3993

OPPOSE HB192 CONSIDER REPEALING CSCSSB720

GARY DALEY

BOX 1017

HOMER ALASKA 99603

1977 FEB 28 AM 9 18

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

02333 PDM TDA HOMER ALASKA 15 02-27 1159P AST

PMS SENATOR KAY POLAND

4155

JUN

OPPOSE HB192 CONSIDER REPEALING CSCSSB720

CARL JONES BOX 6060 HOMER AK 99603

1977 FEB 28 AM 11 34

TELEGRAM

...CA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

1977 FEB 28 AM 10 52

#

02253 TDA HOMER ALASKA POM 2-27 1159P AST

PMS SEN KAY POLAND

4092

JUN

OPPOSE HB 192 CONSIDER REPEALING CSCCSSB 720

HARRY VICK

SRA BOX 7 99603

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

1977 FEB 28 AM 11 03

02293 TDA HOMER ALASKA POM 2-27 1159P AST

PMS SEN KAY POLAND

JUN 4113

OPPOSE HB 192 CONSIDER REPEALING CSCSSB 720

ROBERT HERRING

BOX 677 99603

TELEGRAM

ALASKA COMMUNICATIONS, INC
PHONE: 586-6440
JUNEAU, ALASKA 99801

1977 FEB 28 AM 10 32

#

022 73 POM TDA HOMER ALASKA 15 02-27 1159P AST

PMS SENATOR KAY POLAND

JUNEAU

OPPOSE HB 192 CONSIDER REPEALING CSCSSB 72

DANIEL HENNICK SRA BOX 23A HOMER AK 99603

TELEGRAM

TDA ALASKA COMMUNICATIONS, INC
PHONE: 586-6440
JUNEAU, ALASKA 99801

77 FEB 28 AM 10 27

02213 TDA HOMER ALASKA POM 2-27 1159P AST

PMS SEN KAY POLAND

JUN 1934

OPPOSE HB192 CONSIDER REPEALING CSCSSB720

EUNICE BERGLAND

BOX 453 99603

#

02054 POM ANCHORAGE AK 15 2-24 1155P AST

PMS SEN KAY POLAND

JUN

VOTE NO HB 192

LEO ROLLINS

BOX 343

HOMER AK 99603

3002

1977 FEB 25 AM 5 17

TELEGRAM

ACA ALASKA COMMUNICATIONS, INC.

PHONE: 586-6440

JUNEAU, ALASKA 99801

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC
PHONE: 586-6440
JUNEAU, ALASKA 99801

1977 FEB 24 PM 10 34

#

02244 POM ANCHORAGE ALASKA 15 02-24 0745P AST

PMS SEN KAY POLAND

JUN 2870

IM OPPOSED TO THE KACHEMAK BAY BUY BACK.

JOSEPH GOODRICH 7509 OLD HARBOR AVE ANCHORAGE AK 99504

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

02014 POM ANCHORAGE AK 15 2-24 1155P AST 77 FEB 25 AM 3 17

PMS SEN KAY POLAND 2963

JUN

OPPOSE HB192 USE OUR TAX DOLLARS FOR ALASKAN NEEDS

JIM MANLY

BOX 955

HOMER AK 99603

#

02074 POM ANCHORAGE AK 15 2-24 1155P AST

PMS SEN KAY POLAND 3022 1977 FEB 25 AM 5 46

JUN

OPPOSE HB192

RICHARD DIXON

BOX 271

HOMER AK 99603

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.

PHONE: 586-6140

JUNEAU, ALASKA 99801

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

02094 POM TDA HOMER ALASKA 02-24 1155P AST 1977 FEB 25 AM 6 39

PMS SENATOR KAY POLAND 3042

JUNEAU AK

OPPOSE HB 192

ROBERT DITTON BOX 492 HOMER ALASKA 99603

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

02292 POM ANCHORAGE ALASKA 15 02-24 1000P AST 1977 FEB 25 AM 12 54

PMS SEN KAY POLAND 2917

JUN

I STRONGLY URGE YOU TO VOTE AGAINST BUYING BACK KACHEMAK BAY OIL

LEAES.

MIRAM HILSCHER 2224 FORAKER ANCHORAGE ALASKA 99503

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

02312 POM ANCHORAGE ALASKA 15 02-14 1040P AST

1977 FEB 25 AM 1 21

PMS SEN KAY POLAND

2937

JUN

STOP THIS WASTE OF TAXPAYER MONEY. VOTE NO KACHEMAK BAY

LESE CONDEMNATION.

DONALD G SHEETS SRA BOX 1655 ANCHORAGE AK 99502

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

1977 FEB 25 PM 11 36

02134 POM TDA HOMER ALASKA 15 02-25 0303P AT

PMS SEN KAY POLAND

3593

JUN

VOT NOT HB192 DONT WASTE OUR MONEY

RON EILCHER STAR ROUTE A HOMER 99603

02319 POM TDA HOMER ALASKA 15 02-25 0400P AST

PMS SEN KAY POLAND 3554

JUN

VOTE NO HB192 LISTEN TO THE PEOPLE

SAM MATTHEWS BOX 1235 HOMER 99603

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

077 FEB 25 PM 11 02

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

02057 POM TDA HOMER AK 15 02-25 1215P AST

PMS SENATOR KAY POLAND

3310

JUN

OTE NO HG '92 REPRESENT MY OPINION FOR SPENDING 21 MILLION

DOLLARS

DALE JOHNSON

BOX 1047

HOMER AK 99603

77 FEB 25 PM 3 03

TELEGRAM

ACA ALASKA COMMUNICATIONS, INC
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

'77 FEB 25 PM 4 03

20015 POM KENAI ALASKA 15 02-25 1245P AST

PMS SEN KAY POLAND

3255

POUCH V

JUNEAU

PLAESE OPPOSE H' 92

JOHN A PACE B 392 HOMER

TELEGRAM

ROA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

1977 FEB 25 PM 7 50

02035 POM TDA HOMER AK 15 02-25 1040A AST

PMS SENATOR KAY POLAND

3285

JUN

VOTE NO ON HB192 DON'T WAST OUR TAX DOLLARS

HOWARD MYHILL REXALL DRUGS

BOX 314

HOMER AK 99603

TELEGRAM

ROM ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

977 FEB 25 PM 8 24

02248 POM TDA HOMER ALASKA 15 02-25 0420P AST

PMS SEN KAY POLAND

3319

JUN

PLEASE OPPOSE HB192

JIM CLAUSS SRA BOX 20B HOMER AASKA

TELEGRAM

FROM ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

977 FEB 25 PM 8 25

#

02249 POM TDA HOMER ALASKA 15 0C-25 0420P AST

PMS SEN KAY POLAND

JUN 3320

PLEASE OPPOSE HB192

MICKEY CLAUSS SRA BOX 20B HOMER ALASKA

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

1977 FEB 25 PM 8 57

#

02077 POM TDA HOMER AK 15 02-25 1220P AST

PMS SENATOR KAY POLAND

JUN 3341

PLEASE OPPOSE HB 192

ARTHUR KOLAR

BOX 294

HOMER AK 99603

TELEGRAM

ACA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

02 154 POM ANCHORAGE AK 15 02-25 155P AST

PMS SEN KAY POLAND

3381

JUN

VOTE NO ON HB192 WE WANT CHEVRON TO DRILL NOT SELL THEIR LEASES

JM BOYLES 4001 GARFIELD ANCHORAGE 99501

77 FEB 25 PM 9 06

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

77 FEB 25 PM 10 39

02279 POM TDA HOMER ALASKA 15 02-25 0400P AST

PMS SEN KAY POLAND

3514

JUN

OPPOSE HB192 HELP NOT HINDER PROGRESS HEED THE TAXPAYERS

PHYLLIS ABBOTT BOX 111 HOMER 99603

TELEGRAM

ACA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

02299 POM ANCHORAGE ALASKA 15 02-25 0400P AST

PMS SEN KAY POLAND

3536

JUN

VOTE NO HB192 TAX DOLLARS DONT PAY MY WAGES I WORK FOR A LIVING

DAVE GIBBONS 928 WEST 8TH ANCHORAGE 99501

'77 FEB 25 PM 10

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

'77 FEB 25 PM 11 10

#

02059 POM TDA HOMER AK 15 02-25 445P AST

PMS SEN KAY POLAND

3575

JUN

VOTE NO HB 192

ALEX FLYUM BOX 627 HOMER 99603

TELEGRAM

ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

02221 POM TDA HOMER ALASKA 15 02-25 0327P AST

PMS SEN KAY POLAND

JUN 3598

OPPOSE HB 192

PEARL SALING BOX 433 HOMER 99603

1977 FEB 25 PM 11 40

TELEGRAM

CA ALASKA COMMUNICATIONS, INC
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

02093 POM TDA HOMER AK 15 2-27 1159P AST 1977 FEB 28 AM 6 13

PMS SEN KAY POLAND 3906

JUN

OPPOSE HB192 CONSIDER REPEALING CSCSSB720

ROBERT BREAKFIELD BOX 454 HOMER AK 99603

#

22113 POM TDA HOMER AK 15 2-27 1159P AST

PMS SEN KAY POLAND 3926

JUN

1977 FEB 28 AM 7 21

N

OPPOSE HB192 CONSIDER REPEALING CSCSSB720

LAWRENCE ROGERS BOX 349 HOMER AK 99603

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

02133 POM TDA HOMER AK 15 2-27 1159P AST

PMS SEN KAY POLAND

JUN 3948

OPPOSE HB192 CONSIDER REPEALING CSCSSB720

MADALINE WOODHEAD SRA BOX 9 HOMER AK 99603

1977 FEB 28 AM 7 46

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

0225 POM TDA HOMER ALASKA 15 02-26 0330P AST

PMS SEN KAY POLAND

JUN 3729

VOTE NO HB192 PLEASE LISTEN TO THE TAX PAYERS

LEWIS A GJOSUND SR SRA BOX 21 HOMER ALASKA 99603

TELEGRAM

CA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

1977 FEB 26 PM 7 21

02045 POM TDA HOMER ALASKA 15 02-25 0330P AST

PMS SEN KAY POLAND

JUN 3749

VOTE NO HB192 PLEASE LISTEN TO THE TAXPAYERS

FLOYD WARD BOX 192 HOMER ALASKA 99603

TELEGRAM

TDA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

1977 FEB 26 PM 10 12

02068 POM TDA HOMER ALASKA 15 02-26 0330P AST

PMS SEN KAY POLAND

JUN 3769

VOTE NO HB192 PLEASE LISTEN TO THE TAXPAYERS

HELEN ALM BOX 121 HOMER ALASKA 99603

TELEGRAM

ACA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

77 FEB 28 AM 12 35

#

02041 POM ANCHORAGE ALASKA 15 02-27 0915P AST

PMS SEN KAY POLAND

3813

JUN

VOTE AGAINST RESCINDING THE OIL LEASES IN

KACHEMAK BARAU LAWMAKERS OR LAWBREAKERS

RICHARD L BESSE 941 WEST 77 ANCHORAGE 99502

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

02013 POM TDA HOMER AK 15 2-27 1140P AST

1977 FEB 28 AM 4 08

PMS SEN KAY POLAND 3826

JUN

OPPOSE HB192 CONSIDER REPEALING CSCSSB720

CLYDE WOODHEAD SRA BOX 9 HOMRER AK 99603

TELEGRAM

ACA ALASKA COMMUNICATIONS INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

1977 FEB 28 AM 12 43

#

02041 POM ANCHORAGE ALASKA 15 02-27 0915P AST

PMS SEN KAY POLAND 3812

JUN

VOTE AGAINST RESCINDING THE OIL LEASES IN

KACHEMAK BAY ARE YOU LAWMAKERS OR LAWBREAKERS

RICHARD L BESSE 941 WEST 77 ANCHORAGE 99502

TELECGRAM

ICA ALASKA COMMUNICATIONS, INC
PHONE: 586-6440
JUNEAU, ALASKA 99801

02 133 POM TDA SELDOVIA AK 15 02-25 1230P AST

PMS SEN KAY POLLAND

JUN 3400

VOTE NO HB 192 WE WANT CHEVRON TO DRILL NOT SELL THEIR LEASES

BILL AND GEORGIA NELSON DRAWER C SELDOVIA 99663

77 FEB 25 PM 9 20

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

02175 POM TDA SELDOVIA AK 15 02-25 215P AST

PMS SEN KAY POLAND

3423

JUN

VOTE NO ON HB192 WE WANT CHEVRON TO DRILL NOT SELL THEIR LEASES

DENNIS HOFFMAN BOX 151 SELDOVIA AK 99663

77 FEB 25 PM 9 34

TELEGRAM

ROA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

02175 POM TDA SELDOVIA AK 15 02-25 215P AST

PMS SEN KAY POLAND

JUN 3422

VOTE NO ON HB192 WE WANT CHEVRON TO DRILL NOT HEIR LEASES

DENNIS HOFFMAN BOX 151 SELDOVIA AK 99663

77 FEB 25 PM 9 34

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

77 FEB 25 PM 10 02

#

02199 POM TDA HOMER ALASKA 15 02-25 0317P AST

PMS SEN KAY POLAND

JUN 3463

VOTE NO HB192 LISTEN AND THINK FOR A CHANGE

SANDRA GLIDDEN BOX 182 HOMER 99603

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

02258 POM TDA HOMER ALASKA 15 02-25 0400P AST

PMS SEN KAY POLAND 3493

JUN

VOTE NO HB192 WE WANT CHEVRON TO DRILL NOT SELL THEIR LEASES

TED L WYTHE

BOX 1348 HOMER 99603

77 FEB 25 PM 10 31

TELEGRAM

ACA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

02380 POM TDA SELDOVIA AK 15 02-25 500P AST 77 FEB 25 AM 12 01

PMS SEN KAY POLAND 3632

JUN

VOTE NO HB 192 WE WANT CHEVRON TO DRILL NOT SELL THEIR LEASES

DON AND CAROL CROSSEN DRAWER A SELDOVIA 99663

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

02379 POM TDA SELDOVIA AK 15 02-25 500P AST

377 FEB 25 AM 12 01

PMS SEN KAY POLAND 3631

JUN

VOTE NO HB 192 WE WANT CHEVRON TO DRILL NOT SELL THEIR LEASES

DON AND CAROL CROSSEN DRAWER A SELDOVIA 99663

TELEGRAM

ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

02033 POM TDA HOMER AK 15 2-27 1159P AST 1977 FEB 28 AM 4 46

PMS SEN KAY POLAND 3846

JUN

OPPOSE HB192 CONSIDER REPEALING CSCSSB720

LARRY DEBROCK BOX 397 HOMER AK 99603

TELEGRAM

ACA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

02053 POM TDA HOMER AK 15 2-27 1159P AST

1977 FEB 28 AM 5 08

PMS SEN KAY POLAND

3866

JUN

OPPOSE HB192 CONSIDER REPEALING CSCSSB720

BOB GILLAS

SRA BOX 44 HOMER AK 99603

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

02073 POM TDA HOMER AK 15 2-27 1159P AST

1977 FEB 28 AM 5 48

PMS SEN KAY POLAND 3886

JUN

OPPOSE HB 192 CONSIDER REPEALING CSCSSB 720

CHUCK HENDRIX BOX 620 HOMER AK 99603

TELEGRAM

A ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

1977 FEB 28 PM 12 38

#

02353 TDA HOMER ALASKA POM 2-27 1159P AST

PMS SEN KAY POLAND

4177

JUN

OPPOSE HB192 CONSIDER REPEALING CSCSSB720

ROBERT HODEL

BOX 672 99603

TELEGRAM

ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

02477 POM TDA HOMER AK 15 02-23 417P AST

PMS SEN KAY POLAND

JUN 4324

VOTE NO HB192 PLEASE REPRESENT THE TAX PAYERS

FLOYD BEACH BX 215 HOMER AK 99603

1977 FEB 28 PM 3 06

TELEGRAM

ALASKA COMMUNICATIONS, INC.
PHONE: 586-6140
JUNEAU, ALASKA 99801

1977 FEB 28 PM 8 18

#

02500 POM TDA HOMER AK 15 02-23 419P AST

PMS SEN KAY POLAND

JUN 4347

VOTE NO HB192 PLEASE REPRESENT THE TAX PAYERS

JOHN KOSCH BOX 1163 HOMER AK 99603

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

02558 POM TDA HOMER ALASKA 15 02-28 0435P AST

PMS SEN KAY POLAND
4407
JUN

VOTE NO HB 192 PLEASE REPRESENT THE TAX PAYERS

JERRY ANDERSON BOX 1253 HOMER ALASKA 99603

1977 FEB 28 PM 9 11

TELEGRAM

BCM ALASKA COMMUNICATIONS, INC
PHONE: 586-6440
JUNEAU, ALASKA 99801

1977 FEB 23 PM 3 39

02533 POM TDA HOMER ALASKA 15 02-23 0425P AST

PMS SEN KAY POLAND

JUN 4366

VOTE NO HB 192 PLEASE PRESENT THE TAXPAYERS

DON LEDGER DRAWER 1150

KENAI AK 99699

TELEGRAM

TCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

1977 FEB 28 PM 9 34

#

22 600 POM TDA HOMER ALASKA 15 02-23 0428P AST

PMS SEN KAY POLAND 4437

JUN

VOTE NO HB 192 PLEASE REPRESENT THE TAXPAYERS

JIM JACOBS STERLING ROUTE HOMER AK 99603

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

02517 POM TDA HOMER AK 15 02-23 420P AST

PMS SEN KAY POLAND
4388
JUN

1977 FEB 28 PM 8 52

VOTE NO HB192 PLEASE REPRESENT THE TAX PAYERS

ANGELO AND MELVA HILLAS BOX 102 HOMER AK 99603

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

1977 FEB 28 PM 9 59

025 73 POM TDA HOMER ALASKA 15 02-23 0430P AST

PMS SEN KAY POLAND

4458

JUN

VOTE NO HB 192 PLEASE REPRESENT THE TAX PAYERS

ELIZABETH APRILL BOX 127 ANCHOR POINT ALASKA 99556

TELEGRAM

SCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

22 674 POM TDA HOMER AK 15 02-23 505P AST

PMS SEN KAY POLAND

JUN 4517

VOTE NO HB 192 OPOSE ALL BUY BACKS REPEAL BUY BACK BILL

THOMAS S CROSBIE BOX 571 HOMER AK 99603

1977 FEB 28 PM 10 45

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC
PHONE: 586-6440
JUNEAU, ALASKA 99801

1977 FEB 23 PM 10 21

#

02 532 POM TDA HOMER ALASKA 15 02-23 6P AST

PMS SEN KAY POLAND 4477

JUN

VOTE NO HB 192 OPPOSE ALL BUY BACKS REPEAL BUY BACK BILL

EUGENE E ROBINSON BOX 323 HOMER ALASKA 99603

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

1977 FEB 28 PM 10 53

#

02695 POM TDA HOMER AK 15 02-28 610P AST

PMS SEN KAY POLAND

JUN 4538

VOTE NO HB 192 OPPOSE ALL BUY BACKS REPEAL BUY BACK BILL

HOMER EGBERT BOX 505 HOMER AK 99603

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

1977 FEB 23 PM 10 31

02 S55 POM TDA HOMER ALASKA 15 02-23 0603P AST

PMS SEN KAY POLAND

4497

JUN

VOTE NO HB 192 OPPOSE ALL BUY BACKS REPEAL BUY BACK BILL

HARRY N OLSON BOX 52 ANCHOR POINT AK 99556

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

02714 POM TDA HOMER ALASKA 15 02-23 0615P AST

PMS SEN KAY POLAND

4558

JUN

VOTE NO HB192 OPPOSE ALL BUY BACKS REPEAL BUY BACK BILL.

GEORGE AND ALICE DANBY BOX 532 HOMER ALASKA 99603

TELEGRAM

ACA ALASKA COMMUNICATIONS, INC
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

02436 POM TDA HOMER ALASKA 15 02-28 1130P AST

PMS SEN KAY POLAND

JUN 4261

VOTE NO HB 192 DO NOT WASTE MY MONEY TO PAY FOR STANDARD OIL'S

MISTAKE

ROGER PAINTER BOX 8585 INDIAN 99540

1977 FEB 28 PM 6 44

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC
PHONE: 586-6440
JUNEAU, ALASKA 99801

1977 FEB 28 PM 11 38

#

02754 POM TDA HOMER ALASKA 15 02-28 0520P AST

PMS SEN KAY POLAND

0013

JUN

VOTE NO HB192 23 YEAR RESIDENT AND OPPOSE ALL LEASE BUY BACKS.

KEN ARNDT BOX 133 HOMER ALASKA 99603

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

02416 POM TDA HOMER ALASKA 15 02-28 0410P AST

PMS SEN KAY POLAND

JUN 42882

VOTE NO HB192 PLEASE REPRESENT THE TAX PAYERS

DON E KNIGHTON BOX 177 ANCHOR POINT ALASKA 99556

77 FEB 28 PM 7 24

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

1977 FEB 23 PM 11 17

#

02735 POM TDA HOMER ALASKA 15 02-23 0615P AST

PMS SEN KAY POLAND 4578

JUN

VOTE NO HB192 OPPOSE ALL BUY BACKS REPEAL BUY BACK BILL.

MILTON LEWIS BOX 277 HOMER ALASKA 99603

#

02078 ANCHORAGE ALASKA POM 3-9 910 A AST

PMS SEN POLAND

JUN

OPPOSED TO HB192. SUPPORT SB199

MICHAEL HART AREA MANAGER CARE AIRBORNE FREIGHT

PO BOX 6063 99502

1977 MAR 9 PM 1 03

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.

PHONE: 586-6440

JUNEAU, ALASKA 99801

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

02014 POM TDA HOMER ALASKA 03-10 0323A AST

PMS SENATOR POLAND

JUNEAU AK

PLEASE OPPOSE HOUSE BILL 192. PLEASE SUPPORT SENATE BILL 199.

BOB AND GAIL SIMCOE PO BOX 1213 HOMER ALASKA 99603

1977 MAR 10 AM 6 24

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

02023 NL ANCHORAGE ALASKA 50 03-15 740A AST

PMS SENATOR POLAND

JUN 1572

I AM A TRUCK DRIVER. WE NEED HIGHWAYS. TAKE STANDARD OIL BUY BACK MONEY ADD TO FEDERAL HIGHWAY MATCHING FUNDS. WE COULD HAVE 211 MILLION WORTH OF NEW HIGHWAYS. WOULD HELP ALL ALASKANS. OPPOSE HB192. SUPPORT SB199

PETER W SHAW SRA BOX 33-C ANCHORAGE ALASKA 99501

77 MAR 15 AM 10 33

HB
248

COMMITTEE REPORT

SENATE

4/14/77

4/22/77 Date

Mr. President:

The Committee on ~~XXXXXX~~ Resources has had CSHB 243 (Fin)
Alaska Pipeline Commission
under consideration. A majority of the members of the Committee

☐ recommends it do pass

☐ recommends it do not pass

☐ recommends it do pass with attached amendment(s)

☒ recommends it be replaced with CS for CSHB 243 and that CS for CSHB 243 do pass

☐ (and) recommends it be referred to the _____ committee

☐ reports it back without recommendation

☐ AND attaches a report of its intent

☐ (other) _____

MEMBERS SIGNING THE MAJORITY REPORT:

Chris Kennick — Do Pass

Tom Melaven — No Rec

Kay Poland — DO PASS

Victor D. — Do Pass

MEMBERS NOT CONCURRING IN THE MAJORITY REPORT:

_____ recommends: _____

_____ recommends: _____

_____ recommends: _____

R. Poland
Chairman

S 60

SCS CSHB 248 (FINANCE)

The Senate Resources Committee substitute resolves the differences between the Pipeline Commission, the Attorney General's office, and the Alyeska Pipeline Company.

The Senate Committee substitute more clearly defines the regulatory and tariff setting authority of the Pipeline Commission. At the same time it removes the non-pipeline connected activities of affiliated interests from regulation and provides a certainty of at least a partial cash flow to the pipeline carrier during suspension of the filed tariff and the operation of a temporary tariff.

* * * * *

SUMMARY OF BILL ANALYSIS

1. Brings the pipeline connected activities and property of affiliated interests under commission regulations. Non-pipeline connected activities of the affiliated interests are exempt.

2. Brings connections and interconnections under the commission's permit requirements.

3. Allows the commission to suspend the filed tariff for 18 months instead of only 6 months.

4. Clearly establishes the commission's authority to set a temporary tariff thus eliminating the contention that shipment of oil could not be accepted until a tariff was set.

5. Allows the collection of the filed tariff but stipulates that the difference between the filed tariff and the temporary tariff must be placed in escrow, or acceptably bonded in lieu thereof, until the tariff question is resolved. This provision protects the state's shipments and those of the other shippers while not forcing the pipeline carrier to operate without at least partial revenue.

6. Reiterates the requirement that records be kept at a place convenient to the commission.

7. Allows the commission the latitude of having a limited number of persons present during an investigatory hearing.

8. Gives the pipeline carrier ten calendar days to appeal a commission decision before the commission can appeal for judicial enforcement.

9. Makes the Act retroactive to July 1, 1976. This was acknowledged as proper by all parties.

April 28, 1977

HB
264

COMMITTEE REPORT

**Finance

SENATE

4/21/77

_____ Date

Mr. President:

The Committee on RESOURCES has had CSHB 264 (Fin) fisheries enhancement under consideration. A majority of the members of the Committee

- [ ] recommends it do pass
- [ ] recommends it do not pass
- [ ] recommends it do pass with attached amendment(s)
- [X] recommends it be replaced with CS for CSHB 264 (Resources) and that CS for CSHB 264 (Resources) do pass
- [ ] (and) recommends it be referred to the _____ committee
- [X] reports it back without recommendation
- [ ] AND attaches a report of its intent
- [ ] (other) _____

MEMBERS SIGNING THE MAJORITY REPORT:

MEMBERS NOT CONCURRING IN THE MAJORITY REPORT:

_____ recommends: _____

_____ recommends: _____

_____ recommends: _____

_____
Chairman

S 60

Terry Gardiner

Box 6092, Ketchikan, Alaska 99901 Pouch V, Juneau, Alaska 99811

April 25, 1977

Memo

To: Senate Rescurces Committee

From: Rep. Terry Gardiner

Re: Sectional Analysis of SCS for House CSHB 264 (referred to as HB 264). "An Act Relating to Fisheries Enhancement; and providing for an effective date;"

Section 1.

Section 1 repeals AS16.10.375 and re-enacts it with new language. The present section 375 requires the Commissioner of Fish & Game to:

1.0 Designate regions of the State for purposes of enhancing salmon production.

2.0 Develop and amend if necessary a comprehensive salmon enhancement plan for each region for both public and private non-profit hatchery systems.

3.0 Develop a comprehensive salmon enhancement plan in cooperation with appropriate qualified regional associations formed under section 380.

Hb 264 rewords section 375 and requires the following activity:

1.0 The Commissioner of Fish & Game shall designate regions of the State for purposes of salmon production.

2.0 Develop and amend as necessary a comprehensive salmon plan for each region for both public and private non-profit hatchery systems.

3.0 Require that the comprehensive salmon plan be developed by regional planning teams.

4.0 The regional planning teams shall consist of; Dept. of Fish & Game personnel, and representatives of the appropriate qualified regional associations formed under section 380 of this chapter.

The basic change in the present section 375 by HB 264 is the requirement for the creation of regional planning teams. In the past year its proved that there was some ambiguity regarding how the comprehensive enhancement plans were to be developed. The experience in Prince William Sound Aquaculture Association in dealing with the Dept. of Fish & Game at the regional planning team concept was finally evolved and put in place and is working.

This amendment to the legislation adds some clarity and direction to the Dept. of Fish & Game regarding how these regional salmon plans are to be developed.

Section 2.

Section 2 amends AS16.10.400 (a). The amendments to section (a) and section (e) are obvious from the draft of the bill. The amendment to section (a) tightens up the discretion given to the Commissioner of Fish & Game under the existing law. Under HB 264, "the Commissioner or his designee may issue a permit subject to the restrictions imposed by statute or regulations." The discretionary phrase "he considers desirable" is removed. The reason is to give the permit holders some certaint regarding their actions.

The second change to subsection (a) adds the language t require tha a permit application be reviewed by the regional planning team prior to its being issued. The reason is to make sure that the permit application is reviewed by the regional planning team which is drawing up the comprehensive salmon plan prior to the issuance.

The original HB 264 transferred the term renewable into subsection (a) while at the same time deleting (d). The Senate State Affairs Committee Substitute removed the phrase 'or renew' from (a).

The result of removing the section allowing for renewability of permits from this bill leaves the situation that once a permit is issued by the Commissioner of the Dept. of Fish & Game, it remains in the permit holder it may not be transferred and may only be altered, suspended or revoked subject to AS16.10.430 which deals with failure to comply with conditions or terms of the permit. This amendment again is an attempt to give some certainty to the permit holder that the terms under which he is going to operate a permit will either be in law or regulation and not subject to discretionary decisions by the Dept. of Fish & Game.

Subsection (e) is an attempt to clarify an ambiguous situation under the present law. Under the present law, there are provisions for three different types of non-profit hatchery corporations to exist; those established by a qualified regional association; those established by a seperate non-profit corporation which are approved by a qualified regional association; and those established by a seperate non-profit corporation which are not approved by qualified regional association. This language clarifies the ambiguity that existed of whether a qualified regional association had to go out and establish a seperate non-profit corporation for each of the hatcheries it was going to build. Under the amending language, a qualified regional association can construct as many hatcherie as it wishes without establishing seperate corporate identities for each of those hatcheries.

Section 3

Section 3 amends AS16.10.430 (a). The amendment of the additional language to the present section 430 requires that a decision to revoke a permit may only be made "after the regional planning team for the area in which the hatchery is located is notified and granted an opportunity to comment on the proposed suspension of revocation." This is an attempt to clarify the situation in which the Dept. of Fish & Game, due to its organizational structure, may act in an arbitrary manner of revoking a hatchery permit without consulting with the regional planning team which is developing and administering the comprehensive salmon plan for each region.

Section 4.

Section 4 amends AS16.10.450. There is a little bit of possible confusion in reading the proposed amendments and deletions in this section. On examination of the bill it should be noted that the phrase deleted on page 2 line 21 "fisheries research, salmon rehabilitation projects, or" is merely moved up into line 18. Its just a rearrangement of the phrases.

The substantive amendment to AS16.10.450 is the phrase on line 19 and 20, "costs of operating the qualified regional association for the area in which the hatchery is located." the addition of that language allows the use of funds obtained from the sale of surplus salmon or salmon eggs which return to the hatchery to help defray the costs of operating the qualified regional association for the area in which the hathcery is located. The reason for the addition of that language is the realization after starting to work with the law allowing the establishment of regional associations, that there are no provisions made for the funding of such regional associations. Although it is realized that there will be no surplus salmon until there are some returns to the hatcheries which may be 4 to 6 to 8 years down the line, and even then the monies received from the sale of surplus salmon will probably be primarily dedicated to the retirement of debt and operating costs. This additional language will provide for the possibility of funding the qualified regional associations.

The second amendment to section 450 on page 2 line 22 and 23 is a rewording of the present law to clear up any ambiguities of fish which return to hatcheries and are sold for human consumption, whether they return to a State hatchery or a private non-profit hatchery, shall be of comparible quality to fish harvested in the commercial area and sold at prices commensurate with the current market.

Section 5

Section 5 repeals and re-enacts AS16.10.470 regarding the annual reporting. The present law regarding annual reporting requires the submission of an annual report to the Dept. of Fish & Game including but

not limited to:

1.0 A Complete description of all significant hatchery operations;

2.0 Statistics on the numbers of eggs and fish handled by the hatchery whether for production or sale;

3.0 Further recommendations for modification of the hatchery program;

4.0 Any other relevant data required by the Department.

The amended amendment in HB 264 requires an annual report to "include but not be limited to statistics on the number of eggs and fish handled by the hatchery, whether for production or sale." The other three items listed in the present section 470 are deleted. The reason for the deletion is that the other three items are very ambiguous and could if required become quite costly to the hatchery owner. It is felt by the non-profit hatchery owners and potential owners that the overhead cost for operating hatcheries should be held at a minimum and that any reporting features should be only those which are required by necessity and not those of convenience.

Subsection (b) of AS16.10.470 was added by the Senate State Affairs Committee. The essence of the section would require the submission of an annual financial report for the Dept. of Commerce and Economic Development on a form to be provided by the Dept. of Commerce & Economic Development. The primary purpose of this amendment is to make sure that the financial statements and essential operating criteria will be kept by all non-profit hatcheries in the state in the same basic format so there will be an ability to compare cost and efficiencies throughout the State.

Section 6.

Section 6 amends AS16.10.500. Sections 500 through 560 deal with the Fisheries Enhancement Loan Program.

Section 500 amends the declaration of policy to allow for the making of grants for organizational and planning purposes to regional associations which have qualified under section 380 and by means of long term low interest loans for hatchery planning construction and operations.

The grant provisions are in section 10 of the bill and the loan provisions are dealt with in sections 11 and 12.

The reason for the making of grants for organizational and planning purpose has been as a result of the realization of the realities that Prince William Sound Aqualculture Assoc. and the Southern Southeast Re-

gional Aqualculture Assoc. have gone through in organizing the regions which are required by this Act.

The grants under this provision are only available to regional associations which have been qualified under section 380 which means that they have been recognized by the Commissioner of Fish & Game and he has determined that:

1.0 Their Board of Directors is representative of the requirements of the law under this act; and

2.0 that he has designated that region of which the corporation will operate under.

Because of the size of the regions and the necessity for large regions to operate under a regional type concept, the cost of organizing and planning the region is substantial. Also, until the region is organized and has an opportunity to vote on an assessment proceedure there is no revenue. It is a question of the cart before the horse. These grants are intended to provide that initial monies to organize and to get an assessment mechanism in place for the ongoing revenues to the regional and hatchery corporations.

The second provision of the amendment to section 500 adds the additional language on page 3 line 15 so that the long term low interest loans may be used for operational costs. Again, this is a result of the realization after a year of operation under this Act that once hathceries are constructed and the fry released, it may be two to four years before there are any returns to the hatchery from which a surplus of fish may be sold to provide revenues. During that time period there is a necessity for money for operating costs to run the hatcheries and this provision will allow the loans to be made for those operating costs.

Section 7

Section 7 amends the law by adding a new section AS16.10.505. This section was originally in the HB 252 introduced by Rep. Specking. In the House Finance Committee, HB 252 was adopted as an amendment to HB 264 and incorporated in as section 7 of the bill.

The Fisheries Enhancement Revolving Loan Fund was created to assist in the transfer of funds within the State Government. Under this Act the Dept. of Commerce & Economic Development is authorized to make the loans for the hatchery projects but the Dept. itself is not funded. This provision will allow them to receive funds, which were also appropriated under HB 253 to this revolving loan fund while their paper is being transferred over to the Dept. of Revenue at which time the fund would again be filled. The Dept. of Commerce requested the Fisheries Enhancement Revolving Loan Fund provision be implemented into the bill.

Rep. Specking's companion bill HB 253 which also passed the House appropriates 2 million dollars to the Fisheries Enhancement Revolving Loan Fund.

Section 8.

Section 8 amends AS16.10.510 (1) and (2). Subsection (1) adds the language to allow the loans to be made for operations of hatcheries facilities. Subsection 2 clarifies the ambiguous tri-level structure of non-profit hatchery corporations as explained in section 2 of HB 264 and also deletes the phrase "provided the hatchery has received preliminary project approval from the Commissioner of Fish & Game". That phrase was deleted on request of Commissioner Brooks of that department in the original HB 264. The phrase "preliminary project approval" was very ambiguous to both the Dept. and the non-profit hatchery groups and was causing quite a problem in determining when an applicant was qualified for a loan.

Section 9

Section 9 repeals and re-enacts AS16.10.510 (8). The present subsection (8) reads as follows: "upon written approval, defer interest and principle payments up to 6 years." The reason for such a provision was based upon the fact that the hatcheries once built and in operation would take four to six years before generating enough dollars from the sale of surplus fish to handle the debt service and retire the loan in addition to providing operating costs. The Dept. of Commerce & Economic Development found some ambiguity in the present way subsection (8) is written and interpret it to mean that even though they were to defer interest and principle payments up to 6 years, the interest itself would continue to accrue during the 6 year period.

The provision in section (9) of the bill clarifies the issue and states that no interest on the principle shall accrue during the period up to 6 years before the loan is repaid. The second sentence in subsection 9 "this provision applies to loans made under this chapter before the effective date of this Act." was added by the Senate State Affairs Committee in their Committee Substitute. At the present time there is only one loan under the provisions of this Act by the Dept. of Commerce & Economic Development. The Aqualculture group in Prince William Sound has received a loan and constructed a hatchery. The loan has not been repaid nor has a 6 year period elapsed at this time. The effect of the second sentence of subsection (8) is to clarify the issue that this amendment is to apply to that loan.

Section 10.

Section 10 adds an additional paragraph, AS16.10.510. Subsection (9) outlines the provisions for making grants for organizational and planning purposes to the qualified regional associations. There is a two-step approach in making the grants under this section:

1.0 A grant may be made to a qualified regional association in an amount not to exceed $100,000.00 per region. That grant is the applicant to qualify pursuant to section .380 as the regional association for that area. That determination includes a determination by the Commissioner of Fish & Game that the Board of Directors of the corporation meets the requirements of the law and that the regional boundaries have been defined according to his discretion.

2.0 An additional $100,000.00 on a 50-50 cash matching basis may be made to those regional associations which have an authorized assessment under either section .530 or .540 of this chapter.

Subsection (9) also provides that the state portion of the matching share shall be made available when a final vote for assessments is made under Section .530 or .540 of this chapter. The money would be made available through the collection of the assessments throughout the season and at the end of the fishing season. To the degree that the State Dept. of Commerce & Economic Development feels they can rely upon the collection of the necessary amount of money to match the second $100,000.00, this sentence allows them to make the state portion of the matching share available.

The last sentence of subsection (9) was added by the Senate State Affairs Committee. It is intended to clarify any ambiguities which may exist in the Dept. of Commerce & Economic Development on who is eligible.

Section 11.

Section 11 amends AS16.10.520 (a). The amendment to this section again is clarifying the tri-level structure of local private non-profit corporations which is discussed in section 2 of this analysis.

Section 12.

Section 12 amends AS16.10.520 (b). The present subsection (b) reads as follows: "no loan may exceed 75% of the total project cost as determined by the Commissioner."

The Prince William Sound Aqualculture group and the various other experts which have analyzed the situation in the past year, have found that the 75% loan limitations have made the feasibility of non-profit hatcheries in the private industry very unlikely. The private industry is depleted and is unable to put up the necessary amound of money to equal 25% of the total project cost. The only source of the revenues as can be determined at this time will come from the assessments on the fishermen

which even then will take one to two years to build up a 25% portion of the total project costs of a hatchery.

The present section 12 was added by the Senate State Affairs Committee. In the original HB 264, subsection (b) was deleted in its entirety.

The Senate State Affairs Committee Substitute provision for subsection (b) provides for two different types of loan restrictions. The provision for a loan not to exceed 75% of the total project cost is included in the CS. Additionlly, subsection (b) would allow a loan to be made for the total project cost provided the fishermen of a region have voted to assess themselves under either section .530 or .540 of this chapter. Also that the Commissioner of Commerce must determine that the assessment is of sufficient size so that a qualified regional corporation could establish a 10% equity position over a six year period. The section also defines that total project costs includes planning, construction and operation in line with the policy statement in section .500.

To adopt the concept of establishing an equity position of 10% of the total project costs over a period of time, there must be authority for the Commissioner to loan the total project costs initially. The contractor for the project must be paid off initially and not over a period of time. This method allows the construction and operation of hatcheries to go forward in the immediate future, yet guarantees the applicant will establish a 10% equity position in the project.

Section 13.

Section 13 repeals and re-enacts AS16.10.530 (a). Section .530 is referred to as the mandatory assessment section. The present law provides that a mandatory assessment may be levied by the Commissioner of Commerce & Economic Development "for the purposes of securing repayment of a loan or loans made to qualified regional associations which have formed a non-profit corporation or to a local non-profit corporation established or approved by a qualified regional association." That section does two things; one, it provides that the assessment, as interpreted by the Commissioner of Commerce may only be levied for the purposes of securing a repayment of a loan. That has been interpreted as meaning only when the loan is in jeopardy or the security is in jeopardy. The second portion of that provision states that the assessment is inherently dependent upon the application and granting of a loan.

The version presented in the bill rewrites the section to accomplish two basic purposes:

1.0 The assessment shall be levied by the Commissioner of Commerce & Econ. Development on request of the regional qualified association after compliance with subsection (e);

2.0 The revenues derived from the assessment shall be for the purpose of providing revenue for the qualified regional associations in which the assessment is made.

Those provisions accomplish two things:

1.0 It unhooks the requirement of a mandatory assessment from the application for a loan or the default on loan repayments.

2.0 Provides that the assessment mechanism is initiated by the qualified regional association and not by the Commissioner of Commerce.

Subsection (a) of the bill also states that the "Commissioner shall determine whether the procedural requirements under (e) of this section were followed and whether the proposed assessment is reasonable." The reason for that section is to leave the final determination of whehter the assessment shall be imposed up to the governmental body through the Commissioner's office both with the procedural safeguards and the substantive question of whether the assessment is reasonable enough in its scope to accomplish the job proposed. That is an important feature when connected with the amendments made in AS16.10.520 above which require the Commissioner to determine whether the assessment under either section .530 or .540 is of a sufficient amount to insure the establishment of an equity position of 10% of the loan over a six year period.

For the Committee's information it should also note that AS16.10.530 (b) is repealed in the repealer section of the bill in section 18 on page 16. The reason for the repeal of (b) is that it is no longer relevant with the amendments made to subsection (a).

Section 14.

Section 14 of the bill amends AS16.10.530 (c) and (d). The subsection (c) deletes the provision that the assessment is connected with the application for a loan. That amendment makes the provision consistent with the amendments made in section 13 above.

Subsection (d) states that "the assessment once instituted shall terminate upon a request of the qualified regional corporation but only after all financial obligations relating to the assessments have been met." This provision is necessary in light of the amendments made in AS16.10.530 (a) in section 13 of the bill. With the amendment in subsection (a) the assessment is no longer automatically connected to the loan. This language in AS16.10.530 (d) guarantees that if the assessment is used as collateral to any loan whether from the state or any other source, the qualified regional corporation has no authority and no power to revoke that assessment or stop that assessment until all of the financial obligations relating to the assessment have been met.

Section 15.

Section 15 of the bill amends AS16.10.530 by adding a new subsection (e). This subsection lays out in detail the procedural requirements for a qualified regional corporation to follow before a request can be made of the Commissioner of Commerce to impose a mandatory assessment in the area of the regional corporation. The terms may seem detailed and cumbersome, the intent is to provide ample opportunity for all of the people who would be required to pay an assessment to voice their concerns at public meetings and to vote on the assessment. It requires at least two public meetings and that the ballots be made available to all of those who will be made a part of the assessment, twice. It does state that no person may vote more than once but requires that the ballots be made available by mail to all the people within the region who sell fish commercially.

Subsection (f) is also an addition to the present law and states that the qualified regional corporation shall establish standard registration proceedures for voting on an assessment under this section.

Section 16.

Section 16 of the bill adds the necessary language to create a regional salmon enhancement authority.

I would note that section 16 is identicle to the original SB 39 of Senator Kerttula's which the Senate Resource Committee passed out earlier this session. Sb 39 is presently in the Senate Finance Committee but it was amended substantially by the Senate State Affairs Committee by in fact adding the first 6 pages of what is now SCS CSHB 264.

The purpose of creating the regional salmon enhancement authorities is to provide a financial vehicle for the availability of federal dollars.

The present public works bill of President Carter's which is being worked on in Free Conference Committee in Congress, provides for money to be administered through the Economic Development Agency but limits the recipients to only federal agencies, states, municipalities, townships, or political subdivisions of those. The Senate Resources Committee heard testimony on SB 39 from the Prince William Sound Aqua culture Assoc. that they were found to be ineligible for an EDA Grant because they were not a political subdivision.

This language is the near identicle language of the Regional Electrification Assoc. which are presently in the statutes, AS18.57.

Section 17.

On Page 16 of the bill, section 17 states as follows: "Notification, public meeting and voting proceedures instituted before the effective date of this act that are substantially in compliance with AS16.10.530 (e), shall be considered a constitute compliance with this Act, and are radified upon the effective date of this Act."

The qualified regional corporations in Southern Southeast Regional Aqualculture Assoc. and the Cook Inlet Regional Aquaculture Assoc. have proceeded through somewhat similar notification of public meeting and voting proceedures regarding the mandatory assessment provisions at this time. The Southern Southeast Regional Aqualculture Assoc. is at the present time undergoing a large notification public meeting and balloting on the mandatory assessment. That region encompasses all of lower Southeastern Alaska including Petersburg, Wrangell, Ketchikan, Craig, Klawock, Hydaburg and all fishermen who commercially sold fish within fishing districts 1 through 8. A large portion of those fishermen reside in Oak Harbor, Seattle, Bellingham, Mr. Vernon and other coastal towns in Washington, They are all being provided with a ballot to vote on the mandatory assessment proceedures.

There is a fiscal note attached to this bill from the House Finance Committee pertaining to the grant provisions of AS16.10.510 (9) found in section 10 of the bill. It anticipates the creation of 6 regions including Ketchikan, Sitka, Bristol Bay, Cook Inlet, Kuskokwim and Prince William Sound. The note anticipates the granting of the entire initial $100,000.plus the additional $50,000 matching monies to each region for a total of $900,000.

COMMITTEE REPORT

SCS CSHB 264 (RESOURCES)
AN ACT RELATING TO FISHERIES ENHANCEMENT
AND PROVIDING FOR AN EFFECTIVE DATE

Section 1.

Section 1 repeals AS 16.10.375 and re-enacts it with new language. The present section 375 requires the Commissioner of Fish and Game to:

(1) Designate regions of the State for purposes of enhancing salmon production.

(2) Develop and amend if necessary a comprehensive salmon enhancement plan for each region for both public and private non-profit hatchery systems.

(3) Develop a comprehensive salmon enhancement plan in cooperation with appropriate qualified regional associations formed under section 380.

HB 264 rewords section 375 and requires the following activity:

(1) The Commissioner of Fish and Game shall designate regions of the State for purposes of salmon production.

(2) Develop and amend as necessary a comprehensive salmon plan for each region for both public and private non-profit hatchery systems.

(3) Require that the comprehensive salmon plan be developed by regional planning teams.

(4) The regional planning teams shall consist of; the Department of Fish and Game personnel, and representatives the appropriate qualified regional associations formed under section 380 of this chapter.

The basic change in the present section 375 by this bill is the requirement for the creation of regional planning teams. In the past year it's proved that there was some ambiguity regarding how the comprehensive enhancement plans were to be developed. The experience in Prince William Sound Aquaculture Association in dealing with the Department of Fish and Game at the regional planning team concept was finally evolved and put in place and is working.

It is the intent of this section that the Department of Fish and Game involve the public in the development of comprehensive slamon plans by the creation of regional planning teams which shall consist of representatives of appropriate qualified regional associations, local department personnel, regional department personnel and other personnel as determined appropriate by the Commissioner.

These teams will provide the means by which the second half of the original legislative intent can be accomplished. This intent states that ". .the program shall be operated without adversely affecting natural stocks of fish in the state and under a policy of management which allows reasonable segregation of returning hatcher-reared salmon from naturally occurring stocks." The planning team approach to this concern will bring the greatest amount of talent to bear on this problem and will allow for a flexible approach that can tailor a program to suit the unique conditions of a specific region while allowing for the adaptability necessary to accomodate chance. It constitutes an approach that integrates the many human concerns and biological variables into a comprehensive problem solving effort. It is recognized by the legislature that planning is a continuous process that should be cooperatively conducted on a local level, by persons familiar with the area in question.

It is also intended that the Division of Fisheries, Rehabilitation and Enhancement be the lead agency in coordinating this planning which should be an inter divisional effort on the part of the Department. This intent is expressed as an extension of the statutory responsibility of the division to " 1)Develop and continually maintain a comprehensive, coordinated State plan for the orderly present and long-range rehabilitation,

enhancement and development of all aspects of the State's fisheries for the perpetual use, benefit and enjoyment of all citizens and revise and update this plan annually." In regard to salmon, it is clear that any planning effort must incorporate full consideration of all departmental functions, including management, rehabilitation and enhancement.

This amendment to the legislation adds some clarity and direction to the Department of Fish and Game regarding how these regional salmon plans are to be developed.

Section 2.

Section 2 amends AS 16.10.400 (a). The amendments to section (a) and section (e) are obvious from the draft of the bill. The amendment to section (a) tightens up the discretion given to the Commissioner of Fish and Game under the existing law. Under HB 264, "the Commissioner or his designee may issue a permit subject to the restrictions imposed by statute or regulations." The discretionary phrase "he considers desirable" is removed. The reason is to give the permit holders some certainty regarding their actions.

The second change to subsection (a) adds the language to require that a permit application be reviewed by the regional planning team prior to its being issued. The reason is to

make sure that the permit application is reviewed by the regional planning team drawing up the comprehensive salmon plan prior to the issuance of any permits.

The repeal of AS 16.10.400 (d), the section allowing for renewal of permits, leaves the situation that once a permit is issued by the Commissioner of Fish and Game, it remains in the permit holder it may not be transferred and may only be altered, suspended or revoked subject to AS 16.10.430 which deals with failure to comply with conditions or terms of the permit. This amendment again is an attempt to give some certainty to the permit holder that the terms under which he is going to operate a permit will either be in law or regulation and not subject to discretionary decisions by the Department of Fish and Game.

Subsection (e) is an attempt to clarify an ambiguous situation under the present law. Underthe present law, there are provisions for three different types of non-profit hatchery corporations to exist; those established by a qualified regional association; those established by a separate non-profit corporation which are not approved by qualified regional association. This language clarifies the ambiguity that existed of whether a qualified regional association had to go out and establish a separate non-profit corporation for each of the hatcheries it

was going to build. Under the amending language, a qualified regional association can construct as many hatcheries as it wishes without establishing separate corporate identities for each of those hatcheries.

Section 3.

Section 3 amends AS 16.10.430 (a). The amendment of the additional language to the present section 430 requires that a decision to revoke a permit may only be made "after the regional planning team for the area in which the hatchery is located is notified and granted an opportunity to comment on the proposed suspension or revocation." This will assure the regional planning team which is developing and administering the comprehensive salmon plan for each region will be involved in the decision making process.

Section 4.

Section 4 amends AS 16.10.450. There is a little bit of possible confusion in reading the proposed amendments and deletions in this section. On examination of the bill it should be noted that the phrase deleted on page 2 line 21 "fisheries research, salmon rehabilitation projects, or" is merely moved up into line 18. It's just a rearrangement of the phrases.

The substantive amendment to AS 16.10.450 is the phrase "costs of operating the qualified regional association for the area in which the hatchery is located." The addition of that language allows the use of funds obtained from the sale of surplus salmon or salmon eggs which return to the hatchery to help defray the costs of operating the qualified regional association for the area in which thehatchery is located. The reason for the addition of that language is the realization after starting to work with the law allowing the establishment of regional associations, that there are no provisions made for the funding of such regional associations. Although it is realized that there will be no surplus salmon until there are some returns to the hatcheries which may be 4 to 6 to 8 years down the line, and even then the monies received from the sale of surplus salmon will probably be primarily dedicated to the retirement of debt and operating costs. This additional language will provide for the possibility of funding the qualified regional associations.

The second amendment to section 450 is a rewording of the present law to clear up any ambiguities of fish which return to hatcheries and are sold for human consumption, whether they return to a State hatchery or a private non-profit hatchery, shall be a comparable quality to fish harvested in the commercial area and sold at prices commensurate with the current market.

Section 5

Section 5 repeals and re-enacts AS 16.10.470 regarding the annual reporting. The present law regarding annual reporting requires the submission of an annual report to the Department of Fish and Game including but not limited to:

(1) A Complete description of all significant hatchery operations;

(2) Statistics on the numbers of eggs and fish handled by the hatchery whether for production or sale;

(3) Further recommendations for modification of the hatchery program;

(4) Any other relevant data required by the Department.

The amended amendment requires an annual report to "include but not limited to information pertaining to species; brood stock source; number, age, weight, and length of spawners; number of eggs taken, and fry fingerling produced; and the number, age, weight, and length of adult returns attributable to hatchery releases, on a form to be provided by the Department of Fish and Game. The other three items listed in the present section 470 are deleted. The reason for the deletion is that

the other three items are very ambiguous and could if required become quite costly to the hatchery owner. It is felt by the non-profit hatchery owners and potential owners that the overhead cost for operating hatcheries should be held at a minimum and that any reporting features should be only those which are required by necessity and not those of convenience.

Subsection (b) of AS 16.10.470 requires the submission of an annual financial report for the Department of Commerce and Economic Developemtn on a form to be provided by the Department of Commerce and Economic Development. The primary purpose of this amendment is to make sure that the financial statements and essential operating criteria will be kept by all non-profit hatcheries in the state in the same basic format so there will be an ability to compare cost and efficiencies throughout the State.

Section 6.

Section 6 amends AS.16.10.500, the declaration of policy, to allow for the making of grants for organizational and planning purposes to regional associations which have qualified under section .380 and by means of long term low interest loans for hatchery planning construction and operations.

The reason for the making of grants for organizational and planning purpose has been as a result of the realization of

the realities that Prince William Sound Aquaculture Association and the Southern Southeast Regional Aquaculture Association have gone through in organizing the regions which are required by this Act.

The grants under this provision are only available to regional associations which have been qualified under section .380 which means that they have been recognized by the Commissioner of Fish and Game and he has determined that:

1.0 Their Board of Directors is representative of the requirements of the law under this act; and

2.0 that he has designated that region of which the corporation will operate under.

Because of the size of the regions and the necessity for large regions to operate under a regional type concept, the cost of organizing and planning the region is substantial. Also, until the region is organized and has an opportunity to vote on an assessment procedure there is no revenue. These grants are intended to provide that initial monies to organize and to get an assessment mechanism in place for the ongoing revenues to the regional hatchery corporations.

The second provision of the amendment to section 500 adds the additional language so that the long term low interest loans may be used for operational costs. Again, this is a result of the realization after a year of operation under this Act that once hatcheries are constructed and the fry released, it may be four to six years before there are any returns to the hatchery from which a surplus of fish may be sold to provide revenues. During that time period there is a necessity for money for operating costs to run the hatcheries and this provision will allow the loans to be made for those operating costs.

Section 7.

Section 7 amends the law by adding a new section AS 16.10.505. The Fisheries Enhancement Revolving Loan Fund was created to assist in the transfer of funds within the State Government. Under this Act the Department of Commerce and Economic Development is authorized to make the loans for the hatchery projects but the Department itself is not funded. This provision will allow them to receive funds, which were also appropriated under HB 253 to this revolving loan fund while their paper is being transferred over to the Department of Revebue at which time the fund would again be filled. The Department of Commerce requested the Fisheries Enhancement Revolving Loan Fund provision to implemented into the bill.

Section 8.

Section 8 amends AS 16.10.510 (1) and (2). Subsection (1) adds the language to allow the loans to be made for operations of hatcheries facilities. Subsection 2 clarifies the ambiguous tri-level structure of non-profit hatchery corporations as explained in section 2 of HB 264 and also deletes the phrase "provided the hatchery has received preliminary project approval from the Commissioner of Fish and Game." That phrase was deleted on request of Commissioner Brooks of that department in the original HB 264. The phrase "preliminary project approval" was very ambiguous to both the Department and the non-profit hatchery groups and was causing quite a problem in determining when an applicant was qualified for a loan.

Section 9.

Section 9 repeals and re-enacts AS 16.10.510 (8). The present subsection (8) reads as follows: "upon written approcal, defer interest and principle payments up to 6 years." The reason for such a provision was based upon the fact that the hatcheries once built and in operation would take four to six years before generating enough dollars from the sale of surplus fish to handle the debt service and retire the loan in addition to providing operating costs. The Department of Commerce and Economic Development found some ambiguity in the present way subsection (8) is written and interpret it to mean that even though they were to defer interest and principle payments up to

6 years." The reason for such a provision was based upon the fact that the hatcheries once built and in operation would take four to six years before generating enough dollars from the sale of surplus fish to handle the debt service and retire the loan in addition to providing operating costs. The Department of Commerce and Economic Development found some ambiguity in the present way subsection (8) is written and interpret it to mean that even though they were to defer interest and principle payments up to 6 years, the interest itself would continue to accrue during the 6 year period.

The provision in section (9) of the bill clarifies the issue and states that no interest on the principle shall accrue during the period up to 6 years before the loan is repaid. The second sentence in subsection 9 "this provision applies to loans made under this chapter before the effective date of this Act." was added by the Senate State Affairs Committee in their Committee Substitute. At the present time there is only one loan under the provisions of this Act by the Department of Commerce and Economic Development. The Aquaculture group in Prince William Sound has received a loan and constructed a hatchery. The loan has not been repaid nor has a 6 year period elapsed at this time. The effect of the second sentence of subsection (8) is to clarify the issue that this amendment is to apply to that loan.

Section 10.

Section 10 adds an additional paragraph AS 16.10.510. Subsection (9) outlines the provisions for making grants for organizational and planning purposes to the qualified regional associations. There is a two-step approach in making the grants under this section:

1.0 A grant may be made to a qualified regional association in an amount not to exceed $100,000.00 per region. That grant is available only after the Commissioner of Fish and Game has found the applicant to qaulify pursuant to section .380 as the regional association for that area. That determination includes a determination by the Commissioner of Fish and Game that the Board of Directors of the corporation meets the requirements of the law and that the regional boundaries have been defined according to his discretion.

2.0 An additional $100,000.00 on a 50-50 cash matching basis may be made to those regional associations which have an authorized assessment under either section .530 or .540 of this chapter.

Subsection (9) also provides that the state portion of the matching share shall be made available when a final vote for assessmen-s is made under Section .530 or .540 of this chapter.

The private money would be made available through the collection of the assessments throughout the season and at the end of the fishing season. To the degree that the Department of C ommerce and Economic Development feels they can rely upon the collection of the necessary amount of money to match the second $100,000.00, this sentence allows them to make the state portion of the matching share available.

The last sentence of subsection (9) was added by the Senate State Affairs Committee. It is intended to clarify any ambiguities which may exist in the Department of Commerce and Economic Development on who is eligible.

Section 11.

Section 11 amends AS 16.10.520 (a). The amendment to this section again is clarifying the tri-level structure of local private non-profit corporations which is discussed in section 2.

Section 12.

Section 12 amends AS 16.10.520 (b). The present subsection (b) reads as follows: "no loan may exceed 75% of the total project cost as determined by the Commissioner."

The Prince William Sound Aquaculture group and the various other experts which have analyzed the situation in the past year, have

found that the 75% loan limitations have made the feasibility of non-profit hatcheries in the private industry very unlikely. The private industry is depleted and is unable to put up the necessary amount of money to equal 25% of the total project cost. The only source of the revenues as can be determined at this time will come from the assessments on the fishermen which even then will take one to two years to build up a 25% portion of the total project costs of a hatchery.

The amendment to AS 16.10.520 (b) makes a substantive change in the present law. The amended section allows loans to be made for the total project costs which are defined as planning and construction costs and the costs for operations for not more than the first six years. The Commissioner of Commerce and Economic Development must determine that the applicant has sufficient financial resources to insure the establishment of an equity position in the project equal to 10% of the loan within six years or less either through an assessment under section .530 or .540 or by other means approved by the Commissioner.

This amendment follows theconcept adopted throughout this bill to proceed with the establishment of non-profit hatcheries at a pace as fast as possible and insure that the beneficiaries of the increase in fisheries production are contributing their

share of the funds. This loan provision provides for monies to be loaned for three different types of activities; planning, construction, and operations. The planning and construction portions of the loan provision are intended to provide monies for a broad range of activities related to the selection and development of a site for a hatchery which would include but not be limited to site selection, water source, and quality evaluation, brood stock, sources and selection, transportation of brood stocks to the site, in addition to site preparation and architectural drawings for the facility. The construction costs are intended to meet all of those costs normally related to the construction of a hatchery facility. The provision for loans for costs for up to the first six years of operations is made in recognition of the fact that there may be no returns of fish to the hatchery for a period of 4 to 6 years to provide cash flow for repayment of the debt, debt services and costs of operations.

The last sentence of the amendment providing that the costs for operations shall be loaned on an annual basis, is to insure that that portion of the loan attributable to the operational costs will be available for that purpose and will not be used to cover possible cost overruns in the planning and construction phases of the operations. If there are cost overruns in the planning and construction phases, the borrower must face that

problem at that time and not be dependent upon using money from that portion of the loan attributable to the operational functions of the hatchery.

The amended language adopts the concept of establishing an equity position of 10% of the total project costs over a period of time. The contractor for the project must be paid off initially and not over a period of time. This method allows the construction and operation of hatcheries to go forward in the immediate future, yet guarantees the applicant will establish a 10% equity position in the project.

Section 13.

Section 13 repeals and re-enacts AS 16.10.530 (a). Section .530 is referred to as the mandatory assessment section. The present law provides that a mandatory assessment may be levied by the Commissioner of Commerce and Economic Development "for the purpsoes of securing repayment of a loan or loans made to qualified regional associations which have formed a non-profit corporation or to a local non-profit corporation established or approved by a qualified regional association." That section does two things; one, it provides that the assessment, as interpreted by the Commissioner of Commerce may only be levied for the purposes of securing a repayment of a loan. That has been interpreted as meaning only when the loan security is in

jeopardy. The second portion provides that the assessment is inherently dependent upon the application and granting of a loan.

The amendment in the bill rewrites the section to accomplish two basic purposes:

1.0 The assessment shall be levied by the Commissioner of Commerce and Economic Development on request of the regional qualified association after compliance with subsection (e) and that the Commissioner determines that the assessment is reasonable.

2.0 The revenues derived from the assessment shall be for the purpose of providing revenue for the qualified regional associations in which the assessment is made.

Those provisions accomplish two things:

1.0 It unhooks the requirement of a mandatory assessment from the application for a loan or the default on loan repayments.

2.0 Provides that the assessment mechanism is initiated by the qualified regional association but subject to final determination by the Commissioner of Commerce.

Subsection (a) of the bill also states that the "Commissioner shall determine whether the procedural requirements under (e) of this section were followed and whether the proposed assessment is reasonable." The reason for that section is to leave the final determination of whether the assessment shall be imposed up to the governmental body through the Commissioner's office both with the procedural safeguards and the substantive question of whether the assessment is reasonable enough in its scope to accomplish the job proposed. That is an important feature when connected with the amendments made in AS 16.10.520 above which require the Commissioner to determine whether the assessment under either section .530 or .540 is of a sufficient amount to insure the establishment of an equity position of 10% of the loan over a six year period.

Subsection (a) clarifies that the assessment will be levied on the basis of where the fish is caught and not where it is sold. "....an assessment shall be levied on the sale of one or more species of salmon caught by persons licensed under AS 16.05.540 - 16.05.600 in the area in which the assessment is to be levied. AS 16.10.530 (b) is repealed. The reason for the repeal of (b) is that it is no longer relevant with the amendments made to subsection (a).

Section 14.

Section 14 of the bill amends AS 16.10.530(c) and (d). The subsection (c) deletes the provision that the assessment is connected with the application for a loan. That amendment makes the provision consistent with the amendements made in section 13 above.

Subsection (d) states that "the assessment once instituted shall terminate upon a request of the qualified regional corporation but only after all financial obligations relating to the assessments have been met." This provision is necessary in light of the amendments made in AS 16.10.530(a) in section 13 of the bill. With the amendment in subsection (a) the assessment is no longer automatically connected to the loan. This language in AS 16.10.530(d) guarantees that if the assessment is used as collateral to any loan whether from the state or any other source, the qualified regional corporation has no authority and no power to revoke that assessment or stop that assessment until all of the financial obligations relating to the assessment have been met.

Section 15.

Section 15 of the bill amends AS 16.10.530 by adding a new subsection (e). This subsection lays out in detail the procedural requirements for a qualified regional corporation to follow before

a request can be made of the Commissioner of Commerce and Economic Development to impose a mandatory assessment in the area of the regional corporation. The terms may seem detailed and cumbersome, the intent is to provide ample opportunity for all of the people who would be required to pay an assessment to voice their concerns at public meetings and to vote on the assessment. It requires at least two public meetings and that the ballots be made available to all of those who will be mad a part of the assessment, twice. It does state that no perso may vote more than once but requires that the ballots be made available by mail to all the people within the region who sell fish commercially.

Subsection (f) is also an addition to the present law and states that the qualified regional corporation shall establish standard registration procedures for voting on an assessment under this section.

Section 16.

Section 16 of the bill adds the necessary language to create a regional salmon enhancement authority.

The purpose of creating the regional salmon enhancement authorities is to provide a financial vehicle for the availability of federal dollars.

This language is the near identical language of the Regional Electrification Association which are presently in the statutes, AS 18.57. provided the qualified regional association complies with the requirements of the bill, the state will recognize the creation of a regional salmon enhancement authority as a public body corporate and politic as a political subdivision of the State.

Section 17.

Section 17 states as follows: "Notification, public meeting and meeting and voting procedures instituted before the effective date of this act that are substantially in compliance with AS 16.10.530(e), shall be considered to constitute compliance with this Act, and are radified upon the effective date of this Act."

The qualified regional corporations in Southern Southeast Regional Aquaculture Association and the Cook Inlet Regional Aquaculture Association have proceeded through somewhat similar notification of public meeting and voting procedures regarding the mandatory assessment provisions at this time. The Southern Southeast Regional Aquaculture Association is at the prbsent time undergoing a large notification public meeting and balloting on the mandatory assessment. That region encompasses all of lower Southeastern Alaska including Petersburg, Wrangell, Ketchikan, Craig, Klawock, Hydaburg and all fishermen who

commercially sold fish within fishing districts 1 through 8. A large portion of those fishermen reside in Oak Harbor, Seattle, Bellingham, Mt. Vernon and other coastal towns in Washington. They are all being provided with a ballot to vote on the mandatory assessment procedures. This section provides that those efforts will be recognized as compliance with the requirements of this bill provided they are in substantial compliance. Other provisions of the law necessarily require the determinations of substantial compliance to be made by the Commissioner of Commerce and Economic Development.

There is a fiscal note attached to this bill from the House Finance Committee pertaining to the grant provisions of AS 16.10.510(' found in section 10 of the bill. It anticipates the creation of 6 regions including Ketchikan, Sitka, Bristol Bay, Cook Inlet, Kuskokwim and Prince William Sound. The note anticipates the granting of the entire initial $100,000 plus the additional $50,000 matching monies to each region for a total of $900,000.

HB
322

COMMITTEE REPORT

SENATE

**Finance

5/14/77

5/18/77 Date

Mr. President:

The Committee on RESOURCES has had CSHB 322
establishing an oil and gas corporate franchise tax
under consideration. A majority of the members of the Committee

- ☐ recommends it do pass
- ☐ recommends it do not pass
- ☐ recommends it do pass with attached amendment(s)
- ☒ recommends it be replaced with CS for CSHB 322 and that CS for CSHB 322 do pass Industrial Rec
- ☐ (and) recommends it be referred to the _____ committee
- ☐ reports it back without recommendation
- ☐ AND attaches a report of its intent
- ☐ (other) _____

MEMBERS SIGNING THE MAJORITY REPORT:

[illegible]	Ind Rec	
[illegible]	Ind Rec	
[illegible]	Ind Rec	

MEMBERS NOT CONCURRING IN THE MAJORITY REPORT:

_____ recommends: _____

_____ recommends: _____

_____ recommends: _____

K. Patman
Chairman

AGO 547898

S 60

COMMITTEE REPORT

SENATE

1/20/78

FURTHER: _____

_____

Date: 6/4/78

Mr. President:

The Committee on RESOURCES has had CSHB 322 establishing an oil and gas corporate franchise tax

under consideration and (a majority of the committee) (the committee reports it back as follows)

( ) recommends it do pass ( ) recommends it do not pass

( ) recommends it do pass with attached amendment(s)

( ) recommends it be replaced with CS for _____

and _____ ( ) new title ( ) same title

( ) AND attaches a Letter of Intent ( ) New Fiscal Note

( ) reports it back without recommendation

( ) and recommends it be referred to the _____ Committee

MEMBERS SIGNING DO PASS:

OTHER RECOMMENDATIONS:

_____

Chairman

AGO 547899

S 60 (rev. 6/77)

EFFECTS OF PROPOSED CHANGES IN ALASKA'S CORPORATE INCOME TAX LAW

Summaries of Three Studies Conducted
by Multistate Tax Authorities
for the Alaska Oil & Gas Association

This report summarizes three studies conducted for the Alaska Oil & Gas Association by recognized authorities on taxation of multistate corporations. The studies were commissioned to obtain expert opinion concerning the fairness and effectiveness of the current Alaska corporate income tax law as applied to the oil and gas industry. Limited copies of the complete studies are available from the Alaska Oil & Gas Association, Suite 219, 505 West Northern Lights Blvd., Anchorage, Alaska 99503.

AGO 547987

KUST STUDY

SUMMARY

INCOME TAXATION OF MULTISTATE CORPORATIONS ENGAGED IN OIL AND GAS PRODUCTION AND TRANSPORTATION IN ALASKA

By Leonard E. Kust,
Senior Tax Partner
Cadwalader, Wickersham & Taft
New York, New York

AGO 547989

I. PRINCIPLES OF TAX JURISPRUDENCE

Where the activities of a business extend over two or more states, all of the income from such business cannot reasonably be taxed by each of the states. The whole development of the law regarding state taxation of multistate business income rests on this manifest and undisputed principle. Similarly, international tax jurisprudence and tax treaties are grounded on this basic principle with respect to national taxation of multinational business income.

Under the Constitution and with our federal system, this principle has been implemented by Supreme Court decisions under the commerce and due process clauses and through the voluntary and mutually compatible actions of state legislatures and tax administrators.

The effort has been to avoid multiple taxation of the income of a multistate business through the taxing by each state in which the business has activities of only a portion of the income, determined by some reasonable method of apportionment. The system which has developed has two basic elements: (i) a tax base measured by a company's worldwide income determined by Federal taxable income and (ii) a method of dividing this base through use of an apportionment formula.

The Massachusetts, or three-factor, formula apportions the income of a multistate business to the taxing state on the basis of the average of three fractions: (1) property within the state over total property, (2) payroll within the state over total payroll, and (3) sales within the state over total sales.

It was recognized at the outset that multiple taxation of multistate business income arises not merely from failure to apportion reasonably but from disparity in methods of apportionment as well, even though each method by itself and applied universally might be reasonable. The National Tax Association began advocating uniformity in the method of apportionment as early as 1919. Ultimately, these and other efforts culminated in the Uniform Division of Income for Tax Purposes Act (UDITPA) adopted by the National Commissioners on Uniform State Laws in 1957. UDITPA incorporated the three-factor formula and, most notably, defined the numerator of the sales fraction, with respect to which the greatest divergence from uniformity had developed, as being sales having their destination, that is, delivered to customers, in the state.

The Multistate Tax Compact, inaugurated in 1966 to promote uniformity and thereby avert Federal legislation then under consideration to impose uniformity on the states, incorporates UDITPA.

AGD 547991

Out of a total of 44 states and the District of Columbia which impose a corporate net income tax, 40 provide for the three-factor formula, 25 by adoption of UDITPA or the Multistate Tax Compact and 15 by incorporation in their own tax statutes, four of the latter giving greater weight to the sales factor than to the property and payroll factors. Differences in the economies of the states as to whether primarily industrial, or commercial, or agricultural or extractive have not affected the general acceptance of the three-factor formula as essentially fair and reasonable.

II. ALASKA INCOME TAX--PRESENT STRUCTURE AND APPLICATION TO THE OIL AND GAS PRODUCTION AND TRANSPORTATION INDUSTRIES

Alaska has adopted both UDITPA and the Multistate Tax Compact and determines taxable income by reference to the Federal tax base. No distinction is made between the oil and gas industry and other industries engaged in the production and sale of tangible personal property. Since this is essentially the same treatment which is accorded to the oil and gas industry by all of the states imposing a corporate income tax, Alaska suffers no disadvantage in comparison with other states. Accordingly, there does not appear to be justification for change and departure from uniformity. The burden of proof should rest on those who advocate departure.

III. THE ZEIFMAN-AINSWORTH REPORT

The Zeifman-Ainsworth Report contends that Alaska's tax base has been eroded through Federal tax subsidies and incentives which are unrelated to the definition of net income but which are provided solely to accomplish certain economic and social goals, and that the UDITPA apportionment formula reduces the amount of taxable income attributable to Alaska by corporations which export non-renewable petroleum resources from the state.

Zeifman and Ainsworth's recommendations which have been endorsed by the Department of Revenue and incorporated in H.B. 322 are:

1. Adoption of a tax base measured by the greater of book income or Federal taxable income.
2. Replacement of the destination-oriented sales factor with an "extraction factor" — the ratio of oil and gas energy units produced in Alaska to total oil and gas energy units produced everywhere.

These changes would apply only to corporations with ordinary gross receipts in excess of $250,000,000 more than 50% of which is derived from production, transportation,

AGO 547993

refining, manufacturing, processing, distribution or retail sale of oil or gas or products derived from oil and gas.

The "tax subsidies" cited by Zeifman and Ainsworth are for the most part available to all corporations. It is unfair and perhaps unconstitutional to single out the oil industry.

Furthermore, with respect to the one Federal "tax subsidy" allowed to the oil and gas industries, a current deduction for intangible drilling costs, Alaska does not, as Zeifman and Ainsworth claim, provide an incentive to drill wells outside Alaska. Federal taxable income reflects not only deductions for the cost of wells drilled throughout the world but also the income from such wells. It is not a one-way street. Alaska is no more providing an incentive for drilling outside Alaska than other states are providing an incentive for drilling in Alaska. Denial of this current deduction in Alaska, however, could reduce the incentive to drill wells in Alaska.

Congressman Vanik's computations of "effective taxable income" do not support the view that the adoption of the Federal tax base by Alaska automatically causes Alaska's "effective tax rate" to be less than 9.4%, by something comparable to the difference between the statutory 48% rate and the Vanik "effective U.S. tax rate on

worldwide income." Congressman Vanik's approach of measuring Federal income tax due as a percentage of worldwide income is patently incorrect because the United States, recognizing the principles of international tax jurisprudence, provides a credit against its tax on worldwide income for taxes paid to other countries. Alaska does not provide a credit but imposes its tax rate of 9.4% on a corporation's worldwide income apportioned to Alaska. Obviously after apportionment (or after the foreign tax credit at the Federal level) the amount of Alaskan tax as a percentage of worldwide income will be less than 9.4% (or the Federal tax will be less than 48%).

Book income is an inappropriate tax base. It will greatly increase the administrative and audit costs and burdens of both the oil companies and the Department of Revenue. Furthermore, book income not only reflects taxable income before tax subsidies but also many timing differences unrelated to Congressional tax policies. Use of the higher of Federal taxable income or book income as a tax base would tax income twice to the extent of such timing differences.

The UDITPA apportionment formula provides for fair and equitable division of income of oil and gas corporations between Alaska and the rest of the world and fairly reflects the extent of their activity in Alaska as compared to the rest of the world. The destination sales factor properly

gives recognition to the contribution of the market states to the creation of income. Without the demand and purchasing power of the market states, the value of Alaska's oil and gas would be less and the income tax base of oil and gas companies would be smaller. The extraction factor ignores the contribution of the market state and creates multiple taxation, since nearly every other state uses a destination oriented sales factor.

The extraction factor has been proposed not to make Alaska's apportionment formula "fairer" in terms of reasonable sharing of the income tax base with other states, but to generate more tax revenue. Apportionment formulas are not intended to be vehicles to generate tax revenue but to divide income among the states fairly and uniformly so as to avoid multiple taxation.

IV. SEPARATE ACCOUNTING--S.B. 105

The declared purpose of the "net proceeds" tax is to tax production and pipeline transportation income in Alaska by means of a statutory separate accounting, while retaining formula apportionment (as modified) to apportion all other income.

Conceptually, separate accounting constructs an income or loss statement for the activities of the business in the state as if they constituted an independent business

dealing at arm's-length with the remainder of the business and the outside world. In practice separate accounting is impossible to administer and determine. Separate accounting requires that hypothetical prices be established for goods and services between affiliated companies. Separate accounting must effectively cope with efforts of companies to shift income among divisions, affiliates and states and must devise some reasonable way to attribute overhead expenses to the various business locations and activities of the taxpayer, no doubt by means of an apportionment formula, thereby abandoning to that extent its initial purpose of avoiding the apportionment formula. Furthermore, separate accounting requires maintenance of records needed in the effort to determine geographic income--records which serve no other business function.

S.B. 105 handles the problem of allocating overhead expenses by simply denying a deduction for such costs. Pricing difficulties are "solved" by using as gross income the value of oil and gas produced as determined for purposes of the production tax.

Thus, the proposed net proceeds tax would not by definition apply separate accounting even though it purports to do so.

The proposed net proceeds tax has major infirmities. It purports to be an application of separate accounting but it is not. It represents a sharp deviation

from uniformity and as such would constitute a major disruption of the common consensus underlying the system of state taxation of interstate business income. Separate accounting applied by one state to a whole industry in order to increase its share of the total income over that resulting from the three-factor formula necessarily results in multiple taxation because income which is fully taxed by one state is also apportioned by formula to other states.

V. THE MULTISTATE TAX COMPACT

Alaska's continuing membership in the Multistate Tax Compact and the administrative benefits derived from such membership may not be tenable if either the Zeifman-Ainsworth proposals or S.B. 105 were adopted. The courts may find such proposals to be in conflict with the Compact and as a result may further hold that Alaska has in effect withdrawn from the Compact or that the Compact remains in effect but enactment of the proposals is ineffective to prevent taxpayers from applying the UDITPA formula under the provisions of the Compact.

VI. UNIFORMITY, COMITY AND ENLIGHTENED SELF-INTEREST

Great progress has been made in recent years in adopting uniform allocation methods. Part of the drive for voluntary uniformity has obviously been the desire of both

states and taxpayers to avoid Federal intervention. As long as states strive toward uniformity as a goal of fair taxation, Congress will be hesitant to act. If the drive for uniformity falters through independent action by states asserting their currently perceived self-interest without restraint, Congress will be constrained to exercise its constitutional responsibility to protect interstate commerce by prescribing a Federal standard of uniformity.

Alaska has been in the forefront of the drive for uniformity. By the collective judgment reflected in the development and general acceptance of the three-factor formula, Alaska's net income tax fairly and effectively reaches its proportionate share of the income of multinational oil and gas corporations doing business within the state. The proposed changes would be destructive of community and comity among the states in dealing reasonably with state taxation of multistate business and are parochially designed to increase tax revenues without regard to the general principles of tax jurisprudence for division of interstate business income adhered to by other states.

LEONARD E. KUST

Biographical Information

LEONARD E. KUST is a partner in the New York Law firm of Cadwalader, Wickersham & Taft. He was formerly Vice President and General Tax Counsel of Westinghouse Electric Corporation with which he was associated from 1955 to 1970.

A native of Wisconsin, Mr. Kust is a graduate of the University of Wisconsin and the Harvard Law School. He is a member of the New York and Pennsylvania bars.

He is a past president of the Tax Institute of America, and of the Tax Executives Institute. Mr. Kust has served as Chairman of Governor Scranton's Committee on Tax Administration, Chairman of Task Forces for Governor Shafer's Tax Study and Revision Commission, and was a member of the Advisory Committee of the Commissioner of Internal Revenue. He has served on the Executive Committee of the National Tax Association, as a Director of the Chamber of Commerce of the United States, and as a member of the Taxation Committee. He is a member of the Tax Section of the American Bar Association, a member of the Council of the U.S.A. Branch of the International Fiscal Association, a member of the Advisory Board of the Tax Management, and a member of the Advisory Board of the Tax Foundation.

AGO 548000

Mr. Kust has written on a wide variety of tax issues, including "State Taxation of Income from Interstate Commerce: New Dimensions of an Old Problem," S.W. L.J. 1 (1960); "State Taxation of Interstate Sales," 46 Va. L. Rev. 1290 (1960); "Federal Tax Reform," the Tax Executive, Vol. XIV, April, 1962; "Standards of Conduct for Tax Executives," the Tax Executive, Vol. XIV, July 1962; "A Reappraisal of Taxation of International Business Income," National Tax Association Proceedings, Annual Conference, 1966, p.154; "Alternatives for New Federal Revenues," Tax Review, Tax Foundation, Vol. XXXIV, No. 7, July, 1973.

SUMMARY

POSITION PAPER ON ALASKA OIL AND GAS TAXATION

By John S. Warren
Partner
Loeb and Loeb
Los Angeles, California

AGO 548002

WARREN STUDY

EXECUTIVE SUMMARY OF POSITION PAPER ON ALASKA OIL AND GAS TAXATION

By John S. Warren

Alaska's existing corporation income tax meets all of the generally recognized criteria of a modern and efficient state corporation income tax. It is simple and inexpensive to comply with and enforce, it provides equality among taxpayers, and it contains rules for the allocation of income that provide the best possible assurance against overtaxation or undertaxation of multi-state businesses. The several bills which the Legislature has had under consideration (H.B. 145 and 322, S.B. 105 and 202) are all changes for the worse as far as meeting these criteria is concerned.

If the Alaska tax base for oil companies were to become the greater of book income or federal taxable income (H.B. 322), the Department of Revenue auditors could no longer rely on federal audits. Rather, they would have to verify two sets of figures for each company. Because the financial accounting rules for determination of book income allow some leeway, the Department would have to adopt regulations to prevent manipulation of book income for tax avoidance purposes and to assure equality

among taxpayers. Furthermore, because income or expenses are often reportable in different years under federal income tax rules than they are under financial accounting rules, intricate adjustments would be necessary to avoid including the same item in the tax base for two years.

The changing o' the formula for apportionment of income by substituting an origin sales factor ("extraction factor") for the destination sales factor used by most states (H.B. 322) will force Alaska to withdraw from the Multistate Tax Compact and will deprive the state of the benefits of the joint audit program of the Multistate Tax Commission. More importantly, the use of the extraction factor cannot be justified under the generally accepted principles for apportionment of the income of a unitary business.

Determining Alaska tax liabilities on the basis of separate accounting (H.B. 145, S.B. 105, and H.B. 322 as amended in the Senate) is an even more drastic departure from generally accepted principles of proper state tax policy. It would force Alaska out of the Multistate Tax Compact, would create horrendous audit problems for the Department of Revenue, and might even result in a net revenue loss to the state.

The analytical approaches of the Department of Revenue and the several consultants who have been advising the Legislature leave much to be desired. They have created the impression that Alaska does not get as much tax revenue from the oil companies as it should because the present tax structure does not attribute to Alaska the net income actually earned in Alaska. They then attempt to persuade the state to turn its back on all of the principles of state taxation and multistate business that have been hammered out over the last century - principles that have been widely endorsed by the courts, by tax administrators of other states, and by tax scholars - and to adopt instead one of several new proposals. They have no difficulty in showing that these proposals would increase Alaska's tax collections, but they fail completely to show that they will come any closer to the ideal of taxing the "net income actually earned in Alaska," no more and no less. Alaska would be ill advised to warp its tax structure away from the tried and true principles simply to collect more taxes from one type of business.

JOHN S. WARREN

Biographical information

Education:

Bachelor of Science in Law, University of Minnesota - 1943

Bachelor of Laws, University of California, Hastings College of Law - 1950

Professional:

Loeb and Loeb, Los Angeles, California - 1957 to present (partner 1960 to present)

Government Positions:

Associate Tax Counsel, California Franchise Tax Board - 1951-1957

Consultant, California Department of Finance - 1962

Consultant, California Legislature, Senate Fact Finding Committee on Revenue and Taxation - 1964

Memberships:

State Bar of California

Committee on Taxation (1958-1962)
Committee on Property Sales and Local Taxes (1975-)
Chairman, Subcommittee on Occasional Sales (1976-)

Los Angeles County Bar Association, Tax Section:

Committee on Federal and California Death and Gift Taxes

American Bar Association, Section of Taxation, Committee on State and Local Taxes:

Subcommittee on Non-Federal Solutions to Interstate Tax Problems (1974)
Subcommittee on Important Developments (1975)
Vice Chairman, Subcommittee on Corporation Net Income Taxes (1976)

Articles:

"Sales of Depreciated Properties to Related Entities," 1959 Southern California Tax Institute

"The Unitary Concept in the Allocation of Income," 12 Hastings Law Journal 42 (with Frank M. Keesling"

"Selected Problems in California Corporation Taxes,"
1962 Southern California Tax Institute 939

"Income Taxation of Testamentary Trusts,"
23 Journal of Taxation 278

"California Franchise Tax Allocation of Income of Unitary Business,"
1966 Southern California Tax Institute 529

'California's Uniform Division of Income for Tax Purposes Act,"
15 U.C.L.A. Law Review 156 (with Frank M. Keesling)

"Reform Act Changes in Pension and Profit Sharing Plans,"
1971 Southern California Tax Institute 137

Lecturer:

"Tax Problems of Closely Held Corporations and Their Shareholders"
California Continuing Education of the Bar, 1974

"Advising on California Taxes"
California Continuing Education of the Bar, 1975

"California State and Local Tax Rules Pertaining to the Entertainment Industry"
California CPA Foundation, 1974

Teacher:

Adjunct Professor of Law in State and Local Taxes,
Loyola University, School of Law
commencing January 1977.

BOREN
STUDY

SUMMARY

THE EFFECTS OF HOUSE BILL 322 and SENATE COMMITTEE SUBSTITUTE FOR HOUSE BILL 322 ON UNIFORMITY AND EQUITY

By Gary I. Boren
Professor of Law
Washington University
St. Louis, Missouri

AGO 548010

I.

The removal from Alaska of its oil and gas is compensated for through payments by oil and gas producers of the Oil and Gas Properties Production Tax. That tax has recently been reviewed and amended by the Legislature to ensure that a proper price is being paid for the removal of these resources. Consideration of the treatment of taxpayers under the corporate income tax therefore should be considered independently of concern about proper compensation to the state for the withdrawal of its natural resources.

II.

Alaska, as most states, uses the federal definition of taxable income under the corporate and personal income taxes. Concern has been expressed that erosion of federal taxable income has resulted in an inappropriately small tax base for oil and gas producers under the Alaska corporate income tax. Examination of the items considered as eroding the federal base indicates that oil and gas producers do not receive a disproportionate benefit. To single out oil and gas producers for the withdrawal of all deductions deemed erosions (whether or not peculiar to the oil and gas industry) means that the oil and gas industry in Alaska will bear an excess burden, shifted to them from other taxpayers who continue to be able to receive those deductions.

A study by Congressman Vanik investigating the tax burden of major corporations under the federal income tax has been

AGO 548011

advanced as demonstrating that oil and gas producers are paying a disproportionately low effective rate on their income to Alaska in comparison to the rates paid by local taxpayers. The Vanik study, however, demonstrates primarily that the foreign tax credit has been used to reduce the amount of taxes paid the U.S. Alaska does not permit the foreign tax credit, nor does it grant a deduction for taxes paid on income to any government. The result therefore is that oil and gas producers, and other multinationals, would be paying a higher proportionate effective rate to Alaska than to the federal government. The Vanik study therefore is an argument against the very proposal that it has been used to advance.

Reform of the Corporate Income Tax by the Alaska legislature to be fair must be reform for all taxpayers.

III.

A state may tax only the portion of the income of a corporation to which it has a sufficient connection. The manner of determining how much a state may tax used by almost all states is formulary apportionment. Taxable income for state purposes is determined by multiplying taxable income by a formula of three fractions, called factors. The factors represent the proportions respectively of property, payroll and sales occurring in the taxing state to the total amount of property, payroll and sales occurring everywhere. The three fractions are then divided by

three to obtain an average proportion of activities occurring within the taxing state to activities everywhere. The largest number of states, including Alaska, have adopted a model law called the Uniform Division of Income for Tax Purposes Act to determine the income they may tax.

If states do not apply the same or similar methods for division of income it is possible, even likely, that taxpayers will be subjected to tax on more or less than their total income. Nonuniformity also causes taxpayers difficulties in complying with the laws of numerous states. Federal legislation has been proposed to require a uniform formula by Act of Congress. Progress toward uniformity by the states has been at least one reason why no federal solution has as yet been imposed.

No special uniform apportionment formulas have evolved for oil and gas producers. The normal manner of division of income has been considered appropriate to them. The use of a special formula by one state to increase the income taxable by that State must therefore necessarily result in overtaxation.

IV.

House Bill 322, which has been passed by the House of Representatives would impose a special formula on oil and gas producers in Alaska. The standard sales factor would be eliminated and an extraction factor substituted for it. The sales factor is justified because sales are requisites to income and because a state

may exact a tax for maintaining an orderly market and protecting the sales activities of a taxpayer and the customers who purchase goods from the taxpayer. The states have resisted elimination of the sales factor in a federally proposed formula. Alaska, a market state, benefits usually from the existence of the sales factor. Elimination of sales for oil and gas producers is supported by no plausable justification.

The proposed extraction factor has no comparison in the apportionment formulas of other states applied to oil and gas producers. Had the extraction factor been substituted for sales in the year 1975 the result would have been subjecting $53,000,000 of the income of a limited number of oil and gas producers to double taxation.

The proposed extraction factor has a diminishing connection with activities of taxpayers not involving the processing and sales of petroleum products. Questions of constitutionality are raised for all, and for diversified taxpayers two formulas would seem clearly required. This creates the problems of separate accounting, discussed elsewhere in the paper. The extraction factor would also require maintenance of extensive records not used for business purposes. They would be expensive to maintain and difficult to audit.

House Bill 322 also attempts to include in the numerators of the apportionment formula (which increase the amount of income

taxable by Alaska) items connected to the Outer Continental Shelf. Congress has declared that state tax laws should not apply to the Outer Continental Shelf. California which has considered the action contemplated by House Bill 322 has determined that it is not permissible.

V.

A method of dividing income known as "separate accounting" has from time to time been forwarded for use by Alaska. The doctrine is an attempt to identify income with geographic areas. It is the theoretical opposite of the use of a formula. Formulary apportionment has as its basis the inability to segregate items geographically and the belief that total income of a corporation is to be divided among the states. Taxpayers have attempted to avoid formulary apportionment and to use separate accounting by such pleas as disproportionately high costs in a taxing jurisdiction, or by operating through multiple corporations. It has, however, been demonstrated that higher cost in one state may yet produce additional income for the business, and some of that income therefore is attributable to that state. Nor does the use of multiple corporations mean that application of a formula to total group income is improper: the formula determines how much of the total income is attributable to activities of corporations that are connected with the taxing state. Formulary apportionment permits the taxation of worldwide income, separate accounting does not.

Separate accounting is expensive for the taxpayer and the state and requires the constructing of hypothetical transactions, permitting the possibility of taxpayer avoidance. The main flaw of the doctrine is that it ignores the interdependence of different portions of a unitary business, and the values created by that integration of operations. Separate accounting has been rejected by the overwhelming majority of studies and scholars that considered the question in modern times.

Senate CS for CSHB 322 which would impose a "net proceeds tax" bears some resemblance to separate accounting in its use of hypothetical values and treatment of taxpayers as though they were engaged in two separate businesses. It has attempted to avoid the possibility of taxpayer manipulation but in doing so has arbitrarily eliminated deductions connected to the production of income. In separating oil and gas production and pipeline transportation income in Alaska from worldwide operations and denying the deductions mentioned it increases revenue taxed by Alaska on this portion of a taxpayer operation and apportions the balance of income from worldwide operations by a special formula designed also to maximize Alaska revenue. The result must be double taxation, and for oil and gas production in Alaska approaches the taxation of gross receipts at income tax rates.

VI.

Taxes tailored to increased revenues from producers operating in interstate commerce raise serious constitutional questions. The U.S. Supreme Court has recently stated the necessity to examine such tailored taxes closely. Moreover, specialized tax treatment by individual states reduces uniformity and increases the possibility of federal action. Discrimination against oil and gas producers makes it unlikely that those taxpayers would attempt to expand their Alaska operations. The ultimate question for the legislature, however, is whether the bills would result in a tax structure for Alaska that is fair to the taxpayer and the state. The attempt to increase revenue from the one class of taxpayers under the circumstances investigated in this paper indicates that on this basis also the taxes should not be enacted.

GARY I. BOREN

Biographical Information

Education:

Bachelor of Arts, University of California, Los Angeles - 1957

Bachelor of Laws, University of California, Los Angeles - 1961

Member of the Order of the Coif
Note and Comment Editor, U.C.L.A. Law Review

Professional:

Professor of Law and Director of the Graduate Tax Program, Washington University School of Law, St. Louis, Missouri

Assistant Professor - 1967-1971
Associate Professor - 1971-1975
Professor - 1975-Present

Private practice, Los Angeles, California - 1961-1967

Member State Bar of California

Major Publications:

Equitable Apportionment: Administrative Discretion and Uniformity in the Division of Corporate Income for State Tax Purposes
49 So. Cal. L. Rev. 991 (1976)

Specific Allocation of Corporate Income in California: Some Problems in the Uniform Division of Income for Tax Purposes
30 TAX. L. REV. 607 (1975)

Separate Accounting in California and Uniformity in Apportioning Corporate Income
18 U.C.L.A. L. REV. 478 (1971)

Courses Taught:

*State and Local Taxation
*Federal Income Taxation
*Federal and Estate Gift Taxation
*Seminar in Tax Policy and Current Legislation
Seminar in Advanced Tax Research
Natural Resources

*Courses taught currently

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907·465·3800

May 6, 1978

M E M O R A N D U M

SUBJECT: Corporate Income Tax Legislation - SCSCSHB 322

TO: The Honorable Kay Poland

FROM: Gregg K. Erickson
Director of Research

Enclosed is a memorandum received from the Alaska Public Utilities Commission responding to a much earlier request of mine concerning the fiscal impact on the Commission of the above cited legislation. They indicate that the total cost of carrying out their responsibilities under the bill in FY 79 would be about $33,000.

Under the draft committee substitute proposed by Senator Croft and the Administration, the fiscal impact on the Commission would presumably be zero, since all the auditing and determination responsibilities would be vested in the Department of Revenue. The Department is preparing a fiscal note on the Croft/Administration bill.

GKE:dh
Enclosure

AGO 547863

02-0018 (Rev. 10/76)

STATE
of ALASKA

MEMORANDUM

TO: Pam Knode
Information Officer
Division of Administrative Services

DATE: April 5, 1978

FILE NO:

TELEPHONE NO:

FROM: Carolyn S. Guess CSG
Commissioner
Alaska Public Utilities Commission

SUBJECT: Comments on SCSCSHB 322

Enclosed please find our comments on SCSCSHB 322. We were requested by Gregg Erickson to examine this committee substitute to see if it would change the fiscal impact on the Commission.

As you can tell from the research that Susan Knowles did, it will not change the fiscal impact on this Commission and, therefore, the original fiscal note should remain.

I understand that John Messenger of Revenue is coordinating comments in regard to the committee substitutes. Will you see that he gets a copy of our comments as well as transmitting, as quickly as possible, our comments to Gregg Erickson, noting please that we are responding to his request of over a month ago.

Thanks a lot.

CSG:lin
Enclosure

AGO 547864

The certification procedure prescribed under SCS CSHB 322, like its predecessor HB 145, involves a significant extension of the Commission's responsibilities.

Section 43.20.068(b) defines taxable income primarily in terms of amounts presented on FPC* report forms and requires the APUC to certify that the calculation was made in accordance with FPC "principles" and regulations. Firms which do not normally prepare FPC report forms in the manner envisioned by the proposed legislation would be required to do so for certification purposes. Section 42.05.502 directs the Commission to review the accounts of the carrier and to certify that net pipeline income submitted under proposed AS 43.20.069** is in accordance with APUC regulations. In addition, the net income so defined was intended to coincide as nearly as possible with the definition of income used in establishing rates. Under both sections the Commission is responsible for identifying deficiencies and, if possible, providing a report of the true and correct income.

Having summarized those components of the proposed legislation which it believes have the greatest probable impact, the Commission offers the following comments. First, there is a potential for two different definitions of taxable income arising under the aforementioned sections of the statutes, one based on FPC report forms and one based on APUC regulations. A similar dichotomy may exist between net income for tax purposes and that for rate-making purposes. The Commission believes that it would be in the public interest for the legislature to make the definition uniform in all sections. Second, the thorough knowledge of FPC principles and regulations discussed in the legislation will involve a greater commitment to monitoring the FPC than is currently required. Third, it is apparent that the legislature's intent is for the APUC to more than simply rubber stamp figures provided by gas pipeline companies. In this light, the certification procedure appears to be akin to issuing an independent audit opinion and will require comparable standards of review and expertise. Additionally, the Commission is constrained to issue a certificate of compliance or deficiency within 45 days from receipt of a request of a pipeline carrier.

Given the Commission's workload, satisfactory performance of the certification responsibility will necessitate hiring a staff person with specialized knowledge of tax accounting. The alternative of developing in-house expertise and diverting limited staff resources to certification would dilute effective performance of existing regulatory responsibilities. Therefore, the fiscal note attached to HB 145 applies to SCSCSHB 322.

* It is presumed that the legislature will modify all references to the FPC to the Federal Energy Regulatory Commission (FERC).

** The Commission believes that this is a drafting error and should be AS 43.20.068. The latter will be assumed in further comments.

Second Session - Ninth Legislature
First Tenth

I. REQUEST
Bill No. HB 145
Title: An Act Relating to the Ak to Net Income Tax
Requested by: Date:
Return Date Requested:
Agency: Commerce Program: Public Inspection

II. FISCAL DETAIL
Budget Request Unit(s) Affected:

A. EXPENDITURES: (Thousands of dollars)

	OBJECT	FY 76	FY 77	FY 78	FY 79	FY 80	FY 81
100	PERSONAL SERVICES		0	15.3	30.6		
200	TRAVEL		0				
300	CONTRACTUAL		0	2.1	2.1		
400	COMMODITIES		0	.2	.2		
500	EQUIPMENT		0	.8			
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL			18.4	32.9		

B. FUNDING: (Thousands of dollars)

GENERAL FUND			18.4	32.9		
FEDERAL FUNDS						
OTHER						

C. POSITIONS:

PERMANENT/TEMPORARY	/	/	1/	1/	/	/
MAN MONTHS (P./T.)	/	/	5/	12/	/	/

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Passage of this proposed legislation will require the Alaska Public Utilities Commission to employ at least one additional Financial Analyst III who would be responsible for examining the tax returns for intrastate pipelines.

IV. ATTACHMENTS

Detailed expense estimate

V. DATE: PREPARED BY:

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

AGO 547866

H/S 50

FISCAL NOTE

Re HB 145

1 Tax Accountant (UFA III, Range 18C)	$24408	
Benefits 25 1/2%	6226	$30634
Contractual:		
Office Space	1890	
Telephone	240	2130
Commodities:		
Stationery and Office Supplies	230	230
Equipment:		
Desk	295	
Chair	135	
Calculator	150	
Dictating Machine (Pocket Secretary)	250	830
		$33824

AGO 547867

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM January 26, 1978

SUBJECT: Membership in the Multistate Tax Compact - (Work Order No. 4448)

TO: Gregg K. Erickson
Director
Division of Research Services

FROM: Randolph Berry
Legislative Counsel

The question presented is whether Alaska will be able to retain its membership in the Multistate Tax Compact should CS HB 322 (Oil and Gas Corporate Franchise Tax) or SCS CSHB 322 (Separate Accounting) or a "4th-factor" approach to multistate oil company taxation be adopted.

The stated purposes of the Multistate Tax Compact, contained in Article I of the compact, are as follows:

1. Facilitate proper determination of state and local tax liability of multistate taxpayers, including the equitable apportionment of tax bases and settlement of apportionment disputes.

2. Promote uniformity or compatibility in significant components of tax systems.

3. Facilitate taxpayer convenience and compliance in the filing of tax returns and in other phases of tax administration.

4. Avoid duplicative taxation.

The primary mechanism by which the compact is designed to achieve a uniform manner of apportionment and allocation of tax liability of multistate business taxpayers between states is through the use of the three-factor formula based on property payroll and sales set out in the Uniform Division of Income for Tax Purposes Act (UDITPA), which is incorporated as Article IV of the compact.

AGO 547868

However, the ability of a taxpayer to utilize apportionment and allocation under the formula of the UDITPA and the compact is not without provision for exception. Section 18 of Article IV of the compact reads as follows:

> 18. If the allocation and apportionment provisions of this Article do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:
>
> (a) separate accounting;
>
> (b) the exclusion of any or more of the factors;
>
> (c) the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or
>
> (d) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income. (Emphasis Supplied)

Thus, where the state tax administrator determines that the allocation and apportionment formula of the compact does not fairly represent a taxpayer's business in Alaska, he may employ a different method of allocating the taxpayer's income, rather than allowing the taxpayer to use the compact formula.

In both CSHB 322 and SCS CSHB 322, there is a stated legislative finding to the effect that the three-factor formula contained in the UDITPA does not fully reflect business activity or corporate income-producing activity in the state of multistate corporations engaged in the extraction, transportation and refining of oil and gas.

Although in this situation the determination that the allocation and apportionment provisions of the compact "do not fairly represent the extent of the taxpayer's business in the state" is being made legislatively, and the legislative process is being used as the "state tax administrator" rather than the case-by-case judgment of the Commissioner of Revenue, this should not logically affect the outcome of the question involved.

If the UDIPTA allocation and apportionment formula is determined to not fairly reflect business activity in the state by multistate oil and gas corporations, then the compact by its own terms provides a list of alternate methods of allocating and apportioning income for such taxpayers which would include the three proposed methods as permissible alternatives.

To date, there have not been any Alaskan cases interpreting or defining the scope and limits of Article IV, section 18 of the compact, so it is necessary to look to other jurisdictions for assistance in interpreting the state's authority under the compact to utilize alternate methods of allocating and apportioning income of multistate businesses.

The majority of cases of note in recent years dealing with the question of separate accounting versus statutory allocation under UDITPA have hinged on the issue of whether the business in question was unitary or non-unitary, with the outcome of this issue being presumed to be determinative of the question of whether separate accounting was permissible or required.

The concept of "unitary business" activity is a judicially developed concept utilized by the courts in determining whether, and the extent to which, a business has income which is subject to formula apportionment under the compact, UDITPA, or other state statutes requiring or allowing apportionment of income from multistate business activity. Whereas the language and application of the UDITPA and UDITPA type three-factor formulas has been comparatively uniform once it is determined that a business has multistate business income subject to formulary apportionment, the definitions and tests of what constitutes a "unitary business" subject to formulary apportionment vary substantially from one jurisdiction to the next, producing what appear to be inconsistent results in the applicability of UDITPA. (An extensive discussion of the concept of "unitary business" is not necessary for purposes of this memorandum, but will be covered in a separate memorandum. For purposes of this memorandum, it is sufficient to say that if a particular multistate business activity is not "unitary," then the UDITPA formula is not applicable and we would not reach the question presented in this memorandum.)

In Superior Oil Company v. Franchise Tax Board, 386 P.2d 33 (Cal. 1963) and the companion case Honolulu Oil Corp. v. Franchise Tax Board, 386 P.2d 40 (Cal. 1963) the California Franchise Tax Board was seeking to impose separate accounting on multistate oil companies, arguing in both cases that the companies were not true "integrated" oil companies, and that the comparatively profitable California operations should not be subject to allocation under the statutory formula. In both cases, the California Supreme Court overruled the Board's contention that the companies' operations were not unitary in nature, and concluded that the companies were authorized to use formulary allocation. However, no contention was argued in either case that even if the companies were determined to be unitary, the allocation formula nonetheless did not fairly reflect business activity in the state.

It should be noted in the Superior case that Superior operated in eight other states, showed losses from its operations in six of the eight states and utilized separate accounting in seven of these states, including the six in which it showed losses. Use of formulary apportionment by Superior allowed it to allocate a portion of these losses to income arising from its operations in California.

In contrast, in Webb Resources, Inc. v. McCoy (401 P.2d 879, Kansas 1965) the Kansas Supreme Court determined that Webb's multistate oil business was not subject to statutory apportionment, but rather its Kansas oil production was subject to separate accounting. But this case, like Superior, was decided on the basis of whether the business activity was unitary in nature.

There is, however, a recent Utah case under the UDITPA involving the same language as section 18, and a business activity roughly analogous to oil production, in which the contention was argued and the decision made on the basis of whether the standard three-factor formula fairly represented the taxpayer's business in the state. (Kennecott Copper Corp. v. State Tax Comm., 493 P.2d 632, 1972) Kennecott Copper Corporation and subsidiary corporations owned and operated mining properties in Utah, with virtually the entire production of the mining properties being sold and delivered to purchasers out of state. Under the UDITPA formula, for the tax years 1967 and 1968, Kennecott had property factors of 42.46 and 35.65 per cent and payroll factors of 42.88 and 33.36 per cent, respectively. But the sales factor for 1967 showed sales in the state of $3.3 million on total sales everywhere of $397 million and resulted in an apportionment fraction of 0.83 percent. The 1968 sales apportionment fraction was 0.568 percent. Yet for purposes of computing its depletion allowance for 1967, Kennecott reported gross receipts for sales from its Utah division of $158 million. The Utah tax commission concluded under the same language as contained in Article IV, section 18 of the compact that the UDITPA allocation and apportionment formula did not fairly represent the extent of Kennecott's business activity in Utah, and made its own determination and allocation of income attributable to business activity in the state. In Kennecott Copper Corp. v. State Tax Commission, 493 P.2d 632 (1972) the Utah Supreme Court upheld the tax commission, stating that the commission was authorized under the UDITPA to depart from the formula and adopt another method to make its own allocation if the apportionment provisions of the Uniform Act do not fairly represent the taxpayer's business activity in the state.

Additionally, of note is the case of Texas Co. v. Cooper (07 So 2d 687, La. 1959) which squarely presented the question of whether the statutory three-factor formula fairly allocated to Louisiana income from oil

produced in the state but sold out of state. Although not decided under UDITPA, the formula used by Louisiana contained the same factors, and the issues were the same as would have arisen under UDITPA. The Louisiana statutes place the burden of showing "manifest unfairness" of the statutory three-factor formula on the party seeking to use separate accounting, and in this case the court, after extensive discussion, held that the tax commissioner had met the burden of showing that the sales-oriented three-factor formula did not fairly reflect the extent of income attributable to oil production in Louisiana.

In view of the above discussion, the answer to the question at hand of whether the adoption by Alaska of either CSHB 322 or SCS CSHB 322 or a "4th-factor" approach would jeopardize Alaska's membership in the Multistate Tax Compact appears to be "no". If, as stated in the legislative findings incorporated in each bill, the UDITPA three-factor formula does not fairly reflect the extent of business activity conducted in the state by multistate oil corporations, which is the foundation upon which both of the above bills are predicated, then the adoption of either bill or of a "4th-factor" approach would be entirely consistent of the compact, and could not be viewed as a breach by the state of its agreements under the compact.

RB:jpd

TAX BURDEN COMPARISON

I. Taking the Arthur Anderson Approach, but using a sensitivity analysis to determine the extent to which the relative tax burden ranking is influenced by various assumptions employed such as market price and transportation charges.

II. Expand the scope of the Arthur Anderson approach to include all fields and activities in the state such as Cook Inlet and gas along with potential development of marginal fields such as Kuparik and Lisburne.

III. Develop figures from each state showing gross oil and gas production, wellhead values, total tax payments. Then compute tax payments as a percentage of total wellhead value and as a percentage of per barrel production. Also, if data is available take tax payments as a percentage of net profit per barrel in each state.

Reference: John Messenger

AGO 547873

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907 465-3800

MEMORANDUM

April 1, 1978

SUBJECT: SCS CSHB 322 and the Multistate Compact

TO: The Honorable Kay Poland

FROM: Gregg K. Erickson
Director of Research

Several weeks ago, Mr. John Warren testified before your committee and suggested that adoption of the Senate committee substitute for HB 322 would jeopardize Alaska's membership in the Multistate Tax Compact. As you requested at that time, an analysis of these assertions has been prepared and is enclosed herewith (memorandum of March 31 from Mr. Berry to me). A January 26 memorandum on the same subject is also enclosed. An even earlier memorandum is available in our files.

All these memoranda indicate fairly clearly that adoption of either the proposed or existing Senate committee substitutes for HB 322 would not jeopardize the state's membership in the multistate compact. The last paragraph of each memorandum contains a fairly concise summary of its findings.

Please let us know if you wish to have these memoranda circulated to other members, or if you believe additional work is needed in this area.

GKE:jm
Attachments

AGO 547874

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

March 31, 1978

SUBJECT: Membership in the Multistate Tax Compact (Work Order No. 4448 - Part II)

TO: Gregg K. Erickson
Director
Division of Research Services

FROM: Randolph Berry RSB
Legislative Counsel

The question continues to be raised as to the effect on Alaska's membership in the multistate compact of the enactment by Alaska of a statute mandating specific accounting and allocation of income methods for corporations engaged in the production of oil and gas in the state.

As this question has been raised and discussed by various legislative and industry consultants with inconsistent or conflicting answers, it is felt that it would be worthwhile to continue and elaborate on my memorandum on that subject, dated April 28, 1976, to Gregg Erickson, with an attempt to clarify the current state of the law and the practice of allocation of income from oil production in other oil producing states.

There are presently nineteen states which have adopted or joined the Multistate Tax Compact (referred to hereinafter simply as the "compact").1/ Of the twelve major oil producing states, 2/ six in addition to Alaska have joined the compact 3/ and five have not.4/ Of these same twelve oil producing states, ten have income taxes on corporate income; 5/ and of these ten, six are members of the compact. 6/ Of the six oil producing states, in only three has there been litigation on the issue of allocation of income from extractive industry under the compact or UDITPA formula versus separate accounting or other modification of the statutory formula. The litigation in two of these states 7/ involved section 18 of Article IV (the "relief provision"), in the third, the litigation turned on the issue of whether or not the business was unitary in nature, 8/ and the "relief provision" was not raised by either side.

Of the four significant oil producing states which do not belong to the compact but do impose an income tax on corporations with statutory allocation formulas, 9/ one now has a statute which specifically provides that "the income from oil production shall be allocated according to the location of the producing property." 10/ In a second, the court has upheld the requirement of separate accounting for oil production on the ground that the statutory three-factor formula is manifestly unfair to the state. 11/ In the other two, no cases involving departure from the statutory formula was found. Thus it can be seen that there is currently a wide disparity of allocation provision and practice even in the twelve states with the most significant oil production.

In considering whether separate accounting is permitted to be used or may be imposed by a compact state on a business taxpayer involved in business activity in more than one state, it should be borne in mind that the determination may occur in two stages; and either stage may result in a decision that separate accounting is permissible (or conversely that the party requesting separate accounting has not made the necessary showing).

The first stage turns on the question of whether the business activity in the particular state is separate in nature from the taxpayer's business activity in other states, or whether it is part of a "unitary" business. The definition of what is a "unitary" business varies from state to state, which has lead to inconsistencies between member states in the application of the mulitstate compact. However, for a rough working definition, one might say that a unitary business is one in which the business activities of the taxpayer in several states are so interrelated that each part is dependent on the parts occurring in other states.

If the business activity is unitary, then the compact provisions would be applicable to that business activity, and allocation would occur under the three-factor formula, unless relieved under the second stage of the determination. If, on the other hand, the taxpayer's business activity in the particular state is essentially separate and distinct from his activity in other states, then separate accounting would be appropriate, and the compact formula would not be applicable.

If the business activity falls within the definition of "unitary" as in effect in the particular state, separate accounting may still be permissible for, or required of, that business taxpayer if it is determined, under the "relief provision," that the three-factor compact formula "does not fairly represent the extent of the taxpayer's business activity" in the state.

Whereas the first stage determination of whether a multi-state business activity is "unitary" might be viewed as a decision at the front door of whether the taxpayer enters into the compact's coverage, the determination made at the second stage (under the "relief" provision) is one of whether a taxpayer, already determined to be covered by the compact, leaves its coverage out the side door.

Of the cases discussed in the memo of January 26, 1978, the two California cases - Superior Oil Co. v. Franchise Tax Board, 386 P.2d 33 (Col. 1963) and Honolulu Oil Corp. v. Franchise Tax Board, 386 P.2d 40 (1963), and the Kansas case Webb Resources, Inc. v. McCoy, 401 P.2d 879 (1965), [decided prior to Kansas' entry into the compact], all involved the threshold question of whether or not the business activity involved was unitary in nature, and the question of fairness of the statutory formula was not raised. In both the Utah case Kennecott Copper Corp. v. State Tax Commission, 493 P.2d 632 (1972) and the Louisiana case - Texas Co. v. Cooper, 107 So 2d 687 (1959) [although Louisiana is not a member of the compact, its statutory formula parallels that of the compact] the question was decided on the basis of whether the statutory formula fairly represented the taxpayer's business activity in the state, and in both instances it was determined that it did not.

Since the decision of the Webb case in Kansas, which upheld separate accounting of oil production in the state, Kansas has joined the compact (1967), and the question of separate accounting has again been litigated in Amoco Production Co. v. Armold, 518 P.2d 453 (1974), this time on the question of whether the compact's three-factor formula fairly represented Amoco's oil production business in Kansas. Although John S. Warren, in a position paper, relies on the Amoco case for the proposition that oil companies are not excludable from the compact (p. 4), the case did not in fact contain any such holding. The court did say that although the legislature had chosen to specifically exclude certain businesses from

the Uniform Division of Income for Tax Purposes Act, it had not chosen to exempt oil companies. However, the holding of the case was based on the fact that the tax administrator had misinterpreted the Act; and the case was remanded for further proceeding by the tax administrator on the question of whether the UDITPA formula fairly represented the extent of the taxpayer's business activity in Kansas. The court, (contrary to the impression given by Mr. Warren), recognized that if the tax administrator found that the formula did not fairly represent the extent of Amoco's business activity in Kansas, then departure from the formula was appropriate; and the use of separate accounting was one of the authorized alternatives.

From the above discussion, it should be evident that there is no clear authority for the statement that Alaska's enactment of HB 322 in any of its versions would jeopardize Alaska's membership in the Multistate Tax Compact. Absolute uniformity is not required by the compact; its own provisions recognize the need for some flexibility on the part of state tax administration. The court in the Kennecott case recognized that the compact formula might be inappropriate to certain industries unless modified, and the Kansas court in Amoco impliedly recognized the legislature's authority to exclude specific businesses or industries as is proposed in HB 322.

RB:jpd

FOOTNOTES

1/ Alaska, Arkansas, California, Colorado, Hawaii, Idaho, Kansas, Michigan, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Texas, Utah, and Washington.

2/ Alaska, California, Colorado, Florida, Kansas, Louisiana, Mississippi, New Mexico, Oklahoma, Texas, Utah and Wyoming.

3/ California, Colorado, Kansas, New Mexico, Texas and Utah.

4/ Florida, Louisiana, Mississippi, Oklahoma and Wyoming.

5/ Alaska, California, Colorado, Florida, Kansas, Louisiana, Mississippi, New Mexico, Oklahoma and Utah.

6/ Alaska, California, Colorado, Kansas, New Mexico and Utah.

7/ Kennicott Copper Corp. v. State Tax Commission, 493 P.2d 632 (Utah 1972); Amoco Production Co v. Armold, 518 P.2d 453 (Kansas 1974).

8/ Superior Oil Co. v. Franchise Tax Board, 386 P.2d 33 (Calif. 1963) and the companion case Honolulu Oil Corp. v. Franchise Tax Board, 386 P.2d 40 (Calif. 1963), decided under UDITPA prior to California's entry into the Multistate Tax Compact.

9/ Florida, Louisiana, Mississippi and Oklahoma.

10/ Oklahoma.

11/ Louisiana - Texas Co. v. Cooper, 107 so 2d 687 (1959).

January 26, 1978

MEMORANDUM

SUBJECT: Impact of Proposed Changes in Corporate Income Tax Treatment of Oil and Gas Operations on Alaska Membership in the Multistate Tax Compact (H. O. 4448)

TO: The Honorable John Rader

FROM: Gregg K. Erickson
Director
Division of Research Services

The attached memorandum responds to your questions proposed in the above Work Order. The brief answer to your question is that neither the "franchise tax", "direct accounting", or "4th-factor" approaches are likely to be construed as a breach of the multistate tax compact.

In accordance with your instructions we are forwarding a copy of this memorandum to the Department of Revenue for comment.

GKE:ftc
Attachment

b
cc: Attached memoranda to John Messenger,
Deputy Commissioner of Revenue

04-D3LH

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER / POUCH S – JUNEAU 99811

May 8, 1978

The Honorable Kay Poland
Chairman
Senate Resources Committee
Alaska State Legislature
Juneau, AK 99801

Dear Senator Poland:

In his testimony on April 28, 1978, Milton Lipton noted three points of a technical nature which he felt should be addressed by the committee. I have talked to Gregg Erickson about these three items and believe that there is either an explanation of the specific language in the draft or a suggestion of specific language to the draft, to clear up the points raised by Mr. Lipton. I will discuss each point in order that it was mentioned.

1. Page 3, line 3

On this point, Mr. Lipton raised the concern that a tariff properly on file with a regulatory agency might be ultimately overturned by that agency or the courts with appropriate refunds ordered. In this situation, he felt that we should assure ourselves that the income tax for any prior periods would be recomputed based upon the new tariff. That was our intent and we believe that the matter can be clarified with the addition of the following additional language at line 6 on page 3 of the proposed committee substitute:

<u>If a tariff properly on file with a regulatory agency is subsequently amended, changed, or overturned retroactively, the reasonable costs of transportation shall be recomputed for that period using the newly determined tariff</u>.

2. Page 3, line 8, (c)(1)

On this point, Mr. Lipton felt that this deduction for royalty paid was too narrow since it included only royalties paid to the state or the United States. We agree. Our intent was to insure that a company would

only be taxed upon its interest in the oil and gas. Accordingly we would propose the following amendment at line 8 on page 8 of the proposed committee substitute:

(1) royalties paid in kind or in value. [TO THE STATE OR THE UNITED STATES.]

3. Page 3, line 13, (c)(4)

On this technical point, Mr. Lipton raised the concern that this particular deduction for operating expenses should fit with the definition of gross value so as to assure that there is not a double deduction of these particular expenses of producing, gathering, preparing the oil or gas for pipeline transportation. We have rechecked the interrelationship of the definition of gross value and this deduction and believe that they do fit together without overlap to assure no double deduction.

We have tied our definition of gross value to the definition of "gross value at the point of production" in the production tax statute. That definition contained in AS 43.55.140(12) provides essentially that the value at the point of production is the value at the point where the oil or gas is metered or measured in a condition of pipeline quality. This means that the oil or gas is valued without deduction for the costs of production including the costs of gathering, conditioning and treating prior to pipeline transportation. For example, for Prudhoe Bay oil production the oil is valued under this definition at the point where it is metered into the Trans Alaska Pipeline (Pump Sation No. 1) and no deductions upstream from that point are allowed. In (c)(4) the companies are then allowed to take their direct upstream operating costs as deductions from the gross value in arriving at net income. Since gross value is determined without deducting these operating expenses under the definition in the production tax statute, there is no double deduction of these items. Therefore we believe the definition of gross value and deduction for operating expenses fit together.

Also, I might note in response to a question from you regarding the proposed Sec. 43.21.050 ASSESSMENT OF INCOME AND TAX, Mr. Lipton did not specify any objection but noted that this was, as far as he knew, a standard provision in other taxes. I agree, but I would like to emphasize the importance of this provision in the separate accounting approach. This provision would help to assure that the tax

avoidance problems which we have pointed out in last year's CS HB 322 are eliminated, since the department itself would be directly assessing the income and tax. This would be similar to the way the property tax is now administered and in our view is essential to administer a separate accounting approach to income taxation.

Mr. Lipton also raised certain policy considerations for the committee on the proposed committee substitute for HB 322. Those items included (1) the use of "book income" instead of "federal taxable income" as a definition of net income from activities other than oil and gas production and pipeline transportation, and (2) the use of the OCS apportionment factors for apportioning income from activities other than oil and gas production and pipeline transportation. As you know, these are items which were contained in our original franchise tax approach, and we believe that they would enhance a new corporate income tax for the oil and gas industry.

Sincerely,

John R. Messenger
Deputy Commissioner

cc: Gregg Erickson

TO: ALASKA OIL AND GAS ASSOCIATION

FROM: JOHN S. WARREN

DATE: APRIL 24, 1978

RE: INCOMPATIBILITY OF PENDING TAX LEGISLATION WITH MULTISTATE TAX COMPACT

In my "Position Pager on Alaska Oil and Gas Taxation," I stated that enactment of the pending legislation on income taxation of oil companies might very well be a breach of the Multistate Tax Compact which would require Alaska to give up its membership in the Compact and the benefits inuring therefrom, such as participation in the joint audit program. I made this statement with respect to both HB 322 and SB 105 (which has become SCS CSHB 322). Crawford Thomas also spoke on this point in his testimony before the Senate Resources Committee on February 24, 1978.

The Legislative Affairs Agency disputes my contention and has advised the Senate Committee that adoption of the proposed legislation would not jeopardize the states membership in the Compact. You have asked for my further comments. There is no present authority squarely on the question of how far a party State may depart from the apportionment prescribed in the Compact without forfeiting its membership; therefore no one

can say dogmatically that enactment of SCS CSHB 322 will or will not forfeit Alaska's membership. Any opinion of what the outcome would be must necessarily be somewhat speculative, but I still believe that an examination of the relevant authorities that do exist will show that jeopardy would surely be created and the end result would probably be termination of Alaska's membership.

The Relevant Provisions of the Compact and MTC Regulations

Article I. "The purposes of this compact are to ... (2) Promote uniformity or compatibility in significant components of tax systems."

Article II. "As used in this compact: ... 4. 'Income tax' means a tax imposed on or measured by net income including any tax imposed on or measured by an amount arrived at by deducting expenses from gross income, one or more forms of which expenses are not specifically and directly related to particular transactions."

Article III. "1. Any taxpayer subject to an income tax whose income is subject to apportionment and allocation for tax purposes pursuant to the laws of a party State or pursuant to the laws of subdivisions in two or more party States may elect to apportion and allocate his income in the manner provided by the laws of such State or by the

laws of such States and subdivisions without reference to this compact, or may elect to apportion and allocate in accordance with Article IV."

Article IV. (the UDITPA provisions) "... 2. Any taxpayer having income from business activity which is taxable both within and without this State, other than activity as a financial organization or public utility or the rendering of purely personal services by an individual, shall allocate and apportion his net income as provided in this Article. ..."

"18. If the allocation and apportionment provisions of this Article do not fairly represent the extent of the taxpayer's business activity in this State, the taxpayer may petition for or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

"(a) separate accounting;

"(b) the exclusion of any one or more of the factors;

"(c) the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this State; or

"(d) the employment of any other method to effectuate an equitable allocation and apportionment

of the taxpayer's income."

Regulation IV-18. "Article IV, Sec. 18 permits a departure from the allocation and apportionment provisions of Article IV only in limited and specific cases where unusual fact situations (which ordinarily will be unique and non-recurring) produce incongruous results under the apportionment provisions contained in Article IV."

It is clear that the tax to be imposed on oil companies by SCS CSHB 322 would be an "income tax." Therefore, the oil companies must be allowed the option to continue using the standard formula method. There is nothing in the compact that excludes oil companies from the standard treatment; only financial corporations and public utilities are excluded. It follows, therefore, that Alaska's only hope of defending its proposed special treatment of oil companies is to show that it is authorized by § 18 of Article IV.

It would seem impossible to bring Alaska's proposed action within the restrictive language of Regulation IV-18. The situation with respect to the oil companies is neither unusual, unique, or nonrecurring. Moreover, the determination under § 18 is supposed to be made by the tax administrator, not by the state legislature.

AGO 547887

How Would the Multistate Tax Commission React to the Issue?

If Alaska enacts SCS CSHB 322, the Multistate Tax Commission will be faced with a difficult problem. On the one hand, they want very much to maintain and increase the membership in the Compact. On the other hand, they are sure to realize that the Compact's only hope of success is for all party States to remain true to the principle of uniformity. This is why they have committed themselves to a very strict construction of § 18 in their own regulations. Surely they will know that any laxity in enforcing this strict construction would be a serious setback to their efforts to convice the business community, state governments, and particularly the U.S. Congress that the Compact is the best answer to the uniformity problem.

A recent incident involving Florida may be illuminating. After that state had joined the Compact, its legislature passed a law providing for double weighting of the sales factor (a maneuver which increased Florida's tax-take as primarily a market state and which also gave it a selling point in attracting business to establish factories in the state). Reliable sources have told me that there were considerable expressions of displeasure over this at Multistate Tax

Commission meetings. A confrontation was avoided, however, when Florida voluntarily withdrew from the Compact. Alaska can be expected to incur this same kind of pressure to resign if it enacts SCS CSHB 322.

The recent approval of the Compact by the U.S. Supreme Court in the U.S. Steel case has brightened the future of the Compact. The party States look upon it as their best chance to convince Congress that the states can achieve and maintain uniformity on their own and that federal internention is neither necessary or desirable. They are not likely to risk spoiling this opportunity by allowing the legislature of one Party State to take a whole class of taxpayers completely out of the ambit of the Compact. Such lack of self-restraint by one Party State, if left unchallenged by the other Party States, could destroy the credibility of the Compact. It would stand as evidence that any Party State can depart from the standard apportionment formula whenever it thinks it is not getting enough revenue from a particular industry. As such, it would provide wonderful ammunition for the advocates of federal intervention.

Of course, Alaska could try to persuade the other party States to amend the Compact to make the proposed

Alaska method the standard method for taxing oil companies. The chances of Alaska being successful, however, are nil. The market states would never agree to it. They would never consent to the downgrading of the place of marketing as compared to the place of production. They would insist that tax revenue from the oil industry be shared between production states and market states in the same way that it is for all other businesses.

In summary, Alaska is sure to become a pariah among party States to the Compact if SCS CSHB 322 is enacted into law. If Alaska is unwilling to share the tax revenue of the oil industry with other states in the conventional way, it has no future in the Compact.

How Would the Courts React to the Issue?

As improbable as it may be, let us assume that the Multistate Tax Commission takes no action to expel Alaska from the Compact. Any oil company would then be able to force the issue into court by a declaratory relief action, by refusing to submit to a joint audit in which Alaska is participating, or by contesting an Alaska deficiency assessment based on denial of the UDITPA option. This raises the question of how the courts will interpret § 18.

The following cases have been cited by the Legislative Affairs Agency or by me, or both, as having a possible bearing on the question:

Texas Co. v. Cooper, (La. 1959) 107 So. 2d 676.

Superior Oil Co. v. Franchise Tax Board, (Cal. 1963) 386 P. 2d 33.

Honolulu Oil Corp. v. Franchise Tax Board, (Cal. 1963) 386 P. 2d 40.

Webb Resources, Inc. v. McCoy, (Kan. 1965) 401 P. 2d 879.

Kennecott Copper Corp. v. State Tax Commission, (Utah 1972) 493 P. 2d 632.

Donald M. Drake Co. v. Dept. of Revenue, (Ore. 1972) 500 P 2d 1041.

Amoco Production Co. v. Armhold, (Kan. 1974) 518 P.2d 453.

None of these cases involves the Compact. The last three are interpretations of § 18 of UDITPA. The first four involve the question of separate accounting versus formula apportionment for oil companies prior to UDITPA.

The Texas and Webb cases held that the oil companies in question were not engaged in a unitary business and therefore separate accounting was favored over formula apportionment. The Superior and Honolulu cases held that the oil companies in question were unitary businesses, and therefore separate accounting was rejected and formula

apportionment was required.

In the Alaska situation, no one can dispute that the oil companies under consideration are unitary businesses. The Department of Revenue has so treated them in the past, and under the pending bill they would still be treated as unitary businesses, with formula apportionment being applied to all of their income except their Alaska production income. Therefore, Alaska's proposed use of separate accounting could not be defended on the ground that the oil companies are not unitary businesses, and the Texas and Webb cases would be of no help to Alaska.

If it is found to be a fact that an oil company is a unitary business, then the Superior and Honolulu cases are the persuasive authority. They were decided under a statute giving much broader discretion than does UDITPA, and still they held that separate accounting could not be used for oil companies that were found to be unitary businesses.

The more helpful cases, of course, are those decided under UDITPA. The first of these was Kennecott. That corporation was one of the largest taxpayers in Utah, but the Tax Commission felt it was not collecting enough revenue from Kennecott because the sales factor in

the apportionment formula was working to the state's disadvantage, i.e., almost all of the copper was sold outside the state. (Note the parallel to the Zeifman and Ainsworth complaint against the formula as applied to oil companies in Alaska). So the Tax Commission invoked § 18 and required Kennecott to use separate accounting. The court upheld the Tax Commission. The decision, however, would be a very weak reed for Alaska to lean upon. In the first place, it was a 3-to-2 decision, with Chief Justice Callister writing a scathing dissent. It is quite possible that other courts will find the dissent more persuasive than the majority opinion. Secondly, it has been criticized by commentators. See, e.g., Peters, "State Income Tax Problems of Interstate Business," 33 N.Y.U. Tax Inst. 899, 952. Finally, the courts of two other states have indicated their disdain for it. In Chase Brass & Copper Co. v. Franchise Tax Board, (Cal. 1977) 138 Cal. Rptr. 901, it was ruled that Chase and its parent, the very same Kennecott, were engaged in a unitary business and that formula apportionment was proper. In Amoco, infra, the Director of Taxation relied heavily on Kennecott to support his claim to broad authority under § 18, but he still lost his case.

The next court to interpret § 18 was the Oregon court in Drake. There the tax administrator sought to compel a construction contractor to use separate accounting, citing § 18 as authority. The court held that, in keeping with the purpose of UDITPA, the use of any method other than apportionment should be exceptional, and the party - the taxpayer or the tax administrator - who seeks to invoke § 18 has the burden of proof.

Amoco is another case where both the majority opinion and the dissenting opinions should be read. The majority opinion is favorable to my position, and the dissents are even more favorable. The Director of Taxation thought he could continue to require oil companies to use separate accounting after Kansas adopted UDITPA, just as he had been doing before, and as had been upheld by the court in Webb. The court rebuffed him, saying that separate accounting and formula apportionment were no longer two methods of equal stature and that UDITPA made formula apportionment the preferred method, even for oil companies, since they were not among those businesses expressly excluded from the act.

The Director also contended that his action was authorized by § 18. The majority opinion endorsed

Drake as a correct interpretation of UDITPA and found Kennecott to be unpersuasive because of the 3-to-2 split in the Utah court. But the majority thought the Director should have another chance to meet his burden of proof because he had applied the wrong test. His evidence consisted solely of a wide discrepancy in the percentage of the taxpayer's income attributed to Kansas by separate accounting and the percentage arrived at by formula apportionment. The majority pointed out that the test is not whether the standard method clearly reflects net income but whether it fairly represents the extent of the taxpayer's business activities in the state. They remanded the case so that the Director could make a new finding under § 18 using the business activities test.

The two dissenters felt that the Director had failed to meet his burden of proof and so the litigation should end with a judgment for the taxpayer. Chief Justice Falzer wrote: "Tax liability is to be computed on the basis of business activity, and a comparison between formula allocation and separate accounting to ascertain the higher tax, is not within the scheme of the Uniform Act" (518 P 2d 469).

Both the majority and the dissenters agreed

that a showing that separate accounting will allocate more income to the state is not sufficient to support the imposition of separate accounting under § 18. They disagreed only as to whether the administrator should be given another bite at the apple.

There is a clear lesson to be learned by Alaska from the Amoco case. The only evidence that the proponents of SCS CSHB 322 have offered to show that a variance under § 18 is justified is evidence that separate accounting will allocate more income of oil companies to the state than does formula apportionment. In the views of both the majority and the dissenters in Amoco, this evidence is incompentent to meet the burden of proof under § 18.

It is to be noted that in all four of these cases interpreting § 18 of UDITPA were cases where the tax administrator determined that a variance should be made. The incipient Alaska case will present the question of the propriety of the legislature making the determination. Again, Alaska will not be within the express language of § 18. The court is quite likely to find significance in the fact that the language of § 18 contemplates action by the tax administrator rather than

the state legislature, for this would indicate an intention that the section is to be used only sparingly and in very specific cases. It is one thing for the tax administrator, upon review of the facts of a particular case, to find that the standard method does not fairly represent the extent of the taxpayer's business activity in the state and to devise another method that works better in that particular case. It is quite another thing for a state legislature to pre-empt the question and declare that a whole class of taxpayers shall receive non-standard treatment. The framers of UDITPA and the Compact intended the former as a limited continuation of traditional administrative discretion in this field, but they certainly did not intend to include the latter within the meaning of § 18. Such action by a state legislature would probably be viewed by the courts as nothing but an attempt to unilaterally amend the Compact itself.

Conclusion

If SCS CSHB 322 is enacted, Alaska will come under considerable pressure from other party States to quit the Compact. If the issue is not forced at that level, Alaska will have to defend itself in court and will have great difficulty in meeting the burden of proving that its action is compatible with the Compact.

SOHIOBPA A AHG

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TELEX PD CLEVELAND , OHIO APRIL 24, 1978 960599

BP ALASKA
ANCHORAGE ALASKA
ATTN JOHN SAINT

FOR IMMEDIATE RELEASE

CLEVELAND, OHIO, APRIL 24--THE STANDARD OIL CO. (OHIO) REPORTED TODAY THAT NET EARNINGS PER SHARE FOR THE FIRST QUARTER OF 1978 WERE $.75, UP 56 PER CENT, ON A GREATER NUMBER OF SHARES OUTSTANDING, FROM $.48 CENTS FOR THE SAME PERIOD OF 1977. PER SHARE COMPUTATIONS WERE BASED ON 46 MILLION AVERAGE SHARES OUTSTANDING FOR THE FIRST PERIOD THIS YEAR, AND 38.6 MILLION SHARES FOR THE FIRST QUARTER OF 1977.

THE INCREASE IN SHARES REFLECTS ADDITIONAL COMMON SHARE EQUIVALENTS EARNED BY THE SPECIAL STOCK OWNED BY THE BRITISH PETROLEUM COMPANY LIMITED AS SOHIO'S ALASKAN CRUDE OIL PRODUCTION INCREASED.

"NET INCOME ROSE TO $36.3 MILLION FOR THE FIRST QUARTER OF 1978 COMPARED TO $18.7 MILLION IN 1977. THIS INCREASE WAS DUE TO ALASKAN CRUDE OIL OPERATIONS THAT OFFSET SUBSTANTIALLY INCREASED INTEREST EXPENSE, LOSSES FROM THE LENGTHY NATIONWIDE COAL STRIKE, AND LOWER INCOME FROM ROYALTIES," SOHIO CHAIRMAN ALTON W. WHITEHOUSE REPORTED.

RETURN ON ALL-TIME RECORD SALES FOR ANY QUARTER OF $1.03 BILLION WAS UP TO 3.5 CENTS ON EACH SALES DOLLAR FROM 2.3 CENTS FOR THE FIRST QUARTER LAST YEAR DESPITE THE FACT THERE WAS A LOSS FROM THE COAL BUSINESS.

THE COMPANY'S RETURN ON TOTAL CAPITAL EMPLOYED IN THE BUSINESS FOR THE TWELVE MONTHS ENDED MARCH 31, 1978, ROSE TO 5.6 PER CENT FROM 3.2 PER CENT FOR THE TWELVE MONTHS ENDED MARCH 31, 1977.

"SOHIO'S SHARE OF NET CRUDE OIL PRODUCTION FROM THE PRUDHOE BAY FIELD AVERAGE 382,600 BARRELS PER DAY DURING THE FIRST QUARTER OF 1978, WITH NO OIL PRODUCTION FROM THIS SOURCE IN THE FIRST QUARTER OF 1977," WHITEHOUSE SAID. IN EARLY APRIL, NET SUSTAINED PRODUCTION PASSED 400,000 BARRELS PER DAY, WHICH RAISES BP'S STOCK INTEREST TO 45.5 PER CENT.

REPAIRS TO PUMP STATION EIGHT, WHICH WAS DAMAGED BY FIRE DURING STARTUP OPERATIONS OF THE TRANS-ALASKA PIPELINE, WERE COMPLETED EARLY IN MARCH AND AN OPERATING LEVEL OF MORE THAN 1.1 MILLION BARRELS PER DAY IS EXPECTED TO BE SUSTAINED DURING THE SECOND QUARTER THIS YEAR. FOR THE FIRST HALF OF APRIL, OPERATIONS AVERAGED ABOUT 1,130,000 BARRELS PER DAY. AT THIS RATE, SOHIO'S NET SHARE OF PRUDHOE BAY PRODUCTION WAS ABOUT 525,000 BARRELS PER DAY.

INCOME FROM OPERATIONS BEFORE INTEREST AND INCOME TAXES WAS $164.7 MILLION, UP FROM $43.8 MILLION IN 1977. PETROLEUM OPERATIONS IMPROVED TO $173.2 MILLION FROM $25.2 MILLION IN 1977, ALTHOUGH THE IMPROVEMENT WAS RESTRAINED BY LOWER THAN EXPECTED REFINERY RUNS DUE TO SEVERAL MECHANICAL PROBLEMS DURING THE QUARTER. COAL OPERATIONS LOST $10.7 MILLION, COMPARED TO AN $8.7 MILLION INCOME IN 1977. CHEMICALS AND PLASTICS DECLINED TO $2.1 MILLION FROM $3.1 MILLION. ROYALTIES WERE DOWN $7.7 MILLION IN THE FIRST QUARTER OF 1978, WHEN A FIXED SUM LICENSE WAS SOLD TO A TURKISH FIRM.

FIRST QUARTER SALES AND OPERATING REVENUE REACHED $1.03 BILLION, UP 25 PER CENT OVER $823.5 MILLION FOR THE SAME PERIOD LAST YEAR, DUE PRIMARILY TO ALASKAN CRUDE OIL SALES.

COSTS AND EXPENSES, OTHER THAN INTEREST AND INCOME TAXES, ROSE 11 PER CENT TO $865 MILLION FROM $761.9 MILLION IN THE FIRST QUARTER OF 1977. THERE WAS A SUBSTANTIAL INCREASE IN DEPRECIATION AND DEPLETION BECAUSE OF ALASKAN OIL OPERATIONS.

"NET INTEREST EXPENSE INCREASED TO $114.9 MILLION FROM $17 MILLION IN THE FIRST QUARTER OF 1977, REFLECTING THE DISCONTINUANCE OF CAPITALIZING OR DEFERRING INTEREST DURING CONSTRUCTION, TESTING, AND FILLING OF THE TRANS- ALASKA PIPELINE. INCOME TAX EXPENSE INCREASED DUE TO HIGHER PRE-TAX INCOME.," WHITEHOUSE CONCLUDED.

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SOHIOBPA A ANG

SOHIO 2 CLV

EXXON COMPANY, U.S.A.
POUCH 6601 • ANCHORAGE, ALASKA 99502

PRODUCTION DEPARTMENT
ALASKA OPERATIONS

March 22, 1978

Mr. W. Monte Taylor

The alleged Croft-Hammond Compromise substitute bill adopts Croft's separate accounting approach for the determination of corporate income tax liability for oil and gas production and pipeline transportation income. The compromise bill adopts Hammond's apportionment of book income approach for the determination of income other than oil and gas production and pipeline transportation income.

Croft's Senate CS 322, currently in the Senate Resources Committee, and the compromise proposal would adopt variations of wellhead value to directly determine gross income from Alaska oil and gas production with the compromise bill allowing the Department of Revenue flexibility to determine that value by regulation. Definitions of gross income from Alaska production and specific deductions therefrom to arrive at taxable net income are compared below. The major difference between the two bills in allowable deductions is the allowance of some overhead and administration expense by the compromise bill.

Income from oil and gas pipeline transportation would be the same as reported to certain regulatory agencies under both the compromise and Croft's Senate CS 322.

With respect to income from activities other than oil and gas production and pipeline transportation, the compromise proposal differs from Croft's bill, but is similar to Hammond's bill that passed the House, in that it adopts certified consolidated net income as apportionable income. Croft's bill would use a two-factor property and payroll formula whereas the compromise proposal would use a three-factor property, payroll and sales formula requiring the inclusion of Alaska OCS property and payroll in the formula.

Determination of Gross Oil and Gas Production Income:

Croft's Senate CS 322:	Croft-Hammond Compromise:
Gross value as established for purposes of production tax.	Gross income at the Point of Production. Dept. of Revenue by regulation may

Croft's Senate CS 322:	Croft-Hammond Compromise:
	use (1) actual prices or values received, (2) posted price, same field or (3) prevailing prices or values, same field.

Deductions from Gross Income to Determine Net Taxable Income:

Croft's Senate CS 322:	Croft-Hammond Compromise:
Royalties actually paid	Royalties actually paid
Severance tax actually paid	Severance and conservation tax actually paid
Property taxes actually paid on property directly associated with production after date of initial production	Property taxes actually paid on property used directly in production after date of commercial production
Direct costs incurred by corporation in operating field	Direct costs incurred by or for corporation in operating lease or property
Depreciation on investments associated with production including depreciation on capitalized interest and amortization of lease payments and property taxes paid before initial production	Depreciation on property used directly in production including amortization of capitalized interest, lease payments and property taxes paid before commercial production
Interest expense not capitalized according to the percentage that property associated with production in Alaska bears to corporate fixed assets everywhere	Interest expense not capitalized according to the percentage that property used directly in production in Alaska bears to real and tangible personal property everywhere
Expenses after 12/31/76 of unsuccessful exploration efforts in Alaska	Expenses after 12/31/77 of unsuccessful exploration efforts in Alaska
	General overhead and administration expenses according to

Croft's Senate CS 322:	Croft-Hammond Compromise:
	the percentage that property used directly in production in Alaska bears to tangible personal and real property everywhere or .12 cents/bbl or .02 cents for each MCF gas

Determination of Income from Oil and Gas Pipeline Transportation:

Croft's Senate CS 322:	Croft-Hammond Compromise:
Oil - "Net balance transferred from income" reported to ICC. Certified by Alaska P/L Comm.	Oil - "Net balance transferred from income", determined by Dept. of Revenue, reported to Fed. Energy Regulatory Comm.
Gas - "Balance transferred from income" reported to FPC. Certified by Alaska Public Utilities Commission	Gas - "Balance transferred from income", determined by Dept. of Revenue, reported to Fed. Energy Regulatory Comm.

Determination of Income from Activities Other Than Oil and Gas Production and Pipeline Transportation:

Croft's Senate CS 322:	Croft-Hammond Compromise:
Subtract oil and gas production and P/L transportation income from combined corporate income and apportions balance using two-factor payroll and property formula	Subtract oil and gas production and P/L transportation income from consolidated net income certified by CPA for purposes of reporting to stockholders (book income) and apportion by three-factor property, payroll and sales formula, including property and payroll from Alaska OCS in factors

James R. Howell

JRH:djb

xc: W. M. Barstow
H. W. Beathard
N. C. Fitch
S. J. Kettelkamp
R. J. Walker

AGO 547904

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

April 4, 1978

MEMORANDUM

SUBJECT: Milton Lipton's Comments on Draft No. 5 of Proposed CS of CS for HB 322

TO: The Honorable Kay Poland

FROM: Gregg K. Erickson
Director of Research

Briefly, Milton Lipton's comments to me over the telephone were as follows:

1. He suggested that the definition of gross income was too broad. Mr. Messenger and I have not discussed specific language by which it might be narrowed, but I believe such language could be developed in a matter that satisfies the administration.

2. He suggests that we should not necessarily assume that transportation costs set by a tarrif on file with the pipeline commission are necessarily resonable (page 3, line 3-5). He suggests language to take care of the situation where a filed tarrif may be later found to be unreasonable by a court. I am sure that the administration would have no problem with this change.

3. On page 3, line 8, Lipton suggests that we make it clear that royalties paid to individuals or corporations are also deductable As the bill stands now these are taken account of in the determination of gross value, but there should be no problem (no change in the effect of the bill) by putting this deduction here.

4. Milton questions the usefulness of the concept of book income in the allocation of "other income" (page 6, line 25).

5. On page 7, line 18, he questions the "semmetry" of the attempt to use payroll and property located on the Alaska OCS in the allocation formula for "other income".

I am not sure that the administration would accept these last two changes, although their revenue impact seems almost negligable to us.

AGO 547905

LEONARD E. KUST is a partner in the New York law firm of Cadwalader, Wickersham & Taft. He was formerly Vice President and General Tax Counsel of Westinghouse Electric Corporation with which he was associated from 1955 to 1970.

A native of Wisconsin, Mr. Kust is a graduate of the University of Wisconsin and the Harvard Law School. He is a member of the New York and Pennsylvania bars.

He is a past president of the Tax Institute of America, and of the Tax Executives Institute. Mr. Kust has served as Chairman of Governor Scranton's Committee on Tax Administration, Chairman of Task Forces for Governor Shafer's Tax Study and Revision Commission, and was a member of the Advisory Committee of the Commissioner of Internal Revenue. He has served on the Executive Committee of the National Tax Association, as a Director of the Chamber of Commerce of the United States, and as a member of the Taxation Committee. He is a member of the Tax Section of the American Bar Association, a member of the Council of the U.S.A. Branch of the International Fiscal Association, a member of the Advisory Board of Tax Management, and a member of the Advisory Board of the Tax Foundation.

Mr. Kust has written on a wide variety of tax issues, including "State Taxation of Income from Interstate Commerce: New Dimensions of an Old Problem", S.W. L.J. 1 (1960); "State Taxation of Interstate Sales", 46 Va. L. Rev. 1290 (1960); "Federal Tax Reform", the Tax Executive, Vol XIV, April, 1962; "Standards of Conduct for Tax Executives", the Tax Executive, Vol. XIV, July 1962; "A Reappraisal of Taxation of International Business Income", National Tax Association Proceedings, Annual Conference, 1966, p.154; "Alternatives for New Federal Revenues", Tax Review, Tax Foundation, Vol. XXXIV, No. 7, July, 1973.

GARY I. BOREN

Biographical Information

Education:

Bachelor of Arts, University of California, Los Angeles - 1957

Bachelor of Laws, University of California, Los Angeles - 1961

Member of the Order of the Coif
Note and Comment Editor, U.C.L.A. Law Review

Professional:

Professor of Law and Director of the Graduate Tax Program, Washington University School of Law, St. Louis, Missouri

Assistant Professor - 1967-1971
Associate Professor - 1971-1975
Professor - 1975-Present

Private practice, Los Angeles, California - 1961-1967

Member State Bar of California

Major Publications:

Equitable Apportionment: Administrative Discretion and Uniformity in the Division of Corporate Income for State Tax Purposes
49 So. Cal. L. Rev. 991 (1976)

Specific Allocation of Corporate Income in California: Some Problems in the Uniform Division of Income for Tax Purposes
30 TAX. L. REV. 607 (1975)

Separate Accounting in California and Uniformity in Apportioning Corporate Income
18 U.C.L.A. L. REV. 478 (1971)

Courses Taught:

*State and Local Taxation
*Federal Income Taxation
*Federal and Estate Gift Taxation
*Seminar in Tax Policy and Current Legislation
Seminar in Advanced Tax Research
Natural Resources

*Courses taught currently

JOHN S. WARREN

Biographical information

Education:

Bachelor of Science in Law, University of Minnesota - 1943

Bachelor of Laws, University of California, Hastings College of Law - 1950

Professional:

Loeb and Loeb, Los Angeles, California - 1957 to present (partner 1960 to present)

Government positions:

Associate Tax Counsel, California Franchise Tax Board - 1951-1957

Consultant, California Department of Finance - 1962

Consultant, California Legislature, Senate Fact Finding Committee on Revenue and Taxation - 1964

Memberships:

State Bar of California

Committee on Taxation (1958-1962)
Committee on Property Sales and Local Taxes (1975-)
Chairman, Subcommittee on Occasional Sales (1976-)

Los Angeles County Bar Association, Tax Section:

Committee on Federal and California Death and Gift Taxes

American Bar Association, Section of Taxation, Committee on State and Local Taxes:

Subcommittee on Non-Federal Solutions to Interstate Tax Problems (1974)
Subcommittee on Important Developments (1975)
Vice Chairman, Subcommittee on Corporation Net Income Taxes (1976)

Articles:

"Sales of Depreciated Properties to Related Entities," 1959 Southern California Tax Institute

"The Unitary Concept in the Allocation of Income," 12 Hastings Law Journal 42 (with Frank M. Keesling)

"Selected Problems in California Corporation Taxes," 1962 Southern California Tax Institute 939

AGO 547909

"Income Taxation of Testamentary Trusts,"
23 Journal of Taxation 278

"California Franchise Tax Allocation of Income of Unitary Business,"
1966 Southern California Tax Institute 529

"California's Uniform Division of Income for Tax Purposes Act,"
15 U.C.L.A. Law Review 156 (with Frank M. Keesling)

"Reform Act Changes in Pension and Profit Sharing Plans,"
1971 Southern California Tax Institute 137

Lecturer:

"Tax Problems of Closely Held Corporations and Their Shareholders"
California Continuing Education of the Bar, 1974

"Advising on California Taxes"
California Continuing Education of the Bar, 1975

"California State and Local Tax Rules Pertaining to the Entertainment Industry"
California CPA Foundation, 1974

Teacher:

Adjunct Professor of Law in State and Local Taxes,
Loyola University, School of Law
commencing January 1977.

Alaska State Legislature

SENATOR
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KODIAK, ALASKA 99615

Senate

KODIAK-ALEUTIAN
DISTRICT

WHILE IN JUNEAU
POUCH V
JUNEAU, ALASKA 99811

February 17, 1978

Don Dickey, President
Alaska State Chamber of Commerce
310 Seward Street
Juneau, Alaska 99801

Dear Don:

Thank you for your letter regarding SCS/CS HB 322. It will be inserted in the Resources Committee hearing record as you have requested.

Additional hearing dates for SCS/CS HB 322 have been scheduled for Wednesay, February 22 and Friday, February 24. If you are interested in providing additional testimony, please contact Sharon Stoops at 465-3717 as soon as possible.

Sincerely,

Kay Poland

Kay Poland
State Senator
Kodiak-Aleutian District

KP:ts

AGO 547911

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM

April 1, 1978

SUBJECT: SCS CSHB 322 and the Multistate Compact

TO: The Honorable Kay Poland

FROM: Gregg K. Erickson
Director of Research

Several weeks ago, Mr. John Warren testified before your committee and suggested that adoption of the Senate committee substitute for HB 322 would jeopardize Alaska's membership in the Multistate Tax Compact. As you requested at that time, an analysis of these assertions has been prepared and is enclosed herewith (memorandum of March 31 from Mr. Berry to me). A January 26 memorandum on the same subject is also enclosed. An even earlier memorandum is available in our files.

All these memoranda indicate fairly clearly that adoption of either the proposed or existing Senate committee substitutes for HB 322 would not jeopardize the state's membership in the multistate compact. The last paragraph of each memorandum contains a fairly concise summary of its findings.

Please let us know if you wish to have these memoranda circulated to other members, or if you believe additional work is needed in this area.

GKE:jm
Attachments

AGO 547912

STATE OF ALASKA
THE LEGISLATURE

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

March 31, 1978

SUBJECT: Membership in the Multistate Tax Compact (Work Order No. 4448 - Part II)

TO: Gregg K. Erickson
Director
Division of Research Services

FROM: Randolph Berry RHB
Legislative Counsel

The question continues to be raised as to the effect on Alaska's membership in the multistate compact of the enactment by Alaska of a statute mandating specific accounting and allocation of income methods for corporations engaged in the production of oil and gas in the state.

As this question has been raised and discussed by various legislative and industry consultants with inconsistent or conflicting answers, it is felt that it would be worthwhile to continue and elaborate on my memorandum on that subject, dated April 28, 1976, to Gregg Erickson, with an attempt to clarify the current state of the law and the practice of allocation of income from oil production in other oil producing states.

There are presently nineteen states which have adopted or joined the Multistate Tax Compact (referred to hereinafter simply as the "compact").1/ Of the twelve major oil producing states, 2/ six in addition to Alaska have joined the compact 3/ and five have not.4/ Of these same twelve oil producing states, ten have income taxes on corporate income; 5/ and of these ten, six are members of the compact. 6/ Of the six oil producing states, in only three has there been litigation on the issue of allocation of income from extractive industry under the compact or UDITPA formula versus separate accounting or other modification of the statutory formula. The litigation in two of these states 7/ involved section 18 of Article IV (the "relief provision"), in the third, the litigation turned on the issue of whether or not the business was unitary in nature, 8/ and the "relief provision" was not raised by either side.

AGO 547913

Of the four significant oil producing states which do not belong to the compact but do impose an income tax on corporations with statutory allocation formulas, 9/ one now has a statute which specifically provides that "the income from oil production shall be allocated according to the location of the producing property." 10/ In a second, the court has upheld the requirement of separate accounting for oil production on the ground that the statutory three-factor formula is manifestly unfair to the state. 11/ In the other two, no cases involving departure from the statutory formula was found. Thus it can be seen that there is currently a wide disparity of allocation provision and practice even in the twelve states with the most significant oil production.

In considering whether separate accounting is permitted to be used or may be imposed by a compact state on a business taxpayer involved in business activity in more than one state, it should be borne in mind that the determination may occur in two stages; and either stage may result in a decision that separate accounting is permissible (or conversely that the party requesting separate accounting has not made the necessary showing).

The first stage turns on the question of whether the business activity in the particular state is separate in nature from the taxpayer's business activity in other states, or whether it is part of a "unitary" business. The definition of what is a "unitary" business varies from state to state, which has lead to inconsistencies between member states in the application of the mulitstate compact. However, for a rough working definition, one might say that a unitary business is one in which the business activities of the taxpayer in several states are so interrelated that each part is dependent on the parts occurring in other states.

If the business activity is unitary, then the compact provisions would be applicable to that business activity, and allocation would occur under the three-factor formula, unless relieved under the second stage of the determination. If, on the other hand, the taxpayer's business activity in the particular state is essentially separate and distinct from his activity in other states, then separate accounting would be appropriate, and the compact formula would not be applicable.

If the business activity falls within the definition of "unitary" as in effect in the particular state, separate accounting may still be permissible for, or required of, that business taxpayer if it is determined, under the "relief provision," that the three-factor compact formula "does not fairly represent the extent of the taxpayer's business activity" in the state.

Whereas the first stage determination of whether a multi-state business activity is "unitary" might be viewed as a decision at the front door of whether the taxpayer enters into the compact's coverage, the determination made at the second stage (under the "relief" provision) is one of whether a taxpayer, already determined to be covered by the compact, leaves its coverage out the side door.

Of the cases discussed in the memo of January 26, 1978, the two California cases - Superior Oil Co. v. Franchise Tax Board, 386 P.2d 33 (Col. 1963) and Honolulu Oil Corp. v. Franchise Tax Board, 386 P.2d 40 (1963), and the Kansas case Webb Resources, Inc. v. McCoy, 401 P.2d 879 (1965), [decided prior to Kansas' entry into the compact], all involved the threshold question of whether or not the business activity involved was unitary in nature, and the question of fairness of the statutory formula was not raised. In both the Utah case Kennecott Copper Corp. v. State Tax Commission, 493 P.2d 632 (1972) and the Louisiana case - Texas Co. v. Cooper, 107 So 2d 687 (1959) [although Louisiana is not a member of the compact, its statutory formula parallels that of the compact] the question was decided on the basis of whether the statutory formula fairly represented the taxpayer's business activity in the state, and in both instances it was determined that it did not.

Since the decision of the Webb case in Kansas, which upheld separate accounting of oil production in the state, Kansas has joined the compact (1967), and the question of separate accounting has again been litigated in Amoco Production Co. v. Armold, 518 P.2d 453 (1974), this time on the question of whether the compact's three-factor formula fairly represented Amoco's oil production business in Kansas. Although John S. Warren, in a position paper, relies on the Amoco case for the proposition that oil companies are not excludable from the compact (p. 4), the case did not in fact contain any such holding. The court did say that although the legislature had chosen to specifically exclude certain businesses from

the Uniform Division of Income for Tax Purposes Act, it had not chosen to exempt oil companies. However, the holding of the case was based on the fact that the tax administrator had misinterpreted the Act; and the case was remanded for further proceeding by the tax administrator on the question of whether the UDITPA formula fairly represented the extent of the taxpayer's business activity in Kansas. The court, (contrary to the impression given by Mr. Warren), recognized that if the tax administrator found that the formula did not fairly represent the extent of Amoco's business activity in Kansas, then departure from the formula was appropriate; and the use of separate accounting was one of the authorized alternatives.

From the above discussion, it should be evident that there is no clear authority for the statement that Alaska's enactment of HB 322 in any of its versions would jeopardize Alaska's membership in the Multistate Tax Compact. Absolute uniformity is not required by the compact; its own provisions recognize the need for some flexibility on the part of state tax administration. The court in the Kennecott case recognized that the compact formula might be inappropriate to certain industries unless modified, and the Kansas court in Amoco impliedly recognized the legislature's authority to exclude specific businesses or industries as is proposed in HB 322.

RB:jpd

FOOTNOTES

1/ Alaska, Arkansas, California, Colorado, Hawaii, Idaho, Kansas, Michigan, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Texas, Utah, and Washington.

2/ Alaska, California, Colorado, Florida, Kansas, Louisiana, Mississippi, New Mexico, Oklahoma, Texas, Utah and Wyoming.

3/ California, Colorado, Kansas, New Mexico, Texas and Utah.

4/ Florida, Louisiana, Mississippi, Oklahoma and Wyoming.

5/ Alaska, California, Colorado, Florida, Kansas, Louisiana, Mississippi, New Mexico, Oklahoma and Utah.

6/ Alaska, California, Colorado, Kansas, New Mexico and Utah.

7/ Kennicott Copper Corp. v. State Tax Commission, 493 P.2d 632 (Utah 1972); Amoco Production Co v. Armold, 518 P.2d 453 (Kansas 1974).

8/ Superior Oil Co. v. Franchise Tax Board, 386 P.2d 33 (Calif. 1963) and the companion case Honolulu Oil Corp. v. Franchise Tax Board, 386 P.2d 40 (Calif. 1963), decided under UDITPA prior to California's entry into the Multistate Tax Compact.

9/ Florida, Louisiana, Mississippi and Oklahoma.

10/ Oklahoma.

11/ Louisiana - Texas Co. v. Cooper, 107 so 2d 687 (1959).

January 26, 1978

MEMORANDUM

SUBJECT: Impact of Proposed Changes in Corporate Income Tax Treatment of Oil and Gas Operations on Alaska Membership in the Multistate Tax Compact (W. O. 4448)

TO: The Honorable John Rader

FROM: Gregg K. Erickson
Director
Division of Research Services

The attached memorandum responds to your questions proposed in the above Work Order. The brief answer to your question is that neither the "franchise tax", "direct accounting", or "4th-factor" approaches are likely to be construed as a breach of the multistate tax compact.

In accordance with your instructions we are forwarding a copy of this memorandum to the Department of Revenue for comment.

GKE:ftc
Attachment

b
cc: Attached memoranda to John Messenger,
Deputy Commissioner of Revenue

Alaska
STATE CHAMBER of COMMERCE
310 Second St.
Juneau, Alaska 99801
Phone 586-2323

February 14, 1978

The Honorable Kay Poland
Chairman
Senate Resources Committee
Alaska State Senate
Pouch V, State Capitol Building
Juneau, Alaska 99811

Dear Senator ~~Poland~~ Kay:

Because of the long list of technical witnesses who have appeared and testified on the oil and gas corporate franchise tax (SCS/CS HB 322), I have decided to conserve your Committee's time by putting our views on this proposal in writing.

As you know, I have attended almost all the hearings on this important subject. However, I have yet to hear anyone justify the need for this legislation which Robert Moore of Arthur Anderson's Accounting Firm testified would skyrocket Alaska's tax load to 61% higher than the national average and increase by $1.9 billion the cost to the oil industry over the 25 year life of Prudhoe Bay. Certainly it would be difficult for the State to argue we need the added income to operate government in view of pending legislation dealing with the "Permanent Fund." In the Administration's bill on the fund, HB 298, they proposed setting aside 50% of all royalties, and 100% from bonuses to operate the Permanent Fund. The House version, HB 596, calls for depositing 30% in the fund of royalties, and 100%of bonus monies, while the Senate version calls for a split of 25% royalties and 25% bonuses.

My point is, if the Administration and the legislators feel we can set aside these substantial funds, in a so called "people's savings account", then certainly additional taxes are not needed or justified.

AGO 547919

The Alaska State Chamber of Commerce firmly believes that every industry should pay their fair share of supporting needed state government services. With the oil industry presently providing over 60% of the State's operating income, certainly it would appear that they are paying their share, and then some.

Our statewide membership is representative of all of Alaska's basic industries: fishing, timber, minerals, as well as oil and gas. My concern is that if this oil tax legislation were to pass, and it resulted in putting, to any degree, a damper on future exploration for energy resources, other industries would quickly be called upon to pick up the slack and carry a heavier burden of taxation.

With the many problems presently facing all of Alaska's basic industries, the need now is for encouragement, not additional obstacles in their path to expansion.

The Alaska State Chamber requests you reject this costly, unneeded legislation proposed in SCS/CS HB 322.

Thank you for this opportunity to state our position for te record.

Sincerely,

Don

Don Dickey
President

DD:rh
cc: All Alaska State Senators

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM

January 31, 1978

SUBJECT: Arthur Andersen & Company Oil Tax Study (W.O. #4812, partial)

TO: The Honorable Russ Meekins

FROM: Richard G. Haggart
Research Analyst

This memorandum is in response to your request that we analyze the Arthur Andersen & Co. report of January, 1978 ("Prudhoe Bay Field and Trans-Alaska Pipeline System Comparative State Tax Burden Study"), and the issues raised therein. Generally, you requested that we examine the following points:

1. The general accuracy of the Andersen report.

2. The applicability of its findings to Alaska.

3. Whether or not the Andersen study is an accurate representation of Alaska's tax burden on the oil industry generally (as opposed to an isolated consideration of Prudhoe Bay).

4. What other factors, if any, might modify or affect the conclusions reached in the Andersen study.

The Andersen Report

The Arthur Andersen report compares the relative tax burden on the Prudhoe Bay field and the trans-Alaska pipeline, of Alaska and seven other oil producing states -- California, Kansas, Louisiana, New Mexico, Oklahoma, Texas, and Wyoming. To make this comparison, Andersen developed a *pro forma* income and expense model for the Prudhoe Bay field and the pipeline for the period 1977-2001, based generally on publicly available data. The tax regimes of the seven other oil producing states were then transplanted to Alaska and applied to the Prudhoe Bay oil field and the Alyeska pipeline over the 25 year period. The results were then tabulated, and compared to the taxes which Andersen estimated would be paid under Alaska's current tax laws.

The study indicates that, given Andersen's assumptions, Alaska's tax system would generate the greatest amount of revenue from the Prudhoe Bay field and the pipeline of the eight states considered. *In general, we believe the Andersen study represents an accurate appraisal of the relative impact of Alaska's tax system on one oil field and its associated pipeline system. It is not, however, an accurate representation of the relative position of Alaska's oil tax system generally.* This last comment should not be considered a critique of the Andersen report *per se*, since the company performed only that analysis which was requested by its clients. As was noted above, we believe the Andersen report is an accurate response to the precise questions that were raised -- however narrow and incomplete such questions might be, in terms of determining the tax "burden" imposed by Alaska, and the effects of this "burden" on corporate incentives to find and produce oil in the state.

Outlined below are some of the major issues, which, in our judgment, must be considered in determining Alaska's relative position in terms of state taxation of oil and natural gas. Because of time and resource limitations, the material set forth below *cannot be considered definitive.* Instead, we believe it should serve as a starting point in considering the issues raised by the Andersen report and recent associated industry statements regarding Alaska's tax structure. We intend to pursue this analysis and will report further within the next two weeks.

Alaska's Taxes Outside Prudhoe Bay

By limiting the Andersen study to Prudhoe Bay and the trans-Alaska pipeline, an important aspect of Alaska's tax policy was omitted. Specifically, the state of Alaska imposes a *progressive* severance tax, designed to impose higher tax rates on profitable fields and production and much lower rates (or none at all) on less profitable production. By focusing on Prudhoe Bay, with very high per-well productivity, Alaska's severance taxes emerge at very high levels. According to the Andersen study, the effective rate of severance taxation imposed by Alaska on Prudhoe Bay is 11.2% over the life of the field.*

Alaska's relative position in terms of severance taxation, as calculated by Andersen & Co., is shown in Table I.

*We currently have underway an analysis of the extent to which this assumption departs from current expectations.

Table I
Relative Severance Tax Burden on Prudhoe Bay Oil 1977-2001

State	Aggregate Severance Tax Collections	% Gross Value
Louisiana	$5.7 billion	12.5%
New Mexico	$5.4 billion	11.4%
Alaska	$5.1 billion	11.2%
Oklahoma	$3.2 billion	6.97%
Texas	$2.2 billion	4.6%
Wyoming	$1.9 billion	4.0%

Source: Arthur Andersen & Co. report "Prudhoe Bay Field and Trans-Alaska Pipeline System Comparative State Tax Burden Study", January, 1978.

In contrast, however, a similar analysis of Alaska's tax burden on Cook Inlet (calculated for the years 1978-1980 utilizing the Legislative Affairs Agency's Severance Tax Model) results in an average tax rate of only 4.6% -- due to the much lower profitability and productivity of the Cook Inlet fields. In contrast, Louisiana's tax rate on Cook Inlet would remain at 12.5%, New Mexico's would *increase* somewhat to 12%, and Wyoming's rate would remain at 4%. The comparative severance tax burden of the six states which impose severance taxes is shown in terms of Cook Inlet in Table II.

Table II

Comparative Severance Tax Burden
Cook Inlet Oil Production 1978-1980

State	(MM/bbl) Cook Inlet Prod.	$ Value	Severance Taxes Due	% Effective Rate
Louisiana	150.5	$876.4	$109.6	12.5%
New Mexico	150.5	$876.4	$104.9[1]	11.97%
Oklahoma	150.5	$876.4	$ 61.4	7.0%
Alaska	150.5	$876.4	$ 40.6	4.63%
Texas	150.5	$876.4	$ 40.3	4.6%
Wyoming	150.5	$876.4	$ 35.1	4.0%

[1] Sum of New Mexico's percentage of value tax and cents per barrel charge.

Source: Arthur Andersen & Co. report "Prudhoe Bay Field and Trans-Alaska Pipeline System Comparative State Tax Burden Study", January, 1978; Alaska Effective Tax Rate from Legislative Affairs Agency, Research Division, Severance Tax Model.

In our judgment tables I and II are significant indicators of one of the important aspects of Alaska's current tax structure: namely, that Alaska imposes much lower tax rates on marginal or expensive production than do most other states. This relative flexibility of Alaska's severance tax statute, and its ability to operate without harming the essential profitability of high-cost or marginal producers, is not adequately addressed by the Andersen study which limits its consideration to the Prudhoe Bay field.

Another important consideration, and one that does not appear in Table II, is that Alaska's tax rate on such marginal fields *continues to decline* as the field's production goes down. Hence, while Alaska's *average* rate for the 1978-1980 period covered in Table II is 4.63%, it is declining each year. Thus, in 1978 the rate is 4.96%, in 1979 it is 4.59%, and in 1980 is down to 4.26%. In contrast, the rates of the other states in the Andersen study will not change appreciably as the rate of production in Cook Inlet declines -- and consequently, would pose ever increasing tax burdens on the producers in that field.

Suitability of Alaska's Tax Structure

Another consideration not addressed in the Andersen report, is the degree to which Alaska's tax system has been uniquely tailored to Alaska's oil situation. Like , it is at least plausible to assume that other state's have acted simila..y in designing their own tax systems. Consequently, it is useful to delineate the differences between various producing states that have lead to such different tax structures, and to consider how such different circumstances might make state-to-state comparisons difficult or misleading.

Table III outlines one key distinction between Alaska and several other representative producing states -- average per well productivity.

TABLE III

Well Productivity Calendar 1975

State	Average Daily Production
Alaska	947 bbl/d/well
Louisiana	64 bbl/d/well
California	21.7 bbl/d/well
Texas	20.0 bbl/d/well

While certainly not the sole determinant, well productivity is a very significant factor in determining profitability of a well. It is useful to note that in 1975, prior to any production at Prudhoe Bay, Alaskan oil fields produced at the highest average rate in the United States. The only other state in the U. S. with an average well productivity over 100 barrels per day was Florida. In comparison, recent productivity estimates of Prudhoe Bay wells indicate an average daily production of about 5000 barrels per day -- and the Department of Revenue anticipates that in peak production, the average will be in excess of 7000 barrels per day per well.

Yet another comparative measure between the various states is the success rate of exploratory ventures. Table IV outlines expenditures for drilling in calendar year 1975 for three states, along with reserves discovered.

TABLE IV

Cost of New Reserves & Field Extensions Calendar 1975
Compared with Prudhoe Bay

State	Drilling Exp. ($ Million)	Oil Found (MM/bbl)	Cost/bbl ($/bbl)	Finding Cost as % of Wellhead Value[1]
California[2]	$ 231.7	18.1	$12.80	100%
Texas[2]	$1507.6	329.9	$ 4.57	35.7%
Louisiana[2]	$2138.6	311.3	$ 6.87	53.7%
***				
Alaska[3] (Prudhoe Bay)	$3,000-$8,000	7,600	$0.395-$1.130	7% - 20.1%

[1] Wellhead values for these three states were assumed to be $12.80 per barrel for newly discovered oil. This figure utilizes the $13.30 per barrel market value for Alaskan crude used in the Andersen study, adjusted for a $0.50 per barrel marketing and transportation charge. It is used for general purposes of comparison only and is not meant to be a definitive valuation of new crude oil discovered in these states.

[2] Data for these three states was calculated from the Joint Association Survey and the Basic Petroleum Data Book, both published by the American Petroleum Institute.

[3] Values for Alaska were taken from the Arthur Andersen & Co. report, January, 1978.

Tables III & IV are not meant to provide a conclusive demonstration of some aggregate level of profitability of Prudhoe Bay oil. They are, however, illustrative of several comparative measures by which relative levels of state taxation could be compared. On the basis of the data in the Tables, Prudhoe Bay and Alaska generally, clearly emerge as an unusually productive oil province. For example, in 1975, even without Prudhoe Bay, Alaska's per well productivity was 43 times greater than that of California. If current Prudhoe Bay production is included, the ratio expands to over 240 to 1 -- meaning that the average California well produces only about 4/10 of one per cent as much oil per day as does an Alaskan well. Despite this vast disparity, Alaska's tax level on Prudhoe Bay is only about 8% greater than that which would be imposed under California's system of taxation. Again, based on return on investment (as measured by development costs versus wellhead prices) Alaska's oil emerges as highly profitable production, relative to recent experiences in other states. Thus, utilizing the Andersen data, the *full* finding and development over the entire life of the field costs of Alaska oil in Prudhoe Bay total only about 20% of wellhead value on a per barrel basis. This can be compared with the weighted average drilling cost (which does *not* include full field development expenditures as does the Alaska figure) for the three states in Table IV, which is 46% of the wellhead value. It should be noted here that investment in the trans-Alaska pipeline should not be included in these sorts of calculations, since for comparative purposes, the carriers are earning *no less* a rate of return on the pipeline than they would in any other taxing jurisdiction. And, even if the pipeline were included in the calculation, total investment in the line and the field would still only total 41% of the wellhead value of the Prudhoe Bay reserves 5% less than the weighted average of the states in Table IV.

Conclusions

The Andersen study compares the Alaska tax system with seven other taxing jurisdictions and concludes that in terms of Prudhoe Bay, Alaska's tax burden is the highest. For the reasons discussed above, we believe the Andersen study is of very limited value in determining whether or not Alaska's tax structure is "fair" or whether it is excessive compared with other states.

The key element in Alaska's tax structure which is not reflected in the Andersen report is the essentially progressive nature of the state's severance tax. *It is absolutely clear that if Alaska's severance tax system were transferred, without modification, to the other five states that impose severance taxes (as outlined in the Andersen report) the severance tax collections would be virtually nil in those states.* This is simply because Alaska's current law imposes no severance tax on wells producing less than 300 barrels per day, while the average daily production in *all* states, save Florida, is less than 100 bbls/d. As a consequence, we believe that Alaska's tax system would generally rank relatively low

if it were transferred "as is" to other states. What does this prove about Alaska's "tax burden"? In our judgment, it proves little, save that indiscriminate transfers of state tax systems among otherwise dissimilar jurisdictions can produce somewhat unusual -- and misleading -- results.

RGH:fc

February 9, 1978

The Honorable Kay Poland
The State Senate
Pouch V
Juneau, AK 99811

Dear Senator Poland:

I subscribe to both the morning and evening newspapers here in Anchorage. From what I read I reach the conclusion that the oil industry pays more than its fair share of taxes in the State of Alaska. These newspapers and the TV news media state that Alaska taxes the oil industry the highest of any state in the Union. There might be some argument that by some standards that Alaska does not tax the highest but there seems to not be any argument by any standards that Alaska is at least second highest in assessing taxes upon the oil industry of any state in the Union.

These same sources of news point out that the current Legislature wants to raise these taxes significantly higher so that, among other things, there will be no question in anyone's mind as to which state treats the oil industry worst in providing an encouraging environment for the discovery and development of additional reserves of oil. The industry drilled only ten exploratory wells in 1977 in Alaska, a state twice the size of Texas which drilled over 3,000 exploratory wells. The only conclusion I can reach is that the Alaskan Legislature does not want the oil industry's presence in Alaska except on a subsistence level to where no risk capital can be generated for a meaningful amount of exploratory drilling.

I work in the oil industry and have done so for well over 30 years. I have lived in Alaska six years. My family and I enjoy Alaska. I wish to finish my career in the oil industry working here in Alaska.

I want you to know that if I hear that further oil industry taxation is passed by the legislative session or future legislative sessions, I will express my disgust in the voting booth and encourage my family to do the same. I furthermore will encourage my friends, neighbors and business associates including storekeepers, barbershops and all to express themselves similarly in the voting booth. I will exhort my family to encourage their friends, neighbors, business associates, storekeepers, etc. to do the same thing. Please make it possible for me not to have to carry out such a threat.

Sincerely,

L. V. Gefvert
3113 Wesleyan Drive
Anchorage, AK 99504

AGO 547929

February 10, 1978

Senator Kay Poland, Chairwoman
Resources Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Poland:

The reason for my writing is to let you know my thoughts on the on-going debate relating to increasing, stabilizing or decreasing taxes being sought on oil, minerals and the like.

First: I am in the middle income group, work in a non resource oriented field - health care, don't know too much about oil taxation, am a moderate politically, and feel that non-renewable resource development - although perhaps destructive at times to the enivornment - is a fact of life to our country until another reasonable energy source can be developed that is affordable to the general population. If we have the resource - it should be developed, and in developing we should encourage the industry - not make them pay through the nose at the expense of all the consumers who end up paying for it (because of high taxes).

Alaska, to me, is a land of many special interests to special interest groups. There are very few people here who don't have a special interest. Some of these special interest groups can contribute significantly to our tax base - monies which will and are used to pay for the many services required by non-income producing special interest groups. As there are only a few groups that can make this contribution via taxes, then it looks to me that 1. we either have to stop spending - if taxes are to stay the same 2. Increase their taxes over and over and over -- or tax the public higher and higher or 3. Bite the tax bullet for a while to stabilize taxes - so other companies might look to Alaska as a good place to come and invest. New companies could then help to pick up the slack in tax revenues that we have been taking from a few and revenues would be increased because of larger numbers contributing a moderate amount - rather than a few paying all the freight.

Lastly, I seriously wonder if all the money we are asking for is all that necessary. I realize that we have to look to the future (a la permanent fund savings), but that is only if we are going to continually rely on non-renewable resources for our revenues. I would rather be more optimistic about Alaska and say that our growth potential in other industries which don't have to totally rely on these resources can be as great in revenue producing efforts.

Lets stabilize our tax base so investors won't be looking over their shoulders each year - thinking that the legislature is going to change taxes and structures every year. No company can feel comfortable with that spectre facing them.

Don't increase taxes to oil and gas. I would hate to see those golden eggs turn to lead -- while at the same time turn potential nuggets of potential in another direction to line someone elses pocket.

AGO 547930

The point here is not whether ARCO, Exxon, Mobile, BP and others are making alot of money here or anywhere else. The point is that Alaska must continue to provide from a stable base, and that means encouraging other industries in addition to our good working relationship with the non-renewable people in resources.

Our people (me included) and the existing companies are now paying some of the highest taxes in the nation. Frankly I think our state is overspending in some areas and that there is some waste. The fishing,commercial and sport industries, timber development, and soft ware and service industries are taking a back seat in being encouraged. As long as we continue to change and increase taxes, the situation is going to become worse.

As just a regular tax power, who lacks the sophistication of totally understanding this whole complex structure, I hope that you will consider my points.

Thank you for your consideration.

Sincerely,

Chris Beardsley

Christopher Beardsley
1412 Annapolis Drive
Anchorage, Alaska 99504

cc. Sen. Chancy Croft
Sen. Pete Meland

AGO 547931

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC.
PHONE 586-8440
JUNEAU, ALASKA 99801

1070 FEB 13 PM 7 58

02116 NL ANCHORAGE ALASKA 98 02-13 0442P AST

PMS SEN KAY POLAND CHAIRMAN OF RESOURCE COMMITTEE

JUN

THE ANCHORAGE CHAMBER OF COMMERCE OPPOSES ANY INCREASES IN TAXES ON OIL AND GAS OR OTHER BUSINESSES AT THIS TIME AS WE BELIEVE SUCH WOULD NOT SERVE THE LONG TERM BEST INTERESTS OF THE BUSINESS COMMUNITY, THE STATE OR THE PEOPLE OF ALASKA, SINCE EXISTING TAXES ARE EXPECTED NOT ONLY TOMEET FUTURE NEEDS OF THE STATE BUT ALSO TO BUILD A HUGH SURPLUS. TAX INCREASE ARE NOT NEEDED, TAXATION POLICIES WHICH PROVIDE INCENTIVE FOR INVESTMENT, BUSINESS DEVELOPMENT AND CREATION OF NEW JOBS WILL BETTER SERVE THE PEOPLE OF ALASKA.

WALT BONNETT LEGISLAITIVE AFFAIRS CHAIRMAN

AGO 547932

TABLE I

Net Income Tax Liability in Prudhoe Bay Under Present Tax Laws and Under Proposed CS for CS for HB 322 (Resources)
($ Thousands)

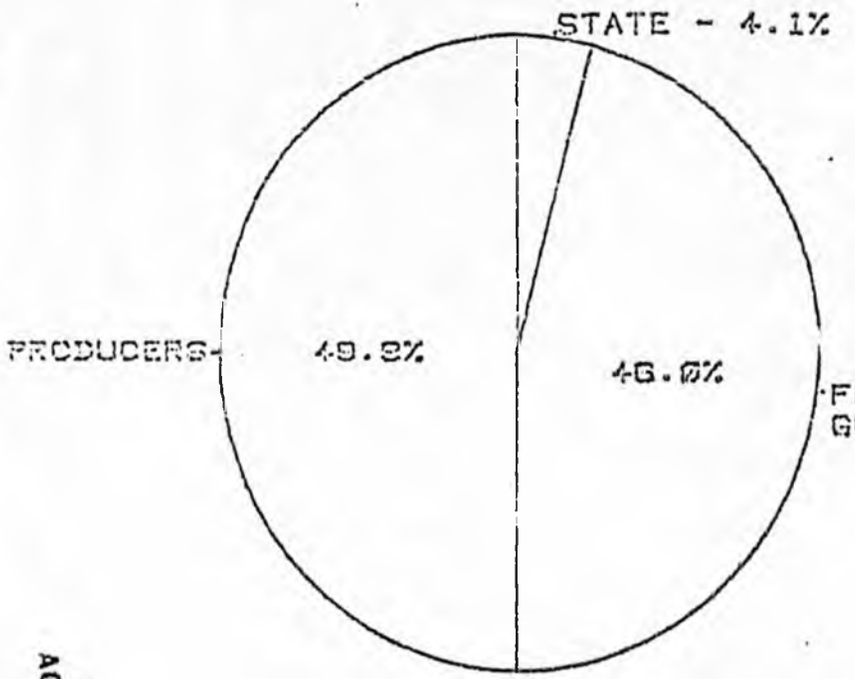
	Pre-Tax Net	State Income Tax	Federal Income Tax	Total Income Taxes
Current State Income Tax[1]	$37,294.000	$1,539,000	$17,162,000	$18,701,000
Effective Rate on Pre-Tax	NA	4.1%	46%	50.1%
Income Tax Under Proposed Substitute[2]	$37,294,000	$3,506,000	$16,218,000	$19,724,000
Effective Rate on Pre-Tax	NA	9.4%	43.5%	52.9%
Net Change in Liability[3]	NA	+$1,967,000	($944,000)	+$1,023,000
Net Change in Rate	NA	+5.3%	(2.5%)	+1.8%

1 Pre-tax net income and estimated state income taxes from Prudhoe Bay and the trans-Alaska Pipeline system are taken from the Arthur Andersen & Co. report of January, 1978. Federal tax liability is assumed to be 48% of pre-tax after deduction of state income taxes. Total taxes are the sum of state and federal taxes.

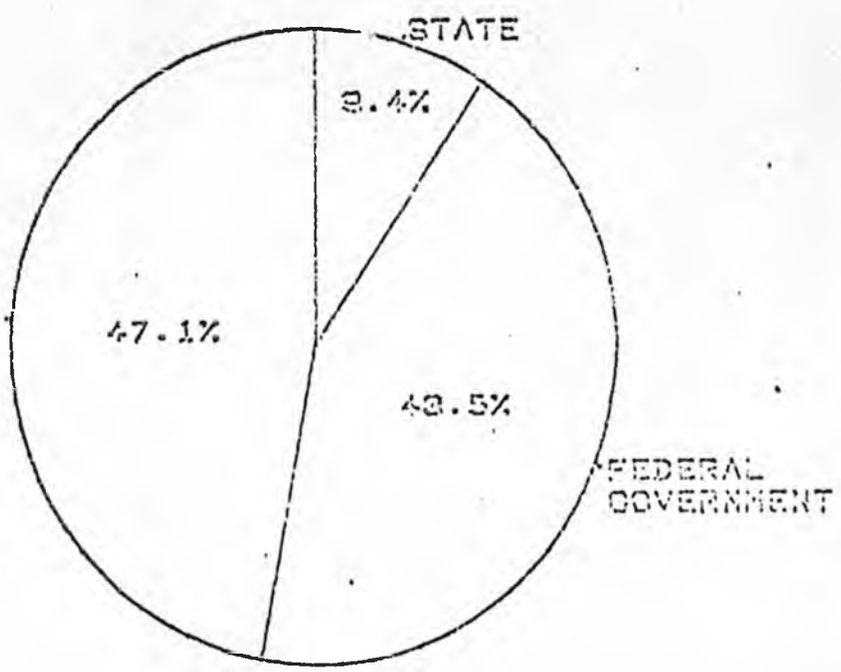
2 Pre-tax net income is taken from the Arthur Andersen & Co. report of January, 1978. State income taxes were calculated as 9.4% of pre-tax net. Federal income taxes were assumed to be 48% of pre-tax after deduction of state income taxes. Total taxes are the sum of state and federal income taxes.

3 Net changes in tax liability represent the increase (or decrease) in tax liability for state, federal and total income taxes under the proposed substitute.

COMPARATIVE INCOME TAX BURDEN



EXISTING STATUTE

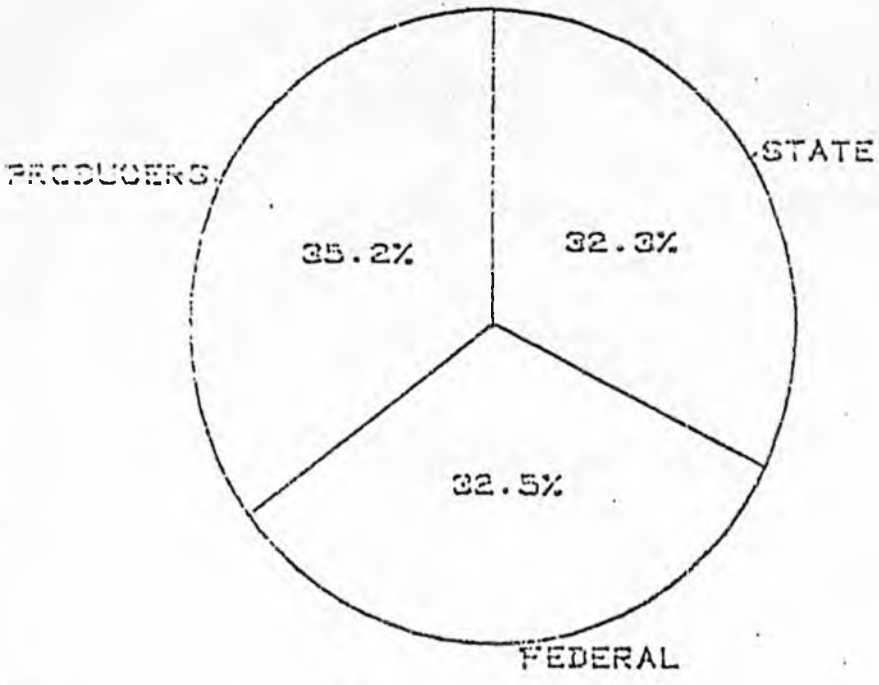


PROPOSED SUBSTITUTE
FOR CS HB322

AGO 547934

Legislative Affairs Agency
Research Division
March 24, 1978

NET REVENUE SHARES



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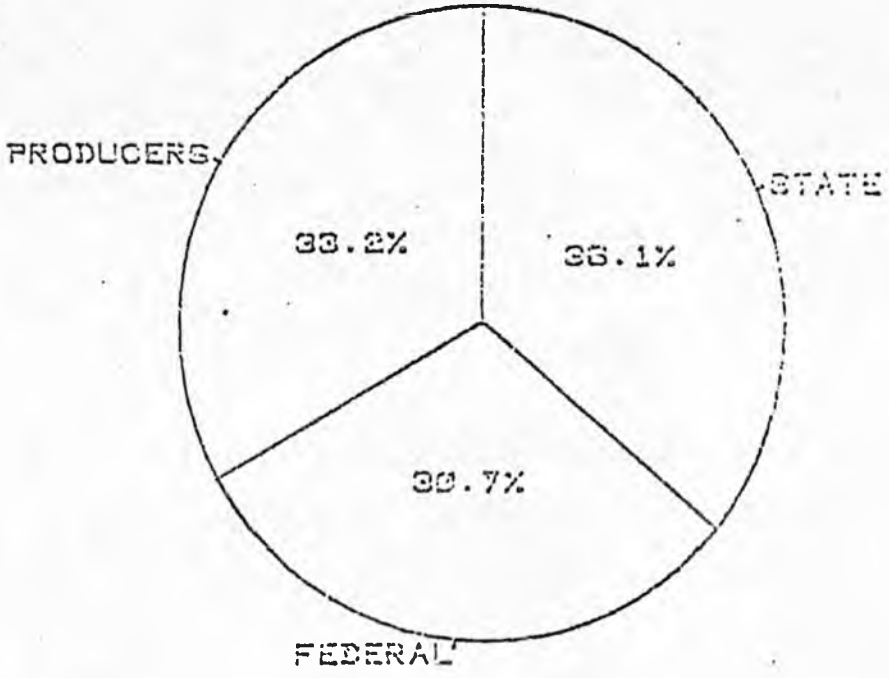

PROPOSED SUBSTITUTE
FOR CS HB522

AGO 547935

Legislative Affairs Agency
Research Division
March 24, 1978

TABLE I

Impact of Proposed CS for CS HB 322 (Resources)
On Relative Prudhoe Bay Net Revenue Shares
($ Millions)

	Existing Statute		Proposed Substitute		Net Change	
	Net Revenues	Per Cent Share	Net Revenues	Per Cent Share	Change in Revenues	Per Cent Change in Revenues
Companies	$18,593	35.2%	$17,570	33.2%	($1,023)	(5.5%)
State	$17,086	32.3%	$19,053	36.1%	+$1,967	+11.5%
Federal Government	$17,162	32.5%	$16,218	30.7%	($944)	(5.5%)

Note: Based on Arthur Andersen & Co. report of January, 1978. State revenues include all royalties and taxes. Federal revenues are assumed to be 48% of pre-tax income after deduction of state income taxes. Net revenues to the companies is assumed to be pre-tax income less state and federal income taxes.

Figures in Table I are for the three largest oil producers in Prudhoe Bay (representing 93.7% of production) and for the four largest owners of the trans-Alaska pipeline system (representing about 90.18% of ownership).

AGO 547936

Prepared by:

Legislative Affairs Agency
Research Division
24 March 1978

STATE OF ALASKA
DEPARTMENT OF REVENUE
OFFICE OF THE COMMISSIONER
JAY S. HAMMOND, GOVERNOR
POUCH S — JUNEAU 99811

Summary of the Proposed Committee Substitute for House Bill 322

This proposal contains provisions of both the original House Bill 322 as introduced by the Governor and the Senate Committee Substitute for House Bill 322. It represents a compromise between the two versions which retains in large part the concept of separate accounting approach to assessing oil and gas production and pipeline transportation income, but works to avoid the problems of corporate manipulations and profit shifting by providing the state greater control in the determination of that income. It also contains elements of the original House Bill 322 for purposes of determining that portion of the income earned by oil and gas corporations from activities other than production and pipeline transportation.

DETERMINATION OF INCOME

1. Oil and Gas Production

Production income is determined under a separate accounting method. That is, instead of taking world-wide income and apportioning that income to the state based upon a formula, the income in the state is determined directly by looking only at the income and expenses of the production activity in the state. This is done as is in the bill adopted by the Senate Resources Committee by taking the well head value of total production as gross income and deducting a specified list of expenses to arrive at net income. The same list of deductions is retained except an allowance for general administrative expense or overhead is made.

The major change to the approach however is that the state plays a major role in the determination of the income by assessing the net income and tax due. This direct role by the state in assessing income will hopefully avoid the possibilities for profit shifting and other income manipulations.

AGO 547937

2. Pipeline Transportation

Income from pipeline transportation is also determined on a separate accounting basis. As in the Senate Resources Committee substitute, the income is determined according to amounts reported to the Federal Energy Regulatory Commission.

This income is also assessed by the department.

3. Income from Activities other than Pipeline Transportation and Production

Income from activities other than production and pipeline transportation is determined under a formula approach after subtracting out production and pipeline transportation income.

First the world wide book income of the corporation is determined. From this amount is subtracted the income determined separately for production and pipeline transportation activities. The remaining net income is then apportioned using the present uniform formula of property, payroll and sales. Since production and pipeline transportation income are determined separately that portion of property, payroll and sales attributable to these activities in Alaska are subtracted from the numerators and denominators of the apportionment formula. What remains in the formula is just the elements of property, payroll and sales attributable to other activities.

In addition the proposal would adjust the apportionment formula to take account of OCS activity.

PUBLIC REPORTING AND LEGISLATIVE OVERSIGHT

As in the Senate Resources Committee Substitute, annual reporting of aggregate income and expense statistics is provided for. In addition, the proposed substitute provides for an annual review of the department's assessment actions by the legislative auditor with an annual report to the legislature.

ASSESSMENT

This proposal differs from the Senate Resources Committee Substitute in that the department is provided more control in the determination of income. This is done to help avoid profit shifting and other manipulations of income. Thus the authority is given to the department to assess directly the income taxable under the proposed statute. The resulting income that would be assessed is then taxed at the standard corporate income tax rate of 9.4 percent.

Rental

BEFORE THE SENATE RESOURCES COMMITTEE

TESTIMONY OF

CRAWFORD H. THOMAS

SCS for CS for HB 322

February 24, 1978

Madame Chairman and Members of the Senate Resources Committee:

My name is Crawford Thomas. I live in Sacramento, California. I have had a long association with state income taxation. I am now retired. Until my retirement in early 1974, I was Chief Counsel of the California Franchise Tax Board for eight and one-half years. The Franchise Tax Board administers the income tax in California.

I commenced working for the Board as an attorney in 1940. My entire time while I was associated with the Board was devoted to legal and administrative problems of state income taxation.

I estimate that about one-half of my time was spent on matters involving the taxation of the income of multistate businesses and the apportionment of such income.

I started my career in taxation at the time when the unitary concept, which you have heard discussed at some length, was first being seriously applied, although the concept had been recognized for some time. I participated in the extension of the unitary concept from its application to a single corporation to its

application to parent and subsidiaries, to foreign subsidiaries and, finally, to the so-called world-wide combinations. I understand that your state now uses essentially the system as is in effect in California.

I was heavily involved for several years in opposition to federal intervention in state income taxation, through the Willis bill and its successor bills.

I was involved with the Uniform Division of Income for Tax Purposes Act, from the time it was first being seriously considered by the states. I supervised the drafting of regulations under this act, which later became the basis of the regulations adopted by the Multistate Tax Commission. Alaska was one of the first states to adopt the Uniform Law for dividing income.

I was involved with the Multistate Tax Compact from the very birth of the Compact idea.

Some substantial portion of my time was spent reviewing and analyzing proposed tax legislation in the California legislature. A prime reason for this review was to spot problems in proposed bills. I have reviewed the bill before you and I have found what I believe to be some major problems. I would like to discuss these problems.

Under your present Alaska law and your administrative practice, an integrated oil business is treated as a unitary business and its Alaska income is determined to be that percentage of its total income, as determined by use of the standard apportionment formula of property, payroll and sales.

This method of apportionment is set forth in the Multistate Tax Compact which Alaska has adopted as its law.

This Compact has a higher status than an ordinary state law. It is a solemn covenant entered into by Alaska and some 18 other states, guaranteeing that taxpayers will be taxed in accordance with the terms of this Compact.

This bill does not amend the Multistate Tax Compact contained in your present law.

I doubt that having adopted the Compact, a state could unilaterally amend it, without violating the Compact and eliminating Alaska as a Compact state.

This bill starts out by saying that, notwithstanding the present law which provides that income shall be apportioned as provided in the Compact, the income of oil and gas production or transportation companies derived from Alaska shall be determined by separate accounting under the provisions of Sec. 18 of Article IV of the Compact.

I shall return to this Section 18 in a moment and at some length.

This bill thus segregates unitary oil and gas producing or transporting companies from other unitary companies and says oil and gas companies, alone, must use a separate accounting procedure. It thus treats these companies as conducting businesses in Alaska entirely separate and distinct from the rest of their world-wide completely integrated businesses.

Now, having totally discarded the unitary concept and use of the uniform formula for computing Alaska production or transporation income, the bill completely reverses itself and considers the out of state income, less the Alaska income, to be unitary income and apportions this by use of a two factor formula which uses only the property and payroll factors.

This treatment of a business as non-unitary for one purpose and unitary for another is completely inconsistent.

We now come to a very major problem, one that I believe has not been sufficiently called to your attention.

If my analysis is correct, then enactment of this bill will not change the present method of apportionment of oil companies. The reason is that in enacting the Compact you also enacted Article III, Section 1 of the Compact. This section provides

that a taxpayer may elect to apportion its income either under the state law, or under Article IV of the Compact which is the uniform apportionment law. By enacting and entering into the Compact, Alaska guarantees this option to its taxpayers to use the formula of property, payroll and sales.

If this bill is enacted as law, an oil company would have a very strong legal argument that it could exercise its option not to report under this law, but to report under the Compact and use the uniform apportionment formula rather than the method used in this bill.

I can find nothing in anything presented to you denying that this would be so.

This bill apparently seeks to eliminate the taxpayer's option by attempting to use Article IV, Section 18, of the Compact to force oil companies to apportion their income by separate accounting.

You will recall that Section 18 states that if the uniform formula does not fairly represent the extent of the taxpayer's business activity in the state, the tax administrator may require the use of separate accounting or a change in the formula.

Leaving aside for the moment the fact that under this bill the legislature and not the tax administrator is making the deter-

mination, I think we should look at this Section 18 in some depth.

Two years before Alaska adopted the Uniform Act for division of income now contained in the Compact, Professor Pierce of the University of Michigan, the drafter of the Uniform Act, published his article (35 Taxes 747 (1957)) stating that Section 18 should be employed sparingly and only to avoid situations which were unusual and where use of the uniform formula would create constitutional problems.

In other words, it was to take care of unforeseen situations unknown at the time the Act was drafted.

My personal knowledge, gained at meetings with state representatives to discuss the Uniform Act, is that the states were very wary of this section. It was felt that unless Section 18 was strictly interpreted, the Uniform Act could not achieve uniformity and could be rendered meaningless.

This strict interpretation has also been the interpretation of the states, including Alaska, forming the Multistate Tax Commission and entering into the Compact.

This strict interpretation is set forth in Regulation IV-18 of the regulations issued by the Multistate Tax Commission.

AGO 547944

The first paragraph of the regulation merely restates the text of Section 18. The second paragraph is very important. I do not believe it has been brought to your attention.

That paragraph states:

> "Article IV, Sec. 18 permits a departure from the allocation and apportionment provisions of Article IV only in limited and specific cases."

Here, the attempt in the bill before you is not to apply it to limited and specific cases, but to an entire industry.

The paragraph of the regulation continues to read:

> "Article IV, Sec. 18 may be invoked only in specific cases where unusual fact situations (which ordinarily will be unique and nonrecurring) produce incongruous results under the apportionment provisions contained in Article IV."

There is nothing unusual about the fact situation concerning oil companies. Oil companies are not unusual. They have been around for years. For the same reason, it is not a "unique" situation as referred to in the regulation.

It is not nonrecurring, it is a permanent situation.

The results are not incongruous, that is, unfit or inappropriate. To the contrary, they are fit and appropriate for a unitary business. About 95% of the other states, including Alaska, so hold, as does the great weight of legal authority in this country.

Getting back to Section 18, it specifically says that the tax administrator shall make the determination to use a different method of apportionment. It does not give this authority to a legislature.

As the section is to be used only in specific and unusual cases, this is not only a sound requirement but a vital one.

Only the tax administrator is in a position to investigate specific cases, and only he can make a determination that the case falls within the intent of the section and the regulations.

The Oregon Supreme Court has twice decided that the burden of proof is on the party seeking to invoke Section 18, whether the party be the taxpayer or the State. (Donald M. Drake Co. v. Dept. of Revenue, 236 Ore. 26,500 P2d 1041; Coca-Cola Co. v. Dept. of Revenue, ___ Ore. __,___ P2d ____).

This major problem, as I see it, is that under the present facts, the administrator would have a very difficult time

meeting the burden of proof. The legislature could not. It would not only not be a party to the proceeding, but a mere legislative declaration that the formula does not fairly represent the extent of the business activities in the state is not proof.

The next major problem is that even if the proper party invoked Section 18, or if Alaska withdrew from the Compact and enacted a law requiring oil companies to allocate income by separate accounting, your revenue department, in either instance, would encounter extreme legal difficulties in putting the law into effect and enforcing it.

As others have testified at great length, the great weight of legal authority in this country is that integrated multistate companies such as these are unitary businesses.

I am not aware that you have been given any testimony or information that such companies are not unitary.

As others have also testified, if a business is unitary, the use of the formula is required to determine the income to be apportioned to the state.

I am not aware that you have been given any testimony or information that this is not so. Your revenue department has

consistently taken the position that this concept is correct. The department's position is a matter of public record.

The only support I have seen for the use of the separate accounting method comes from your consultant, Milton Lipton. Mr. Lipton has simply stated a conclusion that there is a deficiency in the present income tax structure and that separate accounting is the way to cure the deficiency, as it will produce more revenue from the oil companies. Mr. Lipton has avoided the vital question of whether the separate accounting method may, in fact, be used.

In the face of the problems I have just outlined, plus those matters addressed by such undisputed experts in their fields as Mr. Kust, Mr. Warren, and Professor Boren in their papers and testimony, it would seem to me that this committee should need more than the mere unsupported conclusion of Mr. Lipton that use of separate accounting rests on a firm legal foundation.

I am aware of Alaska's situation, that the oil is being extracted and revenues from this source will decline unless new fields are developed.

I am also aware that oil is a wasting asset and that Alaska may not have a highly diversified tax base.

AGO 547948

If litigation should result from enactment of this bill, I think that a court would have no choice but to simply focus only on the question of whether the method used to determine income attributes to Alaska her share of the unitary income. I do not believe other matters should or would be considered by the court.

From the available material I have reviewed, it appears to me that Alaska's tax burden on oil companies is as high as that imposed by other states.

I am convinced that these companies are paying an effective rate of tax of 9.4%. They are paying a tax of 9.4% upon that portion of their income properly apportioned to Alaska.

For example, if the ABC Oil Company's total net income is $10 million and 10%, or $1 million, is apportioned to Alaska by the formula, then the ABC Company pays a tax of $94,000, or exactly 9.4% of its Alaska income.

To say, for example, that the effective rate of tax is only 4.7%, requires the assumption that $2 million rather than $1 million is the amount of income derived from Alaska sources.

Those that so argue rest their assumption upon the conclusion that Alaska income must be determined by a separate accounting method.

All the testimony you have received shows that such conclusion has no foundation and nothing has been offered in its support.

In going over these matters, I have several times noted the comment that Alaska is not taxing the value of the oil extracted. Such statements misconceive the purpose and function of an income tax. An income tax is not intended to tax the value of oil produced within a state or anything else produced therein.

It is intended to tax that portion of the income of the entire taxpayer entity properly apportioned to the state.

Using an income tax to tax the value of oil produced is simply using the wrong vehicle on the wrong road.

Crawford H. Thomas
1902 12th Avenue
Sacramento, California 95818
(916) 443-5071

Age:	67
Education:	University of California University of California Hastings College of Law, LL.B. 1937
Experience:	Admitted to Califrnia Bar 1937
1937-1940	Associate attorney, Shelton, Gray & McWilliams, San Francisco. Corporation, probate and tax law practice.
1940-1942	Junior and Assistant Tax Counsel, Office of Franchise Tax Commissioner, Sacramento. Legal work in connection with administration of Franchise Tax Act, Corporation Income Tax Act and Personal Income Tax Act.
1942-1946	Military service, including ordnance procurement, contract renegotiation and price redetermination, St. Louis Ordnance District. Legal Officer, Military Government, Japan.
1947-1965	Associate Tax Counsel, Franchise Tax Board. Experience in this position is outlined below.
1965-1973	Chief Counsel, Franchise Tax Board. Experience in this position is also outlined below.

Thirty years of my entire legal career has consisted in working with state franchise or income taxation. I commenced work with the Franchise Tax Commissioner in the year of the landmark decision in Butler Bros. v. McColgan, and have, so to speak, grown up with the unitary concept. I participated in the extension of this concept to parent and subsidiary corporations and use of the combined return, world wide combinations, and through all of the developments of the doctrine to its present form and use.

I have handled protested cases and hundreds of appeals involving every facet of this question, participated in all the California legislation, and assisted the attorney general in the preparation in all of the California court cases affirming or extending this doctrine. I estimate that close to a major portion of my time was spent on matters involving the unitary business.

In the eight and one half year period in which I was Chief Counsel of the Franchise Tax Board, I supervised all protests, appeals, litigation and legislation involving the unitary business. I participated in many studies and conferences with industry groups, including the oil industry. I was heavily involved in studies of, and opposition to, attempts by Congress to have federal intervention in the state tax field via the Willis bill and its successor bills. I participated in or supervised California's involvement in the affairs of the Multistate Tax Compact and Commission.

I have made many appearances before legislative committees, the Willis Committee, conferences of state tax administrators and tax executives, chambers of commerce and other groups concerned with state taxation.

My experience has given me an in depth knowledge of the problems faced by the state tax administrator and his legal counsel in the interpretation and enforcement of the unitary concept.

TO: CHAIRMAN, HOUSE RESOURCES COMMITTEE
AND ALL COMMITTEE MEMBERS

FROM: SUB-COMMITTEE ON OIL & GAS

During the week of march 21 - 26 the Joint Senate and House Resources Committees met to hear testimony relating to the various oil and gas taxation bills currently before us. Some of the bills under discussion, have not been refered to this committee.

Of the ones that have been, the Sub-committee on Oil and Gas recommends that H.B. 321, H.B. 322, C.S.H.B. 323, H.B. 328, and S.B. 274 be brought to the full committee's attention for consideration and that they be acted upon and passed out of committee no later than April 7.

Each of these bills have a further referal to House Finance and the Finance Committee has scheduled hearings and work sessions on these bills beginning early next week. Representatives from the oil companies and several nationally recognized economists will be present. We urge all members, who are able, to attend.

RECOMMENDED BILLS

H.B. 321 - SEVERENCE TAX

This tax, in our opinion, rates highest in priorities. It's timeliness is dependant upon the actions undertaken by the Federal Energy Administration in setting a recommended "well head" price by April 15, 1977, and further by actions later taken by the I.C.C. in recommending the transportation cost of North Slope crude. For other features of the bill, we refer the committee's attention to the Governor's transmittal letter for H.B. 321, included with this report.

H.B. 322 - ALASKA NET INCOME TAX OR FRANCHISE TAX

This tax bill, in our opinion, has several advantages over our present income tax collection system. It is easy to administer, is based upon the amount earned within the state, including OCS development, and would provide the State and the industry with a stable taxation policy for years to come. For other features, we refer you to the Governor's transmittal letter for H.B. 322, included in this report.

AGO 547953

H.B. 323 - PROPERTIES AD VALOREM TAX

This tax bill, in our opinion, is premature. It would increase the scope of taxable property to include refining, liquefaction, and marine transportation. We believe that it would act as a "disincentive", at this time, for future development within our state, and of all the tax bills before us, meet with the most resistence. Accordingly, we have asked the Department of Revenue to place before this committee, a committee substitute for H.B. 323 which would reduce the bill to a "house-keeping" measure. This has been done and is before the committee for consideration.

H.B. 328 - RESERVE TAX

This tax bill amends the reserves tax bill to allow a credit reduction of tax levied 12 [20] if the oil flow through the Trans-Alaska Pipeline by October 1, 1977 has reached at least 600,000 barrels of oil on a daily average. Otherwise, the bill extends the reserve tax beyond the December 31, 1977 effective date of the original act. We urge its passage.

S.B. 274 - THE TAKING OF OIL AND GAS ROYALITY IN KIND

This bill requires that royality oil and gas be taken "in kind" rather than in money unless deemed otherwise by the commissioner, the Alaska Royality Oil and Gas Development Advisory Board, and the the Legislature. As an encouragement for future development within our state, we urge the passage of this bill.

KLP ?
Will you taking up that last Amendment that's supposedly Student part of?

AGL 547954

CONCLUSION:

The Sub-committee bleieves that the passage of these tax proposals, taken in conjunction with the desire to have the Alaskan Permanent Fund replace the eventual and inevitable passage of our nonrenewable resources, will produce a desired benefit for the State of Alaska. We further believe that they <u>will not</u> act as a disincentive for the oil industry and that their passage will ensure Alaska's "fair share" in the wealth of our state. Regarding this aspect, we urge committee members to read the Tanzer Report, "IMPACT OF INCREASED TAXATION ON OIL EXPLORATION AND DEVELOPMENT IN ALASKA", submitted to all members of the Alaskan State Legislature on March 25, 1977.

We have asked that Mr. John Messenger from the Department of Revenue be present to assist committee members in answering their questions and would, as this time, like to highly commend the staff of Senate and House Resources for providing the back-up material needed for the committee's deliberations.

Rep. Merle G. Snider
Rep. Hugh Malone
Rep. William Akers.

HOUSE BILL NO. 321 by the Rules Committee by request of the Governor, entitled: HB 321

"An Act relating to the oil and gas properties production tax; and providing for an effective date."

was introduced, read the first time and referred to the Committees on Resources and Finance.

The Governor's transmittal letters appear following the bill to which it pertains; fiscal notes appear in House Supplemant No. 31 to today's journal.

"March 8, 1977

HB 321

The Honorable Hugh Malone
Speaker of the House
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18 of the Alaska Constitution, and in accordance with AS 24.30.060(b) and the Uniform Rules of the Alaska State Legislature, I am transmitting a bill relating to the oil and gas properties production tax.

As a result of a recent study of Alaska's oil and gas tax structure, the Department of Revenue has recommended several changes in the state's production or "severance" tax. This bill incorporates those specific recommendations.

Currently the state's oil production tax is calculated according to "stair stepped" rates depending upon the level of production for the lease or property. As currently structured the tax may have an adverse impact upon a particular property as it reaches its economic limit. The "stair step" approach may not alleviate this adverse effect since the economic limit may vary substantially from one part of the state to another. This is because it may be more costly to produce and transport the oil in the more remote areas of the state. Accordingly, the bill contains an economic limit mechanism which automatically scales the tax rate down as the production nears its economic limit. This will insure that the tax will not unduly inhibit oil production as it reaches its economic limit.

One of the immediate dangers which face the state's revenue picture is the potential for artificially depressed pricing of the state's North Slope oil. This could result from federal pricing decisions or excessive tariff costs from the wellhead to the refinery. To insulate the state's petroleum revenues from these forces, the bill provides for a mechanism which would raise the cents-per-barrel floor to correspond to a mid-range market value for North Slope oil and tie that floor to an index which will let the floor keep pace with inflation.

One of the Department of Revenue's recommendations -- the oil and gas surtax -- which was designed to offset revenue losses due to depressed pricing of North Slope oil and which was to be imposed only on holders of state-owned leaseholds was deleted on the advice of this department because of the substantial legal problems involved.

The bill places the tax on gas at a parity with the tax on oil. Currently gas is taxed at only 4 percent while oil is taxed from 5 to 8 percent. The bill would tax both oil and gas at 10 percent. In addition, the bill sets a cents-per-Mcf floor for the gas tax similar to the cents-per-barrel floor for oil. This new floor for gas corresponds to the highest market price in the state, and it too is tied to an index to keep pace with inflation.

Sincerely,

Jay S. Hammond
Governor "

AGO 547956

HOUSE BILL NO. 322 by the Rules Committee by request of the Governor, entitled: HB 322

"An Act establishing an oil and gas corporate franchise tax; and providing for an effective date."

was introduced, read the first time and referred to the Committees on Resources and Finance.

"March 8, 1977

The Honorable Hugh Malone
Speaker of the House
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 19 of the Alaska Constitution, and in accordance with AS 24.50.060(b) and the Uniform Rules of the Alaska State Legislature, I am transmitting a bill establishing an oil and gas corporate franchise tax.

The Department of Revenue, in its oil and gas tax study, found two basic deficiencies with the corporate income tax as it relates to oil and gas corporations. This bill would correct those deficiencies.

The first problem is the eroded federal tax base. The department found that the federal corporate tax base HB 322 which Alaska has adopted has been substantially eroded by special exemptions, deductions, credits and other accounting devices. The result has been that oil and gas corporations pay an effective tax rate much smaller than the statutory 48 percent. Accordingly, the bill would enact a separate franchise tax on a corporation's "book income." "Book income" is the net income which the corporation reports to its stockholders. This would eliminate all the special Congressional tax provisions.

In addition, the departm found that the present apportionment formula does not fully represent the oil and gas corporate activity in the state. The present formula of property, payroll, and sales generally measures corporate business activity in the state. For natural resource companies, however, it does not. No reflection in the present formula is made for the scarcity value of the oil and gas produced. Accordingly, the bill will substitute for the present sales factor an extraction factor which will give weight specifically to oil and gas production activity.

One of the advantages of this franchise tax is that it will take into account elements of property, payroll, and extraction located on the Outer Continental Shelf which causes a resulting impact on the adjoining state. Thus property, payroll, and extraction not located in any state but which are located off the shores of an adjoining state which is impacted by the oil and gas production activity will be allocated to that state suffering the impact. Although this latter provision may raise some constitutional law questions, we believe that the proposal comes within the limits of the state's taxing powers given the impact on the coastal communities of our state of these OCS activities.

Sincerely,

Jay S. Hammond
Governor"

AGO 547957

HOUSE BILL NO. 328 by the Rules Committee by request of the Governor, entitled:

HB 328

"An Act amending the oil and gas reserves ad valorem tax; and providing for an effective date."

was introduced, read the first time and referred to the Committees on Resources and Finance.

" March 9, 1977

The Honorable Hugh Malone
Speaker of the House
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18 of the Alaska Constitution, and in accordance with AS 24.50.060(b) and the Uniform Rules of the Alaska State Legislature, I am transmitting a bill amending the oil and gas reserves ad valorem tax.

Section 1 of this bill proposes that the reserve tax levy be reduced from 20 mills to 12 mills this year with the condition that an additional levy will be made if there is a delay in the start-up of the Trans-Alaska Pipeline.

This amendment is proposed because the state has a budget surplus for FY 1977. This surplus is somewhat illusory, however, since the reserve tax payments may be recouped by oil and gas producers by credits against future severance tax. Accordingly, the adoption of this measure would reduce the surplus for 1977 and also reduce the amount "borrowed" from future revenues.

Section 2 provides for a contingent 1978 assessment at a rate to be determined by that year's legislature.

Sincerely,

Jay S. Hammond
Governor"

AGO 547958

HOUSE BILL NO. 323 by the Rules Committee by request of the Governor, entitled:

"An Act relating to the oil and gas exploration, production, and pipeline and marine transportation property tax; and providing for an effective date."

Introduced, read the first time and referred to the Committees on Resources and Finance.

"March 8, 1977

The Honorable Hugh Malone
Speaker of the House
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18 of the Alaska Constitution, and in accordance with AS 24.30.050(b) and the Uniform Rules of the Alaska State Legislature, I am transmitting a bill relating to the oil and gas exploration, production, and pipeline and marine transportation property tax.

The Department of Revenue has recently completed its study of Alaska's oil and gas tax structure and has made several recommendations. One set of recommendations dealt with the state's 20-mill property tax imposed by AS 43.56. This bill would implement that set of recommendations.

The bill corrects four problem areas in the current property tax: the omission of certain important kinds of oil-and-gas-related properties from the definition of taxable property; present uncertainty about how pipelines should be valued; the static nature of the $1500 per-capita limitation on municipal taxation, and the extent to which municipal property tax payments should be allowed as credits against the state tax. The bill's features are described below:

Section 1 of the bill makes clear that taxes paid to municipalities which exceed the statutory limitations in AS 29.53.045 and 29.53.050 are not creditable against the state tax.

Section 3 of the bill removes the current uncertainty on pipeline valuation by ensuring that pipelines will be valued on the basis of their full and true value with due regard to their economic value. This will eliminate the possibility of pipelines being valued under the depressed valuation method of actual cost depreciated.

Section 4 of the bill defines full and true value of property used in refining or liquefying of gas or oil as replacement cost less depreciation. It also defines the value of taxable marine transportation property.

Section 7 adds new categories of taxable property including oil refineries, gas processing plants and liquefied natural gas facilities. This will mean greater revenues to the state from these important oil and gas properties.

Section 8 and 9 of the bill tie the $1500 per capita municipal limitation to the Anchorage cost-of-living index in order that the limitation would increase over time as inflation raises the cost to municipalities of providing services to its residents.

HB 323 In addition, Sections 2, 4, 5, 6, and 7 are aimed at amending the relevant provisions of AS 43.56 to provide for the taxation of marine transportation property (i.e. tankers) on an apportioned basis determined by the number of days spent on ports loading and unloading gas and unrefined oil divided by the total number of days-spent-in-ports everywhere. Although these provisions raise close and difficult questions of constitutional law regarding the ability of the state and municipalities to impose an ad valorem property tax on such vessels in light of the traditional application of the "home port" doctrine, it is the view of the Department of Law that these vessels have sufficent nexus with the state to bring them within the constitutional parameters of the state's taxing power.

Sincerely,

Jay S. Hammond
Governor"

AGO 547959

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TESTIMONY BEFORE THE
SENATE RESOURCES COMMITTEE
OF THE
ALASKA STATE LEGISLATURE

By

LEONARD E. KUST

February 10, 1978

Madame Chairman and members of the Committee:

I am LEONARD KUST, partner in the New York City law firm of Cadwalader, Wickersham & Taft. I have been retained by the Alaska Oil and Gas Association (AOGA) to study the present Alaska corporate income tax and the various proposals to change that tax pending before the Alaska Legislature. On December 9, 1977 I presented a 45 page paper to AOGA setting forth my views on these issues. This paper has, I understand, been made available to you and I offer a copy for inclusion in the record of these hearings.

Before I proceed further I think you are entitled to ask whether I have the credentials to presume to give you views which it is worth your time to listen to and consider. I have for this purpose prepared a resume of my past involvement in issues of state taxation of the income of multistate and multinational business. I would like to offer this

resume for the record and hand copies to members of the committee for their perusal, if they wish.

I understand that your major concern and the concern which the various bills under consideration are intended to address is that the current Alaska income tax fails to reach and effectively tax income derived from oil and gas production and transportation activity in Alaska and your concern that oil and gas corporations operating in Alaska are paying to Alaska significantly less than the statutory 9.4% tax rate on their income.

Let me remind you at the outset of what I am sure you are all aware. Under the United States Constitution Alaska cannot impose its tax of 9.4% on the entire income of corporations engaged in business in Alaska and elsewhere. Such a tax would insure multiple taxation by the states in which the corporation does business and be an unconstitutional burden on interstate commerce.

This constitutional limitation conforms with internationally recognized fundamental principles of tax jurisprudence. Where the activities of a business extend over two or more countries or states, all of the income from such business cannot be taxed by each of the countries or states.

Accordingly Alaska can impose a tax only on Alaska source income of corporations which operate in Alaska and elsewhere. Any tax which applies to income earned outside Alaska will not only result in multiple taxation but will also violate both the United States Constitution and the generally accepted principles of tax jurisprudence.

The problem, of course, is in determining the source of income. This is not a new problem. It is a problem which scholars, legislators, and tax administrators have struggled with over the years. In this modern era as corporations have expanded their interests throughout the country and in many cases the world the problem has become more acute. The states from the outset upon enacting corporation net income taxes beginning in 1911 strove to avoid imposing an unconstitutional burden on interstate commerce by taxing only a portion of the income of the interstate business. The development over the years has been in devising and refining the method by which to determine the portion of the total income of a multistate business which should be taxed by each state and the attainment of uniformity in the methods used by different states so as to subject to tax all, but not more than all, of the total income of multistate business.

The system which has developed has two elements:

(i) a tax base measured by a company's worldwide income determined by reference to Federal taxable income and (ii) a method of dividing this base through use of an apportionment formula.

Why a formula approach? Well, the states initially sought to determine the source of income by means of "separate accounting", that is, by constructing an income or loss statement for the activities of the business in the state as if it constituted an independent business dealing at arm's-length with the remainder of the business and the outside world. It was soon evident, however, that separate accounting was not reasonably feasible within the limits of administrative practicability. As a consequence, the so-called "Massachusetts formula" gained early and general acceptance, commencing in the 1920's, among tax administrators and business taxpayers as a reasonable alternative to separate accounting for determining the portion of the total income of multistate business which is taxable in each of the states in which it has activities. The Massachusett's three-factor formula apportions the income of a business to the taxing state on the basis of the average of three fractions:

(1) property within the state over total property,

(2) payroll within the state over total payroll,

and

(3) sales within the state over total sales.

It was recognized at the outset that multiple taxation of multistate business income arises not merely from failure to apportion reasonably but from disparity in methods of apportionment as well, even though each method by itself and applied universally might be reasonable. The National Tax Association began advocating uniformity in the method of apportionment as early as 1919. Ultimately, these and other efforts culminated in the Uniform Division of Income for Tax Purposes Act (UDITPA) adopted by the National Commissioners on Uniform State Laws in 1957. UDITPA incorporated the three-factor formula and, most notably, defined the numerator of the sales fraction, with respect to which the greatest divergence from uniformity had developed, as being sales having their destination, that is, delivered to customers, in the state.

The Multistate Tax Compact, of which Alaska is a member, inaugurated in 1966 to promote uniformity and thereby avert Federal legislation then under consideration to impose uniformity on the states, incorporates UDITPA.

The UDITPA formula is not without its flaws; clearly it is not perfect. Whether, in theory, a better formula can

be developed, I do not know. This particular formula rests on common sense which has survived years of practical application. Most importantly, this formula has been accepted by both taxpayers and state tax administrators.

I want to emphasize the general acceptance of the three factor UDITPA formula. Out of my experience serving as co-chairman in 1969-71 of a committee of state administrators and business representatives seeking to formalize a country-wide uniform system for division of income of multistate and multinational business by a combination of the Multistate Tax Compact and Federal legislation, I can report that there was at no time any disagreement among the state tax administrators and business representatives as to the validity of the three factor formula. It was accepted by all as the bedrock on which any system of uniform division of income must rest.

Out of a total of 44 states and the District of Columbia which impose a corporate net income tax, 40 provide for the three-factor formula 25 by adoption of UDITPA or the Multistate Tax Compact and 15 by incorporation in their own tax statutes, four of the latter giving greater weight to the sales factor than to the property and payroll factors. Differences in the economies of the states as to whether primarily industrial, or commercial, or agricultural or extractive have not affected the general acceptance of the three-

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factor formula as essentially fair and reasonable.

The major concern raised by the proposals under consideration by this Committee , and I will discuss the proposals more specifically in a few moments, is that they would seriously disrupt the uniformity which over the years the states and business have labored to achieve, and which, I believe, is essential to fair and effective taxation by the states of the income of multistate businesses. A few other states have begun to tinker with the formula for their own parochial interests. I deplore such action. If you really believe that the UDITPA formula is not reasonable with respect to the oil and gas industry as a whole, the solution is to proceed under Section 18 of UDITPA on a case by case basis or to approach other states and seek a new uniform method for division of the income of the industry. Unilateral action by Alaska or by any other state would generate multiple taxation and would threaten the framework that has developed for division of income among the states.

But beyond the question of uniformity, I believe that both HB 322 and SCS CSHB 322 and the impetus behind them are based on a fundamental fallacy. They are based on the assumption--and I stress assumption--that the "fair" share of income to be taxed by Alaska is

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to be determined by changing the apportionment formula or by statutory "separate accounting" so as to approximate the income based on barrels of production in Alaska times the well-head price less costs and expenses incurred solely in Alaska. This is demonstrably not the "fair" share of income attributable to Alaska. Income is not merely the result of production. The creation of income requires both production and consumption. It is the demand created by the economies of the consumption states that converts the production into income. The consumption states have an undeniably legitimate claim to tax part of the income which is based on this price created by their demand. Would Alaska agree that only the states in which the goods are produced which are sold by Sears in Alaska can tax the income and Alaska cannot? Of course not. As the consumer state in this case it was [illegible] and is entitled to and it does tax a portion of the income from production outside Alaska.

Thus, having read some of the prior testimony, I would take sharp issue with the confident assertion that Alaska's fair share of the income of the oil and gas industry is the well-head price less costs and expenses incurred in Alaska.

I would like to challenge Mr. Lipton and Professor Zeifman to present their arguments to the Multistate Tax Commission or to a meeting of the National Association of Tax Administrators in support of their proposals as appropriate uniform methods to be accepted by all states for division of the income of the oil and gas industry. I think it is reasonable to predict that neither of the proposals would be judged to be a fair and reasonable basis for uniform division of income among the states.

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This committee and the Alaska legislature will ultimately decide what course to follow. It is your responsibility and your prerogative but I would like to suggest that your decision should be made against the broader framework which I have presented rather than the narrow perspective urged upon you in support of the proposals under consideration.

THE ZEIFMAN-AINSWORTH PROPOSALS

The proposals of Professors Zeifman and Ainsworth which are incorporated in H.B. 322 are based on these two premises: (i) that Alaska's tax base has been eroded through Federal tax subsidies and incentives which are unrelated to the definition of net income, and (ii) that the UDITPA apportionment formula unfairly reduces the amount of taxable income attributable to Alaska by corporations which export non-renewable petroleum resources from the state. Zeifman and Ainsworth recommend:

1. Adoption of a tax base measured by the greater of book income or Federal taxable income, and
2. Replacement of the destination-oriented sales factor with an "extraction factor".

Furthermore, they propose that these changes apply only to corporations with ordinary gross receipts in excess of $250,000,000, more than 50% of which is derived from production, transportation, refining, manufacturing, processing, distribution or retail sale of oil or gas or products derived from oil and gas.

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I believe that Professors Zeifman and Ainsworth are mistaken both as to their premises and their recommended solutions.

The current Alaska income tax base is a corporation's Federal taxable income. That base includes the world-wide income of the corporation - not just United States source income. In determining Federal taxable income, Congress has allowed certain deductions which are not taken into account in determining the corporation's book income. These "tax subsidies", however, are for the most part available to all corporations, including corporations engaged in business solely in Alaska and multinational corporations engaged in various business activities in Alaska. It is unfair to single out the oil industry. If "tax subsidies" are to be eliminated they should be eliminated for all corporations.

Furthermore, with respect to the one Federal "tax subsidy" available solely to the oil and gas industry, a current deduction for intangible drilling costs, it is erroneous to charge that because drilling costs reduce Federal taxable income Alaska in using such income provides an incentive to drilling wells outside Alaska. Federal taxable income reflects not only deductions for the cost of wells drilled outside Alaska but also the income from such wells. It is not a one-way street. Alaska is no more providing an incentive for drilling outside Alaska than other states are providing an incentive for drilling in Alaska.

The Department of Revenue has cited Congressional studies by Congressmen Vanik of Ohio to support the Department's claim that adoption of the Federal tax base by Alaska results in an effective tax rate significantly less than 9.4%. Vanik's study measures Federal income tax due as a percentage of worldwide income. Obviously this comparison will result in an effective U.S. tax rate of less than 48% for companies engaged in foreign operations because the United States provides a credit against its tax on worldwide income for taxes paid to other countries. This is the necessary alternative to taxing only the income earned in the United States. Similarly, measuring taxes due to Alaska as a percentage of a corporation's total worldwide income will result in an effective tax rate of less than 9.4%. Both comparisons are meaningless, since neither the United States nor the State of Alaska intends or reasonably can impose its tax on the worldwide income of taxpayers without a foreign tax credit or without apportionment. It is primarily because of the division of income (by means of a foreign tax credit at the Federal level and formula apportionment at the state level), not determination of the tax base, that the effective rate on worldwide income is significantly less than the statutory rate. If 25% of the worldwide income of a company is earned in Alaska, obviously the effective rate of Alaska tax on worldwide income will be 2.35%.

The suggestion of Professors Zeifman and Ainsworth, which is incorporated in H.B. 322, that book income be used as

a tax base is unique. I am aware of no state with a tax base measured by book income, even as an alternative basis. Book income is an inappropriate tax base. Adoption of such a tax base would in effect delegate determination of income to the company's management and the accounting profession. If Alaska is not prepared to accept management's and their accountants' determination, it will have to develop an audit staff sufficient in size and skill to conduct its own audits. It will not be able to rely on the audit skills and extensive examinations of the Federal government or the Multistate Tax Compact.

Furthermore, book income not only reflects taxable income before tax subsidies but also many accounting and timing differences unrelated to Congressional tax policies, many of which reduce book income in comparision to taxable income. As an example, corporations are often entitled and even required for financial accounting purposes to set up reserves for certain estimated expenses or losses which are not deductible in determining Federal taxable income.

Finally, use of the higher of Federal taxable income or pre-tax book net income as a tax base, as is proposed in H.B. 322, will tax income without reduction for those expenses which are deducted in different years in determining book net income and Federal taxable income. For example, if book income

exceeds Federal taxable income because of current deduction for intangible drilling costs which are deferred for book purposes, and then Federal taxable income in a succeeding year exceeds book income because the deferred intangible drilling costs are then expensed for book purposes, the tax base will be determined without deduction for such costs at any time.

As to substitution of the extraction factor for the sales factor in the apportionment formula, it is my view that the UDITPA formula provides for fair and equitable division of income of oil and gas corporations between Alaska and the rest of the world and fairly reflects the extent of their activity in Alaska as compared to the rest of the world.

The destination sales factor cannot be regarded as allocating Alaska's share of income to other states but more properly as assuring to the market states a fair share of the taxable income base. Without the purchasing power and demand provided by the market states, there would be little if any income of oil and gas companies for Alaska to tax. The sales factor quite properly gives recognition to the contribution by the market states to the creation of the income tax base. Substitution of the extraction factor for the sales factor would ignore the contribution of the market state to the creation of income, just as would an origin-oriented sales factor

which was used for years by heavy manufacturing states for their parochial interest. Use of this factor was so short sighted that it drove business out of these states. States such as New York and Massachusetts have had to retreat so far that they have adopted double-weighted destination sales factors to attempt to convince businesses to stay or to return to their states.

Alaska may dismiss this experience as irrelevant since the oil is in Alaska and the oil business cannot go elsewhere. Only within limits is this so, but in any event Alaska cannot ignore applicable principles of fairness and of cooperative action among the states to avoid multiple taxation. Use of an extraction factor in Alaska when other states use a destination sales factor would obviously result in multiple taxation. Is it proper for Alaska to take deviant action and expect all the other states to conform their apportionment formulas to Alaska's in order to avoid multiple taxation? Is it appropriate for Alaska unilaterally to disrupt the progress the states have cooperatively been making toward uniformity in their apportionment formulas?

Professors Zeifman's and Ainsworth's proposal to replace the destination sales factor of the UDITPA formula with an origin-oriented extraction factor is based primarily on

the ground that the extraction factor would generate more tax revenues than the sales factor. Apportionment formulas are not intended to be vehicles to generate tax revenues but are designed to divide income among the states fairly and uniformly so as tc avoid multiple taxation.

Finally as to the proposed new tax base and apportionment formula in H.B. 322, the singling out of the oil and gas industry and of companies within the industry having receipts of more than $250,000,000 may well be unconstitutional.

SEPARATE ACCOUNTING -- SENATE CS FOR CS FOR HOUSE BILL 322

I understand that the other major proposal before this Committee is adoption of a tax based upon principles of separate accounting. The declared purpose of this bill is to tax oil and gas production and pipeline transportation income in Alaska by means of a statutory separate accounting, while retaining formula apportionment (as modified) to apportion all other income.

Conceptually, separate accounting constructs an income or loss statement for the activities of a corporation in the state as if it conducted an independent oil and gas production or transportation business solely within Alaska and assumes that all dealings by the business with other

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aspects of its business and with the outside world are at arm's-length. I am sure it is an attractive concept to try to isolate the Alaskan income by what purports to be a rational procedure rather than the fixed formula. But let me suggest, as your Department of Revenue has strongly argued, that this approach is doomed to failure. Perhaps with small localized businesses the concept is workable. But to apply this concept to large integrated multinational oil and gas corporations ignores the unitary nature of their operations. Each element of a corporation contributes to the overall net profit of the business. You simply cannot ignore the contribution of out-of-state activity to the creation of income in Alaska and how will separate accounting deal with this?

Separate accounting, in practice, is impossible to administer and determine. I fail to see how a concept which proved to be unworkable in the 1920's, when business was relatively simple, can be expected to work in today's era of complex multistate and multinational business of which the oil companies are a preeminent example. The apportionment formula was resorted to because separate accounting could not be administered.

The current proposal attempts to avoid some of the inherent problems of separate accounting by arbitrarily defining net income. Allocation of overhead expenses is "solved"

by simply denying a deduction for such costs. Pricing differences are "solved" by using as gross income the value of the oil and gas produced as determined for purposes of the production tax. And inadvertently, I assume, the proposal results in a double allocation of production income to Alaska, first by allocating production income in Alaska under the statutory separate accounting formula and then allocating to Alaska a portion of the production income outside Alaska under the two-factor apportionment formula. This is clearly a duplication.

Such duplication can be eliminated only by determining production income by separate accounting both in Alaska and outside Alaska and eliminating both, not just Alaskan production income, from the base subjected to the two-factor apportionment formula.

Accordingly, the current proposal does not by definition even approach theoretical separate accounting, and is at least as arbitrary, if not more so, than formula apportionment. It is, indeed another kind of statutory formula.

The proposal has major infirmities. It purports to be an application of separate accounting but it is not and it incorporates a "double dip" allocation of production income to Alaska. It represents a sharp deviation from uniformity and as such would constitute a major disruption of the common consensus underlying the system of state taxation of interstate business income. Separate accounting defined by legislative fiat and applied by one state to a whole industry in order to increase the state's share of the total income

over that resulting from the three-factor formula necessarily results in multiple taxation because income which is fully taxed by the one state is also apportioned by formula to other states. Such deviant action, particularly when it is directed at one industry, may well be unconstitutional.

Moreover, Alaska must ask itself again whether it is appropriate for it to take unilateral action which will disrupt the progress toward uniformity in the division of income among the states which is essential to avoidance of multiple taxation.

THE MULTISTATE TAX COMPACT

Alaska's continuing membership in the Multistate Tax Compact and the administrative benefits derived from such membership may not be tenable if either of the proposals under consideration are adopted. The courts may find such proposals to be in conflict with the Compact and as a result may hold that Alaska has in effect withdrawn from the Compact or that the Compact remains in effect but enactment of the proposals is ineffective to prevent taxpayers from applying the UDITPA formula under the provisions of the Compact. It will take years of litigation to clarify these issues which will cast doubt on what the applicable law is for taxing the income of the oil and gas industry.

CONCLUSION

The United States Supreme Court presently is considering the constitutionality of Iowa's single-factor sales formula. I cannot predict the Court's decision, nor can I

predict to what extent a state may tamper with the uniform formula without violating constitutional principles. Perhaps the Court is ill suited to act as final arbiter as to whether one method of apportionment is fairer or more reasonable than another. But I suspect that with the nearly nationwide acceptance of UDITPA, the Court will show less tolerance of deviant formulas which result in multiple taxation. In any event years of litigation as to the constitutional validity of either of the proposals if enacted as well as their compatibility with the Multistate Tax Compact must be anticipated.

Great progress has been made in recent years in adopting uniform apportionment methods. Part of the drive for voluntary uniformity has obviously been the desire of both states and taxpayers to avoid Federal intervention. As long as states strive toward uniformity as a goal of fair taxation, Congress will be hesitant to act. If the drive for uniformity falters through unilateral action by states asserting their currently perceived self-interest without restraint and the Supreme Court declines to prescribe a uniform formula, Congress will be constrained to exercise its constitutional responsibility to protect interstate commerce by prescribing a Federal standard of uniformity in the division of multistate business income.

Alaska has been in the forefront of the drive for uniformity. By the collective judgment reflected in the

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development and general acceptance of the three-factor formula, Alaska's net income tax fairly and effectively reaches its proportionate share of the income of multinational oil and gas corporations doing business within the state. The proposed changes are designed to produce higher revenue, not a fairer division of multistate income, and they would be destructive of the cooperative effort among the states in developing a uniform approach to the division of multistate business income among them.

Madame Chairman and members of the Committee, I want to reemphasize in conclusion that changing the present formula for determining the portion of the worldwide income of oil and gas companies which is taxable in Alaska is not an appropriate way to increase revenues. If Alaska is to act responsibly it cannot ignore the interests of its sister states and in the long run its own interests in maintaining uniformity in the division of multistate business income among the states. If Alaska believes that the apportionment formula is not fair and reasonable as it applies to oil companies, the proper action to take is under Article 18 of UDITPA or through the Multistate Tax Compact or other cooperative state machinery to persuade other states of a different uniform approach, not unilateral legislation which is destructive of uniformity.

CITIES SERVICE MINERALS CORPORATION
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DON STEVENS, PH.D.
DISTRICT GEOLOGIST

(907) 272-5441

March 17, 1977

Mr. Bill Bishop
Bristol Bay Native Corp.
445 East 5th Avenue
Anchorage, AK 99501

Dear Bill:

Mr. Ranspot and I want to thank you and the Bristol Bay Native Corporation staff for the courtesies extended during our meeting last week. We found our review of the Bear Creek Mining Data to be most interesting and, in fact, these data exceeded our expectations. Bear Creek Mining has done an excellent job in its investigation of porphyry type targets.

As I mentioned on the phone, we have had to decline entering into an exploration agreement with Bristol Bay Native Corporation for a number of reasons in spite of the excellent mineral potential indicated by the data reviewed.

Certainly one important reason for being very hesitant to engage in new minerals exploration programs has been the Hammond administration's attitude toward mining taxes. Not only are attempts being made to adversely change the present mining license tax but several comments by the administration have indicated that an additional severance tax bill is going to be introduced in the next session of the legislature. One needs only to look at what has happened to taxes on oil and gas production in the last ten years to believe that the same thing will happen to the mining industry. With the high capital costs and the high infrastructure costs in mine development in Alaska a high tax burden will simply eliminate any chance for development of a mining industry.

The attractiveness of possible mining operations on native corporation land is being outweighed by the ever more burdensome tax policies generated in Juneau.

Sincerely,

Donald L. Stevens

DLS:bh

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STATEMENT OF LARRY DINNEEN
ARCTIC SLOPE REGIONAL CORPORATION
BEFORE THE
SENATE RESOURCES COMMITTEE
STATE OF ALASKA
FEBRUARY 22, 1978

I am not here today to play the numbers game related to the corporate income tax legislation before your Committee. But I have a few points to make, based on my years of experience in developing business ventures in several states and working for the Arctic Slope Regional Corporation (ASRC) in Alaska.

The "bottom line" of my statement is this: the enactment of the separate accounting bill or the franchise bill -- or anything in between -- would be bad for Alaskans. Although the intent of both bills my be simply to extract more dollars out of the major oil corporations in Alaska, the effect will be damaging to ASRC, to some 70,000 Native Alaskans and to the future viability of the economy of the State of Alaska. First, I would like to call your attention to some of the specifics in the proposed legislation.

JUST THE OIL COMPANIES?

It is evident from some of the language in both bills that the intent is to exempt the Native Regional Corporations from the provisions of the bills. I believe that in either case, litigation could prove that Native Regional Corporations would not be exempt. This is especially true with regard to the separate accounting bill as the actual amending language in Section 2 relates directly to "income of any corporation derived in Alaska." Additionally, it appears

deductible costs would not include the costs of the consultants that we have had to hire in Seattle, Washington, D.C. and elsewhere to deal with the myriad of government problems that are facing us . and to ensure that we are getting the most expert advice on our business matters. Since the Committee is addressing the separate accounting bill in particular, we felt that it was important to bring out these two points.

But the major point is that we do not feel that it is in Alaska's interest --and particularly with respect to ASRC and other Native Regional Corporations -- to change the corporate income tax laws affecting the major oil companies or anyone else, particularly at this time in Alaska's history. Even if we were exempted ultimately from the language of the corporate income tax legislation, the effects of raising taxes on the oil industry in Alaska would be directly damaging to ASRC and thousands of other Alaskans. Although I will develop this point further in my testimony, I want to mention now that ASRC and other corporations are engaged in a great deal of contract work for the major oil companies. And, while no one expects the Prudhoe Bay companies to leave the State altogether, there is no doubt but that the amount of exploratory work going on in Alaska could and should be much higher. And with exploratory and development work comes jobs for Native Alaskans in the form of contract work. Yet this is only one important aspect of the tax issue that I would like to call to your attention.

THE BILLION BARREL OIL FIELDS PROBLEM

Last year, Revenue Commissioner Sterling Gallagher spoke about our problem to the Federal Energy Administration officials dealing with North Slope oil pricing in discussing the Lisburne and Kuparuk oil pools:

> "The Lisburne and Kuparuk pools are illustrative of the case for most-likely discoveries on Alaska Native lands selected under the Alaskan Native Claims Settlement Act. It is far more probable that any discoveries on Native lands will be in the 1 to 2 billion-barrel range like Lisburne-Kuparuk, than in the 8 to 10 billion-barrel range like the main Prudhoe pool." 1/

The problem for ASRC is that we need to raise capital in order to find these fields and we need oil company expertise both to find and develop them. But the future is not PRUDHOE-BAY SIZED FIELDS.

Costs in Alaska are extremely high, and there are many other places still left in the world -- including the North Sea -- where drilling operations are more profitable than they have been and especially will be in Alaska. The wellhead value, after subtracting transportation, etc, is only about $3 these days, and with smaller sized fields as the likely prospect for future discoveries, we can not afford to continue raising taxes on the oil industry without directly reducing the likelihood of finding and developing marginal fields. Needless to say, this is of some concern to ASRC in particular, but all 70,000 Natives are also directly affected...

1/ Statement of Commissioner Sterling Gallagher, Department of Revenue, State of Alaska to the Federal Energy Administraion Regarding Alaska North Slope Crude Oil Price and Entitlements Issues, Washington, D.C., March 21, 1977, p. 3.

ALASKA NATIVES: THE LOWERING OF EXPECTATIONS

With the enactment of the Alaska Native Claims Settlement Act, it was hoped that the Alaskan Native might at last be able to have more of what some have called The American Dream. More choices in terms of employment and lifestyle. And a strong economic base from which to build for their children and grandchildren.

But problems with the Federal Government have multiplied, causing long delays in land transfer and incredible costs. The importance of the D2 issue cannot be overstated. The threat to village lifestyles and subsistence living is very great. Yet few seem to realize that the State government is another direct threat.

If either of the corporate income tax bills were to pass, there would be an immediate effect, not only on the oil companies but also on every Native in Alaska. There would be an immediate reduction in the value of Native land to the Natives who have made their selections in large measure for resource value. All Natives are affected because of Section 7(i) of the Act which provides that 70% of the revenues received by an Native Corporation for hard rock minerals or oil and gas discovered on the Corporation's land will be shared with the other Corporations.

Thus, if ASRC cannot get a billion barrel field developed or more fields found, every other Native Corporation and its stockholders will also be adversely affected. Not to mention the adverse affect on the State of Alaska itself over the long term.

THE THIRD ALTERNATIVE

In conclusion, I would like to highlight a number of important points that Milton Lipton made in addressing this Committee on January 25th. First, despite any perceived "deficiency" in Alaska's corporate oil income tax laws, Lipton endorsed the Arthur Andersen study and stated that the figures are "revealing." Lipton also pointed out that the Legislature should note that "the deficiency in your corporate income tax receipts from the oil and gas producing industry is at least and probably more than made up by higher severance and ad valorem taxation which the Legislature has already imposed upon the industry."

Additionally, Lipton took a good bit of time expressing the importance of perceptions. He stated that the impression which the State of Alaska presents "may be even more important in discouraging investment than the fact of the tax burden per se." He spoke also about the dangers of giving the impression of having an "ad hoc taxing policy" which increases taxes year to year "dedicated to the budgetary needs, revenue deficiences, or whatever the case may be." As a businessman, not an economist, I have noted that the perception of Alaska as a good place to invest is already poor.

And Lipton seriously presented what he called the Third Alternative: not to amend the income tax statute. It seems to me that the two corporate income tax bills may make more dollars and cents for the State in the near term but that it makes much more sense for Alaska at this point to stop changing the oil and gas tax laws.

Prudhoe Bay production will begin to decline in about eight years. Once a new field is discovered in Alaska, it takes about eight years to get it into production. We need much more exploration now and many more discoveries in the future to replace the income from Prudhoe Bay. A tax hike now could mean the loss of far greater revenues in the future for the State from the development of the remaining smaller fields. And we must face the fact that there probably will not be any more Prudhoe Bays in Alaska.

The Native interest in this matter is clearly the value of our land, revenue and jobs. But the importance of the perception of Alaska is important to all Alaskans. With billions of dollars of surplus revenues projected by the State for the future, we do have time. The passage of these bills would not just reduce oil companies' profitability. Either one would be damaging to the economic aspirations of all Alaskans and particularly Alaskan Natives.

* * *

HB
353

COMMITTEE REPORT

SENATE

5/14/77 **Finance

5/17/77
Date

Mr. President:

The Committee on Resources has had CSHB 353
creation of agricultural development projects
under consideration. A majority of the members of the Committee

☐ recommends it do pass

☐ recommends it do not pass

☐ recommends it do pass with attached amendment(s)

☐ recommends it be replaced with CS for HB 353 and that
CS for CSHB 353 do pass with attached amendments :

☐ (and) recommends it be referred to the _____
committee

☐ reports it back without recommendation

☐ AND attaches a report of its intent

☐ (other) _____

MEMBERS SIGNING THE MAJORITY REPORT:

_____ _____ _____

_____ DO PASS _____

_____ _____ _____

_____ _____ _____

MEMBERS NOT CONCURRING IN THE MAJORITY REPORT:

_____ recommends: _____

_____ recommends: _____

_____ recommends: _____

R. Pol
Chairman

S 60

A M E N D M E N T #1

Offered in the SENATE By Resources Committee

To: _____ SENATE BILL NO. _____

SCS CS HOUSE BILL NO. 393

AMENDMENT: Page 9 Line 5

Delete subsection (c) in its entirety.

AMENDMENT #2

Offered in the SENATE By Resources Committee

To: _____ SENATE BILL NO. _____

SCS CS HOUSE BILL NO. 353

AMENDMENT: Page 9 Line 27

Delete: "The provisions of the Administrative Procedures Act (AS 44.62) do not apply to the regulations adopted under this section."

A M E N D M E N T #3

Offered in the SENATE By Resources Committee

To: _____ SENATE BILL NO. _____

SCS CS HOUSE BILL NO. 353

AMENDMENT: Page 13 Line 27

Delete subsection (3) in its entirety and renumber accordingly.

A M E N D M E N T

Offered in the SENATE By Resources Committee

To: _____ SENATE BILL NO. _____

SCS CS HOUSE BILL NO. 187

AMENDMENT: Page 2 Line 22

PAGE TWO

Delete all material on page 2, lines 22 through 29 and page 3, lines 1 through 5 and replace with the following:

(1) seven members appointed by the governor after consultation with

(a) the Alaska Gold Producers Assoc.;

(b) the agricultural policy task force established under Senate Concurrent Resolution No. 37 (Sixth Alaska State Legislature);

(c) the Alaska State Chamber of Commerce;

(d) the conservation of natural resources;

(e) the Alaska State Hotel Association;

(f) the Alaska Federation of Natives;

(g) the Alaska Conservation Society;

(h) any other organization the governor considers appropriate;

(2) one member appointed by the Speaker of the House of Representatives;

(3) one member appointed by the President of the Senate.

A M E N D M E N T #4

Offered in the SENATE By Resources Committee

To: _____ SENATE BILL NO. _____

SCS CS HOUSE BILL NO. 353

AMENDMENT: Page 1 Line 8

PART TWO

Add new sub-section (b) as follows, and re-letter accordingly:

(b) Members appointed by the Governor are subject to legislative confirmation.

Invite Fish & Game & Monday
← Dr. Hennings - Dept. of Agriculture

CS # B353 - Swanson, Bierne, Bennett, et al

~~Disposal of land~~
~~Reclamation~~

Dr. Hennings ?

Comm. Le Resale - endorses Delta project
does not endorse this bill
makes into single use management
vested disposes of lands without
legislative consent

no proper review
no ← & notification of Regional Corps

Director of Agriculture - Czar
responsibilities they are not prepared to handle
loans

Delta Fish & Game opposing Bd

Ron Skoog - Chief of Habitat Section
Conflicts with Delta land Mngt plan. Protection

Diverta hand land to Ag

Delta - Clearwater - Delta Loop area
- no reserves

Clearing land at State expense

Kettleka - no moose in Next Valley 40 yrs ago
moose came back until can moose &
open winter harvest 1,000 moose in one
3 day period.

Sept. 1st - Delta land use Plan to be complete

Impact on water & fisheries (Salmon & Grayling)
Recreational use too.

Red Lewis ovi - "promulgate"?

May 17, 1977

The Honorable Jalmar Kerttula
State of Alaska
Pouch V, State Capital
Juneau, AK 99811

Dear Senator Kerttula:

The following notes pertain to Commissioner LeResche's Delta Agricultural Action Plan of April 21, 1977 and Senate CS for HB 353.

1. Commissioner LeResche's action plan closes with the significant statement that state land will not be released for the expansion of agriculture near Delta unless, after completion of all reports called for in the plan, there is ". . . a finding that the project is acceptable and has a significant probability of success. . . " In reality, LeResche's "agressive" plan most accurately relects his statement in the March 30, 1977 Daily News-Miner that ". . . the proposed Delta farming project needed more study and planning."

   The LeResche plan is actually self-defeating. It provides no provision for planning, developing or financing a processing and marketing system for barley, the major crop considered for production near Delta. Thus, the farmer will have no means of processing and marketing his crop, a situation guaranteed to inhibit the successful development of commercial agriculture.

2. According to the March 30, 1977 News-Miner, "LeResche said current studies indicate that quick, massive agriculture development could lead to spectacular failure." Specific, technical reasons for establishing a relatively large acreage for barley production as rapidly as possible were well documented in the report of the ad hoc Agricultural Group entitled "Potential Barley Production in the Delta-Clearwater Area of Alaska" as well as in the report on Alaska's agricultural economists E. Faris and J. Hildreth.

   Slow agricultural development in the Delta area to date has not resulted in sufficient production to permit the necessary processing and marketing required for a stable, commercial agriculture. Continued slow development will lead to the same failure that would occure in the commercial fishing industry if harvests of fish were insufficient to permit commercial canneries to initiate processing and marketing. In contrast to the self-defeating LeResche plan, SCS for CS for HB 353 provides a mechanism for the development and financing of essential processing and marketing systems for agricultural commodities.

3. In view of existing legislation related to land use for "agricultural purposes," it is difficult to understand why LeResche considers the definition of "agricultural purposes" or "agricultural rights" as a "big question." SCS CSHB 414, an Act relating to land sales or leases for agricultural purposes, and CCSB 14, an Act relating to agricultural land, were passed in 1976. These Acts require the Division of Lands to classify land for "agricultural purposes" and permit state lands to be leased for "agricultural purposes." "Agricultural rights" can't be too big a question because, according to the April 13, 1977

News-Miner, the Division of Lands has initiated plans to sell land in the Tanana Loop near Delta for "agricultural use only." Of course, SCS for CS for HB 353 provides a specific definition of "agricultural purposes."

4. LeResche identified a conflict between HCS for HB 353 developed from the report of the ad hoc Agricultural Group and a recommendation of the "Delta Land Use Planning Study" in that the planning study recommended disposal of agricultural land in parcels of 300 acres or less. A major constraint imposed on the ad hoc Agricultural Group by state government as it worked to assess potential barley production in the Delta area was that any proposed agricultural development must have a bottom line written in black ink. It must pay its own way. A significant result of the resulting assessment was that small grain farms in the Delta area would have to be at least 3000 acres in size to be economically feasible.

It was surprising, therefore, that LeResche indicated in his testimony on May 4, 1977 that the Department of Natural Resources has already initiated action to dispose of agricultural rights for small farms with much more concern for people's lifestyles than for agricultural economics. Equally surprising was a statement by Dave Hanson, a planning director for the Dept. of Natural Resources, in the April 13, 1977 News-Miner. In reviewing proposed sales of state land, Hanson outlined:

> "An agricultural rights sale in January, 1978, for 5000 acres in small-farm lots of about 20-320 acres in the Tanana Loop area near Delta. This is some of the richest farm land, Hanson said, and farms of that size would be economically feasible."

In the absence of expensive processing and marketing systems for high-value commodities produced on 20-320 acre farms, the economic feasibility of these farms is highly questionable. Of course, if the farms are planned to be economically unsound, it should not be surprising if large subsidies are needed to maintain the farming operations. Yet in the April 6 News-Miner, LeResche said:

> "The quickest way to give agriculture a really bad name is to blow a few million bucks on something that doesn't fly."

The ambiquity of these statements is interesting to say the least.

5. LeResche criticized CS for HB 353 on the grounds that it includes a whole new concept for land disposal, land classification, and other land management within the Dept. of Natural Resources. It is clearly evident, however, that land classification and disposal in recent years have not met the needs of Alaska's agriculture. Agriculture in Alaska has declined substantially, in part, because of decreasing amounts of land available for farmers to farm.

In the April 13, 1977 News-Miner, land disposal policies of the Dept. of Natural Resources were reviewed by Chuck Albrecht, information

officer for the Department, as follows:

> "The Department did dispose of land in 1976 but only as a continuation of existing programs.
> "In 1975 we stopped and looked at where the state was (in land disposals). It was a kind of logical stopping point and they know where they have to go now. "In the 1960's about eight new land disposals a year were made, slowing to about four a year in 1971 through 1975, and none in 1976."

In view of the discontinued disposal of state lands for agriculture, it would seem that a whole new concept for land classification and disposal is desparately needed if Alaskan agriculture is to survive. SCS for CS for HB 353 provides a viable concept of land disposal to revitalize agriculture in Alaska.

LeResche's memo does not provide funding for agricultural research to crop production and soil conservation in the Delta area. Research of this nature is essential if technical problems encountered during the course of agricultural development on new lands are to be solved. In the absence of continuing research programs during the course of agricultural development are substantially reduced.

In contrast, SB 279, an Act making a special appropriation to the University of Alaska to develop environmentally sound management practices for the production and marketing of small grains in the Delta-Clearwater area of Alaska, would provide for this essential research. SB 279 would allow the Agricultural Experiment Station to establish a 10 acre research field near Delta Junction to permit research on conservation tillage practices, crop response to irrigation, crop rotations, and variety combinations and cultural practices for small grains. This research has been planned with the assistance of subsistance farmers, part-time farmers and commercial farmers in the Delta area, and is designed to answer practical questions on crop production, agricultural economics and soil conservation.

7. It is interesting to note that the LeResche plan proposes to aggressively address agricultural development. Yet, LeResche's testimony of May 4, 1977 includes many of the same objections to agricultural development that were presented in a position paper prepared by the Fairbanks Environmental Center to oppose the plan for agriculture in the Delta area that was prepared by the ad hoc Agricultural Group. According to the December 16, 1976 News-Miner, the environmental said its opposition to the agricultural development project is based on political, economic and environmental considerations. Objections by the center include:

> "Management of agriculture lands by a new agency rather than the Division of Lands.
> "Failure to include all costs in a cost-benefit analysis, and determining the agricultural value of the land in the beginning as zero.
> "Committing a large acreage figure to what the center claims is essentially a pilot project."

The center proposed a substantial array of additional studies that would take years to complete and that are similar to many of the studies called for in the LeResche memo. Completion of all of these studies would require substantial time and would provide no guarantee that the Department of Natural Resources would actually initiate agricultural development on a scale that would be lik to ensure success. Never-the-less, the LeResche memo is ostensi designed to pursue aggressively the "exciting prospect" of agricultural development in the Delta area.

Sincerely,

James V. Drew

each person to choose the subject of his or her particular interest and spend an hour or better with that speaker in a small group situation.

At noon, the Subdistrict sponsored a potluck dinner (spearheaded by Mrs. Mildred "Tiny" Buzby with help from several others and food contributed by many), and held its first annual meeting for all cooperators.

This Farm Forum-Annual Meeting was judged a success and we hope to outdo ourselves next year. Plan to come.

Ag Development Legislation Workshop

"Red" Swanson, (D) Nenana, Representative from District 19, held a special work session at the Delta School Saturday, March 26. His purpose was to get public input on an agricultural development bill he has introduced and is cosponsoring with several District 20 legislators and others.

A good turnout of local people with considerable background in the development of this legislation and a high interest in its success provided Swanson with a good deal of valuable input for revisions to the final version of the proposal.

Swanson indicated that he was optimistic about passage this session, but emphasized the need for voter support to individual legislators.

Soil Surveys Can Save You Money

It's that time of year again. People are heading north to the future in Alaska. Part of this future for many people includes buying a home in the great land.

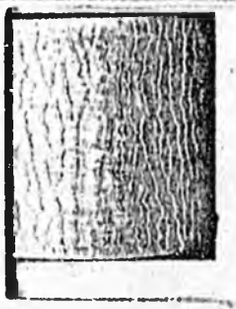
Practically everyone in the lower 48 is unaware of the unique problems associated with building on some Alaskan soil. Normally frozen soil can thaw and settle after construction, rendering an expensive new house unliveable.

Using the soil survey information available at no cost, potential buyers can avoid areas unsuitable for building.

For further information, contact the SCS - SCSD office at 1760 Westwood Way in Fairbanks (phone: 479-6767), or a local SCSD supervisor.

Snow Survey -- The SCS Snow Job

Snow, whether looked upon as a resource or a hindrance, and its subsequent melt water runoff provide



Delta plan costs disputed

By ERIN VAN BRONKHORST
News-Miner Bureau

JUNEAU—There are some serious questions about the true public costs of the proposed Delta agriculture of the money and other uses that would bring higher interest rates.

Also included is $1.8 million for land preparation costs such as surveying, breaking and clearing, and transfer administration, according to Dona Lehr of the policy division. The $1.8 million is the portion that would not be repaid to the state.

But the largest part of the state's cost given in this report is $19.2 million, the value of the agricultural rights of the land to be given away. Lehr said she had based this figure on the estimates of Dr. James Drew, a University of Alaska scientist and agriculture booster, who said private corporate interests would be willing to buy the land at a certain price.

Like all estimates on proposed projects, the numbers are open to different interpretations. An earlier report on the Delta barley project, written by a group of UA people and two staff members at the state departments of Commerce and Natural Resources, gave a much lower figure for state costs.

That report was based on the assumption that the land would be development project, according to the new commissioner of natural resources, Robert LeResche.

"If the government can put in about $30 million for 34 full-time jobs, that doesn't sound like a bargain to me," LeResche told the News-Miner Tuesday.

LeResche, who was appointed by Gov. Jay Hammond last week, emphasized that he favors farming in general and that there are many favorable aspects to the Delta plan. It would involve clearing about 64,000 acres of land south of Delta for barley production, with state financing and support.

"The quickest way to give agriculture a really bad name is to blow a few million dollars on something that doesn't fly," he said.

The $30 million figure comes from a report on the Delta project to be released next week by the governor's Division of Policy Development and Planning, which LeResche headed until recently.

The estimated costs to the state include $8.8 million in revenue the state would lose if it lent money to the project at six per cent interest. The figure is the difference in interest between that use made available at zero value for agricultural rights. This report estimated the capital required for farm financing, market financing, and public service costs at $18 million.

The policy division's report, however, has another section giving the public service costs for items such as highways, police, and more students in the schools. This totals an additional $6.2 million per year.

The jobs section of the report shows 44 more persons would be employed during the clearing process, and after that 34 full-time jobs would be provided on a permanent basis.

LeResche said the project is not going to generate a lot of jobs and he pointed out that the proposed farms would be fairly large. The earlier report gives 3,000-acre farms as the most economically feasible.

"This is an agribusiness proposal, not a family farm proposal," he said. LeResche said he is not sure that it "would be anything but a pretty good deal for a few large businessmen."

However, LeResche also said he favors going ahead with an experiment of clearing a section of land, possibly this summer, which would help determine some of the unknowns.

The policy division report's conclusions are that the project will not be economically self sufficient, even given state support. It also said that commercial agriculture will have "a very rough time" getting established in Alaska. The report said the expected government revenue generated by the project will not cover the increased government expenditure.

The report recommends that the land in the area be opened to private ownership for agricultural use only, and sold as there is a demand for it. It would be sold at the fair market value for agricultural rights, LeResche said.

He hasn't officially approved the recommendations yet, but he noted that he had already okayed them as part of his earlier job. So it is clear that he favors this approach.

"What I don't want is for the state to get left holding the bag," he said. "We may encourage it (agriculture), we may even subsidize it, but we don't want to take all the risks."

Several proposals for moving ahead with the Delta project are being considered in the legislature. The plan sponsored by Rep. Red Swanson, D-Nenana, sets up a mechanism for large-scale agricultural development projects and declares the Delta project eligible. The plan (HB 353) involves the state selling the agricultural rights to the land for only the cost of surveys, preparation, and land transfer costs. The Department of Natural Resources would run the program, and provisions for state financing are included.

A somewhat different approach is presented in another bill (SB 291), which would set up a separate Alaska agriculture authority as a state corporation that could issue bonds. The authority would issue five-year leases for agricultural rights to the land, with the agricultural value assumed to be zero at the time of lease.

State to hold onto Delta land

By SUE LEWIS
Staff Writer

The state of Alaska has no intention of giving away land in the Delta Junction area as part of a proposed agricultural project there, according to a member of an ad hoc committee that developed the Delta barley project proposal.

Speaking at this morning's no-host no-sponsor breakfast meeting, Roger Rayburn of the Soil Conservation Service said the project includes provisions for lease-purchase arrangements of agricultural rights, but not for outright give-aways.

Rayburn referred to an article in Wednesday's News-Miner quoting newly nominated Commissioner of Natural Resources Robert LeResche. LeResche said there are serious questions about the true public costs of the project. In computing costs to the state, the Division of Policy Development and Planning, formerly headed by the new commissioner, reportedly included $19.2 million for the value of the agricultural rights to the land.

That figure should not be included, according to Rayburn. "The state has no intention of ever giving any farming land to anyone," he said. Under the Delta project proposal, the state would finance clearing and breaking of the land, but then would recoup the costs by leasing the land to farmers for a five-year period, with a purchase option for the agricultural rights at the end of five years.

At this morning's meeting other cost estimates included in the estimate were also disputed. Dr. William Wood, executive director of the Fairbanks Industrial Development Corp., noted that the estimate of $30 million includes $8.8 million in revenue the state would lose if it loaned money to the project at six per cent.

Wood said that was "curious reasoning," and said he wondered if that cost would have been looked at so closely if the land had been proposed as a state park.

Rayburn also discussed agriculture in Alaska in more general terms at this morning's meeting. He said the Soil Conservation Service has identified some 20 million acres suitable for agriculture.

"Alaska has the dubious distinction of having the largest agricultural area in the United States," he said. Only 17,000 acres of land are under production in the state, compared to the nationwide total of 400 million acres. Undeveloped agricultural land in the Lower 48 totals only 80 million acres, he said. "I really think, that as our population increases, the Lower 48 will look to Alaska for agricultural production," he said.

Rayburn said the cold soils of Alaska usually require two years after clearing and breaking to warm sufficiently for farmers to achieve full production.

Project participants would be selected by the director of the division of agriculture based on their qualifications to farm the land. The director also would administer a state loan fund to guarantee loans for development of the farm projects.

Both bills, which normally would have been referred to the Resources Committee, intead went directly to Finance and then to the floor. Minority Leader Rick Urion of Anchorage criticized the House leadership for what he termed a violation of the rules.

While there was no opposition to the bill on the floor, Pat Conheady, legislative liaison for the Department of Natural Resources, said after the vote that the Hammond administration has serious objections to the bill. Conheady said he never was given a chance to testify on the legislation.

He said the bill would "create another bureaucracy" in state goverment. He said his department "is in the process of doing the same thing without the bill," and that the bill would result in both the division of lands and agriculture disposing of land.

Conheady also disputed the price tag attached to the farm program. Swanson's bill originally carried a fiscal note over $1 million, but when the bill was reported out of the House Finance Committee the price tag had been slashed to $65,000.

Finance Chairman Steve Cowper, D-Fairbanks and a co-sponsor of the bill, defended his committee's action and said the original estimate was misleading because the money spent on surveying and clearing the land would be returned when it was sold.

Southeast Alaska Empire,
Juneau, ...aska, Friday, April 22, 1977

Farm Project Okayed

By The Associated Press

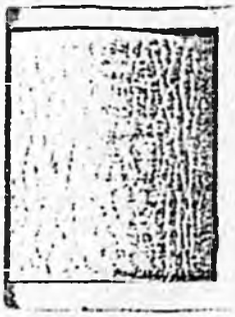
Legislation to set-up a large-scale farming development project and designate 60,000 acres in Alaska's Interior won unanimous approval from the state House Thursday.

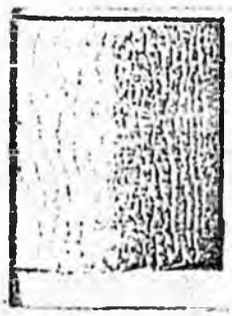
House members also approved a bill authorizing fiveacre agricultural homesites for Alaskans who claim at least five years residency in the state and meet certain other criteria.

Both bills were sponsored by Nenana Democrat Leslie "Red" Swanson and now head for an uncertain future in the Senate, where opposition is expected to be stronger. Another homesite bill passed on to the Senate several weeks ago has yet to receive a hearing.

Under Swanson's farming bill, the director of the Division of Agriculture would have authority to designate large areas of land as agriculture development projects. His designations would be subject to legislative approval.

The land would be sold for agricultural use only at a price equal to the state's cost to survey, clear the land and administer the sale. The parcels would be large enough to "assure the creation of an economic farm unit," the bill states, and probably would be a few thousand acres each.





Daily News-Miner, Fairbanks, Alaska, Friday, April 22, 1977

Delta farm bill takes a big step

By ERIN VAN BRONKHORST

News-Miner Bureau

JUNEAU—The House Thursday passed legislation setting up large-scale farming development projects and designating 60,000 acres in the Delta area as the first such plan.

The measure now goes to the Senate where it probably will face more substantial opposition. The House vote was unanimous.

Also approved was a bill authorizing five-acre agricultural homesites. However, all homesite legislation is being held in the Senate so far this session and looks unlikely to pass.

Rep. Red Swanson, Nenana Democrat who sponsored both bills, told legislators the development bill had been drafted with the help of people both in Fairbanks and Delta, and amended to make the project "strictly agriculture."

"There is no promotion; there are no schemes in it, it is totally an agriculture project," he said. Swanson added that the plan will pay for itself.

Under the bill, the director of the Division of Agriculture is given authority to designate large areas of land as agriculture development projects, after consulting with local groups and after receiving legislative approval.

The land in those areas would be sold for agricultural use only. The price would be equal to the state's total cost to survey, clear and break the land and administer the sale. The parcels would be large enough so that the farm unit would be economical.

The director also would have authority to guarantee loans for development of farms on the project.

The impetus for the bill was long-studied plans for development of a barley farming project south of Delta. Proponents of the plan say it would be economically feasible for farms of about 3,000 acres to produce for sale within Alaska and possibly to Japan.

The project would require substantial amounts of state support, and estimates of the total cost range up to $30 million, depending on whose figures are accepted.

The bill passed Thursday included a fiscal impact note of just $65,300. Swanson said the total includes $35,000 for an experimental land clearing project involving only a small area of land, and $30,000 for one staff person plus related expenses.

The Department of Natural Resources had estimated the cost of the bill earlier at over $1 million. However, Rep. Steve Cowper, D-Fairbanks, told House members that the department could spend only the $65,300 authorized in the bill this year.

"All the money spent on surveying and clearing will be returned to the state anyway when the land is sold," he said.

The $30 million estimate was made in a report by the administration's Division of Policy Development and Planning released recently, and covers all possible costs over the life of the project. Some of the numbers have been disputed by proponents, particularly a figure of $19.2 million given as the value of agricultural right to be given away.

Staff members of the Department of Natural Resources had estimated the cost of the bill earlier at over $1 million. However, Rep. Steve Cowper, D-Fairbanks, told House members that the department could spend only the $65,300 authorized in the bill this year.

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Staff members of the Department of Natural Resources said Thursday the size of the appropriation dictates that only a pilot project will be started this year.

Pat Conheady of the DNR staff said the Hammond administration has serious objections to the bill but representatives were not given a chance to testify. The bill splits responsibility for disposing of land between the Division of Lands and the Division of Agriculture, he said. He added that the department is moving ahead on agriculture now anyway.

However, Swanson has said he deliberately placed the authority with the agriculture division because he believes the land people are too anti-growth and won't move fast enough.

Farm Proposal Passes House Unanimously

JUNEAU (AP) — Legislation to set up a large-scale farming development project and designate 60,000 acres in Alaska's Interior won unanimous approval from the state House yesterday.

House members also approved a bill authorizing five-acre agricultural homesites for Alaskans who claim at least five years residency in the state and meet certain other criteria.

Both bills were sponsored by Nenana Democrat Leslie "Red" Swanson and now head for an uncertain future in the Senate, where opposition is expected to be stronger. Another homesite bill that went on to the Senate several weeks ago has yet to receive a hearing.

Under Swanson's farming bill, the director of the division of agriculture would have authority to designate large areas of land as agriculture development projects. His designations would be subject to legislative approval.

The land would be sold for agricultural use only at a price equal to the state's cost to survey, clear the land and administer the sale. The parcels would be large enough to "assure the creation of an economic farm unit," the bill states, and probably would be a few thousand acres each.

Project participants would be selected by the director of the division of agriculture based on their qualifications to farm the land. The director also would administer a state loan fund to guarantee loans for development of the farm projects.

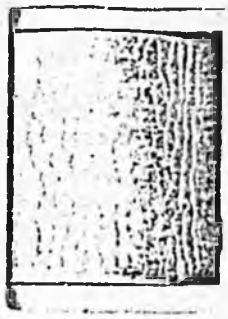
Both bills, which normally would have been referred to the Resources Committee, instead went directly to Finance and then to the floor. Minority Leader Rick Urion of Anchorage criticized the House leadership for what he termed a violation of the rules.

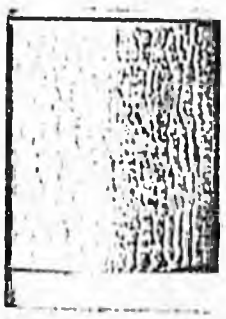
While there was no opposition to the bill on the floor, Pat Conheady, legislative liaison for the Department of Natural Resources, said after the vote that the Hammond administration has serious objections to the bill. Conheady said he never was given a chance to testify on the legislation.

He said the bill would "create another bureaucracy" in state government. He said his department "is in the process of doing the same thing without the bill," and that the bill would result in both the division of lands and agriculture disposing of land.

Conheady also disputed the price tag attached to the farm program. Swanson's bill originally carried a fiscal note for over $1 million, but when the bill was reported out of the House Finance Committee the price tag had been slashed to $65,000.

Finance Chairman Steve Cowper, D-Fairbanks and a co-sponsor of the bill, defended his committee's action and said the original estimate was misleading because the money spent on surveying and clearing the land would be returned when it was sold.





Daily News-Miner, Fairbanks, Alaska, Tuesday, March 29, 1977

Delta farm bill draws its support

News-Miner Bureau

JUNEAU—A group of 50 farmers and farming promoters who met at Delta Saturday enthusiastically supported the agriculture projects bill with only a few amendments, Rep. Red Swanson, D-Nenana, said Monday..

"We took HB 353 and went over it totally, paragraph by paragraph, line by line," he said. At the end everyone supported the bill, he said.

Besides farmers from the Delta area, the group included representatives of the University of Alaska and the Fairbanks business community, he said..

The bill generally would give the Division of Agriculture in the State Department of Natural Resources authority to start and finance farming development projects, and would declare the Delta-Clearwater-Tanana Loop Project automatically eligible. A companion measure (HB 352) would allow five-acre agricultural homesites.

Among amendments approved at the Delta meeting was one requiring the division director to consult with local community groups before approving land to be designated an agriculture project.

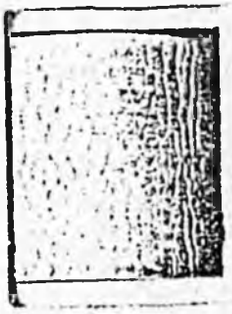
Some of the group also wanted to take out parts of the bill which required confidentiality of the names of people applying for land, and geological, geophysical and engineering data about the land and its natural resources, Swanson said. The amendment thus would make this information public rather than confidential.

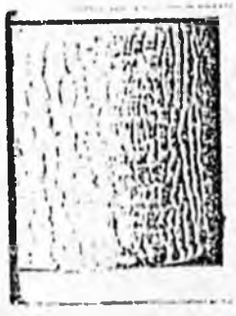
Financial information submitted by applicants still would be confidential, however, Swanson said.

The bill now is in the House Finance Committee and Swanson said he will push for the requested amendments there.

It does not include an appropriation to carry out the project, although Swanson said the capital budget approved by the House Finance Committee included $30,000 for a pilot project to find out the cost of clearing a section of land.

Swanson said the agricultural development project could be run by people already working for the state and he does not plan to ask for additional funds. He will ask for more money next year.





Daily News-Miner, Fairbanks, Alaska, Thursday, March 17, 1977—A-3

New farming bill proposed

By ERIN VAN BRONKHORST
News-Miner Bureau

JUNEAU—An ambitious agriculture bill proposed this week would set up a new state division, start and finance farming development projects, and declare the Delta Project as eligible without any further public testimony.

The measure (HB 353) is sponsored by Rep. Red Swanson, D-Nenana, and co-sponsored by eight other legislators, including Fairbanks Reps. Don Bennett, Republican, and Steve Cowper and Charlie Parr, Democrats.

Swanson said the bill would obtain land and financing for the Delta-Clearwater-Tanana Loop project, which has been studied for several years. But the government mechanism could be used in other parts of the state as well.

He will visit Delta soon to hold a workshop with farmers there, and some amendments to the bill may be made in committee, Swanson said Wednesday.

"I want the farmers to tell me what they want," he said.

The bill was drafted by Swanson and Jim Baldwin, a staff attorney for the legislature. Baldwin said he had met with a group in Fairbanks over the bill, including attorney Ed Merdes, real estate broker Frank Geiger, agriculture booster Dr. James Drew, Dr. William Wood of the Fairbanks Industrial Development Corp., and Bruce Boyd of the Fairbanks Chamber of Commerce.

The plan would set up a division of agriculture within the state Department of Natural Resources. Its director would identify available land suitable for large-scale agricultural development, subject to confirmation by the legislature.

The director would have the power to sell the land for farming by direct negotiation with a qualified individual. The price would not be greater than the cost of surveying and clearing the land and administering the sale.

The land would be sold in pieces large enough to "assure the creation of an economical farm unit." Baldwin said this provision indicates the parcels should be large enough so that the farmers could make a profit.

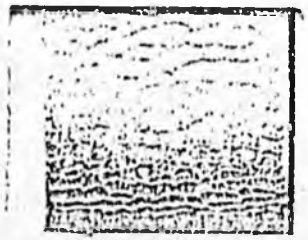
Any resale would be limited to a price equal to the agriculture-use value of the land, a provision meant to discourage speculation, according to Baldwin.

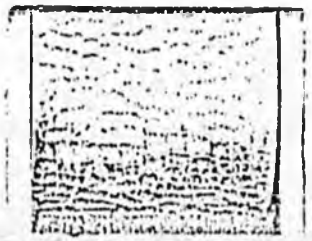
Swanson said the leasing and sale provisions were made "strong enough to keep it all agriculture."

The division director could guarantee 90 per cent of the amounts of loans made by private institutions for developing and operating the farms. The bill also sets up a revolving fund that could be used to award contracts for clearing the land.

In another section, the bill gives the director the power to loan up to $100,000 from an already-existing agriculture loan fund without the approval of the funds board.

The Delta Project is designated automatically as eligible under the plan. The bill waives the requirements for public notice and obtaining public testimony, unless some governing body or corporation in the Delta area enacts a resolution objecting to the project within 30 days after the law takes effect.





"Independent in All Things . . . Neutral in None"

FAIRBANKS
Daily News-Miner

Tuesday, April 27, 1976

Editorials . . . Comment

Agriculture potential

The exciting scenario for agricultural development in Interior Alaska laid out last week promises independence from a complete reliance on our renewable resources. It offers the state an opportunity for a clean industry. But it also demands careful attention to a long list of prerequisites before that dream will be realized.

So far the legislature has passed a resolution establishing an official policy on agriculture. Gov. Jay Hammond has joined the crusade, too.

Yet to be dealt with are a number of difficult and sensitive problems that will be addressed by a task force composed of individuals picked by the legislature and the governor. They include the establishment of new state land policies to free tillable lands for farming, the need for low-cost energy in large quantities, a tax break for people with capital tied up in farming, marketing systems, and the all-time Alaska bugaboo: transportation.

The concept was smoothly presented last week by farm boosters Ed Merdes and Dr. William R. Wood. Mr. Merdes' Delta farming efforts are as legendary as Dr. Wood's provincial enthusiasm. Their grand scheme seems to be as practical as it is compelling.

As Vice President of the Fairbanks Industrial Development Corp., Dr. Wood promises to keep up the barrage of facts, figures and crop forecasts. He and Mr. Merdes were given an able assist at last week's kickoff of the scheme by the University of Alaska's Agricultural Experiment Station Director, Dr. James Drew. Others on the UA agricutural team further bolstered the proposition of an agricultural industry worth hundreds of millions of dollars.

It is possible, but a long list of maneuvers and contortions need to be executed before it's ever close. A public commitment from Alyeska Pipeline Service Co. to consider dedicating pipeline pump station waste heat to the proposal would be a logical beginning point. A new state lands policy would be an excellent second step. The Alaska Railroad should get involved, too.

The legislature and Gov. Hammond should move expeditiously to support the agriculture resolution's policies, and appoint members to the task force as soon as is practicable.

With a maximum of coordinated effort, Alaska could pull it off. But it's a long way down the road, and a good deal of leg work needs to be done before an Alaskan agricultural industry is even probable.

"Independent in All Things . . . Neutral in None"

FAIRBANKS
Daily News-Miner

Monday, April 26, 1976

Editorials . . . Comment

The permanent fund

What could be more exciting than the prospect of true economic stability for Alaska?

What Alaskan wouldn't like to see the boom-and-bust economic cycle that has plagued the state and the territory since the turn of the century be transformed into a relatively smooth line on the economic chart?

The leading possibility for this kind of economic stability for Alaska is the creation of a permanent fund which would be used to sock away a percentage of the state's oil receipts much like a savings account. The interest derived from the investment of the fund would be used to sustain certain state programs that would benefit all Alaskans.

There are two versions of how the fund would be established. One would take a fourth of all revenues from oil, including bonuses, oil taxes and royalties. The other would ignore oil taxes, but would increase to 50 per cent the portion of bonus and royalty funds that go to the permanent fund.

The legislature passed a bill creating a permanent fund last year, but Gov. Jay Hammond vetoed it, contending that the issue can be decided only by a constitutional amendment.

Only after oil receipts are invested will Alaskans be assured that their money won't be as quickly dispersed as it was following the $900 million North Slope oil lease sale in 1969.

If the state saves 25 per cent of its oil receipts for 10 years, the account will total $3 billion after the first decade. The three billion dollars could produce $100 million per year for injecting into other economic enterprises in the state.

What sort of enterprises? The fund could help put a viable state agricultural industry on its feet. It could provide loans to Alaskans who want to build their own homes, but can't obtain conventional financing. It could also be utilized in revitalizing the state's depleted fishing industry by helping individual fishermen finance and construct new boats. And it could simultaneously encourage the development of aquaculture corportations to rebuild the fish stocks.

Another exciting aspect of the permanent fund would be its effect on state spending. By mandating that a portion of the state's wealth being derived from non-reneweable resources be sunk into the permanent fund, Alaskans would avoid careless spending of those revenues, at least. Chances are excellent the constraints of putting regular deposits into a state savings account would have a sobering influence on other state programs as well.

The permanent fund offers Alaska an opportunity to invest in itself, preserving forever the bonanza of our non-renewable resources in a way that will allow permanent improvements in the condition of our renewable resources.

A responsible precedent

–Daily News-Miner, Fairbanks, Alaska, Friday, April 22, 1977

Hammond offers his own version of Delta bill

News-Miner Bureau

JUNEAU—Gov. Jay Hammond has introduced his version of plans for moving ahead with the Delta barley project—an appropriation o $400,000 for preparing 2,000 acres of land.

The bill (SB 337) would direct the Department of Natural Resources to survey, clear and break the land. It's south of Delta. A spokesman for the department said the acreage would be an experimental project run by the University of Alaska.

The governor's plan also includes a study of the changes that occur on the land, including effects on animals, plants and water supply.

In a letter with the bill, Hammond said his staff has studied the proposal for a year and has concluded, "Such production may indeed be feasible and is deserving of further attention."

The House already has passed an agriculture development bill setting up about 60,000 acres in the same area as a farming project. But the $65,300 appropriation accompanying it is expected to cover only one staff person and the breaking of a small area.

Department spokesmen said Hammond's bill is intended to replace the House measure. The governor's version has been referred to three Senate committees, which means it isn't likely to be approved this session.

THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB 353

Title Act providing for creation of agricultural development projects

Requested by _____ Date _____

II. FISCAL DETAIL

Agency Affected Natural Resources

Program Category Affected NRMEC

Budget Request Unit(s) Affected Division of Agriculture

EXPENDITURES (Thousands of Dollars)

	FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
100 PERSONAL SERVICES	450.0					
200 TRAVEL	10.0					
300 CONTRACTUAL	5.0					
400 COMMODITIES	5.0					
500 EQUIPMENT	10.0					
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.	1000.0					
TOTAL	1480.0					

FUNDING (Thousands of Dollars)

GENERAL FUND	1480.0					
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

FULL TIME	13.0					
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

1. General administration and purchase selection process: 3 people
2. Agricultural Development project revolving fund: $1,000,000 start-up
3. Land management office: 10 people

IV. DATE March 29, 1977 PREPARED BY Ted Smith

AGENCY Dept. of Natural Resources, Div. of Lands

PHONE _____

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 10/76)

Dr. Dogson

Ladies and Gentlemen:

Man has lived with agriculture for so many generations, it has become a complete part of him. It is so much a part of him that he takes it very much for granted . Everyone is his own agriculturist.

Modern man, however, is also a product of the industrial age and the scientific age.

These influences in the U.S. have created a very sophisticated population capable of reasoning from small bits of information and misinformation and thus, not being in direct touch with the land and the basic biology of agriculture, have created images of food production that are often outside the realm of reality. For instance, everyone knows the farther north you go, the colder it is, and most people in the lower 48 are perfectly willing to accept the term, "The Frozen North". This image is so strong that National Geographic can show a movie of Siberia in which"Reindeer run across a land of eternal snow", and few people question how the trees they are running through ever grew where there was eternal snow.

One step closer to reality are those who understand that agriculture may be possible in the north, but relating to their own experience in the lower 48 ask, "How long is your growing season?" When you get above 55° latitude where the day length stretches rapidly, you have to start thinking in terms of degree-hours of sunlight. The only real answer to the question is, "Long enough to mature crops".

Agriculture is the process of putting together certain renewable and non-renewable resources to produce specific products, and you work with what you have.

What Alaska has is about 17.5 million acres of tillable lands (1 1/2 times the agricultural lands in California). In addition, we have another 10 million acres of land suitable for conventional livestock grazing. Now these are lands that have been identified so far by the Soil Conservation Service, and I know they are quite conservative because I am aware of other lands suitable for limited grazing that are not included in these estimates. Tillable lands have been

identified only if they occur in blocks as large as a township. We do not even know what the final acreage figure will be but it may well approach the early estimates of C. D. Georgeson, who said Alaska had 40 million acres of agricultural lands.

Other resources include water, something of which the drylands of the West do not have enough, especially if they start using their water resources to develop and transport coal. Alaska has 30 percent of the runoff water in the United States and 50 percent of the surface water.

We also have nitrogen fertilizer and anticipate having a great deal more. The Kenai plant is one of the largest urea and anhydrous ammonia plants on the West Coast, and they are expanding. The availability of Prudhoe gas may provide even more fertilizer production in the Interior. We already export large quantities of nitrogen fertilizer to the west coast, and could provide it to the mid-west in time if we had the transportation.

Given these resources, what can we produce. First of all, I'd like to say that the majority of extensive agricultural lands is in the central plains area of the State, along the Tanana, Yukon, and Kuskokwim river valleys. And I might add that Fairbanks which is roughly in the center of this area has a June 22nd. daylength of about 22 hours. The temperature in this central area reaches 90 to 100 degrees in the summer.

One area that is beginning development is the Delta Junction region. Because of its 1100 ft. elevation, I have always thought of it as more of a forage production area than a grain area.

On the other hand, I asked Dr. Wooding, our Agronomist at Fairbanks for some figures on grain production at Delta, and here is what he gave me.

Delta

These are average figures for three years, 1973 - 1975. These grains were planted on summer fallow land and 300 lbs. of 20-10-10 were added.

Barley:	Galt	76.4 bu. per acre
	Weal	67.3
	Lidal	61.6
	Edda	67.6
	Olli	60.7
	Finaska	76.6
	Otra	80.1
Oats:	Cayuse	118.9 bu. per acre
	Nip	118.0
	Toral	143.7
	Pendek	135.9
	Cal	88.9
	Rodney	94.5
	Glen	110.0
	Frazer	105.2

Wheat:	Delta	Fairbanks
Chena	49.5	62.0
Gasser	42.0	47.4
Thatcher	38.5	54.3
Saunders	33.4	47.4
Park	39.0	49.4
Kenthatch	33.3	53.9
Pictic	62	100.0

It is quite likely that the figures for Fairbanks would more nearly resemble those for the Totchatket area just west of Nenana which will probably be our next area for agricultural development.

I don't want to leave you with the impression that all we are going to produce is grain. I use grain to give you an index of our productivity. The chances are good that most of our grain as well as forage will be used to produce animal products in time. One of the interesting and important things about our grain in the Interior is that it runs 40 to 50 percent higher in protein than feed grains from the Pacific Northwest. This means lower rates of supplemental feeding. And for supplements especially our ruminants, cattle and sheep we can use urea and fish meal, both Alaskan products. With our high-protein grain, supplementation would be minimal.

One of the advantages of forage production, especially in the Delta area, is that the pipeline operation will provide massive quantities of waste heat which can be put to use in forage drying and pelleting.

The dry, cold Interior, with its millions of acres of summer grazing lands and millions of acres of tillable lands for winter feed-base production, would seem to make the Interior ideal for sheep production. The swing away from petro chemical based synthetic fibers back to natural fibers, a trend which can easily be projected to continue, will make wool a valuable product.

Although some lamb is consumed in the U. S., mutton is not readily marketable there. But Japan is a consumer of mutton, and in fact, they have enquired about the possibility of very large quantities of lean mutton from Alaska. Perhaps in the future we will see wool and lamb moving in one direction and mutton in the other.

If we consider the Interior river valleys of the Yukon, Kuskokwim and Tanana, there are 12.5 million tillable acres. Based on 3000 lbs/acre grain production or 2 ton dry matter brome grass per acre, 3.2 acres would sustain an animal unit (cow plus calf to slaughter weight) or 3,900,000 animal units.

If we translate this to sheep at roughly 3.5 sheep per acre, this would be a ridiculous figure of over 43 million sheep.

Naturally, the land will not all go for one thing. The point is that if you want a million sheep and 500 thousand head of cattle and 20 thousand dairy cows, a million hogs, and a quarter of a million chickens, a few thousand acres of potatoes and vegetables, and a few hundred acres berries and small fruits; there's plenty of room left over for wild life, specialty crops and export quantities of grain and hay.

I would like to remind you that agriculture, as opposed to other kinds of industry is a very long-term affair. It is not something you can turn on and off at will. Unlike mining, you cannot go out and drill and compute tonnages of product.

Unlike forestry, you cannot look at a standing crop and expect it to be there when you get arount to harvest.

We can give you numbers of acres and production per acre possibilities, but until a well-developed agriculture exists, there is no way to estimate how much in the way of products will move.

Agriculture competes with other land uses, and is therefore subject to the whims of political action and to changing views of social reality.

Agriculture requires more than just land. It requires a total infrastructure of which transportation is a vital component. You cannot build a railroad on the possibility of agricultural development but farmers wont grow crops unless they can get their crops to market. The State is reluctant to release land for agricultural use without proof that agriculture is an economically viable activity, and the farmers wont produce without assurance of access to land.

Everything in agriculture is, therefore, related to everything else. Agriculture is more social than it is economic. Large areas of new agricultural lands in America have always been opened for social reasons rather than economic. The settlement of the West occasioned by construction of the transcontinental railroads was serendipitous fallout to the broader issue of linking the West Coast to the Mid-west for territorial defense. The proposed railroad building in Western Canada is not for the purpose of developing agriculture, but to develop employment opportunities for residents who may otherwise be by-passed by the 20th Century. Agricultural development may result from this activity.

Railroads will not be built into and within Alaska on the basis of potential agriculture, but agriculture will result and in time, may become the mainstay of the transportation industry.

Alaska's Agricultural Potential
A Summary

Alaska has large acreages of land suitable for potential agricultural production (cropland, rangeland and forests). In fact, when only the physical food or fiber production requirements are considered, the area in Alaska which would lend itself to farming is truly vast.

However, looking at the soil and climatic limitations, the potential agricultural acreage diminishes somewhat. There are four major areas, approximately 15,516,000 acres, which have suitable climate and soils for cropland. They are the Anchorage, Kenai, Matanuska-Susitna Valley area; the Dillingham, Tikchick Lake area; the Tanana, Kantishna and Salcha Basin area in the Interior; and the Yukon flats area of the Upper Yukon. Three minor areas, the Yukon Valley below Holy Cross to Ruby, including the Koyukuk Basin; the Kuskokwim Valley from just below Aniak to Lake Minchumina and the Copper Valley-Chitina Basin.

Alaska also possesses many square miles of potential rangeland. Reindeer forage on the northwest tundra. Cattle graze on the southern coastal grasslands while the easternmost Aleutian Islands are grazed by cattle and sheep. With current information, it is difficult, if not impossible, to define this vast area in acres or square miles. These immense areas cover roughly the entire western part of the State. Expansion of the red meat industry into these rangelands will be limited by social, economic, governmental and ownership restrictions; not by the physical availability of suitable rangeland.

The third major part of Alaskan agricultural production lies in forests. As land ownership questions are resolved, the potential for increased use of interior and peripheral forest will increase, particularly in view of present world market conditions. A separate summary on Forest Resources is available.

Recently developed controlled environment housing techniques for dairy animals, hogs and beef will almost certainly be used as the demand to concentrate animal production continues. In the beef cattle and reindeer area, Alaska may be an exception--a place where red meat production can still be done on open ranges. However, Alaskan red meat production will depend almost entirely on the development of a supporting feed base. Even in those areas where cattle could survive outside, supplemental feeding is needed for growth or finishing. Thus the size of Alaska's cattle industry depends upon the amount of cropland devoted to producing forage--or upon a crop which can be processed to yield feed.

As to crop farming, many plants are well-adapted to Alaska's climates! The lengthy list of suitable crops covers everything but large fruits. Long summer days contribute to larger, tastier and more tender vegetables. Grains are higher in protein content. And, in some cases, yields are very impressive. Serious insect problems have not occurred.

Physically, the agriculture potential is tremendous. Why, then, so little development?

Alaska's agricultural development began for one purpose--to help feed Alaskans by offsetting dependency on outside foods. Initially, this purpose may have been enough. Now, Alaska's agricultural industry is stagnated! Percentagewise, only a fraction of what Alaskans consume is produced in the State. And, yearly this percentage becomes less! Alaska's population doesn't allow for the development of a comprehensive agricultural framework.

Agriculturally speaking, Alaska's in a unique position. Worldwide urban pressures, increased food consumption, increased population and better diets, make Alaska one of the few places where vast acreages of virgin potential agricultural land still exists. Alaska must look to world markets for selling its agricultural products, and it must react to the worldwide demand for agricultural products. Economically, it may not be feasible to produce certain products in parts of Alaska now. In a very few years, however, the question is not going to be "is it economical to produce food," but "whether we <u>can</u> produce food here". Increasing demand will probably make it economically feasible.

Agriculturally, Alaska is nearing a crossroads which may determine the industry's future. As the land ownership problems are resolved under the Statehood Act and the Alaska Native Claims Settlement Act, these large parcels of land will undoubtedly be split among four or more land owners. Steps must be taken to set aside agricultural development land. Unless this is done, the land will be divided into many different areas for many different uses. Then, a comprehensive agricultural development plan will be impossible when, eventually, it becomes desirable and profitable to do so. This occurred on the Kenai Peninsula, in the Matanuska Valley, and is occurring in the Susitna and Tanana Valleys. In those areas it is impossible for a new farmer to obtain enough concentrated, tillable land to build a viable commercial operation. For this reason agriculture's future (when defined as large-scale production for export) in those areas is dim.

However, there are superb agricultural areas with potential, where this is not yet the case. Some of these areas are equal to the best agricultural cropland in the State. Specifically, the upper Susitna Valley, the Kantishna Block, west of Nenana, the Yukon flats area, the upper Kuskokwim River Valley, and to a lesser degree the Delta Clearwater area. These relatively unsettled areas would be ideal for large-scale agricultural developments.

Similarly, immense grazing acreages exist with the physical potential for substantial expansion of red meat and fiber (reindeer, beef cattle, musk ox, sheep) industry.

One of the first steps which must be taken toward preserving these areas is the establishment of strong national and state policies aimed at eventual agricultural development. Without firm positive policy, it is not

possible to pass and adopt required laws and regulations, or to retain the support of government officials for the effort.

There will be many desirable side effects of a commercial agriculture producing for export. First, we will have to product enough fertilizer to be self-sufficient, at least for phosphates and ammonium nitrate. Second, agricultural industry is "clean". Third, as a percentage of production, it requires less utilities, service industries and other expenditures of tax funds than any other industry. Fourth, the agricultural dollar stays in the community longer and to a greater extent than other industry dollars, especially if basic agricultural products such as seed, fertilizer and feed can be purchased within the state. Fifth, the cost of the Alaska food basket, compared to statewide costs, will decrease as larger scale operations allow lower production costs.

As food demands, increase, particularly in the Pacific Rim Nations, Alaska may be in a unique position of having the land available just when the pressure develops to use every available agricultural acre.

--Abridgement of summary, from
Alaska's Agricultural Potenaial
Alaska R. D. C. Publication #1

COST VERSUS MARKET PRICES

PERHAPS THE MOST SIGNIFICAN FINDING ("POTENTIAL BARLEY PRODUCTION DELTA-CLEARWATER AREA OF ALASKA") IS THE FOLLOWING: ON A 3,000 ACRE FARM UNIT, USING A ONE-HALF FALLOW PRODUCTION CYCLE, IT IS ESTIMATED THAT THE FARM OPERATOR CAN BREAK EVEN ON ALL COSTS AT A PER-BUSHEL PRICE AT DELTA JUNCTI OF SOMEWHERE BETWEEN $1.90 AND $2.30 PER BUSHEL.

FOR COMPARISION, THE PORTLAND CASH MARKET PRICE FOR No. 2 WESTERN BARLEY AS OF THE END OF JANUARY, 1977, WAS $110 PER TON, APPROXIMATELY $2.64 PER BUSHEL. DURING THE TWO-YEAR PERIOD 75-76 THE PORTLAND PRICE HAD VARIED FROM A LOW OF $94 TO A HIGH OF $143 (Jan. 75) BUT WAS GENERALLY UNDER $115.

The author is Associate Economist with Rainier National Bank. The opinions expressed are his own and do not necessarily reflect those of the bank.

3000 ACRE FARM UNIT

3000 at 60 bushels to an acre	180,000 bushels
180,000 at $2.00 per bushel	$ 360,000
$360,000 over a 25 year period	$9,000,000

TOTAL PROJECT

60,000 acres at 60 bushels	3,600,000
3,600,000 bushels at $2.00	$ 7,200,000
$7,200,000 over 25 years	$180,000,000

Clearing & Breaking	60,000 acres at $200 per acre	$ 18,000,000
Administrative Costs	60,000 acres at $ 25 per acre	$ 1,500,000
	TOTAL	$ 19,500,000

DELTA FARMING PLANS —Former State Sen. Bob Palmer, the governor's chief agricultural adviser and chairman of an ad hoc committee on farm development in Delta, describes the administration's plans in the first presentation of a weekly seminar program at the University of Alaska (Staff Photo by Marc Olson)

Delta agricultural project may be postponed a year

Plans to clear and break ground near Delta Junction this spring as part of a state-backed agriculture project may be delayed a year, according to Bob Palmer, chairman of an ad hoc committee investigating the economic feasibility of the project.

Palmer was in Fairbanks Thursday to speak at a seminar in land resources at the University of Alaska.

"The most reasonable scenario I see," he said, "would start clearing and breaking this spring on just a couple of quarter sections, introduce legislation if the governor approves it; then expect action late in the session, or maybe even next session if the Legislature appoints an interim committee to study it. Then plan to start next season."

Gov. Jay Hammond established the ad hoc committee and charged it with determining whether a state-backed agricultural project could succeed. The committee's proposal calls for the state to clear 60,000 acres in the Delta Junction area, then lease and later sell agricultural rights to farms ranging from 900 to 3,000 acres. The state would also assist in setting up grain storage, drying and processing facilities.

Palmer said project backers had hoped to begin this spring because the time is "highly opportune" to use heavy equipment that now stands idle after the oil pipeline construction and is waiting for construction of a gas pipeline. Costs might be as low as one-third of the costs in other times, he said.

But he said the governor has asked the Division of Policy Planning and Development to review the project

(See DELTA, page A-3)

before he determines whether to back it.

However, Palmer said interest among legislators appears to be high, and added that several have told him they would sponsor legislation to get the project underway if the governor does not.

He said the University is interested in conducting additional studies in the Delta area, and those could begin this spring before any legislative action is taken.

"I think there's a great deal to be gained by proceeding with cautious haste," he said.

SCR. 11.

02-0018

STATE
of ALASKA

MEMORANDUM

DEPARTMENT OF NATURAL RESOURCES
OFFICE OF THE COMMISSIONER

TO: Those Listed Below

DATE : April 21, 1977

FROM: Robert E. LeResche
Commissioner

SUBJECT: Delta Agricultural Action Plan

The feasibility report by the Ad Hoc Delta Barley Group has been completed and reviewed by the Division of Policy Development and Planning. In addition, the Delta Land Management Planning Study is essentially completed. All three of these studies have been very well done, and fit together well as a guide to future action. The purpose of this memorandum is to establish an action plan for aggressive accomplishment of the recommendations in these three studies.

I am assigning Dave Hanson of the Planning and Research Section to coordinate this effort. Work schedules and reports should be coordinated through Dave. I am also requesting those indicated below to move with all practical speed to accomplish the tasks outlined.

GENERAL ADMINISTRATIVE TASKS:

1. Definition of "agricultural rights." The Planning and Research Section and Division of Lands should immediately get together with the Department of Law and draw up an acceptable definition of agricultural rights to be included in any sale or lease of these rights. The Division of Agriculture should be consulted during this process. This definition might well contain identification of permitted uses and the covenants/easements to sale, as well as provisions for recreational access and liability against crop depredation. The Department of Fish and Game should be consulted concerning the latter.

The Director of Land and Water Management should report progress to me on this item on June 1.

2. Appraisal policy for "agricultural rights." The Division of Lands, the Department of Law, and Division of Agriculture should get together once a working definition of agricultural rights is established, to consider principles whereby these rights will be appraised precedent to sale or lease. These agencies should consider whether potential economic viability of a specifically stated farming venture on the land should be an overriding factor in appraisal. The Director of Land and Water Management should report to me on this on July 1, with a draft of proposed appraisal instructions.

3. Analysis of needs for additional regulations or statute changes. This analysis should include acreage limitations. The Division of Land and Water Management and the Department of Law should work together to complete this analysis. The Director of Land and Water Management should provide me with a report by July 1.

4. Determination of appropriate method of disposal of agricultural rights. The Planning Section, Division of Lands and Division of Agriculture should derive a set of principles from which decisions can be made in individual cases whether to offer agricultural rights for purchase, lease, or lease-purchase. In addition, they should establish the principles under which future decisions should be made regarding whether leases or purchases should be by bidding, lottery, or negotiation. Any additional statute or regulatory changes required to carry out recommended policies should also be investigated. The Director of Land and Water Management should make recommendations to me in this regard by October 1.

5. Classification of agricultural and other lands in the Delta Land Management and Study area. By May 31, the classifications should be ready for Public Notice under the provisions of AS 38.05.305. The Division of Lands should complete classification of lands designated cultural by the Delta Land Management Plan by September 1.

6. The Division of Lands should hold a public meeting in the Delta area to gather input and reaction to the actions proposed for the Delta area. Since these actions are to a large extent planned in reponse to the Delta Land Management Plan recommendations, the Delta Land Management Citizen Council as well as the general public should participate and offer comment during this meeting. The public meeting should be held as soon as possible, but not later than June 15. This meeting should be in addition to the required hearing on classification action which will be held during July. I expect a full briefing on this meeting.

TANANA LOOP AREA: In accordance with the Delta Land Management Planning Study, the Division of Lands should proceed to lay out, plat, and make available for sale around 5,000 acres of land for small farmsteads. This acreage should be divided into parcels ranging from 20 to 320 acres. Disposal of the parcels should be by an agricultural rights sale to qualified applicants who submit an agricultural development plan. The Division of Lands should work closely with the Division of Agriculture and the University of Alaska to lay out this land disposal, and to derive the procedure by which it shall occur. Hopefully, disposal can begin by January, 1978.

"DELTA BARLEY PROJECT" :

1. Lay out of project. The Planning Section, Division of Lands and the Division of Agriculture should prepare a final project lay-out plan, using the recommendations of the Ad Hoc barley project group, the Delta Land Management planning Study, and the Division of Policy Development and Planning report. This final layout should be reviewed by all concerned parties, including especially those who had active involvement with the three above studies. I hope that the project layout can be finalized and accepted by all parties by November 1. The Director of Lands should report progress in this regard to me on August 1.

2. Platting. The Division of Lands should then proceed rapidly with platting the area pursuant to the approved layout plan. On December 1, the Director of Lands should give me a schedule under which platting will occur.

3. The Division of Parks should initiate an archae logical and historical survey, pursuant to AS 41.35.070, as soon as the final development plan for both the barley project area and the Tanana Loop area is available. The Director of Parks should let me know as soon as possible a reasonable time schedule for completing this survey.

4. Test plot clearing. The Division of Agriculture, with cooperation from the Division of Lands should arrange for clearing 2,000 acres of University land as a test plot in the Delta area. A trade of general grant land for University land may be necessary to insure use of the appropriate land for this project. The University should expeditiously identify appropriate land for the clearing project and any additional land the University may need in the Delta area for research or model farm purposes. The Division of Lands should seek to "trade out" University lands presently classified as parks, refuges or critical habitat areas which will not be productive for University purposes.

The purpose of this test plot clearing will be to test clearing methods, to test moisture retention and blowoff tendancies, and to test barley production. The Division of Agriculture should ensure that representatives of the Department of Fish and Game, Department of Environmental Conservation, the Ad Hoc Group and the University all have ample opportunity to help design the test procedures, and to be present and participate in the actual clearing and manipulation of the test plot as well as any subsequent measurements they may wish to undertake. The Director of Agriculture should give me an action plan and schedule for this test clearing, as well as for all test procedures to be undertaken during fiscal year 1978, by June 30.

5. Design of environmental studies. The Division of Lands should immediately contact the Departments of Fish and Game and Environmental Conservation, as well as interested members of the Ad Hoc Committee, the Planning Section and the Division of Agriculture and request that they design by June 30 specific environmental studies that will be necessary in order to evaluate clearing methods, prepare the final project layout plan, and assist in development of the conservation plan. These studies should be designed in detail and costed out so that we may proceed to implement them without delaying the project unnecessarily.

6. Soil conservation plan. The Division of Agriculture, Division of Lands, Department of Environmental Conservation and the Soil Conservation Service, should begin preparation of a soil conservation plan for the entire Delta Clearwater area. This plan should at least cover soil conservation and erosion control, pesticide use, herbicide and fertilizer use, and water quality. In addition, the plan may consider such things as energy conservation, suggestions for clearing and farm management practices. The Director of Agriculture should give me, by June 1, a schedule for completion of necessary data gathering activities and the soil conservation plan.

7. Funding alternatives. The Division of Agriculture and the Department of Commerce and Economic Development should assist Mr. Palmer as much as possible in his quest for non-State funds that may be available to finance the Delta Barley project. Hopefully, some specific avenues of approach should be available to us by July.

In addition, Bob Palmer with the Department of Natural Resources' assistance is presently preparing a supplemental budget for accomplishing the other directives included in this memorandum.

8. Timber sales. The Division of Land and Water Management should as soon as the experimental clearing area is designated, offer personal use permits for timber within that area. Other areas designated for clearing within the approved layout region should be offered for sale in March of 1978.

9. Local government and farmers cooperative. The Division of Agriculture, Department of Community and Regional Affairs and Department of Commerce and Economic Development should develop an active program of contact with the City of Delta Junction and local farmers, designed to clarify the long-term role of local government and any potential farmers cooperative organizations in future agricultural development in the Delta area. I would suggest it would be very beneficial for the State to provide a similar level of aid to Delta farmers, including both those involved in the Tanana Loop "small" acreage

farms and in the Delta Barley project, as we are currently providing to fishermen interested in private, nonprofit aquaculture projects. I would suggest that the Department of Commerce and Economic Development review the contract that the Division of Policy Development and Planning has with the Southeast aquaculture organization and consider creating a similar relationship between the State and Delta farmers.

10. The Division of Agriculture, Division of Lands, the Planning Section, and the Department of Commerce and Economic Development should together prepare a draft of qualifications for those who will qualify to purchase or lease large tracts of agricultural rights in the Delta barley area. These criteria should follow those discussed by the Ad Hoc Group and the Division of Policy Development and Planning, and should include experience factors, financial qualifications, and other factors. I would suggest that these criteria be derived solely on the basis of maximizing the probability of success of the Delta farming venture, and not on the basis of insuring that enough qualified farmers will be immediately available. Necessary regulations to carry out this policy should be prepared. Following adequate consideration, the Director of Agriculture should give me a draft list of criteria by July 15, Draft regulations should be completed by November 1.

I feel if we can accomplish the above, we will have made a very positive step toward achieving a new and viable renewable resource industry in Alaska. Upon our completion of the above tasks, including a finding that the project is acceptable and has a significant probability of success, and upon qualification of the requisite number of potential private participants (i.e., upon sufficient showing of private demand by qualified individuals), I would intend to make approximately 50,000 acres of land available for barley production in the Delta area as outlined by previous plans.

I sincerely hope we all can work together compatibly in pursuing this exciting prospect.

cc: Governor Jay S. Hammond

Memo sent to:

Bob Palmer, Special Projects
Phil Hubbard, Commissioner of Commerce and Economic Development
Jim Brooks, Commissioner of Fish and Game
Mike Smith, Assistant Commissioner of Natural Resources
Ted Smith, Director of Land and Water Management
Allan Linn, Director of Agriculture
Russ Cahill, Director of Parks
Dave Hanson, Chief, Planning and Research Section
James Drew, University of Alaska

1977 MAY 23 PM 10 25

TELEGRAM

ACA ALASKA COMMUNICATIONS, INC.
PHONE: 586-6440
JUNEAU, ALASKA 99801

#

02098 NL ANCHORAGE ALASKA 77 05-23 0525P ADT

PMS SEN KAY POLAND

JUN

URGE SYMPATHETIC CONSIDERATION AND ACTION TO BRING HB353 TO SENATE FLOOR FOR VOTE BEFORE CLOSE OF SESSION. IF BILL DIES THIS SESSION IMPETUS TOWARD BUILDING VIABLE FARMING BASE IN ALASKA COULD BE DESTROYED. AGRICULTURE ESSENTIAL FOR DEVELOPMENT OF STABLE SELF-SUSTAINING ECONOMY IN INTERIOR ALASKA. WILL PAY KEY ECONOMIC AND SOCIAL ROLE THROUGHTOUT STATE. HB353 PROVIDES GROUND WORK FOR INTERIOR FARMING ALASKA EFFORTS AND IMPLEMENTATION COULD HAVE DECISIVE LONG-TERM POSITIVE EFFECT ON STATE ECONOMY.

PAULA EASLEY EXEC DIR OMAR

Sen Poland

FAIRBANKS DELEGATION

	Reps.		
Bennett	202A	Brown	207A
Carpenter	202A	Cowper	411
Parr	110	Smith	612
	Senators		
Butrovich	525	Hackney	105A
Huber	114		

LA21 1336 10.59 JA01 0007 10.59 05/24/77

TO: CINDY OR MERLE, JNU
FROM: SUSAN, FBX.

PLEASE DELIVER THE FOLLOWING MESSAGE:

TO: THE FBX. DELEGATION;TO SENATOR KAY POLAND, CHAIRMAN, SENATE RESOURCES COMMITTEE; TO SENATORS SACKETT, RADER, KERTULA, AND SWANSON.
FROM: GERALD SMETZER/ FAIRBANKS TOWN AND VILLAGE ASSOCIATION/ BOX 1267/ FAIRBANKS, AK. 99707/ PH: 452-4761, EXT. 273:

WHEREAS SB 353 IS THE BEST LEGISLATION INTRODUCED TO DATE FOR THE DEVELOPMENT OF ALASKA'S AGRICULTURAL RESOURCES, WE SUPPORT THE BILL AND URGE YOU TO SEND THE LEGISLATION TO THE SENATE FLOOR AT THE EARLIEST POSSIBLE DATE WITH A "DO PASS" RECOMMENDATION. WE ALSO URGE YOU TO ACTIVELY PRESS FOR PASSAGE OF SB 353 IN THE SENATE IMMEDIATELY TO ENABLE THE DELTA-CLEARWATER PROJECT TO GET UNDERWAY IN 1977.
THANK YOU FOR YOUR CONSIDERATION.
/S/ JERRY SMETZER/ FBKS. TOWN & VILLAGE ASSOCIATION.

THANKS, AND PLEASE ACK. WHEN DELIVERED. /S/ EOM

Delta Chamber of Commerce

P. O. Box 987
Phone 845-4515

Delta Junction, Alaska

May 20, 1977

Senators Butrovich, Hackney, Huber, Kerttula, Poland and Sackett
Pouch V
Juneau, Alaska 99811

RE: SSCSHB353, Ag Development

Dear Senators:

The Delta Chamber of Commerce has consistently favored legislation that would assist the development of Alaskan agriculture, particularly in the Delta Junction area.

We have been apprised of the latest efforts to incorporate the positive aspects of various development proposals into coherent and acceptable legislation. This effort, SSCSHB353, received the endorsement of the Chamber membership at their meeting of Thursday, May 19, 1977.

As president of the Chamber, I ask for the membership in urging the passage of this legislation.

Sincerely,

Robert D. Morton

ROBERT D. MORTON
President

cc: Bob Palmer
Robert LeResche
K. Allan Linn
William Wood
Frank Geiger
Alaska Farmers Co-op
Salcha-Big Delta Soil Conservation Subdistrict
Red Swanson
Sally Smith
Charlie Parr
Steve Cowper
Larry Carpenter
Fred Brown
Don Bennett

CF/pd

Soil Conservation Subdistrict

P. O. Box 929
Delta Junction, Alaska 99737

May 18, 1977

Senators Butrovich, Hackney, Huber, Kerttula and Sackett
Pouch V
Juneau, Alaska 99811

Dear Senators:

RE: SSCSHB353 - Ag Development

Our latest information is that further revision of HB353 has incorporated the Agricultural Authority of SB291 and some aspects of the Feed Grain Project SB337. We still favor the Small Grain Research concept of SB279 ($281,500) over what we consider the duplication and excess expense ($400,000, 2000A) of SB337. However, it should be clearly understood and apparently our previous letters have been ambiguous - that the Supervisors consider further research essential on such topics as water quality [illegible] in which DEC should participate financially), windbreak relocation and spacing, and shearing and burning techniques (a new topic). We do feel that SB337 as originally conceived is a wasteful approach, and it is our understanding that use of the funding (under SSCSHB353) would be discretionary by the Authority, and consequently such research as is essential could be conducted as an integral part of development rather than as a separate research project.

These alterations, as we have outlined and understand them, are acceptable to us and we would urge passage of such legislation.

Sincerely,

C. G. Forck

CHARLES G. FORCK
Secretary

cc: K. Allan Linn
Weymeth Long
James Drew
Robert LeResche
Bob Palmer
Roger Rayburn
William Wood
Frank Geiger
Rep. Red Swanson
Rep. Don Bennett
Rep. Fred Brown
Rep. Larry Carpenter
Rep. Steve Cowper
Rep. Charlie Farr
Rep. Sally Smith

CGF/p

HB
356

COMMITTEE REPORT

SENATE

5/13/77 **Finance

5/16/77 Date

Mr. President:

The Committee on Resources has had HB 356 am 1
water resources revolving loan fund
under consideration. A majority of the members of the Committee

- [X] recommends it do pass
- [ ] recommends it do not pass
- [X] recommends it do pass with attached amendment(s)
- [ ] recommends it be replaced with CS for _____ and that CS for _____ do pass
- [ ] (and) recommends it be referred to the _____ committee
- [ ] reports it back without recommendation
- [X] AND attaches a report of its intent
- [ ] (other) _____

MEMBERS SIGNING THE MAJORITY REPORT:

	John Harper	
Tillotson		
Hon Yarborough		
Neuhaus		

MEMBERS NOT CONCURRING IN THE MAJORITY REPORT:

_____ recommends: _____

_____ recommends: _____

_____ recommends: _____

K. Poland
Chairman

S 60

A M E N D M E N T

Offered in the SENATE By RESOURCES COMMITTEE

To: _____ SENATE BILL NO. _____

_____ HOUSE BILL NO. 356 Am.

AMENDMENT: Page 2 Lines 23 through 27

Delete section four in its entirety and re-number accordingly.

A M E N D M E N T

Offered in the SENATE By Resources Committee

To: _____ SENATE BILL NO. _____

_____ HOUSE BILL NO. 356 am

AMENDMENT: Page 2 Lines 23 through 27

Delete section four in its entirety and re-number accordingly.

May 17, 1977

Letter of Intent for HB 356

Inasmuch as the administration of State water resources is currently the responsibility of various departments, it is the intent of this Resources Committee in enacting the water resources revolving loan fund (HB 356) that the Commissioner of the Department of Commerce and Economic Development, in adopting regulations to carry out the provisions of this act, is directed to take into account the responsibilities for water resources of the Department of Environmental Conservation under AS 46.03 of the Department of Fish and Game under AS 16, and of the Department of Natural Resources under AS 46.15.

Kay Poland, Chairman
Senate Resources Committee

John Butrovich

Clem V. Tillion

Chancy Croft

H. D. Meland

John Huber

Mike Colletta

THE SOUTHEASTERN CONFERENCE

P. O. BOX 531
WRANGELL, ALASKA 99929

March 11, 1977

Representative Terry Gardiner
Chairman, House Judiciary Committee
Pouch V Mail Stop No. 3100
Juneau, Alaska 99811

Dear Sir: Terry

The Southeastern Conference wishes to express their appreciation to you for your interest and efforts in sponsoring legislation of economic importance to Southeast Alaska and those other communities needing support in the development of hydro and other water resource development.

As requested in our meeting held March 1, 1977, we are submitting back up material for the proposed changes in the Water Resources Revolving Loan Fund Act. Enclosed are the suggested changes in the Statutes and proposed appropriations for the next fiscal year, including a revised summary of funding requirements for FY 1978.

Very truly yours,

James R. Eide
President

JRE/jr

enclosures

President James R. Eide
First Vice President William Macomber
Second Vice President John Halliwell

PROPOSED AMENDMENTS

WATER RESOURCES REVOLVING LOAN FUND ACT

Sec. 45.86.010. There is established a separate fund, The Water Resources Revolving Loan Fund. Loans from this fund are to be used to develop and conserve in the public interest the water resources of Alaska, using State revenues from the Alaska Permanent Fund (mineral development).

Sec. 45.86.040 (b) is repealed and re-enacted to read:

Sec. 45.86.040 (b) The department shall forward all loan applications it recommends for approval to the Water Resources Revolving Loan Fund Committee established with the department and made up of the commissioner or his deputy, the director of division of energy and power development, and the director of division of business loans.

Sec. 45.86.060 shall be added as follows:

Sec. 45.86.060. CONDITIONS APPLICABLE TO PROJECT LOANS. (a) The term of the loan shall not exceed 50 years and the interest rate shall be not less than three, or more than five, percent a year on the unpaid balance. The repayment schedule shall be computed in a manner so that annual payments of principal and interest, termed debt service, are approximately equal over a period not to exceed 40 years. Repayment of the loan, principal and interest, will commence at the date of commercial operation of the project or ten years from the date the loan is made, whichever is sooner.

(b) Loans shall be utilized for feasibility studies, pre-construction engineering including the securing of permits and licenses necessary for construction and operation, design and construction of capital improvement projects.

(c) If, in the opinion of the Water Resources Revolving Loan Fund Committee, feasibility studies or preconstruction engineering establish that the project is not feasible from either a technical, economic or financial viewpoint, the department may not require repayment of loans made for this purpose, provided that repayment of all loans shall be required if design or construction of the project proceeds.

This Act takes effect immediately in accordance with _____.

JUSTIFICATION FOR AMENDMENTS

WATER RESOURCES REVOLVING LOAN FUND ACT

I. The change in Sec. 45.86.010 is to correctly indicate the proper fund from which the revolving fund would secure revenue for making the loans. When the Water Resources Revolving Loan Fund was first drafted, one of the sources of loan funds was tied to Alaska mineral lease bonus funds. This was passed by the Legislature, but vetoed by the Governor as being unconstitutional. Since then, voter approval of the permanent fund has made possible this vehicle for funding these projects.

Sec. 45.86.040 - the Loan Committee composition as now specified in the Statutes, was a high level group deemed necessary to consider loans for large projects such as the Susitna and Yukon Taiya projects. Projects of this nature would now come under the State Power Authority which, together with Federal support, would finance the large installations.

The formation of a committee within the Department of Commerce would be more appropriate to consider the financing of small hydro and water projects. These would be administered similar to the other business loans the Department handles.

Sec. 45.86.060 - The first draft of HB171 (copy attached) spelled out the conditions of loans consistent with long term low interest. However, it was determined that this type of condition could best be handled by regulatory provisions. As a result, the conditions now being applied to the loans are not in accord with the intent of the Legislation. Loans are for a term of seven years rather than long term of forty to fifty years and interest rates of 6% are hardly low. Interest is due and payable yearly and prior to the project generating revenues or the ability to meet debt service. This burden on small utilities preclude their involvement in the revolving fund.

Subsection (b) spells out the type of activities in the development of the property which would be eligible for loans under the revolving fund. Subsection (c) is an "advance planning fund" provision similar to H.U.D. 701. If the studies indicate the project is not feasible, the repayment of the loans for the studies may not be required. Here again is the intent to alleviate the financial burden for the small communities for those projects which turn out to be a "dry hole" and for which revenues cannot be realized.

II. Basis for the proposed appropriation bill FY 1978 for the Resources Revolving Loan. The proposed appropriations for FY 1978 are based on estimated community requirements for the specified projects over and above the funds made available in the 1977 appropriations. The attached list of funding requirements total $3,730,000, however, it appears that the applications for FY 1977 will leave a balance of $230,000 which can reduce the proposed appropriations to $3,500,000.

KETCHIKAN PUBLIC UTILITIES

334 FRONT STREET P. O. BOX 1019 KETCHIKAN, ALASKA 99901 TELEPHONE 907-225-3111

MUNICIPALLY OWNED
ELECTRIC WATER PHONE

February 11, 1977

Representative Oral Freeman
State Capitol
Pouch V
Juneau, Alaska 99811

Subject: Development of Hydroelectric Generating Plants in Southeast Alaska

Dear Oral:

Mr. N. L. Teague, City-Utilities Manager has requested that I submit to you some pertinent information regarding the advantages to Ketchikan, and Southeast Alaska as a whole, which would be gained by the installation of hydroelectric generating plants. I will use Ketchikan as an example.

We have three (3) small hydroelectric plants. To 1969 we were hydro oriented. Our first base load type diesel was placed in operation in 1970. We now have three (3) such units. I believe that a comparison of cost, hydro versus diesel generation in our system, is pertinent.

In 1976, the average operation and maintenance cost of producing one (1) kilowatt hour at the bus bar by hydroelectric generation was $ .0055 or 5.5 mils.

The average cost of operation and maintenance per kilowatt hour of generation by diesel was $ .0638.

A recap in the same vein, from 1970 to date, clearly points up that hydroelectric power is the greatest hedge against inflation since the Republicans.

TIME PERIOD - January 1, thru December 31, 1970:

Diesel = $ .01249/KWHR

Hydro = $ .00272/KWHR

Differential in cost/KWHR - Diesel greater by $ .00977

Differential in dollars - 2,718,600 KWHR x $ .00977 = $26,560.72

TIME PERIOD - January 1, thru December 31, 1971:

Diesel = $ .01689/KWHR

Hydro = $ .00336/KWHR

Differential in cost/KWHR - Diesel greater by $ .01353

Differential cost in dollars = $174,228.52

TIME PERIOD - January 1, thru December 31, 1972:

Diesel = $ .01476/KWHR

Hydro = $ .00365/KWHR

Differential in cost/KWHR - Diesel greater by $ .01111

Differential cost in dollars = $143,065.69

TIME PERIOD - January 1, thru December 31, 1973:

Diesel = $ .02144/KWHR

Hydro = $ .00388/KWHR

Differential in cost/KWHR - Diesel greater by $ .01756

Differential cost in dollars = $226,123.63

TIME PERIOD - January 1, thru December 31, 1974:

Diesel = $ .04125/KWHR

Hydro = ¢ .00534/KWHR

Differential in cost/KWHR - Diesel greater by $ .03591

Differential cost in dollars = $462,420.25

TIME PERIOD - January 1, thru December 31, 1975:

Diesel = $ .0430/KWHR

Hydro = $ .0051/KWHR

Differential in cost/KWHR - Diesel greater by $ .0379/KWHR

Differential cost in dollars = $491,763.87

TIME PERIOD - January 1, thru December 31, 1976:

Diesel = $ .0638/KWHR

Hydro = $ .0055/KWHR

Differential in cost/KWHR - Diesel greater by $ .0583/KWHR

Differential cost in dollars = $470,883.27

Note that 1976 differential cost in dollars is slightly less than 1975. This is due to a small hydro-electric plant (Silvis) being returned to service in 1976. The Silvis Plant had been destroyed by a landslide in 1969.

The Silvis hydro plant generated approximately 13% of our electrical system output in 1976. Without the Silvis Plant in operation, our differential cost in dollars would have been approximately $532,098.00 for 1976.

Look at what is happening in the major item needed for diesel generation. That "NON-RENEWABLE RESOURCE", diesel fuel oil.

Costs for fuel delivered by barge to our S. W. Bailey diesel plant located ashore on Tongass Narrows, for example, are as follows:

Date	Cost per gallon	Cost of fuel oil/KWHR generated
1972	$ .1375	$ .0095
1973	$ .1930	$ .0133
1974	$ .3260	$ .0225
1975	$ .3610	$ .0249
1976	$ .3930	$ .0271
1977 (Feb.)	$ .4190	$ .0289

In a time span of just over four years and two months, our diesel fuel costs have increased 205 percent.

The industrial growth of the lower 48 States and most specifically the Pacific Northwest was made possible by the construction by the U. S. Government of large hydroelectric projects. In addition, it permitted a better living standard for the people at low energy cost.

The technology of transmission line construction permitted transmission line "grids" to be built from the large government projects to all points of the land or load centers.

Southeastern Alaska does not lend itself to the aforementioned methodology. We are situated in an archipelago that would strain the technology of transmission line construction and be vastly more expensive. It is one thing to serve load centers connected by land, another to serve load centers connected only by water.

It is therefore most logical to construct (large for us) hydroelectric projects as close to the load centers as possible, e.g. our Swan or Grace Lake projects. Short, interconnecting transmission lines could be installed between neighboring islands, e.g. Revillagigedo Island (Ketchikan) and Annette Island (Metlakatla).

Oral, it is safe to say that every power utility in Southeastern Alaska is municipally owned with the exception of Juneau, Alaska. It seems odd to us that Juneau is the only community that has a Federal hydroelectric project "on line" in our part of the State.

Government seems to speak with forked tongue. They advocate conservation of depletable natural resources and energy, and yet seem to balk at providing the help necessary to alleviate the situation in our portion of Alaska.

Also, Oral, any added expense to the Utilities or cities created by the construction of the hydroelectric projects should be deferred until the projects are "on line". I do not believe any of us can individually carry the burden of cost of generation by our existing means, plus pay any interest or principal payments in case of loans or bonds. Payment deferral is of utmost importance.

I have made this letter far longer than I had intended, Oral, and apologize for taking up so much of your valuable time.

I am attaching certain data that we hope you will find of interest.

Very truly yours,

Donald D. Bowey

Donald D. Bowey
Assistant Utilities Manager

cc: N. L. Teague, City-Utilities Manager
Senator Robert Ziegler
Representative Terry Gardiner

file Sponsor
11 HB356

KETCHIKAN PUBLIC UTILITIES

334 FRONT STREET P. O. BOX 7300 KETCHIKAN, ALASKA 99901 TELEPHONE 907-225-3111

MUNICIPALLY OWNED
ELECTRIC WATER PHONE

April 5, 1977

Mr. James Eide
City Manager
P. O. Box 531
Wrangell, Alaska 99929

Subject: Hearing before the Commerce Committee,
Representative Joe McKinnon, Chairman,
Re: House Bills No. 356 and No. 357

Dear Jim:

The hearing meeting was held at 8:00 A.M. in the new court building in Juneau, Room 628, on Monday, April 4, 1977.

Representative Ernie Haugen was kind enough to meet Jack Ballard of Wrangell and myself at the Baranof Hotel for coffee and then escorted us to the hearing.

Ernie testified first and pretty well recapped the history of the Water Resources Loan Fund and the intent of the legislative bodies. I believe that Ernie brought out that the Southeastern Conference group has been most active in promulgating the concept of long term, low interest loans for hydroelectric oriented projects and potable water projects from which all Alaskans will benefit.

Next to testify was Representative Terry Gardiner. Terry affirmed the preceding testimony and very ably placed his beliefs and thoughts before the committee.

Dick Ballard, chairman of the Thomas Bay Power Authority did an excellent job of testifying as regards Petersburg-Wrangell power. Dick was knowledgable and had a good delivery. I am sure he clarified conditions prevailing in your area.

This writer testified next. I had just completed an analysis of the Ketchikan Public Utilities 1976 generation for another report. Much of the data in the analysis was germain to the hearing in that it clearly pointed out cost of operation of hydroelectric in comparison to an alternate means which in our case is diesel. My analysis was in hand written (rough) form. Terry had copies made and presented them to the committee members.

Last to testify was Farrell Campbell, Business Agent for the

Operating Engineers Union. Farrell pointed out that labor supported the concept as set forth of long term, low interest loans, and the use of a "RENEWABLE RESOURCE" to power the prime movers that turn the generators which produce electric energy.

Chairman McKinnon and the Representatives of his Commerce Committee are to be complimented, and thanked for their courtesy and consideration shown the persons to be heard. The committee was knowledgable on the subject and questions were direct and honest.

Action taken while I was present consisted of the following:

1. Motion for amendment of H.B. No. 356.
   Page 1, line 13, after the word "ALASKA", insert period and delete, "using State revenues from nonrenewable resource [mineral] development". MOTION APPROVED.

2. Motion made to amend.
   Page 1, line 18, by deleting mention of five percent (5%). Supporter of the amendment felt the intent of the original act was to provide low interest loans and recommended the three percent (3%) figure. MOTION FAILED TO PASS.

House Bills No. 356 and No. 357 will be moved out of the Commerce Committee and, I believe, on to Finance.

Sorry you could not be present at Juneau, Jim, but hope this letter and accompanying data helps keep you informed.

Best Regards,

Donald D Bowey

Donald D. Bowey
Assistant Utilities Manager

cc: N. L. Teague, City-Utilities Manager
Ted Ferry, KPU Advisory Board Chr.
Jim Williamson, R. W. Beck and Associates
Senator Robert Zeigler Sr.
Representative Oral Freeman
Representative Terry Gardiner

Enclosures

March 31, 1977

MEMORANDUM TO FILE

FROM : Donald D. Bowey, Assistant Utilities Manager

SUBJECT: COST DIFFERENTIAL, HYDRO VS. DIESEL

Cost of generation per KWHR by prime mover type and Plant. Maintenance and operating costs only used. Labor, fuel, oils, parts, repair, etcetera.

DIESEL - YEAR 1976:

ACCT. NOS.	KETCHIKAN	TOTEM BIGHT	BAILEY	TOTAL
546	$ -0-	$ 2,484.98	$ 4,259.75	$ 6,744.73
547	2,202.00	21,404.85	181,942.23	205,549.08
548	2,089.19	11,404.85	71,995.64	85,088.07
549	87.55	517.16	3,789.01	4,393.72
551	-0-	-0-	1,445.90	1,445.90
552	-0-	-0-	15,408.49	15,408.49
553	7,429.11	7,232.17	185,038.96	199,700.24
554	-0-	3,378.11	5,078.78	8,456.89
	$11,807.85	$46,020.51	$468,958.76	$526,787.12

HYDRO - YEAR 1976:

ACCT. NOS.	KETCHIKAN	BEAVER FALLS	SILVIS	TOTAL
535	$11,736.34	$ 4,550.10	$ 3,373.16	$ 19,659.60
536	-0-	-0-	-0-	-0-
537	11,040.88	6,295.40	4,282.81	21,619.09
538	167,897.24	64,310.82	12,878.83	245,086.89
539	10,077.48	4,168.18	9,534.15	23,779.81
541	293.89	1,961.09	528.14	2,783.12
542	7,248.64	3,137.13	725.64	11,111.41
543	4,589.61	5,936.72	2,449.79	12,976.12
544	5,328.12	8,861.16	13,881.94	28,071.22
545	94.63	-0-	-0-	94.63
	$218,306.83	$99,220.60	$ 47,654.46	$365,181.89

YEAR 1976:

HYDRO:

POWERHOUSE	GENERATION KWHR	M & O COSTS DOLLARS	COST/KWHR CENTS
Ketchikan Plant	17,693,700	$218,306.83	$ .01234
Beaver Falls	40,669,000	99,220.60	.00244
Silvis	10,172,000	47,654.46	.00468
TOTALS	68,534,700	$365,181.89	$ .00533

AVERAGE COST PER KWHR generated by HYDRO = 5.3 MILL

DIESEL:

Ketchikan Plant	55,900	$ 11,807.85	$ .21123
Totem Bight	781,000	46,020.51	.05893
S. W. Bailey	7,240,000	468,958.76	.06477
TOTALS	8,076,900	$526,787.12	$ .06522

AVERAGE COST PER KWHR generated by DIESEL = 65.2 MILL

Average Cost Per Kilowatthour of Total Generation By Diesel and Hydro. (Conglomerate):

- Total generated 76,611,600 kwhr = $ .01164 cents/kwhr
  or
- Total M & O Costs = $891,969.01 11.6 MILL/KWHR
- Cost per KWHR "SOLD" (Gen. less Station Use & Losses), = $.0131 cents or 13.1 Mill
- Hydro generated = 89.46% of total generation
- Diesel generated = 10.54% of total generation
- WATER YEAR was exceptional.
- Diesel cost per KWHR generated = $ .06522 cents, or 65.2 MILL
- Hydro cost per KWHR generated = $ .00533 cents, or 5.3 MILL
- Diesel generation per KWHR exceeded Hydro generation per KWHR by ..... $ .05989 cents, or 59.9 MILL

HYPOTHESIS:

HYDRO..... $\frac{68,534,700 \text{ KWHR}}{14.5 \text{ kwhr/gal.}}$ = 4,726,531 gallons of fuel

4,726,531 gal. x $ .41 = $1,937,878

Added to labor, etc. of HYDRO would = $2,303,058

Added to actual diesel generation cost of generation 8,076,900 kwhr or, $2,303,058 PLUS $526,787..... = $2,829,845

$\frac{\$2,829,845 \text{ M\&O Costs}}{76,611,600 \text{ kwhr}}$ = .03694 cents/kwhr

or,

36.9 mill

The above hypothesis of all diesel operation in 1976 would have meant, $\frac{36.9 \text{ mill}}{11.6 \text{ mill}} = 3.181$

OR, generation costs, maintenance and operation only would have been 218% greater than it actually was by combination, or conglomerate, of hydro & diesel.

The above is very conservative as it does not consider additional staffing which would have been necessary, plus other factors, if all generation had been by diesel.

Time and staffing prevents a more in-depth analysis at this time.

Donald D. Bowey

cc: N. L. Teague, City-Utilities Manager
Mack Wheeler, U.S. Corps of Army Engineers
Ernst & Ernst

HB
359
(1979)

COMMITTEE REPORT

SENATE

3/27/79

FURTHER: None

Date: _____

Mr. President:

The Committee on RESOURCES has had HB 359 am
salmon enhancement

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass [ ] do not pass

[ ] do pass with attached amendments(s)

[X] replace with CS for SCS HB 359 [X] same title [ ] new title

and recommends _____

[ ] AND attaches a "Letter of Intent" [ ] New Fiscal Note

[ ] reports it back without recommendation

[ ] referred to the _____ _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS:

_____

CHAIRMAN

S 60 (Rev. 12/78)

A M E N D M E N T

Offered in the SENATE By Sumner

TO: SENATE CS FOR HOUSE BILL NO. 359

Page 2, line 15:

Delete "harvest of broodstock" and insert in its place "source and number of salmon eggs, the harvest of"

OFFICE OF THE GOVERNOR

The Honorable Bill Sumner
Chairman
Senate Resources Committee
Alaska State Senate

April 2, 1979

Letter of Intent for
House Bill 359 Amended

Bob Palmer
Special Projects Coordinator
Office of the Governor

The following is a suggested text for a letter of intent for HB 359 am, which will be signed by you.

"The intention of the Legislature in enacting AS 16.10.375-620 was to encourage the construction and operation of salmon hatcheries by the private sector and to do so with no more restriction and bureaucratic red tape than is reasonably required.

"AS 16.10.400 specifies that the Commissioner of the Alaska Department of Fish and Game or his designee may issue a permit for the construction and operation of a private, non-profit hatchery. The Department has established a very thorough permit application and evaluation process involving both preliminary and final permit application forms, comments on both by all relevant divisions of the Department, public hearings on the final application and review by the Regional Planning Team to ensure compatibility with the Regional Comprehensive Plan.

"The changes in AS 16.10.440(a) and (b) in this bill are to clarify the role of the Board of Fisheries.

"The language added to AS 16.10.440(a) clarifies that the Board of Fisheries may adopt regulations relating to the harvest of the fish by hatchery operators at the specifically designated locations.

"The repeal of AS 16.10.440(b) in this bill limits the function of the Board of Fisheries to that specified in AS 16.10.440(a), eliminates any possibility of conflict between the Board of Fisheries and the Department of Commerce in section .470(b) and leaves the permitting authority completely to the Commissioner of the Alaska Department of Fish and Game."

ADDITIONAL AMENDMENT

Page 2, line 15

After "relating to the"

ADD "broodstock,"

Page 2, line 15

After "operators"

Delete "at"

ADD "and"

DOUGLAS POPE
Attorney

Law Offices
912 West Sixth Avenue
Anchorage, Alaska 99501
(907) 272-6225

Box 27
Hope, Alaska 99605

April 2, 1979

Honorable Bill Sumner
Chairman, Senate Resources
Committee
Alaska State Senate
Juneau, Alaska 99811

Re: House Bill 359 am, an Act Relating to Salmon Enhancement

Dear Senator Sumner:

The Speaker has requested that I contact you regarding the above referenced bill. I am currently representing Southern Southeast Regional Aquaculture Association, Inc., in a lawsuit wherein the statutory structure authorizing the regional associations and providing for their financing mechanism is under challenge on constitutional grounds. Specifically, the focal issue of the lawsuit is whether A.S. 16.10.530 is an unconstitutional delegation of the taxing power to an entity other than an organized borough or city in violation of Art. 10, § 2 of the Alaska Constitution. House Bill 359 am was drafted in order to eliminate all but the focal issues in the case, and is also designed to preserve the economic viability of the private associations. The purpose of this letter is to comment on proposed changes in the law necessary to maintain the present system.

Enclosed with this letter is a copy of SSRAA's brief in Superior Court. The brief is long, and I do not suggest that you read it for the purposes of understanding this letter. It does, however, discuss a number of constitutional issues with regard to the State's natural resources that you may be interested in reviewing on another date. Also enclosed is a copy of the House Journal for March 15, 1979. On pages 598-603 of that day's journal is the House Resources' letter of intent with regard to this bill.

Presently, there are five regional associations in existence: two in Southeast Alaska, one in Prince William Sound,

one in Cook Inlet, and one in Dillingham. The two Southeast Alaska associations and the Cook Inlet Regional Aquaculture Association have held assessment elections pursuant to A.S. 16.10.530 and have instituted the assessment in their regions. Southern Southeast Regional Aquaculture Association broke ground on a hatchery a year and a half after it was organized. All of the associations have been set up jurisdictionally along fish and game management units boundaries, and this is one of the problems that lead to the above referenced lawsuit. Art. 10, § 2 of the Alaska Constitution directs that the taxing power shall not be delegated to entities other than organized boroughs and cities. It is true that in a geographic sense the boundaries do occasionally overlap.

Sections Five and Six of Article 10 provide that the legislature may establish services areas in the unorganized borough and authorize the levying of taxes, charges or assessments to finance the special services. We have taken the position in the lawsuit that the assessment is not a tax, that there is not a delegation, and that in any event the private associations fit the meaning of a service area within the unorganized borough.

The Bill.

Section 1 of the bill, findings and purpose, are designed to make the legislature policy clear. In the House the FRED division objected to the emphasis on efficient aquaculture development in subparagraphs 5, 6, 7, and in paragraph B of the findings and purpose clause. The emphasis is on efficient in the findings and purpose because of the obvious efficiency in private organizations over the FRED division, and the emphasis on efficient aquaculture development in Art 8, § 15 of the Alaska Constitution.

Section 2 of the Bill is not directly related to the lawsuit. It clarifies the original intention of the Legislature that the Board of Fisheries jurisdiction over the regional associations is limited to the harvest of fish by the hatchery operators at specific locations. That section can best be explained by the Speaker or his assistant John Sund.

In Sections 3, 4 and 5 the word "royalty" is inserted before assessment. That is the only change in those sections and the change is designed to diminish any possibility that the assessment may be construed as a tax.

Section 6, p. 3, on lines 21 to 22, the language "licensed" and "A.S. 16.05.540 - 16.05.600" is deleted and the language "holding entry permits" and "A.S. 16.43.010-16.43.080" is inserted in its place. The assessment is levied on salmon harvested by commercial fisherman. The deleted language refers to persons holding gear licenses. Those sections were repealed last year and this chore would normally be reserved for the revisor of statutes but it was thought to be smoother to tag it to persons holding permits rather than persons holding gear licenses.

Section 6 also sets the lid on the assessment of 3% of the fair market value of the fish. Rather than explain it here, I will explain it later in this letter since I have a proposed language change for it.

Section 6 creates additional means by which the assessment may be terminated. New paragraph G of section .530 is designed to give more control to the Commissioner of Commerce and Economic Development over the continuance of the assessment and to strengthen the argument that the taxing power is not delegated unconstitutionally. New paragraphs (d)(2) and (h) of section .530 are the result of a floor amendment. It has political implications for the associations themselves but does not appear to have any affect upon the issues in the lawsuit.

Section 7 makes it clear that the finding by the Commissioner of Commerce and Economic Development that the assessment is reasonable is subject to the Administrative Procedure Act. Section 8, the repealer, must be reviewed in conjunct with section 2 discussed above.

PROPOSED LANGUAGE CHANGES

P. 2, lines 1-3 Change Subparagraph (9) of the findings to read

> "(9) the most equitable and nondiscriminatory method for providing revenue for regional salmon enhancement is to authorize regional associations to assess percentage royalty shares against those persons commercially harvesting the resource within the region."

This proposed change states the necessary finding with regard to the regional association more clearly.

P. 4, lines 4-6 Delete the following proposed language

> "the royalty assessment may not exceed 3% of the fair market value of the fish"

and insert in its place the following:

> "The royalty assessment rate requested may be equal to either 2% or 3% of the fair market value of the fish. In no event shall it exceed 3%."

The purpose of this amendment is to make it clear that the Legislature is setting the rate of the assessment. A certain degree of flexibility has to be provided for, however, because some associations are choosing to proceed with central incubation facilities (hatcheries) which necessarily require a significant start up capital, whereas others are choosing enhancement methods of stream clearances or small hatcheries. The design of the amendment is to further dilute the suggestion that the law unconstitutionally delegates a taxing power. I believe the most significant argument that can be made that the current Section .530 is indeed an unconstitutional delegation lies in the fact that no specific assessment figures are established.

P. 3, line 19 After "game" and before the comma insert

> "and reaching any necessary agreements with local government".

This proposed change goes to the heart of the lawsuit. One of the problems that has concerned me when realistically reviewing plaintiffs' claims in the lawsuit is that the geographic boundaries do overlap. Art. 10, § 13 of the Alaska Constitution provides that agreements may be made between local government and the state for "cooperative or joint administration of any function or power". In conjunction with similar language already in the municipal government section, I believe this proposed language change makes it clear that in the areas where sound fisheries biology requires an overlapping of geographic jurisdictions, that the State, the qualified regional associations and the local government entities possibly affected can enter into a cooperative agreement regarding the assessment. This agreement can take the form of local government merely stating that they have no objection to the levying of the assessment within their geographic boundaries, or in the instance of a local government which is actually levying a tax on the sale of fish (which is occurring in Naknek) that the assessment may not be levied within the jurisdiction wherein the tax is being levied.

The case in court is a close call, frankly, and I believe that House Bill 359 am with the proposed language changes and additions will cure any constitutional defect. I am

available to meet with you and the Speaker, and upon your request I will be available to make comments to the Committee. I do not wish to have the appearance of urging policy changes on any members of the Legislature, since I feel that that would be in conflict with my present status as a contractor to members of both the House and the Senate. I will be in Juneau April 6th through 10th and will be available to speak with either of you during that time period.

Sincerely,

Douglas Pope

DP/emm
cc: Honorable Terry Gardiner
Speaker, Alaska State House
Of Representatives

Letter of Intent for House Bill 359 am

The intention of the Legislature in enacting AS 16.10.375-620 was to encourage the construction and operation of salmon hatcheries by the private sector and to do so with no more restriction and bureaucratic red tape than is reasonably required.

AS 16.10.400 specifies that the Commissioner of the Alaska Department of Fish and Game or his designee may issue a permit for the construction and operation of a private, non-profit hatchery. The Department has estavlished a very thorough permit application and evaluation process involving both preliminary and final permit application forms, comments on both by all relevant divisions of the Department, public hearings on the final application and review by the Regional Planning Team to ensure compatibility with the Regional Comprehensive Plan.

The changes in AS 16.10.440(a) and (b) in this bill are to clarify the role of the Board of Fisheries.

The language added to AS 16.10.440(a) clarifies that the Board of Fisheries may adopt regulations relating to the harvest of the fish by hatchery operators at the specifically designated locations.

The repeal of AS 16.10.440(b) in this bill limits the function of the Board of Fisheries to that specified in AS 16.10.440(a), eliminates any possibility of conflict between the Board of Fisheries and the Department of Commerce in section .470(b) and leaves the permitting authority completely to the Commissioner of the Alaska Department of Fish and Game.

Cordova District Fisheries Union

Headquarters: Box 939, Cordova, Alaska

March 23, 1979

359

Senator Bill Sumner
Chairman, Senate Resource Committee
Pouch V
Juneau, Alaska 99811

Dear Senator Sumner:

We understand that HB 359 passed out of the House and into the Senate on March 22nd. It is somewhat disheartening to be constantly exposed to bills being passed back and forth with only cursory review, and then getting hit between the eyes by laws that have far reaching and dramatic effects.

HB 359 appeared relatively innocent at first reading until we took time for a second review with a pessimistic approach. We are very much concerned with the controversy and problems that could and probably will be created with a portion of Section 1 - Findings and Purpose, and with the exemption of the Alaska Board of Fisheries involvement in the process.

We have reviewed the bill with the ADF&G-FRED Division and the Commercial Fish Division and support the amendments the department has proposed to relieve our fears.

The proposed amendments are as follows: Increase involvement of Board than Private

Section 1 Findings and Purpose (a)(5) Regional user involvement in salmon enhancement planning and production will promote maximum benefit to the users.

(8) Regional Associations comprised of user groups will effectively promote aquaculture development in the State.

Amend Page 2 - Lines 14 and 15 to read as follows:

by hatchery operator. (b) The Board of Fisheries may adopt regulations necessary to implement 400 to 460 (drop 70) of this chapter, in accordance with the Administrative Procedures Act (AS44.62), relating to etc.

On Page 6 - Line 4 - Delete the whole line that states:
(Sec. 8 AS 16.10.440 (b) is repealed)

We sincerely hope that the Senate will adequately review this bill before it acts on it and amends it to conform with the recommended changes.

Sincerely,

Bob Blake
Chairman

BB:jmr

cc: To all Members of the Senate

STATE
of ALASKA

MEMORANDUM

OFFICE OF THE GOVERNOR

TO: The Honorable Bill Sumner
Chairman
Senate Resources Committee
Alaska State Senate

DATE: April 2, 1979

FILE NO:

TELEPHONE NO:

FROM: Bob Palmer
Special Projects Coordinator
Office of the Governor

SUBJECT: Letter of Intent for House Bill 359 Amended

The following is a suggested text for a letter of intent for HB 359 am, which would be signed by you.

"The intention of the Legislature in enacting AS 16.10.375-620 was to encourage the construction and operation of salmon hatcheries by the private sector and to do so with no more restriction and bureaucratic red tape than is reasonably required.

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"The repeal of AS 16.10.440(b) in this bill limits the function of the Board of Fisheries to that specified in AS 16.10.440(a), eliminates any possibility of conflict between the Board of Fisheries and the Department of Commerce in section .470(b) and leaves the permitting authority completely to the Commissioner of the Alaska Department of Fish and Game."

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT, AT JUNEAU

WAYNE ALEX, WILLIAM A. THOMAS, JR., ED MAKI, JOHN C. MARTIN, WARREN S WESTROM, DICK WORKMAN, MARK W. WHITE, CARL SINS, BRUCE R. GILBERT, FRED CHAMBERS, DOUGLAS D. KARNS, HAROLD D. BIELESKI and LEO R. ALBECKER, JR.,	)
Plaintiffs,	)
vs.	)
SOUTHERN SOUTHEAST REGIONAL AQUACULTURE ASSOCIATION, ET AL.,	)
Defendants.	)

No. 1JU-78-191 Civil

MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT
OF SOUTHERN SOUTHEAST REGIONAL
AQUACULTURE ASSOCIATION, INC.

February 15, 1979

Douglas Pope
912 West Sixth Avenue
Anchorage, Alaska 99501
(907) 272-6225

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INTRODUCTION

It is the position of defendant, Southern Southeast Regional Aquaculture Association that a regionally initiated assessment of a royalty share of the fishery harvest, from the exclusive class of commercial fishermen for the express purpose of fisheries enhancement by a quasi private organization, subject to plan approval by the State, is constitutionally permissible. Plaintiffs would have this court look to the assessment in isolation for the purpose of determining whether the acquaculture programs stand upon firm ground. Such a simplistic approach to a question requiring detailed analysis of constitutional, executive and legislative policy does not do justice to the growth and interaction of these policies. With that in mind defendant has constructed the memorandum in support of this motion for summary judgment in such a manner that this court will have a full opportunity to review the interacting policies dealing with the natural resource bounty of our State, local governments and revenues. There is a clearly emerging doctrine of flexibility with regard to the raising and use of revenues from clear identifiable exclusive classes within the private sector for purposes which will most directly and demonstrably benefit the exclusive class. The unique role of the legislative and executive branches in Alaska delegated by the constitution for the purpose of developing and enhancing common property resources of the State adds dimension to this emerging doctrine of flexibility. To fully understand the added dimensions to this doctrine of flexibility the court must grasp the state of evolution of fundamental constitutional doctrines at this point in history in American and Alaskan society.

It is also defendant's position that plaintiffs have totally ignored many fundamental procedural requirements basic to the judicial process while seeking judicial intervention into a domaine primarily involving executive

and legislative policy functions. The failure to address those threshold requirements by the plaintiffs is developed in a different section of this memorandum. Most of these procedural issues require detailed factual analysis. The court should note that discovery is still proceeding on these detailed questions, but should be completed prior to argument in this case. Should the court find that there are genuine material issues of fact regarding the procedural issues that must be further explored it is not necessary to do so if defendants are entitled to summary judgment as a matter of law on the substantive issues discussed herewith.

No fundamental issues in this lawsuit initiated by plaintiffs have yet been resolved. As frequently happens when a party moves for summary judgment in its entirety upon the pleadings alleged as supported by depositions, affidavits and appendages, it is necessary for the moving party to discuss in detail each and every one of the issues raised by the plaintiffs regardless of varying weights of comment those issues raised actually deserve. For example, plaintiffs have alleged equal protection violations but have primarily focused on what they perceive to be a delegation of a taxing power. Even though they raise an equal protection issue without further alleging that the legislature is powerless to enter the field through the means they have chosen, it is still necessary for the defendants to dispose of that allegation. Defendant believes however, that discussion of such issues as equal protection, in a meaningful manner, will result in providing the court with a better background for the purpose of ruling on the issues that plaintiffs have focused upon so far. For this reason equal protection is discussed first in this memorandum, after the background material is developed.

STATEMENT OF THE CASE

On March 15, 1978, plaintiffs filed this lawsuit. On behalf of themselves and on behalf of a putative class of persons "consisting of all fishermen who have fished, wish to fish in Southeast Alaska" plaintiffs request that the enabling legislation providing for regional aquaculture associations pursuant to A.S. 16.10 be declared unconstitutional, that mandatory assessments of shares from the common property fisheries reduced to capture by commercial fishermen of the State pursuant to A.S. 16.10.530 be declared unconstitutional, and that all such shares paid by plaintiffs and the putative class they purport to represent be returned. On May 11, 1978, plaintiffs requested production of material relating to: (1) the implementation of A.S. 16.10 in the Northern and Southern region of Southeast Alaska; (2) the promulgation of any regulations emergency or otherwise promulgated thereunder; (3) the recognition of the Southern Southeast Regional Aquaculture Association and the Northern Southeast Regional Aquiculture Association by the Department of Fish and Game; (4) the elections held by said associations; and (5) the assessment and levy of assessments conducted pursuant to A.S. 16.10. On May 25, 1978, after answers by all parties, plaintiffs moved for partial judgment on the pleadings regarding the issues of (1) whether the class is so numerous that joinder of all members is unpracticable; and (2) whether there were questions of law common to the class. Defendants Southern Southeast Regional Aquaculture Association then moved for a protective order regarding some of the matters requested in plaintiffs' request for production. Earlier, defendant Southern Southeast Regional Aquaculture Association had moved to void the return of service of summons or to dismiss the action against the Southern Region. On June 16, 1978, this court granted that motion to void the

return of service and summons, and finished that order by stating "other issues raised by these defendants will be held in abeyance pending these defendant's production and plaintiffs' response." Plaintiffs have never responded to defendant's motion for protective order.

In the meantime, the Northern Region held elections pursuant to A.S. 16.10.530, and as of May 17, 1978, regulations implementing A.S. 16.10 for the Northern Region were effected. On December 11, 1978, plaintiffs moved to maintain and certify class action. On December 21, 1978, plaintiffs moved to amend the complaint to include the election and assessment provided for by the Commissioner of Commerce and Economic Development by regulation for the Northern Region. On December 15, 1978, plaintiffs moved to enjoin expenditures by the Northern Region from any funds derived from "payments made by defendant processors pursuant to A.S. 16.10.530."

On January 3, 1979, a motion to intervene as parties-defendants was filed by a fisherman, on behalf of himself and a class of persons similarly situated. Various oppositions to these motions have been filed, and on January 17, 1979, the date set for this motion for summary judgment was agreed to.

I. FACTUAL BACKGROUND

Southern Southeast Regional Aquaculture Association, Inc. (SSRAA) organized in early 1976. The principle purpose for which the corporation was formed was to "engage in aquaculture." (See Articles of Incorporation, Appendix). The Corporation is a nonprofit corporation, and is constrained by the law of Alaska relevant to nonprofit corporations. However, the articles specifically provide that all corporate "powers are to be construed in limitation of the powers which the corporation may have under the present or future laws of the . . . . State of Alaska." The corporation has been recognized by the Internal Revenue Service as a tax exempt nonprofit organization, commonly known as a 501(c)(3) corporation. Pursuant to the by-laws, fishermen elect 55% of the board. Members of other user groups, including subsistence fishermen and processors, are appointed by the full board of fishermen. Also included on the board is at least one representative of local government.

SSRAA has shown a history of being aggressive in pursuit of responsible and efficient aquaculture development with a maximum of user and other local input, and a board which is actively involved in the management corporation. The board is currently composed of five standing committees, and every member of the board is assigned to a committee. Those committees are the Executive Committee, Ways and Means Committee, Personnel Committee, the Regional Planning Team and the Nomination and Board Development Committee. Each Committee is staffed with professional advisors pursuant to budget approval of the full board. The board - committee system setup in the Southern Region provides an opportunity for all members of the association to participate actively.

On November 2, 1976, the Alaska Department of Fish and Game recognized SSRAA as a qualified regional association pursuant to Chapter 161 of the 1976 Session Laws. The

region covers the same geographic boundaries as Fish and Game Regulatory district 1 through 8 in Southeastern Alaska. The Corporation had earlier hired a highly qualified chief executive officer and by the end of 1976 had devoted substantial energy and revenues for preliminary hatchery site selection and preliminary applications for a private nonprofit hatchery, as well as an intensified campaign to educate fishermen and other users about the promises of user controlled regionally oriented salmon enhancement.

In early 1977, the corporation became aware of pending legislation, then House Bill 264. The pending legislation provided for an assessment election for qualified regional associations, and also provided that "notification, public meeting and voting procedures instituted before the effective date of this Act ... in substantial compliance with A.S. 16.10.530(e) shall be considered to constitute compliance with this Act, and are ratified upon the effective date of the Act." SLA Chapter 154(1977) §18. The board resolved to proceed with a mandatory assessment election in order to meet compliance with the pending legislation. An elections committee was appointed, and the calendar of events was established to conform with the election procedures in the proposed law. The elections committee drew up procedural rules of voting, and made substantial preparations for full and adequate notice of the proposed election to all limited permits holders in Southeast Alaska. The corporation made a tremendous effort to ensure the largest turnout for the elections, and otherwise precisely followed the law prior to and during the election. The mandatory assessment passed in the Southern Region with over 56% of the qualified fishermen casting ballots voting for the assessment. A month later, on June 30, 1977, the Commissioner of the Department of Commerce and Economic Development approved the assessment, effective July 24, after finding that the procedural voting requirement had been followed, and that the assessment was

reasonable. The procedure for the Commissioner in making his findings and approving the assessment were further explicated in the regulations adopted on July 15. See 3AAC 88.010-030. It is undisputed that the major plaintiffs in this lawsuit made no attempt to provide input into the approval and regulation adoption or to request the Commissioner not to approve the assessment. (See depositions.) Although the Commissioner gave notice to the processors and other fish buyers, pursuant to A.S. 16.10, that they were to begin collecting the assessment, the processors collected but declined to transmit the assessment to the regional association. Cf. State of Alaska and Southern Southeast Regional Aquaculture Association, Inc. v. Annette Island Packing Co. et al., Civil Action No. 77-10006, Juneau. However, some fish buyers did collect and forward the assessment and by November 11, 1977, SSRAA had received some $49,000 in assessments.

Meanwhile, the corporation was actively proceeding with plans for hatchery sites and a hatchery facility at Whitman Lake on Ravilla Island near Ketchikan. On December 15, 1977, the final request for the last $100,000 matching grant, pursuant to A.S. 16.10.510, was sent to the Director of Business Loans, Department of Commerce and Economic Development.

In early 1978, after processors had agreed to release the impounded assessment, the corporation let an engineering and design contract for the Whitman Lake Hatchery facility. The design of the facility and its specifications were supervised by Milo Bell, Professor Emeritous of Fisheries, University of Washington, SSRAA's senior technical advisor. Subsequently, interim financing was secured through the Spokane Bank for Cooperatives, and construction began at the Herring Cove-Whitman Lake hatchery site in June. A temporary hatchery was built at Beaver Falls, near Ketchikan, primarily

for the purpose of preventing a years delay in production of salmon. The Beaver Falls Hatchery is presently incubating 800,000 Coho eggs.

Also during 1978, the corporation had become heavily involved in the regional planning process. This process is dictated by A.S. 16.10.375. Corporation expenses in 1978 exceeded $112,000 in conjunction with this process.

Currently there exist five recognized regional aquaculture associations in the state. They are Southern Southeast Regional Aquaculture Assocation, Northern Southeastern Regional Aquaculture Association, Prince William Sound Regional Aquaculture Association, Cook Inlet Regional Aquaculture Association and Imarpik Regional Aquaculture Association in Dillingham. Three have implemented assessments pursuant to A.S. 16.10.530: The Southern and Northern Regions of Southeast Alaska, and Cook Inlet Regional Aquaculture Association. Specific rehabilitation and enhancement programs are currently underway, partially funded or guaranteed by the mandatory assessment.

II. HISTORIC BACKGROUND

Historically, salmon were important as a food source in Alaska; while Eskimos, Aleuts and Indians were heavily dependent on salmon, they used the fishery in a manner unlikely to cause damage to it. In the early days of the commercial fishery in Alaska, the resource was considered inexhaustible by those most concerned with its exploitation. The fishing levels during the first years skyrocketed; the number of fish traps increased from 60 to 600 in a period from 1906 to 1920. During the same period the number of gillnet boats rose from 1,000 to 5,000, and the number of seiners increased from 200 to 800. There was a rapid increase in consumer demand for canned salmon from the inception of commercial fishing in the 1880's until the end of World War I. Fishing levels and industry expansion in Alaska reflected this demand. In the twenty year period from 1899-1918 the Alaska salmon pack rose from approximately 1,000,000 cases to over 6,500,000 cases. This growth occurred in the absence of any effective governmental regulation and, had it not been for the sharp drop in demand after the First World War, might have very rapidly destroyed the fishery. Production continued to increase and reached a peak in the late 1930's despite that drop in demand. Then the commercial catch began to decline significantly until in the mid-1960's it reached a level less than half the maximum yields of the late 1930's. Several factors must be considered in evaluating the reasons for that serious continuing decline in production. The first factor was the increase in the number of fishermen.

In the first years of the Alaska commercial salmon fishery a relatively small number of fishermen harvested large numbers of fish. The years thereafter were marked by an enormous increase in the number of commercial fishermen. In the peak fishery period from 1934 to 1939 an average of 8,383 fishermen caught an average of 593,719,000 pounds of

salmon annually, whereas for the period from 1963 to 1967 an average of 16,764 fishermen harvested an average of only 254,771,000 pounds annually. By the mid-1930's the average catch had peaked and had started its precipitous decline. The average catch per fisherman dropped from a high of 89,236 pounds in 1934 to 18,763 pounds by 1966. As a result of these developments, the almost 18,000 fishermen employed in 1966 caught twenty-five percent fewer fish than did 7,408 fishermen in 1930.

The declining size of the average catch of each fisherman and the increased number of fishermen in the fishery were related phenomena. It could be possible for both of those conditions to exist in an economically viable industry if the average catch and the number of fishermen leveled off, but until recently this is not the case in the Alaska fishery. The fisherman in the boom period of the mid-1960's earned less gross real income than his counterpart fishing in the depression period of the mid-1930's, notwithstanding an increase of over 300 percent in the real value price of fish. This situation was caused partially by the fact that, for a given output, the cost of catching each fish increased as the average catch per fisherman decreased. The concerns caused by the declining catch and the increasing cost of catching fish led to the limitation of entry into the fisheries and a plan for efficient aquaculture development. 1/

1/ Cf. R. Cooley, Politics and Conservation: The Decline of the Alaska Salmon (1963); J. Crutchfield & G. Pontecorvo The Pacific Salmon Fishery: A Study In Irrational Conservation (1969).

III. DEVELOPMENT OF AQUACULTURE POLICY IN ALASKA.

A. CONSTITUTIONAL RECOGNITION.

Prior to 1972, Art. VIII, Sec. 15 of the Alaska Constitution provided that "[N]o exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the state." That section was derived from section 1 of the White Act, 48 U.S.C., §221, under which Alaska fisheries were managed prior to statehood. Cf. 1963 Opinion, Attorney General, No. 3. The White Act had been consistently construed to forbid exclusivity in the common property fishery not only to any single group or corporation but also to any special group or number of people. Cf. Hynes v. Grimes Packing Co., 337 U.S. 86 (1949).

In 1972 sec. 15 was amended with the additional clause:

> This section does not restrict the power of the state to limit entry into any fishery for purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State.

When the resolution calling for the proposed amendment was under consideration by the legislature several significant changes were made. These changes were referred to in a House Resources Committee report:

> As received by the committee, the amendment specifies three grounds for restricting entry to a fishery, one of which is "for purposes of conservation of the resource." In our proposed substitute we have altered this to read "for purposes of resource conservation," thereby broadening it to include conservation not only of the fisheries themselves, but of the capital and labor resources which are expended in harvesting them. This is a particularly important point since limited entry finds its primary significance more in the context of economics than biology. We have added the adjective "efficient" before "development of aquaculture" for similar reasons.

1971 House Journal, p. 761. The House Resources Committee substitute was the version eventually adopted by the voters.

The significance of those changes should be emphasized. The conservation of capital and labor resources embodies

economic concepts far beyond biological rehabilition of the fisheries. Efficiency of the means chosen to achieve biological enhancement became a constitutionally fathered public purpose. As shall be seen, the legislative scheme to promote aquaculture development effectively recognized capital and labor conservation as a primary goal.

B. LEGISLATIVE DEVELOPMENTS.

1. In 1974 the legislature passed into law, with the Governor's signature, a bill authorizing the ownership of salmon hatcheries by qualified nonprofit corporations for the purpose of contributing to the rehabilitation of the depleted salmon stocks. 2/ The bill empowered the Commissioner of Fish and Game to issue permits to nonprofit corporations organized under A.S. 16.10.20 for the construction and operation of a salmon hatchery, "subject to the restrictions he considers desirable or that are imposed by statute or regulation under Secs. 400-470 of this Chapter." 3/ (Underlining supplied.)

2/ SLA Chapter 111. Section 1 of that Chapter laid out the legislative intent of the Act:

> "It is the intent of this Act to authorize the private ownership of salmon hatcheries by qualified nonprofit corporations for the purpose of contributing, by artificial means, to the rehabilitation of the state's depleted and depressed salmon fishery. The program shall be operated without adversely affecting natural stocks of fish in the state and under a policy of management which allows reasonable segregation of returning hatcher-reared salmon from naturally occurring stocks."

3/ SLA Chapter 111, Sec. 2, adding Sec. 16.10.400(a) by amendment. The underlined language was later deleted from law by amendment in SLA Chapter 154 (1977), Section 3. See discussion infra.

The Act also listed conditions which must be included in any permit:

> Sec. 16.10.240. CONDITIONS OF A PERMIT. The department shall require, in a permit issued to a hatchery operator, that,
>
> (1) salmon eggs procured by the hatchery must be from the department or a source approved by the department;

(footnote 3/ con't)

(footnote 3/ con't)

(2) no salmon eggs or resulting fry be placed in waters of the state other than those specifically designated in the permit;

(3) no salmon eggs or resulting fry, sold to a permit holder by the state or by another party approved by the department, may be resold or otherwise transferred to another person;

(4) no salmon be released by the hatchery before department approval, and, for purposes of pathological examination and approval, the department shall be notified of the proposed release of salmon at least 15 days before the date of their proposed release by the hatchery;

(5) diseased salmon be destroyed in a specific manner and place designated by the department;

(6) adult salmon be harvested by hatchery operators only at specific locations as designated by the department;

(7) surplus eggs from salmon returning to the hatchery be made available for sale first to the department and then, after inspection and approval by the department, to operators of other hatcheries authorized by permit to operate under secs. 400-470 of this chapter;

(8) if surplus salmon eggs are sold by a permit holder to another permit holder, a copy of the sales transaction be provided to the department;

(9) the cost of inspections or examinations conducted by the department under this section before the release of salmon, or when eggs are procured from sources other than the department, or to determine the existence of disease, be borne by the hatchery owner for which the inspection or examination is conducted;

(10) a hatchery be located in an area where a reasonable segregation from natural stocks occurs, but, when feasible, in an area where returning hatchery fish will pass through traditional salmon fisheries.

The conditions listed in SLA Chapter 111 (1974), Sec. 16.10.420 have not been enumerated upon nor amended.

The Act provided that fish released into the natural waters of the state by a non-profit hatchery "are available to the people for common use and are subject to regulation under applicable law in the same way as fish occurring in their natural state until they return to the specific location designated by the department for harvest by the hatchery operator." 4/

Funds raised by the sale of harvested salmon or eggs by the hatchery operator 5/ were to be utilized for hatchery operating costs, debt service, capital improvements and expansion, with the remaining funds expended on "fisheries research, salmon rehabilitation projects, or other fisheries activities." SLA Chapter 111, Sec. 16.10.450. Other aspects of the bill included provisions for altering, suspending or revoking permits, 6/ public hearings on permit issuances, 7/

4/ The decision to specifically mandate that the hatchery salmon would be available for common use and subject to regulation "in the same way as fish occurring in their natural state" must have been discussed within the framework of Article VIII, Sec. 36 of the Alaska Constitution, which states:

> "Section 3. COMMON USE. Whenever occurring in their natural state, fish, wildlife, and waters are reserved to the people for common use."

See discussion, Alaska Constitutional Convention Proceedings, pp. 2458-2466.

5/ "Fish sold by hatcheries for human consumption shall be of comparable quality to fish harvested by commercial fisheries in the area, and shall be sold at priced commensurate with the current market." A.S. 16.10.450.

6/ A.S. 16.10.430, Subsection (b) provides:

> "(b) If the commissioner finds that the operation of the hatchery is not in the best interests of the public, he may alter the conditions of the permit to mitigate the adverse effects of the operation, or, if the adverse effects are irreversible and cannot be mitigated sufficiently, initiate a termination of the operation under the permit over a reasonable period of time under the circumstances, not to exceed four years. During the period of time that the operation is being terminated, the permit holder may harvest salmon under the terms of the permit but may not release additional fish."

7/ A.S. 16.10.410.

approval of egg takes, 8/ inspection of the hatchery by the department, 9/ and an annual report to the department. 10/

2. (a). In 1976, the legislature passed two more bills that pertained to aquaculture. 11/ SLA Chapter 161 (1976) provided for the formation of "qualified regional associations for the purpose of enhancing salmon production." A.S. 16.10.380(g). The associations would be deemed qualified if the Commissioner of Fish and Game found that:

A.S. 16.10.380(a):

> "(1) it is comprised of associations representative of commercial fishermen in the region;
>
> (2) it includes representatives of other user groups interested in fisheries within the region who wish to belong; and

---

8/ A.S. 16.10.445:

> "EGG SOURCES. (a) The department shall approve the source and number of salmon eggs taken under secs. 400-470 of this chapter.
>
> (b) Where feasible, salmon eggs utilized by a hatchery operator shall first be taken from stocks native to the area in which the hatchery is located, and then, upon department approval, from other areas, as necessary."

9/ A.S. 16.10.460.

10/ A.S. 16.10.470, The report to the Department of Fish and Game included:

> (1) a complete description of all significant hatchery operations;
>
> (2) statistics on the numbers of eggs and fish handled by the hatchery, whether for production or sale;
>
> (3) future recommendations for modification of the hatchery program;
>
> (4) any other relevant date required by the department.

11/ Both bills were requested by the Governor and signed by the Governor. SLA Chapter 161 (1976), which provided for Regional Associations, passed both houses by a unanimous vote of the members present. Senate Bill History, 9th Legislature, pp. 340-341.

SLA Chapter 190 (1976) passed the Senate 19-1 and passed the House 36-0-4 before it was signed by the Governor. Senate Bill History, 9th Legislature, p. 341.

(3) it possesses a board of directors which includes no less than one representative of each user group that belongs to the association."

The Act directed that the Commissioner shall "designate regions of the state for the purpose of enhancing salmon production and shall develop and amend as necessary a comprehensive salmon enhancement plan for each region for both public and private non-profit hatchery systems." SLA Chapter 161 (1976), Section 2. 12/

If a qualified association "has become a non-profit corporation under A.S. 10.20" and "if its proposed hatchery is provided for in the comprehensive plan for that region" then the Act granted the association "a preference right to a permit." Supra, Section 3. 13/

(b). The second bill relating to aquaculture to be passed in 1976 was SLA Chapter 190. This Act created the Fisheries Enhancement Loan Program and declared the following:

"Sec. 16.10.500. DECLARATION OF POLICY. It is the policy of the state, under secs. 500-550 of this chapter, to promote the enhancement of the state's fisheries by means of long-term, low interest loans for hatchery planning and construction."

In order that this policy could be implemented, the Legislature provided for means of securing the loans. 14/ Two means

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12/ Section 1 of the Act clearly stated its purpose:

"Section 1. INTENT. It is the intent of this Act to produce salmon for the common property fisheries of the state."

13/ Permits are not to be issued unless "the stream has been classified as suitable for enhancement purposes by the Commissioner." A.S. 16.10.400(f). Until the development of the regional comprehensive plan, no permit for a hatchery may issue "unless the Commissioner determines that such an action would result in substantial public benefits and would not jeopardize natural stocks." A.S. 16.10.400(g).

14/ "All loans must be secured by collateral s factory to the commissioner, including but not limi to a first deed of trust, assignment of lease and leasehold improvements, sale of surplus fish from the hatchery, or assessments from fishermen levied under secs. 530-540 of this chapter." A.S. 16.10.520(c).

provided for were mandatory and volutary assessments on the sale of salmon. 15/

15/ The mandatory assessment:

"Sec. 16.10.530. ASSESSMENT ON SALE OF SALMON. (a) The commissioner of commerce and economic development, with the advice and approval of the commissioner of fish and game, may establish areas in which an assessment shall be levied on the sale of one or more species of salmon by persons licensed under A.S. 16.05.540-16.05.600. An assessment levied under this section shall be for the purpose of securing repayment of a loan or loans made to a qualified regional association which has formed a nonprofit corporation, or to a local nonprofit corporation established or approved by a qualified regional association, which has obtained a permit under secs. 400-470 of this chapter. The rate and conditions of assessments shall be negotiated between the commissioner and the appropriate qualified regional association in conjunction with the issuance of the loan, and the agreement on the rate and conditions of assessment reached between them shall be incorporated into the provisions of the loan contract.

(b) If conditions warrant alteration of the rate or conditions of assessment, and the alteration would be inconsistent with the agreement negotiated under (a) of this section, the commissioner shall obtain the consent of the appropriate qualified regional association before altering the rate of assessment.

(c) The commissioner and the appropriate qualified regional association must agree on a means of collection of the assessment before a loan is made, and the commissioner may, by regulation, require its collection by buyers of the salmon upon the sale of which an assessment is levied.

(d) The assessment shall terminate when the principal and interest on the loan is paid."

Subsection (a) of this section was substantially amended in 1977 by SLA Chapter 154. Subsection (b) was repealed, Subsections (c) and (d) were amended and new subsections were added. See discussion infra.

The voluntary assessment:

Sec. 16.10.540. VOLUNTARY ASSESSMENT ON SALE OF SALMON.

(a) In place of or in addition to an assessment levied under sec. 530 of this chapter, an association of persons licensed under A.S. 16.05.540 -16.05.600, which consists of at least 51 percent of the persons so licensed and actively participating in a fishery to be benefitted by a hatchery program, may levy and collect an assessment from among its members for the purpose of securing and repaying a loan made under sec. 510 of this chapter.

(footnote con't)

(footnote 15/ con't)

(b) Upon satisfactory demonstration to the commissioner that an assessment levied under this section may reasonably be relied upon to secure and repay a loan to be made under sec. 510 of this chapter, the commissioner may make the loan without requiring an assessment under sec. 530 of this chapter.

(c) If an assessment made under this section fails to satisfy the payments required on the principal and interest due on the loan the commissioner may negotiate with the regional association to levy an assessment under sec. 530 of this chapter.

This section has not been amended.

3. In 1977 the legislature enacted SLA Chapter 154, "An Act Relating to Fisheries Enhancement." 16/

16/ This bill passed the House 36-0-4 and the Senate on reconsideration 18-1-1. The Governor signed the bill with an accompanying message:

"June 23, 1977

The Honorable Hugh Malone
Speaker of the House
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. Speaker:

I have signed the following bill and am transmitting the enrolled and engrossed copies to the Lieutenant Governor's Office for permanent filing:

SENATE COMMITTEE SUBSTITUTE FOR
COMMITTEE SUBSTUTITE FOR
HOUSE BILL NO. 264
Resources, amended Senate
(Relating to fisheries enhancement)
Chapter 154, SLA 1977

While this legislation does have a number of technical difficulties that merit consideration during the next legislative session, it nevertheless represents a good example of the administration and the legislature working together to achieve a common goal.

Enactment of this legislation will provide very substantial assistance to the regional associations of user groups who desire to work with the Alaska Department of Fish and Game to develop comprehensive plans for rebuilding the salmon resources of their region.

It is my hope and expectation, that with this additional support for the regional associations, the private, nonprofit program of salmon restoration can go forward at a very positive and effective pace.

Sincerely,

/s/ JAY S. HAMMOND
Governor"

House Journal, 1977, pp. 1701-1702.

The policy was restated to read:

§16.10.500 DECLARATION OF POLICY

> It is the policy of this state, under Sections 500 to 550 of this chapter, to promote the enhancement of the state's fisheries by means of grants for organizational and planning purposes to regional associations which have qualified under Section 380 of this chapter, and by means of long term, low interest loans for hatchery planning, construction, and operation.

The Act substantially amended A.S. 16.10. For the purposes of this lawsuit, the relevant amendments, and their effect, are listed below:

(a). Regional Salmon Plan

A.S. 16.10.375 originally directed the Commissioner of Fish and Game to designate regions of the State for the purpose of enhancing salmon production and required that he should develop a comprehensive salmon enhancement plan for each region for both public and private non-profit hatchery systems. 17/

The 1977 Act amended this section to direct that the plans "for public and private non-profit hatchery systems" should be developed by "regional planning teams consisting of department personnel and representatives of the appropriate qualified regional associations," subject to plan approval by the Commissioner. 18/ SLA Chapter 154 (1977), Sec. 2. (Hereafter 1977 Act.)

17/ See SLA Chapter 161 (1976), Section 2 and discussion, supra.

18/ Other sections of A.S. 16.10 were amended to accommodate the regional planning team concept, but always with an eye toward the ultimate authority of the Commissioner:

> (a) permits for the hatchery may be issued to a non-profit corporation "after the permit application has been reviewed by the regional planning team." 1977 Act, Sec. 3.
>
> (b) permits may be revoked or suspended "after the regional planning team for the area in which the hatchery is located is notified and granted an opportunity to comment." 1977 Act, Sec. 4.

(b). Preference Rights to a Permit

SLA Chapter 161 (1976) had granted a preference right to a hatchery permit if a qualified regional association had become a non-profit corporation and its proposed hatchery was provided for in the comprehensive plan.

The 1977 Act placed an additional requirement that the fresh water source for the proposed hatchery "exceed one cubic foot per second minimum flow." 1977 Act, Sec. 3.

(c). Revenues From Sale of Salmon and Salmon Eggs

Previously A.S. 16.10.450 had restricted the use of revenues from the sale of salmon and salmon eggs by a non-profit hatchery operator to hatchery operating costs, debt service, captial improvements and expansion, and fisheries research, salmon rehabilitation projects, or other fisheries activities.

The 1977 Act amended that section to also include acceptable expenditures from these revenues as operating costs of the "qualified regional association for the area in which the hatchery is located" and directed that remaining funds shall be expended "on other fisheries activities of the qualified regional association." 1977 Act, Sec. 5.

(d). Annual Reports

SLA Chapter III (1974) required hatchery operators to submit an annual report to the Department of Fish and Game. (See discussion, supra.) That section required only that the operator submit a complete description of all significant hatchery operations, statistics on the number of eggs and fish handled, and any other relevant data required by the Department.

The 1977 Act specified in detail that which was to be included in the report to the Department "and to the

qualified regional association." 19/ Supra, Sec. 6. In addition, the Act required that permit holders must submit "an annual financial report to the Department of Commerce and Economic Development." 20/ Supra.

(e). Grants For Organizational and Planning Purposes.

The 1977 Act declared it to be the policy of the State to promote the enhancement of the State's fisheries by means of "grants for organizational and planning purposes" to qualified regional associations. 21/ Pursuant to this declaration of policy, the Act provided for grants "in amounts not exceeding $100,000 per region and up to an additional $100,000 on a 50/50 cash matching basis." 22/

19/ "Sec. 16.10.470. ANNUAL REPORT. (a) A person who holds a permit for the operation of a salmon hatchery under secs. 400-470 of this chapter shall submit an annual report no later than December 15 to the department and to the qualified regional association for the area in which the hatchery is located, to include but not be limited to information pertaining to species, brood stock source, number, age, weight, and length of spawners; number of eggs taken and fry fingerling produced; and the number, age, weight, and length of adult returns attributable to hatchery releases, on a form to be provided by the Department of Fish and Game." (Emphasis supplied.)

20/ "Sec. 16.10.410. (b) A person who holds a permit for the operation of a salmon hatchery under secs. 400-470 of this chapter shall submit an annual financial report to the Department of Commerce and Economic Development on a form to be provided by the Department of Commerce and Economic Development." (Emphasis supplied)

Note that the financial statement is required of all permit holders, not just those seeking financial assistance.

21/ A.S. 16.10.500. This "means" was added to that of long-term, low interest loans for hatchery planning and construction.

22/ A.S. 16.10.510(9). Grants were, in fact, made to the regions. The breakdown may be gleaned from the following committee report:

"HOUSE FINANCE COMMITTEE REPORT
ON
CSHB 264 (FINANCE)

The revised fiscal note for CSHB 264 (Finance) provides funding as follows:

FY 77: $900,000 in grant funds for the following regions: Ketchikan, Sitka, Bristol Bay, Cook Inlet, Yukon-Kuskokwim and Prince William

Sound. The grant amount provides $100.000 to each region attempting to organize and to Prince William sound (Already organized). A matching assessment grant of $100,000 will be made to organized regional associations. It is estimated that three regional associations will qualify for this second grant.

FY 78: $900,000 in grant funds to provide for six additional regions attempting to organize and three of which might qualify for the matching grant.

Respectfully submitted,

/s/ STEVE COWPER, Chairman
House Finance Committee"

House Journal, 1977, p. 788.

(f). Mandatory Assessment.

(1). Assessment Trigger

Previously A.S. 16.10.530(a) had authorized the levying of the assessment by the Commissioner of Commerce and Economic Development, with the advice and consent of the Commissioner of Fish and Game, at the time of and in conjunction with the issuance of a loan or loans to a qualified regional association.

The Act amended that subsection to direct that the Commissioner levy the assessment "on request of the qualified regional association" after the Commissioner determined that procedural requirements set by statute were met. 23/

(2). Assessment Rate

Originally it was provided that the rate of the assessment "shall be negotiated between the Commissioner and the qualified regional association in conjunction with the issuance of the loan." 24/ That was changed to provide that "[T]he rate . . . shall be stated by the appropriate qualified regional association in conjunction with the request" for the assessment levy. 1977 Art. Sec. 14.

23/ These procedural requirements are discussed infra. The Act also replaced the requirement of advice and consent by the Commissioner of Fish and Game with a requirement to consult with that Commissioner.

24/ A.S. 16.10.530(a). Note A.S. 16.10.530(d) which directs that the Commissioner and the association must agree on a "means of collection of the assessment" and provides that the Commissioner "may, by regulation, require its collection by buyers of salmon upon the sale of which an assessment is levied."

(3). Approved use of assessment revenues

The Act provided that the "assessment . . .shall be for the purpose of providing revenue for the qualified regional association for the area in which the assessment is made." Supra. The original authorized use was "for the purpose of securing repayment of a loan or loans." SLA Chapter 190 (1976), Sec. 1.

(4). Procedural safeguards required by law

Originally, when the Commissioner was empowered to levy the assessment in his discretion for the purpose of securing repayment of a loan, there were no procedural safeguards mandated by law. When the 1977 Act changed the assessment trigger to a request from the qualified association and authorized a broader use of the assessments, the following procedural safeguards were adopted:

> "(e) Before an assessment is made under this section, the qualified regional association for the area in which the assessment is to be levied shall hold an initial public meeting to explain and discuss the necessity for the assessment and to explain the registration procedure established under (f) of this section. Reasonable public notice of the meeting shall be sent to all limited entry permit holders actively participating in a fishery in the area, posted in at least three centrally located public places in the area, and published in at least one newspaper of general circulation at least one time a week for three consecutive weeks in the area, if one exists. The notice shall briefly state the amount of the assessment and a short general description of the purposes for which the assessment money will be used. A ballot shall be mailed to all limited entry permit holders actively participating in a fishery in the area at least 20 days before the initial public meeting and contain a copy of the notice and ask the question whether an assessment shall be imposed. At the public meeting the returned ballots shall be counted by a special committee appointed by the regional association for that purpose, and a vote by written ballot shall be taken on the question from among the limited entry permit holders present at the initial public meeting. After the vote is taken at the initial meeting a second public meeting shall be held, upon the limited notice of publication in a newspaper of general circulation, each day for five consecutive days and the mailing of personal notice to all limited entry permit holders who actively participate in a fishery in the area at least 14 days before the second public

meeting, to give those who did not vote by written ballot at the initial public meeting an opportunity to vote. A majority vote for the assessment is required from the combined total of the returned ballots and the votes by ballot cast at both public meetings, before an assessment may be imposed. No person may vote twice.

(f) The qualified regional association shall establish standard registration procedures for voting on assessments under this section."

5. Termination of the assessment

SLA Chapter 190 (1976) required that the assessment "terminate when the principal and interest on the loan is paid." The 1977 Act amended this to require termination "upon request of the qualified regional association when all financial obligations relating to the assessment have been met." Supra, Sec. 15.

C. REGULATIONS ADOPTED BY THE EXECUTIVE.

Emergency and permanent regulations relating to the assessment on the sale of salmon have been adopted by the Commissioner. Those regulations, emergency and permanent, are enclosed in their entirety in the appendix for reference. However, it can be said in general that the regulations require additional specificity regarding requests or institution of the assessment, review and approval of initial requests, collection of the assessment, and submission of initial and final reports.

IV. THE DEVELOPMENT OF NATURAL RESOURCE POLICY IN THE STATE OF ALASKA

Beginning with the opening keynote address to the Alaska Constitutional Convention by E. L. Bartlett, 25/ Alaska's public policy development has struggled with the promises from and the challenges created by our natural resource wealth. The Convention focused frequently on Alaska's mineral wealth, but heeded the call of Bartlett to forge an agressive policy toward the fisheries:

> "The question of resources policy is not to be confined, of course, solely to the issue of mineral policy. Upon statehood, Alaska becomes the master of her own destiny on controlling the fisheries resources within her waters. Slavish adherence to old concepts, concepts which have brought only depletion and portents of ruin, will result only in the complete destruction of a once mighty industry. While the major future wealth of Alaska may be underground, the fisheries and marine resources of this area are matters of the highest importance and deserve the most careful consideration by this Convention and by future state legislatures."
>
> Alaska Constitutional Convention Proceedings, Appendix II, p. 6. 26/

25/ Bartlett was Alaska's Territorial delegate in Congress.

26/ Bartlett challenged the delegates to be bold in this area while drafting the natural resources article:

> "In the drafting of resources policy the Convention should not fear to consider and adopt a bold course of action. No other state entering the Federal Union has ever been so dependent upon its water and mineral resources. Never was the issue of resources policy been to vital. Devising basic policy suitable to the demand of this and future times may well require that older conceptions of resources policy be drastically revised or even discarded.
>
> We write on a clean slate in the field of resources policy. Only a minute fraction of the land area is owned by private persons or corporations. Never before in the history of the United States has there been so great an opportunity to establish resources policy geared to the growth of a magnificent economy and the welfare of a people." Supra, p. 7.

At the time of the Convention "almost absolute control over the salmon resources had been concentrated in the hands of a few large nonresident canning concerns, and the fishery was managed strictly for their benefit." 27/ The delegates struggled with many issues regarding the fisheries and natural resources in general, and finally produced a well-balanced article mandating aggressive functions for the State in providing for the utilization, development and conservation of Alaska's natural resources while, at the same time, obligating the State with protecting those resources. The approach taken is familiar to jurists and scholars as the public trust concept.

A. THE PUBLIC TRUST CONCEPT

The Public Trust concept of managing resources is not new. Its roots are in Roman jurisprudence, developed in a society with heavy commerce, with important urban concentrations, and with a legal heritage from the sea-dependent Greeks. It was considered basic natural law that the air, water, and living resources of the rivers and the sea were held in trust for common use. 28/ One of the main thrusts of the Magna Carta was the assertion of public rights in land and resources previously held by the King as private and alienable. 29/

27/ Fischer, Alaska's Constitutional Convention, University of Alaska Press, 1975, p. 132. See also, Ernest Gruening, The State of Alaska, New York: Random House, 1954, and George W. Rogers, The Future of Alaska, Baltimore: The Johns Hopkins Press, 1962.

28/ Cf. Note, The Public Trust in Tidal Areas: A Sometimes Submerged Traditional Doctrine, 79 Yale Law Journal 762, 763 (1970). Sax, The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention, 1970 Michigan Law Review 471.

29/ Cohen, The Constitution, The Public Trust Doctrine, and the Environment, 1970 Utah Law Review 388, 389. Indeed, serfdom embodied the concept of the feudal lords "owning" the land and resources. Magna Carta, part of the great struggle to break the shackles of serfdom, tried to reassert the principle that the resources were held by the crown in its sovereign capacity as a trustee, and not as a private landlord.

In this country, attempts have occasionally been made to discredit the concept. Recently, in Hicklin v. Orbeck, ____ U.S. ____, 57 L.Ed. 2d 397 (1978) and Baldwin v. Fish and Game Commission of Montana, ____ U.S. _____, 56 L.Ed. 2d 354 (1978), appellants attacked application of state law, based in part on the public trust doctrine, as having no remaining vitality. In Baldwin, supra, Justice Blackmun answered this attack:

> "Many of the early cases embrace the concept that the States had complete ownership over wildlife within their boundaries, and, as well, the power to preserve this bounty for their citizens alone. It was enough to say 'that in regulating the use of the common property of the citizens of [a] state, the legislature is [not] bound to extend to the citizens of all the other states the same advantages as are secured to their own citizens.' Corfield v. Coryell, 6 F.Cas. 546, 552 (No. 3230) (CCEDPa. 1825). It appears to have been generally accepted that although the States were obligated to treat all those within their territory equally in most respects, they were not obliged to share those things they held in trust for their own people. In Corfield, a case the Court has described as 'the first, and long the leading, explication of the [Privileges and Immunities] Clause,' see Austin v. New Hampshire, 420 U.S., at 661, Mr. Justice Washington, sitting as Circuit Justice, although recognizing that the States may not interfere with the 'right of a citizen of one state to pass through, or to reside in any other state, for purposes of trade, agriculture, professional pursuits, or otherwise; to claim the benefit of the writ of habeas corpus; to institute and maintain actions of any kind in the courts of the state; to take, hold and dispose of property, either real or personal,' 6 F. Cas., at 552, nonetheless concluded that access to oyster beds determined to be owned by New Jersey could be limited to New Jersey residents. This holding, and the conception of state sovereignty upon which it relied, formed the basis for similar decisions during later years of the 19th century. E.G., McCready v. Virginia, 94 U.S. 391 (1876); Geer v. Connecticut, 161 U.S. 519 (1896). See Rosenfeld v. Jakways 67 Mont. 558, 216 P.776 (1923). In Geer, a case dealing with Connecticut's authority to limit the disposition of game birds taken within its boundaries, the Court roundly rejected the contention 'that a State cannot allow its own people the enjoyment of the benefits of the property belonging to them in common, without at the same time permitting the citizens of other States to participate in that which they do not own.' 161 U.S., at 530.
>
> "In more recent years, however, the Court has recognized that the States' interest in regulating and controlling those things they claim to 'own,' including wildlife, is by no means absolute. States may not compel the confinement of the

benefits of their resources, even their wildlife, to their own people whenever such hoarding and confinement impedes interstate commerce. Foster-Fountain Packing Co. v. Haydel, 278 U.S. 1 (1928); Pennsylvania v. West Virginia, 262 U.S. 553 (1923); Oklahoma v. Kansas Natural Gas Co., 221 U.S. 229 (1911). Nor does a State's control over its resources preclude the proper exercise of federal power. Douglas v. Seacoast Products, Inc. 431 U.S. 265 (1977); Kleppe v. New Mexico, 426 U.S. 529 (1976); Missouri v. Holland, 252 U.S. 416 (1920). And a State's interest in its wildlife and other resources must yield when, without reason, it interferes with a nonresident's right to pursue a livelihood in a State other than his own, a right that is protected by the Privileges and Immunities Clause. Toomer v. Witsell, 334 U.S. 385 (1948). See Takahashi v. Fish & Game Comm'n, 334 U.S. 410 (1948).

Appellants contend that the doctrine on which Corfield, McCready, and Geer all relied has no remaining vitality. We do not agree. Only last Term, in referring to the 'ownership' or title language of those cases and characterizing it 'as no more than a 19th-century legal fiction,' the Court pointed out that that language nevertheless expressed '"the importance to its people that a State have power to preserve and regulate the exploitation of an important resource."' Douglas v. Seacoast Products, Inc., 431 U.S., at 284, citing Toomer v. Witsell, 334 U.S., at 402. The fact that the State's control over wildlife is not exclusive and absolute in the face of federal regulations and certain federally protected interests does not compel the conclusion that it is meaningless in their absence." Baldwin, supra, 56 L.Ed. 2d pp. 360-361.

The focus of the Public Trust Doctrine in the past has primarly involved the protection of and access to the trust resources. 30/ This focus can be explained to a great extent by history: protecting the rights of the citizens from imperial use and grants of public resources.

The Public Trust concept in Alaska has not been so narrowly focused. The protections have been promised by specific constitutional obligations, as well as lodging in the legislative branch the power and obligations to apply the concept as our society evolves. (See discussions infra.) The concept has evolved in the executive, judicial and legislative branches with a similarly broad focus.

30/ For example, in Illinois Central R.R. Co. v. State of Illinois, 146 U.S. 387 (1892), the Illinois legislature made extensive grants of submerged land, in fee simple, to the Illinois Central Railroad. Four years later, a new legislature repealed the grant. The Supreme Court held that the express conveyance of trust lands was beyond the power of the state legislature. Supra, p. 452.

1. In the Alaska Constitution

At the time of the Convention the delegates were aware of several policy considerations which were not always in concert. Wise use and development of all natural resources was considered necessary and healthy, but the delegates were also well aware of the problems addressed by Bartlett. 31/

Consequently, the Committee on Resources submitted several drafts of a pr osed article to the Convention. It is important to revie ne evolution of those proposals in detail.

Article VIII of the Alaska Constitution provides in relevant sections:

> Sec. 1 Statement of Policy. It is the policy of the State to encourage the settlement of its land and the development of its resources by making them available for maximum use consistent with the public interest.
>
> Sec. 2 General Authority. The legislature shall provid for the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people.

31/ The natural resource article was the subject of much attention from the staff:

> "Recognizing that the issue of Alaska's land and resources was the most important issue facing the convention delegates, Public Administration Service made a special effort to provide a working base in its staff paper on 'The Alaskan Constitution and the State Patrimony.' After detailing land grants, resources, and responsibilities that would pass on to Alaska with statehood, the PAS paper attempted to set out a basis for delegate discussions by departing from its own established policy and developing a suggested land and resources article. In these suggestions, accompanied by explanatory discussions, PAS tried to compensate for lack of useful precedents and to provide a starting point for delegates. However, since the consultant proposals did not coincide with committee members' ideas, there was little resemblance between the PAS draft and the resources article as finally adopted." Fischer, supra, fn. p. 132.

> Sec. 3 Common Use. Whenever occurring in their natural state, fish, wildlife and waters are reserved to the people for common use.
>
> Sec. 4 Sustained Yield. Fish, forests, wildlife, grasslands, and all other replenishable resources belonging to the State shall be utilized, developed, and maintained on the sustained yield principle, subject to preferences among beneficial uses.
>
> Sec. 6. State Public Domain. Lands and interests therein, including submerged and tidal lands, possessed or acquired by the State, and not used or intended exclusively for governmental purposes, constitute the state public domain. The legislature shall provide for the selection of lands granted to the State by the United States, and for the administration of the state public domain.
>
> Sec. 10. Public Notice. No disposals 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.
>
> Sec. 17 Uniform Application. Laws and regulations governing the use or disposal of natural resources shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation. (Emphasis supplied).

Committee Proposal No. 8, Sec. 7, entitled State Public Domain, was the first committee proposal and was far more specific than the adopted section:

> "Lands and interest therein possessed or acquired by the state, including submerged and tidal lands, and not used or intended exclusively for governmental purposes or for reserved sites and areas constitute the state public domain. Such lands and interests therein are to be held in trust for the people of the state. These lands and interests may be disposed of only in accordance with provisions of applicable acts of Congress, including the Act admitting Alaska to the Union, this constitution and the laws of the state.
>
> The legislature shall make provision for the selection, classificatin and administration of lands in the state public domain, and the several uses thereof, in such a manner as will give maximum use and public benefit." The Alaska Constitutional Convention Record, Vol. 6, pp. 77-78. (Emphasis supplied.)

The quoted language from the first proposal is similar to constitutional language in several western states placing all or part of the domain of lands granted from the Federal

Government in trust. 32/

By the final adoption of Article VIII, the emphasized language from Sec. 7 of the first proposal had been deleted. There is no specific explanation for the deletion. Yet, prior to the exclusion of the emphasized language from Section 7, the section on Uniform Application did not contain any language that laws and regulations governing the disposal of natural resources should apply equally. Supra, Vol. 6, p. 77. That language was added at the same time the specific reference to a public trust was deleted. Supra, Vol. 6, pp. 92-97. The amendment to the section on Uniform Application broadened the scope of protection to include the public interest in disposal of the resources as well as their utilization, thereby obligating that disposal of trust resources must bear equally upon all persons similarly situated.

In the first proposal which contained the public trust language, in then Sec. 7, then Sec. 1 provided:

> "The State of Alaska has the power to provide for the utilization, conservation and balanced development of all the natural resources, including aesthetic features, of the land and waters belonging to the state for the maximum benefit of its people." Alaska Constitutional Convention, Vol. 6, p. 76. (Emphasis supplied.)

When the specific reference to the public trust was deleted, the above section had been amended to command that "[T]he State of Alaska shall provide for the utilization, conservation and development of all the natural resources." Supra, p. 92. (Emphasis supplied.) Subsequent amendments specifically obligated the legislature to provide for "the utilization,

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32/ See Washington Const., Article 16, Sec. 1; Utah Const., Article 20, Sec, 1; New Mexico Const., Art. 13, Sec. 1. Some states implemented this language through a recognition that the resources should be held in trust, in others the statehood enabling acts contained directives to that result. See Ervien v. U.S., 251 U.S. 41 (1919).

development, and conservation of all natural resources . . . for the maximum benefit of its people." Article VIII, Sec. 2. 33/

It is clear that the delegates, rather than generally obligate the State to utilize, develop and conserve land and mineral resources pursuant to trust obligations, chose to direct future legislatures to carefully pick and choose the management and protection process. 34/

33/ The committee realized

> "that policies which promoted maximum use and development could be inconsistent with maximum benefit to the people or with the general public interest, as defined by Bartlett and others concerned about exploitation and destruction of resources and the environment." Fischer, supra, fn. 26, p. 133.
>
> Again, this understanding had been forcefully urged by Bartlett:
>
> "Many states have included in their constitutions statements that the natural resources of the state should be 'developed for the benefit of the people' of the state. Such pious generalities, without further conrete policy statements, have proved wholly inadequate as effective barriers against dissipation of resources, fraud, and corruption. Alaskans will not want, and above all else do not need, a resources policy which will prevent orderly development of the great treasures which will be theirs. But they will want, and demand, effective safeguards against the exploitation of the heritage by persons and corporations whose only aim is to skim the gravy and get out, leaving nothing that is permanent to the new state except, perhaps, a few scars in the earth which can never be healed. . . a failure to write into fundamental law basic barriers to minimize fraud, corruption, nondevelopment, and exploitation may well be viewed fifty years from now as this Convention's greatest omission." Alaska Constitutional Convention Proceedings, Appendix II, p. 7.

34/ The delegates were well aware of numerous cases struggling with this policy concept in regard to the public domain and resources contained therein. Cf. The Alaska Constitution and the State Patrimony: The Constitution and Natural Resources, Public Administration Service, 1955.

> Submerged lands within the territorial sea of Alaska are held in trust for certain purposes. See Brief of Amicus Curiae, Moore v. State, file no. 2551, Alaska Supreme Court.
>
> The legislature has chosen to place fiduciary obligations on the management of school lands; to dedicate certain royalties to a mental health trust; to present a permanent trust fund amendment to the voters. See Section 2, infra.

A necessary fundamental distinction between lands and resources held by a state in trust and all other lands and resources held by a state is that in holding the former the state acts "not as proprietors, but in their sovereign capacity as the representatives and for the benefit of all their people in common." Organized Village of Kake v. Egan, 174 F.Supp. 500, 504 (D.C. Alaska, 1959). The necessity for such a distinction was recognized in Winston Bros. Co. v. State Tax Commission, 62 P.2d 7 (Or. 1936). In language distinguishing those lands to which the state had title in a proprietary capacity from trust lands beneath navigable waters, the court made clear:

> "Until disposed of by the state, the state held title to these lands in its proprietary capacity and, after they had been disposed of by the state, their grantees took them free from any right therein (citations). As to the other class, . . . although the title passed to the state by virtue of its sovereignty, its rights were merely those of a trustee for the public. In its ownership thereof, the state represents the people, and the ownership is that of the people in their united sovereignty . . . Being subject to this trust, they are public juris, in other words they are held for the use of the people at large . . .[t]herefore, the state can make no sale or disposal of the soil underlying its navigable waters so as to prevent the use by the public of such waters for the purposes of navigation and fishing, but must hold them in trust for the public." Winston Bros., supra, p. 9.

By retreating from the specific trust language in Sec. 7, while adding additional safeguards, the framers surely left the task of defining any trust obligations regarding land and mineral resources with the legislature. However, with regard to fish, wildlife and waters, the delegates held fast to their original decision to reserve these resources for common use. 35/ Cf. Alaska Public Easement Defense Fund v. Andrus, 435 F. Supp. 664, 677 (D.C. Alaska, 1977).

35/ In Geer v. Connecticut, 161 U.S. 519 (1896), while struggling with the question of the sovereignty over the wildlife resources of the State of Connecticut, Justice White concluded:

"The power lodged in the state, resulting from the common ownership, is to be exercised like all other powers of the state, as a trust for the benefit of the people and not as a prerogative for the advantage of the government as distingquished from the public good." Supra, p. 529.

The Geer court cited a view that had been recognized earlier by the Supreme Court in Minnesota:

> "We take it to be correct doctrine in this country that the ownership of wild animals, so far as they are capable of ownership, is in the state, not as proprietor, but in its sovereign capacity, as the representative and for the benefit of all its people in common." State v. Rodman, 59 N.W. 1098, 1099 (Minn. 1894). (Emphasis supplied.)

Such a view has been maintained throughout the land to this day. Organized Village of Kake v. Egan, 174 F. Supp. 500 (D.C. Alaska 1959).

In summary, the constitutional framers carved out an agressive role for the legislature with regard to all natural resources of Alaska. At the same time, the air, water, fish and game resources were reserved to the people. This balance creates a necessary process of activist leadership for the benefit of the full complement of Alaskan society with our living resources. It is a role for a legislative body which is unique in democratic governments. It is a role contemplated by the framers to compliment and interact with other aspects of Alaskan government structure -- most notably local government and state and local finance. 36/

2. In the Three Branches of State Government

a. Judicial.

During the time of the Alaska Constitutional Convention, public opposition to fish traps had built tremendously. 37/ It had become obvious that the fishery resource was being depleted. Indeed, this public opposition had generated a lot of sentiment for Statehood. Part of the work product of the Convention was an ordinance providing for the abolition of the traps. 38/

36/ See Delegate Proposals Nos. 5 (Delegate Robertson); 7 (Delegate Johnson); 18 (Delegate Hellenthal); 26 (Delegate Marston); 30 (Delegate Hurley). It is defendant's position that the framers did not intend the separation between state and local functions to preclude the state from fulfilling it's trust to develop and protect the common property resources.

37/ Fish traps were unquestionably the most productive method of catching salmon ever used.

38/ Ordinance No. 3:

"As a matter of immediate public necessity, to relieve economic distress among individual fishermen and those dependent upon them for a livelihood, to conserve the rapidly dwindling supply of salmon in Alaska, to insure fair competition among those engaged in commercial fishing, and to make manifest the will of the people of Alaska, the use of fish traps for the taking of salmon for commercial purposes is hereby prohibited in all the coastal waters of the State."

The effect of that ordinance on the Metlakatlan Indians was challenged in Metlakatla Indian Community, Annette Island Reserve v. Egan, 362 P.2d 901 (Alaska 1961). The confrontation of policies was between that of the new State's obligation to protect and preserve the natural resource and the rights of the Indians to fish with traps on the reserve granted them by the federal authority. The court recognized the role of the executive and legislative branches in the State with regard to the resource:

> "These migrating schools of fish, while in inland waters, are the property of the state, held in trust for the benefit of all the people of the state, and the obligation and authority to equitably and wisely regulate the harvest is that of the state." Metlakatla Indian Community, supra, p. 915. (Emphasis supplied.) 39/

The reflection by the court that the State was not only empowered, but entrusted to protect the fishery is noteworthy. It appropriately identifies the nature of the relationship between the citizens, the State, and the resources held in trust.

b. Legislative.

In 1976, the legislature dealt with a number of resource management pieces of legislation. Concerned about the increasing pressures on Alaska's mineral and living resources, legislative proposals took several forms. For example, a lawsuit was then pending before the Alaska Supreme Court regarding a statutory and constitutional challenge to an executive decision in late 1973 to lease submerged lands in Kachemak Bay for competitive oil and gas development. Moore v. State, 553 P.2d 8 (1976). The Legislature responded with SLA Chapter 113, (1976), "An Act Relating to the Reacquisition of Oil and Gas Leasehold Interests in Kachemak Bay."

1976 saw a proposed constitutional amendment by members of the House providing for an individual constitutional right to a heathful environment. The resolution

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39/ See also, Kake v. Egan, 174 F. Supp. 500 (D.C. Alaska 1959); Aleut Community of St. Paul v. U.S., 117 F. Supp. 427 (Ct. Claims 1954).

passed the House but failed to pass the Senate. The House Rules Committee Report and Commentary on Rules Committee Substitute for House Joint Resolution No. 10, Amending the Inherent Rights Section of the Constitution of the State of Alaska, is instructive:

> The primary purpose of the amendment is constitutional recognition of the economic and noneconomic values in managing our unique Alaskan environment. This recognition, which is essential to human wellbeing also includes a necessity of maintaining a viable economy as part of a healthy human habitat. Accordingly, the degree of environmental protection which the state should afford as trustee of Alaska's air, water, lands, and natural resources is one which will reduce environmental incursions or degrogations to a minimum without eliminating the basis for a viable economy. The proposed constitutional amendment shall allow a balancing of environment, social, and economic concerns.

1976 House Journal, p. 469.

Later, in that same session, the Legislature specifically recognized that certain State lands were to be managed in a fiduciary capacity. SLA Chapter 267 (1976), "An Act Relating to the Rental and Leasing of State Land," amended several sections of Title 38 relating to the sale, lease, or other disposal of lands. Section 2 of that law states in relevant part:

> No sale, lease, exchange or other disposal of school lands may be made without the approval of the state Board of Education. The state Board of Education shall act as trustee of school lands. The board may retain private counsel or other professional assistance when necessary to carry out its duty as a trustee.

In order to make absolutely clear the intent of the law, the Senate Resources Committee adopted the following letter of intent:

> The purpose of designating school lands as a trust is to insure that their management for the purposes of supporting public education be treated as a fiduciary responsibility. The board of education is made trustee and is authorized to retain professional assistence as needed to assist it in meeting its responsibility.
>
> In singling out school lands in this manner, there is no intent whatsoever to limit the application of trust concepts and trust law to other

> lands of the State, or to transactions involving other lands of the State, when application of trust concepts and trust law would, in the opinion of the courts, be proper.

1976 Senate Journal, p. 1461.

The amendments to Title 38 and the letter of intent clearly reflect that the legislature was defining specific trust obligations with regard to certain state lands in the manner and within the scope that the constitutional framers intended.

The 1976 aquaculture Act amending A.S. 16.10 adding new sections relating to regional plans for salmon enhancement and the establishment and qualification of regional aquaculture associations, clearly stated that "It is the intent of this Act to produce salmon for the common property fisheries of the state." SLA Chapter 161 (1976), § 1. The 1977 Act amending A.S. 16.10.530 to provide for mandatory assessment elections stated that "It is the policy of the state, under §§ 500-550 of this Chapter, to promote the enhancement of the State's fisheries by means of grants for organizational and planning purposes to regional associations . . . and by means of long term, low interest loans for hatchery planning, construction, and operation." SLA Chapter 154 (1977), §7. The stated intent of these two laws providing the basic framework for the evolution of SSRAA, clearly suggests that the purpose of §530 and of the regional associations is not to raise revenue but rather to fulfill the legislatures constitutuional obligation to rehabilitate and develop the fisheries, and to exercise the broad police powers available in order to fulfill the constitutional trust. Dictating the trust obligation with regard to school lands became a matter of placing fiduciary responsibilities on the Board of Education. Fulfilling the trust obligation with regard to fisheries resources necessitated a role of action as well as protection.

In 1978, the legislature passed SLA Chapter 179, "An Act Relating to the Renewable Resources Fund." The Act

created a public corporation for the purpose of facilitating the rehabilitation, enhancement and development of the State's renewable resources. The House Finance Committee's letter of intent, in relevant parts, reflects the understanding of the legislature's constitutional role:

> "An integral part of the bill is the concept of achieving an appropriate use of the resources. As trustees of our renewable resources the state is constitutionally directed to seek the most beneficial uses. ARRC investment decisions should consider both expected financial returns and the effects of resource development on both the target resource and on other resources. Achieving appropriate resource use at the inception of economic activity will greatly benefit the state and its residents by avoiding longer-run regulatory and rehabilitation burdens resulting in more stable ecomonic activity based on all of the state's renewable resources." House Journal, April 11, 1978, p. 830.

More specific purposes of Chapter 179 direct a public corporation to "sponser research and development of technologies and innovations for the rehabilitation and enhancement of the state's renewable resources to achieve an appropriate use of the resources." A.S. 37.12.040(2). A board of trustees is established as the governing body of the corporation. A.S. 37.12.060. Here the Legislature is clearly adding another dimension to the state's role as trustee. The law creates a public corporation which is essentially a venture capital fund with broad flexibility and investment powers. However, it cannot be said that the purpose of the law is to raise revenues or even to make money, like the aquaculture laws its purpose is to generate a healthy enconomy in renewable resource areas and is balanced against the constitutional obligations not to impair the productivity of the resource. 40/

40/ A further dimension can be found in A.S. 37.14.010, et sec., establishing a mental health trust fund. See A.S. 37.14.050, dedicating 1 1/2% of the total revenue derived from management of state land, including amounts paid to the state in proceeds of sale or annual rent of surface rights, mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments or bonuses to the fund.

c. Executive.

Aspects of the constitutional role have also been recognized by the executive. For example, in a 1978 transmittal letter to the legislature accompanying sponsor substitute for Senate Bill No. 59, (SLA Chapter 108 (1978)), "An Act Relating to Forest Resources and Practices," Governor Hammond referred to a section on regulatory and administrative standards which directed that "there shall be no significant impairment of the productivity of the land and water with respect to renewable resources." A.S. 41.17.060(b)(5). Governor Hammond commented that:

> Paragraph (5) recognizes the fundamental public trust obligation of the state to ensure that the capability of the land to produce renewable resources is not impaired. While a particular species of tree or wildlife may have little relative value now, the future may find it suddenly in great demand. If the land is incapable of producing it to the demand level, an important land management option is lost, to the detriment of the public welfare. 1978 Senate Journal, p. 663.

The role discussed above by the other branches of State government was equally alive with the formulation of aquaculture policy in Alaska. Originally focused on rehabilitation of the State's depleted and depressed salmon fishery, and producing salmon for the common property fisheries of the State, the later intent was not only to rehabilitate, but also to enhance. To enhance salmon production by artificial means from general revenues would benefit a select class of citizens, commercial fishermen, at the expense of the entire class of tax-paying citizens. 41/ At this point of demarcation that the legislature chose to provide for the class directly benefitting from the policy to contribute to their benefit by the assessment. This course was set consistent with the constitutional roles discussed above.

41/ Direct appropriations by the legislature or bond issues for creation of hatcheries to enhance salmon production effectively subsidize an industry without conferring equal benefits on all citizens. Although no challenge has yet been made to the recent bond issues (1976 and 1978, totaling over $50,000,000, there is an apparent violation of Article VIII, Section 17.

V. LOCAL GOVERNMENT POLICY IN ALASKA.

A. The constitutional policy for local government in Alaska has been discussed best by Victor Fischer 42/ in his book, Alaska's Constitutional Convention, University of Alaska Press, 1975. Rather than recreate a similar discussion or cite the court to the publication, relevant portions for the purposes of this case are enclosed here:

> "In providing for the legislative, executive, and judicial branches of government, delegates dealt with subject matter with which they were familiar and on which they had definite opinions. On the other hand, local government was a subject for which there was little Alaska experience to provide a useful point of departure and which provided few useful models. The local government committee, therefore, determined early that innovation was the key to structuring a local government system for Alaska.
>
> Under territorial status, local institutions had undergone only limited development; there was little self-determination at the territorial and even less at the local level. Federal law prescribed the powers of the territorial legislature, severely limiting the scope and types of local government and restricting the powers that could be exercised by cities. For example, counties could not be established, bonding criteria were strictly delimited, and home rule could not be extended to cities.
>
> * * *
>
> Since there were no direct precedents, the committee decided that the local government article should consist of general statements and policy, rather than detailed prescriptions and criteria. The first draft article presented to the convention stated the general purpose was to provide a maximum of self-government to people in all parts of Alaska. To meet this goal, two basic local government units were established--boroughs and cities. This framework was designed to accomodate today's needs and tomorrow's growth and development. The committee then set forth the principles underlying the proposed local government system:

42/ Fischer, delegate to the convention, former legislator and Director of the Institute of Social Economic and Government Research, University of Alaska, is a recognized expert in the field of local government.

1. Self-Government. The proposed article bridges the gap now existing in many parts of Alaska. It opens the way to democratic self-government for people now ruled directly from the capital of the territory or even Washington, D.C. The proposed article allows some degree of self-determination in local affairs whether in urban or sparsely populated areas. The highest form of self-government is exercised under home rule chapters which cities and first class boroughs could secure.

2. One basic local government system. The proposed article vests all local government authority in boroughs and cities. It prevents creation of numerous types of local units which can become not only complicated but unworkable.

3. Prevention of overlapping taxing authorites. The proposed article grants local taxing power exclusively to boroughs and cities. This will allow consideration of all local needs in the levying of taxes and the allocation of funds. It will lead to balanced taxation. Single interest agencies with taxing authority often do not realize needs other than their own.

4. Flexibility. The proposed article provides a local government framework adaptable to different areas of the state as well as changes that occur with the passage of time. It allows classification of units on the basis of ability to provide and finance local services. It allows optional administrative forms, adoption of home rule charters, boundary changes, etc.

5. State interest. The proposed articles recognizes that the state has a very definite interest in and concern with local affairs. For example, the credit of the state is indirectly involved in local financial matters, and local units are the agencies through which many state functions are performed. The proposal therefore gives the state power to establish and classify boroughs, to alter boundaries of local units, to prescribed powers of noncharter governments, to withhold authority from home rule boroughs and cities, and to exercise advisory and review functions.

The Borough Concept

As the committee was evolving chese principles, its members agreed that some type of unit larger than the city and smaller than the state was required to provide both for a measure of local self-government and for performance of state functions on a regionalized basis. They also agreed that any form of local government for Alaska that would be similar to counties would need a broader scope, should have authority to perform all services and should provide a maximum amount of local self-government. The result was the borough concept--an areawide unit that while different from the traditional form of the county,

was in effect a modernized county adapted to Alaska's needs. As seen by delegates, the inadequacies of conventional counties were limited functional jurisdiction, frozen boundaries, an overabundance of constitutionally established elective offices, inadequacy of fiscal powers, and lack of specifically local (as against state) government authority. They noted also that numerous special districts were being created to fill service gaps left by counties and municipalities, resulting in a multiplicity of overlapping tax jurisdictions.

To overcome such deficiencies, the initial principles set forth by the committee for consideration in the formation of the new areawide government units included these guidelines:

> Provisions should be made for subdividing all Alaska into local units (boroughs) based on economic, geographic, social, and political factors; initially, not all need be organized.
>
> Units should be large enough to prevent too many subdivisions in Alaska; they should be so designed as to allow the provision of all local services within the boundaries of a single unit, thus avoiding multiplicity of taxing jurisdiction and overlapping, independent districts.
>
> The state should have power to create, consolidate, subdivide, abolish, and otherwise change local units.
>
> Creation of units should be compulsory, with provision for local initiative.
>
> Boundaries should be established at the state level to reflect statewide considerations as well as regional criteria and local interests, and must remain flexiable in order to permit future adjustment to growth and changing requirements for the performance of regional functions.
>
> Units should cover large geographic areas with common economic, social, and political interests.
>
> Local units should have the maximum amount of self-government and have authority to draft and adopt charters; organized units should have the authority to perform any function, to adopt any administrative organization, and to generally undertake any action that is not specifically denied by the legislature.

* * *

Unlike the organized borough, legally a municipal corporation, unorganized boroughs were to be instrumentalities of the state. The legislature was to have the same authority within these boroughs as the governing bodies (assemblies) of

organized boroughs. By permitting the legislature to act as the borough assembly, the general prohibition against local legislation was overcome, and laws could be enacted for differential performance of functions in accordance with the needs of different regions.

Service areas were authorized to be established by organized boroughs (and by the legislature in unorganized boroughs) as another method of meeting requirements for different services. Initially, service areas were conceived as a means of providing services within a limited part of the borough in which taxes, assessments, and charges could be levied to cover the cost of such services. The approach was subsequently expanded to include areawide services that might be administered by special instrumentalities such as health or school districts. In all cases, however, service areas were to be creatures of boroughs and function under borough fiscal control.

* * *

State-Local Relations

In general, the constitutional convention saw the role of the state as critical in making the local governmental system work. Several factors strongly argued for a continuing state responsibility for local affairs, such as:

> The lack of any general government beyond the city.
>
> A tradition of territorial government responsibility for services beyond incorporated communities.
>
> The varying levels of local government capability and of the requirements for local services throughout Alaska.
>
> The realization that further detailed study and planning was necessary to establish a new governmental system.

Therefore, in addition to dealing with local government organization, Article X includes the following provisions for state authority and responsibility:

> Responsibility is vested in the legislature for establishing procedures and standards under which boroughs will be created and classified.
>
> The legislature is established as the governing body for unorganized boroughs and has reponsibility for provisions of services in such boroughs.
>
> A state-level local boundary commission is given responsibility for changes in local government boundaries, subject to disapproval by the legislature.

> An executive agency is established in state government to deal with local affairs.
>
> Authorization is granted for joint exercise of powers by local governments and the state.

Supra, pp. 116-124, footnotes omitted.

B. Providing for the utilization, development, and conservation of the fisheries resources is clearly a state as opposed to a local government function. This principle was not challenged from the outset of the Constitutional convention. See Volume 8, Constitution and Local Government, Public Administration Service Staff Paper, p. 54:

> Local units, on the other hand, pave city streets, put out fires, operate water and sewer systems, collect garbage and refuge, put in sidewalks, enact and enforce zoning systems, and exercise a number of regulatory functions with respect to local business activity, traffic, transporation facilities and other matters. Supra, p. 55.

The necessary jurisdictional boundaries of the regional aquaculture associations in southeast Alaska, surrounding in water a multiplicity of local governments but primarily the unorganized borough, are not in concert with any local government boundaries. It is impracticable for the framework of local governments in southeast Alaska to be the vehicle for efficient aquaculture development. Though not stated explicity, this finding is clearly implicit in the legislative policy. The legislature has implicitly carved out an area or areas that are out of bounds of the municiple governments. Such areas "implicitly carved out" are a prohibition within the scope of the word "prohibit" as used in Article 10, §11, Alaska Constitution. In Chugach Electric Association v. City of Anchorage, 476 P.2d 115 (Alaska 1970), the Court chose the language "implicitly carved out" rather than implied preemption, but for the purposes of our analysis here the result is the same. With A.S. 16.10 et seq. the legislature has clearly established that standards for choosing the boundaries of the region are to be based upon user groups within the region and the resources they harvest, rather than a functionally and

constitutionally inequipped melange of municipal governments.

Article 9, §9, Alaska Constitution prohibits local debts other than capitol improvements. Such a limitation on regionally oriented salmon enhancement would functionally prevent financing mechancisms such as the Spokane Bank for Cooperatives from providing interim or long-term financing. In effect, the legislature chose the most efficient and best equipped mechanism to meet the desired purposes of aquaculture development. The mandate of local government representation on the board of directors of the regional associations provides opportunity for policy interplay with local governments.

The legislature cannot delegate any power of control over the enhancement or rehabilitation of a common property resource. See. Libcrati v. Bristol Bay Borough, ___ P.2d ___, Opinion No. 1735, Justice Rabinowitz, Dissenting; Illinois Central R. R. Co. v. State of Illinois, supra, fn. 30. The legislature has effectively created the only scheme which allows regional involvement while retaining the obligatory role of ensuring the productivity of the resource through executive oversight. The regional aquaculture associations in no sense imperissibly conflict with local governments.

VI. DUE PROCESS AND EQUAL PROTECTION OF THE LAWS

A. Defendant SSRAA believes that plaintiffs' major complaint is that the legislature has entered the field of fisheries managment with a statutory scheme for fisheries enhancement that identifies commercial fisherman as a class which must bear a major portion of the financial burden. In brief, the plaintiffs major complaint is an equal protection issue. In order to analyze the issue it is necessary to discuss the modified rational basis test applied in Alaska.

1. Purpose

In applying this modified rational basis test, we must first look at the purpose of the challenged legislation. Isakson v. Rickey, 500 P.2d 359, 363 (Alaska 1976). There the Court looked to "the statement of purpose of the [entire Act] itself upon the assumption that the provision [in question] was enacted to further that expressed purpose." Supra. Where such a preamble of purpose does not exist, or is inadequate, resort may be had to "the legislative history." Supra. Legislative history has been defined to include reports of conference committees, Alaska Public Employees Association v. State, 525 P.2d 12, 15 (Alaska 1973) statements by "a bill's sponsor in the course of legislative deliberations;" Alaska Public Employees Association v. State, supra, at 16; and hearings held by the legislative body, Weinberger v. Wiesenfeld, 95 S.Ct. 1225, 1234 (1975). The purpose may, of course, be determined from the "Act viewed as a whole." Isakson v. Rickey, supra at 364. 43/ Whatever aids are used, the purpose determined by the Court

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43/ The Alaska Supreme Court has also recently recognized the value of letters of intent. See Hafling, et al. v. Inland Boatman's Union of the Pacific, ___ P.2d ___, Opinion 1743, (Alaska 1978). See also, North Slope Borough v. Sohio Petroleum Corporation, et al., ___ P.2d ___, Opinion No. 1750 (Alaska 1978).

must be the actual purpose.

> This Court need not in equal protection cases accept at face value assertions of legislative purpose, when an examination of the legislative scheme and its history could not have been a goal of the legislation.

Weinberger v. Wiesenfeld, supra, 1233, n. 16. In discussing the proffered purpose of an Oklahoma law struck down on equal protection grounds, the Supreme Court accepted the purpose or "objective" of the legislation as enhancement of traffic safety but noted: 44/

> That this was the true purpose is not at all self-evident. The purpose is not apparent from the face of the statute and the Oklahoma Legislature does not preserve statutory history materials capable of clarifying the objectives served by its legislative enactments. The District Court acknowledged the non-existence of materials necessary 'to reveal what the actual prupose of the legislature was,' but concluded that 'we feel it apparent that a major purpose of the legislature was to promote the safety of the young persons affected and the public generally.' Similarly, the attorney for Oklahoma, while proposing traffic safety as a legitimate rationale for the 3.2% beer law, candidly acknowledged at oral argument that he is unable to assert that traffic safety is 'indeed the reason' for the gender line contained in §245. For this appeal we find adequate the appellee's representation of legislative purpose, leaving for another day consideration of whether the statement of the State's Assistant Attorney General should suffice to inform this Court of the legislature's objectives, or whether the Court must determine if the litigant simply is selecting a convenient, but false, post-hoc rationalization. (Citations omitted).

Craig v. Boren, ____ U.S. ____, 45 U.S.L.W. 4057, 4060, n. 7 (1976). Thus, as stated in Gunther, "Forward: In Search of Evolving Doctrine on a Changing Court: A Model for Newer Equal Protection," 36 Harv. L. Rev. 1, 20 (1972), and quoted in Isakson v. Rickey, supra, at 362,

> Judicial deference to a broad range of conceivable legislative purposes and to imaginable facts that might justify classifications is strikingly diminished.

44/ Although the legislation identifies the burdened class as all commercial fishermen actually harvesting the resource it is defendant's position that the vested interest of numerous members of the class in the continuing increased benefits from aquaculture production prevents plaintiffs from representing a putative class that broad in scope.

Nowhere is the ascertainment of the purpose of legislation more accurately depicted than in Isakson, where the sole issue separating the majority from the dissent was the purpose of the legislation. Compare, Isakson, supra, at 364, and id, Connor dissenting, at 366.

2. The Legitimacy of the Legislation

a. In General.

Whether the legislature can act at all in a given field becomes a function of the equal protection analysis. As the Alaska Supreme Court recented stated:

> Since the distinction made by Alaska Hire between residents and non-residents bears a close correlation to the state's interest in providing economic benefit to residents, the subject of dispute is whether this interest is a permissible one for the state to promote.

Hicklin et al. v. Orbeck et al., 565 P.2d 159, 167, (Alaska 1977). In that case the legitimacy of the legislation was questioned as infringing on Article IV, §2 of the United States Constitution, the privileges and immunities clause. In Lynden Transport, Inc. v. State, 532 P.2d 700 (Alaska 1975), the Alaska Supreme Court invalidated an act discriminating between in-state and non-resident corporations. Since the privileges and immunities clause does not apply to corporations, the Court found that:

> While any of these reasons may have, to the extent that we can tell from the scanty evidence available, motivated the legislature to enact the subject amendments, none of them explain, let alone justify, discrimination against non-residents.

Lynden Transport, Inc. v. State, supra, at 708.

Similarly, in Ravin v. State, 537 P.2d 494, 509 (Alaska 1975) the Alaska Supreme Court, in finding that the proscription of marihuana was sufficiently protected by privacy when used by adults in the home, noted:

> . . . the general proposition that the authority of the state to exert control over the individual extends only to activities of the individual which affect others of the public at large as it relates to matters of public health or safety, or to provide for the general welfare. We believe this tenet to be basic to a free society. The state

> cannot impose its own notions of morality, propriety, or fashion on individuals when the public has no legitimate interest in the affairs of those individuals. The right is not absolute, of course: it can be made to yield when it begins to infringe on the rights and welfare of others.

Ravin found no close and substantial relation between the legitimate proscription of marihuana because it affected drivers and the general proscription of marihuana as it affected adults using the substance in their home. Supra, at 511. The Court, thus used privacy as a means of showing the legislation in question, as applied, was illegitimate. Similarly, in Breese v. Smith, 501 P.2d 159 (Alaska 1972), privacy was used to show no legitimate governmental interest in regulating hairstyles since hairstyles are a highly personal matter in which the individual is traditionally automonous. See, also, Eisenstadt v. Baird, 405 U.S. 438, 92 S.Ct. 1029 (1972).

Traditional limits on the police power of the State, the power to legitimately enter a field, have been defined:

> Thus has this Court from the early days affirmed that the power to promote the general welfare is inherent in government. Touching the matters committed to it by the Constitution, the United States possesses the power, as do the states in their sovereign capacity touching all subjects jurisdiction of which is not surrendered to the federal government, as shown by the quotations above given. These correlative rights, that of the citizen to exercise exclusive dominion over property and freely to contract about his affairs, and that of the state to regulate the use of property and the conduct of business, are always in collision. No exercise of the legislative prerogative to regulate the conduct of the citizen which will not to some extent abridge his liberty or affect his property. But subject only to constitutional restraint the private right must yield to the public need.
>
> The Fifth Amendment, in the field of federal activity, and the Fourteenth, as respects state action, do not prohibit governmental regulation for the public welfare. They merely condition the exertion of the admitted power, by securing that the end shall be accomplished by methods consistent with due process, and the guaranty of due process, as has often been held, demands only that the law shall not be unreasonable, arbitrary or capricious, and that the means selected shall have a real and substantial relation to the object sought to be attained. It results that a regulation valid for one sort of business, or in given circumstances, may be invalid for another sort, or

> for the same business under other circumstances, because the reasonableness of each regulation depends upon the relevant facts.

Nebbia v. New York, 291 U.S. 502, 524-525 (1934). From this it is clear then that the potential of the legislature to act under its police powers is circumscribed by precisely the same test as that used in Isakson v. Rickey, supra. Indeed, it has been noted that the same test applies in Alaska for local and special legislation attacks on the ability of the legislature to act. Boucher v. Engstrom, 528 P.2d 456, 463, n. 25 (Alaska 1974); State v. Lewis, 559 P.2d 630, 643 (Alaska 1977).

Finally it must be noted that the Fourteenth Amendment to the United States Constitution in relevant part reads:

> . . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

In testing legislation for the equal protection of the laws, the legitimacy of the legislature to act at all in the field is a necessary function because the two clauses, equal protection and due process, necessarily overlap, just as they appear together in the Fourteenth Amendment.

> The [equal protection] clause is associated in the amendment with the due process clause and it is customary to consider them together. It may be that they overlap, that a violation of one many involve at times the violation of the other, but the spheres of the protection they offer are not coterminous. The due process clause . . . of course, tends to secure equality of law in the sense that it makes a required minimum of protection for everyone's right of life, liberty, and property, which the Congress or the Legislature may not withhold. Our whole system of law is predicated on the general fundamental principle of equality of application of the law. 'All men are equal before the law;' 'this is a government of laws and not of men;' 'No man is above the law;' are all maxims showing the spirit in which legislature, executives and courts are expected to make, execute and apply laws. But the framers and adopters of this amendment were not content to depend upon the spirit of equality which might be insisted on by local public opinion, they therefore embodied that spirit in a specific guaranty.

Taft, C.J. in Truax v. Corrigan, 257 U.S. 312, 331, 66 L.Ed. 254 (1921), discussed in 22 Col. L. Rev. 252 (1922). Indeed, it is under the Fifth Amendment due process clause that violations of equal protection are struck in federal legislation.

> [W]hile the Fifth Amendment contains no equal protection clause, it does forbid discrimination that is 'so unjustifiable as to be violative of due process.' Schneider v. Rush, 377 U.S. 163, 168, 84 S.Ct. 1187, 1190, 12 L.Ed.2d 218, 222 (1964); see also, Bolling v. Sharpe, 347 U.S. 497, 499, 74 S.Ct. 693, 694, 98 L.Ed. 884 (1954). This Court's approach to Fifth Amendment equal protection claims has always been precisely the same as to equal protection claims under the Fourteenth Amendment. [citations omitted].

Weinberger v. Wiesenfeld, 95 S.Ct. 1225, 1228, n. 2 (1975).

Once discrimination is admitted, the equal protection analysis demands that the various constitutional infirmities be considered as a whole, for while discrimination may be allowed if it bears "a fair and substantial relation" to the legislation, such legislation must be legitimate and constitutionally permissible in itself.

The degree of judicial power this Court possesses to inquire into the legislative legitimacy is fairly broad. "The question of benefit [of the legislation by the persons burdened] is not irrelevant . . ." Mobil Oil Corp. v. Local Boundary Commission, 518 P.2d 92, 101 (Alaska 1974), and

> A statute based upon a legislative declaration of facts is subject to constitutional attack on the ground that the facts no longer exist; in ruling upon such a challenge a court must, of course, be free to re-examine the factual declaration.

Leary v. United States, 395 U.S. 6, 36 L.Ed.2d 57, 82 (1969).

In Isakson v. Rickey, the legitimacy of the legislation was unquestionable because the people of Alaska had approved a constitutional amendment allowing just such legislation to be passed. Indeed, on the first page of the opinion it is stated:

> In August, 1972, the people of Alaska voted overwhelmingly to amend the State Constitution to permit the adoption of a limited entry program for the commercial fisheries. [footnote omitted] In

> January of 1973, the Governor proposed legislation for a limited entry program to the state legislature.

Isakson v. Rickey, supra, at 360.

In State v. Reefer King, 559 P.2d 56 (Alaska 1976) the legitimacy of the legislative tax discrimination had already been upheld in State v. Wakefield Fisheries, Inc., 495 P.2d 166 (Alaska 1972). Since the statute attacked "reflects a similar sort of legislative judgment" as that already upheld (State v. Reefer King, supra, at 65), ". . . it was not arbitrary" for the legislature to amend the statute as it did, and the only relevant question was whether the discrimination involved bore "a fair and substantial relation" to the legislative "judgment." Supra.

In an article by Gunther, "Forward: In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection," 86 Harv. L. Rev. 1, is support for the thesis that intensified scrutiny should be applied to legislative means chosen and not ends. However, Gunther ends his article by stating at 48:

> Indeed, perhaps the greatest difficulty in applying the model will be to delineate the boundary between the narrow value judgments required in evaluating means and the broad ones implicit in choosing among ends, such as Baird's excessively intense concentration on actual state objectives. The lines between means and ends will be drawn primarily in such terms of breadth of value judgments; it will present the most difficult questions of degree.

In a recent United States Supreme Court decision involving equal protection, the Court found that

> . . . appellee's statistics in our view cannot support the conclusion that the gender-based distinction closely serves to achieve that objective and therefore the distinction cannot under Reed withstand equal protection challenge. (emphasis added.)

Craig v. Boren, supra, 45 U.S.L.W. at 4060. The Court there noted that the statistical method used by the State in attempting to show the achievement of a legitimate purpose

was "one that inevitably is in tension with the normative philosophy that underlies the Equal Protection Clause." Supra. Obviously the requirement of a relationship between purpose and means, that the means closely serve the ends, coupled with a reference to "the normative philosophy" of the equal protection clause, indicates a greater scrutiny of legislative purposes and ends than Gunther five years previously would have required.

Similarly the Alaska Supreme Court, in the cases which have evolved since the adoption of an intensified scrutiny test, have consistently moved toward an analysis of purpose or ends of the legislation attacked that is less deferential than Gunther.

In Isakson v. Rickey, supra, at 365, the doctrine of irrebutable presumption was used to strike the legislation in question. In Vlandis v. Kline, 412 U.S. 442, 452, 37 L.Ed.2d 63 (1973), the judicial usage of an irrebuttable presumption was applied to the right to travel, considered fundamental and requiring strict scrutiny of ends as means and, of course, the legitimacy of purpose. An irrebuttable presumption necessarily requires a strict scrutiny of the ends and the purpose of the legislation because while, as a means, it may bear a fair and substantial relation to the purpose of the legislation (See, Isakson v. Rickey, supra, at 366 et seq., Connor, J. dissenting), it may, as the Alaska Supreme Court determined, be an illegitimate legislative purpose of the particular statute when viewed against the purpose of the Act as a whole.

> Appellees contend that it was this rush for gear licenses which provcked the legislature to insert the contested provision that only holders of gear licenses issued before January 1, 1973, could submit applications to the Commission for an entry permit. They maintain that this justified the classification. This argument assumes that more gear licenses meant more gear in already depleted fisheries, and that a heavy influx of gear into certain areas before entry permits were required in January of 1974 would result in detrimental

> economic and biological ramifications. While we agree with these assumptions, it is our view that the means for stopping the hear rush and its consequent harmful effects was accomplished by a provision already in the Act.

Isakson v. Rickey, supra, at 363-364.

Finally, in Hicklin v. Orbeck, supra, after noting the distinction in the Alaska Hire law between the residents and non-residents bears "a close correlation" to the state purpose of providing economic benefit to residents, the Alaska Supreme Court discussed the nature of fundamental and non-fundamental rights within the context of the right to work.

> The differences between rights which are 'fundamental' and those which are not are analyzed at length in San Antonio School District v. Rodrigquez, 411 U.S. 1, 98-110, 36 L.Ed.2d 16, 81-88 (1973)(Marshall, J. dissenting), and "Developments in the Law - Equal Protection," 82 Harv. L. Rev. 1065, 1127-31 (1969). Both Justice Marshall and the Harvard commentators reach the conclusion that rights are considered 'fundamental' simply because they are believed to be more important than other personal and economic interests. 411 U.S. at 100, 36 L.Ed.2d at 82; 82 Harv. L. Rev. at 1128. A balance of the state's interests and those of the individual is implicit. 411 U.S. at 108, 36 L.Ed.2d at 87; 82 Harv. L. Rev. at 1132.
>
> Justice Marshall, citing his San Antonio dissent, dissented in Mass. Board of Retirement v. Murgia, supra. But he did not believe that the right to work was a fundamental right invoking strict scrutiny; he urged that laws infringing that right be tested by the standard used in cases such as Reed v. Reed, 404 U.S. 71, 30 L.Ed.2d 225 (1971), this is the standard we adopted in Isakson v. Rickey, 500 P.2d 359 (Alaska 1976). His objection was to the use of the extremely differential standard of City of New Orleans v. Dukes, 427 U.S. 297, 49 L.Ed.2d 511 (1976), which we no longer use in testing laws against the Alaska Constitution. 427 U.S. 307, 317-23, 49 L.Ed.2d 520, 527-31.

Hicklin v. Orbeck, supra, p. 166, n. 12.

As stated by Mr. Justice Connor and Chief Justice Boochever in their concurring opinions in Ravin v. State, supra, 537 P.2d at 575:

> I would apply a single flexible test depending first upon the importance of the right involved. Based on the nature of that right, a greater or lesser burden would be placed on the state to show the relationship of the intrusion to a legitimate governmental interest.

The scrutiny which this Court must apply, whether the words used are "fair and substantial," "close and substantial," "substantially further" or "intensified scrutiny" is to question the legitimacy of the legislation by the burden it places on the discriminated class. The higher the burden and the more important the constitutional rights such burden infringes, the closer the scrutiny that must be given the legitimacy of the legislature to act in the first place. Less drastic alternatives, irrebuttable presumptions and actual, rather than hypothesized purposes, are central to determining whether the legislature could act at all, and the constitutional provisions which the Act infringes indicate the importance of the burden the Act places on the discriminated class.

b. In Particular.

The stated purposes of the legislation are to:

(1) produce salmon for the common property fisheries of the state; and to

(2) promote the enhancement of the state's fisheries by means of grants for the organization of qualified regional associations and long-term, low interest loans for hatchery planning and construction.

Beyond the stated purposes it can also be fairly said that the overall purpose is to provide for continuing efficient aquaculture development in Alaska.

As discussed in the previous section on the development of natural resource policy in Alaska, the legislature is constitutionally obligated to provide for the utilization, development and conservation of all natural resources of the state. In the constitutional amendment providing for limited entry into the fisheries for specific purposes, one of those purposes was the efficient development of aquaculture. Clearly, the legislature is authorized to enter the field

of fisheries development with an efficient aquaculture development plan.

c. The Classification

The obvious classification created by the legislation is all commercial fishermen actually harvesting the resource in those regions which have qualified regional associations. 45/

It is clear this classification is reasonable and neither overinclusive nor underinclusive. There is a direct and substantial relationship between a commercial fisherman actually harvesting the resource and the benefits derived from increased salmon production of the common property fisheries. No such direct and substantial relationship exists with any other user group. 46/

d. Fairness

The test enunicated in Isakson v. Rickey is that the classification must hear a fair and substantial relation. Clearly, the relation between commercial fishermen actually harvesting the resource and fisheries enhancement is fair.

B. LEGITIMACY OF THE STATE ACTION AND THE MEANS CHOSEN

The state action is the adoption of a statutory framework for efficient aquaculture development. As discussed previously, efficient aquaculture development is a constitutionally legitimate purpose for legislative action in Alaska. It is defendant Southern Southeastern Regional Aquaculture Association's position that the constitutional efficacy of the means chosen by the legislature not only satisfies the close and substantial relationship test but also is the most

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45/ Although the legislature identifies the burdened class as all commercial fishermen actually harvesting the resource, it is defendants' position that the vested interest of numerous members of the class in the continuing increased benefits from aquaculture production prevents plaintiffs from representing a putative class that broad in scope.

46/ It is defendant's position that burdening a group larger than commercial fishermen with fisheries enhancement would be overinclusive to constitutional proportions.

capital and labor efficient means to effect the purposes of the salmon enhancement policy.

The legislature chose a means that blends the executive efficiency of the private sector with the constitutional policy safeguards of the public sector. The regional associations participate in the planning stages of salmon enhancement programs, yet the state is not yielding nor neglecting its role as trustee of the common property resource. The execution of appropriate phases of the enhancement programs are handled not by a bureaucracy of public employees but rather by a publicly responsive non-profit corporation which operates with private sector efficiency and has the capabilities of securing development assistance through the financial community. 47/ The statutory program manifests a legislative finding that the most capital and labor efficient means of aquaculture development is the means chosen in law. That the legislature chose to provide for a royalty share assessment, subject to regional and executive approval for the purpose of partially funding or securing the necessary debt, capital improvements and operating costs for salmon enhancement reflects a finding that the select class of persons most directly benefiting from enhanced salmon production should bear a proportionate share of the cost. That finding also reflects a legislative judgment that the assessment is the most capital and labor efficient, as well as the least discriminatory manner in which to meet the stated and implicit purposes of the aquaculture program.

47/ Indeed, the key to financial assistance from the private sector is the section 530 assessment.

VII. THE ASSESSMENT - ROYALTY SHARE OR TAX?

A.S. 16.10.530 allows the Commissioner of Commerce, after request of a qualified regional association, to levy an assessment on the sale of "one or more species of salmon caught by persons licensed under A.S. 16.05.540 - 16.05.600 in the area for which the assessment is to be levied." A.S. 16.10.530(9). Plaintiff contends that the "alleged assessment constitutes a delegation of the taxing power of the State of Alaska to an entity other than a city or a borough in contravention of Art. X, § 2, of the Alaska Constitution". (See complaint, page 5(b)). Defendant submits that this assessment is not a tax but rather the assessment of a royalty share of the resource, and that the statutory provisions at issue do not involve an unconstitutional delegation of legislative power.

A. THE ASSESSMENT IS NOT A TAX.

Taxes are annual, recurring pecuniary burdens posed by legislative authority upon individuals or property to support the government. Efros v. Russo, 171 A.2d 370, 371 (N.J. 1961). A tax is a forced burden, charge, exaction, imposition, or contribution assessed in accordance with some reasonable rule of apportionment by authority of a sovereign state upon the persons or property within its jurisdiction to provide public revenue for the support of the government, the administration of the law or the payment of public expenses. Any payment exacted by the state or its municipal subdivisions as a contribution toward the costs of maintaining governmental functions, where the special benefits derived from their performance is merged in the general benefit, is a tax. 51 Am.Jur. Taxation §3, p. 35.

Taxation proceeds upon the theory that the existence of government is a necessity; that it cannot continue without means to pay its expenses, and that for those means it has the right to compel all citizens and property within its limits to contribute. Multnomah v. Luihn, 178 P.2d 159

(Ore. 1947).

A tax is "in no way dependant upon the will or expressed consent of the person taxed". Menz v. Coyle, 117 N.E.2d 290 (N.D. 1962). Michigan Employment Security v. Falt, 144 N.W.2d 663 (C.A. Mich. 1966); "Cooley on Taxation", 4th Ed. 41 §3. It is an imposition upon individuals who enjoy no direct benefit from its expenditure, and who are not responsible for the conditions to be remedied. It is not an assessment of benefits; rather it is a means of distributing the burden of the cost of government. The only benefit to which the taxpayer is entitled is that derived from his enjoyment of the privileges of living in an organized society. People v. George, 250 N.W.2d 491 (Mich. 1977) quoting from Carmichael v. Southern Coal and Coke Company, 301 U.S. 514, 515, 81 L.Ed. 45, 49 (1937).

In Aetna Life Insurance Company v. Washington Life and Dis.I.G.Ass'n., 520 P.2d 162 (Wash. 1974),plaintiff challenged the constitutionality of the Washington Life and Disability Assurance Guaranty Act and the assessments levied thereunder. The primary purpose of the Act was to accummulate funds arising from assessments upon all insurers authorized to transact life or disability insurance business in the State of Washington. These funds are then used to insure the performance of contractual insurance obligations of insolvent insurers.

Appellant argued that these assessments amounted to an unconstitutional tax. The court disagreed, holding that money which does not reach the general fund is not a tax:

> "The assessments made under the Act were not State revenue funds. They did not rebound to the benefit of any state or municipal treasury. Rather they were trust funds assessed by a private association to be retained in private bank accounts to carry out the purpose of the Act. This court has characterized assessments under the Industrial Insurance Act saying that 'it is manifest that it is not a tax in the sense that the word is used in

> the section of the constitution to which reference is here made. No assessment to the public revenue, general or local, is authorized or aimed at. The purpose of the exaction is entirely different. It is to be used, not to meet the current expenses of government but to recompense employees of the industry upon whom the burden is imposed for injuries received by them while engaged in pursuit of their employment' ". at 171 Citing State ex rel, Davis Smith Company v. Clausen, 117 P. 101, 116 (1911). See also State Farm Mutual Auto Insurance Company v. Board of Trustees, 79 S.2d 512 (Alabama 1973).

In the Opinion of the Justices, 379 A.2d 782 (NH 1977), House Bill 439 created a "tax" of 1 cent per barrel on oil terminal facilities with a capacity over 50 barrels. The purpose of the "tax" was to establish a fund to finance the activities of the pollution control commission. The court held that this "tax" is not a tax as it too did not become a part of the general fund:

> "The 'tax' exacted by House Bill 439 is more in the nature of a charge of facilities to reimburse the state for maintaining, and if necessary, employing pollution control for their benefit. Monies collected from this tax do not go into the general fund revenues, but in fact the tax abates when the pollution control fund is sufficiently capitalized, thus House Bill 439 imposes no 'tax' in the sense employed by the Constitution; hence it need not be apportioned." supra, 787.

In Orbison v. Welsh, 179 NE.2d 727 (Ind. 1962) an Indiana statute provided for the operation and maintenance of a port from the proceeds of tolls that it charges levied by a port commission. The fees were to "provide sufficient revenue to pay the cost, operation, etc. including the administration expenses of the commission". Net revenue over and above this amount were to be paid into the state general fund. Nevertheless the court held that these tolls were not taxes either:

> " . . . [T]his court has held in numerous decisions that the 'raising revenue' used in Art. 4, §17 . . . does not apply to other purposes which may incidently create revenue. . . . The purpose of the act in question is not to levy t xes but as set out in the statute to promote the agricultural industrial and commercial development of the state and to provide for the general welfare by the construction and operation of a modern port on Lake Michigan.

* * *

> The payment of a tax is compulsary and not optional, and it entitles the taxpayer to receive nothing in return, other than the rights of government which are enjoyed by all citizens alike. . . . Under the statute the tolls, rentals and fees are to be paid by the users of the port or its facilities but this is merely compensation for the use of the property and the improvement of the port and can in no sense be considered a tax". supra, at 743.

In Wickham v. Trapani, 246 N.Y.Supp.2d 137 (N.Y. 1964); affirmed 272 N.Y.Supp.2d 6 (N.Y. 1966), a referendum was held pursuant to New York law for the establishment of an apple marketing order. The order provided for an assessment on apple growers to create a fund to promote New York apples. Defendant asserted that the assessment was a tax, the New York Supreme Court said it was not:

> "Indeed, the assessment here involved does not appear to be a tax at all, but merely a fund raising measure, incidental to a valid regulation and this is true even though the assessment may be 'part' of the regulatory order. See U.S. v. Butler, 297 U.S. 1, 59, 56, Sup. Ct. 312 A.D.L.Ed. 477, moreoever, we view the expenditure of the funds raised by assessment rebounding primarily to the benefit of appellant and all other apple producers from anticipated expansion of markets for their product. That other classes involved in apple marketing may also be benefited is or could be found to be incidental. (at 272 N.Y.Supp.2d 6, 9).

Finally, the court should note carefully the Michigan decision of the Michigan Supreme Court in Dukesherer Farms, Inc. v. Bald, 251 N.W.2d 278 (Mich. App. 1977) In that case, a Michigan statute allowed producers to commission the Department of Agriculture for particular marketing programs; funding to be derived from special assessments collected "from each producer of any marketable agricultural commodity directly affected by marketing programs." The statute said the assessments were to be used to defray program and administrative costs.

The court stated that the key to determining the constitutionality of this marketing act was to decide whether the funds collected in support of its marketing program were assessments or taxes. In holding that the funds were assessments, the court noted that taxes are imposed for a public

purpose; they are a means of raising revenue for the general benefit of the public as a whole. Assessments, on the other hand, are exactions required in addition to the general levy and "demand that special contribution, in consideration of special benefits, shall be made by the person receiving it". The court recognized that these assessments to benefits do benefit the general welfare of the state but felt that they were not taxes because of the distinct benefit was conferred on the cherry producers. Supra.

Thus, case after case, courts have emphasized that taxes are involuntary exactions which return to the general fund for general public expenses, and that assessment similar to those challenged in the case at bar, which are primarily designed to benefit those assessed, simply to not fit within this definition. There are, however, several cases contrary to this conclusion. In Scott v. Donnelly, 133 N.W.2d 418 (ND 1965) for example, a North Dakota statute authorized a collection of 'fees' not to exceed "1% per 100 weight of potatoes shipped" to be fixed and collected by the North Dakota Potato Development Commission. The purpose of the fee was to promote the marketing of potatoes. The Donnelly court called the fee an excise tax not a regulatory fee, the primary purpose was for revenue, the benefit accruing to the people of the state in general, and the potato growers throughout the state in particular.

The court should note however, that the Donnelly court was concerned with several provisions of that statute which are not at issue here. First, the board was given the power to determine and prescribe taxing areas. Yet, once the areas were prescribed, the expenditures of the proceeds of the tax were not limited in areas for the benefit of the potato growers throughout the state. In the case at bar, the assessment is for the benefit of the association which

requested it. Second, liability to pay the "tax" in Donnelly could be extended to certain taxpayers elsewhere in the state including all persons engaged in the production, processing or handling of potatoes sold or shipped within that state. In the case at bar liability for the assessment is limited to those members of the association commercially harvesting salmon within the appropriate area. Third, the Donnelly court was concerned that neither the growers nor the taxpayers in general had a voice in determining the purposes for which the tax proceeds might be spent either through a government body of their own choosing or by referendum. As we have seen A.S. 16.10.300 et seq. requires the association to determine the rate, scope and purpose of the assessment, subject to executive approval.

The Georgia Supreme Court has advanced the Donnelly theory in Agricultural Commodities v. Balkcom, 109 S.E.2d 276 (Georgia 1959) and Campbell v. Farmer, 157 S.E.2d 276 (Georgia 1967). In Balkcom, supra, the George legislature empowered the Agricultural Commodities Authority to levy and collect from peanut producers an "assessment" of "not less than 25 cents nor more than one dollars per ton" on peanuts for advertising and promotion. The act authorized a purchaser of peanuts to collect from the producer and remit the money to the authority within a specified amount of time. No assessment was effective until ratified by two thirds of the producers voting in a referendum. The Court held that the "assessment" was in fact a tax:

> "A tax is a rate of sum of money assessed in the person, property, etc. . . . but a license issued under the police power of the authority granting it, permitting the performance of an act which except for payment of a prescribed fee, would be prohibited; if the fee required for the license is intended for revenue, it is an exercise of the power of taxation."

The court went on to invalidate the statute because they concluded that such a tax is prohibited by the Georgia

constitution - "The state can never do indirectly that which it cannot lawfully do directly." In Campbell, supra, the legislature tried again following the adoption of an appropriate constitution amendment. The Georgia Supreme Court relying on Balkcom, supra, held that the assessments were still taxes.

It is the position of the defendant that this court should first apply the Dukesherer reasoning, focusing initally on the fact that no money reaches the general fund for general public expenses; and that the act's stated purpose is to promote fisheries enhancement thereby conferring a direct benefit on those assessed (fisherman) and only a broad secondary effect on the public as a whole.

Dukesherer is consistant with a wide range of authorities which unequivically hold that taxes must remit to the general fund for general public expenses and are in no way dependent upon the will or consent of the persons taxed. As is discussed supra, the assessment here is not for general expenses, and may not be levied unless requested by a majority of those affected.

Defendant urges that Donnelly and Campbell have mischaracterized the old axiom that money acquired as "revenue" is tax money. It is not "revenue", at least for purposes of Donnelly analysis because no money is returned to the general fund. See cases, supra and Rainwater v. Haynes, 428 S.W.2d 254 (Ark. 1968); Cooley on Taxation, Vol. 1, subsection 26 at 94, section 27 at 98. 48/

Defendant Southern Region urges the court to then consider that in all other cases analyzing assessments, a common property resource, with limited commercial entry, is not involved in the question.

48/ "But a charge of a fixed sum which bears no relation to the cost of inspection which is payable into the general revenue of the state this a tax rather than an exercise of police power". Cooley at §27, p. 98.

The classic assessment situation is an assessment on real property for the purpose of guaranteeing the debt required for road and sidewalk improvements abutting the property. The assessment levied is generally a percentage of the appraised value of the property. It is an assessment of benefits. 49/ Here the benefits are two-fold: (a) the benefits of the privilege of commercially harvesting the common property resource with limited commercial entry, and (b) the benefit received from the increase salmon production of efficient aquaculture development. The assessment is equal to a fixed percentage of the fair market value of a common property resource when reduced to capture, as determined by the value received at the point purchased. The assessment essentially exacts a royalty share of the fair market value of the resource reduced by harvest to private possession for the purpose of guaranteeing the reception of public funds (matching grant) and private financing. This analysis is consistent with the Dukesherer case. See also Efros v. Russo, 171 A.2d 370 (New Jersey 1961); Northwestern Mutual Life Insurance Company v. State Board of Equalization, 169 P.2d 917 (California 1946); Outman v. Kilburn, 116 P.2d 812 (New Mexico 1941). Here, money collected results in improved fisheries and enhanced livelihood for those participating. The statute is not a lefthanded taxing mechanism, rather it is a modern equitable devise, endorsed by several states, to help people help themselves.

B. A.S.16.10.530 ET SEQ. DOES NOT UNCONSTITUTIONALLY DELEGATE LEGISLATIVE POWER.

In the case at bar, we are concerned with two forms of delegation; the delegation to the qualified regional association of the power to determine the rate, scope, purpose and ration of the assessment, subject to executive

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49/ Assessments are not taxes. McCoy v. City of Florence, 409 S.W.2d 511 (Kentucky C.A. 1966) City of Idabel ex rel. Wood Roof v. School District No. 5 of McCurtain County, 430 P.2d 285 (Okla. 1967); Rainwater v. Haynes, 428 S.W.2d 254 (Ark. 1968); Cooley on Taxation, Vol. I.

approval and the power of the commissioners to specify areas applicable and to determine whether the proposed assessment is procedurally sound and reasonable.

1. The Power to Tax or Assess is Not Delegated.

The legislature cannot delegate its lawmaking powers, but it can delegate the power to fill in the blanks;

> " . . . [T]he legislature cannot delegate its power to make a law, but it can make a law to delegate a power to determine some fact or state of things upon which the law makes or intends to make its own action. To deny this would be to stop the wheels of government. There are many things upon which wise and useful legislatures depend which cannot be known to the lawmaking power, and must therefore be a subject of inquiry and determination outside of the legislative halls. Knight v. West Alabama Environmental IMP Authority, 246 S.2d 903, 909 (Alabama 1971) citing Porter v. Davis, 160 So. 93 (Alabama 1936). See also Cohen v. Mississippi State University of Agriculture and Applied Science, 256 S.2d 954 (D.C. Miss. 1966); Randolph v. U.S., 274 F.Supp. 200 (D.C. MC. 1967) affirmed 88 Sup. Ct. 695, 389 U.S. 570 19 L.Ed.2d 785; Quincy College Seminary Corp. v. Burlington Northern, Inc., 328 F.Supp. 808 (D.C. Ill 1971) affirmed 405 U.S. 906, 92 Sup. Ct. 939, 30 L.Ed.2d 177.

Clearly the taxation power has not been delegated. The legislature has empowered the Commissioner of Commerce and Economic Development to make certain findings relevant to the manner in which an assessment is levied and its reasonableness. The reasonableness of the assessment depends primarily on the type of enhancement and rehabilitation pursued. For example, in southern southeast central incubation facilities requiring egg takes, egg plants, and transportation are the primary focus of the regional salmon enhancement plan. Whereas, in northern southeast as well as the Cook Inlet region, completely different salmon enhancement plans are being pursued, also utilizing techniques of stream rehabilitation and bypasses into previously unproductive areas. Obviously, the type of enhancement is strongly dictated by geography and the species involved. 50/

50/ Silver and red salmon, for example, spawn primarily in lakes, pink salmon in fast moving mountain streams, king salmon spawn in larger, siltier rivers.

The means chosen by the legislature reflects the judgment that the complexity of the economic analysis necessary to determine the most cost efficient and least discriminatory method of achieving the legislative policy of salmon enhancement is best determined by the users themselves, subject to approval by the executive. No power of taxation or of assessment has been delegated.

2. Any Delegations Are Justified and Constitutional.

The court in Barry and Barry, Inc. v. Department of Motor Vehicles, 500 P.2d 540 (Wash. 1972) has delineated the constitutional boundaries of the delegation doctrine:

> "The delegation of legislative powers is justified constitutional, and the requirements of the standard doctrine are satisfied when it can be shown 1) that the legislature provided standards or guidelines that define in general terms what can be done in the instrumentality or administrative body which is to accomplish it and 2) that procedural safeguards exist to control arbitrary administrative action and any administrative abuse of the discretionary power.

In Wilson v. Connecticut Product Development, Corp., 355 A.2d 72 (Conn 1974) the court discusses the modern trend in delegation questions:

> "As the complexity of economic and governmental conditions has increased over the years, courts have tended to approve ever broader standards to facilitate operational functions of administrative agencies . . . The modern trend holds statutory standards are constitutionally sufficient so long as they are declared as definite as is reasonably practical under the circumstances , cases cited at 77 (emphasis added). See also Westervelt v. Natural Resources Commission, 263 N.W.2d 564 (Mich. 1978) and Automotive Service v. Secretary of State, 267 N.W.2d 698 (Mich. 1978); In Re Johnson, 554 S.W.2d 775 (Texas 1977); See also People v. Mosely, 566 P.2d 331 (Colorado 1977) U.S. v. Paster, 557 F.2d (C.A. N.Y. 1977).

The legislature may also delegate power to private persons:

> "In order to meet a reasonableness test, a statute delegating power to private person must satisfy both underlying concerns of the nondelegation doctrine. First, the legislature itself must have decided the fundamental policy question relevant to the legislative scheme. . . . Second, such

> power may not validly be delegated by the legislature to a private body where the exercise of such power is not accompanied by adequate legislative standards or safeguards against arbitrary or self motivated action on the part of such private body." Jennings v. Exitor West Green Reg. Sch. Dist. Com., 352 A.2d 634, 638 (R.I. 1976) See also Carrol v. Finch, 3[illegible] F.Supp. 891 (D.C. Alaska 1971); Humane Society of U.S., New Jersey Branch, Inc. v. New Jersey Fish and Game Council, 322 A.2d 841 (N.J. Super. C.H. 1976); Arlington v. Board of Conciliation and Arbitration, 352 N.E.2d 914 (Mass. 1976).

DELEGATION TO ASSOCIATION

As outlined supra two delegation questions need be addressed. First, does A.S. 16.10.530(a) "declare legislative policy, establish primary standards or lay down an intelligable principal to which the instrumentality must conform? " Second, is the exercise of this power "accompanied by adequate legislative standard safeguards against arbitrary or self motivated action on the part of a private body?"

A.S. 16.10.500 declares that "[I]t is the policy of the state under §§ 500 - 550 of this chapter, to promote the enhancement of the state's fisheries by means of grants for organizational and planning purposes to regional associations which have qualified under §380 of this chapter, and by means of long term low interest for hatchery planning, construction and operation". A.S. 16.10.530 authorizes the Commissioner of Commerce, on request of a qualified regional association, to levy an assessment on a sale of one or more species of salmon by person licensed under A.S. 16.05.540 - A.S. 16.05.640. The rate and conditions of the assessment, including species covered, are to be submitted in conjunction with request by the regional association. A.S. 16.10.530(c) states that the Commissioner and association must agree on a appropriate means of collecting the assessment. A.S. 16.10.530(d) states that the assessment will terminate upon the request of the association "when all financial obligations relating to the assessment have been met".

Thus, the legislature has defined the purpose of A.S. 16.10.530 - enhancement of the state's fisheries through

hatchery and other enhancement organization planning, construction and operation - but has left the details of these plans to the qualified regional associations; subject to executive approval.

It is not necessary that the legislature supply a specific formula for the guidance of an administrative agency in a field were flexibility and adoption of legislative policy to infinitely variable conditions constitute the essense of the program. The modern tendancy is to permit liberal grants of discretion in order the facilitate the administration of laws dealing with involved economic and governmental conditions. Swisher v. Brown, 402 P.2d 621, 627 (Cal 1965). See also State v. Reisman, 374 P.2d 1002 (Wash. 1972); Walker v. Alaska State Mortgage Association, 416 P.2d 245 (Alaska 1966).

Consequently, the determination of the adequacy of standards to guide an agency or other entity cannot be made in the abstract; consideration must be given to the nature of the subject matter regulated. Atlantic City Electric Company v. Parden, 368 A.2d 366 (N.J. 1976). In the case at bar, the variables associated with the operation and development of hatcheries are infinite and highly complex; incapable of meaningful legislative orchestration.

The statute at bar also establishes important checks on the arbitrary exercise of power by the regional association. A.S. 16.10.530(e) provides that the assessment cannot be levied until the qualified association has held two public hearings. Reasonable notice is required. Ballots are to be mailed to all limited entry permits holders actively participating in a fishery at least twenty days before the initial public hearing. After a vote is taken at the initial hearing the second meeting is required following newspaper notice and full notice to active limited entry permit holders 14 days before the second public meeting. The votes of the

second are to the counted with the votes of the first meeting. The appendix reveals voluminous examples that these safeguards were diligently followed.

VIII. THE COLLECTION OF THE ROYALTY SHARE ASSESSMENT BY A REGIONAL AQUACULTURE ASSOCIATION IS NOT IN VIOLATION OF ARTICLE IX, SECTION 7 OF THE ALASKA CONSTITUTION.

Plaintiffs contend that the collection of the royalty share assessment by the regional associations is a dedication of the proceeds of a state tax or license for a special purpose in violation of Article IV, Sec. 7 of the Alaska Constitution which provides in relevant part:

> Section 7. Dedicated Funds. The proceeds of any state tax or license shall not be dedicated to any special purpose,

It is the position of defendant SSRAA that the royalty share assessments are not the proceeds of a state tax or license, are not dedicated to a special purpose and, alternatively, the savings clause of the last sentence of the present section 7, constitutionally excepts the assessments from any general prohibition.

A. State Tax or License

1. Defendant believes that a ruling by this court that the royalty share assessed is not a tax is dispositive of this issue. The critical language for the purpose of review are the first eight words of the section: "The proceeds of any state tax or license."

At the Constitutional Convention the framers had experience with a variety of dedicated funds during territorial days. 51/

At that time, however, the delegates were singularly unexperienced with revenues raised from sources other than taxes or license fees. With that in mind it is worth reviewing the progress of Sec. 7 through the convention in detail.

51/ Cigarette taxes dedicated to school construction; marine fuel taxes to water and harbor facilities; highway motor fuel taxes to the highway fund; and aviation fuel taxes to airport construction. Cf. 1960 Opinion of Attorney General No. 31.

The section first appeared in the committee minutes on November 24, 1955, as follows:

> All tax revenues shall be deposited in a general fund to be established and maintained by the state. This provision shall not prohibit the continuance of any special fund for special purposes existing at the effective date of the constitution.

Minutes, Committee on Finance and Taxation, (Hereafter, Committee Minutes).

On December 9, 1955, the section was amended to read, in relevant part, as follows:

> All revenues shall be deposited in the State treasury without allocation for special purposes, except where state participation in Federal programs will thereby be denied.

Committee Minutes.

The section was sent to the Convention floor with a proposed amendment to change the first clause of the section to read:

> "All public revenues shall be deposited in the State treasury . . . " Constitutional Convention Proceedings, p. 2297 (Hereafter Proceedings)

The section was subsequently withdrawn from floor deliberation at the request of the chairman of the Committee on Finance and Taxation. Proceedings, 2318.

When the section was again submitted for deliberation by the delegates it was changed to read substantially the same as the form in which it passed:

> "The proceeds of any state tax or license shall not be dedicated to any special purpose. . . ." Proceedings, p. 2361.

The significance of the retreat from the broad language of "all public revenues" to that of "the proceeds of any tax or license" is emphasized when reviewing another section of the constitution regarding the dedication of revenues. Article VI, Sec. 7 directs that "[T]he initiative shall not be used to dedicate revenues. . ." That section remained substantively unchanged throughout the convention. Cf. Proceedings, Vol. 6, p. 19.

The term "all public revenues" has a reasonably clear meaning as does the term "the proceeds of any state tax or license." The meanings are clearly not identical. To argue that royalty shares or assessments are included in "the proceeds of any state tax or license" is to argue that the language in the constitution does not mean what it says and that the convention went through an amendment exercise for no reason. All fundamental canons of constitutional interpretation reject such an approach.

2. Clearly the royalty shares assessed from those commercially harvesting common property resources by a regional association is not a state tax or license. It is not of a state but a regional nature.

In Black & White Taxi Co. v. Standard Oil Co., 218 P. 139 (Ariz. 1923), the governor of Arizona sought to veto a provision giving half the gas tax to the county under a constitutional provision giving him the power to veto individual line items in appropriation bills. The court held that the governor had no authority to veto this provision for this reason:

> "An appropriation or items of appropriation that the Governor may decline to approve are of funds belonging to the State . . . the fifty percent of the 3 cents gasoline tax that goes to the county is not levied for a State purpose and does not become the State's money. It is collected by the gasoline dealers and by them remitted to the Secretary of State, who pays one half thereof to the State Treasurer . . . and remits the other one half to the Treasurers of the different counties from which it has been received. It is the counties' money, levied for a county purpose; it is as though the legislature had directed the county authorities to collect one and one half cents tax per gallon on gasoline and apply it to the maintenance of the county's roads and highways, or as though the legislature had directed the county authorities to make a tax levy upon the property of the county to be used in building, improving, repairing, and maintaining a public court house, or a county hospital for the indigent sick and disabled, or any other public purpose or use . . . the item or items that may be disapproved [by the Governor] are items of money, to be paid out of the State's money levied and collected for the purposes of the State and not expenditures the legislature may authorize and direct its political subdivisions to make." Supra, p. 144.

See also, Buchanan v. Town of Salina, 58 N.Y.S.2d 797 (1945); State v. Donald, 158 N.W. 317 (Wis. 1916); Opinion of the Justices, supra; Aetna Life, supra.

B. Savings Clause.

Should this court construe the royalty share to be a state tax, defendant urges the following analysis on this court for the purpose of resolving the issue.

As originally adopted the last cluase of Art. IV, Sec. 7 read as follows:

> This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this constitution by the people of Alaska."

That clause was amended at the general election held in November, 1976 to read:

> This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska."

A.S. 16.10.530 was adopted in 1976 by the same legislature that presented the permanent fund amendment to the voters.

The change in the savings clause by the same legislature that adopted Sec. 530 has no meaning if it is construed merely to allow valid dedication to continue since for a dedication to be valid it must either be a dedication other than the proceeds of a state tax or license or the dedication of a tax or license made prior to the date of the constitution. No change in the constitution was needed to accomplish this. A fundamental canon of constitutional construction is that no part of an enactment is to be considered meaningless if a reasonable meaning can be found.

IX. VAGUENESS.

Plaintiffs allege that the statutory framwork for the assessment is unconstitutionally vague because it is not clear who should pay the assessment. It is defendant SSKAA's position that the law is not vague, any possible vagueness has been cured by executive interpretation, and finally that plaintiffs are precluded from raising this issue because they have failed to exhaust their administrative remedies.

A. The Law is Not Vague.

The previous argument in the section on equal protection and the due process of the laws clearly reveals that the levy of assessment is not over-inclusive nor under-inclusive. Plaintiffs' allegation is thus reduced to the question of whether the law is sufficiently definite to determine who the assessment is levied against. The law clearly states that the assessment "shall be levied on the sale of one or more species of salmon caught by persons" commercially harvesting salmon in the qualified region. A.S. 16.10.530(a). The law further states that the "commissioner may, by regulation, require its collection by buyers of the salmon upon the sale of which an assessment is levied" A.S. 16.10.530(c). These sections make it clear that the assessment is levied against the person harvesting the salmon. See also A.S. 16.10.540(a).

B. Any Possible Vagueness Has Been Corrected By Executive Interpretation.

It is a long established rule that administrative or executive interpretation of a statute is weighed by a court in determining whether that statute is constitutionally infirm. Cf. Kelly v. Zamarello, 486 P.2d 106 (Alaska 1971); C.J.S.2d, Statutes. A review of 3 AAC 88.040 (Collection of Assessment) leaves no room for imagination.

C. Exhaustion

It is abundantly clear that plaintiffs have not petitioned, requested action from, no objected to the

Commissioner of Commerce and Economic Development about any aspect of the assessment process. Such a failure to utilize the administrative remedies available prohibits certain allegations raised for the first time in the judicial branch. Plaintiffs' vagueness argument could have been and should have been addressed to the Commissioner. Failure to do so estopped plaintiffs from raising any argument that the statute is indefinite to the level of constitutional concerns.

X. COMMERCE CLAUSE.

Defendant SSRAA believes it appropriate to conclude the substantive analysis of plaintiffs' allegations in this memorandum with a discussion about the commerce clause. The issue could be dealt with summarily but an important contrast between economic policy by Congress subjected to commerce clause and other challenges and the challenges in this case should be considered. Plaintiffs sweeping allegation that A.S. 16.10 is in violation of the commerce clause of the Federal Constitution will be dealt with following a brief discussion of the evolution of the commerce clause in the judicial branch.

A. General Background

The evolution of judicial interpretation of the commerce clause closely parallels the evolution of social and economic affairs of the nation. The first century and a half of the republic was dominated by the doctrine of laissez-faire. The government's main task apart from defense was to keep and maintain fair-play while private interests asserted themselves freely within the market. The invasion of federal power into areas of state jurisdiction was only justified when the exercise of state power had to yield to the doctrine of laissez-faire. Thus, in Hammer v. Dagenhart, 247 U.S. 251 (1918), commonly known as the child labor case, the Supreme Court held that the federal government could not prohibit the shipment in inter-state commerce of goods produced by child labor because the effect of such prohibition was to regulate manufacturing carried on within individual states. However, if the exercise of state power infringed upon private market enter-play, the Court was quick to strike down that action pursuant to the commerce clause. This led to the development of a doctrine known by scholars and jurists as dual federalism. A line had to be drawn, in cases such as those involved in the regulation of commerce, dividing the area in which the national

government could operate from that over which the state had exclusive jurisdiction. Today scholars point to the development of a new federalism. Cf. Clark, The Rise of a New Federalism, (1938). They acknowledged the expanded role of government in American life as the root of the new federalism, and point to great economic depression which began in 1929 as the turning point in executive, legislative and judicial policy.

The doctrine of laissez-faire, upon which the operation of governmental authority had been essentially based since the founding of the republic, proved wholly inadequate to meet the problems presented by the depression. Congress moved with the adoption of the legislative measures which sought to regulate most of the critical aspects of the economic system - most of which was previously considered beyond the scope of federal regulatory power. An early legislative enactment was the National Industrial Recovery Act of 1933, granting broad powers of business and industrial interaction with consumers and labor. In Schechter Poultry Corporation V. United States, 295 U.S. 495 (1935), the Court struck down the act:

> Where the effect from intrastate transactions upon interstate commerce is merely indirect, such transactions remain within the domain of state power. If the commerce clause were construed to reach all enterprises and transactions which could be said to have a indirect effect upon interstate commerce, federal authority would embrace practically all the activities on the people and the authority of the state over its domestic concerns would exist only by sufferance of the federal government. Supra, p. 546.

It is generally considered today that the Schechter Poultry case involved one of the last important applications by the Supreme Court of the concept of dual federalism. One commentator has noted:

> The need for national regulation of the economic system, which had induced the legislative and executive branches of the federal government to discard the laissez-faire policies that had controlled their action prior to 1929, was bound also

> to have its effect on the jurisprudence upon the Supreme Court. It is true that there was a certain delay before the court began to adjust its case law to the change that was demanded by the great depression. Thus, while the 'new deal' measures to deal with the economic crisis were enacted as early as 1933, it was not until 1937 - two years after the Schechter decision - that the American court began to remove the restrictions upon federal action which had been imposed by the strict adherence to dual federalism. Such a lag appears to be inherent in the functioning of any judicial tribunal which is compelled by changing external conditions to make fundamental modifications in its case law. It constitutes perhaps the prime weakness of the American system of judicial review, the basic conservatism of the judiciary often makes it difficult for its members to make the necessary accomodation before it is too late. Schwartz, American Constitutional Law, p. ___, (1963).

Within six years the court had retreated from and then expressly overruled the prior decision in the child labor case. Cf. National Labor Relations Board v. Jones and Laughlin Steel Corp., 301 U.S. 1 (1937); Sunshine Anthracite Coal Co. v. Atkins, 310 U.S. 381 (1940); United States v. Darby, 312 U.S. 100 (1941).

Another example of the retreat from dual federalism involved the Agricultural Adjustment Act of 1933. Under the Act, a processing tax was levied upon different agricultural commodities, and the proceeds from this tax were used to compensate farmers who agreed before hand to raise less or none of such commodities. The prime purpose of this exercise power to tax was the regulation of agricultural production, rather than securing of revenue. In United States v. Butler, 297 U.S. 1 (1936), the Act was struck down as an improper exercise of the taxing powers. There was a strong dissent by Justices Stone, Brandeis and Cardoso:

> The limitation now sanctioned must lead to absurd consequences. The government may give seeds to farmers, but may not condition the gift upon their being planted in places where they are most needed or even planted at all. The government may give money to the unemployed, but may not ask that those who get it shall give labor in return, or even use it to support their families. They may give monies to sufferers from earthquakes, fire, tornado, pestilence or flood, but may not impose conditions - health precautions designed to prevent the spread of disease, or induce the movement of population to safer or more sanitary areas. All that, because it is purchased regulation infringing state powers, must be left with the states, who are unable or unwilling to supply the necessary relief. Supra, p. 85.

Three years later, in Mulford v. Smith, 307 U.S. 38, 48 (1939) the dissents noted above became the law when the Court upheld the Agricultural Adjustment Act of 1938 which did not differ in substance from the act held unconstitutional in 1936. In United States of America v. Rock Royal Cooperative, Inc., et al., 307 U.S. 533 (1938), the demise of laissez-faire was plain. That case involved various parts of the Agricultureal Marketing Agreement Act of 1937 as well as a scheme adopted by the Secretary of Agriculture in connection with the establishment of a plan for fixing uniform prices of milk in certain areas. The scheme created an equalization pool that required producers to pay into the common fund any surplus over a uniform price. The law provided for a vote by the producers to approve any such scheme. The law was challenged on due process grounds, vagueness grounds, delegation grounds, violation of the commerce power and delegation of legislative power to the producers. The court rejected all of these arguments.

B. Interstate Commerce is Not Impermissibly Burdened.

These cases set the foundation for the new federalism, upon which plaintiff apparently rest their allegation that A.S. 16.10 violates. Defendant SSRAA developed that short background for the purpose of pointing out the marked similarities between the constitutional challenges to the new deal legislation and the constitutional challenge resting before this court in this lawsuit. The tragedy of the great depression forced the Supreme Court to disgard the shackles of past judicial interpretation of federal and state power, in order to give the Congress and the executive the flexibility necessary for economic recovery. In order to do this the court had to deal with litigious plaintiffs and multiplicitous constitutional challenges carrying over from the 19th century. The tenacity that laissez-faire capitalism displayed in the face of new and far reaching economic policy by the legislative

and executive branches is understandable. The tenacity of plaintiff fishermen in this lawsuit is equally understandable.

A.S. 16.10 et seq. places no impermissible burdens on interstate commerce. The assessment is in no sense exclusionary. Henneford v. Silas Mason Co., 300 U.S. 577 (1937). It levies a share of the common property resource reduced to capture by commercial harvest prior to the introduction of the fish into commerce. The assessment in no way discourages commerce and the purposes of the aquaculture development will in fact increase commerce between the states and effectively increase the opportunity for nonresidents to travel here and participate in the commercial harvest. General Motors Corp. v. Washington, 377 U.S. 436 (1964). Members of SSRAA are not discriminated against and, in fact, at least one member of the board lives in Seattle and actively participates in management of the corporation. The burden plaintiffs allege are burdens shared by all persons most directly benefited from the fisheries enhancement and are in no sense burdens upon the streams of commerce. However, as noted in this brief, the equal protection and commerce claims of the plaintiffs effectively put the complaint in perspective.

XI. PLAINTIFFS HAVE NOT EXHAUSTED ADMINISTRATIVE REMEDIES.

It is fundamental that plaintiffs seeking judicial review of administrative action must normally first exhaust their administrative remedies. See generally McKart v. United States, 395 U.S. 185 (1969). The doctrine of exhaustion helps delimit the respective roles of the executive and judicial branches. It gives the agency the first chance to exercise discretion or apply its special expertise, and promotes efficiency in both judicial and administrative processes. McKart, supra, 395 U.S. at 193-194. Its purpose is to allow an agency to perform functions within its special competence and to "correct its own errors so as to moot judicial controversy." Parisi v. Davidson, 405 U.S. 34, 37, 31 L.Ed.2d 17 (1972).

Plaintiffs' failure to attempt adminstrative resolution of their claims short-circuits the system by denying to the agency charged with administering this statute the opportunity to apply its expertise. An administrative agency often has wide latitude to construe its enabling legislation, Cf. Boehl v. Sabre Jet Room, Inc., 349 P.2d 585 (Alaska 1960); Kelly v. Zamarello, 486 P.2d 906, 908-911 (Alaska 1971) and of course would do so in such a manner as to resolve doubtful questions of constitutionality where present. Plaintiffs' resort to the court might have been obviated had the administrator been asked to consider their challenges and perhaps construe the statutes to satisfy them. This is expecially true to the extent plaintiffs are claiming a vagueness problem of constitutional proportions. Defendant asserts that there is no such problem, and that the statute is quite clear on the point plaintiffs seek to obfuscate. Assuming arguendo that it were vague, proper administrative action could rectify the problem. Plaintiffs were remiss in not seeking such.

If plaintiffs were challenging reasonableness of the assessment, e.g., or the method by which the election

was conducted, exhaustion would obviously be required. Such claims are completely without merit on the facts of this litigation, however, and plaintiffs have eschewed them.

A more interesting situation is posed by the fact that plaintiffs' claims are at least in part based on allegations of unconstitutionality. The mere fact that such issues are raised, however, does not obviate exhaustion requirements. See Montana Chapter of Ass'n. of Civilian Technicians v. Young 514 F.2d 1165, 1167-1168 (9th Cir. 1975). Where relief may be granted on nonconstitutional grounds, exhaustion is still required.

Plaintiffs at bar failed to present their claims to the administrator to allow possible resolution which would avoid necessity for judicial intervention. They should therefore be estopped from asserting such claims now, and their case should be dismissed, or alternatively, the matter should be remanded to the Commissioner for appropriate consideration and action.

Defendant observes that another available remedy which plaintiffs totally ignored is provided in A.S. 44.62.220. That section grants to any "interested person" the right to "petition an agency for adoption or repeal of a regulation". By failing to avail themselves of this administrative remedy, plaintiffs are denying the Commissioner opportunity to "correct his own (alleged) errors so as to moot judicial controversy," Parisi, supra, and to apply his expertise to effectuate the intent of the legislature through appropriate construction of the statute. For this reason, also the plaintiffs should be estopped and their cause dismissed, or alternatively the court should defer to appropriate administrative procedures.

XII. PLAINTIFFS ARE BARRED BY LACHES

As a result of plaintiffs' unreasonable delay in initiating and prosecuting this action, defendant SSRAA would be unfairly prejudiced should the court grant the relief sought. Plaintiffs are therefore estopped from asserting their claims due to laches. Accordingly, defendant asks this court to exercise its discretion to dismiss the action.

Prejudice to the defendant (as well as delay by plaintiffs) is demonstrated in detail below. It consists primarily of expenditures of funds and organizational efforts in reliance upon continued unhampered operation of the salmon enhancement program. As part of their complaint plaintiffs seek to recover monies collected pursuant to the assessment election. These funds have largely been spent or committed by the regional aquaculture associations. To the extent plaintiffs seek such damages, failure to timely assert their rights seems clearly to preclude recovery. However, the question of damages is irrelevant to this motion for summary judgment, and its consideration is best deferred since it may well be moot. Defendants request that the court bifurcate these proceedings, determining the question of liability first, and then, if need be, the question of damages. Accordingly defendant's argument on laches is addressed to dismissal of the action. Issues related more specifically to damages will be briefed subsequently should that become necessary.

The traditional equitable doctrine of laches is applied and discussed extensively in two leading Alaska cases, Moore v. State, 553 P.2d 8 (Alaska 1976), and Concerned Citizens of South Kenai Peninsula v. Kenai Peninsula Borough, 527 P.2d 447 (Alaska 1974). Two criteria must be met before laches will be applied to bar a claim. "The defendant must show the plaintiff was guilty of inexcusable delay, resulting

in undue prejudice to the defendant." Moore, supra, 553 P.2d at 15. While the court refers to these as "independent" tests, they in fact appear to be inversely related. A showing of severe prejudice might justify application of laches though the causative delay is relatively short. Concerned Citizens, 527 P.2d at 457. An indefinite inexcusable delay, on the other hand, will not justify barring a claim due to laches where the defendant has suffered no resulting prejudice.

In Moore, the plaintiffs brought suit challenging the legality of the sale of certain offshore oil and gas leases in Kachemak Bay. The trial court held plaintiffs' claim were barred by laches and dismissed the action on defendants' motion for summary judgment. The Alaska Supreme Court reversed on this issue, finding that plaintiffs' three week delay in filing the action after the issuance of the first drilling permit did not cause sufficient prejudice to justify preclusion of the suit.

In Concerned Citizens, the Supreme Court unheld a trial court grant of summary judgment based on laches. In that action, the taxpayer plaintiffs sought dissolution of a hospital service district on constitutional and other grounds. The suit was not brought until four years and ten months after the voters had approved delegation of the Borough's hospital powers on April 8, 1969 - the point at which the court held plaintiffs' claims arose. Between that date and June 5, 1973 a hospital board was authorized, a long term lease was negotiated for operation of a former city hospital, and plans were laid for enlarging the facility. 527 P.2d at 447. On June 5, 1973, nine months before the complaint was filed - voters authorized issuance of bonds for construction of a new hospital. Between then and February 13, 1974, when the complaint was filed, defendants obtained federal and state grants and loans and contracted for architectural and other services. Ibid.

Before proceeding to specifics of the case at bar defendant wishes to dispose of a threshhold issue raised in plaintiffs' pleadings -- the claim that laches may not be interposed as a defense where constitutional claims are made. This is without merit. In Concerned Citizens, e.g., plaintiffs claimed the organization of the service area violated constitutional provisions, 527 P.2d at 449, and the Supreme Court expressly noted that it was barring a constitutional claim for laches. Id. at 458 n. 32. See also, Neizer v. School District of the Township of Schuylkill, 121 A.2d 93 (Pa. 1956); Ciletti v. Washington, 140 A.2d 98 (Pa. 1958), app. dism'd. 358 U.S. 130, 3 L.Ed.2d 225. In Neizer plaintiff taxpayers sued on constitutional grounds to enjoin a school district from paying rent to an authority created for the purpose of building and equipping school facilities and renting the same to the district. The action was barred by laches. In Ciletti, the court barred plaintiffs' suit due to laches where they waited five months to challenge creation of a sewage treatment authority. Reference to the lower court opinion in Ciletti, 107 A.2d 871 (1954), reveals that plaintiffs raised a number of constitutional challenges to the validity of the statutes and ordinances at issue. Plaintiffs apparently conceded the constitutionality of the enabling statute at trial, but continued to press other constitutional claims including challenges to alleged unconstitutional delegations of power to private corporations hired by the authority. Id., at 872. These claims were all held barred due to laches.

Application of the doctrine of laches depends on the facts and equitable considerations of each case, Moore, supra, 553 P.2d at 16. Defendant believes the following will demonstrate to the court ample grounds for a finding of laches. SSRAA reserves the right however to supplement

matters presented herein with information requested in pending discovery motions, should the court find such further documentation necessary or desirable.

The two key determinants of laches -- delay by plaintiffs and prejudice to defendants -- must be analyzed with reference to a particular time frame. Moore provides guidance in determining the relevant period for measuring prejudice attributable to delay.

> "The point in time at which plaintiffs must exercise their remedies in court or lose their right to assert their cause of action depends on the facts and equitable considerations of each case, including the knowledge of the plaintiffs, the conduct of the defendants, the interests to be vindicated, and the resulting prejudice. ... (O)ur concern is ... with when, in light of any resulting prejudice to defendants, it became reasonable to expect plaintiffs to act upon the (alleged) wrong."

The Supreme Court goes on to enumerate two specific factors to be used in evaluating plaintiffs' delay:

> "(One) is when, under the circumstances, it became no longer reasonable for plaintiffs to assume that defendants would comply with the law. We will also look to that point in time when there were positive steps taken by defendants which made their course of conduct irrevocable, and would have galvanized reasonable plaintiffs into seeking a lawyer."

How do these tests apply to the facts of this case? In both instances they demonstrate that plaintiffs are guilty of laches.

With respect to the first test, plaintiffs could not reasonably have presumed defendants would comply with the law as they view it at any point after passage of the legislation. It is plaintiffs' contention that the statute itself is constitutionally infirm, so that nothing defendant might do could remedy its illegality. Thus there is a substantial argument that the point from which to measure plaintiffs' delay is June 19, 1976, when the statutory scheme became law. This would be consistent with the holding in Concerned Citizens, supra, where the Supreme Court stated, "All the claims which appellants attempted to argue before

the superior court could have been asserted in April 1969." 527 P.2d at 458. (The date voters approved an ordinance creating a hospital service area and delegating assembly powers to it). In Moore, unlike the instant case or Concerned Citizens, plaintiffs did not challenge the validity of the statutes and regulations at issue, only their application. Thus it could not be assumed until these were actually illegally applied that defendants would not comply with the law -- indeed plaintiffs were entitled to presume the officials would proceed in accordance with the law. 553 P.2d at 18. As noted, such was not the case here, and nothing short of failure to implement the statute would save state officials from violating plaintiffs' version of the constitution. Plaintiffs have shown no evidence, nor did any exist, to support a finding that state officials did not intend from the outset to fully implement the law.

Application of the second test, however, points to a somewhat different time period. Defendant is willing to concede that the most reasonable and meaningful date to use with reference to the second test is July 1977, when the mandatory assessment for the Southern Region was approved by the Commissioner of Commerce. Persuasive arguments could be made that the relevant point in time when the positive steps taken by defendants made their course of conduct irrevocable came much earlier - when the region was formed, e.g., or when the Executive Director was hired, or particularly when the assessment vote was taken. But defendant contends that there can be no reasonable dispute that approval of the mandatory assessment marked such a point in time, plaintiffs' actions bear this out, for they were in fact "galvanized into action and motivated to hire counsel" by this event. See Moore, 553 P.2d at 16. The principal plaintiff, Wayne Alex, stated that he found out in late July or early August that the assessment had actually been instituted. (Depo. of Wayne Alex, p. 37). At that point, he was galvanized. He

obtained a copy of the law and information about it (ibid.), he pulled his membership card from United Fishermen of Alaska (UFA), which had lobbied for the plan (id., 14), and went to see an attorney, Bill Ruddy (id., 43), began trying to organize fishermen in opposition to the law (id., 47), and sent out letters to certain permit holders seeking financial and political support (id., 69).

Plaintiff John C. Martin likewise took action after the election results came out. As a member of the Board of Directors of PFI in Petersburg, Martin favored having the cannery refuse to collect the assessments. (Depo. of John C. Martin, at 27). The cannery (PFI) supplied a form fishermen could fill out to protest the assessment (Id. 26).

These men were and others were aware of the assess-- ment program in varying degrees before the assessment vote, but their interest and concern crystalized into action at that point and the test is satisfied.

Given July 1977 as the time at which plaintiffs should have acted, we must assess the prejudic which defendant suffered as a result of their delay a filing the Complaint until March 15, 1978. The following activities, commitments and expenditures by SSRAA occured between July 1977 and the time plaintiffs filed their complaint.52/

(a) $100,000 was committed to secure an engineering contract with the firm of CMH2 Hill; (b) $260,000 in grants were received from the state, $100,000 of which was awarded specifically on the basis of passage of the mandatory assessment, and these monies were committed; (c) thousands were spent for site selection, and helicopters and boats were employed throughout Southeast for this purpose, biologists

51/ Defendants contend the date it received notice of the suit by being served is the relevant time for terminating the period of latches -- the extra week, however, is of little actual significance.

were sent to various towns, and eggs were taken from numerous streams; (d) SSRAA and auxiliary personnel were employed and engaged in extensive planning and research functions premised on assessment income.

To allow this belated attack on the program after defendant made such substantial commitments during a period in which plaintiffs unreasonably delayed action would work a gross injustice on defendant. The defense of laches "is one of great public utility ... (which) induces confidence in what is, and willingness to improve property in possession." Holmstead v. Grinnan, 152 U.S. 412, 38 L.Ed 495. Plaintiffs failure to challenge the salmon enchancement program at its inception, or at least at the stage of the assessment vote approval when they demonstrably could have, estops them from asserting any right to dismantle the now growing, visible entity which is SSRAA.

As noted above, this case is similar to Concerned Citizens. There the Authority which plaintiffs sought to dismantle, though formed for several years, untertook its major actions cited by the court to prove prejudice within nine months before plaintifffs filed their complaint. These included issuance of construction bonds, securing of federal and state grants and loans, and awarding of an architectural design contract.

The prejudice to defendant SSRAA is likewise similar to that found by the court in Ciletti, supra, 107 A.2d at 872, where laches was found based on plaintiffs' five month delay in filing suit. The court noted the sewage authority which plaintiffs there sought to dismantle had sold sewage bonds, agreed to provide services, employed a consulting engineer, and contracted with private companies to receive certain services.

One final factor deserves mention with respect to plaintiffs' laches. The Moore case expressly makes the public interest an element of the laches equation.

> "In determining whether laches was properly applied in the case at bar, we cannot overlook the fact that under Section I of Article VIII of our Constitution, the public also has an interest in the proper development of Alaska's resources." 533 P.2d at 19.

The Alaska legislature has made a judgment that the statutes codified in A.S. 16.10 et seq. represent the best method of development of our common property fisheries resource. This creates a strong presumption that the public interest is represented and served by this salmon enhancement program. This Court should therefore consider the public interest as a factor supporting a finding of laches here.

Considering this important public interest, and the serious prejudice to defendant resulting from plaintiffs' unnecessary delay, this court should grant summary judgment for defendants on the basis of laches.

XIII. THE CONSTITUTIONALITY OF REGIONAL AQUACULTURE ASSOCIATIONS AND THE ASSESSMENT IN A NUTSHELL.

Defendant realizes that this court is being confronted with issues of first impression. It is for that reason that this memorandum contains extensive background material in order that the issues can best be understood in the light of constitutional, executive and legislative policy as well as the judicial interpretations given those policies. This section is devoted to placing the issues in a nutshell with the positions of the opposing parties.

It is defendant SSRAA's position that the regional aquaculture program and the mandatory assessment contained in A.S. 16.10.375 - 620 is a legitimate purpose for legislative intervention, that the means chosen bears a close substantial relationship to the purposes stated, is not vague, is not the delegation of a taxing power in violation of Art. 10, § 2, Alaska Constitution, does not establish a dedicated fund in violation of Art. 9, § 7, Alaska Constitution, and in no way impermissibly interferes with interstate commerce. Further, the regulations and orders adopted by the executive pursuant to the law were lawful. Finally, it is defendant's position that plaintiffs are precluded from raising certain issues for the first time in the judicial branch when they have not sought administrative remedies, and are precluded in seeking certain relief by the doctrine of latches.

The real issues in this case are the most elusive ones to identify because of the multiplicitous allegations raised by plaintiffs. The first real issue is equal protection and fortunately there is substantial recent case law and commentaries from which the section in this memorandum was drawn and from which the court can review its conclusions. The second real issue involves interplay between Art. 8 of

the Alaska Constitution (Natural Resources) and Art. 10 (Local Government). Plaintiffs urge a construction of Art. 10, § 2 that is narrow and rigid. They allege that a taxing power is delegated to an institution other than a borough or city. Defendant believes that the assessment is not a tax and, in any event, no power to tax or levy an assessment has been delegated.

One thing should be clear at this juncture. The legislature can delegate the power to tax or levy assessments in any manner it chooses in the unorganized borough. Art. 10, § 6. Regardless of how the assessment is interpreted, if a regional aquaculture association operates exclusively in the unorganized borough the provisions of A.S. 16.10.375 - 620 are constitutionally firm. It is defendant's position that current qualified regional aquaculture associations in Southeast Alaska may tax or levy an assessment, notwithstanding the presence of local government jurisdictions. The obligation to provide for the rehabilitation and enhancement of the common property fisheries of the state is clearly a state function and in no sense can be delegated to local government. Given that the legislature cannot delegate to local governments fisheries enhancement, it chose the only constitutionally permissible means to provide for regionally oriented fisheries enhancement while at the same time engrossing contemporary public interests such as user input and control, executive oversight for a complex subject matter, equitable distributions of the burdens, and labor and capital resource conservation.

The essense of plaintiff's position, then, is that the only permissible means for the legislature to provide for fisheries enhancement is through absolute and continuous state involvement funded by general income tax revenues. 52/

52/ It is defendant's position that funding fisheries enhancement through general tax revenues, if not unconstitutional is a graphic example of a hidden subsidy that inequitably distributes public wealth to an exclusive class harvesting a common property resource.

We believe that the constitutional framers in no sense intended the division between state and local functions to mean that the presence of a local government in or near a region of fisheries commerce precluded the legislature from establishing the means for fisheries rehabilitation and enhancement that it chose. The position plaintiffs urge has similarities to the dual federalism that for so long hamstrung the commerce and taxing powers of congress. The framers surely did not intend that the presence of local government jurisdictions was a license to balkanize rehabilitation and enhancement of common property resources. The framers also surely did not intend to cripple future legislatures dealing with resource development economics by restricting their powers to the limited scope urged.

The position plaintiffs' urge is archaic in a constitutional and a public policy sense. It would effectively limit the legislature to recreating the policies and ideas of the past through instant replays, regardless of their effectiveness and efficiency, rather than recognizing the flexibility necessary for the economic transition into the 21st century.

CONCLUSION

For all the reasons stated above, defendant SSRAA respectfully requests that this court enter judgment as a matter of law against the plaintiffs in this action.

DATED this 15th day of February, 1979.

Douglas Pope
Attorney for Defendant SSRAA

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT, AT JUNEAU

WAYNE ALEX, WILLIAM A. THOMAS, JR., ED MAKI, JOHN C. MARTIN, WARREN S. WESTROM, DICK WORKMAN, MARK W. WHITE, CARL SINS, BRUCE R. GILBERT, FRED CHAMBERS, DOUGLAS D. KARNS, HAROLD D. BIELESKI and LEO R. ALBECKER, JR.,	)
Plaintiffs,	)
vs.	)
SOUTHERN SOUTHEAST REGIONAL AQUACULTURE ASSOCIATION, ET AL.,	)
Defendants.	)

No. 1JU-78-191 Civil

AFFIDAVIT OF JACK MILNES

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

JACK MILNES, upon oath, says:

1. My name is Jack Milnes and I am the Executive Director of Southern Southeast Aquaculture Association, Inc. I have served in that position since August 15, 1976, and my duties are set out in the by-laws. At the time I became Executive Director for the corporation the only staff was part-time secretarial help, and my early chores were to solicit directors from the various representational user groups, and to gain acceptance of the corporation as a qualified regional aquaculture association. Pursuant to my duties as set out in by-laws, I began collecting records and other physical materials in a corporation filing system relevant to all phases of my responsibility and all necessary activities of the corporation. Those materials appended to this affidavit have been selected from those files and records kept as a part of the corporation business and are attached herewith for the purposes of explaining certain points in more detail.

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2. In August of 1976 the corporation had approximately Ten Thousand Dollars ($10,000.00) of cash on hand from contribution and donations by various users, processors, and other interested persons.

3. On August 26th, I began traveling to various towns in Southeast Alaska and informing fishermen of the purposes of the aquaculture association, and to solicit voluntary contributions in the form of direct contributions, and voluntary assessments. The first was to Wrangell on August 26 and 27, then I traveled to Juneau for the period of August 31 through September 3rd. On September 20, 21, 22, 23, 24, and 25 I traveled to Haines, Skagway, and Juneau, with Larry Dalton, President of the Southern Association. Other people present on the trip were James Beaton and several other directors who met us along the way in various towns. In this latter trip we began distributing a small brochure which contained information regarding proposed releases from hatchery sights and estimated returns, hatchery costs, estimates, approximate duration and magnitute of the proposed assessment, projected assessment return calculations, and a form for those fishermen interested in contributing to the Southern Region by agreeing to assess themselves Three Percent (3%) of their gross salmon catch in Districts One through Eight. (See Appendix) As I traveled to these various communities, meetings were organized ahead of time where various fishermen from the different areas would attend, look at the brochure, fill out the agreement for a voluntary assessment if they were so interested, and would engage with me in a dialog and discussion regarding the pros and cons of hatchery development and funding mechanisms. I had prepared some material for discussion that I tried to cover at each meeting. A standard dialog is reflected in the appendix and memorandum dated October 1976 and entitled

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"Narrative to Accompany the Pamphlet which discusses the Reasoning Behind and Request for Assessment by each Fisherman." The narrative attached to this affidavit in the appendix was actually prepared for other persons to utilize in their discussions to various user groups about the reasoning behind and the request for the assessment, but it also adequately reflects what I attempted to cover at each meeting. Preceding the above referenced "Narrative" in the appendix is a graph entitled "SSRAA's Target". That graph was used frequently during these meetings and was reproduced in different forms and distributed.

During this period we also sought support from other organizations and local governments. For example, the Alaska Trollers Aquaculture Corporation agreed to consolidate with us, and the Ketchikan Chamber of Commerce assisted us in securing donations. Local merchants petitioned the city and borough governments to give us as much support as permissible. The reaction was quite favorable.

Also included in the appendix, is a memorandum dated December, 1976, entitled "Viewpoints from Southeast Alaska". That memorandum was prepared by me and delivered to members of Governor Hammond's staff at their request, for the purpose of providing a brief history of activities to date, capital shortfalls, and to discuss various problems and concerns then known or perceived in the aquaculture programs, and to suggest some solutions.

4. Meanwhile, in November 2, 1976, pursuant to our request, the Alaska Department of Fish and Game recognized Southern Southeast Regional Aquaculture Association, Inc. as a qualified regional association under the terms of Chapter 161 of the 1976 session laws. The region covered the same geographic boundaries as Fish and Game regulatory districts 1 through 8 in Southeastern Alaska. (See November 2 letter

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and map in appendix). By the end of October, 1976, a significant portion of the cash on hand of the corporation had been expended for preliminary hatchery site selection.

A preliminary application for a private nonprofit hatchery at Beaver Falls had been submitted to the Commissioner of Fish and Game. Submitted with the application and also to the Department of Commerce, Division of Business Loans were the signature and comments of those persons agreeing to a voluntary assessment. The assessment volunteers were considered essential to any successful financing. (See October 8, Memorandum and Application).

5. 1977 In late February of 1977, the board of directors' Executive Committee met with Phil Daniels for the purpose of discussing current legislative proposals regarding the aquaculture program pending in the legislature. Phil Daniels, a United Fishermen of Alaska representative, advised the board about the proposed legislative changes providing for a change in the funding mechanisms as well as mechanisms for mandatory assessment. Shortly thereafter, the full board resolved to proceed with a mandatory assessment election in order to meet compliance with legislation pending before the legislature. An elections committee was appointed, and a calendar of events established to conform with the election procedures in the proposed law. The committee drew up procedural rules for voting, and made substantial preparations for full and adequate notice of the proposed election to all limited entry permit holders in Southeast Alaska. In the appendix, are included numerous copies of actual notices posted in public places, newspaper notices of the pending election, affidavits of publication, and other evidence of various efforts taken by the corporation to insure the largest possible turn out for the election. Also included in the appendix are copies of the various election materials mailed to each limited entry permit holder in Southeast

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Alaska. For example, a small brochure entitled "Fisheries Permit Holders: Want More Fish?" contained information about the board of directors of the corporation, proposed hatchery facilities, projected costs, and encouraged votes. The law was precisely followed prior to and during the election. The corporation hired the Ketchikan accounting firm of Walter W. Shuham to audit and tabulate the results of the election. On June 1, 1977, the certified public accountant advised the association that of 1,052 ballots by qualified fishermen received in accordance with established voting procedures the number of votes cast for the proposal were 592 and the number of votes cast against the proposal were 446. 14 votes cast were not counted because the envelopes contained two or more ballots or the general meaning of the ballot was unclear and the result of the ballot would not affect the outcome of the election. On June 30, 1977, the corporation requested that the Department of Commerce approve the mandatory assessment vote, and establish on a emergency basis, a mandatory assessment. On July 15, 1977, the Commissioner of the Department of Commerce and Economic Division made a finding of an emergency and noticed adoption of emergency regulations. The notices of adoption of emergency regulations, which fleshed out provisions of the statute regarding requests for institution of assessment, review and approval of initial and final requests, and other related matters, were posted in every fishing village and town in Southeast Alaska. Although the Commissioner gave notice to the processors and other fish buyers, pursuant to A.S. 16.10 that they were to begin collecting the assessment, the processors collected but declined to transmit the assessment funds to the regional association without first obtaining a court order or specific authorization from fish sellers from whom the assessments were collected. Cf. State of Alaska

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and Southern Southeast Aquaculture Association, Inc. v. Annette Island Packing Company, et al., civil action number 77-10006, Juneau. However, some fish buyers did collect and forward the assessment and by November 11, 1977, Southern Southeast Regional Aquaculture Association had received some $49,000.00 in assessments. (See appendix.) On December 28, 1977, in the above cited case, the State of Alaska, SSRAA, and the various defendant processors filed a release and indemnity agreement in Superior Court. Pursuant to that release and indemnity agreement over $545,000 was released to SSRAA by the processors.

In 1977, another $17,000.00 was expended on the hatchery sites selection process.

6. Meanwhile, the board was actively proceeding with plans for hatchery sites and the hatchery facility at Witman Lake on Ravila Island near Ketchikan. (See project Management Request for Proposal, appendix) On December 15, 1977, the final request for the $100,000.00 matching grant, pursuant to A.S. 16.10.510, was sent to the director of the Division of Business Loans, Department of Commerce and Economic Development.

7. 1978. In early 1978 the corporation contracted with CH2M-Hill, an engineering consultant, for design and engineering of the Witman Lake hatchery facility. The design of the facility and its specifications were supervised by Milo Bell, Professor Emeritous, Fisheries, University of Washington, SSRAA's senior technical advisor. Pursuant to the contract, CH2M-Hill was advanced $100,000.00. In early March, 1978, the board authorized the executive director to arrange, with the State of Alaska, for its long term hatchery construction and operation financing, as authorized by A.S. 16.10.

8. Interim financing for the construction of the

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hatchery was secured through the Spokane Bank for Cooperatives. Construction began at the Herring Cove-Witman Lake hatchery site in June. Land was cleared and graded, the lake was drained and necessary repairs were begun on the dam valves. Construction required installation of over 3,000 feet of up to 24" pipe for the purpose of feeding the hatchery. The pipeline made a fall of over three hundred feet while restrained to a narrow fifty foot corridor on national forest land, and required the expertise of a major construction company; Palmer Wright-Schugart.

9. In July, construction began on the Beaver Falls temporary hatchery. That temporary hatchery was completed in September, and was ready for eggs. The building is 40' by 50' and contains 2,560 Heath incubating trays. Each tray can handle 10,000 eggs. The total capacity at the Beaver Falls temporary hatchery is 25,600,000. The purpose for building the temporary hatchery was primarily to prevent a year delay in production.

10. During 1978, the corporation also became heavily involved in the regional planning process. The corporation's involvement in the regional planning team broke down into general areas, public involvement, and technical planning. Corporation expenses in 1978 exceeded $112,000.00 in conjunction with this process.

11. Other significant aspects of the corporate process on which energies were focused in 1978 included board development, rehabilitation, and stream surveys. Board development involved the preparation of the board for the necessary activities to meet multi-million dollar committments.

12. Currently there exist five recognized regional aquaculture associations in the State. They are Southern Southeast Regional Aquaculture Association, Northern Southeastern Regional Aquaculture Association, Prince William Sound Regional Aquaculture Association, Cook Inlet Regional

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Aquaculture Association, and Imarpik Regional Aquaculture Association in Dillingham. Organizational efforts are proceeding in other areas. Of the recognized aquaculture associations, three have implemented assessments pursuant to A.S. 16.10.530. Those are the Southern and Northern Regions in Southeast Alaska, and Cook Inlet Regional Aquaculture Association. The three section 530 assessment associations have specific rehabilitation and enhancement programs currently under way partially funded or guaranteed by the mandatory assessment. Prince William Sound Regional Aquaculture Association has a hatchery completed and fish returning. Imarpik Regional Aquaculture Association has been recognized by the Commissioner and has received the first $100,000.00 grant for organizational purposes. In the Southern region 800,000 Coho eggs have been incubated at Beaver Falls.

13. The law requires that boards of directors of each corporation include representatives of various user groups, including sport fishermen, processors, commercial fishermen, subsistence fishermen, and representatives of local communities. The blend of representatives required by law necessitate varying sizes in the board of directors in the different regions. For example, the by-laws of the Southern regional require 21 members on the board, whereas in Prince William Sound there are approximately 70 members on the board. In Southern Southeast board members are actively involved in management of the corporation. The board is composed of five committees, and every member of the board is assigned to a committee. Those committees are the Executive Committee, the Ways and Means Committee, The Personnel Committee, the Regional Planning Team and the Nomination and Board Development Committee. The Executive Committee is established in the by-laws, the other committees are working committees established at the direction of the

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board for the purpose of providing well researched recommendations to the board. Each committee is staffed with professional advisors pursuant to budget approval by the full board. Other than these standing committees there is from time to time special committees. For example there is currently a long range planning committee developing a five year plan for the corporation. The Regional Planning Team is developing specific plans for rehabilitation and enhancement projects which reflect the collective decision of the corporation and the Alaska Department of Fish and Game with primary focus on the social and economic benefits to the people of the region. The Personnel Committee recommends an employee wage and benefit policy to the full board, suggests performance standards and plans for the long-term requirements for the corporation. The Ways and Means Committee integrates proposed annual plans with the available budget, hires the outside auditors and supervises the financial controls of the corporation. The Nominations and Board Development Committee is responsible for the annual election of the board, and skills development for directors.

14. Fishermen elect 55% of the board. Members of other user groups, including subsistence fishermen and processors, are appointed by the full board of fishermen. The representative of the local communities is a former member of the Ketchikan Gateway Borough Assembly. He has been active as a board member in the affairs of the corporation and makes recommendations to the borough assembly on behalf of the regional association. The Beaver Falls temporary facility and the Whitman Lake hatchery required agreements with Ketchikan Public Utilities, a city owned public utility, which provides power and water to both the City and the Borough. The projects also required cooperation from the Cape Fox Village Native Association and Sealaska.

15. Board meetings are primarly held in Ketchikan,

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but the board members are flown in from various communities in Southern Southeast Alaska and Seattle. The corporation publishes a newsletter (see appendix), and holds public meetings in the various communities on a periodic basis. As part of regional planning the board expects to hold twice yearly meetings in the various communities for the purpose of public input to specific project proposals.

16. A necessary part of hatchery development is securing permits from various government agencies. Federal, state and local permits are required for access, water, egg takes and other essential aspects of salmon enhancement. (See examples in appendix). These permits are required of any public or private organization seeking to use public land or water.

17. Representatives of the corporation travelled to Washington, D.C. in 1978 to testify in Congress on the impact of D-2 legislation on fisheries enhancement. Prior to that testimony, the federal legislation would have effectively prohibited most salmon rehabilitation and enhancement projects on federal land by excluding the necessary permanent facilities, bypasses and other structures. After the effort by representatoves of the corporation and others at our urging, the legislation was amended to provide for adequate flexibility.

DATED: Feb 10, 1979

Jack Milnes
JACK MILNES

SUBSCRIBED AND SWORN to before me this 10 day of February, 1979.

Notary Public in and for Alaska
My Commission expires: 4-12-82

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CHAPTER 88.
ASSESSMENT ON SALE OF SALMON

Section
10. Eligibility
20. Requests for institution of assessment
30. Review and approval of initial and final requests
40. Collection of assessment
50. Submission of initial and final requests
60. Prior action by a regional association
900. Definitions

3 AAC 88.010. ELIGIBILITY. Only a qualified regional association as defined in AS 16.10.380 is eligible to participate in the institution of an assessment under AS 16.10.530. (Eff. 5/24/78, Reg. 66)

Authority: AS 16.10.380
AS 16.10.510(4)
AS 16.10.530

3 AAC 88.020. REQUESTS FOR INSTITUTION OF ASSESSMENT. (a) A qualified regional association desiring to institute an assessment under AS 16.10.530 shall submit to the commissioner an initial request and, after approval of it, a final request.

(b) An initial request must consist of

(1) a letter of intent (including certification by the board of directors of the regional association) to seek an assessment, which letter must propose and describe

(A) the area to be covered by the assessment;

(B) the species of salmon to be included;

(C) the conditions of the assessment;

(D) the period during which the assessment will be in effect;

(E) the rate(s) of the assessment;

(F) designation of categories of salmon gear within the area to be subject to the assessment;

(G) detailed procedures for collection of the assessment, including timing, means, and method of cash transfers;

(H) designation of the trust account into which assessment funds will be deposited;

(I) procedures to be used in the implementation of any approved changes in the assessment, including increases, decreases, and discontinuation;

(J) procedures to be used by the regional association to comply with the terms and conditions of AS 16.10.530(c) and (f);

(K) procedures to be used by the regional association to comply with other provisions of applicable laws and regulations;

(2) a review of historic catch levels of salmon and present processing capabilities within the area to be covered by the assessment (catch and production statistics and other data supplied by the Department of Fish and Game may be used); and

(3) a statement of the purpose of the assessment, including, but not limited to, a description of the objectives to be accomplished by the regional association.

(c) A final request must be submitted by the regional association after approval by the commissioner of the initial request. The final request must consist of

(1) finalization of all proposals set forth in the initial request and a final description of them including the trust account agreement (which agreement must permit inspection of the account by the commissioner);

(2) evidence of compliance with AS 16.10.530(c), (e) and (f), including certification of election results. (Eff. 5/24/78, Reg. 66)

Authority: AS 16.10.510(4)
AS 16.10.530(a)

3 AAC 88.030. REVIEW AND APPROVAL OF INITIAL AND FINAL REQUESTS. (a) Upon receipt of an initial request, it will be reviewed by the commissioner for consistency with the intent and provisions of applicable laws and regulations. Factors which will be considered include, but are not limited to

(1) the recommendations of the

commissioner of fish and game, who will be consulted by the commissioner with respect to the initial and final request;

(2) the reasonableness of the assessment in view of the projected activities of the regional association as described and proposed in the materials submitted under sec. 20 of this chapter; and

(3) the likelihood of promoting, through the assessment, the interest of the public in fostering salmon enhancement efforts.

(b) If an initial request is approved by the commissioner, the commissioner will notify the regional association by letter and solicit submission of a final request after the prerequisite activities and procedures have taken place.

(c) Upon receipt of a final request, it will be given a final review by the commissioner for consistency with the intent and provisions of applicable laws and regulations. If the final request is approved by the commissioner, the commissioner will notify the regional association by letter and take the actions described in sec. 40(a) of this chapter.

(d) If an initial or final request is disapproved by the commissioner, he will notify the regional association of the reasons for the disapproval. (Eff. 5/24/78, Reg. 66)

Authority: AS 16.10.510(4)
AS 16.10.530

3 AAC 88.040. COLLECTION OF ASSESSMENT. (a) Upon approval of a final request from a regional association, the commissioner will give notice of the implementation of an assessment. Notice will be published in advance of the effective date at least twice in a newspaper of general circulation in the area of assessment. The notice will specify the area in which the assessment will be effective, the rate(s) of the assessment, the effective date, the purpose of the assessment, persons and species subject to the assessment, collection procedures, procedures for forwarding funds collected, and other details with respect to implementation of the assessment. The commissioner will, in his discretion, use other means to inform the public of a forthcoming assessment if he considers it necessary to reach persons who will be affected by it.

(b) Buyers of salmon shall collect, deduct, or withhold the assessment from fishermen at the time they purchase salmon or initiate a transaction to purchase salmon from a fisherman. For purposes of this section, completion of a fish ticket constitutes initiation of a transaction. Any subsequent consideration paid to fishermen for salmon taken is subject to the assessment and the appropriate amount must be collected and forwarded in accordance with the provisions of this section.

(c) Buyers of salmon shall accumulate assessment funds collected and shall forward those funds to the applicable trust account at times or intervals specified by the commissioner.

(d) Buyers of salmon shall keep records of assessment funds collected and forwarded (including the sources of those funds) in a manner recommended by the regional association and approved by the commissioner. The commissioner will, in his discretion, inspect and audit those records at any time consistent with AS 16.05.815. A regional association may request an inspection of assessment funds records by the commissioner, except that the cost of the inspection shall be borne by the association and the association shall not have access to individual financial records of fishermen and buyers of salmon.

(e) The commissioner will, in his discretion, require regional associations to include in their annual financial reports specified information relating to their participation in an assessment program. (Eff. 5/24/78, Reg. 66)

Authority: AS 16.10.470(6)
AS 16.10.510(4)
AS 16.10.530

3 AAC 88.050. SUBMISSION OF INITIAL AND FINAL REQUESTS. Regional associations shall submit initial and final requests for the institution of an assessment and related documents to the Division of Business Loans, Department of Commerce and Economic Development, Pouch D, Juneau, Alaska 99811. (Eff. 5/24/78, Reg. 66)

Authority: AS 16.10.510(4)

3 AAC 88.060. PRIOR ACTION BY A REGIONAL ASSOCIATION. A regional association which has taken action relating to the institution of an assessment before the effective date of this chapter, which action is determined by the commissioner to be in substantial conformity with provisions of this chapter, will, in the discretion of the commissioner, be considered to have complied with all or part of this chapter for purposes of its application. (Eff. 5/24/78, Reg. 66)

Authority: AS 16.10.510(4)
Sec. 18, ch 154, SLA 1977

3 AAC 88.900. DEFINITIONS. As used in this chapter

(1) "commissioner" means the commissioner of commerce and economic development or his designee; and

(2) "buyer of salmon" means any person, company, firm, partnership, or other organization or entity which purchases unprocessed salmon from the holder of a permit issued under AS 16.43 when such salmon were taken from an area in which an assessment is in effect. (Eff. 5/24/78, Reg. 66)

Authority: AS 16.10.510(4)
AS 16.10.530

PART 8. MISCELLANEOUS

Chapter
90. Emergency Rent Review

CHAPTER 90. EMERGENCY RENT REVIEW

Section
10. Application of chapter
20. Procedure for increase in rent
30. Rental complaints by tenants
40. Notice of filing a complaint
50. Retroactivity
60. Emergency Rent Review Board
70. Operation of the board
80. Hearings on rent complaints
85. Hearings on evictions
90. Objections to adverse recommendations
100. Orders of commissioner of commerce and economic development
110. Standard for review of proposed increases in rent
115. Procedure for eviction
120. (Repealed)
125. Eviction complaints by tenants
130. Retaliatory conduct prohibited
140. No waiver of rights
145. Standard of review for evictions
150. Definitions

3 AAC 90.010. APPLICATION OF CHAPTER. This chapter applies to all residential housing accommodations, as defined in sec. 150 of this chapter, if the property is located in an area declared by the governor to be in a state of housing emergency, pursuant to AS 34.06.020. Except as provided in sec. 115 of this chapter, nothing in this chapter affects application of the Uniform Residential Landlord and Tenant Act (AS 34.03). The following are exempt from the provisions of this chapter:

(1) the first rent assessed and collected upon the initial occupancy of a residential housing accommodation;

(2) evictions from or rent charged for transient occupancy in hotels, motels, and motor inns, as defined in sec. 150 of this chapter;

(3) evictions from or rent charged in federal

CHAPTER 40.
PRIVATE NONPROFIT SALMON HATCHERIES

Article
1. General
2. Special Harvest Areas

ARTICLE 1.
GENERAL

Section
5. General
10. Modifications of applicable regulations
15. Prohibitions

5 AAC 40.005. GENERAL. (a) The harvest of salmon inhabiting the water of the state, regardless of whether the salmon are naturally or artificially propagated, may be conducted only pursuant to regulations adopted by the Board of Fisheries.

(b) The harvest of salmon returning to a private nonprofit salmon hatchery will be governed by regulations adopted by the Board of Fisheries. The board will, in its discretion, develop harvesting regulations after review of the harvest plans or other materials, information and testimony (if any) presented by the regional associations, hatchery operators, the Department of Commerce and Economic Development, fishermen and other interested parties.

(c) Where hatchery returns enter a terminal location and can be harvested without significantly affecting wild stocks, a special harvest area will be designated and described by regulation adopted by the board. The board will, in its discretion, adopt additional regulations applicable to other matters necessary to accomplish the harvest in an orderly manner.

(d) A private nonprofit hatchery permit holder and his agents, contractees, and employees may harvest salmon for the hatchery only in the applicable special harvest area. This does not prevent a special harvest area from being open to commercial, sport, or subsistence fishing or any combination thereof to the extent provided in regulations adopted and orders issued under this chapter. Harvesting of salmon within the special harvest area, whether by the hatchery operator or the common property fisheries, will be opened and closed by regulation or emergency order.

(e) Special harvest area boundaries set out in this chapter may be altered by emergency order if necessary for proper management of natural stocks and hatchery stocks.

(f) Hatchery permit holders, their agents, contractees, and employees shall comply with all terms and conditions of the hatchery permit, applicable regulations and orders, and any additional requirements imposed by the commissioner to implement this chapter.

(g) Agents, contractees, and employees of a hatchery permit holder may harvest salmon for the hatchery in the special harvest area only if in possession of a written authorization from the hatchery permit holder and pursuant to its terms. The activities of persons in a special harvest area who are not a hatchery permit holder or an agent, contractee, or employee of the holder acting under the terms of a written authorization are governed by regulations governing commercial, sport, and subsistence fishing.

Authority: AS 16.05.050
AS 16.05.060
AS 16.05.251(2)–(7) and (12)
AS 16.05.920
AS 16.10.420–440

5 AAC 40.010. MODIFICATIONS OF APPLICABLE REGULATIONS. (a) Hatchery permit holders shall, with respect to salmon harvested by them (or their agents, contractees, or employees), comply with applicable provisions of 5 AAC 39.130(a) and (b) as though they were a purchaser of fish.

(b) Hatchery permit holders harvesting salmon within a special harvest area, to the extent those salmon are used as egg sources for brood stock, will be exempted by the commissioner from the provisions of AS 16.05.831 if the permit holder so requests. The commissioner may condition the exemption on terms he considers necessary to carry out the intent of AS 16.05.831.

(c) Hatchery permit holders conducting a hatchery harvest of salmon within a special harvest area are exempt from the provisions of 5 AAC 39.290.

(d) Fishermen taking salmon in a special harvest area under authorization from the hatchery permit holder and operating under an interim-use permit are exempt from the provisions of 5 AAC 39.120.

Authority: AS 16.05.050
AS 16.05.060
AS 16.05.251(2)–(7) and (12)
AS 16.05.831
AS 16.05.920
AS 16.10.420–440

5 AAC 40.015. PROHIBITIONS. It is unlawful for any person to violate the provisions of this chapter.

Authority: AS 16.05.050
AS 16.05.060
AS 16.05.251(2)–(7) and (12)
AS 16.05.831
AS 16.05.920
AS 16.10.420–440

ARTICLE 2.
SPECIAL HARVEST AREAS

Section
30. Sheldon Jackson Special Harvest Area
35. Prince William Sound Aquaculture Corporation Special Harvest Area–San Juan

5 AAC 40.030. SHELDON JACKSON SPECIAL HARVEST AREA. (a) There is established under the provisions of sec. 5 of this chapter the Sheldon Jackson Special Harvest Area, consisting of all water of Crescent Bay and Eastern Anchorage enclosed by a line beginning at the northern end of John O'Connel Bridge and proceeding to the south end of the bridge, then to the northeasternmost points of Aleutski Island, Turning Island, Kutkan Island, Morne Island and Twin Islands, then to the westernmost points of Ring Island and of Dove Island, then west to the southeastern corner of Cannon Island.

(b) A hatchery permit holder harvesting salmon within the special harvest area is exempt from the provisions of 5 AAC 33.310. Fishing periods for the hatchery permit holder will be opened and closed by emergency order by gear type.

(c) Notwithstanding 5 AAC 33.330, legal gear for hatchery permit holders is a purse seine. However, if the commissioner determines that purse seine gear is unavailable to the hatchery permit holder or if the use of purse seines only would jeopardize the financial solvency of the corporation, the commissioner may open the special harvest area for hatchery harvest with beach seine or hand purse seine.

Authority: AS 16.05.050
AS 16.05.060
AS 16.05.251(2)–(7) and (12)
AS 16.05.920
AS 16.10.420–440

5 AAC 40.035. PRINCE WILLIAM SOUND AQUACULTURE CORPORATION SPECIAL HARVEST AREA – SAN JUAN. (a) There is established the Prince William Sound Aquaculture Corporation Special Harvest Area – San Juan consisting of all water of Sawmill Bay, Evans Island, west of 148° 01′ 50″ W. long.

(b) A hatchery permit holder harvesting salmon within the special harvest area is exempt from the provisions of 5 AAC 24.310–320 and 5 AAC 24.350(15), except as may be specifically provided by emergency order. The hatchery permit holder may harvest salmon within the special harvest area by purse seines seven days per week from 6:00 a.m. July 17 through 6:00 p.m. September 15 unless closed or modified by emergency order.

(c) Notwithstanding 5 AAC 24.330, legal gear for the hatchery permit holder in the special harvest area is a purse seine. However, if the commissioner determines that purse seine gear is unavailable to the hatchery permit holder or if the use of purse seines only would jeopardize the financial solvency of the corporation, the commissioner may open the special harvest area for hatchery harvest with beach seine or hand purse seine.

Authority: AS 16.05.050
AS 16.05.060
AS 16.05.251(2)–(7) and (12)
AS 16.05.920
AS 16.10.420–440

HB

477

COMMITTEE REPORT

SENATE

5/28/77

4/19 Date

Mr. President:

The Committee on Resources has had CSHB 477 am sale of state land under consideration. A majority of the members of the Committee

- [ ] recommends it do pass
- [ ] recommends it do not pass
- [ ] recommends it do pass with attached amendment(s)
- [x] recommends it be replaced with CS for CS HB 477 and that CS for _____ do pass
- [ ] (and) recommends it be referred to the _____ committee
- [ ] reports it back without recommendation
- [ ] AND attaches a report of its intent
- [ ] (other) _____

MEMBERS SIGNING THE MAJORITY REPORT:

Pearson, Conn, Hoon

Hill, Lewis, Peters

A. Ahern, Hixon, D-Pats

MEMBERS NOT CONCURRING IN THE MAJORITY REPORT:

_____ recommends: _____

_____ recommends: _____

_____ recommends: _____

K. Poland
Chairman

Do Pass

S 60

Read in 6/11

CONFERENCE COMMITTEE REPORT

5/31/78

DATE: June 9, 1978

Mr. President:
Mr. Speaker:

The FREE Conference Committee which has had

CSHB 477 am (sale of state land; effective date)
&
SCS CSHB 477 (same title)

adopted 3-0-9

under consideration, recommends that

FCCS SCS CSHB 477

"An Act relating to the sale of State land; and providing for an effective date."

be adopted.

Senate Members:

K. Poland
Senator Poland, Chairman

Orsini
Senator Orsini

Senator Butrovich

House Members:

Representative Hayes, Chairman

Representative Bradley

Representative Freeman

PLEASE RETURN ORIGINAL REPORT AND BILL TO THE CHIEF CLERK. COPIES MUST BE DUPLICATED FOR EACH MEMBER OF THE HOUSE AND SENATE.

H/S 55 (Rev. 1977)

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

April 17, 1978

SUBJECT: Proposed SCS CS for HB 477

TO: Senator Kay Poland
Chairman, Senate Resources Committee

FROM: James L. Baldwin
Legislative Counsel

I have been directed to present a memorandum discussing the constitutionality of legislation suggested by the Joint Federal - State Land Use Planning Commission for Alaska. The Commission would permit the director of the division of lands to grant a preference to local residents to purchase state land by lottery when land located near their residence is offered for sale.

A local preference right establishes a classification among state residents. The classification discriminates against non-local residents to the extent local residents do not compete for state land equally with non-local residents.

Traditionally, whenever a statute's constitutionality has been challenged, the courts test the validity of the statute under either the "rational basis standard" or the "compelling state interest standard." The United States Supreme Court announced the rational basis standard in F.S. Royster Guano Co. v. Virginia, 253 U.S. 412, 415. The Court explained that for a statute to survive judicial scrutiny under the rational basis test:

> [It must] be reasonable not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.

While under the "compelling state interest standard," the classification will withstand constitutional scrutiny only upon a clear showing that "the burden imposed is necessary to protect a compelling and substantial state interest." Oregon v. Mitchell, 400 U.S. 112, 238 (1970). The courts determine which standard of review to apply according to the type of personal right that is being invaded by the statute under review. If the right is characterized as "fundamental", the compelling state interest standard of review is applicable, while invasions of other non-fundamental rights of citizenship are reviewed under the rational basis standard of review.

The Alaska Supreme Court has further refined the rational basis standard by demanding that the legislature create classes that logically relate to the object of the legislation. Isakson v. Rickey, 550 P.2d 359 (Alaska 1976). This approach was presumably adopted out of frustration with the present system of characterizing the rights affected and then applying either of two standards of review - one that is nearly impossible to satisfy (compelling state interests standard) and the other that is easily satisfied (rational basis standard).

In addition to the standards judicially imposed, the Alaska State Constitution contains general requirements specifically applicable to the disposal of natural resources of the state.

These requirements are:

(1) Article VIII, Section 2 which directs the legislature to provide for:

> "... the utilization, development, and conservation of all natural resources belonging to the State, including land and waters, for the maximum benefit of its people." (emphasis added); and

(2) Article VIII, Section 17 which provides:

> 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.

THE COMMISSION'S PROPOSAL

The proposal presented by the Commission amends AS 38.05.055 by adding a new subsection to read:

> "The director may limit qualified applicants in a sale of land by lottery to residents of the local area."

The commission urged the following justification in support of its proposal:

> "This authority would be useful in cases where there was an identified need in the area for additional lands for homes and cabin sites for local people. By limiting qualified purchasers to local residents, the director could prevent the sale offering from being preempted by speculative purchasers from outside the local area."

The proposal was submitted in conjunction with another proposal to reduce the durational residency requirement contained in HB 477. After receiving advice from legislative counsel that all durational residency requirements are constitutionally suspect, the committee has indicated unwillingness to support a durational residency requirement of less than three years as presently contained in HB 477. The Commission's proposal as drafted lacks specificity since no boundaries for the local area are set, nor is there a durational residency requirement in the local area as a precondition for qualifying for a local preference. The Research Division of the Legislative Affairs Agency was requested to develop a factual survey of the distribution of state land in different localities of the state; that report is attached for your review. The purpose of this survey is to determine the extent to which residents currently residing in different regions of the state would be affected by granting preference rights for local land offerings. It was felt that the distribution of available state land may cause inequality in opportunity for the purchase of state lands for residents residing in a locality where state land is in limited supply. The survey seems to support the contention that the Commission's proposal creates a class of state residents who would always have a second priority preference right or at least have less opportunity to exercise a first priority preference right than other state residents who reside in areas of the state where there is an abundant supply of available state land.

LOCAL RESIDENCY REQUIREMENTS AND THE DISPOSAL OF STATE LAND

The U.S. Supreme Court has long recognized that the freedom to travel throughout the United States "uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement" is a right of national citizenship but that right is not a fundamental right unless a right to receive a basic necessity of life is also impaired. Memorial Hospital v. Maricopa County, 415 U.S. 250 (1974). It could be argued that there also exists a right to freedom of travel or migration within a state without undue discrimination between rights and remedies available to state residents who choose to do so. The pivotal issue which determines the standard of judicial review is whether or not the right to purchase state land by state residents is a "basic necessity of life" to justify the characterization of that right as a fundamental right of citizenship. The Alaska Supreme Court has in three out of four cases struck down durational residency requirements and has done so by analyzing the invasion of personal rights on the basis of the right to travel and has not imposed the additional stipulation that the residency requirement also cause persons a denial of the necessities of life. The necessities of life referred to by the Court in Maricopa was the right to receive welfare payments or the right to obtain medical care after changing state residence. The basic necessities of life considered by the United States Supreme Court are more closely related to personal well-being than the right to purchase state land at a lottery sale. I conclude that a court would review a local preference that is not determined by a lengthy durational requirement by applying the less stringent "rational basis standard."

SUMMARY

In summary, past cases indicate that the Alaska Supreme Court has reviewed residency requirements strictly and characterizes the right to travel as a fundamental right; while the U.S. Supreme Court has indicated that it will apply the compelling state interest standard of review to legislation which infringes the right to travel only if the legislation also infringes upon a right to receive a basic necessity of life offered by the state to others similarly situated. Whether the Alaska Supreme Court will depart from its stricter standard and embrace the United States Supreme Court's position is unclear. The position of the United States Supreme Court regarding residency requirements for the purpose

of controlling utilization of natural resources is currently being considered by that court in Hicklin v. Orbeck, 565 P.2d 159 (Alaska 1977). That case involves a test of the constitutionality of the Alaska local hire law (AS 38.40).

In its brief, the state has argued that the state's right to control its land resources outweighs an individual's basic right to travel. Whether the outcome of Hicklin will cause the Alaska Supreme Court to review residency requirements under a less strict standard for review is unknown. What is readily ascertainable is that due to the unequal distribution of state land in localities of the state certain residents will be discriminated against in fact under the Commission's proposal. A local preference may not be justified under the Alaska Supreme Court's stricter rational basis standard of review. The requirement contained in Article VIII, section 17 of the Alaska State Constitution, set out above also causes me to question the legality of establishng discriminatory classifications based upon local residency for the disposal of state land.

JLB:jpd/hjd

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM

April 7, 1978

SUBJECT: Regional Resident Preference Rights

TO: The Honorable Kay Poland

FROM: George Utermohle
Research Analyst

In response to a request from Legislative Affairs Agency, Legal Division, we have reviewed the subject of regional resident preference rights for disposals of state land. In the following discussion, the number of persons who would receive a preference right to state land based upon residence in the region of the disposal is compared with the apparent amount of state land present in that region. The regions used in this discussion are based upon: (1) 1974 state house election districts; (2) existing state senate election districts; and (3) current state judicial districts.

The information which is necessary for a thorough analysis of the need for and subsequent impact of a regionalized resident preference system is not readily available or does not exist. In order to complete a thorough analysis of such a system we must know how much state land in each region is suitable for each type of use (residential, industrial, agricultural, etc.), what the demand is for each type, and what the state's schedule of land disposals is or might be. The cursory discussion which follows is intended as illustrative of what lands could be disposed by the state in each district and how many persons would receive a preference right to those lands.

1974 House Election Districts

There were twenty-two house election districts in 1974. If these districts were used as a basis for granting regional resident preference rights when state land is disposed, this would create 22 sub-groups within Alaska's population, each with a preference right to lands within their region.

The population and an estimate of the state land present within each house election district are listed in Table 1. For an explanation of how the amount of state land present in each district was estimated, see the section on Methodology.

The population of these districts ranges from 6,500 to 180,700 and the amount of state land present within each district varies from almost zero to 657 townships. There is no correlation between the population of a district and the amount of state land present. Many rural districts have relatively small populations but contain disproportionately large shares of state land. Likewise, the urbanized districts have little state land present relative to their population.

Senate Election Districts

There are 11 senate districts. These districts generally encompass two or more house districts and, thus, have larger populations and larger areas of state land within their boundaries. The population and the amount of state land present within each district are shown in Table II. For an explanation of how the amount of state land present within each district was determined, see the section on Methodology.

The population of the senate districts ranges from 13,300 to 180,700. The amount of land within these districts ranges from .5 to 1,092 townships. Since the senate districts are amalgamations of house districts, the relationships between population and the amount of state land present are similar for the two kinds of districts. Rural districts in Interior Alaska have much more state land present relative to their population. The urban districts, Anchorage and Fairbanks, have much less land present relative to their populations. Districts in Southeast Alaska have very little state land present.

Judicial Districts

There are four judicial districts in Alaska. These districts coincide with the major geographic regions of Alaska: Southeast, Southcentral and Southwest, Interior and Northeast, and the Northwest. The judicial districts were established for administrative purposes and are not related to population, which is the basis for election districts. The population and amount of state land present within each judicial district are listed in Table III. For an explanation of how the amount of state land present in each district was estimated, see the section on Methodology.

The population within the judicial districts ranges from 25,200 to 251,500. The amount of state land present within the districts ranges from 20 to 1,279 townships. The use of judicial districts has eliminated some of the variation that was found to exist between rural and urban election districts. However, the relative shortage of land in Southeast Alaska is unaffected by the use of judicial districts.

Methodology

The population of each district was established by using data supplied by the state revenue sharing program for fiscal year 1978 and currently available census data. The total state population is estimated to be 411,000. These figures include all civilians regardless of age residing in the state.

The amount of state land present in each district was established by counting the number of state selected, tentatively approved, and patented townships within each district as shown on the Bureau of Land Management land status map dated March, 1974. The amount of state land present within each district is all state land present without regard to suitability for settlement, present dedications as parks and refuges, existing disposals, and proposed disposals such as municipal land grants. It is important to note that the amounts of land listed as present in each district are merely indicative of the amount of state land present and does not represent a true and accurate accounting of the distribution of state land. These data are most valuable for comparative purposes.

The low amounts of land present in House Districts 1 and 2 are partly due to the methodology of this study. There is certainly some state land within House Election District 2 (Petersburg, Icy Strait), but there is not enough land in a sufficiently compact area to be represented on the land status map. Similar conditions exist in other parts of the state.

Discussion

As the size and number of districts increase, the number of persons eligible for preference rights within each district and the amount of land within each district decreases. However, it depends upon the system of establishing these districts as to whether the population and amount of state land involved decrease at the same rate. In the case of election districts, which are based upon population, the area of the district will decrease as the density of the population increases. This will result in more people exercising a preference right to a decreasing amount of state land. This is particularly true within those election districts which comprise Anchorage.

Judicial districts are established without much regard for land area or population. Also, there are only four judicial districts, which means that each district must contain more population and more area than would the more numerous election districts. The advantage of the judicial districts over the election districts as a basis for granting preference rights is that each person would be able to select from a greater variety of land types and locations. This would be a benefit to the resident of Anchorage or Kodiak who does not have large acreages of state land available due to competition for land and existing withdrawals of state land.

In all of the three districting proposals presented, there is little that can be done to increase the relative amount of state land present in Southeast Alaska. The current state tentative selections within the National Forests (400,000 acres) would, at best, increase the amount of state land in Southeast by 75 percent. This land may be suitable for settlement and may be enough to more than satisfy the demand for land

for decades, but the amount of state land present will never be comparable to other areas of the state.

There is no mechanism for determining what the demand is for land in each region of the state and how suitable the land in that region is to satisfy that demand. Without that kind of information on the demand for land and the suitability of the land, there is no way to know what effect preference rights will have on the ability of people to obtain the land that they need or want, when and where they desire.

Small districts such as the house election districts may limit the preference rights to smaller areas, but it ensures that a local resident will have the first opportunity to obtain land near his present home. For example, there may or may not be sufficient state land within the Anchorage house election districts to satisfy the demand, but limitation of the preference rights to small districts would assure that an Anchorage resident would have the first opportunity to obtain state land sold or leased within that district. Under the judicial district system, a resident of Cordova would have the same opportunity to obtain scarce land around Anchorage as would the resident of Anchorage.

However preferable it may be to limit preference rights to small districts such as house election districts in order to assure preference rights to local residents, it will do them no good if the state never [illegible]ses of land within that district. If the state seldom disposes of [illegible] within a particular house district, it would benefit the residents of that district to have preference rights to a larger area such as a senate or judicial district.

It is our hope that the brief foregoing discussion will aid you in identifying some of the factual issues inherent in the subject of regional preference rights.

GU:jm
Attachments

TABLE I. DISTRIBUTION OF STATE LAND AND POPULATION BY 1974 HOUSE ELECTION DISTRICTS

District	Location	Population 1/	State Land 2/ (Townships)
1	Ketchikan Area	14,600	.5
2	Petersburg, Icy Strait	7,600	0
3	Sitka, Yakutat	8,300	2
4	Juneau, Haines	23,300	17
5	Valdez, Cordova, Seward	15,600	79
6	Matanuska-Susitna	16,700	400
7-12	Anchorage Municipality 3/	180,700	32
13	Kenai	20,500	87
14	Kodiak, Ouzinkie	6,700	12
15	Aleutians, Kodiak Island	6,600	66
16	Dillingham, Eek, Port Heiden	6,800	387
17	Bethel, Aniak, Mekoryuk	7,900	31
18	Hooper Bay, Mt. Village, McGrath, Galena, Allakaket	8,400	657
19	Tanana, Ft. Yukon, Tok, Nenana	6,700	453
20	Fairbanks North Star Borough	60,200	81
21	North Slope Borough, Kotzebue, Kobuk	13,900	155
22	Nome, Unalakleet, Savoonga	6,500	62
	Total	411,000	2,522

1/ Estimated 1978 civilian population based upon FY 78 state revenue sharing program data.
2/ Estimated state land present (measured in townships). See text for further explanation.
3/ All districts within the city of Anchorage are combined.

Prepared by:
Legislative Affairs Agency
Research Division
17 April 1978

TABLE II. DISTRIBUTION OF STATE LAND AND POPULATION BY SENATORIAL DISTRICT

District	Location	Population 1/	State Land 2/ (Townships)
A	Ketchikan	14,600	.5
B	Sitka, Wrangell, Petersburg, Yakutat	15,900	2
C	Juneau, Haines, Skagway	23,300	17
D	Mat-Su Borough, Valdez, Cordova	32,000	479
E-J	Anchorage Borough 3/	180,700	32
K	Kenai-Cook Inlet	20,500	87
L	Kodiak Island, Aleutian Islands	13,300	78
M	Bristol Bay, Bethel, Dillingham	14,700	418
N	Upper Yukon, Lower Yukon	14,900	1,092
O	Fairbanks, North Star Borough	60,300	99
P	North Slope, Nome, Kotzebue	20,800	217
	Total	411,000	2,522

1/ Estimated 1978 civilian population based upon FY 78 state revenue sharing program data.
2/ Estimated state land present (measured in townships). See text for further explanation.
3/ All districts within the Municipality of Anchorage are combined.

Prepared by:
Legislative Affairs Agency
Research Division
17 April 1978

TABLE III. DISTRIBUTION OF STATE LAND AND POPULATION BY ALASKA JUDICIAL DISTRICT

District	Location	Population 1/	State Land 2/ (Townships)
1st	Southeast Alaska	53,800	20
2nd	Northwest Alaska	25,200	160
3rd	Southcentral Alaska	251,500	1,063
4th	Interior Alaska	80,500	1,279
	Total	411,000	2,522

1/ Estimated 1978 civilian population based upon FY 78 state revenue sharing program data.
2/ Estimated state land present (measured in townships). See text for further explanation.

Prepared by:
Legislative Affairs Agency
Research Division
17 April 1978

HB
588

COMMITTEE REPORT

SENATE

FURTHER: Finance

3/14/78

Date: 3/27

Mr. President:

The Committee on RESOURCES has had HB 588 supplemental appropriation to Dept. of Natural Resources for repurchase of certain oil & gas leases in Katchemak Bay

under consideration and (a majority of the committee) (the committee reports it back as follows)

( ) recommends it do pass ( ) recommends it do not pass

( ) recommends it do pass with attached amendment(s)

( ) recommends it be replaced with CS for _____

and _____ ( ) new title ( ) same title

( ) AND attaches a Letter of Intent ( ) New Fiscal Note

(X) reports it back without recommendation

( ) and recommends it be referred to the _____ Committee

MEMBERS SIGNING DO PASS:

OTHER RECOMMENDATIONS:

DO NOT PASS

Chairman

S 60 (rev. 6/77)

HB588

January 10, 1978

The Honorable Hugh Malone
Speaker of the House
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18 of the Alaska Constitution, and in accordance with AS 24.30.060(b) and the Uniform Rules of the Alaska State Legislature, I am transmitting a bill appropriating $7,552,198.21 to the Department of Natural Resources, to implement ch. 113 SLA 1976 (Kachemak Bay). It is similar to the appropriation made in ch. 91 SLA 1977.

The purpose of the appropriation is to fulfill obligations of the State of Alaska under contracts with Shell Oil Company, Simasko Production Company, and Texas International Petroleum Corporation to repurchase all of their leases in Kachemak Bay. Pursuant to ch. 113 SLA 1976, the administration initiated negotiations with these companies and concluded agreements with them in June of 1977. Copies of the contracts are attached along with a breakdown of the purchase prices showing amounts for bonuses, rent, etc. It should be noted that the balance owed under the Shell contract is subject to adjustment upon tabulation of recent credits taken by Shell pursuant to the contract.

Ch. 113 SLA 1976 specifically authorized the commissioner of natural resources to use credits for future taxes and royalties of the lessees as part of the purchase price. The Shell contract takes advantage of roughly $2.4 million in credits over the next two years. Additionally, the state was able to conclude an agreement with Union Oil Company in the principal amount of $150,423, which will be entirely paid by future credits, foreclosing entirely the need for an appropriation.

This bill, along with the credit provisions of the contracts, concludes our monetary obligations for all but two of the leases. Two inexpensive leases along the shoreline of the Bay were required to be made subject to a condemnation action, since the state was unable to reach what we considered a fair agreement on these leases. We do not anticipate the judgment awarding compensation to be a significant sum of money.

Sincerely,

S/JSH

Jay S. Hammond
Governor

THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. Law Log #1 HOUSE BILL NO. 588
Title Appropriation for Kachemak Bay Repurchases
Requested by Governor Date

II. FISCAL DETAIL
Agency Affected Natural Resources
Program Category Affected NRMEC
Budget Request Unit(s) Affected Management & Administration (Commissioner's Office)

EXPENDITURES (Thousands of Dollars)

	FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL	7,522.2					
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	7,552.2					

FUNDING (Thousands of Dollars)

GENERAL FUND	7m552,2					
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Shell	$7,500,000.00
Texas International	7,938.81
SIMASKO	44,259.40
TOTAL	$7,552,198.21

IV. DATE Dec 9, 1977 PREPARED BY Fred Boness
AGENCY Natural Resources
PHONE 465-2400

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 10/76)

HB
645

COMMITTEE REPORT

SENATE

FURTHER: Finance

2/23/78

Date: _____

Mr. President:

The Committee on RESOURCES has had HB 645
supplemental appropriations to the Dept. of Natural Resources

under consideration and (a majority of the committee) (the committee reports it back as follows)

( ) recommends it do pass ( ) recommends it do not pass

( ) recommends it do pass with attached amendment(s)

( ) recommends it be replaced with CS for _____

and _____ ( ) new title ( ) same title

( ) AND attaches a Letter of Intent ( ) New Fiscal Note

( ) reports it back without recommendation

( ) and recommends it be referred to the _____ Committee

MEMBERS SIGNING DO PASS:

OTHER RECOMMENDATIONS:

_____

Chairman

S 60 (rev. 6/77)

FY 78 SUPPLEMENTAL REQUEST ANALYSIS

	FY 76 Actual	FY 77 Final Auth.	FY 77 Actual	FY 78 Gov. Budget	FY 78 Initial Auth.	FY 78 Current Auth.	Expenditures + Encumbrances 7/1 - 10/31	Other Obligations 7/1 - 10/31	Projected Expenditures + Encumbrances 11/1 - 6/30	FY 78 (Deficit) or Excess	FY Maint Req
SONAL SERVICES				310.7	310.7	250.7	168.0		253.6	(170.9)	471.4
VEL				19.0	14.5	14.5	5.4		19.1	(10.0)	21.3
TRACTUAL SERVICES				33.5	33.5	93.5	37.9	18.9	102.7	(66.0)	125.5
MODITIES				2.5	2.5	2.5	1.2		4.3	(3.0)	5.5
IPMENT				1.5	.4	.4	0		5.4	(5.0)	3.8
DS, BLDGS. ...											
NTS, CLAIMS, ...											
CELLANEOUS											
TOTAL	NA	NA	NA	367.2	361.6	361.6	212.5	18.9	385.1	(254.9)	627.5
ERAL RECEIPTS											
UIRED GF MATCHING											
ER GENERAL FUND											
ER-AGENCY RECEIPTS											

AGENCY Nautral Resources BRU Mangement & Administration COMPONENT Planning & Research REVISED

IHB645

TO: Mike Harper, Chairman
Budget Review Committee

DATE: November 23, 1977

FILE NO:

Thru: R.E. LeResche, Commissioner
Department of Natural Resources

TELEPHONE NO:

FROM: Donald G. Wold, Executive Director
Alaska Royalty Oil & Gas Board

SUBJECT: FY 78 Supplemental Budget
Royalty Oil and Gas Board

Forwarded herewith is a completed "FY 78 Supplemental Request Analysis" to support our request for an additional $15,000 for Contractual Services (consultant fees) tc be used by the Alaska Royalty Oil and Gas Development Advisory Board and the Commissioner of Natural Resources in the review and analysis of proposals received from industry in response to the State solicitation entitled "Offer for Negotiated Sale of Prudhoe Bay Crude Oil, 150,000 Barrels Per Day."

In response to the above solicitation the State has received four (4) final proposals from companies offering to construct refineries and petrochemical plants ranging in size from 150,000 - 250,000 Barrels per Day and ranging in investment from $400 million to $2,500 million.

The evaluation of these proposals will require the retaining of three consultants with special expertise in law, finance, and engineering related to those process industries to insure that the States interests are protected in this large sale of the States resources.

The FY 78 Royalty Board budget for contractual services is $76,700 of which approximately $60,000 is currently available for these purposes.

A law firm has been retained to assist the State in the development of the contract for this sale, approximately $30,000 is required for these services. A technical engineering firm has been retained to assist in the technical evaluation of the projects proposed and $20,000 is required for these services. Financial consultants will be retained to assist in all aspects of the financing of the project and a minimum of $25,000 is required for these services.

Should you have any further questions please do not hesitate to call.

Enclosure

DGW:sw

						EXPENDITURES + ENCUMBRANCES 7/1 - 10/
						21.1
						2.4
						1.3

STATE of ALASKA

MEMORANDUM

TO: Robert LeResche
Commissioner

DATE: September 2, 1977

FILE NO:

TELEPHONE NO:

FROM: Dave Hanson, Chief
Planning and Research

SUBJECT: Justification for Supplemental funding for d-2 and land selections work

At your direction, the Planning and Research Section has recently become heavily involved in critically important Alaskan land issues to an extent not anticipated during the formation of the fiscal year 1978 budget last August. As a direct consequence of the Section's responsibility for the resource impact analysis of the various d-2 land proposals, assessment of State concerns associated with specific d-2 unit proposals, preparation of d-2 related resource impact presentations to Federal entitites such as the Department of Interior, the Office of Management and Budget, and various Congressional committees, along with the Section's responsibility for Statehood Entitlement Land Selections, the Section must augment its fiscal year 1978 budget by approximately $255,000. This memo is a justification for the supplemental funding which is essential to support the section's continued lead in these land issues through fiscal year 1978.

This memo is divided into the following parts:

1. A description of the unanticipated but unprecedented opportunity for substantial State input into the federal and Congressional deliberations on the d-2 land issues and timely action on Statehood Entitlement land selections;

2. A summary of the supplemental budget request;

3. An accounting of Section personnel and other budget allocations for FY 78 and an explanation of why the accelerated d-2 and land selections program budget demands cannot be met with the Section's present budget allocation.

The immediacy of the demands related to statehood land entitlement selections and the d-2 decision process emphasize the need for expedient consideration of this supplemental budget request. The Section will be able to provide the State with adequate backup in order to have a substantial impact on federal and Congressional considerations of d-2 proposals, and also will be able to honor the Governor's recent committment to indicate within ninety days approximately 60 million acres from which the State will select the remainder of its Statehood Entitlement. In considering this request, it should be recognized that the vast majority of the State's decisions concerning land selections and the national decisions concerning the allottment of d-2 lands will take place during the remainder of FY 78 and initial months of FY 79. Consequently, this is a singular and historic opportunity which will have enormous long term impact on Alaska.

Furthermore, the Governor's committment to a publicly accountable and analytical process of land selections should be recognized. Without this supplemental these services cannot be provided.

1. Land Selections and d-2 issue tasks and opportunities:

During the past eighteen months, the Department of Natural Resources Planning and Research Section has had the lead responsibility for establishing a land selections process which was publicly accountable and based upon the best analysis available as well as a detailed land resource inventory/analysis to form a basis for land selection decisions. The inventory/analysis system has already proved to be an invaluable tool for determining relevant resource values on Alaskan lands. The assessment was used in December of 1976, and April 1977 in making land selections totaling over 3.6 million acres and was frequently used by the Department in appraising land management options. The Department's inventory/analysis is the only system available to the State or Federal Government which can provide detailed assessment of the relative values of Alaskan lands.

Recently, you requested the Planning and Research Section to apply the resource inventory and assessment to the various d-2 proposals and prepare to use it to help provide a data base for the d-2 debate and identify State areas of interest within that debate. In view of the emergence of the Udall d-2 Bill in January of 1977 and the various pressures being applied nationally to Statehood selections rights, it became extremely important to identify both the relative value of those lands which the State might wish to select in the future and also to be able to defend rationally past selection actions and statehood entitlements. The use of the resource assessment to evaluate d-2 proposals, the development, on an accelerated basis, of the land selection system, and the need to apply this system to the selection of the majority of the remaining Statehood entitlement within FY 78, had not been envisioned in planning the FY 78 budget.

The opportunities and results related to these tasks, however, are overwhelming and require immediate action. As a result of the application of the resource assessment to the various d-2 proposals, the State is developing a rational and well justified position on d-2 issues. The depth of the analysis behind the State's position is greatly aiding our effectiveness with various federal agencies and Congressional committees. We have gained additional credibility with these agencies and committees by providing them with the best data base available for their consideration of d-2 issues. In addition, the Section has prepared large scale maps to convey State concerns with respect to the various d-2 proposals. These maps were critical in the State's recently successful effort to communicate its concerns to the federal government and will be used to help influence House and Senate d-2 committee positions.

The significance of these projects in providing an objective resource information and a reputable State land selection system which is necessary to deal with both the various d-2 issues and to effectively defend the State's position can hardly be overstated. The Department of Interior, the Federal Energy

Administration, the Office of Management and Budget, the State Federal Land Use Planning Commission, and both House and Senate committees dealing with the d-2 issues and overall land issues have recognized the State's efforts and complimented the system that has been developed.

In addition to the considerable effort relating directly to the d-2 issues, the Section has recently been obligated by the Governor to identify 60 million acres of land suitable for State selections on November 20. What this means is that the development of a publicly accountable land selection process will have to be greatly accelerated. This further means that most of the State land selection decisions will have to be made within the next year.

The need for accelerated determination of land selections, a greatly accelerated land selection process, and the need for detailed analyses of federal d-2 actions to protect statehood rights were neither foreseen nor expected during FY 78 budget formulation. It should also be noted that the total cost of this supplemental appropriation represents .7¢ per acre for the remaining Statehood land entitlement. We estimate the entire program to protect state interest in d-2 and select the remaining entitlement in a publicly accountable manner over the next two years will cost 1.7¢ per acre. It should be emphasized that in providing our input thus far, the Planning and Research Section has completely exhausted its budgetary options and must have supplemental funding to continue this effort into the future.

A description of the projects and budgetary requirements which the Planning and Research Section believe essential for the State's continued input into these land decisions is provided in the following pages.

2. Summary of Supplemental Budget Request

This Section sets forth a summary of the additional funding which would be required to complete the above tasks related to analysis of d-2 issues, provision for documentation and presentation of these issues to federal and State entities, completion of the establishment of a land selection process, and analyses and documentation required to identify proposed selections of an additional 60 million acres within ninety days. The summary of the budget requirements is set forth in tabular form below and is followed by a short explanation of each budget item. An appendix is attached to the supplemental request which sets forth in more detail the tasks to be covered by the supplemental funding.

Supplemental Budget Request

Personnel	Range	Budget
Research Analyst I (24 mos)	13	41,284
Associate Planner (12 mos)	17	27,630
Data Clerks (14 months)	9	18,707
Research Analyst II (4 mos)	16	7,440
Criteria document writer/analyst (3 mos)	18	7,100
Contingency hires		5,000
Cartographer (2½ mos)	13	3,750
	TOTAL	110,911

Contractual		
Systems Analyst (12 mos), programming		43,005
Computer time		36,000
D-2 data assessments and addendums, documentation and distribution		30,000
Criteria document publication, distribution, statewide public participation, review, and analysis		10,000
	TOTAL	120,005
Space		6,000
Commodities		3,000
Travel		10,000
Equipment		5,000
	TOTAL	24,000
	TOTAL SUPPLEMENTAL REQUEST	254,916

The following is a brief explanation of each of the budget items listed above in the order they are presented.

Research Analyst (24 mos): The Research Analyst I positions will be used to accomplish four tasks. These include preparation and manipulation of data within the computer system to handle routine requests for d-2 analysis and land selection scenarios; analysis of resource data for presentation to State, Federal and Congressional entities regarding d-2 impacts on state lands; development and application of accountable land selections processes for immediate selection demands; and finally completion of the required refinement and updating of the resource inventory which is to take place during the next six months.

Associate Planner (12 mos): The Associate Planner position will have responsibility for the overall direction of the d-2 analysis and preparation of presentations to be given on d-2 impacts on state lands. The Section's current Associate Planner position is responsible for completing selections activities which are related to the Governor's request and the establishment of an accountable process as well as its administration. The requested Associate Planner is definitely required to provide fulltime guidance on the d-2 issues and yet enable us to continue completing our selections responsibilities with existing personnel.

Data Clerk (14 mos): The Clerk personnel will be used for the very necessary and complicated function of continuing to check and double check resource and land status data to assure its validity before the conclusions from such computer runs and data are used in official presentations and positions. This element is central to the credibility of the entire system and the State's positions on d-2 and land selections. The credibility of our efforts are damaged if there are inaccuracies due to mechanical errors. The elimination or minimization of such errors is a prime responsibility of these data clerks. The work time needed to complete these tasks is considerable and cannot be overstated. The Data Clerks also assist in the preparation of the State's formal presentations and mechanical mapping activities.

Research Analyst II(4 mos): The Research Analyst II position is responsible for generating and analyzing the selections scenarios which must be completed to provide a basis for our identification of 60 million acres of land suitable for selection by late November and the narrowing down of these selection recommendations during the months which follow.

Criteria Document Writer Analyst (3 mos): In response to the Governor's request that our selection efforts be publicly accountable, a document must be written which explains the general criteria we use in the land selection process. A person to accomplish this during the immediate future is mandatory if this system is to be credibly presented to the Alaskan public.

Contingency Hires: The small amount of money for contingency hires is to cover unforeseen circumstances requiring clerical or mechanical work associated with putting together documents, presentations or booklets of data.

Cartographer (2½ mos): Though the majority of cartographic efforts associated with our land selection process and the d-2 analysis presentation process will be provided by Cartographers within the Section, the unexpected number of presentations and maps variations that will be needed in providing the d-2 assessment and the selections nominations require some additional cartographic time. This minimal 2½ months of cartographic time should enable us to complete these mapping projects on schedule.

Contractual

Systems Analyst (12 mos) Programming:

The focal point for our land selections efforts and our d-2 analysis rests on the ability of our computer system to be manipulated to provide information for the great variety of changing d-2 proposals and selections scenarios. Consequently, a large amount of computer programming and systems-analysts help is mandatory if any of this work is to get done. This system is still being modified to meet the new types of demands associated with d-2 and accelerated land selections which also require this manpower.

Computer Time:

During the first two months of FY 78, 150 hours of computer time has been required to complete the demanded d-2 analyses alone. In order to continue meeting the demands for d-2 analyses and manipulating this large amount of data for the accelerated land selection purposes, at least an additional 600 hours of computer time will be required. Due to the complexities of the d-2 and land selections systems, along with the large areas to be covered, require significant amounts of computer time.

d-2 Data Assessments and Addendums, Document Publication and Distribution:

The publication and distribution of the initial d-2 proposals assessments is estimated to cost in the range of over $20,000. It should be recognized that these are voluminous documents providing the data base for d-2 assessment work to be carried on by the State and interested parties within the State for the next year and a half. Addendums to this data for the final Department of Interior, and Congressional proposals will be necessary, and are estimated to require an additional $10,000 for printing, publication, and distribution costs.

Criteria Document Publication, Distribution, Statewide public Participation, Review, and Analysis:

In order to fulfill the Governor's mandate that our selection process be publicly accountable, we must set out criteria used in selections for public review and assure widespread awareness of these criteria and opportunities for public participation and comment. The cost provided for in this supplemental refer only to expected publication costs of

the criteria document. The Department is planning to cover the costs of public meetings from existing budgets.

Space: In order to provide facilities for the additional personnel, additional space is necessary.

Commodities: This small amount of commodities money is inserted for drafting materials, xeroxing, and telephone bills associated with the project including long distance calls to Washington, D. C., and other miscellaneous items.

Travel: During FY 78, at least ten trips to Washington of Section personnel will be necessary to assist in presentations of our d-2 assessment and land selections data to various federal departments, and Congressional committees and staffs. This amount of travel to D. C. was not expected at the time the budget was formed and actual travel demands may easily be in excess of this estimate.

Equipment: This covers the equipment necessary for the additional personnel including files, desks, and tables as well as storage facilities for the large amounts of computer data that will have to be referred to in the future which will result from the various phases of this project.

3. Present FY 78 Budget Allocations and Section Responsibilities

The Planning and Research Section of the Department of Natural Resources was allocated a budget of $367,000 for FY 78. The vast majority of this budget, $310,700, was allocated for personal services expenditures to support the Planning Section's ten permanent positions. These ten permanent positions include two clerical staff members, two cartographers, and six professional planner positions. The remainder of the budget was divided as follows:

Contractual Services	$33,500
Travel	14,500
Commodities	2,500
Equipment	400

The contractual services portion of the budget was divided between computer time for land selections, $10,000; computer time for water permits, $4,000; space rental, $10,000; and office equipment, drafting material, and publishing, $9,500.

The large portion of this budget, Personal Services Expenditures, provides little if any leeway for additional expenditures in other areas, and currently supports several high priority items. Of the six professional positions budgeted, one of the Natural and Physical Sciences Planner positions is being used for a special leasing advisory position which does not relate to the Section's efforts. Four of the other five professional positions are currently filled and the one unfilled position, a Principal Planner position, will be filled by October of this year. Consequently the Personal Services portion of the budget provides a leeway of only $9,000 due to the unfilled Principal Planner position during the first three months of Fiscal 1978.

The responsibilities being carried out by the five professional positions currently dealing with Section activities include such high priority items as coordination of the Delta Barley project; coordination and planning involvement in the recently passed homesite act; analysis of the recently authorized agricultural rights disposal and development statute; coordination of the Department's implementation of the recently passsed coastal management act and administration of federal monies provided to aid coastal management programs; coordination, and direction of the newly created Departmental water planning program and establishment of a new water section; establishment of the State's land selection program and provision for analysis and strategy for that program; analysis and data preparation for the establishment of the Department's general land management policies; involvement in the revision of the Department's classification system; and coordination of Department activities with the Department of Transportation, including the haul road question.

The Section also has responsibilities involved with coordination of all Department planning, analysis, and research efforts, as well as initiation of new programs between various federal land management agencies, native land owners, and the Department. The Section is also responsible for coordination of various review functions regarding policy decisions.

Finally, the Section manages a variety of land and water use planning programs throughout the State ranging from the Susitna Valley, Kenai Peninsula, Prince William Sound, the Fairbanks area, and the North Slope, as well as managing a major petroleum development study which will input directly to oil and gas leasing considerations on the North Slope. The section is also the lead agency for developing a computerized resource inventory and analysis system for the entire state. (This program provides the basic data for the d-2 and land selection assessment.) These projects all have high priority within the Department of Natural Resources and all have previous committments for final products under time deadlines. Elimination of these ongoing programs would severly hamper the management and administration processes of the Department. In addition approximately 33% of our budgeted professional manpower, 50% of our budgeted drafting manpower and 33% of our budgeted clerical manpower are presently involved in d-2, land selection, and selection process projects.

The largest budget unit after permanent personnel is Contractual Services which includes $33,500. The vast majority of this budget component has already been spent or committed in the support of computer services for our land selections and resource inventory efforts, rent payments, and support of existing office equipment, drafting material, and publication of already completed documents.

It is obvious from the above, that the current budget provides very little leeway for support of an accelerated land selection program and analysis of d-2 issues. The budget demands of these new programs fall primarily in the Contractual Services category for computer time, systems analyst time, publication of documents, and preparation of mapping materials. Another large portion of the demand budget falls in the area of Personal Services money for temporary employees to help with the vast amount of clerical and data gathering duties associated with an analysis of land selection issues and d-2 proposals.

The current budget as noted above provides barely $8-9,000 of excess money for temporary hires and absolutely no additional monies for the great amount of contractual services required. The possibility of using much additional time of the five permanent employees beyond that already allocated to the land selections process is slight and would not greatly change the need for additional monies. Most of the items being dealt with by the professionals are high priority items. As noted above, one of the professionals is already working fulltime on the land selection and d-2 issues under the present budget and at least two of the other professionals are already spending a large portion of the time on the land selections/d-2 issues.

Supplemental Request

Based upon the above description of the needs and analysis of current budget allocations and section committments, the Planning and Research Section hereby requests a supplemental budget appropriation of $254,916. The need for expeditious process of this request is obvious in view of the federal and Congressional deadlines regarding the d-2 issues, the Governor's ninety day committment to provide land selection nominations, and the immediate demand upon the Section for products in these areas which cannot be provided without this supplemental.

HB
647

COMMITTEE REPORT

SENATE

FURTHER: FINANCE

6/5/78

Date: 6/12/78

Mr. President:

The Committee on RESOURCES has had CSHB 647 making transfers between FY 78 appropriations for analysis of royalty oil purchase proposals and for operating expenditures of the Steering Council for Alaska Lands

under consideration and (a majority of the committee) (the committee reports it back as follows)

( ) recommends it do pass ( ) recommends it do not pass

( ) recommends it do pass with attached amendment(s)

( ) recommends it be replaced with CS for _____

and _____ ( ) new title ( ) same title

( ) AND attaches a Letter of Intent ( ) New Fiscal Note

(X) reports it back without recommendation

( ) and recommends it be referred to the _____ Committee

MEMBERS SIGNING DO PASS:

OTHER RECOMMENDATIONS:

Chairman

S 60 (rev. 6/77)

HB647

January 17, 1978

The Honorable Hugh Malone
Speaker of the House
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18 of the Alaska Constitution, and in accordance with AS 24.30.060(b) and the Uniform Rules of the Alaska State Legislature, I am transmitting a bill making appropriation adjustments for the Department of Revenue.

This measure will permit the use of $109,000 originally appropriated for state-facilitated gas pipeline financing, which is no longer needed for that purpose, to conduct in-depth investigations of the bids for state royalty oil.

Fiscal information is enclosed.

Sincerely,

S/ JSH

Jay S. Hammond
Governor

STATE of ALASKA

MEMORANDUM

RECEIVED
DEC - 5 1977
BUDGET & MANAGEMENT

TO: Ron Lind, Director
Division of Budget & Management
Office of the Governor

DATE : December 5, 1977

FROM: Norene Hirsh
Finance Officer
Department of Revenue

SUBJECT: FY 78 Supplemental Request
for Treasury Management

HB647

Attached please find our memo and FY 78 Supplemental Request.

Please note we are lasping $109,000 to investigate financing for the All - Alaska Gas Pipeline (item one on fiscal note CS HCR 27) and requesting a supplemental appropriation of $109,000 for the Financial Analysis of the Proposals to purchase the State's Royalty Oil.

The Supplemental Request is to remain under Treasury Management's administration.

Attachments

STATE of ALASKA

MEMORANDUM

TO: Ron Lind, Director
Division of Budget and Management
Office of the Governor

DATE : December 2, 1977

FROM: Jim Edenso
Deputy Commissioner
Department of Revenue

SUBJECT: Supplemental Appropriation to Pay for Financial Analysis of the Proposals to Purchase the State's Royalty Oil

The Alaska Royalty Oil and Gas Development Board requested the Department of Revenue by resolution to perform the above evaluation. It further requested that the Department hire an independent financial consultant to assist in the above analysis. The Department submitted a request for proposals to the following firms:

1. White Weld, Inc.
2. Kidder Peabody and Co.
3. Dillon, Read and Company, Inc.
4. Smith Barney, Harris Upham & Co., Inc.

The Department of Revenue elected to hire the firm of Smith Barney, Harris Upham & Co., Inc. to perform the financial analysis. The cost of the contract is not to exceed $100,000 plus expenses.

The 1977 legislature passed Committee Substitute for House Concurrent Resolution #27 directing the Department of Revenue to investigate financing an all-Alaska gas pipeline. The dollars appropriated for this investigation amounted to $59,000 in FY 1977 and $109,000 in FY 1978. The contract was let to Smith Barney, Harris Upham & Co., Inc. to perform the gas pipeline investigation.

The El Paso Gas Pipeline withdrew its application to construct an all-Alaska gas pipeline in September, 1977 and the Department of Revenue subsequently cancelled the contract with Smith Barney immediately upon learning of El Paso's application withdrawal.

The final billing for the gas pipeline investigation is in an amount of $50,000. It is expected that the $50,000 will be paid out of the FY 77 special appropriation under HCR #27.

The payment for the financial analysis of the proposals to purchase Alaska's royalty oil is expected to come from a supplemental appropriation utilizing the FY 78 residual dollar amount of $109,000 for investigating the financing of an all-Alaska gas pipeline. It is mandatory that the State fully analyze the ability of the firms proposing to purchase Alaska's royalty oil to implement their proposals.

The desirability of using a supplemental appropriation of $109,000 for the financial analysis of royalty oil sales rather than investigating the all-Alaska gas pipeline (which is now a moot question) is obvious. Should the State, for all intents and purposes, make a disposition which ultimately costs the State millions of royalty revenue dollars it will be most unfortunate. The kind of financial analysis contemplated will assist the State in making the most "correct" decision.

Your assistance in helping to approve a supplemental appropriation will be greatly appreciated.

JE:ge
cc: Sterling Gallagher, Commissioner

CS
HCR
27

FISCAL NOTE

I. REQUEST
Bill/Resolution No. House Concurrent Resolution #27 - C.S
Title Relating to State-facilitated financing of an All-Alaska Gas Pipeline
Requested by Rep. Russ Meeking Date: April 5, 1977

II. FISCAL DETAIL
Agency Affected Department of Revenue
Program Category Affected Development
Budget Request Unit(s) Affected Treasury Management

EXPENDITURES (Thousands of Dollars)

	Special Appropriation FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
100 PERSONAL SERVICES						
200 TRAVEL	4.0	4.0				
300 CONTRACTUAL	55.0	315.0				
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	59.0	319.0				

FUNDING (Thousands of Dollars)

GENERAL FUND	59.0	319.0				
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

FULL TIME	-0-	-0-				
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)
These Professional Services Contracts which will include expenses for Travel, Postal, Meals, Taxi, Limo & Telephone (L.H.) and Administrative Travel.

	FY 77 Special Appropriation	FY 78 Fiscal Note	TOTAL
1. To investigate financing All-Alaska Gas Pipeline			
Contract Expenses	47.5	97.5	
	7.5	7.5	
Administrative Expenses	4.0	4.0	
	59.0	109.0	
2. To investigate financing thru equity ownership of All-Alaska Gas Pipeline		50.0	
Contract Expenses		10.0	
		60.0	
3. To investigate financing of All-Alaska Royalty Gas Pipeline		140.0	
Contract Expenses		10.0	
		150.0	
	59.0	319.0	378.0

IV. DATE April 5, 1977 PREPARED BY James A. Rhode
AGENCY Aide to Rep. Cowper, Chairman
PHONE House Finance Committee

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named) 1

FY 73 SUPPLEMENTAL REQUEST ANALYSIS

	FY 76 Actual	FY 77 Final Auth.	FY 77 Actual	FY 78 Gov. Budget	FY 78 Initial Auth.	FY 78 Current Auth.	Expenditures + Encumbrances 7/1 - 10/31	Other Obligations 7/1 - 10/31	Projected Expenditures + Encumbrances 11/1 - 6/30	FY 78 (Deficit) or Excess	FY 79 Maintenance Request
ERSONAL SERVICES	444.6	490.7	475.8	593.3	579.3	605.6	159.1		446.5	-0-	671.6
RAVEL	11.8	41.4	43.7	22.8	32.4	32.4	8.5		23.9	-0-	24.2
ONTRACTUAL SERVICES	417.4	636.0	507.6	451.9	805.2	805.2	121.8		685.4	-0-	512.2
OMMODITIES	4.5	4.7	6.1	4.9	5.5	5.5	.6		4.9	-0-	5.1
QUIPMENT	2.9	3.4	3.3	6.0	5.4	5.4	2.3		3.1	-0-	7.5
ANDS, BLDGS. ...		46.1	46.1	46.1	46.1	46.1	46.1		-0-		46.1
RANTS, CLAIMS, ...											
ISCELLANEOUS	.7	1.4	1.4								
TOTAL	881.9	1,223.7	1,084.0	1,125.0	1,473.9	1,500.2	338.5		1,161.7	-0-	1,266.7
EDERAL RECEIPTS											
EQUIRED GF MATCHING											
THER GENERAL FUND	626.7	889.9	750.2	710.2	1,058.7	1,085.0	243.7		841.3		766.3
NTER-AGENCY RECEIPTS											
Public Employees and Teachers Retirement Fund	225.2	333.8	333.8	414.8	415.2	415.2	94.8		320.4		500.4

AGENCY Revenue BRU Treasury Management COMPONENT REVISED

FY 78 SUPPLEMENTAL REQUEST ANALYSIS

	FY 76 Actual	FY 77 Final Auth.	FY 77 Actual	FY 78 Gov. Budget	FY 78 Initial Auth.	FY 78 Current Auth.	Expenditures + Encumbrances 7/1 - 10/31	Other Obligations 7/1 - 10/31	Projected Expenditures + Encumbrances 11/1 - 6/30	FY 78 (Deficit) or Excess	FY 79 Maintenance Request
...ONAL SERVICES	444.6	490.7	475.8	593.3	579.3	605.6	159.1		446.5	-0-	671.6
...VEL	11.6	41.4	43.7	22.8	32.4	32.4	8.5		23.9	-0-	24.2
...TRACTUAL SERVICES	417.4	636.0	507.6	451.9	805.2	805.2	121.8		683.4	-0-	512.2
...MODITIES	4.5	4.7	6.1	4.9	5.5	5.5	.6		4.9	-0-	5.1
...UIPMENT	2.9	3.4	3.3	6.0	5.4	5.4	2.3		3.1	-0-	7.5
...NDS, BLDGS. ...		46.1	46.1	46.1	46.1	46.1	46.1		-0-		46.1
...NTS, CLAIMS, ...											
...SCELLANEOUS	.7	1.4	1.4								
TOTAL	881.9	1,223.7	1,084.0	1,125.0	1,473.9	1,500.2	338.5		1,161.7	-0-	1,266.7
...ERAL RECEIPTS											
...QUIRED GF MATCHING											
...ER GENERAL FUND	626.7	889.9	750.2	710.2	1,058.7	1,085.0	243.7		841.3		766.3
...ER-AGENCY RECEIPTS											
...blic Employees and ...achers' Retirement Fund	225.2	333.8	333.8	414.8	415.2	415.2	94.8		320.4		500.4

AGENCY Revenue BRU Treasury Management COMPONENT REVISED

HB
652

COMMITTEE REPORT

SENATE

3/2/78

FURTHER: FINANCE

Date: _____

Mr. President:

The Committee on RESOURCES has had CSHB 652 am (eff. date am) under consideration and (a majority of the committee) (the committee reports it back as follows)

( ) recommends it do pass ( ) recommends it do not pass

( ) recommends it be replaced with CS for _____

and _____ ( ) new title ( ) same title

( ) AND attaches a Letter of Intent ( ) New Fiscal Note

( ) reports it back without recommendation

( ) and recommends it be referred to the _____ Committee

MEMBERS SIGNING DO PASS:

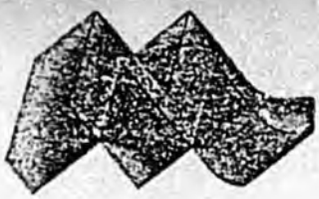
OTHER RECOMMENDATIONS:

R. Poland
Chairman

S 60 (rev. 6/77)

NATIONAL D-2 INFLUENCE PROGRAM

	Alternative I (Radio plus nat'l newspapers)	Alternative II (Local plus nat'l newspapers)	Alternative III (Combination of I and II)
Planning & Budgeting	3,500	3,500	3,500
Benchmark Survey	15,000	15,000	15,000
Plan Implementation	750,000	727,000	1,353,100
Follow-up Survey	15,000	15,000	15,000
Subtotal	773,500	761,100	1,386,600
CSHB 652 am Reduction	(81,000)	(81,000)	(81,000)
TOTAL	692,500	680,100	1,305,600



murray, kraft & rockey, inc.
advertising & public relations

3925 Reka Drive, Anchorage, Alaska 99504, (907) 279-3516

AN OUTLINE FOR

THE STATE OF ALASKA

FOR A

NATIONAL d-2 INFLUENCE PROGRAM

Prepared for

Senator Joseph L. Orsini

by

Murray, Kraft & Rockey, Inc.
3925 Reka Drive
Anchorage, Alaska 99504

February 27, 1978

I INTRODUCTION

At the request of Senator Joe Orsini, Murray, Kraft & Rockey, Inc. has prepared the following prospectus, detailing estimated reach and frequency which might be achieved by the State of Alaska, should it desire to go to the American public with messages urging reasonable assignment of d-2 lands.

Obviously, close coordination with our congressional delegation would be required, since rather than "shot-gunning" advertising, our messages should be concentrated in those congressional districts wherein influence is required. However, for purposes of this outline, the agency has selected the 128 leading United States markets, and for purposes of budgeting have assigned market values to the total, based on two different media proposals, and the combination of both.

In order to produce a detailed plan, to include budget allocation by market and medium, with frequency and penetration figures, and specific costs, Murray, Kraft & Rockey, Inc. would require approximately two weeks' time and a preliminary budget of $3,500.

II THE SITUATION

Sometime this summer or fall, the Congress of the United States will consider one or more bills providing for assignment and disposition of the d-2 lands of the Alaska Native Claims Settlement Act. Within Alaska, it is generally conceded that a bill such as the Udall bill could work extreme hardship on Alaskans and our economy. On the other hand, recent events would seem to indicate that the environmental groups opposing a limited d-2 settlement have begun to lose some of their momentum. Obviously, in an election year politicians are inclined to vote "on the right side" on matters which either effect their constituency, or about which their constituents have strong feelings. To this point, most Americans (with the exception of Alaskans) have very little knowledge of, or interest in, the d-2 assignments. Therefore, their elected officials may cast their vote in Congress with relative impunity. As has been shown by the Panama Canal controversy, however, an involved constituency can drastically effect political outcomes. It would be our hope that the attached program could help Alaskans to achieve their goal of an equitable d-2 land settlement.

III OBJECTIVES

A. To reach a substantial portion of the constituents of those United States Senators and Representatives most subject to influence, with sufficient explanatory information, and enough frequency, to win them to Alaska's position.

B. To measure results, both before and after, in order to provide proof positive to these members of Congress that a vote favorable to Alaska's position will not harm them politically with their constituents, and in fact may be of positive benefit.

IV STRATEGY

A. Selection of Target. Immediate meetings with our Congressional Delegates and their staffs, and other resource persons in our nation's capitol, in order to ascertain which congressional districts should be reached. In general, we would tend to concentrate major effort on those votes most subject to influence. Secondary emphasis would be placed on those already supporting Alaska's cause, since these officials also require our assistance with their constituents. Final targets would be those adamant adversaries who are facing strong opposition in their bids for reelection.

B. Survey. As soon as target markets are selected, we would arrange for a survey which essentially would seek to determine what people now know about the d-2 lands issue, how important they consider it to be, and how they feel about it. This would be a bench-mark survey, and would precede the media program.

C. Creation of Program. Working with resource people from the State of Alaska, the agency would seek to create communications material which would educate,

inform and influence the general public. In all instances, materials would give every appearance of factuality and all information would be footnoted where necessary. Should radio be utilized, we would seek to find responsibile, nationally-known spokesmen to help promote Alaska's views.

D. Media Placement. The agency would contract with a nationally reputable media buying service, in order to ensure that materials are delivered to the media in a timely fashion, yet not so far in advance as to alert the opposition. Incidentally, it would be our contention that the Fairness Doctrine may not be invoked against radio stations carrying our messages should this media be selected. This is because of the "local controversy" aspect of past rulings. However, please bear in mind that each station must bear the responsibility for making determination as to whether provisions of the Fairness Doctrine should be afforded, if requested by the opposition. Naturally, fairness provisions apply only to broadcast--not print media.

V MEDIA PLAN

A. The following list of 128 markets constitutes a total population of 117,745,000 American citizens.

Alabama - Birmingham Metro, Mobile, Montgomery, Huntsville

Arizona - Phoenix Metro, Tucson

Arkansas - Little Rock, Fort Smith, Texarkana

California - Los Angeles, Oakland, San Francisco, San Diego

Colorado - Denver-Boulder, Colorado Springs, Pueblo

Connecticut - Hartford, Stamford-Norwalk

Delaware - New Castle, Wilmington

Florida - Dade County Metro, Orlando, Tampa, Talahassee

Georgia - Atlanta Metro, Augusta, Columbus, Savannah

Hawaii - Honolulu

Idaho - Boise City, Pocatello-Idaho Falls

Illinois - Chicago, Arlington, Madison, Rock Island

Indiana - South Bend, Evansville, Indianapolis

Iowa - Davenport, Des Moines, Cedar Rapids

Kentucky - Louisville, Ashland, Lexington

Louisiana - New Orleans, Baton Rouge, Jefferson, Shreveport

Maine - Portland, Augusta

Massachusetts - Boston, Springfield, New Bedford

Michigan - Lansing, Detroit, Grand Rapids, Flint

Minnesota - Minneapolis-St. Paul, Duluth

Mississippi - Jackson, Biloxi, Columbus, Greenville

Nebraska - Omaha, Grand Island, North Platte, Lincoln

Nevada - Las Vegas, Reno

New Hampshire - Manchester, Portsmouth-Exeter

New Jersey - Newark, Trenton, Camden, Patterson

New Mexico - Albuquerque Metro, Las Cruces

New York - New York, Buffalo, Albany

North Carolina - Raleigh-Durham, Charlotte, Greensboro

North Dakota - Fargo-Moorhead, Grand Forks, Minot

Ohio - Cleveland, Columbus, Cincinnati

Oklahoma - Oklahoma City, Tulsa

Oregon - Portland, Salem

Rhode Island - Warwick, Pawtucket

South Carolina - Spartanburg, Greenville, Charleston

Tennessee - Memphis, Nashville, Knoxville, Chattanooga

Texas - Dallas, Fort Worth, Houston, El Paso, San Antonio

Utah - Ogden, Salt Lake

Virginia - Newport News-Norfolk-Portsmouth, Richmond

Washington - Seattle-Tacoma, Olympia, Spokane

Washington, D. C.

West Virginia - Charleston, Huntington, Wheeling

Wyoming - Cheyenne, Casper

1. Plan No. 1 - Basic Radio, Supported by National Newspapers.

The agency would purchase an average of three adult stations per market, with a frequency of four spots per day per station for a period of three weeks. The number of stations per city would vary from one (in the smaller communities) to six (in Los Angeles and New York). This type of selection should deliver an estimated penetration of 60% of the total population, with a frequency per listener of 4.5 times. This amounts to total impressions of 317,915,000 generated in a 21-day period. In addition, radio would be supported by National newspaper schedules.

National Newspapers

Publication	Circulation
New York Times	1,479,862
Washington Post	762,825
Wall Street Journal	1,484,667
Christian Science Monitor	170,087
Total Circulation	3,897,441*

*for total readership of 7,210,266, at an average pass-along factor of approximately 1.85%.

Summary. In one three-week period, Americans receive 323,623,288 impressions urging their support of a reasonable d-2 legislation, under Plan No. 1.

2. Plan No. 2 - Local Newspaper Program.

Newspaper advertising generally tends to reach community thought leaders. We do not wish to appear to be the "blue-eyed Arabs" some of the eastern establishment is calling us. Therefore we feel that advertising should be less than full-page size, contain fairly detailed information, and although all advertising would follow a specific format, we would recommend that each succeeding ad would cover different aspects of the d-2 controversy. Frequency would be one ad per week, in the 128 foregoing markets. Ads would be approximately three-quarters of a page in size, and would appear in 217 newspapers, both morning and evening. Along with the New York Times and the Washington Post, we would once again recommend inclusion of the Wall Street Journal and the Christian Science Monitor--two of the nation's leading national newspapers.

Total combined circulation of all 217 newspapers is approximately 29,203,000. Applying the 1.85 pass-along factor, each ad would have theoretical exposure to 54,025,550 readers.

Multiplying this factor by three--the number of insertions--we would be exposed to a potential 162,076,650 readers. However, the nature of the subject and the ad would dictate against high readership. Therefore, if we assume that one-fourth of all readers actually see the ad, we would have a "noted" factor of 40,519,163. If, of this number, one-fourth read all or most of the ad--a fair average based on national readership surveys--we will have reached with our message a total of 10,129,791 Americans.

VI BUDGET

Plan I - Radio plus national newspapers. $750,000.

Plan II - Local newspaper advertising program. $727,600.

Obviously, the most effective program would combine these two, although not necessarily simultaneously. Rather, we would recommend a six-week program, initiated by radio, and culminating with the newspaper advertising. The total price for carrying out both newspaper and radio in 128 of the leading population centers of the United States would be $1,353,100.

In addition, we estimate the two national surveys at approximately $15,000 each, or a total of $30,000. It is imperative, in our opinion, that the surveys be taken, because we believe that this actual data will provide the basic vehicle for using our advertising effort to influence legislation.

VII CONCLUSION

The foregoing programs are estimated only, but in the agency's experience, should be reasonably accurate, and are inclusive enough to include such factors as creativity, production, and direct expense incurred in formulating and carrying out the program. As an item of general philosophy, we would urge that advertising messages concentrate on people--both the people of Alaska, and the people of the United States who will benefit from Alaskan resources which might otherwise be lost if an unduly restrictive d-2 act is passed. Again, because of the drastic fact of d-2 legislation on Alaskans in all walks of life, we would urge that primary consideration be given to working with Alaskan professional firms and suppliers. Finally, it is our contention that the media themselves will respond more favorably to advertising which is generated in, and from, Alaska--perhaps even to the extent of supplying favorable editorial support.

Wildlife management

Daily News Miner 3/9/78

By SEN. TED STEVENS

Of the many land use management issues involved in the congressional d-2 lands decision, perhaps the most misunderstood is that of wildlife management. There are a number of proposals now before Congress to change the present system of management on federal lands in Alaska.

Under existing law, the regulation of hunting, trapping or fishing of resident fish and wildlife is the responsibility of each individual state. This law, commonly known as the Sikes Act, applies uniformly throughout the country, and under its provision the State of Alaska is responsible for the enforcement of fish and game laws on federal lands in Alaska.

The original authority for the state to oversee fish and game management is found in the Alaska Statehood Act. Under that act, the secretary of interior certified that the state had "made adequate provision for the administration, management, and conservation" of fish and game to serve the national interest.

During the 20 years since statehood, the state has compiled a good record of managing Alaska's fish and game and has developed a number of sophisticated management techniques to deal with wildlife problems unique to Alaska.

Nevertheless, legislation has been introduced in Congress to change this system, but only in Alaska. A number of proposals would involve the federal government in the daily management of fish and game. These proposals ignore the fact that the federal government is already involved in fish and game management through numerous cooperative agreements between the Alaska Department of Fish and Game and various federal agencies in Alaska.

These agreements authorized under existing law provide the federal government with ample authority to protect the habitat—the actual land and water—and leave daily management to the more experienced state agency. This system applies nationwide and has proven itself to be a workable one.

The specific provisions proposed for d-2 legislation that would change this sytem would affect only Alaska. I will firmly oppose such provisions. I will not support any legislation dealing with wildlife management which treats Alaska differently from the other 49 states.

Regulation of fish and game resources is one which concerns all states, and Alaska was granted full rights of statehood under the Alaska Statehood Act. Any change in the system of fish and game management that applies solely to Alaska is a repudiation of the principles under which the State of Alaska was founded.

The governor and the Alaska State Legislature are presently considering changes in fish and game management. The right of the state to enact such changes is fully guaranteed under its constitution and the Statehood Act. This is the way changes in fish and game management policy should be made—not through unilaterial federal legislation. Alaska deserves to be treated as one of the 50 states in all matters, and not as a territory.

A number of d-2 lands provisions currently before Congress would change the present system of wildlife management on federal lands in Alaska. These provisions ignore the fact that the Alaska Department of Fish and Game has been properly and successfully managing the state's wildlife under constitutional authority for the past 20 years.

Certain provisions provide for complete federal takeover of fish and game management on federal lands. Other provisions would require only "federal oversight" over state management activities.

The rationale for these proposals is that the state without federal assistance cannot be expected to protect fish and game and at the same time ensure subsistence and sport hunters are able to use the game. I am opposed to any change in fish and game management which would provide for federal management or oversight. In the long run, such a provision would only serve to hasten the restriction and potential elimination of hunting on certain federal lands.

My experience during the recent bowhead whale controversy convinced me that there is tremendous antihunting pressure in Washington.

During the weeks which the administration was considering its position on the taking of bowhead whale by Alaskan Eskimos, certain environmental pressure groups spent thousands of dollars in a campaign against any taking of bowhead whales.

Full-page ads were placed in major East Coast newspapers, including the New York Times, the Washington Post, the Baltimore Sun, and the Boston Globe, urging the president to support a complete ban on the taking of the bowhead whales. The fact that the whale was taken only by residents of the North Slope of Alaska for subsistence did not matter to those who supported the ban.

These ads went so far as to state that the culture of the Eskimos was not dependent at all upon hunting the whale, even though at the time a number of Alaskans were in Washington to speak personally on the importance of bowhead whale hunting to the Eskimo culture.

Proponents of federal involvement in fish and game management argue that only the federal government can provide for subsistence needs of rural Alaskans. I reject that argument categorically. In the long run, the state is in a far better position to insure the needs of subsistence as well as sport hunting. To involve the federal government in the daily management of fish and game resources would be a great mistake, and I will oppose any such provision.

Instead, I have proposed in my d-2 legislation continuation of the state management of fish and game with a priority for subsistence uses when there is not enough game to go around. The subsistence preference would not be made on a racial or ethnic basis. With continued good management of the state's wildlife by the Alaska Department of Fish and Game, a scarcity of wildlife that would require the subsistence preference should not occur very often.

Editorial Opinion and Comment of

FAIRBANKS
Daily News-Miner

"Independent in All Things . . . Neutral in None"

Other opinions expressed on this page do not necessarily reflect those of the Daily News-Miner.

Small improvements

When the first committee print of H.R. 39 came out a few months back we observed that it had been amended to insure the elimination of sport hunting on all federal lands in Alaska in the next few years. The final committee print to come out of the Alaska Lands Subcommittee was changed quite a bit, but it's still totally unacceptable.

The subsistence section of the first committee print was the product of heavy lobbying in Washington by Alaskan Native leaders and lobbyist Stuart Udall, the former Interior Secretary and first brother of the House Interior Committee. It was aimed directly at the non-Native hunter in Alaska.

It took away Alaska's fish and game management on federal land and said the state could keep those rights only if it quickly adopted the kinds of fish and game regulations the Secretary of Interior demanded. Local councils were established to watch over hunting on these federal lands and advise the secretary how things were going. Only Natives could be on the councils and if the council advised the secretary that there was too much competition for game in an area the state had to give local Native subsistence hunters priority over local non-Native subsistence hunters and all sport hunters.

Committee Print 1 went through the usual amendment process in the Alaska Lands Subcommittee and the subsistance section, Title VII, was a prime target for amendments pushed by Alaska Congressman Don Young. Ron Sommerville of the Alaska Department of Fish and Game also contributed greatly to the amendment effort with his many weeks in Washington D.C. The result is a much-amended T e VII in Committee Print 3 of H.R. 39, which is t. version now being considered by the full Interior Committee.

Congressman Young's biggest success is getting the racial preferences out of the bill. There's no constitutional reason in the world why a Native living in the Alaskan bush should have greater hunting rights than a non-Native living in the next cabin down the river. This is especially true since the Alaskan Natives are getting millions of acres of private land turned over to village and regional corporations which will surely become private hunting reserves for their members.

The bill still retains the federal assumption of fish and game management, however. It only takes a quick reading of the 16-page Title VII to see that the state is forced to jump through all too many hoops and is bound too tightly between the federal government on one hand and the local councils on the other.

Our earlier words on this subject, for instance, pointed out that Title VII requires the state to give priority for subsistence uses over other consumptive uses of fish and game. This remains, and it's unfair in cas s where a game management problem is caused by the subsistence hunters and not sport hunters.

The local councils can recommend regulations to the state and the state must adopt them unless it can prove to the secretary of Interior that the regulations are not supported by substantia. evidence, violate recognized fish and game management principles or would be detrimental to subsistence needs. With the federal government's record on Alaskan game management it's easy to see who's side the secretary will take in any conflict between a local council against the state.

Congressman Young deserves a hearty pat on the back for his efforts on Title VII to date. Despite these small victories, however, the H.R. 39 is still completely unacceptable in its approach to fish and game management.

Wednesday we lost the fifth major try by Alaskans to get the d-2 bill on a more reasonable tract. Maybe now more Alaskans will realize that the whole philosophy and intent of H.R. 39 is defective and it's time to give up trying to improve it and renew our efforts to kill off the whole thing.

Interior Wildlife Association of Alaska

Conservation: Wise USE of Resources

PHONE (907) 452-3788 • BOX 60255 • FAIRBANKS, ALASKA 99701

BOARD OF DIRECTORS:
Dr. P. B. Haggland, Chairman
H. C. "Bud" Wiese, Treas.
William G. Stroecker
Richard A. Burley
William I. Waugaman
Charles L. Gray

March 9, 1978

Mrs. Kay Poland, Chairman
Senate Resources Committee
Pouch V
Juneau, Alaska 99801

Dear Mrs. Poland,

Our group would like to speak against CSHB 652 in it's present form .

This legislation would appropriate monies for the Steering Committee to use to lobby on the d-2 issue.

We belive CSHB 652 should be more specific in the way this money will be used. There is no State position on most major points of the d-2 problem.

For instance, it would be our desire that any representative from the State tell others that Governor Hammond did not speak for the average Alaskan last August 12th when he testified before the House Subcommittee on Fisheries and Wildlife and the Environment, when he said "I would hope that this Congress establishes the priority of subsistence uses where there is a conflict. I believe that this is a legitimate subject for legislation, and hope that this principle, which has been State policy for some time, might be enacted into federal law." (Page 17 of his speech).

This is exactly what HR-39 does in Title VII, consisting of 16 pages of bureaucratic garbage. Doesn't Governor Hammond know there is already a conflict for every critter that moves?

We don't believe the average Alaskan wants a subsistence provision dictated in the d-2 legislation, especially if they have ever stopped to realize what a can of worms is being opened. It means federal strings tied to wildlife management, expensive over-sight of the State's programs (tieing up State employees and tax money) and a breech of the State's Constitution which says game will be managed for the common use.

Probably worst of all, they would be attempting to regulate something that no one has yet been able to define, for "subsistence" means different things to different people under different conditions. For instance, is a subsistence user one who spends all his time in a village or on a trapline? If so, how small of a village? Does the use of modern firearms and snow machines constitute subsistence hunting? How about the native that works at a high paying oil-field job; does he maintain subsistence hunting rights? How about the average trapper that spends three months on a trapline and nine months in Fairbanks, where he works three or four months at construction? How about the village resident who accompanies his urban relative afield to cover

for the game taken? How about the inevitable destruction of our game if left to regionalized regulation?

We would like to point out that this subsistence monster would be in court more than it would be out. It is an intolerable monstrosity concocted by bureaucrats and we don't think that those who foster it realize the ramifications or else they have ulterior motives that are not in the State's nor the resource's best interests. We believe the needs of bush residents and the wildlife can best be handled as they have been in the past--without any half-baked over-night plan hatched in Washington.

We have two suggestions we would like to make before our tax money is squandered on any nebulous d-2 lobbying effort:

1. A State position be formulated on major points of the d-2 legislation, including a stand against federal subsistence legislation.

2. Part of the money be ear-marked to bring Congressmen (particularly Senators) to Alaska to talk with the people who will be most affected by their actions.

Sincerely,
INTERIOR WILDLIFE ASSOCIATION

Charles L. Gray

CG/ht

Dr. P. B. Haggland

H. C. "Bud" Wiese

William G. Stroecker

Richard A. Burley

William I. Waugaman

HB 652

STEERING COUNCIL FOR ALASKA LANDS

Rep. Steve Cowper, Chairman
(907) 465-3706

MEMORANDUM TO MEMBERS OF THE
HOUSE INTERIOR AND INSULAR AFFAIRS COMMITTEE

Subject: D-2 Legislation

The Steering Council for Alaska Lands has and will continue to present the balanced viewpoint of Alaskans on the D-2 issue. In many of these positions, we are in agreement with H.R. 39. Despite our efforts, the Alaska Coalition has persistently criticized our activities and distorted our position. Until today, we have chosen not to counter their allegations.

Unfortunately, a March 3, 1978, press release issued by the Coalition goes beyond the bounds of accuracy and propriety. We believe the record must be corrected so that this ill-conceived release does not influence the deliberations of the House Interior Committee at this critical juncture.

In our efforts to accurately represent the D-2 sentiment of Alaskans, the Steering Council commissioned a 42-question statewide survey on the issue. The preliminary results have just been received by the Council. The poll at no time asked Alaskans whether they favor or oppose H.R. 39. In fact, H.R. 39 is never mentioned in any of the questions.

The poll does indicate that the majority of Alaskans:

-favor giving permanent protection as parks and wildlife refuges to certain public lands in Alaska (61%)

-favor building surface transportation access to some or all parks in Alaska (78%)

-believe that Alaska's resources can be developed without destroying its wilderness, scenic and wildlife values (61%)

-find that some parks and refuges in the State are inaccessible because of the cost of getting there (62%).

We believe that the Council's poll reflects the diversity and complexity of the issues facing Alaskans and Congress in the D-2 legislation. The Council is appalled by the fallacious and irresponsible claim that the survey demonstrates majority support for the Alaska Coalition and H.R. 39.

The Council will soon provide the full 42-question survey to all members of the House of Representatives, so that the members can determine the facts for themselves.

Two recent statewide polls of Alaskans conducted by groups unaffiliated with the Council have been published in the Alaskan press. Both surveys ask State citizens what their feelings are toward H.R. 39. We report their published findings:

-a survey conducted for the State of Alaska's Commerce Department found 67% of Alaskans opposed to H.R. 39.

-a poll conducted for an Alaskan citizen's group found 64.7% opposed to H.R. 39.

We hope this memorandum sets the record straight.

620 C Street, S.E.
Washington, D.C. 20003

ALASKA COALITION *"To Preserve Alaska's National Interest Wildlands"*

CONTACT: Rita Molyneaux
(202) 293-2732

IMMEDIATE RELEASE
March 3, 1978

ALASKANS FAVOR H.R. 39

The Alaska Coalition today claimed the support of the majority of Alaskans in the debate over protection of federal lands in Alaska.

Citing a survey conducted by the Steering Council for Alaskan Lands, a Coalition spokesperson reported, "Despite questions in the survey obviously slanted to elicit negative responses, Alaskans have endorsed the concept of H.R. 39."

The survey asked:

"Do you feel certain public lands in Alaska deserve receiving protection as national parks or wildlife refuges even though you may not be able to visit all of them?" Responses were:

61.0% Yes, deserve permanent protection

20.8 No

7.7 No opinion/unsure

10.5 Yes, though not in amounts reported

According to the Coalition the lively debate over the issue in Alaska has been an educational experience for Alaskans. Understanding of the complexities of the questions has built public support for the legislation protecting important wilderness and wildlife areas.

Territorial Sportsmen, Inc.

P. O. Box 761

Juneau, Alaska 99801

MATTERS RELATING TO COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 652

Madam Chairman and Members of the Committee:

My name is A. W. "Bud" Boddy. I am representing the Alaska Wildlife Federation, a statewide organization dedicated to the principles of wise use and proper management of our resources. We appreciate the opportunity of commenting on Committee Substitute for House Bill No. 652.

We are opposed to Committee Substitute HR652 in its present form and I hope to give the committee some of the reasons in the background as to our opposition. During the many hearings held by Mr. Seiberling and his committee on HR39, members of our organization testified as to their concern and opposition as to including the section on subsistence use in any Federal legislation. We believe this is a State problem and a State responsibility. It should be resolved at the State level. Our State Constitution specifies that the fish and game resources of Alaska belong to all of the people of the State. To our knowledge none of the proposed money would be used to assure the deletion and defeat of the subsistence section from HR39. We feel that this is another example of where the State rights are being eroded. Very briefly the legislation proposes to establish Regional Fish and Game Boards and would give priority to rural user groups. We note also that if the State does not adopt legislation following the guidelin established by the Secretary of Interior within a certain specified time, the Secretary of

Interior will have the authority to impose Federal regulations on public domain lands. We believe that it is impossible for anyone to identify a subsistence hunter or fisherman or a sports hunte · or fishermen, both take game and fish for food and family consumption. We would hope that this committee would endorse the following points for consideration prior to finalizing action on Committee Substitute 652.

1. We will work together and utilize our individual resources for the mutual benefit of all of our members on those matters which are of mutual concern.

2. We will support any forthcoming D-2 legislation ONLY to the extent that it will provide the maximum opportunity for Alaskan sportsmen to continue to participate in the wise management and utilization of fish and game resources within the State through a broad based concept of multiple land use.

3. We will only support legislation which does not discriminate between residents of the State of Alaska with regards to their Constitutional rights to share equitably in the utilization and enjoyment of the Fish and Game resources of the State.

4. We will vigorously oppose any legislation which threatens to take away from the State of Alaska the right to manage its own fish and game resources as provided for and guaranteed by the Alaska Statehood Act and the Constitution of the State.

We would again emphasize that if State funds are to be used, they be used in a manner which would include and

assure that the above points are included in any Federal legislation.

Again, we would emphasize support of the present fish and game management concept in the State of Alaska and believe that it should be retained and improved upon. We appreciate the opportunity of presenting our views to you today. If there are any questions, I would be most happy to try and answer them.

A. W. "Bud" Boddy, Representative of the Alaska Wildlife Federation

JAY S. HAMMOND
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

July 9, 1975

Mr. Clark Engle
Vice President
International Professional
Hunters Association
4129 Lana Center
Anchorage, Alaska 99502

Dear Mr. Engle:

With only three votes in opposition, it is clearly evident that the Legislature desires to split the Board of Fish and Game. While I personally do not believe that such a move would significantly improve management of those resources, I am well aware that a veto is not likely to be sustained.

Quite probably little legislative attention will be given to other designs to improve Fish and Game Board performance, such as that sponsored by myself, until such time as the Legislature concludes that simply splitting the Board does not remedy the situation. While it remains untried, in all probability it will be viewed by many as a prime solution.

The bill presents significant problems which, hopefully, can be remedied through amendment next session. Many of these have been discussed with some advocates, and with the assurance that these will be addressed during the next session, I am permitting the bill to become law.

A chief concern with FCCSSB 131 is that the final version of the bill incorporates (an amendment providing what could be a sorely abused power to local advisory committees to arbitrarily close seasons.) Unlike existing law, such closures could not be overridden by any other authority even if the public interest and welfare required it.) If not unconstitutional, this provision is at least very dangerous and should be amended at the first opportunity. Should a local advisory committee, for example, choose to close a fishing season in order to exert economic leverage to improve prices, they would find to their dismay that the bill provides no mechanism by which the season could be reopened by either themselves or the Commissioner. Furthermore, should local advisory committees choose, they could severely inhibit the sport hunting and fishing capabilities of those who live elsewhere by simply closing the season.) It has been rumored that local advisory committees may well close the season on those

animals and fish which might be deemed trophy or recreational species and instead confine all activities to local subsistence efforts. While this may or may not be warranted, it is not likely to be viewed with enthusiasm by those who live in metropolitan areas.)

This legislation establishes separate regulatory authorities for Fish and Game management on the premise that each is unique and mutually exclusive in many ways. However, there are many common qualities which are biological, social, economic and administrative in nature. These qualities necessitate close and harmonious working relationships between the two boards. Unfortunately, the legislation fails to provide procedures to guide boards in dealing with shared responsibilities. Rules governing joint meetings and the transaction of official business are either missing or ambiguous. For example, there is not even a mechanism for dealing with tie votes. While exercise of goodwill might temporarily forestall serious problems, the act must be amended to give the boards the tools required.

While the legislation is intended to enlarge the roles of advisory committees and resource management, it actually introduces such ambiguity and vagueness as to render their operation difficult at best. The law fails to specify whether each board must establish and improve its own advisory committees or whether a single system of advisory committees serves both boards. In view of the problems already existing in relation to conduct of official business at joint board meetings, the successful operation of the advisory committee system is certain to be further hindered.

The splitting of regulatory authority between a fisheries board and a game board means that proper interest in geographical representation on these new boards cannot possibly be obtained by merely reappointing all of the former members of the Board of Fish and Game. While such members have served with devotion and distinction, it will be necessary to realign board membership with several appointments of Alaskans who have not formerly served. Moreover, it will be necessary to make some of these appointments very quickly in order to be able to deal with issues requiring immediate attention.

Since there are only seven members on each board, it is obvious that many areas of the State which previously had representation on the board dealing with both Fish and Game matters now have a member on one board only. Other areas will be denied any representation whatsoever. The new bill actually reduces the area of representation rather than expands it. I fear that once the public realizes such to be the case, there will be ongoing efforts

to constantly expand both boards in order to assure every area and every special interest adequate representation. This, of course, is one of the basic faults with the current board system, as it poses an absolute impossibility. Under such philosophy, adequate representation cannot be acquired without appointing everybody in the State to the Board of Fish and Game. Since the board members will now receive a hundred dollars a day while in session, the inclination to expand the board further should be resisted by the Legislature as it will be by this Administration. I have been assured by the proponents of the bill that they share this concern and will, as well, resist further enlargement.

Sincerely,

Jay S. Hammond
Governor

WE APLA ARE OPPOSED

TO THE PASSAGE OF H. B. 652, which would appropriate money for legislators to lobby on the D-2 land question.

WE BELIEVE THAT THERE ARE ONLY A SELECT FEW PEOPLE WHO UNDERSTAND THE MANY FACETS OF THE D-2 PROBLEM AND CAN ADEQUATELY TALK INTELLIGENTLY ABOUT THEM TO CONGRESSMEN. TO TALK ABOUT THE D-2 LANDS IN A GENERAL WAY WE BELIEVE ACCOMPLISHES VERY LITTLE. TO SPEND STATE MONEY WHICH REPRESENTS ALL THE TAXPAYERS IN THE STATE SHOULD BE DONE SO THAT ALL THE SPECIAL INTERESTS GET FAIR TREATMENT. TO OUR KNOWLEDGE NO LEGISLATOR HAS ADDRESSED HIMSELF TO LOBBYING AGAINST THE SUBSISTENCE SECTION IN HR 39. THIS SECTION ALONE CARRIES ABOUT 15 PAGES OF THE BILL AND HAS MANY RAMIFICATIONS.

BRIEFLY, IT SETS OFF THE SPORTS HUNTER FROM THE SUBSISTENCE HUNTER IN THE MATTER OF WHO SHOULD HARVEST FISH AND GAME SUPPLIES WHEN THERE IS A LIMITED SUPPLY. FURTHERMORE, IT ALLOWS THE SECRETARY OF INTERIOR TO IMPOSE FEDERAL CONTROL OF OUR FISH AND WILDLIFE ON FEDERAL DOMAIN, UNLESS THE STATE SUBMITS TO THEIR CRITERIA AND DOES EXACTLY WHAT THEY WANT. YESTERDAY SOME OF YOU MEMBERS UNDERSTAND LISTENED TO THE SECRETARY OF INTERIOR ANDRUS'S PROPOSAL OF RESTRICTED PUBLIC USE ON THE HAUL ROAD. EACH DAY SEEMS TO BRING FORTH MORE FEDERAL LEGISLATION ERODING STATE'S RIGHTS. WE THINK IT IS TIME THAT ALL ALASKANS CALL A HALT TO THE EROSION OF STATE RIGHTS AND MAKE A STRONG STAND TO SOLVE OUR OWN PROBLEMS ON THE STATE LEVEL.

THE TERM SUBSISTENCE IS DIFFICULT TO DEFINE BUT H.R. 39 SPELLS IT OUT, AND WE QUOTE FROM THE BILL: "DEFINITION SEC. 703. AS USED IN THIS ACT, THE TERM "SUBSISTENCE USES" MEANS CUSTOMARY AND TRADITIONAL USES IN ALASKA OF WILD, RENEWABLE RESOURCES FOR DIRECT PERSONAL OR FAMILY CONSUMPTION AS FOOD, SHELTER, FUEL, CLOTHING, TOOLS, OR TRANSPORTATION, FOR THE MAKING AND SELLING OF HANDICRAFT ARTICLES INCLUDING CLOTHING, OR FOR THE CUSTOMARY TRADE OR BARTER AMONG SUBSISTENCE USERS FOR PERSONAL OR FAMILY CONSUMPTION."

EVEN WITH THIS DEFINITION WE THINK IT IS GOING TO BE DIFFICULT FOR ANY ONE MAN OR AGENCY TO SEPARATE THE SPORTS HUNTER, WHO HAS CONSISTENTLY HELPED HIS FAMILY BUDGET BY HUNTING FOR AVAILABLE MEAT ANIMALS.

IF ANY STATE MONEYS ARE GOING TO BE APPROPRIATED WE WOULD SUGGEST THAT SOME SPECIFIC AMOUNT BE EARMARKED TO LOBBY IN WASHINGTON FOR THE DELETION OF ~~THE~~ SUCH SECTION AS SUBSISTENCE ~~SECTION~~. WE DO NOT UNDERSTAND WHY THE FEDERAL GOVERNMENT CAN'T SEE THAT THE SECTION IS UNWORKABLE AND WILL CAUSE NOTHING BUT STRIFE.

MR. CHAIRMAN, WE ARE DOUBLY CONCERNED BECAUSE OF THE GOVERNOR'S POSITION ON THIS ISSUE, AND HIS INVOLVEMENT IN ENCOURAGING THE FEDERAL GOVERNMENT TO PUT THIS SECTION INTO HR.39. I WOULD LIKE TO QUOTE FROM ONE OF HIS SPEECHES AUG 12 TO THE ~~XXXX

PRES. SCI OK PER PHONE

A meeting was held ~~Monday~~ December 6, 1977 which was heralded by those present as being a historic step towards establishing a unified voice to speak for all Alaskan Sportsmen on the vital issues confronting them today.

At this meeting the combined Boards of Directors of the Alaska Professional Hunters Association and the Alaska Chapter of the Safari Clbu International along with Mr. Bud Boddy representing the Alaska Chapter of the Nat'l Wildlife Federation joined hands in reaching the following agreements:

I - It is agreed that we will work together AND UTILIZE OUR INDIVIDUAL RESOURCES for the mutual benefit of all our members on those matters which are of mutual concern.

II - It is agreed that we feel ~~pending~~ the PROPOSED D2 legislation is premature and out of context in the orderly transfer of land management in the State of Alaska both with regards to the Alaska Statehood Act and also with regards to the Land Conveyance portions of the Native Land Claims Sttlemnt Act.

III - It is agreed that we ~~can~~ WILL support any forthcoming D2 legislation only to the extent that it will provide the maximum opportunity for Alaskan Sportsmen to continue to participate in the wise management and utilization of Fish and Game resources within the State through a broad based concept of multiple land use.

IV - It is agreed that we will ONLY support legislation which does not discriminate between residents of the State of Alaska with regards to their Constitutional Rights to share ~~in~~ equitably in the utilization and enjoyment of the Fish and Game resources of the State.

VI - It is agreed that we will vigorously oppose any legislation which threatens to take away from the State of Alaska the right to manage its own Fish and Game resources as provided for and guaranteed by the Alaska Statehood Act and the Constitution of the State.

We invite other concerned and interested groups to contact us at 279-7837

MEMORANDUM

To: STEVE COWPER
Chairman
Finance Committee

From: SHARON LONG
Administrative Assistant
(d)(2) Steering Council Budget

Date: February 22, 1978

Re: (d)(2) STEERING COUNCIL BUDGET

$ 85,722.00 STAFF AND OPERATIONS

-Rent and furnishings for offices at 1016 West 6th Avenue, Suite B Anchorage, Alaska 99501

-Plus salaries for staff

$ 12,000.00 PLANNING AND COUNCILING

-Media advice, national and regional

$102,500.00 TRAVEL/SPEAKERS BUREAU

-Includes $70,000.00 for "Speakers Bureau" which would cover Alaska representatives personally contacting every other State Legislature. And, Council members and staff travel for $32,500.00

$ 40,000.00 COMMUNICATIONS INTERNAL

-Telephone, telegraph, telex

$200,000.00 LEGAL REPRESENTATION

-Includes firms with Washington offices with entree to both minority and majority.

$ 15,000.00 SEMINAR/WORK SESSION

-on cooperative management of lands

$ 11,500.00 MATERIALS REPRODUCTION

-Copying of slides, maps, film segments, xeroxing of briefing books, legal opinions, memoranda, and legislation.

$ 13,000.00 PRINTING

-Brochures and other mail out materials.

$ 4,000.00 GRAPHICS DESIGN

-Brochure and report work

$ 6,000.00 RADIO PRODUCTION

-For productions of radio pieces for use in Congressional communications and key congressional districts in the lower 48.

$140,000.00 TV and for FILM PRODUCTION & BROADCAST TIME PURCHASE

-TV: Studio production time for information programs.

-FILM PRODUCTION: Possible expansion of existing film piece or production of new piece depending on conditions in Congress and the U.S.

-BROADCAST TIME PURCHASE: Radio or TV time purchase to air materials.

$ 50,000.00 SPACE PURCHASE

-For purchase of newspaper space in key regions.

$ 10,000.00 DIRECT MAIL

-Information dissemination to Congress, other legislatures, Alaska public.

$ 25,000.00	SURVEY RESEARCH

-For survey of Congressional attitudes and buying a couple questions in an existing Gallup or Harris type poll.

$ 13,000.00	SPECIAL CONSULTANTS

-Hire of individuals on short term basis with special knowledge or areas of influence in a specific issue area.

$ 12,500.00	EVALUATIONS AND REPORTS

-Reports concerning regionalized knowledge and evaluations such as in "Coalition of Western States" type programs.

$ 12,000.00	MISCELLANEOUS EXPENSES

-Such as Projector or video tape machine rentals, messenger service, publicatic subscriptions, transcriptions, paper, pencils, paper clips, push pins, typewriter ribbons, 3 ring binders, scotch tape, rubber bands, map pins, dictionary, phone message pads, etc.

$ 70,000.00	USA NEWS MEDIA CAMPAIGN

-An individual with nation wide entree to major editors and newspaper to conduct a 5 month nationwide newspaper visiting program.

$ 75,000.00	USA NEWS FEED OPERATION

-To set up and execute a system of feeding (d)(2) related News into the various states and regions. This would require relating "our" news to the pertinent issues of a specific state or region.

$831,222.00	TOTAL

Federal-State
Land Use Planning Commission
For Alaska

February 24, 1978

Honorable Steve Cowper
Chairman
D-2 Steering Council
Alaska House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Steve:

As per our conversation, we have developed a preliminary outline for a work session/seminar on cooperative management of lands in Alaska. This seminar is needed to refine the present legislation proposed for the establishment of a Federal/State land use commission or other mechanisms for Federal/State cooperative and coordination of land management.

The intent is to bring to Alaska, five to seven people knowledgable and recognized in the fields of intergovernmental cooperation and land planning and management.

We are compiling a list of people which will include experts in land management systems, intergovernmental agencies, coastal zone management, etc. The list will be forwarded to you upon completion.

The estimated cost of bringing these people to Alaska for a week should not exceed $17,000. What we will obtain from the conference is:

1. Objective review of the present State and Federal relationships.

2. Evaluation of existing bills and preparation of proposed legislation for cooperative management stressing coordinated interagency, intergovernmental land management activities.

We regard this as an absolute priority for achievement of a successful (d)(2) solution. The Steering Council budget should receive the $17,000 because the Commission budget would require a Federal matching sum.

733 W. FOURTH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99501

The following are what appears to me to be the appropriate steps to follow in organizing the seminar:

1. Selection of consultant panel (5 - 7 members).

2. Preparation of assignment and support materials by Commission staff for review by panel members prior to work session.

3. Five day work session in Anchorage with submission of advisory report.

4. Incorporation of recommendation from consultant report into legislative language.

Because of the pressure of time, it will be necessary to reach an early decision concering funding and selection of the consultant panel because of the lead time necessary to organize the panel, develop the assignment and support materials, and provide preparatory time by panel members prior to the initial work session.

We hope to be able to develop the conference for the week of March 27-31, 1978, dependent upon the availability of the consultant panel participants. This is the week that Senator Mike Gravel will be available to participate, and we hope that Governor Hammond will be able to attend as well as yourself and other Steering Council members.

John Katz of the Commission staff and Lidia Selkregg of the University of Alaska are coordinating the conference.

Sincerely,

Walt

Walter B. Parker
State Co-Chairman

THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HB 652
Title Special Appropriation-d-2 Steering Council
Requested by House Finance Date February 6, 1978

II. FISCAL DETAIL
Agency Affected Department of Natural Resources
Program Category Affected NRMEC
Budget Request Unit(s) Affected Administration

EXPENDITURES (Thousands of Dollars)

	FY 78	FY 79	FY 80	FY 81	FY 82	FY 83
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		-0-				

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

There is no cost in administrating this appropriation as the funding is passed through Natural Resources to the Legislative Affaris Agency which provides the appropriate administrative support.

IV. DATE Feb. 6, 1978 PREPARED BY Patrick W. Conheady
AGENCY Department of Natural Resources
PHONE 465-2400

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

HB.652

STEERING COUNCIL FOR ALASKA LANDS

Rep. Steve Cowper, Chairman
(907) 465-3706

MEMORANDUM TO MEMBERS OF THE
HOUSE INTERIOR AND INSULAR AFFAIRS COMMITTEE

Subject: D-2 Legislation

The Steering Council for Alaska Lands has and will continue to present the balanced viewpoint of Alaskans on the D-2 issue. In many of these positions, we are in agreement with H.R. 39. Despite our efforts, the Alaska Coalition has persistently criticized our activities and distorted our position. Until today, we have chosen not to counter their allegations.

Unfortunately, a March 3, 1978, press release issued by the Coalition goes beyond the bounds of accuracy and propriety. We believe the record must be corrected so that this ill-conceived release does not influence the deliberations of the House Interior Committee at this critical juncture.

In our efforts to accurately represent the D-2 sentiment of Alaskans, the Steering Council commissioned a 42-question statewide survey on the issue. The preliminary results have just been received by the Council. The poll at no time asked Alaskans whether they favor or oppose H.R. 39. In fact, H.R. 39 is never mentioned in any of the questions.

The poll does indicate that the majority of Alaskans:

-favor giving permanent protection as parks and wildlife refuges to certain public lands in Alaska (61%)

-favor building surface transportation access to some or all parks in Alaska (78%)

-believe that Alaska's resources can be developed without destroying its wilderness, scenic and wildlife values (61%)

-find that some parks and refuges in the State are inaccessible because of the cost of getting there (62%).

We believe that the Council's poll reflects the diversity and complexity of the issues facing Alaskans and Congress in the D-2 legislation. The Council is appalled by the fallacious and irresponsible claim that the survey demonstrates majority support for the Alaska Coalition and H.R. 39.

The Council will soon provide the full 42-question survey to all members of the House of Representatives, so that the members can determine the facts for themselves.

Two recent statewide polls of Alaskans conducted by groups unaffiliated with the Council have been published in the Alaskan press. Both surveys ask State citizens what their feelings are toward H.R. 39. We report their published findings:

-a survey conducted for the State of Alaska's Commerce Department found 67% of Alaskans opposed to H.R. 39.

-a poll conducted for an Alaskan citizen's group found 64.7% opposed to H.R. 39.

We hope this memorandum sets the record straight.

620 C Street, S.E.
Washington, D.C. 20003

ALASKA COALITION *'To Preserve Alaska's National Interest Wildlands'*

CONTACT: Rita Molyneaux
(202) 293-2732

IMMEDIATE RELEASE
March 3, 1978

ALASKANS FAVOR H.R. 39

The Alaska Coalition today claimed the support of the majority of Alaskans in the debate over protection of federal lands in Alaska.

Citing a survey conducted by the Steering Council for Alaskan Lands, a Coalition spokesperson reported, "Despite questions in the survey obviously slanted to elicit negative responses, Alaskans have endorsed the concept of H.R. 39."

The survey asked:

"Do you feel certain public lands in Alaska deserve receiving protection as national parks or wildlife refuges even though you may not be able to visit all of them?" Responses were:

61.0% Yes, deserve permanent protection

20.8 No

7.7 No opinion/unsure

10.5 Yes, though not in amounts reported

According to the Coalition the lively debate over the issue in Alaska has been an educational experience for Alaskans. Understanding of the complexities of the questions has built public support for the legislation protecting important wilderness and wildlife areas.

HB
657

COMMITTEE REPORT

SENATE

6/10/78

FURTHER: _____

_____

Date: 6/12/78

Mr. President:

The Committee on RESOURCES has had HB 657 transferral of tide and submerged lands

under consideration and (a majority of the committee) (the committee reports it back as follows)

(X) recommends it do pass ( ) recommends it do not pass

( ) recommends it do pass with attached amendment(s)

( ) recommends it be replaced with CS for _____

and _____ ( ) new title ( ) same title

( ) AND attaches a Letter of Intent ( ) New Fiscal Note

( ) reports it back without recommendation

( ) and recommends it be referred to the _____ Committee

MEMBERS SIGNING DO PASS:

_____

_____

_____

_____

_____

_____

_____

_____

OTHER RECOMMENDATIONS:

_____

_____

_____

_____

_____

_____

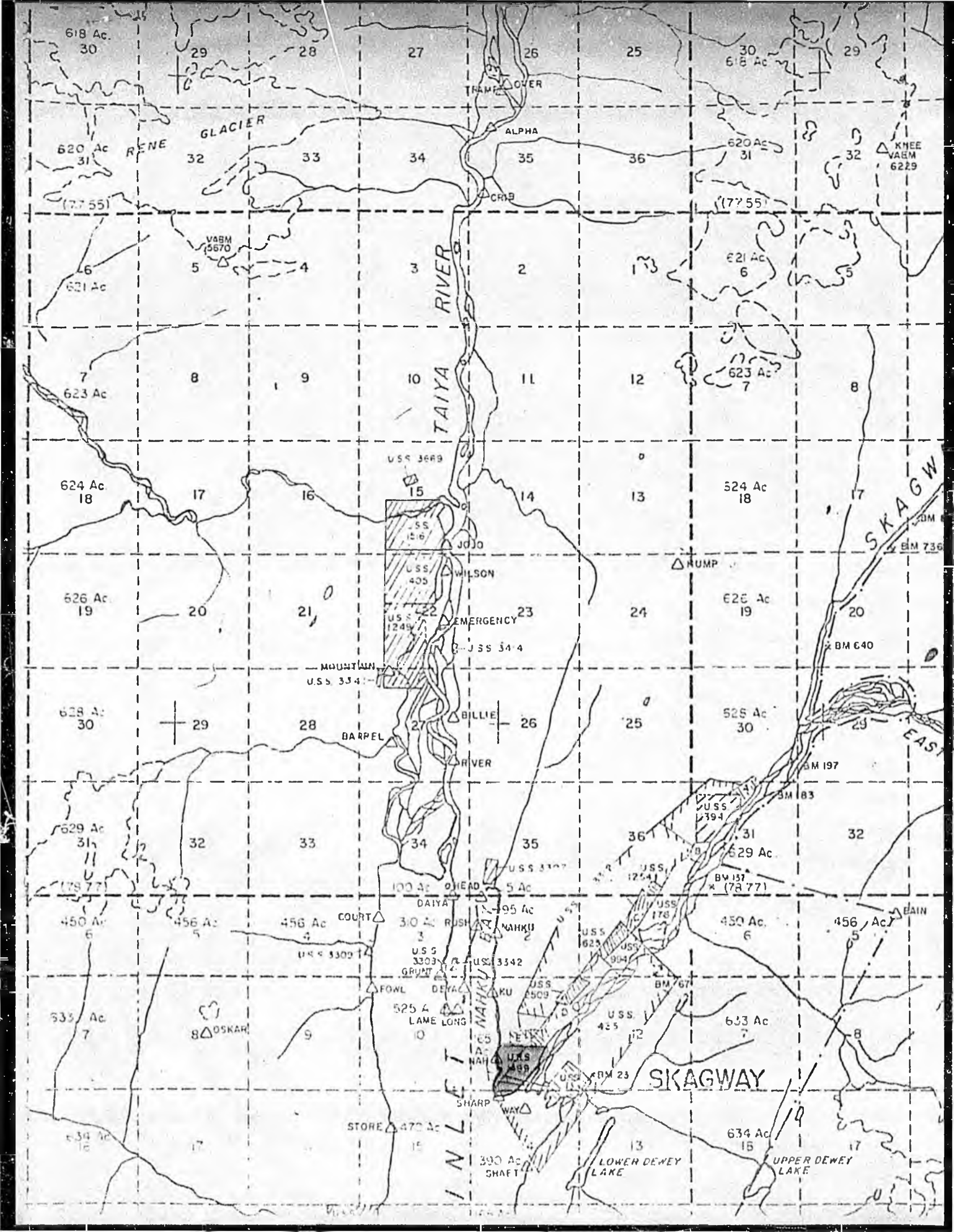
_____

_____

R. Poland

Chairman

S 60 (rev. 6/77)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USS
1249
EMERGENCY
USS 3414
BM 640
MOUNTAIN
USS 3341
628 Ac
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27
BILLIE
26
25
526 Ac
30
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EAST
BARREL
RIVER
BM 197
BM 83
USS
394
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HEAD
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DAIYA
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BAIN
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OSKAR
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435
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WAY
STORE
470 Ac
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16
17
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634 Ac
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17
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LOWER DEWEY
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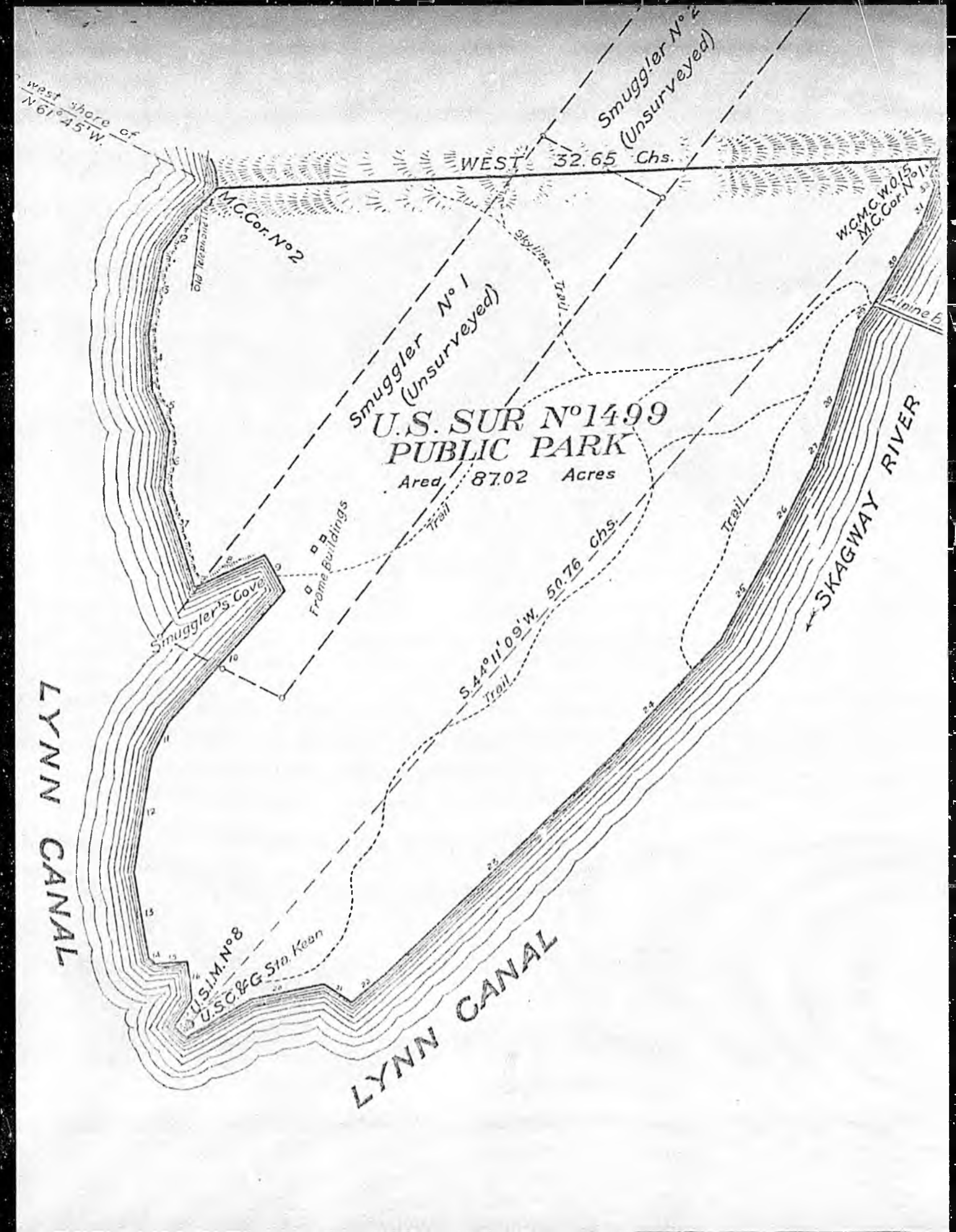
LAKE
INLET
NAHKU BAY


West shore of
N 61° 45' W.
Smuggler N° 2
(Unsurveyed)
WEST 32.65 Chs.
M.C.Cor. N° 2
Old Telegraph Trail
Skyline Trail
W.C.M.C. W.0.15
M.C.Cor. N° 1
Smuggler N° 1
(Unsurveyed)
U.S. SUR N° 1499
PUBLIC PARK
Ared 87.02 Acres
Frame Buildings
Trail
Trail
S. 44° 11' 09" W. 50.76 Chs.
Trail
Smuggler's Cove
SKAGWAY RIVER
LYNN CANAL
U.S.M.M. N° 8
U.S.C.&G. Sta. Kean
LYNN CANAL

MEANDERS

1.	S.49°58'W.,	1.67	chs.
2.	S.38°56'W.,	1.92	"
3.	S.12°51'W.,	3.70	"
4.	S. 1°15'E.,	2.29	"
5.	S.20°48'E.,	2.14	"
6.	S. 7°35'W.,	2.50	"
7.	S.15°30'E.,	4.44	"
8.	N.66°03'E.,	3.45	"
9.	S.27°32'E.,	1.79	"
10.	S.45°15'W.,	7.72	"
11.	S.29°24'W.,	1.69	"
12.	S.11°30'W.,	5.17	"
13.	S. 7°09'E.,	3.87	"
14.	S.48°30'E.,	0.40	"
15.	N.89°00'E.,	1.43	"
16.	S. 4°28'E.,	1.67	"
17.	S.36°00'W.,	1.51	"
18.	S.45°00'E.,	0.76	"
19.	N.62°03'E.,	3.35	"
20.	N.81°05'E.,	3.42	"
21.	S.54°24'E.,	1.57	"
22.	N.52°00'E.,	1.77	"
23.	N.49°30'E.,	14.00	"
24.	N.46°35'E.,	7.21	"
25.	N.32°46'E.,	4.26	"
26.	N.29°12'E.,	4.44	"
27.	N.21°33'E.,	1.69	"
28.	N.20°25'E.,	4.59	"
29.	N.37°34'E.,	1.15	"
30.	N.34°51'E.,	4.25	"
31.	N.22°27'E.,	1.81	"
32.	N.18°48'W.,	0.50	"
33.	N.22°37'E.,	0.91	"

Scale: 1 in. = 5 c

Latitude 59°26'56"N. Longit

- - - - - - - - -

As surveyed under instructio
the U.S.Surveyor General, da
1923, and approved by the Co
the General Land Office, Jul

FRED DAHLQUIST

U.S. Cadastral Engine

July 31 - August 6,19

- - - - - - - - -

OFFICE OF U.S.SURVEYOR G

Juneau, Alaska, Novemb

The map hereon delineated
No.1499, of the Public Park situ
Skagway, Alaska, is strictly con
the field notes of the survey th
in this office, which have been
approved.

U.S. Surveyor

HB
683

COMMITTEE REPORT

SENATE

5/5/78

FURTHER: Finance

Date: 5/11/78

Mr. President:

The Committee on RESOURCES has had CSHB 683
special appropriation to Dept. of Fish & Game, Fish & Wildlife books

under consideration and (a majority of the committee) (the committee reports it back as follows)

( ) recommends it do pass ( ) recommends it do not pass

( ) recommends it do pass with attached amendment(s)

( ) recommends it be replaced with CS for _____

and _____( ) new title ( ) same title

( ) AND attaches a Letter of Intent ( ) New Fiscal Note

( ) reports it back without recommendation

( ) and recommends it be referred to the _____ Committee

MEMBERS SIGNING DO PASS:

John B. Conrad

J. C. Fillion

OTHER RECOMMENDATIONS:

H. Poland

Chairman

S 60 (rev. 6/77)

Federal-State
Land Use Planning Commission
For Alaska

May 3, 1977

Honorable Jay S. Hammond
Governor
State of Alaska
Pouch A
Juneau, Alaska 99811

Dear Governor Hammond:

Tha Alaska Department of Fish and Game has presented a proposal to publish an Alaskan Fisheries Atlas (two volumes) and Volume II of Alaska's Wildlife and Habitat. These volumes, along with Volume I of Alaska's Wildlife and Habitat which was published in 1973, will provide the type of comprehensive fish and wildlife resource information that is needed by all agencies concerned with our natural resources.

The Joint Federal-State Land Use Planning Commission has assisted in this project and we will continue to support the proposal. We consider these publications to be both a timely and necessary component of the statewide resource inventory that is needed for land-use planning and management. It is our hope that your administration and the Alaska Legislature will assist the Alaska Department of Fish and Game in the publication of this valuable data.

Sincerely,

Walter B. Parker

Walter B. Parker
State Co-Chairman

733 W. FOURTH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99501

82-0018

STATE
of ALASKA

MEMORANDUM

OCT 28 Rec'd

TO: Jeff Morrison, Director
Administration, Juneau

DATE : October 26, 1977

FROM: Ed Klinkhart
Special Projects, Anchorage

SUBJECT: Printing proposal

Attached is our proposal for publishing the fish and wildlife books. Our original proposals were in a blue cover. If any of these are around, throw them away. Everything you will need for the supplimental should be in here. If not, call me.

Here is the cost per volume based on varying amounts of grant money:

Total Grant (thousands)	Game/volume	Fish/set of two
0	$76	$152
25	71	142
50	67	134
75	62	124
100	58	116
125	53	106
150	49	98
175	44	88
200	40	80

STATE
of ALASKA

MEMORANDUM

TO: Ronald Skoog, Commissioner
Department of Fish and Game

DATE: September 27, 1977

FILE NO:

TELEPHONE NO:

FROM: Jay S. Hammond, Governor
State of Alaska

SUBJECT: Federal Assistance in the Production and Publication of Three Books on Alaska Fish and Wildlife

Recently I have learned about the difficulties your Department has encountered in funding the compilation and printing of three books on Alaska's Fish and Wildlife. I hate to add to your problems, but I find it necessary to deny your revised program request to receive and expend book sale revenues (program receipts) to finance the production of these books. Your request to interpret book sale revenues as trust funds does not meet the criteria set forth in the Attorney General's definition of trust or custodial funds (see memo from Ron Lind, Director, Division of Budget & Management, to All Commissioners, dated 9/20/77).

I understand the value of this proposed project and believe that it will provide innumerable benefits to non-resident as well as resident Alaskans. I am pleased to see that various federal agencies recognize the importance of this project and are interested in contributing approximately $179,000 to defray the total production costs of these books. As long as federal funds are available, I would favorably welcome your request for FY 78 supplemental funds ($262,500 program receipts) to finance the State's share of this project. As you know, the Legislature is the final authority for appropriating monies for state expenditures. However, I assure you that I will do my utmost to secure passage of a supplemental appropriation for this project.

FY 78 SUPPLEMENTAL REQUEST ANALYSIS

USE BILL NO. 683	FY 76 ACTUAL	FY 77 FINAL AUTH.	FY 77 ACTUAL	FY 78 GOV. BUDGET	FY 78 INITIAL AUTH.	FY 78 CURRENT AUTH.	EXPENDITURES + ENCUMBRANCES 7/1 - 10/31	OTHER OBLIGATIONS 7/1 - 10/31	PROJECTED EXPENDITURES + ENCUMBRANCES 11/1 - 6/30	FY 78 (DEFICIT) OR EXCESS	FY 79 MAINTENANCE REQUEST
ONAL SERVICES						98.9			98.9		
EL											
RACTUAL SERVICES						91.1			309.0	(217.9)	
DDITIES						10.0			10.0		
PMENT											
S, BLDGS. ...											
TS, CLAIMS ...											
ELLANEOUS											
TOTAL	0	0	0	0	0	200.0	0	0	417.9	(217.9)	0
AL RECEIPTS						200.0			200.0		
RED GF MATCHING											
GENERAL FUND											
-AGENCY RECEIPTS											
RAM RECEIPTS									217.9	(217.9)	

ENCY Fish & Game BRU GAME CIP COMPONENT Fish & Wildlife Books REVISED

HB683

January 25, 1978

The Honorable Hugh Malone
Speaker of the House
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. Speaker:

Under authority of art. III, sec. 18 of the Alaska Constitution, and in accordance with AS 24.30.060(b) and the Uniform Rules of the Alaska State Legislature, I am transmitting a bill making a special appropriation to the Department of Fish and Game for the purpose of publishing three Fish and Wildlife volumes. Two of the volumes will deal with fisheries and will be sold as a set, and the third volume will be Alaska's Wildlife and Habitat, Volume II. These volumes will be sold to the public, educational institutions, and governmental agencies.

Section 2 of this measure provides for a lapse date of June 30, 1979.

Fiscal information is attached.

Sincerely,

S/JSH

Jay S. Hammond
Governor

STATE of ALASKA

MEMORANDUM

RECEIVED
DEC 22 1977
BUDGET & MANAGEMENT

TO: Ron Lind, Director
Division of Budget and Management
Office of the Governor

DATE: December 15, 1977

FILE NO:

TELEPHONE NO:

FROM: Ronald O. Skoog
Commissioner
Department of Fish and Game

SUBJECT: FY'78 Supplemental Request: Fish and Wildlife Volumes

The Department of Fish and Game requests a supplemental in the amount of $217,900 in program receipts in order to complete funding for the publication of three fish and wildlife volumes. This money will supplement $200,000 in Federal and private funds which have been requested through the revised program process in Jeff Morrison's memo to you of November 1, 1977. The revised program requesting these funds was scheduled for hearing by the Legislative Budget and Audit Committee on December 16. This meeting has now been postponed.

Jeff Morrison's memo of November 1 went into great detail regarding the subject matter and purpose of the three volumes in this project. I am attaching a copy of his memorandum for your reference. Also attached is a memorandum from Governor Hammond to me dated September 27 in which he indicates his favorable approval of our request for FY'78 supplemental funds for this project. If the supplemental request for the necessary program receipts is not approved, then it will be necessary to abandon the project.

I trust that all of the attachments will provide sufficient information regarding this supplemental request. In the event that legislative budget and audit committee approval is delayed or denied, it may be necessary to include an additional $200,000 in Federal receipts in our supplemental request and increase it to a total of $417,900.

Your favorable consideration of this supplemental request will be most appreciated.

cc: Bob Rausch
Rupe Andrews
Carl Rosier
John Stewart
Jeff Morrison
Ed Klinkhardt
Robert McLean

Attachments

STATE of ALASKA

MEMORANDUM

TO: Ron Lind, Director
Budget and Management Division
Office of the Governor

DATE: November 1, 1977

FILE NO:

TELEPHONE NO:

FROM: Jeff Morrison, Director
Division of Administration
Department of Fish and Game

SUBJECT: Request to Receive and Expend $200,000 in Federal and Private Funds

The Department of Fish and Game requests the authority to receive and expend $200,000 in Federal and private funds. The funds will be expended in the compilation and printing of three comprehensive volumes on Alaska's fish and wildlife. These funds will be supplemented by a request of $317,900 in program receipts which will be requested as a FY'78 Supplemental Budget Request. Authorization for the Federal and private funds is requested at this time so that the Department may actively solicit Federal and private sources for their participation in this project.

Actual implementation of the project will not commence until sufficient funds from Federal and private sources are committed. Once these funds are committed however, the Department will commence preparation of the fish and wildlife volumes so that, assuming the FY'78 supplemental appropriation passes, printing of the documents may be started as soon as possible.

Two of the volumes will deal with fisheries and will be sold as a set. We expect to print 2,000 sets for sale initially. The third volume will be a companion volume to the existing book published by the Department, Alaska's Wildlife and Habitat. This existing volume deals with information on the distribution and general habitat requirements of big game, marine mammals, waterfowl and sea birds. The companion volume will deal with fur bearers, small game, upland game birds and selected raptors. There will be 1,500 copies of the third volume printed initially. The format of the three proposed volumes will be basically the same as the existing volume.

The selling price of the volumes will be determined by the degree of participation (financially) from Federal and private sources. The Department currently has verbal committments for almost $100,000 in Federal funds. At this level, the volumes would sell for about $58 each, and the project would require a total supplemental budget of $317,900 in program receipts. If the full $200,000 in Federal and private funds is realized, the volumes would sell for about $40 each, and the project would require a total supplemental budget of $217,900 in program receipts. At present, we must plan for a supplemental request of $317,900, with $100,000 of this amount earmarked as miscellaneous. This amount will be transferred to other line items if additional Federal or private funds are not committed. Total project expenditures will be $417,900, to be funded as follows:

	RP	FY"78 SUPPLEMENTAL
Personal Services	98.9	
Printing Costs (Contractual)	32.1	217.9
Other Contractual Expenditures	59.0	
Commodities	10.0	
Miscellaneous		100.0
Total	200.0	317.9

Since this project will continue past June 30, 1978, we request that this revised program be authorized to continue into FY'79. We have attached revised program forms. Signed Federal contracts will be forwarded on receipt.

cc: Commissioner Skoog
Bob Rausch
Rupe Andrews
Carl Rosier
Mike Harper
Mike Whitehead
John Stewart

STATE OF ALASKA
Dept. of Administration
Budget & Management Div.

REVISED PROGRAM SUMMARY
by
APPROPRIATION

		code	
AGENCY	CATEGORY	04	NRMEC
Fish and Game	PROGRAM	41	Fish and Game
DIVISION	SUB-PROGRAM	04	Game
Game	ELEMENT	09	CIP
	SUB-ELEMENT	01	Fish & Wildlife Bks

For the Fiscal Year Ending June 30, 19 ____

APPROPRIATION COMPONENTS	PRESENT AUTHORIZATION	REVISION INCREASE (DECREASE)	AMENDED AUTHORIZATION
Fish and Wildlife Volumes	-0-	200.0	200.0
TOTAL		200.0	200.0
SOURCE OF FUNDS			
FEDERAL RECEIPTS			
REQUIRED GENERAL FUND MATCHING		200.0	200.0
OTHER GENERAL FUND			
INTER-AGENCY TRANSFERS			
OTHER			
TOTAL		200.0	200.0
PERMANENT FULL-TIME POSITIONS		3	3
PERMANENT PART-TIME POSITIONS			
TEMPORARY (FULL-TIME EQUIVALENTS)		.5	.5
NUMBER OF MAN MONTHS		56	56

02-1040 (Revised July, 1973)

STATE OF ALASKA
Office of the Governor
Budget & Management Div.

REVISED PROGRAM
COST ANALYSIS SUMMARY
by BUDGET COMPONENT

AGENCY	CATEGORY	code	
	PROGRAM		
DIVISION	SUB-PROGRAM		
	ELEMENT		
	SUB-ELEMENT		

CODE	EXPENDITURE BY OBJECT	PRESENT AUTHORIZATION	REVISION INCREASE, (DECREASE)	AMENDED AUTHORIZATION
100	PERSONAL SERVICES		98.9	98.9
200	TRAVEL			
300	CONTRACTUAL SERVICES		91.1	91.1
400	COMMODITIES		10.0	10.0
00	EQUIPMENT			
600	LANDS, BUILDINGS, NON-STRUCTURAL IMPROVEMENTS			
700	GRANTS, CLAIMS, SHARED REVENUE			
800	MISCELLANEOUS			
	INTER-AGENCY TRANSFERS (INCLUDED ABOVE)			
	TOTAL		200.0	200.0

NEW CODE				
	FEDERAL RECEIPTS		200.0	200.0
	REQUIRED GENERAL FUND MATCHING			
	OTHER GENERAL FUND			
	INTER-AGENCY TRANSFERS			
	OTHER:			
	TOTAL			

PERMANENT FULL-TIME POSITION		3*	3*
PERMANENT PART-TIME POSITIONS			
TEMPORARY (FULL-TIME EQUIVALENTS)		.5	.5
NUMBER OF MAN MONTHS		56	56

* continues 3 existing positions funded by previous revised programs

(CURRENT FY)

	FY ____	FY ____	FY ____	FY ____	FY ____	FY ____
EXPENDITURES – TOTAL						
SOURCE OF FUNDS						
FEDERAL						
REQ. G.F. MATCH						
OTHER G. F.						
OTHER (SPECIFY)						

STATE OF ALASKA
Dept. of Administration
Budget & Management Div.

REVISED PROGRAM PERSONAL SERVICES

		code	
AGENCY	CATEGORY	04	NRM & EC
Fish and Game	PROGRAM	41	Fish and Game
DIVISION	SUB-PROGRAM	04	Game
Game	ELEMENT	09	CIP
	SUB-ELEMENT	01	Fish & Wildlife Rks

CLASSIFICATION TITLE (1)	(2)	PCN (3)	PAY RGE. (4)	MTHLY. SALARY (5)	BUDGET-ARY USE (6)	TOTAL POSITION COST (7)	REVISION INCREASE (DECREASE) NO. POS. (8)	Total No. Mo. (9)	ANNUAL AMOUNT (10)
DRAFTSMAN II		10958							
		1096	11D	1334			2	32	42,688
CARTOGRAPHER II		1083	15C	1712			1	18	30,816
SUB-TOTAL									73,504
BENEFITS @ 25.5%									18,744
TEMP.									
CLERK TYPIST III			8	1005			5	6	6,030
BENEFITS @ 9.5%									573
PERMANENT – Full-Time Positions							3		
PERMANENT – Part-Time Positions									
TEMPORARY – (Full-Time Equivalents)							.5		
NUMBER OF MAN MONTHS								56	
TOTAL ANNUAL AMOUNT									98,851

02-1042 (Revised September, 1072)

HB
704

COMMITTEE REPORT

SENATE

3/20/78

FURTHER: FINANCE

Date: 4/17/78

Mr. President:

The Committee on RESOURCES has had SB 704

special appropriation to Dept. of Natural Resources, division of land & water management

under consideration and (a majority of the committee) (the committee reports it back as follows)

( ) recommends it do pass ( ) recommends it do not pass

( ) recommends it do pass with attached amendment(s)

( ) recommends it be replaced with CS for _____

and _____ ( ) new title ( ) same title

( ) AND attaches a Letter of Intent ( ) New Fiscal Note

(X) reports it back without recommendation

( ) and recommends it be referred to the _____ Committee

MEMBERS SIGNING DO PASS:

OTHER RECOMMENDATIONS:

K. Poland
Chairman

S 60 (rev. 6/77)

LETTER OF INTENT
TO ACCOMPANY HOUSE BILL 704

The purpose of this bill is to provide a one-time only appropriation for the Division of Land and Water Management in order that they may clear up their backlog by June 30, 1979. The employees authorized will be separated out for budget purposes, and additional personnel for the future will be considered separately and in the normal course of budget proceedings.

Steve Cowper, Chairman
House Finance Committee

LETTER OF INTENT

9 February 1978

The Honorable Hugh Malone
Speaker
Alaska House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Mr. Speaker:

This letter is to accompany House Bill 704, reported from the House Committee with a "Do Pass" recommendation on HB 704.

The bill provides for an appropriation to the Department of Natural Resources, Division of Land and Water Management, to reduce the backlog of land and water applications.

The Committee requests that the Department of Natural Resources, Division of Land and Water Management, review the regulations, statutes and procedures presently being used for land and water applications with an eye toward simplifying and expediting the process. The Committee requests that the Division prepare a report to be submitted to the next session of the Legislature proposing any statutory changes they believe desirable to bring about a swifter and less complicated procedure.

Sincerely,

Alvin Osterback, Chairman
House Resources Committee

Rep. William Akers

Rep. Don Bennett

Rep. Richard Eliason

Rep. Hugh Malone

Rep. Mike Miller

Rep. Sarah Smith

Rep. Merle Snider

Rep. Rick Urion

THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. House Bill No. 704
Title An Act Making an Appropriation to the Department of Natural Resources
Requested by Pat Conheady Date 2-3-78

II. FISCAL DETAIL
Agency Affected Department of Natural Resources
Program Category Affected Division of Land & Water Management
Budget Request Unit(s) Affected District Operations, Cadastral Engineering, Classification, Land and Water Management

EXPENDITURES (Thousands of Dollars)

	FY 78	FY 79	FY 80	FY 81	FY 82	FY 83
100 PERSONAL SERVICES	1,012.0					
200 TRAVEL	59.9					
300 CONTRACTUAL	74.8					
400 COMMODITIES	14.2					
500 EQUIPMENT	21.5					
600 LAND & STRUCTURES	21.6					
700 GRANTS, CLAIMS, ETC.						
TOTAL	1,200.0					

FUNDING (Thousands of Dollars)

GENERAL FUND	1,200.0					
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

FULL TIME	41					
PART TIME	1					
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

A. Assumptions:

I. The backlog that will be reduced consists of:

1. Serialized case files.
2. Request for timber (firewood, houselogs and sales)
3. Un-serialized requests that are waiting for some kind of action.

II. The backlog as of December 31, 1977 is:

1. Southeast District - 625 (Up from 549 as of 4-1-77)
2. Southcentral District - 3,622 (Up from 3,212 as of 4-1-77)
3. Northcentral District - 1,026 (Up from 928 as of 4-1-77)

(Continued on attached sheet)

IV. DATE 2-8-78 PREPARED BY Doug K. Hollett
AGENCY Division of Land Water Management
PHONE 279-5577

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/77)

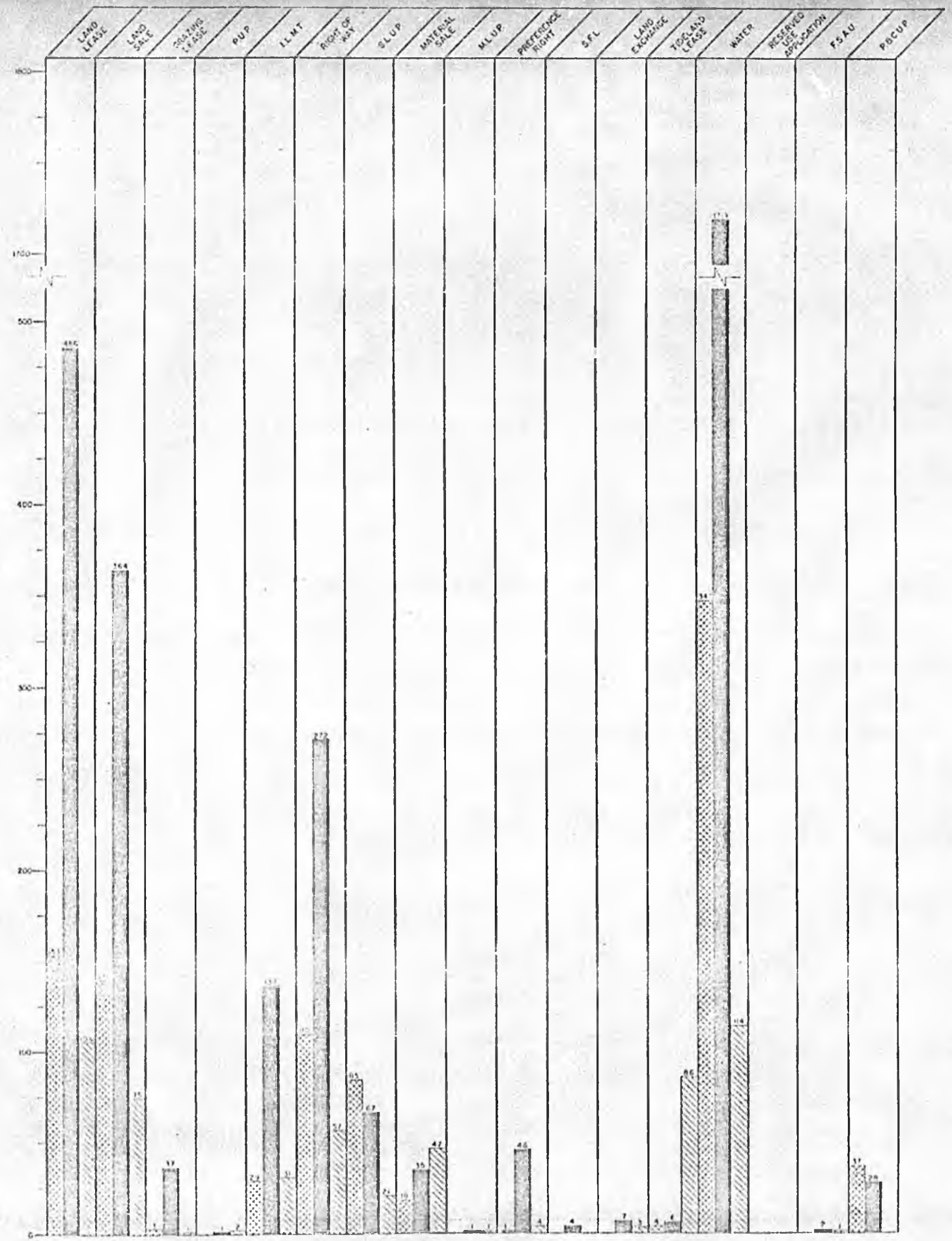
III. That it takes approximately three man days per case by the District personnel.

IV. That a large number of Southcentral District cases will take less than the three man days due to the old practice of accepting applications with no pre-adjudication.

E. Program Summary

Personal Service:		Total	$1,011,980
Southeast District			
2 - Land Management Officer II	for 12 months each	-	$ 56,626
1 - Appraiser II	" " " "	-	32,323
1 - Research Analyst II	" " " "	-	27,666
1 - Engineering Geologist II	" " " "	-	32,323
2 - Land Management Technician I	" " " " each	-	49,450
1 - Clerk Typist III	" " " "	-	16,315
8			$214,703
Southcentral District			
2 - Land Management Officer II	for 12 months each	-	$ 56,626
5 - Land Management Officer I	" " " "	-	123,625
3 - Land Management Technician I	" " " "	-	67,590
3 - Research Analyst I	" " " "	-	62,103
1 - Clerk Typist III	" " " "	-	16,315
2 - Clerk Typist II	" " " " each	-	32,510
16			$358,769
Northcentral District			
2 - Land Management Officer II	for 12 months each	-	$ 60,060
2 - Land Management Officer I	" " " "	-	56,626
1 - Forester I	" " " "	-	28,313
1 - Research Analyst II	" " " "	-	30,030
2 - Land Management Technician I	" " " "	-	47,368
2 - Clerk Typist II	" " " " each	-	41,446
1 - Forest Technician II	" " " "	-	10,258
11			$274,101
Cadastral Engineering			
2 - Drafting Technician II	for 12 months each	-	$ 38,962
2			$ 38,962
Classification			
2 - Associate Planner	for 12 months each	-	$ 56,092
2			$ 56,092

Land and Water			
1 - Land Management Officer II	for 12 months each	-	$ 28,313
1 - Land Management Officer I	" " " "	-	24,725
1 - Clerk Typist III	" " " "	-	16,315
3			$ 69,353
Travel:		Total	$ 55,900
Southeast District	- $ 18,500		
Southcentral " "	- 20,000		
Northcentral " "	- 15,400		
Classification " "	- 2,000		
Contractual		Total	$ 74,800
Southeast District, Air charter & office rental		- $ 28,800	
Southcentral " " , " " "		30,000	
Northcentral " " , " " "		16,000	
Commodities		Total	$ 14,200
Southeast District - Office supplies		- $ 2,000	
Southcentral " " - " " " "		- 5,000	
Northcentral " " - " " " "		- 2,700	
Cadastral Engineering - " " " "		- 2,000	
Classification - " " " "		- 500	
Land and Water - " " " "		- 2,000	
Equipment		Total	$ 21,500
Southeast District - Desk & Chair		- $ 4,000	
Southcentral " " - " "		- 6,000	
Northcentral " " - " "		- 6,000	
Cadastral Engineering - " "		- 3,000	
Classification - " "		- 1,000	
Land and Water - " "		- 1,500	
Land & Structures		Total	$ 21,600
Southeast District - Space rent - $ 21,600			
			$ 1,199,980


LAND LEASE
LAND SALE
GRAZING LEASE
PUP
ILMT
RIGHT OF WAY
SLUP
MATERIAL SALE
MLUP
PREFERENCE RIGHT
SFL
LAND EXCHANGE
TIDELAND LEASE
WATER
RESERVED USE APPLICATION
FSAU
PSCUP
1600
1500
500
400
300
200
100
0
484
364
227
112
94
STATE OF ALASKA
DIVISION OF LAND & WATER MANAGEMENT
PENDING CASE FILES
* WATER SALES NOT INCLUDED
NORTHCENTRAL DISTRICT
SOUTHCENTRAL DISTRICT
SOUTHEAST DISTRICT

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

LAND AND WATER MANAGEMENT 323 E. 4TH AVENUE – ANCHORAGE 99501

March 20, 1978

MAR 23 1978

Honorable Hugh Malone, Speaker
Alaska House of Representative
Pouch V
Juneau, Alaska 99811

Dear Hugh:

Your letter of February 21 asked me about plans for implementing our backlog reduction program for which House Bill 704 would appropriate $1,200,000.

I believe we can substantially reduce the number of backlog items by contacting the applicants. I suspect that a number of them will prove to be no longer interested in the purpose for which the application was originally submitted. Additionally, I think we would be safe in rejecting applications on areas where we do not now have title or in which we will not receive title for the foreseeable future.

The next step would be to segregate the applications by geographic location. One step in our processing is to contact other agencies as to the effect of issuance of the application on fish and game resources as well as water quality. By batching such applications we would substantially reduce the workload on these other agencies.

I also anticipate instituting a sort of traveling processing team which would go into a community for a few days a week and work on applications in that area. This would give them an opportunity to do necessary field examinations as well as make the personal contact which might very well expedite the processing.

Incidentally, we have instituted new application procedures which will screen applications eliminating those which are inappropriate because of ownership or which are inconsistent with an existing classification which is unlikely to be changed. We think that this procedure will go a long ways towards keeping our backlog within manageable porportions in the future.

As a general statement I would expect the most of our existing adjudicators would be supervising units of new personnel who would be

10-J4LH

doing essentially the same steps that they have been doing in the process. That is, the water adjudicator rather than working on the cases themselves will supervise a group of people who have received basic training in the elements of adjudication of water applications and who would proceed with the process.

I have asked our districts and sections to prepare organizational charts indicating how these personnel would be integrated into the existing organizations. I will be happy to provide copies to you as soon as they are finalized. In the meantime if you have any further questions, please do not hesitate to contact me.

Yours truly,

George L. Hollett

for THEODORE G. SMITH
Director

HB
720

COMMITTEE REPORT

SENATE

6/2/78

FURTHER: FINANCE

Date: 6-14-78

Mr. President:

The Committee on RESOURCES has had CSHB 720(Fin) State Land

under consideration and (a majority of the committee) (the committee reports it back as follows)

( ) recommends it do pass ( ) recommends it do not pass

( ) recommends it do pass with attached amendment(s)

( ) recommends it be replaced with CS for _____

and _____ ( ) new title ( ) same title

( ) AND attaches a Letter of Intent ( ) New Fiscal Note

( ) reports it back without recommendation

( ) and recommends it be referred to the _____ Committee

MEMBERS SIGNING DO PASS:

OTHER RECOMMENDATIONS:

No Rec. Administration

DO NOT PASS Finance

Chairman

S 60 (rev. 6/77)

STATE OF ALASKA
DEPARTMENT OF FISH AND GAME
JAY S. HAMMOND, GOVERNOR
OFFICE OF THE COMMISSIONER
SUBPORT BUILDING
JUNEAU 99801

June 10, 1978

The Honorable Kay Poland
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Poland:

Yesterday you requested the Department to poll the Board of Game to determine their views regarding CSHB 960 (Finance)am as written regarding the "subsistence issue" and the establishment of a "Division of Subsistence" in the Department by legislative mandate. Insofar as was possible we contacted the Board members yesterday afternoon and evening with the results as indicated below. Six of the seven members were reached--Jim Rearden, Clint Buckmaster, Charles Evans, Darrell Farmen, Pete Nelson, and Sam Harbo; Sidney Huntington was not available.

(1) All six were opposed to the legislation as written; I feel confident in saying that I believe Sidney Huntington also would be opposed.

(2) Four, and to that I would add Huntington to make five, were opposed to any such legislation being passed regardless of language; two--Chuck Evans and Clint Buckmaster--felt they could support CSHB 960 if the Department's suggested amendments were adopted.

In addition, we attempted to poll the Board of Fisheries as well, but were less successful. Only four of the seven were reached--Nick Szabo, Gordon Jensen, Herman Schroeder, and Calvin Fair. All were opposed to CSHB 960 as written. Szabo was opposed to any legislation being passed. Jensen, Schroeder, and Fair felt they could support the bill if the Department's suggested amendments were adopted.

I will stick my neck out and say that I think all members of the two Boards believe that there is little need for this kind of legislation and that the subsistence question can be handled quite adequately under a modified

regulatory system (which we are working on now). I believe too that all would object to the Legislature establishing any organizational unit within the Department by State law, as has been done already with regard to the Fisheries Rehabilitation, Enhancement and Development Division.

The Department would like to propose two additional amendments to CSHB 960. Again, both were overlooked in our previous review and, again, I apologize for that lack. Our proposals are as follows:

(1) p.5 Sec. 11 (Sec. 10 as per Dept.'s earlier recommendations) AS 16.05.257(h)(2) lines 26-29.

We suggest the elimination of this section, and instead leave the existing language presently in the Statutes. Present language reads as follows:

> (2) "subsistence hunting area" means an area designated by the board as primarily important for subsistence use and in which it is unlikely that subsistence needs will be met if recreational hunting, including hunting for trophy purposes, is permitted or if certain methods and means are continued. (s 1 ch 199 SLA 1975; am s 2 ch 269 SLA 1976)

The language stated in CSHB 960 would be too narrow and I believe not in compliance with the State Constitution because of discrimination in permitting only subsistence hunting in a "subsistence hunting area." The existing Statute language is more flexible in that control of hunting also could be handled via "methods and means," as well as by other regulatory constraints.

(2) p.6 Sec. 14. AS 16.05.930(e), lines 17-18.

Language here needs to recognize the responsibility of the Boards to set regulations. I suggest that it be amended to the following:

Line 17-18 "...except that the appropriate Board or the Commissioner by delegation of the appropriate Board may prohibit....

Thanks again for allowing us to state our views regarding this important piece of legislation.

Sincerely,

Ron Skoog

Ronald O. Skoog
Commissioner

FEDERAL – STATE
LAND USE PLANNING COMMISSION
FOR ALASKA

Office of the Co-Chairman

Kay –

here are some other ideas I gave the Browns on land credits.

Walt

Federal-State
Land Use Planning Commission
For Alaska

March 9, 1978

Honorable Jay S. Hammond
Governor of Alaska
Pouch A
Juneau, Alaska 99811

Dear Governor Hammond:

In reviewing the concept of land credits, one of the major problems as we defined it to you in our letter of March 3 was to mitigate the effects of those persons who would acquire land with no object other than for resale. After reviewing other land distribution programs, including past State programs, it seems to us that combining your concept of land credits with some use requirements on land might be a most attractive system for placing land in private hands and insuring an orderly development of the State.

Under this proposal, land credits would be acquired by residency in the manner in which you have proposed. However, in order to validate his land credits the individual would have to place improvements upon the land he secured. The value of the improvements would then validate his land credits up to the total amount which the individual has credited.

For example, a person with 15 years residence would have $15,000 in credits. If he purchased land from the State to the value of $20,000 and then placed $20,000 in improvements upon that land, he would validate all of his credits and in essence acquire the land for only $5,000, the difference between his credits and the total purchase price.

Cash could always be substituted for land credits, thus, individuals who did not want to make improvements now are not foreclosed from either land purchase or the later use of their credits.

In this system, the individual with long residency will still, in essence, acquire free land or almost free land, but he must use it thereby contributing to the total development of the State. This would insure that lands would not be taken out of production to be held for long periods

733 W. FOURTH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99501

purely for speculative purposes as has happened to so much of the land sold under earlier State sales and acquired under Federal homestead programs. This system could be applied on any State land disposal program including commercial lands if desirable. The residency requirement will largely insure that it will be used primarily for residences, farms, and other individual type uses, rather than corporate uses.

I believe a large segment of the public would find this a most attractive addition to land credits because it would benefit that segment of society which was contributing the most to the State overall. It would also allow the substitution of "sweat equity" for cash, thus allowing persons to contribute up to 60 or 70 percent of the total value in their own labor.

I do not believe that the problems of assessing improvements would be insurmountable. I also believe that a system of conveying interim title could be worked out which would satisfy the financial institutions which would be involved in financing these improvements.

Sincerely,

/s/ Walter B. Parker

Walter B. Parker
State Co-Chairman

WBP:go

Federal-State
Land Use Planning Commission
For Alaska

March 2, 1978

Honorable Jay S. Hammond
Governor of Alaska
Pouch A
Juneau, AK 99811

RE: Proposed Alaska Homestead Land Credit Act

Dear Governor Hammond:

We have reviewed the proposed Alaska Land Credit Act as incorporated in the draft of February 24, and we ask you to consider the following points:

1. Generation of Purchasing Power: On the basis of rough estimates, it is clear that the Act would generate an immense amount of potential purchasing power which can be applied to State lands. [redacted]ent population levels, $200,000,000 worth of credits would be added each year (400,000 x $500). In addition, as soon as the Act takes effect, there will be a backlog of purchasing power held by people who have resided in Alaska for more than a year. Time does not allow for a complete estimate of this backlog, but it is fairly safe to assume that there is a core of at least 100,000 long-term Alaskan residents who have been in the State for 20 years. Their accumulated purchasing power alone amounts to $1,000,000,000 (100,000 x 20 years x $500).[1]

   Only a faction of this purchasing power will be exercised immediately. Census data indicates that roughly 40 percent of the recipients of credits will be below the 18-year-old age limit and many people will choose to accrue several credits before using them. Instead of immediate spending of credits, there will be a gradual build up of purchasing potential as people store their credits, as $200,000,000 or more worth of credits is added each year, and as new citizens reach the age of 18. From the preceding estimates, it is reasonable to assume that by 1985 there will be at least $1,000,000,000 worth of land credits held by people over 18.

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1. The attached memo to Michael C.T. Smith supports these estimates. Average residency of the total Anchorage population is 9.4 years.

733 W. FOURTH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99501

2. Land Demand: The credit system will make potential purchasers of State land out of people who have never entertained the idea of acquiring State property before. People will strive to buy land whether or not they need it for use purposes, simply to cash in on their credits. Credits will give every citizen a vested interest in rapid State land disposal and the Administration will be subjected to enormous pressures to put land on the market as rapidly as possible regardless of the supply of available land on the private market and regardless of whether State land is actually needed for use purposes. Some lands may be used, but turning credits into cash would inevitably be the overwhelming objective of most people.

3. Land Supply: The question then becomes whether the Administration can make lands available in quantities that will match the purchasing power generated by the land credit system and, more basically, whether this is desirable in terms of public and private costs and benefits. In answering the first question, it is important to recognize the real requirements in terms of time and money for making State lands available for conveyance to private citizens. To give private citizens marketable title and reasonably useable and accessible land, lands must be surveyed and rights-of-way or easements fitting the topography must be reserved to and through lands which are conveyed. Otherwise, public and private lands beyond will be land-locked and rendered useless and valueless. These requirements--survey and access reservation--are minimal. Lands should also be inventoried so that suitable lands are made available. There should be a process of consultation with local government. Under the State Constitution, public notice is required before any land may be disposed.

All these components of a responsible land offering require time and people. Between 1964 and 1974, during the most intense era of State land disposal, when land was disposed in 20- and 40-acre tracts, with nothing more than paper section line access, the State was only able to sell 138,000 acres and to lease 323,000 acres, an average of about 46,000 acres per year over a period of about 10 years.

If the State were to try again to make about 50,000 acres available each year--which, as under the previous program, would also necessitate selling land without useable access in tracts far larger than required for individual use--it still would not be able to satisfy the purchasing power generated by land credit build up. At an average value of $1,000 per acre, 50,000 acres per year would only provide $50,000,000 worth of available land. This amounts to only one-quarter of the amount of credit value added each year and one-twentieth the build up in credits anticipated by 1985.

4. Impact on Other Uses: This lag between the build up of spendable credits and the supply of available State land will generate intense pressures to put land on the market, simply so people can cash in their credits. In relation to this pressure, actual land needs for individual use will cease to be a significant consideration. It will be argued that by granting credits, the State assumes an obligation to make lands with a commensurate amount of real estate value available for private acquisition. Since real estate values diminish rapidly as one moves to inaccessible lands far from communities and road and water access, the pressure will be to dispose much of the State lands near road access, waters, and communities. But these are also the lands that often have conflicting values for other purposes. Under the demand/supply ratios that we have projected, it will be extremely difficult to maintain an appropriate balance between lands for private use and accessible public lands that can be used for resource development and for hunting, fishing, snowmobiling, skiing, and other public purposes.

5. Impact of the Bill on Land Prices: Two possible outcomes may result, depending upon disposal procedures followed. Assuming the State lands are made available at a fixed price at or below "fair market value," then the effect of the program will lead to an overall decrease in land prices or result in a lower growth rate for land prices than would occur in the absence of such a program. The reasoning is as follows: Creation of land credits, applicable only to State land disposals, will shift land demands from the private sector to State lands, resulting in decrease in demand for land in the private sector. Secondly, after initial disposal of State lands, these lands become part of the aggregate supply of private sector lands. In other words, there will have been an increase in the supply of private sector lands. The effect of both the demand and supply schedule shifts will be to reduce overall land prices, either in absolute terms or with respect to the rate of growth.

It is worth noting that this program would be concurrent with transfer of lands to the Natives under ANCSA. This increase in the supply of private sector lands will also exert downward pressures on overall land prices. At the same time, the land credit program, also creating downward pressure on land prices, tends to reduce the value of Native lands.

The second possible outcome occurs if State lands are disposed of under a competitive bidding process. In this case, the individual can be expected to pay, as a maximum, an amount equal to that which would have prevailed in the private sector. However, to this maximum "out of pocket" figure may be added the value of land credits (since they are "free" and cannot be

used otherwise) thus resulting in a dollar transaction figure greater than that which would have occurred in the private sector. The result in this case is an artificial inflation of land prices. While such inflation may not be sustained by the private sector (the private sector will not pay more for a parcel acquired in such a manner than the parcel would have traded for in the private sector) the State may help perpetuate such prices if future State land value appraisals reflect these transactions.

6. Impact of "Re-disposal": A situation may develop in which individuals attempt to "cash in" their land credits. Since these credits are not transferable or assignable, the only way to convert them to cash is to acquire land and dispose of the land in the private sector. Since the land was acquired using free land credits, an individual may be willing to dispose of his land for substantially less than the initial transaction price. In this case, the overall effect on land prices would be downward.

An alternative scenario of some importance is one in which a major land acquiring corporation offers to "cash out" land credits. This might result in the corporation acquiring a large number of scattered tracts, or alternatively might provide a means for acquiring large contiguous tracts. In short, the land credits proposal may provide a device for concentrating land ownership.

7. Constitutionality: While our staff has not yet had an opportunity to do detailed research, we have reservations about the constitutionality of Section AS 38.05.057(d). Even though the residency period for initial qualification to participate in the program is relatively short, this subsection is suspect because it provides for the accrual of benefits on the basis of durational residency. This preference for long-term residents over short-term residents may abrogate provisions of the Constitution which were adopted to foreclose states from providing special benefits to their own citizens, a situation which occurred frequently under the Articles of Confederation, the precursor of the Constitution. In examining the constitutionality of subsection (d), this central tenet must be viewed within the context of a few cases which have permitted states to provide limited preferences to local residents in the allocation of natural resources. Because subsection (d) is so integral to the conceptual foundation upon which the land credit act is premised, we believe that the type of research which we are suggesting must be undertaken before this draft legislation is finalized.

8. Difficulty in Administering Residency Requirement: Beyond the legal considerations just mentioned, we believe that subsection (d) would be extremely difficult to administer. The enactment of this subsection would necessitate the creation of a large and costly bureaucracy to determine the validity of hundreds of thousands of residency claims, each of which would involve different sets of facts. Even if such a bureaucracy were established, the difficulties inherent in disproving a claim of residency and the great monetary benefits involved could well generate widespread abuse of the program. This possibility is increased in the situation under discussion here, because the draft legislation does not mandate objective criteria for proof of residency. In our opinion, the likelihood of future administrative and pragmatic problems associated with the implementation of subsection (d) should weigh heavily in any decision to propose the land credit act.

9. Leasing: We note that Section 2(a) of the bill refers to leases, whereas Section 2(e) says that credits cannot be used for lease payments. We expect that the practical effect of such a prohibition would be to virtually eliminate leasing as a tool for State land availability, since any State land program to which credits cannot be applied would be very unpopular. That outcome would be unfortunate, since leasing is well suited as a means of protecting long run public interests while allowing current use. Because trust land transactions must be at market value, trust lands must be exempted from any credit program. If this is done, there is no reason to exempt leased lands in general.

10. Growth Inducement: Essentially, the program pays people $500 per year to live in Alaska. Such a program is bound to generate considerable national publicity. The program's potential to attract people to Alaska should be considered.

In summary, we think that the land credit program will generate additional pressures for very rapid disposal of State lands that may jeopardize sound land administration. Although similar pressures would occur under a homestead program, the pressure generated by the land credit approach would be more pervasive, since benefits would accrue to each citizen automatically without any significant initiative. Moreover, since land credits could be applied to most State land disposal programs, the effects described above would affect State land administration on an across the board basis. Clearly, we want to make lands available for private use, but this can be done effectively under an array of well suited programs without a credit system. The land policy bill, developed in cooperation with members of your Administration, embodies this concept.

We appreciate the complexity of current circumstances surrounding State land issues, and complement you on the consideration that is being devoted to this extremely important matter. The Commission and its

staff stand ready to help in anyway that we can as your deliberations continue.

Sincerely,

Walter B. Parker

Walter B. Parker
State Co-Chairman

Sincerely,

Esther C. Wunnicke

Esther C. Wunnicke
Federal Co-Chairman

Enclosure (1)
1. Memo dtd. 2/28/78 to Michael C.T. Smith from George Gee, re. Population and Residency in Alaska

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF LANDS
PLANNING & CLASSIFICATION SECTION

MICHAEL C. T. SMITH
Assistant Commissioner

February 28, 1978

THRU: STEPHEN REEVE, Chief
Planning & Classification

GEORGE GOE, Senior Planner
Planning & Classification

Population and Residency in Alaska

This memorandum is in response to your request for background data on Alaska's population and average length of residence within the state. Specifically, it is addressed to three questions:

1. How many persons in Alaska's population are 18 years or older? How many are younger than 18?

2. What are the average years of residence for persons 18 years and over and for persons under 18 years of age?

3. Are there distinctive patterns of change in the age distribution of Alaska's population and in the average length of residency?

As you know, we have reached the late intercensal years and accurate population information has become extremely scarce. Even estimates of total state population from different credible sources show significant divergence. Detailed data on demographic characteristics such as age and residency are practically nonexistent. Notions for these will have to be distilled from other types of information found to be available and pertinent. Thus, the best we have at hand is an assortment of rule-of-thumb indicators which, despite built-in limitations, provide a basis for making some reasonable conjectures.

1. How many persons are 18 years or older? The Alaska Department of Labor estimated the July 1976 state population to be 413,289 persons. The U.S. Census Bureau's conservative estimate of 382,000 people generally is considered less reliable. However, the Bureau develops its population total with an age profile component:

	Percentage
	9.7
5-17	27.5
18-44	46.3
45-64	14.1
65 and over	2.4

Applying these results to Labor's estimate of 413,289 people, approximately 63 percent, or 259,000 persons, would be 18 years of age or over, while 153,700 persons would be under 18.

2. What are the average years of residence for these groups?

First, only three sources of information were found to shed light on this issue. A 1977 survey in the Anchorage area gave the following years of residency distribution for about 1200 households:

Years of Residence in Anchorage	Percentage of Households
0-1.9	19.8
2-3.9	17.6
4-7.9	21.0
8-14.9	16.0
15-24.9	15.5
25+	8.0

Mean years of residence = 9.4 years

Median years of residence = 6.0 years.

A similar 1976 survey of 408 households in the North Star Borough yielded these findings:

Years of Residence in North Star Borough	Percentage of Households
0-1	26
2-3	18
4-10	23
11-20	17
20+	16

Median years of residence = 6.4 years

Although these results are for households instead of individuals, they can probably be taken as indicative for the latter. Only about 15 percent of the respondents in both surveys indicated they had lived somewhere else in Alaska prior to moving to their respective municipality. Thus, something like 6 to 10 years would probably provide a fair range for average length of residence for people in these two major population centers of Alaska.

There is very little basis for determining how residency differs for people under and over 18 years of age. The 1970 census for Alaska does suggest some basis for guessing derived from the responses to the question: Where did you live in 1965?

a. one-third of the children between 0 and 9 years of age were 5 year residents;

b. 40 percent of the children ages 10 to 19 were 5 year residents;

c. only about 14 percent of people 20 to 29 were 5 year residents;

d. between 25 and 30 percent of the people between 30 and 44 years were 5 year residents;

e. over half of the people 45 years and older were 5 year residents.

3.

No longstanding trends were
quick review of changes in t
of Alaska's population since

	1960	1970
Under 18:	*39.8%	39.9%
Over 18:	*60.2%	60.1%

* estimated from data
years rather than 10 ye

No data at all was useful for determining changes
patterns.

HB
763

HOUSE RULES COMMITTEE LETTER OF INTENT TO ACCOMPANY HB 763

It is the intent of the Legislature that after passage of HB 763 the board of directors of the Commercial Fishing and Agriculture Bank shall institute a plan of work to include:

(1) work with federal farm credit system representatives to develop policies and agreements formalizing the working relationship between the bank and the Spokane Bank for Cooperatives and the Federal Intermediate Credit Bank of Spokane;

(2) the completion of sufficient market research to determine the initial capital needs of the bank and projections for future capital requirements; and

(3) the completion of a financial proposal to be submitted to the commissioner of revenue in support of a preferred stock offering memorandum, specifying the board's suggestions for terms of the stock and a schedule of stock repurchase by the bank.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

March 27, 1978

MEMORANDUM

SUBJECT: HB 763: W.O. #15/R

TO: The Honorable Alvin Osterback

FROM: John Williams
Research Analyst

You have asked that we prepare an analysis of HB 763, an Act relating to commercial fishing and agriculture. Following is a general description of the bill. We will first discuss the bill from a general perspective and then specifically address the issues of the purpose of the development bank, the structure, financial aspects, and the eligibility requirements.

OVERVIEW

HB 763 repeals the commercial fishing loan act (AS 16.10.300-370) and creates the Commercial Fishing and Agriculture Cooperative Development Bank (it does not repeal the Alaska Agricultural Loan Act--AS 3.10). The bank is subject to the provisions of the cooperative corporation laws (AS 10.15.005-600) except as otherwise specifically provided for in the bill.

The bank is to be initially capitalized via purchase by the State of non-voting preferred stock in the corporation. The initial seed money is to be repaid to the State within 20 years from the profits of the bank and from the purchase of stock by fishermen and farmers. If the State's initial investment is not returned within 20 years, the commissioner of Commerce and Economic Development may dissolve the corporation.

The bank may borrow money, lend money, guarantee loans, joint venture in loans with institutions of both the public and private sectors, hold equity interest in enterprises of its members (not to exceed 49%), and may issue bonds.

PURPOSE

Section 2 of HB 763 describes five purposes of the Act (economic assistance for Alaskan commercial fishermen and farmers, to encourage utilization of agrarian and fishery resources, encourage technological devel-

opment in those two renewable resource industries, and to promote a more rapid development of the agricultural industry). The bill will also have the effect of encouraging members of those industries to form cooperatives and perform decision making through peer group processes. The intended impact, however, is to insure the availability of financial resources for expansion of the fishing and agricultural industries in the State.

STRUCTURE

The bank is clearly modeled after components of the federal farm credit system, which were initially financed by the federal government and subsequently fully owned and financed by the members. The federal seed money was repaid, at which time federal involvement in the system was terminated (other than as a regulatory overseer).

The Commercial Fishing and Agriculture Cooperative Development Bank is established as an instrumentality of but separate from the Department of Commerce and Economic Development (Sec. 3). It is governed by a Board of Directors (three in number), with the initial directors appointed by the Governor. Subsequent directors are elected by the shareholders and serve three year terms. The directors are charged with filing the articles of incorporation and with adopting bylaws. They shall also establish the value for and issue stock in the bank, as well as set out a schedule of guidelines for loans made by the bank. A director of the bank is prohibited from voting on matters for which he or she has a conflict of interest (Sec. 41.45.190).

FINANCIAL ASPECTS

Capitalization

The bank is initially capitalized by the sale of preferred stock to the State (60-80% of issuance) and to members. Membership stock is issued in the amounts and with the value determined by the Board of Directors.

Sections 41.45.120-180 provides for bonding powers. The bank may issue bonds at its discretion, except that the maturity of any issue may not exceed 30 years, and the bank may not pledge the full faith and credit of the State. All property and bond issuances of the bank are tax exempt and legal investments for fiduciaries.

Sec. 41.45.210(15) allows the bank to borrow money and issue secured or unsecured evidence of indebtedness.

Lending

As mentioned earlier, the bank is fashioned after the farm credit system. To be eligible to borrow from the bank, a lendee must be a participant in the bank. The farm credit system specifies that a member must own at least 10% of the value in stock of an outstanding loan. A minimum participation is not specified in HB 763.

The bill leaves broad discretion to the Board of Directors in determining loan policy. Sec. 41.45.210 specifies that the bank may make variable rate or fixed rate loans, provide for extensions of loan terms (for poor fishing or farming seasons), make loans jointly with other public or private institutions, guarantee or endorse obligations of other corporations, and accept subordinate leins as security.

Sec. 41.45.210(18) allows the bank to provide "technical services" to shareholders to enhance their ability to obtain financial assistance from the bank.

Investments

The bank is given broad powers to invest its resources. Sec. 41.45.210(7) provides for the bank to "invest in projects conducted by shareholders of the bank by purchase of the capital stock of corporations involved in such projects, except that no investment in capital stock may exceed 49 per cent of the capital stock of a corporation". Subparagraph (8) of the same section provides for the bank to invest in projects relating to the development of farms, storage and processing of farm produce, etc. except that no investment may exceed 49% of the capital stock. There is no similar provision specifically allowing the bank to invest in "vertically integrated" fishing operations.

ELIGIBILITY

Sec. 41.45.210(1) describes the eligibility requirements. Applicants must be members of the bank to be eligible to receive loans. Eligible recipients are defined as "commercial fishermen and farmers or...corporations, partnerships, or joint ventures 51 per cent of which are owned by commercial fishermen or farmers who are state residents...."

Eligible activities do not appear to be limited to strictly fishing or farming. Subparagraphs (7) and (8) of Sec. 41.45.210 allow the bank to invest in activities conducted by shareholders of the bank. Subparagraph (7) is not specific as to what kinds of projects the bank may invest in, other than the projects must be projects "conducted by the shareholders". Subparagraph (8) specifies that bank investments may be made in the development and operation of vertically integrated activities relating to farming.

The bill is not specific as to what loan applications are eligible for consideration by the bank, except that loans are made only to members and members must be either commercial fishermen or farmers. Loan applications submitted by members for projects outside the purview of either fishing or agriculture are presumably eligible, unless otherwise provided for by the Board of Directors in the articles of incorporation or bylaws.

JW:dh

THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. CS for HB 763 (am)
Title An Act relating to commercial fishing and agriculture
Requested by Representatives Osterback and Gardiner Date 5/2[illegible]/78

II. FISCAL DETAIL
Agency Affected Departments of Commerce and Economic Development and Revenue
Program Category Affected Development/Treasury
Budget Request Unit(s) Affected Economic Enterprise/Treasury Management

EXPENDITURES (Thousands of Dollars)

	FY 77	FY 78	FY 79	FY 80	FY 81	FY 82
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL			150.0			
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
General Fund Equity Investment			2,000.0			
TOTAL			2,150.0			

FUNDING (Thousands of Dollars)

GENERAL FUND			2,150.0			
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

FULL TIME			0			
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

$150,000 is appropriated as one time only setup costs for the bank. The attached sheet gives the breakdown of that $150,000 which will be used for organizational and setup purposes.

The initial capitalization of the bank is to be $2 million in preferred stock investment from the General Fund. It is anticipated that the $2 million will be necessary after December, 1978. The stock shall be repurchased within 20 years. The bank is intended to become a member owned private institution.

IV. DATE 5/26/78 PREPARED BY John Williams
AGENCY Legislative Affairs Agency
PHONE 465-4918

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 10/76)

The following is a general breakdown of the anticipated use to be made of the $150,000 one time appropriation to the Commercial Fishing and Agriculture Bank board of directors.

1. Personal Services

A. Bank Executive Director with salary similar to State range 23, salary of $36,120 plus benefits of 20% ($7,224)	$43,344
B. Clerk Typist with salary similar to State range 8, salary of $12,660 plus benefits of 20% ($2,532)	15,192

2. Travel

A. Board-6 meetings, 5 members at $350 per trip	10,500
B. Executive Director-12 trips at $350 per trip (per diem included)	4,200

3. Contractual

A. Rent-250 sq. ft. at $1.25 per sq. ft./mo.	3,700
B. Telephone/communications	1,800
C. Postage, etc	600
D. Printing and Advertising	1,600
E. Professional fees and services (includes research and legal fees of organization)	65,000

4. Commodities

A. Office Supplies	600

5. Equipment

A. 2 desks, 2 chairs	1,100
B. File cabinets, book cases	400
C. Calculator, typewriter, and misc.	800
TOTAL FY-79	$148,836

IPMAFUB AHG

A-078249E053 02/22/78

ICS IPMMTZZ CSP

5094567393 TDMT SPOKANE WA 213 02-22 0804P EST

PMS HONORABLE ALVIN OSTERBACK, REPORT DELIVERY

10-1

MEMBER HOUSE OF REPRESENTATIVES

ALASKAN STATE LEGISLATURE COPY MESSAGE , FONE ASAP

JUNEAU AK 99801

REFERENCE HOUS , BILL 763 DUE FOR MARKUP SESSION OF RESOURCES COMMITTEE, PLEASE CONSIDER THE FOLLOWING THE FEDERAL INTERMEDIATE CREDIT BANK OF SPOKANE UNDER THE FARM CREDIT ACT OF 1971 IS CHARGED WITH THE SUPERVISION OF PROVIDING SHORT AND INTERMEDIATE TERM CREDIT FOR AGRICULTURE, INCLUDING FARMERS, RANCHERS AND HARVESTERS AND PRODUCERS OF AQUATIC PRODUCTS FOR THE STATE OF ALASKA BY PRODUCTION CREDIT ASSOCIATION AND OTHER FINANCING INSTITUTIONS. COMMENCING I THE LATE 60S THE NORTHWEST LIVE STOCK PRODUCTION CREDIT ASSOCIATION HAS EXTENDED AGRICULTURAL CREDIT TO QUALIFIED FARMERS AND RANCHERS IN ALASKA. IN 1973, NORTHWEST LIVE STOCK PRODUCTION CREDIT ASSOCIATION ALSO BEGAN FINANCING FISHERMAN FISHING IN ALASKAN WATERS. TO DATE, EXPERIENCE HAS BEEN SATISFACTORY.

THE FEDERAL INTERMEDIATE CREDIT BANK OF SPOKANE WOULD NOT REGISTER OBJECTION TO THE CREATION OF A COMMERCIAL FISHING AND AGRICULTURAL COOPERATIVE DEVELOPMENT BANK AS PROPOSED IN HOUSE BILL 763. IN FACT, THE FICB OF SPOKANE LOOKS FORWARD TO WORKING CLOSELY WITH THE BANK WHEN AUTHORIZED IN ITS CREATION. THIS IS PARTICULARLY IMPORTANT BECAUSE THE PROPOSED BANK SHOULD BE STRUCTURED SO AS TO QUALIFY FOR DISCOUNTING LOANS WITH THE FEDERAL INTERMEDIATE CREDIT BANK OF SPOKANE.

FOR FURTHER INFORMATION, CONTACT THE FEDERAL INTERMEDIATE CREDIT BANK OF SPOKANE WEST 705 FIRST AVE SPOKANE WASHINGTON 99204, TELEPHONE (509) 456-7380. SINCERELY,

WILLIAM F BARRATT PRESIDENT FEDERAL INTERMEDIATE CREDIT BANK OF SPOKANE

HB 763

EARL R. COMBS, INC.
CONSULTANTS IN ECONOMICS AND PLANNING

2737 - 77th Ave. S.E. • Mercer Island, WA 98040 • (206) 232-3991 • TWX 32-9472 MIS MRID

March 27, 1978

Rep. Al Osterback, Chairman
House Resources Committee
Pouch V State Capitol
JUNEAU, AK 99811

Dear Al:

As reported to your office by phone on March 27, I would recommend that the Resources Committee consider the following changes to HB763:

1) Section 1 - FINDINGS

The concept of the target group for assistance throughout Section 1 (fishermen and farmers) could be expanded to include processing firms and other businesses whose primary function is to service farmers and fishermen, by referring to "agriculture and fishing businesses" instead of "farmers and fishermen". This would appear to make the FINDINGS more consistent with Sec. 41.45.210 POWERS OF THE BANK as written (and as proposed for change in the remainder of this letter).

Sec. 41.45.210 POWERS OF THE BANK

Para (1) line 25, remove; replace with , and to seafood and agriculture processors, marketers and firms providing technical services to the agriculture and fishing industries for projects which will establish a facility within Alaska or which will establish or expand a market for the harvests of resident commercial fishermen or farmers.

Para (7) and (8) could be clarified by merging them and defining target projects as defined under para (1). This could be done by adding of the type approved under para (1) of this section at the end of line 7. Paragraphs (7) and (8) would then be replaced by a single paragraph:

(7) invest in projects conducted by shareholders of the bank of the type approved under para (1) of this section by purchase of the capital stock of corporations involved in such projects, except that no investment in capital stock may exceed 49 percent of the capital stock of a corporation;

I am hopeful that these comments will be of assistance. If any clarification is needed, please contact me.

Sincerely,

Franklin L. Orth
Senior Economist

FLO:TOE

HB

773

COMMITTEE REPORT

SENATE

FURTHER: FINANCE

2/23/78

Date: _____

Mr. President:

The Committee on RESOURCES has had CSHB 773 (Fin)
special appropriation to Dept. of Fish & Game, division of commercial fisheries

under consideration and (a majority of the committee) (the committee reports it back as follows)

( ) recommends it do pass ( ) recommends it do not pass

( ) recommends it do pass with attached amendment(s)

( ) recommends it be replaced with CS for _____

and _____ ( ) new title ( ) same title

( ) AND attaches a Letter of Intent ( ) New Fiscal Note

( ) reports it back without recommendation

( ) and recommends it be referred to the _____ Committee

MEMBERS SIGNING DO PASS:

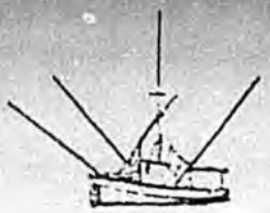
OTHER RECOMMENDATIONS:

_____

Chairman

S 60 (rev. 6/77)

CS/HB 773 folder



ALASKA TROLLERS ASSOCIATION

P.O. BOX 5825
KETCHIKAN, ALASKA 99901
907-225-9638
January 27,1978

The Honorable Mike Miller
Pouch V
Juneau, Alaska, 99811

Dear Representative Miller;

The Alaska Trollers Association Logbook Program, now entering its third year, has been deemed an important and needed undertaking by fishermen, resource managers and ocean scientists. The enclosed letters of commendation from the North Pacific Fishery Management Council and the National Marine Fisheries Service bear this out. Much of the initial two years has been devoted to generating interest and cooperation for the program, training fishermen in data collection techniques and determining the types of information that could best be obtained. Even so, much useful information has already been obtained. Attached is a list of the reports available from our office.

The Logbook Program is the only source of information providing detailed catch and fishing effort data for the Alaska power troll salmon fishery. It also provides virtually the entire data base for determining abundance, distribution and migration patterns of marine mammals in southeast Alaska waters and for monitoring trends in the southeast Alaska marine ecosystem. In 1978, with only a small increase in time and effort for participating fishermen, the Logbook Program will be used to help obtain better information for recoveries of tagged salmon, better understanding of incidence of salmon diseases and parasites and better knowledge of the accuracy of the Alaska fish ticket data collection system.

None of the above information can be feasibly collected by existing state, federal or private agencies. The cost of ship-time and personnel alone would be prohibitive - roughly $2.7 million! Only Alaska Trollers Association can provide such data at a relatively modest cost, since we rely on voluntary efforts of fishermen. However, we do require a central office staffed with a biologist and secretary-administrator to ensure efficient management and coordination of the Program.

To date we have received a grant of $40,000 from the State of Alaska for fiscal year 1977 (administered through a contract with A.D.F.& G. to University of Alaska Sea Grant Program). We had also anticipated receiving a grant of $25,000 from the federal government (through Outer Continental Shelf Environmental Assessment Program) but have run into delays due to a series of unfortunate misunderstandings. Although we have sufficient funds to print 1978 Logbooks and Annual Reports on 1977 Logbook data, we are in need of funds to run our office for the remainder of fiscal year 1977. We need an additional $20,000 to continue operations on a "bare bones" level. Therefore, we are asking that you support a request for $20,000 in supplemental funding from the State Legislature 1978 fiscal year budget to go to our Logbook Program. Additionally, we hope you will ensure that our program is funded in the 1978 fiscal year budget at the increased level of $65,000. Considering the amount of valuable information our program is able to provide just in the area of fisheries, this is certainly a modest and reasonable funding request.

Fishermen have long desired a voice in the management of the resource they depend upon for their livelihood, and are certainly in the best position to collect much needed information. The Logbook Program has shown that fishermen are responsive and responsible resource users. We hope that you will help us in our efforts to continue and improve our Logbook Program. Please let us know if we can provide you with any further information. We look forward to hearing from you.

Sincerely yours,

Ed Linkous

Ed Linkous, President

SF/sn
Enclosures

TROLL LOGBOOK PROGRAM REPORTS

1976 Southeast Alaska Troll Logbook Program, Marine Mammal Sightings: Detailed Summary. February 1977. A.D.F.& G. in cooperation with A.T.A., U. of A. Sea Grant and N.M.F.S. 80p.

1976 Troll Logbook Program: General Data Summary by Period and Area. A.D.F.& G. in cooperation with A.T.A., U. of A. Sea Grant and N.M.F.S. 200p.

Graphic Representations of Sea Surface Temperature Data from the 1976 Southeast Alaska Troll Log Book Program. 1977. Northeast and Alaska Fisheries Center Processed Report, N.M.F.S. 80p.

Feeding Habits of Salmon in Southeast Alaska based on Logbook Data and Stomach Samples Collected by Alaska Trollers Association. M.S. Thesis, U. of A. in progress.

Alaska Trollers Association Troll Logbook Program: Annual Report from 1976 Logbook Data. A.T.A., U. of A. Sea Grant, A.D.F.&G. and N.M.F.S. in press (printed by U.of A. Sea Grant).

Relative Abundance and Distribution of Small Chinook Salmon (Oncorhynchus tshawytscha) in Commercial Troll Fishing Waters North and West of Cape Spencer, Southeast Alaska. 1977 A.T.A. Technical Report. 33p. (Printed in Industry's Appraisal of the Alaska Salmon Troll Plan)

North Pacific Fishery Management Council

Harold E. Lokken, Chairman
Jim H. Branson, Executive Director

Suite 32, 333 West 4th Avenue
Post Office Mall Building

Mailing Address: P.O. Box 3136DT
Anchorage, Alaska 99510

Telephone: (907) 274-4563
FTS 265-5435

December 19, 1977

Mr. Ed Linkous
Alaska Trollers Association
P. O. Box 5825
Ketchikan, AK 99901

Dear Ed,

The North Pacific Council asked me to write to the Alaska Trollers Association through you, commending you and your organization for the objective response you made to the first draft of the Council's management plan for the troll salmon fishery and your help in developing additional material for their consideration when they adopted the plan.

As you will recall, the Council, at the December meeting, was enthusiastic about the Alaska Trollers Association's logbook program recognizing the value of the information that can be derived from this voluntary effort. They want to work closely with you, both in that program and in the development of revisions to the troll management plan.

We are planning on holding a one-day work session to develop research proposals for the troll fishery along the lines suggested by the Council at its last meeting. It will be held in Juneau as early in January as we can schedule everyone. We'd like to have one or two representatives from the Trollers and your fishery biologist, Mr. Stephen Fried attend. Don Collingsworth will be coordinating the workshop and will keep you advised of the time and place. The Council will fund travel for up to two of your members and Mr. Fried for this workshop.

Sincerely,

Jim H. Branson
Executive Director

National Oceanic and Atmospheric Administration
National Marine Fisheries Service
P. O. Box 1668, Juneau, Alaska 99802

March 9, 1977

Mr. Ed Linkous
P.O. Box 5825
Ketchikan, AK 99901

Dear Ed:

Jon Rowley delivered a progress report at a recent Interagency Technical Committee meeting which summarized the Troll Log Book Program for 1977.

We were pleased with the progress of this cooperative program and believe that it should be continued and refined. In addition to the data generation potential, the Troll Log Program elicits vastly improved communications between fishermen, scientists and administrators.

We support the Troll Log Program and will do all we can to assist it.

Sincerely,

Harry L. Rietze
Director, Alaska Region

LOGBOOK PROGRAM BUDGET FY 1979
for
Program and Data Management

Salaries and Wages	
Project Leader 12 months @ $2,000	$24,000
Project Secretary 6 mos. @ $1,000	6,000
Benefits (10% of salary and wages)	3,000
Taxes (State and Federal)	4,500
Travel (including Logbook Workshops prior to fishing season, travel to Fairbanks to help with data reduction, travel to N.P.F.M.C., A.D.F.&G., and N.M.F.S. meetings)	8,000
Supplies	1,000
Services	
Data Coding and Checking	3,500
Office Rental and Utilities	3,500
Communications (phone and postage)	1,500
Copying and Drafting	2,000
Logbook Printing (1979, 300 copies)	2,500
Annual Report Printing (1979, 400 copies)	2,500
Newsletter (4 times yearly, 400 copies)	500
Equipment (including drafting materials, electronic calculator)	2,500
Total	$65,000

HB
815

COMMITTEE REPORT

SENATE

FURTHER: None

5/10/78

Date: 5/30/78

Mr. President:

The Committee on RESOURCES has had CSHB 815 (Fin) oil and gas conservation

under consideration and (a majority of the committee) (the committee reports it back as follows)

( ) recommends it do pass ( ) recommends it do not pass

( ) recommends it do pass with attached amendment(s)

(X) recommends it be replaced with CS for CS HB 815

and _____ ( ) new title ( ) same title

( ) AND attaches a Letter of Intent ( ) New Fiscal Note

(X) reports it back without recommendation Individual

( ) and recommends it be referred to the _____ Committee

MEMBERS SIGNING DO PASS:

Ellis Bunk

Bill Ray

OTHER RECOMMENDATIONS:

Jim Duncan DO PASS WITHOUT AMENDMENT

AGO 085864

R. Palmer

Chairman

S 60 (rev. 6/77)

Testimony Before
Alaska Senate Resources Committee
on
CSHB 815

My name is Thomas H. Krueger. I am an attorney for Exxon Company, U.S.A. and am located in Los Angeles. I appreciate the opportunity to appear before this Committee and present testimony for Exxon.

CSHB 815 operates to amend various chapters in Titles 31 (Oil and Gas) and 38 (Public Lands) of the Alaska statutes. Much of the Bill deals with unitization and unitized operation of oil and gas pools. Exxon is and has long been a strong supporter of unitized operations designed to enhance recovery, promote resource conservation, prevent waste, eliminate unnecessary operations and safeguard correlative rights of the parties involved. Thus, we are interested greatly in presenting our views on this Bill to the Committee.

Several portions of CSHB 815 appear to be proper and acceptable revisions of the State's oil and gas law, and we will not take up your time discussing these provisions. There are, however, three areas in the Bill that are of considerable concern to us.

Section 7 of the Bill, which amends the unitization provisions of A.S. 31.05.110(b), deletes one of the findings of the Department of Natural Resources ("DNR") essential to a DNR order of unitization. Under current law, the DNR must find, among other things, that unitization and the adoption of a unitized method(s) are "for the common good and will result in the general advantage of the owners of the oil and gas rights within the pool or portion of it directly affected." The Bill proposes to eliminate the finding of resultant general advantage to the affected property owners, leaving only the finding that unitization and adoption of one or more unitized methods of operations are for the "common good". Significantly, "common good" is not defined.

In Exxon's view, unitization should result to the general advantage of the owners of the oil and gas rights, including the royalty owners directly affected, as well as to the "common good". If it does not, it should not be ordered by the State. The current provision is fair and should not be changed.

Under the Bill, the DNR could make the requisite finding that unitization, etc. are for the "common good" in a context where it would not result in

the general advantage of the owners of the oil and gas rights directly affected thereby. If DNR-ordered unitization were approved in such a context, serious constitutional questions could arise as applied to property owners who, in fact, were not benefited by and did not approve unitization, etc. of their interests. These questions could take the form of deprivations of liberty and property without due process of law.

(2) Underlifting and overlifting

Section 10 of the Bill, which would apply to all units created after June 30, 1978, allows underlifting and overlifting of unit production only when it does not create waste; and, regardless of waste, underlifting and overlifting may be permitted by the commissioner for temporary periods when there are extraordinary disruptions to the owner's production disposal systems. Further, this section restricts the recovery of underlifted oil to a daily rate not to exceed 10 percent of a working or royalty interest owner's share of daily production at the time of underlift recovery.

Exxon strongly supports the prevention of waste, but does not consider the first portion of this section to be necessary. Waste is already prohibited by the statutes and the Department of Natural Resources is fully empowered to carry out the purposes of AS 31.05.

As to the part of this section which limits the rate of recovery of underlifted oil, we see no need for the restriction that is imposed or for the state to intervene in this area. The details of underlifting and overlifting are matters that can best be worked out satisfactorily by the oil and gas resource owners. By imposing this restriction, which produces no apparent benefit to anyone, unforeseen future problems may be created.

3. Sections 11 and 16 of the Bill would remove the requirement that state-ordered unitization be acceptable to 62.5% of the lessees and 62.5% of the royalty owners within the unit area (with certain exclusions). Under these provisions, the State, without working or royalty owner concurrence, could mandate unitization, including the details of unit participation, unitized management of further development and operation of the unit area, cost and expense apportionment, financing, etc.

(3)

Exxon believes that unitized operations are best accomplished through voluntary agreement between the persons whose property interests would be affected. In this way, interested persons are consulted and mutual agreement reached in a manner satisfactory to those concerned. This promotes harmony and contributes to the achievement of

unit operations. Under present law, compulsory unitization must be acceptable to working and royalty interest owners of at least 62.5 percent of the unit area, thereby insuring comfortable majority support and satisfaction. This provides some degree of assurance both that only meritorious unit projects are considered and approved and that the State will not be forced to act on applications for unitization which are lacking in merit and reasonable support.

Exxon Company, U.S.A. is presently participating in more than 370 reservoir-wide and field-wide unitization projects throughout the United States, all of which have been formed voluntarily or with majority consent of both royalty and working interests. We have found that when a project has merit, its benefit will be recognized by the resource holders and it will be implemented. In our experience, we have seen no need for government-dictated unitization; however, we do support the concept of state-ordered unitization where majority, but not total, agreement is reached for unitization amongst the participants.

We question that enactment of Sections 11 and 16 would serve to benefit all interest owners in a pool since the sections eliminate the necessity for working and royalty interest approval for State unitization as provided under current Alaska law. There is no

need for this legislation since (a) to Exxon's knowledge, no unitization project which was needed in the State of Alaska has failed to materialize as a result of failure to reach sufficient agreement among the persons affected, and (b) present conservation laws contain sufficient authority for unitization and conservation of oil and gas resources. If the Bill is enacted, the only way that a dissatisfied person could object to State-ordered unitization affecting him would be to resort to litigation.

Finally, if the State were to undertake unitization by unilateral action, it would be put in the position of addressing many complex technical, operating, financial and legal issues normally handled by the operators. This would require a large expansion of its staff, and could delay the unitization process. Many of these issues that the State would set itself up to resolve would impact only upon the working interest owners and not upon the State.

In summary, Exxon believes that there is no need to change existing law on this subject and supports retention of voluntary and majority consent unitization as presently provided for in the statutes.

In summary, Exxon opposes that portion of Section 7 of the Bill which removes the required finding that unitization and adoption of unitized method(s) will result in the general advantage of the owners of the oil and gas rights. Present law on this subject is reasonable and fair and should not be changed. In addition, Exxon is opposed to Section 10 of the Bill since the provisions it adds concerning underlift and overlift appear to be unnecessary. The restriction on the rate of recovery of underlifted oil could cause problems in the future. Finally, we are strongly opposed to Sections 11 and 16 which allow for unitization by unilateral state action.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

March 1, 1978

MEMORANDUM

SUBJECT: HB 815 (W.O. #12/R)

TO: The Honorable Al Osterback, Chairman
House Resources Committee

FROM: Richard G. Haggar
Research Analyst

This memorandum is in response to your request that we prepare a summary analysis of HB 815, relating to oil and gas conservation.

Section 1

Amends AS 31.05.030(d) and allows the Department of Natural Resources to require oil or gas well operators to measure and monitor pressures within oil or gas pools. Such pressure monitoring would provide an additional source of information for state conservation authorities in terms of seeing that state conservation objectives are met.

Section 2

Amends AS 31.05.030(e) and allows the Department of Natural Resources to regulate the production rate of oil and gas from a well or property for purposes of meeting state conservation objectives.

Section 3

Amends AS 31.05.030(a)(1) and allows the Department of Natural Resources to require that oil or gas well operators make, and file the results of, flow test information from wells drilled for oil or natural gas. Such flow test information would be covered under the confidentiality provisions of AS 31.05.035(c).

Section 4

Amends AS 31.05.035(c) and provides that only operators of oil and natural gas wells may require confidential treatment of data submitted to the Department of Natural Resources in relation to state conservation requirements. The current statute does not specify which parties may require confidential treatment of data.

Section 5

Amends AS 31.05.060 by adding a new subsection (b) which requires that any action by the Department of Natural Resources under AS 31.05 that has state-wide or general application will be performed in accordance with the Administrative Procedure Act (AS 44.62), except that any action by the Department under AS 31.05 with respect to a single well or field will be performed in accordance with regulations of the department designed to afford persons affected by the action notice and an opportunity to be heard.

Section 6

Amends AS 31.05.110(b) by removing the requirement that a unitization agreement, if promulgated, "...will result in the general advantage of the owners of the oil and gas rights within the pool or portion of it directly affected..."

Section 7

Amends AS 31.05.110(c) in the following manner:

1. Makes discretionary the Department of Natural Resources' authority to determine the size and area of operating units.

2. Revises the terms by which the department determines the area of an operating unit from "...the area of a pool or portion of it..." to "...the boundary of the area...".

3. Makes discretionary the department's authority to limit unitization agreements to single pools or portions of single pools.

4. Removes the requirement that unitization agreements can cover only those areas of a pool or pools which have been defined and determined to be productive of oil and gas by actual drilling operations.

Section 8

Amends AS 31.05.110(h) by deleting references to "one-eigth" landowner royalty shares. The amendatory language would take into account circumstances where the landowners royalty share was other than one-eighth (12.5%).

Section 9

Amends AS 31.05.110(i) by forbidding either underlifting or overlifting of an "aliquot" (a fraction) of unit production unless an emergency order for such under- or overlifting is approved by the department. "Emergency order" is not, however, defined either in HB 815 or the current statute.

Section 10

Amends AS 31.05.170(11) by defining the drilling of unnecessary wells to carry out the general conservation purposes of AS 31.05 as "waste".

Section 11

Amends AS 31.05.170(12) by clarifying the definition of a "cubic foot of natural gas" and by changing the pressure measurement base for defining a "cubic foot of natural gas" from 14.65 pounds per square inch absolute to 14.73 pounds per square inch absolute (conforming Alaska's law to both federal standards and those of the Interstate Oil Compact).

Section 12

Amends AS 38.05.180 relating to the leasing of public lands, by adding the requirement that no lease under section 180 may be issued without inclusion of the language of AS 31.05.110(h) (providing for the assessment of unitization costs) as part of the lease. Section 12 also provides that leases issued in violation of this requirement shall be construed as containing the language of AS 31.05.110(h).

Section 13

Amends AS 43.55.140(2) relating to Alaska's oil and gas severance tax, by changing the pressure measurement base for defining "one cubic foot of gas" from 14.65 pounds per square inch absolute to 14.73 pounds per square inch absolute (again, conforming Alaska's law to the federal and Interstate Oil Compact standard).

Section 14

Provides that the Act will take effect July 1, 1978.

324A S. Willoughby
Juneau, Alaska 99801

May 15, 1978

SENATOR ROLAND

Senator Chancy Croft
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Croft:

As the sponsor of Senate Bill 503, relating to the establishment of an Oil and Gas Conservation Commission, you already know that the House has passed House Bills 815 and 830 on much the same subject.

There is, however, a small technical change which could be made to your bill or to the appropriate House bill, which change would have a potential benefit to the State of Alaska in excess of $135 million.

The details of the cost savings to the State are related in the accompanying letters to Representatives Chatterton and Malone and to Secretary Schlesinger.

Put simply, the suggested change would give the state the option of keeping its "excess" or "surplus" oil in the ground until markets can be found which have low transportation costs & consequent high royalty income levels--or until the Federal government can be persuaded to compensate Alaska for continued production on behalf of the East Coast even at low royalty rates for Alaska.

The change involves giving the Commission the right to set prorationing rates for "conservation or marketing purposes". (The underlined words need to be added to either the House bill or to your bill to make the Commission's rights explicit rather than implicit.)

The other change to reach this desirable end is in the definition section: the definition of "waste" should include "the production of oil or gas at a rate greater than economic market demand."

As the letter to Representative Buchholdt points out, "economic market demand" is purposely left vague to allow the Commission to decide whether to maximize production or revenue, whether or not to leave oil excess to West Coast demand in the ground or to produce oil to satisfy East Coast demand.

Since legislators are used to arguments from self-interest, I suggest 10% of the savings come to me; these small changes will in any case benefit Alaska--and the oil companies--greatly by reducing high

transportation costs on the "excess" oil. Or--and this may be ultimately the more likely possibility--the fact that Alaska has given itself this power may mean that the Federal government will either be willing to compensate Alaska for excess production on behalf of East Coast consumer states or will be willing to aid Alaska in realizing the Japanese barrel-for-barrel swap.

In short, this is a change which benefits Alaska: please do what is possible to add these suggested words.

Sincerely and cordially,

Dr. Joe Sonneman
Five Star Consulting and Research

P.S.: There is one oversight: as production is scheduled to rise to 2 million barrels a day, the actual potential cost to the State of Alaska from continuing production of the "excess" oil will be substantially more than $135 million over the three year period; the potential savings will also be more, therefore, if the change in SB503 or HB815 is effected.

cc: Senator Poland
Senator Sackett
Senate President Rader
Senator Ray
Senator Hohman
Senator Sumner
Senator Huber
Senator Rodey

Title 31 - Chapter 05 - The States Oil and Gas Conservation Act was adopted in 1955 by the Territorial Legislature. The Act is virtually the Interstate Oil Compact Commission's Model Act. No substantive changes have been made to the Act since adaption, 23 years ago. The Model Act was drafted primarily for the purpose of providing States with the authority to protect correlative rights of private mineral land owners and prohibit waste.

HB 815 except for Section 15 deals solely with amendments to the Oil and Gas Conservation Statute 31-05. The intent of the bill is to improve Statute for application to Alaska which is primarily a public lands state rather than a private lands state typified by the uplands of oil producing south 48 states.

HB 815 incorporates in addition to the sponsors proposals amendments to Statute requested by the Department of Natural Resources and amendments to Statute requested by the industry. Several sections of the bill address requirements for the Industry, additional data deemed necessary to insure Alaska protection of correlative rights and prevention of waste. Other sections address housekeeping amendments to facilitate better administration of the Act.

The most substantive change to existing statute is provided by Section 16 of the bill. This is a policy question.

Current law 31.05.110(d) in addition to permitting voluntary unitization of many oil and gas leases in to one cooperative reservoir management unit, provides the State with the authority to mandate unitization providing that 62.5% or more of the lessees approve and 62.5% or more of the lessors approve.

Section 16 of the bill repeals the proviso for 62.5% or more approval; thus providing the State with the power to mandate unitization of Oil and Gas leases when deemed necessary to protect correlative rights and prevent waste.

You may ask why this power is needed. Oil and Gas reservoirs almost always have a habit of occuring beneath leases having different owership interests. Unless the entire reservoir is managed as one unit "waste" as defined by Statute will generally occur and in fact waste as defined by Statute will most often be necessary to protect correlative rights. We have a show window example of such waste existing on State lands today. We need the statutory hammer to force unitization. After all, because of our severance tax law we have a vested interest in maximizing the ultimate recovery of oil and gas from all lands within the State regardless of ownership.

ACO 885861

Of lesser significance are Sections 10 and 15 of the bill. Section 10 permits underlifting/overlifting of unit production only when it will not create waste excepting for temporary periods where the Commission finds extraordinary conditions have occurred.

Section 15 requires that all future oil and gas lease forms include the language set forth within the quotation marks. We would not be in the court today if such language had been adopted in earlier years.

AGO 885862

AMENDMENT

OFFERED IN THE ~~HOUSE:~~ Senate Resources BY: Chatterton

TO: Senator Poland HOUSE BILL No. CSHB 815 (Finance)

SENATE BILL No. _____

PAGE: 7 and 9 LINE: Pg. 7 - Lines 20 & 23
Pg. 9 - Lines 3,4 & 6

Page 7, Line 20

(a) Delete - (the unit) immediately preceding the word Production.

(b) Add - or lease immediately following the word tract.

Page 7, Line 23

Add - or lease immediately following the word unit.

Page 9, Line 3 & 4

(a) Delete - (the unit) immediately preceding the word Production.

(b) Line 4 - Add - or lease immediately following the word tract.

Page 9, Line 6

Add - or lease immediately following the word unit.

HB
830

COMMITTEE REPORT

SENATE

FURTHER: Finance

5/10/78

Date: 6/2

Mr. President:

The Committee on RESOURCES has had CSSSHB 830 (Fin)
establishing the Alaska Oil and Gas Conservation Commission

under consideration and (a majority of the committee) (the committee reports it back as follows)

( ) recommends it do pass ( ) recommends it do not pass

( ) recommends it do pass with attached amendment(s)

( ) recommends it be replaced with SCS for CS SS HB 830 (Fin)

and _____ ( ) new title (X) same title

( ) AND attaches a Letter of Intent ( ) New Fiscal Note

( ) reports it back without recommendation

( ) and recommends it be referred to the _____ Committee

MEMBERS SIGNING DO PASS:

Ebb Dalrymple

Bill Ray

Joe Vogler

OTHER RECOMMENDATIONS:

No Rec.

C. Tillion No Rec

AGO 885838

Ted Poland
Chairman

S 60 (rev. 6/77)

THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. CSSSHB 830
Title An Act establishing the Alaska Oil and Gas Conservation Commission
Requested by Commissioner Robert E. LeResche Date June 1, 1978

II. FISCAL DETAIL
Agency Affected Division of Oil & Gas Conservation of Department of Natural Resources
Program Category Affected NRMEC
Budget Request Unit(s) Affected Oil and Gas Conservation

EXPENDITURES (Thousands of Dollars)

		FY 78	1/2 year FY 79	FY 80	FY 81	FY 82	FY 83
100	PERSONAL SERVICES		125.9	268.2	285.6	304.2	324.0
200	TRAVEL		3.0	6.4	6.8	7.2	7.7
300	CONTRACTUAL		76.0	152.0	243.2	257.8	273.3
400	COMMODITIES		1.0	2.2	2.4	2.5	2.7
500	EQUIPMENT		4.9	2.1	2.2	2.4	2.5
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS						
	TOTAL		210.8	430.9	540.2	574.1	610.2

FUNDING (Thousands of Dollars)

GENERAL FUND		210.8	430.9	540.2	574.1	610.2
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

FULL TIME	7	7	7	7	7	
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Salaries, equipment and other provisions for three Commissioners, three personal secretaries and one Administrative Assistant to make the organization semi-independent. This assumes that budgeting, personnel, and fiscal work or basic administrative support would be provided by Department of Natural Resources or some other existing department. Existing staffing of the present Division of Oil and Gas would be utilized in total in the new Commission. The entire staff would have to relocate.

IV. DATE June 1, 1978 PREPARED BY Hoyle H. Hamilton
AGENCY Division of Oil and Gas Conservation
PHONE 279-1433

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/77)

AGO 885834

POSITION TITLE Administrative Assistant

	Type of Expenditure	Amount	Detail
100	Personal Services	$17,055	13,644 + 25% benefits=17,055
200	Travel	--	
300	Contractual	6,700	Rent, word processing, utilities, telephone
400	Commodities	300	
500	Equipment	1,400	
	Total	$25,455	

Discussion

One Administrative Assistant required starting 1/1/79

POSITION TITLE Secretary

	Type of Expenditure	Amount	Detail
100	Personal Services	$17,055	13,644 + 25% benefits=17,055
200	Travel	--	
300	Contractual	8,200	Rent, word processing, utilities, telephone
400	Commodities	300	
500	Equipment	1,400	
	Total	$26,955	

Discussion

Three secretaries required starting 1/1/79

POSITION TITLE Commissioner

	Type of Expenditure	Amount	Detail
100	Personal Services	$59,130	47,304 + 25% benefits=$59,13
200	Travel	2,000	
300	Contractual	6,700	Rent, word processing, utilities, telephone
400	Commodities	300	
500	Equipment	1,400	
	Total	$69,530	

Discussion

Three Commissioners required starting 1/1/79

THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. SSHB 830
Title An Act Establishing the Oil and Gas Conservation Commission
Requested By Commissioner LeResche Date 3/13/78

II. FISCAL DETAIL
Agency Affected Division of Oil and Gas Conservation of Department of Natural Resources
Program Category Affected NRMEC
Budget Request Unit(s) Affected Oil and Gas Conservation

EXPENDITURES (Thousands of Dollars)

		FY 78	1/2 year FY 79	FY 80	FY 81	FY 82	FY 83
100	PERSONAL SERVICES		8.5	18.2	19.3	20.6	21.9
200	TRAVEL						
300	CONTRACTUAL		3.3	7.1	7.6	8.1	8.6
400	COMMODITIES		.2	.3	.3	.4	.4
500	EQUIPMENT		.7	1.5	1.6	1.7	1.8
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL		12.7	27.1	28.8	30.8	32.7

FUNDING (Thousands of Dollars)

GENERAL FUND	12.7	27.1	28.8	30.8	32.7
FEDERAL FUNDS					
OTHER (Specify)					

POSITIONS

FULL TIME	1	1	1	1	1
PART TIME					
TEMPORARY					

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

These estimates assume that the present Oil and Gas Conservation Committee would be selected for the new Commission serving in the dual capacity as Commissioner (Chief Petroleum Engineer), Commissioner (Chief Petroleum Geolcgist) and Commissioner (Director). Since there is not sufficient top level work to keep three commissioners busy, a savings of approximately $400,000/year could be realized in this manner. Help is needed at the lower levels.

IV. DATE March 13, 1978 PREPARED BY O.K. Gilbreth
AGENCY Oil and Gas Conservation
PHONE 279-1433

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33 901 (Rev. 12/77)

AGO 885839

POSITION TITLE Administrative Assistant

	Type of Expenditure	Amount	Detail
100	Personal Services	$17,055	13,644 + 25% benefits=17,055
200	Travel	--	
300	Contractual	6,700	Rent, word processing, utilities, telephone
400	Commodities	300	
700	Equipment	1,400	
	Total	$25,455	

Discussion

One Administrative Assistant required starting 1/1/79

FISCAL NOTE

I. REQUEST
Bill/Resolution No. SSHB 830
Title An Act establishing the Alaska Oil and Gas Conservation Commission
Requested by Commissioner LeResche Date 3/13/78

II. FISCAL DETAIL
Agency Affected Division of Oil and Gas Conservation of Department of Natural Resources
Program Category Affected NRMEC
Budget Request Unit(s) Affected Oil and Gas Conservation

EXPENDITURES (Thousands of Dollars)

		FY 78	1/2 year FY 79	FY 80	FY 81	FY 82	FY 83
100	PERSONAL SERVICES		125.9	268.2	285.6	304.2	324.0
200	TRAVEL		3.0	6.4	6.8	7.2	7.7
300	CONTRACTUAL		25.6	54.6	58.1	61.9	65.9
400	COMMODITIES		1.0	2.2	2.4	2.5	2.7
500	EQUIPMENT		4.9	2.1	2.2	2.4	2.5
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL		160.4	333.5	355.1	378.2	402.8

FUNDING (Thousands of Dollars)

GENERAL FUND		160.4	333.5	355.1	378.2	402.8
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

FULL TIME		7	7	7	7	7
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)
Salaries, equipment and other provisions for three Commissioners, three personal secretaries and one Administrative Assistant to make the organization semi independent. This assumes that budgeting, personnel, and fiscal work or basic administrative support would be provided by Department of Natural Resources or some other existing department. Existing staffing of the present Division of Oil and Gas would be utilized in total in the new Commission.

IV. DATE March 13, 1978 PREPARED BY O.K. Gilbreth
AGENCY Division of Oil and Gas Conservation
PHONE 279-1433

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/77)

AGO 885841

POSITION TITLE Commissioner

	Type of Expenditure	Amount	Detail
100	Personal Services	$59,130	47,304 + 25% benefits=$59,130
200	Travel	2,000	
300	Contractual	6,700	Rent, word processing, utilities, telephone
400	Commodities	300	
500	Equipment	1,400	
	Total	$69,530	

Discussion

Three Commissioners required starting 1/1/79

POSITION TITLE Administrative Assistant

	Type of Expenditure	Amount	Detail
100	Personal Services	$17,055	13,644 + 25% benefits=17,055
200	Travel	--	
300	Contractual	6,700	Rent, word processing, utilities, telephone
400	Commodities	300	
500	Equipment	1,400	
	Total	$25,455	

Discussion

One Administrative Assistant required starting 1/1/79

POSITION TITLE Secretary

	Type of Expenditure	Amount	Detail
100	Personal Services	$17,055	13,644 + 25% benefits=17,055
200	Travel	--	
300	Contractual	8,200	Rent, word processing, utilities, telephone
400	Commodities	300	
500	Equipment	1,400	
	Total	$26,955	

Discussion

Three secretaries required starting 1/1/79

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM

March 21, 1978

SUBJECT: Draft Resources Committee Substitute for SSHB 830

TO: The Honorable C. V. "Chat" Chatterton

FROM: Gregg K. Erickson
Director of Research

As you directed, we have engrossed the language you presented us yesterday into a work draft committee substitute for SSHB 830. The draft committee substitute is attached herewith.

Although we have incorporated your language into SSHB 830, as you specifically directed, we would caution that doing this has introduced a number of uncertainties into the bill. Among these are the following:

1. Sec. 31.05.015 COMPENSATION OF MEMBERS OF THE COMMISSION. By deleting the phrase "equal to that of a commissioner of a principal executive department" after the word "salary", you are presumably reserving to later legislative action the establishment of commissioners' salaries. If this is to be done in the course of the budgetary process, I would suggest that the staff of the Legislative Finance Division be contacted to insure that the salary allocation is made a separate line item, or that other appropriate steps are taken to insure that legislative intent with respect to salaries, whatever it might be, is fulfilled. If it is the legislative desire to have the members of this commission treated for salary purposes the same way as members of all other regulatory commissions, then it will be necessary to amend the Alaska Salary Commission Act (AS 39.23.060) in order to include the commission in the purview of the salary review body.

2. Sec. 31.05.023(b) and (c). The effect of your change to subsection (b) is to place the professional staff of the commission and the personal secretaries of each commissioner in the exempt service. If this is your intention, it would be desirable, although not strictly required, that a conforming amendment to AS 39.25.110 be adopted as well. The effect of your change will be to give the commission pretty much complete discretion with respect to establishing the salaries of its

AGO 885845

professional staff members (with the exception of the executive director) and the commissioner's personal secretaries, subject only to the overall constraint of having to live within their budget. Since you did not delete (d), we assume you wish to leave the executive director's salary pegged to that of a commissioner of a principal executive department.

3. Sec. 31.05.025 CONFLICT OF INTEREST. The language you provided would make employees, consultants and members of the commission subject to AS 39.50 and AS 39.51. We would call your attention to the fact that *Sec. 2 of the bill already brings the commissioners under chapter 50. If it is desired to bring the employees and consultants of the department under this chapter, amendment to AS 39.50 will be required. Bringing consultants and employees under AS 39.50 will, of course, mean that they will be subject to the full public disclosure requirements now imposed on legislators and other "public officials" as defined in that chapter.

Subsection (b) of this section gives the governor authority to determine whether a conflict of interest exists, presumably based on the disclosures required under AS 39.50. It is not clear, however, what action the governor would take if he determines such a conflict exists, or what authority the governor would have in the event a member, consultant or employee of the commission disagreed with the governor's determination that a particular holding would impair the person's ability to act in the "best interests of the people of Alaska".

AS 31.51 will need to be amended if it is desired to bring consultants under its provisions.

4. Sec. 31.05.026 RELATIONSHIP TO DEPARTMENT OF NATURAL RESOURCES. We are not clear as to your intent in adding subsection (d). If subsection (c) is to be superseded, then it probably should be deleted as well. It would appear that your intent in (d) is to vest all information gathering responsibility in the commission. This could create difficulties for the department if it attempts to require persons conducting geophysical exploration or drilling on state lands to provide it with information to assist the state in planning for and conducting the leasing of oil and gas lands. Furthermore, it is not clear what exemptions would be allowed to "the general rule" that is described in subsection (d).

With respect to subsection (e) we are not clear as to the intent or effect of the first sentence. The second sentence of this subsection appears to encourage interagency agreements, but by enumerating the areas to which such agreements may be

entered into, and by specifying that they may be only for "the sole purpose of efficiency" the sentence could be construed as limiting such agreements to the areas enumerated, and for the purpose specified. Subsection (f) seems to speak to the same material as contained in subsections (a) and (b). We cannot judge what its effect would be, either taken together with (a) and (b) or standing alone.

A prior scheduling commitment to another committee will prevent us from attending your markup hearing this afternoon, but we hope these comments may be helpful.

GKE:jm
Attachment

CC: The Hon. Hugh Malone (co-sponsor)

HB
854
.U42

COMMITTEE REPORT

SENATE

FURTHER: _____

_____

5/19/78

Date: 5/22/78

Mr. President:

The Committee on RESOURCES has had CSHB 854 (Fin)
leasing and exploration of state land for oil and gas development

under consideration and (a majority of the committee) (the committee reports it back as follows)

( ) recommends it do pass ( ) recommends it do not pass

( ) recommends it do pass with attached amendment(s)

(X) recommends it be replaced with CS for CSHB 854 (Fin)

and _____ ( ) new title (X) same title

( ) AND attaches a Letter of Intent ( ) New Fiscal Note

( ) reports it back without recommendation

( ) and recommends it be referred to the _____ Committee

MEMBERS SIGNING DO PASS:

_____

_____

_____

_____

_____

_____

_____

_____

OTHER RECOMMENDATIONS:

_____

_____

Rodney Ps No Rec

Jan Faulkner NO Rec

_____

_____

_____

T. Poland
Chairman

Do Pass

S 60 (rev. 6/77)

AGO 546628+

COMMENTS FROM AN ECONOMICS PERSPECTIVE ON HOUSE BILL NO. 854 IN THE LEGISLATURE IN THE STATE OF ALASKA TENTH LEGISLATURE -- SECOND SESSION

by

Walter J. Mead

Professor of Economics

University of California

Santa Barbara, California

May 15, 1978

AGO 546796

This analysis will concentrate attention on major issues of House Bill No. 854 on which economic analysis can shed some light.

In general, it is clear that the Bill is patterned after proposed amendments to the Outer Continental Shelf Lands Act of 1953 now being considered by the U.S. Congress. There is an implied assumption that the State of Alaska can benefit by following Washington's legislative lead. Almost every Economist specialized in energy economics who has reviewed the record of federal energy legislation has concluded that a half-century of federal interference in the energy industry has been counterproductive. Such interference has not served the general welfare.

Enclosed as Appendix A is a reprint of my own analysis of President Carter's National Energy Program. This analysis includes an appraisal of past Federal energy policies. There is no evidence in the record to indicate that the State of Alaska will benefit in any way from following the lead of the Federal government in the energy policy area.

With respect to future joint state-federal leases in the Beaufort Sea, the State of Alaska is likely to commit a strategic error if it adopts leasing policies parallel to the revised OCS bill. If Alaska and the Federal government have nearly identical leasing provisions, then the Federal government is likely to determine lease policy for the joint sales. On the other hand, if the State of Alaska retains its present

bonus bidding system with the options currently provided, then Alaska is more likely to determine the outcome. As will be shown below, lease systems other than bonus biddings will yield less Economic Rents to government. This loss in income is of little concern to the Federal government, but is of great concern to the State of Alaska. If the arguments made below are acceptable, then the State of Alaska would be well advised to retain its present leasing system.

I. BIDDING ALTERNATIVES

House Bill No. 854 provides the Commissioner with a choice of several leasing methods. In order to simplify the analysis we will concentrate attention on four bid variables. (1) Bonus, (2) Royalty, (3) Profit-Share and, (4) Work-Commitment bidding. Each of these four bid variables is, in turn, paired with a variety of fixed payment requirements.

Before discussing each of these leasing alternatives, it would be useful to identify the basic economics involved. The oil and gas resources in the ground belong to the people of the State of Alaska. In turning over to lessees rights to explore for and produce any oil and gas found on leases, the people, through their government, are entitled to receive what economists call the "economic rent". This is the difference between the value of oil and gas produced, and the total necessary cost of exploration, development, and production, including in costs a competitive rate of return for the lessee. The important economic relationships are illustrated in Figure 1.

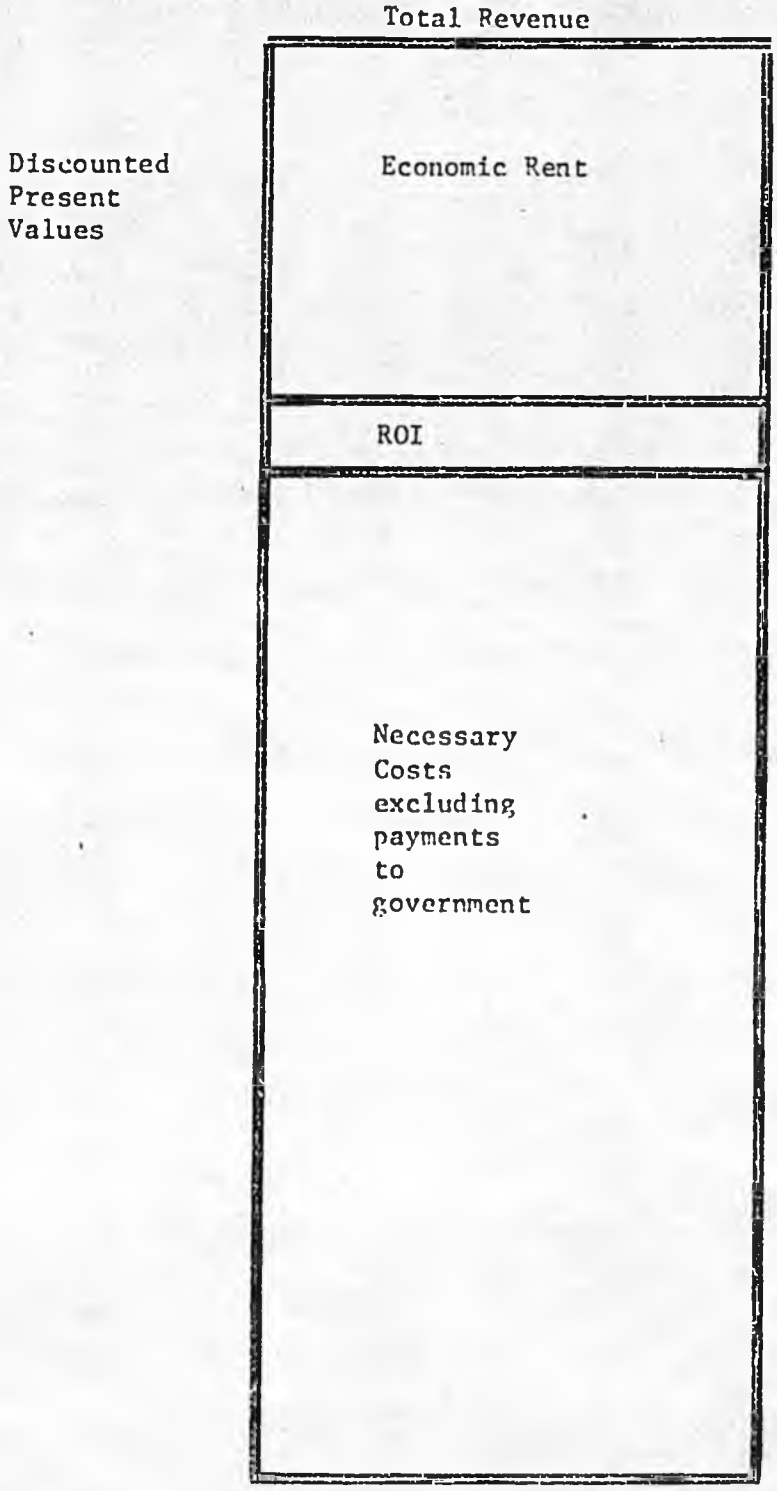
Because outlays and incomes flow at different points in time, it is necessary to use comparable values. This is done through the process of discounting future dollars to a common point in time. (Using a 10% discount rate, $1.10 next year is worth only $1.00 today.) In order to avoid the "apples and oranges" problem, all revenues and outlays represented in Figure 1 are shown as "Discounted Present Values."

The vertical distance in the diagram represents the discounted present value of total revenue obtainable from a given oil or gas lease. The middle segment of the figure represents the "necessary costs" of exploring for and producing oil and gas from a lease. However, payments to the government are not included in these costs.

The ROI segment of the figure represents the Return on the Investment for all capital costs incurred by the lessee. This ROI is assumed to be a necessary minimum as determined by competition.

The residual revenue, after all necessary costs including normal profit, is the Economic Rent collectible by the landowner.

Figure 1 is constructed on the assumption that maximum efficiency is obtained. If a leasing policy introduces inefficient operations, then costs will be higher than necessary and Economic Rent will be relatively low. It is important to realize that the total receipts of the government from an oil and gas lease do not necessarily correspond with the maximum obtainable Economic Rent. Rent is maximized only


Total Revenue
Discounted Present Values
Economic Rent
ROI
Necessary Costs excluding payments to government

under efficient conditions of production. A good leasing system then collects all of the economic rent.

(1) Bonus Bidding

Under bonus bidding a single lump sum is offered. The principal advantage of the bonus bid variable is that it is the most efficient system available. If the bonus payment is not accompanied by a fixed royalty payment, it does not impose on each barrel of oil (or gas) produced a charge which represents part of the economic rent payment. The only charges against each unit of output is the real economic cost (labor, electricity, maintenance) of producing another barrel of oil. This important fact leads to efficient business judgments concerning investments in secondary and tertiary recovery, and the optimum shut down point when a well approaches exhaustion.

Since only a lump sum payment to the government is required, this system is inexpensive to administer. The less the administration cost, the greater is the economic rent colletible by the government.

Finally, because the operator receives the residual value after the bonus payment and all economic costs of oil and gas production, the operator has the highest possible incentive to operate his lease efficiently.

Maximum efficiency should be of interest to all segments of society, and especially to the people of Alaska as the resource owners. Maximum efficiency means that resource (cost) input is minimized relative to product output. This is a goal of conservation. With maximum efficiency, the State

of Alaska will receive the highest possible payments. Maximum efficiency also produces lowest possible costs to consumers.

The above points can be illustrated by reference to Figure 1. The ROI is limited by competition in the long run. If inefficiency is built into the leasing system, them the "Necessary Costs" sector of Figure 1 will be large, reducing Economic Rent available to the state. Similarly, if the leasing system imposes unnecessary administrative costs on the lessee, then Economic Rents are again lowered. Any unnecessary administrative costs paid for by the state, come out of the Economic Rents directly.

The corresponding disadvantages of bonus bidding are two-fold.

First, bonus bidding requires "front end money." The lump sum bid must be paid before drilling has identified any reserves. There may be anti-competitive consequences arising from this "front end money" problem. Smaller, less well financed firms, may not be able to participate in bidding competition to the extent that they might wish. However, the severity of this problem may not be significant. Through widespread use of joint bidding, smaller firms, in fact, have been able to enter even the expensive OCS lease auctions through joining with other small firms and with large firms.

In order to reduce the "front end money" even further, the State might consider introducing a schedule of delayed payments. The only risk that the State would undertake through a delayed payment schedule is the risk that poorly financed

firms would "walk away" from part of their bonus payment obligation.

Oil exploration, development and production in a hostile environment requires a high degree of technological expertise as well as financial and operational integrity. The companies with this level of technological expertise are generally financially responsible firms.

Second, there is no one-to-one relationship between the bonus payment to government and the value of any oil and gas reserves ultimately found. In the extreme, this problem is illustrated by the Prudhoe Bay lease where probable value exceeds the bonus payment (and all future royalty and severance payments) by a large amount, and by the Destin Anticline offshore from Florida where the bonus payment was extremely large and revenues were zero. Even for productive wells there is usually not a perfect match between outlay and income. However, recent research on Federal OCS leases shows that, in the aggregate, under bonus bidding, with a fixed royalty, there is a very close match between costs plus payments to the government, on the one hand, and the discounted present value of oil and gas production from such leases, on the other hand.

Evidence from OCS Leasing. The record of production from all 839 leases issued by the Federal government in the Gulf of Mexico region of the Outer Continental Shelf between

the years 1954 and 1962 has been analyzed.[1] This record shows that of these 839 Federal leases, 522 (62%) produced only dry holes. Another 132 (16%) leases were productive but unprofitable. Only 185 (22%) were profitable. Effective competition requires that these profitable leases produce revenue flows sufficient to cover not only their own full costs but the bonus and exploration costs of all dry holes as well.

The rate of return that all lessees earned on their investment (bonus, exploration, development, etc.) in these leases has been estimated. Precise information on all leases is available showing bonus, rent, and royalty payments, together with oil and gas production by year through 1976. The value of such production is also known with precision. Estimates were made of pre-lease geological and geophysical exploration costs, post-lease exploration costs, development outlays, and production costs. Forecasts were made of oil and gas production from 1977 through projected closedown of each well. In addition, oil and gas prices and costs of production were forecast. With these outlays and income flows, the rate of return earned by lessees has been estimated. The results show that lessees earned a 9.5% rate of return before taxes on their investment. This ROI is low relative

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[1] R. O. Jones, W. J. Mead, and P. E. Sorensen, "Free Entry into Oil and Gas Production and Competition in the U.S. Oil Industry," Natural Resources Journal, July, 1978, forthcoming.

to competitive performance elsewhere in the U.S. economy. The interpretation of the results is as follows:

1. Competition for Federal leases from 1954 through 1962 was intense.

2. The federal government received more than a "Fair Market Value" for these leases. This does not mean that the Federal government received all of the Economic Rent which might be collected under most efficient conditions. As will be shown later, the fact that royalty payments were required introduces some economic inefficiency therby reducing the collectible Economic Rents.

3. The bonus bidding system, in the aggregate, is an effective method of collecting Economic Rent.

(2) Royalty Bidding.

Under royalty bidding, interested parties bid a percentage of gross wellhead value payable to the government for each and every barrel of oil or thousand cubic feet of gas produced from a lease. There are two advantages of royalty bidding:

First, payments to the government correspond with production. If a lease is found to be dry, then no payments are required. If a lease is highly productive, then payments correspond with the value of production. Royalty is calculated as some specified percent of production, or of the value of production at wellhead.

Second, in the absence of a fixed bonus, no "front-end" payment is required. This may stimulate additional competition. Firms are able to obtain leases with no payment being made to the government prior to production from such leases.

However, there are also substantial disadvantages arising out of a royalty bidding system.

First, royalty bidding is inefficient for three reasons. The royalty payment is a bid percentage of the gross (not net) wellhead value. It, therefore, requires a significant payment to the government in addition to the real cost of producing every barrel of oil or thousand cubic feet of gas. The first inefficiency is due to premature abandonment of leases. The problem is illustrated in Figure 2. The State of Alaska currently requires a 12.5% fixed royalty payment from oil and gas production. In addition, the State imposes a severance tax on production. This tax has the same effect as a royalty. The two payments together are shown in Figure 2 as a 20% royalty charge.

Costs of production are low in the initial phase of reservoir life. With the passage of time, reservoir pressure declines as economically recoverable output is produced. In the absence of any royalty charge, production would be carried to point Q_1. Beyond that point, the cost of producing an additional unit of output is higher than its value. At point Q_1, the value of the resources used up to produce the last barrel of oil is exactly equal to the value

AGO 546807

Dollars per bbl.
$10.00
Royalty 40%
Royalty 20%
Real Economic Costs
Time
Q_3
Q_2
Q_1
Incremental Cost with 40% Royalty
Incremental Cost with 20% Royalty
Incremental Cost No Royalty

of the oil produced. Social waste would result from production beyond, or short of, this point.

Where a 20% combination royalty and severance tax is levied, production would be terminated at Q_2. If bidding takes place on the royalty, the royalty payments would rise to higher levels. Figure 2 illustrates a 40% combination royalty and severance tax. With this payment, the property illustrated in Figure 2, would be abandoned at Q_3. Thus a royalty leads to premature abandonment of valuable resources. It is correct to describe this as "premature abandonment" because the royalty payments are merely transfer payments from the operator to the government. They are not true economic costs in the sense that labor and materials are economic costs.

Returning to Figure 1, the effect of premature abandonment on Economic Rent can be shown. Because total revenue with a royalty payment is lower than it would be if no royalty were required, the Total Revenue column would be lower than shown in the diagram. But necessary costs and profits (ROI) would be reduced only slightly. Therefore, premature abandonment causes Economic Rents to be lower than their potential. This means that the people of the State of Alaska sacrifice money income due to a royalty payment requirement. Social costs are borne by all of the people. This is always the result when scarce resources are wasted. In the royalty case, the higher the royalty payment, the greater the loss in Economic Rent.

Where bidding takes place on the basis of a royalty payment, the loss to government in Economic Rent and to the people of a nation in lost resources can be substantial. An 80% royalty payment when oil is priced at $10.00 per barrel at wellhead requires a payment to the state of $8.00 per barrel. This means that when real economic costs reach $2.00 per barrel, this real cost together with the $8.00 transfer payment results in extremely early abandonment.

The second inefficiency in royalty payments arises from the fact that some smaller fields, which would be profitable to operate under low or zero royalty payments, become submarginal with higher royalty payments. In this case, a discovered field would be termed uneconomic to operate and would not be developed. This results in a monetary loss to the State of Alaska, and a social cost to the entire nation.

A third inefficiency arising out of royalty payments is that they reduce the incentive of operators to invest in more intensive management of their reserves. For example, secondary and tertiary recovery investments in some cases will not be undertaken. Without royalty payments, some of these investments might return an attractive rate of return, say 20% ROI; whereas with royalty payments the ROI might fall to the unattractive or negative category and investments would not be undertaken.

In terms of Figure 1, foregoing recovery investments reduce Total Revenue below the optimum level with the result that Economic Rents are less than what could be collected under efficient leasing terms.

Premature abandonment, however, can be avoided by successive reduction of royalty to zero. Everybody gains from reducing royalties to zero relative to fixed royalties. Profits to the operator would increase, additional royalties would accrue to the State, because premature abandonment would be avoided, employment would be higher, and the nation would receive additional oil production at social benefits which are greater than social costs.

A second disadvantage of the royalty system is that it may simply tie up leases without cost to the lessee. With no bonus payment, he may have no investment whatsoever in the lease. He has only a commitment to pay royalties in the event of production. This is a free option to buy. If other lessees are nearby who have invested bonuses in leases and are engaged in exploratory activity, the lessee with a royalty lease will probably choose to wait for the results of drilling by others. However, if a small fixed royalty is also required along with the contingent royalty payment, the royalty lessee has less of an incentive to do nothing. However, a pure bonus bid provides a maximum incentive to proceed quickly with exploration.

In an economic sense, any royalty should be reducible to zero prior to abandonment. The U.S. Interior Secretary has authority to do this, but has never exercised his authority possibly because of the administrative difficulty. There is no objective way to inexpensively determine when royalties should

be eliminated. If bidders, at the point of lease sale, understand that royalties will be reduced to zero to avoid premature abandonment, then they will place a higher value on the lease. Competition for the lease will force them to bid higher bonus payments. In this event, more oil is produced and the State would collect increased Economic Rents.

House Bill No. 854 also provides for a sliding royalty scale, "according to the volume of production." If a sliding scale is used, the inefficiencies and consequent losses in Economic Rent analyzed above would still appear. Any investment in secondary and tertiary recovery would still be retarded. Such investments cause output to increase, and therefore incur higher royalty obligations. The net effect would still reduce the ROI on the investment. In cases where the ROI is shifted from attractive to unattractive or negative levels, the state would suffer a loss of Economic Rents. Further, expensive administrative costs are incurred. There is no efficient and objective means of setting sliding scale royalty rates. If royalty rates are made purely a function of production, then the operator has an incentive to reduce production below the most efficient rate which would maximize the Economic Rent. Government administrators may try to avoid this problem with careful surveillance of the operator and careful, but subjective, determination of sliding scale royalty rates. But this requires expensive administration.

The cost of this bureaucracy may be shown in Figure 1 as a negative charge against Economic Rent. A relatively

high level of rent might be collected, but some of it will be dissipated in administrative costs and will not accrue to the people of Alaska. In addition, the lessees must also maintain staff personnel in order to develop and analyze data, and negotiate with their government counterparts. This raises costs to the lessee beyond those which are represented to be "necessary costs" in Figure 1. This means that Economic Rents are doubly reduced and payments available to the State decline even further.

In summary, royalty payments result in reduced efficiency and therefore in reduced Economic Rents. The larger the royalty payments, the greater the loss in Economic Rent. Sliding scale royalty rates will avoid premature abandonment if they are reduced to zero at appropriate points. However, sliding scale royalties artificially discourage investments in secondary and tertiary recovery, lead to abandonment of wells that are economically operable, and also result in wasteful administration costs, all of which lower Economic Rents available to the State.

(3) Profit-Share Bidding.

Under profit share bidding, each bidder offers a percent of the net profit for each lease to be paid to the State. There are four possible advantages of profit share bidding as follows:

First, it is an improvement over royalty bidding in that the profit share to be paid to the State is based on

net income (profit) rather than gross income. This means that as a field approaches exhaustion, its profit declines towards zero. Unless the profit share bidding system also requires a fixed royalty payment, the problem of premature abandonment is avoided.

Second, profit share bidding avoids the front end loading problem that is characteristic of bonus bidding, unless profit share bidding is paired with a fixed bonus requirement. No payments are due to the State until production appears and profits accrue to the operator. In the absence of front end payments, smaller less well financed operators may enter the bidding competition and possibly win leases. As indicated in the analysis above (page 8), this problem is of minor importance from a competitive performance viewpoint.

Third, payments correspond with benefits. Dry holes require no profit share payment. Conversely, the occasional rich discovery producing high profits results in larger payments to the State. This would avoid some of the political embarrassment associated with the Prudhoe Bay situation.

Fourth, hopefully, a pure profit share bidding arrangement may constrain over-zealous regulators and environmentalists from imposing uneconomic costs on oil exploration and production. Under the profit share system, any economic waste is clearly shared by the operator and the government.

Returning to Figure 1, when unnecessary costs are imposed on operators after a lease sale has taken place, both the ROI and the Econor ic Rent segments of the chart are reduced. It should be pointed out that when a government engages in such post-bidding practices, bidders will quickly learn to anticipate a repetition in subsequent sales. Such expectations will be factored into future bid calculations such that in subsequent leases the entire cost of uneconomic regulations is borne by the government in the form of reduced Economic Rent.

There are also substantial disadvantages involved in the profit share bidding system.

First, while the layman may consider computation of profit to be a simple and straight-forward calculation, in fact, a wide variety of accepted accounting procedures are used. There are two general concepts of profit which may be identified.

(1) Bidding may take place on an accounting concept of profit in which fixed costs and overhead costs, along with all operating costs, are deducted from gross revenue in order to obtain net profit.

(2) Net profit may be defined as operating profits in which fixed costs and overhead are not allowed as reportable expenses.

Within each general classification a multitude of problems immediately appear. For example: (1) The process of trading oil between separate companies is widespread in this industry, and an arm's length sale of oil may not take place.

Prices must be carefully analyzed. This requires unnecessary administrative expense by both lessee and lessor. (2) Where a company wishes to do some research and development concerned with oil exploration and production, it is likely to do so on leases involving profit share payments rather than on other company production. (3) Where a company has a mixture of highly efficient and less efficient drilling rigs or drill ships, it is likely to use the poor equipment on the profit share lease and reserve the best equipment for other company operations. (4) Where a company needs to train crews in drilling and reservoir development, it is likely to do its training on profit sharing leases. (5) "Gold-plating" is likely to occur on profit share leases where the share paid to government is high and the retained share is low. Evidence of this practice may be found in the Long Beach (Wilmington) field where profit shares paid to the government are extremely high. (6) In profit share leases, public relations expenditures are likely to be high. This will be particularly true when expenditures for P. R. produce benefits for the lessee company as a whole. (7) In the event of supply shortages such as occurred in 1973 and 1974, available supplies are likely to be allocated to non-profit share leases first.

Companies differ in their level of efficiency. In order for the State to select the highest bidder it should evaluate probable efficiency of each competing bidder. While

this is desirable, it is also expensive and probably impossible. But it means that the high profit share bidder is not necessarily the operator that will produce the most Economic Rent for the State.

In order to avoid the problems listed above, as well as others not listed, the State will probably determine that it must carefully police lessee operations. This, of course, requires additional administrative costs. Again in terms of Figure 1, one should expect not only the necessary cost of production to be incurred, but also unnecessary costs as well. But these costs reduce the Economic Rents available to the State. Also, the added policing function by the State involves additional administrative costs which must be paid for out of the State's Economic Rents. Further, because the interpretation of profit is difficult, one must expect litigation of disputes. This requires expensive attorney fees and court costs for both the operator and the government. All of these expenses further reduce available Economic Rents.

Second, in addition to the profit share bid, one must also consider the corporate income tax for it too is a profit share payment. With percentage depletion allowance totally phased out for all integrated oil companies and reduced for smaller non-integrated firms, the corporate income tax will approach a 48% effective rate at the federal level. Any state income taxes will increase this rate even further. Using a 48% corporate income tax paired with a 30% profit share

bid results in an effective profit share (or tax) rate of 63.6%. Thus, out of every additional dollar saved through efficiency, the company retains 36.4¢. Where an 80% profit share bid is paired with a 48% corporate income tax, the effective tax rate is 89.6%. This leaves only 10.4¢ on the dollar, as a reward for efficiency. This incentive is too small to produce maximum efficiency. In terms of Figure 1, expenses will be higher than necessary with the result that Economic Rents available to the State are sacrificed.

Third, as in the case of royalty payments, profit share payments discourage investments in intensive field management including well workovers, pressure maintenance projects, and secondary recovery investments. Some super-marginal investments will become submarginal and will be passed over. The lost net benefits are borne by the State in the form of reduced Economic Rents, and by all citizens in the form of resource waste.

Fourth, further experiment with profit share bidding is not needed. Instead of engaging in such wasteful bidding practices, researchers from the State of Alaska can easily examine the Long Beach record. In that case the profit share bid for the largest operating interest amounted to 94.56% of accounting profit being paid to the State. While this may sound good for the lessor, the profit share retained by the lessee (after profit share payment to the State, after management fee, and after income taxes) is only 0.75%. In effect, there is no efficiency incentive.

As a substitute, the Department of Oil Properties of the City of Long Beach has developed a 50 person permanent staff to supervise and police the operators. Administrative interference with the operation of the field becomes a necessity. The Long Beach-Wilmington contract provides that

> The City Manager... shall exercise supervision and control of all day-to-day unit operations... and... shall make determinations and grant approvals in writing as he may deem appropriate for the supervision and direction of day-to-day operations of the Field Contractor, and the Field Contractor shall be bound by and shall perform in accordance with such determination....

A spokesman for one operator has stated that "Hassle after hassle has developed regarding charges to the net profits account."[2] All of the problems outlined above can be verified in the Long Beach situation including the "gold-plating" problem.

In summary, while profit share bidding avoids some of the problems present in both bonus bidding and royalty bidding, it has its own set of serious problems. Economic analysis clearly indicates that Economic Rents received by the State would be substantially lower under profit share bidding than under bonus bidding.

(4) Work Commitment Bidding.

Under this system the bidder would specify in detail precisely the dollar amount of investments he would make in exchange for a lease. Presumably this means that the bidder

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[2] W. J. Mead, "Federal Public Lands Leasing Policies." Quarterly of Colorado School of Mines, October, 1969, p. 212.

would cost-out his entire exploration, development and production program.

The disadvantages of this system are overwhelming.

First, it is questionable whether the Commissioner and his staff will be in a position to determine the most efficient work program. If it selects any program other than the most efficient one, then Economic Rents are reduced as previously illustrated with reference to Figure 1.

Second, experience in North Sea work program bidding has shown that when it becomes known what type of work commitment is viewed with favor by the sale administrators, firms will concentrate their efforts and corresponding dollar amounts in that direction. In the early North Sea leases it became known that the bidder offering to drill the most holes would win the leases. The result was excessive drilling. But this practice reduced Economic Rents available to the British government.

There is no practical way the number of wells to be drilled can be specified in advance. The optimum number of wells to be drilled must be determined as experience in drilling a specific lease is gained. Similarly, other characteristics of a work program can best be determined after the presence or absence of reserves has been determined.

Third, if the winner is determined on the basis of the dollar amount of his work commitment, then the State sacrifices receipt of all or part of a cash bonus and receives in exchange only a work commitment. If bidder selection is

not based on the highest dollar amount of the work commitment, then there is no objective way in which the winner can be selected. This opens up a possibility of corruption of government officials.

Fourth, any work commitment must be policed. Administrators must carefully monitor all provisions of the work commitment to assure compliance. Consequently, adminstrative costs will be relatively high. Correspondingly, the lessee must maintain added staff in order to negotiate with government staff. Further, costing out the dollar value is an expensive process. If the State is to select the winner on the basis of the high dollar amount, then it must verify the costs claimed. All of this added administrative cost comes out of Economic Rents.

Fifth, a minor amount of specific work programs can be accomplished by a bonus bidding arrangement or other bid forms without resorting to a work commitment program. This may be accomplished by simply writing into the contract specific requirements. In any event, specific work requirements such as environmental safeguards should be justified by evidence that their benefits exceed their costs. Unless they are economically justified, they are not part of necessary costs as shown in Figure 1. Economically unjustified environmental or other work requirements, in the long run, simply reduce Economic Rents available to the State.

There is no need for the State of Alaska to experiment with the work commitment bidding form. There is abundant experience in both British and Norwegian North Sea experience. This experience has been evaluated by Kenneth Dam.[3] Dam reported that "the discretionary system turns out to be a most expensive subsidy."

While most of the British experience has been under a discretionary system in which a work program has been specified, the British leased 15 blocks by competitive bonus bidding in 1971. If these blocks had been leased by the discretionary system, the British would have failed to receive 37 million pounds ($90 million) the total amount of the bonus bids. The only offsetting gain to the government would be the incremental value of the work program. However, it is probable that the operators would have engaged in an optimal work program without bidding a specified work commitment.

The work commitment bidding system is probably the most expensive in terms of lost Economic Rents. While House Bill No. 854 provides for a fixed cash bonus, or fixed royalty, or fixed sliding scale royalty, or fixed net profits share in addition to the work commitment, it is highly unlikely that fixed payments would have a value to the people of Alaska equal to a bonus bid in the absence of the work commitment.

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[3] K. W. Dam, Oil Resources. Chicago: University of Chicago Press, 1976.

The work commitment option provision in the February 17, 1978 draft has been replaced by an exploration incentive credit system. This system has many of the same problems listed above. If 50% of the cost of drilling or exploratory work is to be deducted from payments to the State, then the after-payments and after-tax cost of drilling and exploratory work becomes cheap for the lessee. This leads to wasteful drilling and exploration. The people of Alaska pay the bill.

III. CONCLUSIONS

Economic analysis indicates that sealed bonus bidding without a fixed royalty is the most efficient system available and would, in the long run, maximize Economic Rents payable to Alaska.

Passage of House Bill No. 854 would appear to convert a reasonably effective bonus bidding system presently in use in Alaska, into a system which will virtually guarantee a loss of Economic Rents. This burden will be borne by the people in Alaska in terms of foregone money income, and by the entire nation in the form of inefficient use of scarce resources.

STATEMENT OF
SOUTHERN CALIFORNIA GAS COMPANY
PACIFIC GAS AND ELECTRIC COMPANY AND
PACIFIC ALASKA LNG ON HB 854

My name is Norman Gorsuch and I am the registered representative for Southern California Gas Company, Pacific Gas and Electric Company and Pacific Alaska LNG. We are very seriously concerned about paragraph Z on page 11 of the proposed legislation. That paragraph would grant the State the right to purchase as much as all of the volume of gas produced from a lease issued by the State for in state use. Arguably, because of a possible ambiguity in the language, this right can be exercised subsequent to the execution of the lease contract without notice having been given prior to the lease sale.

Affiliates of these companies are now actively engaged in financing drilling for gas reserves by oil companies holding leases located in the Cook Inlet area. In addition, Pacific Gas and Electric Company is a partner in a lease recently acquired at the Lower Cook Inlet sale held by the Federal Government. To date, these companies have expended $35,000,000 in payments to producers to fund the drilling of gas wells in the Cook Inlet area. In addition, these companies plan to expend another $35,000.000 over the next few years in similar ventures.

Pacific Gas and Electric and Southern California

Gas Companies are the largest public gas supply utilities in Calfiornia. Together they have delivered as much as 5 billion cubic feet of gas per day in California to residential and commercial customers. A recent staff report by the California Public Utilities Commission found that both utilities should expedite the acquisition of future gas supplies in Alaska. The Public Utilities Commission Staff most particularly urged rapid pursuit by these companies of their Cook Inlet Liquified Natural Gas project. This project consists of a proposed facility in Kenai to liquify and ship 400 million cubic feet of gas per day to these companies in California. The capital investment in 1977 dollars projected for this facility and related pipelines is $850,000,000. This project will not require any State financing nor does the project require the State royalty gas in Cook Inlet to make it economically feasible. At the present time, these companies have under committment approximately 800 billion cubic feet of gas in the Cook Inlet area. They will need approximately 1.3 trillion cubic feet for the first phase of the project which would be for 200 million cubic feet of LNG per day with a total of approximately 3.6 trillion cubic feet for a 400 million cubic feet per day throughput. It is contemplated by both companies that all of these gas reserves will be found by an agressive gas drilling program in the Cook Inlet area. These companies are also committed to invite the gas distribution public utilities in the Cook

Inlet area to participate in any of these ventures if those companies so desire. A subsidiary of Alaska Interstate Company is currently participating in a prospect being drilled at Stump Lake.

Southern California Gas Company and Pacific Gas and Electric have plans to continue to explore for gas reserves in southern Alaska. Long range plans contemplate the purchase of gas discovered in southcentral Alaska and a committment of the gas to this and future LNG projects.

Paragraph Z would effectively frustrate the plans of these companies in several ways and adversly affect gas exploration and development in Southcentral Alaska, First, these companies are financing this exploration program to obtain guaranteed gas supplies. They would not benefit from the receipt of money from the State for the acquisition of the gas supplied from State leases. Furthermore, under a ruling by the California Public Utilities Commission, the gas consumers of these two companies pay in their gas rates the carrying charges on the capital investment required to fund this drilling in expectation of the gas coming to California. Second, this provision in future gas leases would effectively deny financing for this Cook Inlet project and other LNG ventures should they materialize as no lender will advance capital if the project is not assured of a gas supply. Third, this provision would

effectively frustrate certification by the Federal Energy Regulatory Commission of this project and any future gas projects simply because the applicant seeking a certificate from the Federal Energy Regulatory Commission could not guarantee a supply of gas so long as the State arguably has an option to purchase as much as all of it in all future leases. Fourth, if a well prospect after being drilled shows a low potential for oil but a high potential for gas, it is uneconomic for the oil producer to develop that gas field unless a public utility funds development costs for the purpose of acquiring the gas from the producer. Fifth, there is no economic incentive for oil producers and drilling companies to drill for gas in the Cook Inlet area and in southcentral Alaska generally because there is no market for such gas at this time.

The Cook Inlet LNG project proposed by these companies when constructed and in operation, will provide a self sustaining market for this gas and future LNG projects when completed would provide markets for future gas discoveries.

Sixth, the existence of this provision effectively encumbers the ability of any lessee to sell gas to anyone if the state could arguably come in and execute its purchase right at any time during the gas production phase. The lessee would in no way be able to finalize a sale of the gas from the lease.

Obviously, the funding of exploration gas wells in Alaska by these utilities adds to the proven gas reserves under state lands and increases future state supplies of royalty gas. It also increases future income to the state from its severance taxes, ad valorem oil and gas property taxes and income taxes.

We urge the deletion of paragraph Z of the bill as it relates to the state's gas purchase option.

At a minimum we urge the inclusion of language in paragraph Z similar to that contained in the House Resources Committee version of the bill which places an absolute percentage limitation on the amount of gas which can be purchased by the state pursuant to this provision and makes it clear that this option must be exercised or made known to the lease bidders no later than the date of the announcement of the lease sale. These provisions would eliminate the ambiguity which does now exist in the section and avoid any possible interpretation that this right would be exercised after the lease was issued and accepted by the lessees. In addition by placing an absolute percentage limitation on this right to purchase, companies can plan to receive at least the balance of the gas from a lease for purposes of bidding, financing and operations planning.

Introduced: 2/17/78
Referred; Resources and Finance

IN THE HOUSE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

HOUSE BILL NO. 854

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the leasing and exploration of state land for oil and gas development."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

Section 1. AS 38.05.180 is repealed and re-enacted to read:

Sec. 38.05.180. OIL AND GAS LEASING. (a) The legislature finds that

(1) the people of Alaska have an interest in the development of the state's oil and gas resources to

(A) maximize the economic recovery of the resources;

(B) minimize the exploitation of these natural resources in protection of the public interest;

(C) maximize competition among parties seeking to explore and develop the resources;

(D) maximize use of Alaska's human resources in the development of the resources;

AGO 546830

SUGGESTED REVISION OF HOUSE BILL NO. 854

NOTE: Suggestions to language are underlined in draft below, which also contains unchanged sections from original bill (at left). Although we reproduce many unchanged sections from the original bill below without specific suggestions, it should be understood that this does not constitute an endorsement of the language or the concepts involved, as we discuss many problems generally in the commentary preceding this addendum. We reproduce these sections only to facilitate reading of the language and comparing it to the original. In some cases we will note a specific deletion from the original bill, which is intended to draw the reader's attention to a specific problem with the original section.

Section 1. AS 38.05.180 is repealed and re-enacted to read:

Sec. 38.05.180. OIL AND GAS LEASING. (a) For the purpose of establishing the basic policy of the state for the development of its oil and gas resources the legislature finds that

(1) the people of Alaska have an interest in the development of the state's oil and gas resources to

(A) maximize the recovery of Alaska's resources consistent with the economic and energy needs of Alaska and the rest of the United States;

(B) encourage prompt exploration and competition among parties seeking to explore and develop the resources;

(C) maximize use of Alaska's human resources in the development of the resources;

(2) it is in the best interests of the state to encourage an assessment of its oil and gas resources and to allow the maximum flexibility in the methods of issuing leases to

(A) recognize the many varied geographical regions of the state and the different costs of exploring for oil and gas in these regions;

(B) recognize the need for stimulating development in particular regions of the state;

(C) minimize the adverse impact of exploration, development, production, and transportation activity on the environment of the state;

(D) maximize state revenue from profitable oil and gas production, while minimizing revenue from unsuccessful exploration and from marginal economic oil and gas production.

(b) The commissioner shall prepare, review, revise, and maintain an oil and gas leasing program as follows:

(2) it is in the best interests of the state to allow flexibility in the methods of issuing leases, where consistent with the findings stated in (1) above, and to encourage industry to assess, explore, develop and produce those areas of state lands which are likely to contain significant oil and gas resources and which are found to be compatible with such activity, in accordance with a publicly reviewed leasing program so structured as to permit all interested parties to rely on its consistent implementation once formulated and adopted. Such plan shall:

(A) recognize the many varied geographical regions of the state and the different potential in such areas with respect to environmental values, oil and gas potentials, exploration and development costs, and economic needs of these areas and balance these competing values as nearly as possible in the best interest of the state.

(B) maximize state revenue potential from areas which appear to offer the possibility of profitable oil and gas development.

(b) The commissioner shall prepare, review, revise, and maintain an oil and gas leasing program consistent with the above findings as follows:

AGO 546831

(1) The leasing program shall be submitted to the legislature for its information within 10 days after the convening of each regular session of the legislature. The leasing program must indicate as precisely as practicable the size, timing, and location of leasing activity which the commissioner determines will best meet state needs for the following five-year period. The commissioner shall establish the timing and location of leasing, tothe maximum extent practicable, so as to obtain a balance between the potential for environmental damage, the potential for the discovery of oil and gas and the potential for adverse impact on the local communities in the state.

(2) After the leasing program has been prepared by the commissioner, a lease shall be issued if it is for an area included in the leasing program; however, leasing may continue until January 1, 1980 or until a program is prepared, whichever is sooner, and leasing under (t) of this section may be excepted from the leasing program if the commissioner finds it to be in the best interest of the state.

(3) The commissioner shall review the leasing program at least once each year, at which time he may revise and reapprove the program.

(4) The commissioner shall, by regulation, establish procedures for

(1) The status of the current leasing program shall be reported to the to the legislature for its information within 10 days after the convening of each regular session of the legislature. The leasing program must indicate as precisely as practicable the size, timing, and location of leasing activity which the commissioner determines will best meet state needs for the following five-year period. The commissioner shall establish the timing and location of leasing, to the maximum extent practicable, so as to obtain a balance between the potential for environmental damage, the potential for the discovery of oil and gas and the potential for adverse impact on the local communities in the state.

(2) The commissioner may lease lands for oil and gas development until July 1, 1980 or until a program is prepared and adopted by him, whichever is sooner.

(3) The commissioner shall establish the conditions and stipulations under which each tract in a sale area may be leased and prepare sample lease documents as required. No lease stipulation or condition may be subsequently altered except upon a finding by the commissioner that the change is required for substantial and significant reasons and that without the change the state's interests would be materially and adversely affected. The commissioner shall. by regulation, establish procedures for

AGO 546832

(A) receipt and consideration of nominations for any area to be offered for lease or to be excluded from leasing;

(B) public notice of and participation in development of the leasing program;

(C) review by federal and local government agencies which may be affected by the proposed leasing;

(D) consultation with local governments, oil and gas lesssees and permittees, and others engaged in activity on state land;

(E) coordination of the program with the management program developed under the Coastal Zone Management Act of 1972; and

(F) the use of the capabilities and resources of all state agencies in preparation of the leasing program, and for the provision by agencies to the commissioner of any nonproprietary information he requests.

(5) At the time the commissioner submits the leasing program to the legislature, as required by (1) of this subsection, he shall also submit to the legislature for its information, a report concerning the use of the various leasing methods provided for in (c) of this section. The report must include:

(A) receipt and consideration of nominations for any area to be offered for lease or to be excluded from leasing;

(B) public notice of and participation in development of the leasing program and the form of the lease for each sale.

(C) review by appropriate federal and local government agencies which may be affected by the proposed lease sale;

(D) consultation with affected local governments, oil and gas lessees and permittees, and others engaged in activity on state land;

(E) coordination of the program with the management program developed under the Coastal Zone Management Act of 1972; and

(F) the use of the capabilities and resources of all state agencies in preparation of the leasing program, and for the provision by agencies to the commissioner of any nonproprietary information he requests;

(G) any other matters required by law for the disposition of oil and gas rights on state lands.

(4) At the time the commissioner reports the status of the current leasing program to the legislature, as required by (1) of this subsection, he shall also report to the legislature the use of the various leasing methods provided for in (c) of this section. The report must include:

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(A) the schedule of all lease sales held during the preceeding calendar year and the bidding method or methods utilized;

(B) the schedule of all lease sales to be held the following year and the bidding method or methods to be used;

(C) the benefits and costs associated with conducting lease sales using the various bidding methods;

(D) the reasons why a particular bidding method was selected; and

(E) if applicable, the reason why more than 50 per cent of the area leased in the upcoming year was or is to be leased under one particular bidding method.

SUGGESTED REVISION OF HOUSE BILL 854

(A) the schedule of all lease sales held during the preceeding five calendar years and the bidding method or methods utilized;

(B) the schedule of all lease sales to be held during the balance of the current leasing program and the bidding method or methods to be used, if determined;

(C) the benefits and costs associated with conducting lease sales using the various bidding methods;

(D) the reasons why a particular bidding method was selected;

(E) deleted

AGO 546834

(c) The commissioner may issue oil and gas leases on state land to the highest responsible qualified bidder determined by competitive bidding under regulations adopted by the commissioner. Bidding may be by sealed bid or according to any other bidding procedure the commissioner determines is in the best interests of the state. Whenever, under any of the leasing methods listed in this subsection, a royalty share is reserved to the state, it is free of all lease or unit expenses, including but not limited to separation, cleaning, dehydration, gathering, salt water disposal, and preparation for transportation off the lease or unit area. Following a pre-sale analysis, the commissioner may choose at least one of the following leasing methods:

(c) The commissioner may issue oil and gas leases on state land to the highest responsible qualified bidder determined by competitive bidding under regulations adopted by the commissioner. Bidding may be by sealed bid or according to any other bidding procedure the commissioner determines is in the best interest of the state and insures fairness to all participants. Whenever, under any of the leasing methods listed in this subsection, a royalty share is reserved to the state, it is free of all lease or unit expenses, including but not limited to separation, cleaning, dehydration, gathering, salt water disposal, and preparation for transportation off the lease or unit area. Following a pre-sale analysis, conducted under regulations required by (3), the commissioner may choose one or more of the following leasing methods or adopt any other method consistent with the legislative findings in (a)(1) which insures basic fairness to all responsible qualified bidders, but if a system other than bonus bidding is to be used, the commissioner must find that (i) bonus bidding will not achieve the best interests of the state and (ii) his (her) selected method will.

AGO 546835

(1) bonus bidding

(A) a cash bonus bid with a fixed royalty share reserved to the state of not less than 12 1/2 per cent in amount or value of the production removed or sold from the lease or unit area encompassing the lease;

(B) a cash bonus bid with a fixed royalty share reserved to the state based on a sliding scale according to volume of production but in no event less than 12 1/2 per cent in amount or value of the production removed or sold from the lease or unit area encompassing the lease;

(2) royalty bidding

(A) a fixed cash bonus with a royalty share reserved to the state as the bid variable but not less than 12 1/2 per cent in amount or value of the production removed or sold from the lease or unit area encompassing the lease;

(B) a fixed cash bonus with a royalty share reserved to to the state based on a sliding scale according to the volume of production as the bid variable but not less than 12 1/2 per cent in amount or value of the production removed or sold from the lease or unit area encompassing the lease;

(1) bonus bidding

(A) a cash bonus bid with a fixed royalty share reserved to the state of not less than 12 1/2 per cent in amount or value of the production removed or sold from the lease or unit area encompassing the lease;

(B) a cash bonus bid with a fixed royalty share reserved to the state based on a sliding scale according to volume of production but in no event less than 12 1/2 per cent in amount or value of the production removed or sold from the lease or unit area encompassing the lease;

(2) royalty bidding

(A) a fixed cash bonus with a royalty share reserved to the state as the bid variable but not less than 12 1/2 per cent in amount or value of the production removed or sold from the lease or unit area encompassing the lease;

(B) a fixed cash bonus with a royalty share reserved to the state based on a sliding scale according to the volume of production as the bid variable but not less than 12 1/2 per cent in amount or value of the production removed or sold from the lease or unit area encompassing the lease;

AGO 546836

(3) net profit bidding

(A) a cash bonus bid with a fixed royalty share reserved to the state of not less than 12 1/2 per cent in amount or value of the production removed or sold from the lease or unit area encompassing the lease and a fixed share or the net profit derived from the lease of not less than 30 per cent reserved to the state;

(B) a fixed cash bonus with the share of the net profit derived from the lease reserved to the state as the bid variable;

(C) a fixed cash bonus with a fixed royalty share reserved to the state of not less than 12 1/2 per cent in amount or value of the production removed or sold from the lease or unit area encompassing the lease with the share of the net profit derived from the lease reserved to the state as the bid variable;

(D) the share of the net profit derived from a lease reserved to the state under this subsection is royalty sale proceeds for the purpose of the Alaska Permanent Fund under AS 37.10.065;

(4) a work commitment bid with a fixed cash bonus, or a fixed royalty or a fixed sliding scale royalty or a fixed net profits share reserved to the state, or any combination of these methods, at the discretion of the commissioner, with a work commitment stated in a dollar amount as the bid variable; however, in no event may a royalty share

(3) net profit bidding

(A) a cash bonus bid with a fixed royalty share reserved to the state of not less than 12 1/2 per cent in amount or value of the production removed or sold from the lease or unit area encompassing the lease and a fixed share or the net profit derived from the lease of not less than 30 per cent reserved to the state;

(B) a fixed cash bonus with the share of the net profit derived from the lease reserved to the state as the bid variable;

(C) a fixed cash bonus with a fixed royalty share reserved to the state of not less than 12 1/2 per cent in amount or value of the production removed or sold from the lease or unit area encompassing the lease with the share of the net profit derived from the lease reserved to the state as the bid variable;

(D) the share of the net profit derived from a lease reserved to the state under this subsection is royalty sale proceeds for the purpose of the Alaska Permanent Fund under AS 37.10.065;

(4) a work commitment bid with a fixed cash bonus, or a fixed royalty or a fixed sliding scale royalty or a fixed net profits share reserved to the state, or any combination of these methods, at the discretion of the commissioner, with a work commitment stated in a dollar amount as the bid variable; however, in no event may a royalty share

AGO 546837

reserved to the state be less than 12 1/2 per cent in amount or value of the production removed or sold from the lease or unit area encompassing the lease.

(d) To prolong the economical life of an oil and gas field, the commissioner shall adopt regulations for all bidding methods to allow reduction of royalty to compensate for increasing costs in the later stages of production decline. The commissioner may grant such a reduction of royalty so long as the reduced royalty begins nc sooner than two years after initial production from the lease.

(e) The commissioner may, in his discretion, defer any part of the payment of a cash bonus, under (c) of this section, according to a schedule announced at the time of the announcement of the lease sale, but such payment shall be made in total no later than five years from the date of the lease sale.

reserved to the state be less than 12 1/2 per cent in amount or value of the production removed or sold from the lease or unit area encompassing the lease.

(d) To prolong the economic life of an oil and gas field, the commissioner shall adopt regulations for all bidding methods to allow reduction of royalty of leases within the field to compensate for increasing costs in the later stages of production decline. The commissioner may not grant such a reduction of royalty until two years' initial production from the field has occurred and each lessee requesting the reduction has made a clear showing that the revenue from all hydrocarbons produced from the field is insufficient to produce a reasonable rate of return with respect to that lessee's total investment therein.

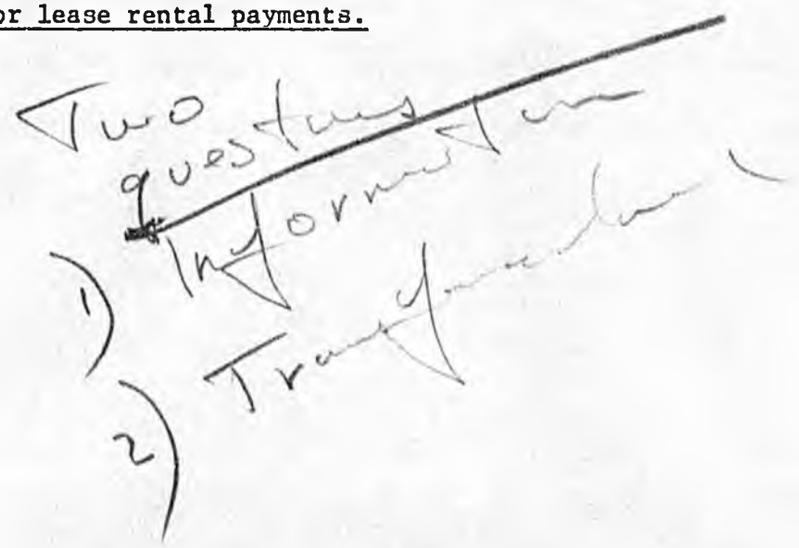
(e) Deleted

AGO 546838

(f) The commissioner may withhold acreage from leasing in a particular lease sale.

Deleted

(f) The commissioner may provide for the establishment of a drilling incentive credit system whereby all exploratory wells will earn credit based on the footage drilled and the region in which the well is sited. The credit formula used shall provide to the company drilling the well credits equal to no more than one half of the cost of the well. Such credits can be used for a bid in the state lease sale, or for royalty payments or lease rental payments.



AGO 546839

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(g) The commissioner shall adopt regulations governing the calculation of net profits for lease sales under (c)(3) of this section. In the event of any dispute between the state and a lessee concerning the calculation of the net profits under the regulation adopted under this subsection, the burden of proof is on the lessee.

(h) The commissioner shall adopt regulations governing the exploration work commitment leasing method under (c)(4) of this section. The commissioner shall require either (i) a cash deposit for 20 per cent of the work commitment or, (ii) a performance bond, in form and substance and with a surety satisfactory to the commissioner, in the principal amount of 20 per cent of the exploration work commitment assuring the commissioner that the commitment will be faithfully discharged in accordance with this section, the regulations, and the lease. A lessee who fails to discharge a work commitment in its entirety is liable to the state for the undischarged portion of the commitment. At his discretion, the commissioner may terminate the work committment if he finds that the work would be unnecessary or cumulative.

SUGGESTED REVISION OF HOUSE BILL NO. 854

(g) The commissioner shall define all terms and adopt all regulations necessary for a reasonable understanding and evaluation of a particular bidding method prior to the public announcement of the terms of proposed sale employing that method.

(h) Deleted.

AGO 546840

(i) At his discretion, the commissioner may enter into an agreement whereby, with the consent of the lessee, the state's royalty share of oil and gas production may be stored or retained in storage by the lessee, or the commissioner may enter into an agreement with one or more of the affected field lease holders to trade current royalty production from a field for a like amount, kind, and quality of future production, on the condition that the state receives back its stored or traded royalty share during the first half of the estimated field life or no later than 15 years after start of production, whichever is sooner.

(i) At his discretion, the commissioner may enter into an agreement whereby, with the consent of the lessee, the state's royalty share of oil and gas production may be stored or retained in storage by the lessee, or the commissioner may enter into an agreement with one or more of the affected field lease holders to trade current royalty production from a field for a like amount, kind, and quality of future production, on the condition that the state receives back its stored or traded royalty share during the first half of the estimated field life or no later than 15 years after start of production, whichever is sooner.

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(j) An oil and gas lease must cover a reasonably compact area not exceeding 5,760 acres, and must be for a period of five years. The commissioner may grant a lease for a term greater than five years but not to exceed 10 years, where he finds that the longer period is necessary to encourage exploration and development in areas where environmental condiditons severly restrict operations. An oil and gas lease shall be automatically renewed if and for so long thereafter as oil or gas is produced in paying quantities from the lease or, if the lease is committed to a unit approved by the commissioner. A lease issued under this section covering land on which there is a well capable of producing oil or gas in paying quantities does not expire because the lessee fails to produce oil or gas unless the lessee is allowed reasonable time to place the well on a producing status. Upon renewal, the commissioner may increase lease rentals so long as the increased rental rate does not exceed 150 per cent of the rate of the preceding year. The commissioner may provide by regulation and in the lease that the lessee may earn production rights only to the depth drilled at the beginning of production from the lease. If drilling has commenced on the expiration date of the primary term of the lease and is continued with reasonable diligence, including such operations as redrilling, sidetracking, or other means necessary to reach the originally proposed bottom hole location, the lease continues in effect until 90 days after drilling has ceased and for so long thereafter as oil or gas is pro-

AGO 546842

SUGGESTED REVISION OF HOUSE BILL NO. 854

(h) An oil and gas lease must cover a reasonably compact area not exceeding 5,760 acres, unless tract size in adjacent lands, economic or geological factors relating to that locality require a larger area, and must have a term of ten years. The commissioner may grant a lease for a term less than ten years, but not less than five years, and only where the commissioner finds that environmental and economic conditions do not severely restrict operations. An oil and gas lease shall be automatically renewed if and for so long thereafter as oil or gas is produced in paying quantities from the lease or, if the lease is committed to a unit approved by the commissioner. A lease issued under this section covering land on which there is a well capable of producing oil or gas in paying quantities does not expire because the lessee fails to produce oil or gas unless the lessee is allowed reasonable time to place the well on a producing status. Upon renewal, the commissioner may increase lease rentals so long as the increased rental rate does not exceed 150 per cent of the rate for the preceding year. If drilling has commenced on the expiration date of the primary term of the lease and is continued with reasonable diligence, taking into account the limitations imposed on dirlling operations by Alaskan environmental conditions and including such operations as redrilling, sidetracking, or other means necessary to reach the originally proposed bottom hole location, the lease shall continue in effect until 90 days after drilling has ceased and for so long thereafter as there is a well thereon capable of producing oil or gas in paying quantities.

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(k) The commissioner may establish by regulation that after a well has been plugged and abandoned, the rental rate which was in effect during the year of abandonment is maintained for the remainder of the term. Rental is payable in advance and continues until income to the state from royalty, net profit, or exploration work commitment exceeds rental income to the state for that year; after the rental income schedule has been exceeded for three consecutive years, the rental terminates. Oil and gas leases shall provide for payment to the state of rental on the following basis:

(1) for the first year, $1.00 per acre;

(2) for the second year, $1.50 per acre;

(3) for the third year, $2.00 per acre;

(4) for the fourth year, $2.50 per acre;

(5) for the fifth year, $3.00 per acre;

SUGGESTED REVISION OF HOUSE BILL NO. 854

(i) The commissioner may establish by regulation that after a well has been plugged and abandoned, the rental rate which was in effect during the year of abandonment is maintained for the remainder of the term. Rental is payable in advance and continues until income to the state from royalty, net profit, or exploration work commitment exceeds rental income to the state for that year; after the rental income schedule has been exceeded for three consecutive years, the rental terminates. Oil and gas leases shall provide for payment to the state of rental on the following basis:

(1) for the first year, $1.00 per acre;

(2) for the second year, $1.50 per acre;

(3) for the third year, $2.00 per acre;

(4) for the fourth year, $2.50 per acre;

(5) for the fifth year, $3.00 per acre;

AGO 546843

(l) Upon timely application as provided by regulation, the state may issue to the holder of a federal or private lease, a state shorelands lease covering land within the exterior boundaries of the federal or private lease which has been excluded on the basis of navigability or which is later administratively or judicially determined to be shoreland. The term of such a state shoreland lease shall be the same as the term of the federal or private lease, but may not exceed five years.

(j) Upon timely application as provided by regulation, the state may issue to the holder of a federal or private lease, a state shorelands lease covering land within the exterior boundaries of the federal or private lease which has been excluded on the basis of navigability or which is later administratively or judicially determined to be shoreland. The term of such a state shoreland lease shall be the same as the term of the federal or private lease.

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(m) To conserve the natural resources of all or a part of an oil or gas pool, field, or like area, whether or not the part is then subject to a cooperative or unit plan of development or operation, lessees and their representatives may unite with each other, or jointly or separately with others, in collectively adopting or operating under a cooperative or a unit plan of development or operation of the pool, field, or like area, or a part of it, when determined and certified by the commissioner to be necessary or advisable in the public interest. The commissioner may, with the consent of the holders of leases involved, establish, change, or revoke drilling, producing, rental minimum royalty, and royalty requirements of the leases and adopt regulations with reference to the leases, with like consent on the part of the lessees, in connection with the institution and operation of a cooperative or unit plan as he determines necessary or proper to secure the proper protection of the public interest. The commissioner may require oil and gas leases issued under this section to contain a provision requiring the lessee to operate under a reasonable cooperative or unit plan, and he may prescribe a plan under which the lessee must operate. The plan must adequately protect all parties in interest, including the state.

SUGGESTED REVISION OF HOUSE BILL NO. 854

(k) To promote the most efficient development of the natural resources of all or part of an oil or gas pool, field, or like area, whether or not the part is then subject to a cooperative or unit plan of development or operation, lessees and their representatives may unite with each other, or jointly or separately with others, in collectively adopting or operating under a cooperative or a unit plan of development or operation of the pool, field, or like area, or a part of it, when determined and certified by the commissioner to be necessary or advisable in the public interest. The commissioner may, with the consent of the holders of leases involved, establish, change, or revoke drilling, producing, rental minimum royalty, and royalty requirements of the leases and adopt regulations with reference to the leases with like consent on the part of the lessees, in connection with the institution and operation of a cooperative or unit plan as he determines necessary or proper to secure the proper protection of the public interest. The commissioner may require oil and gas leases issued under this section to contain a provision requiring the lessee to operate under a reasonable cooperative or unit plan, and he may prescribe a plan under which the lessee must operate. The plan must adequately protect all parties in interest, including the state.

AGO 546845

(n) A plan authorized by (m) of this section, which includes land owned by the state, may contain a provision vesting the commissioner, or a person committee, or state agency with authority to modify from time to time the rate of prospecting and development and the quantity and rate of production under the plan. All leases operated under a plan approved or prescribed by the commissioner are excepted in determining holdings or control under sec. 140 of this chapter. The provisions of this section concerning cooperative or unit plans are in addition to, and do not affect AS 31.05.

(o) Producing acreage on a known geologic structure of a producing oil or gas field is excluded from chargeability as against the acreage limitation provisions of sec. 140 of this chapter.

(l) A plan authorized by (j) of this section, which includes land owned by the state, may contain a provision vesting the commissioner, or a person, committee, or state agency with authority to modify from time to time the rate of prospecting and development and the quantity and rate of production under the plan. All leases operated under a plan approved or prescribed by the commissioner are excepted in determining holdings or control under sec. 140 of this chapter. The provisions of this section concerning cooperative or unit plans are in addition to, and are subject to the state's authority to prohibit waste of oil and gas in AS 31.05.

(m) Producing acreage on a known geologic structure of a producing oil or gas field is excluded from chargeability as against the acreage limitation provisions of sec. 140 of this chapter.

AGO 546846

HOUSE BILL 854

(p) When separate tracts cannot be individually developed and operated in conformity with an established well-spacing or development program, a lease, or a portion of a lease, may be pooled with other land, whether or not owned by the state, under a communitization or drilling agreement providing for an apportionment of production or royalties among the separate tracts of land comprising the drilling or spacing unit when determined by the commissioner to be in the public interest. Operations or production under the agreement are considered as operations or production as to each lease committed to the agreement.

(q) The commissioner may, on conditions which he prescribes, approve drilling, or development contracts made by one or more lessees of oil or gas leases, with one or more persons, when, in his discretion, the conservation of natural resources or the public convenience or necessity requires it or the interests of the state are best served. All leases operated under approved drilling or development contracts, and interests under them, are excepted in determining holding or control under sec. 140 of this chapter. Drilling or development contracts may include, at the discretion of the commissioner, provisions authorizing the state to share in the costs of exploration.

AGO 546847

SUGGESTED REVISION OF HOUSE BILL NO. 854

(n) When separate tracts cannot be indivudually developed and operated in conformity with an established well-spacing or development program, a lease, or a portion of a lease, may be pooled with other land, whether or not owned by the state, under a communitization or drilling agreement providing for a apportionment of production or royalties among the separate tracts of land comprising the drilling or spacing unit when determined by the commissioner to be in the public interest. Operations or production under the agreement are considered as operations or production as to each lease committed to the agreement.

(o) The commissioner may, on conditions which he prescribes, approve drilling, or development contracts made by one or more lessees of oil or gas leases, with one or more persons, when, in his discretion, the conservation of natural resources or the public convenience or necessity requires it or the interests of the state are best served. All leases operated under approved drilling or development contracts, and interests under them are excepted in determining holding or control under sec. 140 of this chapter. Drilling or development contracts may include, at the discretion of the commissioner, provisions authorizing the state to share in the costs of exploration.

HOUSE BILL 854

(r) To avoid waste or to promote conservation of natural resources, the commissioner may authorize the subsurface storage of oil or gas whether or not produced from state land, in land leased or subject to lease under this section. This authorization may provide for the payment of a storage fee or rental on the stored oil or gas, or instead of the fee or rental, for a royalty other than that prescribed in the lease when the stored oil or gas is produced in conjunction with oil or gas not previously produced in paying quantities.

(s) Each oil or gas lease issued by the state must contain a provision requiring the lessee to furnish the Department of Labor a quarterly report regarding the employment of state residents on the leased property. The commissioner of labor shall adopt regulations necessary to implement this subsection. No lease issued under this chapter is valid unless it contains provisions requiring the employment of qualified Alaska residents in accordance with AS 38.40.030, and complies in all respects with the requirements of ch. 40 of this title.

SUGGESTED REVISION OF HOUSE BILL NO. 854

(p) To promote conservation of natural resources, the commissioner may authorize the subsurface storage of oil or gas whether or not produced from state land, in land leased or subject to lease under this section. This authorization may provide for the payment of a storage fee or rental on the stored oil or gas, or, instead of the fee or rental, for a royalty other than that prescribed in the lease when the stored oil or gas is produced in conjunction with oil or gas not previously produced in paying quantities.

(q) Each oil or gas lease issued by the state must contain a provision requiring the lessee to furnish the Department of Labor a quarterly report regarding the employment of state residents on the leased property. The commissioner of labor shall adopt regulations necessary to implement this subsection. No lease issued under this chapter is valid unless it contains provisions requiring the employment of qualified Alaska residents in accordance with AS 38.40.030, and complies in all respects with the requirements of ch. 40 of this title.

AGO 546848

HOUSE BILL 854

(t) Notwithstanding any other provision of this section, land which has been offered for lease within the previous five years but which received no bids at competitive sale may be, at the discretion of the commissioner, immediately offered for lease, under regulations adopted by him, upon terms appearing most advantageous to the state, including leasing non-competitively. The commissioner shall use a sliding scale royalty based upon such formulae as he determines to be in the public interest but not less than 12 1/2 per cent at the beginning of production from the lease in amount or value of the production removed or sold from the lease or unit area encompassing the lease. A lease must provide for payment to the state of rental but need not adhere to the rental schedule in (k) of this section nor to the 5,760-acres-per-lease limitation in (j) of this section. The lease term may not exceed five years except as provided in (j) and (k).

AGO 546849

SUGGESTED REVISION OF HOUSE BILL NO. 854

(t) Notwithstanding any other provision of this section, land which has been offered for lease within the previous five years but which received no bids at competitive sale may be, at the discretion of the commissioner, immediately offered for lease, under regulations adopted by him, upon terms appearing most advantageous to the state, including leasing non-competitively. The commissioner shall use a sliding scale royalty based upon such formulae as he determines to be in the public interest but not less than 12 1/2 per cent at the beginning of production from the lease in amount or value of the production removed or sold from the lease or unit area encompassing the lease. A lease must provide for payment to the state of rental but need not adhere to the rental schedule in (k) of this section nor to the 5,760-acres-per-lease limitation in (j) of this section. The lease terms may not exceed five years except as provided in (j) and (k).

HOUSE BILL 854

*Sec. 2. AS 38.05.135(b) is repealed and re-enacted to read:

(b) When minerals are to be leased, in addition to any other notice given, notice must also be given as provided in secs. 305 and 345 of this chapter.

*Sec. 3. AS 38.05.140(c) is amended to read:

(c) No person may take or hold at one time phosphate leases on state lands exceeding the aggregate 10,240 acres. No person may take or hold sodium leases or permits for up to 15,360 acres. No person may take or hold at any one time oil or gas leases exceeding in the aggregate 200,000 (500,000) acres granted on tide and submerged lands, and 400,000 acres on all land (LANDS) other than tide and submerged land (LANDS), including leases held both as lessee and under option or operating agreement from others. A person has five years from the effective date of this Act to conform to the 200,000-acre upland limitation. Where more than a single person holds an interest in an oil or gas lease, each person shall be charged only with that percentage of the total acreage which corresponds to its percentage share of the total beneficial interest in the lease.

*Sec. 4. AS 38.05.145(b) is repealed.

SUGGESTED REVISION OF HOUSE BILL NO. 854

*Sec. 2. AS 38.05.135(b) is repealed and re-enacted to read:

(b) When minerals are to be leased, in addition to any other notice given, notice must also be given as provided in secs. 305 and 345 of this chapter.

*Sec. 3. AS 38.05.140(c) is amended to read:

(c) No person may take or hold at one time phosphate leases on state lands exceeding the aggregate 10,240 acres. No person may take or hold sodium leases on state lands, exceeding in the aggregate acreage 5,120 acres, except that the commissioner may, where it is necessary in order to secure the economic mining of sodium compounds, permit a person to take or hold sodium leases or permits for up to 15,360 acres. No person may take or hold at any one time oil or gas leases exceeding in the aggregate 500,000 acres granted on tide and submerged lands, and 400,000 acres on all land (LANDS) other than tide and submerged land (LANDS), including leases held both as lessee and under option or operating agreement from others. Where more than a single person holds an interest in an oil or gas lease, each person shall be charged only with that percentage of the total acreage which corresponds to its percentage share of the total beneficial interest in the lease.

*Sec. 4. AS 38.05.145(b) is repealed.

AGO 546850

(u) The commissioner may, by regulation, restrict joint bidding by major or multi-national oil and gas companies to encourage competition.

(v) The State has the right to purchase not more than 16 2/3 per cent of the volume of oil and up to 100 per cent of the volume of gas produced from a lease issued in accordance with this section, at the regulated price, or, if no regulated price applies, at the fair market value at the point of sale, except that any oil or gas obtained by the state as royalty or net profits shall be credited against the amount that may be purchased under this subsection. Oil and gas purchased under this section may be used by the state in the same manner as it uses its royalty oil and gas.

(w) A lessee or permittee conducting any exploration for, or development or production of, oil or gas on state land shall provide the commissioner access to all data obtained from that activity and shall provide copies of specific data, as the commissioner may request.

(delete)

(r) The commissioner may reserve the right to purchase not more than 16 2/3 per cent of the volume of oil and gas produced from a lease issued in accordance with this section, at the regulated price, or, if no regulated price applies, at the fair market value at the point of sale, except that any oil or gas obtained by the state as royalty or net profits shall be credited against the amount that may be purchased under this subsection. Oil and gas purchased under this section may be used by the state in the same manner as it uses its royalty oil and gas.

(s) A lessee or permittee conducting any exploration for, or development or production of, oil or gas on state leases shall provide the commissioner access to all <u>noninterpretive</u> data obtained from that activity and shall provide copies of specific <u>noninterpretive</u> data, as the commissioner may request. <u>Such data shall be held confidential by the commissioner upon request of the lessee or permittee as provided in AS 38.05.035. The commissioner shall, by regulation, establish procedures for each office where such data is filed governing access to and the safekeeping of the data.</u>

AGO 546851

How to Bid for Offshore Rights

Several systems have been proposed to replace the present "bonus-bid" method of assigning leases on offshore oil prospects to developers. Of these, Professor John W. Devanney III of M.I.T. opts for "percentage-of-excess-profits" bids (*see p. 42*). Other proposed arrangements include work obligation permits and various forms of royalty bidding.

The Work Obligation Permit Plan

Under the work obligation permit plan, developers would submit exploratory and provisional drilling plans for a given tract. The government would choose the developer with the most aggressive, best-considered plan, and the developer would then be responsible for agreed-upon amounts of royalties and/or lease rentals. Under this system, used currently by the Norwegians and the British in the North Sea, the great bulk of any economic rent would be transferred to the developer, and a portion of this rent would be returned to the public in the form of corporate income taxes. Of the possible methods reviewed here, this is clearly the most favorable to the developer.

Administering this method to maximize national income depends on the skill and honesty of administrators. There are temptations for prospective developers to submit work plans which represent over-development of the resource so they will be judged the most aggressive, and administrators will have to be wise enough to recognize such over-development and refuse it. The decisions to be made in choosing the "best" work plan are necessarily judgemental, and they are an open invitation to the influence of special interests and even to corruption.

But beyond the possibilities of incompetency or corruption which may result in loss of national income is the basic fact that most of the economic rent goes to the developer. Professor Devanney concludes that work obligation permitting is clearly not desirable, from a nondeveloper point of view. Indeed, as soon as it became clear that economic rent was associated with North Sea oil, the British and Norwegians moved away from this practice.

Royalty Bidding

Royalty bidding involves competitive bidding on a share of the actual gross revenues — generally a percentage of market value — associated with the resource. This method has long been used in state sales of rights, and the federal government experimented with it in the Gulf of Mexico in 1974.

Compared with bonus bidding, royalty bidding transfers some of the risk prior to exploratory drilling from the developer to the public. This helps maintain competition among bidders, for large amounts of up-front capital are not necessary, and the need for large bidding combines disappears.

However, there are other problems. While the method could theoretically give most of the revenues from offshore oil to the public, it could also reduce the total size of the offshore oil pie. This is because the royalty bid, unlike the bonus bid, affects the developer's marginal expenses. For instance, if a developer overestimates production from a certain tract, he will freeze himself into a royalty bid that makes it unprofitable for him to develop the smaller, and thus more expensive, oil find that is actually made. He will refuse to develop it, and the national income will suffer. This risk may especially affect secondary and tertiary production from a tract; such oil will be more expensive than primary oil but still less costly than foreign crude.

Proponents of royalty bidding offer two possible resolutions of this dilemma — re-leasing and renegotiation. The former proposes that if a developer decides not to produce a tract he must turn it back to the government, with all equipment intact, and the government may lease the tract anew, presumably to a different developer at a lower royalty. This would discourage expensive techniques to enhance oil recovery, because the original leaseholder may choose merely to take out the flush production before releasing a tract back to the government. This will be costly to the public, since processes for secondary and tertiary recovery of oil must begin early in a field's life to be most effective. There is also the possibility of excessive administrative costs associated with the negotiations necessary for re-leasing.

Advocates of renegotiation propose that if a developer feels he cannot develop a field at his bid royalty, he should be able to present his evidence to the regulatory body which should be empowered to grant him a decrease if it finds his presentation viable. The obvious problems here are in the regulatory body's verification of the developer's data. The capital-intensiveness of offshore oil makes any estimate extremely sensitive to the cost of capital, and that information is often confidential.

Other potential problems introduced by renegotiation include temptations for developers to "goldplate" a project since additional expenses could come off the royalty — i.e., out of the public's pocket. A developer might deliberately bid high initially in order to obtain a tract, anticipating that he will renegotiate later; and he might go through a whole series of renegotiations as his costs for enhanced recovery techniques begin to appear.

Some have suggested a compromise between bonus bidding and royalty bidding, in which developers would enter a "high" fixed royalty plus a bonus bid of up-front payments. This would decrease the size of bonus bids and aid competition, say its advocates. Unfortunately, this presents the same can of worms as straight royalty bidding.

Installment bonus bidding has also been suggested. This means a developer would pay his bonus in three installments — immediately, after three years, and after five years. He could surrender the lease before the last two payments if things failed to work out. But this presents the same pie-reducing problems as royalty bidding; if a developer originally bid $600 million and after exploratory drilling found oil worth only $350 million, he would abandon the tract rather than pay the final installments even though national income would be increased by $350 million if the find were developed.

There are advantages, however, in installment bonus bidding. There is an automatic re-leasing provision, which could assure that tracts were re-opened for development; and the marginal costs of the oil are not affected, which means that the developer has incentives to invest early in enhanced recovery.

However, the massive amounts of up-front money involved in even a one-third installment payment of a bonus bid will probably still frighten away many bidders. And many bidders would increase their total bonus bids considerably, knowing that they could thus avoid paying additional installments.

AGO 546913

ALBERTA, CANADA

Exploratory Drilling Incentive System

A report from Alberta Energy and Natural Resources states the exploratory drilling incentive principles adopted for wells spudded between Jan. 1, 1978 and March 31, 1981 were announced by the government last fall and will be defined in detail in the Exploratory Drilling Incentive Regulation, 1978 when it is issued in the near future.

This regulation, however, may not be available to industry prior to the commencement of the drilling activity it affects. Accordingly, the essential details respecting the forthcoming program are described herewith.

The department expects that the principles and details outlined here will be incorporated, without a change in meaning, into the 1978 Regulation. If, however, such a change does occur, the 1978 Regulation would, of course, take precedence.

(1) Commencement Date of the Forthcoming Program

As previously indicated, an incentive exploratory well in good standing will be

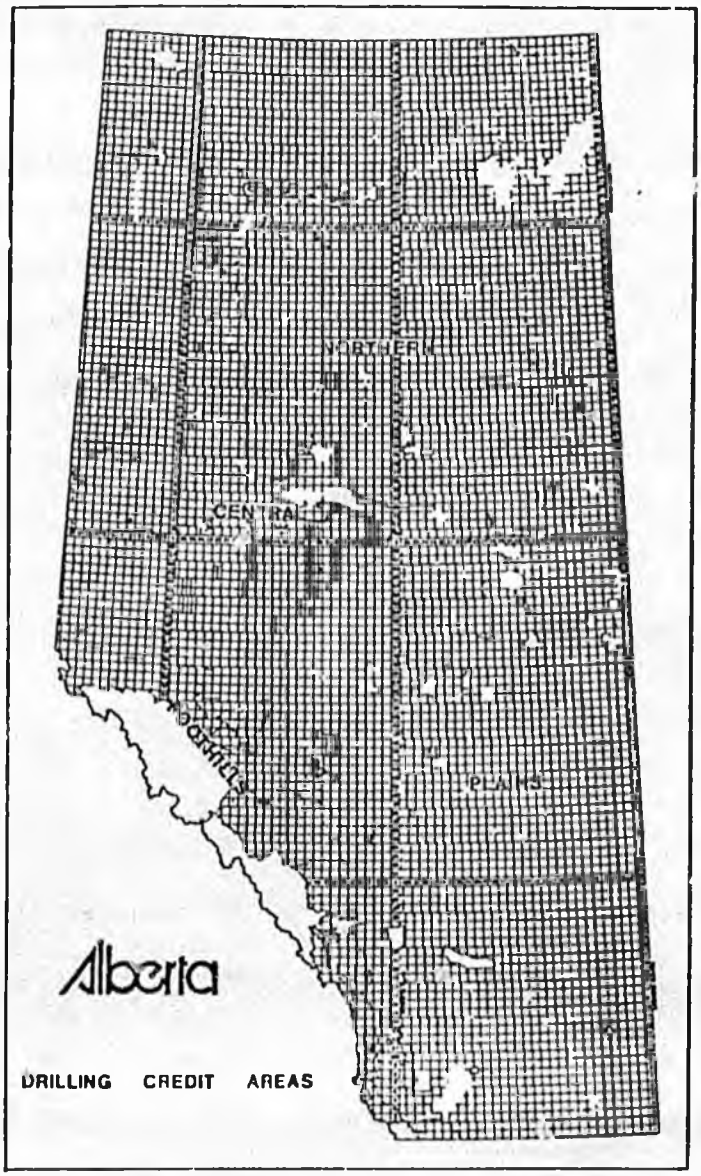

Figure 1

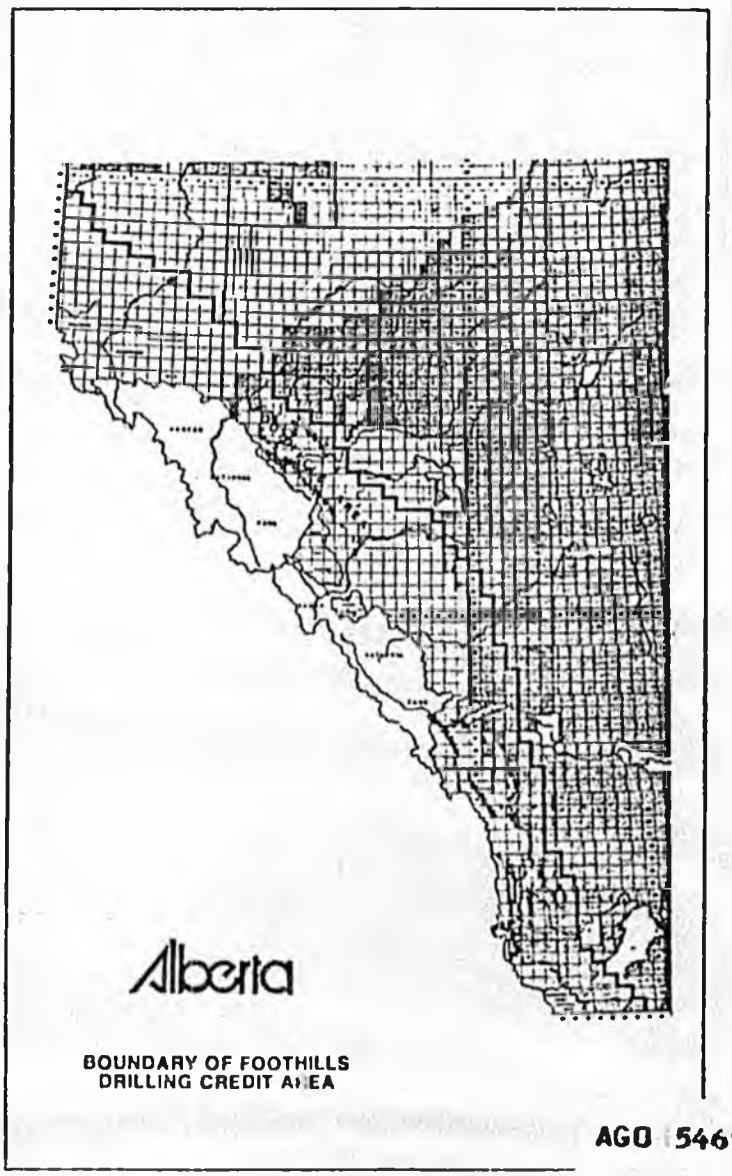

Figure 2

subject to the 1978 Regulation if it commences drilling on or after Jan. 1, 1978. This provision will not be affected if the licensing or certification date is before 1978.

(2) Drilling Credit Areas

Figure 1 shows the drilling credit areas as they will be defined under the 1978 Regulation. The Plains and Foothills Areas have not been changed. The subsisting Northern Area, however has been divided into the new Central and Northern Areas shown by the illustration. The boundary between the two new areas was defined by the Department on the basis of well cost data and topographic and access considerations.

Figure 2 is provided for the convenience of industry to depict the irregular eastern boundary of the Foothills Area. A similar map was issued by the Board in 1974.

(3) Drilling Credit Schedules

Drilling credits under the 1978 Regulation will be determined from Schedules F

SCHEDULE F

Applicable to the Class A Interval of an Incentive Exploratory Well that Commences Drilling on or after January 1, 1978

The Class A interval of an incentive exploratory well that commences drilling on or after January 1, 1978 shall be determined by the Board as the interval below the depth of 2,000 feet that

(i) has not been duplicated by a drilled and abandoned well within one and one-half miles.

(ii) occurs more than 500 feet below the base of the deepest accumulation of crude oil or natural gas that in the opinion of the Board has been penetrated by another well within three miles, and

(iii) occurs immediately below the base of the member or formation containing the deepest oil sands deposit that in the opinion of the Board may underlie the location of the said incentive exploratory well.

Where neither (ii) nor (iii) above applies, the Class A interval shall be determined from the depth of 2,000 feet to the total depth of the said incentive exploratory well.

	Basis for Credit Plains Area		Basis for Credit Central Area		Basis for Credit, Northern and Foothills Areas	
Depth, Feet	Cumulative Dollars	Incremental $/Foot	Cumulative Dollars	Incremental $/Foot	Cumulative Dollars	Incremental $/Foot
2,000	0	20	0	30	0	40
3,000	20,000	18	30,000	25	40,000	35
4,000	38,000	18	55,000	25	75,000	40
5,000	56,000	20	80,000	25	115,000	35
6,000	76,000	24	105,000	35	150,000	35
7,000	100,000	30	140,000	40	185,000	50
8,000	130,000	40	180,000	50	235,000	65
9,000	170,000	55	230,000	70	300,000	80
10,000	225,000	75	300,000	90	380,000	100
11,000	300,000	100	390,000	110	480,000	120
12,000	400,000	110	500,000	160	600,000	180
13,000	510,000	160	660,000	200	780,000	210
14,000	670,000	210	860,000	240	990,000	260
15,000	880,000	280	1,100,000	350	1,250,000	350
16,000	1,160,000	340	1,450,000	400	1,600,000	425
17,000	1,500,000	500	1,850,000	550	2,025,000	575
18,000	2,000,000	500	2,400,000	550	2,600,000	575

Figure 3

SCHEDULE G

Applicable to the Class B Interval of an Incentive Exploratory Well that Commences Drilling on or after January 1, 1978

The Class B interval of an incentive exploratory well that commences drilling on or after January 1, 1978 shall be determined by the Board as the interval below the depth of 2,000 feet that

(i) has been duplicated by a drilled and abandoned well within one and one-half miles.

(ii) occurs more than 500 feet below the base of the deepest accumulation of crude oil or natural gas that in the opinion of the Board has been penetrated by another well within three miles, and

(iii) occurs immediately below the base of the member or formation containing the deepest oil sands deposit that in the opinion of the Board may underlie the location of the said incentive exploratory well.

Where neither (ii) nor (iii) above applies, the Class B interval shall be determined from the depth of 2,000 feet to the total depth of the said incentive exploratory well.

	Basic for Credit Plains Area		Basic for Credit Central Area		Basis for Credit, Northern and Foothills Areas	
Depth, Feet	Cumulative Dollars	Incremental $/Foot	Cumulative Dollars	Incremental $/Foot	Cumulative Dollars	Incremental $/Foot
2,000	0	15	0	20	0	28
3,000	15,000	14	20,000	20	28,000	29
4,000	29,000	14	40,000	20	57,000	29
5,000	43,000	14	60,000	19	86,000	24
6,000	57,000	18	79,000	26	110,000	30
7,000	75,000	25	105,000	30	140,000	40
8,000	100,000	30	135,000	40	180,000	45
9,000	130,000	40	175,000	50	225,000	60
10,000	170,000	55	225,000	65	285,000	75
11,000	225,000	65	290,000	90	360,000	95
12,000	290,000	90	380,000	120	455,000	125
13,000	380,000	120	500,000	150	580,000	155
14,000	500,000	160	650,000	180	735,000	190
15,000	660,000	210	830,000	270	925,000	275
16,000	870,000	270	1,100,000	300	1,200,000	310
17,000	1,140,000	360	1,400,000	400	1,510,000	420
18,000	1,500,000	360	1,900,000	400	1,930,000	420

Figure 4

AGO 546916

and G *(Figures 3 and 4)*. The schedules reflect the government's decision to exclude the upper 2,000 feet from the forthcoming program, and to increase the credits for qualifying wells deeper than about 3,500 feet. For wells greater than 5,000 feet in depth, the increase is between approximately 25 and 45 percent, the difference being justified by the Department's comprehensive well cost study. An exception applies to the new Northern Area, for which credit increases at certain depths exceed 45 percent to correspond with Foothills credits.

(4) Royalty Exemptions

(4.1) Eligibility

Crude oil or gas production must originate from a Class A or Class B interval to qualify for a royalty exemption. Production from any source shallower than 2,000 feet will thus not qualify for royalty exemption under the 1978 Regulation. An exception to the foregoing exclusion is found under the following circumstances: If conventional crude oil is produced from a source shallower than 2,000 feet in the new Northern Area, and if the 2,000-foot interval would have qualified as Class A or Class B footage pursuant to the 1974 Regulations, the crude oil production will be eligible for the normal royalty exemption applicable to deeper production.

(4.2) Duration

The royalty exemptions authorized under the 1978 Regulation will apply to the initial 60 crude oil-producing months or the initial 12 gas-producing months at the well, commencing with the first month in which the crude oil or gas would otherwise be subject to royalty payment.

Additional details concerning these and other principles relating to the forthcoming program will be specified in the 1978 Regulation. If any questions arise after the 1978 Regulation is studied, they may be referred to J. R. Pow or F. Phillips of the Energy Resources Conservation Board, if they pertain to the certification of a well or the determination of its Class A or Class B interval, or to C. R. Smith or E. Saldanha of the Department, if they are concerned with establishing credit or granting royalty exemption. □

Four Articles from Mineral Leasing as an Instrument of Public Policy, British Columbia Institute for Economic Policy Analysis, 1977.

1. Gregg K. Erickson, "Work Commitment Bidding"
2. Dale R. Jordan, "Petroleum Leasing in British Columbia"
3. Walter J. Mead, "Cash Bonus Bidding for Mineral Resources"
4. Arlon R. Tussing, "The Role of Public Enterprise"

Work Commitment Bidding

GREGG K. ERICKSON

One result of the growing concern in the United States over energy matters has been an increased attention to public policies governing the development of Outer Continental Shelf (OCS) oil and gas resources. The institutional structure under which all such development has thus far taken place was established in 1953 by the Outer Continental Shelf Lands Act.[1] This unamended statute provides the Secretary of the Interior with authority to sell oil and gas leases to the public on the basis of cash or royalty bids offered at sealed bid auctions.

The practice of the United States government since the first such sale in 1954 has been to offer relatively small quantities of offshore acreage on an irregular basis, soliciting always cash rather than royalty rate bids. In recent years, the rate at which acreage has moved to market has been accelerating. However, the average per acre bonus received by the government has also increased, partially reflecting worldwide supply conditions. The fact that bids are received in sealed envelopes has resulted in the winning bid being two, three, or several times the amount of the next highest bid.

Among criticisms of present policy is the assertion that this method of lease allocation diverts undesirably large amounts of *front-end money* into the coffers of the government landowner, money that could, would, and should otherwise be used for development of the resource itself.[2] One possible remedy would involve implementation of the existing statutory authority to substitute royalty rate bids, with fixed and presumably low cash bonuses. The problems created by royalty bidding, principally the premature shutdown effect and the potential for speculator induced misallocation of leases, have been well discussed in the literature. More importantly, they are well understood by persons influencing both public and private mineral resource management policies.[3]

An alternative proposed remedy to this same perceived problem is less well understood. Based in part on the method of lease allocation used in the offshore areas of the United Kingdom, it would allocate exploitation rights to the firm that would commit itself to spending the greatest sum in developing the resource. Sealed bids would be solicited as under the present system, but instead of cash the bid variable would be the *work commitment*. Proponents of this system claim that it will divert money the government

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landowner would otherwise receive via bonuses into exploration and development expenditures.[4] These additional increments of expenditure, it is further suggested, will increase future production to such an extent that the government landowner will be able to recoup the foregone bonus income in the form of the consequentially increased royalty and tax revenue. Ancillary benefits in the form of employment, resource self-sufficiency, and improved trade balances are also sometimes claimed or alluded to.

To an economist these arguments may not seem too persuasive. Nevertheless, no one appears to have devoted much effort to analyzing the economic implications of such a system, and certainly not in a form that would be comprehensive to the noneconomist policy maker.[5] This is unfortunate not only because of the substantial public and private interests involved; the system has significant implications for minerals other than petroleum and in places other than the United States OCS. The purpose here is to provide such an analysis.

EVALUATION OF WORK COMMITMENT BIDDING

In evaluating something new the first step is usually to establish a standard against which it can be measured. In this context, the system of competitive cash bidding has long attracted economists concerned with the problem of natural resource allocation, not only as an ideal against which the performance of other systems might be measured, but as a practical and proven technique for bringing resources into productive employment.

Under an idealized competitive cash bidding arrangement, bidders determine the amount they can afford to offer for a mineral lease by a very simple process: they subtract their expected costs of extraction from their expected revenues. The resulting residual is the maximum the prospective bidder can offer for the tract without buying himself an expected loss. Competition, of course, implies that multiple firms will be preparing bids on each tract.

Assuming no uncertainty about the amount of oil to be found or the price that oil will eventually bring, and disregarding the time value of money, the firm with the lowest expected costs of extraction will be capable of submitting the highest, and thus the winning, bid. This is good from society's standpoint, since it means that the resource will be developed with the minimum expenditure of scarce goods and services. The resource's contribution to economic welfare will be greater than it would have been had the tract been awarded to any of the other, less efficient bidders.

Under a work commitment system each prospective bidder will be asking himself: What is the maximum amount I can promise to spend on the development of this tract and still expect to break even? Since any cash bonus

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that would have been offered to acquire a tract under the traditional system is no longer necessary, the amount of that bonus may clearly be diverted to the work commitment without raising costs beyond the breakeven point. What is not quite so obvious, however, is that the amount a bidder will promise to spend under the commitment system will exceed the sum of the cash bonus and the amount that he would have allocated to development of the tract under the cash bonus system.

This follows from the fact that any additional increment of expenditure can almost always be spent in a way that will bring about some increase in output from the tract and a corresponding increase in revenue.

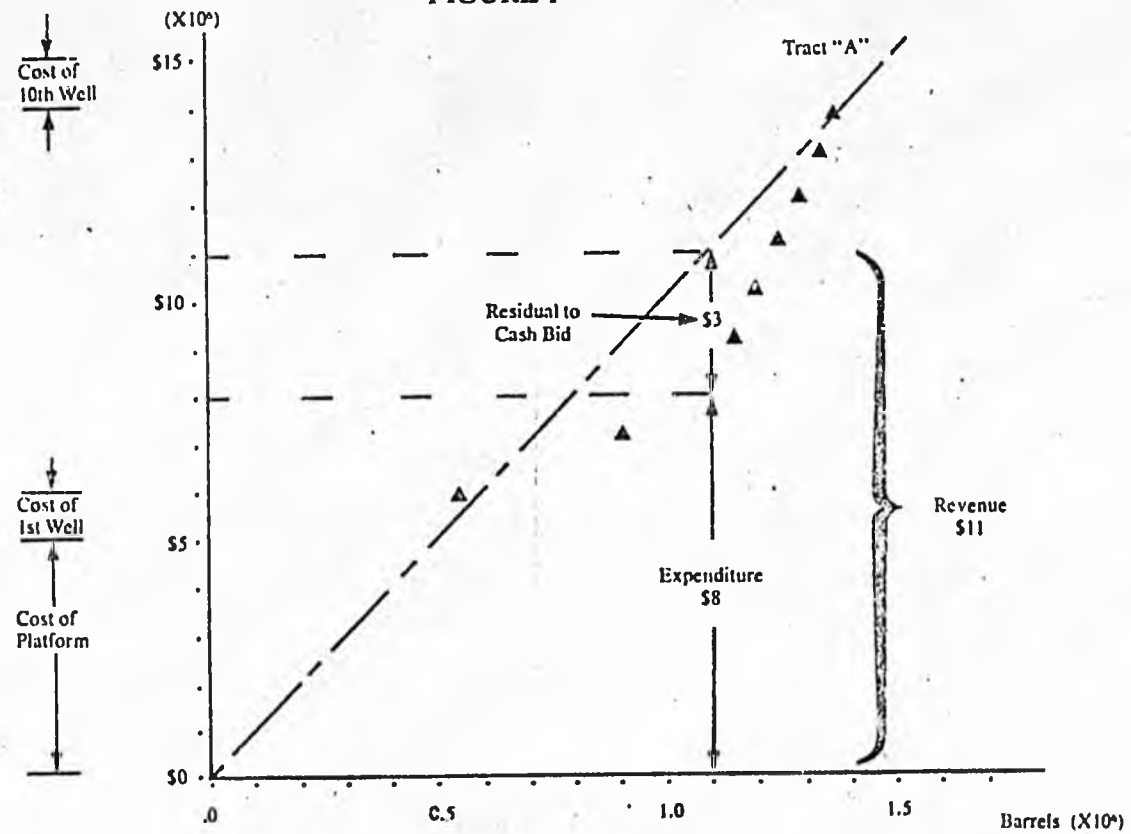
This is most easily demonstrated with a numerical example. Let us assume that a prospective bidder, in determining how much of a cash bonus he can offer for an oil and gas lease on a hypothetical tract A, has calculated the relationship between expenditures on development of the tract and expected production, and that the results of his calculations appear as plotted in Figure 1.

The vertical axis in this graph (and those that follow) measures dollars expended in the tract's development, dollars that we assume will be spent for construction of a platform and the drilling from it of wells. The horizontal scale measures the output that results from that expenditure, denominated in millions of barrels of oil. The relationship between those barrels of output and the revenue they bring their producer (at an assumed price of $10 per barrel) is shown, through appropriate choice of scales, by the dashed 45° straight line running upward to the right. By this means, the vertical scale can be used to show the value of output as well as the cost of production.

In Figure 1, the point closest to the origin indicates that with one platform and one well this operator would expend $6 million (vertical scale) producing an output of 550,000 barrels of oil, worth $5.5 million (determined by the intersection of the 45° line with a line drawn vertically from .55 million barrels). Moving upward and to the right, each subsequent point reflects seriatum the increases in expenditures and output resulting from the drilling of additional wells.

The general shape of the curve defined by these points is characteristic of situations where one major input to the productive process (in this case land) is held constant, while other inputs (in this case wells) are varied. The output curve originates at the lower left hand corner, but it rises vertically at first because the initial input of investment is unproductive: a platform and oil well costs a certain amount, and an expenditure of anything less than that threshold amount produces no oil. The cost of subsequent wells is assumed to be $1 million, no matter how many wells are drilled, creating a curve that looks like a staircase where each increment of cost (representing a new well) creates a new step. The fact that the staircase steepens as we move

FIGURE 1



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to the right is a reflection of the diminishing returns, in terms of oil produced, to each additional well drilled into the fixed geographic area encompassed by the lease.

Naturally the prospective bidder will be looking for the point on this output curve that puts his costs as far below the 45° line (his output-revenue function) as possible. As shown in Figure 1, the maximum cash bid this operator could afford to make on tract A (and still expect to break even) is $3 million, which—if he is the winner—would require him to drill three wells.

Consider now the situation this bidder would face were a work commitment bidding system adopted. The question that now confronts him is: How much can I spend (or how many wells can I drill) on tract A and still break even? The answer is clearly $14 million (representing nine wells), indicated on the right side of Figure 2 by the output curve for tract A.

If the bidder wins tract A under a work commitment system, his oil output will be 1.4 million barrels (Figure 2) as compared to the 1.1 million barrels (Figure 1) that he would have produced had he won the tract in a cash bonus sale.

If the success of a mineral resource management policy is measured by the physical quantities of the mineral educed from the earth, the work commitment bidding is clearly superior. A resource's contribution to economic welfare, however, is not its total output (whether measured in dollars or physical quantities) but is the residual left over when the costs of all inputs to the productive process (other than the resource itself) are subtracted from the value of the outputs. In the case of tract A this residual is maximized at $3 million, when the value of the inputs is $8 million. As the input expenditure is increased above this optimum point, the residual—the resource's potential contribution to economic welfare—is gradually dissipated until, at the point where the value of inputs reaches $14 million, there is no more residual left to be dissipated.

In this particular example, the increase in output that would result from a switch to work commitment bidding ($3 million) happens to equal the amount of the residual. This coincides with the fact that the expenditure of each additional $1 million above $8 million (three wells) contributes exactly $500,000 to revenue. If the incremental contribution of the fourth and succeeding wells were greater, for example $750,000, the slope of the output curve traced by these points would be flatter, as shown by the squares in Figure 3, and the increase in production from a switch to commitment bidding would be much greater. To put it another way, it would take twice as large an increase in expenditure to dissipate the $3 million residual.

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FIGURE 2

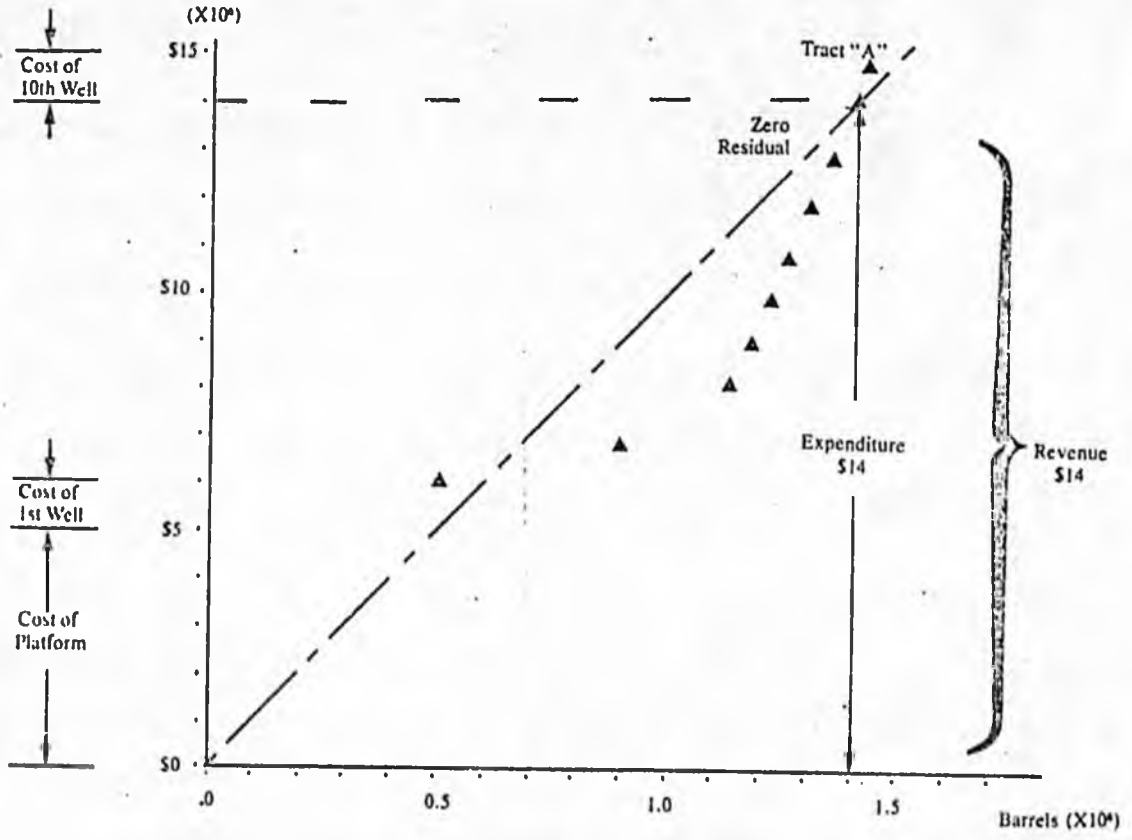

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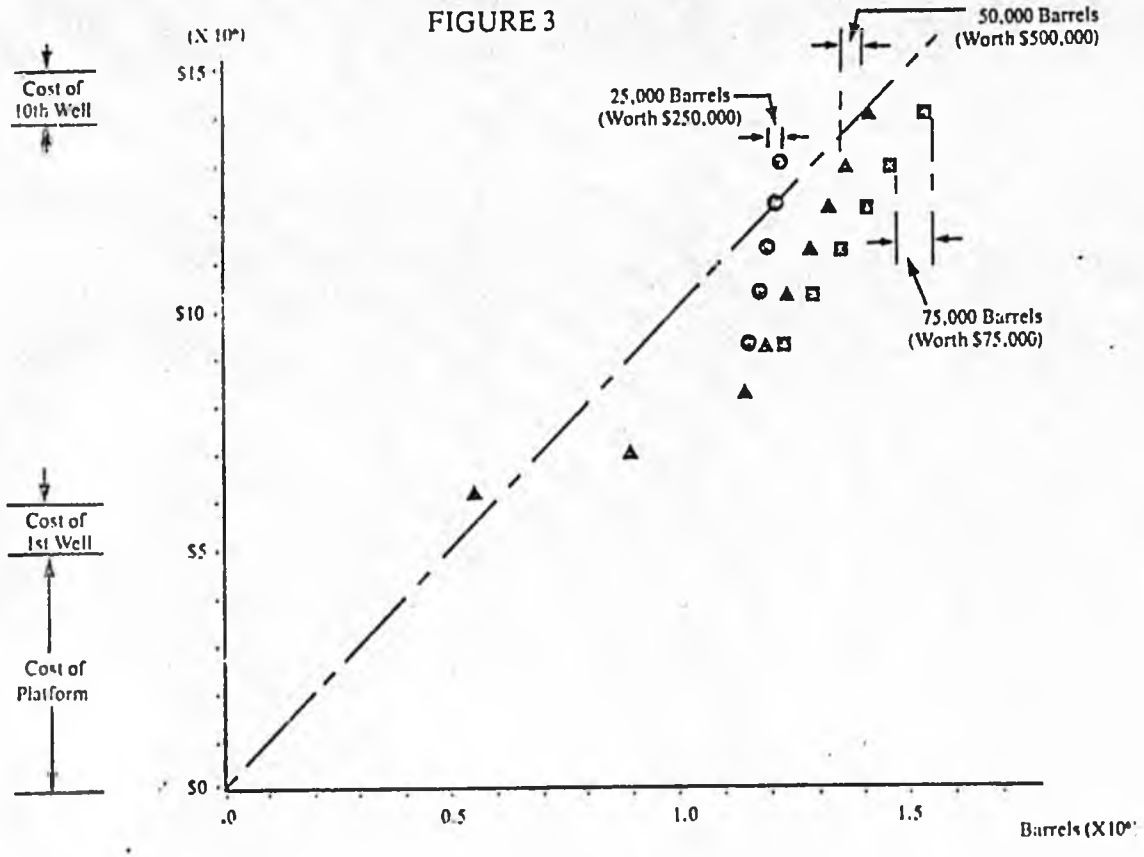
FIGURE 3



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On the other hand, a smaller incremental contribution to output and revenue by the fourth and succeeding wells (for example, an increase of only $250,000 in revenue for each $1 million well) would trace a steeper curve such as the one defined by the circles in Figure 3. The addition to revenue would clearly be less than the $3 million residual sacrificed to obtain it, which is another way of saying that the increase in production would be worth less than the bonus bid sacrificed to obtain it.

TRANSFERABILITY OF COMMITMENTS

Clearly the previously discussed simple work commitment bidding system results in more intensive development of the tract to which it is applied. Clear also is the fact that this effect is dependent on the characteristics of the tract to which it is applied, and in particular on the efficiency with which the successive increments of additional expenditures required under the commitment can be put to work to increase output.

One way to increase this efficiency is to allow an operator who assumes a work commitment in the course of acquiring a particular tract to fulfil that commitment through expenditures on a different tract or tracts.

For example, assume that a bidder has acquired both tract A and tract B as shown in Figure 4. If the work commitment assumed in order to acquire a tract must be fulfilled on that same tract, then his maximum commitment on A (Figure 2) is $14 million; and on B (as indicated in Figure 4 by the dashed lines) it is $8 million. Total output from the two tracts will be 2.2 million barrels.

TABLE 1

WORK COMMITMENT BIDDING

	Output (bbl's)	Revenue ($)	Expenditure ($)	Residual ($)
Tract A	1.4	14	14	0
Tract B	0.8	8	8	0
	2.2	22	22	0

Note: All figures in millions

If the operator is allowed to bid on the two tracts jointly or is otherwise permitted to shift a commitment made to acquire one to the other, then his total work commitment will rise to $24 million, with a corresponding increase in output. As shown in Figure 4, this is possible by operating tract A at the point on the output curve which produces the greatest residual and by transfering that residual, as an internal subsidy, to tract B, where, as indicated by the flatter slope of the output curve, it can be utilized more efficiently. The numbers are summarized in Table 2.

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FIGURE 4

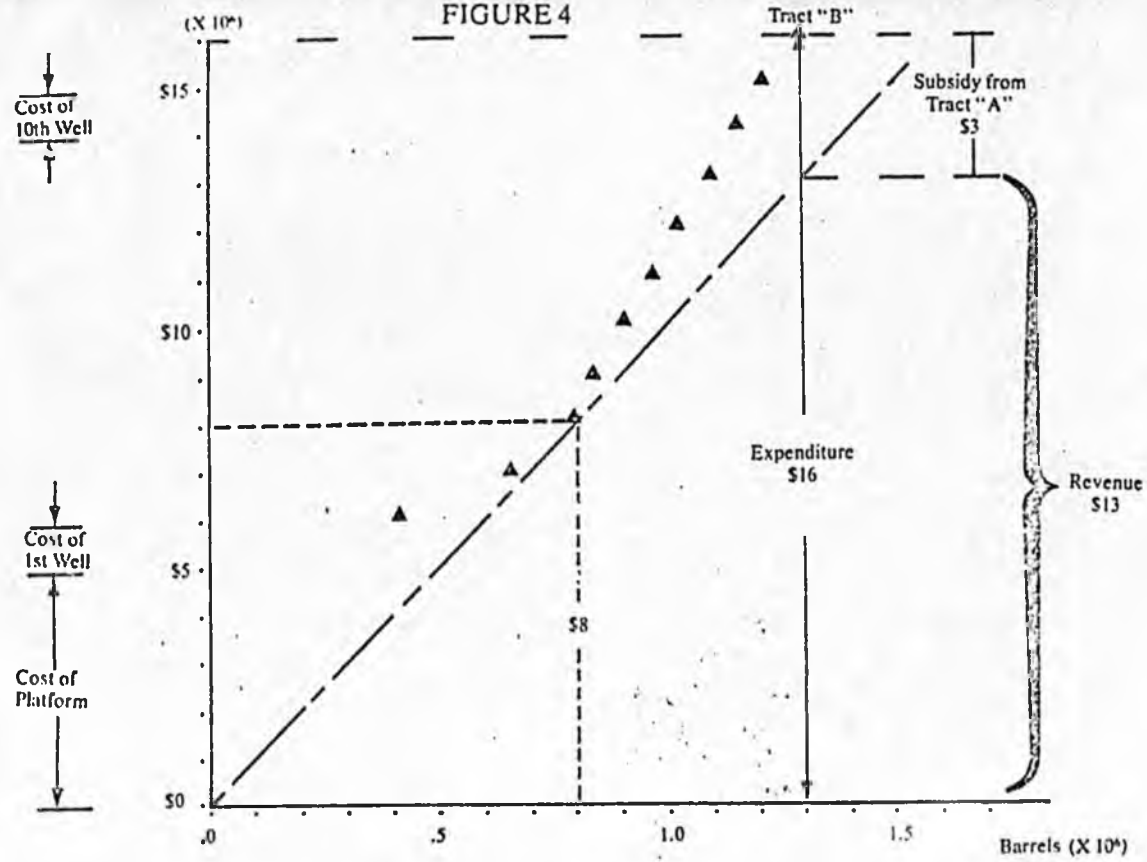

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TABLE 2

WORK COMMITMENT BIDDING
(Internal Subsidy Allowed)

	Output (bbl's)	Revenue ($)	Expenditure ($)	Residual ($)
Tract A	1.1	11	8	3
Tract B	1.3	13	16	(3)
	2.4	24	24	0

Note: All figures in millions

EXTENT OF DEVELOPMENT

In the above examples work commitment bidding has been shown to result in a more intensive development of tracts than would be obtained under cash bidding arrangements. If commitment transfers are permitted among tracts, such a system will also bring about more extensive development.

Consider the output curve of tract C in Figure 5. Tract C is clearly something of a "dog," because there is no point at which the output function crosses the 45° "breakeven" line. Under cash bidding, tract C would elicit no interest at all; even if given away free, it would not be developed.

Under a work commitment system, however, tract C may very well be acquired and drilled. Assume that a firm has already acquired tracts A and B as a package with a work commitment of $24 million and that neither tract has yet been drilled. The firm is now offered tract C. How much of a work commitment can the firm offer for it?

The firm had previously planned to use the $3 million residual generated on tract A to internally subsidize tract B. If tract C is added to the inventory, the firm could apply to C $1.5 million of the internal subsidy that would have otherwise gone to tract B and thereby make the development of tract C a feasible proposition. The calculation is shown in Table 3.

TABLE 3

WORK COMMITMENT BIDDING
(Internal Subsidy Allowed)

	Output (bbl's)	Revenue ($)	Expenditure ($)	Residual ($)
Tract A	1.10	11.0	8.0	3.0
Tract B	1.05	10.5	12.0	(1.5)
Tract C	0.75	7.5	9.0	(1.5)
	2.90	29.0	29.0	0

Note: All figures in millions

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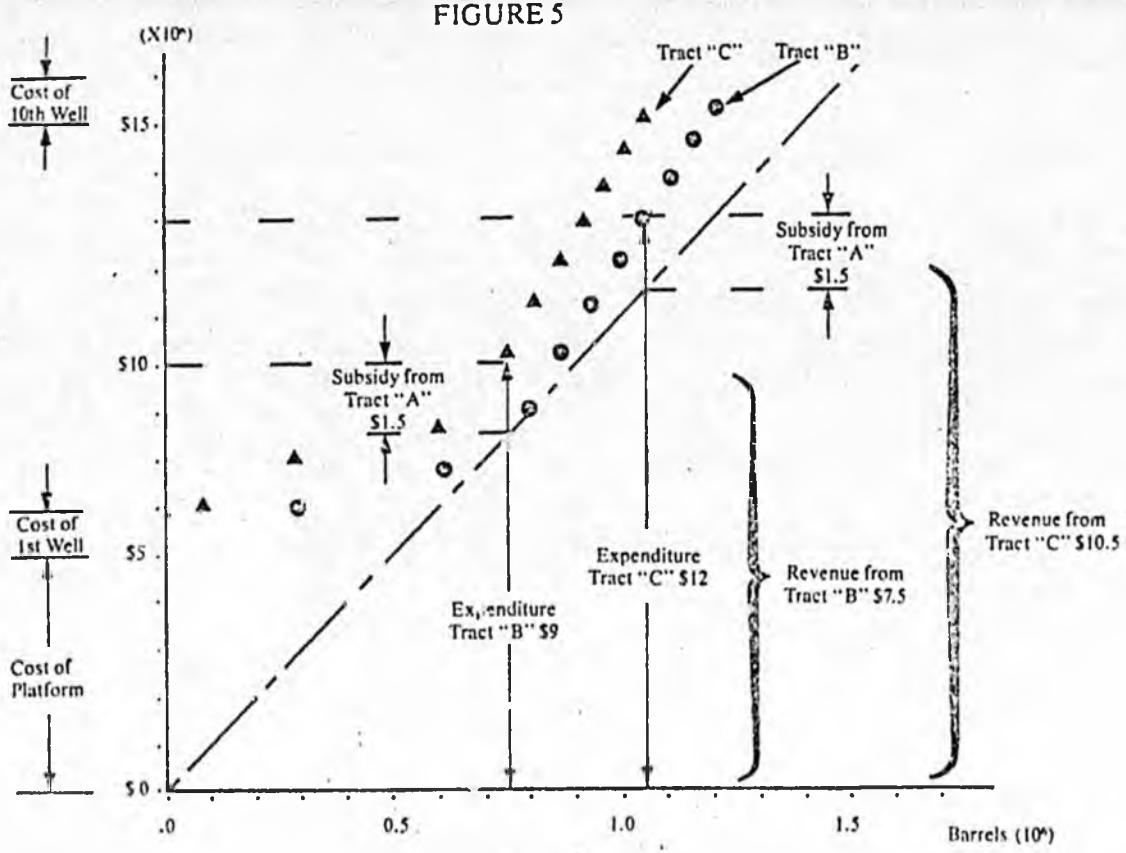
FIGURE 5



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Development of the three-tract package under the work commitment system will be feasible with a total expenditure of $29 million. Since he has already been committed to spending $24 million of this, in the course of acquiring tracts A and B, the maximum commitment bid this operator can afford to make on tract C is $5 million.

Besides illustrating the mechanism through which commitment bidding induces more extensive resource development, the tract C example also indicates how the system (with internal subsidies allowed) may work to the advantage of the firms that can acquire the most tracts. Theoretically, a newcomer with no existing inventory of tracts would be unable to make any commitment bid on tract C.

A way of evading this problem would be to make the commitments transferable. This would allow operator Jones to legally assume the obligations to which operator Smith has committed himself in the course of acquiring tracts from the government. Presumably, operator Smith would pay Jones for the favour.

The prospective bidders in these examples have been endowed with the ability to foresee accurately and precisely the output curve associated with every tract. In practice this is not the case. If there is any characteristic that sets the exploration phase of the petroleum and mineral industries apart from other businesses, it is the everyday uncertainty with which its participants must learn to cope. It is perfectly possible, for example, that Smith might acquire tract C with a work commitment bid of $14 million on the mistaken belief that its output curve is that of tract A. After building a platform and drilling the first four wells, the true shape of the curve—and the firm's predicament—would reveal itself. The required $14 million expenditure applied to tract C would leave Smith with a net loss of about $4 million. If he could somehow shed $5 million of the $14 million commitment, Smith would be able to operate the tract with only four wells already drilled and thereby cut his losses to the more acceptable level of $1.5 million. Smith would be willing to pay up to $2.5 million in cash to unload the $6 million obligation, since that is the amount of his maximum additional loss if he can't get rid of it.

Any other operator who is facing or expects to face an output curve with a flatter slope than that faced by Smith will be able to make a mutually beneficial deal with him, since, for the other party, an additional expenditure of $5 million will bring in more than the maximum $2.5 million that Smith will be willing to pay.

Besides putting the small firm in a better position to compete and mitigating the problems of uncertainty for all firms, large and small, a system which allowed the free exchange of work commitments would have the further and more important advantage of maximizing the overall

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efficiency with which work commitments are utilized. To the extent to which such a market was effective in bringing potential commitment offerers together with potential commitment takers, it would ensure that everyone would be operating at a point where a small increase in expenditure by one operator would produce no more and no less additional revenue than would the same increase applied to any other operator.

A minor but interesting benefit of a market in commitments would be the information it would provide concerning the efficiency with which the work commitment system is eliciting additional output.

This can be understood by applying the concept of the output curve (hitherto used in relation to individual tracts) to the entire universe of tracts being offered under the commitment bidding system. By combining all such tracts and treating them as a single entity, an overall output curve similar to Figure 6 can be drawn. Just as in the case of an individual tract, the point where the curve dips farthest below the 45° breakeven line will be the optimum operating point, the point which results in the resource's largest contribution to economic welfare. The distance between the breakeven line and the output curve at that point is the measure of that contribution, and it is equal to the income that would come to the government landowner were a competitive bidding system utilized. It is this residual—the difference between total revenues and total costs—that the public will be sacrificing to subsidize output.

The efficiency with which the subsidy provided by the work commitment system works to increase output will be a function of the output curve's shape to the right of the point where bonus income would be maximized. Three hypothetical configurations for this part of the curve are shown, and the difference this shape makes to the level of additional output educed by the sacrifice of the residual can be seen. The significance of the price at which commitments change hands will be determined by the slope of the output curve at the point where it intersects the 45° breakeven line. Curves Y and Z both cross at an angle which indicates that, at that point, $1 of expenditure produces $0.50 worth of additional output. In either situation the market price for assumption of a $1 million commitment would be $500,000. Curve X, however, crosses the line at a steeper slope (as shown in the inset), indicating that $1 of expenditure will produce $0.32 worth of additional output. If curve Z accurately represents the overall output curve, the market price for the assumption of a $1 million work commitment will be about $333,000.

From a policy standpoint these numbers, whatever they may be, have considerable significance since they can be used to compare the efficiency of the work commitment system in eliciting additional output with whatever other alternative policies may be available. For example, if the market for

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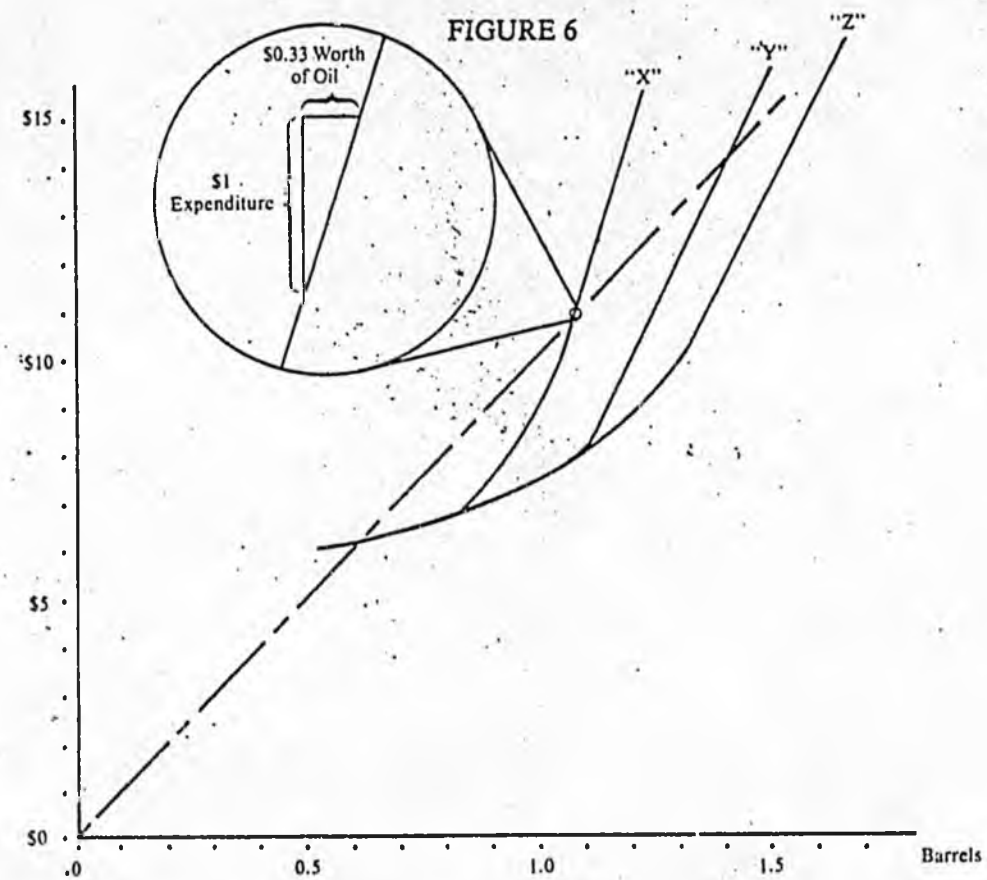
FIGURE 6



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commitments indicates that the last dollar of subsidy transferred is producing only 33 cents worth of additional oil, it may very well be that another source of oil development—for example, tar sand or oil shale—could be found that would give a better return.[6]

THE TIME FACTOR

To simplify the discussion of the work commitment system, the time dimension of both expenditures and income has thus far been ignored. Since a dollar in hand today is worth more than the promise of a dollar tomorrow, it has been assumed that all bidders have used a discounting mechanism to take account of the time value of money. Thus, they would reduce all amounts of both expenditure and income streams to their *present value*, that is, the lump sum that the bidder would be willing to receive or give in exchange for the specified income or expenditure stream.

If a work commitment system is to be implemented, it will be necessary to take careful account of the fact that a commitment fulfilled in the next year will have a very different impact on output from one of the same amount fulfilled ten years hence.

If the public is going to give up its bonus income to subsidize output, the time when that subsidy takes effect will presumably make some difference. Of course, some arbitrary time limit could be established for the fulfilment of commitments exactly as the United States government sets the five-year term on the OCS oil and gas leases it sells. If free exchanges of commitments are allowed, anyone who wished to distribute expenditures over a time frame incompatible with his commitments could simply enter the market and adjust his inventory of commitments accordingly.

Another way of handling the problem would be simply to apply some appropriate interest rate to every commitment assumed and specify that the amount of expenditure required under that commitment must increase by the amount of the compound interest accumulated in the period between the assumption of the commitment and its fulfilment.

CONCLUSION

The adoption of a work commitment bidding system implies a judgment that existing institutions for private exploitation of public resources result in a suboptimal rate of resource development.

Any argument for the adoption of such a system must first establish that this is in fact the case. Secondly, it must prove that the work commitment approach is the least costly method of achieving the desired higher rate of exploitation.

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In comparing various alternative ways of achieving higher output against the work commitment system, some important features of that system are certain to stand out. First, and probably most significant, is the simple fact that the work commitment system results in a subsidy. As such, the criteria for its evaluation should be no less stringent than those applied to a direct appropriation of public funds or a tax concession adopted for the same purpose.

Secondly, the cost of the subsidy conferred under the work commitment approach is impossible to determine *a priori* and difficult of determination after the fact. If there exists a "right" level of subsidy it will be mostly a matter of luck if the foregone public revenue happens to equal that amount. For similar reasons, the benefits of the subsidy in terms of the total increase in output, development, or whatever, are not amenable to accurate quantification. As a consequence, it is doubly difficult to evaluate the system's relative efficiency.

Finally, a properly designed work commitment system allocates the uncertain amount of the subsidy in a fashion that tends to squeeze the maximum additional output from every dollar of subsidy. It does this more or less automatically. This characteristic means that the transfer of resources occasioned by the subsidy needs no affirmative action on the part of policy makers—as does a direct appropriation of public funds—in order to be continued. This fact, however, combined with the intrinsic uncertainty concerning the subsidy's magnitude makes it easier for vested interests to perpetuate such a subsidy long after any real justification for it has passed.

Notes

1. *U.S. Statutes at Large*, vol. 67, p.345. Public Law 212 (August 7, 1953).
2. For an exposition of the conventional industry wisdom on this point, see "Terms for North Sea Oil," in *Petroleum Press Service* 40 (1973): 122-24.
3. In recent testimony before the Senate Interior Committee, industry representatives were unanimous in their opposition to royalty rate bidding. *Outer Continental Shelf Oil and Gas Developments, Hearings Before the Subcommittee on Minerals, Materials, and Fuels of the Committee on Interior and Insular Affairs* (United States Senate, 93rd Congress, Second Session: May 6,7,8,10,1974).

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4. Arguments for the work commitment system are expounded in detail in I. White, D. Kash et al., *North Sea Oil and Gas: Implications for Future United States Development* (Norman: University of Oklahoma Press, 1973).

5. Kenneth Dam has touched on some of these matters, however, in "Oil and Gas Licensing in the North Sea", *Journal of Law and Economics* 8(October 1965) and "Pricing of North Sea Gas in Britain," *Journal of Law and Economics* 13 (April 1970). Dam recognizes the subsidy for what it is and concludes that it is unjustified.

6. If it is determined that only a portion of the residual should be applied as a subsidy, this could be accomplished by offering only a portion of the tracts on the commitments bid basis, but allowing the fulfilment of a commitment on any tract acquired from the government. Since the reduction in the subsidy will move the operating point to the left on the output curve (Figure 5) to a point at which its slope is flatter, the result will be a higher assumption price for commitments. The commonsense explanation is that the optimum amount of total expenditure will be reduced only slightly; but that acreage over which commitments that can be fulfilled by that expenditure will be reduced relatively more. Another alternative would be to combine the work commitment system with a royalty, net profits share, or other form of deferred rent collection. This is in fact the arrangement pertaining in the North Sea sector. If the government takes a very high net profit share, the amount of the subsidy will be substantially reduced.

7. There are certain circumstances where a work commitment system could result in no more extensive or intensive development. This would be the case if the commitment were devoted to an activity not contributing to output. For example, if a government awarded a mineral concession to the operator who promised to build the largest smelter, no increase in mine output would result (unless the location of the smelter made lower grade ores profitable to mine).

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Petroleum Leasing in British Columbia

DALE R. JORDAN

FACTORS AFFECTING THE LEVEL OF EXPLORATION

From data published by the provincial department of mines and petroleum resources, it would seem that exploratory drilling in British Columbia in 1974 was in a static position and may even have been declining. There was a 22 per cent drop in the number of exploratory wells drilled in 1973 compared with 1972, and a corresponding drop in the footage drilled. This decline in activity appeared to be continuing into 1974, with drilling down 10 per cent in the first seven months. This apparent decline in exploration for oil and gas in British Columbia came at a time when the demand for oil and gas was high. Prices for oil and gas had increased dramatically, and considerable concern was being expressed over national self-sufficiency in all forms of energy supplies. By comparison, exploration activity in Alberta showed the opposite pattern. In Alberta, exploratory drilling in 1973 increased 50 per cent over 1972. Statistics published by the Daily Oil Bulletin showed that during the first several months of 1974 there was a further increase over the same period in 1973.

What caused the static or possible decline of exploratory drilling in British Columbia at this particular period of strong demand and high price? There are several answers, and formulated theoretical solutions must be viewed in the light of political judgment where governments demand a greater share of resource revenues. Certainly, the federal budget proposals in the spring of 1974 discouraged exploration for oil and gas in Canada; however, it would seem that provincial government policies were largely responsible for any discouragement felt by the oil and gas explorer.

In this article I attempt to set out some of the basic causes that contributed to the 1974 situation in British Columbia. These causes are identified and any suggested solutions are offered in the realization that there is a danger of oversimplifying complex problems and the possible effects of implementing partial solutions.

For any analysis to be meaningful, a proper perspective must be maintained. One of the overriding factors influencing the oil and gas explorer's decision making is the number of geological prospects. In British Columbia, the potential hydrocarbon-bearing portion is thought to be

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restricted to the northeast part of the province. The western boundary of this 51,000 square miles is the Rocky Mountains. In 1974, an estimated 37 per cent of the oil and 18 per cent of the gas in this area had been found, leaving an estimated 0.82 billion barrels of oil and 47.56 trillion cubic feet of gas still to be discovered. Although there was considerable potential still remaining for the oil and gas explorer, the area was small compared to Alberta and Saskatchewan, and it was much smaller than the vast geological potential north of the 60th parallel.

Another factor that depressed the enthusiasm of the explorer was the apparent lack of multizone prospects. Drilling a well to test only one potential horizon increases the risk factor significantly.

Before leaving the subject of the province's hydrocarbon potential, it should be remembered that several basins existed, both offshore and in the interior, containing substantial deposits of sedimentary rock that have not been explored to any great extent. Generally, the known geology in these basins discouraged any extensive exploration. Possibly, the very expensive exploration needed in the basins required special consideration before their potential could be fully realized. This special consideration might take the form of a reduced royalty on any hydrocarbon discovered, or of a joint participation scheme whereby the British Columbia government might share in the risks involved.

Another factor to be taken into account by the oil and gas explorer when selecting his areas of interest is the access to those tracts that he feels have hydrocarbon potential. Again, British Columbia was at a disadvantage in 1974 when compared with Alberta and Saskatchewan. Access to this already restricted basin area was affected by muskeg conditions over much of the plains and by deep river valleys in the foothills. These conditions involve greater expense in conducting exploratory work, and the oil and gas explorer would often be confined to only a four-month work year, because of such terrestrial conditions. The problem of limited access presents a very real constraint on attracting the oil and gas explorer and is relevant when considering any changes in land tenure and revenue sharing.

Another important parameter in any deliberation affecting oil and gas exploration is the availability of funds for exploration.

As a general rule, funds generated from production are used to finance exploration. It seems that the risk factor employed by financial institutions effectively discourages the use of debt capital as a source of exploration funds. It is not uncommon to read that an oil and gas producer has arranged for a substantial loan, but this will nearly always be for a specific purpose related to the development of a new reservoir of oil or gas. The discovery of this reservoir would have been funded out of the company's cash flow.

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When an oil or gas explorer's cash flow comes from production outside any particular province, then for money for exploration to flow into that province, that jurisidiction must have a framework of leasing and revenue sharing that can favourably compete with other areas also requiring exploration.

It would seem that cash flows from Canadian production will continue to be a major source of exploration funds. In the case of the integrated companies (those having refinery capacity), this will be true under almost any condition short of expropriation.

However, within this framework these funds will generally gravitate to where they can expect the greatest return. It may not be enough for a province to show that it will ensure that the successful explorer will receive a reasonable rate of return. It may well be that the successful criterion for increasing the level of exploratory drilling will be a division of revenues such that the oil and gas explorer will have a sufficient cash flow for an active exploration programme, as compared with other jurisidictions. The explorers who have a cash flow generated from production and the flexibility to determine the best place to reinvest these funds have the responsibility of ensuring that they can go to where they can expect to return the greatest profit.

The ability of the producer to channel cash flow from one jurisdiction to another depends largely upon the particular laws in force where the oil or gas is being produced. The provinces of Alberta and Saskatchewan tend to attempt to discourage the outward flow of funds generated from production in their particular provinces. In both provinces, this discouragement took the form of a high royalty, coupled with a drilling incentive programme, designed to encourage continued exploration.

In Saskatchewan, the mineral tax and the royalty surcharge took away from the producer all of the recent price increases and, in fact, returned to the producer a smaller amount per barrel than he was receiving prior to the price increases. As an inducement to continued exploration in Saskatchewan, an incentive programme was developed, whereby the producer was allowed to retain an additional 30¢ for every barrel produced, providing this money was used for drilling wells, for waterflood projects, research, and other specified purposes in Saskatchewan. This incentive had not been in effect long enough in 1974 to permit a complete analysis of its performance; however, it was really restricted to only those companies that already had production in Saskatchewan. A review of these companies shows that the producers with the majority of the production were the so-called Majors, which raised the question as to whether or not these Majors were prepared to continue to explore in Saskatchewan under any conditions. It is more probable that the exploration philosophy of the

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Majors directed that they use their exploration funds searching for high reserve reservoirs (which generally means exploring outside Saskatchewan).

To encourage explorers who do not have production in Saskatchewan, the government provided an incentive credit of about 30 per cent of the costs of drilling exploration wells. This credit could then be used to reduce any royalty or mineral tax obligations that may accrue.

In Alberta, in 1974, there was also an incentive programme for exploration drilling. This incentive took the form of a credit which could be subsequently used to satisfy most of the cash obligations that may arise by virtue of the royalty obligation, rental payments and mineral taxes, and could also be used to purchase oil and gas leases. Credits established in Saskatchewan could not be used to purchase leases. The formula which determined the amount of credit that could be established for any particular exploration well was predicated upon the area of the province in which the well was located and the depth of the well. This formula was expected to return to the explorer by way of credit approximately one-third of his drilling costs.

The principal producers of crude oil in Alberta were much the same as in Saskatchewan—they were the Majors in the oil and gas industry. Again, as in Saskatchewan, it would seem that the interest of the Majors in continuing to explore in Alberta had become blunted, not because of any particular rules, but more through the apparent lack of sufficient high reserve potential which this type of company must search for.

In Alberta, in 1974 the royalty was structured to increase not only when the production increased but also when the price increased. Alberta had also adopted a new oil/old oil concept, whereby royalties were considerably reduced on what was termed new oil, which, of course, had the affect of increasing the producer's cash flow and encouraging the development expenditures. This old/new concept applied as well in the case of natural gas. Saskatchewan also had provision for a reduction in its mineral tax and royalty surcharge for new oil. This reduction was gradually phased out after a few years. Alberta, in 1974, had the lowest rate of royalty on oil and gas, received the highest price for its natural gas and had a price for crude oil equivalent to the other provinces, all of which means that in Alberta the producer of oil and gas received a higher rate of return and, consequently, had more money available to him for exploration purposes than the producer in Saskatchewan or British Columbia.

While the incentive programme adopted in Alberta and Saskatchewan offered encouragement to drill exploration wells, any analysis of the performance of a similar programme which might be suggested for the province of British Columbia must be coupled with the consideration of a lower royalty and subsequent higher cash flows to the producer.

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This type of incentive can only be effective if the producer is also offered a return on his development expenditures that is competitive with other jurisdictions into which the oil and gas explorer is free to go.

Another source of money for drilling exploratory wells previously used in North America has been the drilling fund. The drilling fund usually takes the form of buying a number of shares in a limited partnership. The attraction to the investor apart from the possibility of participating in oil and gas discoveries, is the income tax feature in the United States which permits all intangible drilling expenses to be written off in the year that expenditures were made. This can be done without qualifying under any principal business rules, as prevails in Canada. It is this principal business rule that has to the present time precluded the tapping of a similar source of exploration funds in Canada.

It is estimated that between 250 and 400 million dollars are generated annually through the sale of shares in drilling funds in the United States. The United States government, in an attempt to encourage further exploration within its own borders, has chosen to reduce the amount that can be written off against income for income tax purposes when the funds are spent outside the United States. This move precipitated the drying up of exploration funds in Canada which previously came from this source.

Over the past few years other extractive industries, particularly mining, have been channelling considerable amounts of their cash flows into oil and gas exploration. These endeavours have usually taken the form of funding a subsidiary company. The continuation of this type of fund for the purposes of exploring for oil and gas will depend upon the success of the subsidiary companies and also upon the influence that mining taxes will have upon the parent companies' cash flows.

A few years ago it was quite popular for large United States gas utility companies to provide exploration funds on the basis that they would have first call on any gas produced and exported for sale to the United States. This source of exploration funds has also dried up almost completely as a result of decisions by the National Energy Board concerning the exporting of gas and, as a result of rulings by the Federal Power Commission in the United States, which have not allowed these utility companies to include these expenditures in their rate base. The Federal Power Commission looks upon this type of exploratory funding as a mortgage loan, rather than as a prepayment for gas, as the utility companies would prefer.

THE LEASING SYSTEM

The 1974 system of leasing in British Columbia will now be reviewed, and I will attempt to analyse its effectiveness in relation to the relatively small

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hydrocarbon potential area, lack of access, difficult terrain, and exploration funds generally coming from cash flows.

The system of granting oil and gas rights on crown lands in British Columbia invoved in 1974 an exploration grant called a "permit," a subsidiary exploration grant called a "drilling reservation," and a development grant called a "lease."

Permits, which can involve upwards of 100,000 acres, could only be acquired through a competitive cash bidding system at sales which were usually held four times a year.

The permits were classified from A to D, depending upon their accessibility and the terrain conditions. The class D permits were for offshore areas. One purpose for classifying permits was to allow them, where the working conditions were difficult, to have a longer life than was otherwise provided.

Permit classification also determined the minimum amount of work the permit owner was obligated to spend in any year. These minimum work obligations were more stringent for the Class A permit, where access and terrain problems were minimal. The significance of this particular requirement was lost because, in order to conduct an equivalent amount of exploration, particularly drilling, the costs involved in the offshore areas far exceed those which would be expended on a class A type permit. The sections of the Petroleum and Natural Gas Act that governed the permit work obligations did not specify any specific exploration programme, but only that a certain amount of money be spent during each term of the permit. This obligation to spend money in exploring on a permit could be satisfied by grouping several permits together, so that expenditures incurred in exploring on any one permit would satisfy the work obligation of the grouped permits. This grouping provision is important because it allowed an explorer to acquire large tracts of land for a short period in order to conduct extensive geophysical exploration.

This obligation to spend money on exploring on a permit could also be satisfied by paying the money to the British Columbia Crown. This would seem to be about as negative a provision as one could imagine, assuming, of course, that the government of British Columbia was interested in ensuring that the companies holding permits were the ones prepared to actively explore. If the removal of this system would give rise to problems, as in the case of an explorer unable to work a permit through no fault of his own, then a far better system would be to provide a means where work obligations could be accumulated and satisfied in the following year.

Permits were valid for one year and could be renewed annually, for a period ranging from five to eight years, providing the company was not in default.

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When a permit holder had expended the minimum amount of money exploring on a permit or group of permits or had paid the money to the government, he was entitled to convert the permit into leases. To do this the permit holder had to relinquish 50 per cent of the land back to the Crown. Land selected for conversion into leases could not be in a consolidated block, but had to be in a number of leases, which had to corner one another, or be separated by at least two units—approximately one mile. The maximum size of the lease was six units—approximately three miles square.

This system of exploratory permit and subsequent conversion of half of the land to lease on a chequerboard fashion was similar to that used in Saskatchewan and part of Alberta. The system probably had its beginning in Alberta. It was designed to ensure that when crude oil was discovered, the Crown would be returned some prospective areas which were subsequently sold. This system worked reasonably well, particularly in Alberta, where some substantial discoveries of crude oil were made during the existence of the exploration agreement. Unfortunately, in the vast number of cases a discovery was not made, and the chequerboard pattern for leases led to fragmentation of rights throughout the area formerly comprising the permit. This effect tended to discourage other explorers from entering the area, and this system of selecting leases also prompted the need for the drilling reservation, which generally covered that 50 per cent of the land returned to the Crown.

Seemingly, in those parts of the province having relatively easy terrestrial access and where the potential hydrocarbon-bearing formations were not too deep, this system of chequerboard leasing may be satisfactory. However, in areas where access is a major cost and where deep expensive drilling is required, it tended to discourage anyone other than the holder of the 50 per cent leases from entering the area to explore. Certainly in offshore areas where seabed drilling cost is many times greater than land drilling, this system of lease selection is most unsatisfactory.

Leases granted on crown land in British Columbia in 1974 had a primary term of ten years, renewable for further ten-year periods if particular circumstances existed which generally related to production.

The acquisition of leases in British Columbia was handled in 1974 in two separate ways. First was the way previously mentioned, which was the result of having a permit and then earning the right to acquire leases of 50 per cent of the land. The second was through the competitive cash bidding at one of the quarterly sales held by the British Columbia Crown.

There was no obligation at that time on the part of the lessee to drill a well during the initial term of the lease. A 1974 amendment to the Petroleum and Natural Gas Act, however, permitted the minister to forward a notice to

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drill when he considered that development of the lease was not active enough. This amendment seemed to suggest that before the minister would consider sending a notice, there would, in fact, have been a discovery made on the lease. Thus, in sending the notice, the minister was merely requiring development drilling. It seemed most unlikely that the wording of this section would be interpreted such that the minister could require exploratory drilling on existing leases.

There was an apparent trend to shorten the term of leases, with Saskatchewan granting only five-year primary terms. However, in British Columbia the term of 10 years was not excessive when one considers the short period of four to five months when work can be done in the area of hydrocarbon potential. This is quite different from most of the areas in Alberta and Saskatchewan, where drilling and other geophysical operations can be conducted all the year round.

The government of British Columbia appeared to feel that a large number of leases were held by companies not particularly active in exploring in the province and that something should be done to discourage these holdings, so that lands could be offered to others who were prepared to explore. These feelings may have promoted some of the 1974 changes in the Petroleum and Natural Gas Act, whereby the rental on leases was increased from one dollar an acre to two dollars an acre. The effect of this change seemed likely to be the return to the Crown of some acreage which, under the previous rental of one dollar an acre per year, would have been retained by the lessee. However, one must assume that for the most part relinquished leases would be the least attractive, and leases with potential, even though the lessee was not prepared to conduct any immediate exploration programme, would be retained, and the two dollars an acre would be paid. The greatest effect that this rental of two dollars an acre per year seemed likely to have was to deter other explorers from entering the province. It is one thing to create a system designed to discourage excess holdings by companies not prepared to explore immediately, and quite another thing to expect these same rules to promote the entry of new companies and increase exploration activities.

The royalties on crude oil in British Columbia were essentially the highest in Canada in 1974. The rate was 40 per cent for a well producing 1,000 barrels a month and further escalated to about 58 per cent when the monthly production reached 10,000 barrels. It would seem that this royalty level, which directly affected the producer's cash flow, could only act as a deterrent to increasing the level of exploration in British Columbia much beyond its historical pattern of about fifty to sixty exploration wells a year. Other changes that may be made in regulations designed to encourage greater exploration activity will never perform to their full potential until

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the producer's return is comparable with what he can obtain in other jurisdictions.

GOVERNMENT OPTIONS

We can now examine the options available to the British Columbia government in 1974. First, the government could maintain the existing regulations without change; or they could have stricter enforcement of the rules, further reducing cash flows to the producer, making it more difficult to operate; and thirdly, they could make changes designed to encourage greater exploration activity in the province. In each of these options it is assumed that some accommodation could be made between the provincial and federal authorities with regard to the revenue-sharing aspect. If it could not, then it would seem almost certain that exploration activity would decline, not only in British Columbia but also in the rest of Canada, and that even significant changes in the regulations would fail to act as an effective inducement to continued exploration.

In the first instance, if the government were to resist changes to its rules and to continue the existing level of royalty, it could expect to receive about the same amount of exploratory drilling as there has been in the past. This is evident from the sale in August 1974, where some 7.2 million dollars was paid for the right to acquire oil and gas permits, drilling reservations, and leases. This was certainly an indication that the oil industry was not prepared to write British Columbia off because of its high royalties and rather stringent regulations. There are several reasons for this. Companies have enjoyed a general increase in their cash flow, and in 1974 enough cash flow was available to pursue exploration in a province where the rates of royalty would reduce their return on invested capital as compared to other jurisdictions—for example, Alberta or the United States. The intensive competitiveness in the oil and gas industry distinguishes it from all other industries. Companies that have invested a great deal of time and money developing the geological potential of a particular area and have found that it fits their exploration parameters are prepared to offer a good deal of bonus money when this land becomes available through a competitive sale. Also, because a number of years usually elapses between acquiring an exploration permit and the development of and production from any discoveries, the economic climate may change such that what at one time is not attractive may become economic at the time of production.

If the government of British Columbia wished to discourage continued exploration by the existing oil and gas explorers and to discourage entry by newcomers, they could most effectively do this by again raising the rates of royalty and making the tenure of agreements shorter than they were. This

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type of action would cause the companies exploring in the province and those contemplating doing so to restrain their activities; exploration would then stagnate.

Presumably, such action by the British Columbia government would not occur without consideration of these consequences and the recognition that a different vehicle should enter the void left by the existing explorers. This could take the form of a public company, such as the British Columbia Petroleum Corporation; alternatively, the government might feel that, given time, the major oil and gas producers, the fully integrated companies, may finish their exploration for high-reserve reservoirs in other parts of Canada and be prepared to return to British Columbia to look for the remaining reserves which they may need to supply their refineries.

To give any support to this latter proposition, one would have to presuppose that the exploration presently being carried on by the Majors in Canada in the Northwest Territories, in the Arctic Islands, and in the offshore areas of eastern Canada will be unsuccessful and that they will have to lower their sights, accept a lesser prospect, and return. This is very difficult to support, considering the successes already achieved in the Northwest Territories, particularly in the Delta, and in the Arctic Islands. Also, there is a vast geological potential remaining as assessed against the very few wells that have been drilled...

The supposition that a provincial public corporation could enter the exploration field and its endeavours be more beneficial to the province than the present system raises many questions about the corporation's practical efficiency and about the possible political repercussions. This article's purpose is not to examine the political repercussions that might occur when dry holes are drilled with public funds; however, we should examine some of the practical considerations involved in the operation of a public company which has an almost exclusive area within which to explore as a result of discouraging the private sector. For the government to discourage both the existing explorer and the entry of any new ones and to expect the public corporation to be able to fill this void suggests that the government is saying, "If the private companies do it, so can we." Now remember that the private companies comprise all the oil and gas explorers working in the province and those contemplating doing so, given the right opportunities. All these companies have geological staffs, many of whom will be geologists who devote most of their time over a considerable number of years entirely to the study of British Columbia's geology. The public corporation could not expect to have such an extensive source of expertise as that available in the free enterprise system. And so the public corporation would suffer from a reduction in the number of ideas generated.

It is not unusual in oil and gas exploration, with its inherent problem of

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scientific interpretation and evaluation of geological prospects, to find that one company will acquire a block of land, will explore it, and perhaps even drill on it before deciding the search is unsuccessful. The company will then return the land to its owner, the Crown. This does not mean that there are not any commercial hydrocarbons underlying this land; but rather that that particular company was unable to find them. To find these hydrocarbon deposits, a second, a third, or a fourth company should acquire this land, and, if this is done often enough, the hydrocarbon will be encountered, and production will follow. The problem with the public company being the only explorer in the province is that, unless it is fortunate enough to make the initial discovery, it is very doubtful whether there would be enough enthusiasm to have a second, third, or perhaps even a fourth try at that particular prospect, with the result that the discovery would not be made. This is surely the worst thing that could happen and is probably the most damning argument against a public corporation moving into an area with an almost exclusive right to explore.[1]

If the British Columbia government wishes to increase the level of exploration in the province and so lead, hopefully, to a greater number of discoveries and a better position of self-sufficiency in their own requirements, there are several measures which could be taken to promote such a situation.

The first step that can and must be taken is to increase the cash flow to the producer and to assure the newcomer that if he makes a commercial discovery, he will receive a sufficient return to expand his exploration endeavours in the province. This action should take the form of restructuring the royalty on oil and probably renegotiating the contracts on gas existing between the producer and British Columbia Petroleum Corporation. The 1974 royalty rate on oil was determined by production at the wellhead, with the price not being a factor at all. This means that if the price paid to the producer for a barrel of crude oil should decrease from the present level, then the producer will suffer a decrease in his cash flow, thus his future available financing to continue exploration endeavours in British Columbia will be diminished. A preferred structure on royalty would take into account the possibility of a rising and falling price for the product so that the producer, out of whose cash flows exploratory drilling is carried out, would be the last one to suffer in the case of a decrease in price for both oil or gas. Probably this might best be accomplished by the producer selling his crude oil to the British Columbia Petroleum Corporation in the way gas is sold, but with a better pricing adjustment mechanism than that which exists with the gas contracts.

Another measure that should be taken would be a redesigning of the exploration agreement. This could be done to ensure that the holder could

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only earn leases after he had conducted actual work on the permit or in the area within reasonable proximity, and that his earnings would be restricted to a consolidated block rather than come from a sprinkling of leases throughout the permit area. This feature alone would help to ensure exploration, because the permit holder must be satisfied that he is getting, at least in his mind, the right half of the permit under lease.

The manner of acquiring oil and gas rights should be reviewed. As mentioned previously, the only method of acquiring an exploration permit under the present rule is through a competitive cash bidding system usually held on a quarterly basis. There are probably several instances where an oil and gas explorer would have been quite prepared to drill wells in British Columbia if he could have acquired the land for a minimal amount rather than having to use money he would put into exploration to purchase land through the cash bidding system. The rentals and fees charged should be the same as in Alberta, if only to appear competitive in this particular area.

CONCLUSION

The exploration for oil and gas in British Columbia cannot be considered in isolation. The proportion of the reserves of oil and gas remaining to be discovered will depend upon the number of exploration dollars allocated to the task. British Columbia's competitive position for these exploration dollars will depend in large measure on its royalty and land tenure policies.

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Cash Bonus Bidding for Mineral Resources

WALTER J. MEAD

Mineral leasing policy alternatives arise out of the fact that governments own mineral resources but, in general, do not engage in mineral esource recovery and processing. Hence, a need arises to transfer publicly owned resources to private enterprise at a price which will reflect the "fair market value" of the resource. The following analysis will, first, explore the problems to be solved by a bidding policy and, second, evaluate the cash bonus method of bidding for mineral leases.

THE PROBLEMS TO BE SOLVED

There are three problems which must be solved by any leasing system. First, the leasing system must as objectively as possible determine who or what firm is to be given the right to exploit publicly owned mineral resources. Second, a price must be determined which the lessee is to pay to the government for the right to recover mineral resoures held in trust for its citizens. Third, assuming that a nation wishes to economize on the use of its scarce resources and to maximize the standard of living of its citizens over time, the leasing system must result in an efficient method of production.

As a prerequisite to a discussion of mineral leasing alternatives there should be a clear statement of the goal(s) to be achieved. It is probably true that economists as a group have a preference for a single goal, declaring it to be one of economic efficiency. Natural resources available to any economy are scarce by definition. Achieving the highest possible standard of living requires that scarce resources be utilized with a maximum of efficiency. If resources are sold at a price below their true value, then the products into which they are converted may also be underpriced. If demand elasticities are less than zero, then the flow of resources into products and the flow of products within the current period will be excessive. Present overconsumption of products and resources will be at the expense of future consumption.

One way of achieving maximum economic efficiency is to price all resources at their "fair market value." Such pricing allows a government the opportunity of capturing the economic rent. Resources should be sold

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for the difference between future revenues and costs, appropriately discounted to their present value. The economic principle relating prices, costs, and money flows at different points in time in order to estimate present value (*PV*) is shown in the following formulation:

$$PV = \sum_{i=0}^{n} \frac{P_iQ_i - C_i}{(1+r)^i}$$

P_iQ_i is the value of the gross income flow at different points in time, C_i represents associated costs, and r represents the interest rate at which future money flows are discounted to the present. The formula clearly shows that higher future prices will increase present values while higher future costs will lower present values. Further, the greater the uncertainty and risk associated with production, the smaller will be present value. Firms utilize some variation of this present value formula in calculating their individual bids. Estimates of the quantity of minerals recoverable from a given tract will, of course, vary widely from firm to firm.

If mineral leases are sold for less than the fair market value as indicated in the above formula, then resources may be used at an excessively rapid rate, and the public, as owners of the resource, will fail to receive their full economic rent. On the other hand, if mineral resources are sold at prices in excess of the fair market value then, in the long run, some operators will be forced out of business. Use of such mineral resources in the present period will be at a suboptimal rate and the public owners will receive more than their normal economic rents.

In the past, Canada apparently has transferred some of its mineral and timber resources through various negotiated transactions rather than by utilizing the auction market approach. Similarly, other foreign governments have traditionally taken the negotiated sale approach in entering into long term oil concessions.

There are major problems involved in the negotiated approach. The correct present value of natural resources is extremely difficult to ascertain. There is no objective test in advance of ultimate production that can indicate the precise present value of mineral resources. By their nature they must first be discovered. Their presence, quantity, and quality are in doubt. With the government as the seller, negotiating with a single buyer, traditional problems of bilateral monopoly are encountered. The seller is interested in maximizing price, while the buyer is interested in minimizing price. Given this uncertainty plus opposing objectives, the civil servant is placed in a difficult position.

A visitor to Canada is reluctant to criticize Canadian experience which has circumvented the market place. Fortunately there is abundant experience within the United States to indicate the shortcomings of the negotiated approach to pricing. We may formulate two general laws which

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seem to govern when prices are determined or may be influenced by administrative judgement. First, the buyer will always complain. If the buyer believes that market prices can be reduced by protesting that they are too high, then complaints based on the argument that the operator cannot make a "fair profit" because prices are set too high could be endless. In the timber context, there are two cases where elaborate reports have been written protesting the high price of timber. One, presented by the Simpson Timber Company, protested against the high price of stumpage set by the United States forest service for the Shelton Sustained Yield Unit Agreement. Timber, in this case, is not sold at auction; its price is determined by the United States forest service. In the second case, the Edward Hines Lumber Company protested against the high cost of timber for its southeastern Oregon lumber mill. The timber was sold at an auction where competition was so weak that, in effect, it was sold at the administratively determined minimum price. By protesting, the company apparently felt that minimum prices could be reduced. In this instance, local community help was solicited on the grounds that if the company failed to make a fair profit, it would be forced to curtail operations. Under auction market procedures the government is relatively free from constant complaint and protest, because it is the impersonal market that determines the price rather than a civil servant. Under auction bidding procedures the buyers themselves set the price in competition with one another.

A second general law is that, where prices are set through administration, the government will always set prices short of the fair market value. A bureaucracy will rarely choose the path that makes its position unpleasant. Low prices are believed to generate less criticism and complaint than high prices. Where there is no auction market to test administrative judgement concerning the fair market value, we have no means to prove the second law. Sales of timber in the United States offer an opportunity to test the administratively determined price. Timber is sold by the forest service on the basis of an appraised fair market value, which becomes the minimum price acceptable to the government. Auction bidding begins at this price. In the four years from 1959 through 1962, competitive bidding for timber in the United States Douglas fir region produced an average high bid price that exceeded the forest service statement of fair market value (the appraised price) by 46 per cent.[1] In this case, the interests of the public were protected, at least in part, by reasonably effective competition. In the absence of this competitive check it is quite likely that the appraised prices would have been even lower. The shortcomings of the negotiated approach should lead to auction bidding wherever competition is possible.

CASH BONUS BIDDING

Before bidding can take place, a decision must be made between oral and

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sealed bidding. Bidding in either form may start with a stated or unstated minimum acceptable price. In the case of timber sales in the United States, the minimum acceptable price is given by the appraised price, and most timber auctions are conducted under oral auction procedures. On the other hand, in the case of oil and gas leases conducted by the federal government in the United States, the minimum acceptable price is not published, and bidding is normally by sealed bidding procedures. The government retains the right to "reject any and all bids." After bids have been received, it determines whether or not the high bid was adequate.

The factors important in choosing between oral and sealed bidding methods are as follows;

a. Of prime importance is the extent of competition. If competition is weak, then sealed bidding with its element of uncertainty makes collusive arrangements more difficult to enforce. Under sealed bidding rules there is no second chance to bid at any given sale. In contrast, under oral bidding procedures, a collusive arrangement can be policed by the participants during bidding. Further, there is always doubt about how many bidders may appear at a given sale. In oral bidding where only one bidder is present, he will bid the minimum; whereas, in sealed bidding a bidder would probably offer an amount which he believes will win the sale under conditions of more than one bidder.
b. In the timber industry where fixed investments in milling facilities normally exist prior to sales, the buyer needs a means of ensuring access to specific raw materials and specific locations. Oral auction procedures provide this means through the opportunity to cast reaction bids. In contrast, in oil and gas bidding fixed investments are made after winning a sale, hence there is less need to protect one's position through the opportunity to react to the bids of others.
c. Where the severed resource is relatively immobile, as in the case of timber, it is of greater importance that a specific nearby sale be obtained; therefore the oral auction procedures are more appropriate. In the case of oil and gas, the severed resource is highly mobile, so obtaining a specific sale is of less importance. In this case sealed bidding is not disadvantageous.
d. Where the resource to be auctioned is not homogeneous, it may be necessary for a firm to obtain a specific sale. Where this is true, the opportunity to make more than one bid to protect one's need for a specific type of resource may be of great importance. Only oral bidding facilitates this subsequent bidding opportunity.
e. Financial planning often requires that a firm carefully limit its financial exposure. Where this is necessary, oral bidding offers greater control over a total resource-financial commitment. In the case of sealed bidding,

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firms may be unexpectedly successful and in the process win more sales than were desired or can be successfully financed. On the other hand, a firm's sealed bidding may be totally unsuccessful so that it becomes undercommitted. This shortcoming of sealed bidding may be corrected where resources may be freely transferred among interested buyers. This procedure is normally followed in the case of oil and gas leasing in the United States.

f. Oral bidding requires more on-the-spot decision making than does sealed bidding; therefore, oral bidding requires that a higher level of executive talent be present at the moment of the auction. In contrast, decisions made on the basis of a sealed bid offer no opportunity for subsequent action on the auction floor; therefore, the presence of expensive executive talent is not necessary.

g. The "free rider" is a problem for serious bidders under oral bidding conditions. A serious bidder will carefully examine the potential productivity of a proposed lease sale. This may, as in the case of minerals, require large investments. Under oral bidding conditions, a "free rider" can observe who is bidding, then, if he is confident that they have done their homework, he can continue to outbid them until they reach their maximum and he will win the sale. His purchase is therefore based on someone else's calculations and he, in turn, has saved the cost of the pre-exploration appraisal. Sealed bidding does not offer the free rider the same opportunity.

Once a decision has been made in favour of oral or sealed bidding, then a choice must be made on the object of bidding. A cash bonus bid is one alternative. Additional alternative bidding objects are shown in Table 1.[2]

Bonus bidding is the standard procedure used by the United States government in all of its Outer Continental Shelf (OCS) programmes. Using the present value formula given earlier, potential bidders presumably estimate the present value of the probable mineral recoverable from a tract of land. The formula provides for adequate recovery of capital and compensation for risk, uncertainty, and profit.

One strong advantage that can be claimed on behalf of a bonus system relative to royalty bidding is that it requires a lump sum payment and correspondingly modest royalty payments. Because royalty payments are due on each barrel of oil or unit of natural gas produced (or other mineral), such charges become part of the marginal cost. At the margin of production this is a transfer cost rather than a real social cost. Royalty bidding thus leads to premature abandonment of an oil or gas well. To the extent that royalty payments are required in addition to the cash bonus, there will be premature abandonment of the lease.

The disadvantages of bonus bidding are numerous. First, while the

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technology for oil exploration prior to drilling has been advanced in the last century, exploration is still subject to extremely high risk. Drilling is the only definitive test to determine the presence of oil or gas. Thus, bonus bids must be submitted by bidders and accepted or rejected by the government when neither the buyer nor the seller knows whether and in what quantities oil is present. This places the seller in a position of accepting millions of dollars for nothing but the right to spend several more millions drilling potentially dry holes. In cases in which a rich oil field is found, returns to the lessee will be and must be very high.

Second, under current procedures a bonus must be paid when the bid is submitted. When the bonus bid is large, it will represent a very heavy cash drain to the bidder far in advance of any revenue which may be generated from the oil or gas produced from the lease. This significant *front-end loading* of capital costs effectively excludes a small operator from winning leases as a solo bidder, creating an additional barrier to entry into the oil and gas production market. To overcome this entry barrier, firms commonly form joint ventures and bid jointly for a lease.

Third, because the bonus is calculated on a present value basis, the government is forced to accept discount rates used by private enterprise. If private enterprise discount rates are unreasonably high from a social standpoint, then bonus payments to the government will be correspondingly low.

Possible variations of the bonus bidding form are shown in Table 1. The present United States system includes fixed royalty requirements (typically 12½ per cent or 16⅔ per cent of wellhead value). However, a bonus bid might be paired with a sliding scale royalty requirement, permitting the royalty rate to be reduced as a field declines in productivity. As the point of economic abandonment is approached, the royalty rate might be reduced substantially or even eliminated. This procedure would, in turn, eliminate a marginal cost of production that is not a real social cost, and it would permit continued production from a field until the real marginal costs equaled the marginal value of production. This is the optimum point for well abandonment from an economic point of view. If at the time that a bonus bid was submitted all bidders understood that the royalty rate would be reduced to zero under the conditions specified above, the present value of the lease would be increased by an amount equal to the present value of reduced future royalty payments. Thus a tradeoff would be effected from royalty payments to bonus payments. The principal impediment to a sliding scale lies in the difficulty of clearly identifying various points at which royalty rates would be reduced. The lessee would have an economic incentive to manage his production in such a way that minimization of royalty payments would be an operating objective, rather than economic efficiency.

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TABLE 1

ALTERNATIVE BIDDING FORMS

Bonus Bidding
- a. with a fixed royalty requirement
- b. with a sliding scale royalty requirement
- c. without a royalty
- d. with or without a rental payment
- e. with a profit share
- f. with delayed bonus payments

Royalty Bidding
- a. flat (nonvariable) royalty
- b. sliding scale royalty
- c. with a fixed bonus requirement or no bonus

Profit Share Bidding
- a. net profit or gross profit
- b. with fixed bonus requirement or no bonus
- c. with a royalty requirement or no royalty

Combination of Bonus and Royalty Bidding

Bidding on the Work Programme

The royalty problem, together with the administrative problem of reducing royalty rates under a sliding scale, might be avoided entirely by using a bonus bid without a royalty payment. However, this procedure would simply magnify all three of the problems associated with bonus bidding listed above.

Present procedures in the United States include modest rental charges payable between the points of sale and production. When production begins, rental payments cease and royalty payments take over. Rental payments in OCS oil and gas lease income are insignificant. In 1972, they amounted to 0.3 per cent of total revenue from such leases.[3] The rental requirement apparently was introduced to motivate the lessees toward early production. If they were of significant size, this result would in fact occur, because rents cease when production begins.

To overcome the front-end-loading problem, provision might be made for delayed payment of the bonus. The problem that would follow from this procedure is that in some cases where no minerals were found, lessees would elect a bankruptcy route. In this event, an unfair bidding situation would be created. Responsible firms in business on a perpetual basis would not follow a bankruptcy procedure and would, therefore, be at a bidding disadvantage with respect to others that contemplated bankruptcy in the event of a "dry hole."

A bill currently pending before the United States Congress provides for a 55 per cent fixed share of net profits in lieu of the existing fixed royalty payment accompanying the bonus bid. The winner would still be

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determined on the basis of a cash bonus. A profit share payment would avoid the above problems associated with royalty payments. As a given lease approaches exhaustion and its point of economic abandonment, profits would also approach zero and payments would decline proportionately to zero. If the profit share was calculated on the basis of net accounting profits including fixed costs, then the profit share payment would decline to zero prior to the point of economic abandonment. The latter point is reached only when marginal cost (not total costs) equals the marginal revenue. There is nothing wrong with this system providing both parties understand how it works and bidders understand it at the time they submit their bonus bids. The proposed 55 per cent profit share is high and is likely to lead to inefficient operations. A profit share payment is approximately the same as an income tax on each well and is additional to the existing income tax. When the profit share payment is added to the existing income tax, a large part of the penalty for wasteful operations will have been shifted from the operator to the government. While a bonus bid paired with a fixed profit share payment has merit, a 55 per cent profit share added to normal income taxes is inappropriately high from an economic point of view.[4]

Some data are available to permit a partial evaluation of the effectiveness of bonus bidding with a fixed royalty. The United States experience with OCS bidding provides a record of thirty-five oil and gas lease sales during the period November 1954 to 29 May 1974. In addition, three sulphur lease sales and two salt lease sales have been conducted on the OCS. The record may be evaluated in terms of the number of bidders competing for each sale, the conditions of entry of new firms, the record of joint bidding, the extent of concentration among winning firms, the trend in price bid per acre, the resale record of tracts where the initial bid was refused by the seller, and the rate of return earned by the winning bidders. Data pertaining to OCS bidding as follows:

a. For oil and gas lease sales there has been an average of 3.6 bidders competing for each tract receiving bids. The trend from 1954 to date has been one of increasing bidder activity. From 1954 to 1966 the average number of bidders per tract was 2.7. From 1967 to date the average increased to 3.9. From the seller's point of view, even more bidders would be preferred. Given the fact of relatively few bidders, sealed bidding procedures would appear to be more appropriate than oral auction.
b. Entry into the oil and gas auction markets appears to be relatively free. In the first 1954 federal lease offshore from Louisiana, 199 tracts were offered. Ninety-seven of these tracts received 327 bids from 22

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different firms, some of which bid in joint bidding combinations. From 1954 to 28 March 1974, an additional 110 firms won tracts as solo bidders or joint bidders with 1 or more other firms. Thus, in addition to the unsuccessful bidders who also perform a competitive function in the bidding process, there were 132 separate firms participating as winning bidders in thirty-three OCS lease sales.[5]

c. Entry by relatively small firms into OCS lease sale bidding is facilitated through joint bidding. Joint bidding by two or more firms each unable to bid solo has the effect of increasing competition. On the other hand, when two or more large firms fully able to bid separately combine to submit a single bid, the effect may be to reduce the number of competitors. However, if through joint bidding, even among large firms, a combination of, say, four firms bids more than four times as frequently as the individuals would have bid solo, then the effect of joint bidding can again be procompetitive.

d. The record shows some tendency toward concentrating winning OCS bids in relatively few hands; however, the extent of concentration also appears to be declining over time. For the nineteen oil and gas OCS lease sales which took place from 1954 through 1966, the eight largest buyers, sale by sale, purchased 85.5 per cent of the tracts. In the fourteen sales from 1967 to 28 March 1974, the percentage of total tracts purchased by the eight largest buyers declined to 62.0.[6]

Using the 184 leases issued in the 1954 and 1955 Louisiana oil and gas lease sales, a multiple regression analysis tested the proposition that firm size was positively related to the high bid by tract as the dependent variable. If large firms are able to outbid smaller firms, then one would expect a positive relationship. The regression analysis revealed no significant relationship between size class of firm (the eight big firms versus all others) and the amount of the winning bid. The same regression equation revealed that the high bid was also independent of whether firms bid jointly or solo. Further, the most significant independent variable related to high bid was number of bidders; the greater the number of bidders competing for any given tract, the higher will be the resulting winning bid. The total value of oil and gas production accumulated through 1967 was also positively related to the high bid. As one would expect the number of acres in the tract leased is also related to the high bid. Estimated water depth as a proxy for development cost was not significantly related to the high bid.[7]

e. Data on the average price bid per acre indicates that with the passage of time the effective high bid per acre has increased substantially. For the entire period 1954 through to 28 March 1974, the average high bid per acre amounted to $1,257.50. For the 1954-1966 period the average was

$301.71 per acre. This increased more than sevenfold to $2,219.90 per acre for the period beginning in 1967. This increase is only partially accounted for by higher crude oil prices. The average price of crude oil increased from $2.89/bbl. in the earlier period, to $3.69/bbl. in the later period. Even this increase would be offset by an unknown decrease in the probability of finding oil, and by increased costs of exploration and production.

f. Lease sales through 1 October 1964 show that of the 1,377 tracts receiving bids, seventy-eight high bid offers were rejected by the government. Subsequently, 26 of these tracts were reoffered and leases awarded. For these 26 tracts, the initial rejected high bid average amounted to $42.41 per acre. The subsequently accepted high bid on resale averaged $411.38. Thus, where bids were found to be inadequate and subsequently reoffered, competition increased bonus payments on these rejected tracts nearly tenfold.

g. The most conclusive test of the workability of cash bonus bidding based on the United States record of OCS oil and gas lease sales is in terms of the rate of return on capital earned by the successful bidders. An analysis has been made of 184 offshore Louisiana oil and gas tracts leased in 1954 and 1955. Precise data are available on bonus payments, rental payments, oil and gas royalty payments, and production of oil and gas during the period from 1954 through 1967. Cost estimates were made for exploration, well drilling and equipment, and operation. Annual cost and annual wellhead values were discounted to obtain a net internal rate of return. The calculations indicate that these early OCS leases generated a 7.5 per cent before tax rate of return to the lessees.[8] Given the fact that oil companies pay relatively low U.S. income tax rates, the after tax rate of return would be only modestly lower than the 7.5 per cent before tax rate of return. This net yield clearly does not reflect monopoly power; it shows an excessive degree of competition.

On the basis of this evidence we conclude that competitive bidding for oil and gas leases is sufficiently strong to protect the public interest inobtaining competitive values for its oil and gas resources. This conclusion is further supported by evidence presented above indicating an increase in the average number of bidders and a substantial increase in the average price bid per acre for oil and gas leases.

CONCLUSIONS

This article has examined the problems to be solved by any leasing system used to transfer publicly owned mineral resources to private firms for processing. The cash bonus bidding system has been used extensively in

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the United States, particularly in the leasing of OCS mineral resources. That record has been examined in some detail. While cash bonus bidding embodies problems which have been identified, it also appears to be an economically efficient method of resource conveyance. The United States record indicates that competition has been effective, if not overly effective, in permitting the government to capture the full economic rent. In addition, bonus bidding avoids a major problem of a popular alternative, that of royalty bidding. It appears to be far superior to a negotiated approach in solving the three critical problems of resource leasing: selecting the operator, determining a fair market value, and creating a climate for efficient mineral resource recovery.

Notes

1. W. J. Mead and T.E. Hamilton, *Competition for Federal Timber in the Pacific Northwest—An Analysis of Forest Service and Bureau of Land Management Timber Sales* (U.S.D.A., Forest Service Research Paper PNW-64, 1968), p. 4.
2. For a more thorough discussion of the economic issues involved in oral auctions and sealed bidding, see W.J. Mead, "Natural Resource Disposal Policy-Oral Auctions versus Sealed Bids," *Natural Resources Journal* 7 (April 1967): 194-224.
3. U.S. Department of the Interior, Geological Survey, *Outer Continental Shelf Statistics* (June 1973), p. 43.
4. For a more thorough discussion of this point, see W.J. Mead, Testimony Presented before the United States Senate, Committee on Interior and Insular Affairs, Hearings 7 May 1974.
5. The data presented above from the OCS bidding record are from Susan M. Wilcox, "Entry and Joint Venture Bidding in the Offshore Petroleum Industry," (Ph.D. diss., University of California, Santa Barbara, 1975), p. 66.
6. Ibid.
7. The multiple regression equation is as follows:

$$Y = -9.5809 - \underset{(0.1513)}{0.2279X_1} + \underset{(0.0111)}{0.0229X_2} + \underset{(0.1701)}{0.1383X_3} + \underset{(0.0544)}{0.1235X_4} + \underset{(0.0253)}{0.408X_5} + \underset{(0.0235)}{0.0357X_6}$$

where Y is the high bid and the unit of measure is $100,000, X_1 is the size class of the high bidder coded as 10 for instances where the high bidder is one of the big firms and as zero for all other firms, X_2 is the total value of all oil and gas production accumulated up to the end of 1967 and the unit of measure is $100,000, X_3 is the corporate structure of the high bidder coded as 10 for a joint venture and zero for a single firms, X_4 is the number of acres with a unit of measure in 100 acres, X_5 is the number of bidders per sale multiplied by 10, and X_6 is the estimated water depth. This equation accounts for 62 per cent of the total

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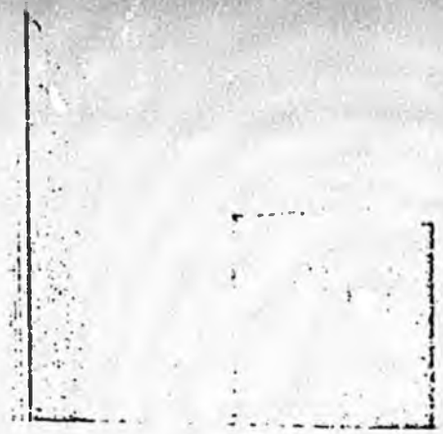
variability in the high bonus bid. The standard error of estimate is shown in parentheses: see Nossaman-Waters, *Study of the Outer Continental Shelf Lands of the United States*, vol. 1(1968), p. 553.

8. Ibid., p. 56.



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The Role of Public Enterprise

ARLON R. TUSSING

My remarks are, firstly, about the role of governmental enterprise generally and, secondly, about some of the considerations involved in using governmental enterprise to foster greater control by the citizens of Canada and British Columbia over their own mineral industries. My view is that governmental ownership of producing operations is not generally the most effective way of accomplishing the social ends for which it is currently being advocated in these industries. Nevertheless, I have a few suggestions how some of the major disadvantages of public enterprise with respect to efficiency and responsibility might be overcome.

Government owned enterprises in the English-speaking countries have seldom owed their existence to an anticapitalist ideology. It is, in fact, hard to detect any systematic difference in motive, organization, or operation between the national, state and provincial, or municipal enterprises established during the incumbency of labour, socialist, and agrarian radical parties and those implemented by Tories of various names and complexions.

Despite the vast amount of existing governmental enterprise today in capitalist countries, and despite the importance of socialist movements and socialist thought in the history of modern civilization, the scholarly literature on public enterprise is remarkably skimpy. Rigorous comparisons —theoretical or empirical—of the economic performance of governmental and private enterprises in the same industry are, to the extent I can determine, nonexistent.

GOVERNMENT OWNERSHIP

The case for government ownership of undeveloped land and natural resource stocks rests on a broader base than that for government ownership of producing enterprises. The intrinsic value of any resource in its natural state is the difference between the value of goods that can be produced from it and the cost (in terms of labour, capital, materials, and organization) required to produce those goods. The size of this residual is not the product

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of any person's labour or enterprise; most of the economic value of an *in situ* resource and its appreciation over time result from such diffuse causes as the increase in population, the general advance of technology, the decline in real transport costs, or directly from governmental outlays on roads or geological mapping. On these grounds, it has become almost an axiom of distributive justice (however commonly violated) that the intrinsic value of natural resources should not be privately appropriated.

Other classical grounds for government ownership of natural resources are the desire to control external costs or capture external benefits of their exploitation, and the expected divergence of private capital costs from the social rate of time preference, which is said to result in too rapid (or too slow) development of the resource. I am skeptical about the universal applicability of the last of these arguments; who, indeed, knows what society's true discount rate should be, and why are politicians and civil servants expected to be more sensitive to it than to entrepreneurs? This reservation notwithstanding, I believe that a presumption in favour of government ownership of undeveloped land and resources is generally justified.

Turning to productive enterprise, however, there are three main economic rationales for government ownership in a capitalist society. First is the use of the state to establish or maintain productive activity that would not be profitable as private enterprise, but whose external benefits are deemed to justify a subsidy out of the public exchequer. A subsidy does not, of course, require state ownership, because either private or governmental enterprise could enjoy that subsidy. In either case, support could take the direct form of providing capital or operating expenses from the Treasury or the indirect form of tax exemptions and the use of public resources at less than their cost of fair market value. State ownership, however, may well make a subsidy more palatable to the public, because it does not conspicuously enrich (or appear to enrich) a few private entrepreneurs.

Within the category of public ownership as a vehicle for subsidization are the numerous instances of private enterprise socialized because of chronic insolvency or imminent liquidation, including the Canadian National Railways, most of the British Labour Party's nationalizations after World War II, and the recent takeover of rail passenger transportation by the United States government.

In other cases, the motive for government ownership has been the creation of "public goods," products (or by products) of an enterprise whose value a private owner could not expect to recover by market pricing. Examples of such externalities are flood control by hydropower projects and the promotion of literacy and national unification by the postal system.

Military necessity has been another justification for producing goods in state enterprises which might not meet the test of the private market.

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Nineteenth-century America had government lead mines and arsenals and plantations for naval stores; the processing of nuclear fuels now remains a governmental activity on security grounds. Many public transportation and communications ventures were begun as defence projects in Alaska, the Yukon, and British Columbia: examples are the ALCAN highway and the White Alice communications system.

Second among the rationales for public enterprise is the perceived inability of private business, because of the great size or risk of the venture in question, to assemble sufficient capital. This tradition in North America began with state ventures in canal and rail development in the early nineteenth century, then extended to river control and irrigation projects, and continues into the present in enterprises like COMSAT and Panarctic Oils. In many of these cases, the proposed activity was expected to be self-sufficient in the long run, on the basis of the revenues from its product or service, but state initiative was seen as necessary to take advantage of scale economies or to overcome high risk threshholds.

The third circumstance seen to justify government ownership is possession by an enterprise of monopoly power and/or exceptionally rich natural resources, either of which can produce substantial "unearned profits" or rents. Government ownership is one means either of preventing monopoly exploitation of consumers (or monopsony exploitation of workers and sellers) or of collecting for the public treasury monopoly profits or resource rents that would otherwise be captured by the private owners.

Government takeover of profitable businesses has been rare in the English-speaking world. There have been a few instances of ideologically motivated nationalization, but it is instructive to note that these have often been reversed, as in the cases of the iron and steel industry in Britain and, more recently, the grain trade in India. The remaining cases have principally been those of utilities—grain elevators, street railways, water, electrical or telephone systems—which had a monopoly ("natural" or otherwise) in a local service area. In the last category it is often hard to distinguish between the instances where government took over to prevent private exploitation of monopoly power and those in which government saw a monopoly as an opportunity to exploit an assured source of revenue for itself.

There are, of course, a variety of cases which overlap two or all three of these categories. Economic development of a poor or sparsely settled region is often advanced as a justification for public enterprise in transport, communications, or electrical power. In these instances the premise is often that the region lacks capital or capital markets and only the state can mobilize resources on the desired scale. At the same time, the project is seen to encourage growth by its ability to widen markets or otherwise cut costs for commodity producing sectors of the regional economy. Once estab-

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lished, moreover, such an enterprise may have a monopoly status, with the power to abuse or exploit that status, and seem thereby to demand public control or ownership.

Many governmental enterprises (and regulated utilities, which they resemble in important respects) combine subsidies for some activities with appropriation of monopoly rents or resource rents from others. A common practice in both regulated private firms and government enterprise in transportation, communications, and utilities is *cross-subsidization*, in which monopoly profits earned from one area, line of business, or class of customers are dissipated in subsidizing others that are deemed to be socially meritorious. Thus, airline and railroad tariffs on heavily travelled route segments typically exceed cost (including a "fair" return), while service on lower density segments is provided at a loss. Hydroprojects in the Western United States typically subsidize users of irrigation water from revenues earned by water sales to municipalities and industry and by sales of electric power. In Alaska, revenues from both state and federal timber sales are sacrificed to support otherwise uneconomic lumber and pulp mills.

Turning to the mineral industries of Western Canada, there is little evidence that suggests they need to be subsidized by formation of a public corporation or otherwise. The province of British Columbia does not have, for example, a great but decaying industry upon which the community depends both for energy and employment, as the British had in the coal mines of the 1940's.

The British Columbia-Yukon Chamber of Mines may occasionally assert that each mining job generates seven additional jobs in supporting industries, but there is no respectable analytical foundation for such a claim. Even if the extractive industries had such an employment multiplier, it does not necessarily follow that job creation *per se* is a benefit that deserves subsidization from the public purse, much less the creation of a government enterprise. New employment opportunities are a *net* benefit to the existing community only to the extent that they are filled by residents who would otherwise be unemployed or working at more poorly paid jobs. In an "open economy" like that of British Columbia or Alaska, there is no predictable relationship between local job creation and local unemployment, because new employment opportunity attracts immigrants who tend to offset the employment gain. Even if the new jobs directly created were reserved for long-time residents, displacement of residents from old to new jobs and their replacement by nonresidents can be expected to make overall unemployment rates relatively unresponsive to employment growth.[1]

National self-sufficiency in minerals and the earning or retention of foreign exchange are sometimes claimed as external benefits of mining that justify preferential treatment. In Canada, paradoxically, some of those

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(including the National Energy Board) who place the highest priority on national self-sufficiency in one or another mineral resource tend to advance policies that *deter* investment, on the grounds that the beneficiary of current development tends to be the export market, at the cost of future diminished Canadian self-reliance. In this country, moreover, balance of payment effects are often used as part of a case *against* mineral development for export rather than in favour of it. In a world of floating exchange rates, however, one might question whether there is any relevance at all to the balance of payments problem in its usual sense. Finally, the impacts upon environmental quality and the dispersion of population are more likely to be regarded as external *costs* of mining than as *benefits* that justify the government's promotion of mining ventures that otherwise would not be self-supporting.

It is hard to make a respectable case that mining (including oil and gas production) creates beneficial *externalities* for the surrounding community, as distinct from the net value of the minerals produced, or the factor payments (wages, profit, rents, and taxes) which make up that value. The current Canadian interest in state enterprise in the mineral industries does not seem, in summary, to be a result of the belief that they are inevitably unprofitable under private enterprise. On the contrary, it rests in part upon the notion that mineral extraction can indeed be very profitable, and that unearned profits (rents) ought to be controlled and disbursed in socially approved ways. This attitude is sometimes experienced as a concern whether the people of the nation or of the province, who are the nominal owners of its natural resources, are receiving as high a return for the products of their land as they might. One issue is, in short, whether the state is effectively maximizing its revenues from disposal of minerals.

Where effective capital markets exist together with a large enough number of potential operators to create workable competition for resource rights, the government (as landlord and/or sovereign) is more likely to maximize its revenues if it does *not* engage in production. This conclusion does not presume that particular government owned entities are necessarily less enterprising and less effective in cost control than profit motivated private corporations. There may well be a bias against efficiency in most forms of state enterprise, if only because their owners (the public) and managers do not have a clearly defined standard of performance as private managers have in the imperative to maximize the present worth of their firms. But more importantly, by operating a productive enterprise in the extractive industries, the government loses the ability it would otherwise have as landowner to exploit the competition among potential private operators.

At oil and gas lease auctions in the United States, for example, the bid prices on a single tract may vary by a factor of two, ten, or even one

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hundred. These variations reflect widely differing geological evaluations of the tract, exploration strategies, and capital and other costs. Thus each tract tends to be won by the bidder with the *most favourable combination of capital cost and expectations* among all the bidders regarding future product prices, the particular tract's recoverable reserves, and their development and lifting costs. The landlord (state or private) who operates on his own land, however, would have only one management team, one exploration strategy, one team of geologists and engineers, and one supply function for capital. Only by rare accident would the landlord's *actual* performance over the average of all his properties tend to be better than the *expectations* of the most optimistic bidder. If, therefore, he were to lease each tract to the highest bidder among the competing operators, he might anticipate receiving a greater net revenue on each property than he could expect from developing the property himself.

The foregoing prediction is implicitly supported by empirical studies of United States Outer Continental Shelf leasing by Walter Mead and others, who show that successful bidders on the average earn a discounted cash flow rate of return on lease acquisition costs substantially less than the oil industry's average rate of return on capital (see Mead's article, "Cash Bonus Bidding for Mineral Resources," contained in this volume).

The effective use of competition to optimize revenues does not dictate the use of a cash bonus bidding system for *all* minerals or even for petroleum under every circumstance. The degree of knowledge or uncertainty regarding the volume and value of minerals present and their cost of extraction, the relative weight of fixed and variable costs in total extraction costs, the number of potential competitors, and the relative preferences of the government and private operators for certain present income versus uncertain future income are all appropriate considerations in the choice of leasing or disposal systems and taxes on the mineral industries. These questions have been discussed elsewhere,[1] and other articles in this volume give close attention to the relative merits of location, leasing, and sale as systems for disposing of minerals; to royalties and severance taxes, and whether they should be reckoned on gross value or net profits; to bidding on cash bonuses, deferred bonuses, gross or net royalty rates; to the use of acreage rentals; to the optimum size and configuration of tracts; to the amount of geological information the landlord ought to obtain and publish before opening land for lease or disposal; and to the duration of the primary term of a lease or permit, its terms for renewal, and so on.

In summary, state enterprise in the business of developing and producing minerals is surely *one* way to capture and redistribute resource rents, but it is unlikely to be as effective a device for maximizing those rents as the combination of a leasing system that takes full advantage of competition

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among private firms (considering the technology and institutional characteristics of each branch of the mining industry) and an appropriate tax system.

The most powerful cases for public enterprise in developing regions (like much of Western Canada and the Territories) relate to transport facilities which create external economies for other economic sectors, including mining. In these instances, both the first motive for socialization (the desire to subsidize) and the second (the need to overcome barriers of scale and risk) may justify investment by the government on projects into which private enterprise will not venture. Neither of these motives, however, creates a case for state enterprise in mineral extraction. Capital and enterprise for mineral exploration and development are plentiful and mobile. Specialized technical inputs, such as geophysical surveys, drilling, and heavy construction can be purchased on contract in a highly competitive market (so that great petroleum and mining companies carry out very few of these activities themselves). Capital sums in the hundreds of millions, or even billions of dollars can be mobilized privately, even without government guarantees, for projects like the Trans-Alaska pipeline, in remote regions.

Development of minerals, like the collection of revenues from their development, is likely to be more rapid and more efficient if it utilizes the diversity of skills, techniques, enterprise, and access to capital in the private economy and the competition between firms differently endowed in these respects. Nationalization or municipalization of producing operations, in my view, has an inevitable price—both in state revenues and in social efficiency—the payment of which must be justified on other grounds.

The hard core of Canadian interest in public enterprise today seems to stem not from a perceived shortage of capital and entrepreneurship (much less an ideological opposition to capitalistic enterprise as such), but from a perceived surplus of foreign capital and entrepreneurship. The problem, it seems, is to assure that mineral development (and, presumptively, related activities like oil refining or oil and gas transportation) are under the control of Canadians or the people of British Columbia, rather than great multinational (read United States) corporations.

It is probably not politic of me as an American to ask what practical difference the nationality of a company's owners or management makes as long as it is subject to the same laws (and obeys them) and pays its proper share of taxes. Foreign companies in Canada have often been berated for not paying enough taxes, but it was after all a *Canadian* decision, reflecting a long-standing Canadian developmental philosophy that the extractive industries should remain largely untaxed. The satisfactions and grievances of Americans regarding the major oil companies apply in the same way to

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Mobil and Texaco, which are domestically controlled, as they do to Shell and Sohio, which are foreign controlled. I am afraid I don't see how any more in the way of real resources for Canadians could be squeezed from a government owned business than could be squeezed from American or Canadian owned private enterprise under a well designed leasing and tax system. Nevertheless, one billion American dollars invested in Canada is more conspicuous than one billion Canadian dollars invested in the United States, and the nationality of your managers and stockholders obviously does make a difference to many Canadians. (I must confess, also, that some Americans become hysterical about the very idea of the Arabs or Persians taking over United States businesses.)

Government enterprise is one way to "nationalize" the mineral industries, but it is not, of course, the *only* possible way to foster Canadian equity and enterprise. Stricter nationality criteria could well be applied to holders of claims and leases or of permits to build pipelines, concentrating plants, and refineries. Such policies raise the further question, however, whether there is in fact enough private equity capital and enterprise in Canada to effectively take the place of foreign equity and enterprise. This is an empirical question to which I do not have an answer. If the answer is negative, consideration must be given to the fact that establishing a government enterprise does not *create* any new Canadian resources. It only uses tax money or potential resource revenues to bid capital and talent away from some other employment in Canada. The cost of Canadianization (either by restrictive licensing of private industry or by government enterprise) may be minimal, however, if preferences for nationals result in bidding home significant amounts of Canadian capital and Canadian talent which would otherwise be employed in other countries. (Presumably, the net effects of even these moves would have to take into consideration remittances that would otherwise flow back to Canada from investments abroad.)

Government capital need not be regarded strictly as a *substitute* for private capital, Canadian or foreign. In North America during the first half of the nineteenth century, and in almost every country at one time or another, state companies were used as a vehicle to *attract* foreign debt or equity capital, usually British, to ventures they would not otherwise consider. A government owned (or guaranteed) railroad company was often naively regarded by Lombard Street as a safe investment, while the promotions of unknown overseas entrepreneurs were viewed with little regard in the world's principal money market.

The use of government participation is still a major instrument for encouraging foreign investment in developing areas. Joint ventures between American, European, or Japanese private companies and governmental entities of the host country are common in almost all the extractive

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industries and in many countries at different levels of economic development. Canada has at least one government enterprise created largely with this function in mind, Quebec's SOQUEM, whose activity consists mainly of joint ventures in mineral exploration with private companies. Petro Canada also *seems* to be interested in this kind of approach.

In addition to being a means by which domestic enterprise becomes a trustworthy borrower (or partner) of foreign capital, state enterprise can also be a means of offsetting a shortage of domestic equity and entrepreneurship. In this role, it has one advantage over promotion of domestic private enterprise through nationality restrictions on investment, management or licences: it avoids the spectre of open discrimination, which could lead to retaliation and might otherwise undermine trade and investment relationships that are beneficial to Canada. The nearly open border allows this country to draw on a much larger pool of capital, technology, and talent than it would with policies fostering autarky. Although this openness is a major element in the ambiguity and insecurity of Canada's national identity, its economic benefits to Canada are relatively greater than they are to the United States. (That is, its impact on the size of the resource pool available to Canada is greater than on the size of the pool available to the United States.) It is therefore a circumstance to be modified only carefully and selectively. Establishing a provincial oil company is one way of containing the side effects of a move in the direction of autarky in a single industry. Such a move might, in fact, limit these side effects even in the industry in question. Suppose the best candidate for executive officer for a British Columbia based oil company were a Texan; there might well be fewer misgivings about hiring him to work for the province than about his heading a subsidiary of an American private firm.

I will conclude this article with some suggestions for the structure and policy of public corporations in the mineral industry, suggestions aimed at combining some of the best features of government and private enterprise, rather than their worst.

First, before establishing a governmental enterprise, be clear what its purpose is to be, what the incentive for the management to accomplish that purpose will be, and, quite rigorously, what will be the measure of the enterprise's success. (I owe this first and most vital point to Milton Moore's critique of the draft of this article.)

Second, do not set up a monopoly. There is no surer formula for inefficiency and social irresponsibility. Economies of scale do exist in mining and petroleum exploration, but they are very small when compared to some other industries or relative to the opportunities for development in an area the size of British Columbia. In petroleum refining, the minimum efficient size of a refinery is probably about the size of the British Columbia

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market for petroleum products, but if a new government owned refinery needs a monopoly or protectionist legislation to be profitable, it will almost certainly be a serious burden on consumers. Industries in which scale economies are narrow and where ingenuity and intuition are still crucial, as in mineral exploration or onshore oil and gas production, are probably not the most appropriate candidates for nationalization; but where it is determined to establish a state enterprise, consideration might be given to the establishment of more than one competing public enterprise.

Third, do not clothe the corporation in sovereign immunities. Such immunity can be, and often is, a cover for inefficiency, irresponsibility, and even lawlessness. The corporation should be suable; it should pay taxes or their equivalent (federal, provincial, and local); and it should be subject to environmental and safety laws and regulations and, above all, subject to the bankruptcy laws. Its operations should not be protected by any version of an official secrets act. There is no good reason why the directors, officers, and employees should be excused from the same civil and criminal liability for their actions to which their counterparts in private enterprise are subject.

I would urge hesitation even in providing guarantees for the corporation's debt. A public mining or oil corporation will be pursuing a line of business in which private enterprise regularly borrows money without such guarantees. The more intense scrutiny of bankers and underwriters toward a corporation whose debt must stand on its own merit might well save the corporation's owners—the public—more money than the small interest differential associated with government guarantees.

Fourth, give the public and the corporation's officers and staff a material interest in its success and its efficiency. The government need not hold all the shares but only a controlling interest, not necessarily even a majority. One block of shares (enough to elect at least one director) can be held in trust for the company's employees and voted by them. The remainder of the shares would be offered to the public; they would be voted by their owners and publicly traded. Not only would this provision broaden interest and participation in management, but the market price of publicly traded shares would be a continuing indicator of management performance and of the value of the government's equity. I see no compelling reason to restrict share ownership to residents; it might in fact be useful to encourage minority participation by major oil companies or mining companies. A residence requirement for shareholders, however, would reinforce symbolically the corporation's identity as a national or provincial instrument, and would, of course, limit remittance of dividends abroad.

Fifth, the corporation's policies should be responsive to public policy but not bend to every political wind. I would suggest that only a minority of the

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government directors serve at the pleasure of the Cabinet and be regarded as spokesmen for its policies. The remaining directors representing the government's equity would be chosen indirectly for long and staggered terms.

Sixth, the corporation should be under pressure to pay dividends. A majority of the shares (and directors) should represent parties who have a material interest that the corporation *not* retain, reinvest, or dissipate all its earnings: private shareholders, the employees, and the members who serve at the pleasure of the Cabinet (who would presumably be responsive to the fiscal interest of the government). The influence of this group will be a constant corrective to tendencies of management, inside directors, and permanent directors toward complacency, empire building, pyramid building, or gold plating.

Seventh, maintain a clear distinction between the corporation and the government as landowner. The public enterprise should obtain resource rights on crown lands only in competition with other prospective operators. The corporation should not receive a concealed (and indeterminate) subsidy by access to resources at no charge or at a lower price than a competitor might offer. If it must have a preferent right, let it be at most a right to match the highest bidder.

A preferent right on the best offshore leases is a feature of the federal oil and gas corporation (FOGCO), proposed recently in the United States Congress. In view of the prices oil companies have been recently willing to spend in these lease sales, such a preference would guarantee that FOGCO would appear profitable, however incompetent its management, and that the federal treasury would lose billions of dollars in lease revenues.

Eighth, take advantage of the division of labour and competition. The corporation should not attempt to do for itself the things that even the greatest oil and mining companies contract out to others, such as seismic surveying, core drilling, well drilling, well logging, and construction. There is virtually no chance that a state corporation could improve on the performance of private firms in these exceedingly competitive areas.

In summary, I am generally skeptical of the case for public enterprise in the minerals industry but hopeful that such enterprises could be established free of many of their usual shortcomings, providing some thought is given to their purpose, organization, and standards of performance.

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Notes

1. In a study aimed at projecting the employment impact of the Trans-Alaska pipeline, we found that *unemployment* in individual labour market areas was almost totally insensitive to the level of *employment*; that is, on a *net* basis, at least, new jobs in Alaska's petroleum and wood products industries and government were entirely filled by immigrants. [Arlon R. Tussing; George W. Rogers; and Victor Fischer; with Richard Norgaard, and Gregg Erickson, *The Alaska Pipeline Report: Alaska's Economy and Gas Industry Development and Impact of Building and Operating the Trans-Alaska Pipeline*, Institute of Social, Economic and Government Research Report no. 31 (Fairbanks: University of Alaska, 1971)].
2. Arlon R. Tussing and Gregg K. Erickson, *Mining and Public Policy in Alaska* (Fairbanks: Institute of Social, Economic and Government Research, University of Alaska, 1969).

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EXPERIMENTATION IN ALASKA'S OIL AND GAS LEASING PROGRAM

AN ANALYSIS OF LEASING POLICY ISSUES RAISED IN H.B. 854

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EXPERIMENTATION IN ALASKA'S OIL AND GAS LEASING PROGRAM

-An Analysis of Leasing Policy Issues Raised in H.B. 854-

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ATTACHMENTS

1. Suggested Amendments to H.B. 854.

2. M.I.T. Professor John W. Devanney III, "How to Bid for Offshore Rights," Technology Review, February 1976, p. 44.

3. "Alberta, Canada: Exploratory Drilling Incentive System," The Landman, March 1978, pp. 18-20.

4. Articles from Mineral Leasing as an Instrument of Public Policy, British Columbia Institute for Economic Policy Analysis, 1977:

   - Gregg K. Erickson, "Work Commitment Bidding"

   - Dale R. Jordan, "Petroleum Leasing in British Columbia"

   - Walter J. Mead, "Cash Bonus Bidding for Mineral Resources"

   - Arlon R. Tussing, "The Role of Public Enterprise"

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SOHIO-BP ALASKA PRODUCTION DIVISION

March 28, 1978

Rep. Al Osterback
Chairman
House Natural Resources Committee
Alaska State House of Representatives
Juneau, Alaska

Dear Rep. Osterback:

When I testified before your committee two weeks ago on H.B. 854, I indicated then that Sohio Petroleum Company would be willing to submit additional information in written form to the committee, in further consideration of changes in Alaska's oil and gas leasing policies.

In this regard, attached is a memorandum, "Experimentation in Alaska's Oil and Gas Leasing Program: An Analysis of Leasing Policy Issues Raised in H.B. 854," prepared by our staff in Anchorage. An addendum presents suggestions for new language in certain sections of H.B. 854 that in our opinion would improve the bill from the State's standpoint as well as that of industry's. We hope you will consider our suggestions as constructive, if critical.

In general, we feel that H.B. 854 as it is now written would create a bias in the State's leasing system toward experimentation with procedures that are unusual and new in Alaska. Our suggested language changes would essentially create a bill that would give the Commissioner of Natural Resources the flexibility that he desires, but with a bias instead toward relying on well-known and proven leasing systems, unless special circumstances would call for the use of an alternative bidding system.

We are also concerned over the extent to which the Administration, in proposing H.B. 854, has simply tracked many concepts (and copied specific language in many cases) from OCS bills now in Congress, without an apparent close examination as to whether these specific provisions proposed for federal OCS sales are really appropriate for the State of Alaska.

We hope you will find this information useful in your consideration of H.B. 854.

With regards,

D.S. Mace
Assistant General Manager

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PART I: AT THE CROSSROADS

I. THE IMPORTANCE OF OIL AND GAS POLICY DECISIONS

A. Global Prospects

The Workshop on Alternative Energy Strategies (WAES), a two-year international energy and economic project, directed by the Massachusetts Institute of Technology, recently released their final report which indicated that:

(1) All energy resources and conservation measures must be developed vigorously to meet total projected demand in the period 1985 - 2000; and

(2) Energy policy decisions made now will be the critical determinants as to whether or not sufficient incremental supplies will be available to meet demand in the years ahead.

In other words; according to the WAES Report:

> The years up to 1985 are critical ones...We are...on the threshhold of a critical decision period. We cannot afford to waste the years immediately ahead if we are to have any large-scale energy options available before the end of the century. The time for decisive action is now. 1/

In this environment, the importance of H.B. 854, the Administration's proposed oil and gas leasing bill, cannot and must not be underestimated, as Alaska's oil and gas resources can and will play an important role in determining the future global energy, economic and political balance. The critical nature of energy decision-making at this time is further underscored by the following conclusions stated in the WAES Report:

1/ ENERGY:GLOBAL PROSPECTS, 1985-2000, Report of the Workshop on Alternative Energy Strategies, M.I.T. Professor Carroll L. Wilson, Project Director McGraw-Hill Book Company, San Francisco, 1977.

(1) The supply of oil will fail to meet increasing demand before the year 2000, most probably between 1985 and 1995...(p.3)

(2) Demand for energy will continue to grow even if governments adopt vigorous policies to conserve energy...(p. 4)

(3) The continued growth of energy demand requires that energy resources be developed with the utmost vigor...(p.4)

(4) Even if there are no governmental constraints on oil production, oil supply will meet demand only under the most optimistic assumptions about gross additions to reserves...(p.145)

(5) Possible constraints on oil production by members of OPEC are likely to cause oil supply to peak at the latest some-time around 1990 although lower production limits could bring this date forward into the early 1980's...(p.145)

(6) All the effort put into oil exploration around the world over the past one hundred years has only yielded 240 large oil fields...(p.123)

(7) With only a small chance of either discovering a new Middle East or discoveries in the Middle East as large as in the past, the past rate of genuine new discoveries can only be achieved if a large number of smaller producing areas are found. (p.122)

(8) Given lead times of 5-10 years or more for many projects, failure to make necessary near-term commitments or to resolve a variety of current restraints on production, or to develop future supplies may foreclose some options for 1985. (p.265)

(9) Failure to recognize the importance and validity of these findings and to take appropriate and timely action will almost certainly result in a world different from the one on which these projections have been based. (p.5)

(10) Failure to act could lead to substantially higher energy prices as the supply/demand imbalance becomes more apparent with the consequent frustration of the aspirations of the less developed countries. The major political and social difficulties that might arise could cause energy to become a focus for confrontation and conflict. (p.5)

(11) The longer the world delays facing this issue the more serious the outcome will be. Even with prompt action the margin between success and failure in the 1985-2000 period is slim. Time has become one of the most precious of our resources. (p.5) 2/ (Emphasis added)

2/ Ibid., pages as indicated above.

Another important point in the Report relates to the size of future oil fields. Worldwide, over 30,000 oil fields have been discovered, but about 75 percent of the oil lies within 240 large fields, each with over 500 million barrels of recoverable reserves. 3/

Out of the tens of thousands of producing oil fields in North America, there are only five fields that have recoverable reserves of more than 500 million barrels (Prudhoe Bay, which is new; and Elk Hills and Wilmington in California, and East Texas and Yates in Texas, all of which are old fields). Despite a great deal of exploration in North America, there has been no recent discoveries of fields more than 500 million barrels, except Prudhoe Bay. In other words, the probabilities of finding large new fields on the order of Prudhoe Bay has significantly diminished, not only globally, but also in the United States.

The WAES Report also makes clear that in certain environments, such as the North Sea, a 500 million barrel field is at the economic margin. 4/ Because of the particularly harsh environment in Alaska's North Slope, and elsewhere in the unexplored part of the State, a field that may contain even more than 500 million barrels of oil could be right on the edge of economic viability in Alaska, given the uniquely high costs and transportation difficulties.

While all of the above has critical implications both for the United States and Alaska, there are yet another set of reasons why we believe that the designing of the future oil and gas leasing program in Alaska deserves serious and careful consideration.

3/ Ibid., p.123

4/ Ibid.

B. Alaskan Outlook

In a sense, the State of Alaska is facing on a smaller scale some of the same problems described earlier on a global scale. Whereas world oil production may begin to decline in about seven years, so also will Prudhoe Bay. This fact has important implications to all Alaskans and, in view of the revenue needs of the State, it would appear to be in the State's interest to encourage a steady, ongoing oil and gas development program in parts of the State with petroleum potential. But the historic rate of genuine new discoveries can only be achieved worldwide if a large number of small producing areas are found. Likewise the future of petroleum discoveries in Alaska will most probably involve smaller fields which will be more costly to develop.

Actually, the possibility of finding another Prudhoe Bay-sized field in Alaska is extremely remote. Further, because of the very high costs of operating in much of Alaska, the size of a discovery must be larger in Alaska than it would in other states to make the project economic. Even the Lisburne and Kuparuk oil pools, which according to State estimates range in potential from one to two billion barrels, are marginally economic and may be typical, in terms of economics, of many future oil and/or gas finds in Alaska. All this tends to suggest that Alaska is special and needs to pay closer attention to the development of her resource policy than a State like Louisiana, for example.

Some have argued that Alaska might be better off 'sitting on' her potential oil and gas resources and waiting for the world oil price to rise even further. Dr. Arlon Tussing, an Alaskan economist and advisor to the Senate Energy Committee, considers this attitude, "simplistic" and "naive."

In real terms, world oil prices may stabilize as a result of a prolonged period of relatively low economic growth which would result in lower growth rates for energy consumption than is generally projected. Additionally, as global attention is increasingly focused on energy, the drive to conserve energy and to develop heavier oils, such as Athabascan tar sands, Rocky Mountain oil shale and Orinoco tar belt; and substitutes for conventional oil and gas will increase. Again, to quote Dr. Tussing, "if you choose to 'sit on' your oil and the decision was wrong, the resultant imbalances could be serious."

A final serious consideration for Alaska relates to a realistic assessment of the growth of State spending. While this subject cannot be addressed in the analysis, there is reason to believe that Alaska's revenue needs in future years requires continuous exploration and development of her oil and gas resources so that new revenues will be coming in as Prudhoe Bay starts to decline. This is especially true when one considers the long lead times involved in exploration and production in the frontier areas of Alaska, where a decade may be needed to find, prove up and begin to develop a field, and where transportation problems can be enormously complex.

C. Implications

Being at the economic/energy crossroads globally -- and in Alaska -- would seem to suggest that it is of critcal importance to the State to (1) carefully delineate its goals with respect to a new oil and gas leasing bill and (2) ensure that the proposed legislation, in its implementation, will achieve the desired goals outlined in the legislation. With this in mind, it would appear appropriate both to review the goals outlined for H.B. 854 and to analyze some of the broad issues raised by the draft legislation.

II. OBJECTIVES FOR ALASKA'S OIL AND GAS LEASING PROGRAM

> "As a prerequisite to a discussion of mineral leasing alternatives there should be a clear statement of the goal (s) to be achieved." 5/

A. Objectives Outlined for H.B. 854

To analyze the objectives outlined for H.B. 854, there are two relevant source documents: the Governor's letter of transmittal and the language contained in the "findings" section of H.B. 854. Both contain ambiguities and sources of conflict that deserve serious attention.

This is important in that the goals and objectives outlined in the legislation reflect the intent of the Legislature, in offering guidance to the Commissioner of Natural Resources.

As described in the bill [Sec. 38.05.180(a)(1)(A-D)] the State's goals are to:

(A) maximize the economic recovery of these natural reosurces in protection of the public interest;

(B) minimize the exploitation of these natural resources in protection of the public interest;

(C) maximize competition among parties seeking to explore and develop the resources;

(D) maximize use of Alaska's human resources;

While (D) is clearly in the State's interest, (B) appears to be in direct conflict with (A) and, in and of itself, could certainly be interpreted to mean more than one thing, e.g., 'sit on' the oil until later or 'protect the environment' or 'don't develop at all,' depending on one's definition of the "the public interest." One might also raise the question as to

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5/ Walter J. Mead, "Cash Bonus Bidding for Mineral Resources," Mineral Leasing as an Instrument of Public Policy, ed. M. Crommelin and A. Thompson, British Columbia Institute for Economic Policy Analysis Series, 1977, p.46

whether (C) could conflict with (A) or is even a necessary goal for the State of Alaska's leasing program or whether the goal to "maximize competition" means having more companies bidding or more competition among current bidders. In short, while goals (A) and (D) appear well-defined, there are important questions that could be raised with respect to the other goals as stated.

If one looks to the Governor's letter of transmittal for guidance on the matter, one becomes more confused. Some of what is presented as broad goals are in fact provisions of the bill related to goals which may in actuality work against the achievement of the overall broad objectives. What appear to be the three major goals of the legislation are presented in paragraph 3 of the Governor's February 17 letter of transmittal on H.B 854:

> "The proposed changes will update the leasing law to provide increased public control over exploration, development, and production from state land, obtain a fair return from our non-renewable resources, and, at the same time, provide land from which explorers may find new energy supplies."

Yet the letter lists six "important state objectives," which include items such as reducing "the length of the term of a lease from ten years to five years..." The reduction of a lease term should not be listed as an "important state objective," it would seem, in that it is not an objective but rather a provision designed to achieve the State objective of assuring "that exploration begins promptly once State land is leased." Whether or not reducing lease terms is the best means to assure prompt exploration or not is not the issue here, but rather the importance of clearly delineating goals (prompt exploration) as opposed to suggested means of implementation (reduce length of term of lease).

While clarifying what are the State's goals may seem academic, the exercise would seem worthwhile, particularly since what are described as "important State objectives" in the Governor's letter appear to conflict with the goals stated in H.B. 854. If it is a State goal in H.B. 854 to maximize competition, for example, then increasing rentals on fields may not be in the State's interest at all and should certainly not be listed as one of the "important State objectives" in the Governor's transmittal letters.

Thus, it would appear to be in the State's interest to set out more clearly, and in some order of priority, what the State is really seeking to do in this legislation. The Commissioner of Natural Resources, who would be designing the leasing program today, and future Commissioners who will be administering the program in future years, need to know what the State really intends and what is most important, given the energy and economic environment today and the future needs of Alaskans. If the Commissioner is given clear guidance by the Legislature as to the overall goals, then the State should be able to rely on the Commissioner to use his judgment and discretion in designing a program that is the best interests of the State.

In addition to the ambiguity relating to the State's most important objectives related to H.B. 854, we are also concerned that the overall legislation would actually deny the Commissioner the very object the bill's proponents suggest they are seeking to guarantee, i.e., flexibility so that the Commissioner may design a program best suited to achieving the State's broad goals. Instead of really allowing flexibility, this bill appears to put stress on the Commissioner by (1) requiring him (her) in many instances to adopt changes; and (2) setting limits on those changes;

and (3) forcing him (her) to account for why this or that was not done, for example, as opposed to merely requesting information as to why what is planned or was done is planned or was done.

Based on studies we have analyzed, we would also suggest that "maximum" experimentation in bidding at this time may not be in the State's interest any more than it is the Federal Government's interest. While we will go into this subject in some detail in Section III, we think it important to highlight here that the Alaska Legislature should be aware that, in many respects, H.B. 854 appears to copy the Federal draft legislation. A brief review of the goals related to the Federal bills would thus appear to be in order.

B. Objectives Related to Federal Legislation

It is noteworthy that the Governor's letter of transmittal states that the "proposed changes will update the leasing law to provide increased public control over exploration, development and production from State land..." (emphasis added). Many in Washington D. C. have been working for years to amend the laws affecting OCS oil and gas exploration and development so as to be able to establish a Federal oil and gas corporation (popularly known by the opponents of the concept as "FOGCO").

While we do not mean to suggest here that the drafters of H.B. 854 are aiming to establish an Alaskan State drilling corporation, we do think it pertinent for the State to analyze the goals and provisions of H.B. 854 in terms of where it would take Alaska, if enacted as presently conceived. Would the result be more exploration and development by private companies, or would the result be added complications in petroleum development and the eventual need for Alaska to establish its own "FOGCO?" We would offer two cautionary notes.

First, Dr. Arlon Tussing has pointed out that "the scholarly literature on public enterprise is remarkably skimpy. Rigorous comparisons - theoretical or empircal - of the economic performance of governmental and private enterprises in the same industry are, to the extent I can determine, nonexistent." 6/

Second, from our own limited experience of government drilling corporations, we would tend to concur with Dr. Tussing's conclusion that a State FOGCO is, as Dr. Tussing says, "unlikely to be as effective a device for maximizing [resource] rents as the combination of a leasing system that takes full advantage of competition among private firms (considering the technology and institutional characteristics of each branch of the ...industry) and an appropriate tax system." 7/

There are a host of reasons given by economists why government drilling corporations (would not) do not serve the public interest, 8/ but the point here is that certainly many companies and analysts view the Federal draft legislation - upon which Alaska's H.B. 854 appears to be patterned - as the first step towards the creation of a FOGCO, especially in that this type of legislation greatly increases the amount of uncertainty and risk related to what is already an uncertain and risky business, that of exploring for oil and gas.

6/ Arlon R. Tussing, "The Role of Public Enterprise," Mineral Leasing as an Instrument of Public Policy, British Columbia Institute for Economic Policy Analysis, 1977, p.163.

7/ Ibid., pp. 168-169

8/ See also "Natural Gas Policy Issues and Options," Prepared at the Request of Henry M. Jackson, Pursuant to R. Res. 45, A National Fuels and Energy Policy Study, Serial No. 93-20 (92-55), 1973, pp. 108-109.

C. Alaska's Leasing Objectives: Problems and Priorities

As the discussion above indicates, we see a host of problems both with the explicit and implicit objectives for H.B. 854. To summarize, we are concerned with:

(1) The Governor's Letter of Transmittal - As this letter is part of the legislative package, it will be used as a reference when, assuming H.B. 854 is passed, a future Commissioner seeks guidance in decision-making. The fact that it confuses objectives and provisions is of concern, especially where some of the provisions that are listed as "important objectives" may be counter-productive to the goals of the legislation.

(2) The Goals Listed in H.B. 854 - At least one goal (B) could be interpreted in drastically different ways, and it is unclear what goals really are most important nor how several of the goals interrelate.

(3) Implicit Goals - While the bill's supporters contend that an important purpose of H.B. 854 is to provide the Commissioner of Natural Resources with flexibility in administering the leasing program, several provisions would not only deny real flexibility but also would require justifications for non-experimentation, in effect putting political pressure on the Commissioner to experiment in bidding practices, for example, even though such experimentation may not be, in the Commissioner's judgment, in the best interests of the State of Alaska.

(4) Following the Federal Trend - We are concerned that H.B. 854, in many ways, parallels many of the provisions in the bills passed by the U. S. House and Senate. Whereas the ultimate goal (implicit or explicit) of many supporters of the Federal legislation may be the establishment of a federal drilling corporation, we would question whether or not it is in

Alaska's best interest to so closely follow the Federal lead in this area at this time...or any time. We would also caution the State, particularly about (1) the reasons why data gathering is viewed as the first step in establishing government drilling corporations; (2) the lack of hard evidence and the experimental nature of using different bidding methods; and (3) the issues related to competition and joint bidding.

To take care of the above-described problems relating to objectives, we would like to suggest some new language in the opening section of the bill (see Attachment I). We have sought, through the proposed changes, to highlight the fact that prompt exploration is an important goal which should be stated in the legislation and that this goal is inextricably related to the overall State goal of maximizing State revenue. We have sought also to provide flexibility for the Commissioner without forcing him (implicitly or explicitly) into experimentation. These and other proposed amendments are further explained in the following two sections.

III. BROAD ISSUES AND OBJECTIVES

A. Data Acquisition: How Useful?

While we understand the State's desire to know more about the potential oil and gas resources underlying State lands, we would reiterate what we and other companies have previously stated: obtaining more data from the companies does not necessarily put the State in a better position to evaluate potential resources. In fact the opposite could be true; government officials, looking at company data, might well understate the potential value of proposed lease acreage because of the general conservative nature of a government compared with, for example, the daringness of one Company geologist willing to stake a professional career on an interpretation of exploratory data. It could also be argued that the very nature of a large government agency makes it easier to hide errors of judgment whereas the company which decides to "go" on a project can hold specific employees more accountable for errors of judgment. But the most important fact to remember is that regardless of how much data the State may obtain, the State will never know what it does or does not have unless the State drills.

Since you may not wish to simply take a company's word for it, the following quotation is presented to underscore the importance of drilling as a means of obtaining useful information and to highlight the relative lack of usefulness of data without drilling. This excerpt is from the writings of an acknowledged expert in leasing policy, Professor Walter Mead, University of Southern California at Santa Barbara:

> "...while the technology for oil exploration prior to the drilling has been advanced in the last century, exploration is still subject to extemely high risk. Drilling is the only definitive test to determine the presence of oil or gas. Thus, bonus bids must be

> submitted by bidders and accepted or rejected by the government when neither the buyer nor the seller knows whether and in what quantities oil is present..." 9/ (Emphasis added)

It would seem obvious, therefore, that if the companies -- with all their data and experience -- don't know at the time of a lease sale whether they've just spent millions for the right to put millions more into drilling potentially dry holes, then the government, with the same data, could hardly be better off. And having all the data of all the companies doesn't necessarily lower the risk of error for the government in that the view supported by most of the data of most of the companies (data that might suggest that "Tract 20" is worthless, for example) could be wrong.

Because more is not necessarily better in the exploration data game, many companies do in fact view data acquisition by the government as the first step which will inevitably lead -- and naturally extend to -- the establishment of government drilling corporations. And, as previously noted, Dr. Arlon Tussing does not view "governmental ownership of producing operations" as "the most effective way of accomplishing the social ends for which it is currently being advocated..." 10/

Additionally, Dale R. Jordan details some of the more severe problems of esblishing government drilling corporations:

> "...This article's purpose is not to examine the political repercussions that might occur when dry holes are drilled with public funds; however, we should examine some of the practical considerations involved in the operation of a public company which has an almost exclusive area within which to explore as a result of discouraging the private sector. For the government to discourage both the existing explorer and the entry of any new ones and to expect the public corporation to be able to fill this void suggests that the government is saying, "if the private companies do it, so can we."

9/ Mead, op. cit., p.51.

10/ M. Crommelin and A. Thompson, "Introduction," Mineral Leasing as an Instrument of Public Policy, British Columbia Institute for Economic Policy Analysis, 1977, p.xvi.

Now remember that the private companies comprise all the oil and gas explorers working in the province and those contemplating doing so, given the right opportunities. All these companies have geological staffs, many of who will be geologists who devote most of their time over a considerable number of years entirely to the study of British Columbia's geology. The public corporation could not expect to have such an extensive source of expertise as that available in the free enterprise system. And so the public corporation would suffer from a reduction in the number of ideas generated.

It is not unusual in oil and gas exploration, with its inherent problem of scientific interpretation and evaluation of geological prospects, to find that one company will acquire a block of land, will explore it, and perhaps even drill on it before deciding the search is unsuccessful. The company will then return the land to its owner, the Crown. This does not mean that there are not any commercial hydrocarbons underlying this land; but rather that that particular company was unable to find them. To find these hydrocarbon deposits, a second, a third, or a fourth company should acquire this land, and, if this is done often enough, the hydrocarbon will be encountered, and production will follow. The problem with the public company being the only explorer in the province is that, unless it is fortunate enough to make the initial discovery, it is very doubtful whether there would be enough enthusiasm to have a second, third or perhaps even a fourth try at that particular prospect, with the result that the discovery would not be made. This is surely the worst thing that could happen and is probably the most damning argument against a public corporation moving into an area with an almost exclusive right to explore. 11/

B. Experimentation in Leasing: How Successful?

The simple answer to the above question is "No one knows." The U. S. Government tried royalty bidding on eight tracts in an October 1974 lease sale with questionable results. It appears that neither the industry participants nor government officials found the experiment to be particularly successful.

According to The Oil and Gas Journal, "operators say they doubt royalty bidding will ever surface again except in areas where production is almost certain or possibly in drainage-tract sales. Development of wildcat acreage

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11/ Dale R. Jordan, "Petroleum Leasing in British Columbia," Ibid., pp. 252-253.

can prove too costly on a royalty bid basis, despite the absence of high front-end expenditures normally budgeted under the traditional bonus-bid system." 12/

Similarly, Energy Secretary Schlesinger appeared to be disenchanted with the royalty bidding experience in Louisiana in that, in a letter to Interior Department Secretary Andrus, Schlesinger apparently stated that the Department of Energy has reservations about the effectiveness of the royalty method based on past experience in the Gulf of Mexico. It appears in fact that Schlesinger raised the same objections to the royalty system as had been raised by industry and formerly by officials in the Department of Interior, i.e., that royalty bidding leads to early abandonment of leases because declining production eventually makes the lease unprofitable under a high royalty arrangement.

Significantly, the Department of Energy and the Interior Department are considering the formation of a task force of experts to help analyze pros and cons of the various systems being proposed in the Federal legislation (which were largely copied in H.B. 854). A key problem seems to be a dearth of experts, however, in that few governments have undertaken experiments in bidding practices long enough or in a manner similar enough as that envisioned in the proposed Federal and State legislation, and to paraphrase Dr. Arlon Tussing's comments: scholarly, empirical analysis of the different bidding systems appears to be 'remarkably skimpy.'

One source document, from which we have already quoted, appears to be quite useful, however. Published by the British Columbia Institute for Economic Policy Analysis, Mineral Leasing as an Instrument of Public Policy,

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12/ Mike Long, "Royalty-bidding experiment turns sour," Oil and Gas Journal, May 2, 1977, p.32.

contains articles by an international and interdisciplinary group of economists, mining engineers, businessmen and industry consultants. In an introductory section, Dr. Mason Gaffney describes the report as "an outstanding contribution to a rapidly growing field of study."

Our greatest concern with the proposed legislation is reflected in many of the articles in the British Columbia Institute's report. The publication cites significant problems with many of the bidding systems proposed in H.B. 854. Since each new system is so experimental, moreover, the likelihood of the Alaska's experiments not succeeding is high. An additional concern is that it would be years before the success or lack of success with a given system can be determined.

An example of our concern relates to the use of royalty bidding. Dr. Arlon Tussing, Dr. Walter Mead and others (including now Energy Secretary Schlesinger) have raised objections to royalty bidding for a variety of reasons. In the Report, Professor Hayne E. Leland, University of California at Berkeley, echoes some of their concerns and ours:

> "Competitive bidding theory makes clear that undesirable consequences may follow from royalty or profit share bidding. If there are no bonus payments required, speculative bidding may lead to extremely high royalties or profit shares being bid, with development occuring only in the most favorable circumstances. This happens because firms have little or nothing to lose by bidding high and then failing to explore or develop..." 13/ (Emphasis added)

Gregg Erickson, a well-known Alaskan economist, in his article on "Work Commitment Bidding," suggests that the problems associated with royalty bidding are well known:

> "The problems created by royalty bidding, principally the premature shutdown effect and the potential for speculator induced misallocation of leases, have been well discussed in the literature. More importantly, they are well understood by persons influencing both public and private mineral resource policies." 14/ (Emphasis added)

13/ Hayne Leland, "Comment," British Columbia Institute Report, p.60.

14/ Gregg Erickson, "Work Commitment Bidding," Ibid., p.61.

Yet, it is not clear to us that royalty bidding problems are well understood by the officials who will guide the Department of Natural Resources in leasing decisions in the next few critical years or in the future.

A specific example of why we are concerned relates to the material prepared by the Department of Natural Resources to accompany H.B. 854, entitled "Two Views on Bidding Strategies." Not only are the numerous problems and dangers of royalty bidding (cited by Meade, Erickson and others in the University of British Columbia Report) not even mentioned, but also, after three short descriptive phrases under the heading "Royalty Bid-Fixed Bonus," the Department of Natural Resources, with no further comment, analysis, or explanation, simply states: "The Beaufort Sale is an ideal candidate for a royalty bidding scheme." (Emphasis added)

We view such remarks by the State Administration with concern. As indicated previously, many who have taken the time to study the various proposed bidding methods in depth list extensive problems with various schemes for royalty bidding (see also Attachment 2) and, would hesitate to use royalty bidding schemes of any sort except in drainage sales or where there are known, proven reserves (as mentioned above in the Leland citation). The Beaufort Sea is believed to have a high potential for discovery, but, as in the Gulf of Alaska, the drilling of wells may result in no discoveries, or discoveries of marginal fields. No discoveries - with royalty bidding - means no income for the State of Alaska. And, as royalty bidding adds risk for the State, another quote from Leland is perhaps appropriate here:

> "Note that if the lessor is such that leasing forms a substantial fraction of its revenue (for example the State of Alaska), it may not be optimal to transfer risk from firms to the lessor. Thus, lease contracts which might be appropriate to the federal government may not be appropriate for regional governments". 15/ (Emphasis added)

15/ Leland, op cit., p.60.

In view of the Department of Natural Resources' apparent current ease of decision-making with regard to where and how the current competitive-bid lease system should be abandoned, we feel it important to stress that we concur both with Mason Gaffney and Gregg Erickson as to where the burden of proof should lie, i.e., with those who would change the current system--not, as is implied and indirectly stated in H.B. 854, upon the Commissioner who would be cautious about a great deal of experimentation. In this regard, we believe we are safe in assuming that Gregg Erickson's statement below with respect to the work commitment bidding system would apply to any new proposed bidding system:

> "The adoption of a work commitment bidding system implies a judgment that existing institutions for private exploration of public resources result in a suboptimal rate of resource development.
>
> Any argument for the adoption of such a system must first establish that this is in fact the case..." 16/

Similarly, though in a more general way, Mason Gaffney warns:

> "To serve his citizens best, the statesman should...resist the temptation to use his power to manipulate and control...on the too easy presumption that the market has no rationale or normative value of its own. Generations of economists have established that it has, and governments seeking to improve on it need face a certain burden of proof." 17/

One final point: The effects of the cash bonus bidding method, though not perfect, have been rigorously scrutinized, with over 20 years of experience as a basis for analysis. And, according to Professor Mead's extensive studies related to the results of 35 oil and gas lease sales during the period November 1954 to May 29, 1974, bonus bidding with a fixed royalty is effective:

16/ Erickson, op cit., p.75.

17/ Gaffney, op cit., p.3.

> "On the basis of this evidence, we conclude that competitive bidding for oil and gas leases is sufficiently strong to protect the public interest in obtaining competitive values for its oil and gas resources. This conclusion is further supported by evidence presented above indicating an increase in the average number of bidders and a substantial increase in the average price bid per acre for oil and gas leases". 18/

Thus, it is our judgment that, although in certain, special circumstances, changes in the bidding approach may be advantagous to the State, several factors should be remembered. First, the State currently depends on the petroleum production for some 70 percent of its revenue, most of which is from a field that will begin to decline in about seven years. New exploration in Alaska is vitally needed.

Second, although oil companies by the nature of their business deal daily in risk and uncertainty, there is no question but that, to the extent the State can reduce uncertainty and foster confidence with regard to the use of new bidding systems, oil and gas exploration will be encouraged.

Third, because the new systems are experimental, we would suggest that the burden of proof for adopting a new system for any lease sale be placed on the Department of Natural Resources because the use of any new system involves greater risks and uncertainty not only for the companies but also for the State. The proposed amendments contained in Attachment 1 reflect this analysis and these conclusions.

18/ Mead, op cit., p.55.

C. Oil and Gas Leasing: How Competitive?

Much has been said in recent years about the competitiveness or lack of competition in oil and gas exploration and development. Concern has risen particularly with respect to joint ventures in general and joint bidding in particular. Although the formation of joint venture groups for lease sale bidding facilitates ease of entry in high-risk ventures, and allows producers to spread their financial investments in an effort to minimize overall risks, the sheer numbers of joint ventures have been interpreted by some as 'fostering something other than competition.'

The two theories about the nature of joint bidding in Federal lease sales (collusive vs. risk-sharing purposes) have been tested by University of North Carolina Professor Edward Erickson and M.I.T. Professor Robert Spann. As they reported in testimony before the U.S. Senate Commerce Committee, the observed patterns of bidding partnerships are most consistent with the hypothesis that joint bidding is a means of risk-sharing, not collusion. 19/ Among the ways in which competition might be fostered rather than reduced by joint arrangements are the following:

Because risks are shared, the cost of capital per unit of supply increment is less, so that entry barriers are lowered in high risk ventures;

Because of joint agreements, smaller independents can and do form independent and successful groups for bidding purposes in Federal lease sales, as evidenced by data on successful bidders in the June 1973 Federal lease sale;

19/ In their study of the 1972 and 1973 Federal offshore lease sales, Erickson and Spann found that membership of bidding groups varies from year to year; market shares for members fluctuate from one year to the next; the most frequent bidding group is a combination of majors and smaller firms, but majors bid alone, as do smaller firms; single firm bids are frequently made by the largest firms, but other firms are also successful single firm bidders, and bidding groups which contain a large number of firms are predominantly composed of smaller firms. They also concluded that the incidence of joint bidding increased as the size of the firm decreased; there was a heavy incidence of joint bidding partnerships between unlike firms; smaller firms use joint bidding ventures as a vehicle for entry into offshore activity. "Competition in the Field Markets for New Natural Gas Supplies," Statement before Senate Commerce Committee, November 8, 1973.

Because of the number of large and small producer combinations and the frequency with which new groups are formed with different members, producers are able to become involved in many projects so that competition is spread through many projects.

Since joint operating agreements also expressly provide for separate marketing of production from joint ventures, it would appear safe to conclude that risk-sharing through joint ventures need not make competition less intense. By facilitating ease of entry, joint ventures by domestic petroleum companies may indeed make competition more intense. 20/

The work of Professor Mead tends to underscore the findings of Erickson and Spann:

> "The most conclusive test of the workability of cash bonus bidding based on the United States record of OCS oil and gas lease sales is in terms of the rate of return on capital earned by the successful bidders. An analysis has been made on 184 offshore Louisiana oil and gas tracts leased in 1954 and 1955. Precise data are available on bonus payments, rental payments, oil and gas royalty payments, and production of oil and gas during the period from 1954 through 1967. Cost estimates were made for exploration, well drilling and equipment, and operation. Annual cost and annual wellhead values were discounted to obtain a net internal rate of return. The calculations indicate that these early OCS leases generated a 7.5 per cent before tax rate of return to the lessees. Given the fact that oil companies pay relative low U.S. income tax rates, the after tax rate of return would be only modestly lower than the 7.5 per cent before tax rate of return. This net yield clearly does not reflect monopoly power; it shows an excessive degree of competition". 21/ (Emphasis added).

In fact, two studies conducted under the auspices of the United States Geological Survey (both authored jointly by Dougherty of the University of Southern California and Lorenz of the U.S.G.S.) have indicated that the restriction of joint-bidding has failed to achieve its objectives in Federal OCS lease sales.

20/ In the last analysis, if the formation of such groups constituted monopoly power, one would expect to see some results where such groups are formed, e.g., a non-random bid price pattern in Federal lease sales.

21/ Mead, op. cit., p.55.

Major conclusions were:

1. The ban of joint-bidding by major oil companies may in fact have acted to broaden the overall influence of major companies in a given sale. The percentage of all bids and the number of bids per lease in which a major oil company was involved actually increased, which in turn may have increased the total amount of acreage in which major companies participated during this period.

2. When the U.S.G.S studies compared solo bids to joint-bids on given tracts, it was concluded that the joint-bidders tended to go after more highly sought-after leases and that they tended to bid higher on the average than sole-bidding competitors.

From a practical standpoint, allowing joint-bidding has important advantages to the State as well as to the industry, in terms of overall economic efficiency, environmental effects of exploration activity, and flexibility.

For example: Often, a given company may have a great deal of geologic and geophysical data in an area, but for one reason or another does not have the cash on hand to fully utilize its data in a competitive-bonus sale. In this kind of situation, it would make sense to join with another company that has the necessary investment capital and does not have the data.

If the two were unable to combine in partnership, a situation could develop where one company had to duplicate seismic and geologic information already held by the other company. Ironically, a situation would then develop where overall competition in the sale would be reduced, because one company with cash reserves would have expended part of its funds in gaining data, while the other company with information would be limited in participation

because of its cash limitations. Also, there would be the obvious environmental effect of the increased seismic and other activity, including, possibly, the drilling of wells, that would go along with the need to gain additional data.

In view of all of the above, we wonder why the State Administration proposes to ban joint bidding among "major and multinational oil and gas companies" (terms which are not defined in H.B. 854). Again, is the State simply following the Federal government's lead? If so, we would repeat Leland's cautionary note that it may not be in the State of Alaska's best interest so to do.

NOTE: The fact that Sohio/BP has proposed amendments to some sections of H.B. 854 does not mean that the Company endorses the bill in its entirety with the proposed amendments nor that we endorse the provisions to which we did not offer amendments. Part I of this paper is meant to clarify many of the concerns we have with H.B. 854 conceptually as well as in detail, concerns which, as shown in Part I, have been expressed in the analytical literature on the subject of the bill.

PART II: H.B. 854: PROBLEMS AND SUGGESTED AMENDMENTS

I. PROPOSED AMENDMENTS TO MAJOR PROVISIONS

A. Objectives (findings):

As explained in Part I above, we feel strongly that the language pertaining to the State's objectives as contained in the "findings" section of H.B. 854, should be amended to clarify the State's major goals in its leasing program. This section will and should be used by the Commissioner of Natural Resources in carrying out the Department's responsibilities under the proposed act in the "best interests" of the State.

These suggested amendments to H.B. 854 are particularly important in that, as explained before, some of the "important goals" outlined in the Governor's letter of transmittal appear to conflict with the apparent goals expressed in H.B. 854.

Suggestions: (Refer to attached draft language, Attachment 1, Page 1 and 2).

We suggest amending (A) to reflect the global and Alaskan energy/economic outlook. We also substituted the goal of encouraging prompt exploration and competition, in place of the ambiguous language of the original (B).

On Page 2, under (2), our amending language was designed to reduce uncertainty with regard to the implementation of the program. The language would allow flexibility, but only where consistent with the findings in (1).

Changes in (A) and (B) on Page 2 simplify the language in the original bill to reach the same goals, listed in (A) through (D) in H.B. 854.

B. Procedures

On Page 2, in (B), we suggest that the Commissioner be required to make his lease sale program consistent with the objectives in the bill.

Under (1), on Page 3 of the draft, we suggest that the status of the current leasing program shall be reported to the legislature, rather than, "submitted."

Section (2) clarifies ambiguous language in the same section of the original bill.

Section (3), also on Page 3, provides more certainty in lease stipulations and conditions by adopting language already contained in proposed state pre-leasing regulations.

On Page 4, under (B) in the suggested language, we suggest permitting the public to comment on the form of the lease sale as well as the leasing program itself.

Changes in (C) and (D) are being suggested to make the language more specific to reduce unnecessary delays and the potential for litigation, by adding "appropriate" federal agencies, "affected" local governments, etc...

Section (G) was added to clarify that (A) through (F) do not supercede Section 305 and 345 of the Alaska Lands Act, which provide for extensive review by affected municipalities and Alaska Native groups.

On Page 5 of the draft language, in (A), we would suggest that the Commissioner review bidding methods and leasing procedures used in the previous five years, rather than one year.

We suggest deleting (E) in the original H.B. 854 because we feel that such a requirement would put the Commissioner under undue pressure to experiment. It would tend to undercut the overall goal of flexibility for the Commissioner.

C. Lease Methods

We suggest new language in (C) on Page 6 of the draft, to provide more flexibility to the Commissioner, to insure fairness to all participants, to insure that the program is consistent with legislative findings of H.B. 854, and to place the burden of proof for the need of change to an alternative bidding system on the Commissioner.

D. Reduction of Royalty

On Page 9 of the draft language, the purpose of our amending language is to make it more difficult for speculation in the bidding of royalties. Under the proposed language, the lessee would have to clearly show that a reduction in royalty is required. These amendments should help in avoiding the problem of irresponsible bidding during a royalty-bid sale.

E. Bonus Bid Deferral

We would propose deleting this language (E) in original bill, Page 9, because we think that the option to defer payment of bonuses would encourage speculation and could lead to charges of unfairness if lessees have the option to "renegotiate" bonuses.

F. Withholding Acreage

For a variety of reasons, we would propose deleting Section (F) in the original bill, page 10. This is similar to powers held by the Commissioner under existing statutes and, as such, is not objectionable.

However, the problem with withholding acreage is illustrated by the description of it as "the fifth bidding system" by the Department of Natural Resources. This is further amplified by written comments by DNR personnel, in Report 2-77, where the withholding of acreage was specifically recommended as a means of significantly increasing state income on the assumption that the withheld acreage would cover half a known geological structure.

In the example discussed in Report 2-77 under the title of "Percentage of Acreage Withheld Leasing," it is assumed that 60% of a structure is leased initially at odds of 1 success in 10 which, after exploration, improve to 9 in 10. The fallacy of the argument is that the authors, (and subsequent proponents of the idea), neglected to take into account the other nine instances where exploration shows the acreage to be more or less worthless. Although 4% (10% of the withheld 40%) would attract high bids, the average overall income should be no different than if the whole acreage had been leased initially.

The assumption that all closed geological structures contain hydrocarbons is attractive, but untrue. The ability to close the rare structures which are filled with hydrocarbons is not vested in the State's geologists or those of a single oil company. Consequently the chances of the State losing income by deliberately withholding leases over a structure far exceed the chances of it making a windfall profit from the procedure.

What is often forgotten in the use of the example of Prudhoe Bay to show how not to lease, is the fact that at the time of the geophysical recognition of the Prudhoe structure, a bigger and geologically more attractive structure was found a short distance away. This was known as

the "Colville High". The Colville structure was drilled in 1966 with disastrous results because it was discovered to be dry and devoid of prospects. Those results seriously downgraded the Prudhoe structure, in the following year. It is highly unlikely that even if the Commissioner has the choice of multiple bidding methods he would have leased the Prudhoe acreage by anything other than cash bonus bids. If he had guessed, the same way that industry did, that the Colville High was the better of the two structures and had deliberately withheld half of it from leasing, would he have dared, in the light of the drilling failures, to do the same for Prudhoe? Obviously he would not have risked a second debacle. It is annoying in the light of this history to read that DNR authors, in, "Two Views on Bidding Strategies", 1978, persist in misusing the Prudhoe Bay example to reach the incorrect conclusion that "Bonus bidding should not have been used in that instance."

G. Exploration Work Credit Program

This is a suggestion made before the House Resources Committee by Sohio in early hearings on H.B. 854, involving credits for exploration as an incentive.

A major objective of H.B. 854 is to maximize revenues to Alaska, but to do this it is essential that the State adopt policies which encourage a steady, ongoing exploration program on State lands. Many sections in H.B. 854, if enacted, could actually serve to dampen exploration, but one option the State Legislature could consider to add an incentive for exploration is a program similar to Albert'a Exploratory Drilling Incentive System. This kind of program has proven to be successful as a way of encouraging high levels of exploratory activity, and in Alberta has been largely responsible for the record-breaking levels of drilling

activity in recent years, and subsequent high rates of discoveries since it was introduced in 1974. This year, the program was extended, until 1981.

The system is simple and is based on a drilling credit which can be earned by all exploratory wells and which varies according to the footage drilled and the region drilled in. For example, under the Alberta system, a well drilled to 8,000 feet on the North Slope could earn a credit of, for example, $2 million, where a similar well on the Kenai Peninsula might qualify for a $1.5 million credit. Deeper wells could earn proportionately more, as would offshore wells. These credits could be scheduled to equal approximately one-third to one-half of the cost of a well in each region, and they could be used by the earning company against bonus bids in a State sale, or against lease rental payments of royalty payments. The result could be an influx of capital into Alaska, similar to what has taken place in Alberta. But since the Commissioner would control the incentive program by regulation, it would be capital that would be directed by the State to areas in which the State wished exploration to occur.

To allow the Commissioner the discretion to introduce such a drilling credit system, we have taken the liberty of proposing general language in section (f) that could be translated into detailed regulations for a successful incentive program (see Page 10).

The system would require control by the Department of Natural Resources, but it could operate with less manpower than is needed for the policing of net profit bidding or royalty-bidding systems. The benefits would be tangible and immediate, and would probably exceed, in terms of new revenues to Alaska, the theoretical and untried potential of royalty or net-profits bidding.

H. Terms and Regulations

On Page 11 of the draft, our proposed language in (G) would replace (G) and (H) in the original bill. Our language would be simpler and would accomplish the same purpose, we think.

I. Lease Terms

On Page 13 of the draft language, our new language in (H) would give the Commissioner the option to have five-year lease terms, but only where the Commissioner finds that environmental and economic conditions would not severely restrict operations. The original language in the bill requires a five-year lease unless severe environmental conditions require a longer period.

In most parts of Alaska, severe environmental conditions and remote exploration locations dictate that drilling and other exploration activity be done only on a seasonal basis. A five-year lease term would therefore place great strain on the operator in all parts of the State except for Cook Inlet or Southern Alaska locations where work can proceed year-round. Our proposed language would leave the 10-year lease term intact, although the Commissioner would have the option for shorter terms where environmental conditions permit.

Our proposed language would also give the Commissioner authority to go to larger lease tracts if circumstances require, if, for example, a work-commitment system is used.

J. 90-Day Provision

Also on Page 13 of the draft language, we also amend section (H) in language dealing with expiration of leases, to reflect unique Alaskan environmental problems in the term "reasonable diligence." This language

deals with activities that an operator may have underway at the time of the expiration of a lease. We would like to see environmental conditions taken into consideration by the Commissioner in delays that might affect an operator.

Also in section (H) on Page 13, we would suggest amending the language to reflect that a lease will be extended if there is a well capable of producing oil and gas, rather than a well producing oil and gas, as in the original language. Our reasoning is that there could be situations where a productive well has been drilled, but there are delays in building transportion systems to actually take the oil away.

K. Commissioner's Role in Conservation

On Page 17 of the draft, we propose new language that would clarify an apparent ambiguity in the original language regarding the Commissioner's conservation regulatory authority under Title 31 over pools unitized under this chapter. Our suggested language would reinforce the Commissioner's conservation authority, and would clarify this language.

L. Noncompetitive Leasing

Sohio-BP has no corporate position on noncompetitive leasing, but while some companies would like to have the option of noncompetitive leasing available, there may be situations where the State's broader public interest might not be served. Noncompetitive leasing can invite speculation in leases and in certain circumstances, there could be adverse environmental effects.

M. Joint Bidding Prohibitions

On Page 21 of the draft, the original language in the bill allows the Commissioner to restrict joint bidding by "major and multinational oil and gas companies" (these terms are nowhere defined). There are many serious problems that are discussed extensively in Part I, Section III C with respect to this provision. Based on the conclusions of the studies cited in this section ("Oil and Gas Leasing: How Competitive?"), we would suggest that it is neither necessary nor in the State's interest ot restrict joint bidding in any way. Such prohibitions not only restrict entry into Alaska leasing, but also could reduce potential revenues from lease sales. We would suggest deletion of this section from the bill.

N. State's Right to Purchase Oil and Gas

Section (v) on page 21 in H.B. 854 would include in leases a provision whereby the State would be allowed to puchase up to 100 percent of any gas discovered on State lands. This could be very harmful to the State in the long run, as it could effectively eliminate the financing of exploration programs by means of gas sale contracts. These contracts have been normal in Alaska, and in the past few years have contributed many millions of dollars to oil and gas drilling. This source of investment would be cut off and the proposed provision would only discourage exploration and the purposeful search for gas.

Under the terms of this section, contractual commitments would be impossible to make because the lessee would have no certainty of ownership of gas and would lose the right to dispose of his share of production to his best advantage, which could also be to the State's advantage. The result could be an increase in the risks and costs of exploration.

O. Data

In accordance with statements made by Administration officials with respect to the intent of the langugage in H.B. 854 relating to data acquisition and confidentiality, we have amended (w) of H.B. 854 on Page 21. Under our amended language in (s) on the same page, therefore, the Commissioner is given access only to noninterpretative data which shall be held confidential upon the request of the lessee or permittee as provided in AS 38.05.035. Additionally, in our (s) section, we have added that the Commissioner shall, by regulation establish procedures to govern access to and the safekeeping of such data.

As to the usefulness of such data acquisition, we would refer you to the analysis contained in PART I, Section III A above ("Data Acquisition: How Useful?"). This section additionally attempts to explain why data acquisition by the government is frequently viewed as the first step that inevitably leads to government drilling corporations.

P. Acreage Limitations

Section 3 AS 38.05.140(c) in H.B. 854 would limit any one company's onshore lease holdings to a limit of 200,000 acres. We would suggest that this limitation may be unnecessary in reaching the objective of encouraging competition and may, in fact, undercut the goal of maximizing competition on State lands simply because some companies are now near or at the proposed limit in terms of onshore acreage holdings. They would not be able to participate in future state sales for at least five years if this provision were enacted.

The limitation also seems to work against other objectives of H.B. 854. For instance, the Department of Natural Resources, in its comments on the proposed work commitment bidding method, acknowledges that large areas on the order of 100,000 acres are needed to make the type of bidding practical. Such acreage would be low potential, high risk land which would not normally be seriously considered for exploration. If the 200,000 acre maximum is retained, no responsible company could even bid on large work commitment parcels of this kind. Consequently, retention of this stipulation would narrow the leasing options available to the State and would be detrimental to the responsible assessment of State land.

II. SUMMARY AND CONCLUSIONS

In summary, we would offer these observations and conclusions:

1. H.B. 854 as currently drafted would create a State leasing system biased towards experimentation with procedures that are new and untried in Alaska. This may not be in the State's interest, because unusual leasing systems could lead to delays in petroleum development that could have serious consequences on future State revenues and Alaska's contribution toward U.S. energy needs.

2. The United States faces a critical energy-import problem that may have serious consequences for the Nation's economy. Alaska can contribute to the lessening of U.S. dependence on imported oil, but long lead times and large investments are needed to develop new petroleum discoveries in remote Alaskan locations. By enacting new leasing legislation that could lead to unusual and untried lease systems, the State could inadvertently delay exploration and development in remote Alaskan areas with resulting consequences in the global energy/economic sphere.

3. The State of Alaska faces a potentially serious revenue situation in the late 1980's as annual State expenditures increase and oil production from the Prudhoe Bay field begins to decline. Again, the long lead-times needed to find and develop new Alaskan oil discoveries would indicate that exploration must proceed soon on State lands to provide needed petroleum revenues.

4. Alternative bidding systems proposed in H.B. 854, although also proposed in OCS legislation now pending in Congress, have not had extensive use in the U.S., nor in very many other places in the world. Experience with royalty bidding in federal OCS sales has been dissappointing, and the federal government may now be reconsidering the use of alternate bidding systems other than the competitive bonus-bid procedures.

5. The majority of academic literature that we have been able to find supports the thesis that the traditional bidding methods have worked well in the leasing of public lands for petroleum development. Academic experts also seem to agree that alternative bidding systems present serious problems, except when used in certain special situations.

6. We have offered in Attachment 1 suggested language that would, we believe, improve many sections of H.B. 854, and give the Commissioner the flexibility he desires while at the same time encouraging the use of proven leasing systems unless special circumstances dictate the need for an alternate situation. Royalty-bidding in a drainage sale would be an example.

7. We have suggested an exploration work-credit program similar to a successful system used in Alberta that we believe would offer substantial incentives for increased Alaska oil and gas exploration.

LEASING METHODS EXAMINED

BUT NOT INCLUDED IN HB 854

1. The so-called "dual leasing" system which would authorize the State to issue separate exploration and production leases. Senator Ted Steven's amendment to S-9 would permit the exploratory lessee to share with the government (Federal) the costs of the exploratory drilling program, which would be managed by the lessee, in exchange for a share of the revenues received by the government from a subsequently issued production lease.

   The Administration believes that the State can know before it offers its land for drilling what development and production activities it expects to take place.

2. Dr. Mason Gaffney's ad valorem charge, or a "post" royalty system versus the "ante" systems in HB 854. In other words, the state determines its take before discovery, not after. Other governments, like the Canadian national, are going to the "post" systems, i.e. "progressive incremental royalty."

3. Incentives. There are no direct incentives to lessees contemplated in HB 854, except that "work commitment" would allow cash bonuses not to go to the government but instead used by industry for exploration.

4. Government equities in leases or state-owned and operated exploration companies are not envisioned in HB 854.

5. Oil Payment Bidding - shift royalty to rental.

6. Performance System which provides government with the authority to specify the exact rate and extent of resource development.

7. Share Bidding or Phillips Plan. Bonus bids are entered for the entire structure instead of for a specific tract. Based on their equity in the field, each company receives a percent of the profits or losses with a maximum percentage participation by any one company.

8. Alberta's so-called "checkerboard" leasing system wherein a reservation holder may apply for leases over not more than 50% of the area in the reservation in a checker-board pattern. These leases convey the right to produce and sell the Crown's oil and gas, and the government retains the right to alter unilaterally the terms and conditions of the arrangement.

Fax to: Bob Walker, Juneau May 26, 1978

From: Bleu Beathard, Anchorage

Proposed Amendments to HB 854
(In order of importance)

1. Section N, page 6, lines 20-25.

Delete first two sentences, replace with following:

An oil and gas lease must cover a reasonably compact area not exceeding 5,760 acres and must be for a period of ten years. The Commissioner may grant a lease for a term less than ten years but not less than five years if he finds that environmental conditions do not severely restrict operations.

2. Section 3 AS 38.05.140(c), page 12, lines 5-15.

Delete remainder of this section starting with sentence that begins No persons may take or hold, and replace with the following:

No persons may take or hold at any one time oil or gas leases exceeding in the aggregate 500,000 acres granted on tide and submerged lands and 500,000 acres on all lands other than tide and submerged lands, including leases held both as lessee and under option or operating agreement from others. Where more than a single person holds an interest in an oil or gas lease, each person shall be charged only with that percentage of the total acreage which corresponds to its percentage share of the total beneficial interest in the lease.

3. Section O, page 7, line 29.

Amend as follows:

for the fifth year and subsequent years, $3.00 per acre.

4. Section C, page 2.

Line 10 delete words third and fourth, change years to year.

Line 12 delete fourth.

Line 13 delete after the year.

AGO 546855 +

THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HOUSE BILL NO. 354
Title Leasing and exploration of state land for oil and gas development
Requested by Governor Date

II. FISCAL DETAIL
Agency Affected Department of Natural Resources
Program Category Affected
Budget Request Unit(s) Affected

EXPENDITURES (Thousands of Dollars)

		FY 78	FY 79	FY 80	FY 81	FY 82	FY 83
100	PERSONAL SERVICES						
200	TRAVEL						
300	CONTRACTUAL						
400	COMMODITIES						
500	EQUIPMENT						
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL						

FUNDING (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

FULL TIME	0	0	0	0	0	0
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)
Existing administrative staff are capable of evaluating and carrying out lease sales under any of the proposed leasing methods within the reporting period unless the number and volume of sales in significantly larger than expected. Should net profits or a post-discovery type leasing method be used by the State, prior to production some auditing and/or assessing functions will have to be increased. However, some of these services are now being performed by Department of Revenue personnel in reserves tax assessing, and by 1983, or thereabouts and beyond, when the impact of production is felt, may be interchangeable with Natural Resources personnel.

Jack Roderick

IV. DATE February 6, 1978 PREPARED BY Jack Roderick
AGENCY Commissioner's Office, Dept. of Nat. Resources
PHONE 279-5577

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

AGO 546856

33-001 (Rev. 12/77)

AMENDMENT

OFFERED IN THE ~~HOUSE:~~ Senate Resources BY: Chatterton

To: Senator Poland HOUSE BILL No. CSHB 815 (Finance)

SENATE BILL No. .

PAGE: 7 and 9 LINE: Pg. 7 - Lines 20 & 23
Pg. 9 - Lines 3,4 & 6

Page 7, Line 20

(a) Delete - (the unit) immediately preceding the word Production.

(b) Add - or lease immediately following the word tract.

Page 7, Line 23

Add - or lease immediately following the word unit.

Page 9, Line 3 & 4

(a) Delete - (the unit) immediately preceding the word Production.

(b) Line 4 - Add - or lease immediately following the word tract.

Page 9, Line 6

Add - or lease immediately following the word unit.

AGO 546857

R F

IN THE FREE CONFERENCE COMMITTEE ON HB 854
MOVED BY SENATOR CROFT:

Add the following subsection to SCS CSHB 854 (Resources), renumber the succeeding subsections accordingly, and adopt the thus amended version as the Free Conference Committee Substitute for SCS CSHB 854.

(x) The commissioner may include in any oil and gas lease provisions giving the state the right to purchase at the prevailing price an amount of oil and an amount of gas equal to the percentage amounts reserved in the lease to the state as royalty. The provisions shall provide that the lessee shall be given the same notice of the exercise of the option to purchase as is required for the state's exercise of its option to take royalty in kind. The commissioner may not include these provisions in any lease unless the intention to include it in the lease is stated in the final notice of sale issued not less than 30 days before the date of the sale.

prior knowledge –
Know ahead →

No Market for Gas →

Your Project needs gas on land yet to be leased.

1. WITHIN 60 DAYS OF RECEIPT OF "LEASING PROGRAM" LEGISLATURE, BY CONCURRENT RESOLUTION, MAY DISAPPROVE "ALL OR ANY PART" OF PROGRAM. P. 2	1. ADMINISTRATION SUBMITS PROGRAM — NO "LEGISLATIVE VETO"
2. SLIDING SCALE ROYALTY BIDDING — EITHER FIXED OR BID — AND ALSO MANDATORY WHEN OFFERED FOR BID A SECOND TIME. P. 3 P. 12	2. SLIDING SCALE ROYALTY — DELETED
3. ROYALTY BIDDING — (4) (5) AS VARIABLE. P. 4	3. ROYALTY BIDDING ONLY WHEN "UNLEASED ACREAGE SUBJECT TO DRAINAGE BY OFFSETTING WELLS."
4. COMMISSIONER MAY DEFER CASH BONUS UP TO 5 YEARS. P. 6	4. DELETED
5. LEASE TERM — 5 YEARS, BUT "GREATER THAN 5 YRS. BUT NOT TO EXCEED 10 YEARS WHEN — — ENVIRONMENTAL CONDITIONS SECURELY RESTRICT OPERATIONS." P. 6	5. LEASE TERM — 5 YEARS, OR "10 YEARS WHEN — — — ENVIRONMENTAL CONDITIONS — — — —"
6. RENTAL CONTINUES UNTIL ROYALTY OR NET PROFIT EXCEEDS RENTAL FOR 3 YEARS. P. 7	6. DELETED
7. RESTRICTION ON JOINT BIDDING P. 10	7. DELETED
8. RIGHT TO PURCHASE FOR IN-STATE USE P. 11	8. DELETED
9. UPLANDS ACREAGE MAXIMUM 300,000 ACRES — 10 YEARS TO CONFORM. P. 12	9. RAISED TO 5,760,000 ACRES (EXISTING LAW)

THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HOUSE BILL NO. 854
Title leasing and exploration of state land for oil and gas development
Requested by Governor Date

II. FISCAL DETAIL
Agency Affected Department of Natural Resources
Program Category Affected
Budget Request Unit(s) Affected

EXPENDITURES (Thousands of Dollars)

		FY 78	FY 79	FY 80	FY 81	FY 82	FY 83
100	PERSONAL SERVICES						
200	TRAVEL						
300	CONTRACTUAL						
400	COMMODITIES						
500	EQUIPMENT						
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL						

FUNDING (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

FULL TIME	0	0	0	0	0	0
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)
Existing administrative staff are capable of evaluating and carrying out lease sales under any of the proposed leasing methods within the reporting period unless the number and volume of sales in significantly larger than expected. Should net profits or a post-discovery type leasing method be used by the State, prior to production some auditing and/or assessing functions will have to be increased. However, some of these services are now being performed by Department of Revenue personnel in reserves tax assessing, and by 1983, or thereabouts and beyond, when the impact of production is felt, may be interchangeable with Natural Resources personnel.

Jack Roderick

IV. DATE February 6, 1978 PREPARED BY Jack Roderick
AGENCY Commissioner's Office, Dept. of Nat. Resources
PHONE 279-5577

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

AGO 546860

33-001 (Rev. 12/77)

HOUSE JOURNAL

LETTER OF INTENT

CSHB 854 (RESOURCES)

The Honorable Hugh Malone
Speaker of the House
Alaska State Legislature

Dear Mr. Speaker:

The Resources Committee substitute for House Bill 854 makes numerous changes in the legislation as proposed by the Governor. Two of these changes involve the deletion of the following language:

1. Subsection (f) on page 6.

2. In subsection (j) the following sentence (at the top of page 8 in the original bill) - "The commissioner may provide by regulation and in the lease that the lessee may earn production rights only to the depth drilled at the beginning of production from the lease."

The record should show that the committee's intent in deleting these two items was not to limit the discretion of the Commissioner of Natural Resources in these areas, but simply the result of its determination that the authority in both of these areas is implied, and does not require special authorizing language in the bill.

Alvin Osterback

Alvin Osterback, Chairman
House Resources Committee

Date: 4/14/78

AGO 546861

DESCRIPTION OF LEASING METHODS IN HB854

Currently, the State of Alaska's leasing system is a cash bonus bid with a minimum fixed royalty of 12.5 percent. The methods outlined below include the present system with different fixed royalties, sliding scale royalty with bonus bid, sliding scale royalty bid with fixed bonus, net profit share bid with fixed bonus, royalty bid with fixed bonus and exploration work commitment. The basic elements of these methods are summarized below.

(1) Bonus Bid With Fixed Royalty

Bonus bid with fixed royalty is the system currently used by the State of Alaska. In a lease sale, the winning bid for a tract is the one which makes the highest sealed or auctioned cash bonus bid. There is also a minimum royalty of 12.5 percent. An advantage of this system is that government receives revenue regardless if there are economical quantities of oil or gas found and/or produced. To avoid early termination of production, royalties need to be flexible during a field's declining years.

(2) Sliding Scale Royalty With Bonus Bid (or Sliding Scale Bid with Fixed Bonus)

Under this system, the government receives a cash bonus bid and a sliding scale royalty. We used 12.5 percent as a minimum figure and 62.5 percent as a ceiling wherein the rate in any period is dependent upon the production of that period.

The royalty rate is graduated in much the same manner as the federal personal income tax. Table I gives two examples of a sliding scale royalty schedule. The royalty is progressive, that is, the royalty on additional production increases. For example, in the South Central Area, the initial 500 barrels pay a royalty of 12.5 percent, the next 500 barrels pay 25 percent. The royalty rate increases by 12.5 percentage points per 500 barrels until 2000 barrels of output are achieved. All production beyond 2001 barrels pays a royalty of 62.5 percent. Thus, if production reaches 5000 barrels, the average royalty rate is 50 percent. In the limit, the average rate would converge towards 62.5 percent as daily production continues to increase.

As field productivity declines and well production falls, the producer backs down the schedule and royalties decline. In order to optimally exploit the field, the royalties should decline to zero near the end of field life. Actually, final rates of five or six percent would result in minimal early shut down.

TABLE I
TYPICAL SLIDING SCALE ROYALTY SCHEDULES

SOUTH CENTRAL AREA

Daily Average Prod. Rate (Bbls./day)	Incremental Royalty Rate (%)	Royalty For Specific Producing Rates: Producing Rate (Bbls./day)	Royalty Production (Bbls./day)	Average Royalty Rate (%)
-500	12.5	500	62.5	12.50
501-1000	25.0	1000	187.5	18.75
1001-1500	37.5	1500	375.0	25.00
1501-2000	50.0	2000	625.0	31.25
2001-2500	62.5	2500	937.5	37.50
		3500	1562.5	44.64
		4500	2187.5	48.61
		5000	2500.0	50.00

NORTH SLOPE AREA

Daily Average Prod. Rate (Bbls./day)	Incremental Royalty Rate (%)	Royalty For Specific Producing Rates: Producing Rate (Bbls./day)	Royalty Production (Bbls./day)	Average Royalty Rate (%)
-1000	12.5	1000	125	12.50
1001-2000	25.0	2000	375	18.75
2001-3000	37.5	3000	750	25.00
3001-4000	50.0	4000	1250	31.25
4001 and above	62.5	5000	1875	37.50
		7000	3125	44.64
		9000	4375	48.61
		10000	5000	50.00

Note: The Sliding Scale Royalty Schedule for the North Slope area is significantly higher than for the South Central area because the higher North Slope operating costs result in a much higher economic limit.

Hopefully, this illustration clarifies the relationship between production rates and royalty rates.

Greater flexibility in setting the initial rate is the major advantage of this system while not running the risk of an uneconomically (for Industry) high royalty rate. On the other hand, to achieve an overall lower royalty payment, a company might spread out production over a longer period of time. Usually, however, because of the time value of money and increased operating costs, oil companies generally try to accelerate production.

(3) Net Profit Share Bid With Fixed Bonus
A small fixed bonus is required as earnest money. The bonus is low enough to encourage producers to bid a high net profit share while permitting profitable development.

(4) Royalty Bid With Fixed Bonus
This system utilizes the same method to calculate fixed bonus as described for Net Profit Share. The bid parameter is a function of production instead of net profits. Since the bonus is fixed, interested parties bid on the royalty rate that the government is to receive. The advantage of royalty bidding is that little front end money is needed by Industry. However, this could encourage speculation causing an overbid. Royalty bidding should encourage more competition among bidders and may allow the smaller companies a better chance of winning the tract.

(5) Work Commitment With Fixed Bonus, Royalty or Net Profit Share
The government itemizes the performance criteria such as the rate and amount of work to be performed on each tract. The total bid specified in dollar terms and a portion of the bid used for exploration and development activities. This system gives the government some control over the rate and extent of resource development.

TWO VIEWS ON BIDDING STRATEGIES

WEALTH MAXIMIZING STRATEGIES FROM THE STATE'S VIEWPOINT

The choice of bidding method cannot be made on the basis of any single criteria but is the result of evaluating a number of factors including but not limited to the potential economic payoff and physical characteristics of the lease area. HB854 offers essentially four leasing schemes: (1) Bonus Bid - Fixed Royalty, (2) Royalty Bid - Fixed Bonus, (3) Net Profit Bidding with Fixed Bonus, (4) Work Commitment with Bonus Bidding. These options will be briefly evaluated.

Bonus Bid - Fixed Royalty

If the royalty is fixed at 12-½%, there is no reason to use this option. It is of historical value only. At higher fixed royalties, it has some merit, but the higher fixed royalty means a lower bonus bid which is supposedly the advantage of the system. Private discount rates are too high for bonus bidding to be advantageous to the State. For example, a brief examination of an annuity table suggests that increases in the discount rate rapidly diminish the present value of a future income stream. This income stream can be interpreted as the discounted net revenues resulting from the potential discovery and development of an oil field. Table II illustrates the discount rate effect.

Table II
Present Value of an Annuity of $1 Million
(Values in 10°$)

Number of Years	Discount Rates					
	6%	10%	14%	16%	18%	20%
20	$11.470	$ 8.514	$6.623	$5.929	$5.353	$4.870
30	13.765	9.427	7.003	6.177	5.517	4.979
N	16.67	10.00	7.14	6.25	5.56	5.00

From the State's viewpoint, a 6% discount rate may properly reflect the present value of the income generated by the potential oil discovery. The industry, on the other hand, is likely to discount the future net income stream at much higher rates, say 20%. Thus, the maximum bid under ideal circumstances would be $5 million for an income stream that would yield net revenues of on million per year in perpetuity. Perpetuity is longer than the life of Prudhoe Bay.

Royalty Bid - Fixed Bonus

Relatively easy to administer - reduces risk and front end filter to the private sector. With sliding scale, most early shut down problems are avoided. The fact

that the State receives a revenue stream over a 20+ year time horizon also is an attractive feature. The Beaufort Sale is an ideal candidate for a royalty bidding scheme.

Net Profit Bidding

This is very attractive from a risk sharing point of view. All risks (geologic, exploration, development, and production costs as well as product price) are shared with the industry. Would increase exploration and development in remote high risk areas. May be useful where there is low probability of bid find. Under ideal circumstances (political) is the best of all possible options but does have serious administrative problems.

Work Commitment

Cases where State wants information and is willing to specify type of information desired. Good for high risk areas in remote locations. May also be used where the State wants more information before putting structures up for competitive bidding scheme.

On balance, the royalty bidding schemes represent a substantial improvement over bonus bidding and are administratively tractable. Given the time to build the expertise, it may be advisable to shift to profit sharing or ad valorem schemes.

MULTIPURPOSE STRATEGIES

Bonus Bids

Bonus bidding should be applied in cases where the State has either:

(a) A very great amount of knowledge about the resource, or
(b) The prospect is of extremely high risk, the lessor has little knowledge of the resource and expected value revenues would be marginal.

The first case (a) where tracts might be offered for Bonus Bidding could be that of a drainage or near drainage situation where the State wished to maximize its near term discounted revenues. It would be advisable to not offer all of the tracts for bonus bidding, but to withhold a percent of acreage to be sold at a later date, (Report 2-77). Also, since royalty and other bidding methods have shown to offer higher expected value revenues for lower risk cases it could be advisable to mix royalty bidding with the bonus bidding, a practice followed by the Federal Government in the recent Cook Inlet OCS sale.

In the second case (b), that of extreme high risk, bonus bidding can be used as a filter to determine the value of marginal tracts. This is discussed under the section on (t) low potential, high risk and previously leased.

AGD 546866

Report 2-77 indicates that for very high risk cases all bidding methods approach the same level of expected value income for the State. In cases of small and marginal potential reservoirs the bonus bid method with its ease of administration might afford optimum State revenues. Report 2-77 also indicates that in probability of success percents of 1 percent or less bonus bids could afford higher revenues, but the State should ensure that leasing under such high risk cases only occurs when sufficient knowledge is gained to indicate that the land to be leased is of such a low potential. For example, a geologic structure as large as the Prudhoe Bay anticline may have had a high degree of risk before it was drilled but its potential to hold enormous reserves was there. Bonus bidding should not have been used in that instance.

In summary, bonus bidding can be used when:

(1) Very small potential reservoirs are expected;

(2) Extreme risk is expected and the gaining of sufficient knowledge to determine the presence of reservoirs is unwarrented because of marginal to low potential indications.

(3) A sliding royalty should be considered in all bonus bid cases;

(4) This method could be used in a mixture with other methods such as royalty bidding;

(5) Also, in general, this method should only be considered when leasing in the less desirable state areas, i.e. those below the top 10 rank.

Royalty Bidding - Fixed Bonus

Report 2-77 indicates that royalty bidding and profit sharing deliver the highest expected value revenues to the State of all bidding methods. It is particularly effective where the probability of occurrence is high (i.e. low risk) and especially when the expected reservoirs are large. A sliding scale should be added in the declining production years to eliminate the problem of premature shut down. Cases for royalty bidding would be when:

(1) The State has enough knowledge to assess the size of potential traps.

(2) Potential reservoirs are not extremely small or of extreme risk.

The Beaufort Sea sale is a good example of a case for using Royalty bidding on tracts. In general, this method should be considered when leasing in the top 10 leasing areas on the desirability scale.

Net Profit Bidding

Net profit bidding would be most advantageous when costs and oil prices are in a state of extreme fluctuations making economic predictions unreliable. In remote high risk areas, this method might attract stronger bids than the royalty

or the bonus bid method.

Of the 35 potential State leasing areas, this method might be used to advantage on those areas below the top 10 in desirability.

Work Commitment

(See section (t)).

This bidding method can be best used where the State has a large (i.e. 100,000+ acres) area of probable low potential where industry has shown a general lack of interest in exploration and leasing. By offering a large area for lease to one lease owner, the State provides an extra incentive to undertake exploration and the State ensures the exploration by making the bid variable.

This method would be used in remote low potential high risk areas. Some of the State's 3 mile limit lands such as Area IX might be applicable to this method.

Low Potential & High Risk and Previously Leased Section (t)

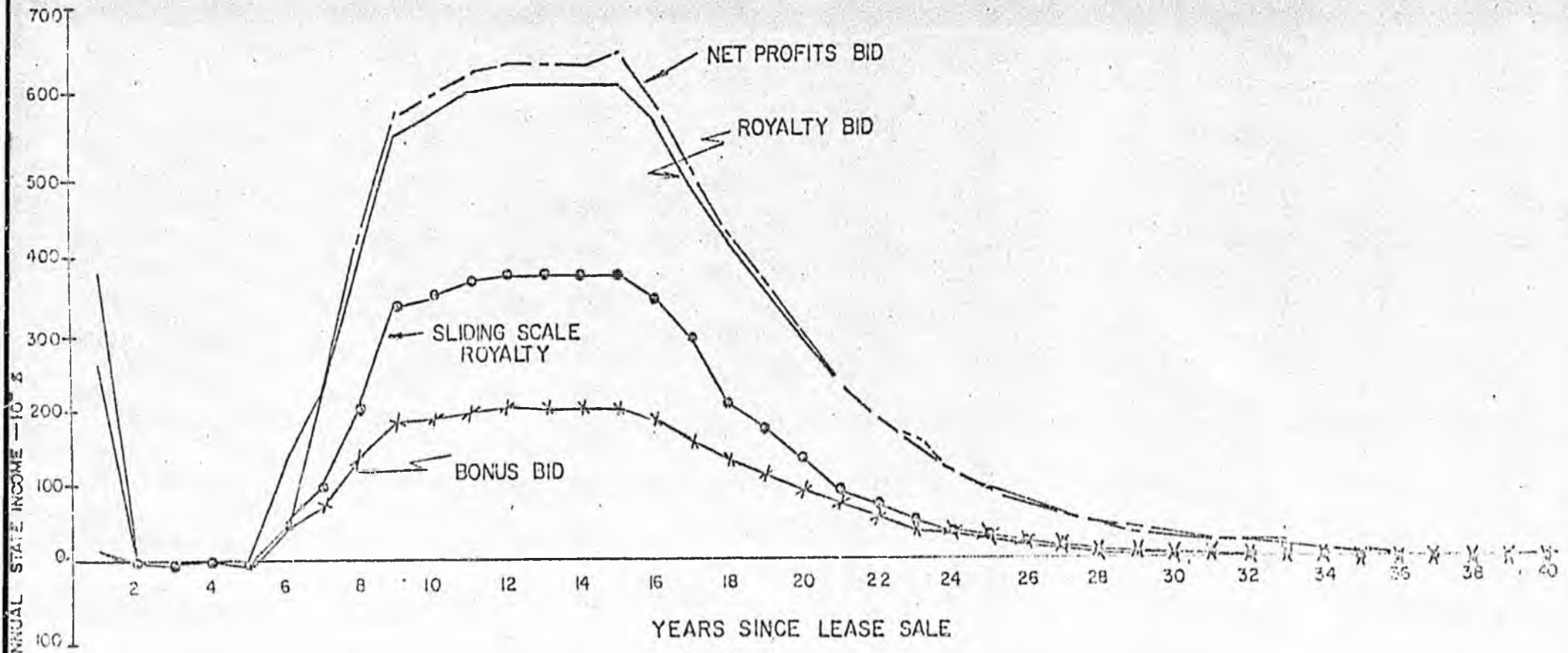
On the basis of exploration knowledge, lack of interest by industry and reasonable analysis, the department may determine that lands have very low potential for oil and gas.

As a means of encouraging the evaluation and possible development of these low potential lands, the department could:

(1) Offer the lands for competitive lease using a bonus bid with sliding royalty. A minimum bid equal to the first year's rentals could be used to filter the bids. This should give a check on the potential of the lands. The sliding royalty would act as a safeguard for very low value bonus bid tracts if a discovery is made later on the lands.

(2) On tracts that receive no acceptable bids, the commissioner could hold a non-competitive similtaneous drawing after proper notice (30 days). Tracts not receiving applications for the drawing could then be opened for over the counter applications. Tracts could be offered at fixed 50¢/year rentals, 5 year terms. A sliding scale royalty would be used in all cases to provide a revenue safeguard against future potential discoveries.

(3) In some cases, all tracts not receiving acceptable bids could be aggregated into large blocks (100,000 acres or more) and offered for work commitment bidding or development contracts.



COMPARISON OF STATE INCOME
FOR VARIOUS LEASING METHODS
AT 90% CHANCE SUCCESS

BEW 1-30-78

AGO 546869

Alaska State Legislature

Senate

Committee on Resources

AGENDA 5-28-78

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

CSHB 898 am	ALLOCATION TO AK FISHERIES DEVELOPMENT CORPORATION
CSHB 815 (Fin)	OIL AND GAS CONSERVATION
	THOMAS KRUEGER - EXXON
CSHB 854 (Fin)	LEASING AND EXPLORATION OF STATE LAND FOR OIL AND GAS DEVELOPMENT
	JACK RODERICK
	JOHN CARSON - CHEVRON
	DAVID MACE - SOHIO ROGER HERRARA - SOHIO
	ROD BOANE - EXXON

AGO 546854

Alaska State Legislature

Senate

Committee on Resources

AGENDA

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

CSHB 854 - AN ACT RELATING TO THE LEASING AND EXPLORATION OF STATE LAND FOR OIL AND GAS DEVELOPMENT.

GEORGE FULFORD - DEPT. OF ENERGY & NATURAL RESOURCES
EDMONTON, ALBERTA

MARC SINGLETARY - ARCO

LARRY VAVRA - UNION

NORM GORSUCH - ATTORNEY

KEITH ARNOLD - AK OIL AND GAS

CLAUDE BROWN - TEXACO

AGO 546852

Alaska State Legislature

Senate

Committee on Resources

AGENDA

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

CSHB 854 - AN ACT RELATING TO THE LEASING AND EXPLORATION OF STATE LAND FOR OIL AND GAS DEVELOPMENT.

GLORGE FULFORD - DEPT. OF ENERGY & NATURAL RESOURCES
EDMONTON, ALBERTA

MARC SINGLETARY - ARCO

LARRY VAVRA - UNION

NORM GORSUCH - ATTORNEY

KEITH ARNOLD - AK OIL AND GAS

CLAUDE BROWN - TEXACO

AGO 546853

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MAY 10 1978

May 5, 1978

The Honorable Steve Cowper
Chairman
House Finance Committee
Alaska State Legislature
Pouch V - State Capitol
Juneau, AK 99811

Dear Steve:

I'd like to review and expand a bit on my discussion last week before your House Finance Committee with respect to CS for House Bill No. 854 -- specifically the proposed exploration incentive credit system.

You will recall that we had suggested the possibility that a minimum work obligation be set out by the Commissioner on every lease offered for competitive bidding. The purpose would be to discourage speculative lease holding and to ensure that the State will get the benefit of actual exploratory activity by each successful bidder. Competing companies would, of course, reckon on the minimum work obligations when they calculate their bids.

We further suggested before your Committee that the exploration incentive credit system (pp. 4-5) may not be an essential incentive, particularly if there are work obligations and especially where prospects are attractive. In any event, the specific provisions of the bill look to be extremely awkward.

If the Legislature feels they should provide the Commissioner with authority for an exploration incentive system, we think you might alternatively consider something along the following

. . . /

AGO 546828

lines. First, expenditures up to minimum work obligations would not qualify. Second, beyond that minimum, additional expenditures on drilling exploratory wells could qualify for incentive credits. Credits could be related to footage and region; credits should never exceed a specified percentage of well cost -- as provided in the bill. Third, such credits could be applied against lease rentals -- not only on the lease where the well is drilled, but on any rentals accruing on State leases. To the extent that exploratory drilling credits exceed a company's accrued rentals, they might perhaps be carried forward. This could be a somewhat simpler approach to an exploration incentive credit system. It would apparently obviate the provision now in the bill whereby the Legislature has to appropriate offsetting funds to reimburse the Alaska permanent fund and the Alaska renewable resources development fund.

The proposed credits for geophysical work on State land within two seasons of an announced lease sale look to be even less necessary. We can appreciate a company's concern that costly exploration outlays designed to provide information to that company in advance of a scheduled lease sale may lose its proprietary value if a lease sale is deferred and the period of confidentiality expires. You may want to consider, therefore, that the period of confidentiality shall be extended by the Commissioner for work done on or proximate to areas scheduled for leasing if the lease sale is deferred beyond its announced date -- but not beyond some limited extension, say, 12 to 18 months.

I hope these thoughts may be of interest. Don't hesitate to call if we can be of any help.

Best regards.

Cordially,

Milton Lipton

/pt

cc: The Hon. Hugh Malone
The Hon. John Rader
The Hon. Kay Poland
Mr. Gregg Erickson

10-J3LH

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

MINERALS AND ENERGY MANAGEMENT / 323 E. 4TH AVENUE – ANCHORAGE 99501

July 1, 1977

To The Honorable Hugh Malone
Speaker of the House of Representatives
Box 9
Kenai, AK 99611

Dear Mr. Malone:

The Division of Minerals and Energy Management has been appointed the lead agency in developing the Alaskan Petroleum Leasing System. A major portion of the Leasing System is the development of policies and goals which the System will be expected to satisfy.

The staff of the division has prepared a preliminary list of possible leasing policies and criteria for evaluation leasing methods (see attachments). We are asking that all appropriate State and Federal agencies, legislative committees, and private parties provide input to the Alaskan Leasing System by reviewing the attached list, commenting on them, and adding policies and criteria that may have been ommitted.

Because of the necessity of arriving at the final leasing system as rapidly as possible, the time schedule for initial input into the policy segment is very tight. Please send your comments to the Division of Minerals and Energy Management at the letterhead address to the attention of Kristina O'Connor by July 15.

Thank you for your prompt attention to this very timely and important matter.

Sincerely,

Joseph P. Green KMO

Joseph P. Green
Director

AGO 547096

OIL AND GAS LEASING PROGRAM

POLICY AND GOAL ANALYSIS

EXHIBIT I.

PROPOSED POLICY AND GOALS FOR THE ALASKA LEASING SYSTEM

Nonrenewable resources should be developed when a net benefit accrues to the State of Alaska, or as may become necessary from a national need.

I. ECONOMIC Leasing of state lands should provide economic benefit to the state by providing direct revenue and by contributing to the development of a broader business and industrial base.

A. The value of resource revenue to the state should exceed the appreciation of the resource if left undeveloped unless it becomes expedient to develop from an overriding need.

B. The state should receive true value from its resources.

C. Resultant development should contribute to development of other related resources, industries and associated businesses.

D. The state should encourage the reinvestment within Alaska of revenues derived from leasing and associated development.

E. One of the benefits of the leasing program should be the improvement and/or establishment of transportation, communication and related facilities

F. The leasing program must be stable and predictable for the benefit of the state and industry.

CRITERIA FOR EVALUATION OF LEASING METHODS

1. Encourage active exploration and development.
2. Receive equitable compensation for the State's resources.
3. Maximize production from existing fields, encourage development of marginal fields, and use of enhanced recovery projects, and discouraging premature shut down of marginal production.
4. Encourage appropriate capitalization.
5. Encourage the State and Industry to maximize discounted cash flow.
6. Encourage preleasing exploration but discourage duplication.
7. Promote bidding competition and increase numbers of bidders.
8. Allow the State to share good fortune of increased reserves and value of crude oil.
9. State should realize only minimal income from dry structures.
10. State and industry to maximize advantages in Federal income tax laws.
11. State to stabilize petroleum exploitation so that prospective lesees can be sure "ground-rules" won't be subject to frequent change.
12. Leasing system to reduce industry risk by small front end filter.
13. Discourage speculation and over bidding.
14. State equity to be based on value of reserves discovered.
15. Maximize State control over amount of State's revenue.
16. Minimize State control over industry
17. State to maintain right to take royalty oil and gas in kind.
18. Effeciency of administration and operation.
19. Criteria for selection of successful bidders.

OIL AND GAS LEASING PROGRAM

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D. The state should encourage the reinvestment within Alaska of revenues derived from leasing and associated development.

E. One of the benefits of the leasing program should be the improvement and/or establishment of transportation, communication and related facilities

F. The leasing program must be stable and predictable for the benefit of the state and industry.

G. The system should attempt to maximize ultimate oil and gas recovery consistant with sound economic practices and increase State employment.

II. POLITICAL: The leasing program should result in improved political harmony between local communities, state and federal government.

A. The leasing program should be compatible with development plans prepared by community, federal and other management groups such as native corporations and beneficial special interest associations.

B. Industrial resources needed for development in Alaska and distribution of the products should be planned to minimize adverse impact on other states or regions.

III. SOCIAL: Leasing should serve to improve the social well-being of Alaskan citizens.

A. The leasing policy should consider the effect a particular resource development would have upon the desired lifestyle of the majority of Alaskan people as well as upon local and statewide historical and cultural values.

B. A demographic study to minimize or determine cost effectiveness of the negative effects of resource development should be made a part of the leasing study.

C. The leasing program should encourage such social benefits as cultural and recreational activities; and improved medical, communication, transportation facilities, and general life style.

CRITERIA FOR EVALUATION OF LEASING METHODS

1. Encourage active exploration and development.
2. Receive equitable compensation for the State's resources.
3. Maximize production from existing fields, encourage development of marginal fields, and use of enhanced recovery projects, and discouraging premature shut down of marginal production.
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16. Minimize State control over industry
17. State to maintain right to take royalty oil and gas in kind.
18. Effeciency of administration and operation.
19. Criteria for selection of successful bidders.

IV. ENVIRONMENTAL: Leasing and development should be conducted with minimal environmental damage and should occur only where benefits exceeds losses.

A. The leasing program must minimize the adverse environmental effects on subsistence and recreational hunting and fishing, water and air pollution, and on asthetic values.

B. Industry is to be encouraged to use methods and technology to minimize environmental problems and reduce need for scarce or limited resources such as water and gravel.

C. Hydrocarbon development when possible should utilize those renewable resources which are available so as to conserve and delay the exhaustion of non-replaceable resources.

V. RESOURCE MANAGEMENT: Alaska's resources should be developed only if there is a need for the resource and only if the state receives true value in return.

A. Lease planning should consider the timing and maximum efficient use of associated renewable and nonrenewable resources. (e.g. fresh water and gravel on the North Slope, excess hydroelectric power, etc.)

B. The Alaska Leasing System must be consistant with national and State goals in the area of energy conservation and development of alternate energy resources.

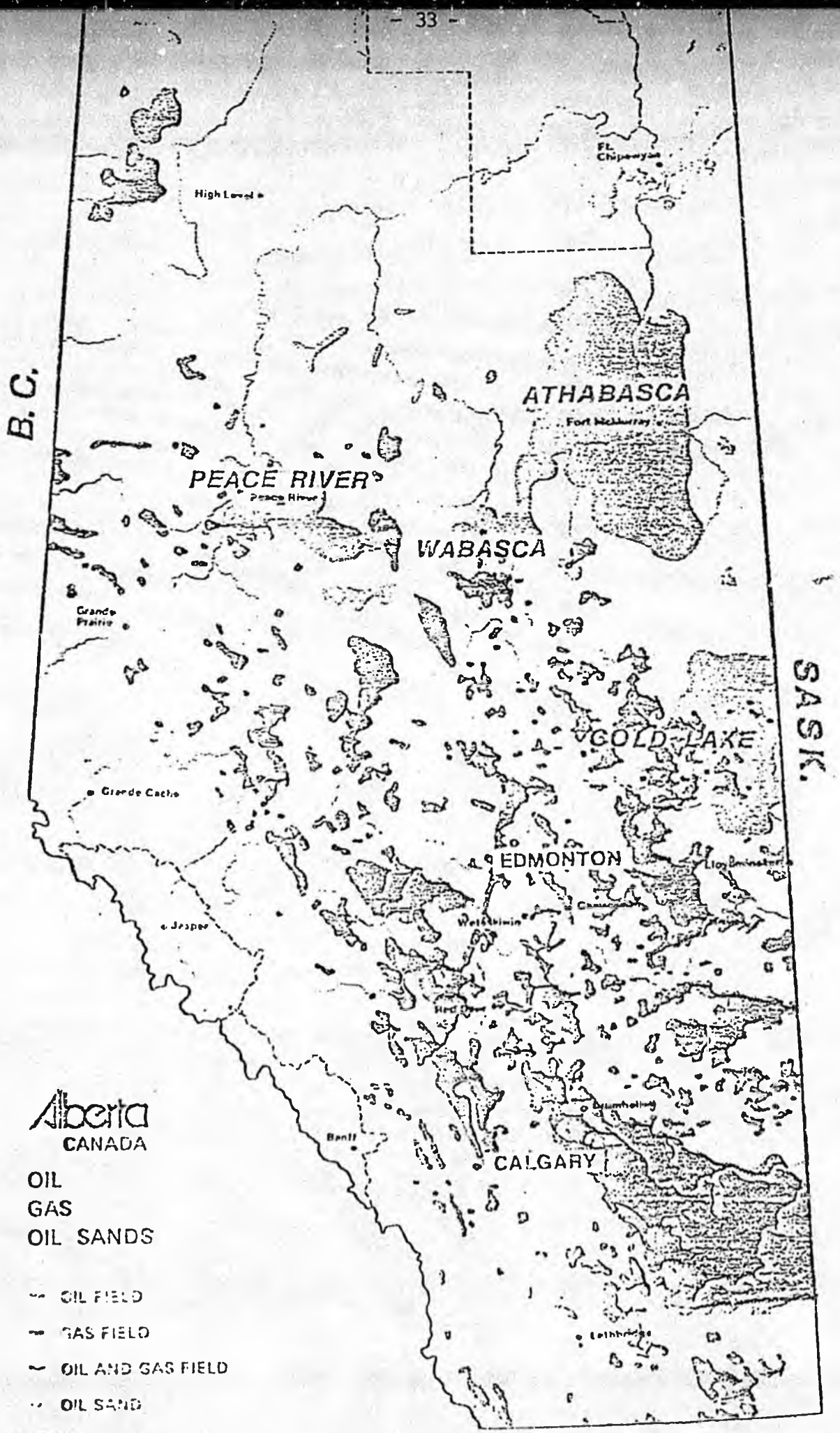

Fig 1

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GOVERNMENT INCENTIVES TO EXPLORATION

FIGURE 1

Alberta's oil and gas resources extend over most of the province and constitute a major source of energy. To expedite the location of such resources, the Government of Alberta on July 28, 1972, approved the Natural Resource Revenue Plan. A main feature of this plan was an increase in annual revenues to the Government of about 70 million dollars commencing in 1973. The Alberta government felt this to be a fair and reasonable additional return to the citizens of Alberta for their ownership of a depleting and non-renewable resource. This dollar figure has increased since the initiation of the program due to the escalating price of crude oil.

To offset this increase in revenues from industry and to stimulate increased exploratory activity in Alberta, the Government implemented the Exploratory Drilling Incentive System. The program has undergone several modifications since it was introduced, but essentially consists of a monetary credit for an exploratory well drilled for oil or gas. The credit may be applied against taxes payable under The Freehold Mineral Taxation Act,

.....2

royalties, rentals, fees and bonuses on petroleum and natural gas Crown minerals rights. A producing incentive exploratory well may also qualify for royalty or mineral taxation exemptions.

The Exploratory Drilling Incentive System is administered jointly by the Alberta Department of Energy and Natural Resources and the Alberta Energy Resources Conservation Board. Determination of qualifying footage upon completion or abandonment of the incentive exploratory well is made by the Board. Determination of the credit to be established is made by the Department.

Due to the close relationship between geophysical and drilling activity, it is found desirable to provide incentives for geophysical exploration. It is considered vital to maintain a high level of geophysical work to ensure the continuity of the search for new oil or gas reserves.

Therefore, the Alberta Government, in taking a second step toward maintaining the necessary level of petroleum activity in the province, implemented on January 1, 1975, the Geophysical Incentive Program.

The credit for a geophysical incentive program is determined from a

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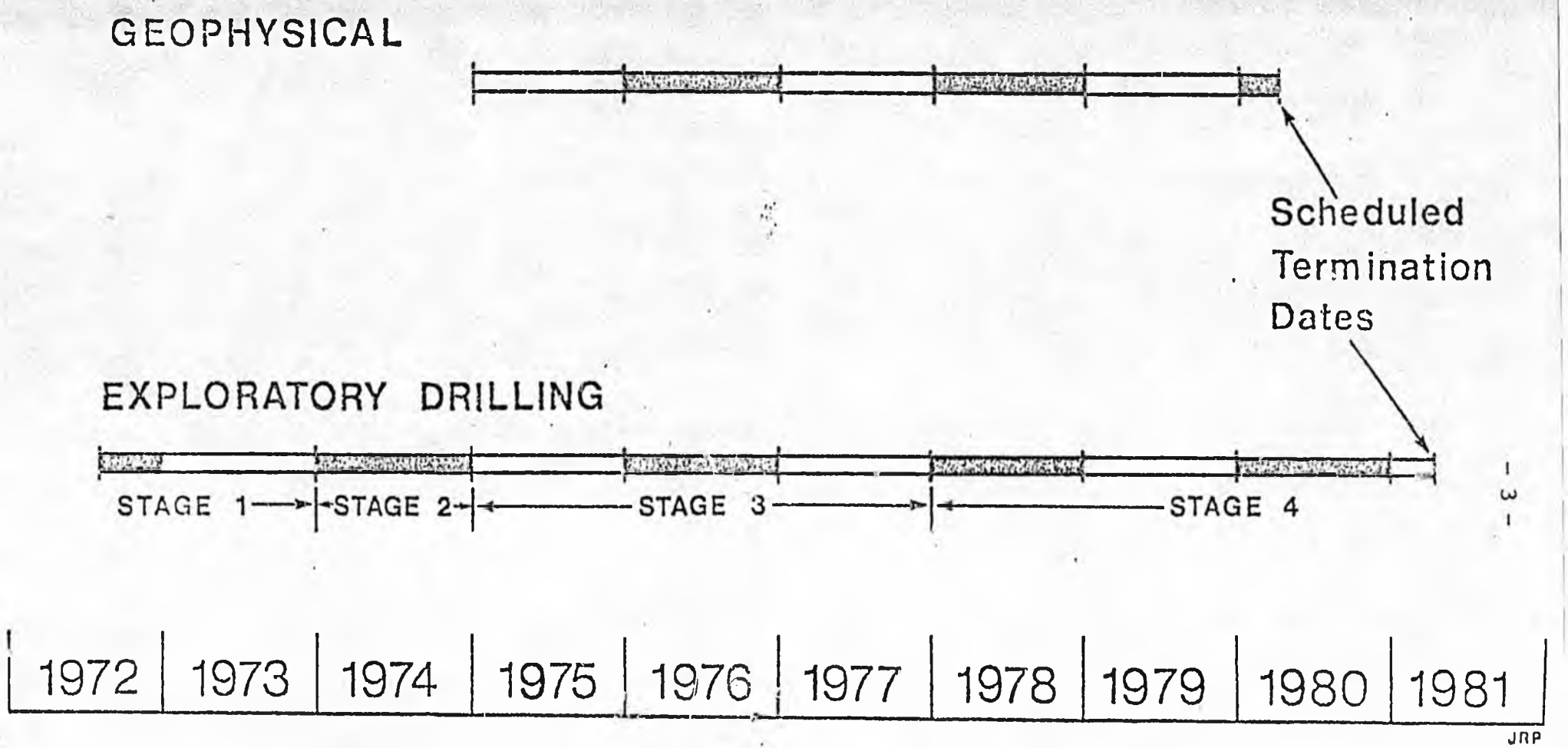

DURATION OF INCENTIVE PROGRAMS

A60 546764

Source: ERCB

FIGURE 2

formula based on the number of miles of subsurface coverage recorded and the geographical area in which the survey was conducted. The incentive credits maybe applied against revenues owing to the Crown, for bonuses on petroleum and natural gas, Crown mineral rights, fees, rentals, royalties and freehold mineral taxes.

FIGURE 2

The Exploratory Drilling Incentive System was implemented on August 1, 1972, and was scheduled to be in existence for a period of five years terminating on December 31, 1977.

After an extensive government task force study, an amendment was introduced extending the Exploratory Drilling Incentive System to March 31, 1981.

At the time the Drilling Incentive program was implemented, it was estimated that only 50% of ultimate oil and gas reserves in Alberta had been discovered. Exploratory activity had declined and many companies with substantial land holdings were apparently shifting their exploratory activity to the frontier areas. For this reason, the Government tried to "tie-in" the Natural Resource Revenue Plan with the Exploratory Drilling Incentive System to benefit those

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operators who undertook exploration in Alberta.

Between 1964 and 1969, the number of new field wildcat wells drilled in Alberta maintained fairly high levels - about 500 wells per year. In 1971, this number dropped to about 300 wells per year.

A further indication of both the decline and shift in exploratory activity was indicated by seismic crew activity in Canada. Seismic activity dropped from a peak of 972 crew months in 1967 to a 1970 low of 724 crew months.

The shift of activity away from Alberta during 1970 and 1971 was of greater significance. From 1961 to 1967, close to 70% of Canada's geophysical activity occurred in Alberta. In 1968 and 1969, Alberta accounted for just over 60% of the total. In 1970, more Canadian seismic activity occurred outside Alberta than in Alberta.

There was a substantial drop in bonuses from the sale of Crown mineral rights. During the period 1965 to 1969, these revenues averaged $100 million per year. In 1970 and 1971, these revenues dropped to about $25 million per year.

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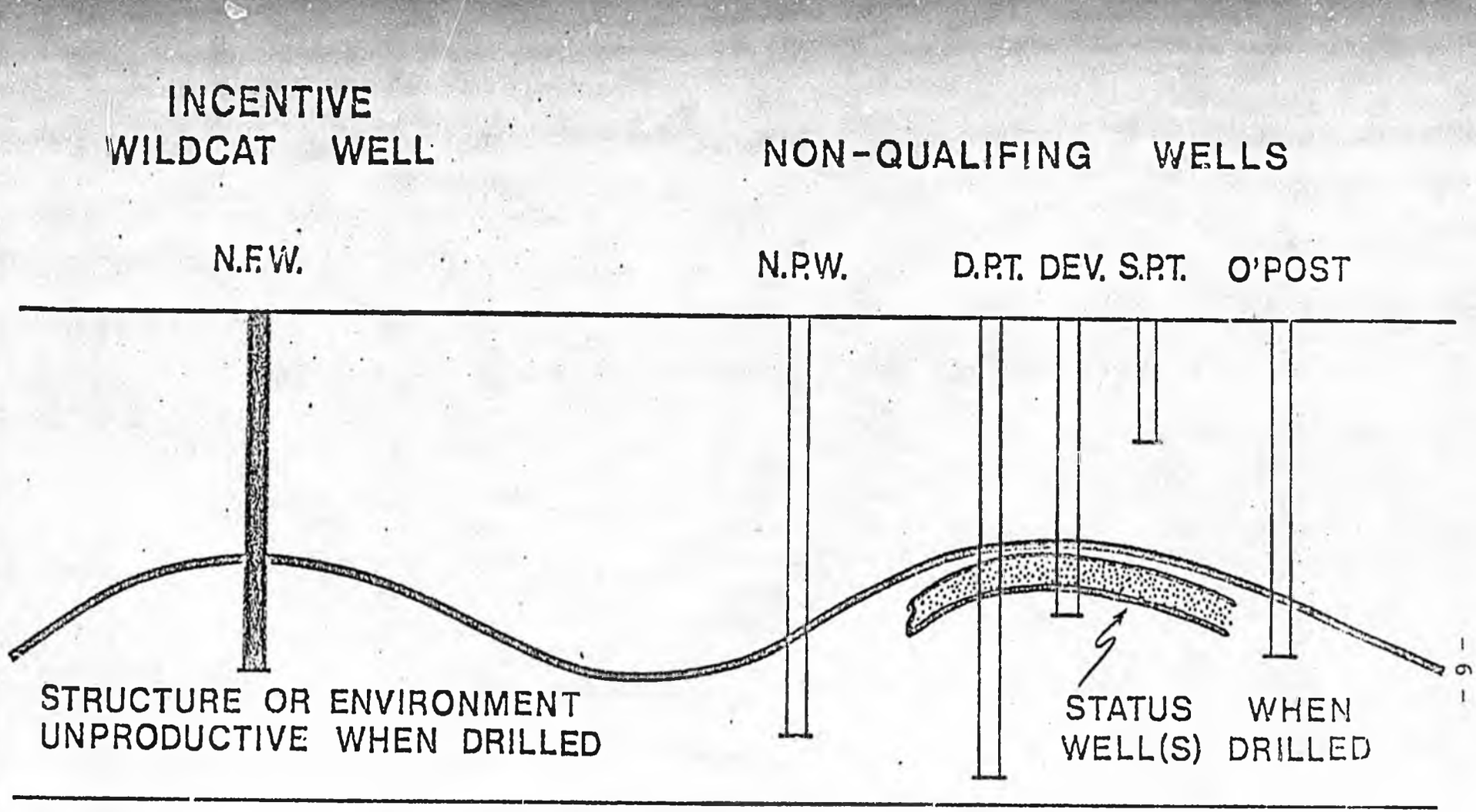

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J.R. Pow

INCENTIVE WILDCAT WELL

AUGUST 1, 1972 TO DECEMBER 31, 1973

FIGURE 3

AGO 546197

The Exploratory Drilling Incentive System, within the Natural Resource Revenue Plan, was designed to stimulate the discovery of crude oil reserves and shift exploratory activity back to the province by providing substantial rewards to the wildcat entrepreneur.

The objective of the Exploratory Drilling Incentive System was to encourage high risk exploratory drilling and increase the drilling activity in remote locations at a time when this type of drilling was declining in the province. The tendency in Alberta was to explore in known and reasonably accessible regions rather than stepping out in the search for new fields.

The Exploratory Drilling Incentive System has had several amendments since its original inception.

FIGURE 3

From August 1, 1972 to December 31, 1973, the program related to wells that were classified by the Energy Resources Conservation Board as "New Field Wildcats" under the "Lahee" classification system. A formula was derived which enabled the establishment of a credit equalling approximately 30% of the cost

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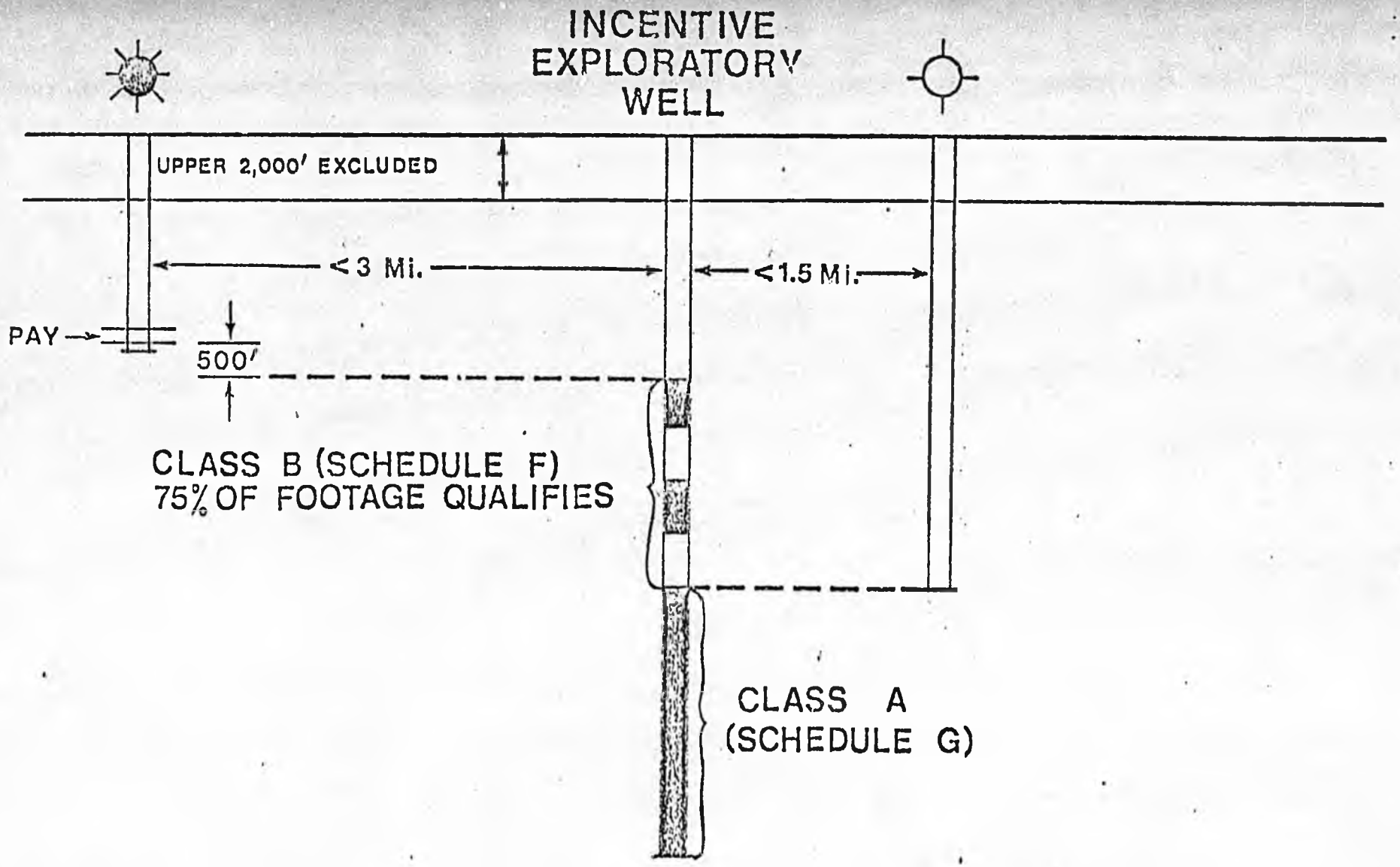

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AGO 546769

JRP

TWO CLASSES OF QUALIFYING FOOTAGE

(EXCLUDING UPPER 2,000 FEET)

FIGURE 4

Energy Resources Conservation Board

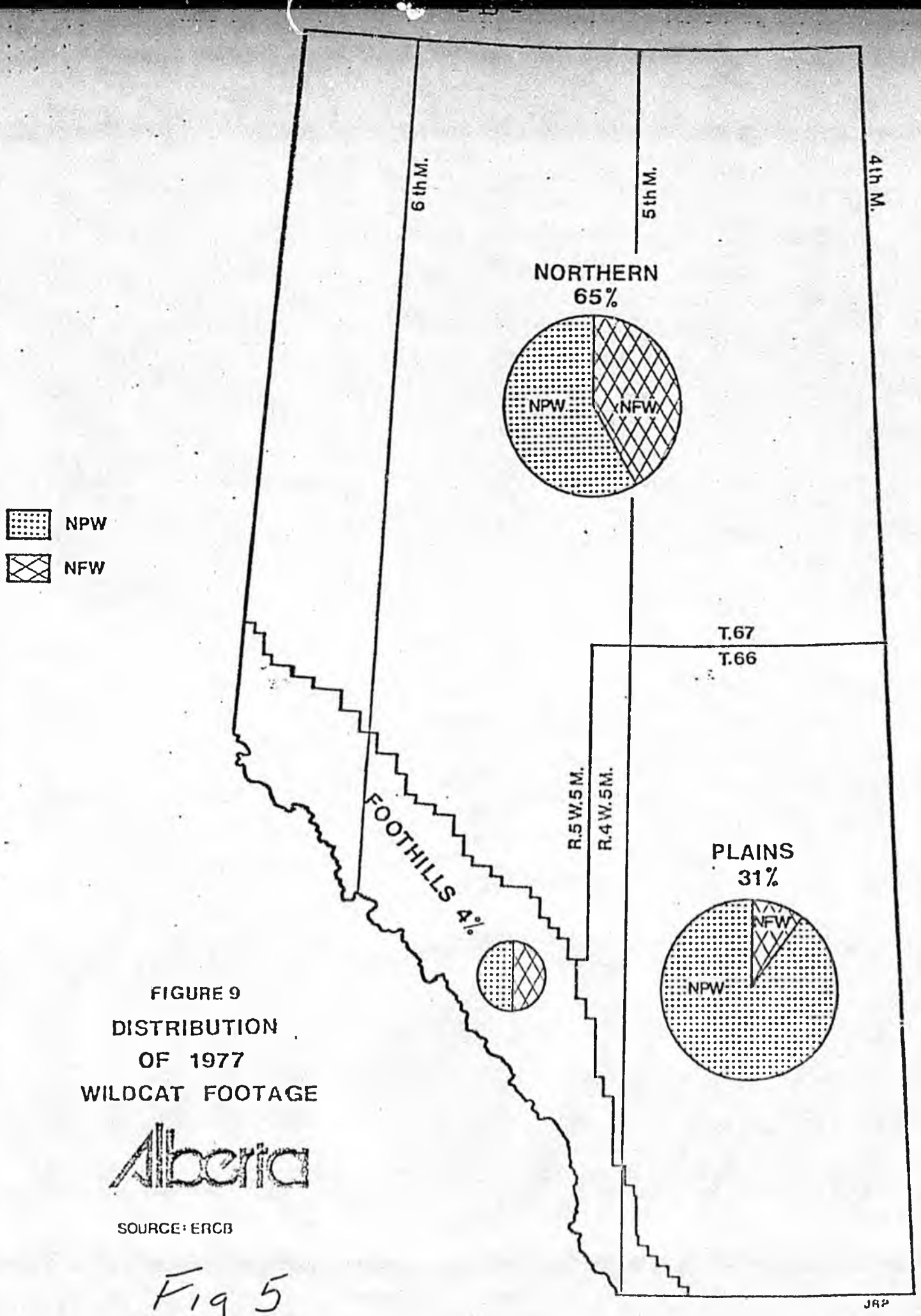

FIGURE 9

DISTRIBUTION
OF 1977
WILDCAT FOOTAGE

Alberta

SOURCE: ERCB

Fig 5

AGO 546770

of the well. The total footage of a new field wildcat qualified for incentive credit. A five-year crude oil royalty "holiday" was granted.

During this 17 month period, $16 million in drilling credits were earned by industry.

FIGURE 4

From January 1, 1974 to December 31, 1974 the program was expanded to include, along with the new field wildcats, about one-quarter of the more remote new pool wildcats and deeper pool footage. Figure 4 shows the principles that were adopted on January 1, 1974. The footage shown in white is known as Class "A" footage and it earned as credits, approximately 40% of the total recognized cost of the well. The Class "B" footage is applicable where a dry hole is within one and one half miles of the well. Class "B" footage earned about 30% support.

FIGURE 5

During this period, drilling costs were increased and a cost distinction was made for wells located in the Foothills, Northern and Plains regions.

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These areas, as modified on February 26, 1975, are shown on Figure 5. Added features included a two-year natural gas royalty "holiday" and authorization for credits to be used to defray bonus payments tendered for Crown oil and gas mineral rights. The credits could continue to be used to offset payments due for royalty, rental or freehold mineral tax.

On January 15, 1974, the Alberta Petroleum Marketing Commission was created. Prior to its creation incentive credits established could be used by the holder to satisfy oil Crown royalty payments. This was discontinued on January 15, 1974 by the Commission.

During this 12 month period, the credits amounted to roughly $20 million and involved almost 600 wells.

From January 1, 1975 to December 31, 1977, the Government increased the benefits of the Exploratory Drilling Incentive System by expanding recognized well costs and by increasing the credit support for Class "A" and "B" footage to approximately 50% and 37½% respectively.

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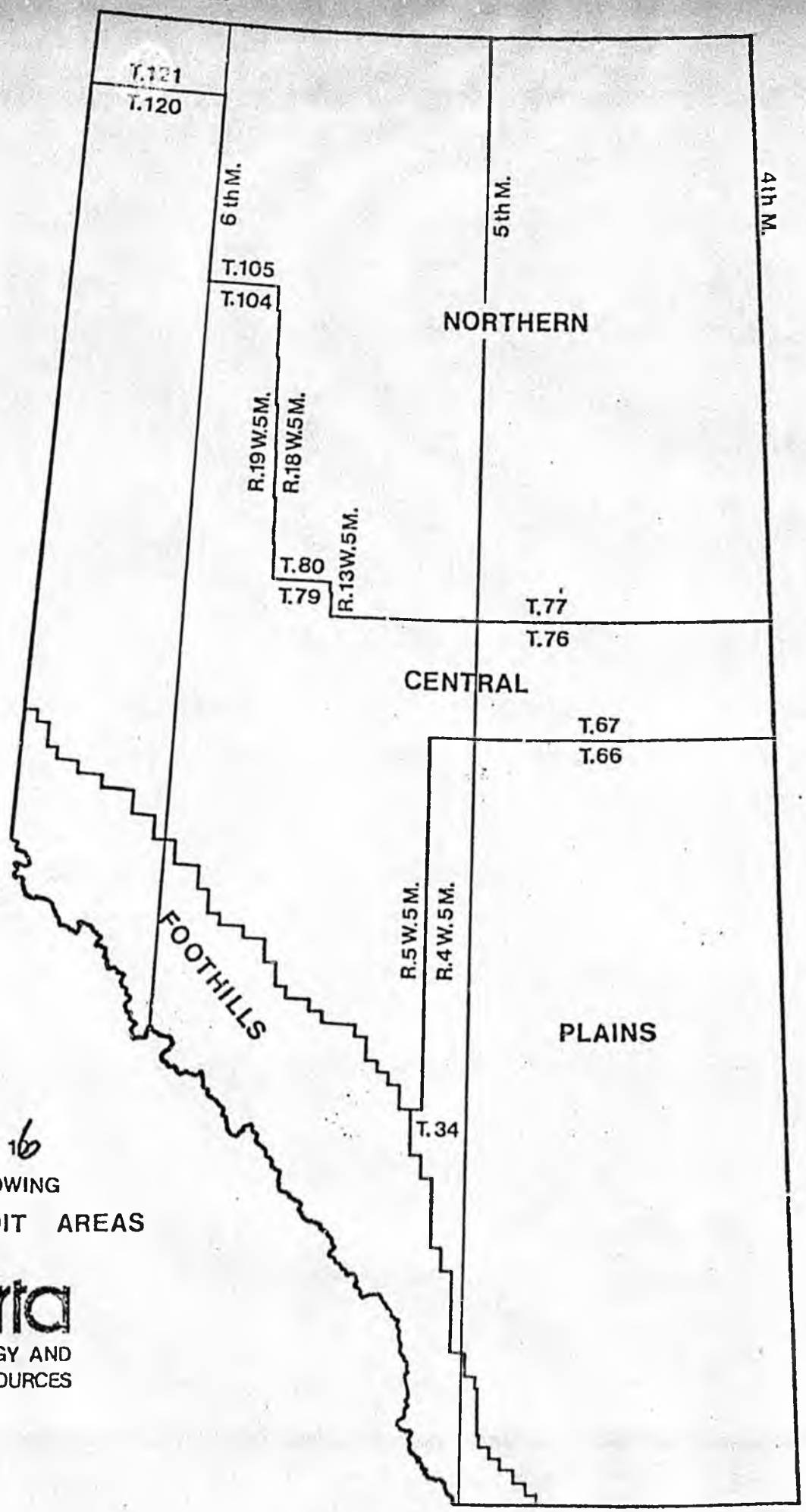


FIGURE 16

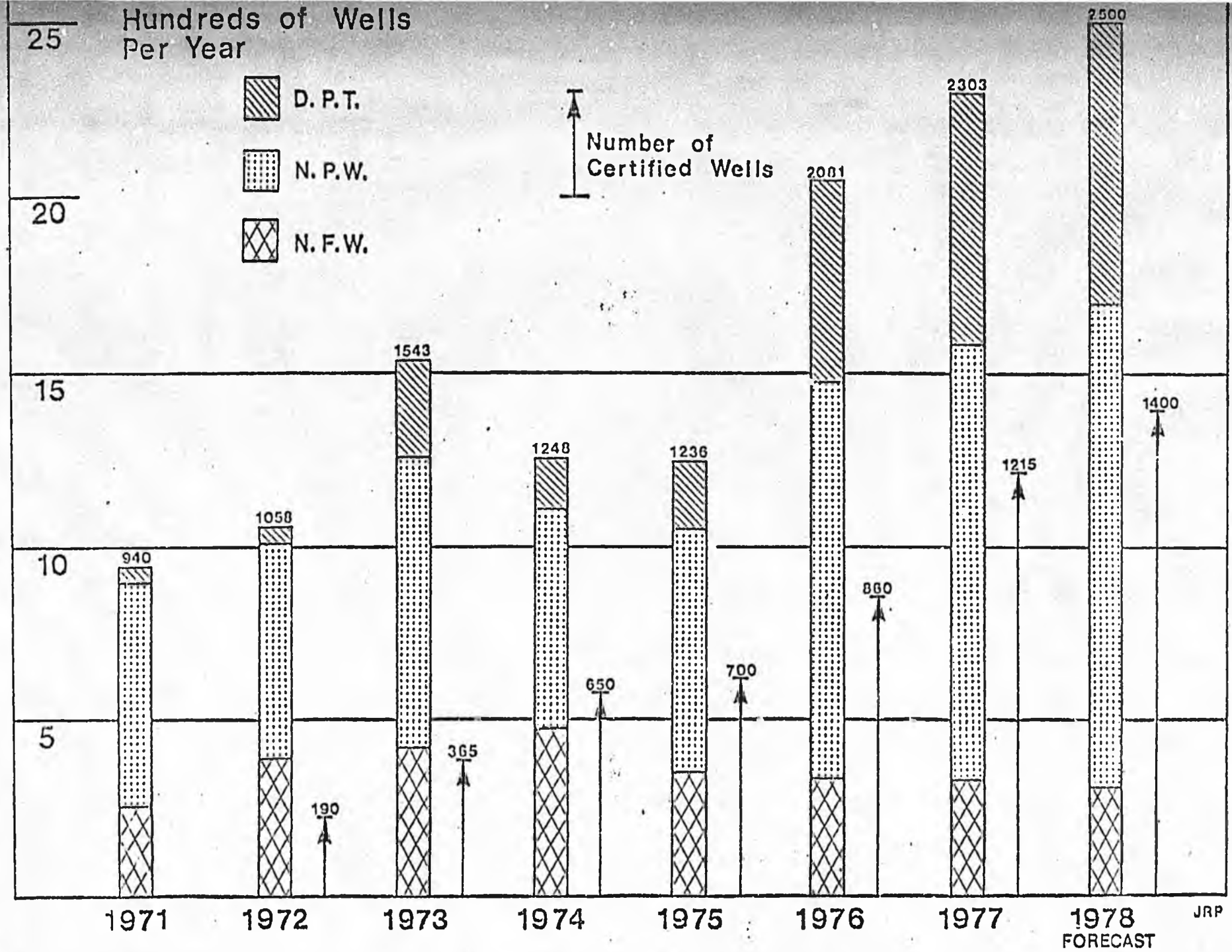
MAP SHOWING

DRILLING CREDIT AREAS

Alberta

ENERGY AND
NATURAL RESOURCES

AGO 546773



EXPLORATORY AND CERTIFIED WELLS, ALBERTA

Source: ERCB

FIGURE 6

AGD 546774

FIGURE 6

Commencing January 1, 1978 the drilling credit areas have been redefined. The Plains and Foothills Areas are unchanged, but the former Northern Area was divided into a Central and Northern Area. The boundary between the two new areas was defined on the bais on well costs, topographic and access considerations. The amendments also include the upper 2,000 feet of sediments from receiving any incentive credit and increase the credits for qualifying wells deeper than 3,500 feet.

For wells greater than 5,000 feet in depth, the incentive is increased by 25% to 45% depending on the location of the well.

FIGURE 7

There has been a considerable increase in the number of exploratory wells drilled in Alberta since inception of the incentive program in 1972. There were 1,058 exploratory wells drilled in 1972 compared with 2,303 drilled in 1977. The number of wells qualifying for incentive footage in 1972 was 190 compared to 1,215 in 1977. An increase is expected in 1978. The number of new pool

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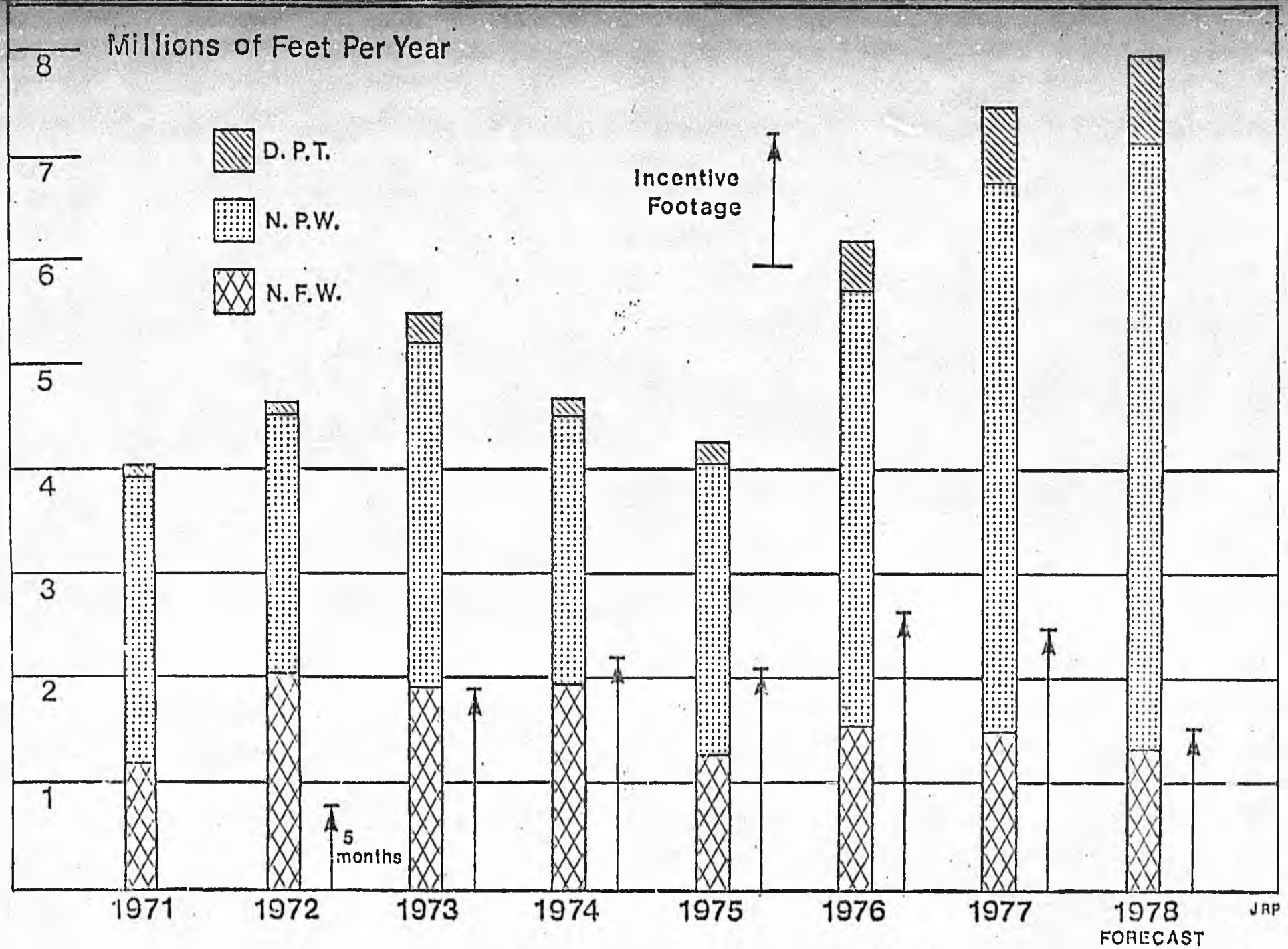
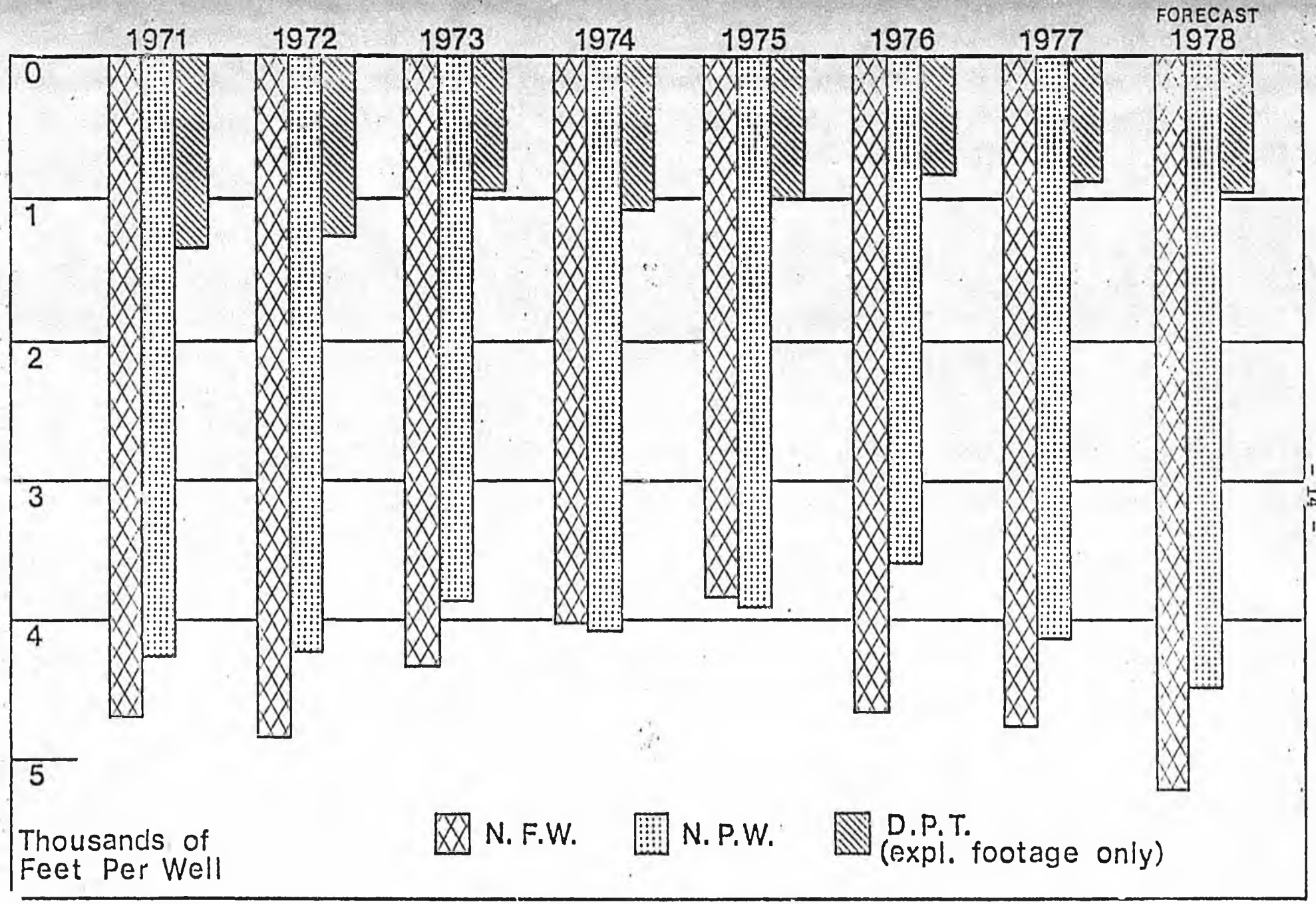


EXPLORATORY AND INCENTIVE FOOTAGE

Source: E&NR, ERCB

FIGURE 8

AGD 546776



JRP

AVERAGE WELL DEPTH

Source: ERCB

FIGURE 9

AGO 546777

wildcats and deeper pool tests have increased since the program began, but the number of new field wildcats have declined.

FIGURE 8

The amount of exploratory footage drilled in 1977 exceeded all previous years. Footage for new field wildcats remained similar to 1976 at 1½ million feet, new pool wildcats increased to 5¼ million from 4¼ million feet in 1976, and deeper pool tests increased to 3/4 million feet from 1/2 million feet. The amount of footage certified under the program has increased since inception, equally divided between New Pool Wildcats and New Field Wildcats. In 1977 a total of 2½ million feet were certified to receive incentive footage. This figure shows an increase of 32% from the first full year the program was in operation.

Normally, 100% of the new field wildcat footage, 20% of the new pool wildcat footage, and 80% of the deeper pool test footage qualified for incentive benefits.

FIGURE 9

The average well depths per year has shown a gradual decrease from the period 1971 to 1976, but a slight upswing occurred in 1977. New field wildcats

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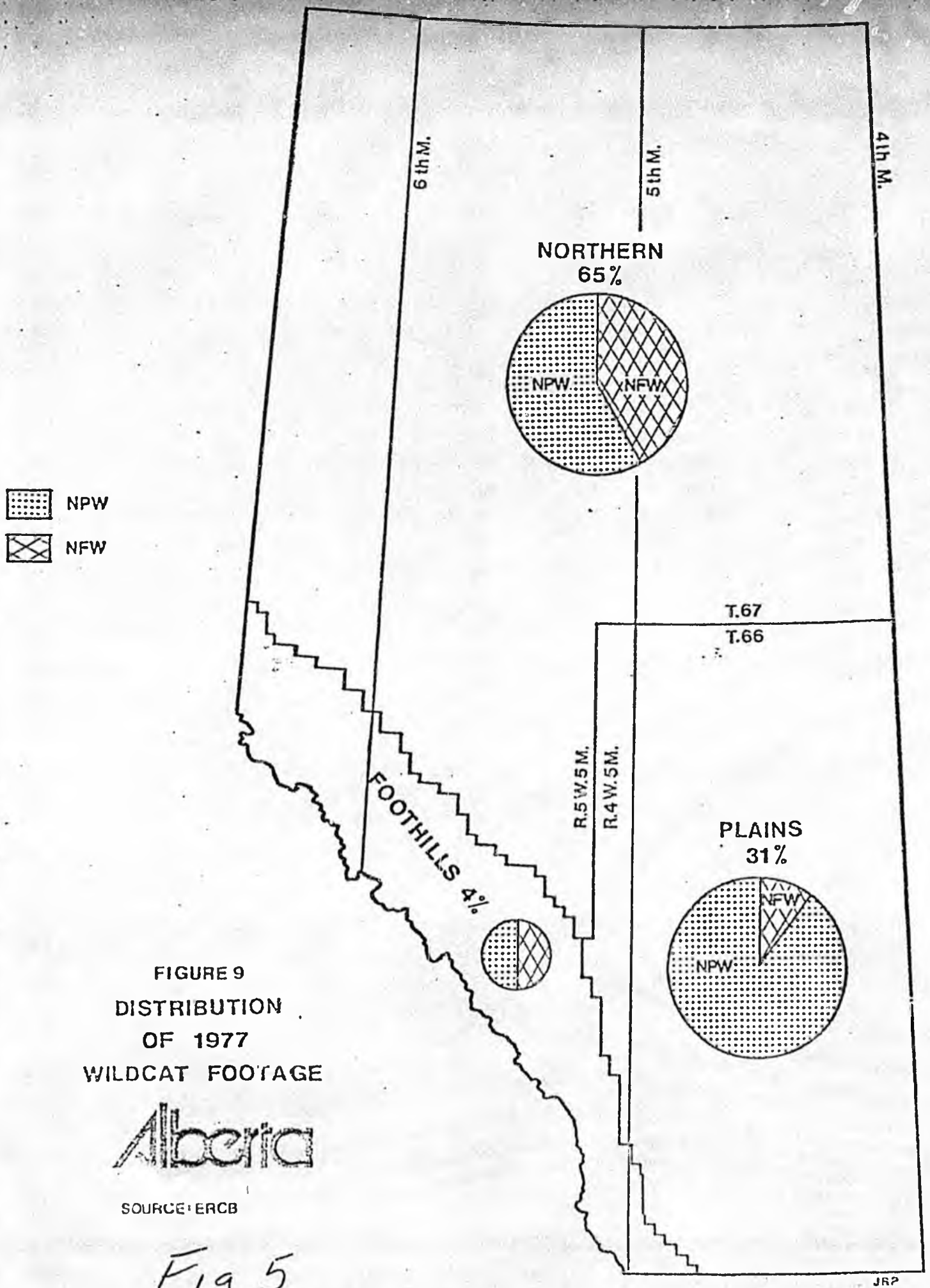

FIGURE 9

DISTRIBUTION OF 1977 WILDCAT FOOTAGE

Alberta

SOURCE: ERCB

Fig 5

AGO 546779

averaged 4,800 feet in 1977, new pool wildcats averaged 4,100 feet, and deeper pool tests averaged 1,000 feet.

FIGURE 5

The majority of the exploratory footage drilled in 1977 was in the Northern Areas. The total footage drilled here was 65% of the total exploratory footage. Of this 65%, new pool wildcats constituted 65% and new field wildcats 36%.

Exploratory drilling in the Plains Area accounted for 31% of the total, with new pool wildcats forming 90% of the figure, and new field wildcats about 10%. Drilling footage in the Foothills Area constituted 4% of the total. Of this 4%, half were classed as new pool wildcats and half as new field wildcats. Deeper pool tests formed less than 10% of the total exploratory footage for the province in 1977.

These figures indicate a shift of emphasis since 1976 from the Plains Area to the more remote Northern Area. In both areas, the total footage of new field wildcats has taken a considerable drop from the 1976 figures. New field wildcat footage in the Foothills Area has increased.

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Geophysical Incentive Program

On January 1, 1975, the Alberta Government implemented the Geophysical Incentive Program to stimulate the level of seismic exploratory activty in Alberta. The program was scheduled to terminate on March 31, 1978. This program has been extended to March 31, 1980 through a recent amendment to the Regulations. The Government recognizes the positive effects improved geophysical techniques have on drilling success rates and feels geophysical work must be encouraged to search for the less obvious hydrocarbon accumulations.

The Geophysical Incentive Program is administered by the Department of Energy and Natural Resources.

Geophysical activities, primarily in the form of reflection surveys, provide the initial technical basis on which many exploration "plays" for new oil and gas deposits are planned. Such surveys have performed a key role in finding many of the prolific reef accumulations of hydrocarbons in the Alberta plains. Geophysical data is essential to interpreting the complex rock structures of the foothills which are expected to contain major new deposits of hydrocarbons.

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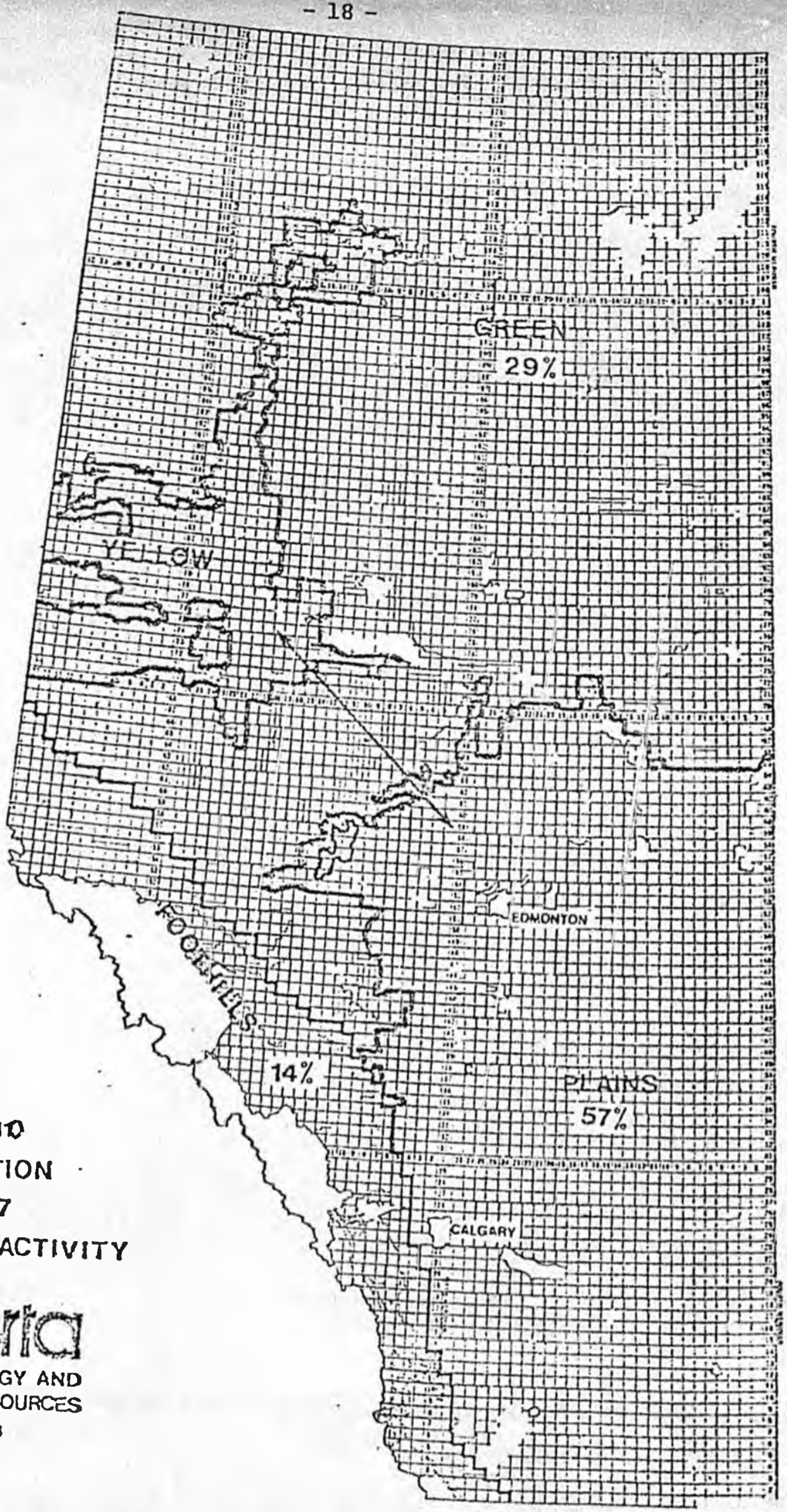

FIGURE 10
DISTRIBUTION
OF 1977
GEOPHYSICAL ACTIVITY

Alberta
ENERGY AND
NATURAL RESOURCES
JUNE, 1978

AGO 546782

The main features of the Geophysical Incentive Program are:

(a) The incentive will apply to seismic surveys certified after January 1, 1975.

(b) Incentive credits are established in the name of the licensee however, these credits may be allocated to partners sharing in the cost of the seismic program.

FIGURE 10

The incentive credits are determined from a formula based on the number of miles of subsurface coverage and the area in which the survey is conducted. Surveys carried out in difficult terrain in the Foothills and Green Areas receive a larger incentive credit than surveys carried out in the Plains region.

The determination of credit for a certified geophysical incentive program was calculated on the number of miles of minimum (400%) subsurface coverage by the following equation:

Credit (dollars) = 500 K M

Where K is the incentive factor for different geographic areas in Alberta where the program was conduted M is the number of miles of minimum subsurface

.....13

coverage.

The incentive credits may be applied in the same manner as the exploratory drilling incentive credits. A licensee may apply for the monetary equivalent of the credit where he is not the owner of a mineral agreement or a freehold mineral right.

Any geophysical information and data obtained pursuant to a geophysical incentive program must be made available by the licensee to any person for a period of not less than five years

(a) three years after the date the program was certified.

(b) at a cost to that person of 60% of the credit determined for each mile of minimum subsurface coverage.

Amendments to the Geophysical Incentive Program effective April 1, 1978, reducing credit by 50% will result in a phase down of the program.

Credit (dollars) = 250 K M

The minimum subsurface requirements have been increased requiring 600% in the white and yellow area and 1200% in Foothills and Northern Areas.

AGO 546784

The total number of miles of subsurface coverage in 1977 that qualified for incentive credit was 28,000 miles. This figure reflects an increase of

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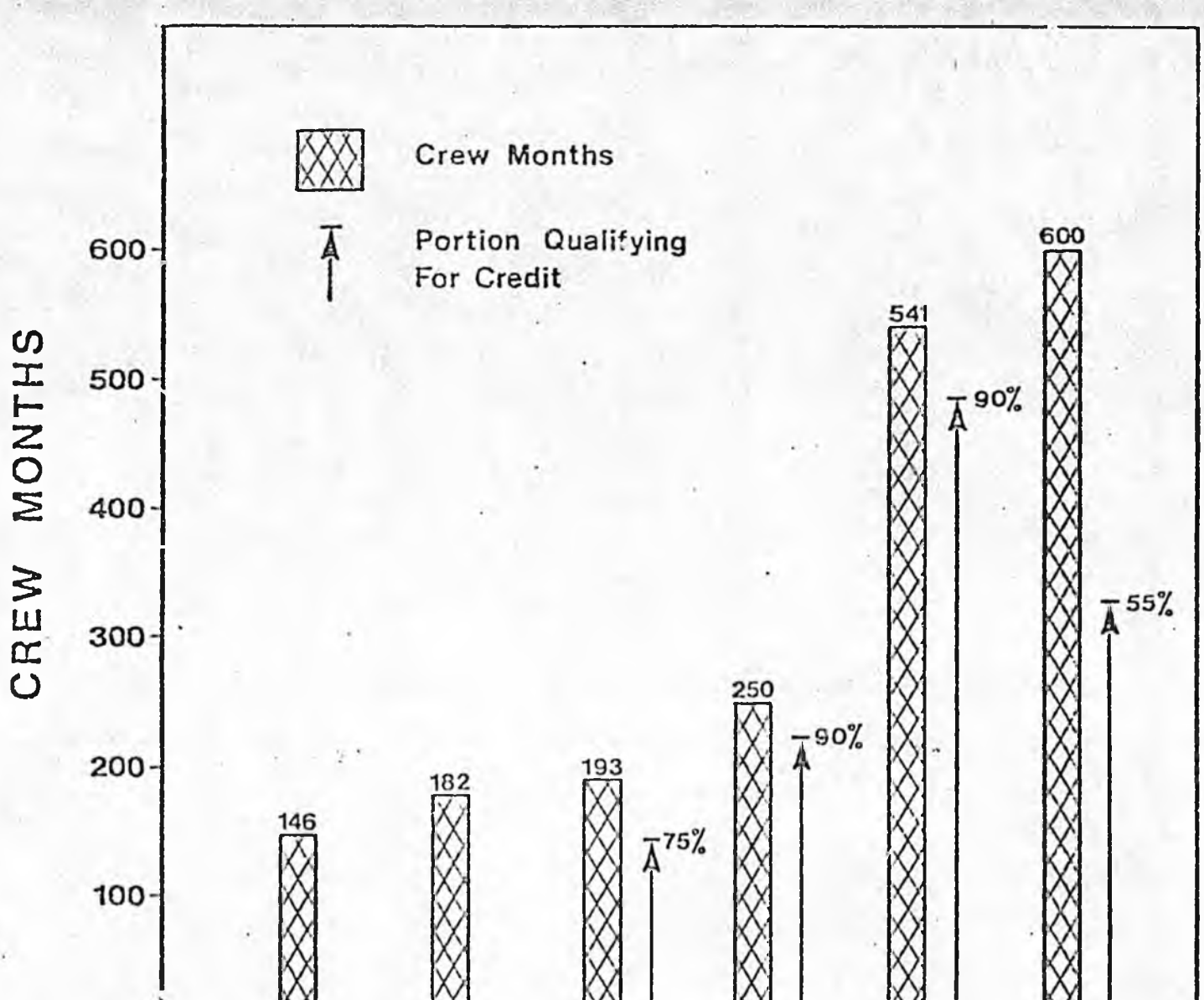

SEISMIC ACTIVITY & PORTION QUALIFYING FOR INCENTIVE CREDIT

FIGURE 12

AGO 546785

82% over the 1976 figure of 15,400 miles. Of this total, 16,105 miles was in the Yellow-Plains Area, 7,994 miles was in the Green Area and 3,921 miles was in the Foothills Area. These figures show an increase in activity in the Yellow-Plains Area, a decrease in the Foothills Area and unchanged activity in the Green Area.

FIGURE 12

This figure shows the crew activity from 1973 to 1978. In 1977 there were 541 crew months of activity, compared with 193 crew months in 1975 the first year the incentive program was in operation. The forecast is that the number of crew months will continue to increase.

In 1976 and 1977, 90% of the programs conducted in the province were certified under the Geophysical Incentive Program Regulations compared with 75% in 1975. The amendments effective April 1, 1978 are expected to reduce the number of programs submitted to the Department for credit. It is estimated that 55% of the programs shot in Alberta will receive incentive credits.

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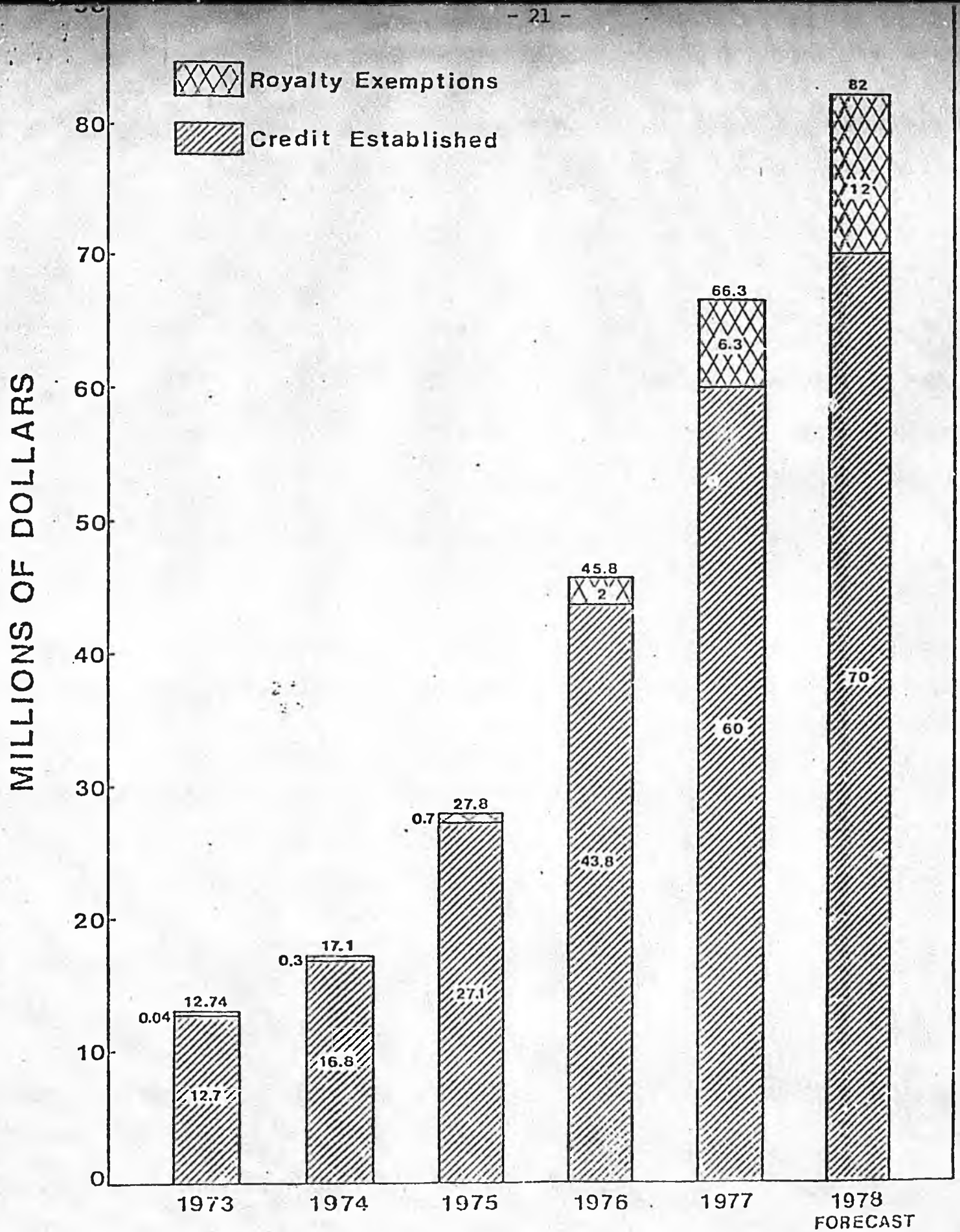


INCENTIVE COSTS ASSOCIATED WITH DRILLING ACTIVITY

AGO 546787

FIGURE 13

Energy & Natural Resources, June 1978

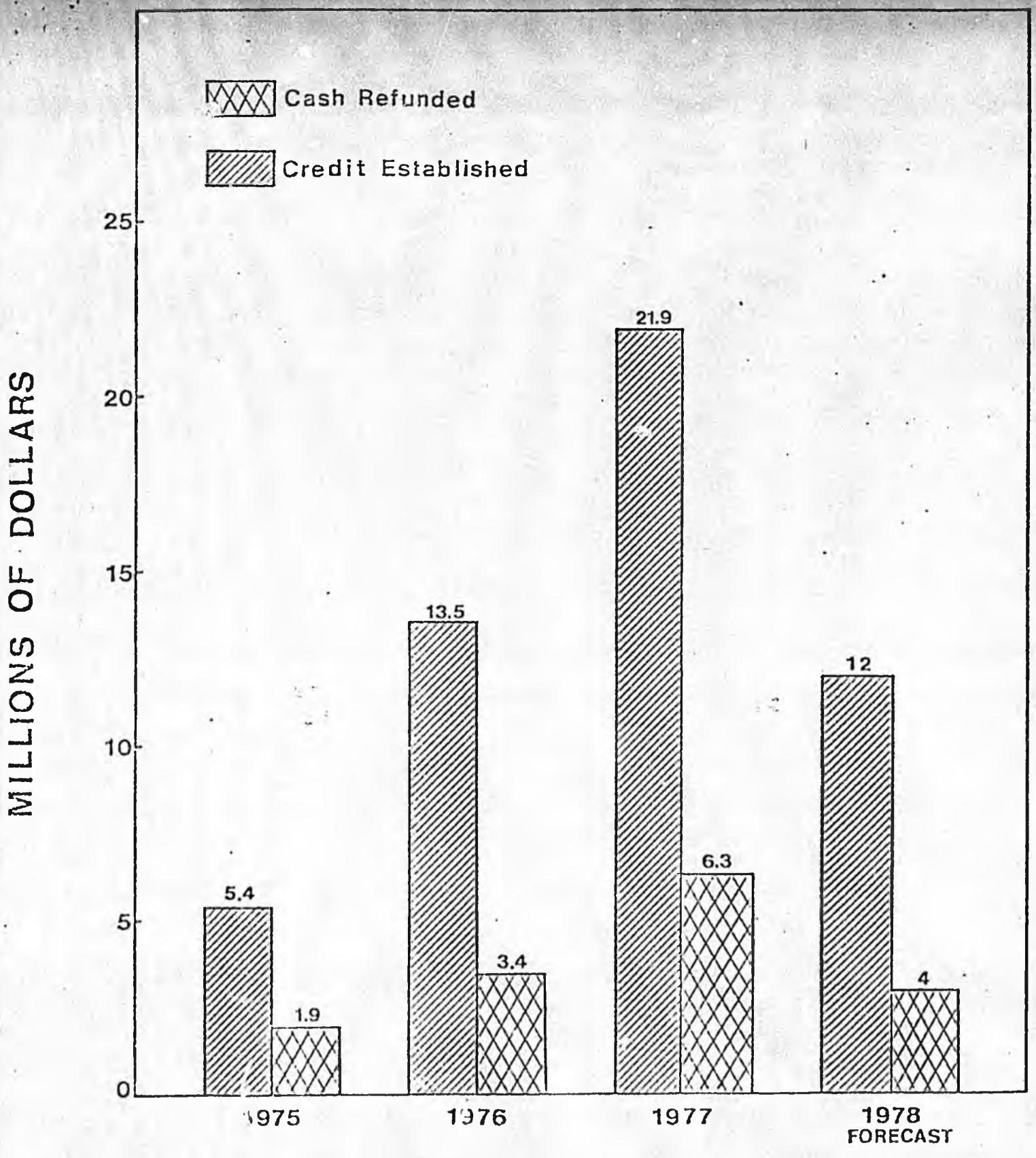
FIGURE 13

The Exploratory Drilling Incentive System and the Geophysical Incentive Program were initially devised to reduce the burden placed on industry when the Natural Resource Revenue Plan was initiated. The incentive programs were meant to reduce the increased royalties owed on Crown oil and gas mineral rights by financing a portion of the exploration costs. These incentive costs have escalated considerably in the years since the inception of the programs from a few million dollars to tens of millions of dollars per year.

The total costs to the Alberta Government for credit, royalty exemptions, cash refunds and administration of the programs amounted to over $90 million in 1977.

The cost for the Exploratory Drilling Incentive System in 1977 was 66.3 million dollars. This figure shows an increase over the 1973 costs of 12.7 million dollars. The credit established in 1978 is forecast to be $82 million. During the same period royalty exemptions have increased from $0.04 million to $6.3 million. It is forecast that royalty exemptions will reach $12 million in 1978.

.....16

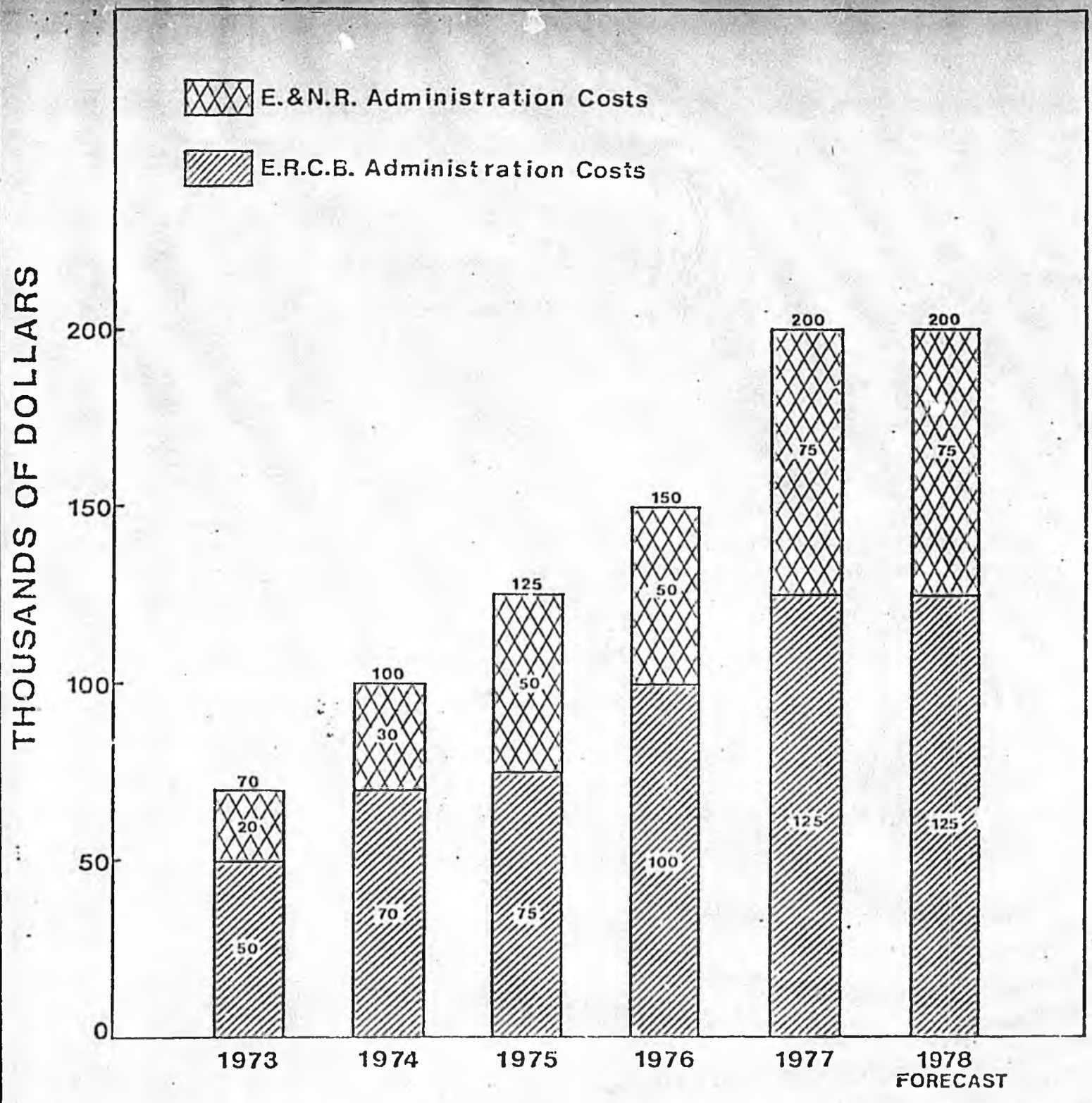


INCENTIVE COST ASSOCIATED WITH SEISMIC ACTIVITY AND CASH REFUNDED

AGO 546789

FIGURE 14

Energy & Natural Resources, June 1978

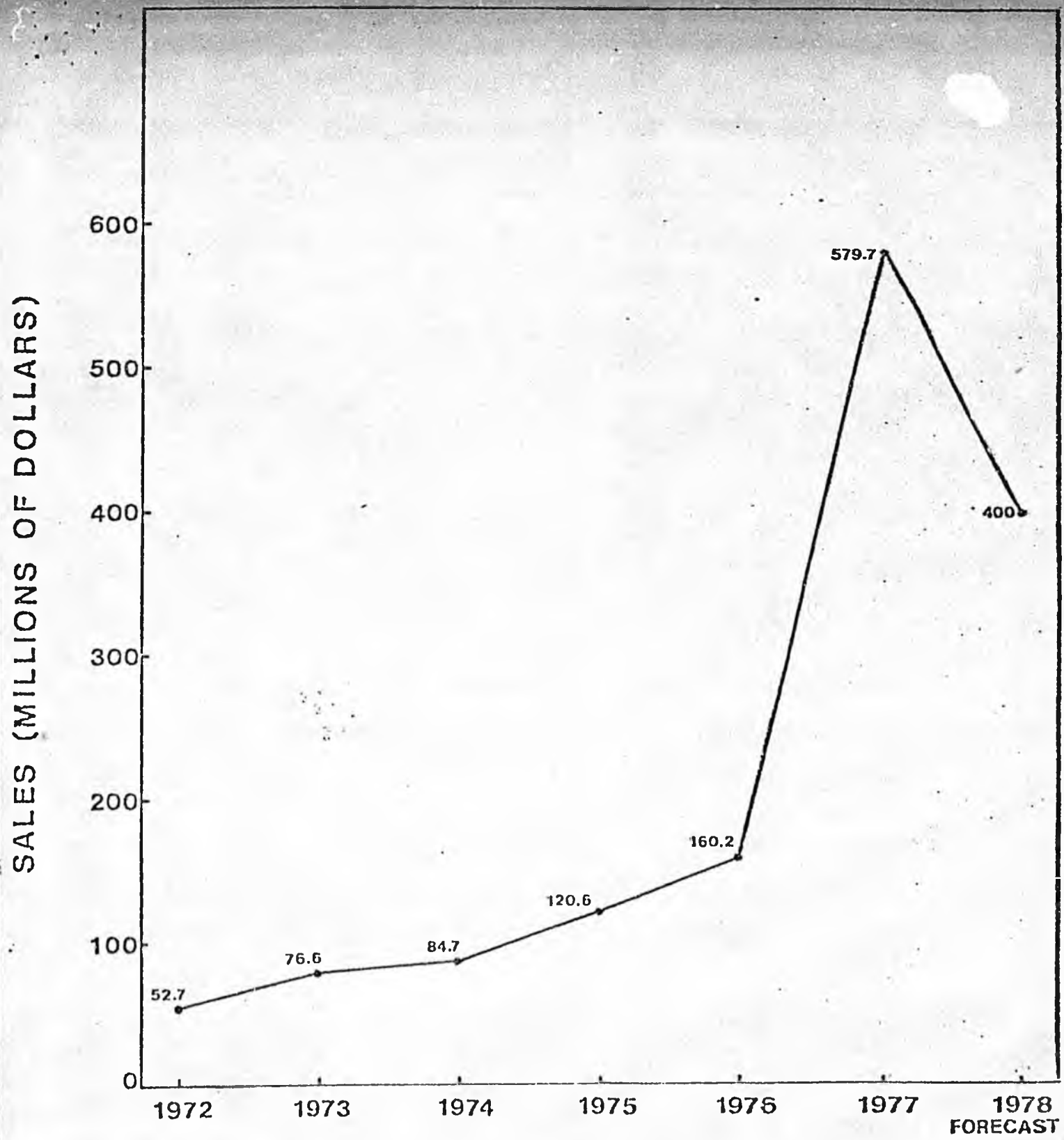


GOVERNMENT ADMINISTRATION COSTS ASSOCIATED WITH THE DRILLING AND GEOPHYSICAL INCENTIVE PROGRAMS

AGO 546790

FIGURE 15

Energy & Natural Resources, June 1976



SALES OF CROWN OIL AND GAS MINERAL RIGHTS

FIGURE 16

Energy & Natural Resources, June 1978

AGO 546791

FIGURE 14

$21.9 million was established as credit in 1977 for the Geophysical Incentive Program. This is an increase of more than 300% over the credit established in the first year the of the program. It is estimated that $12 million will be established as credit in 1978.

The cash refunded has increased from $1.9 million in 1975 to $6.3 million in 1977. We believed that in 1978 cash refunds will total $4 million.

FIGURE 15

In 1973, total administration costs were $70,000 roughly $50,000 for the ERCB and $20,000 for the Department. In 1977, these figures had risen to about $200,000 - $125,000 for the ERCB and $75,000 for the Department. It is expected that these figures will remain constant in 1978.

FIGURE 16

The revenue generated through sales of Crown oil and gas mineral rights has tripled from 1972 to 1976. During 1977 sales increased from $160 million to $579.7 million. The forecast for 1978 is 400 million.

.....17

We recognize three factors which may exist when exploration is supported by an incentive program.

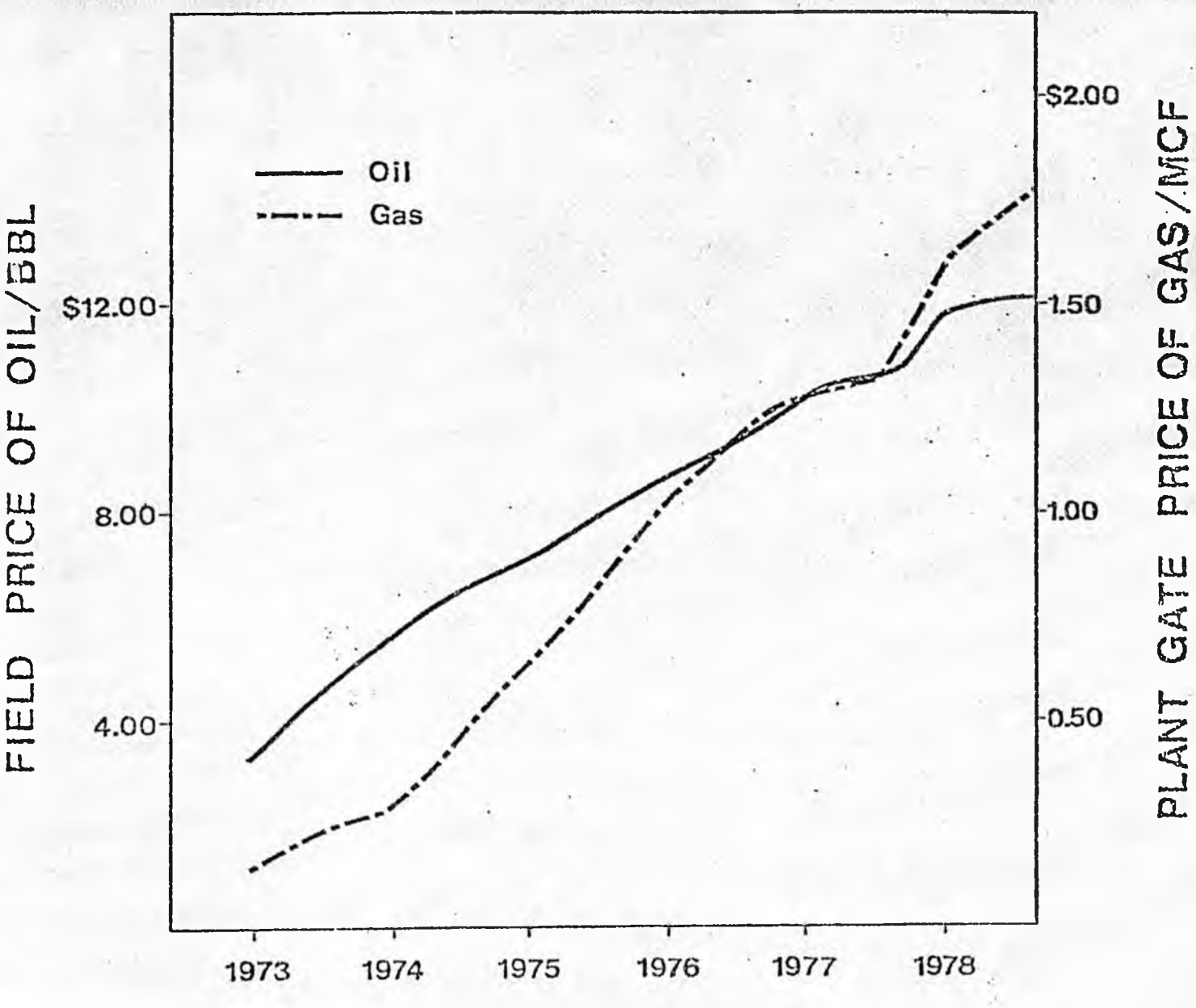
(a) The activity may have occurred even if it had not been supported by an incentive program.

(b) The exploration activity was advanced to take advantage of the programs before their scheduled termination dates.

(c) The activity may not be performed in the forseeable future without incentive support.

The second and third considerations appear in the present situation to be applicable. The programs have been directly responsible for the discovery of large additional reserves and have encouraged high risk deep drilling in the foothills region.

Although the definite effects of the programs on exploration activity cannot be quantitatively assessed, the general trend has shown a considerable increase in exploration activity since inception of the programs.



PRICE OF CRUDE OIL & NATURAL GAS

1973 - 1978

FIGURE 17

Energy & Natural Resources, June 1978

AGO 546794

STATE'S RIGHT TO PURCHASE OIL & GAS IN HB 854

The State has the right in HB 854(v) to purchase not more than 16 2/3% of the oil and up to 100% of the gas at the regulated price or fair market value at the point of sale. The right to purchase is needed to protect the "in kind" taking of its royalty by Alaska, a sale of said royalty, and a subsequent reduction of the royalty in the later stages of production (d).

New Mexico, 1973, enacted a law which gives it the right to reserve an option to purchase at any time at the prevailing market price any or all minerals, including oil and gas, produced from State land. Thus, New Mexico may purchase 100% of the oil and gas found on State land.

Whereas the New Mexico Commissioner is authorized to waive the reservation option with respect to any specific mineral, he may not do so for oil or gas.

The Act, Chapter 26 of the Session Laws of 1973, has never been exercised by New Mexico; thus no opportunity has been given to test its constitutionality.

If Alaska were to reserve an option to purchase up to the amount of the royalty, fixed or bid, an equivalent net profit share would have to be determined.

TESTIMONY ON H.B. 854

Mr. Chairman, members of the committee, my name is John Carson, and I appreciate the opportunity to comment on House Bill 854.

I've been a petroleum geologist for 22 years, and I'm presently Division Geologist in Alaska for Chevron U.S.A., the principal domestic oil and gas subsidiary of the Standard Oil Company of California. I've lived and worked in this state, and since 1965, I've been actively involved in all state lease sales and the two OCS sales in the Gulf of Alaska and the Lower Cook Inlet.

Chevron is aware of the amount of preliminary work done by the state administration and the Department of Natural Resources in researching and drafting this legislation.

We commend efforts in drafting legislation that proposes a five-year leasing program for Alaska. We believe the state should be encouraged in its effort to establish and maintain such a long-term program, with appropriate industry participation.

Members of the committee, the petroleum industry--as indicated by its response to your solicitations--clearly desires a realistic plan that can serve as the basis for an effective working relationship between the industry and the state.

Frankly, we believe the proposed legislation will inhibit or prevent orderly development of oil and gas resources in Alaska--to the detriment of the state government, its taxpayers and my own industry.

AGO 546748

I will say candidly that this legislation is untenable from our point of view. If enacted into law, H.B. 854 would have a serious and far-reaching impact on my own company, and would give us serious cause to reconsider our exploration activities in the high-cost, high-risk frontier state lands of Alaska.

The situation we face today reminds me of a quote I heard the other day attributed to an executive of Walt Disney Productions, which recently announced that it was abondoning its latest recreation complex because of excessive and oppressive regulation.

The Walt Disney executive blamed the end of the project on, and I quote: "An irresponsible proliferation of delays, the never-ending requests for more irrelevant information and studies, and bureaucratic sidetracking and meanderings into unreasonable alternatives."

I realize this is the first of many hearings on this legislation, but H.B. 854, as now written, would be counter-productive. It actually would be a step backward at the very time our nation desperately needs an effective oil and gas exploration program.

Generally stated, we object to provisions covering: (1) the wide variety of bidding methods to be employed; (2) the Commissioner's access to all the lessee's data, including proprietary data; (3) the state's call on production; (4) short and restrictive lease term and conditions; (5) the need for the Commissioner to submit and defend his lease plan before the legislature; (6) the Commissioner's right to ban joint bidding by major companies; and (7) reduced acreage chargeability on state uplands.

Time does not permit me to discuss in detail each of the provisions, but I will attempt to outline our most significant objections:

First, the wide variety of bidding methods:

In advocating numerous bidding schemes--actually a shift from only cash bonus bidding, a system that has worked well--the administration hopes to maximize its financial return from state lands.

But Chevron believes a move away from the cash bonus method means the perilous abandonment of a proven concept that has brought stability to the state's leasing program. The bonus system would be replaced by an array of untested leasing methods, particularly in the frontier areas.

We believe this provision, if enacted, will transform Alaska into a trial-and-error laboratory in oil and gas leasing. It means replacing orderly development with uncertainty and the unknown. It's not a gamble Chevron feels is worth taking.

Before discussing each bidding system, all concerned parties should be aware that a move away from cash bonus bidding will result in three key developments:

First, it will shift a substantial part of the burden of risk from industry to the taxpayer.

Second, it will serve as a substantial deterrent to exploration and development, and

Third, it will cause the rapid and constant growth of state agencies to administer, evaluate and audit the leases and subsequent production. This places increasing demands on taxpayers to support this bureaucracy.

Chevron believes these are unacceptable consequences which would be intolerable to the taxpayers and leaders of this state.

As you know, cash bonus bidding provides that leases be awarded to the highest cash bonus bidder. This bonus is paid before the lessee can proceed with exploratory drilling on the lease.

The other bid methods provide for bid variables such as royalty, net profit, or work commitment. In these cases, the state receives nothing other than perhaps a small fixed bonus at the time of leasing. Other revenue is not forthcoming under the royalty and net profit schemes unless there is production. Simply stated: No production, no revenue.

In our opinion, cash bonus bidding is the only method that will strongly encourage the petroleum industry to lease and explore the state land.

We further believe that this method will result in the production of the most oil and gas and consequently will provide the most revenue, both to the state and the petroleum industry.

The other methods, employing biddable royalties and net profits, reduce the incentive to explore and produce. These alternatives, particularly in the case of biddable royalties, serve to shorten the economic life of the fields--resulting in less production and, therefore, less revenue.

Cash bonus bidding is particularly advantageous to the lessor in frontier areas of high risk. Most of Alaska's lands are in this category.

Now let's compare other proposed bidding methods with traditional cash bonus bidding. Because of time limitations, I can only touch briefly on these, but I am prepared to go into more detail if questions arise.

The royalty bidding method, although it allows oil and gas companies to acquire land with little cash, is a strong deterrent to early drilling. Very simply, it is easier and cheaper to wait on others to bear the risk and expense of exploratory drilling.

Having spent little capital to acquire the lease, an operator is tempted not to spend a dime to evaluate the lease, hoping an adjacent leaseholder may do it for him. Carried to the extreme, the effect of this would be that no wells would be drilled to evaluate the leases. This same problem is inherent in the net profits system, which I'll talk about shortly. On the other hand, when cash bonus is involved, the winning bidder has a strong incentive for early drilling because his bonus investment is earning him nothing.

In cash bonus bidding the state assumes none of the risk but still receives revenue from leases, whether or not they are productive.

The advantages of this system were clearly demonstrated a few years ago in the sale of federal leases off the coasts to Mississippi, Florida and Louisiana. Successful bidders paid $743 million for several tracts on one structure, the Destin Anticline, and spent over 10 million dollars drilling seven dry holes on the structure--all at no cost to the taxpayer. Under royalty or net profit bidding, the government would have received nothing.

What would government have received if it had sold the Gulf of Alaska on a royalty bid basis? As in the Gulf of Mexico case I previously cited, nothing. Should the taxpayer and the government be forced to suffer the loss of more than one-half billion dollars--when to date, no royalty appears forthcoming?

The NPRA comes to mind as another example of an area adjudged to possess high potential, but which so far is a disappointment. Again, if sold on a royalty bidding method, the lessors would have received nothing to date.

Let me emphasize that in all these cases, the areas were considered extremely attractive to both the industry and government. These are precisely the types of areas in which the state might be enticed to use a royalty or net profit bidding method. Yet none of these has led to any discovery or government revenue.

Proponents of royalty bidding believe it encourages competition among bidders and allows the small company and the independent improved entry into oil and gas lease bidding. Cash bonus bidding usually is blamed for tending to discourage small companies from bidding.

This is not supported by the facts. Small companies gain entry into the sale by joining with a larger company or with several other smaller companies. In the recent Lower Cook Inlet sale, independents and smaller companies bid on royalty and cash bonus tracts with about the same frequency as the majors. Of the 34 companies which bid in the sale, 18 were smaller companies. These 18 made successful cash bonus bids on 26 tracts, of which 13 were sold for more than one million dollars. Moreover, the small companies are represented in half of the top tracts of the sale.

The second proposed bidding method we are concerned about is net profit bidding. This system has most of the disadvantages of royalty bidding plus two more: It requires a huge staff to administer and audit.

For example, each property would require a battery of accountants to audit the companies' production and costs. Just as in the case of royalty bidding, the risks are passed on to the government. Furthermore, net profit bidding discourages cost-effective, efficient development practices.

Work commitment bidding is the least onerous alternative to cash bonus bidding methods and would be beneficial, provided that it is enforceable. We view this method with some caution because of the uncertainty of the conditions under which it might be imposed.

At this point, I would like to summarize why we believe a majority of the industry prefers cash bonus as the best method for both the state and the energy explorers.

First, we believe it is the foundation for all free enterprise contract arrangements;

Second, it is the simplest and easiest to determine and administer by all parties;

Third, it is fair and equitable; by this I mean that all parties travel at their own risk, and finally,

The right to explore is paid for in advance.

In 1977 the Department of Natural Resources completed a report entitled, "A Study of Petroleum Leasing Methods and Possible Alternatives." H.B. 854 apparently is based on this study and its conclusions.

In this study, a great deal of attention is given to the "percentage of acreage option." We assume this is the reason for granting the Commissioner authority to withhold acreage from any sale areas under Section 180 (c) (4) (f). Under this scheme, certain amounts of acreage would be withheld from a sale so that following a discovery the state could collect a windfall on drainage acreage sales. This is a workable approach only if you know which acreage to withhold and on which structures. This is rarely the case, as we saw in the MAFLA, Gulf of Alaska and NPRA. Furthermore, industry cannot bid or drill on only portions of prospects in high risk or high cost areas which predominate in Alaska.

I would like to make a few more comments about the Department of Natural Resources' report. The one overriding conclusion of that study was that a variety of bidding methods, widely employed, would increase the state's return from its commitment of oil and gas properties.

Chevron believes this conclusion is biased against cash bonus bidding, and we feel that the odds are against anyone knowing all they need to know to use the right method at the right time. The state, even if armed with a skilled staff and large amounts of data, can hope to do no better than an individual company in evaluating potential and risks, and these companies are more often wrong than right in their appraisals.

We believe the state's report, and particularly its main bias against cash bonus bidding, is based on a few but major faulty economic assumptions.

First, the authors of the report assume that the industry will make an 18 percent rate of return. Although this is very desirable, and would not be out of line considering the high risk involved, past experience shows that the industry has averaged no more than seven to eight percent from OCS ventures which approximates Alaska lands, according to several exhaustive studies. For example, in May 1977 Prof. Walter J. Mead of U.C. Santa Barbara testified before a U.S. House of Representatives Committee that weighted average rate of return from 184 leases issued in the Gulf of Mexico in 1954-55 amounted to only 7½ percent before taxes. This sale period was selected because these leases have a 20-year production history which provides a comprehensive data base.

Second, no reduction of state income was assumed in royalty cases, but it almost certainly will occur. The economic limit of a field is going to be greatly influenced by the amount of royalty. The higher the royalty, the earlier the economic limit is reached. When an operator can no longer produce oil or gas profitably the result will be oil and gas left in the ground and neither industry, nor the state, will make any money on it.

* * *

Next, I would like to turn to the provision of the bill that would require the lessee or permittee to make available to the Commissioner all data obtained from exploration and production activities on the lease or permit. We believe this provision raises fundamental questions about the appropriateness of the state's entry into the exploration business, and secondly, points to grave problems--from our point of view--about the preservation of confidentiality.

should but
The language in the proposed legislation does not distinguish between, "raw", "processed" and "interpretative" data. We are unalterably opposed to providing the state with the results of the efforts of our interpretative staff. Industry cannot operate under this law. We urge the committee to delete this section.

We are also opposed to giving the state our basic geophysical data. We are not convinced that the state can hold this data confidential because of its large staff and turnover rate. Any leak of this sensitive information to our competitors definitely will have an immediate and adverse impact on our exploration program in this state.

The third provision we object to (Sec. 38.05.180(v)) gives the state the right to purchase up to 16 and two-thirds percent of the lessee's share of the oil and up to 100 percent of the lessee's gas.

We are not opposed to the state's right to take its royalty share of oil or gas in kind, but we oppose any provisions which empowers the state to take any portion of the lessee's share.

In order to justify the risk and expense of exploration and development, and be able to satisfy its contractual commitments, the lessee must retain the right to dispose of all of its share of production. Without this right, the state of Alaska lands become less desirable to explore and develop. We believe this is another step toward the state's entry into the oil and gas business, which should stay with private industry.

It seems inconceivable to Chevron that the state would take a portion of the lessee's share when that is the very incentive for industry to explore in the state initially.

Another provision we oppose is Paragraph Q. Paragraph Q refers to drilling and development contracts and to the authority of the state to share in the cost of exploration.

We're not clear on the meaning and intent of this paragraph. If it means the state intends to become a working interest participant in leases, then we strongly object.

Our next objection concerns the terms and conditions of the lease itself. Because of the remoteness of most of Alaska's land and the seasonal restriction on operations, Chevron prefers a ten-year primary lease term. We feel this length of time is necessary to adequately evaluate a lease under Alaskan conditions.

There is one provision which would allow the Commissioner to grant rights on leases only to the depth drilled at the time production begins. Chevron is at a total loss to see how this provision can benefit the state in any way. It will certainly cause waste in time and money for the industry because wells will be drilled far beyond primary objectives--just to ensure earning the rights of a normal lease. In effect, this will delay production and thereby delay revenue to the state.

Considering the geological, legal and practical ramifications of this provision, one must conclude that it is totally unacceptable to the industry and can do the state no good. It should be stricken from the bill.

Our next objection is to any effort to restrict joint bidding between majors or multinational companies. In Alaska, particularly, with its accompanying expensive costs of exploration and production, it is essential for large and small companies to be able to join together to share the risk.

A ban on joint bidding by majors does not necessarily increase state income. In fact, a recent study by the Department of Interior showed that joint bidders tend to bid higher, on the average, than solo bidding competitors. (November 1976 issue of the Journal of Petroleum Technology.)

The next provision we wish to discuss deals with the need for the Commissioner to submit and defend his leasing program to the legislature. We prefer that the various reporting methods set out in this section not be prescribed in law. We believe this review is an administrative function and that public hearings are an adequate and effective vehicle for gathering comments and reactions to the proposed action. Neither the timber leases nor any other types of state lease are submitted to the legislature, and to require this approach in law for the petroleum industry will lead to further delays in development of the state's natural resources. Particularly objectionable to us is the requirement that the Commissioner must defend his previous year's program and explain why he used certain methods. This is certain to toss the entire leasing program into an interminable bureaucratic morass.

And finally we oppose the provision which deals with acreage chargeability. We believe the reduction to 200,000 acre limitation on uplands is arbitrary and unjustified. The 500,000 acre limitation in this state, where there are large areas of state lands potentially available for bid, is not unreasonable. A large acreage position is necessary as an incentive for an operator to explore frontier areas.

In closing, Mr. Chairman, Chevron believes H.B. 854 is an unreasonable, unwise and unworkable piece of legislation that simply is not in the best interest of the citizens of Alaska.

As I said at the outset of my remarks, my own company would be faced with the prospect of seriously reassessing its current and future exploration activities on Alaska state lands if this bill is enacted.

It is our opinion that this legislation will only serve to inhibit or prevent the orderly exploration and development of Alaska's oil and gas properties.

We oppose a shift away from the successful cash bonus bidding system because we believe that the cash bonus ensures a fair and equitable return to the state, as well as ensuring the fair share of any revenue resulting from production.

It is conceivable that Prudhoe Bay may not have been found if royalty or net profits bidding or percentage acreage option had been employed.

Mr. Chairman, members of the committee, we have serious concern that if this legislation becomes law, the ultimate losers will be the citizens of this state, as well as the consumers of oil and gas.

Thank you for giving Chevron this opportunity to comment on this proposed legislation.

* * *

TESTIMONY ON COMMITTEE SUBSTITUTE FOR HOUSE BILL 854 (FINANCE)

PRESENTED BEFORE THE

SENATE RESOURCES COMMITTEE

BY

J. R CARSON

CHEVRON, USA, INC.

May 22, 1978

Juneau, Alaska

AGO 546716

TESTIMONY ON H.B. 854

Madam Chairman, members of the committee, my name is John Carson, and I appreciate the opportunity to comment on Committee Substitute for House Bill 854. (Finance)

I am a petroleum geologist and I'm presently Division Geologist in Alaska for Chevron U.S.A., the principal domestic oil and gas subsidiary of the Standard Oil Company of California. Since 1965, I've been actively involved in all state lease sales and the two OCS sales in the Gulf of Alaska and the Lower Cook Inlet.

Chevron is aware of the amount of preliminary work done by the state administration and the Department of Natural Resources in researching and drafting this legislation.

We commend efforts in drafting legislation that proposes a long term leasing program for Alaska. We believe the state should be encouraged in its effort to establish and maintain such a program, with appropriate industry participation.

Members of the committee, the petroleum industry--as indicated by its response to the State's solicitations--clearly desires a realistic plan that can serve as the basis for an effective working relationship between the industry and the state.

Frankly, we believe the proposed legislation will inhibit or prevent orderly development of oil and gas resources in Alaska--to the detriment of the state government, its taxpayers and my own industry.

I will say candidly that this legislation is untenable from our point of view. If enacted into law, Committee Substitute for House Bill 854 would have a serious and far-reaching impact on my own company, and would give us serious cause to reconsider our exploration activities in the high-cost, high-risk frontier state lands of Alaska.

854 as now written would be counter-productive. It actually would be a step backward at the very time our nation desperately needs an effective oil and gas exploration program.

Generally stated, we object to provisions covering: 1) the wide variety of bidding methods to be employed; 2) the Commissioner's access to all the lessee's data, including proprietary data; 3) the state's call on production; 4) short and restrictive lease term and conditions; 5) the need for the Commissioner to submit and defend his lease plan to the legislature, and 6) the Commissioner's right to ban joint bidding for approval.

Time does not permit me to discuss in detail each of the provisions, but I will attempt to outline our most significant objections:

First, the wide variety of bidding methods, starting on page 3, section (f):

In advocating numerous bidding schemes--actually a shift from only cash bonus bidding, a system that has worked well--the administration hopes to maximize its financial return from state lands.

AGO 546718

But Chevron believes a move away from the cash bonus method means the perilous abandonment of a proven concept that has brought stability to the state's leasing program. The bonus system would be replaced by an array of untested leasing methods, particularly in the frontier areas.

We believe this provision, if enacted, will transform Alaska into a trial-and-error laboratory in oil and gas leasing. It means replacing orderly development with uncertainty and the unknown. It's not a gamble Chevron feels is worth taking.

Before discussing each bidding system, all concerned parties should be aware that a move away from cash bonus bidding will result in three key developments:

First, it will shift a substantial part of the burden of risk from industry to the taxpayer.

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In our opinion, cash bonus bidding is the only method that will strongly encourage the petroleum industry to lease and explore the state land.

We further believe that this method will result in the production of the most oil and gas and consequently will provide the most revenue, both to the state and the petroleum industry.

The other methods, employing biddable royalties and net profits, reduce the incentive to explore and produce. These alternatives, particularly in the case of biddable royalties, serve to shorten the economic life of the fields--resulting in less production and, therefore, less revenue.

Cash bonus bidding is particularly advantageous to the state in frontier areas of high risk. Most of Alaska's lands are in this category.

Now let's compare other proposed bidding methods with traditional cash bonus bidding. Because of time limitations, I can only touch briefly on these, but I am prepared to go into more detail if questions arise.

The royalty bidding method, although it allows oil and gas companies to acquire land with little cash, is a strong deterrent to early drilling. Very simply, it is easier and cheaper to wait on others to bear the risk and expense of exploratory drilling.

Having spent little capital to acquire the lease, an operator is tempted not to spend a dime to evaluate the lease, hoping an adjacent leaseholder may do it for him. Carried to the extreme, the effect of this would be that no wells would be drilled to evaluate the leases. This same problem is inherent in the net profits system, which I'll talk about shortly. On the other hand, when cash bonus is involved, the winning bidder has a strong incentive for early drilling because his bonus investment is earning him nothing.

In cash bonus bidding the state assumes none of the risk but still receives revenue from leases, whether or not they are productive.

The advantages of this system were clearly demonstrated a few years ago in the sale of federal leases off the coasts of Mississippi, Alabama, Florida and Louisiana. Successful bidders paid $743 million for several tracts on one structure, the Destin Anticline, and spent over 10 million dollars drilling seven dry holes on the structure--all at no cost to the taxpayer. Under royalty or net profit bidding, the government would have received nothing.

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Let me emphasize that in all these cases, the areas were considered extremely attractive to both the industry and government. These are precisely the types of areas in which the state might be enticed to use a royalty or net profit bidding method. Yet none of these has led to any discovery or government revenue.

Proponents of royalty bidding believe it encourages competition among bidders and allows the small company and the independent improved entry into oil and gas lease bidding. Cash bonus bidding usually is blamed for tending to discourage small companies from bidding.

This is not supported by the facts. Small companies gain entry into the sale by joining with a larger company or with several other smaller companies. In the recent Lower Cook Inlet sale, independents and smaller companies bid on royalty and cash bonus tracts with about the same frequency as the

AGO 546722

majors. Of the 34 companies which bid in the sale, 18 were smaller companies. These 18 made successful cash bonus bids on 26 tracts, of which 13 were sold for more than one million dollars. Moreover, the small companies are represented in half of the top bonus tracts of the sale.

Provisions are made for reducing the royalty in the event the lessee cannot operate profitably. While we agree that such a provision may be necessary, we think this only serves to point up a major weakness of royalty bidding. Due to the highly competitive nature of the business, industry is encouraged to bid and agree to terms that may be truly ridiculous. Another commission will almost certainly be necessary to review and rule on the long list of plaintiffs for reduced royalties.

The second proposed bidding method we are concerned about is net profit bidding. This system has most of the disadvantages of royalty bidding plus one more: It requires a huge staff to administer and audit. For example, each property would require a battery of accountants to audit the companies' production and costs. Just as in the case of royalty bidding, the risks are passed on to the government. Furthermore, net profit bidding discourages cost-effective, efficient development practices.

At this point, I would like to summarize why we believe a majority of the industry prefers cash bonus as the best method for both the state and the energy explorers.

First, we believe it is the foundation for all free enterprise contract arrangements;

Second, it is the simplest and eas_ st to determine and administer by all parties;

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The right to explore is paid for in advance.

In 1977 the Department of Natural Resources completed a report entitled, "A Study of Petroleum Leasing Methods and Possible Alternatives." H.B. 854 apparently is based on this study and its conclusions.

I would like to make a few comments about the Department of Natural Resources' report. The one overriding conclusion of that study was that a variety of bidding methods, wisely employed, would increase the state's return from its commitment of oil and gas properties.

Chevron believes this conclusion is biased against cash bonus bidding, and we feel that the odds are against anyone knowing all they need to know to use the right method at the right time. The state, even if armed with a skilled staff and large amounts of data, can hope to do no better than an individual company in evaluating potential and risks, and these companies are more often wrong than right in their appraisals.

We believe the state's report, and particularly its main bias against cash bonus bidding, is based on a few but major faulty economic assumptions.

AGO 546724

First, the authors of the report assume that the industry will make an 18 percent rate of return. Although this is very desirable, and would not be out of line considering the high risk invclved, past experience shows that the industry has averaged no more than seven to eight percent from OCS ventures which approximates Alaska lands, according to several exhaustive studies. For example, in May 1977 Prof. Walter J. Mead of U.C. Santa Barbara testified before a U.S. House of Representatives Committee that weighted average rate of return from 184 leases issued in the Gulf of Mexico in 1954-55 amounted to only 7½ percent before taxes. This sale period was selected because these leases have a 20-year production history which provides a comprehensive data base.

Second, no reduction of state income was assumed in royalty cases, but it almost certainly will occur. The economic limit of a field is going to be greatly influenced by the amount of royalty. The higher the royalty, the earlier the economic limit is reached. When an operator can no longer produce oil or gas profitably the result will be oil and gas left in the ground and neither industry, nor the state, will make any money on it.

Next, I would like to turn to the provision of the bill that would require the lessee or permittee to make available to the Commissioner all data obtained from exploration and production activities on the lease or permit. Found on p. 11 - section (aa). We believe this provision raises fundamental

questions about the appropriateness of the state's entry into the exploration business, and secondly, points to grave problems--from our point of view--about the preservation of confidentiality.

The language in the proposed legislation is not clear as to what non-interpretive data will be required. If the intent is to provide access to data existing prior to the lease, we are unalterably opposed. "Non-interpretive" is a loaded word which needs strict definition.

We are also opposed to giving the state our basic geophysical data. We are not convinced that the state can hold this data confidential because of its large staff and turnover rate. Any leak of this sensitive information to our competitors definitely will have an immediate and adverse impact on our exploration program in this state.

The third provision we object to gives the state the right to purchase a specified volume of the lessee's oil or gas. This is found on p. 11, section (Z).

We are not opposed to the state's right to take its royalty share of oil or gas in kind, but we oppose any provisions which empowers the state to take any portion of the lessee's share.

In order to justify the risk and expense of exploration and development, and be able to satisfy its contractual commitments, the lessee must retain the right to dispose of all of its share of production. Without this right, the state of

Alaska lands become less desirable to explore and develop. We believe this is another step toward the state's entry into the oil and gas business, which should stay with private industry.

It seems inconceivable to Chevron that the state would take a portion of the lessee's share when that is the very incentive for industry to explore in the state initially.

If such a clause remains in the bill, Chevron feels it is mandatory that the state make its intention known on this matter prior to the lease sale. Otherwise, it will be totally inoperable. The industry, without contractual commitments for its product, cannot bid on oil and gas leases.

Our next objection concerns the terms and conditions of the lease itself. I refer to p. 6, section (n). Because of the remoteness of most of Alaska's land and the seasonal restriction on operations, Chevron prefers a ten-year primary lease term. We feel this length of time is necessary to adequately evaluate a lease under Alaskan conditions. We appreciate that the proposed legislation gives the Commissioner the right to grant a ten-year lease under certain conditions. However, it should be stated that this decision will be made and announced prior to this sale.

Our next objection is to any effort to restrict joint bidding, found on p. 10, section (y). In Alaska, particularly, with its accompanying expensive costs of exploration and production, it is essential for large and small companies to be able to join together to share the risk.

AGO 546727

A ban on joint bidding does not necessarily increase state income. In fact, a recent study by the Department of Interior showed that joint bidders tend to bid higher, on the average, than solo bidding competitors. (November 1976 issue of the Journal of Petroleum Technology.)

The final provision we wish to discuss deals with the need for the Commissioner to submit and defend his leasing program to the legislature. See p. 1, section (b). We prefer that the various reporting methods set out in this section not be prescribed in law. We believe this review is an administrative function and that public hearings are an adequate and effective vehicle for gathering comments and reactions to the proposed action. Neither the timber leases nor any other types of state leases are submitted to the legislature, and to require this approach in law for the petroleum industry will lead to further delays in development of the state's natural resources. Particularly objectionable to us is the requirement that the Commissioner must defend his previous year's program and explain why he used certain methods. This is certain to toss the entire leasing program into an interminable bureaucratic morass.

In closing, Madam Chairman, Chevron believes CS for H.B. 854 is an unreasonable, unwise and unworkable piece of legislation that simply is not in the best interest of the citizens of Alaska.

AGO 546728

As I said at the outset of my remarks, my own company would be faced with the prospect of seriously reassessing its current and future exploration activities on Alaska state lands if this bill is enacted.

It is our opinion that this legislation will only serve to inhibit or prevent the orderly exploration and development of Alaska's oil and gas properties.

We oppose a shift away from the successful cash bonus bidding system because we believe that the cash bonus ensures a fair and equitable return to the state, as well as ensuring the fair share of any revenue resulting from production.

It is conceivable that Prudhoe Bay may not have been found if royalty or net profits bidding or percentage acreage option had been employed. Our sincere suggestion is to retain the leasing statute now in effect and supplement it with provisions for a long term leasing program.

Madam Chairman, members of the committee, we have serious concern that if this legislation becomes law, the ultimate losers will be the citizens of this state, as well as the consumers of oil and gas.

Thank you for giving Chevron this opportunity to comment on this proposed legislation.

* * *

AGO 546729

H.B. 854
Gov's. Bill

TESTIMONY ON

ALASKA LEASING POLICY BILL

(H.B. 854)

By
Rod L. Boane
Alaska District Manager
Exxon Company, U.S.A.

Before The
State of Alaska
House Resources Committee

Juneau, Alaska

March 17, 1978

AGO 546703

Mr. Chairman and Members of the Committee --

I am Rod L. Boane, District Manager for the Alaska Exploration District of Exxon Company, U.S.A. I appreciate the opportunity to be here today and present the views of my Company concerning the proposed Leasing Policy Bill.

First, let me say that Exxon believes the existing provisions of Section 38.05.180 of the Alaska Statutes are quite satisfactory in administering adequate control over exploratory and development activities on State leases. Therefore, we do not believe these new amendments to the Statutes are needed to protect the public interest. On the contrary, we think the proposed amendments would create unnecessarily involved and cumbersome procedures that will neither foster needed exploration nor benefit the State of Alaska. Although we take exception to almost all features of the proposed amendments, in the interest of time, I intend to discuss only the more troublesome provisions, with particular emphasis on the proposed bidding methods.

Exxon believes that the best method for awarding leases is on a cash bonus basis. This system has several advantages which I would like to review.

- First, the successful bidder sees very strong incentives to explore and develop rapidly and to recover the maximum economic volume of hydrocarbons at the lowest possible cost. This is necessary in order for him to maximize the return on the cash bonus invested.

- Second, under the cash bonus system, the State bears none of the risk that commercial reserves will not be found. This risk is placed directly on industry where it belongs. This is a particularly critical concept in Alaska which is still essentially a frontier province where very little exploratory drilling has occurred and thus very little is known about the oil and gas potential of most of the State. When one further takes into account the fact that Alaska is a very high cost area due to its remoteness and harsh operating environment, it should be easy to see that the exploration risks and costs are indeed great. The Gulf of Alaska history should prove this point as, thus far, no commercial discovery has been made.

- Third, under the cash bonus system there is no possible way that the awards will be made in an arbitrary manner since the highest bid is obvious.

- Finally, the system is simple and inexpensive to administer, and its integrity is unaffected by future events. The State would not have to expand its staff to implement this system.

Now I would like to compare the alternate bidding methods proposed in this legislation to conventional cash bonus bidding with fixed royalty. Basically, the proposed alternative bidding methods fall into one of three categories. The first category involves some form of royalty bidding. The second category uses

some form of net-profit bidding. The third category uses some form of work commitment. All three categories require a cash bonus, either as a bid variable or a fixed amount. Let's first examine the royalty bidding systems.

(1) It is not uncommon for operators to discover reserves of lesser magnitude than anticipated. With high fixed royalty, some of these discoveries could not be developed profitably unless the State agreed to accept a lower royalty than originally bid. Downward adjustment in royalty rate prior to any development would be difficult to administer and could undermine the integrity of this bidding system.

(2) With royalty bidding, the successful bidder does not have a strong incentive for rapid exploration and development since front-end cash investment is small. Speculators could therefore see incentives to acquire leasehold interest, and then wait in hopes that they will be able to cash in on the discoveries made by others. This situation would obviously result in delayed exploration and development activities.

(3) With exclusive royal bidding, the public bears the major portion of the exploration risk because if the tract doesn't contain commercial hydrocarbon reserves, as the majority will not, the public receives no compensation whatever. As an example, the State received $900 million in bonus for acreage on the North Slope in the September 1969 sale. Under a royalty bidding system the State would have received little income to date. We strongly believe that risk-taking and its associated rewards or losses are more properly the province of private enterprise.

The second royalty bidding system involves a sliding scale royalty system which would be difficult to monitor and, practically speaking, would make it impossible to compare bids unless you know the total reserves, the price at which production would be sold, and the rate of production. Sliding royalty could result in widely differing positions on prudent development. Also, unitization of tracts would be a very complex and difficult job.

With these comments in mind, let's review recent experience with royalty bidding in the Federal sector. A program of experimentation began with the recent sale in the Lower Cook Inlet. Thirty-four percent of the tracts were put up for royalty bidding. Selection of these tracts was in such a manner that they were scattered over the entire sale area. When this type of tract distribution is coupled with a forced unitization lease stipulation, it is not difficult to conclude that the owners of the royalty tracts have no incentive for rapid evaluation. They can just sit back and wait for the owners of cash bonus tracts to do the initial drilling. They can then join the units covering any reservoirs that extend under their tract.

After the Cook Inlet sale, this problem apparently became obvious to the Department of Interior. For the North Atlantic Sale (Sale #42), they attempted to "fix" this problem by grouping the royalty tracts together and having them removed from the cash bonus tracts. They further expanded the experiment by having a group of cash bonus tracts that had a fixed royalty of 40 percent.

Industry comments relating to royalty bidding have apparently begun to create some concerns about this system. In the upcoming South Atlantic Sale (Sale #43), we see another attempt to "fix" difficulties in the previous system. Tracts are being offered by cash bonus bidding with a sliding scale royalty. They have attempted to "fix" the unitization problem by again grouping the sliding scale royalty tracts together. However, they did not address how a group of sliding scale royalty tracts or sliding scale royalty and cash bonus tracts would be unitized.

Now that this experimentation process has begun, we see the continuing creation of new difficulties and complexities as attempts are made to correct previous difficulties and problems. It appears that this process is going to have a "snow-balling" effect and may eventually reduce competition. In this situation, only the companies that can afford to dedicate a large professional staff to the long unitization negotiations and wait long periods for initial production will servive. This certainly does not promote increased competition.

Now let's look at the second bidding category a profit-sharing system, which has most of the same adverse characteristics as royalty bidding, but with four added complications and disadvantages.

(1) Using net profits will be much like selecting a contractor to perform a job. The operating efficiency of the bidder could become an important consideration in determining which of

several bidders had submitted the high bid inasmuch as the gross proceeds to be received by the public would be a direct function of the efficiency of the operator. Thus, the successful bidder would no longer be obvious. Since the relative operating efficiency of companies cannot be determined quantitatively, the Commissioner would be vulnerable to charges that bid awards were being made in an arbitrary or discriminatory manner.

(2) A profit-sharing system would be difficult and costly to administer. A large administrative organization would likely be established to audit and monitor the continuing activities of lessees. Discretionary judgments would be required by the State with regard to what costs were to be included or rejected in the profit base. This system could lead to State control of expenditures.

(3) A profit-sharing system would significantly reduce the incentive for a successful bidder to operate at maximum efficiency. Any prudent operator utilizes a priority system when restraints of either manpower or materials create limitations. When these restraints exist, net-profit tracts will have low priority. The result - reduction of efficiency. It would also reduce the timing and incentive for development of advanced technology currently in progress by industry.

(4) Most important, sharing in net profits would signal the State's entry into the production phase of the oil business. It might be politically and economically difficult for the State not

to be deeply involved in decisions about day-to-day operations and thereby become an operating partner. This step would not be consistent with the maintenance of a strong private enterprise system either within the oil industry or within the State itself.

The third category of bidding system is work commitment which can be combined with any of the other methods. A work commitment bid becomes a form of cash bonus bidding. If an operator has a high interest in a tract, he will bid a work commitment which is equivalent to what he would bid in a cash bonus system. In many instances, this committment would be much larger than required for evaluation. If early exploration results are negative, the operator remains committed to drill more wells than would normally be prudent or necessary.

The provision that the Commissioner can terminate a work commitment further complicates the issue. Termination of a work commitment for one operator would undoubtedly result in inequities because he has received an unfair competitive advantage. Continuation of this practice could result in extremely high work commitments in anticipation of cancellation after performing only a portion of the work.

A work commitment bid will be nothing more than a form of cash bonus. The same result can be accomplished more easily and efficiently with a cash bonus bid.

Now I would like to discuss a few other provisions which give us concern.

(1) AS38.05.180(v) Right to Purchase - The provision gives the State the right to purchase not more than 16 2/3 percent of the oil and 100 percent of the gas. The most onerous portion of this provision is the right of the State to purchase 100 percent of the gas.

The present and potential supplies of gas within Alaska far exceed reasonably anticipated demands by the State residents. Therefore, to find a market, this gas will have to move into interstate commerce. This requirement, that the State could remove the gas from the market, could severely hamper a producer's ability to market the reserves. Without a reasonable expectation that the developed gas can be marketed, there is greatly reduced incentive to explore.

It would also retard development of natural gas for State residents. The risk that the gas could be diverted would have significant impact on ventures to install gas transportation systems.

In addition to these concerns, it raises other questions such as:

1. Determination of fair market value
2. Use of gas for lease fuel
3. Timing and rate of production - could the State control these to satisfy their own requirements or desires?

(2) AS380.05.180(w) - Exxon is strongly opposed to this proposed section which requires any lessee or permittee conducting exploration for, or development or production of, oil or gas on State land, to provide the Commissioner access to all data obtained from such activity and to provide copies of such specified data, as the Commissioner may request. Access to all data could potentially permit endless intrusions into private business. Much of this data is very costly. In a competitive industry such as ours, a considerable amount of data is proprietary. Disclosure of this type of data could result in the loss of a competitive edge. In none of the other producing states are operators required to provide access to all data. In addition, we feel that any such requirement would, in effect constitute a "taking" for which compensation by the State would be required. We believe this proposed amendment is unnecessary and should be deleted because the existing regulations provide the State with adequate control over exploration and development activities.

(3) AS38.05.100(1) - We are strongly opposed to the concept of earning production rights only to the depth drilled at the beginning of production from a lease. We are not aware of this language in lease forms for any other producing state.

This language is somewhat similar to that commonly used by a lessee in "farming out" acreage for the purpose of evaluating specific geologic objectives by a third party. In a frontier

province like Alaska it doesn't make any sense to place such restrictions in the lease form. The idea should be to give the lessee maximum flexibility in evaluating his acreage - not to curtail or to require unreasonable and costly actions on his part. We, therefore, strongly suggest that this language be deleted.

We also recommend that reworking be added to the list of actions which will hold a lease in force. In fact, a grace period of 60 days should be allowed between cessation of production and initiation of drilling or reworking operations. This useful and desirable feature is in the present law.

(4) AS38.05.180(j) Lease Term - A five-year primary lease term is very restrictive in Alaska. The remote location of most prospects, rugged terrain, short construction season, and reduced drilling season, either necessary or imposed, make completion of the exploration cycle a difficult and time-consuming process. Once a discovery is made, additional drilling is required before an estimate of the field size can be made. All of the previously mentioned factors affect this drilling too. Once the lengthy process of discovering a field and establishing its commerciality is complete, the long development phase must begin. We strongly recommend that the 10-year lease term be retained.

(5) AS38.05.180(c) Uplands Acreage Limitation - The proposed 200,000-acre limitation on all lands other than tide and submerged lands is very restrictive compared with the current 500,000-acre limitation in a State like Alaska which has so many frontier

interior basins to explore. In a hostile high cost environment such as Alaska, a large block of acreage may be necessary in order to justify exploration. We believe the proposed 200,000-acre limitation would be a strong disincentive of an operator to explore these frontier interior basins and strongly recommend maintenance of the current 500,000-acre limitation.

(6) AS38.05.180(u) Joint Bidding - The provision allowing the Commissioner to restrict joint bidding, if he so desires, could prohibit the involvement of some companies most capable of operating in the Alaskan environment.

A study was performed by the University of Southern California and the USGS to determine the effects of restricting majors from bidding jointly in the OCS. They concluded that on the average, this restriction resulted in more bids per lease by the major oil companies.

(7) Legislative Review - We object to the requirement for submission of the leasing program for annual review by the Legislature because we believe it will result in unnecessary delays in implementing leasing programs.

(8) AS38.05.180(q) Drilling and Development Contracts - The proposed amendment which would allow the State to share in exploration costs is inconsistent with the provisions of the lease agreement, as the State's royalty interest is free of all exploration

and development costs. If this is intended to allow the State to share in working interest, we are opposed since it would signal entrance of State Government into the oil and gas business.

In closing, I would like to reiterate that Exxon believes the current leasing statutes and the implementing and regulations have served the State and industry well and do not need to be changed.

Passage of this bill will require the State to embark into an experimental program. Because these systems are unknown, many mistakes will be made. New "wrinkles" will be tried in order to correct these mistakes. In fact, the State of Alaska will find itself taking a course which is identical to the course presently being followed by the Federal Government. The end result will be an extremely complex system which may allow only a few companies to survive.

This concludes my prepared testimony, and I will be happy to answer any questions which you may have.

* * * * *

Anchorage Division
Production Exploration, U.S. & Canada

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May 22, 1978

Ms. Kay Poland, Chairman
Senate Resources Committee
Pouch V
Juneau, AK 98911

Dear Ms. Poland:

We wish to submit herein Marathon's thoughts, concerns and suggestions regarding the proposed legislation entitled "An Act relating to the leasing and exploration of state land for oil and gas development".

First and most important, the present statues and regulations have worked well for the State and they have a background for proper legal interpretation and understanding. The State has under the existing laws authority to protect itself and to judge whether it is receiving fair value for leases sold at that time with the then known information. Hind sight makes instant experts of persons unknowledgeable in a given field of endeavor. Oil and Gas exploration is a risk business and it deals with many unknowns until it has the opportunity to prove or disprove a theory or imagitative interpretation by drilling a test well. Therefore it is our

AGO 546699

feeling that the proposed legislation being considered here today is unnecessary.

Specific comments to provision of HR 854 are as follows: 38.05.180(b) requires the commissioner to annually submit a proposed leasing schedule, wherein the legislature has the opportunity to disapprove all or part of it. It has long been the theory that the legislature makes the law and the Administration implements them. This proposed procedure gets the legislature involved with implementation of the laws. We feel there is much more important work for the legislature than looking at a specific leasing schedule, unless of course, there has been some impropriety.

38.05.180(f) provides for numerous bidding methods the commissioner may use to issue oil and gas leases. Other than the cash bonus bid and a fixed royalty reserved to the state, we believe the systems would not be in the best interest of the State of Alaska. When royalty bidding and net profits bidding methods are used the citizens of the state are then assuming a portion of the risk. Also, these methods will require additional personnel to administer and could result in less net return to the citizens. The small population of the State of Alaska does not need laws that would enlarge the bureaucratic organization.

When leases in a given area have various royalty provisions it would be difficult if not impossible for the individual companies to agree on a unit operation. With

differing royalty provisions the companies would have different economic incentives and philosophies which would be impossible to overcome.

In Section 38.05.180(n), we encourage its modification to provide for ten (10) year term leases as provided for in existing statues. The short operating seasons and continuing environmental concerns and lengthy process to obtain permits to drill are reasons to justify a ten (10) year term lease.

In line 11 on page 7 of this same section, it is recommended that the words "or is capable of" be added following the word "produced". This would in our opinion clarify the intent. Also we recommend the following sentence be added to this section "No lease issued under this section expires because operation or production is suspended under an order, or with the consent of the commissioner".

In Section 38.05.180(o), we recommend that a fixed rental be established for a lease and that it continue for the life of the lease or until production commences. That a minimum royalty be established and it be payable at the expiration of each lease year beginning on or after a discovery of oil and gas in paying quantities on the lands leased. Also that there be no dual payment of rental and royalties as presently provided for in the proposed leasing bill.

In Section 38.05.180(z), we feel the provision for the

state to take or purchase any volumes of discovered hydrocarbons over and above the reserved royalty share would be counter productive. Such provisions could eliminate or impair the ability of lessees to utilize gas sale contracts or production payments as a method of financing, likewise discourage exploration.

In 38.05.180(aa), we have strong misgivings about furnishing data as provided for therein. Information garnered from ones own initiative and imagination is valuable and proprietary and should be retained by ones own self. These provisions will certainly be counter productive.

In our statement, we have voiced some of our concerns and objections as well as some suggested modifications to HR 854, however, it is our hope that this proposed legislation will languish in committee without further action. We feel the existing law is satisfactory and workable. HR 854 will create confusion and misunderstanding in its implementation and will unnecessarily enlarge the bureaucratic organization and we recommend its rejection.

Very truly yours,

Morris L. Lowman
Senior Landman
MLL/pr

cc: Resource Committee Members

AOGA COMMENTS -- HOUSE BILL NO. 854

Comments on Section 1:

Sec. 38.05.180(a)(1)(B)

In the description of the legislative purposes of this bill, there is a negative connotation given the word "exploitation" in Sec. 38.05.180(a)(1)(B). This section in general suggests sinister motives to the oil and gas industry which need to be "minimized." A possible modification should read, "regulate the development of these natural resources in protection of the public interest."

Sec. 38.05.180(a)(2)

Underlying this section is the notion that it is in the State's best interest to maximize the leasing methods available to the State. However, it is our view that the new leasing methods proposed are largely untested and may result in reduced revenues to the State. Further, it is not at all clear how a unit agreement could ever be formulated for a group of lessees who had obtained their leases under a combination of the proposed bidding methods.

Sec. 38.05.180(b)

This section deals with the Commissioner's obligations to prepare a leasing program for the following 5 year period and his obligation to keep the legislature informed. We are in favor of such a long-range leasing program and support the State's acknowledged

goal of "stability and predictability" in a petroleum leasing program. However, the long-range benefits intended and the State's goal are frustrated by the ability, and, indeed requirement, that the Commissioner review and possibly revise the leasing program at least annually. Perhaps the possibility of revision could be limited to the last two years of the ongoing five year programs so that industry could expend exploration dollars with some certainty that a sale will be held. Alternatively, Sec. 38.05.180(b)(3) should be deleted.

The annual submission to the legislature of the leasing program, although for "its information," would seem to presuppose further modification of the leasing program. Again, opportunity for yearly modification of the leasing program abrogates the State's goal of a stable and predictable petroleum leasing system. As an alternative to reporting to the legislature, the Commissioner could be required to make an annual public report of the leasing program.

Additionally, in Sec. 38.05.180(b)(5)(E), the Commissioner is required to justify in his report to the legislature why more than 50 percent of an area is leased under any one method of leasing. This requirement of justification seems to be an incentive, if not explicit direction, to utilize the full array of leasing alternatives for any one sale and to, in effect, "experiment".

The language in Sec. 38.05.180(b)(2) is extremely confusing and should be clarified. Further, it is not clear whether or not this section is directed to or will have any effect, intended or otherwise, on the Beaufort Sea sale.

Sec. 38.05.180(c)

This section authorizes four generic categories or methods of leasing: (1) "Bonus bidding," (2) "Royalty bidding," (3) "Net profit bidding," and (4) a "Work commitment bid." Several combinations or variations of methods are authorized under each of the generic headings.

The first method of conventional bonus bidding has the best overall record from the lessor's standpoint. A study of federal OCS sales through 1975 showed that industry had invested $35 billion in bonuses, exploration and development on OCS leases while receiving $22 billion in revenue.

Net profit bidding opens up a multitude of problems as to the definition of "net profit." This method would allow many companies to get into a land position for speculative purposes. It is a

fierce deterrent to early drilling as it is far easier and cheaper to wait out the competition. It is extremely cumbersome to administer and audit, and is even more costly to operate than royalty bidding methods.

The last method of bidding, a work commitment for a lease which cannot, by definition, exceed 5,760 acres, seems completely unworkable as such an area is much too small. This method is usually used in European and mid-east concessions or Canadian permits or reservations which share a common characteristic of being very large geographic areas.

In each of the four leasing methods, the language describing the State's royalty is troublesome. Each description of the State's royalty provides, "... royalty share reserved to the state of not less than 12 1/2 cent in amount or value of the production removed or sold from the lease or unit area encompassing the lease ...." (emphasis added) This language would preclude anything but 100 percent state units. Unitization of lands involving federal or native lands and state lands would be impossible because of the inability of the participants to give the state at least 12-1/2 percent of the production from the "unit area encompassing the [state] lease."

Further, it should be noted that all of the methods and components of the alternate leasing methods will necessitate substantial increases in the budgets and personnel of the agencies involved.

Finally, if some minimum flexibility in leasing methods is desired, the same could be accomplished with minor changes in the existing law.

Sec. 38.05.180(d)

This section allows the Commissioner to reduce royalty when production becomes uneconomical, but only after two years of production. The most recent federal leases require only one year of production, which would be more in line with the stated goal of the bill to minimize revenue from marginal production. Given the explicit description of the royalty in Sec. 38.05.180(c) as "not less than 12 1/2 percent ...," it is not clear whether the Commissioner could ever reduce royalty to any figure below 12 1/2 percent.

Sec. 38.05.180(e)

This section purportedly authorizes the Commissioner to defer payment of any part of a cash bonus bid, provided the bonus is paid within five years. This authority is in direct conflict with AS 38.05.335(c), neither referenced nor repealed by the bill, which requires a deposit of 20 percent, in cash, of the bid.

Sec. 38.05.180(f)

This section authorizes the Commissioner to withhold acreage from leasing in a particular sale. It is assumed that the motive of

this provision is a desire to increase the state's income from leasing by leasing, for example, only part of a structure, and then, once proven productive, leasing the remainder for higher amounts. However, this authority to withhold acreage can just as easily decrease the state's income, in the event the first acreage leased is found non-productive.-- which is usually the case. In essence, this section is authorization for the Commissioner to "gamble" on the productivity of state lands.

This section also seems unfair to the first lessees, who, if the first tracts leased prove productive, are faced with the prospect of having to buy themselves back into the fruits of their own risk at a higher rate.

Sec.'s 38.05.180(g) and (h)

These sections relate net profits and work commitment leasing which, as previously discussed, are ill-advised.

Sec. 38.05.180(i)

There are no objections to this section so long as the trading or storage of royalty oil remains and is clearly the subject of mutual agreement.

Sec. 38.05.180(j)

This section concerns several of the provisions to be included in state oil and gas leases:

First, this section reduces the primary term of state leases from 10 to 5 years. It should be understood that in most areas of Alaska the ability to carry out exploration work is limited to a four month period per year, consequently a five year lease allows only 1-2/3 years of exploratory work. This is clearly insufficient in such a high cost, high risk area.

Second, this section provides that a state lease will be "renewed", if and for so long thereafter as oil and gas is produced in paying quantities or if the lease is committed to a unit. The term "renewed" should be replaced with the term "extended" as this is the long-understood and recognized effect of production or commitment to a unit.

Third, the section's provision concerning shut-in wells should be clarified, since, in its present form, it appears as though the shut-in well must be located on the land prior to the issuance of a lease.

Fourth, this section authorizes the Commissioner to increase rentals up to 150 percent of the preceding year's rate and to provide that a lessee earns production rights only to the depth drilled at the beginning of production. Both of these provisions should be deleted as unnecessary and unworkable.

As to rental increases, as noted, Alaska is already a high cost, high risk area. The prospect of substantial rental increases

during the primary term of a lease will serve only to curb exploration not encourage it.

The provision concerning production rights only as to the depth drilled is unnecessary and unfair. Aside from an obvious example of the lessee drilling into the top of a reservoir and being mechanically unable to go deeper and thereby losing the main body of the reservoir, it also could result in split ownership of a lease with one party having to drill through another's rights to reach his own with possible damage to the upper reservoir resulting.

Finally, the means of extending a lease by drilling are set forth in this section. Given the seasonal nature of drilling in Alaska, the 90 day grace period after drilling has ceased should be expanded if further drilling is prevented by environmental considerations or other circumstances imposed by the State.

Sec. 38.05.180(k)

The increased rentals proposed in this section will discourage exploration and will not increase income to the State because the extra expense will be compensated by lower bid totals. The present $1.00 per acre per year rental should be retained.

Further, this section alters substantially the nature of the ordinary rental provisions in oil and gas leases. The rental to be paid under these provisions is no longer a delay rental. This

section provides, "Rental is payable in advance and continues until income to the state from royalty, net profit, or exploration work commitment exceeds rental income to the state ... for three consecutive years ...." There is no provision for credit or set-off of rental paid during those three years against the state's income from production. Consequently, for the first three years of production, the state would receive both rental income and production income.

Sec. 38.05.180(l)

This section should be modified to provide that the state shall issue a State shorelands lease, as AS 38.05.180 presently reads. Also, the Commissioner should be given the discretion to grant a shorelands lease in excess of five years.

Sec.'s 38.05.180(m) and (n)

These two sections concern the unitization of state leases and are re-enactments of present law. However, given the alternate leasing methods of the bill, and the previously discussed, implicit direction to the Commissioner to "experiment" with these methods, unitization of state leases will be extremely difficult, if not impossible.

It is entirely reasonable to assume that under this bill, a proposed unit will be composed of leases involving highly disparate royalty percentages and one net profits or other kind

of lease. The extreme difficulty of applying these completely different lease burdens to the production allocated to each lease under a proposed unit are obvious. These difficulties constitute a disincentive to unitization and therefore nullify the conservation benefits of unitization.

Sec. 38.05.180(o)

This section concerns the acreage chargeability of KGS leases and is unobjectionable.

Sec. 38.05.180(p)

This section is a re-enactment of the present authorization for the pooling of state leases. Like the provisions concerning unitization, the problems inherent in alternate leasing methods will make pooling more difficult, to the detriment of the conservation objectives of pooling.

Sec. 38.05.180(q)

This section authorizes the State to share in the costs of exploration under a drilling or development contract. Oil and gas exploration is extremely risky and historically the province of private enterprise. Financial participation by the state in an exploration venture raises fundamental questions as to the appropriate role of state government. Given the fact that most wells drilled are unsuccessful, and the substantial sums involved in drilling in Alaska, additional challenges may be anticipated as to the authority or wisdom of the State to participate in a particular drilling project.

AGO 546693

Sec. 38.05.180(r)

This section is a re-enactment of present law concerning the subsurface storage of oil or gas on state leases. However, the present law's provision concerning the extension of the lease used for storage for the period of storage and so long thereafter as oil and gas are produced was deleted. This extension provision should be retained.

Sec. 38.05.180(s)

This section concerns the employment of state residents on state leases is substantially the same as the existing law.

Sec. 38.05.180(t)

This section is an attempt by the state to encourage exploration on lands on which no bids have been tendered. This philosophy is laudable. However, the Commissioner should not be restricted by the leasing details of this section.

Sec. 38.05.180(u)

This section would restrict joint bidding and should be deleted. Joint bidding can very well be to the advantage of the state as it tends to increase the size of the bids submitted and facilitates the exploration process. See, for example, the paper in the November 1976 issue of "Journal of Petroleum Technology" in which the authors conclude that "joint bidders tend to bid on more sought-after (and apparently more valuable) leases and that they tend to bid higher, on the average, than solo-bidding

competitors". Industry testimony before the U.S. Senate has indicated that since the first OCS sale in 1954, 172 companies have purchased OCS leases. 42% of these leases were not purchased by the major companies, and in recent years the smaller companies have increased their share of OCS production at the expense of the major oil companies.)

Depending on the content of the regulations adopted, this section may violate Article 8, §17 of the Alaska Constitution. This Constitutional provision requires that laws and regulations governing the use or disposal of natural resources must apply equally to all persons "similarly situated".

Sec. 38.05.180(v)

This section grants the state an unfettered option to purchase 16-2/3 percent of oil and up to 100 percent of gas produced from a state lease. This section will in effect eliminate the lessee's ability to use the gas sales contract as a method of financing. Consequently, gas exploration in Alaska will be discouraged if not precluded. Similarly, if the state should wait several years before deciding to take up to 100 percent of the gas, the discoveror of a gas field would be deprived of all income from his legally obtained gas, because he could not enter into a contract with any other user. This section would also eliminate or impair the ability of lessees to utilize the production payment as a method of financing, likewise discouraging exploration.

Sec. 38.05.180(w) This section requires state access to all of a permittee or lessee's exploration data and should be eliminated from the bill. This section is, in essence, a confiscation of valuable proprietary data, for the sole purpose of deciding whether the explorer has found anything or not. If the state decides he has, the area could then be thrown open to all other competitors, thereby removing any incentive for an aggressive company to be a leader or employ innovative ideas to discover new resources. This section completely removes that incentive, and thereby will cause significant state natural resources to remain unsought.

In addition, grave problems as to the preservation of the confidential nature of the data are inherent in this section. It is common knowledge that such information is extremely confidential and closely guarded by the individual members of the industry.

The existing law upon which the oil and gas industry has relied for the confidentiality of information is contained in AS 38.05.035(a)(9)(C). This existing provision requires the director to keep geological, geophysical and engineering data confidential "upon request of the persons supplying the information." As the Bill's provision requires disclosure of information to the Commissioner, not the director, and since it requires also access, as distinct from supplying copies, are the confidentiality provisions incumbent upon the director not

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applicable to the information required to be disclosed to the Commissioner?

If this section is to be applicable to existing exploration data, then the Commissioner's access and utilization of such existing data is almost certainly an unconstitutional taking of this valuable and expensive property. If the Commissioner is to be allowed access at all to such data, such access should be limited to future data only. Further, there should be a requirement of the adoption of regulations prescribing the confidentiality of this data and the addition of statutory criminal penalties for intentional disclosure of such data.

Section 2

There are no objections to this section concerning notice of mineral leasing.

Section 3

This section would amend AS 38.05.140(c) to reduce the upland acreage limitation from 500,000 acres to 200,000 acres. In Alaska, where there are large areas of state lands which are potentially eligible for bid, a 500,000 acre limitation, which the present statute contemplates, is not unreasonable. The effect of a 200,000 acre limitation would clearly be to limit the participation of those individuals who are most active in exploration business in Alaska, i.e., those individuals who have

historically submitted the highest bids to the state. It is not at all clear why the state would seek to discourage, rather than to encourage, the continued involvement of those individuals in Alaska. Further, this section's applicability to the holding of existing lessee's -- requiring them to reduce their holdings within 5 years -- is an unconstitutional taking of leasehold estates.

Alaska State Legislature

Senate

Committee on Resources

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

LIPTON on LEASING

The following notes summarize Lipton's major points on proposed leasing legislation in his testimony before the Senate Resources Committee on 1/28, 3/15, and 4/28. The initial two testimonies relate to HB 854, while the latter refers to changes later incorporated into CS HB 854 (Finance).

.2 line 3
B 854

Subsection (d) of the initial findings contains an unusual but exemplary approach to leasing - that is to "maximize state revenue from profitable oil and gas production, while minimizing revenue from unsuccessful exploration and from marginal economic oil and gas production." (Deleted in present version)

With respect to the eight leasing methods proposed, his specific comments were confined to:

Royalty Bidding - a method not preferable except when the lease is on a known structure with known risks. There is a potential problem if royalty bidding is permitted as an option and if the commissioner is also given discretion to abate royalties where there is an insufficient rate of return. The successful bidder may overbid a royalty with the expectation of a future royalty reduction. The section on abatement (page 5, line 18 CS HB 854) is still present, but modified from original bill.

Net Profit Bidding - this method may be attractive to both the state and the industry under certain circumstances. Allows the oil company to keep more front-end captial for exploration. (Retained in CS HB 854)

AGO 5466 81

Work Commitment Bidding - not a particularly useful method. May cause company to over-commit itself in relationship to actual profitability of the lease, resulting in premature abandonment. (Deleted in CS HB 854)

Lipton's general comment on the leasing methods is that it may not be desirable to itemize 7 or 8 options with minimum fixed commitments on each variable. The commissioner should have greater flexibility to design the lease sale to conform to the structures to be leased.

.6 line 15 HB 854 "The commissioner may withhold acreage from leasing in a particular lease sale." This is an important section as it may often be in the state's best interest to do so. Suggested a more positive statement to encourage utilization of this authority. (Deleted in CS HB 854)

.7 line 15 HB 854 There should be a provision for reasonable extension of exploration deadline beyond 5 years under certain circumstances. The bill allows for leases up to 10 years - but does not specifically address extensions of 5 year leases. (Same in both versions)

11 line 13 HB 854 This section authorizes the award of non-competitive leases when no bids have been received at a sale. Lipton advises against this because changing circumstances may result in a favorable lease agreement later if the state is not too hasty. (Modified in CS to prohibit non-competitive leasing)

p.12 line 1 HB 854 Gives the state the right to purchase up to 16 2/3% of oil and 100% of gas from a lease at fair market value. Lipton cautions state to use this judiciously as it may hurt the leaseholders under some conditions. CS HB 854 was rewritten to delete specific percentages, but still allows the state to buy "specified volumes" cited in the lease.

.6 line 22 B 854

Work Obligations - should be made a part of every lease agreement - This section is modified but still present in CS HB 854 (Finance). The committee might consider changing may to shall on page 4, line 26 in the CS.

.5 line 2 S HB 854 Finance)

Exploration Credits - See attached letter from Lipton to Cowper dated May 5, 1978.

.11 line 7 S HB 854 Finance)

Confidentiality of Exploration Data - there should be a provision to extend the period of confidentiality beyond two years if a scheduled lease sale is postponed.

CHAPTER 81: OIL AND GAS PRELEASING PROCEDURES

ARTICLES

1. (GENERAL PROVISIONS) AFFECTED LANDS AND EXCEPTIONS
2. PRELEASING PROCEDURES
3. SOCIAL, ECONOMIC, AND ENVIRONMENTAL ANALYSIS
4. ALASKAN ADVISORY COMMITTEE ON LEASING
5. NOTICE AND REVIEW
6. DEFINITIONS

ARTICLE 1: AFFECTED LANDS

SECTION

10. General Provision
20. Joint Federal-State Beaufort Sea Lease Sale
30. Limited Acreage Provision
40. Drainage Situation Provision

11 AAC 81.110. General Provision. (a) These regulations apply only to competitive leasing as specified in AS 38.05.020, 38.05.135, 38.05.145, 38.05.180.

11 AAC 81.120. Joint Federal-State Beaufort Sea Lease Sale (a) The proposed joint Federal-State Beaufort Sea Lease Sale is exemted from the requirements of these regulations.

ROUGH DRAFT ONLY

11 AAC 81.130. Limited Acreage Provision (a) Should an area of up to but not greater than one township in area be deemed leasable, the Commissioner may at his discretion, offer the area for lease under the following method.

1) The Commissioner will publish a notice of intent to lease and a notice of public hearing.

2) The Commissioner will hold the public hearing in the affected area to guage public opinion to the proposed lease sale.

3) Upon completion of subsection two the Commissioner will publish a notice of a lease sale and a chart delineating the tracts to be offered.

11 AAC 81.140 Drainage Situation Provision (a) Should a situation arise whereby the leasing of land by another party adjacent to State owned lands, threaten the mineral interest of the State lands through possible drainage situations, the

Commissioner may, at his discretion, offer that threatened land for leasing under the following methods:

1) The Commissioner will publish a notice of intent to lease and a call for public reaction and nomination.

2) Upon completion of subsection 1 and receipt of nominations, the Division will prepare an economic analysis on the sale area.

3) The Commissioner will then call for and hold a public hearing within the affected area to gauge public sentiment to the proposed lease sale.

4) The Commissioner, taking into account information gathered at the public hearing, will issue a list of the tracts proposed to be leased and a notice of a lease sale.

5) Lands offered for lease under this section may total no more than 100,000 acres.

ARTICLE 2: PRE-LEASING PROCEDURES

SECTION

10. Notice and Publication
20. Soliciation of Comments
30. Initial Tract Selection
40. Social, Economic and Environmental Analysis
50. Public hearings on Social, Economic, and Environmental Analysis
60. Final Social, Economic, and Environmental Analysis and Final Tract Selection
70. Preparation of Leasing Conditions
80. Public Hearings on Lease Conditions
90. Final Lease Conditions Set and Notice of Lease Sale

ROUGH DRAFT ONL

11 AAC 81.210 Notice and Publication. (a) The commissioner, at a date no greater than 24 months prior to any proposed lease sale, will publish a set of charts with accompanying written descriptions adequately locating the general geographic area in which the proposed lease sale will be.

(b) The commissioner will, concurrent with provision (a) cause to be published a notice for the Solicitation of Comments.

Chapter 81: Oil and Gas Pre-Leasing Procedures.

Due to a new article one being inserted into this chapter, articles 1 - 5 of the previous draft are now 2 - 6 with article six being re-titled to read "Definitions." Within article six, sections 520 and 530 have been deleted.

Article 2: Pre-Leasing Procedures

1) 11 AAC 81.210 Notice and Publication (a) The phrase ...date no less than 18 months prior..., has been amended to read...date no greater than 24 months.... The phrase...any lease sale, will cause to be published...has been amended to read ...any proposed lease sale, will publish.

2) 11 AAC 81.230 Initial Tract Selection (a) The phrase...date no less than 16 months prior to any lease sale..., has been amended to read...date no greater than two months after the first notice date of the Solicitation of Comments period,.... The phrase "utilizing industry and public comments" has been added to the end of the sentence.

3) 11 AAC 81.240 Social, Economic, and Environmental
a) the phrase "each tract, group of tracts, and/or," has been deleted.
b) the phrase "all or part of" has been deleted.
e) New Paragraph
From the date of notification by the commissioner of his decision under section 230 of this article, the concerned state agencies will have a maximum of four months in which to prepare their components of the SEEA.

4) 11 AAC 81.250 Public Hearings on Social, Economic, and Environmental Analysis.
c) ...date no less than nine months prior to the lease sale, has been amended to read...date no greater than three months after the completion of the SEEA.

5) 11 AAC 81.260 Final SEEA and Specific Tract Selection
c) ...date no less than six months prior to the lease sale, has been amended to read"...a date no greater than 12 months from the date of notice of Solicitation of Comments under section 10 of this article.
c) The commissioner will, upon completion of paragraph (c) of this section, announce to the public a date by which, barring unforeseen circumstances, the proposed lease sale will be held.

6) 11 AAC 81.280. Public Hearings on Lease Stipulations
c) ...date no less than four months prior to the lease sale has been amended to read...date no greater than three months from the date of completion of paragraph (c) section 60 of this article.

7) 11 AAC 81.290 Final Lease Stipulations Set and Notice of Lease Sale (a)
(a) a) ...date no less than three months prior to the lease sale, has been amended to read...date no greater than four months from the date of completion of paragraph (c section 60 of this article.

8) 11 AAC 81.320 Economic Component (c)...committee not less than 14 months prior to the lease sale, has been amended to read...committee not greater than one month after completion of section 40 article two of this chapter.

9) 11 AAC 81.420 Composition of Committee (a) the phrase "the Division of

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Minerals and Energy Management will be represented on this committee by both its leasing and petroleum managers."

b) the phrase "leasing manager of the" has been inserted between the words "by the"...and;;;"Division of....

c) A new paragraph has been added - "For each lease sale, a delegate from the borough government affected by the sale, will be invited to participate on the committee.

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STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM May 30, 1978

SUBJECT: CSHB 854 and the Effects of Using Multiple Oil and Gas Leasing Methods on Unitization

TO: The Honorable Kay Poland

FROM: Gregg K. Erickson
Director of Research

Summary

At the Senate Resources Committee meeting on Friday you received testimony to the effect that the use of differing leasing methods on adjacent tracts, as would be permitted under HB 854, would make it difficult to establish unitized development and production of the pools over which those tracts lie. Generally, our studies of this question, which we have conducted since the matter was first raised several months ago, do not support this conclusion. On the contrary, they show that the incentives to unitize will not be seriously reduced by diverse lease arrangements, and that the difficulties of reaching unit agreements will not be increased as a result of this diversity.

The Incentive To Unitize

Unit arrangements exist and are encouraged by state policy because centralized, unitized operation of an oil or gas field can and usually will result in substantial reduction in the expenses of extracting the resource, and in absolute gains in the total amount of oil and gas recovered. That the potential for these gains exists is, under the circumstances we have had in Alaska, almost never a matter of contention among the leaseholders who would be a party to a unit.[1] The most

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[1] See Bradner, Tim, "Oil and Gas Regulation in Alaska," *Alaska Review of Business and Economic Conditions*, 1971.

AGO 546672

important question here is therefore: Will the use of differing leasing systems as contemplated in HB 854 significantly reduce the incentive to unitize that is provided currently by the very real benefits of joint, unitized field development and operations?

We think not. At a high royalty rate, as might be encountered under straight royalty bidding, the benefits in the form of increased production are, of course, shared with the landowner on the basis of the royalty percentage. But all the benefits in the form of reduced costs remain with the lessee. In a net profits arrangement the benefits of increased production and reduced expense are both shared with the lessor, but still leave the lessee with substantial incentive to partake of the advantages of unitization. Naturally, if the royalty or net profits rates were set at or close to 100 percent these incentives would disappear, but so would the incentive to develop the tract at all.

Difficulties in Unitization

Despite the retention of a clear incentive to unitize under a mixture of leasing methods as in HB 854, it is possible that a mixture of systems might create a practical barrier to unitization. This might occur, for example, if the differing lease terms made it impossible for the lessees to agree on the proper apportionment of the unit's expenses and produced oil and gas.

Current Alaska law provides only general guidance as to how this allocation is to be made.[2] The usual practice has been to allocate the costs and production generally on the basis of the costs and production that would accrue to an individual leaseholder were he to operate the tract on an individual, non-unitized basis. Another method less frequently employed, but used, at least partly, in the formation of the Prudhoe Bay unit, is to allocate expenses and actual production on the basis of the original petroleum in place underneath each lease. Other factors, or combinations of these factors, may also be considered, and one study has distinguished examples of 42 different methods of apportioning participation.[3]

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[2] AS 31.05.110(c) provides that "each plan of unitization shall contain fair, reasonable and equitable provisions for...the division of interest or formula for the apportionment and allocation of the unit production, among and to the several separately owned tracts within the unit area such as will reasonably permit persons otherwise entitled to share in or benefit by the production from such separately owned tracts to produce and receive, instead thereof, their fair, equitable and reasonable share of the unit production or other benefits of it; a separately owned tract's equitable, and reasonable share of the unit production shall be measured by the value of each such tract for oil and gas purposes and its contributing value to the unit in relation to like values of other tracts in the unit, taking into account [1] *acreage*, [2] *the quantity of oil and gas recoverable from it*, [3] *location on the structure*, [4] *its probable productivity of oil and gas in the absence of unit operations*, [5] *the burden of operations to which the tract will or is likely to be subjected*, or so many of these factors, or such [6] *other pertinent engineering*, [7] *geological* or [8] *operating factors* as may be reasonably susceptible of determination...." (emphasis and numbers added)

[3] A. A. Khan and H. H. Power, "An Analysis and Comparison of Engineering Bases of Participation in Unit Agreements," *IOCC Committee Bulletin*, December 1960, p. 101.

Reaching an agreement on the theoretical basis for allocating participation and resolving all the associated technical issues can be a complex, difficult and protracted process. Although all parties usually have a clear view of the overall benefits to be gained from unitization, some may "hold out" in hopes that by doing so they may be able to extract a better deal from their fellow lessees concerning the allocation of the benefits of unitization.[4]

The question here, though, is whether differing lease arrangements will make reaching an agreement *more* difficult. In our view, the question answers itself when considered in the context of Alaska's unitization law and the permissible bases for apportionment of participating unit interests enumerated therein.[5] For example, is the "acreage" in a lease altered by the fact the lease contains profit sharing arrangements? Is the "location or the structure" affected by the royalty arrangements? Or are the "engineering, geologic or operating factors" influenced by either? We believe it is obvious that they are not.

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[4] For a listing of the problems that can arise in unitization negotiations see Stephen McDonald, *Petroleum Conservation in the United States: An Economic Analysis* (Resources for the Future, Washington: 1971), pp. 198-201.

[5] AS 31.05.110(c). See note 2, *supra*.

A Final Point

As a final point, we note that tracts bearing differing royalty burdens have already been included in units, in Alaska and elsewhere, wherever individual holders of federal and state noncompetitive leases have sold those leases while retaining overriding royalties. Moreover, differing lease arrangements are likely to exist in the future side by side wherever Native corporation or federal and state oil and gas lands are contiguous. It is possible, of course, that if the legislature gives the commissioner of Natural Resources authority to use alternative leasing methods that these differences may be reduced or eliminated.

GKE:jm

cc: Members, Senate Resources Committee
The Honorable Chat Chatterton
The Honorable Hugh Malone
Mr. Phil Holdsworth

STATE of ALASKA

MEMORANDUM

TO: Jack Roderick
Joe Green, Director, DNEM

Thru: Pat Dobey, Petroleum Manager

FROM: Blair Wondzell
Petroleum Engineer

DATE: March 3, 1978

FILE NO.

TELEPHONE NO.

SUBJECT: Sliding Scale Royalty Considerations, Examples, Bidding Methods

Our proposed legislation, House Bill No. 854, contains provisions for utilizing sliding scale royalties as the fixed parameter in some bidding methods and as the bid parameter in others. Since there have been several questions on how we would set up a sliding scale royalty schedule for use as the fixed parameter and how we would request and evaluate sliding scale royalty bids, I have prepared this discussion and some examples.

The basic elements of my recommendations are that production steps will be in multiples of the approximate economic limit (1000 B/D, 2000 B/D, 3000 B/D, etc.). The percent royalty to be applied to each production step is based on increasing by equal increments (x+y, x+2y, etc.), the royalty percentage applied to the base (economic limit) production step. This criteria will make it easy to definitely determine the top bid when industry is asked to bid the sliding scale royalty reserved to the state. For example: The production rate steps are fixed (1000 B/D, 2000 B/D, etc.) as is 12.5% royalty at 1000 B/D, industry then bids on the equal incremental royalty percent increases to be applied to the higher steps.

I noticed that in Jack Roderick's letter to the commissioner, he is also looking at sliding scale royalty schedules. His schedules and discussion should be compared to my data as set out in this memo.

AGO 546740

TO: Joe Green
FROM: Blair Wondzell
RE: Sliding Scale Royalty Schedules

TYPICAL SLIDING SCALE ROYALTY SCHEDULES

NORTH SLOPE AREA

Daily Average Prod. Rate (Bbls./day)	Incremental Royalty Rate (%)	Royalty For Specific Producing Rates: Producing Rate (Bbls./day)	Royalty Production (Bbls./day)	Equivalent Royalty Rate (%)
-1000	12.5	1000	125	12.50
1001-2000	25.0	2000	375	18.75
2001-3000	37.5	3000	750	25.00
3001-4000	50.0	4000	1250	31.25
4001 and above	62.5	5000	1875	37.50
		7000	3125	44.64
		9000	4375	48.61

SOUTH CENTRAL AREA

Daily Average Prod. Rate (Bbls./day)	Incremental Royalty Rate (%)	Royalty For Specific Producing Rates: Producing Rate (Bbls./day)	Royalty Production (Bbls./day)	Equivalent Royalty Rate (%)
-500	12.5	500	62.5	12.50
501-1000	25.0	1000	187.5	18.75
1001-1500	37.5	1500	375.0	25.00
1501-2000	50.0	2000	625.0	31.25
2001-2500	62.5	2500	937.5	37.50
		3500	1562.5	44.64
		4500	2187.5	48.61

Note: The Sliding Scale Royalty Schedule for the North Slope area is significantly higher than for the South Central area because the higher North Slope operating costs result in a much higher economic limit.

AGO 546741

TO: Joe Green
FROM: Blair Wondzell
RE: Sliding Scale Royalty Schedules

SLIDING SCALE ROYALTY
Considerations, Example Schedules, Bidding Methods

CONSIDERATIONS:

1. Sliding scale royalty use is based on the intent that the ownership royalty share be small from economically marginal production and be large from very profitable production.

2. Ideally, at production rates below the economic limit there should be no royalty. ("EL" is herein defined as the production rate necessary to pay direct operating costs; overhead and amortization are not included). Immediately above the EL level or rate of production, industry's share should include an amount for pay back of investment - beyond this pay-back production rate, the State and industry should share the profits which are represented by production. Based on royalty rates actually bid, at very high well rates the State's royalty share should exceed 50%. As the field declines, individual well rates would decline with a corresponding decrease in average or equivalent royalty; therefore, if the State is to obtain a field life average royalty in the 50% range, royalty rates during the peak production years must be higher than the intended overall average equivalent royalty rates.

3. Computer programs for the determination of the correct slide/percent royalty do not, to my knowledge, exist. Because of the many estimated factors which would go into such a program (normal capital, operating cost, production rates, and number of wells producing), the results would be somewhat unreliable.

4. The problem of setting the slide steps and royalty rates can be solved from another direction, however. A good schedule can be obtained based on logical reasoning consistent with the guidelines stated in paragraph #2 above.

5. Since State statutes require a minimum royalty of 12.5%, the "ideal" situation is not obtainable. However, it can be approximated by gradually increasing State royalty - above the EL production rates - to a partial sharing and then to a full sharing of the production. Following are typical sliding scale royalty schedules for the North Slope Area and for the South Central Area.

6. Sliding scale royalty bidding may be a future bidding method. This can be handled in at least 2 ways.

Method #1: Industry can be requested to furnish a sliding scale royalty bid with the only provision being that the minimum royalty be 12.5%. The determination of the winning bid would require multiple economic computer analyses. These analyses would be based on a multitude of estimates and would therefore vary depending on estimates of the input parameters. Industry would most likely, and justifiably, contest the awarding of bids by this method.

Method #2: Industry can be requested to bid royalty percentages having equal incremental increases which will be applied to preset production steps: or industry can be requested to bid the equal increment production steps for preset royalty percentages. Bids based on either of these alternates (preset production steps or preset royalty percentages) can be precisely compared to one another and the winning bidder can easily and definitely be determined.

Method #2 types of a sliding scale royalty bid is shown in the following examples:

EXAMPLE

LEASE AWARDS

A lease will be awarded on each tract to the responsible qualified bidder offering the highest percentage royalty for the production steps as specified below under Bid Method . . . . .

ALTERNATE I

Royalty percentages bid, preset production steps.

BID METHOD

All bidders must designate the percentage royalty reserved to the State for each of the below listed production steps which are average daily production rates based on monthly production volumes for each well as defined in regulations _____. Minimum royalty percentage as required by State Statutes is 12.5%. A royalty percentage of 12.5% is specified for the base production step which is 0 to 1000 B/D and will be

TO: Joe Green
FROM: Blair Wondzell
RE: Sliding Scale Royalty Schedules

increased in equal increments for each subsequent production step. The following production steps will be utilized:

Average Daily Production Rate (Bbls./day)	Incremental Royalty Rate (%)
0-1000	x (must be 12.5%)
1001-2000	x+y
2001-3000	x+2y
3001-4000	x+3y
4001 and above	x+4y

ALTERNATE 2

Production steps bid, preset royalty percentages.

BID METHOD

All bidders must designate the daily average per well production steps for the royalty percentages reserved to the State which are listed below. The daily average production steps are based on the monthly production volumes from each well as defined in regulation _____. The production steps above the base step will be increased by equal increments. The following royalty percentages reserved to the State will be utilized.

Incremental Royalty Rate (%)	Average Daily Production Rate (Bbls./day)
12.5	x
25.0	x+y
37.5	x+2y
50.0	x+3y
62.5	x+4y and above

THE FOLLOWING DOCUMENT(S) MAY NOT FILM LEGIBLY BECAUSE OF POOR QUALITY OF THE ORIGINAL.

Bonus Bids

Bonus bidding should be applied in cases where the state has either.

(a) A very great amount of knowledge about the resource or

(b) The prospect is of extremely high risk, the lessor has little knowledge of the resource and expected value revenues would be marginal.

The first case (a) where tracts might be offered for Bonus Bidding could be that of a drainage or near drainage situation where the state wished to maximize its near term discounted revenues. It would be advisable to not offer all of the tracts for bonus bidding, but to withhold a percent of acreage to be sold at a later date, (Report 2-77). Also, since royalty and other bidding methods have shown to offer higher expected value revenues for lower risk cases it could be advisable to mix royalty bidding with the bonus bidding, a practice followed by the Federal Government in the recent Cook Inlet OCS sale.

In the second case (b), that of extreme high risk, bonus bidding can be used as a filter to determine the value of marginal tracts. This is discussed under the section on (t) low potential, high risk and previously leased.

Report 2-77 indicates that for very high risk cases all bidding methods approach the same level of expected value income for the state. In cases of small and marginal potential reservoirs the bonus bid method with its ease of administration might afford optimum state revenues. Report 2-77 also indicates that in probability of success percents of 1 percent or less bonus bids could afford higher revenues, but the state should ensure that leasing under such high risk cases only occurs when sufficient knowledge is gained to indicate that the land to be leased is of such a low potential. For example, a geologic structure as large as the Prudhoe Bay anticline may have had a high degree of risk before it was drilled but its potential to hold enormous reserves was there. Bonus bidding should not have been used in that instance.

In summary, bonus bidding can be used when

(1) Very small potential reservoirs are expected;

(2) Extreme risk is expected and the gaining of sufficient knowledge to determine the presence of reservoirs is unwarranted because of marginal to low potential indications.

(3) A sliding royalty should be considered in all bonus bid cases;

(4) This method could be used in a mixture with other methods such as royalty bidding;

(5) Also, in general, this method should only be considered when leasing in the least desirable state areas, i.e. those below the top 10 rank.

Royalty Bidding/Fixed Bonus

Report 2-77 indicates that royalty bidding and profit sharing deliver the highest expected value revenues to the state of all bidding methods. It is particularly effective where the probability of occurrence is high (i.e. low risk) and especially when the expected reservoirs are large. A sliding scale should be added in the declining production years to eliminate the problem of premature shut down. Cases for royalty bidding would be when

(1) The state has enough knowledge to assess the ~~risk~~ Degree of potential Target.

(2) Potential reservoirs are not extremely small or of extreme risk.

The Beaufort Sea sale is a good example of a case for using Royalty bidding on tracts. Ingeneral, this method should be considered when leasing in the top 10 leasing areas on the desirability scale.

Net Profit Bidding

~~Net profit bidding would be most advantageous when costs and prices~~ ~~[illegible] the advantages of the royalty~~ ~~bid would be used in the opposite location.~~ In remote high risk areas, this method might attract stronger bids than the royalty or the bonus bid method.

Of the 35 potential state leasing areas, this method might be used to advantage on those areas below the top 10 in desirability.

Work Commitment

(See section (2)).

This bidding method can be best used where the state has a large (i.e. 100,000+ acres) area of probable low potential where industry has shown a general lack of interest in exploration and leasing. By offering a large area for lease to one lease owner the state provides an extra incentive to undertake exploration and the state encourages exploration by making it the bid variable.

This method would be used in remote low potential high risk areas. Some of the states 3 mile limit lands such as Area M might be ~~used applicable~~ applicable to this method.

Low Potential & High Risk and Previously Leased Section (c)

On the basis of exploration knowledge, lack of interest by industry and reasonable analysis, the department may determine that lands have very low potential for oil and gas.

As a means of encouraging the evaluation and possible development of these low potential lands the department could:

(1) Offer the lands for competitive lease using a bonus bid with a sliding royalty. A minimum bid equal to the first year's rentals could be used to filter the bids. This should give a check on the potential of the lands. The sliding royalty would act as a safeguard for very low value bonus bid tracts if a discovery is made later on the lands.

(2) On tracts that receive no acceptable bids, the commissioner could hold a non-competitive similtaneous drawing after proper notice (30 days). Tracts not receiving applications for the drawing could then be opened for over the counter applications. Tracts could be offered at fixed 50¢/year rentals, 5 year terms. A sliding scale royalty would be used in all cases to provide a revenue safeguard against future potential discoveries.

(3) In some cases, all tracts not receiving acceptable bids could be aggregated into large blocks (100,000 acres or more) and offered for work commitment bidding or development contracts.

THE PRECEDING DOCUMENT(S) MAY NOT FILM LEGIBLY BECAUSE OF POOR QUALITY OF THE ORIGINAL.

STATE of ALASKA

MEMORANDUM

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF MINERALS AND ENERGY MANAGEMENT

TO: Robert E. LeResche
Commissioner Natural Resources

DATE: February 28, 1978

FILE NO:

TELEPHONE NO:

FROM: [redacted]

SUBJECT: Rationale and Apparent Objections to HB 854- Oil and Gas leasing Bill.

Predictability, certainty and an acceptable political climate. These are the three things the petroleum industry looks for in an area attractive for exploration.

I contend it is the availability of land, not the method by which land is offered, that is the critical consideration. In other words, Alaska will become more attractive, less subject to severe criticism by the industry, once land is made available for leasing. The methods of leasing will quickly become secondary.

This contention, of course, will be disputed by the industry. They will argue that because the law allows administrators to choose from a wide variety of leasing methods the industry will remain uncertain about what to expect. I contend that the industry will be given plenty of advance notice of what method will be used in a sale and will therefore have enough time to plan financial strategy.

Industry's contention that Alaska must compete with other areas in the world within company budgets is, of course, correct. This does not mean, however, that Alaska has to settle on one, or perhaps two, leasing methods so as to make the Alaska budget dollar compete within a particular company. The company can estimate how much Alaska's prospective oil is worth to them and can calculate how much will be spent on a particular sale based on the method of lease offering, along with a multitude of other considerations. My basic assumption, of course, is that the oil is here and, eventually, the companies will come looking for it.

Which brings me back to my first point. Certainty and predictability will be established once the industry is convinced that a regular, stable procedure for offering oil and gas lands has been established by Alaska. Once lands are available and administrators are directed to offer leases to the public, most of the pressure will relax.

Industry's objection to the two reports to the legislature by the executive, I think, dramatizes my point. I think the industry will eventually accept the 5-year leasing program as a giant step toward predictability and, even though given wide public accountability, will come to believe that the report will not result in more governmental interference. Industry looks,

however, I think on the annual leasing method report as a way for the legislature to probably work its way into the day-to-day leasing decisions best left to the governor. They fear "politics" in leasing, and I am less sure of this one that I am the leasing program report.

The underlying criticism of HB 854 you will hear, I believe, is that Alaska is "experimenting" with leasing methods. We are said to be trying to adapt all the good features used in other states and jurisdictions and are trying to make them work where they were not designed to work. Alaska is frontier; Alaska is different, goes the argument.

I believe I was to take the first cut at a comprehensive review of Alaska's oil and gas leasing law following Dr. Gaffney's study. I do not claim infallibility but I do claim to have weighed the many considerations which make Alaska like and unlike other jurisdictions. As I have told you, I have tried to confront, head-on, the question of the question of the number of participants in exploration in Alaska. You have mentioned the concept of "incentives", at least as it applies to information, and I have indicated that whereas incentives are not directly dealt with in the legislation I think we may get there in the future.

So, with that background let me set forth the rationale for and some of the anticipated objections to HB 854.

Several concepts were examined and rejected. Found to be not applicable, at least at this time, are the so-called dual-leasing system (Ted Stevens' amendment to S-9). Congress may yet include something like it in OCS legislation. Also, the concept which involves distinguishing between exploration leases and those development and production activities which would be allowed after oil or gas is discovered. We have not included this concept because we believe that Alaska can know before it offers its land for drilling what development and production activities it expects to take place. (Incidentally, the conference committee on S-9 and HR 1614 is scheduled shortly.)

We examined the "ante" versus "post" royalty impact. The post (after) charge is the economic recommendation Dr. Mason Gaffney drew in his study of February, 1977 for the legislature. Dr. Gaffney concluded that the ideal way for a government (any lessor) to determine its economic rent was to determine such rent after a discovery at the price then existing and based upon the size of the field discovered. Determining the value of the field after the discovery is much like the present

calculations of the reserves tax. Its newness, being untried and the unsettling effect its introduction and application would have had on exploration activities in Alaska we felt would be primarily negative. Also, we felt that the legislature could follow-up on Dr. Gaffney's recommendations if they wished. Canada, in its new law for leasing of the North and offshore, has proposed a "progressive incremental royalty" similar in concept to Dr. Gaffney's ad valorem charge. Perhaps, it will be in Alaska's future.

We examined the incentive programs existing in the Province of Alberta, and other jurisdictions, and determined that although some incentives may be needed in the future, they should not be dealt with in this bill. Giving direct tax and other incentives to exploration operators may be necessary, particularly to stimulate the much needed geological and geophysical information data, but we felt future legislatures could deal with this basic policy charge. Rather than incentives, we believe the pace of exploration can best be determined at the time and by the terms of the original lease. And, as I note later, the work commitment lease method can be used to offer incentives.

We examined the trends all over the world toward governments retaining ownership interests (equity) in leases, and toward government-owned and operated exploration companies. We rejected both of these ideas for Alaska. Equity interests in leases makes no sense so long as the state has the flexibility to deal with the many and varied leasing situations which will confront it. Government sponsored exploration, if at all, can be achieved by contract with industry rather than by bureaucrats.

Again, the petroleum industry, not unlike any business, needs certainty and predictability in order to be comfortable doing business. A "stable and predictable leasing policy" - Tom Kelly. "The industry will initially tend to go where it's wanted and an orderly contract and dependable lease sale schedule would undoubtedly provide an impetus to further exploration in the state" - Pennzoil.

The state's need for a flexible, comprehensive, all-inclusive means of leasing appears to conflict with the industry's desire for predictability. One company (Chevron) in an informal paper went so far as to say that giving these many alternatives to the state (HB 854, before a significant change) amounts to "overkill" and makes Alaska an "experimental laboratory in oil and gas leasing." They conclude by saying: "We consider this to be capricious".

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In the name of predictability and certainty, oil operators of size almost without exception opt for the cash bonus bid with a fixed royalty as the preferred leasing method. They want

I believe Alaska needs a flexible leasing law so that it may adjust to changes as they occur. The world, national and Alaska energy and oil and gas future is in a state of flux and will remain so for the two decades for which this bill is designed to accomodate. No one can be sure what future developments in energy will be and particularly in Alaska where exploration condition are so diverse.

Alaska is now one of the largest oil owning entities in the world. It will be dealing with petroleum matters, directly, for at least the next two decades, probably much longer. It's immediate future depends in large part on how it deals with petroleum matters. As such, it should become familiar with most of the alternative methods it can use to control petroleum exploration. HB 854, we believe, once it is enacted and in operation will provide the industry the certainty it requires. Admittedly, it calls for State land to be offered by methods including but also other than bonus bid where feasible. The bill introduces more alternatives than now exist, but once these methods are in place and have been used, we believe, most uncertainty will disappear.

One last word on flexibility. In addition to the State, the Federal government and Native Regional Corporations will be leasing land for oil and gas exploration for the next several decades. Terms and conditions under which leases are issued by these entities will include all the variables addressed in HB 854, and, undoubtedly, more. To protect its interest and to operate effectively in this constantly changing exploration picture, the State needs a flexible leasing law by which to respond.

Following, are an itemized list of the objections which I anticipate will be made to HB 854.

1. Term of 5 years. All operators want a lease term as long as possible. In HB 854, Commissioner can go up to 10 years if "extreme conditions, etc." exist. The majors usually know what they intend doing when they bid and lease. The smaller companies will argue that they need more time to put drilling blocks together. The State's interest is to have leases explored and it is not in having leased acreage on the books paying rentals only. Deals can be made in five years. Drilling should proceed as soon as possible, or the land should be offered again to a more agressive operator.

   The time between Cook Inlet lease sales in 1962 and 1965 until first production was begun from Middle Ground,

McArthur, Trading Bay and Granite Point averages under 4 years. Note this is production, not beginning drilling date. Average time from sale to drilling in New Mexico is 6 years.

As I have indicated before, I believe this is the most important term in the lease. The ideal would be for the commissioner to have discretion to set the length of the lease, but I do not believe the legislature or the industry would accept such discretionary authority.

2. Methods of leasing

a. Royalty bidding creates no incentive to develope leases (Chevron). This is particularly true if "surrounding leasehold were such that early evaluation was likely" -(Champlin Petroleum). Same lack of incentive argument is said to apply to high net profits and/or work commitment.

Loss of revenue to state, too risky and premature shutdown problem - (SE Alaska Empire editorial; a reprint of Fairbanks News-Miner editorial, 1977-no date) Rumor has it the USGS in Anchorage (Jones, et al) don't like royalty bidding and DOI forced it on So. Cook Inlet sale. But ARCO's first location appears to be on a royalty tract.

b. Work commitment is faulted for several reasons. Economists, including Gregg Erickson, see it as stimulating activity which the marketplace would not otherwise require. In fact, it can be used to stimulate exploration and, specifically, to acquire exploration information in areas which otherwise might not be explored. There can be an element of incentive in this method.

Tom Kelly sees the use of work commitments as pre-empting small companies. (It is interesting to note that Chevron favored the work commitment so long as the bonus or royalty was fixed and the work commitment was the sole biddable factor). Kelly sees it discouraging the promoting of participations (partners?) in drilling deals because the amount of dollars bid has been fixed. Frankly, I don't quite understand his argument, and contrary to hurting the small companies, I believe it could be used to encourage them to explore. Kelly believes a work commitment works best when it is negotiated and I agree with

him, but we agree that it is unlikely that the Alaskan legislature and public would condone negotiated lease terms by public officials. (unlike royalty sales.)

c. No mention is made of sliding scale royalty by any of the AOGA participants or companies who replied to your letter. All in the department, including Easy Gilbreth and Pedro Denton (from past memorandum in file), feel this is a most satisfactory answer. We are preparing several sliding scale examples for the Cook Inlet and the North Slope so as to focus on the factors which must be taken into consideration in setting the appropriate scale for an area.

d. Net profit will be objected to because it gets the government into the oil company's books and it will will be more costly to administer. Economists Lipton, Erickson, et al will argue it returns the most to the state.

Most economists will agree, I believe, it is the best way if "gold plating" can be controlled, but there seems to be disagreement as to whether it is best used where risks are high or low. Government encroachment will underlie the opponent's arguments.

3. The acreage limitation of 200,000 acres on state uplands (rather than present 500,000) has been objected to thus far only by a few majors. The reduction in the maximum is obviously aimed at the larger companies, and we should so state directly. (A list of state leaseholdings as of 2/10/78 is attached).

Some background may be helpful. No other state that I am aware of, has an acreage limitation. But no other state is Alaska's size nor has any state tens of millions of acres available to lease.

The Federal government has an acreage maximum for its land within each state. During Alaska's territorial days the Federal oil and gas acreage limitation in Alaska was 100,000 acres. In other states it was 46,080.

After 1961, Alaska's rose to 300,000 in the Northern district (approximately north of the Yukon River) and 300,000 in the Southern district. These apply today. Presently the acreage limitation is 246,080 acres of Federal leases per state, other than Alaska.

Finally, note that in HB 854 companies are given five years from the effective date of the act to comply with the 200,000 acre maximum.

Hopefully, a lesser upland acreage maximum in Alaska will act as, albeit a small, incentive for companies other than the majors now here to explore in Alaska.

4. The state's right to purchase up to 16 2/3% of the oil and 100% of the gas will be opposed on the grounds that it is a negative incentive for integrated companies who wish to find and use the oil and gas. We should be careful of this one, but suffice to say that in 1972 New Mexico passed a similar law (N. Mexico can purchase 100% of gas and oil), which though never exercised or tested in court, remains on the books. (a copy attached).

5. Rentals may be opposed as being too high. The authority of the commissioner to up the rental at least 150% each year on shut-in leases may begin to bind the operator without a market, but there is no easy answer to the shut-in field unless we investigate something like the reserves tax concept, which I don't believe will solve the problem.

6. Leases offered noncompetitively after receiving no bids appear to be favored by the industry. Tom Kelly comments that such leases should be offered immediately (automatically?) after the competitive sale.

Please note that HB 854(t), as written, allows the commissioner three options. He can offer tracts immediately, at any time up to 5 years after receiving no bids, or not at all. If he intended to offer tracts noncompetitively immediately after a competitive sale he would so announce in the notice of the competitive sale.

The problem inherent in giving the administrator this many options, it will be argued, is that unpredictability will occur. Unless the operator knows before hand that he can fill out his block of acreage, he is at a distinct disadvantage. The administrator should take these matters into consideration before he notices a sale.

Milton Lipton, Gregg Erickson and others may oppose this open-ended authority to lease noncompetitively following an unsuccessful competitive sale on the grounds that an administrator might rig a competitive sale so that it will not elicit bids so that an immediate noncompetitive lease can be awarded. I don't think such a hit-and-run transaction can exist these days, particularly with HB 854's public disclosure procedures, but, perhaps, I'm too naive.

7. Sealed bids or oral auction or sliding sealed bids (like Alberta). HB 854 permits the commissioner to use any or all of these. Sealed bids will be most commonly used. They are easy to administer. Oral bidding is used in New Mexico and Colorado. Champlin recommends oral bidding on "low potential" land so as to avoid preparing bid forms and "leaving money on the table." New Mexico, on the contrary, uses oral bidding about 50% of the time when it perceives that there will be alot of competition in a sale. About 50% of the time New Mexico offers tracts by sealed bid.

   Alberta allows bidders to slide bids from one tract to another in a sale. Thus, if bidder A's sealed bid fails to win on tract 1, he can direct his bonus be slid to tract 2, and so on.

   Tom Kelly, when commissioner, had his staff investigate this sliding bid method in Alberta in hopes that it might be used for the 1969 Prudhoe Bay $900 million sale. The idea was rejected because the industry objected on the grounds that it would cause too much uncertainty so close to the time of sale. Score one for certainty. Obviously, the advantage to the state would be that more money would be paid at the sale if bids were allowed to slide. Before actually using this system, Alberta's procedures should be studied again.

8. By regulation, the lessee may earn only to the depth drilled(j). I envision that the state would not invoke this right until it felt deeper horizons contained oil, and then would give the lessee a reasonable time to explore deeper. If the lessee failed to drill deeper, the deeper horizons would be offered at a competitive lease sale. Alberta woke up to this problem late and solved it by changing terms of existing lease contracts with all that political controversy.

   I will ask Peter Froehlich to research whether this issue of drilling deeper might not be solved by tightening-up terms of the lease form to require due diligence by the operator at the request of the state.

2-10-78

Alaska - O+G Acreage Holdings

COMPANY	ACRES
Amoco	126, 134.64
ARCO	411, 482.68
BP Alaska	103, 218.99
Beard Oil	71, 260.49
Chevron	126, 493.55
Elias Sousa	140, 071.58
Exxon	158, 627.73
Marathon Oil	71, 538.36
Mobil	120, 375.19
Phillips Pet.	250, 748.38
Sohio Pet.	135, 588.28
Texaco	156, 027.63
Union	293, 712.05
Getty	29, 857.30
Shell Oil	40, 603.10
Sun Oil	27, 453.87

AGO 546738

CHAPTER 26

AN ACT

RELATING TO STATE LANDS; REQUIRING THE COMMISSIONER OF PUBLIC LANDS TO RESERVE CERTAIN RIGHTS TO THE STATE IN LEASES OR OTHER CONVEYANCES OF STATE LANDS GRANTING ANY INTEREST IN OR RIGHTS TO MINERALS OF WHATSOEVER KIND, INCLUDING OIL AND GAS; PROVIDING FOR A WAIVER OF THE REQUIRED RESERVATION; PROVIDING FOR DISPOSAL OF RESERVED MINERALS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. COMMISSIONER OF PUBLIC LANDS TO RESERVE CERTAIN RIGHTS TO THE STATE IN LEASES OR OTHER CONVEYANCES OF ANY MINERAL INTERESTS OR RIGHTS TO MINERALS IN STATE LANDS.--In any lease or other conveyance of state lands granting any interest in or rights to minerals of whatsoever kind, including oil and gas, in those lands executed by the commissioner of public lands after the effective date of this section, the following reservation of rights to the state shall be made: "The state has a continuing option to purchase at any time and from time to time, at the market price prevailing in the area on the date of purchase, all or part of any minerals (specify the minerals) that may be produced from the lands covered by this lease (or other conveyance).".

Section 2. WAIVER OF REQUIREMENTS FOR RESERVATION OF RIGHTS IN LEASES OR CONVEYANCE FOR SPECIFIC MINERALS--PROCEDURES FOR WAIVER.--

A. The commissioner of public lands may waive by written order the reservation of rights required under Section 1 of this act in respect to any specific mineral, other than fossil fuels, for which

HB 441
approved March 9, 1973

AGO 546739

there is no significant consumptive use within the state, but such order may be made only:

(1) after written notice is mailed by certified mail at least twenty days before the hearing required by Paragraph (3) of this subsection to the governor;

(2) after notice of the hearing required by Paragraph (3) of this subsection is posted in the same manner as notice of public sale of mineral leases is required to be posted under Section 7-9-34 NMSA 1953;

(3) after a public hearing on the issue of waiver under this subsection has been held by the commissioner of public lands or his designated representative in accordance with procedures adopted by the commissioner of public lands; and

(4) if the commissioner of public lands finds after considering the evidence produced at the hearing that a waiver of the provision would be in the best interests of the trust beneficiaries considering long-range and short-range benefits.

B. A waiver granted under Subsection A of this section shall be limited to a definite period of time not to exceed five years. Waivers may be renewed by the commissioner but only after following the procedure required under Subsection A of this section.

Section 3. DISPOSAL OF MINERALS BY COMMISSIONER OF PUBLIC LANDS.--The commissioner of public lands shall dispose of any minerals reserved under this act at the best price available in order to gain the maximum benefit for the trust beneficiaries.

TESTIMONY ON
ALASKA LEASING POLICY BILL
(H.B. 854)

BY

ROD L. BOANE

ALASKA DISTRICT MANAGER

EXXON COMPANY, U.S.A.

BEFORE THE

STATE OF ALASKA

SENATE RESOURCES COMMITTEE

JUNEAU, ALASKA

MAY 22, 1978

AGD 546659

MADAM CHAIRMAN AND MEMBERS OF THE COMMITTEE --

I AM ROD L. BOANE, DISTRICT MANAGER FOR THE ALASKA EXPLORATION DISTRICT OF EXXON COMPANY, U.S.A. I APPRECIATE THE OPPORTUNITY TO BE HERE TODAY AND PRESENT THE VIEWS OF MY COMPANY CONCERNING THE PROPOSED LEASING POLICY BILL.

FIRST, LET ME SAY THAT EXXON BELIEVES THE EXISTING PROVISIONS OF SECTION 38.05.180 OF THE ALASKA STATUTES ARE QUITE SATISFACTORY IN ADMINISTERING ADEQUATE CONTROL OVER EXPLORATORY AND DEVELOPMENT ACTIVITIES ON STATE LEASES. FURTHERMORE, THE EXISTING LEASING PROVISIONS HAVE BEEN VERY SUCCESSFUL IN PROVIDING THE INCENTIVE FOR THE PETROLEUM INDUSTRY TO DISCOVER PRUDHOE BAY, THE LARGEST OIL FIELD IN NORTH AMERICA, PLUS FOUR OTHER MAJOR OIL FIELDS INCLUDED IN THE TOP 100 OIL FIELDS IN THE U.S. IN OTHER WORDS, THE SUCCESS OF THE CURRENT SYSTEM IS AN ESTABLISHED FACT, AND IS A TRIBUTE TO THE FORESIGHT OF THE FIRST LEGISLATURE WHICH ENACTED THE PRESENT LEASING ACT SOME EIGHTEEN YEARS AGO. INSTEAD OF REPEALING THE PRESENT LEASING SYSTEM, WHAT IS NEEDED TO REJUVENATE EXPLORATION ACTIVITY IN ALASKA IS A RESTORATION OF COMPETITIVE LEASE SALES UNDER THE CURRENT PROVISIONS OF AS 38.05.180. THEREFORE, WE DO NOT BELIEVE THESE NEW AMENDMENTS TO THE STATUTES ARE NEEDED TO PROTECT THE PUBLIC INTEREST. ON THE CONTRARY, WE THINK THE PROPOSED AMENDMENTS WOULD CREATE UNNECESSARILY INVOLVED AND CUMBERSOME PROCEDURES THAT WILL NEITHER FOSTER NEEDED EXPLORATION NOR BENEFIT THE STATE OF ALASKA. ALTHOUGH WE TAKE EXCEPTION TO MANY OF THE FEATURES OF THE PROPOSED

AMENDMENTS, IN THE INTEREST OF TIME, I INTEND TO DISCUSS ONLY THE MORE TROUBLESOME PROVISIONS, WITH PARTICULAR EMPHASIS ON THE PROPOSED BIDDING METHODS.

EXXON BELIEVES THAT THE BEST METHOD FOR AWARDING LEASES IS ON A CASH BONUS BASIS WITH A FIXED ROYALTY WHICH IS IN THE CURRENT LAW. THIS SYSTEM HAS SEVERAL ADVANTAGES WHICH I WOULD LIKE TO REVIEW.

FIRST, THE SUCCESSFUL BIDDER SEES VERY STRONG INCENTIVES TO EXPLORE AND DEVELOP RAPIDLY AND TO RECOVER THE MAXIMUM ECONOMIC VOLUME OF HYDROCARBONS. THIS IS NECESSARY IN ORDER FOR HIM TO MAXIMIZE THE RETURN ON THE CASH BONUS INVESTED.

SECOND, UNDER THE CASH BONUS SYSTEM, THE STATE BEARS NONE OF THE RISK THAT COMMERCIAL RESERVES WILL NOT BE FOUND. THIS RISK IS PLACED DIRECTLY ON INDUSTRY WHERE IT BELONGS. THIS IS A PARTICULARLY CRITICAL CONCEPT IN A FRONTIER PROVINCE SUCH AS ALASKA WHERE VERY LITTLE EXPLORATORY DRILLING HAS OCCURRED AND THUS VERY LITTLE IS KNOWN ABOUT THE OIL AND GAS POTENTIAL OF MOST OF THE STATE. THE GULF OF ALASKA HISTORY SHOULD PROVE THIS POINT AS, THUS FAR, NO COMMERCIAL DISCOVERY HAS BEEN MADE. ANOTHER EXAMPLE OF THIS POINT IS THE NORTH SLOPE SALE OF 1969.

THIRD, UNDER THE CASH BONUS SYSTEM THERE IS NO POSSIBLE WAY THAT THE AWARDS WILL BE MADE IN AN ARBITRARY MANNER SINCE THE HIGHEST BID IS OBVIOUS. THIS IS NOT THE CASE FOR OTHER SYSTEMS WHICH WE WILL DISCUSS LATER.

FINALLY, THE SYSTEM IS SIMPLE AND INEXPENSIVE TO ADMINISTER. THE STATE WOULD NOT HAVE TO EXPAND ITS STAFF TO CONTINUE THE CASH BONUS SYSTEM, WHEREAS OTHER SYSTEMS WILL REQUIRE A LARGER STAFF. THE INTEGRITY OF THE SYSTEM WOULD NOT BE AFFECTED BY FUTURE EVENTS SUCH AS REDUCTION OF ROYALTY OR DETERMINATION OF OPERATORY EFFICIENCY. THESE PROBLEMS WILL BE DISCUSSED LATER.

PROPONENTS OF ALTERNATE BIDDING HAVE STATED THAT CASH BONUS BIDDING DOES NOT ENSURE THE PUBLIC A FAIR RETURN ON ACREAGE LEASED. THEY ALSO ARGUE THAT CASH BONUS BIDDING REDUCES COMPETITION. WE DISAGREE WITH THESE STATEMENTS, AND I'LL DISCUSS GULF OF MEXICO EXPERIENCE WHICH IS THE BASIS FOR OUR CONCLUSIONS. IT SHOULD BE NOTED THAT IN A HIGH COST, HIGH RISK ENVIRONMENT, COMPETITION WILL REMAIN HIGH ONLY IF THE POTENTIAL FOR HIGH REWARD EXISTS. THIS ALLOWS THE FEW SUCCESSES TO COVER THE COSTS OF THE MANY FAILURES.

THE GULF OF MEXICO IS ONE AREA THAT HAS HAD ENOUGH SALES, DISCOVERIES, AND PRODUCTION TO ALLOW AN EVALUATION OF THE CASH BONUS SYSTEM. DATA PUBLISHED BY THE U.S.G.S. SHOWS THAT THE GOVERNMENT HAS RECEIVED AN EXCELLENT RETURN. FROM 1953 THROUGH 1976, BONUSES, RENT, AND ROYALTY PAID TO THE U.S. GOVERNMENT HAVE AMOUNTED TO 83% OF THE TOTAL OCS REVENUE. NUMEROUS STUDIES HAVE BEEN CONDUCTED THAT INDICATE THAT INDUSTRY RETURN ON OCS OPERATIONS IS ABOUT 7%.

Source	Date Issued	Period Covered	DCF - % BFIT	DCF - % AFIT
Barrow, T.D.	1967	1951-65		7.0
DOE Tech. Bull. 5	1970	1965-67	5.6	
Nanz, R. H.	1975	1964-73		5.0
Nanz, R. H.	1976	1945-73		7.0
Mead, W. J.	1977	1954-55	7.5	
DOI	1975	1954-68	9.0	
Bybee, R. W.	1970	1954-69		6.0

These studies indicate that industry has not earned an excessive return.

For this same time period, new bidders have been successful in purchasing acreage in all but 3 of the 24 general sales. A total of 172 companies have been successful in purchasing acreage in the OCS (as of 1/1/77). This does not support the claim that cash bonus bidding restricts competition. It is also difficult to conclude that an industry which is earning a 7% rate of return is non-competitive. In fact, this would lead one to draw the conclusion that competition for OCS leases under the cash bonus system has been intense.

Now I would like to compare the alternate bidding methods proposed in this legislation to the current system of cash bonus bidding with fixed royalty. Basically, the proposed alternative bidding methods fall into two categories. The first category involved some form of royalty bidding. The second category uses some

FORM OF NET-PROFIT BIDDING. BOTH CATEGORIES REQUIRE A CASH BONUS, EITHER AS A BID VARIABLE OR A FIXED AMOUNT. LET'S FIRST EXAMINE THE ROYALTY BIDDING SYSTEMS.

(1) IT IS NOT UNCOMMON FOR OPERATORS TO DISCOVER RESERVES OF LESSER MAGNITUDE THAN ANTICIPATED. WITH HIGHER ROYALTY, WHICH WOULD BE EXPECTED UNDER A ROYALTY BID SYSTEM, SOME OF THESE DISCOVERIES COULD NOT BE DEVELOPED PROFITABLY UNLESS THE STATE AGREED TO ACCEPT A LOWER ROYALTY THAN ORIGINALLY BID. DOWNWARD ADJUSTMENT IN ROYALTY RATE PRIOR TO ANY DEVELOPMENT WOULD BE DIFFICULT TO ADMINISTER AND COULD UNDERMINE THE INTEGRITY OF THIS BIDDING SYSTEM. SECTION 38.05.180(J) ALLOWS THE COMMISSIONER TO ADOPT REGULATIONS FOR REDUCTION OF ROYALTY AFTER TWO YEARS OF PRODUCTION. THIS WILL NOT ALLOW DEVELOPMENT OF MARGINAL RESERVES SINCE NO PRUDENT OPERATOR WILL DEVELOP A PROPERTY KNOWING THAT IT WILL BE UNECONOMICAL, BUT IN HOPES OF OBTAINING A LOWER ROYALTY AFTER TWO YEARS.

(2) WITH ROYALTY BIDDING, THE SUCCESSFUL BIDDER DOES NOT HAVE A STRONG INCENTIVE FOR RAPID EXPLORATION AND DEVELOPMENT SINCE FRONT-END CASH INVESTMENT IS SMALL. SPECULATORS COULD THEREFORE SEE INCENTIVES TO ACQUIRE LEASEHOLD INTEREST, AND THEN DELAY EXPLORATORY DRILLING IN HOPES THAT OTHER NEARBY OPERATORS WILL CONDUCT EXPLORATION. IF THESE OPERATORS ARE SUCCESSFUL, THE SPECULATORS CAN CASH IN WITH MINIMAL RISK. THIS SITUATION WOULD OBVIOUSLY RESULT IN DELAYED EXPLORATION AND DEVELOPMENT ACTIVITIES.

(3) WITH EXCLUSIVE ROYALTY BIDDING, THE PUBLIC BEARS THE MAJOR PORTION OF THE EXPLORATION RISK BECAUSE IF THE TRACT DOESN'T CONTAIN COMMERCIAL HYDROCARBON RESERVES, AS THE MAJORITY WILL NOT, THE PUBLIC RECEIVES NO COMPENSATION WHATEVER. WE STRONGLY BELIEVE THAT RISK-TAKING AND ITS ASSOCIATED REWARDS OR LOSSES ARE MORE PROPERLY THE PROVINCE OF PRIVATE ENTERPRISE.

ANOTHER ROYALTY BIDDING SYSTEM INVOLVES SLIDING SCALE ROYALTY WHICH CAN EITHER BE THE BID VARIABLE OR USED IN COMBINATION WITH A CASH BONUS BID. IN THE CASE WHERE THE SLIDING SCALE ROYALTY IS THE BID VARIABLE, IT WILL BE EXTREMELY DIFFICULT TO COMPARE BIDS UNLESS YOU KNOW THE TOTAL RESERVES, THE PRICE AT WHICH PRODUCTION WOULD BE SOLD, AND THE RATE OF PRODUCTION. SHOULD PRODUCTION BE ESTABLISHED, SLIDING ROYALTY COULD CAUSE WIDELY DIFFERING POSITIONS TO DEVELOP BETWEEN OPERATORS AND THE STATE. IN AN EFFORT TO MAXIMIZE ITS INCOME, THE STATE COULD REQUIRE OPERATORS TO MAKE INVESTMENTS FOR PRODUCTION INCREASES WHICH WOULD EARN A MARGINAL OR SUBMARGINAL RETURN. THIS COULD RESULT IN PREMATURE ABANDONMENT OF THE PROPERTY. ALSO, UNITIZATION OF TRACTS WITH DIFFERENT ROYALTY BASES OR SLIDING SCALE TRACTS WITH CASH BONUS TRACTS WOULD BE A VERY COMPLEX AND DIFFICULT JOB AND COULD DELAY DEVELOPMENT OF A DISCOVERY.

NOW LET'S LOOK AT THE SECOND BIDDING CATEGORY, A PROFIT-SHARING SYSTEM, WHICH HAS MOST OF THE SAME ADVERSE CHARACTERISTICS AS ROYALTY BIDDING, BUT WITH FOUR ADDED COMPLICATIONS AND DISADVANTAGES.

(1) USING NET PROFITS WILL BE MUCH LIKE SELECTING A CONTRACTOR TO PERFORM A JOB ON A COST-PLUS BASIS. THE OPERATING EFFICIENCY OF THE BIDDER COULD BECOME AN IMPORTANT CONSIDERATION IN DETERMINING WHICH OF SEVERAL BIDDERS HAD SUBMITTED THE HIGH BID INASMUCH AS THE PROCEEDS TO BE RECEIVED BY THE PUBLIC WOULD BE A DIRECT FUNCTION OF THE EFFICIENCY OF THE OPERATOR. THUS, THE SUCCESSFUL BIDDER WOULD NO LONGER BE OBVIOUS. SINCE THE RELATIVE OPERATING EFFICIENCY OF COMPANIES CANNOT BE DETERMINED QUANTITATIVELY, THE COMMISSIONER COULD BE VULNERABLE TO CHARGES THAT BID AWARDS WERE BEING MADE IN AN ARBITRARY OR DISCRIMINATORY MANNER. THIS WOULD AFFECT THE INTEGRITY OF THE SYSTEM AS WAS PREVIOUSLY MENTIONED.

(2) A PROFIT-SHARING SYSTEM WOULD BE DIFFICULT AND COSTLY TO ADMINISTER. A LARGE ADMINISTRATIVE ORGANIZATION WOULD LIKELY BE ESTABLISHED TO AUDIT AND MONITOR THE CONTINUING ACTIVITIES OF LESSEES. DISCRETIONARY JUDGMENTS WOULD BE REQUIRED BY THE STATE WITH REGARD TO WHAT COSTS WERE TO BE INCLUDED OR REJECTED IN THE PROFIT BASE.

(3) A PROFIT-SHARING SYSTEM WOULD SIGNIFICANTLY REDUCE THE INCENTIVE FOR A SUCCESSFUL BIDDER TO OPERATE AT MAXIMUM EFFICIENCY. ANY PRUDENT OPERATOR UTILIZES A PRIORITY SYSTEM WHEN RESTRAINTS OF EITHER MANPOWER OR MATERIALS CREATE LIMITATIONS. WHEN THESE RESTRAINTS EXIST, NET-PROFIT TRACTS WILL HAVE LOW PRIORITY. THE RESULT - REDUCTION OF EFFICIENCY. IT WOULD REDUCE THE INCENTIVE FOR EARLY DEVELOPMENT OF TECHNOLOGY BY INDUSTRY. UNDER A PROFIT-

SHARING SYSTEM, TECHNOLOGY WILL ONLY BE DEVELOPED WHEN IT IS NEEDED AND THE COSTS OF THIS DEVELOPMENT WOULD BE SHARED WITH THE STATE. THIS WOULD LEAD TO DELAYS IN DEVELOPMENT OF NEEDED RESERVES.

(4) MOST IMPORTANT, SHARING IN NET PROFITS WOULD SIGNAL THE STATE'S ENTRY INTO THE PRODUCTION PHASE OF THE OIL BUSINESS. IT MIGHT BE POLITICALLY AND ECONOMICALLY DIFFICULT FOR THE STATE NOT TO BE DEEPLY INVOLVED IN DECISIONS ABOUT DAY TO DAY OPERATIONS AND THEREBY BECOME AN OPERATING PARTNER. THIS TYPE OF INVOLVEMENT WOULD REQUIRE A LARGE TECHNICAL STAFF TO BE EMPLOYED BY THE STATE. THIS STEP BY THE STATE WOULD WEAKEN THE PRIVATE ENTERPRISE SYSTEM WITHIN THE OIL INDUSTRY AND DIMINISH FREE ENTERPRISE IN THE STATE OVERALL.

NOW I WOULD LIKE TO DISCUSS A FEW OTHER PROVISIONS WHICH GIVE US CONCERN.

(1) AS38.05.180(z) RIGHT TO PURCHASE - THE PROVISION GIVES THE STATE THE RIGHT TO PURCHASE A SPECIFIED VOLUME OF OIL AND GAS. THE VAGUENESS OF THIS PROVISION MAKES IT VERY ONEROUS TO THE INDUSTRY. THE PROVISION DOES NOT SPECIFY WHEN THE ACTUAL QUANTITY WILL BE SPECIFIED. WILL IT BE PUBLISHED AT THE TIME THE LEASE SALE SCHEDULE IS PUBLISHED? IF IT IS NOT, AN OPERATOR MAY RUN THE RISK OF OBTAINING GEOPHYSICAL DATA IN PREPARATION FOR THE SALE AND THEN FINDING HE'S NOT INTERESTED WHEN THE STATE THROUGH ITS OPTION TO PURCHASE PRODUCTION, DEPRIVES HIM THE FREEDOM TO MARKET AND/OR USE THE PRODUCTION HE HOPES TO DEVELOP.

IT WOULD APPEAR THAT A SPECIFIED VOLUME COULD RANGE FROM THE STATE'S ROYALTY SHARE UP TO A MAXIMUM OF 100%. BASED ON PRIOR VERSIONS OF THE BILL, IT SEEMS REASONABLE TO ASSUME THAT THE STATE'S PRIMARY INTEREST IS IN PURCHASING A LARGE PORTION OF THE GAS.

HOWEVER, THE PRESENT AND POTENTIAL SUPPLIES OF GAS WITHIN ALASKA FAR EXCEED REASONABLY ANTICIPATED DEMANDS BY THE STATE RESIDENTS. THEREFORE, TO FIND A MARKET, THIS GAS WILL HAVE TO MOVE INTO INTERSTATE COMMERCE. THIS REQUIREMENT, THAT THE STATE COULD REMOVE THE GAS FROM THE MARKET, COULD SEVERELY HAMPER A PRODUCER'S ABILITY TO MARKET THE RESERVES. WITHOUT A REASONABLE EXPECTATION THAT GAS CAN BE MARKETED, THERE IS GREATLY REDUCED INCENTIVE TO EXPLORE.

IT WOULD ALSO RETARD DEVELOPMENT OF NATURAL GAS FOR STATE RESIDENTS. THE RISK THAT THE GAS COULD BE DIVERTED WOULD HAVE SIGNIFICANT IMPACT ON VENTURES TO INSTALL GAS TRANSPORTATION SYSTEMS.

IN ADDITION TO THESE CONCERNS, IT RAISES OTHER QUESTIONS SUCH AS:

1. DETERMINATION OF FAIR MARKET VALUE
2. TIMING AND RATE OF PRODUCTION - COULD THE STATE CONTROL THESE TO SATISFY THEIR OWN REQUIREMENTS OR DESIRES?

(2) <u>AS38.05.180(N) LEASE TERM</u> - A FIVE-YEAR PRIMARY LEASE TERM IS VERY RESTRICTIVE IN ALASKA. THE REMOTE LOCATION OF MOST

PROSPECTS, RUGGED TERRAIN, SHORT CONSTRUCTION SEASON, AND REDUCED DRILLING SEASON, EITHER NECESSARY OR IMPOSED, MAKE COMPLETION OF THE EXPLORATION CYCLE A DIFFICULT AND TIME-CONSUMING PROCESS. ONCE A DISCOVERY IS MADE, ADDITIONAL DRILLING IS REQUIRED BEFORE AN ESTIMATE OF THE FIELD SIZE CAN BE MADE. ALL OF THE PREVIOUSLY MENTIONED FACTORS AFFECT THIS DRILLING TOO. ONCE THE LENGTHY PROCESS OF DISCOVERING A FIELD AND ESTABLISHING ITS COMMERCIALITY IS COMPLETE, THE LONG DEVELOPMENT PHASE MUST BEGIN. WE STRONGLY RECOMMEND THAT THE 10-YEAR LEASE TERM BE RETAINED.

(3) AS38.05.140(c) UPLANDS ACREAGE LIMITATION - THE PROPOSED 300,000-ACRE LIMITATION ON ALL LANDS OTHER THAN TIDE AND SUBMERGED LANDS IS RESTRICTIVE COMPARED WITH THE CURRENT 500,000-ACRE LIMITATION IN A STATE LIKE ALASKA WHICH HAS SO MANY FRONTIER INTERIOR BASINS TO EXPLORE. IN A HOSTILE HIGH COST ENVIRONMENT SUCH AS ALASKA, A LARGE BLOCK OF ACREAGE MAY BE NECESSARY IN ORDER TO JUSTIFY EXPLORATION. WE BELIEVE THE PROPOSED 300,000-ACRE LIMITATION WOULD REDUCE THE INCENTIVE OF AN OPERATOR TO EXPLORE THESE FRONTIER INTERIOR BASINS AND STRONGLY RECOMMEND MAINTENANCE OF THE CURRENT 500,000-ACRE LIMITATION.

(4) AS38.05.180(y) JOINT BIDDING - THE PROVISION ALLOWING THE COMMISSIONER TO RESTRICT JOINT BIDDING, IF HE SO DESIRES, COULD PROHIBIT THE INVOLVEMENT OF SOME COMPANIES MOST CAPABLE OF OPERATING IN THE ALASKAN ENVIRONMENT.

A STUDY WAS PERFORMED BY THE UNIVERSITY OF SOUTHERN CALIFORNIA AND THE USGS TO DETERMINE THE EFFECTS OF RESTRICTING MAJORS

FROM BIDDING JOINTLY IN THE OCS. THEY CONCLUDED THAT ON THE AVERAGE, THIS RESTRICTION RESULTED IN MORE BIDS PER LEASE BY THE MAJORS. THE STUDY ALSO SHOWED THAT THE NUMBER OF BIDS BY NON-MAJORS EITHER BIDDING ALONE OR IN COMBINES NOT INCLUDING A MAJOR, DECREASED SHARPLY. ("STATISTICAL ANALYSIS OF SOLO AND JOINT BIDS FOR FEDERAL OFFSHORE OIL AND GAS LEASES", SPE #6517 BY ELMER L. DOUGHERTY AND JOHN LOHRENZ.) FROM THIS DATA, IT DOES NOT APPEAR THAT THE RESTRICTION OF JOINT BIDDING BY MAJORS HAS RESULTED IN ANY INCREASED COMPETITION BY THE NON-MAJORS.

(5) AS38.05.180(i) INCENTIVE CREDIT - THIS PROVISION ALLOWS THE COMMISSIONER TO ESTABLISH AN EXPLORATION INCENTIVE CREDIT SYSTEM. IN ORDER TO OBTAIN CREDIT FOR GEOPHYSICAL WORK, THE OPERATOR MUST RELEASE THE INFORMATION TO THE PUBLIC FOLLOWING THE SALE. WE OBJECT TO THE REQUIREMENT FOR RELEASE OF THIS DATA.

THE PROVISION DOES NOT ESTABLISH A TIME REQUIREMENT FOR THE RELEASE OF THIS DATA. I ASSUME THE RELEASE WOULD BE REQUIRED BEFORE ANY CREDIT COULD BE RECEIVED. RELEASE OF THIS DATA COULD COST AN OPERATOR ANY COMPETITIVE EDGE WHICH HE MIGHT HAVE ON LEASING ACREAGE THAT IS RELEASED BY A LESSEE AND RENOMINATED. IN ADDITION, RELEASE OF THIS DATA TO THE PUBLIC COULD RESULT IN THE DISCLOSURE OF PROPRIETARY RECORDING TECHNIQUES AND THEREFORE RESULT IN THE POSSIBLE LOSS OF A TECHNOLOGICAL ADVANTAGE.

IN CLOSING, I WOULD LIKE TO REITERATE THAT EXXON BELIEVES THE CURRENT LEASING STATUTES AND THE IMPLEMENTING REGULATIONS

HAVE SERVED THE STATE AND INDUSTRY WELL AND DO NOT NEED TO BE CHANGED.

THIS CONCLUDES MY PREPARED TESTIMONY, AND I WILL BE HAPPY TO ANSWER ANY QUESTIONS WHICH YOU MAY HAVE.

* * * * *

ALASKA OIL AND GAS ASSOCIATION TESTIMONY on CSHB 854
Senate Resources Committee
May 24, 1978

I am KEITH ARNOLD, Public Affairs Manager for the Alaska Oil and Gas Association, a trade association whose 25 member companies are engaged in or have an interest in oil and gas activities in Alaska, including exploration, production, transmission, refining and marketing.

The basic position of our Association is that because Alaska's present leasing system has worked well for the state, major changes--such as those proposed in the bill before you--should be subjected to the most careful, deliberate study possible. We believe this has not yet been accomplished The current law is sufficient. It has encouraged industry to lease, explore, discover and develop oil and gas resources with confidence, and sometimes success.

Our remarks will attempt to highlight provisions of the bill we consider particularly counterproductive. We understand several companies will comment individually on the bill and that specific suggestions reflecting individual views may be offered.

We have several areas of particular concern to call to your attention and we will try to identify them as briefly as possible:

The item on page one, line 27, paragraph (b), calls for annual legislative review of the Commissioner's leasing program. Traditionally it has been the function of the Administrative branch of state governments to administer the use of state lands. The annual submission of the leasing program to the legislature would seem to presuppose

further modification of the leasing program. We believe that the program should be administered totally on the basis of its merits and it should remain out of the political arena.

Next please refer to page 3, paragraph (f). We favor the traditional method of wellhead pricing and are opposed in principle to the state receving a free ride on the gathering systems and high grading of the oil or gas. The very essence of a reserved royalty share is that the mineral estate owner keeps a portion of whatever is found and produced from the leased land. Such reserved shares become possessory immediately at the point shares can be reduced to physical possession, i.e., at the wellhead. Whatever the quality of the production, the royalty share is the property of the royalty owner to be disposed of in accordance with the terms of the lease contract. A shifting of the royalty owner's share of costs to the lessee of the expense of processing for market, and preparation for transportation off the lease will necessitate an attendant reduction in the bid to cover the greatest potential cost which could occur in the event of production.

Various leasing methods are also proposed in paragraph (f). In advocating a move away from bonus bidding one should consider that the risk burden is being shifted from the oil industry to the public, that the rate of exploration and development is being impeded, and that the growth of state agencies to administer and audit such systems is inevitable.

Our member companies prefer the cash bonus bid and fixed royalty arrangement. This method historically has generated the greatest dollar value to the state. Tracts receiving abnormally high royalty bids are not the first to be explored or developed and are held, in many instances, for speculation. This same premise also applies to "net profits."

Regarding Section 38.05.180 (j), we concur with the ability (authority) of the Commissioner to reduce the royalty in the interest of conservation and to encourage the greatest ultimate recovery of oil or gas. However, we believe a requirement that the Commissioner find a need for such reduction, based on two years of uneconomic production, is wasteful. Two years is too long.

Section (k), on page 6, gives the Commissioner authority to defer payment of any part of a cash bonus bid for a period of five years. Such a provision would encourage speculation with the state's assets by parties who have no intention of conducting expensive exploration programs but rather, hope to capitalize on any enhancement in value caused by the work of others in the vicinity of their lease. This is not in the best interest of the state.

It is common knowledge that Alaska is a high-cost, high-risk area for our industry. Exploration and drilling seasons are short. For these reasons, we respectfully request that you give favorable attention to the retention of the ten-year primary term for leases.

If cash bonus/fixed royalty is adopted as the bidding method and the 10 year term remains in the Law, the benefits to the state will be greater, in the long-run, than the experimentation proposed in CSHB 854.

Sections (n) and (o), dealing with rentals, are both counter productive and regressive. Alaska is already a high-cost, high-risk area. The prospect of substantial rental increases during the primary term of the lease can only discourage exploration interest in Alaska--not encourage it. The extra expense for rentals will have to be compensated for by lower bid totals. Further, these high fixed costs will lessen the amount of cash flow dollars that otherwise would be available for exploration work. Subsection (o) alters substantially the nature of the ordinary rental provisions in oil and gas leases. The rental to be paid under these provisions is no longer a delay rental. Also, there is no provision for credit or set-off of "rental" paid during those three years against the state's income from production. Consequently, we find ourselves in the absurd situation during the first three years of production, paying the state both a rental and royalty payment at the same time. This means, we are paying for the privilege of deferred drilling, after drilling operations have been completed and in addition, paying production income during this same period of time.

Section 38.05.180(y) would restrict joint bidding and should be deleted. Joint bidding can very well be to the advantage of the

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state as it tends to increase the size of the bids submitted and facilitates the exploration process. See, for example, the paper in the November 1976 issue of "Journal of Petroleum Technology" in which the authors conclude that "joint bidders tend to bid on more sought-after (and apparently more valuable) leases and that they tend to bid higher, on the average, than solo-bidding 'competitors.' Industry testimony before the U.S. Senate has indicated that since the first OCS sale in 1954, 172 companies have purchased OCS leases. Forty-two percent of these leases were not purchased by the major companies.

Depending on the content of the regulations adopted, this section may violate Article 8, Section 17, of the Alaska Constitution. This Constitutional provision requires that laws and regulations governing the use or disposal of natural resources must apply equally to all persons "similarly situated."

A provision giving the state the right to purchase a specified volume of oil and gas (Section 38.05.180(z)) would, in our opinion, be considered objectionable to any potential participant at a state lease sale whether a major oil company or the smallest independent. It virtually eliminates the lessee's ability to use a gas sales contract as a method of financing. A discoverer of a gas field could find it impossible to market the discovered reserves. This would inevitably result in a disincentive to explore with adverse results for both the state, as owner of the resource, and for its residents whose needs for fuel could be drastically affected.

As our Association has previously testified at public hearings dealing with similar provisions in proposed amendments to the Alaska Administrative Code, we believe that a provision in paragraph (aa) for state access to a lessee's exploration data constitutes an invasion of industry's proprietary property for the sole purpose of enabling the state to decide whether the area in which the exploring party is working should or should not be thrown open to his competition. It should be obvious that this can only result in a substantial reduction in incentive to undertake exploration work in the future, the performance of which is significantly in the state's best interest.

If the section is to be considered applicable to existing exploration data, then the Commissioner's access, and utilization thereof, is almost certainly an unconstitutional taking of a valuable private property.

The proposed bill also would amend Section 38.05.140(c) to reduce the upland acreage limitation from 500,000 to 300,000 acres. In Alaska, where there are large areas of state lands which are potentially eligible for bid, a 500,000 acre limitation, which the present statute contemplates, is not unreasonable. The effect of a 300,000 acre limitation would clearly be to limit the participation of those individuals who are most active in exploration business in Alaska, i.e., those individuals who have historically submitted the highest bids to the state. It is not at all clear why the state would seek to discourage, rather than to encourage, the continued

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involveme of those individuals in Alaska. Further, this section's applicability to the holding of existing lessees--requiring them to reduce their holding within 10 years--is an unconstitutional taking of leasehold estates.

In summary we offer the following:

We believe the existing law has worked very well over the last 18 years to protect the interests of all the citizens of the State of Alaska. The present law provides important public benefits that are seriously lacking in the proposed bill, such as:

(a) protection to the state from having to take "exploration risk" when selling leases;

(b) assurance the state will get the fair market value of what the state offers for sale by utilizing a proven unhampered competitive, free-enterprise open market system;

(c) ease of administration minimizing the number of state employees and overhead expense;

(d) assurance that all citizens, bot individual and corporate, are treated equally under the law;

(e) legislative and judicial history that gives relative stability in interpretation and operation;

(f) allowance of latitude to lease lands in low interest or high-risk areas non-competitively to avoid the bureaucratic expense of competitive sales;

(g) and recognition that the geological and geophysical data gleaned from an exploration operation is the 'stock-in-trade' of the explorationist and is proprietary in a competitive industry. The present law also recognizes that forced disclosure of proprietary data will discourage exploration. Research and development to find better methods of obtaining usable data will also suffer.

In conclusion, we strongly urge retention of leasing procedures that exist under present regulations. The effect of the sweeping provisions of CSHB 854 should be studied carefully before further consideration is given to the measure. We urge that you do not adopt CSHB 854.

It is our belief that the current method is not only fair to industry but also is in the best interest of the people of the State of Alaska.

Thank you.

THE MINES AND MINERALS ACT

GEOPHYSICAL INCENTIVE PROGRAM REGULATION, 1978

(filed April 26, 1978)

1 In this regulation

(a) "certificate" means a certificate issued for a program under this regulation;

(b) "Department" means the Department of Energy and Natural Resources;

(c) "foothills area", "green area", "yellow area" and "plains area" mean the respective areas of Alberta described in Schedule C to this regulation;

(d) "geophysical incentive program" means a program certified by the Minister as an incentive program under this regulation;

(e) "geophysical information and data" means all field data, field reports and the standard processed sections that are stacked after filtering and correction for statics and normal moveout;

(f) "Geophysical Regulations" means the Geophysical Regulations filed as Alberta Regulation 26/59, as amended;

(g) "licence" means a licence issued pursuant to Part 9 of The Mines and Minerals Act;

(h) "licensee" means the holder of a licence under which a program is conducted;

(i) "line" means a portion of a program;

(j) "minimum subsurface coverage" means the coverage obtained when seismic pulses generated from not less than 6 different energy source positions in the yellow area and plains area or 12 different energy source positions in the green area and foothills area are reflected from a subsurface point;

(k) "Minister" means the Minister of Energy and Natural Resources;

(l) "permit" means a permit to operate geophysical equipment issued pursuant to the Geophysical Regulations;

(m) "program" means a survey conducted by the use of the geophysical prospecting technique known as the seismic reflection method for the purpose of exploring for petroleum or natural gas or both.

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2 This regulation applies to a program for which an application for a certificate is received by the Minister before April 1, 1980.

3 (1) A licensee may, in accordance with this regulation, apply to the Minister to have a program certified as a geophysical incentive program.

(2) The application shall be submitted by the licensee and shall be in Form of Schedule A to this regulation.

(3) Where a program qualifies as a geophysical incentive program, the Minister shall issue a certificate for the program in Form 2 of Schedule A to this regulation.

(4) A copy of the certificate shall be sent to the licensee.

4 A certificate is subject to the following conditions:

(a) that the licensee shall allow the Minister, or any person authorized by the Minister for the purpose, to have access to any field data or field reports obtained by the licensee or his representatives during the course of conducting the program, and

(b) that the licensee and his representatives shall render to the Minister or the person authorized by him under clause (a) such assistance as may be necessary for the purposes of enabling the Minister or that person to inspect the field data or field reports.

5 (1) Within 120 days of completing a geophysical incentive program, or on or before August 1, 1980, whichever is earlier, the licensee shall submit to the Minister a final report on the program in Form 3 of Schedule A to this regulation.

(2) A final report submitted by the licensee under subsection (1) shall be accompanied by a copy of the computer stacking diagram for each line in the program.

(3) The final report on a geophysical incentive program shall be made on behalf of the licensee by a professional geophysicist within the meaning of The Engineering and Related Professions Act.

(4) At any time following submission to the Minister of the final report on a geophysical incentive program, the licensee shall make available to the Department upon request all geophysical information and data obtained from the program.

6 Subject to subsection (3), where a geophysical incentive program

(a) is conducted under a certificate for which an application is received by the Minister after March 31, 1978, and before April 1, 1980,

(b) is completed to the satisfaction of the Minister, and

(c) is reported on within the time and in the manner prescribed by section 5,

the Minister shall

(d) determine a credit for the program in accordance with Schedule B to this regulation, and

(e) notify the licensee of the credit as determined.

(2) The mileage upon which a determination of credit for a geophysical incentive program is based shall never exceed the number of miles of minimum subsurface coverage approved for the program, but where the number of miles of minimum subsurface coverage in a geophysical incentive program as determined from the final report and computer stacking diagrams is less than the mileage approved for the program, the Minister shall base his determination of credit for the program upon the size of the program as ascertained from the computer stacking diagrams.

(3) The Minister shall not determine a credit for a program under subsection (1) where he is satisfied that

(a) the program fails to meet minimum subsurface coverage,

(b) the program is not conducted in accordance with generally accepted standards of geophysical practice, or

(c) the recording of the program has commenced before a certificate for the program is issued under section 3.

(4) Subsection 3(c) does not apply to a geophysical incentive program for which an application for certification is received by the Minister during April, 1978.

(5) When submitting a final report on a program under section 5, the licensee shall inform the Minister in writing as to the manner of allocation of the credit among the persons specified by the licensee as being participants who have contributed to the actual cost of conducting the program and, subject to subsection (6) and section 7, the credit shall be allocated and established in the records of the Department accordingly.

(6) If the licensee fails to comply with subsection (5), the credit shall be established in the records of the Department in the name of the licensee.

7 Notwithstanding sections 6 and 9, the Minister may withhold from establishment in the records of the Department or from utilization, 25% of the credit determined by the Minister for a geophysical incentive program until the Minister receives evidence satisfactory to him that the program was conducted in accordance with the Geophysical Regulations, and that the surface of the land on which the program was conducted has been adequately reclaimed.

8 (1) Subject to subsection (2), credit established in the records of the Department under section 6 is not transferable.

(2) Any credit held in the records of the Department in the name of a licensee or of a party to whom credit has been allocated under section 6 may be transferred to any other person where that person provides evidence satisfactory to the Minister

(a) that he has acquired the assets and liabilities of the licensee or party in whose name the credit is being held, and

(b) that the licensee or party in whose name the credit is being held has ceased to carry on business in Alberta, or, being a corporation, is dissolved or is struck off the register pursuant to The Companies Act.

9 (1) Credit established in the records of the Department pursuant to section 6 may, upon the written request of the holder thereof, and subject to procedures established by the Department, be applied in satisfaction of

(a) money payable by him with respect to any applications made and agreements made or entered into under Part 5 of The Mines and Minerals Act,

(b) royalty payable on petroleum and natural gas obtained pursuant to an agreement made or entered into under Part 5 of The Mines and Minerals Act,

(c) interest on money payable under any agreement made or entered into under Part 5 of The Mines and Minerals Act, or

(d) taxes levied under The Freehold Mineral Taxation Act on petroleum or natural gas rights,

and becoming due and payable on or before December 31, 1987.

(2) Where a licensee submits a request to the Minister for the monetary equivalent of the credit being held in the name of the licensee in the records of the Department and provides evidence satisfactory to the Minister that he is neither the registered owner under The Land Titles Act of a petroleum or natural gas right as defined in The Freehold Mineral Taxation Act nor the holder of an agreement under Part 5 of The Mines and Minerals Act, the Minister may pay to the licensee upon submission of the request the monetary equivalent of the credit.

10 (1) It is a condition of every certificate that geophysical information and data obtained pursuant to the geophysical incentive program for which the certificate is issued shall be made available by the licensee under whose licence the program was conducted 3 years after the date upon which the geophysical incentive program is certified

(a) to any person requesting the data in writing within 20 days after receipt by the licensee of the written request for the data and thereafter for a period of not less than 5 years, and

(b) at a cost to that person of

(i) $300.00 for each mile of minimum subsurface coverage in the yellow area or plains area to which the geophysical information and data to be acquired relates,

(ii) $600.00 for each mile of minimum subsurface coverage in the green area to which the geophysical information and data to be acquired relates, and

(iii) $900.00 for each mile of minimum subsurface coverage in the foothills area to which the geophysical information and data to be acquired relates,

and of the expense of reproducing the geophysical information and data requested.

(2) The minimum amount of geophysical information and data which may be purchased pursuant to a written request under subsection (1) shall be the lesser of the geophysical information and data relating to

(a) 5 miles of minimum subsurface coverage, or

(b) the minimum subsurface coverage in a line.

(3) If a licensee, within the 3-year period referred to in subsection (1),

(a) withdraws from Alberta and ceases carrying on business in Alberta, or

(b) being a corporation, is dissolved or is struck off the register pursuant to The Companies Act,

he shall place in trust with a person approved by the Minister all the geophysical information and data obtained pursuant to geophysical incentive programs that were conducted under his licence until the 3-year period has expired, and thereafter for an additional period of 5 years, and any credit held in the name of the licensee in the records of the Department shall be cancelled.

11 (1) Where geophysical information and data obtained from a geophysical incentive program for which no credit is determined by the Minister under this regulation is not made available in accordance with section 10 by the licensee, the Minister may cancel

(a) his licence,

(b) his permit, and

(c) any credit held in his name in the records of the Department.

(2) Where geophysical information and data obtained from a geophysical incentive program for which credit is established in the records of the Department is not made available in accordance with section 10 by the licensee, the Minister may cancel

(a) his licence,

(b) his permit,

(c) any credit established for the program in the records of the Department, and

(d) any credit held in the records of the Department in the name of the licensee.

12 Any of the powers of the Minister under this regulation may be exercised by any employee of the Department authorized in writing by the Minister for that purpose.

Form 1
(Section 3)

APPLICATION FOR CERTIFICATION OF A PROGRAM AS A
GEOPHYSICAL INCENTIVE PROGRAM

DATE:

NAME OF LICENSEE: _____

ADDRESS: _____

LICENCE NO. _____

LICENSEE REPRESENTATIVE: _____

TELEPHONE NO. _____

NAME OF PERMITTEE: _____

ADDRESS: _____

PERMIT NO. _____ PARTY NO. _____

PROGRAM NO. _____

PROGRAM RECORDING TO COMMENCE: _____

ANTICIPATED PROGRAM RECORDING COMPLETION DATE: _____

ENERGY SOURCE: _____

SOURCE SPACING (FEET): _____

RECEIVER SPACING (FEET): _____

NUMBER OF TRACES: _____

	yellow-plains	green	foothills
MILES PLANNED (APPROX.):	_____	_____	_____
INCENTIVE ANTICIPATED (APPROX.):	_____	_____	_____
TOTAL INCENTIVE ANTICIPATED:	_____	_____	_____

_____
Licensee

(Note: Application must be accompanied by a map or maps on a scale of not less than 1" = 1 mile.)

AGO 546637

Form 2

(Section 3)

CERTIFICATE NUMBER _____

DATE: _____

NAME OF LICENSEE: _____

ADDRESS: _____

LICENCE NO. _____ PERMIT NO. _____

PROGRAM NO. _____

MAXIMUM MILEAGE APPROVED _____

_____

for MINISTER OF ENERGY AND NATURAL RESOURCES

SCHEDULE A

Form 3
(Section 5)

FINAL REPORT

LICENSEE: _____

LICENCE NO. _____

ADDRESS: _____

PROGRAM CERTIFICATE NO. _____ PROGRAM CERTIFICATE DATE _____

RECORDING COMMENCEMENT DATE _____ RECORDING COMPLETION DATE _____

PERMITTEE: _____

PERMIT NO: _____

ADDRESS: _____ PARTY NO: _____

RECORDING COMMENCEMENT DATE _____ RECORDING COMPLETION DATE _____

AMPLIFIER MAKE _____ MODEL _____ NO. OF TRACES _____ (24) _____ (48) _____ (Other)

SOURCE INTERVAL _____ RECEIVER INTERVAL _____ SOURCE TYPE _____

	yellow-plains	green	foothills
No. of miles of minimum subsurface coverage.	$250 x 1 x	$250 x 2 x	$250 x 3 x
(Accurate to two significant decimals)			
Credit (in dollars) applied for	= $	= $	= $

Total $_____

I, the undersigned, certify that I am qualified to report on this program and have personal knowledge of and attest to the accuracy of the above report.

_____ _____

Signature and Seal of Professional Geophysicist *A.P.E.G.G.A. Class*

(Note: Must be accompanied by a map or maps on a scale of not less than 1" = 1 mile showing location of data recorded. A final report must be completed for each program.)

AGO 546639

SCHEDULE B

DETERMINATION OF CREDIT

The credit in dollars for a geophysical incentive program, shall be calculated in accordance with the following equation:

$$\text{Credit (In dollars)} = 250 KM$$

where K is the incentive factor for the area of Alberta described in Schedule C in which the geophysical incentive program was conducted,

and

M is the number of miles of minimum subsurface coverage in the area.

Incentive Factors

For the purposes of section 6 and this Schedule, the incentive factors established for the areas of Alberta described in Schedule C are as follows:

(a) 1 for the yellow area and the plains area,

(b) 2 for the green area, and

(c) 3 for the foothills area.

FOOTHILLS AREA

The Foothills Area consists of the lands in Alberta listed below and those lands within Alberta located south and west of the listed lands:

Township 1, Range 24; Township 2, Range 25; Township 3, Range 26; Township 4, Range 27; Township 5, Range 28; and Townships 6 to 11 inclusive, Range 29, all west of the 4th Meridian;

and

Townships 12 and 13, Range 1; Townships 14 to 20 inclusive, Range 2; Townships 21 and 22, Range 3; Townships 23 to 28 inclusive, Range 4; Townships 29 and 30, Range 5; Townships 31 to 34 inclusive, Range 6; Townships 35 and 36, Range 7; Township 37, Range 8; Township 38, Range 9; Townships 39 and 40, Range 10; Township 41, Range 11, 12 and 13 inclusive; Township 42, Range 14; Township 43, Ranges 15 and 16; Township 44, Range 17; Townships 45 and 46, Range 18; Townships 47 and 48, Range 19; Township 48, Range 20; Township 49, Ranges 21 and 22; Township 50, Range 23; Townships 51 and 52, Range 24; Townships 53 and 54, Range 25, Township 54, Range 26; Townships 55 and 56, Range 27, all west of the 5th meridian;

and

Township 56, Range 1; Townships 57 and 58, Range 2; Township 58, Range 3; Townships 59 and 60, Range 4; Township 60, Ranges 5 and 6; Township 61, Ranges 7 and 8; Township 62, Ranges 9 and 10; Township 63, Range 11; Townships 64 and 65, Range 12;and Township 66, Ranges 13 and 14, all west of the 6th meridian.

GREEN AREA

The green area consists of that part of Alberta in which public lands are classified as forest land not available for agricultural development other than grazing by an order of the Minister pursuant to Section 12 of The Public Lands Act effective to November 30, 1974, but does not include those lands described in this Schedule as the Foothills Area.

YELLOW AREA

The yellow area consists of that part of Alberta in which public lands are classified as being adaptable to any kind of disposition by an order of the Minister pursuant to Section 12 of The Public Lands Act effective to November 30, 1974.

PLAINS AREA

The plains area consists of the remaining lands in Alberta not described in the Foothills Area, the Green Area or the Yellow Area.

HOUSE JOURNAL

LETTER OF INTENT

CSHB 854 (RESOURCES)

The Honorable Hugh Malone
Speaker of the House
Alaska State Legislature

Dear Mr. Speaker:

The Resources Committee substitute for House Bill 854 makes numerous changes in the legislation as proposed by the Governor. Two of these changes involve the deletion of the following language:

1. Subsection (f) on page 6.

2. In subsection (j) the following sentence (at the top of page 8 in the original bill) - "The commissioner may provide by regulation and in the lease that the lessee may earn production rights only to the depth drilled at the beginning of production from the lease."

The record should show that the committee's intent in deleting these two items was not to limit the discretion of the Commissioner of Natural Resources in these areas, but simply the result of its determination that the authority in both of these areas is implied, and does not require special authorizing language in the bill.

Alvin Osterback

Alvin Osterback, Chairman
House Resources Committee

Date: 4/14/78

AGO 546642

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

June 16, 1978

SUBJECT: Suggested Technical Amendments to HB 854

TO: The Free Conference Committee on HB 854

FROM: Gregg K. Erickson
Director of Research

We suggest that you may wish to consider the following technical amendments to the oil and gas leasing bill. Page and line numbers referred to SCS CS HB 854 (2nd Rules).

P.#- SIDE
By SIDE ANALYSIS

p. 2

1. Page 2, lines 9-13: Delete the word "and" on Line 9 and substitute the word "or". Insert a period after the word "issued" on line 10, and delete all remaining material on lines 10-13.

The change suggested above is unnecessary if the House's position on legislative review is accepted by the Free Conference Committee. However, if the provision for legislative review is deleted, as was the case in the Senate bill, the change suggested here would appear to eliminate possible confusion over the legislature's roll, and would eliminate any doubt concerning whether an area proposed in the third (but not the fourth) year preceding leasing, could be leased.

p. 6

2. Page 4, lines 23 and 25: Delete the last sentence in subsection (h) and substitute the following material, "The Commissioner may waive a work commitment, or portion of it if, based on the results of exploration in the area surrounding lease, a lease holder demonstrates that there is a substantial probability that the lease is incapable of producing oil or gas."

We believe this language to be a clearer expression of what we understand to be the intent of this sentence.

p. 17

3. Page 12, line 19; Delete the word "this" and substitute "the leasing program submitted to the first session of the 11th Legislature."

Administration officials have suggested that restatement rather than the use of the pronoun would eliminate any possible confusion on this subsection.

GKE:fc

AGO 546629+

HB

854

DRAFTS +

NOTES

(2) of (2)

Statement of David S. Mace
Sohio Petroleum Company
before the
Senate Resources Committee
Alaska State Legislature
May 22, 1978

AGO 546972

Statement of David S. Mace
Sohio Petroleum Company
before the
Senate Resources Committee
Alaska State Legislature
May 22, 1978

AGO 546973

Statement of David S. Mace
Sohio Petroleum Company
before the
Senate Resources Committee
Alaska State Legislature
May 22, 1978

INTRODUCTION

PART I: AT THE CROSSROADS

--THE IMPORTANCE OF OIL AND GAS POLICY DECISIONS--

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PART III: ARTICLES ON LEASING

1. M.I.T. Professor John W. Devanney III, "How to Bid for Offshore Rights," Technology Review, February 1976, p. 44.

2. "Alberta Canada: Exploratory Drilling Incentive System," The Landman, March 1978, pp. 18-20.

3. Articles from Mineral Leasing as an Instrument of Public Policy, British Columbia Institute for Economic Policy Analysis, 1977:

   - Gregg K. Erickson, "Work Commitment Bidding"
   - Dale R. Jordan, "Petroleum Leasing in British Columbia"
   - Walter J. Mead, "Cash Bonus Bidding for Mineral Resources"
   - Arlon R. Tussing, "The Role of Public Enterprise"

AGO 546974

Statement of David S. Mace
Sohio Petroleum Company
before the
Senate Resources Committee
Alaska State Legislature
May 22, 1978

As Assistant General Manager, I am pleased to have the opportunity to present the views of Sohio Petroleum Company, a Division of Sohio Natural Resources Company, with respect to the House-passed version of H.B. 854.

We strongly feel that the oil and gas leasing bill merits thoughtful study, as its implementation will determine the State's ability to conduct an effective leasing program in the future. Since the industry's ability and willingness to participate in future lease sales will be determined by the manner in which future administrations administer the State's leasing bill, it is vitally important that the provisions contained therein give clear guidance to the Department of Natural Resources (DNR).

Although the House has significantly improved the bill as originally introduced, we feel that there are key provisions that should be further amended. Additionally, we strongly believe that further consideration should be given to the exclusion of several of the proposed bidding methods and to the general concept of experimentation in Alaska's leasing program.

Prior to describing the specific problems we see in H.B. 854, I should like to outline for you why we feel that Alaska should, particularly at this time, pay close attention to energy policy development in general and its leasing program in particular. To put it in a nutshell, world supplies of conventional oil and gas have shrunk and are narrowing rather quickly; the chances of finding another Prudhoe Bay-sized field--anywhere in the U.S.--are next to zero. Thus policy decisions affecting oil and gas are crucial if Alaska is to find and develop her remaining petroleum resources, thereby strengthening the future economic outlook for all Alaskans and the political/economic outlook for the United States.

PART I: AT THE CROSSROADS

THE IMPORTANCE OF OIL AND GAS POLICY DECISIONS

Global Prospects

The Workshop on Alternative Energy Strategies (WAES), a two-year international energy and economic project, directed by the Massachusetts Institute of Technology, recently released their final report which indicated that:

(1) All energy resources and conservation measures must be developed vigorously to meet total projected demand in the period 1985 - 2000; and

(2) Energy policy decisions made now will be the critical determinants as to whether or not sufficient incremental supplies will be available to meet demand in the years ahead.

In other words; according to the WAES Report:

> The years up to 1985 are critical ones...We are...on the threshhold of a critical decision period. We cannot afford to waste the years immediately ahead if we are to have any large-scale energy options available before the end of the century. The time for decisive action is now. 1/

In this environment, the importance of the Federal and State petroleum leasing programs affecting Alaska cannot and must not be underestimated. Whether or not Alaska's oil and gas resources can and will be developed will be an important factor not only for Alaska but also for the United States as a determinant in the future global energy, economic and political balance. The critical nature of energy decision-making at this time is further underscored by the following conclusions stated in the WAES Report:

1/ ENERGY:GLOBAL PROSPECTS, 1985-2000, Report of the Workshop on Alternative Energy Strategies, M.I.T. Professor Carroll L. Wilson, Project Director McGraw-Hill Book Company, San Francisco, 1977.

(1) The supply of oil will fail to meet increasing demand before the year 2000, most probably between 1985 and 1995...(p.3)

(2) Demand for energy will continue to grow even if governments adopt vigorous policies to conserve energy...(p. 4)

(3) The continued growth of energy demand requires that energy resources be developed with the utmost vigor...(p.4)

(4) Even if there are no governmental constraints on oil production, oil supply will meet demand only under the most optimistic assumptions about gross additions to reserves...(p.145)

(5) Possible constraints on oil production by members of OPEC are likely to cause oil supply to peak at the latest some-time around 1990 although lower production limits could bring this date forward into the early 1980's...(p.145)

(6) All the effort put into oil exploration around the world over the past one hundred years has only yielded 240 large oil fields...(p.123)

(7) With only a small chance of either discovering a new Middle East or discoveries in the Middle East as large as in the past, the past rate of genuine new discoveries can only be achieved if a large number of smaller producing areas are found. (p.122)

(8) Given lead times of 5-10 years or more for many projects, failure to make necessary near-term commitments or to resolve a variety of current restraints on production, or to develop future supplies may foreclose some options for 1985. (p.265)

(9) Failure to recognize the importance and validity of these findings and to take appropriate and timely action will almost certainly result in a world different from the one on which these projections have been based. (p.5)

(10) Failure to act could lead to substantially higher energy prices as the supply/demand imbalance becomes more apparent with the consequent frustration of the aspirations of the less developed countries. The major political and social difficulties that might arise could cause energy to become a focus for confrontation and conflict. (p.5)

(11) The longer the world delays facing this issue the more serious the outcome will be. Even with prompt action the margin between success and failure in the 1985-2000 period is slim. Time has become one of the most precious of our resources. (p.5) 2/ (Emphasis added)

2/ Ibid., pages as indicated above.

Another important point in the Report relates to the size of future oil fields. Worldwide, over 30,000 oil fields have been discovered, but about 75 percent of the oil lies within 240 large fields, each with over 500 million barrels of recoverable reserves. 3/

Out of the tens of thousands of producing oil fields in North America, there are only five fields that have recoverable reserves of more than 500 million barrels (Prudhoe Bay, which is new; and Elk Hills and Wilmington in California, and East Texas and Yates in Texas, all of which are old fields). Despite a great deal of exploration in North America, there has been no recent discoveries of fields more than 500 million barrels, except Prudhoe Bay. In other words, the probabilities of finding large new fields on the order of Prudhoe Bay has significantly diminished, not only globally, but also in the United States.

The WAES Report also makes clear that in certain environments, such as the North Sea, a 500 million barrel field is at the economic margin. 4/ Because of the particularly harsh environment in Alaska's North Slope, and elsewhere in the unexplored part of the State, a field that may contain even more than 500 million barrels of oil could be right on the edge of economic viability in Alaska, given the uniquely high costs and transportation difficulties.

While all of the above has critical implications both for the United States and Alaska, there are yet another set of reasons why we believe that the designing of the future oil and gas leasing program in Alaska deserves serious and careful consideration.

3/ Ibid., p. 123

4/ Ibid.

Alaskan Petroleum Outlook

In a sense, the State of Alaska is facing on a smaller scale some of the same problems described earlier on a global scale. Whereas world oil production may begin to decline in about seven years, Prudhoe Bay will begin to decline within the decade. This fact has important implications to all Alaskans and, in view of the revenue needs of the State, it would appear to be critically important for the State to ensure and encourage a steady, strong and ongoing oil and gas development program in Alaska. But the historic rate of genuine new discoveries can only be achieved worldwide if a large number of small producing areas are found. Likewise, the future of petroleum discoveries in Alaska will most probably involve smaller fields which will be more costly to develop.

As previously noted, the possibility of finding another Prudhoe Bay-sized field in Alaska--or anywhere--is extremely remote. Further, because of the very high costs of operating in much of Alaska, the size of a discovery must be larger here than it need be in other states to make the project economic. Even the Lisburne and Kuparuk oil pools, which according to State estimate range in potential from one to two billion barrels, may be marginally economic and typical of many future oil and/or gas finds in Alaska. All this tends to suggest that Alaska needs to pay closer attention to the development of her resource policy than a state like Louisiana, for example.

Some have argued that Alaska might be better off 'sitting on' her potential oil and gas resources and waiting for the world oil price to rise even further. Dr. Arlon Tussing, an Alaskan economist advisor to the Senate Energy Committee, considers this attitude, "simplistic" and "naive".

In real terms, world oil prices may stabilize as a result of a prolonged period of relatively low economic growth which would result in lower growth rates for energy consumption than is generally projected. Additionally, as global attention is increasingly focused on energy, the drive to conserve energy and to develop heavier oils, such as Athabascan tar sands, Rocky Mountain oil shale and Orinoco tar belt--and substitutes for conventional oil and gas--will increase. Again, to quote Dr. Tussing, "if you choose to 'sit on' your oil and the decision was wrong, the resultant imbalances could be serious."

A final serious consideration for Alaska relates to a realistic assessment of the future revenue needs of the State. Projections indicate that Alaska's revenue problems in future years require a significant expansion of petroleum exploration and development activity now so that new sources of revenue will be available as Prudhoe Bay declines. This is an especially critical consideration in view of the long lead times involved in exploration and production in the frontier areas of Alaska. In some areas, it can take a decade to find, prove up and begin to develop a field, and transportation problems can be enormously complex, causing further delays.

Implications

Being at the economic/energy crossroads globally -- and in Alaska -- would seem to suggest that it is of vital importance to the State to (1) carefully delineate its goals with respect to a new oil and gas leasing bill and (2) ensure that the proposed legislation, in its implementation, will achieve the desired goals outlined in the legislation. With this in mind, I would like to address some of the specific, critical problems we foresee if H.B. 854 were to be implemented in its current version. Additional, I would like to present some of the experts' views with respect to several broad issues raised by the draft legislation.

PART II: CRITICAL CONCERNS WITH H.B. 854

Bidding Methods - Experimentation

No one knows how beneficial experimentation in bidding methods will be. The U. S. Government tried royalty bidding on ten tracts in an October 1974 lease sale with questionable results. It appears that neither the industry participants nor government officials found the experiment to be particularly successful.

According to The Oil and Gas Journal, "operators say they doubt royalty bidding will ever surface again except in areas where production is almost certain or possibly in drainage-tract sales. Development of wildcat acreage can prove too costly on a royalty bid basis, despite the absence of high front-end expenditures normally budgeted under the traditional bonus-bid system." 5/

Similarly, Energy Secretary Schlesinger appeared to be disenchanted with the royalty bidding experience in Louisiana in that, in a letter to Interior Department Secretary Andrus, Schlesinger apparently stated that the Department of Energy has reservations about the effectiveness of the royalty method based on past experience in the Gulf of Mexico. It appears in fact that Schlesinger raised the same objections to the royalty system as had been raised by industry and formerly by officials in the Department of Interior, i.e., that royalty bidding leads to early abandonment of leases because declining production eventually makes the lease unprofitable under a high royalty arrangement.

5/ Mike Long, "Royalty-bidding experiment turns sour," Oil and Gas Journal, May 2, 1977, p.32.

Significantly, the Department of Energy and the Interior Department are considering the formation of a task force of experts to help analyze pros and cons of the various systems being proposed in the Federal legislation (which were largely copied in H.B. 854). Apparently, there is considerable disagreement between the two agencies as to the merit of the sliding scale royalty systems used in the last two lease sales, as well as to the efficacy of using other bidding methods. A key problem in forming a task force seems to be a dearth of real experts, however, in that few governments have undertaken experiments in bidding practices long enough or in a manner similar enough as that envisioned in the proposed Federal and State legislation, and to paraphrase Dr. Arlon Tussing's comments: scholarly, empirical analysis of the different bidding systems appears to be 'remarkably skimpy.'

One source document appears to be quite useful, however. Published by the British Columbia Institute for Economic Policy Analysis, Mineral Leasing as an Instrument of Public Policy, contains articles by an international and interdisciplinary group of economists, mining engineers, businessmen and industry consultants. In an introductory section, Dr. Mason Gaffney describ the report as "an outstanding contribution to a rapidly growing field of study."

Our greatest concern with the proposed legislation is reflected in many of the articles in the British Columbia Institute's report. The publication cites significant problems with many of the bidding systems proposed in H.B. 854. Since each new system is so experimental, the likelihood of the Alaska's experiments not succeeding is high. An additional concern is that it would be years before the success or lack of success with a given system can be determined.

An example of our concern relates to the use of royalty bidding. Dr. Arlon Tussing, Dr. Walter Meade and others (including now Energy Secretary Schlesinger) have raised objections to royalty bidding for a variety of reasons. In the Report, Professor Hayne E. Leland, University of California at Berkeley, echoes some of their concerns and ours:

> "Competitive bidding theory makes clear that undesirable consequences may follow from royalty or profit share bidding. If there are no bonus payments required, speculative bidding may lead to extremely high royalties or profit shares being bid, with development occuring only in the most favorable circumstances. This happens because firms have little or nothing to lose by bidding high and then failing to explore or develop..." 6/ (Emphasis added)

Gregg Erickson, a well-known Alaskan economist, in his article on "Work Commitment Bidding," suggests that the problems associated with royalty bidding are well known:

> "The problems created by royalty bidding, principally the premature shutdown effect and the potential for speculator induced misallocation of leases, have been well discussed in the literature. More importantly, they are well understood by persons influencing both public and private mineral resource policies". 7/ (Emphasis added)

Yet, it is not clear to us that royalty bidding problems are well understood by the officials who will guide the Department of Natural Resources in leasing decisions in the next few critical years or in the future.

A specific example of why we are concerned relates to the material prepared by the Department of Natural Resources to accompany H.B. 854, entitled "Two Views on Bidding Strategies." Not only are the numerous problems and dangers of royalty bidding (cited by Meade, Erickson and others in the University of British Columbia Report) not even mentioned,

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6/ Hayne Leland, "Comment," British Columbia Institute Report, p.60

7/ Gregg Erickson, "Work Commitment Bidding," Ibid., p.61.

but also, after three short descriptive phrases under the heading "Royalty Bid-Fixed Bonus," the Department of Natural Resources, with no further comment, analysis, or explanation, simply states: "The Beaufort Sale is an ideal candidate . . . royalty bidding scheme." (Emphasis added)

We view such remarks by the State Administration with concern. As indicated previously, many who have taken the time to study the various proposed bidding methods in depth list extensive problems with various schemes for royalty bidding (see also Part 3) and, would hesitate to use royalty bidding schemes of any sort except in drainage sales or where there are known, proven reserves (as mentioned above in the Leland citation). The Beaufort Sea is believed to have a high potential for discovery, but, as in the Gulf of Alaska, the drilling of wells may result in no discoveries, or discoveries of marginal fields. No discoveries - with royalty bidding - means no income for the State of Alaska. And, as royalty bidding adds risk for the State, another quote from Leland is perhaps appropriate here:

> "Note that if the lessor is such that leasing forms a substantial fraction of its revenue (for example the State of Alaska), it may not be optimal to transfer risk from firms to the lessor. Thus, lease contracts which might be appropriate to the federal government may not be appropriate for regional governments". 8/ (Emphasis added)

Future administrations working with the proposed leasing statutes may have multiple choices of bidding methods available to them. We feel it important to stress that we concur both with Mason Gaffney and Gregg Erickson as to where the burden of justification of such decisions should lie, i.e., with those who would change the current system of cash bonus bidding. In this regard, we believe we are safe in assuming that Gregg Erickson's

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8/ Leland, op cit., p.60.

statement below with respect to the work commitment bidding system would apply to any new proposed bidding system:

> "The adoption of a work commitment bidding system implies a judgment that existing institutions for private exploration of public resources result in a suboptimal rate of resource development.
>
> Any argument for the adoption of such a system must first establish that this is in fact the case..." 9/

Similarly, though in a more general way, Mason Gaffney warns:

> "To serve his citizens best, the statesman should...resist the temptation to use his power to manipulate and control...on the too easy presumption that the market has no rationale or normative value of its own. Generations of economists have established that it has, and governments seeking to improve on it need face a certain burden of proof." 10/

One final point: The effects of the cash bonus bidding method, though not perfect, have been rigorously scrutinized, with over 20 years of experience as a basis for analysis. And, according to Professor Mead's extensive studies related to the results of 35 oil and gas lease sales during the period November 1954 to May 29, 1974, bonus bidding with a fixed royalty is effective:

> "On the basis of this evidence, we conclude that competitive bidding for oil and gas leases is sufficiently strong to protect the public interest in obtaining competitive values for its oil and gas resources. This conclusion is further supported by evidence presented above indicating an increase in the average number of bidders and a substantial increase in the average price bid per acre for oil and gas leases". 11/

Thus, it is our judgment that, although in certain, special circumstances, changes in the bidding approach may be advantagous to the State, several factors should be remembered. First, the State currently depends on the petroleum production, some for 70 percent of its revenue, most of which is from a field that will begin to decline in about seven years. New exploration in Alaska is vitally needed.

9/ Erickson, op cit., p.75.

10/ Gaffney, op cit., p.3.

11/ Mead, op cit., p.55.

Second, although oil companies by the nature of their business deal daily in risk and uncertainty, there is no question but that, to the extent the State can reduce uncertainty and foster confidence with regard to the use of new bidding systems, oil and gas exploration will be encouraged.

Third, because the new systems <u>are</u> experimental, we would suggest that the burden of proof for adopting a new system for any lease sale be placed on the Department of Natural Resources because the use of any new system involves greater risks and uncertainty not only for the companies but also for the State.

Lease Terms (y) and (z)

As currently proposed in H.B. 854 the lease stipulations include a normal lease life of five years duration; leases can only be prolonged to ten years in areas where environmental conditions severely restrict operations. It is our understanding from testimony given to the House Resources Committee by personnel of DNR that severely restrictive environmental conditions are interpreted to include moving ice zones in the Beaufort Sea, but not onshore conditions on the North Slope. As this latter area can only be explored by winter operations, a five year lease would only allow 1-2/3 years of exploration time. From a practical standpoint this is not sufficient, and such a restriction would make it physically impossible for an operator to explore a reasonable number of leases.

The cost of exploratory wells in environmentally difficult areas of Alaska, both onshore and offshore, can now be expected to exceed 10 million dollars and sometimes reach 20 million dollars per well. With such large amounts of money involved, exploratory wells are high risk ventures which must be very carefully planned to obtain the greatest return, not only in oil and gas discovered, but also in geological data obtained. Consequently, a company's exploratory program on Alaskan leases must be systematic and careful and can no longer follow the philosophy of "wildcatting." Such a logical approach cannot be rushed in its implementation, and the restriction of leases to a five year term would inevitably result in many leases not receiving the exploratory attention they might deserve. They would be relinquished without having been drilled, and would therefore diminish in value due to their apparent unimportance to the lessee with consequent loss to the State.

To counteract this situation, and allow operators to assess the true value of their landholdings, we are proposing that the normal term of a lease should be ten years, except in those areas where the Commissioner determines that environmental and economic restrictions on operations are not a factor. Since many of the future lease sales will be in hostile environmental areas, it is in the State's interest, we feel, to ensure that sufficient time is permitted for a proper evaluation of the lease areas.

Furthermore, we feel that the bill should specify that, prior to the lease sale, in the tract terms, the State will provide specific information related to provision (z), i.e., the percentages of oil and gas that the State intends to require for in-state use. Otherwise, it becomes impossible realistically to bid on the proposed tracts.

Joint Bidding - Its Effect on Competition (y)

Much has been said in recent years about the competitiveness or lack of competition in oil and gas exploration and development. Concern has risen particularly with respect to joint ventures in general and joint bidding in particular. Although the formation of joint venture groups for lease sale bidding facilitates ease of entry in high-risk ventures, and allows producers to spread their financial investments in an effort to minimize overall risks, the sheer numbers of joint ventures have been interpreted by some as 'fostering something other than competition'.

The two theories about the nature of joint bidding in Federal lease sales (collusive vs. risk-sharing purposes) have been tested by University of North Carolina Professor Edward Erickson and M.I.T. Professor Robert Spann. As they reported in testimony before the U.S. Senate Commerce Committee, the observed patterns of bidding partnerships are most consistent with the hypothesis that joint bidding is a means of risk-sharing, not collusion.12/ Among the ways in which competition might be fostered rather than reduced by joint arrangements are the following:

Because risks are shared, the cost of capital per unit of supply increment is less, so that entry barriers are lowered in high risk ventures;

Because of joint agreements, smaller independents can and do form independent and successful groups for bidding purposes in Federal lease sales, as evidenced by data on successful bidders in the June 1973 Federal lease sale;

12/ In their study of the 1972 and 1973 Federal offshore lease sales, Erickson and Spann found that membership of bidding groups varies from year to year; market shares for members fluctuate from one year to the next; the most frequent bidding group is a combination of majors and smaller firms, but majors bid alone, as do smaller firms; single firm bids are frequently made by the largest firms, but other firms are also successful single firm bidders, and bidding groups which contain a large number of firms are predominantly composed of smaller firms. They also conclude that the incidence of joint bidding increased as the size of the firm decreased; there was a heavy incidence of joint bidding partnerships between unlike firms; smaller firms use joint bidding ventures as a vehicle for entry into offshore activity. "Competition in the Field Markets for New Natural Gas Supplies," Statement before the Senate Commerce Committee, November 8, 1973.

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Because of the number of large and small producer combinations and the frequency with which new groups are formed with different members, producers are able to become involved in many projects so that competition is spread through many projects.

Since joint operating agreements also expressly provide for separate marketing of production from joint ventures, it would appear safe to conclude that risk-sharing through joint ventures need not make competition less intense. By facilitating ease of entry, joint ventures by domestic petroleum companies may indeed make competition more intense. 13/

The work of Professor Mead tends to underscore the findings of Erickson and Spann:

> "The most conclusive test of the workability of cash bonus bidding based on the United States record of OCS oil and gas lease sales is in terms of the rate of return on capital earned by the successful bidders. An analysis has been made on 184 offshore Louisiana oil and gas tracts leased in 1954 and 1955. Precise data are available on bonus payments, rental payments, oil and gas royalty payments, and production of oil and gas during the period from 1954 through 1967. Cost estimates were made for exploration, well drilling and equipment, and operation. Annual cost and annual wellhead values were discounted to obtain a net internal rate of return. The calculations indicate that these early OCS leases generated a 7.5 per cent before tax rate of return to the lessees. Given the fact that oil companies pay relative low U.S. income tax rates, the after tax rate of return would be only modestly lower than the 7.5 per cent before tax rate of return. <u>This net yield clearly does not reflect monopoly power; it shows an excessive degree of competition</u>". 14/ (Emphasis added).

In fact, two studies conducted under the auspices of the United States Geological Survey (both authored jointly by Dougherty of the University of Southern California and Lorenz of the U.S.G.S.) have indicated that the <u>restriction of joint-bidding has failed</u> to achieve its objectives in Federal OCS lease sales.

13/ In the last analysis, if the formation of such groups constituted monopoly power, one would expect to see some results where such groups are formed, e.g., a non-random bid price pattern in Federal lease sales.

14/ Mead, <u>op. cit.</u>, p.55.

Major conclusions were:

1. The ban of joint-bidding by major oil companies may in fact have acted to broaden the overall influence of major companies in a given sale. The percentage of all bids and the number of bids per lease in which a major oil company was involved actually increased, which in turn may have increased the total amount of acreage in which major companies participated during this period.

2. When the U.S.G.S studies compared solo bids to joint-bids on given tracts, it was concluded that the joint-bidders tended to go after more highly sought-after leases and that they tended to bid higher on the average than sole-bidding competitors.

From a practical standpoint, allowing joint-bidding has important advantages to the State as well as to the industry, in terms of overall economic efficiency, environmental effects of exploration activity, and flexibility.

For example: Often, a given company may have a great deal of geologic and geophysical data in an area, but for one reason or another does not have the cash on hand to fully utilize its data in a competitive-bonus sale. In this kind of situation, it would make sense to join with another company that has the necessary investment capital and does not have the data.

If the two were unable to combine in partnership, a situation could develop where one company had to duplicate seismic and geologic information already held by the other company. Ironically, a situation would then develop where overall competition in the sale would be reduced, because one company with cash reserves would have expended part of its funds in gaining data, while the other company with information would be limited in participation

because of its cash limitations. Also, there would be the obvious environmental effect of the increased seismic and other activity, including, possibly, the drilling of wells, that would go along with the need to gain additional data.

In view of all of the above, it is very doubtful that joint bidding will adversely affect competition, and it is more likely to enhance competition and result in financial advantages to the State as well as oil companies. In this instance, the Federal Governments stance on restricting joint bidding appears to be counter-productive, and it is not in the State of Alaska's best interest to follow that lead.

Minimum Work Commitments (h)

The current language of H.B. 854 permits the Commissioner to impose a minimum work commitment on a lessee. The only reasons we can deduce for including the provision is to overcome the problems inherent in royalty and net profit bidding procedures. Both these methods inadvertently encourage a lessee to sit on a lease as long as possible without carrying out any work, because the lessee has no meaningful financial involvement in the lease. Consequently, under royalty or net profit bidding, the leaseholder will tend to prefer to 'sit on' the lease in the hope that neighboring leaseholders will, by their efforts, help indicate the true potential of the lease. Conversely, minumum work commitments are not necessary on leases won with a cash bonus bid because the lessee has an obvious financial incentive to produce a profit from his cash investment in the lease as soon as possible.

No responsible bidding company will bid on a lease which it thinks is devoid of prospects unless the bidding method imposes no appeciable risk or financial outlay to the company. Under these circumstances, i.e., when royalty or net profit bidding are used, the company has an inducement to try to obtain the acreage because of the slim chance that its assessment of the poor potential of the land is wrong. To prevent the company from doing nothing with this lease, the Commissioner has to impose a work commitment on it. But if the lessee views the lease prospects as negligible, the lessee will expend money for exploration only up to the amount equal to the work commitment imposed by the State.

The question arises: is this result in the State's best interest? Instead of obtaining maximum exploration on tracts with maximum potential,

the State, under royalty and net profits bidding, will encourage, through work commitments, capital outlays on tracts with minimum potential. And the capital outlays will most likely be a waste of dollars, producing no ultimate gain for the State.

If the cash bonus bidding system is not utilized on a particular lease, however, the level of fixed cash bonus imposed with the bidding system chosen can be made sufficiently large to ensure adequate and prompt exploration. Thus, we recommend that (h) be deleted from H.B. 854.

Data Acquisition by the State

While we understand the State's desire to know more about the potential oil and gas resources underlying State lands, we would reiterate what we and other companies have previously stated: obtaining more data from the companies does not necessarily put the State in a better position to evaluate potential resources. In fact the opposite could be true; government officials, looking at company data, might well understate the potential value of proposed lease acreage because of the general conservative nature of a government compared with, for example, the daringness of one Company geologist willing to stake his professional career on his interpretation of exploratory data. It could also be argued that the very nature of a large government agency makes it easier to hide errors of judgment whereas the company which decides to "go" on a project can hold specific employees more accountable for errors of judgment. But the most important fact to remember is that regardless of how much data the State may obtain, the State will never know what it does or does not have unless the State drills.

Since you may not wish to simply take a company's word for it, the following quotation is presented to underscore the importance of drilling as a means of obtaining useful information and to highlight the relative lack of usefulness of data without drilling. This excerpt is from the writings of an acknowledged expert in leasing policy, Professor Walter Meade, University of Southern California at Santa Barbara:

> "...while the technology for oil exploration prior to the drilling has been advanced in the last century, exploration is still subject to extemely high risk. Drilling is the only definitive test to determine the presence of oil or gas. Thus, bonus bids must be submitted by bidders and accepted or rejected by the government when neither the buyer nor the seller knows whether and in what quantities oil is present..." 15/ (Emphasis added)

15/ Mead, op. cit., p.51.

It would seem obvious, therefore, that if the companies -- with all their data and experience -- don't know at the time of a lease sale whether they've just spent millions for the right to put millions more into drilling potentially dry holes, then the government, with the same data, could hardly be better off. And having all the data of all the companies doesn't necessarily lower the risk of error for the government in that the view supported by most of the data of most of the companies (data that might suggest that "Tract 20" is worthless, for example) could be wrong.

Because more is not necessarily better in the exploration data game, many companies do in fact view data acquisition by the government as the first step which will inevitably lead -- and naturally extend to -- the establishment of government drilling corporations. And, as previously noted, Dr. Arlon Tussing does not view "governmental ownership of producing operations" as "the most effective way of accomplishing the social ends for which it is currently being advocated..." 16/

Additionally, Dale R. Jordan details some of the more severe problems of esblishing government drilling corporations:

> "...This article's purpose is not to examine the political repercussions that might occur when dry holes are drilled with public funds; however, we should examine some of the practical considerations involved in the operation of a public company which has an almost exclusive area within which to explore as a result of discouraging the private sector. For the government to discourage both the existing explorer and the entry of any new ones and to expect the public corporation to be able to fill this void suggests that the government is saying, "if the private companies do it, so can we."

16/ M. Crommelin and A. Thompson, "Introduction," Mineral Leasing as an Instrument of Public Policy, British Columbia Institute for Economic Policy Analysis, 1977, p.xvi.

Now remember that the private companies comprise all the oil and gas explorers working in the province and those contemplating doing so, given the right opportunities. All these companies have geological staffs, many of who will be geologists who devote most of their time over a considerable number of years entirely to the study of British Columbia's geology. The public corporation could not expect to have such an extensive source of expertise as that available in the free enterprise system. And so the public corporation would suffer from a reduction in the number of ideas generated.

It is not unusual in oil and gas exploration, with its inherent problem of scientific interpretation and evaluation of geological prospects, to find that one company will acquire a block of land, will explore it, and perhaps even drill on it before deciding the search is unsuccessful. The company will then return the land to its owner, the Crown. This does not mean that there are not any commercial hydrocarbons underlying this land; but rather that that particular company was unable to find them. To find these hydrocarbon deposits, a second, a third, or a fourth company should acquire this land, and, if this is done often enough, the hydrocarbon will be encountered, and production will follow. The problem with the public company being the only explorer in the province is that, unless it is fortunate enough to make the initial discovery, it is very doubtful whether there would be enough enthusiasm to have a second, third or perhaps even a fourth try at that particular prospect, with the result that the discovery would not be made. This is surely the worst thing that could happen and is probably the most damning argument against a public corporation moving into an area with an almost exclusive right to explore. 17/

17/ Dale R. Jordon, "Petroleum Leasing in British Columbia," Ibid., pp. 252-253

SUMMARY AND CONCLUSIONS

In summary, we would offer these observations and conclusions:

1. H.B.854, as currently drafted, would create a State leasing system containing many experimental procedures that are new and untried in Alaska. This may not be in the State's interest, because unusual leasing systems could lead to delays in petroleum development that could have serious consequences on future State revenues and Alaska's contribution toward U.S. energy needs.

2. The State's future revenue problems should not be underestimated. The State of Alaska may face an extremely serious revenue situation in the late 1980's as oil production from the Prudhoe Bay field begins to decline. The long lead-times needed to find and develop new Alaskan oil discoveries would indicate that exploration must expand rapidly on State lands to provide needed petroleum revenues for the future.

3. Alternative bidding systems proposed in H.B. 854, although also proposed in OCS legislation now pending in Congress, have not had extensive use in the U.S., nor in very many other places in the world. Experience with royalty bidding in Federal OCS sales has apparently been dissappointing, and the Federal government is giving serious attention to the use of alternate bidding systems.

4. The majority of academic literature that we have been able to find supports the thesis that the traditional bidding methods have worked well in the leasing of public lands for petroleum development. Academic experts also seem to agree that alternative bidding systems present serious problems, except when used in certain special situations.

5. The bill must be clarified where judgmental factors in its administration are critical to the success of the leasing program. The life span of a lease in years must be compatible with the extreme environmental and economic constraints placed on exploration activity in Alaska. To underestimate those constraints will result in unacceptably short lease terms, with a consequent reduction in exploratory work carried out on the leases. A decrease in exploration leads directly to a reduction in discoveries, production and State revenues.

6. Section (2) needs to be clarified in that, as currently drafted, the financing of exploration ventures based on a commitment of future production, would be impossible.

7. Work commitments are not as effective as higher bonus bids in encouraging prompt exploration of worthwhile leases, as work commitments, particularly in conjunction with royalty bidding schemes, work against the State's best interests in developing promising acreage.

PART III: ARTICLES ON LEASING

1. M.I.T. Professor John W. Devanney III, "How to Bid for Offshore Rights," Technology Review, February 1976, p. 44.

2. "Alberta, Canada: Exploratory Drilling Incentive System," The Landman, March 1978, pp. 18-20.

3. Articles from Mineral Leasing as an Instrument of Public Policy, British Columbia Institute for Economic Policy Analysis, 1977:

   - Gregg K. Erickson, "Work Commitment Bidding"
   - Dale R. Jordan, "Petroleum Leasing in British Columbia"
   - Walter J. Mead, "Cash Bonus Bidding for Mineral Resources"
   - Arlon R. Tussing, "The Role of Public Enterprise"

How to Bid for Offshore Rights

Several systems have been proposed to replace the present "bonus-bid" method of assigning leases on offshore oil prospects to developers. Of these, Professor John W. Devanney III of M.I.T. opts for "percentage-of-excess-profits" bids (*see p. 42*). Other proposed arrangements include work obligation permits and various forms of royalty bidding.

The Work Obligation Permit Plan

Under the work obligation permit plan, developers would submit exploratory and provisional drilling plans for a given tract. The government would choose the developer with the most aggressive, best-considered plan, and the developer would then be responsible for agreed-upon amounts of royalties and/or lease rentals. Under this system, used currently by the Norwegians and the British in the North Sea, the great bulk of any economic rent would be transferred to the developer, and a portion of this rent would be returned to the public in the form of corporate income taxes. Of the possible methods reviewed here, this is clearly the most favorable to the developer.

Administering this method to maximize national income depends on the skill and honesty of administrators. There are temptations for prospective developers to submit work plans which represent over-development of the resource so they will be judged the most aggressive, and administrators will have to be wise enough to recognize such over-development and refuse it. The decisions to be made in choosing the "best" work plan are necessarily judgemental, and they are an open invitation to the influence of special interests and even to corruption.

But beyond the possibilities of incompetency or corruption which may result in loss of national income is the basic fact that most of the economic rent goes to the developer. Professor Devanney concludes that work obligation permitting is clearly not desirable, from a nondeveloper point of view. Indeed, as soon as it became clear that economic rent was associated with North Sea oil, the British and Norwegians moved away from this practice.

Royalty Bidding

Royalty bidding involves competitive bidding on a share of the actual gross revenues — generally a percentage of market value — associated with the resource. This method has long been used in state sales of rights, and the federal government experimented with it in the Gulf of Mexico in 1974.

Compared with bonus bidding, royalty bidding transfers some of the risk prior to exploratory drilling from the developer to the public. This helps maintain competition among bidders, for large amounts of up-front capital are not necessary, and the need for large bidding combines disappears.

However, there are other problems. While the method could theoretically give most of the revenues from offshore oil to the public, it could also reduce the total size of the offshore oil pie. This is because the royalty bid, unlike the bonus bid, affects the developer's marginal expenses. For instance, if a developer overestimates production from a certain tract, he will freeze himself into a royalty bid that makes it unprofitable for him to develop the smaller, and thus more expensive, oil find that is actually made. He will refuse to develop it, and the national income will suffer. This risk may especially affect secondary and tertiary production from a tract; such oil will be more expensive than primary oil but still less costly than foreign crude.

Proponents of royalty bidding offer two possible resolutions of this dilemma — re-leasing and renegotiation. The former proposes that if a developer decides not to produce a tract he must turn it back to the government, with all equipment intact, and the government may lease the tract anew, presumably to a different developer at a lower royalty. This would discourage expensive techniques to enhance oil recovery, because the original leaseholder may choose merely to take out the flush production before releasing a tract back to the government. This will be costly to the public, since processes for secondary and tertiary recovery of oil must begin early in a field's life to be most effective. There is also the possibility of excessive administrative costs associated with the negotiations necessary for re-leasing.

Advocates of renegotiation propose that if a developer feels he cannot develop a field at his bid royalty, he should be able to present his evidence to the regulatory body which should be empowered to grant him a decrease if it finds his presentation viable. The obvious problems here are in the regulatory body's verification of the developer's data. The capital-intensiveness of offshore oil makes any estimate extremely sensitive to the cost of capital, and that information is often confidential.

Other potential problems introduced by renegotiation include temptations for developers to "goldplate" a project since additional expenses could come off the royalty — i.e., out of the public's pocket. A developer might deliberately bid high initially in order to obtain a tract, anticipating that he will renegotiate later; and he might go through a whole series of renegotiations as his costs for enhanced recovery techniques begin to appear.

Some have suggested a compromise between bonus bidding and royalty bidding, in which developers would enter a "high" fixed royalty plus a bonus bid of up-front payments. This would decrease the size of bonus bids and aid competition, say its advocates. Unfortunately, this presents the same can of worms as straight royalty bidding.

Installment bonus bidding has also been suggested. This means a developer would pay his bonus in three installments — immediately, after three years, and after five years. He could surrender the lease before the last two payments if things failed to work out. But this presents the same pie-reducing problems as royalty bidding; if a developer originally bid $600 million and after exploratory drilling found oil worth only $350 million, he would abandon the tract rather than pay the final installments even though national income would be increased by $350 million if the find were developed.

There are advantages, however, in installment bonus bidding. There is an automatic re-leasing provision, which could assure that tracts were re-opened for development; and the marginal costs of the oil are not affected, which means that the developer has incentives to invest early in enhanced recovery.

However, the massive amounts of up front money involved in even a one-third installment payment of a bonus bid will probably still frighten away many bidders. And many bidders would increase their total bonus bids considerably, knowing that they could thus avoid paying additional installments.

ALBERTA, CANADA

Exploratory Drilling Incentive System

A report from Alberta Energy and Natural Resources states the exploratory drilling incentive principles adopted for wells spudded between Jan. 1, 1978 and March 31, 1981 were announced by the government last fall and will be defined in detail in the Exploratory Drilling Incentive Regulation, 1978 when it is issued in the near future.

This regulation, however, may not be available to industry prior to the commencement of the drilling activity it affects. Accordingly, the essential details respecting the forthcoming program are described herewith.

The department expects that the principles and details outlined here will be incorporated, without a change in meaning, into the 1978 Regulation. If, however, such a change does occur, the 1978 Regulation would, of course, take precedence.

(1) Commencement Date of the Forthcoming Program

As previously indicated, an incentive exploratory well in good standing will be

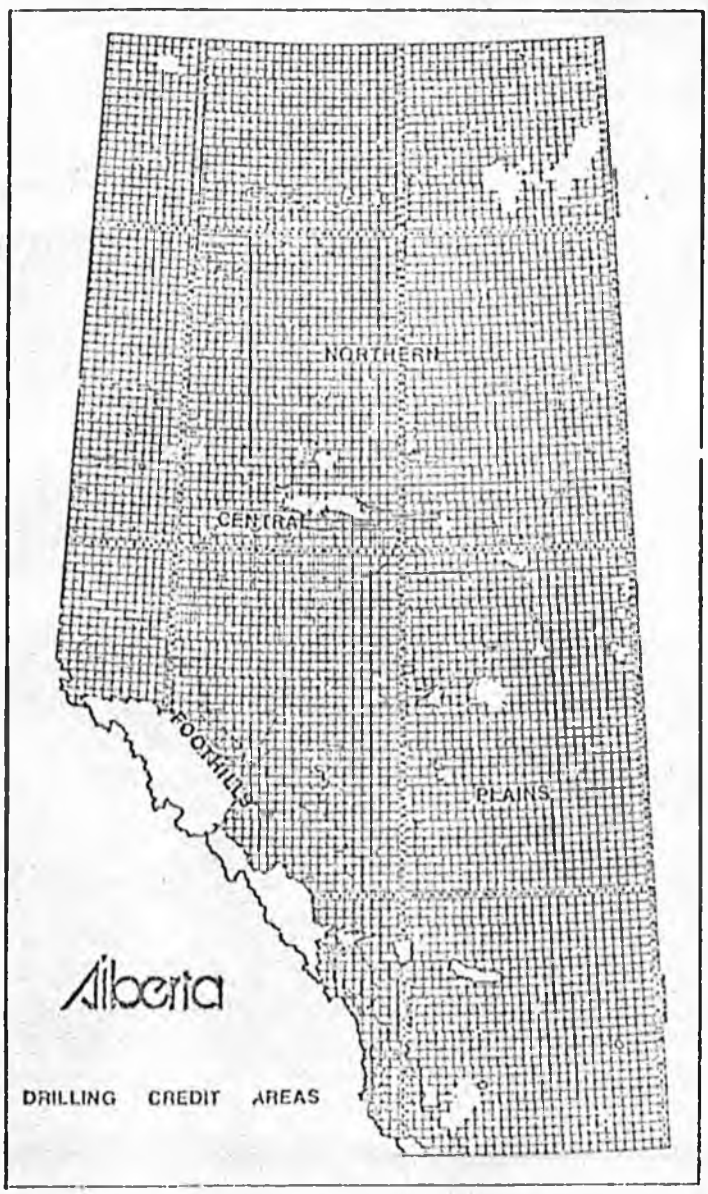

Figure 1

Figure 2

subject to the 1978 Regulation if it commences drilling on or after Jan. 1, 1978. This provision will not be affected if the licensing or certification date is before 1978.

(2) Drilling Credit Areas

Figure 1 shows the drilling credit areas as they will be defined under the 1978 Regulation. The Plains and Foothills Areas have not been changed. The subsisting Northern Area, however has been divided into the new Central and Northern Areas shown by the illustration. The boundary between the two new areas was defined by the Department on the basis of well cost data and topographic and access considerations.

Figure 2 is provided for the convenience of industry to depict the irregular eastern boundary of the Foothills Area. A similar map was issued by the Board in 1974.

(3) Drilling Credit Schedules

Drilling credits under the 1978 Regulation will be determined from Schedules F

SCHEDULE F

Applicable to the Class A Interval of an Incentive Exploratory Well that Commences Drilling on or after January 1, 1978

The Class A interval of an incentive exploratory well that commences drilling on or after January 1, 1978 shall be determined by the Board as the interval below the depth of 2,000 feet that

(i) has not been duplicated by a drilled and abandoned well within one and one-half miles.

(ii) occurs more than 500 feet below the base of the deepest accumulation of crude oil or natural gas that in the opinion of the Board has been penetrated by another well within three miles, and

(iii) occurs immediately below the base of the member or formation containing the deepest oil sands deposit that in the opinion of the Board may underlie the location of the said Incentive exploratory well.

Where neither (ii) nor (iii) above applies, the Class A interval shall be determined from the depth of 2,000 feet to the total depth of the said Incentive exploratory well.

	Basis for Credit Plains Area		Basis for Credit Central Area		Basis for Credit, Northern and Foothills Areas	
Depth, Feet	Cumulative Dollars	Incremental $/Foot	Cumulative Dollars	Incremental $/Foot	Cumulative Dollars	Incremental $/Foot
2,000	0	20	0	30	0	40
3,000	20,000	18	30,000	25	40,000	35
4,000	38,000	18	55,000	25	75,000	40
5,000	56,000	20	80,000	25	115,000	35
6,000	76,000	24	105,000	35	150,000	35
7,000	100,000	30	140,000	40	185,000	50
8,000	130,000	40	180,000	50	235,000	65
9,000	170,000	55	230,000	70	300,000	80
10,000	225,000	75	300,000	90	380,000	100
11,000	300,000	100	390,000	110	480,000	120
12,000	400,000	110	500,000	160	600,000	180
13,000	510,000	160	660,000	200	780,000	210
14,000	670,000	210	860,000	240	990,000	260
15,000	880,000	280	1,100,000	350	1,250,000	350
16,000	1,160,000	340	1,450,000	400	1,600,000	425
17,000	1,500,000	500	1,850,000	550	2,025,000	575
18,000	2,000,000	500	2,400,000	550	2,600,000	575

Figure 3

SCHEDULE G

Applicable to the Class B Interval of an Incentive Exploratory Well that Commences Drilling on or after January 1, 1978

The Class B interval of an incentive exploratory well that commences drilling on or after January 1, 1978 shall be determined by the Board as the interval below the depth of 2,000 feet that

(i) has been duplicated by a drilled and abandoned well within one and one-half miles.

(ii) occurs more than 500 feet below the base of the deepest accumulation of crude oil or natural gas that in the opinion of the Board has been penetrated by another well within three miles, and

(iii) occurs immediately below the base of the member or formation containing the deepest oil sands deposit that in the opinion of the Board may underlie the location of the said Incentive exploratory well.

Where neither (ii) nor (iii) above applies, the Class B interval shall be determined from the depth of 2,000 feet to the total depth of the said Incentive exploratory well.

	Basic for Credit Plains Area		Basic for Credit Central Area		Basis for Credit, Northern and Foothills Areas	
Depth, Feet	Cumulative Dollars	Incremental $/Foot	Cumulative Dollars	Incremental $/Foot	Cumulative Dollars	Incremental $/Foot
2,000	0	15	0	20	0	28
3,000	15,000	14	20,000	20	28,000	29
4,000	29,000	14	40,000	20	57,000	29
5,000	43,000	14	60,000	19	86,000	24
6,000	57,000	18	79,000	26	110,000	30
7,000	75,000	25	105,000	30	140,000	40
8,000	100,000	30	135,000	40	180,000	45
9,000	130,000	40	175,000	50	225,000	60
10,000	170,000	55	225,000	65	285,000	75
11,000	225,000	65	290,000	90	360,000	95
12,000	290,000	90	380,000	120	455,000	125
13,000	380,000	120	500,000	150	580,000	155
14,000	500,000	160	650,000	180	735,000	190
15,000	660,000	210	830,000	270	925,000	275
16,000	870,000	270	1,100,000	300	1,200,000	310
17,000	1,140,000	360	1,400,000	400	1,510,000	420
18,000	1,500,000	360	1,800,000	400	1,930,000	420

Figure 4

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and G *(Figures 3 and 4)*. The schedules reflect the government's decision to exclude the upper 2,000 feet from the forthcoming program, and to increase the credits for qualifying wells deeper than about 3,500 feet. For wells greater than 5,000 feet in depth, the increase is between approximately 25 and 45 percent, the difference being justified by the Department's comprehensive well cost study. An exception applies to the new Northern Area, for which credit increases at certain depths exceed 45 percent to correspond with Foothills credits.

(4) Royalty Exemptions

(4.1) Eligibility

Crude oil or gas production must originate from a Class A or Class B interval to qualify for a royalty exemption. Production from any source shallower than 2,000 feet will thus not quality for royalty exemption under the 1978 Regulation. An exception to the foregoing exclusion is found under the following circumstances: If conventional crude oil is produced from a source shallower than 2,000 feet in the new Northern Area, and if the 2,000-foot interval would have qualified as Class A or Class B footage pursuant to the 1974 Regulations, the crude oil production will be eligible for the normal royalty exemption applicable to deeper production.

(4.2) Duration

The royalty exemptions authorized under the 1978 Regulation will apply to the initial 60 crude oil-producing months or the initial 12 gas-producing months at the well, commencing with the first month in which the crude oil or gas would otherwise be subject to royalty payment.

Additional details concerning these and other principles relating to the forthcoming program will be specified in the 1978 Regulation. If any questions arise after the 1978 Regulation is studied, they may be referred to J. R. Pow or F. Phillips of the Energy Resources Conservation Board, if they pertain to the certification of a well or the determination of its Class A or Class B interval, or to C. R. Smith or E. Saldanha of the Department, if they are concerned with establishing credit or granting royalty exemption. □

Work Commitment Bidding

GREGG K. ERICKSON

One result of the growing concern in the United States over energy matters has been an increased attention to public policies governing the development of Outer Continental Shelf (OCS) oil and gas resources. The institutional structure under which all such development has thus far taken place was established in 1953 by the Outer Continental Shelf Lands Act.[1] This unamended statute provides the Secretary of the Interior with authority to sell oil and gas leases to the public on the basis of cash or royalty bids offered at sealed bid auctions.

The practice of the United States government since the first such sale in 1954 has been to offer relatively small quantities of offshore acreage on an irregular basis, soliciting always cash rather than royalty rate bids. In recent years, the rate at which acreage has moved to market has been accelerating. However, the average per acre bonus received by the government has also increased, partially reflecting worldwide supply conditions. The fact that bids are received in sealed envelopes has resulted in the winning bid being two, three, or several times the amount of the next highest bid.

Among criticisms of present policy is the assertion that this method of lease allocation diverts undesirably large amounts of *front-end money* into the coffers of the government landowner, money that could, would, and should otherwise be used for development of the resource itself.[2] One possible remedy would involve implementation of the existing statutory authority to substitute royalty rate bids, with fixed and presumably low cash bonuses. The problems created by royalty bidding, principally the premature shutdown effect and the potential for speculator induced misallocation of leases, have been well discussed in the literature. More importantly, they are well understood by persons influencing both public and private mineral resource management policies.[3]

An alternative proposed remedy to this same perceived problem is less well understood. Based in part on the method of lease allocation used in the offshore areas of the United Kingdom, it would allocate exploitation rights to the firm that would commit itself to spending the greatest sum in developing the resource. Sealed bids would be solicited as under the present system, but instead of cash the bid variable would be the *work commitment*. Proponents of this system claim that it will divert money the government

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landowner would otherwise receive via bonuses into exploration and development expenditures.[4] These additional increments of expenditure, it is further suggested, will increase future production to such an extent that the government landowner will be able to recoup the foregone bonus income in the form of the consequentially increased royalty and tax revenue. Ancillary benefits in the form of employment, resource self-sufficiency, and improved trade balances are also sometimes claimed or alluded to.

To an economist these arguments may not seem too persuasive. Nevertheless, no one appears to have devoted much effort to analyzing the economic implications of such a system, and certainly not in a form that would be comprehensive to the nonceconomist policy maker.[5] This is unfortunate not only because of the substantial public and private interests involved; the system has significant implications for minerals other than petroleum and in places other than the United States OCS. The purpose here is to provide such an analysis.

EVALUATION OF WORK COMMITMENT BIDDING

In evaluating something new the first step is usually to establish a standard against which it can be measured. In this context, the system of competitive cash bidding has long attracted economists concerned with the problem of natural resource allocation, not only as an ideal against which the performance of other systems might be measured, but as a practical and proven technique for bringing resources into productive employment.

Under an idealized competitive cash bidding arrangement, bidders determine the amount they can afford to offer for a mineral lease by a very simple process: they subtract their expected costs of extraction from their expected revenues. The resulting residual is the maximum the prospective bidder can offer for the tract without buying himself an expected loss. Competition, of course, implies that multiple firms will be preparing bids on each tract.

Assuming no uncertainty about the amount of oil to be found or the price that oil will eventually bring, and disregarding the time value of money, the firm with the lowest expected costs of extraction will be capable of submitting the highest, and thus the winning, bid. This is good from society's standpoint, since it means that the resource will be developed with the minimum expenditure of scarce goods and services. The resource's contribution to economic welfare will be greater than it would have been had the tract been awarded to any of the other, less efficient bidders.

Under a work commitment system each prospective bidder will be asking himself: What is the maximum amount I can promise to spend on the development of this tract and still expect to break even? Since any cash bonus

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that would have been offered to acquire a tract under the traditional system is no longer necessary, the amount of that bonus may clearly be diverted to the work commitment without raising costs beyond the breakeven point. What is not quite so obvious, however, is that the amount a bidder will promise to spend under the commitment system will exceed the sum of the cash bonus and the amount that he would have allocated to development of the tract under the cash bonus system.

This follows from the fact that any additional increment of expenditure can almost always be spent in a way that will bring about some increase in output from the tract and a corresponding increase in revenue.

This is most easily demonstrated with a numerical example. Let us assume that a prospective bidder, in determining how much of a cash bonus he can offer for an oil and gas lease on a hypothetical tract A, has calculated the relationship between expenditures on development of the tract and expected production, and that the results of his calculations appear as plotted in Figure 1.

The vertical axis in this graph (and those that follow) measures dollars expended in the tract's development, dollars that we assume will be spent for construction of a platform and the drilling from it of wells. The horizontal scale measures the output that results from that expenditure, denominated in millions of barrels of oil. The relationship between those barrels of output and the revenue they bring their producer (at an assumed price of $10 per barrel) is shown, through appropriate choice of scales, by the dashed 45° straight line running upward to the right. By this means, the vertical scale can be used to show the value of output as well as the cost of production.

In Figure 1, the point closest to the origin indicates that with one platform and one well this operator would expend $6 million (vertical scale) producing an output of 550,000 barrels of oil, worth $5.5 million (determined by the intersection of the 45° line with a line drawn vertically from .55 million barrels). Moving upward and to the right, each subsequent point reflects seriatum the increases in expenditures and output resulting from the drilling of additional wells.

The general shape of the curve defined by these points is characteristic of situations where one major input to the productive process (in this case land) is held constant, while other inputs (in this case wells) are varied. The output curve originates at the lower left hand corner, but it rises vertically at first because the initial input of investment is unproductive: a platform and oil well costs a certain amount, and an expenditure of anything less than that threshold amount produces no oil. The cost of subsequent wells is assumed to be $1 million, no matter how many wells are drilled, creating a curve that looks like a staircase where each increment of cost (representing a new well) creates a new step. The fact that the staircase steepens as we move

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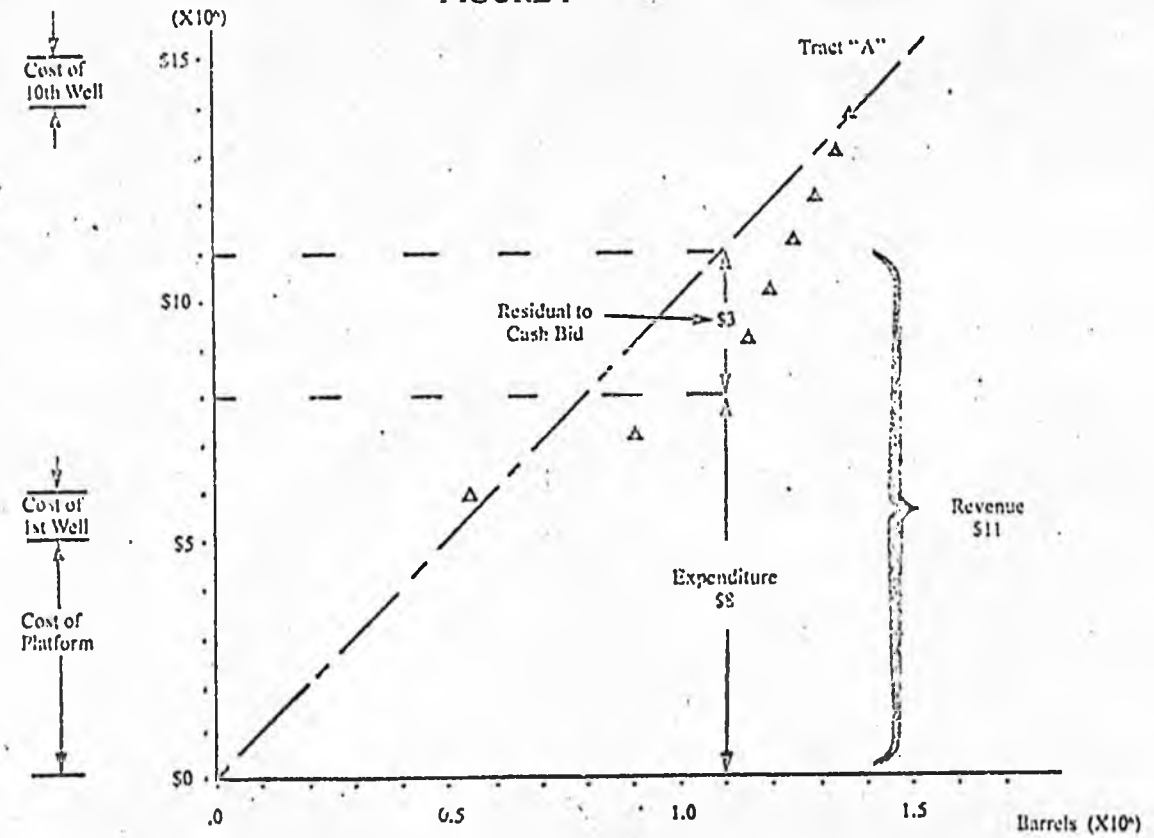
FIGURE 1



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to the right is a reflection of the diminishing returns, in terms of oil produced, to each additional well drilled into the fixed geographic area encompassed by the lease.

Naturally the prospective bidder will be looking for the point on this output curve that puts his costs as far below the 45° line (his output-revenue function) as possible. As shown in Figure 1, the maximum cash bid this operator could afford to make on tract A (and still expect to break even) is $3 million, which—if he is the winner—would require him to drill three wells.

Consider now the situation this bidder would face were a work commitment bidding system adopted. The question that now confronts him is: How much can I spend (or how many wells can I drill) on tract A and still break even? The answer is clearly $14 million (representing nine wells), indicated on the right side of Figure 2 by the output curve for tract A.

If the bidder wins tract A under a work commitment system, his oil output will be 1.4 million barrels (Figure 2) as compared to the 1.1 million barrels (Figure 1) that he would have produced had he won the tract in a cash bonus sale.

If the success of a mineral resource management policy is measured by the physical quantities of the mineral educed from the earth, the work commitment bidding is clearly superior. A resource's contribution to economic welfare, however, is not its total output (whether measured in dollars or physical quantities) but is the residual left over when the costs of all inputs to the productive process (other than the resource itself) are subtracted from the value of the outputs. In the case of tract A this residual is maximized at $3 million, when the value of the inputs is $8 million. As the input expenditure is increased above this optimum point, the residual—the resource's potential contribution to economic welfare—is gradually dissipated until, at the point where the value of inputs reaches $14 million, there is no more residual left to be dissipated.

In this particular example, the increase in output that would result from a switch to work commitment bidding ($3 million) happens to equal the amount of the residual. This coincides with the fact that the expenditure of each additional $1 million above $8 million (three wells) contributes exactly $500,000 to revenue. If the incremental contribution of the fourth and succeeding wells were greater, for example $750,000, the slope of the output curve traced by these points would be flatter, as shown by the squares in Figure 3, and the increase in production from a switch to commitment bidding would be much greater. To put it another way, it would take twice as large an increase in expenditure to dissipate the $3 million residual.

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FIGURE 2

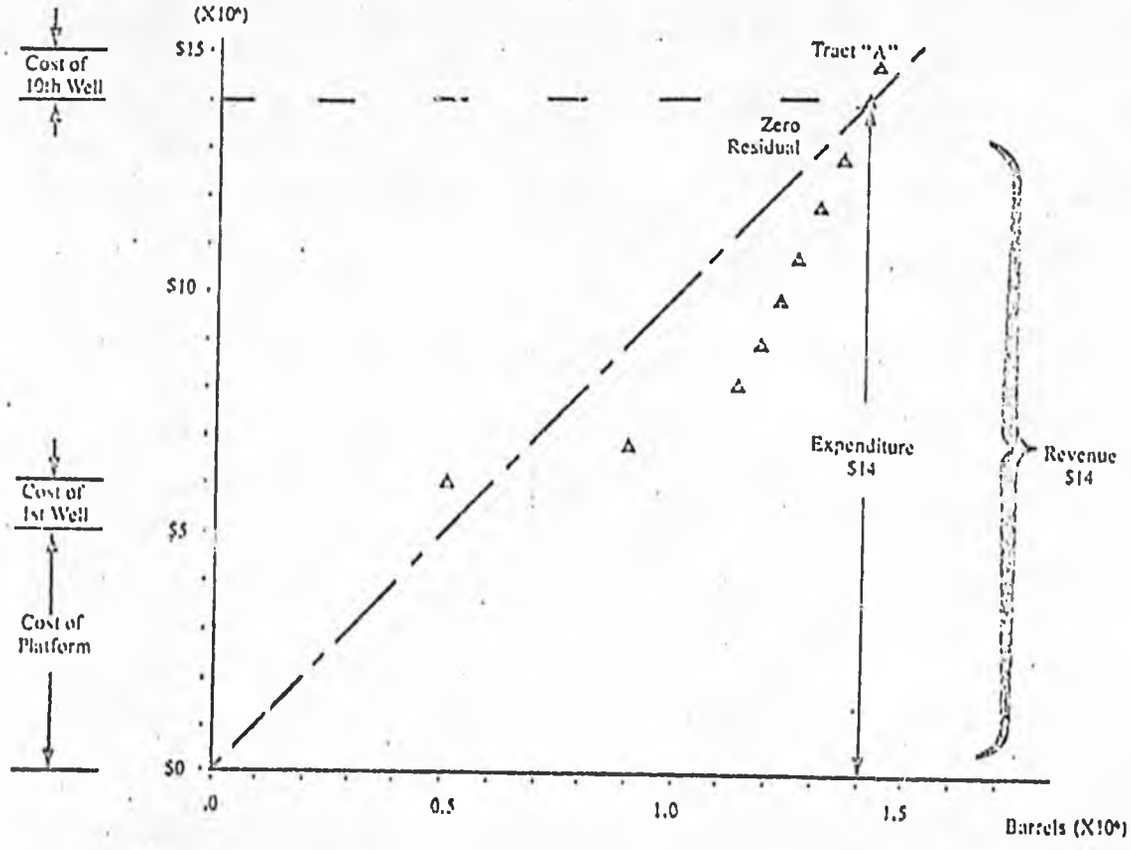

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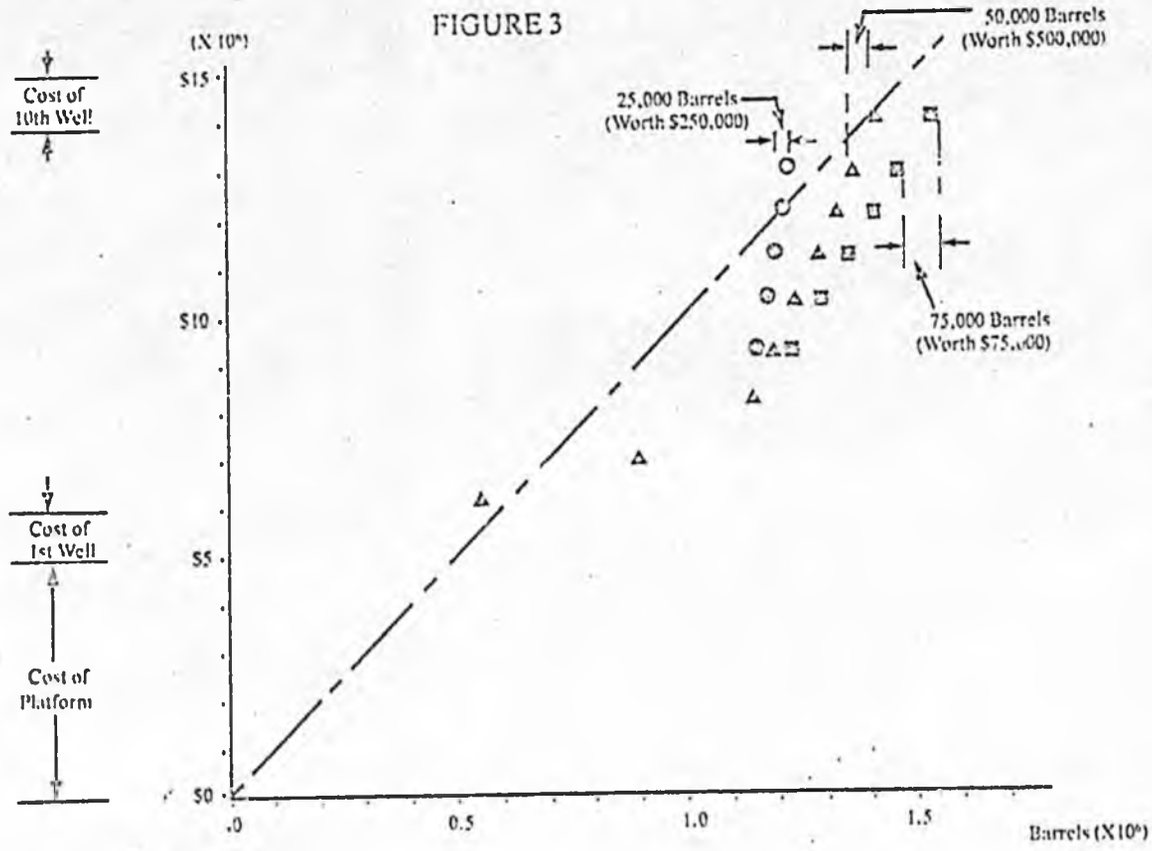
FIGURE 3



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On the other hand, a smaller incremental contribution to output and revenue by the fourth and succeeding wells (for example, an increase of only $250,000 in revenue for each $1 million well) would trace a steeper curve such as the one defined by the circles in Figure 3. The addition to revenue would clearly be less than the $3 million residual sacrificed to obtain it, which is another way of saying that the increase in production would be worth less than the bonus bid sacrificed to obtain it.

TRANSFERABILITY OF COMMITMENTS

Clearly the previously discussed simple work commitment bidding system results in more intensive development of the tract to which it is applied. Clear also is the fact that this effect is dependent on the characteristics of the tract to which it is applied, and in particular on the efficiency with which the successive increments of additional expenditures required under the commitment can be put to work to increase output.

One way to increase this efficiency is to allow an operator who assumes a work commitment in the course of acquiring a particular tract to fulfil that commitment through expenditures on a different tract or tracts.

For example, assume that a bidder has acquired both tract A and tract B as shown in Figure 4. If the work commitment assumed in order to acquire a tract must be fulfilled on that same tract, then his maximum commitment on A (Figure 2) is $14 million; and on B (as indicated in Figure 4 by the dashed lines) it is $8 million. Total output from the two tracts will be 2.2 million barrels.

TABLE 1

WORK COMMITMENT BIDDING

	Output (bbl's)	Revenue ($)	Expenditure ($)	Residual ($)
Tract A	1.4	14	14	0
Tract B	0.8	8	8	0
	2.2	22	22	0

Note: All figures in millions

If the operator is allowed to bid on the two tracts jointly or is otherwise permitted to shift a commitment made to acquire one to the other, then his total work commitment will rise to $24 million, with a corresponding increase in output. As shown in Figure 4, this is possible by operating tract A at the point on the output curve which produces the greatest residual and by transfering that residual, as an internal subsidy, to tract B, where, as indicated by the flatter slope of the output curve, it can be utilized more efficiently. The numbers are summarized in Table 2.

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FIGURE 4

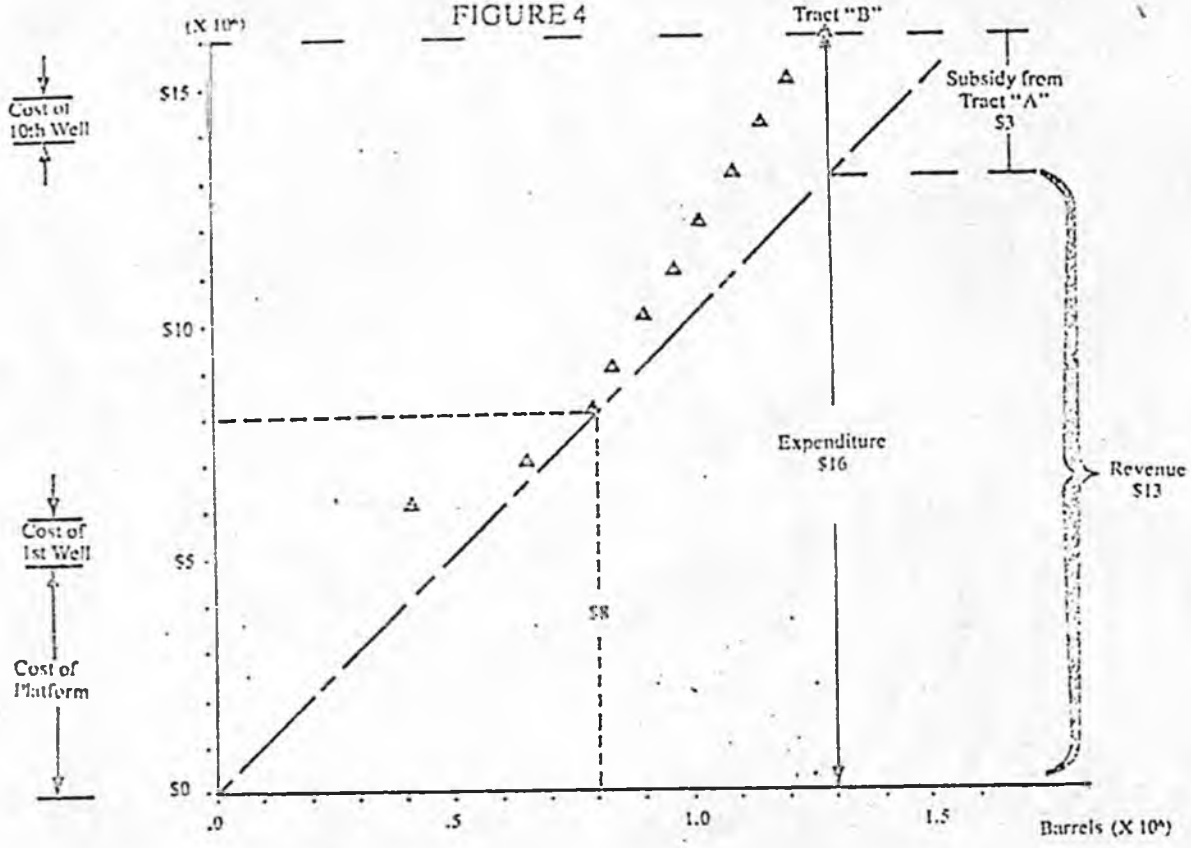

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FIGURE 4

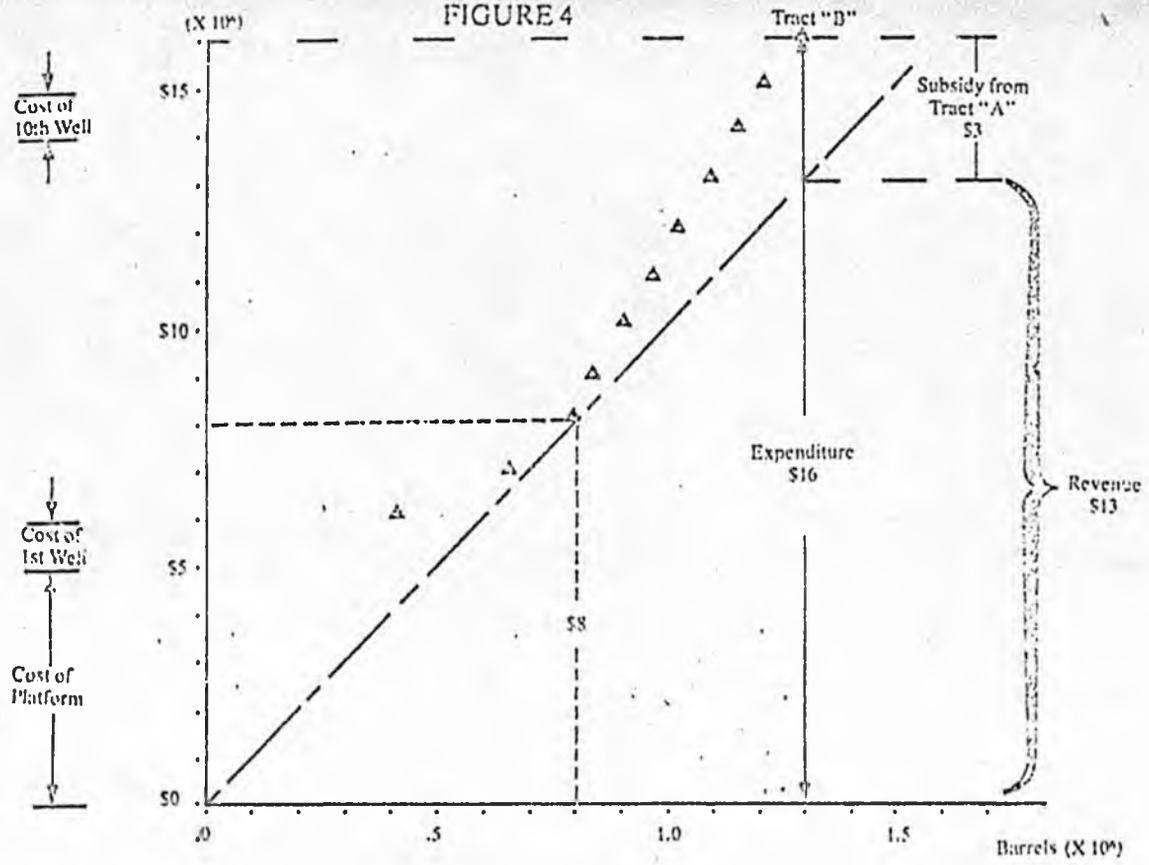

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TABLE 2

WORK COMMITMENT BIDDING
(Internal Subsidy Allowed)

	Output (bbl's)	Revenue ($)	Expenditure ($)	Residual ($)
Tract A	1.1	11	8	3
Tract B	1.3	13	16	(3)
	2.4	24	24	0

Note: All figures in millions

EXTENT OF DEVELOPMENT

In the above examples work commitment bidding has been shown to result in a more intensive development of tracts than would be obtained under cash bidding arrangements. If commitment transfers are permitted among tracts, such a system will also bring about more extensive development.

Consider the output curve of tract C in Figure 5. Tract C is clearly something of a "dog," because there is no point at which the output function crosses the 45° "breakeven" line. Under cash bidding, tract C would elicit no interest at all; even if given away free, it would not be developed.

Under a work commitment system, however, tract C may very well be acquired and drilled. Assume that a firm has already acquired tracts A and B as a package with a work commitment of $24 million and that neither tract has yet been drilled. The firm is now offered tract C. How much of a work commitment can the firm offer for it?

The firm had previously planned to use the $3 million residual generated on tract A to internally subsidize tract B. If tract C is added to the inventory, the firm could apply to C $1.5 million of the internal subsidy that would have otherwise gone to tract B and thereby make the development of tract C a feasible proposition. The calculation is shown in Table 3.

TABLE 3

WORK COMMITMENT BIDDING
(Internal Subsidy Allowed)

	Output (bbl's)	Revenue ($)	Expenditure ($)	Residual ($)
Tract A	1.10	11.0	8.0	3.0
Tract B	1.05	10.5	12.0	(1.5)
Tract C	0.75	7.5	9.0	(1.5)
	2.90	29.0	29.0	0

Note: All figures in millions

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commitments indicates that the last dollar of subsidy transferred is producing only 33 cents worth of additional oil, it may very well be that another source of oil development—for example, tar sand or oil shale—could be found that would give a better return.[6]

THE TIME FACTOR

To simplify the discussion of the work commitment system, the time dimension of both expenditures and income has thus far been ignored. Since a dollar in hand today is worth more than the promise of a dollar tomorrow, it has been assumed that all bidders have used a discounting mechanism to take account of the time value of money. Thus, they would reduce all amounts of both expenditure and income streams to their *present value*, that is, the lump sum that the bidder would be willing to receive or give in exchange for the specified income or expenditure stream.

If a work commitment system is to be implemented, it will be necessary to take careful account of the fact that a commitment fulfilled in the next year will have a very different impact on output from one of the same amount fulfilled ten years hence.

If the public is going to give up its bonus income to subsidize output, the time when that subsidy takes effect will presumably make some difference. Of course, some arbitrary time limit could be established for the fulfilment of commitments exactly as the United States government sets the five-year term on the OCS oil and gas leases it sells. If free exchanges of commitments are allowed, anyone who wished to distribute expenditures over a time frame incompatible with his commitments could simply enter the market and adjust his inventory of commitments accordingly.

Another way of handling the problem would be simply to apply some appropriate interest rate to every commitment assumed and specify that the amount of expenditure required under that commitment must increase by the amount of the compound interest accumulated in the period between the assumption of the commitment and its fulfilment.

CONCLUSION

The adoption of a work commitment bidding system implies a judgment that existing institutions for private exploitation of public resources result in a suboptimal rate of resource development.

Any argument for the adoption of such a system must first establish that this is in fact the case. Secondly, it must prove that the work commitment approach is the least costly method of achieving the desired higher rate of exploitation.[7]

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FIGURE 6

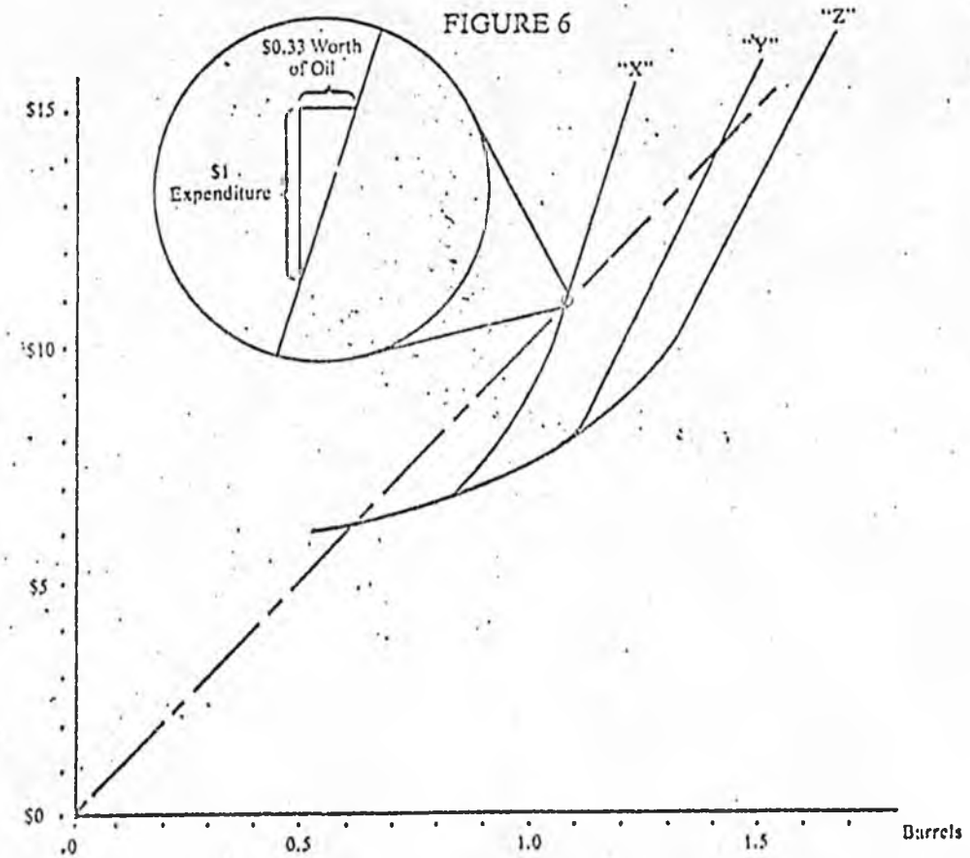

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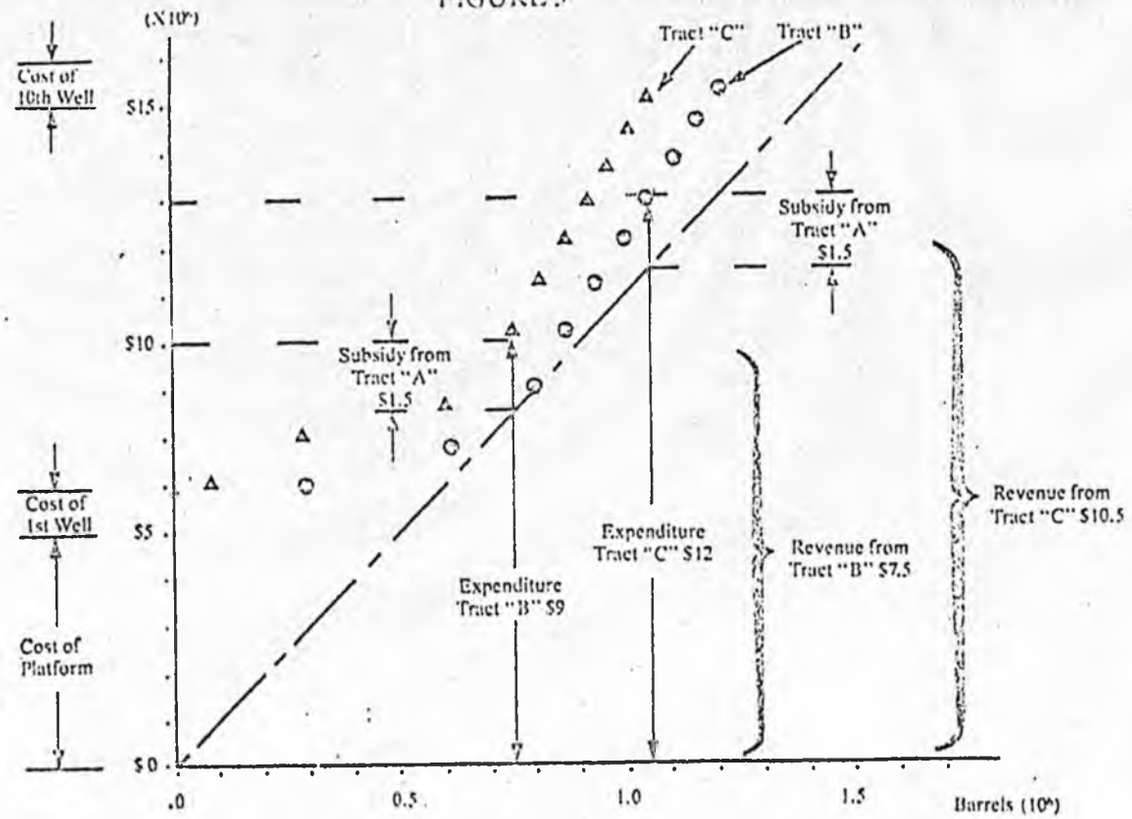
FIGURE 5



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Development of the three-tract package under the work commitment system will be feasible with a total expenditure of $29 million. Since he has already been committed to spending $24 million of this, in the course of acquiring tracts A and B, the maximum commitment bid this operator can afford to make on tract C is $5 million.

Besides illustrating the mechanism through which commitment bidding induces more extensive resource development, the tract C example also indicates how the system (with internal subsidies allowed) may work to the advantage of the firms that can acquire the most tracts. Theoretically, a newcomer with no existing inventory of tracts would be unable to make any commitment bid on tract C.

A way of evading this problem would be to make the commitments transferable. This would allow operator Jones to legally assume the obligations to which operator Smith has committed himself in the course of acquiring tracts from the government. Presumably, operator Smith would pay Jones for the favour.

The prospective bidders in these examples have been endowed with the ability to foresee accurately and precisely the output curve associated with every tract. In practice this is not the case. If there is any characteristic that sets the exploration phase of the petroleum and mineral industries apart from other businesses, it is the everyday uncertainty with which its participants must learn to cope. It is perfectly possible, for example, that Smith might acquire tract C with a work commitment bid of $14 million on the mistaken belief that its output curve is that of tract A. After building a platform and drilling the first four wells, the true shape of the curve—and the firm's predicament—would reveal itself. The required $14 million expenditure applied to tract C would leave Smith with a net loss of about $4 million. If he could somehow shed $5 million of the $14 million commitment, Smith would be able to operate the tract with only four wells already drilled and thereby cut his losses to the more acceptable level of $1.5 million. Smith would be willing to pay up to $2.5 million in cash to unload the $6 million obligation, since that is the amount of his maximum additional loss if he can't get rid of it.

Any other operator who is facing or expects to face an output curve with a flatter slope than that faced by Smith will be able to make a mutually beneficial deal with him, since, for the other party, an additional expenditure of $5 million will bring in more than the maximum $2.5 million that Smith will be willing to pay.

Besides putting the small firm in a better position to compete and mitigating the problems of uncertainty for all firms, large and small, a system which allowed the free exchange of work commitments would have the further and more important advantage of maximizing the overall

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efficiency with which work commitments are utilized. To the extent to which such a market was effective in bringing potential commitment offerers together with potential commitment takers, it would ensure that everyone would be operating at a point where a small increase in expenditure by one operator would produce no more and no less additional revenue than would the same increase applied to any other operator.

A minor but interesting benefit of a market in commitments would be the information it would provide concerning the efficiency with which the work commitment system is eliciting additional output.

This can be understood by applying the concept of the output curve (hitherto used in relation to individual tracts) to the entire universe of tracts being offered under the commitment bidding system. By combining all such tracts and treating them as a single entity, an overall output curve similar to Figure 6 can be drawn. Just as in the case of an individual tract, the point where the curve dips farthest below the 45° breakeven line will be the optimum operating point, the point which results in the resource's largest contribution to economic welfare. The distance between the breakeven line and the output curve at that point is the measure of that contribution, and it is equal to the income that would come to the government landowner were a competitive bidding system utilized. It is this residual—the difference between total revenues and total costs—that the public will be sacrificing to subsidize output.

The efficiency with which the subsidy provided by the work commitment system works to increase output will be a function of the output curve's shape to the right of the point where bonus income would be maximized. Three hypothetical configurations for this part of the curve are shown, and the difference this shape makes to the level of additional output educed by the sacrifice of the residual can be seen. The significance of the price at which commitments change hands will be determined by the slope of the output curve at the point where it intersects the 45° breakeven line. Curves Y and Z both cross at an angle which indicates that, at that point, $1 of expenditure produces $0.50 worth of additional output. In either situation the market price for assumption of a $1 million commitment would be $500,000. Curve X, however, crosses the line at a steeper slope (as shown in the inset), indicating that $1 of expenditure will produce $0.33 worth of additional output. If curve Z accurately represents the overall output curve, the market price for the assumption of a $1 million work commitment will be about $333,000.

From a policy standpoint these numbers, whatever they may be, have considerable significance since they can be used to compare the efficiency of the work commitment system in eliciting additional output with whatever other alternative policies may be available. For example, if the market for

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In comparing various alternative ways of achieving higher output against the work commitment system, some important features of that system are certain to stand out. First, and probably most significant, is the simple fact that the work commitment system results in a subsidy. As such, the criteria for its evaluation should be no less stringent than those applied to a direct appropriation of public funds or a tax concession adopted for the same purpose.

Secondly, the cost of the subsidy conferred under the work commitment approach is impossible to determine *a priori* and difficult of determination after the fact. If there exists a "right" level of subsidy it will be mostly a matter of luck if the foregone public revenue happens to equal that amount. For similar reasons, the benefits of the subsidy in terms of the total increase in output, development, or whatever, are not amenable to accurate quantification. As a consequence, it is doubly difficult to evaluate the system's relative efficiency.

Finally, a properly designed work commitment system allocates the uncertain amount of the subsidy in a fashion that tends to squeeze the maximum additional output from every dollar of subsidy. It does this more or less automatically. This characteristic means that the transfer of resources occasioned by the subsidy needs no affirmative action on the part of policy makers—as does a direct appropriation of public funds—in order to be continued. This fact, however, combined with the intrinsic uncertainty concerning the subsidy's magnitude makes it easier for vested interests to perpetuate such a subsidy long after any real justification for it has passed.

Notes

1. *U.S. Statutes at Large*, vol. 67, p.335. Public Law 212 (August 7, 1953).
2. For an exposition of the conventional industry wisdom on this point, see "Terms for North Sea Oil," in *Petroleum Press Service* 40 (1973): 122-24.
3. In recent testimony before the Senate Interior Committee, industry representatives were unanimous in their opposition to royalty rate bidding. *Outer Continental Shelf Oil and Gas Developments, Hearings Before the Subcommittee on Minerals, Materials, and Fuels of the Committee on Interior and Insular Affairs* (United States Senate, 93rd Congress, Second Session: May 6,7,8,10,1974).

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4. Arguments for the work commitment system are expounded in detail in I. White, D. Kash et al., *North Sea Oil and Gas: Implications for Future United States Development* (Norman: University of Oklahoma Press, 1973).

5. Kenneth Dam has touched on some of these matters, however, in "Oil and Gas Licensing in the North Sea" *Journal of Law and Economics* 8(October 1965) and "Pricing of North Sea Gas in Britain," *Journal of Law and Economics* 13 (April 1970). Dam recognizes the subsidy for what it is and concludes that it is unjustified.

6. If it is determined that only a portion of the residual should be applied as a subsidy, this could be accomplished by offering only a portion of the tracts on the commitments bid basis, but allowing the fulfillment of a commitment on any tract acquired from the government. Since the reduction in the subsidy will move the operating point to the left on the output curve (Figure 5) to a point at which its slope is flatter, the result will be a higher assumption price for commitments. The commonsense explanation is that the optimum amount of total expenditure will be reduced only slightly; but that acreage over which commitments that can be fulfilled by that expenditure will be reduced relatively more. Another alternative would be to combine the work commitment system with a royalty, net profits share, or other form of deferred rent collection. This is in fact the arrangement pertaining in the North Sea sector. If the government takes a very high net profit share, the amount of the subsidy will be substantially reduced.

7. There are certain circumstances where a work commitment system could result in no more extensive or intensive development. This would be the case if the commitment were devoted to an activity not contributing to output. For example, if a government awarded a mineral concession to the operator who promised to build the largest smelter, no increase in mine output would result (unless the location of the smelter made lower grade ores profitable to mine).

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Petroleum Leasing in British Columbia

DALE R. JORDAN

FACTORS AFFECTING THE LEVEL OF EXPLORATION

From data published by the provincial department of mines and petroleum resources, it would seem that exploratory drilling in British Columbia in 1974 was in a static position and may even have been declining. There was a 22 per cent drop in the number of exploratory wells drilled in 1973 compared with 1972, and a corresponding drop in the footage drilled. This decline in activity appeared to be continuing into 1974, with drilling down 10 per cent in the first seven months. This apparent decline in exploration for oil and gas in British Columbia came at a time when the demand for oil and gas was high. Prices for oil and gas had increased dramatically, and considerable concern was being expressed over national self-sufficiency in all forms of energy supplies. By comparison, exploration activity in Alberta showed the opposite pattern. In Alberta, exploratory drilling in 1973 increased 50 per cent over 1972. Statistics published by the Daily Oil Bulletin showed that during the first several months of 1974 there was a further increase over the same period in 1973.

What caused the static or possible decline of exploratory drilling in British Columbia at this particular period of strong demand and high price? There are several answers, and formulated theoretical solutions must be viewed in the light of political judgment where governments demand a greater share of resource revenues. Certainly, the federal budget proposals in the spring of 1974 discouraged exploration for oil and gas in Canada; however, it would seem that provincial government policies were largely responsible for any discouragement felt by the oil and gas explorer.

In this article I attempt to set out some of the basic causes that contributed to the 1974 situation in British Columbia. These causes are identified and any suggested solutions are offered in the realization that there is a danger of oversimplifying complex problems and the possible effects of implementing partial solutions.

For any analysis to be meaningful, a proper perspective must be maintained. One of the overriding factors influencing the oil and gas explorer's decision making is the number of geological prospects. In British Columbia, the potential hydrocarbon-bearing portion is thought to be

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restricted to the northeast part of the province. The western boundary of this 51,000 square miles is the Rocky Mountains. In 1974, an estimated 32 per cent of the oil and 18 per cent of the gas in this area had been found, leaving an estimated 0.82 billion barrels of oil and 47.56 trillion cubic feet of gas still to be discovered. Although there was considerable potential still remaining for the oil and gas explorer, the area was small compared to Alberta and Saskatchewan, and it was much smaller than the vast geological potential north of the 60th parallel.

Another factor that depressed the enthusiasm of the explorer was the apparent lack of multizone prospects. Drilling a well to test only one potential horizon increases the risk factor significantly.

Before leaving the subject of the province's hydrocarbon potential, it should be remembered that several basins existed, both offshore and in the interior, containing substantial deposits of sedimentary rock that have not been explored to any great extent. Generally, the known geology in these basins discouraged any extensive exploration. Possibly, the very expensive exploration needed in the basins required special consideration before their potential could be fully realized. This special consideration might take the form of a reduced royalty on any hydrocarbon discovered, or of a joint participation scheme whereby the British Columbia government might share in the risks involved.

Another factor to be taken into account by the oil and gas explorer when selecting his areas of interest is the access to those tracts that he feels have hydrocarbon potential. Again, British Columbia was at a disadvantage in 1974 when compared with Alberta and Saskatchewan. Access to this already restricted basin area was affected by muskeg conditions over much of the plains and by deep river valleys in the foothills. These conditions involve greater expense in conducting exploratory work, and the oil and gas explorer would often be confined to only a four-month work year, because of such terrestrial conditions. The problem of limited access presents a very real constraint on attracting the oil and gas explorer and is relevant when considering any changes in land tenure and revenue sharing.

Another important parameter in any deliberation affecting oil and gas exploration is the availability of funds for exploration.

As a general rule, funds generated from production are used to finance exploration. It seems that the risk factor employed by financial institutions effectively discourages the use of debt capital as a source of exploration funds. It is not uncommon to read that an oil and gas producer has arranged for a substantial loan, but this will nearly always be for a specific purpose related to the development of a new reservoir of oil or gas. The discovery of this reservoir would have been funded out of the company's cash flow.

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When an oil or gas explorer's cash flow comes from production outside any particular province, then for money for exploration to flow into that province, that jurisidiction must have a framework of leasing and revenue sharing that can favourably compete with other areas also requiring exploration.

It would seem that cash flows from Canadian production will continue to be a major source of exploration funds. In the case of the integrated companies (those having refinery capacity), this will be true under almost any condition short of expropriation.

However, within this framework these funds will generally gravitate to where they can expect the greatest return. It may not be enough for a province to show that it will ensure that the successful explorer will receive a reasonable rate of return. It may well be that the successful criterion for increasing the level of exploratory drilling will be a division of revenues such that the oil and gas explorer will have a sufficient cash flow for an active exploration programme, as compared with other jurisidictions. The explorers who have a cash flow generated from production and the flexibility to determine the best place to reinvest these funds have the responsibility of ensuring that they can go to where they can expect to return the greatest profit.

The ability of the producer to channel cash flow from one jurisdiction to another depends largely upon the particular laws in force where the oil or gas is being produced. The provinces of Alberta and Saskatchewan tend to attempt to discourage the outward flow of funds generated from production in their particular provinces. In both provinces, this discouragement took the form of a high royalty, coupled with a drilling incentive programme, designed to encourage continued exploration.

In Saskatchewan, the mineral tax and the royalty surcharge took away from the producer all of the recent price increases and, in fact, returned to the producer a smaller amount per barrel than he was receiving prior to the price increases. As an inducement to continued exploration in Saskatchewan, an incentive programme was developed, whereby the producer was allowed to retain an additional 30¢ for every barrel produced, providing this money was used for drilling wells, for waterflood projects, research, and other specified purposes in Saskatchewan. This incentive had not been in effect long enough in 1974 to permit a complete analysis of its performance; however, it was really restricted to only those companies that already had production in Saskatchewan. A review of these companies shows that the producers with the majority of the production were the so-called Majors, which raised the question as to whether or not these Majors were prepared to continue to explore in Saskatchewan under any conditions. It is more probable that the exploration philosophy of the

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Majors directed that they use their exploration funds searching for high reserve reservoirs (which generally means exploring outside Saskatchewan).

To encourage explorers who do not have production in Saskatchewan, the government provided an incentive credit of about 30 per cent of the costs of drilling exploration wells. This credit could then be used to reduce any royalty or mineral tax obligations that may accrue.

In Alberta, in 1974, there was also an incentive programme for exploration drilling. This incentive took the form of a credit which could be subsequently used to satisfy most of the cash obligations that may arise by virtue of the royalty obligation, rental payments and mineral taxes, and could also be used to purchase oil and gas leases. Credits established in Saskatchewan could not be used to purchase leases. The formula which determined the amount of credit that could be established for any particular exploration well was predicated upon the area of the province in which the well was located and the depth of the well. This formula was expected to return to the explorer by way of credit approximately one-third of his drilling costs.

The principal producers of crude oil in Alberta were much the same as in Saskatchewan—they were the Majors in the oil and gas industry. Again, as in Saskatchewan, it would seem that the interest of the Majors in continuing to explore in Alberta had become blunted, not because of any particular rules, but more through the apparent lack of sufficient high reserve potential which this type of company must search for.

In Alberta, in 1974 the royalty was structured to increase not only when the production increased but also when the price increased. Alberta had also adopted a new oil/old oil concept, whereby royalties were considerably reduced on what was termed new oil, which, of course, had the affect of increasing the producer's cash flow and encouraging the development expenditures. This old/new concept applied as well in the case of natural gas. Saskatchewan also had provision for a reduction in its mineral tax and royalty surcharge for new oil. This reduction was gradually phased out after a few years. Alberta, in 1974, had the lowest rate of royalty on oil and gas, received the highest price for its natural gas and had a price for crude oil equivalent to the other provinces, all of which means that in Alberta the producer of oil and gas received a higher rate of return and, consequently, had more money available to him for exploration purposes than the producer in Saskatchewan or British Columbia.

While the incentive programme adopted in Alberta and Saskatchewan offered encouragement to drill exploration wells, any analysis of the performance of a similar programme which might be suggested for the province of British Columbia must be coupled with the consideration of a lower royalty and subsequent higher cash flows to the producer.

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This type of incentive can only be effective if the producer is also offered a return on his development expenditures that is competitive with other jurisdictions into which the oil and gas explorer is free to go.

Another source of money for drilling exploratory wells previously used in North America has been the drilling fund. The drilling fund usually takes the form of buying a number of shares in a limited partnership. The attraction to the investor apart from the possibility of participating in oil and gas discoveries, is the income tax feature in the United States which permits all intangible drilling expenses to be written off in the year that expenditures were made. This can be done without qualifying under any principal business rules, as prevails in Canada. It is this principal business rule that has to the present time precluded the tapping of a similar source of exploration funds in Canada.

It is estimated that between 250 and 400 million dollars are generated annually through the sale of shares in drilling funds in the United States. The United States government, in an attempt to encourage further exploration within its own borders, has chosen to reduce the amount that can be written off against income for income tax purposes when the funds are spent outside the United States. This move precipitated the drying up of exploration funds in Canada which previously came from this source.

Over the past few years other extractive industries, particularly mining, have been channelling considerable amounts of their cash flows into oil and gas exploration. These endeavours have usually taken the form of funding a subsidiary company. The continuation of this type of fund for the purposes of exploring for oil and gas will depend upon the success of the subsidiary companies and also upon the influence that mining taxes will have upon the parent companies' cash flows.

A few years ago it was quite popular for large United States gas utility companies to provide exploration funds on the basis that they would have first call on any gas produced and exported for sale to the United States. This source of exploration funds has also dried up almost completely as a result of decisions by the National Energy Board concerning the exporting of gas and, as a result of rulings by the Federal Power Commission in the United States, which have not allowed these utility companies to include these expenditures in their rate base. The Federal Power Commission looks upon this type of exploratory funding as a mortgage loan, rather than as a prepayment for gas, as the utility companies would prefer.

THE LEASING SYSTEM

The 1974 system of leasing in British Columbia will now be reviewed, and I will attempt to analyse its effectiveness in relation to the relatively small

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hydrocarbon potential area, lack of access, difficult terrain, and exploration funds generally coming from cash flows.

The system of granting oil and gas rights on crown lands in British Columbia invoved in 1974 an exploration grant called a "permit," a subsidiary exploration grant called a "drilling reservation," and a development grant called a "lease."

Permits, which can involve upwards of 100,000 acres, could only be acquired through a competitive cash bidding system at sales which were usually held four times a year.

The permits were classified from A to D, depending upon their accessibility and the terrain conditions. The class D permits were for offshore areas. One purpose for classifying permits was to allow them, where the working conditions were difficult, to have a longer life than was otherwise provided.

Permit classification also determined the minimum amount of work the permit owner was obligated to spend in any year. These minimum work obligations were more stringent for the Class A permit, where access and terrain problems were minimal. The significance of this particular requirement was lost because, in order to conduct an equivalent amount of exploration, particularly drilling, the costs involved in the offshore areas far exceed those which would be expended on a class A type permit. The sections of the Petroleum and Natural Gas Act that governed the permit work obligations did not specify any specific exploration programme, but only that a certain amount of money be spent during each term of the permit. This obligation to spend money in exploring on a permit could be satisfied by grouping several permits together, so that expenditures incurred in exploring on any one permit would satisfy the work obligation of the grouped permits. This grouping provision is important because it allowed an explorer to acquire large tracts of land for a short period in order to conduct extensive geophysical exploration.

This obligation to spend money on exploring on a permit could also be satisfied by paying the money to the British Columbia Crown. This would seem to be about as negative a provision as one could imagine, assuming, of course, that the government of British Columbia was interested in ensuring that the companies holding permits were the ones prepared to actively explore. If the removal of this system would give rise to problems, as in the case of an explorer unable to work a permit through no fault of his own, then a far better system would be to provide a means where work obligations could be accumulated and satisfied in the following year.

Permits were valid for one year and could be renewed annually, for a period ranging from five to eight years, providing the company was not in default.

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When a permit holder had expended the minimum amount of money exploring on a permit or group of permits or had paid the money to the government, he was entitled to convert the permit into leases. To do this the permit holder had to relinquish 50 per cent of the land back to the Crown. Land selected for conversion into leases could not be in a consolidated block, but had to be in a number of leases, which had to corner one another, or be separated by at least two units—approximately one mile. The maximum size of the lease was six units—approximately three miles square.

This system of exploratory permit and subsequent conversion of half of the land to lease on a chequerboard fashion was similar to that used in Saskatchewan and part of Alberta. The system probably had its beginning in Alberta. It was designed to ensure that when crude oil was discovered, the Crown would be returned some prospective areas which were subsequently sold. This system worked reasonably well, particularly in Alberta, where some substantial discoveries of crude oil were made during the existence of the exploration agreement. Unfortunately, in the vast number of cases a discovery was not made, and the chequerboard pattern for leases led to fragmentation of rights throughout the area formerly comprising the permit. This effect tended to discourage other explorers from entering the area, and this system of selecting leases also prompted the need for the drilling reservation, which generally covered that 50 per cent of the land returned to the Crown.

Seemingly, in those parts of the province having relatively easy terrestrial access and where the potential hydrocarbon-bearing formations were not too deep, this system of chequerboard leasing may be satisfactory. However, in areas where access is a major cost and where deep expensive drilling is required, it tended to discourage anyone other than the holder of the 50 per cent leases from entering the area to explore. Certainly in offshore areas where seabed drilling cost is many times greater than land drilling, this system of lease selection is most unsatisfactory.

Leases granted on crown land in British Columbia in 1974 had a primary term of ten years, renewable for further ten-year periods if particular circumstances existed which generally related to production.

The acquisition of leases in British Columbia was handled in 1974 in two separate ways. First was the way previously mentioned, which was the result of having a permit and then earning the right to acquire leases of 50 per cent of the land. The second was through the competitive cash bidding at one of the quarterly sales held by the British Columbia Crown.

There was no obligation at that time on the part of the lessee to drill a well during the initial term of the lease. A 1974 amendment to the Petroleum and Natural Gas Act, however, permitted the minister to forward a notice to

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drill when he considered that development of the lease was not active enough. This amendment seemed to suggest that before the minister would consider sending a notice, there would, in fact, have been a discovery made on the lease. Thus, in sending the notice, the minister was merely requiring development drilling. It seemed most unlikely that the wording of this section would be interpreted such that the minister could require exploratory drilling on existing leases.

There was an apparent trend to shorten the term of leases, with Saskatchewan granting only five-year primary terms. However, in British Columbia the term of 10 years was not excessive when one considers the short period of four to five months when work can be done in the area of hydrocarbon potential. This is quite different from most of the areas in Alberta and Saskatchewan, where drilling and other geophysical operations can be conducted all the year round.

The government of British Columbia appeared to feel that a large number of leases were held by companies not particularly active in exploring in the province and that something should be done to discourage these holdings, so that lands could be offered to others who were prepared to explore. These feelings may have promoted some of the 1974 changes in the Petroleum and Natural Gas Act, whereby the rental on leases was increased from one dollar an acre to two dollars an acre. The effect of this change seemed likely to be the return to the Crown of some acreage which, under the previous rental of one dollar an acre per year, would have been retained by the lessee. However, one must assume that for the most part relinquished leases would be the least attractive, and leases with potential, even though the lessee was not prepared to conduct any immediate exploration programme, would be retained, and the two dollars an acre would be paid. The greatest effect that this rental of two dollars an acre per year seemed likely to have was to deter other explorers from entering the province. It is one thing to create a system designed to discourage excess holdings by companies not prepared to explore immediately, and quite another thing to expect these same rules to promote the entry of new companies and increase exploration activities.

The royalties on crude oil in British Columbia were essentially the highest in Canada in 1974. The rate was 40 per cent for a well producing 1,000 barrels a month and further escalated to about 58 per cent when the monthly production reached 10,000 barrels. It would seem that this royalty level, which directly affected the producer's cash flow, could only act as a deterrent to increasing the level of exploration in British Columbia much beyond its historical pattern of about fifty to sixty exploration wells a year. Other changes that may be made in regulations designed to encourage greater exploration activity will never perform to their full potential until

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the producer's return is comparable with what he can obtain in other jurisdictions.

GOVERNMENT OPTIONS

We can now examine the options available to the British Columbia government in 1974. First, the government could maintain the existing regulations without change; or they could have stricter enforcement of the rules, further reducing cash flows to the producer, making it more difficult to operate; and thirdly, they could make changes designed to encourage greater exploration activity in the province. In each of these options it is assumed that some accommodation could be made between the provincial and federal authorities with regard to the revenue-sharing aspect. If it could not, then it would seem almost certain that exploration activity would decline, not only in British Columbia but also in the rest of Canada, and that even significant changes in the regulations would fail to act as an effective inducement to continued exploration.

In the first instance, if the government were to resist changes to its rules and to continue the existing level of royalty, it could expect to receive about the same amount of exploratory drilling as there has been in the past. This is evident from the sale in August 1974, where some 7.2 million dollars was paid for the right to acquire oil and gas permits, drilling reservations, and leases. This was certainly an indication that the oil industry was not prepared to write British Columbia off because of its high royalties and rather stringent regulations. There are several reasons for this. Companies have enjoyed a general increase in their cash flow, and in 1974 enough cash flow was available to pursue exploration in a province where the rates of royalty would reduce their return on invested capital as compared to other jurisdictions—for example, Alberta or the United States. The intensive competitiveness in the oil and gas industry distinguishes it from all other industries. Companies that have invested a great deal of time and money developing the geological potential of a particular area and have found that it fits their exploration parameters are prepared to offer a good deal of bonus money when this land becomes available through a competitive sale. Also, because a number of years usually elapses between acquiring an exploration permit and the development of and production from any discoveries, the economic climate may change such that what at one time is not attractive may become economic at the time of production.

If the government of British Columbia wished to discourage continued exploration by the existing oil and gas explorers and to discourage entry by newcomers, they could most effectively do this by again raising the rates of royalty and making the tenure of agreements shorter than they were. This

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type of action would cause the companies exploring in the province and those contemplating doing so to restrain their activities; exploration would then stagnate.

Presumably, such action by the British Columbia government would not occur without consideration of these consequences and the recognition that a different vehicle should enter the void left by the existing explorers. This could take the form of a public company, such as the British Columbia Petroleum Corporation; alternatively, the government might feel that, given time, the major oil and gas producers, the fully integrated companies, may finish their exploration for high-reserve reservoirs in other parts of Canada and be prepared to return to British Columbia to look for the remaining reserves which they may need to supply their refineries.

To give any support to this latter proposition, one would have to presuppose that the exploration presently being carried on by the Majors in Canada in the Northwest Territories, in the Arctic Islands, and in the offshore areas of eastern Canada will be unsuccessful and that they will have to lower their sights, accept a lesser prospect, and return. This is very difficult to support, considering the successes already achieved in the Northwest Territories, particularly in the Delta, and in the Arctic Islands. Also, there is a vast geological potential remaining as assessed against the very few wells that have been drilled.

The supposition that a provincial public corporation could enter the exploration field and its endeavours be more beneficial to the province than the present system raises many questions about the corporation's practical efficiency and about the possible political repercussions. This article's purpose is not to examine the political repercussions that might occur when dry holes are drilled with public funds; however, we should examine some of the practical considerations involved in the operation of a public company which has an almost exclusive area within which to explore as a result of discouraging the private sector. For the government to discourage both the existing explorer and the entry of any new ones and to expect the public corporation to be able to fill this void suggests that the government is saying, "If the private companies do it, so can we." Now remember that the private companies comprise all the oil and gas explorers working in the province and those contemplating doing so, given the right opportunities. All these companies have geological staffs, many of whom will be geologists who devote most of their time over a considerable number of years entirely to the study of British Columbia's geology. The public corporation could not expect to have such an extensive source of expertise as that available in the free enterpris system. And so the public corporation would suffer from a reduction in the number of ideas generated.

It is not unusual in oil and gas exploration, with its inherent problem of

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scientific interpretation and evaluation of geological prospects, to find that one company will acquire a block of land, will explore it, and perhaps even drill on it before deciding the search is unsuccessful. The company will then return the land to its owner, the Crown. This does not mean that there are not any commercial hydrocarbons underlying this land; but rather that that particular company was unable to find them. To find these hydrocarbon deposits, a second, a third, or a fourth company should acquire this land, and, if this is done often enough, the hydrocarbon will be encountered, and production will follow. The problem with the public company being the only explorer in the province is that, unless it is fortunate enough to make the initial discovery, it is very doubtful whether there would be enough enthusiasm to have a second, third, or perhaps even a fourth try at that particular prospect, with the result that the discovery would not be made. This is surely the worst thing that could happen and is probably the most damning argument against a public corporation moving into an area with an almost exclusive right to explore.

If the British Columbia government wishes to increase the level of exploration in the province and so lead, hopefully, to a greater number of discoveries and a better position of self-sufficiency in their own requirements, there are several measures which could be taken to promote such a situation.

The first step that can and must be taken is to increase the cash flow to the producer and to assure the newcomer that if he makes a commercial discovery, he will receive a sufficient return to expand his exploration endeavours in the province. This action should take the form of restructuring the royalty on oil and probably renegotiating the contracts on gas existing between the producer and British Columbia Petroleum Corporation. The 1974 royalty rate on oil was determined by production at the wellhead, with the price not being a factor at all. This means that if the price paid to the producer for a barrel of crude oil should decrease from the present level, then the producer will suffer a decrease in his cash flow, thus his future available financing to continue exploration endeavours in British Columbia will be diminished. A preferred structure on royalty would take into account the possibility of a rising and falling price for the product so that the producer, out of whose cash flows exploratory drilling is carried out, would be the last one to suffer in the case of a decrease in price for both oil or gas. Probably this might best be accomplished by the producer selling his crude oil to the British Columbia Petroleum Corporation in the way gas is sold, but with a better pricing adjustment mechanism than that which exists with the gas contracts.

Another measure that should be taken would be a redesigning of the exploration agreement. This could be done to ensure that the holder could

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only earn leases after he had conducted actual work on the permit or in the area within reasonable proximity, and that his earnings would be restricted to a consolidated block rather than come from a sprinkling of leases throughout the permit area. This feature alone would help to ensure exploration, because the permit holder must be satisfied that he is getting, at least in his mind, the right half of the permit under lease.

The manner of acquiring oil and gas rights should be reviewed. As mentioned previously, the only method of acquiring an exploration permit under the present rule is through a competitive cash bidding system usually held on a quarterly basis. There are probably several instances where an oil and gas explorer would have been quite prepared to drill wells in British Columbia if he could have acquired the land for a minimal amount rather than having to use money he would put into exploration to purchase land through the cash bidding system. The rentals and fees charged should be the same as in Alberta, if only to appear competitive in this particular area.

CONCLUSION

The exploration for oil and gas in British Columbia cannot be considered in isolation. The proportion of the reserves of oil and gas remaining to be discovered will depend upon the number of exploration dollars allocated to the task. British Columbia's competitive position for these exploration dollars will depend in large measure on its royalty and land tenure policies.

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Cash Bonus Bidding for Mineral Resources

WALTER J. MEAD

Mineral leasing policy alternatives arise out of the fact that governments own mineral resources but, in general, do not engage in mineral resource recovery and processing. Hence, a need arises to transfer publicly owned resources to private enterprise at a price which will reflect the "fair market value" of the resource. The following analysis will, first, explore the problems to be solved by a bidding policy and, second, evaluate the cash bonus method of bidding for mineral leases.

THE PROBLEMS TO BE SOLVED

There are three problems which must be solved by any leasing system. First, the leasing system must as objectively as possible determine who or what firm is to be given the right to exploit publicly owned mineral resources. Second, a price must be determined which the lessee is to pay to the government for the right to recover mineral resoures held in trust for its citizens. Third, assuming that a nation wishes to economize on the use of its scarce resources and to maximize the standard of living of its citizens over time, the leasing system must result in an efficient method of production.

As a prerequisite to a discussion of mineral leasing alternatives there should be a clear statement of the goal(s) to be achieved. It is probably true that economists as a group have a preference for a single goal, declaring it to be one of economic efficiency. Natural resources available to any economy are scarce by definition. Achieving the highest possible standard of living requires that scarce resources be utilized with a maximum of efficiency. If resources are sold at a price below their true value, then the products into which they are converted may also be underpriced. If demand elasticities are less than zero, then the flow of resources into products and the flow of products within the current period will be excessive. Present overconsumption of products and resources will be at the expense of future consumption.

One way of achieving maximum economic efficiency is to price all resources at their "fair market value." Such pricing allows a government the opportunity of capturing the economic rent. Resources should be sold

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for the difference between future revenues and costs, appropriately discounted to their present value. The economic principle relating prices, costs, and money flows at different points in time in order to estimate present value (PV) is shown in the following formulation:

$$PV = \sum_{i=0}^{n} \frac{P_iQ_i - C_i}{(1+r)^i}$$

P_iQ_i is the value of the gross income flow at different points in time, C_i represents associated costs, and r represents the interest rate at which future money flows are discounted to the present. The formula clearly shows that higher future prices will increase present values while higher future costs will lower present values. Further, the greater the uncertainty and risk associated with production, the smaller will be present value. Firms utilize some variation of this present value formula in calculating their individual bids. Estimates of the quantity of minerals recoverable from a given tract will, of course, vary widely from firm to firm.

If mineral leases are sold for less than the fair market value as indicated in the above formula, then resources may be used at an excessively rapid rate, and the public, as owners of the resource, will fail to receive their full economic rent. On the other hand, if mineral resources are sold at prices in excess of the fair market value then, in the long run, some operators will be forced out of business. Use of such mineral resources in the present period will be at a suboptimal rate and the public owners will receive more than their normal economic rents.

In the past, Canada apparently has transferred some of its mineral and timber resources through various negotiated transactions rather than by utilizing the auction market approach. Similarly, other foreign governments have traditionally taken the negotiated sale approach in entering into long term oil concessions.

There are major problems involved in the negotiated approach. The correct present value of natural resources is extremely difficult to ascertain. There is no objective test in advance of ultimate production that can indicate the precise present value of mineral resources. By their nature they must first be discovered. Their presence, quantity, and quality are in doubt. With the government as the seller, negotiating with a single buyer, traditional problems of bilateral monopoly are encountered. The seller is interested in maximizing price, while the buyer is interested in minimizing price. Given this uncertainty plus opposing objectives, the civil servant is placed in a difficult position.

A visitor to Canada is reluctant to criticize Canadian experience which has circumvented the market place. Fortunately there is abundant experience within the United States to indicate the shortcomings of the negotiated approach to pricing. We may formulate two general laws which

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seem to govern when prices are determined or may be influenced by administrative judgement. First, the buyer will always complain. If the buyer believes that market prices can be reduced by protesting that they are too high, then complaints based on the argument that the operator cannot make a "fair profit" because prices are set too high could be endless. In the timber context, there are two cases where elaborate reports have been written protesting the high price of timber. One, presented by the Simpson Timber Company, protested against the high price of stumpage set by the United States forest service for the Shelton Sustained Yield Unit Agreement. Timber, in this case, is not sold at auction; its price is determined by the United States forest service. In the second case, the Edward Hines Lumber Company protested against the high cost of timber for its southeastern Oregon lumber mill. The timber was sold at an auction where competition was so weak that, in effect, it was sold at the administratively determined minimum price. By protesting, the company apparently felt that minimum prices could be reduced. In this instance, local community help was solicited on the grounds that if the company failed to make a fair profit, it would be forced to curtail operations. Under auction market procedures the government is relatively free from constant complaint and protest, because it is the impersonal market that determines the price rather than a civil servant. Under auction bidding procedures the buyers themselves set the price in competition with one another.

A second general law is that, where prices are set through administration, the government will always set prices short of the fair market value. A bureaucracy will rarely choose the path that makes its position unpleasant. Low prices are believed to generate less criticism and complaint than high prices. Where there is no auction market to test administrative judgement concerning the fair market value, we have no means to prove the second law. Sales of timber in the United States offer an opportunity to test the administratively determined price. Timber is sold by the forest service on the basis of an appraised fair market value, which becomes the minimum price acceptable to the government. Auction bidding begins at this price. In the four years from 1959 through 1962, competitive bidding for timber in the United States Douglas fir region produced an average high bid price that exceeded the forest service statement of fair market value (the appraised price) by 46 per cent.[1] In this case, the interests of the public were protected, at least in part, by reasonably effective competition. In the absence of this competitive check it is quite likely that the appraised prices would have been even lower. The shortcomings of the negotiated approach should lead to auction bidding wherever competition is possible.

CASH BONUS BIDDING

Before bidding can take place, a decision must be made between oral and

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sealed bidding. Bidding in either form may start with a stated or unstated minimum acceptable price. In the case of timber sales in the United States, the minimum acceptable price is given by the appraised price, and most timber auctions are conducted under oral auction procedures. On the other hand, in the case of oil and gas leases conducted by the federal government in the United States, the minimum acceptable price is not published, and bidding is normally by sealed bidding procedures. The government retains the right to "reject any and all bids." After bids have been received, it determines whether or not the high bid was adequate.

The factors important in choosing between oral and sealed bidding methods are as follows:

a. Of prime importance is the extent of competition. If competition is weak, then sealed bidding with its element of uncertainty makes collusive arrangements more difficult to enforce. Under sealed bidding rules there is no second chance to bid at any given sale. In contrast, under oral bidding procedures, a collusive arrangement can be policed by the participants during bidding. Further, there is always doubt about how many bidders may appear at a given sale. In oral bidding where only one bidder is present, he will bid the minimum; whereas, in sealed bidding a bidder would probably offer an amount which he believes will win the sale under conditions of more than one bidder.
b. In the timber industry where fixed investments in milling facilities normally exist prior to sales, the buyer needs a means of ensuring access to specific raw materials and specific locations. Oral auction procedures provide this means through the opportunity to cast reaction bids. In contrast, in oil and gas bidding fixed investments are made after winning a sale, hence there is less need to protect one's position through the opportunity to react to the bids of others.
c. Where the severed resource is relatively immobile, as in the case of timber, it is of greater importance that a specific nearby sale be obtained; therefore the oral auction procedures are more appropriate. In the case of oil and gas, the severed resource is highly mobile, so obtaining a specific sale is of less importance. In this case sealed bidding is not disadvantageous.
d. Where the resource to be auctioned is not homogeneous, it may be necessary for a firm to obtain a specific sale. Where this is true, the opportunity to make more than one bid to protect one's need for a specific type of resource may be of great importance. Only oral bidding facilitates this subsequent bidding opportunity.
e. Financial planning often requires that a firm carefully limit its financial exposure. Where this is necessary, oral bidding offers greater control over a total resource-financial commitment. In the case of sealed bidding,

firms may be unexpectedly successful and in the process win more sales than were desired or can be successfully financed. On the other hand, a firm's sealed bidding may be totally unsuccessful so that it becomes undercommitted. This shortcoming of sealed bidding may be corrected where resources may be freely transferred among interested buyers. This procedure is normally followed in the case of oil and gas leasing in the United States.

f. Oral bidding requires more on-the-spot decision making than does sealed bidding; therefore, oral bidding requires that a higher level of executive talent be present at the moment of the auction. In contrast, decisions made on the basis of a sealed bid offer no opportunity for subsequent action on the auction floor; therefore, the presence of expensive executive talent is not necessary.

g. The "free rider" is a problem for serious bidders under oral bidding conditions. A serious bidder will carefully examine the potential productivity of a proposed lease sale. This may, as in the case of minerals, require large investments. Under oral bidding conditions, a "free rider" can observe who is bidding, then, if he is confident that they have done their homework, he can continue to outbid them until they reach their maximum and he will win the sale. His purchase is therefore based on someone else's calculations and he, in turn, has saved the cost of the pre-exploration appraisal. Sealed bidding does not offer the free rider the same opportunity.

Once a decision has been made in favour of oral or sealed bidding, then a choice must be made on the object of bidding. A cash bonus bid is one alternative. Additional alternative bidding objects are shown in Table 1.[2]

Bonus bidding is the standard procedure used by the United States government in all of its Outer Continental Shelf (OCS) programmes. Using the present value formula given earlier, potential bidders presumably estimate the present value of the probable mineral recoverable from a tract of land. The formula provides for adequate recovery of capital and compensation for risk, uncertainty, and profit.

One strong advantage that can be claimed on behalf of a bonus system relative to royalty bidding is that it requires a lump sum payment and correspondingly modest royalty payments. Because royalty payments are due on each barrel of oil or unit of natural gas produced (or other mineral), such charges become part of the marginal cost. At the margin of production this is a transfer cost rather than a real social cost. Royalty bidding thus leads to premature abandonment of an oil or gas well. To the extent that royalty payments are required in addition to the cash bonus, there will be premature abandonment of the lease.

The disadvantages of bonus bidding are numerous. First, while the

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technology for oil exploration prior to drilling has been advanced in the last century, exploration is still subject to extremely high risk. Drilling is the only definitive test to determine the presence of oil or gas. Thus, bonus bids must be submitted by bidders and accepted or rejected by the government when neither the buyer nor the seller knows whether and in what quantities oil is present. This places the seller in a position of accepting millions of dollars for nothing but the right to spend several more millions drilling potentially dry holes. In cases in which a rich oil field is found, returns to the lessee will be and must be very high.

Second, under current procedures a bonus must be paid when the bid is submitted. When the bonus bid is large, it will represent a very heavy cash drain to the bidder far in advance of any revenue which may be generated from the oil or gas produced from the lease. This significant *front-end loading* of capital costs effectively excludes a small operator from winning leases as a solo bidder, creating an additional barrier to entry into the oil and gas production market. To overcome this entry barrier, firms commonly form joint ventures and bid jointly for a lease.

Third, because the bonus is calculated on a present value basis, the government is forced to accept discount rates used by private enterprise. If private enterprise discount rates are unreasonably high from a social standpoint, then bonus payments to the government will be correspondingly low.

Possible variations of the bonus bidding form are shown in Table 1. The present United States system includes fixed royalty requirements (typically 12½ per cent or 16⅔ per cent of wellhead value). However, a bonus bid might be paired with a sliding scale royalty requirement, permitting the royalty rate to be reduced as a field declines in productivity. As the point of economic abandonment is approached, the royalty rate might be reduced substantially or even eliminated. This procedure would, in turn, eliminate a marginal cost of production that is not a real social cost, and it would permit continued production from a field until the real marginal costs equaled the marginal value of production. This is the optimum point for well abandonment from an economic point of view. If at the time that a bonus bid was submitted all bidders understood that the royalty rate would be reduced to zero under the conditions specified above, the present value of the lease would be increased by an amount equal to the present value of reduced future royalty payments. Thus a tradeoff would be effected from royalty payments to bonus payments. The principal impediment to a sliding scale lies in the difficulty of clearly identifying various points at which royalty rates would be reduced. The lessee would have an economic incentive to manage his production in such a way that minimization of royalty payments would be an operating objective, rather than economic efficiency.

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TABLE I

ALTERNATIVE BIDDING FORMS

Bonus Bidding
- a. with a fixed royalty requirement
- b. with a sliding scale royalty requirement
- c. without a royalty
- d. with or without a rental payment
- e. with a profit share
- f. with delayed bonus payments

Royalty Bidding
- a. flat (nonvariable) royalty
- b. sliding scale royalty
- c. with a fixed bonus requirement or no bonus

Profit Share Bidding
- a. net profit or gross profit
- b. with fixed bonus requirement or no bonus
- c. with a royalty requirement or no royalty

Combination of Bonus and Royalty Bidding

Bidding on the Work Programme

The royalty problem, together with the administrative problem of reducing royalty rates under a sliding scale, might be avoided entirely by using a bonus bid without a royalty payment. However, this procedure would simply magnify all three of the problems associated with bonus bidding listed above.

Present procedures in the United States include modest rental charges payable between the points of sale and production. When production begins, rental payments cease and royalty payments take over. Rental payments in OCS oil and gas lease income are insignificant. In 1972, they amounted to 0.3 per cent of total revenue from such leases.[1] The rental requirement apparently was introduced to motivate the lessees toward early production. If they were of significant size, this result would in fact occur, because rents cease when production begins.

To overcome the front-end-loading problem, provision might be made for delayed payment of the bonus. The problem that would follow from this procedure is that in some cases where no minerals were found, lessees would elect a bankruptcy route. In this event, an unfair bidding situation would be created. Responsible firms in business on a perpetual basis would not follow a bankruptcy procedure and would, therefore, be at a bidding disadvantage with respect to others that contemplated bankruptcy in the event of a "dry hole."

A bill currently pending before the United States Congress provides for a 55 per cent fixed share of net profits in lieu of the existing fixed royalty payment accompanying the bonus bid. The winner would still be

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determined on the basis of a cash bonus. A profit share payment would avoid the above problems associated with royalty payments. As a given lease approaches exhaustion and its point of economic abandonment, profits would also approach zero and payments would decline proportionately to zero. If the profit share was calculated on the basis of net accounting profits including fixed costs, then the profit share payment would decline to zero prior to the point of economic abandonment. The latter point is reached only when marginal cost (not total costs) equals the marginal revenue. There is nothing wrong with this system providing both parties understand how it works and bidders understand it at the time they submit their bonus bids. The proposed 55 per cent profit share is high and is likely to lead to inefficient operations. A profit share payment is approximately the same as an income tax on each well and is additional to the existing income tax. When the profit share payment is added to the existing income tax, a large part of the penalty for wasteful operations will have been shifted from the operator to the government. While a bonus bid paired with a fixed profit share payment has merit, a 55 per cent profit share added to normal income taxes is inappropriately high from an economic point of view.[4]

Some data are available to permit a partial evaluation of the effectiveness of bonus bidding with a fixed royalty. The United States experience with OCS bidding provides a record of thirty-five oil and gas lease sales during the period November 1954 to 29 May 1974. In addition, three sulphur lease sales and two salt lease sales have been conducted on the OCS. The record may be evaluated in terms of the number of bidders competing for each sale, the conditions of entry of new firms, the record of joint bidding, the extent of concentration among winning firms, the trend in price bid per acre, the resale record of tracts where the initial bid was refused by the seller, and the rate of return earned by the winning bidders. Data pertaining to OCS bidding as follows:

a. For oil and gas lease sales there has been an average of 3.6 bidders competing for each tract receiving bids. The trend from 1954 to date has been one of increasing bidder activity. From 1954 to 1966 the average number of bidders per tract was 2.7. From 1967 to date the average increased to 3.9. From the seller's point of view, even more bidders would be preferred. Given the fact of relatively few bidders, sealed bidding procedures would appear to be more appropriate than oral auction.
b. Entry into the oil and gas auction markets appears to be relatively free. In the first 1954 federal lease offshore from Louisiana, 199 tracts were offered. Ninety-seven of these tracts received 327 bids from 22

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different firms, some of which bid in joint bidding combinations. From 1954 to 28 March 1974, an additional 110 firms won tracts as solo bidders or joint bidders with 1 or more other firms. Thus, in addition to the unsuccessful bidders who also perform a competitive function in the bidding process, there were 132 separate firms participating as winning bidders in thirty-three OCS lease sales.[5]

c. Entry by relatively small firms into OCS lease sale bidding is facilitated through joint bidding. Joint bidding by two or more firms each unable to bid solo has the effect of increasing competition. On the other hand, when two or more large firms fully able to bid separately combine to submit a single bid, the effect may be to reduce the number of competitors. However, if through joint bidding, even among large firms, a combination of, say, four firms bids more than four times as frequently as the individuals would have bid solo, then the effect of joint bidding can again be procompetitive.

d. The record shows some tendency toward concentrating winning OCS bids in relatively few hands; however, the extent of concentration also appears to be declining over time. For the nineteen oil and gas OCS lease sales which took place from 1954 through 1966, the eight largest buyers, sale by sale, purchased 85.5 per cent of the tracts. In the fourteen sales from 1967 to 28 March 1974, the percentage of total tracts purchased by the eight largest buyers declined to 62.0.[6]

Using the 184 leases issued in the 1954 and 1955 Louisiana oil and gas lease sales, a multiple regression analysis tested the proposition that firm size was positively related to the high bid by tract as the dependent variable. If large firms are able to outbid smaller firms, then one would expect a positive relationship. The regression analysis revealed no significant relationship between size class of firm (the eight big firms versus all others) and the amount of the winning bid. The same regression equation revealed that the high bid was also independent of whether firms bid jointly or solo. Further, the most significant independent variable related to high bid was number of bidders; the greater the number of bidders competing for any given tract, the higher will be the resulting winning bid. The total value of oil and gas production accumulated through 1967 was also positively related to the high bid. As one would expect the number of acres in the tract leased is also related to the high bid. Estimated water depth as a proxy for development cost was not significantly related to the high bid.[7]

e. Data on the average price bid per acre indicates that with the passage of time the effective high bid per acre has increased substantially. For the entire period 1954 through to 28 March 1974, the average high bid per acre amounted to $1,257.50. For the 1954-1966 period the average was

$301.71 per acre. This increased more than sevenfold to $2,219.90 per acre for the period beginning in 1967. This increase is only partially accounted for by higher crude oil prices. The average price of crude oil increased from $2.89/bbl. in the earlier period, to $3.69/bbl. in the later period. Even this increase would be offset by an unknown decrease in the probability of finding oil, and by increased costs of exploration and production.

f. Lease sales through 1 October 1964 show that of the 1,377 tracts receiving bids, seventy-eight high bid offers were rejected by the government. Subsequently, 26 of these tracts were reoffered and leases awarded. For these 26 tracts, the initial rejected high bid average amounted to $42.41 per acre. The subsequently accepted high bid on resale averaged $411.38. Thus, where bids were found to be inadequate and subsequently reoffered, competition increased bonus payments on these rejected tracts nearly tenfold.

g. The most conclusive test of the workability of cash bonus bidding based on the United States record of OCS oil and gas lease sales is in terms of the rate of return on capital earned by the successful bidders. An analysis has been made of 184 offshore Louisiana oil and gas tracts leased in 1954 and 1955. Precise data are available on bonus payments, rental payments, oil and gas royalty payments, and production of oil and gas during the period from 1954 through 1967. Cost estimates were made for exploration, well drilling and equipment, and operation. Annual cost and annual wellhead values were discounted to obtain a net internal rate of return. The calculations indicate that these early OCS leases generated a 7.5 per cent before tax rate of return to the lessees.[4] Given the fact that oil companies pay relatively low U.S. income tax rates, the after tax rate of return would be only modestly lower than the 7.5 per cent before tax rate of return. This net yield clearly does not reflect monopoly power; it shows an excessive degree of competition.

On the basis of this evidence we conclude that competitive bidding for oil and gas leases is sufficiently strong to protect the public interest in obtaining competitive values for its oil and gas resources. This conclusion is further supported by evidence presented above indicating an increase in the average number of bidders and a substantial increase in the average price bid per acre for oil and gas leases.

CONCLUSIONS

This article has examined the problems to be solved by any leasing system used to transfer publicly owned mineral resources to private firms for processing. The cash bonus bidding system has been used extensively in

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the United States, particularly in the leasing of OCS mineral resources. That record has been examined in some detail. While cash bonus bidding embodies problems which have been identified, it also appears to be an economically efficient method of resource conveyance. The United States record indicates that competition has been effective, if not overly effective, in permitting the government to capture the full economic rent. In addition, bonus bidding avoids a major problem of a popular alternative, that of royalty bidding. It appears to be far superior to a negotiated approach in solving the three critical problems of resource leasing: selecting the operator, determining a fair market value, and creating a climate for efficient mineral resource recovery.

Notes

1. W. J. Mead and T.E. Hamilton, *Competition for Federal Timber in the Pacific Northwest—An Analysis of Forest Service and Bureau of Land Management Timber Sales* (U.S.D.A., Forest Service Research Paper PNW-64, 1968), p. 4.
2. For a more thorough discussion of the economic issues involved in oral auctions and sealed bidding, see W.J. Mead, "Natural Resource Disposal Policy-Oral Auctions versus Sealed Bids," *Natural Resources Journal* 7 (April 1967): 194-224.
3. U.S. Department of the Interior, Geological Survey, *Outer Continental Shelf Statistics* (June 1973), p. 43.
4. For a more thorough discussion of this point, see W.J. Mead, Testimony Presented before the United States Senate, Committee on Interior and Insular Affairs, Hearings 7 May 1974.
5. The data presented above from the OCS bidding record are from Susan M. Wilcox, "Entry and Joint Venture Bidding in the Offshore Petroleum Industry," (Ph.D. diss., University of California, Santa Barbara, 1975), p. 66.
6. Ibid.
7. The multiple regression equation is as follows:

$$Y = -9.5809 - \underset{(0.1513)}{0.2279}X_1 + \underset{(0.0111)}{0.0229}X_2 + \underset{(0.1701)}{0.1383}X_3 + \underset{(0.0544)}{0.1235}X_4 + \underset{(0.0253)}{0.408}X_5 + \underset{(0.0235)}{0.0357}X_6$$

where Y is the high bid and the unit of measure is $100,000, X_1 is the size class of the high bidder coded as 10 for instances where the high bidder is one of the big firms and as zero for all other firms, X_2 is the total value of all oil and gas production accumulated up to the end of 1967 and the unit of measure is $100,000, X_3 is the corporate structure of the high bidder coded as 10 for a joint venture and zero for a single firms, X_4 is the number of acres with a unit of measure in 100 acres, X_5 is the number of bidders per sale multiplied by 10, and X_6 is the estimated water depth. This equation accounts for 62 per cent of the total

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variability in the high bonus bid. The standard error of estimate is shown in parentheses: see Nossaman-Waters, *Study of the Outer Continental Shelf Lands of the United States*, vol. 1(1968), p. 553.

8. Ibid., p. 56.

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The Role of Public Enterprise

ARLON R. TUSSING

My remarks are, firstly, about the role of governmental enterprise generally and, secondly, about some of the considerations involved in using governmental enterprise to foster greater control by the citizens of Canada and British Columbia over their own mineral industries. My view is that governmental ownership of producing operations is not generally the most effective way of accomplishing the social ends for which it is currently being advocated in these industries. Nevertheless, I have a few suggestions how some of the major disadvantages of public enterprise with respect to efficiency and responsibility might be overcome.

Government owned enterprises in the English-speaking countries have seldom owed their existence to an anticapitalist ideology. It is, in fact, hard to detect any systematic difference in motive, organization, or operation between the national, state and provincial, or municipal enterprises established during the incumbency of labour, socialist, and agrarian radical parties and those implemented by Tories of various names and complexions.

Despite the vast amount of existing governmental enterprise today in capitalist countries, and despite the importance of socialist movements and socialist thought in the history of modern civilization, the scholarly literature on public enterprise is remarkably skimpy. Rigorous comparisons —theoretical or empirical—of the economic performance of governmental and private enterprises in the same industry are, to the extent I can determine, nonexistent.

GOVERNMENT OWNERSHIP

The case for government ownership of undeveloped land and natural resource stocks rests on a broader base than that for government ownership of producing enterprises. The intrinsic value of any resource in its natural state is the difference between the value of goods that can be produced from it and the cost (in terms of labour, capital, materials, and organization) required to produce those goods. The size of this residual is not the product

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of any person's labour or enterprise; most of the economic value of an *in situ* resource and its appreciation over time result from such diffuse causes as the increase in population, the general advance of technology, the decline in real transport costs, or directly from governmental outlays on roads or geological mapping. On these grounds, it has become almost an axiom of distributive justice (however commonly violated) that the intrinsic value of natural resources should not be privately appropriated.

Other classical grounds for government ownership of natural resources are the desire to control external costs or capture external benefits of their exploitation, and the expected divergence of private capital costs from the social rate of time preference, which is said to result in too rapid (or too slow) development of the resource. I am skeptical about the universal applicability of the last of these arguments; who, indeed, knows what society's true discount rate should be, and why are politicians and civil servants expected to be more sensitive to it than to entrepreneurs? This reservation notwithstanding, I believe that a presumption in favour of government ownership of undeveloped land and resources is generally justified.

Turning to productive enterprise, however, there are three main economic rationales for government ownership in a capitalist society. First is the use of the state to establish or maintain productive activity that would not be profitable as private enterprise, but whose external benefits are deemed to justify a subsidy out of the public exchequer. A subsidy does not, of course, require state ownership, because either private or governmental enterprise could enjoy that subsidy. In either case, support could take the direct form of providing capital or operating expenses from the Treasury or the indirect form of tax exemptions and the use of public resources at less than their cost of fair market value. State ownership, however, may well make a subsidy more palatable to the public, because it does not conspicuously enrich (or appear to enrich) a few private entrepreneurs.

Within the category of public ownership as a vehicle for subsidization are the numerous instances of private enterprise socialized because of chronic insolvency or imminent liquidation, including the Canadian National Railways, most of the British Labour Party's nationalizations after World War II, and the recent takeover of rail passenger transportation by the United States government.

In other cases, the motive for government ownership has been the creation of "public goods," products (or by products) of an enterprise whose value a private owner could not expect to recover by market pricing. Examples of such externalities are flood control by hydropower projects and the promotion of literacy and national unification by the postal system.

Military necessity has been another justification for producing goods in state enterprises which might not meet the test of the private market.

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Nineteenth-century America had government lead mines and arsenals and plantations for naval stores; the processing of nuclear fuels now remains a governmental activity on security grounds. Many public transportation and communications ventures were begun as defence projects in Alaska, the Yukon, and British Columbia: examples are the ALCAN highway and the White Alice communications system.

Second among the rationales for public enterprise is the perceived inability of private business, because of the great size or risk of the venture in question, to assemble sufficient capital. This tradition in North America began with state ventures in canal and rail development in the early nineteenth century, then extended to river control and irrigation projects, and continues into the present in enterprises like COMSAT and Panarctic Oils. In many of these cases, the proposed activity was expected to be self-sufficient in the long run, on the basis of the revenues from its product or service, but state initiative was seen as necessary to take advantage of scale economies or to overcome high risk threshholds.

The third circumstance seen to justify government ownership is possession by an enterprise of monopoly power and/or exceptionally rich natural resources, either of which can produce substantial "unearned profits" or rents. Government ownership is one means either of preventing monopoly exploitation of consumers (or monopsony exploitation of workers and sellers) or of collecting for the public treasury monopoly profits or resource rents that would otherwise be captured by the private owners.

Government takeover of profitable businesses has been rare in the English-speaking world. There have been a few instances of ideologically motivated nationalization, but it is instructive to note that these have often been reversed, as in the cases of the iron and steel industry in Britain and, more recently, the grain trade in India. The remaining cases have principally been those of utilities—grain elevators, street railways, water, electrical or telephone systems—which had a monopoly ("natural" or otherwise) in a local service area. In the last category it is often hard to distinguish between the instances where government took over to prevent private exploitation of monopoly power and those in which government saw a monopoly as an opportunity to exploit an assured source of revenue for itself.

There are, of course, a variety of cases which overlap two or all three of these categories. Economic development of a poor or sparsely settled region is often advanced as a justification for public enterprise in transport, communications, or electrical power. In these instances the premise is often that the region lacks capital or capital markets and only the state can mobilize resources on the desired scale. At the same time, the project is seen to encourage growth by its ability to widen markets or otherwise cut costs for commodity producing sectors of the regional economy. Once estab-

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lished, moreover, such an enterprise may have a monopoly status, with the power to abuse or exploit that status, and seem thereby to demand public control or ownership.

Many governmental enterprises (and regulated utilities, which they resemble in important respects) combine subsidies for some activities with appropriation of monopoly rents or resource rents from others. A common practice in both regulated private firms and government enterprise in transportation, communications, and utilities is *cross-subsidization*, in which monopoly profits earned from one area, line of business, or class of customers are dissipated in subsidizing others that are deemed to be socially meritorious. Thus, airline and railroad tariffs on heavily travelled route segments typically exceed cost (including a "fair" return), while service on lower density segments is provided at a loss. Hydroprojects in the Western United States typically subsidize users of irrigation water from revenues earned by water sales to municipalities and industry and by sales of electric power. In Alaska, revenues from both state and federal timber sales are sacrificed to support otherwise uneconomic lumber and pulp mills.

Turning to the mineral industries of Western Canada, there is little evidence that suggests they need to be subsidized by formation of a public corporation or otherwise. The province of British Columbia does not have, for example, a great but decaying industry upon which the community depends both for energy and employment, as the British had in the coal mines of the 1940's.

The British Columbia-Yukon Chamber of Mines may occasionally assert that each mining job generates seven additional jobs in supporting industries, but there is no respectable analytical foundation for such a claim. Even if the extractive industries had such an employment multiplier, it does not necessarily follow that job creation *per se* is a benefit that deserves subsidization from the public purse, much less the creation of a government enterprise. New employment opportunities are a *net* benefit to the existing community only to the extent that they are filled by residents who would otherwise be unemployed or working at more poorly paid jobs. In an "open economy" like that of British Columbia or Alaska, there is no predictable relationship between local job creation and local unemployment, because new employment opportunity attracts immigrants who tend to offset the employment gain. Even if the new jobs directly created were reserved for long time residents, displacement of residents from old to new jobs and their replacement by nonresidents can be expected to make overall unemployment rates relatively unresponsive to employment growth.[1]

National self-sufficiency in minerals and the earning or retention of foreign exchange are sometimes claimed as external benefits of mining that justify preferential treatment. In Canada, paradoxically, some of those

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(including the National Energy Board) who place the highest priority on national self-sufficiency in one or another mineral resource tend to advance policies that *deter* investment, on the grounds that the beneficiary of current development tends to be the export market, at the cost of future diminished Canadian self-reliance. In this country, moreover, balance of payment effects are often used as part of a case *against* mineral development for export rather than in favour of it. In a world of floating exchange rates, however, one might question whether there is any relevance at all to the balance of payments problem in its usual sense. Finally, the impacts upon environmental quality and the dispersion of population are more likely to be regarded as external *costs* of mining than as *benefits* that justify the government's promotion of mining ventures that otherwise would not be self-supporting.

It is hard to make a respectable case that mining (including oil and gas production) creates beneficial *externalities* for the surrounding community, as distinct from the net value of the minerals produced, or the factor payments (wages, profit, rents, and taxes) which make up that value. The current Canadian interest in state enterprise in the mineral industries does not seem, in summary, to be a result of the belief that they are inevitably unprofitable under private enterprise. On the contrary, it rests in part upon the notion that mineral extraction can indeed be very profitable, and that unearned profits (rents) ought to be controlled and disbursed in socially approved ways. This attitude is sometimes experienced as a concern whether the people of the nation or of the province, who are the nominal owners of its natural resources, are receiving as high a return for the products of their land as they might. One issue is, in short, whether the state is effectively maximizing its revenues from disposal of minerals.

Where effective capital markets exist together with a large enough number of potential operators to create workable competition for resource rights, the government (as landlord and/or sovereign) is more likely to maximize its revenues if it does *not* engage in production. This conclusion does not presume that particular government owned entities are necessarily less enterprising and less effective in cost control than profit motivated private corporations. There may well be a bias against efficiency in most forms of state enterprise, if only because their owners (the public) and managers do not have a clearly defined standard of performance as private managers have in the imperative to maximize the present worth of their firms. But more importantly, by operating a productive enterprise in the extractive industries, the government loses the ability it would otherwise have as landowner to exploit the competition among potential private operators.

At oil and gas lease auctions in the United States, for example, the bid prices on a single tract may vary by a factor of two, ten, or even one

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hundred. These variations reflect widely differing geological evaluations of the tract, exploration strategies, and capital and other costs. Thus each tract tends to be won by the bidder with the *most favourable combination of capital cost and expectations* among all the bidders regarding future product prices, the particular tract's recoverable reserves, and their development and lifting costs. The landlord (state or private) who operates on his own land, however, would have only one management team, one exploration strategy, one team of geologists and engineers, and one supply function for capital. Only by rare accident would the landlord's *actual* performance over the average of all his properties tend to be better than the *expectations* of the most optimistic bidder. If, therefore, he were to lease each tract to the highest bidder among the competing operators, he might anticipate receiving a greater net revenue on each property than he could expect from developing the property himself.

The foregoing prediction is implicitly supported by empirical studies of United States Outer Continental Shelf leasing by Walter Mead and others, who show that successful bidders on the average earn a discounted cash flow rate of return on lease acquisition costs substantially less than the oil industry's average rate of return on capital (see Mead's article, "Cash Bonus Bidding for Mineral Resources," contained in this volume).

The effective use of competition to optimize revenues does not dictate the use of a cash bonus bidding system for *all* minerals or even for petroleum under every circumstance. The degree of knowledge or uncertainty regarding the volume and value of minerals present and their cost of extraction, the relative weight of fixed and variable costs in total extraction costs, the number of potential competitors, and the relative preferences of the government and private operators for certain present income versus uncertain future income are all appropriate considerations in the choice of leasing or disposal systems and taxes on the mineral industries. These questions have been discussed elsewhere,[3] and other articles in this volume give close attention to the relative merits of location, leasing, and sale as systems for disposing of minerals; to royalties and severance taxes, and whether they should be reckoned on gross value or net profits; to bidding on cash bonuses, deferred bonuses, gross or net royalty rates; to the use of acreage rentals; to the optimum size and configuration of tracts; to the amount of geological information the landlord ought to obtain and publish before opening land for lease or disposal; and to the duration of the primary term of a lease or permit, its terms for renewal, and so on.

In summary, state enterprise in the business of developing and producing minerals is surely *one* way to capture and redistribute resource rents, but it is unlikely to be as effective a device for maximizing those rents as the combination of a leasing system that takes full advantage of competition

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among private firms (considering the technology and institutional characteristics of each branch of the mining industry) and an appropriate tax system.

The most powerful cases for public enterprise in developing regions (like much of Western Canada and the Territories) relate to transport facilities which create external economies for other economic sectors, including mining. In these instances, both the first motive for socialization (the desire to subsidize) and the second (the need to overcome barriers of scale and risk) may justify investment by the government on projects into which private enterprise will not venture. Neither of these motives, however, creates a case for state enterprise in mineral extraction. Capital and enterprise for mineral exploration and development are plentiful and mobile. Specialized technical inputs, such as geophysical surveys, drilling, and heavy construction can be purchased on contract in a highly competitive market (so that great petroleum and mining companies carry out very few of these activities themselves). Capital sums in the hundreds of millions, or even billions of dollars can be mobilized privately, even without government guarantees, for projects like the Trans-Alaska pipeline, in remote regions.

Development of minerals, like the collection of revenues from their development, is likely to be more rapid and more efficient if it utilizes the diversity of skills, techniques, enterprise, and access to capital in the private economy and the competition between firms differently endowed in these respects. Nationalization or municipalization of producing operations, in my view, has an inevitable price—both in state revenues and in social efficiency—the payment of which must be justified on other grounds.

The hard core of Canadian interest in public enterprise today seems to stem not from a perceived shortage of capital and entrepreneurship (much less an ideological opposition to capitalistic enterprise as such), but from a perceived surplus of foreign capital and entrepreneurship. The problem, it seems, is to assure that mineral development (and, presumptively, related activities like oil refining or oil and gas transportation) are under the control of Canadians or the people of British Columbia, rather than great multinational (read United States) corporations.

It is probably not politic of me as an American to ask what practical difference the nationality of a company's owners or management makes as long as it is subject to the same laws (and obeys them) and pays its proper share of taxes. Foreign companies in Canada have often been berated for not paying enough taxes, but it was after all a *Canadian* decision, reflecting a long-standing Canadian developmental philosophy that the extractive industries should remain largely untaxed. The satisfactions and grievances of Americans regarding the major oil companies apply in the same way to

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Mobil and Texaco, which are domestically controlled, as they do to Shell and Sohio, which are foreign controlled. I am afraid I don't see how any more in the way of real resources for Canadians could be squeezed from a government owned business than could be squeezed from American or Canadian owned private enterprise under a well designed leasing and tax system. Nevertheless, one billion American dollars invested in Canada is more conspicuous than one billion Canadian dollars invested in the United States, and the nationality of your managers and stockholders obviously does make a difference to many Canadians. (I must confess, also, that some Americans become hysterical about the very idea of the Arabs or Persians taking over United States businesses.)

Government enterprise is one way to "nationalize" the mineral industries, but it is not, of course, the *only* possible way to foster Canadian equity and enterprise. Stricter nationality criteria could well be applied to holders of claims and leases or of permits to build pipelines, concentrating plants, and refineries. Such policies raise the further question, however, whether there is in fact enough private equity capital and enterprise in Canada to effectively take the place of foreign equity and enterprise. This is an empirical question to which I do not have an answer. If the answer is negative, consideration must be given to the fact that establishing a government enterprise does not *create* any new Canadian resources. It only uses tax money or potential resource revenues to bid capital and talent away from some other employment in Canada. The cost of Canadianization (either by restrictive licensing of private industry or by government enterprise) may be minimal, however, if preferences for nationals result in bidding home significant amounts of Canadian capital and Canadian talent which would otherwise be employed in other countries. (Presumably, the net effects of even these moves would have to take into consideration remittances that would otherwise flow back to Canada from investments abroad.)

Government capital need not be regarded strictly as a *substitute* for private capital, Canadian or foreign. In North America during the first half of the nineteenth century, and in almost every country at one time or another, state companies were used as a vehicle to *attract* foreign debt or equity capital, usually British, to ventures they would not otherwise consider. A government owned (or guaranteed) railroad company was often naively regarded by Lombard Street as a safe investment, while the promotions of unknown overseas entrepreneurs were viewed with little regard in the world's principal money market.

The use of government participation is still a major instrument for encouraging foreign investment in developing areas. Joint ventures between American, European, or Japanese private companies and governmental entities of the host country are common in almost all the extractive

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industries and in many countries at different levels of economic development. Canada has at least one government enterprise created largely with this function in mind, Quebec's SOQUEM, whose activity consists mainly of joint ventures in mineral exploration with private companies. Petro Canada also *seems* to be interested in this kind of approach.

In addition to being a means by which domestic enterprise becomes a trustworthy borrower (or partner) of foreign capital, state enterprise can also be a means of offsetting a shortage of domestic equity and entrepreneurship. In this role, it has one advantage over promotion of domestic private enterprise through nationality restrictions on investment, management or licences: it avoids the spectre of open discrimination, which could lead to retaliation and might otherwise undermine trade and investment relationships that are beneficial to Canada. The nearly open border allows this country to draw on a much larger pool of capital, technology, and talent than it would with policies fostering autarky. Although this openness is a major element in the ambiguity and insecurity of Canada's national identity, its economic benefits to Canada are relatively greater than they are to the United States. (That is, its impact on the size of the resource pool available to Canada is greater than on the size of the pool available to the United States.) It is therefore a circumstance to be modified only carefully and selectively. Establishing a provincial oil company is one way of containing the side effects of a move in the direction of autarky in a single industry. Such a move might, in fact, limit these side effects even in the industry in question. Suppose the best candidate for executive officer for a British Columbia based oil company were a Texan; there might well be fewer misgivings about hiring him to work for the province than about his heading a subsidiary of an American private firm.

I will conclude this article with some suggestions for the structure and policy of public corporations in the mineral industry, suggestions aimed at combining some of the best features of government and private enterprise, rather than their worst.

First, before establishing a governmental enterprise, be clear what its purpose is to be, what the incentive for the management to accomplish that purpose will be, and, quite rigorously, what will be the measure of the enterprise's success. (I owe this first and most vital point to Milton Moore's critique of the draft of this article.)

Second, do not set up a monopoly. There is no surer formula for inefficiency and social irresponsibility. Economies of scale do exist in mining and petroleum exploration, but they are very small when compared to some other industries or relative to the opportunities for development in an area the size of British Columbia. In petroleum refining, the minimum efficient size of a refinery is probably about the size of the British Columbia

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market for petroleum products, but if a new government owned refinery needs a monopoly or protectionist legislation to be profitable, it will almost certainly be a serious burden on consumers. Industries in which scale economies are narrow and where ingenuity and intuition are still crucial, as in mineral exploration or onshore oil and gas production, are probably not the most appropriate candidates for nationalization; but where it is determined to establish a state enterprise, consideration might be given to the establishment of more than one competing public enterprise.

Third, do not clothe the corporation in sovereign immunities. Such immunity can be, and often is, a cover for inefficiency, irresponsibility, and even lawlessness. The corporation should be suable; it should pay taxes or their equivalent (federal, provincial, and local); and it should be subject to environmental and safety laws and regulations and, above all, subject to the bankruptcy laws. Its operations should not be protected by any version of an official secrets act. There is no good reason why the directors, officers, and employees should be excused from the same civil and criminal liability for their actions to which their counterparts in private enterprise are subject.

I would urge hesitation even in providing guarantees for the corporation's debt. A public mining or oil corporation will be pursuing a line of business in which private enterprise regularly borrows money without such guarantees. The more intense scrutiny of bankers and underwriters toward a corporation whose debt must stand on its own merit might well save the corporation's owners—the public—more money than the small interest differential associated with government guarantees.

Fourth, give the public and the corporation's officers and staff a material interest in its success and its efficiency. The government need not hold all the shares but only a controlling interest, not necessarily even a majority. One block of shares (enough to elect at least one director) can be held in trust for the company's employees and voted by them. The remainder of the shares would be offered to the public; they would be voted by their owners and publicly traded. Not only would this provision broaden interest and participation in management, but the market price of publicly traded shares would be a continuing indicator of management performance and of the value of the government's equity. I see no compelling reason to restrict share ownership to residents; it might in fact be useful to encourage minority participation by major oil companies or mining companies. A residence requirement for shareholders, however, would reinforce symbolically the corporation's identity as a national or provincial instrument, and would, of course, limit remittance of dividends abroad.

Fifth, the corporation's policies should be responsive to public policy but not bend to every political wind. I would suggest that only a minority of the

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government directors serve at the pleasure of the Cabinet and be regarded as spokesmen for its policies. The remaining directors representing the government's equity would be chosen indirectly for long and staggered terms.

Sixth, the corporation should be under pressure to pay dividends. A majority of the shares (and directors) should represent parties who have a material interest that the corporation *not* retain, reinvest, or dissipate all its earnings: private shareholders, the employees, and the members who serve at the pleasure of the Cabinet (who would presumably be responsive to the fiscal interest of the government). The influence of this group will be a constant corrective to tendencies of management, inside directors, and permanent directors toward complacency, empire building, pyramid building, or gold plating.

Seventh, maintain a clear distinction between the corporation and the government as landowner. The public enterprise should obtain resource rights on crown lands only in competition with other prospective operators. The corporation should not receive a concealed (and indeterminate) subsidy by access to resources at no charge or at a lower price than a competitor might offer. If it must have a preferent right, let it be at most a right to match the highest bidder.

A preferent right on the best offshore leases is a feature of the federal oil and gas corporation (FOGCO), proposed recently in the United States Congress. In view of the prices oil companies have been recently willing to spend in these lease sales, such a preference would guarantee that FOGCO would appear profitable, however incompetent its management, and that the federal treasury would lose billions of dollars in lease revenues.

Eighth, take advantage of the division of labour and competition. The corporation should not attempt to do for itself the things that even the greatest oil and mining companies contract out to others, such as seismic surveying, core drilling, well drilling, well logging, and construction. There is virtually no chance that a state corporation could improve on the performance of private firms in these exceedingly competitive areas.

In summary, I am generally skeptical of the case for public enterprise in the minerals industry but hopeful that such enterprises could be established free of many of their usual shortcomings, providing some thought is given to their purpose, organization, and standards of performance.

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Notes

1. In a study aimed at projecting the employment impact of the Trans-Alaska pipeline, we found that *unemployment* in individual labour market areas was almost totally insensitive to the level of *employment*; that is, on a *net* basis, at least, new jobs in Alaska's petroleum and wood products industries and government were entirely filled by immigrants. [Arlon R. Tussing; George W. Rogers; and Victor Fischer, with Richard Norgaard, and Gregg Erickson, *The Alaska Pipeline Report: Alaska's Economy and Gas Industry Development and Impact of Building and Operating the Trans-Alaska Pipeline*, Institute of Social, Economic and Government Research Report no. 31 (Fairbanks: University of Alaska, 1971)].
2. Arlon R. Tussing and Gregg K. Erickson, *Mining and Public Policy in Alaska* (Fairbanks: Institute of Social, Economic and Government Research, University of Alaska, 1969).

AGO 547057

TEXACO'S TESTIMONY CONCERNING CS FOR HOUSE BILL NO. 854
PRESENTED TO THE STATE OF ALASKA SENATE RESOURCES COMMITTEE
ON MAY 22, 1978

Texaco is opposed to CSHB 854, the State Leasing and Exploration Bill, in its entirety for reasons which we will enumerate in our following comments.

It is our firm belief that the present Statute AS 38.05.180, in effect since 1959, has proven equitable to both the State and the oil industry and has served to maximize economic benefits to the State. We firmly believe that industry competition has fluorished under the present regulations, to the State's benefit.

In reviewing the proposed bill, #854, we would like to point out some of the areas that we believe are not in the best interest of the State and do not follow the goals stated in (a) (2) (A) and (B) (Page 1).

Legislative Review of Leasing Programs-Section (b) (Page 1)

We completely concur with proposed long range leasing programs giving industry sufficient lead time to acquire subsurface information and to budget costs of lease acquisitions and subsequent exploratory drilling. However, should annual reviews result in major revisions or reductions in areas to be leased, or complete elimination of sale areas, substantial

human and monetary efforts by both State and industry personnel will have been wasted. We believe this would be contrary to: 1) the State's goal of a stable and predictable petroleum leasing program, and 2) the State's interest in maximizing the economic recovery of its resources.

Leasing Methods-Section (f) (1) through (7) (Pages 3 & 4)

Paragraph (1) providing for bonus bidding with a fixed royalty is the most desirable and will have the greatest economic benefit to the State. Experimenting with other types of bidding, i.e., royalty, sliding scale royalty and net profits variables, places a greater risk on the State of the loss of revenue. As an example, let's use the Gulf of Alaska OCS sale. To date, 8 wildcat wells have been drilled without a single commercial hydrocarbon discovery; a very discouraging situation. Had the Federal Government resorted to bidding methods other than the conventional bonus bid, the result would have been a loss of $400 million+ in needed revenue. Although State lands have great potential for discovery of hydrocarbon reserves, it must be clearly realized that these lands have thus far been virtually unexplored. Undesirable consequences may result from royalty or net profits bidding. These bidding methods which allow many companies to establish a land position with very little cash outlay is a deterrent to early drilling. These companies would probably drill only

under the most favorable conditions as it would be much easier and cheaper to await the results of exploration in the same general area by competitive lease holders. In view of these conditions, the State can ill afford to assume the risk of experimenting with alternate types of bidding.

Minimum Work Commitment-Section (h) (Pages 4 & 5)

This section enables the Commissioner to impose a minimum work commitment on any oil and gas lease, with penalties for noncompliance. That is a very poor provision, for these reasons: A work commitment is sensible only when applied to entire concessions or other large geographical areas. Applied to individual leases, it is unworkable. If a dry well is drilled on an adjacent lease, and if it proves that there is no hope for oil or gas on the subject lease, then it would be senseless waste of exploration dollars to carry out the work commitment. It would serve the State much more effectively if that lease were surrendered, with the money saved to explore elsewhere, where there is a more reasonable chance for a discovery.

Defferal of Cash Bonus-Section (k) (Page 6)

This section allows the Commissioner to defer any part of a cash bonus payment, allowing up to 5 years for full payment.

This is in direct conflict with AS 38.05.335(c), which requires a deposit of 20 percent of the bid in cash. Moreover, it opens the possibility for a bidder to deposit a small fraction of the cash bonus, and then to default on the balance no oil or gas is indicated by his neighbors' drilling programs. It also appears to conflict with section (a) (1) (A), to "maximize the economic recovery of the resources."

Lease Term-Section (n) (Pages 6 & 7)

This section mandates a 5-year term for oil and gas leases, with a possible extension to 10 years where operations are restricted by the environment. As the great majority of the State is subject to environmental conditions which limit an exploration season to about 4 winter months, a 5-year lease allows only 1 and 2/3 years of exploratory work. This is quite insufficient in such high-risk, high-cost areas of Alaska. We therefore would urge that the present statute be maintained whereby leases contain a 10-year primary term.

Non-Competitive Leasing-Section (x) (Page 10)

The proposed bill requires competitive leasing for all State lands. This basis may be good for many areas within the State having a high prospective value; however, this system is not suitable for low prospective areas, many of which would

attract little or no bids at a competitive sale. In line with the objective to maximize the economic recovery, the State should provide for non-competitive leasing in certain areas of low prospectiveness and in instances where tracts received no bids in an earlier competitive lease sale. This procedure is comparable to that used very successfully by the Federal Government and would provide additional revenue to the State.

Joint Bidding Restriction-Section (y) (Pages 10 & 11)

Texaco believes that the State would lose revenue by adopting a policy of restricting joint bidding. The theory of the author of the bill was that one must restrict joint bidding in order to promote competition. This, however, may have the opposite effect since many small companies, or large companies with limited budgets, may be precluded from participating in a competitive sale if joint bidding is not permitted. Joint bidding combinations may be the only means of acquiring lease acreage for these companies. In addition, the federal experiment in joint bidding restrictions on the OCS has not demonstrated that any additional revenue has been received by the government as a result of higher bids. On the contrary, a recent study indicated that higher bonus bids were received in joint bidding rather than by sole company bidding.

State's Call on Oil and Gas Production-Section (z) (Page 11)

Texaco objects to the State having a call on production for the reason that it will discourage oil and gas exploration within the State. An increasing number of wells are being drilled within the State as a result of financing from various utility companies interested primarily in the production to serve their customers. If the State were to include a call on production in excess of its royalty share, this will effectively preclude the utility form of financing from future exploration, reduce industry exploration on State lands, and, therefore, not be in the State's best interest.

State Access to Exploratory Data-Section (aa) (Page 11)

Texaco is particularly opposed to supplying any of its valuable proprietary seismic data to the State.

This section would remove the incentive for an aggressive company to be a leader in initiating new or innovative ideas in an effort to discover new resources. It is common knowledge that geophysical data, in particular, is extremely confidential and closely guarded by the individual members of the industry. Leakage of this information, whether by accident or other means, could cost an individual company its competitive advantage in a given area, expecially an area which has

heretofore been relatively unexplored. We believe such a requirement would discourage rather than promote exploration of the State's lands.

Acreage Limitations-Section 3(c) (Page 11)

The acreage limitations should apply only to non-competitive leases. To limit the amount of competitive acreage a company holds effectively precludes that company from participating in some future leases sales at such time as its lease holdings approach the limitation figure. This reduces the competition by lowering the number of companies bidding for the leases, which will most likely reduce the revenue to the State.

In the event the State insists on limiting oil and gas lease holdings by an individual or company, Texaco requests that the present statute providing for the holding of leases on 500,000 acres of tide and submerged lands, and 500,000 acres of all lands other than tide and submerged lands be maintained in effect.

Summary

There are numerous other conflicts and ambiguities contained in this bill which we are sure your Committee will detect in

your review of the various sections. After a thorough review of CSHB No. 854, taking into account the testimony and comments presented by various individuals, we sincerely trust that your Committee will determine that: 1) such legislation will not fully accomplish the intent set forth in Section (a) (1) and (2); 2) that such legislation may in fact seriously discourage and delay an assessment of the State's oil and gas resources; and 3) that your deliberations will result in your finding the existing leasing statute AS 38.05.180 to be in the best interests of the State and the most equitable for the State and industry to work in concert in accomplishing the desired goals.

Claude H. Brown

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM

April 4, 1978

SUBJECT: Oil and Gas Leasing Bill: Major Issues in Drafting CS for HB 854

TO: The Honorable Hugh Malone
The Honorable Merle Snider

FROM: Gregg K. Erickson
Director of Research

Here, as you requested, is our list of some major issues the committee will probably want to address in drafting a committee substitute for this bill. They are listed in no particular order.

1. DEGREE OF LEGISLATIVE INVOLVEMENT IN THE LEASING PROCESS. As currently written, the legislature would not be involved in any formal way in the leasing process, except as a recipient of information from the department. We discuss this issue in more detail in an accompanying memorandum.

2. WORK COMMITMENT BIDDING. Work commitment bidding, including the system of drilling incentives proposed by BP/Sohio, implies a subsidy from the state in favor of oil exploration and/or development. If the committee decides that such a subsidy is desirable, then the question of whether or not this is the most appropriate method of providing it should be addressed. Finally, the committee may wish to put some limitation on the extent of the subsidy, and consider the specific terms under which it is offered. For example, the period of time over which the commitment can be worked off, and its transferability among lessees and between tracts are all issues which you might wish to consider.

3. NON-COMPETITIVE LEASING. HB 854 would allow non-competitive leasing where tracts have been offered under competitive conditions but where no bids have been received. Theoretically, tracts could be offered with very high minimum bids, or with other terms which make them very unattractive. This would ensure a lack of competitive interest, and make it possible for the lands to be reclassified as non-competitive, and essentially given away. If noncompetitive leasing is to be retained, the committee should probably review the question of whether these arrangements are appropriate.

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4. REDUCTION OF ROYALTY. This provision has been fairly widely criticized by the various witnesses before the committee, particularly in combination with the royalty bidding arrangements.

5. NET PROFITS BIDDING. The bill has been criticized for being insuffici tly precise about how the net profits would be calculated. The department has indicated that this can and would be taken care of in regulations. The committee could attempt to provide a general description of this calculation in the bill.

6. ROYALTY BIDDING WITHOUT THE SLIDING SCALE. Almost all economists who've looked closely at this method have been critical of it.

7. PUBLIC OUTCRY BIDDING. HB 854 allows this method of bidding; a number of scholarly studies have indicated a tendency toward collusive and non-competitive behavior in situations where natural resources are disposed of by this method.

8. ONE HUNDRED PERCENT GAS ROYALTY RESERVATION TO THE STATE. It has been asserted fairly convincingly that this provision will reduce gas company interest in exploration. On the other hand, particularly in the Cook Inlet Basin, the utility of having large gas reserves controlled by the state may be very high.

9. FIVE YEAR LEASE TERM. Most economists and the Department of Natural Resources would argue for the shorter term. Most industry representatives believe longer terms are necessary in many circumstances.

10. MINIMUM LEASE SIZE. Under the bill before you, individual leases are limited to 5,760 acres except under non-competitive leasing. It is clear from testimony of the department that it is contemplated that larger tracts should be made available in cases of low potential lands. Most economists and industry represenatives would agree. The department seems to believe that it could amalgamate tracts, in which case the acreage limitation would be of no effect. The committee may want to retain the existing acreage limitation, but provide that the commissioner may lease much larger tracts when he makes specified findings.

11. ACREAGE LIMITATIONS. The maximum acreage that can be held by any one lessee is reduced in this bill over present law. Apparently, two companies would be affected by this reduction. The provision has been criticized by the industry. It becomes more significant as the term of lease is increased, so this provision should probably be considered together with number 9, above.

12. STATUS OF EXISTING OFFERS FOR NON-COMPETITIVE OIL AND GAS LEASES. No non-competitive oil and gas leases have been issued during the past two years, although many offers have been made for such leases under the existing law. Options for dealing with these "prior rights" will be discussed in a later memorandum.

13. RESTRICTION OF JOINT BIDDING. The committee may want to require such restrictions, or it may want to eliminate the provision entirely. Federal regulations currently limit joint bidding between the twelve largest oil companies. A similar provision is in pending federal legislation.

14. ACCESS TO AND CONFIDENTIALITY OF EXPLORATION DATA. The industry seems to generally oppose this provision. The department believes it is very important but would be willing to specify that the confidentiality of this information would be as established in current law.

GKE:jm

File HB854

NOTE: Professor Norgaard in his study which accompanied Dr. Mason Gaffney's leasing policy study recommends a "more sophisticated analysis" of the affect of bonus bidding in Cook Inlet. See Recommendation III. B. 1 on page 25, attached. A comparison of other bidding methods could be done, also.

UNCERTAINTY, COMPETITION, AND LEASING POLICY

by

Richard B. Norgaard*

B. Bonus Bids and Rent Collected by the State

It is now well known to Alaskans that approximately 90 percent of the Prudhoe Bay field was acquired by ARCO and British Petroleum in mid-1960's sales which, along with considerable other Arctic Slope acreage, brought $10,500,000 in bonus bids. After oil was discovered, the small amount of remaining Prudhoe Bay acreage brought $900 million in bonus bids. Clearly, had the state known

*Associate Professor of Agricultural and Resource Economics and a member of Energy and Resources Group, University of California, Berkeley.

about the Prudhoe Bay field in advance, between $5 billion and $10 billion more would have been collected in bonus bids. Several years after the sale, petroleum prices tripled. Presuming that industry had not predicted this increase at the time of the sale, then the state probably "lost out" on perhaps an additional $15 billion to $30 billion. Prudhoe Bay is clearly a "tough luck" story for the state, and industry is quick to point out that at other times and places they have bid large bonuses and lost. Offshore Cook Inlet is undoubtedly more representative than Prudhoe Bay due to the larger number of sales and smaller size of fields discovered.

The discounted value of oil produced and estimated to be produced from Lease Sales 7 and 9 is $1.3 billion (Table 3, column 7). Ideally, we would like to determine what portions of this value have gone to cover production costs, what portion has been collected in royalties and similar per barrel taxes, and what portions of the remaining amount were paid in lease bonuses and retained by the industry. The following discussion will be complicated by (1) imprecise measures of the value of future natural gas production; (2) imprecise estimates of production costs; (3) uncertain shares of rent collected or to be collected by royalties, severance taxes, and other taxes; (4) the value of oil and gas in fields which are under lease but have not yet produced; and (5) the number of lease sales to be included in the analysis. The effect of alternative assumptions for items 1 through 5 could be incorporated a computer-modeled sensitivity analysis. For the purposes of this report assumptions will be made which are biased in favor of the effectiveness of the bonus bid as an instrument for collecting rent. If the bonus bid appears to be ineffective under these favorable assumptions, then we can be reasonably confident that it, in fact, has been ineffective.

Natural gas sales from Cook Inlet fields are now approximately 11 percent of the value of oil sales. This percentage, however, has been increasing historically and is expected to continue to increase significantly in the future. Nevertheless, the discounted value of oil will only be increased by 13 percent to $1.5 billion to account for gas sales. Production costs (exclusive of interest charges since petroleum flows have been discounted to the present) in 1975 dollars are assumed to be $1.25 per barrel, which may be somewhat low, or $2.50 per barrel which is definitely high. The average wellhead price of crude oil in 1975 dollars reached a high in 1965 of $5.66 a barrel, declined to $4.26 in 1973, rose dramatically to $5.38 in 1974, and is likely to increase gradually in the future. Nevertheless, for this analysis, we assume a constant price of $5.00 per barrel. The state collects a 12.5 percent royalty, a severance tax of 3 percent to 8 percent depending on the rate of production, and has occasionally levied other smaller production taxes as well as occasionally granted discovery credits. For the purposes of this analysis, we assume these payments average 20 percent of the value of petroleum produced which is undoubtedly somewhat higher than actually the case. Lastly, we assume that all the oil and gas fields that will ever be produced up to Lease Sale 16 are now producing, and we assume that these 11 sales constitute a meaningfully large sample.

Given the above assumptions, production costs plus royalties and related payments come to 0.45 to 0.70 of the discounted value of the petroleum. The 0.30 to 0.55 remaining share has a discounted value of $450 million to $825 million. What proportion of this amount was collected in lease bonus payments? The value of the lease bonus payments discounted to 1961, roughly the year of the sales for the tracts in which oil was discovered, equals $74 million. Thus, assuming the high production cost estimate, bonus bids transferred 16 percent

of the remaining rent, after royalties, etc., to the state. With the low production cost estimate, this percentage diminishes to 9 percent. Even given the favorable assumptions, the effectiveness of the bonus bid as a method for transferring rent to the state appears to be very low.

RECOMMENDATION III.B.1. The Department of Natural Resources should conduct a more sophisticated analysis along the above lines, with attention given to the sensitivity of the conclusions to alternative assumptions.

One might still argue that offshore Cook Inlet is another bad-luck example for the state of Alaska but that, with a large number of sales, the state will earn a fair return over the long run. This may be true in theory. But given the tremendous variations around the mean which are possible due to the great uncertainties involved, the state should (1) consider whether it has enough petroleum lands to lease to be reasonably certain that the law of large numbers is relevant and (2) whether it has sufficient planning expertise and access to capital to cope with the variations in bonus bid flows over time.

RECOMMENDATION III.B.2. The Department of Natural Resources should employ a statistician to assess alternative confidence limits about the mean for bonus bid revenues in 2-year, 5-year, and 10-year intervals given the projected pace of acreage to be leased in the future.

IV. Conclusions

The lease bonus bid appears to have been between 5 and 20 percent effective as a means of collecting rent over and above that collected through royalties. Its historic ineffectiveness may be due to extensive risk discounting on the part of industry, low levels of competition and the use of game theory by industry in determining bids, simply bad luck, or a combination of all of these. Regardless of the reason, both the theory and evidence brought out in this report suggest the state of Alaska should seriously consider alternative leasing systems, initiating or participating in presale exploration, acquiring the expertise to establish competitive bid rejection values for each tract, or a combination of all three of these.

This portion of the overall study does not address alternative lease terms or procedures for determining lease winners. If the state retains the lease bonus bid approach, especially with current royalty levels, its effectiveness can be increased in two interrelated ways. First, the state could contract or provide incentives for limited exploratory drilling with public dissemination of information prior to lease sales. This information could reduce uncertainty substantially and thereby increase the level of competition. Second, the state could, itself, behave as a bidder by establishing competitive bid rejection criteria for each tract. Such an approach at least would increase the level of competition substantially, for example, from 2.2 to 3.2 serious bidders on likely tracts in Lease Sale 9. But more importantly, the state's bid could reduce the effectiveness of game theoretic strategies significantly, thereby having a bigger impact than merely increasing the number of bidders. Each of these approaches can be developed over time with increasing intensity or sophistication. There effectiveness and cost can be monitored and optimal levels roughly

determined. These proposals cannot be rejected on the grounds that staffing and expenditures comparable to Exxon's exploration division would be required.

Even if the lease bonus bid approach is abandoned, some changes along the above lines would probably be desirable. First, there is no known perfect set of lease terms or procedures of determining lease winners under conditions of uncertainty and limited competition. While other leasing strategies may be better, there will probably still be advantages to reducing uncertainty and increasing competition. Second, the state could better plan sales over time and predict revenue flows if it had information on areas to be leased. Again, such information might be gathered by initiating or providing incentives to industry to drill. Or it may be sufficient for the state to participate in industry-initiated seismic exploration and to employ several seismologists or contract for the analysis of seismic data.

In summary, the Department of Natural Resources should seriously consider increasing its level of expertise and role in exploration, incrementally over time but substantially during the next 5 to 10 years.

Notes on HB 854

1. 5-year leasing program submitted to each regular Legislature specifying land to be leased in the 3rd and 4th years after the year in which leasing program is submitted. The 1979 through 1983 leasing program will be submitted to next year's Legislature.

   THIS WILL PERMIT THE LEGISLATURE, THE PUBLIC AND THE OIL & GAS COMPANIES TO KNOW LONG-RANGE LEASING PLANS OF ANY PARTICULAR GOVERNOR OR COMMISSIONER OF NATURAL RESOURCES.

2. Commissioner would also submit an annual report to the Legislature on the bidding methods used, or proposed to be used, and why.

   THIS WILL HELP ALL ALASKANS TO UNDERSTAND BETTER THE ECONOMICS OF OIL EXPLORATION.

3. Methods include:

   a. Cash bonus with a fixed royalty of not less than 12½% (present method);

   b. net profit bidding, and

   c. royalty bidding, but only where "unleased acreage is subject to drainage by offsetting wells."

4. A "minimum work commitment" may be included in a lease. (to be amended?)

5. Exploration incentive credits -- based on footage drilled and geophysical work done -- can be made part of the lease and may be taken against royalties; rentals and taxes, but may not exceed 50% of the payment toward which it is being applied.

   THE CREDIT SYSTEMS WILL PROBABLY NOT BE NEEDED AT THIS TIME, BUT SHOULD BE IN THE LAW TO PERMIT THEIR USE IN THE FUTURE, IF NECESSARY.

6. The Commissioner may reduce royalty but only when a clear showing is made by the lessee that in the later stages of production his rate of return, based on his total investment in the field, is insufficient.

   ANOTHER SECTION OF THE LAW IS AMENDED TO DELETE COMMISSIONER'S EXISTING POWER TO REDUCE ROYALTY AT ANY TIME.

7. The lease term is reduced from 10 years to 5 years, except when "environmental conditions severely restrict operations", the term can then be 10 years.

IT IS IN THE STATE'S INTEREST TO HAVE THE LESSEE EXPLOR AS QUICKLY AS POSSIBLE AFTER HAVING BEEN AWARDED A LEA OR RETURN IT TO THE STATE FOR RE-LEASING.

8. Rentals have been increased from $1.00 per acre to $1.00 - 1st year; $1.50 - 2nd year; $2.00 - 3rd year; $2.50 - 4th year and $3.00 for the 5th and following years. "Shut-in" field rentals may be increased but not to exceed 150% of the rate for the preceding year.

9. The existing law concerning unitization has been left as is. (See HB 815)

10. Leases which draw no bids may be offered by another competitive method but the rental may be less and the lease size greater.

11. All non-interpretive data obtained from activity on the lease may be made available to the State by the lessee, but the information shall be controlled by the existing law on confidentiality.

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March 31, 1978

Dr. Robert E. LeResche, Commissioner
Alaska Department of Natural Resources
Pouch M
Juneau, Alaska 99811

Re: Issuance of non-competitive oil and gas leases in Susitna Basin

Dear Dr. LeResche:

It has just come to my attention that you or Governor Hammond will be announcing within the next few days that a relatively small area near Flaxman Island on the North Slope will soon be opened for competitive oil and gas leasing, and that many non-competitive oil and gas (and coal?) leases will finally be issued by the State pursuant to applications filed by numerous individuals as long as 2½ years ago. It is also my understanding that you will be announcing your intention to reject all currently pending non-competitive lease applications filed by oil and gas companies in Susitna Basin (many were filed nearly 2 years ago), in order that the land now covered by those applications might be reclassified for competitive oil and gas leasing only.

Your proposed North Slope competitive lease sale will surely generate spirited bidding because of Exxon's recent nearby oil discovery. And, you are certainly to be commended for acting affirmatively at long last on those non-competitive oil and gas lease applications which so many individuals filed in good faith so many years ago. If you have been adivsed that competitive interest will be high in those areas which are now covered by oil company applications for non-competitive leases in Susitna Basin, however, then your advisors are sadly out of touch with reality.

As an independent geologist who makes his living principally from oil and gas leasing activities, and as the one person who has more leasing experience in Susitna Basin than any other individual, I can assure you on the basis of real world experience that interest in Susitna Basin is extremely low at this time despite Union Oil Company's current reconnaissance seismic activities in the southwestern corner of the basin.

Rejection of oil company applications in Susitna Basin at this time will serve only to dampen what little interest there is in Susitna Basin already. Even if competitive interest were eventually to develop in the basin, however, required cumbersome and time consuming pre-leasing and leasing procedures would necessarily result in undue delays in exploration and development activities. If it is your intention to encourage early exploration for natural gas and/or oil in Susitna Basin, therefore, you will approve, rather than reject, all oil company non-competitive oil and gas

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lease applications in the Basin, forthwith, just as you contemplate doing for those non-competitive lease applications which were filed by individuals in the area.

Please bear in mind that Susitna Basin is an extremely low-priority geologic province where oil possibilities are believed to be nil and possibilities for natural gas are marginal at best. The sedimentary section is thin in Susitna Basin, and structural information there is extremely scarse.

Moreover, hundreds of thousands of acres remain unleased (or even applied for) in the basin, despite the fact that this land has been available for non-competitive oil and gas leasing for many years now. I also wish to stress that Texaco dropped its oil and gas leases on over 150,000 acres in Susitna Basin after first conducting an extensive seismic program there some eight years ago. Furthermore, to my knowledge Texaco has no plans to drill its remaining 70,000 acres of leases in the basin before they expire next December.

I also think you should know that oil companies haven't exactly been stumbling all over themselves trying to buy my leases in Susitna Basin, either. It took me 7½ years to sell my 40,000-acre Yentna River lease block (to Union Oil Company and Pacific Lighting) in the southwest part of the basin, for example, and, after nearly eight years, I still haven't found any takers for my 47,000-acre Highway Bridge lease block in the east-central part of the basin despite the fact that Union Oil Company is now conduct seismic operations only 25 miles away. As a matter of fact, I still own leases in the immediate vicinity of Union's current shooting area which I haven't yet been able to sell or farm out!

I caution you not to interpret as an indication of high general interest the over-the-counter non-competitive oil and gas lease applications which Amarex Inc. and Gas Supply Corporation of Alaska (GASCOA, a subsidiary of Anchorage Natural Gas) filed jointly on 40,000 acres in the southeastern part of the basin, and on 36,000 acres in the north-central part of the basin nearly two years ago. These companies are so cautious about Susitna Basin, in fact, that, prior to filing the aforementioned applications, they were unwilling to purchase either my Yentna River lease block (which Union Oil and Pacific Lighting now own) or my Highway Bridge lease block, even for as little as $3.00 per acre (my rental investment at that time). In their view, there were (and still are) simply too many geological unknowns in Susitna Basin to justify spending more than a state filing fee of $20.00 per application plus the required annual rental of 50¢ per acre for leases there. Inasmuch as Amarex and GASCOA filed their applications with my help, I can also attest to the fact that their applications cover prospects which are inferred, only, on the basis of best-guess extrapolations from old, incomplete, and now publicly available seismic data which Pure Oil Company filed with the U.S.G.S. over 14 years ago.

Neither should you misconstrue Union Oil Company's recent over-the-counter filings for oil and gas leases in Susitna Basin as an indication that an abundance of favorable geological data is available in that area.

As a matter of fact, in filing its recent applications for non-competitive oil and gas leases on approximately 100,000 acres west of Mt. Yenlo, Union Oil Company had even less geological information to go on than Amarex and GASCOA had when they filed their aforementioned applications elsewhere in Susitna Basin. No outcrops are present where Union filed, for example, and neither has any seismic exploration ever been conducted in the area. Moreover, it should be obvious from the simple rectangular pattern of Union's filings west of Mt. Yenlo that the company hasn't the foggiest notion of what to expect geologically in the area. It would therefore be unrealistic, indeed, to expect Union (or anyone else, for that matter) to pay any more for leases in the area than the small filing fees and rentals which are presently required for state non-competitive leases.

Amarex, GASCOA (now McAlester Fuel Company), and Union Oil Company obviously filed their respective non-competitive oil and gas lease applications in Susitna Basin with the intention of eventually exploring large areas where geologic information is currently sparse or non-existent. In data deficient areas such as these, however, history shows that 90% or more of the land will be condemned geologically by future exploration. These companies are therefore faced with the unpleasant task of condemning most is not all of their respective areas of interest as cheaply as possible!

In these circumstances, of course, it would be totally unrealistic to expect that any of the aforementioned companies (or any others) would suddenly become spirited bidders for competitive leases in any of the geologically questionable areas mentioned above. In fact, it is safe to say that no exploration whatsoever will be initiated in the aforementioned areas by either Amerex, McAlester, or Union Oil unless inexpensive non-competitive leases are first issued to them by the State pursuant to their currently pending applications

The facts make it clear that reclassification of the aforementioned areas for competitive leasing, only, would result in postponement, if not total abandonment, of new exploration and development efforts in Susitna Basin. The question is, however, "Can the State afford to block exploration in Susitna Basin at this time in hopes that competitive interest in the area may pick up at some indefinite time in the future?" I don't believe it can. Here's why.

As you know, Mr. Pat Dobey of the Division of Minerals and Energy Management here in Anchorage has warned the Administration and the public that the Anchorage Bowl area will be faced with a critical shortage of natural gas by 1985 (just seven years from now), unless more discoveries are made in south-central Alaska soon, or, in the alternative, unless a state-built-or-subsidized gas pipeline is laid from Prudhoe Bay to Anchorage.

It would of course be unwise for the State to spend taxpayers' money on a gas pipeline from Prudhoe Bay to Anchorage, when oil companies such as those who have filed for non-competitive leases in Susitna Basin appear ready, willing, and able to spend money from the private sector to explore for and develop natural gas reserves right here in Anchorage's own back yard.

It therefore behooves the State to approve the aforementioned oil companies' non-competitive oil and gas lease applications, forthwith, in order to clear the way for new exploration in Susitna Basin as soon as possible. Remember, Anchorage is rapidly running out of gas, and new discoveries of oil and gas generally require lead times ranging from five to ten years. The State simply cannot afford to hold up development in Susitna Basin any longer. To do so would be totally irresponsible.

While new exploration in Susitna Basin could be highly beneficial to the State of Alaska in general, and to Anchorage natural gas consumers in particular, it could also result in a significantly broadened tax base for the Matanuska-Susitna Borough in which Susitna Basin is situated. Obviously, any further impediments to early leasing, exploration, and development in the aforementioned areas will definitely not be in the best interests of the Matanuska-Susitna Borough. It is therefore to be expected that your proposal to reclassify lands for competitive leasing in Susitna Basin will be denounced by the Matanuska-Susitna Borough Assembly and Planning Department when your competitive reclassification proposal comes up for notice and review pursuant to Section 38.05.305 of the Alaska Statutes. Undue delay in broadening the borough's tax base could be avoided, of course, if you would simply approve all currently pending oil-company (and individually-filed) applications for non-competitive oil and gas leases in Susitna Basin forthwith.

While I believe you can justify immediate approval of all pending non-competitive oil and gas lease applications in Susitna Basin on the basis of the foregoing reasons alone, you must of course also consider the moral and legal aspects of your forthcoming proposal to reject all lease applications filed by oil companies while approving similar applications filed by individuals.

First of all, it must be remembered that all of the now-pending applications were filed in good faith pursuant to laws and regulations which were in effect when the applications were filed (and still are in effect). Moreover, it clear that most of these applications would have been approved already, were it not for the current land freeze.

The land freeze, of course, was originally designed to protect certain aggrieved parties until such time that their grievances could be reconciled by the courts and/or the Legislature (these grievances have since been reconciled). It was not intended to be used as a means of cheating oil companies out of non-competitive oil and gas leases when it was first instituted, and it should not be used as a weapon to be turned against oil companies now.

The oil companies which are involved here (and individuals, too, for that matter) have filed their lease applications pursuant to laws and regulations which are supposed to protect their first-priority rights to the lands in which they have revealed their interest to the world in good faith (their areas of interest are described in their applications, of course, and their applications are on public file for all to see). Accordingly, use of the land freeze as a means of selectively blocking the issuance of leases to

oil companies, while allowing the issuance of such leases to individuals, not only would constitute a reprehensible breach of trust on the part of the admininstation but also would serve double duty as an arbitrary and capricious abuse of administrative power which probably could be challenged successfully in court.

While oil and gas possibilities in Susitna Basin are generally considered to be marginal (even by those oil companies now holding oil and gas leases and lease applications in the area), the element of surprise in oil and gas exploration is such tnat significant reserves of oil and gas could nevertheless be discovered there. For a low-priority area such as Susitna Basin, however, economic incentives for exploration must be unusually attractive. You can provide this needed incentive, of course, simply by making it easy for everyone (including oil companies) to assemble large blocks of inexpensive non-competitive oil and gas leases in the area.

An early increase in the rate of exploration and development in Susitna Basin will clearly bring economic benefits not only to the State but to the Matanuska-Susitna Borough as well. It will also provide new jobs for oil workers, and it will stimulate new business for the service companies. Moreover, by making it known that you are clearing the way for possible early discoveries which could prevent the occurrence of an impending natural gas crisis in the Anchorage area, you could make considerable political hay in this important election year.

The foregoing observations make it obvious that competitive leasing will not stimulate urgently needed new exploration for oil and gas in Susitna Basin, whereas non-competitive oil and gas leasing will. I therefore urge you to reconside your present plans to reclassify lands in Susitna Basin for competitive leasing only, and, instead, to approve all presently pending applications which oil companies and individuals alike have filed for non-competitive oil and gas leases in the area to date. I also urge you to lift the current land freeze in order to clear the way for future non-competitive oil and gas leasing in Susitna Basin. The sooner you take these important steps, of course, the sooner exploration can get under way, and the better it will be for all parties concerned.

Very truly yours,

L. C. LOVELY

Copies to: Jay S. Hammond, Governor, Juneau
Joseph P. Green, Director, DMEM, Anchorage
Patrick Dobey, Petroleum Manager, DMEM, Anchorage
Jack Roderick, Special Projects, DMEM, Anchorage
Gregg K. Erickson, Director, Div. of Research, Juneau
Lance Garola, Mat-Su Borough Planning Department, Palmer
Rep. C. V. "Chat" Chatterton, Juneau

(continued)

(continued)

Copies to: Senator Joseph L. Orsini, Juneau
Dale Teel, President, Alaska Gas & Service Co., Anchorage
R. L. Rich, Manager of Land, Amarex Inc., Oklahoma City
W. B. "Buzz" Sawyer, V. P., McAlester Fuel Co., Magnolia, Ark.
Wayne Rodges, Land Manager, Union Oil Co., Anchorage
Wm W. Hopkins, Executive Director, AOGA, Anchorage
Don Hartmen, Exploration Representative, Texaco Inc., Anchorage

10-002
(12-23-70)

DEPARTMENT OF NATURAL RESOURCES

INTRA-DEPARTMENT ROUTE SLIP

TO:
DIV/SEC: _____ LOCATION: _____

ATTN: Hugh Malone

☐ Approval	☐ Note & Return
☒ Signature	☐ Initial & Return
☐ Comment	☐ Return As Requested
☐ Contact Me	☐ Return For Approval
☐ Prepare Reply	☐ Necessary Action
☐ For Your File	☒ Your Information

REMARKS:

APR 26 1978

AGO 547089 +

FROM
BY: [signature] DATE: 4/24/78

DIV/SEC: [signature] LOCATION: [signature]

Hugh O'Malone

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

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

for HB 854

April 21, 1978

RECEIVED
APR 24 1978
Div. of Minerals & Energy Mgt.
Anchorage, Ak.

Honorable D. R. Getty, Minister
Alberta Energy and Natural Resources
319 Legislative Building
Edmonton, Alberta, Canada
T5K, 2B6

Dear Mr. Getty:

Governor Hammond's recently introduced oil and gas leasing legislation for Alaska has now had incorporated into it by the legislature a drilling and geophysical incentive credit system similar to Alberta's. We have looked at the concept and, based on what we know, believe that the system could become useful in Alaska. However, we do need help in understanding how it has actually worked in your province.

Could we ask your assistance in explaining the operations of the system, both conceptually and technically, to some members of our legislature. The bill, HB 854, a copy of which is enclosed, is expected to begin Senate committee hearings sometime in May.

It would be of particular help to us if someone from your department could come to Anchorage to brief my staff and to Juneau to testify before the Senate Natural Resources Committee. We would, of course, cover all expenses. The exact dates of the visit would have to wait on the progress of the bill, but it is likely to be in mid or late May, 1978.

Over the past several years, Jack Roderick, my Special Projects Coordinator, who has been in charge of this particular legislation, has kept in contact with Michael J. Day, and others, in your minerals disposition division, on land tenure matters and he, or someone of your choice, would be most welcome. I will have Mr. Roderick arrange for the visit, subject to your authorization.

AGO 547090

Thank you for your assistance in this matter. We believe Alaska can benefit from Alberta's experience with the exploration incentive credit system.

Sincerely yours,

Robert LeResche
Commissioner

cc: Dr. G. B. Mellon, Deputy Minister
Michael J. Day, Asst. Deputy Minister
Petroleum Plaza, South Tower
9915-108 Street
Edmonton, Alberta T5K 2C0

Jack Roderick

STATE
of ALASKA

MEMORANDUM

File copy
O&G Leasing

TO: Robert E. LeResche, Commissioner
Department of Natural Resources

DATE: December 22, 1977

FILE NO:

TELEPHONE NO:

FROM: Jack Roderick
Special Coordinator

SUBJECT: Meeting with AOGA landmen
Juneau, 12/15/77
Proposed Leasing Legislation

Presented copies of draft oil and gas legislation to oil company representatives (Alaskan Oil and Gas Association land and legal committee) at a meeting in Baranof Hotel, Juneau on December 15, 1977. This is the same proposed legislation which was presented to Speaker Hugh Malone's ad hoc leasing committee on December 9th in Anchorage. A 3-hour give-and-take discussion was had. Representing the State in addition to Roderick were Joe Green and Pat Dobey. Carl Smith took notes.

In the order of discussion the oil company representatives felt:

1) No need to change existing laws, leasing or other.

2) Opposed to Commissioner having to "report" to legislature, either 5-year leasing program, or annual leasing methods. Feel executive should maintain complete control over leasing i.e. "keep politics out", perhaps a Leasing Board, like Louisiana, Colorado, etc., (a) and (b).

3) Opposed to requirement that federal agencies must be consulted prior to leasing. Failure to consult might result in law suit, (b) (4) (C).

4) Opposed to restricting any one leasing method to no more than 50% of area, (5) (E).

5) Opposed to royalty, net profits and work commitment type bidding (c) (but see Chevron's position, attached.) BP thought that allowing the Commissioner to postpone any part of the payment of the cash bonus would result in the state being "ripped off" by the irresponsible operator.

6) Opposed to permitting legislature by joint legislation to disapprove new leasing method, (g). Stated that State Attorney General believes this kind of attempted delegation is unconstitutional.

7) Questioned whether State should have the right to store or trade its royalty even with "consent of the majority" of the effected field lease holders". (j) Phillips (Swetnam)

8) Pointed out that (k) as written would allow State to terminate a 5-year lease which was capable of production in paying quantities but had no market available. Recognized State's need not to allow fields to remain "shut-in".

9) Opposed to accelerating rentals of this magnitude. (Roger Herrera, BP, suggested "freezing" rentals after a dry-hole, thereby giving incentive to drill quickly and yet continue to explore.) (l).

AGO 547092

TO: R. E. LeResche
FROM: J. Roderick
DATE: 12/22/77
SUBJ: Meeting with AOGA landmen, Juneau, 12/15/77 - Proposed Leasing Legislation

10) Suggested that a State "shorelands" preference lease, due to a determination of navigability, be given on fee (Native) acreage, also, (m).

11) Didn't believe development contracts are workable and certainly opposed to State sharing in "the costs of exploration." (r)

12) Favored lands being offered non-competitively if no bids received at first sale. (u) Stressed the need for lands to be made available on a regular, continuous basis.

13) Opposed to restriction on joint bidding.(v)

14) Opposed to State's right to "purchase not to exceed 16 2/3% by volume of the oil and gas produced". Might accept an amount equal to original royalty in lease.(w)

15) Opposed to State's right to "all data". (x)

16) Opposed to lowering acreage limitation on uplands to 200,000 acres. Pointed out that there would have to be a "phase-in" period during which companies now at the maximum would be allowed to continue to lease. Otherwise, those companies who have acted aggressively in the past would be penalized. Sec. 3 (c).

Summary: AOGA Land and Legal Committee believes that the Legislature asked the Administration to review not revise oil and gas leasing law. Present bonus bid system is sufficient. Federal OCS law still not passed by Congress. Royalty bids on OCS will result in "less money to U.S. government." State administration should maintain complete and strict control over leasing; legislature should be informed only as they are presently.

Proposed law will hinder, not help, exploration in Alaska. "This will kill exploration in Alaska. We are categorically opposed to it." Herrera, BP. The methods, other than bonus bid, will not work. Work commitments will be impossible to administer.

Cash or performance bond requirment will discourage exploration even if commissioner can credit work against cash deposit. Perhaps statewide performance bond based on a percentage of amount bid would satisfy.

Reaction was as I expected. Despite the overwhelming negativism, some constructive ideas came from the exchange.

Recommendations:

1) Redraft legislation taking into account some of AOGA's suggestions. This has been done (see attached draft #8, in which I have made the changes noted below.)

Key issues still appear to be:

TO: R. E. LeResche
FROM: J. Roderick
DATE: 12/22/77
SUBJ: Meeting with AOGA landmen, Juneau, 12/15/77 - Proposed Leasing Legislation

a. executive-legislature relationship (have retained the "reports" to legislature).

b. number and kind of leasing alternatives (have retained net profits and work commitments).

c. escalating rentals and lease term (have shortened to 5 years).

d. "shut-in" status of fields (have added "reasonable" time in which to produce).

e. state's right to purchase oil and gas (have retained 16 2/3%).

f. acreage limitation reduction on uplands (have included a "phase-in period).

g. restriction on joint bidding (have retained).

h. maintenance of non-competitive leasing in some form (have specified "noncompetitive" as option).

i. state's right to store or trade (have retained).

2) Contact Hugh Malone to see how extensive a leasing law change is possible in the upcoming legislative session. If taken at their word, AOGA is prepared to fight "any change" in the oil and gas leasing statute.

3) I believe AOGA realizes that Alaska will eventually demand to have at least as much flexibility in leasing as the Federal government. I believe our fortunes ride to some extent on the OCS legislation now pending in in the U.S. House and for that reason I feel we should follow the OCS legislation closely and time our legislative effort accordingly.

4) Contact independent oil operators who will support methods of leasing which the major oil companies may oppose. (See enclosed sample letter for you to send to attached list of "independents" and others, including the AFN.)

5) It appears as if the high tax, low development profile of the State government over the past few years have the major oil companies in a fighting mood. The "tax ads" are the leading edge of the attack. Any leasing changes will be caught in the 1978 "political" year. Thus, consultations with key legislators is doubly important. The key policy decision remains: what changes are essential to proceed at this time toward the Beaufort lease sale in 1979 and beyond?

6) You will need to consider the disposition of the noncompetitive offers which were chosen in simultaneous drawings several years back, and over-the-counter offers. Also, the question of pending Federal oil and gas offers which appear to have a State preference right at the time

TO: R. E. LeResche
FROM: J. Roderick
DATE: 12/22/77
SUBJ: Meeting with AOGA landmen, Juneau, 12/15/77 - Proposed Leasing Legislation

of TA under existing law. The draft legislation no longer grants an automatic preference right to these Federal oil and gas offerors, so the status of these pending offers will come into question.

I will be willing to meet with you at any time to decide what course of action should be taken on these matters.

COPY (MEMO ONLY) TO SNIDER

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

HAVE ENTIRE THING PUT IN MY HB 854 FILE

MEMORANDUM

March 28, 1978

SUBJECT: Comparison of Statements by Milton Lipton on Oil and Gas Leasing Policy (W.O. 5195)

TO: The Honorable Hugh Malone

FROM: Gregg K. Erickson
Director of Research

As you requested, we have analyzed recent statements by Mr. Milton Lipton concerning oil and gas leasing policy, and compared these with the positions taken in late 1969 and early 1970 by Mr. Lipton (Economic Considerations for Alaska's Future Oil and Gas Leasing Policy, W. J. Levy Consultants Corporation, N. Y., 1970). Although a number of the points discussed in the 1970 memorandum were not the subject of more recent comments, and vice-versa, we generally find the Lipton positions to have been consistent. We have summarized some of the high points and are attaching a copy of the 1970 memorandum.

In general, the 1970 memorandum made its strongest recommendation with respect to the rate at which lands are made available for exploration. It was suggested that a continuous and steady supply of exploration acreage would be appropriate, but that the state should feel no compunction about withholding acreage for future lease sales adjacent to lands being currently disposed of. With respect to leasing systems, the memorandum expressed general approval of the competitive leasing system currently in place, a somewhat qualified disapproval of royalty bidding, and a strong disapproval (with only minor exceptions) to the use of non-competitive leasing systems.

In 1970, as this year, Lipton argued for the establishment of work obligations in leases, but did not consider their use as a bid variable. The sliding scale royalty device, though not considered as a bid variable, was given a qualified endorsement as a lease term. However, from the context, it appears that Lipton's 1970 discussion contemplated that the highest royalty rate in the sliding scale would be 25 percent, substantially lower than the percentages presented in the hypothetical calculations made by the Department of Natural Resources.

All of the foregoing positions are consistent with Lipton's most recent testimony. In one minor change of emphasis, Mr. Lipton now seems to have some question about the desirability of acreage limitations. In the 1970 memorandum, these were explicitly endorsed.

AGO 547101 +

Net profits leasing and work commitment bidding were not discussed at all in the 1970 memorandum.

Please let us know if you need a more detailed analysis of any of these points.

GKE:jm
Attachment

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

April 4, 1978

MEMORANDUM

SUBJECT: Legislative Role in Leasing of Oil and Gas Land - HB 854

TO: The Honorable Hugh Malone
The Honorable Merle Snider

FROM: Gregg K. Erickson
Director of Research

In testimony and private conversations concerning HB 584, administration representatives have strongly argued against any direct legislative involvement in the oil and gas leasing process. This opposition creates an important political dimension to the decision as to how (or whether) the legislature should be involved in this process. The purpose of this memorandum, however, is to explore other aspects of this issue, and to present some options for your consideration.

As currently structured, HB 854 would place the legislature in an almost totally passive position with respect to leasing. The administration would be required to make certain reports to the legislature, but any other direct influence would have to be through enactment of future legislation (including appropriations). Two major areas where some legislators might desire a more active involvement are in the choice of leasing systems, and in the selection and scheduling of acreage to be offered for lease. In each of these cases, legislative involvement could take the form of:

AGO 547103

1. A requirement that the leasing program (bidding systems) be approved in advance by joint resolution, or

2. A stipulation that the leasing program (bidding systems chosen) would be subject to a legislative veto, by joint resolution or by simple resolution of either house.

If you desire to include either of these methods (with respect to the choice of acreage, the choice of systems, or both), we would suggest that the formal document to be acted on by the legislature be a two or three year "program" and that the commissioner be required to update this each year. A legislative veto could stop all leasing, or it could simply mean that the program would go forward under the previously approved plan.

While we have not secured a formal legal opinion on the requirement for legislative approval, or legislative veto, informal consultation indicates that both systems have been used in the past in other instances, and that both would be constitutionally sustainable.

In a sense, a committee decision to advocate legislative approval of individual leasing decisions, implies that the committee cannot or is unwilling to deal in a comprehensive way with the various issues that will arise in the course of the life of this act. In any event, if the

legislature decides not to formally inject itself into the leasing process, it is likely to want a much more tightly drawn and carefully conceived piece of legislation. On the other hand, a bill which includes a provision for legislative veto could probably be written allowing much more latitude for the commissioner in his conduct of leasing policy.

Finally, it should be noted that legislature could specify more formal oversight of the leasing function without intruding directly into the leasing process. For example, the bill could require that a standing or special committee of the legislature, or a legislative staff agency submit formal reports to the legislature each year on the manner which the legislative policy is being carried out.

GKE:ftc

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

March 15, 1978

MEMORANDUM

SUBJECT: Leasing of State Land for Oil and Gas Development - HB 854 (W.O. #11/R)

TO: The Honorable Alvin Osterback

FROM: Gregg K. Erickson
Director of Research

You requested that we provide an analysis of this bill. We have done this below in a cursory manner, and have attached additional material provided by the Department of Natural Resources (DNR). We have also noted some areas where we see potential problems. You will undoubtedly be taking a great deal of testimony on this bill from DNR, the legislature's consultants (Milton Lipton and Mason Gaffney), and the industry. After you have heard the testimony we would be pleased to address any points that you may at that time wish to have analyzed in depth.

Under current law the state is restricted to leasing oil and gas lands under the bonus bid system, or by the non-competitive system, which is essentially a lottery. However, the use of the non-competitive system has been of little importance during the past fifteen years, since all lands of medium or high potential have been classified so as to make them only eligible for bonus bidding.

In recent years other jurisdictions, most notably the federal government, have been moving towards expanding the number of bidding systems that could be used in leasing oil and gas lands. The U.S. Senate and House of Representatives have passed different versions of a bill that would accomplish this, and are about to enter conference on this legislation.

The legislation before your committee, HB 854, resembles this federal legislation in a number of important ways. The major thrusts of both the Alaska bill and the federal legislation are directed at expanding a number of leasing systems that may be used by the government in disposing of its land, increasing the opportunities for smaller firms to participate in development of oil and gas resources, and at insuring that the government achieves an appropriate return for the leasing of its oil and gas lands. In addition, the federal legislation establishes

AGO 547106 +

procedures for coordination and review of federal leasing plans by adjacent states, and establishes institutional arrangements for protection of the environment.

The attached material headed "Description of Leasing Methods in HB 854" sets out in summary form the systems that would be allowable under the Alaska legislation as it now stands. Also attached is a memorandum from Mr. Jack Roderick to Commissioner LeResche which describes the rationale which went into choosing these systems. This particular memorandum has been released by the Department with the request that its circulation be restricted to legislators and legislative staff. All the other attached material may be released to the public, if you so choose.

Some points which you may particularly wish to look into in your consideration of HB 854 are noted below:

1. Legislative Review. The legislation calls for submission by the commissioner to the legislature of an annual "leasing program". The administration apparently intends that no lease would be issued unless "it is for an area included in" the program (page 2, line 19). If this is indeed the intent, it perhaps could be clarified by amending language at this point. In any case, the you should note that the bill has been carefully drafted to avoid any active involvement in leasing policy by the legislature. This, of course, is no change from the current policy, but under HB 854 the latitude of the commissioner, in choosing leasing systems and in other matters, has been substantially increased, and the legislature may wish to be more involved.

2. Expenses Charged Against Royalty Oil. The bill contains language (subsection (c), on page 4) which would insure that future leases are not subject to the same sort of dispute over the cleaning and dehydration costs as the state is now litigating with the Prudhoe Bay producers.

3. Choice of Leasing Systems by the Commissioner. Nowhere in the bill does the legislature give the Commissioner of Natural Resources any guidance as to when he should or should not use a particular leasing system. The commissioner is required, in his annual "leasing program" submission, to explain to the legislature why he believes a particular system should be used in a particular area. However, the choice and the adequacy of the justification remain beyond legislative review. In the attached material DNR has provided some explanation as to the conditions that would call for the use of one system or another. The legislature may wish to consider these explanations, and - if it agrees with them - may wish to include language within the law to give the commissioner (and future commissioners) guidance along these lines.

4. Work Commitment Bidding. Paragraph (4) (on page 5) would establish work commitment bidding as a leasing alternative. Under this system the bid variable would be the amount of effort the lessee agrees to expend in exploring the land. Use of this alternative will, on the average, result in less revenue to the state, with the revenue that is foregone by the state being expended in developing resources that would otherwise be uneconomic. This is a clear instance of economic subsidy. The legislature may wish to consider whether this subsidy is desirable, and if so, whether this is the most efficient way to provide it.

5. Commissioner's Discretionary Authority to Reduce Royalty. The commissioner now has authority to reduce the royalty rate on tracts having marginal production. So far as we know this authority has never been utilized. Subsection (d) of the proposed law (page 6) retains this authority to lower royalties. It becomes much more significant in the context of this bill, however, because of its use of royalty bid and sliding scale royalty leasing systems. Particularly in the case of the royalty bid arrangement, a lessee may, with a very high royalty bid, acquire a tract on the assumption that the commissioner will reduce that royalty if and when production is developed. The legislature may wish to consider the possibly of limiting this authority to only to royalties paid ~~the~~ WHEN production level is within the lowest block of the royalty schedule, i.e., at the bottom of the "sliding scale".

6. Non-competitive Bidding. HB 854 would allow the commissioner, at his discretion, to offer acreage on a lottery system if the acreage had not received a bid in an earlier competitive sale. The legislature should be aware that this system, in combination with initial offerings at unrealistically high minimum bids, could be used to give away the state's oil and gas resources to private individuals or firms.

We will be pleased to examine these or other questions in more detail. We are confident that Mr. Lipton, Professor Gaffney, and the industry will raise additional questions that the legislature may also wish to examine.

GKE:dh
Attachments

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
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LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

May 30, 1978

SUBJECT: CSHB 854 and the Effects of Using Multiple Oil and Gas Leasing Methods on Unitization

TO: The Honorable Kay Poland

FROM: Gregg K. Erickson
Director of Research

Summary

At the Senate Resources Committee meeting on Friday you received testimony to the effect that the use of differing leasing methods on adjacent tracts, as would be permitted under HB 854, would make it difficult to establish unitized development and production of the pools over which those tracts lie. Generally, our studies of this question, which we have conducted since the matter was first raised several months ago, do not support this conclusion. On the contrary, they show that the incentives to unitize will not be seriously reduced by diverse lease arrangements, and that the difficulties of reaching unit agreements will not be increased as a result of this diversity.

The Incentive To Unitize

Unit arrangements exist and are encouraged by state policy because centralized, unitized operation of an oil or gas field can and usually will result in substantial reduction in the expenses of extracting the resource, and in absolute gains in the total amount of oil and gas recovered. That the potential for these gains exists is, under the circumstances we have had in Alaska, almost never a matter of contention among the leaseholders who would be a party to a unit.[1] The most

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[1] See Bradner, Tim, "Oil and Gas Regulation in Alaska," *Alaska Review of Business and Economic Conditions*, 1971.

important question here is therefore: Will the use of differing leasing systems as contemplated in HB 854 significantly reduce the incentive to unitize that is provided currently by the very real benefits of joint, unitized field development and operations?

We think not. At a high royalty rate, as might be encountered under straight royalty bidding, the benefits in the form of increased production are, of course, shared with the landowner on the basis of the royalty percentage. But all the benefits in the form of reduced costs remain with the lessee. In a net profits arrangement the benefits of increased production and reduced expense are both shared with the lessor, but still leave the lessee with substantial incentive to partake of the advantages of unitization. Naturally, if the royalty or net profits rates were set at or close to 100 percent these incentives would disappear, but so would the incentive to develop the tract at all.

Difficulties in Unitization

Despite the retention of a clear incentive to unitize under a mixture of leasing methods as in HB 854, it is possible that a mixture of systems might create a practical barrier to unitization. This might occur, for example, if the differing lease terms made it impossible for the lessees to agree on the proper apportionment of the unit's expenses and produced oil and gas.

Current Alaska law provides only general guidance as to how this allocation is to be made.[2] The usual practice has been to allocate the costs and production generally on the basis of the costs and production that would accrue to an individual leaseholder were he to operate the tract on an individual, non-unitized basis. Another method less frequently employed, but used, at least partly, in the formation of the Prudhoe Bay unit, is to allocate expenses and actual production on the basis of the original petroleum in place underneath each lease. Other factors, or combinations of these factors, may also be considered, and one study has distinguished examples of 42 different methods of apportioning participation.[3]

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[2] AS 31.05.110(c) provides that "each plan of unitization shall contain fair, reasonable and equitable provisions for...the division of interest or formula for the apportionment and allocation of the unit production, among and to the several separately owned tracts within the unit area such as will reasonably permit persons otherwise entitled to share in or benefit by the production from such separately owned tracts to produce and receive, instead thereof, their fair, equitable and reasonable share of the unit production or other benefits of it; a separately owned tract's equitable, and reasonable share of the unit production shall be measured by the value of each such tract for oil and gas purposes and its contributing value to the unit in relation to like values of other tracts in the unit, taking into account [1] *acreage*, [2] *the quantity of oil and gas recoverable from it*, [3] *location on the structure*, [4] *its probable productivity of oil and gas in the absence of unit operations*, [5] *the burden of operations to which the tract will or is likely to be subjected*, or so many of these factors, or such [6] *other pertinent engineering*, [7] *geological* or [8] *operating factors* as may be reasonably susceptible of determination...." (emphasis and numbers added)

[3] A. A. Khan and H. H. Power, "An Analysis and Comparison of Engineering Bases of Participation in Unit Agreements," *IOCC Committee Bulletin*, December 1960, p. 101.

Reaching an agreement on the theoretical basis for allocating participation and resolving all the associated technical issues can be a complex, difficult and protracted process. Although all parties usually have a clear view of the overall benefits to be gained from unitization, some may "hold out" in hopes that by doing so they may be able to extract a better deal from their fellow lessees concerning the allocation of the benefits of unitization.[4]

The question here, though, is whether differing lease arrangements will make reaching an agreement *more* difficult. In our view, the question answers itself when considered in the context of Alaska's unitization law and the permissible bases for apportionment of participating unit interests enumerated therein.[5] For example, is the "acreage" in a lease altered by the fact the lease contains profit sharing arrangements? Is the "location or the structure" affected by the royalty arrangements? Or are the "engineering, geologic or operating factors" influenced by either? We believe it is obvious that they are not.

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[4] For a listing of the problems that can arise in unitization negotiations see Stephen McDonald, *Petroleum Conservation in the United States: An Economic Analysis* (Resources for the Future, Washington: 1971), pp. 198-201.

[5] AS 31.05.110(c). See note 2, *supra*.

A Final Point

As a final point, we note that tracts bearing differing royalty burdens have already been included in units, in Alaska and elsewhere, wherever individual holders of federal and state noncompetitive leases have sold those leases while retaining overriding royalties. Moreover, differing lease arrangements are likely to exist in the future side by side wherever Native corporation or federal and state oil and gas lands are contiguous. It is possible, of course, that if the legislature gives the commissioner of Natural Resources authority to use alternative leasing methods that these differences may be reduced or eliminated.

GKE:jm

cc: Members, Senate Resources Committee
The Honorable Chat Chatterton
The Honorable Hugh Malone
Mr. Phil Holdsworth

yle
HB 854
o&g leasing

March 8, 1973

Robert LeResche
Commissioner

Position Paper on HB 854
Oil and Gas Leasing

Here is a clause-by-clause analysis of HB 854. Coupled with my memo to you of February 28, 1973, you should have much of the information needed for the hearings scheduled before the House Resources Committee on March 16 and 17. Note that I am already recommending amendments. Perhaps we should offer them on the 16th. Milton Lipton is to testify after us on the 16th; Mason Gaffney will testify on the 17th.

Section 1

(a) Purpose clauses - self explanatory

Choice of the phrase ".....minimize the exploitation of these natural resources...."
(1)(B) meaning to reduce uneconomic exploration, may be unfortunate. These words do not mean that leasing is opposed. Likewise the phrase "....while minimizing revenue from unsuccessful exploration " (1)(D) which means the state's desire to share less in bonuses and more ... oyalties, etc.

(b) Five year leasing program. As precisely as practicable, the commissioner determines the size, timing and location of leasing which he expects to take place during the following five-year period. He "approves" the program and must review "at least once each year." We may wish to change this to "no more than once each year" if more stability is desired. He may "revise" and "reapprove" the leasing program.

The leasing program is submitted to the legislature "for its information" (not approval) within 10 days after the convening of each regular session. The first leasing program is due on or before January 1, 1980.

(4) Leasing program procedures. An AMENDMENT deleting "by regulation" will be necessary. We believe it will be sufficient for the commissioner to establish procedures for the formulation review and revisions to the leasing program. Pre-leasing regulations, which apply to the sales, will be in addition to these leasing program procedures. Should regulations be required for the leasing program, any revisions by the commissioner would probably require a formal hearing or hearings. We feel this would not be necessary.

Included in the procedures will be nominations of areas to be included or excluded from the leasing program, and notice to the federal and local governments and to the public who wish to participate in the development of a leasing program are called for, as well as coordination with the CZM program.

Perhaps an AMENDMENT specifying which federal (Dept. of Interior?) and local (boroughs?) agencies should review.

AGO 547058

(5) Annual bidding method report is submitted to legislature within 10 days of the convening of each regular session. The report includes:

(A) A schedule of all lease sales held during preceding year and bidding method or methods used;

(B) Schedule of all lease sales to be held the next year and bidding method or methods proposed to be used;

(C) Cost-benefit analysis associated with each method;

(D) Reasons why a bidding method was selected;

(E) The reasons why more than 50% of the area leased in the upcoming year is to be leased under one particular bidding method;

(HR 1614, the House OCS bill, requires that sliding scale royalty, net profits and work commitment bidding methods be used not less than 20% nor more than 50% of the time.

This provision applies for 5 years, but can be waived by the Secretary. S9 requires, for five years, that bonus bidding not be used more than 50% of the time in areas where there has been "no development" prior to October 1, 1975. The Secretary determines these areas.)

(c) HB 854 requires that all lands will be first offered competitively. Only one bid variable will be used in any bidding method. Bids will be sealed, or other methods can be used. The state's royalty share will be free of all lease or unit expenses, including separation, cleaning, etc. costs.

Following a pre-sale analysis, the commissioner may choose at least one of the following leasing methods (which are all included in HR 1614 or S9):

(1) Bonus bidding

(A) Cash bonus bid with a fixed royalty - this is the present competitive method

(B) Cash bonus bid with a sliding scale royalty (see B. Mondzell's Memo dated 3/1/73 attached)

(2) Royalty bidding

(A) Fixed bonus with royalty as the bid variable

(B) Fixed bonus with sliding royalty as the bid variable

(3) Net profit bidding

(A) Cash bonus bid, fixed royalty, not less than 30% net profit (in OCS legislation 30% net profits equates to 12½% royalty)

(B) Fixed bonus, bid net profit--this is the only bidding method that does not require of royalty of not less than 12½%. "In kind" taking is protected by the state's right to purchase (v).

(C) Fixed bonus, fixed royalty, bid net profit

(D) Net profit share is "royalty" for Permanent Fund

(4) Work commitment bidding

Fixed bonus, or fixed royalty, or fixed sliding scale royalty, or fixed net profit, or any combination. Work commitment bid in dollars. 20% of the dollar amount bid in cash or performance bond required at the time of bid.

State may recover unperformed amount. Commissioner may terminate if work is unnecessary or cumulative. Regulations will permit the inclusion of all costs, except lessee's general overhead, toward work commitment. (S-9 requires 100% cash or performance bond. HR 1614 fixes a bonus at not less than $62 per hectare ($25/acre) and fixes the royalty at 12½% or 30% net profits.)

(d) Regulations allowing reduction of royalty during declining production, beginning two years after initial production. (HR 1614 allows the Secretary to eliminate any royalty at any time.)

(e) Commissioner may defer any part of the payment of the cash bonus up to five years.

(HR 1614 - same)

(f) Commissioner may withhold acreage from particular sale - this provision may be unnecessary unless legislature feels authority should be specified in order to withhold a tract from leasing block.

(g)(h) Regulations governing net profits and work commitments will be adopted. (Question: Should definition of allowable costs in net profits and work commitment be in the bill? Ad Hoc leasing committee thought not.)

(i) With consent of the leaseholder, state may store or trade its royalty. (HB 815 addresses this matter and appears to prohibit all storing; i.e. underlifting or overlifting.)

(j) Maximum size of lease is 5,760 acres, except subsec.(t). Presently, uplands 2,560 acres, offshore 5,760 (same as OCS).

Lease term 5 years, (except up to 10 years if environmental conditions severely restrict operations) or so long as produced in paying quantities (same as OCS). Unit or drilling will hold a lease. Commissioner must give

reasonable time to place a shut-in well on producing status (same as existing law). Rental may be increased not to exceed 150% of the rental the preceding year for a lease held past the primary 5-year term. (Presently a minimum royalty of $1/acre is charged on shut-in leases). By regulation, commissioner may require the lessee to drill deeper or the deeper horizons revert to state for resale. (Perhaps this requirement to drill deeper can be accomplished by inserting stronger due diligence language in lease contract.)

(k) Freeze rental at abandonment or until royalty, net profit or work commitment exceeds rental for 3 consecutive years.

Rentals are:
Year 1 = $1.00/acre
Year 2 = $1.50/acre
Year 3 = $2.00/acre
Year 4 = $2.50/acre
Year 5 = $3.00/acre

(present rentals - competitive $1/acre; noncompetitive .50¢/acre)

(l) May issue holder of a federal or private lease or state shorelands lease within its boundaries. Term may not exceed 5 years. (These are lands determined to be "navigable" during lease term.)

(m)(n) Unitization (existing law). No changes.

(p) Pooling for well spacing (existing law). No changes.

(q) Development or drilling contracts (existing law). State may share in the costs of exploration (new). These contracts have been authorized for years, but never used. We did not delete from HB 854 in order to allow the legislature to decide to eliminate or to keep. Work commitment and subsection(t) could replace these contracts. (S9, OCS, Federal government can share in exploration costs.)

(r) Subsurface storage (existing law). AMENDMENT. By error last line in existing law was not included. Should be added.

(s) Lessee's report on "local hire" (existing law). Provision required in lease (new).

(t) Tracts receiving no bids may be offered on flexible terms including noncompetitive. [illegible] include a sliding scale royalty. Rentals may be less than in subsec(k) and tracts may exceed 5,760 acres in size.

(u) Authority to restrict joint bidding by major or multi-national oil and gas companies to encourage competition.

(HR (HR 1614 restricts joing bidding to companies who have 1.6 million barrels or more per day production. Also, anti-trust review by the Attorney General and the Federal Trade Commission is required.)

(v) State may purchase up to 16.66% of oil and 100% of gas production at the regulated price or fair market value. Purchased petroleum may be used as "in-kind" royalty.

(w) The commissioner is given the right to obtain "all data" obtained from exploration, development or production from the lease. This is simply the lessor's recognized right to have what information it deems necessary to intelligently manage its land. (Title 30, Section 251.12, Code of Federal Regulations gives the Secretary the right to inspect and select for at least one year any or all geological or geophysical data collected by the lessee. This includes geophysical data, processed geophysical information and reprocessed information. It does not include interpreted geological or geophysical information. Data must be kept confidential for ten years after the issuance of the permit, and, then, processed, reprocessed and interpreted geophysical information is released to the public. Geological data and analyzed and interpreted geological information obtained from deep strategraphic tests are released five years after completion of the test well or 60 calendar days after the issuance of the first Federal lease within 50 geographic miles of the test site, whichever is earlier.)
POSSIBLE AMENDMENT TO INCLUDE CONFIDENTIAL STATUTE AS 38.05.035

Section 2

Notice requirements of AS 38.05.135(b) retained for competitive sales; deleted for noncompetitive

Section 3

Upland acreage limitation reduced from 500,000 acres to 200,000 acres. Offshore maximum acreage remains at 500,000 acres. AS 38.05.140(c)

Section 4

The priority given a Federal oil and gas offer to a state noncompetitive lease is extinguished. AS 38.05.145(b) This provision now provides that if lands on which a federal oil and gas noncompetitive lease offer exists is classified as competitive by the state within 90 days of receipt of tentative approval from Interior, the priority given the Federal offeror to a state noncompetitive lease is extinguished. I believe an AMENDMENT to HB 654 will be necessary to specify that as of the effective date of the Act all state lands will be classified as competitive. Thus, any lands which subsequently are tentatively approved will not grant a priority to a noncompetitive offer. Approximately 80 Federal offers have earned a preference right and will be awarded state noncompetitive leases under the existing law. The amendment will need to protect these existing rights.

HB 654 will also need an AMENDMENT to AS 38.05.180 which will specify the extension rights of existing state noncompetitive leaseholders. Under AS 38.05.180(c) upon expiration of the initial five-year term of a noncompetitive lease the lessee is entitled to a five-year extension unless the lands are determined to be competitive in which case the lease is extended for only two years.

TO: LeRESCHE
FROM: RODERICK

The AMENDMENT should read:

"A noncompetitive lease existing at the affective date of this Act shall be extended for a period of two years and so long thereafter as oil and gas is produced in paying quantities. A noncompetitive lease extended under this paragraph is subject to the rules and regulations in force at the expiration of the initial five-year term of the lease. No extension may be granted, however, unless within a period of 90 days before the expiration date an application for extension is filed by the record title holder or an assignee whose assignment has been filed for approval, or an operator whose operating agreement has been filed for approval."

cc: J. P. Green

TESTIMONY ON

ALASKA LEASING POLICY BILL

(H.B. 854)

By
Rod L. Boane
Alaska District Manager
Exxon Company, U.S.A.

Before The
State of Alaska
House Resources Committee

Juneau, Alaska

March 17, 1978

AGO 547114 +

Mr. Chairman and Members of the Committee --

I am Rod L. Boane, District Manager for the Alaska Exploration District of Exxon Company, U.S.A. I appreciate the opportunity to be here today and present the views of my Company concerning the proposed Leasing Policy Bill.

First, let me say that Exxon believes the existing provisions of Section 38.05.180 of the Alaska Statutes are quite satisfactory in administering adequate control over exploratory and development activities on State leases. Therefore, we do not believe these new amendments to the Statutes are needed to protect the public interest. On the contrary, we think the proposed amendments would create unnecessarily involved and cumbersome procedures that will neither foster needed exploration nor benefit the State of Alaska. Although we take exception to almost all features of the proposed amendments, in the interest of time, I intend to discuss only the more troublesome provisions, with particular emphasis on the proposed bidding methods.

Exxon believes that the best method for awarding leases is on a cash bonus basis. This system has several advantages which I would like to review.

- First, the successful bidder sees very strong incentives to explore and develop rapidly and to recover the maximum economic volume of hydrocarbons at the lowest possible cost. This is necessary in order for him to maximize the return on the cash bonus invested.

- o Second, under the cash bonus system, the State bears none of the risk that commercial reserves will not be found. This risk is placed directly on industry where it belongs. This is a particularly critical concept in Alaska which is still essentially a frontier province where very little exploratory drilling has occurred and thus very little is known about the oil and gas potential of most of the State. When one further takes into account the fact that Alaska is a very high cost area due to its remoteness and harsh operating environment, it should be easy to see that the exploration risks and costs are indeed great. The Gulf of Alaska history should prove this point as, thus far, no commercial discovery has been made.

- o Third, under the cash bonus system there is no possible way that the awards will be made in an arbitrary manner since the highest bid is obvious.

- o Finally, the system is simple and inexpensive to administer, and its integrity is unaffected by future events. The State would not have to expand its staff to implement this system.

Now I would like to compare the alternate bidding methods proposed in this legislation to conventional cash bonus bidding with fixed royalty. Basically, the proposed alternative bidding methods fall into one of three categories. The first category involves some form of royalty bidding. The second category uses

some form of net-profit bidding. The third category uses some form of work commitment. All three categories require a cash bonus, either as a bid variable or a fixed amount. Let's first examine the royalty bidding systems.

(1) It is not uncommon for operators to discover reserves of lesser magnitude than anticipated. With high fixed royalty, some of these discoveries could not be developed profitably unless the State agreed to accept a lower royalty than originally bid. Downward adjustment in royalty rate prior to any development would be difficult to administer and could undermine the integrity of this bidding system.

(2) With royalty bidding, the successful bidder does not have a strong incentive for rapid exploration and development since front-end cash investment is small. Speculators could therefore see incentives to acquire leasehold interest, and then wait in hopes that they will be able to cash in on the discoveries made by others. This situation would obviously result in delayed exploration and development activities.

(3) With exclusive royalty bidding, the public bears the major portion of the exploration risk because if the tract doesn't contain commercial hydrocarbon reserves, as the majority will not, the public receives no compensation whatever. As an example, the State received $900 million in bonus for acreage on the North Slope in the September 1969 sale. Under a royalty bidding system the State would have received little income to date. We strongly believe that risk-taking and its associated rewards or losses are more properly the province of private enterprise.

The second royalty bidding system involves a sliding scale royalty system which would be difficult to monitor and, practically speaking, would make it impossible to compare bids unless you know the total reserves, the price at which production would be sold, and the rate of production. Sliding royalty could result in widely differing positions on prudent development. Also, unitization of tracts would be a very complex and difficult job.

With these comments in mind, let's review recent experience with royalty bidding in the Federal sector. A program of experimentation began with the recent sale in the Lower Cook Inlet. Thirty-four percent of the tracts were put up for royalty bidding. Selection of these tracts was in such a manner that they were scattered over the entire sale area. When this type of tract distribution is coupled with a forced unitization lease stipulation, it is not difficult to conclude that the owners of the royalty tracts have no incentive for rapid evaluation. They can just sit back and wait for the owners of cash bonus tracts to do the initial drilling. They can then join the units covering any reservoirs that extend under their tract.

After the Cook Inlet sale, this problem apparently became obvious to the Department of Interior. For the North Atlantic Sale (Sale #42), they attempted to "fix" this problem by grouping the royalty tracts together and having them removed from the cash bonus tracts. They further expanded the experiment by having a group of cash bonus tracts that had a fixed royalty of 40 percent.

Industry comments relating to royalty bidding have apparently begun to create some concerns about this system. In the upcoming South Atlantic Sale (Sale #43), we see another attempt to "fix" difficulties in the previous system. Tracts are being offered by cash bonus bidding with a sliding scale royalty. They have attempted to "fix" the unitization problem by again grouping the sliding scale royalty tracts together. However, they did not address how a group of sliding scale royalty tracts or sliding scale royalty and cash bonus tracts would be unitized.

Now that this experimentation process has begun, we see the continuing creation of new difficulties and complexities as attempts are made to correct previous difficulties and problems. It appears that this process is going to have a "snow-balling" effect and may eventually reduce competition. In this situation, only the companies that can afford to dedicate a large professional staff to the long unitization negotiations and wait long periods for initial production will servive. This certainly does not promote increased competition.

Now let's look at the second bidding category a profit-sharing system, which has most of the same adverse characteristics as royalty bidding, but with four added complications and disadvantages.

(1) Using net profits will be much like selecting a contractor to perform a job. The operating efficiency of the bidder could become an important consideration in determining which of

several bidders had submitted the high bid inasmuch as the gross proceeds to be received by the public would be a direct function of the efficiency of the operator. Thus, the successful bidder would no longer be obvious. Since the relative operating efficiency of companies cannot be determined quantitatively, the Commissioner would be vulnerable to charges that bid awards were being made in an arbitrary or discriminatory manner.

(2) A profit-sharing system would be difficult and costly to administer. A large administrative organization would likely be established to audit and monitor the continuing activities of lessees. Discretionary judgments would be required by the State with regard to what costs were to be included or rejected in the profit base. This system could lead to State control of expenditures.

(3) A profit-sharing system would significantly reduce the incentive for a successful bidder to operate at maximum efficiency. Any prudent operator utilizes a priority system when restraints of either manpower or materials create limitations. When these restraints exist, net-profit tracts will have low priority. The result - reduction of efficiency. It would also reduce the timing and incentive for development of advanced technology currently in progress by industry.

(4) Most important, sharing in net profits would signal the State's entry into the production phase of the oil business. It might be politically and economically difficult for the State not

to be deeply involved in decisions about day-to-day operations and thereby become an operating partner. This step would not be consistent with the maintenance of a strong private enterprise system either within the oil industry or within the State itself.

The third category of bidding system is work commitment which can be combined with any of the other methods. A work commitment bid becomes a form of cash bonus bidding. If an operator has a high interest in a tract, he will bid a work commitment which is equivalent to what he would bid in a cash bonus system. In many instances, this committment would be much larger than required for evaluation. If early exploration results are negative, the operator remains committed to drill more wells than would normally be prudent or necessary.

The provision that the Commissioner can terminate a work commitment further complicates the issue. Termination of a work commitment for one operator would undoubtedly result in inequities because he has received an unfair competitive advantage. Continuation of this practice could result in extremely high work commitments in anticipation of cancellation after performing only a portion of the work.

A work commitment bid will be nothing more than a form of cash bonus. The same result can be accomplished more easily and efficiently with a cash bonus bid.

Now I would like to discuss a few other provisions which give us concern.

(1) AS38.05.180(v) Right to Purchase - The provision gives the State the right to purchase not more than 16 2/3 percent of the oil and 100 percent of the gas. The most onerous portion of this provision is the right of the State to purchase 100 percent of the gas.

The present and potential supplies of gas within Alaska far exceed reasonably anticipated demands by the State residents. Therefore, to find a market, this gas will have to move into interstate commerce. This requirement, that the State could remove the gas from the market, could severely hamper a producer's ability to market the reserves. Without a reasonable expectation that the developed gas can be marketed, there is greatly reduced incentive to explore.

It would also retard development of natural gas for State residents. The risk that the gas could be diverted would have significant impact on ventures to install gas transportation systems.

In addition to these concerns, it raises other questions such as:

1. Determination of fair market value
2. Use of gas for lease fuel
3. Timing and rate of production - could the State control these to satisfy their own requirements or desires?

(2) AS380.05.180(w) - Exxon is strongly opposed to this proposed section which requires any lessee or permittee conducting exploration for, or development or production of, oil or gas on State land, to provide the Commissioner access to all data obtained from such activity and to provide copies of such specified data, as the Commissioner may request. Access to all data could potentially permit endless intrusions into private business. Much of this data is very costly. In a competitive industry such as ours, a considerable amount of data is proprietary. Disclosure of this type of data could result in the loss of a competitive edge. In none of the other producing states are operators required to provide access to all data. In addition, we feel that any such requirement would, in effect, constitute a "taking" for which compensation by the State would be required. We believe this proposed amendment is unnecessary and should be deleted because the existing regulations provide the State with adequate control over exploration and development activities.

(3) AS38.05.100(1) - We are strongly opposed to the concept of earning production rights only to the depth drilled at the beginning of production from a lease. We are not aware of this language in lease forms for any other producing state.

This language is somewhat similar to that commonly used by a lessee in "farming out' acreage for the purpose of evaluating specific geologic objectives by a third party. In a frontier

province like Alaska it doesn't make any sense to place such restrictions in the lease form. The idea should be to give the lessee maximum flexibility in evaluating his acreage - not to curtail or to require unreasonable and costly actions on his part. We, therefore, strongly suggest that this language be deleted.

We also recommend that reworking be added to the list of actions which will hold a lease in force. In fact, a grace period of 60 days should be allowed between cessation of production and initiation of drilling or reworking operations. This useful and desirable feature is in the present law.

(4) AS38.05.180(j) Lease Term - A five-year primary lease term is very restrictive in Alaska. The remote location of most prospects, rugged terrain, short construction season, and reduced drilling season, either necessary or imposed, make completion of the exploration cycle a difficult and time-consuming process. Once a discovery is made, additional drilling is required before an estimate of the field size can be made. All of the previously mentioned factors affect this drilling too. Once the lengthy process of discovering a field and establishing its commerciality is complete, the long development phase must begin. We strongly recommend that the 10-year lease term be retained.

(5) AS38.05.180(c) Uplands Acreage Limitation - The proposed 200,000-acre limitation on all lands other than tide and submerged lands is very restrictive compared with the current 500,000-acre limitation in a State like Alaska which has so many frontier

interior basins to explore. In a hostile high cost environment such as Alaska, a large block of acreage may be necessary in order to justify exploration. We believe the proposed 200,000-acre limitation would be a strong disincentive of an operator to explore these frontier interior basins and strongly recommend maintenance of the current 500,000-acre limitation.

(6) AS38.05.180(u) Joint Bidding - The provision allowing the Commissioner to restrict joint bidding, if he so desires, could prohibit the involvement of some companies most capable of operating in the Alaskan environment.

A study was performed by the University of Southern California and the USGS to determine the effects of restricting majors from bidding jointly in the OCS. They concluded that on the average, this restriction resulted in more bids per lease by the major oil companies.

(7) Legislative Review - We object to the requirement for submission of the leasing program for annual review by the Legislature because we believe it will result in unnecessary delays in implementing leasing programs.

(8) AS38.05.180(q) Drilling and Development Contracts - The proposed amendment which would allow the State to share in exploration costs is inconsistent with the provisions of the lease agreement, as the State's royalty interest is free of all exploration

and development costs. If this is intended to allow the State to share in working interest, we are opposed since it would signal entrance of State Government into the oil and gas business.

In closing, I would like to reiterate that Exxon believes the current leasing statutes and the implementing and regulations have served the State and industry well and do not need to be changed.

Passage of this bill will require the State to embark into an experimental program. Because these systems are unknown, many mistakes will be made. New "wrinkles" will be tried in order to correct these mistakes. In fact, the State of Alaska will find itself taking a course which is identical to the course presently being followed by the Federal Government. The end result will be an extremely complex system which may allow only a few companies to survive.

This concludes my prepared testimony, and I will be happy to answer any questions which you may have.

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TESTIMONY ON H.B. 854

Mr. Chairman, members of the committee, my name is John Carson, and I appreciate the opportunity to comment on House Bill 854.

I've been a petroleum geologist for 22 years, and I'm presently Division Geologist in Alaska for Chevron U.S.A., the principal domestic oil and gas subsidiary of the Standard Oil Company of California. I've lived and worked in this state, and since 1965, I've been actively involved in all state lease sales and the two OCS sales in the Gulf of Alaska and the Lower Cook Inlet.

Chevron is aware of the amount of preliminary work done by the state administration and the Department of Natural Resources in researching and drafting this legislation.

We commend efforts in drafting legislation that proposes a five-year leasing program for Alaska. We believe the state should be encouraged in its effort to establish and maintain such a long-term program, with appropriate industry participation.

Members of the committee, the petroleum industry--as indicated by its response to your solicitations--clearly desires a realistic plan that can serve as the basis for an effective working relationship between the industry and the state.

Frankly, we believe the proposed legislation will inhibit or prevent orderly development of oil and gas resources in Alaska--to the detriment of the state government, its taxpayers and my own industry.

AGO 547127

I will say candidly that this legislation is untenable from our point of view. If enacted into law, H.B. 854 would have a serious and far-reaching impact on my own company, and would give us serious cause to reconsider our exploration activities in the high-cost, high-risk frontier state lands of Alaska.

The situation we face today reminds me of a quote I heard the other day attributed to an executive of Walt Disney Productions, which recently announced that it was abondoning its latest recreation complex because of excessive and oppressive regulation.

The Walt Disney executive blamed the end of the project on, and I quote: "An irresponsible proliferation of delays, the never-ending requests for more irrelevant information and studies, and bureaucratic sidetracking and meanderings into unreasonable alternatives."

I realize this is the first of many hearings on this legislation, but H.B. 854, as now written, would be counter-productive. It actually would be a step backward at the very time our nation desperately needs an effective oil and gas exploration program.

Generally stated, we object to provisions covering: 1) the wide variety of bidding methods to be employed; 2) the Commissioner's access to all the lessee's data, including proprietary data; 3) the state's call on production; 4) short and restrictive lease term and conditions; 5) the need for the Commissioner to submit and defend his lease plan before the legislature; 6) the Commissioner's right to ban joint bidding by major companies; and 7) reduced acreage chargeability on state uplands.

Time does not permit me to discuss in detail each of the provisions, but I will attempt to outline our most significant objections:

First, the wide variety of bidding methods:

In advocating numerous bidding schemes--actually a shift from only cash bonus bidding, a system that has worked well--the administration hopes to maximize its financial return from state lands.

But Chevron believes a move away from the cash bonus method means the perilous abandonment of a proven concept that has brought stability to the state's leasing program. The bonus system would be replaced by an array of untested leasing methods, particularly in the frontier areas.

We believe this provision, if enacted, will transform Alaska into a trial-and-error laboratory in oil and gas leasing. It means replacing orderly development with uncertainty and the unknown. It's not a gamble Chevron feels is worth taking.

Before discussing each bidding system, all concerned parties should be aware that a move away from cash bonus bidding will result in three key developments:

First, it will shift a substantial part of the burden of risk from industry to the taxpayer.

Second, it will serve as a substantial deterrent to exploration and development, and

Third, it will cause the rapid and constant growth of state agencies to administer, evaluate and audit the leases and subsequent production. This places increasing demands on taxpayers to support this bureaucracy.

Chevron believes these are unacceptable consequences which would be intolerable to the taxpayers and leaders of this state.

As you know, cash bonus bidding provides that leases be awarded to the highest cash bonus bidder. This bonus is paid before the lessee can proceed with exploratory drilling on the lease.

The other bid methods provide for bid variables such as royalty, net profit, or work commitment. In these cases, the state receives nothing other than perhaps a small fixed bonus at the time of leasing. Other revenue is not forthcoming under the royalty and net profit schemes unless there is production. Simply stated: No production, no revenue.

In our opinion, cash bonus bidding is the only method that will strongly encourage the petroleum industry to lease and explore the state land.

We further believe that this method will result in the production of the most oil and gas and consequently will provide the most revenue, both to the state and the petroleum industry.

The other methods, employing biddable royalties and net profits, reduce the incentive to explore and produce. These alternatives, particularly in the case of biddable royalties, serve to shorten the economic life of the fields--resulting in less production and, therefore, less revenue.

Cash bonus bidding is particularly advantageous to the lessor in frontier areas of high risk. Most of Alaska's lands are in this category.

Now let's compare other proposed bidding methods with traditional cash bonus bidding. Because of time limitations, I can only touch briefly on these, but I am prepared to go into more detail if questions arise.

The royalty bidding method, although it allows oil and gas companies to acquire land with little cash, is a strong deterrent to early drilling. Very simply, it is easier and cheaper to wait on others to bear the risk and expense of exploratory drilling.

Having spent little capital to acquire the lease, an operator is tempted not to spend a dime to evaluate the lease, hoping an adjacent leaseholder may do it for him. Carried to the extreme, the effect of this would be that no wells would be drilled to evaluate the leases. This same problem is inherent in the net profits system, which I'll talk about shortly. On the other hand, when cash bonus is involved, the winning bidder has a strong incentive for early drilling because his bonus investment is earning him nothing.

In cash bonus bidding the state assumes none of the risk but still receives revenue from leases, whether or not they are productive.

The advantages of this system were clearly demonstrated a few years ago in the sale of federal leases off the coasts to Mississippi, Florida and Louisiana. Successful bidders paid $743 million for several tracts on one structure, the Destin Anticline, and spent over 10 million dollars drilling seven dry holes on the structure--all at no cost to the taxpayer. Under royalty or net profit bidding, the government would have received nothing.

What would government have received if it had sold the Gulf of Alaska on a royalty bid basis? As in the Gulf of Mexico case I previously cited, nothing. Should the taxpayer and the government be forced to suffer the loss of more than one-half billion dollars--when to date, no royalty appears forthcoming?

The NPRA comes to mind as another example of an area adjudged to possess high potential, but which so far is a disappointment. Again, if sold on a royalty bidding method, the lessors would have received nothing to date.

Let me emphasize that in all these cases, the areas were considered extremely attractive to both the industry and government. These are precisely the types of areas in which the state might be enticed to use a royalty or net profit bidding method. Yet none of these has led to any discovery or government revenue.

Proponents of royalty bidding believe it encourages competition among bidders and allows the small company and the independent improved entry into oil and gas lease bidding. Cash bonus bidding usually is blamed for tending to discourage small companies from bidding.

This is not supported by the facts. Small companies gain entry into the sale by joining with a larger company or with several other smaller companies. In the recent Lower Cook Inlet sale, independents and smaller companies bid on royalty and cash bonus tracts with about the same frequency as the majors. Of the 34 companies which bid in the sale, 18 were smaller companies. These 18 made successful cash bonus bids on 26 tracts, of which 13 were sold for more than one million dollars. Moreover, the small companies are represented in half of the top tracts of the sale.

The second proposed bidding method we are concerned about is net profit bidding. This system has most of the disadvantages of royalty bidding plus two more: It requires a huge staff to administer and audit.

For example, each property would require a battery of accountants to audit the companies' production and costs. Just as in the case of royalty bidding, the risks are passed on to the government. Furthermore, net profit bidding discourages cost-effective, efficient development practices.

Work commitment bidding is the least onerous alternative to cash bonus bidding methods and would be beneficial, provided that it is enforceable. We view this method with some caution because of the uncertainty of the conditions under which it might be imposed.

At this point, I would like to summarize why we believe a majority of the industry prefers cash bonus as the best method for both the state and the energy explorers.

First, we believe it is the foundation for all free enterprise contract arrangements;

Second, it is the simplest and easiest to determine and administer by all parties;

Third, it is fair and equitable; by this I mean that all parties travel at their own risk, and finally,

The right to explore is paid for in advance.

In 1977 the Department of Natural Resources completed a report entitled, "A Study of Petroleum Leasing Methods and Possible Alternatives." H.B. 854 apparently is based on this study and its conclusions.

In this study, a great deal of attention is given to the "percentage of acreage option." We assume this is the reason for granting the Commissioner authority to withhold acreage from any sale areas under Section 180 (c) (4) (f). Under this scheme, certain amounts of acreage would be withheld from a sale so that following a discovery the state could collect a windfall on drainage acreage sales. This is a workable approach only if you know which acreage to withhold and on which structures. This is rarely the case, as we saw in the MAFLA, Gulf of Alaska and NPRA. Furthermore, industry cannot bid or drill on only portions of prospects in high risk or high cost areas which predominate in Alaska.

I would like to make a few more comments about the Department of Natural Resources' report. The one overriding conclusion of that study was that a variety of bidding methods, widely employed, would increase the state's return from its commitment of oil and gas properties.

Chevron believes this conclusion is biased against cash bonus bidding, and we feel that the odds are against anyone knowing all they need to know to use the right method at the right time. The state, even if armed with a skilled staff and large amounts of data, can hope to do no better than an individual company in evaluating potential and risks, and these companies are more often wrong than right in their appraisals.

We believe the state's report, and particularly its main bias against cash bonus bidding, is based on a few but major faulty economic assumptions.

First, the authors of the report assume that the industry will make an 18 percent rate of return. Although this is very desirable, and would not be out of line considering the high risk involved, past experience shows that the industry has averaged no more than seven to eight percent from OCS ventures which approximates Alaska lands, according to several exhaustive studies. For example, in May 1977 Prof. Walter J. Mead of U.C. Santa Barbara testified before a U.S. House of Representatives Committee that weighted average rate of return from 184 leases issued in the Gulf of Mexico in 1954-55 amounted to only 7½ percent before taxes. This sale period was selected because these leases have a 20-year production history which provides a com= prehensive data base.

Second, no reduction of state income was assumed in royalty cases, but it almost certainly will occur. The economic limit of a field is going to be greatly influenced by the amount of royalty. The higher the royalty, the earlier the economic limit is reached. When an operator can no longer produce oil or gas profitably the result will be oil and gas left in the ground and neither industry, nor the state, will make any money on it.

* * *

Next, I would like to turn to the provision of the bill that would require the lessee or permittee to make available to the Commissioner all data obtained from exploration and production activities on the lease or permit. We believe this provision raises fundamental questions about the appropriateness of the state's entry into the exploration business, and secondly, points to grave problems—from our point of view—about the preservation of confidentiality.

(subsection (aa))

should but
The language in the proposed legislation does not distinguish between, "raw", "processed" and "interpretative" data. We are unalterably opposed to providing the state with the results of the efforts of our interpretative staff. Industry cannot operate under this law. We urge the committee to delete this section.

We are also opposed to giving the state our basic geophysical data. We are not convinced that the state can hold this data confidential because of its large staff and turnover rate. Any leak of this sensitive information to our competitors definitely will have an immediate and adverse impact on our exploration program in this state.

The third provision we object to (Sec. 38.05.180(v)) gives the state the right to purchase up to 16 and two-thirds percent of the lessee's share of the oil and up to 100 percent of the lessee's gas.

We are not opposed to the state's right to take its royalty share of oil or gas in kind, but we oppose any provisions which empowers the state to take any portion of the lessee's share.

In order to justify the risk and expense of exploration and development, and be able to satisfy its contractual commitments, the lessee must retain the right to dispose of all of its share of production. Without this right, the state of Alaska lands become less desirable to explore and develop. We believe this is another step toward the state's entry into the oil and gas business, which should stay with private industry.

It seems inconceivable to Chevron that the state would take a portion of the lessee's share when that is the very incentive for industry to explore in the state initially.

Another provision we oppose is Paragraph Q. Paragraph Q refers to drilling and development contracts and to the authority of the state to share in the cost of exploration.

We're not clear on the meaning and intent of this paragraph. If it means the state intends to become a working interest participant in leases, then we strongly object.

Our next objection concerns the terms and conditions of the lease itself. Because of the remoteness of most of Alaska's land and the seasonal restriction on operations, Chevron prefers a ten-year primary lease term. We feel this length of time is necessary to adequately evaluate a lease under Alaskan conditions.

There is one provision which would allow the Commissioner to grant rights on leases only to the depth drilled at the time production begins. Chevron is at a total loss to see how this provision can benefit the state in any way. It will certainly cause waste in time and money for the industry because wells will be drilled far beyond primary objectives--just to ensure earning the rights of a normal lease. In effect, this will delay production and thereby delay revenue to the state.

Considering the geological, legal and practical ramifications of this provision, one must conclude that it is totally unacceptable to the industry and can do the state no good. It should be stricken from the bill.

Our next objection is to any effort to restrict joint bidding between majors or multinational companies. In Alaska, particularly, with its accompanying expensive costs of exploration and production, it is essential for large and small companies to be able to join together to share the risk.

A ban on joint bidding by majors does not necessarily increase state income. In fact, a recent study by the Department of Interior showed that joint bidders tend to bid higher, on the average, than solo bidding competitors. (November 1976 issue of the Journal of Petroleum Technology.)

The next provision we wish to discuss deals with the need for the Commissioner to submit and defend his leasing program to the legislature. We prefer that the various reporting methods set out in this section not be prescribed in law. We believe this review is an administrative function and that public hearings are an adequate and effective vehicle for gathering comments and reactions to the proposed action. Neither the timber leases nor any other types of state lease are submitted to the legislature, and to require this approach in law for the petroleum industry will lead to further delays in development of the state's natural resources. Particularly objectionable to us is the requirement that the Commissioner must defend his previous year's program and explain why he used certain methods. This is certain to toss the entire leasing program into an interminable bureaucratic morass.

And finally we oppose the provision which deals with acreage chargeability. We believe the reduction to 200,000 acre limitation on uplands is arbitrary and unjustified. The 500,000 acre limitation in this state, where there are large areas of state lands potentially available for bid, is not unreasonable. A large acreage position is necessary as an incentive for an operator to explore frontier areas.

In closing, Mr. Chairman, Chevron believes H.B. 854 is an unreasonable, unwise and unworkable piece of legislation that simply is not in the best interest of the citizens of Alaska.

As I said at the outset of my remarks, my own company would be faced with the prospect of seriously reassessing its current and future exploration activities on Alaska state lands if this bill is enacted.

It is our opinion that this legislation will only serve to inhibit or prevent the orderly exploration and development of Alaska's oil and gas properties.

We oppose a shift away from the successful cash bonus bidding system because we believe that the cash bonus ensures a fair and equitable return to the state, as well as ensuring the fair share of any revenue resulting from production.

It is conceivable that Prudhoe Bay may not have been found if royalty or net profits bidding or percentage acreage option had been employed.

Mr. Chairman, members of the committee, we have serious concern that if this legislation becomes law, the ultimate losers will be the citizens of this state, as well as the consumers of oil and gas.

Thank you for giving Chevron this opportunity to comment on this proposed legislation.

* * *

Rep. Malone

File, HB 854.

EXPERIMENTATION IN ALASKA'S OIL AND GAS LEASING PROGRAM

AN ANALYSIS OF LEASING POLICY ISSUES RAISED IN H.B. 854

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EXPERIMENTATION IN ALASKA'S OIL AND GAS LEASING PROGRAM

-An Analysis of Leasing Policy Issues Raised in H.B. 854-

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ATTACHMENTS

1. Suggested Amendments to H.B. 854.

2. M.I.T. Professor John W. Devarney III, "How to Bid for Offshore Rights," Technology Review, February 1976, p. 44.

3. "Alberta, Canada: Exploratory Drilling Incentive System," The Landman, March 1978, pp. 18-20.

4. Articles from Mineral Leasing as an Instrument of Public Policy, British Columbia Institute for Economic Policy Analysis, 1977:

   - Gregg K. Erickson, "Work Commitment Bidding"

   - Dale R. Jordan, "Petroleum Leasing in British Columbia"

   - Walter J. Mead, "Cash Bonus Bidding for Mineral Resources"

   - Arlon R. Tussing, "The Role of Public Enterprise"

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SOHIO–BP ALASKA PRODUCTION DIVISION

March 28, 1978

Rep. Al Osterback
Chairman
House Natural Resources Committee
Alaska State House of Representatives
Juneau, Alaska

Dear Rep. Osterback:

When I testified before your committee two weeks ago on H.B. 854, I indicated then that Sohio Petroleum Company would be willing to submit additional information in written form to the committee, in further consideration of changes in Alaska's oil and gas leasing policies.

In this regard, attached is a memorandum, "Experimentation in Alaska's Oil and Gas Leasing Program: An Analysis of Leasing Policy Issues Raised in H.B. 854," prepared by our staff in Anchorage. An addendum presents suggestions for new language in certain sections of H.B. 854 that in our opinion would improve the bill from the State's standpoint as well as that of industry's. We hope you will consider our suggestions as constructive, if critical.

In general, we feel that H.B. 854 as it is now written would create a bias in the State's leasing system toward experimentation with procedures that are unusual and new in Alaska. Our suggested language changes would essentially create a bill that would give the Commissioner of Natural Resources the flexibility that he desires, but with a bias instead toward relying on well-known and proven leasing systems, unless special circumstances would call for the use of an alternative bidding system.

We are also concerned over the extent to which the Administration, in proposing H.B. 854, has simply tracked many concepts (and copied specific language in many cases) from OCS bills now in Congress, without an apparent close examination as to whether these specific provisions proposed for federal OCS sales are really appropriate for the State of Alaska.

We hope you will find this information useful in your consideration of H.B. 854.

With regards,

AGO 547143

D.S. Mace
Assistant General Manager

PART I: AT THE CROSSROADS

I. THE IMPORTANCE OF OIL AND GAS POLICY DECISIONS

A. Global Prospects

The Workshop on Alternative Energy Strategies (WAES), a two-year international energy and economic project, directed by the Massachusetts Institute of Technology, recently released their final report which indicated that:

(1) All energy resources and conservation measures must be developed vigorously to meet total projected demand in the period 1985 - 2000; and

(2) Energy policy decisions made now will be the critical determinants as to whether or not sufficient incremental supplies will be available to meet demand in the years ahead.

In other words; according to the WAES Report:

> The years up to 1985 are critical ones...We are...on the threshhold of a critical decision period. We cannot afford to waste the years immediately ahead if we are to have any large-scale energy options available before the end of the century. The time for decisive action is now. 1/

In this environment, the importance of H.B. 854, the Administration's proposed oil and gas leasing bill, cannot and must not be underestimated, as Alaska's oil and gas resources can and will play an important role in determining the future global energy, economic and political balance. The critical nature of energy decision-making at this time is further underscored by the following conclusions stated in the WAES Report:

1/ ENERGY:GLOBAL PROSPECTS, 1985-2000, Report of the Workshop on Alternative Energy Strategies, M.I.T. Professor Carroll L. Wilson, Project Director McGraw-Hill Book Company, San Francisco, 1977.

(1) The supply of oil will fail to meet increasing demand before the year 2000, most probably between 1985 and 1995...(p.3)

(2) Demand for energy will continue to grow even if governments adopt vigorous policies to conserve energy...(p. 4)

(3) The continued growth of energy demand requires that energy resources be developed with the utmost vigor...(p.4)

(4) Even if there are no governmental constraints on oil production, oil supply will meet demand only under the most optimistic assumptions about gross additions to reserves...(p.145)

(5) Possible constraints on oil production by members of OPEC are likely to cause oil supply to peak at the latest some-time around 1990 although lower production limits could bring this date forward into the early 1980's...(p.145)

(6) All the effort put into oil exploration around the world over the past one hundred years has only yielded 240 large oil fields...(p.123)

(7) With only a small chance of either discovering a new Middle East or discoveries in the Middle East as large as in the past, the past rate of genuine new discoveries can only be achieved if a large number of smaller producing areas are found. (p.122)

(8) Given lead times of 5-10 years or more for many projects, failure to make necessary near-term commitments or to resolve a variety of current restraints on production, or to develop future supplies may foreclose some options for 1985. (p.265)

(9) Failure to recognize the importance and validity of these findings and to take appropriate and timely action will almost certainly result in a world different from the one on which these projections have been based. (p.5)

(10) Failure to act could lead to substantially higher energy prices as the supply/demand imbalance becomes more apparent with the consequent frustration of the aspirations of the less developed countries. The major political and social difficulties that might arise could cause energy to become a focus for confrontation and conflict. (p.5)

(11) The longer the world delays facing this issue the more serious the outcome will be. Even with prompt action the margin between success and failure in the 1985-2000 period is slim. Time has become one of the most precious of our resources. (p.5) 2/ (Emphasis added)

2/ Ibid., pages as indicated above.

Another important point in the Report relates to the size of future oil fields. Worldwide, over 30,000 oil fields have been discovered, but about 75 percent of the oil lies within 240 large fields, each with over 500 million barrels of recoverable reserves. 3/

Out of the tens of thousands of producing oil fields in North America, there are only five fields that have recoverable reserves of more than 500 million barrels (Prudhoe Bay, which is new; and Elk Hills and Wilmington in California, and East Texas and Yates in Texas, all of which are old fields). Despite a great deal of exploration in North America, there has been no recent discoveries of fields more than 500 million barrels, except Prudhoe Bay. In other words, the probabilities of finding large new fields on the order of Prudhoe Bay has significantly diminished, not only globally, but also in the United States.

The WAES Report also makes clear that in certain environments, such as the North Sea, a 500 million barrel field is at the economic margin. 4/ Because of the particularly harsh environment in Alaska's North Slope, and elsewhere in the unexplored part of the State, a field that may contain even more than 500 million barrels of oil could be right on the edge of economic viability in Alaska, given the uniquely high costs and transportation difficulties.

While all of the above has critical implications both for the United States and Alaska, there are yet another set of reasons why we believe that the designing of the future oil and gas leasing program in Alaska deserves serious and careful consideration.

3/ Ibid., p.123

4/ Ibid.

B. Alaskan Outlook

In a sense, the State of Alaska is facing on a smaller scale some of the same problems described earlier on a global scale. Whereas world oil production may begin to decline in about seven years, so also will Prudhoe Bay. The fact has important implications to all Alaskans and, in view of the revenue needs of the State, it would appear to be in the State's interest to encourage a steady, ongoing oil and gas development program in parts of the State with petroleum potential. But the historic rate of genuine new discoveries can only be achieved worldwide if a large number of small producing areas are found. Likewise the future of petroleum discoveries in Alaska will most probably involve smaller fields which will be more costly to develop.

Actually, the possibility of finding another Prudhoe Bay-sized field in Alaska is extremely remote. Further, because of the very high costs of operating in much of Alaska, the size of a discovery must be larger in Alaska than it would in other states to make the project economic. Even the Lisburne and Kuparuk oil pools, which according to State estimates range in potential from one to two billion barrels, are marginally economic and may be typical, in terms of economics, of many future oil and/or gas finds in Alaska. All this tends to suggest that Alaska is special and needs to pay closer attention to the development of her resource policy than a State like Louisiana, for example.

Some have argued that Alaska might be better off 'sitting on' her potential oil and gas resources and waiting for the world oil price to rise even further. Dr. Arlon Tussing, an Alaskan economist and advisor to the Senate Energy Committee, considers this attitude, "simplistic" and "naive."

In real terms, world oil prices may stabilize as a result of a prolonged period of relatively low economic growth which would result in lower growth rates for energy consumption than is generally projected. Additionally, as global attention is increasingly focused on energy, the drive to conserve energy and to develop heavier oils, such as Athabascan tar sands, Rocky Mountain oil shale and Orinoco tar belt; and substitutes for conventional oil and gas will increase. Again, to quote Dr. Tussing, "if you choose to 'sit on' your oil and the decision was wrong, the resultant imbalances could be serious."

A final serious consideration for Alaska relates to a realistic assessment of the growth of State spending. While this subject cannot be addressed in the analysis, there is reason to believe that Alaska's revenue needs in future years requires continuous exploration and development of her oil and gas resources so that new revenues will be coming in as Prudhoe Bay starts to decline. This is especially true when one considers the long lead times involved in exploration and production in the frontier areas of Alaska, where a decade may be needed to find, prove up and begin to develop a field, and where transportation problems can be enormously complex.

C. Implications

Being at the economic/energy crossroads globally -- and in Alaska -- would seem to suggest that it is of critcal importance to the State to (1) carefully delineate its goals with respect to a new oil and gas leasing bill and (2) ensure that the proposed legislation, in its implementation, will achieve the desired goals outlined in the legislation. With this in mind, it would appear appropriate both to review the goals outlined for H.B. 854 and to analyze some of the broad issues raised by the draft legislation.

II. OBJECTIVES FOR ALASKA'S OIL AND GAS LEASING PROGRAM

> "As a prerequisite to a discussion of mineral leasing alternatives there should be a clear statement of the goal (s) to be achieved." 5/

A. Objectives Outlined for H.B. 854

To analyze the objectives outlined for H.B. 854, there are two relevant source documents: the Governor's letter of transmittal and the language contained in the "findings" section of H.B. 854. Both contain ambiguities and sources of conflict that deserve serious attention.

This is important in that the goals and objectives outlined in the legislation reflect the intent of the Legislature, in offering guidance to the Commissioner of Natural Resources.

As described in the bill [Sec. 38.05.180(a)(1)(A-D)] the State's goals are to:

(A) maximize the economic recovery of these natural reosurces in protection of the public interest;

(B) minimize the exploitation of these natural resources in protection of the public interest;

(C) maximize competition among parties seeking to explore and develop the resources;

(D) maximize use of Alaska's human resources;

While (D) is clearly in the State's interest, (B) appears to be in direct conflict with (A) and, in and of itself, could certainly be interpreted to mean more than one thing, e.g., 'sit on' the oil until later or 'protect the environment' or 'don't develop at all,' depending on one's definition of the "the public interest." One might also raise the question as to

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5/ Walter J. Mead, "Cash Bonus Bidding for Mineral Resources," Mineral Leasing as an Instrument of Public Policy, ed. M. Crommelin and A. Thompson, British Columbia Institute for Economic Policy Analysis Series, 1977, p.46

whether (C) could conflict with (A) or is even a necessary goal for the State of Alaska's leasing program or whether the goal to "maximize competition" means having more companies bidding or more competition among current bidders. In short, while goals (A) and (D) appear well-defined, there are important questions that could be raised with respect to the other goals as stated.

If one looks to the Governor's letter of transmittal for guidance on the matter, one becomes more confused. Some of what is presented as broad goals are in fact provisions of the bill related to goals which may in actuality work against the achievement of the overall broad objectives. What appear to be the three major goals of the legislation are presented in paragraph 3 of the Governor's February 17 letter of transmittal on H.B 854:

> "The proposed changes will update the leasing law to provide increased public control over exploration, development, and production from state land, obtain a fair return from our non-renewable resources, and, at the same time, provide land from which explorers may find new energy supplies."

Yet the letter lists six "important state objectives," which include items such as reducing "the length of the term of a lease from ten years to five years..." The reduction of a lease term should not be listed as an "important state objective," it would seem, in that it is not an objective but rather a provision designed to achieve the State objective of assuring "that exploration begins promptly once State land is leased." Whether or not reducing lease terms is the best means to assure prompt exploration or not is not the issue here, but rather the importance of clearly delineating goals (prompt exploration) as opposed to suggested means of implementation (reduce length of term of lease).

While clarifying what are the State's goals may seem academic, the exercise would seem worthwhile, particularly since what are described as "important State objectives" in the Governor's letter appear to conflict with the goals stated in H.B. 854. If it is a State goal in H.B. 854 to maximize competition, for example, then increasing rentals on fields may not be in the State's interest at all and should certainly not be listed as one of the "important State objectives" in the Governor's transmittal letters.

Thus, it would appear to be in the State's interest to set out more clearly, and in some order of priority, what the State is really seeking to do in this legislation. The Commissioner of Natural Resources, who would be designing the leasing program today, and future Commissioners who will be administering the program in future years, need to know what the State really intends and what is most important, given the energy and economic environment today and the future needs of Alaskans. If the Commissioner is given clear guidance by the Legislature as to the overall goals, then the State should be able to rely on the Commissioner to use his judgment and discretion in designing a program that is the best interests of the State.

In addition to the ambiguity relating to the State's most important objectives related to H.B. 854, we are also concerned that the overall legislation would actually deny the Commissioner the very object the bill's proponents suggest they are seeking to guarantee, i.e., flexibility so that the Commissioner may design a program best suited to achieving the State's broad goals. Instead of really allowing flexibility, this bill appears to put stress on the Commissioner by (1) requiring him (her) in many instances to adopt changes; and (2) setting limits on those changes;

and (3) forcing him (her) to account for why this or that was not done, for example, as opposed to merely requesting information as to why what is planned or was done is planned or was done.

Based on studies we have analyzed, we would also suggest that "maximum" experimentation in bidding at this time may not be in the State's interest any more than it is the Federal Government's interest. While we will go into this subject in some detail in Section III, we think it important to highlight here that the Alaska Legislature should be aware that, in many respects, H.B. 854 appears to copy the Federal draft legislation. A brief review of the goals related to the Federal bills would thus appear to be in order.

B. Objectives Related to Federal Legislation

It is noteworthy that the Governor's letter of transmittal states that the "proposed changes will update the leasing law to provide increased public control over exploration, development and production from State land..." (emphasis added). Many in Washington D. C. have been working for years to amend the laws affecting OCS oil and gas exploration and development so as to be able to establish a Federal oil and gas corporation (popularly known by the opponents of the concept as "FOGCO").

While we do not mean to suggest here that the drafters of H.B. 854 are aiming to establish an Alaskan State drilling corporation, we do think it pertinent for the State to analyze the goals and provisions of H.B. 854 in terms of where it would take Alaska, if enacted as presently conceived. Would the result be more exploration and development by private companies, or would the result be added complications in petroleum development and the eventual need for Alaska to establish its own "FOGCO?" We would offer two cautionary notes.

First, Dr. Arlon Tussing has pointed out that "the scholarly literature on public enterprise is remarkably skimpy. Rigorous comparisons - theoretical or empircal - of the economic performance of governmental and private enterprises in the same industry are, to the extent I can determine, nonexistent." 6/

Second, from our own limited experience of government drilling corporations, we would tend to concur with Dr. Tussing's conclusion that a State FOGCO is, as Dr. Tussing says, "unlikely to be as effective a device for maximizing [resource] rents as the combination of a leasing system that takes full advantage of competition among private firms (considering the technology and institutional characteristics of each branch of the ...industry) and an appropriate tax system." 7/

There are a host of reasons given by economists why government drilling corporations (would not) do not serve the public interest, 8/ but the point here is that certainly many companies and analysts view the Federal draft legislation - upon which Alaska's H.B. 854 appears to be patterned - as the first step towards the creation of a FOGCO, especially in that this type of legislation greatly increases the amount of uncertainty and risk related to what is already an uncertain and risky business, that of exploring for oil and gas.

6/ Arlon R. Tussing, "The Role of Public Enterprise," Mineral Leasing as an Instrument of Public Policy, British Columbia Institute for Economic Policy Analysis, 1977, p.163.

7/ Ibid., pp. 168-169

8/ See also "Natural Gas Policy Issues and Options," Prepared at the Request of Henry M. Jackson, Pursuant to R. Res. 45, A National Fuels and Energy Policy Study, Serial No. 93-20 (92-55), 1973, pp. 108-109.

C. Alaska's Leasing Objectives: Problems and Priorities

As the discussion above indicates, we see a host of problems both with the explicit and implicit objectives for H.B. 854. To summarize, we are concerned with:

(1) The Governor's Letter of Transmittal - As this letter is part of the legislative package, it will be used as a reference when, assuming H.B. 854 is passed, a future Commissioner seeks guidance in decision-making. The fact that it confuses objectives and provisions is of concern, especially where some of the provisions that are listed as "important objectives" may be counter-productive to the goals of the legislation.

(2) The Goals Listed in H.B. 854 - At least one goal (B) could be interpreted in drastically different ways, and it is unclear what goals really are most important nor how several of the goals interrelate.

(3) Implicit Goals - While the bill's supporters contend that an important purpose of H B. 854 is to provide the Commissioner of Natural Resources with flexibility in administering the leasing program, several provisions would not only deny real flexibility but also would require justifications for non-experimentation, in effect putting political pressure on the Commissioner to experiment in bidding practices, for example, even though such experimentation may not be, in the Commissioner's judgment, in the best interests of the State of Alaska.

(4) Following the Federal Trend - We are concerned that H.B. 854, in many ways, parallels many of the provisions in the bills passed by the U. S. House and Senate. Whereas the ultimate goal (implicit or explicit) of many supporters of the Federal legislation may be the establishment of a federal drilling corporation, we would question whether or not it is in

Alaska's best interest to so closely follow the Federal lead in this area at this time...or any time. We would also caution the State, particularly about (1) the reasons why data gathering is viewed as the first step in establishing government drilling corporations; (2) the lack of hard evidence and the experimental nature of using different bidding methods; and (3) the issues related to competition and joint bidding.

To take care of the above-described problems relating to objectives, we would like to suggest some new language in the opening section of the bill (see Attachment I). We have sought, through the proposed changes, to highlight the fact that prompt exploration is an important goal which should be stated in the legislation and that this goal is inextricably related to the overall State goal of maximizing State revenue. We have sought also to provide flexibility for the Commissioner without forcing him (implicitly or explicitly) into experimentation. These and other proposed amendments are further explained in the following two sections.

III. BROAD ISSUES AND OBJECTIVES

A. Data Acquisition: How Useful?

While we understand the State's desire to know more about the potential oil and gas resources underlying State lands, we would reiterate what we and other companies have previously stated: obtaining more data from the companies does not necessarily put the State in a better position to evaluate potential resources. In fact the opposite could be true; government officials, looking at company data, might well understate the potential value of proposed lease acreage because of the general conservative nature of a government compared with, for example, the daringness of one Company geologist willing to stake a professional career on an interpretation of exploratory data. It could also be argued that the very nature of a large government agency makes it easier to hide errors of judgment whereas the company which decides to "go" on a project can hold specific employees more accountable for errors of judgment. But the most important fact to remember is that regardless of how much data the State may obtain, the State will never know what it does or does not have unless the State drills.

Since you may not wish to simply take a company's word for it, the following quotation is presented to underscore the importance of drilling as a means of obtaining useful information and to highlight the relative lack of usefulness of data without drilling. This excerpt is from the writings of an acknowledged expert in leasing policy, Professor Walter Mead, University of Southern California at Santa Barbara:

> "...while the technology for oil exploration prior to the drilling has been advanced in the last century, exploration is still subject to extemely high risk. Drilling is the only definitive test to determine the presence of oil or gas. Thus, bonus bids must be

> submitted by bidders and accepted or rejected by the government when neither the buyer nor the seller knows whether and in what quantities oil is present..." 9/ (Emphasis added)

It would seem obvious, therefore, that if the companies -- with all their data and experience -- don't know at the time of a lease sale whether they've just spent millions for the right to put millions more into drilling potentially dry holes, then the government, with the same data, could hardly be better off. And having all the data of all the companies doesn't necessarily lower the risk of error for the government in that the view supported by most of the data of most of the companies (data that might suggest that "Tract 20" is worthless, for example) could be wrong.

Because more is not necessarily better in the exploration data game, many companies do in fact view data acquisition by the government as the first step which will inevitably lead -- and naturally extend to -- the establishment of government drilling corporations. And, as previously noted, Dr. Arlon Tussing does not view "governmental ownership of producing operations" as "the most effective way of accomplishing the social ends for which it is currently being advocated..." 10/

Additionally, Dale R. Jordan details some of the more severe problems of esblishing government drilling corporations:

> "...This article's purpose is not to examine the political repercussions that might occur when dry holes are drilled with public funds; however, we should examine some of the practical considerations involved in the operation of a public company which has an almost exclusive area within which to explore as a result of discouraging the private sector. For the government to discourage both the existing explorer and the entry of any new ones and to expect the public corporation to be able to fill this void suggests that the government is saying, "if the private companies do it, so can we."

9/ Mead, op. cit., p.51.

10/ M. Crommelin and A. Thompson, "Introduction," Mineral Leasing as an Instrument of Public Policy, British Columbia Institute for Economic Policy Analysis, 1977, p.xvi.

Now remember that the private companies comprise all the oil and gas explorers working in the province and those contemplating doing so, given the right opportunities. All these companies have geological staffs, many of who will be geologists who devote most of their time over a considerable number of years entirely to the study of British Columbia's geology. The public corporation could not expect to have such an extensive source of expertise as that available in the free enterprise system. And so the public corporation would suffer from a reduction in the number of ideas generated.

It is not unusual in oil and gas exploration, with its inherent problem of scientific interpretation and evaluation of geological prospects, to find that one company will acquire a block of land, will explore it, and perhaps even drill on it before deciding the search is unsuccessful. The company will then return the land to its owner, the Crown. This does not mean that there are not any commercial hydrocarbons underlying this land; but rather that that particular company was unable to find them. To find these hydrocarbon deposits, a second, a third, or a fourth company should acquire this land, and, if this is done often enough, the hydrocarbon will be encountered, and production will follow. The problem with the public company being the only explorer in the province is that, unless it is fortunate enough to make the initial discovery, it is very doubtful whether there would be enough enthusiasm to have a second, third or perhaps even a fourth try at that particular prospect, with the result that the discovery would not be made. This is surely the worst thing that could happen and is probably the most damning argument against a public corporation moving into an area with an almost exclusive right to explore. 11/

B. Experimentation in Leasing: How Successful?

The simple answer to the above question is "No one knows." The U. S. Government tried royalty bidding on eight tracts in an October 1974 lease sale with questionable results. It appears that neither the industry participants nor government officials found the experiment to be particularly successful.

According to The Oil and Gas Journal, "operators say they doubt royalty bidding will ever surface again except in areas where production is almost certain or possibly in drainage-tract sales. Development of wildcat acreage

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11/ Dale R. Jordan, "Petroleum Leasing in British Columbia," Ibid., pp. 252-253.

can prove too costly on a royalty bid basis, despite the absence of high front-end expenditures normally budgeted under the traditional bonus-bid system." 12/

Similarly, Energy Secretary Schlesinger appeared to be disenchanted with the royalty bidding experience in Louisiana in that, in a letter to Interior Department Secretary Andrus, Schlesinger apparently stated that the Department of Energy has reservations about the effectiveness of the royalty method based on past experience in the Gulf of Mexico. It appears in fact that Schlesinger raised the same objections to the royalty system as had been raised by industry and formerly by officials in the Department of Interior, i.e., that royalty bidding leads to early abandonment of leases because declining production eventually makes the lease unprofitable under a high royalty arrangement.

Significantly, the Department of Energy and the Interior Department are considering the formation of a task force of experts to help analyze pros and cons of the various systems being proposed in the Federal legislation (which were largely copied in H.B. 854). A key problem seems to be a dearth of experts, however, in that few governments have undertaken experiments in bidding practices long enough or in a manner similar enough as that envisioned in the proposed Federal and State legislation, and to paraphrase Dr. Arlon Tussing's comments: scholarly, empirical analysis of the different bidding systems appears to be 'remarkably skimpy.'

One source document, from which we have already quoted, appears to be quite useful, however. Published by the British Columbia Institute for Economic Policy Analysis, Mineral Leasing as an Instrument of Public Policy,

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12/ Mike Long, "Royalty-bidding experiment turns sour," Oil and Gas Journal, May 2, 1977, p.32.

contains articles by an international and interdisciplinary group of economists, mining engineers, businessmen and industry consultants. In an introductory section, Dr. Mason Gaffney describes the report as "an outstanding contribution to a rapidly growing field of study."

Our greatest concern with the proposed legislation is reflected in many of the articles in the British Columbia Institute's report. The publication cites significant problems with many of the bidding systems proposed in H.B. 854. Since each new system is so experimental, moreover, the likelihood of the Alaska's experiments not succeeding is high. An additional concern is that it would be years before the success or lack of success with a given system can be determined.

An example of our concern relates to the use of royalty bidding. Dr. Arlon Tussing, Dr. Walter Mead and others (including now Energy Secretary Schlesinger) have raised objections to royalty bidding for a variety of reasons. In the Report, Professor Hayne E. Leland, University of California at Berkeley, echoes some of their concerns and ours:

> "Competitive bidding theory makes clear that undesirable consequences may follow from royalty or profit share bidding. If there are no bonus payments required, speculative bidding may lead to extremely high royalties or profit shares being bid, with development occuring only in the most favorable circumstances. This happens because firms have little or nothing to lose by bidding high and then failing to explore or develop..." 13/ (Emphasis added)

Gregg Erickson, a well-known Alaskan economist, in his article on "Work Commitment Bidding," suggests that the problems associated with royalty bidding are well known:

> "The problems created by royalty bidding, principally the premature shutdown effect and the potential for speculator induced misallocation of leases, have been well discussed in the literature. More importantly, they are well understood by persons influencing both public and private mineral resource policies." 14/ (Emphasis added)

13/ Hayne Leland, "Comment," British Columbia Institute Report, p.60.

14/ Gregg Erickson, "Work Commitment Bidding," Ibid., p.61.

Yet, it is not clear to us that royalty bidding problems are well understood by the officials who will guide the Department of Natural Resources in leasing decisions in the next few critical years or in the future.

A specific example of why we are concerned relates to the material prepared by the Department of Natural Resources to accompany H.B. 854, entitled "Two Views on Bidding Strategies." Not only are the numerous problems and dangers of royalty bidding (cited by Meade, Erickson and others in the University of British Columbia Report) not even mentioned, but also, after three short descriptive phrases under the heading "Royalty Bid-Fixed Bonus," the Department of Natural Resources, with no further comment, analysis, or explanation, simply states: "The Beaufort Sale is an ideal candidate for a royalty bidding scheme." (Emphasis added)

We view such remarks by the State Administration with concern. As indicated previously, many who have taken the time to study the various proposed bidding methods in depth list extensive problems with various schemes for royalty bidding (see also Attachment 2) and, would hesitate to use royalty bidding schemes of any sort except in drainage sales or where there are known, proven reserves (as mentioned above in the Leland citation). The Beaufort Sea is believed to have a high potential for discovery, but, as in the Gulf of Alaska, the drilling of wells may result in no discoveries, or discoveries of marginal fields. No discoveries - with royalty bidding - means no income for the State of Alaska. And, as royalty bidding adds risk for the State, another quote from Leland is perhaps appropriate here:

> "Note that if the lessor is such that leasing forms a substantial fraction of its revenue (for example the State of Alaska), it may not be optimal to transfer risk from firms to the lessor. Thus, lease contracts which might be appropriate to the federal government may not be appropriate for regional governments". 15/ (Emphasis added)

15/ Leland, op cit., p.60.

In view of the Department of Natural Resources' apparent current ease of decision-making with regard to where and how the current competitive-bid lease system should be abandoned, we feel it important to stress that we concur both with Mason Gaffney and Gregg Erickson as to where the burden of proof should lie, i.e., with those who would change the current system--not, as is implied and indirectly stated in H.B. 854, upon the Commissioner who would be cautious about a great deal of experimentation. In this regard, we believe we are safe in assuming that Gregg Erickson's statement below with respect to the work commitment bidding system would apply to any new proposed bidding system:

> "The adoption of a work commitment bidding system implies a judgment that existing institutions for private exploration of public resources result in a suboptimal rate of resource development.
>
> Any argument for the adoption of such a system must first establish that this is in fact the case..." 16/

Similarly, though in a more general way, Mason Gaffney warns:

> "To serve his citizens best, the statesman should...resist the temptation to use his power to manipulate and control...on the too easy presumption that the market has no rationale or normative value of its own. Generations of economists have established that it has, and governments seeking to improve on it need face a certain burden of proof." 17/

One final point: The effects of the cash bonus bidding method, though not perfect, have been rigorously scrutinized, with over 20 years of experience as a basis for analysis. And, according to Professor Mead's extensive studies related to the results of 35 oil and gas lease sales during the period November 1954 to May 29, 1974, bonus bidding with a fixed royalty is effective:

16/ Erickson, op cit., p.75.

17/ Gaffney, op cit., p.3.

> "On the basis of this evidence, we conclude that competitive bidding for oil and gas leases is sufficiently strong to protect the public interest in obtaining competitive values for its oil and gas resources. This conclusion is further supported by evidence presented above indicating an increase in the average number of bidders and a substantial increase in the average price bid per acre for oil and gas leases". 18/

Thus, it is our judgment that, although in certain, special circumstances, changes in the bidding approach may be advantagous to the State, several factors should be remembered. First, the State currently depends on the petroleum production for some 70 percent of its revenue, most of which is from a field that will begin to decline in about seven years. New exploration in Alaska is vitally needed.

Second, although oil companies by the nature of their business deal daily in risk and uncertainty, there is no question but that, to the extent the State can reduce uncertainty and foster confidence with regard to the use of new bidding systems, oil and gas exploration will be encouraged.

Third, because the new systems are experimental, we would suggest that the burden of proof for adopting a new system for any lease sale be placed on the Department of Natural Resources because the use of any new system involves greater risks and uncertainty not only for the companies but also for the State. The proposed amendments contained in Attachment 1 reflect this analysis and these conclusions.

18/ Mead, op cit., p.55.

C. Oil and Gas Leasing: How Competitive?

Much has been said in recent years about the competitiveness or lack of competition in oil and gas exploration and development. Concern has risen particularly with respect to joint ventures in general and joint bidding in particular. Although the formation of joint venture groups for lease sale bidding facilitates ease of entry in high-risk ventures, and allows producers to spread their financial investments in an effort to minimize overall risks, the sheer numbers of joint ventures have been interpreted by some as 'fostering something other than competition.'

The two theories about the nature of joint bidding in Federal lease sales (collusive vs. risk-sharing purposes) have been tested by University of North Carolina Professor Edward Erickson and M.I.T. Professor Robert Spann. As they reported in testimony before the U.S. Senate Commerce Committee, the observed patterns of bidding partnerships are most consistent with the hypothesis that joint bidding is a means of risk-sharing, not collusion. 19/ Among the ways in which competition might be fostered rather than reduced by joint arrangements are the following:

Because risks are shared, the cost of capital per unit of supply increment is less, so that entry barriers are lowered in high risk ventures;

Because of joint agreements, smaller independents can and do form independent and successful groups for bidding purposes in Federal lease sales, as evidenced by data on successful bidders in the June 1973 Federal lease sale;

19/ In their study of the 1972 and 1973 Federal offshore lease sales, Erickson and Spann found that membership of bidding groups varies from year to year; market shares for members fluctuate from one year to the next; the most frequent bidding group is a combination of majors and smaller firms, but majors bid alone, as do smaller firms; single firm bids are frequently made by the largest firms, but other firms are also successful single firm bidders, and bidding groups which contain a large number of firms are predominantly composed of smaller firms. They also concluded that the incidence of joint bidding increased as the size of the firm decreased; there was a heavy incidence of joint bidding partnerships between unlike firms; smaller firms use joint bidding ventures as a vehicle for entry into offshore activity. "Competition in the Field Markets for New Natural Gas Supplies," Statement before Senate Commerce Committee, November 8, 1973.

Because of the number of large and small producer combinations and the frequency with which new groups are formed with different members, producers are able to become involved in many projects so that competition is spread through many projects.

Since joint operating agreements also expressly provide for separate marketing of production from joint ventures, it would appear safe to conclude that risk-sharing through joint ventures need not make competition less intense. By facilitating ease of entry, joint ventures by domestic petroleum companies may indeed make competition more intense. 20/

The work of Professor Mead tends to underscore the findings of Erickson and Spann:

> "The most conclusive test of the workability of cash bonus bidding based on the United States record of OCS oil and gas lease sales is in terms of the rate of return on capital earned by the successful bidders. An analysis has been made on 184 offshore Louisiana oil and gas tracts leased in 1954 and 1955. Precise data are available on bonus payments, rental payments, oil and gas royalty payments, and production of oil and gas during the period from 1954 through 1967. Cost estimates were made for exploration, well drilling and equipment, and operation. Annual cost and annual wellhead values were discounted to obtain a net internal rate of return. The calculations indicate that these early OCS leases generated a 7.5 per cent before tax rate of return to the lessees. Given the fact that oil companies pay relative low U.S. income tax rates, the after tax rate of return would be only modestly lower than the 7.5 per cent before tax rate of return. This net yield clearly does not reflect monopoly power; it shows an excessive degree of competition". 21/ (Emphasis added).

In fact, two studies conducted under the auspices of the United States Geological Survey (both authored jointly by Dougherty of the University of Southern California and Lorenz of the U.S.G.S.) have indicated that the restriction of joint-bidding has failed to achieve its objectives in Federal OCS lease sales.

20/ In the last analysis, if the formation of such groups constituted monopoly power, one would expect to see some results where such groups are formed, e.g., a non-random bid price pattern in Federal lease sales.

21/ Mead, op. cit., p.55.

Major conclusions were:

1. The ban of joint-bidding by major oil companies may in fact have acted to broaden the overall influence of major companies in a given sale. The percentage of all bids and the number of bids per lease in which a major oil company was involved actually increased, which in turn may have increased the total amount of acreage in which major companies participated during this period.

2. When the U.S.G.S studies compared solo bids to joint-bids on given tracts, it was concluded that the joint-bidders tended to go after more highly sought-after leases and that they tended to bid higher on the average than sole-bidding competitors.

From a practical standpoint, allowing joint-bidding has important advantages to the State as well as to the industry, in terms of overall economic efficiency, environmental effects of exploration activity, and flexibility.

For example: Often, a given company may have a great deal of geologic and geophysical data in an area, but for one reason or another does not have the cash on hand to fully utilize its data in a competitive-bonus sale. In this kind of situation, it would make sense to join with another company that has the necessary investment capital and does not have the data.

If the two were unable to combine in partnership, a situation could develop where one company had to duplicate seismic and geologic information already held by the other company. Ironically, a situation would then develop where overall competition in the sale would be reduced, because one company with cash reserves would have expended part of its funds in gaining data, while the other company with information would be limited in participation

because of its cash limitations. Also, there would be the obvious environmental effect of the increased seismic and other activity, including, possibly, the drilling of wells, that would go along with the need to gain additional data.

In view of all of the above, we wonder why the State Administration proposes to ban joint bidding among "major and multinational oil and gas companies" (terms which are not defined in H.B. 854). Again, is the State simply following the Federal government's lead? If so, we would repeat Leland's cautionary note that it may not be in the State of Alaska's best interest so to do.

NOTE: The fact that Sohio/BP has proposed amendments to some sections of H.B. 854 does not mean that the Company endorses the bill in its entirety with the proposed amendments nor that we endorse the provisions to which we did not offer amendments. Part I of this paper is meant to clarify many of the concerns we have with H.B. 854 conceptually as well as in detail, concerns which, as shown in Part I, have been expressed in the analytical literature on the subject of the bill.

PART II: H.B. 854: PROBLEMS AND SUGGESTED AMENDMENTS

I. PROPOSED AMENDMENTS TO MAJOR PROVISIONS

A. Objectives (findings):

As explained in Part I above, we feel strongly that the language pertaining to the State's objectives as contained in the "findings" section of H.B. 854, should be amended to clarify the State's major goals in its leasing program. This section will and should be used by the Commissioner of Natural Resources in carrying out the Department's responsibilities under the proposed act in the "best interests" of the State.

These suggested amendments to H.B. 854 are particularly important in that, as explained before, some of the "important goals" outlined in the Governor's letter of transmittal appear to conflict with the apparent goals expressed in H.B. 854.

Suggestions: (Refer to attached draft language, Attachment 1, Page 1 and 2).

We suggest amending (A) to reflect the global and Alaskan energy/economic outlook. We also substituted the goal of encouraging prompt exploration and competition, in place of the ambiguous language of the original (B).

On Page 2, under (2), our amending language was designed to reduce uncertainty with regard to the implementation of the program. The language would allow flexibility, but only where consistent with the findings in (1).

Changes in (A) and (B) on Page 2 simplify the language in the original bill to reach the same goals, listed in (A) through (D) in H.B. 854.

B. Procedures

On Page 2, in (B), we suggest that the Commissioner be required to make his lease sale program consistent with the objectives in the bill.

Under (1), on Page 3 of the draft, we suggest that the status of the current leasing program shall be reported to the legislature, rather than, "submitted."

Section (2) clarifies ambiguous language in the same section of the original bill.

Section (3), also on Page 3, provides more certainty in lease stipulations and conditions by adopting language already contained in proposed state pre-leasing regulations.

On Page 4, under (B) in the suggested language, we suggest permitting the public to comment on the form of the lease sale as well as the leasing program itself.

Changes in (C) and (D) are being suggested to make the language more specific to reduce unnecessary delays and the potential for litigation, by adding "appropriate" federal agencies, "affected" local governments, etc...

Section (G) was added to clarify that (A) through (F) do not supercede Section 305 and 345 of the Alaska Lands Act, which provide for extensive review by affected municipalities and Alaska Native groups.

On Page 5 of the draft language, in (A), we would suggest that the Commissioner review bidding methods and leasing procedures used in the previous five years, rather than one year.

We suggest deleting (E) in the original H.B. 854 because we feel that such a requirement would put the Commissioner under undue pressure to experiment. It would tend to undercut the overall goal of flexibility for the Commissioner.

C. Lease Methods

We suggest new language in (C) on Page 6 of the draft, to provide more flexibility to the Commissioner, to insure fairness to all participants, to insure that the program is consistent with legislative findings of H.B. 854, and to place the burden of proof for the need of change to an alternative bidding system on the Commissioner.

D. Reduction of Royalty

On Page 9 of the draft language, the purpose of our amending language is to make it more difficult for speculation in the bidding of royalties. Under the proposed language, the lessee would have to clearly show that a reduction in royalty is required. These amendments should help in avoiding the problem of irresponsible bidding during a royalty-bid sale.

E. Bonus Bid Deferral

We would propose deleting this language (E) in original bill, Page 9, because we think that the option to defer payment of bonuses would encourage speculation and could lead to charges of unfairness if lessees have the option to "renegotiate" bonuses.

F. Withholding Acreage

For a variety of reasons, we would propose deleting Section (F) in the original bill, page 10. This is similar to powers held by the Commissioner under existing statutes and, as such, is not objectionable.

However, the problem with withholding acreage is illustrated by the description of it as "the fifth bidding system" by the Department of Natural Resources. This is further amplified by written comments by DNR personnel, in Report 2-77, where the withholding of acreage was specifically recommended as a means of significantly increasing state income on the assumption that the withheld acreage would cover half a known geological structure.

In the example discussed in Report 2-77 under the title of "Percentage of Acreage Withheld Leasing," it is assumed that 60% of a structure is leased initially at odds of 1 success in 10 which, after exploration, improve to 9 in 10. The fallacy of the argument is that the authors, (and subsequent proponents of the idea), neglected to take into account the other nine instances where exploration shows the acreage to be more or less worthless. Although 4% (10% of the withheld 40%) would attract high bids, the average overall income should be no different than if the whole acreage had been leased initially.

The assumption that all closed geological structures contain hydrocarbons is attractive, but untrue. The ability to close the rare structures which are filled with hydrocarbons is not vested in the State's geologists or those of a single oil company. Consequently the chances of the State losing income by deliberately withholding leases over a structure far exceed the chances of it making a windfall profit from the procedure.

What is often forgotten in the use of the example of Prudhoe Bay to show how not to lease, is the fact that at the time of the geophysical recognition of the Prudhoe structure, a bigger and geologically more attractive structure was found a short distance away. This was known as

the "Colville High". The Colville structure was drilled in 1966 with disastrous results because it was discovered to be dry and devoid of prospects. Those results seriously downgraded the Prudhoe structure, in the following year. It is highly unlikely that even if the Commissioner has the choice of multiple bidding methods he would have leased the Prudhoe acreage by anything other than cash bonus bids. If he had guessed, the same way that industry did, that the Colville High was the better of the two structures and had deliberately withheld half of it from leasing, would he have dared, in the light of the drilling failures, to do the same for Prudhoe? Obviously he would not have risked a second debacle. It is annoying in the light of this history to read that DNR authors, in, "Two Views on Bidding Strategies", 1978, persist in misusing the Prudhoe Bay example to reach the incorrect conclusion that "Bonus bidding should not have been used in that instance."

G. Exploration Work Credit Program

This is a suggestion made before the House Resources Committee by Sohio in early hearings on H.B. 854, involving credits for exploration as an incentive.

A major objective of H.B. 854 is to maximize revenues to Alaska, but to do this it is essential that the State adopt policies which encourage a steady, ongoing exploration program on State lands. Many sections in H.B. 854, if enacted, could actually serve to dampen exploration, but one option the State Legislature could consider to add an incentive for exploration is a program similar to Alberta's Exploratory Drilling Incentive System. This kind of program has proven to be successful as a way of encouraging high levels of exploratory activity, and in Alberta has been largely responsible for the record-breaking levels of drilling

activity in recent years, and subsequent high rates of discoveries since it was introduced in 1974. This year, the program was extended, until 1981.

The system is simple and is based on a drilling credit which can be earned by all exploratory wells and which varies according to the footage drilled and the region drilled in. For example, under the Alberta system, a well drilled to 8,000 feet on the North Slope could earn a credit of, for example, $2 million, where a similar well on the Kenai Peninsula might qualify for a $1.5 million credit. Deeper wells could earn proportionately more, as would offshore wells. These credits could be scheduled to equal approximately one-third to one-half of the cost of a well in each region, and they could be used by the earning company against bonus bids in a State sale, or against lease rental payments of royalty payments. The result could be an influx of capital into Alaska, similar to what has taken place in Alberta. But since the Commissioner would control the incentive program by regulation, it would be capital that would be directed by the State to areas in which the State wished exploration to occur.

To allow the Commissioner the discretion to introduce such a drilling credit system, we have taken the liberty of proposing general language in section (f) that could be translated into detailed regulations for a successful incentive program (see Page 10).

The system would require control by the Department of Natural Resources, but it could operate with less manpower than is needed for the policing of net profit bidding or royalty-bidding systems. The benefits would be tangible and immediate, and would probably exceed, in terms of new revenues to Alaska, the theoretical and untried potential of royalty or net-profits bidding.

H. Terms and Regulations

On Page 11 of the draft, our proposed language in (G) would replace (G) and (H) in the original bill. Our language would be simpler and would accomplish the same purpose, we think.

I. Lease Terms

On Page 13 of the draft language, our new language in (H) would give the Commissioner the option to have five-year lease terms, but only where the Commissioner finds that environmental and economic conditions would not severely restrict operations. The original language in the bill requires a five-year lease unless severe environmental conditions require a longer period.

In most parts of Alaska, severe environmental conditions and remote exploration locations dictate that drilling and other exploration activity be done only on a seasonal basis. A five-year lease term would therefore place great strain on the operator in all parts of the State except for Cook Inlet or Southern Alaska locations where work can proceed ye r-round. Our proposed language would leave the 10-year lease term intact, although the Commissioner would have the option for shorter terms where environmental conditions permit.

Our proposed language would also give the Commissioner authority to go to larger lease tracts if ircumstances require, if, for example, a work-commitment system is used.

J. 90-Day Provision

Also on Page 13 of the draft language, we also amend section (H) in language dealing with expiration of leases, to reflect unique Alaskan environmental problems in the term "reasonable diligence." This language

deals with activities that an operator may have underway at the time of the expiration of a lease. We would like to see environmental conditions taken into consideration by the Commissioner in delays that might affect an operator.

Also in section (H) on Page 13, we would suggest amending the language to reflect that a lease will be extended if there is a well capable of producing oil and gas, rather than a well producing oil and gas, as in the original language. Our reasoning is that there could be situations where a productive well has been drilled, but there are delays in building transportion systems to actually take the oil away.

K. Commissioner's Role in Conservation

On Page 17 of the draft, we propose new language that would clarify an apparent ambiguity in the original language regarding the Commissioner's conservation regulatory authority under Title 31 over pools unitized under this chapter. Our suggested language would reinforce the Commissioner's conservation authority, and would clarify this language.

L. Noncompetitive Leasing

Sohio-BP has no corporate position on noncompetitive leasing, but while some companies would like to have the option of noncompetitive leasing available, there may be situations where the State's broader public interest might not be served. Noncompetitive leasing can invite speculation in leases and in certain circumstances, there could be adverse environmental effects.

M. Joint Bidding Prohibitions

On Page 21 of the draft, the original language in the bill allows the Commissioner to restrict joint bidding by "major and multinational oil and gas companies" (these terms are nowhere defined). There are many serious problems that are discussed extensively in Part I, Section III C with respect to this provision. Based on the conclusions of the studies cited in this section ("Oil and Gas Leasing: How Competitive?"), we would suggest that it is neither necessary nor in the State's interest ot restrict joint bidding in any way. Such prohibitions not only restrict entry into Alaska leasing, but also could reduce potential revenues from lease sales. We would suggest deletion of this section from the bill.

N. State's Right to Purchase Oil and Gas

Section (v) on page 21 in H.B. 854 would include in leases a provision whereby the State would be allowed to puchase up to 100 percent of any gas discovered on State lands. This could be very harmful to the State in the long run, as it could effectively eliminate the financing of exploration programs by means of gas sale contracts. These contracts have been normal in Alaska, and in the past few years have contributed many millions of dollars to oil and gas drilling. This source of investment would be cut off and the proposed provision would only discourage exploration and the purposeful search for gas.

Under the terms of this section, contractual commitments would be impossible to make because the lessee would have no certainty of ownership of gas and would lose the right to dispose of his share of production to his best advantage, which could also be to the State's advantage. The result could be an increase in the risks and costs of exploration.

O. Data

In accordance with statements made by Administration officials with respect to the intent of the langugage in H.B. 854 relating to data acquisition and confidentiality, we have amended (w) of H.B. 854 on Page 21. Under our amended language in (s) on the same page, therefore, the Commissioner is given access only to noninterpretative data which shall be held confidential upon the request of the lessee or permittee as provided in AS 38.05.035. Additionally, in our (s) section, we have added that the Commissioner shall, by regulation establish procedures to govern access to and the safekeeping of such data.

As to the usefulness of such data acquisition, we would refer you to the analysis contained in PART I, Section III A above ("Data Acquisition: How Useful?"). This section additionally attempts to explain why data acquisition by the government is frequently viewed as the first step that inevitably leads to government drilling corporations.

P. Acreage Limitations

Section 3 AS 38.05.140(c) in H.B. 854 would limit any one company's onshore lease holdings to a limit of 200,000 acres. We would suggest that this limitation may be unnecessary in reaching the objective of encouraging competition and may, in fact, undercut the goal of maximizing competition on State lands simply because some companies are now near or at the proposed limit in terms of onshore acreage holdings. They would not be able to participate in future state sales for at least five years if this provision were enacted.

The limitation also seems to work against other objectives of H.B. 854. For instance, the Department of Natural Resources, in its comments on the proposed work commitment bidding method, acknowledges that large areas on the order of 100,000 acres are needed to make the type of bidding practical. Such acreage would be low potential, high risk land which would not normally be seriously considered for exploration. If the 200,000 acre maximum is retained, no responsible company could even bid on large work commitment parcels of this kind. Consequently, retention of this stipulation would narrow the leasing options available to the State and would be detrimental to the responsible assessment of State land.

II. SUMMARY AND CONCLUSIONS

In summary, we would offer these observations and conclusions:

1. H.B. 854 as currently drafted would create a State leasing system biased towards experimentation with procedures that are new and untried in Alaska. This may not be in the State's interest, because unusual leasing systems could lead to delays in petroleum development that could have serious consequences on future State revenues and Alaska's contribution toward U.S. energy needs.

2. The United States faces a critical energy-import problem that may have serious consequences for the Nation's economy. Alaska can contribute to the lessening of U.S. dependence on imported oil, but long lead times and large investments are needed to develop new petroleum discoveries in remote Alaskan locations. By enacting new leasing legislation that could lead to unusual and untried lease systems, the State could inadvertently delay exploration and development in remote Alaskan areas with resulting consequences in the global energy/economic sphere.

3. The State of Alaska faces a potentially serious revenue situation in the late 1980's as annual State expenditures increase and oil production from the Prudhoe Bay field begins to decline. Again, the long lead-times needed to find and develop new Alaskan oil discoveries would indicate that exploration must proceed soon on State lands to provide needed petroleum revenues.

4. Alternative bidding systems proposed in H.B. 854, although also proposed in OCS legislation now pending in Congress, have not had extensive use in the U.S., nor in very many other places in the world. Experience with royalty bidding in federal OCS sales has been dissappointing, and the federal government may now be reconsidering the use of alternate bidding systems other than the competitive bonus-bid procedures.

5. The majority of academic literature that we have been able to find supports the thesis that the traditional bidding methods have worked well in the leasing of public lands for petroleum development. Academic experts also seem to agree that alternative bidding systems present serious problems, except when used in certain special situations.

6. We have offered in Attachment 1 suggested language that would, we believe, improve many sections of H.B. 854, and give the Commissioner the flexibility he desires while at the same time encouraging the use of proven leasing systems unless special circumstances dictate the need for an alternate situation. Royalty-bidding in a drainage sale would be an example.

7. We have suggested an exploration work-credit program similar to a successful system used in Alberta that we believe would offer substantial incentives for increased Alaska oil and gas exploration.

AtlanticRichfieldCompany
Post Office Box 360
Anchorage, Alaska 99510
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April 6, 1978

The Honorable Alvin Osterback
Chairman, Resource Committee
Alaska House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Chairman Osterback:

Recently, Mr. Mark Singletary provided the Resources Committee with verbal testimony reflecting Atlantic Richfield Company's reaction to proposals contained in HB 854.

Attached is written commentary on HB 854 which I would respectfully request that the Committee consider and include in the official record of these proceedings.

Sincerely,

Dave Harbour
Director
Alaska State and Local
Government Relations

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ATLANTIC RICHFIELD COMPANY COMMENTS ON
HOUSE BILL 854

"An Act relating to the leasing and exploration of state land for oil and gas development."

April 6, 1978

Comments on Section 1:

Sec. 38.05.180(a)(1)(B)

In the description of the legislative purposes of this bill, there is a negative connotation given the word "exploitation" in Sec. 38.05.180(a)(1)(B). This section in general suggests sinister motives to the oil and gas industry which need to be "minimized." A possible modification should read, "regulate the development of these natural resources in protection of the public interest."

Sec. 38.05.180(a)(2)

Underlying this section is the notion that it is in the State's best interest to maximize the leasing methods available to the State. However, it is our view that the new leasing methods proposed are largely untested and may result in reduced revenues to the State. Further, it is not at all clear how a unit agreement could ever be formulated for a group of lessees who had obtained their leases under a combination of the proposed bidding methods.

Sec. 38.05.180(b) AGO 547182

This section deals with the Commissioner's obligations to prepare a leasing program for the following 5 year period and his obligation to keep the legislature informed. We are in favor of such a long-range leasing program and support the State's acknowledged

goal of "stability and predictability" in a petroleum leasing program. However, the long-range benefits intended and the State's goal are frustrated by the ability, and, indeed requirement, that the Commissioner review and possibly revise the leasing program at least annually. Perhaps the possibility of revision could be limited to the last two years of the ongoing five year programs so that industry could expend exploration dollars with some certainty that a sale will be held. Alternatively, Sec. 38.05.180(b)(3) should be deleted.

The annual submission to the legislature of the leasing program, although for "its information," would seem to presuppose further modification of the leasing program. Again, opportunity for yearly modification of the leasing program abrogates the State's goal of a stable and predictable petroleum leasing system. As an alternative to reporting to the legislature, the Commissioner could be required to make an annual public report of the leasing program.

Additionally, in Sec. 38.05.180(b)(5)(E), the Commissioner is required to justify in his report to the legislature why more than 50 percent of an area is leased under any one method of leasing. This requirement of justification seems to be an incentive, if not explicit direction, to utilize the full array of leasing alternatives for any one sale and to, in effect, "experiment".

The language in Sec. 38.05.180(b)(2) is extremely confusing and should be clarified. Further, it is not clear whether or not this section is directed to or will have any effect, intended or otherwise, on the Beaufort Sea sale.

Sec. 38.05.180(c)

This section authorizes four generic categories or methods of leasing: (1) "Bonus bidding," (2) "Royalty bidding," (3) "Net profit bidding," and (4) a "Work commitment bid." Several combinations or variations of methods are authorized under each of the generic headings.

The first method of conventional bonus bidding has the best overall record from the lessor's standpoint. A study of federal OCS sales through 1975 showed that industry had invested $35 billion in bonuses, exploration and development on OCS leases while receiving $22 billion in revenue.

Net profit bidding opens up a multitude of problems as to the definition of "net profit." This method would allow many companies to get into a land position for speculative purposes. It is a

fierce deterrent to early drilling as it is far easier and cheaper to wait out the competition. It is extremely cumbersome to administer and audit, and is even more costly to operate than royalty bidding methods.

The last method of bidding, a work commitment for a lease which cannot, by definition, exceed 5,760 acres, seems completely unworkable as such an area is much too small. This method is usually used in European and mid-east concessions or Canadian permits or reservations which share a common characteristic of being very large geographic areas.

In each of the four leasing methods, the language describing the State's royalty is troublesome. Each description of the State's royalty provides, "... royalty share reserved to the state of not less than 12 1/2 cent in amount or value of the production removed or sold from the lease or unit area encompassing the lease ...." (emphasis added) This language would preclude anything but 100 percent state units. Unitization of lands involving federal or native lands and state lands would be impossible because of the inability of the participants to give the state at least 12-1/2 percent of the production from the "unit area encompassing the [state] lease."

Further, it should be noted that all of the methods and components of the alternate leasing methods will necessitate substantial increases in the budgets and personnel of the agencies involved.

Finally, if some minimum flexibility in leasing methods is desired, the same could be accomplished with minor changes in the existing law.

Sec. 38.05.180(d)

This section allows the Commissioner to reduce royalty when production becomes uneconomical, but only after two years of production. The most recent federal leases require only one year of production, which would be more in line with the stated goal of the bill to minimize revenue from marginal production. Given the explicit description of the royalty in Sec. 38.05.180(c) as "not less than 12 1/2 percent ...," it is not clear whether the Commissioner could ever reduce royalty to any figure below 12 1/2 percent.

Sec. 38.05.180(e)

This section purportedly authorizes the Commissioner to defer payment of any part of a cash bonus bid, provided the bonus is paid within five years. This authority is in direct conflict with AS 38.05.335(c), neither referenced nor repealed by the bill, which requires a deposit of 20 percent, in cash, of the bid.

Sec. 38.05.180(f)

This section authorizes the Commissioner to withhold acreage from leasing in a particular sale. It is assumed that the motive of

this provision is a desire to increase the state's income from leasing by leasing, for example, only part of a structure, and then, once proven productive, leasing the remainder for higher amounts. However, this authority to withhold acreage can just as easily decrease the state's income, in the event the first acreage leased is found non-productive.-- which is usually the case. In essence, this section is authorization for the Commissioner to "gamble" on the productivity of state lands.

This section also seems unfair to the first lessees, who, if the first tracts leased prove productive, are faced with the prospect of having to buy themselves back into the fruits of their own risk at a higher rate.

Sec.'s 38.05.180(g) and (h)

These sections relate net profits and work commitment leasing which, as previously discussed, are ill-advised.

Sec. 38.05.180(i)

There are no objections to this section so long as the trading or storage of royalty oil remains and is clearly the subject of mutual agreement.

Sec. 38.05.180(j)

This section concerns several of the provisions to be included in state oil and gas leases:

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First, this section reduces the primary term of state leases from 10 to 5 years. It should be understood that in most areas of Alaska the ability to carry out exploration work is limited to a four month period per year, consequently a five year lease allows only 1-2/3 years of exploratory work. This is clearly insufficient in such a high cost, high risk area.

Second, this section provides that a state lease will be "renewed", if and for so long thereafter as oil and gas is produced in paying quantities or if the lease is committed to a unit. The term "renewed" should be replaced with the term "extended" as this is the long-understood and recognized effect of production or commitment to a unit.

Third, the section's provision concerning shut-in wells should be clarified, since, in its present form, it appears as though the shut-in well must be located on the land prior to the issuance of a lease.

Fourth, this section authorizes the Commissioner to increase rentals up to 150 percent of the preceding year's rate and to provide that a lessee earns production rights only to the depth drilled at the beginning of production. Both of these provisions should be deleted as unnecessary and unworkable.

As to rental increases, as noted, Alaska is already a high cost, high risk area. The prospect of substantial rental increases

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during the primary term of a lease will serve only to curb exploration not encourage it.

The provision concerning production rights only as to the depth drilled is unnecessary and unfair. Aside from an obvious example of the lessee drilling into the top of a reservoir and being mechanically unable to go deeper and thereby losing the main body of the reservoir, it also could result in split ownership of a lease with one party having to drill through another's rights to reach his own with possible damage to the upper reservoir resulting.

Finally, the means of extending a lease by drilling are set forth in this section. Given the seasonal nature of drilling in Alaska the 90 day grace period after drilling has ceased should be expanded if further drilling is prevented by environmental considerations or other circumstances imposed by the State.

Sec. 38.05.180(k)

The increased rentals proposed in this section will discourage exploration and will not increase income to the State because the extra expense will be compensated by lower bid totals. The present $1.00 per acre per year rental should be retained.

Further, this section alters substantially the nature of the ordinary rental provisions in oil and gas leases. The rental to be paid under these provisions is no longer a delay rental. This

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section provides, "Rental is payable in advance and continues until income to the state from royalty, net profit, or exploration work commitment exceeds rental income to the state ... for three consecutive years ...." There is no provision for credit or set-off of rental paid during those three years against the state's income from production. Consequently, for the first three years of production, the state would receive both rental income and production income.

Sec. 38.05.180(1)

This section should be modified to provide that the state shall issue a State shorelands lease, as AS 38.05.180 presently reads. Also, the Commissioner should be given the discretion to grant a shorelands lease in excess of five years.

Sec.'s 38.05.180(m) and (n)

These two sections concern the unitization of state leases and are re-enactments of present law. However, given the alternate leasing methods of the bill, and the previously discussed, implicit direction to the Commissioner to "experiment" with these methods, unitization of state leases will be extremely difficult, if not impossible.

It is entirely reasonable to assume that under this bill, a proposed unit will be composed of leases involving highly disparate royalty percentages and one net profits or other kind

of lease. The extreme difficulty of applying these completely different lease burdens to the production allocated to each lease under a proposed unit are obvious. These difficulties constitute a disincentive to unitization and therefore nullify the conservation benefits of unitization.

Sec. 38.05.180(o)

This section concerns the acreage chargeability of KGS leases and is unobjectionable.

Sec. 38.05.180(p)

This section is a re-enactment of the present authorization for the pooling of state leases. Like the provisions concerning unitization, the problems inherent in alternate leasing methods will make pooling more difficult, to the detriment of the conservation objectives of pooling.

Sec. 38.05.180(q)

This section authorizes the State to share in the costs of exploration under a drilling or development contract. Oil and gas exploration is extremely risky and historically the province of private enterprise. Financial participation by the state in an exploration venture raises fundamental questions as to the appropriate role of state government. Given the fact that most wells drilled are unsuccessful, and the substantial sums involved in drilling in Alaska, additional challenges may be anticipated as to the authority or wisdom of the State to participate in a particular drilling project.

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Sec. 38.05.180(r)

This section is a re-enactment of present law concerning the subsurface storage of oil or gas on state leases. However, the present law's provision concerning the extension of the lease used for storage for the period of storage and so long thereafter as oil and gas are produced was deleted. This extension provision should be retained.

Sec. 38.05.180(s)

This section concerns the employment of state residents on state leases is substantially the same as the existing law.

Sec. 38.05.180(t)

This section is an attempt by the state to encourage exploration on lands on which no bids have been tendered. This philosophy is laudable. However, the Commissioner should not be restricted by the leasing details of this section.

Sec. 38.05.180(u)

This section would restrict joint bidding and should be deleted. Joint bidding can very well be to the advantage of the state as it tends to increase the size of the bids submitted and facilitates the exploration process. See, for example, the paper in the November 1976 issue of "Journal of Petroleum Technology" in which the authors conclude that "joint bidders tend to bid on more sought-after (and apparently more valuable) leases and that they tend to bid higher, on the average, than solo-bidding

competitors". Industry testimony before the U.S. Senate has indicated that since the first OCS sale in 1954, 172 companies have purchased OCS leases. 42% of these leases were not purchased by the major companies, and in recent years the smaller companies have increased their share of OCS production at the expense of the major oil companies.)

Depending on the content of the regulations adopted, this section may violate Article 8, §17 of the Alaska Constitution. This Constitutional provision requires that laws and regulations governing the use or disposal of natural resources must apply equally to all persons "similarly situated".

Sec. 38.05.180(v)

This section grants the state an unfettered option to purchase 16-2/3 percent of oil and up to 100 percent of gas produced from a state lease. This section will in effect eliminate the lessee's ability to use the gas sales contract as a method of financing. Consequently, gas exploration in Alaska will be discouraged if not precluded. Similarly, if the state should wait several years before deciding to take up to 100 percent of the gas, the discoveror of a gas field would be deprived of all income from his legally obtained gas, because he could not enter into a contract with any other user. This section would also eliminate or impair the ability of lessees to utilize the production payment as a method of financing, likewise discouraging exploration.

Sec. 38.05.180(w) This section requires state access to all of a permittee or lessee's exploration data and should be eliminated from the bill. This section is, in essence, a confiscation of valuable proprietary data, for the sole purpose of deciding whether the explorer has found anything or not. If the state decides he has, the area could then be thrown open to all other competitors, thereby removing any incentive for an aggressive company to be a leader or employ innovative ideas to discover new resources. This section completely removes that incentive, and thereby will cause significant state natural resources to remain unsought.

In addition, grave problems as to the preservation of the confidential nature of the data are inherent in this section. It is common knowledge that such information is extremely confidential and closely guarded by the individual members of the industry.

The existing law upon which the oil and gas industry has relied for the confidentiality of information is contained in AS 38.05.035(a)(9)(C). This existing provision requires the director to keep geological, geophysical and engineering data confidential "upon request of the persons supplying the information." As the Bill's provision requires disclosure of information to the Commissioner, not the director, and since it requires also access, as distinct from supplying copies, are the confidentiality provisions incumbent upon the director not

applicable to the information required to be disclosed to the Commissioner?

If this section is to be applicable to existing exploration data, then the Commissioner's access and utilization of such existing data is almost certainly an unconstitutional taking of this valuable and expensive property. If the Commissioner is to be allowed access at all to such data, such access should be limited to future data only. Further, there should be a requirement of the adoption of regulations prescribing the confidentiality of this data and the addition of statutory criminal penalties for intentional disclosure of such data.

Section 2

There are no objections to this section concerning notice of mineral leasing.

Section 3

This section would amend AS 38.05.140(c) to reduce the upland acreage limitation from 500,000 acres to 200,000 acres. In Alaska, where there are large areas of state lands which are potentially eligible for bid, a 500,000 acre limitation, which the present statute contemplates, is not unreasonable. The effect of a 200,000 acre limitation would clearly be to limit the participation of those individuals who are most active in exploration business in Alaska, i.e., those individuals who have

historically submitted the highest bids to the state. It is not at all clear why the state would seek to discourage, rather than to encourage, the continued involvement of those individuals in Alaska. Further, this section's applicability to the holding of existing lessee's -- requiring them to reduce their holdings within 5 years -- is an unconstitutional taking of leasehold estates.

Prepared by:

Legislative Affairs Agency
Research Division
17 June 1978

Differences Between House and Senate
Versions of HB 854
(Page Numbers Refer to Side-by-Side Analysis)

	Senate	House
1.	Senate added word "physical"(p.1)	
2.		Gives legislature right to "veto" any part of leasing program (p.2).
3.	Includes words "pipeline quality" in description of how royalty shall be delivered (p.4).	
4.		Sliding scale royalty allowed, with bonus as bid variable (p.4).
	REDUCTION of WORK COMMITMENTS	
5.		Sliding scale royalty allowed as bid variable (p.5).
6.	Allows straight royalty bidding, but only in "drainage" situations (p.5).	Allows straight royalty bidding (p.5).
7.		Commissioner may defer bonus bid payment (p.8).
8.	Calls generally for ten year term (p.9).	
9.	Rental terminates whenever royalty is greater (p.10).	Rental terminates when royalty is greater for three consecutive years (p.10).
11.		Includes provision for reduction of royalty (p.11).
12.		Requires use of sliding scale royalty for reoffered leases (p.14).
13.		Provides for possible restriction on joint bidding (p.14).
14.		Provides for possible inclusion in lease of provision under which producers could be required to sell for instate use (p.14).

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Senate

House

15. Changed "activity" to "lease" in section giving commissioner access to "noninterpretive data" (p.15).

16. Senate made technical amendment: "lands" to "land" (p.16).

17. Retains 500,000 acre limitation contained in current law (p.16).

18. Senate made conforming amendment to 38.05.140(d). Effect is to insure that (j) of both bills has intended result of setting standards for royalty reduction.

How to Bid for Offshore Rights

Several systems have been proposed to replace the present "bonus-bid" method of assigning leases on offshore oil prospects to developers. Of these, Professor John W. Devanney III of M.I.T. opts for "percentage-of-excess-profits" bids (*see p. 42*). Other proposed arrangements include work obligation permits and various forms of royalty bidding.

The Work Obligation Permit Plan

Under the work obligation permit plan, developers would submit exploratory and provisional drilling plans for a given tract. The government would choose the developer with the most aggressive, best-considered plan, and the developer would then be responsible for agreed-upon amounts of royalties and/or lease rentals. Under this system, used currently by the Norwegians and the British in the North Sea, the great bulk of any economic rent would be transferred to the developer, and a portion of this rent would be returned to the public in the form of corporate income taxes. Of the possible methods reviewed here, this is clearly the most favorable to the developer.

Administering this method to maximize national income depends on the skill and honesty of administrators. There are temptations for prospective developers to submit work plans which represent over-development of the resource so they will be judged the most aggressive, and administrators will have to be wise enough to recognize such over-development and refuse it. The decisions to be made in choosing the "best" work plan are necessarily judgemental, and they are an open invitation to the influence of special interests and even to corruption.

But beyond the possibilities of incompetency or corruption which may result in loss of national income is the basic fact that most of the economic rent goes to the developer. Professor Devanney concludes that work obligation permitting is clearly not desirable, from a nondeveloper point of view. Indeed, as soon as it became clear that economic rent was associated with North Sea oil, the British and Norwegians moved away from this practice.

Royalty Bidding

Royalty bidding involves competitive bidding on a share of the actual gross revenues — generally a percentage of market value — associated with the resource. This method has long been used in state sales of rights, and the federal government experimented with it in the Gulf of Mexico in 1974.

Compared with bonus bidding, royalty bidding transfers some of the risk prior to exploratory drilling from the developer to the public. This helps maintain competition among bidders, for large amounts of up-front capital are not necessary, and the need for large bidding combines disappears.

However, there are other problems. While the method could theoretically give most of the revenues from offshore oil to the public, it could also reduce the total size of the offshore oil pie. This is because the royalty bid, unlike the bonus bid, affects the developer's marginal expenses. For instance, if a developer overestimates production from a certain tract, he will freeze himself into a royalty bid that makes it unprofitable for him to develop the smaller, and thus more expensive, oil find that is actually made. He will refuse to develop it, and the national income will suffer. This risk may especially affect secondary and tertiary production from a tract; such oil will be more expensive than primary oil but still less costly than foreign crude.

Proponents of royalty bidding offer two possible resolutions of this dilemma — re-leasing and renegotiation. The former proposes that if a developer decides not to produce a tract he must turn it back to the government, with all equipment intact, and the government may lease the tract anew, presumably to a different developer at a lower royalty. This would discourage expensive techniques to enhance oil recovery, because the original leaseholder may choose merely to take out the flush production before releasing a tract back to the government. This will be costly to the public, since processes for secondary and tertiary recovery of oil must begin early in a field's life to be most effective. There is also the possibility of excessive administrative costs associated with the negotiations necessary for re-leasing.

Advocates of renegotiation propose that if a developer feels he cannot develop a field at his bid royalty, he should be able to present his evidence to the regulatory body which should be empowered to grant him a decrease if it finds his presentation viable. The obvious problems here are in the regulatory body's verification of the developer's data. The capital-intensiveness of offshore oil makes any estimate extremely sensitive to the cost of capital, and that information is often confidential.

Other potential problems introduced by renegotiation include temptations for developers to "goldplate" a project since additional expenses could come off the royalty — i.e., out of the public's pocket. A developer might deliberately bid high initially in order to obtain a tract, anticipating that he will renegotiate later; and he might go through a whole series of renegotiations as his costs for enhanced recovery techniques begin to appear.

Some have suggested a compromise between bonus bidding and royalty bidding, in which developers would enter a "high" fixed royalty plus a bonus bid of up-front payments. This would decrease the size of bonus bids and aid competition, say its advocates. Unfortunately, this presents the same can of worms as straight royalty bidding.

Installment bonus bidding has also been suggested. This means a developer would pay his bonus in three installments — immediately, after three years, and after five years. He could surrender the lease before the last two payments if things failed to work out. But this presents the same pie-reducing problems as royalty bidding; if a developer originally bid $600 million and after exploratory drilling found oil worth only $350 million, he would abandon the tract rather than pay the final installments even though national income would be increased by $350 million if the find were developed.

There are advantages, however, in installment bonus bidding. There is an automatic re-leasing provision, which could assure that tracts were re-opened for development; and the marginal costs of the oil are not affected, which means that the developer has incentives to invest early in enhanced recovery.

However, the massive amounts of up-front money involved in even a one-third installment payment of a bonus bid will probably still frighten away many bidders. And many bidders would increase their total bonus bids considerably, knowing that they could thus avoid paying additional installments.

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ALBERTA, CANADA

Exploratory Drilling Incentive System

A report from Alberta Energy and Natural Resources states the exploratory drilling incentive principles adopted for wells spudded between Jan. 1, 1978 and March 31, 1981 were announced by the government last fall and will be defined in detail in the Exploratory Drilling Incentive Regulation, 1978 when it is issued in the near future.

This regulation, however, may not be available to industry prior to the commencement of the drilling activity it affects. Accordingly, the essential details respecting the forthcoming program are described herewith.

The department expects that the principles and details outlined here will be incorporated, without a change in meaning, into the 1978 Regulation. If, however, such a change does occur, the 1978 Regulation would, of course, take precedence.

(1) Commencement Date of the Forthcoming Program

As previously indicated, an incentive exploratory well in good standing will be

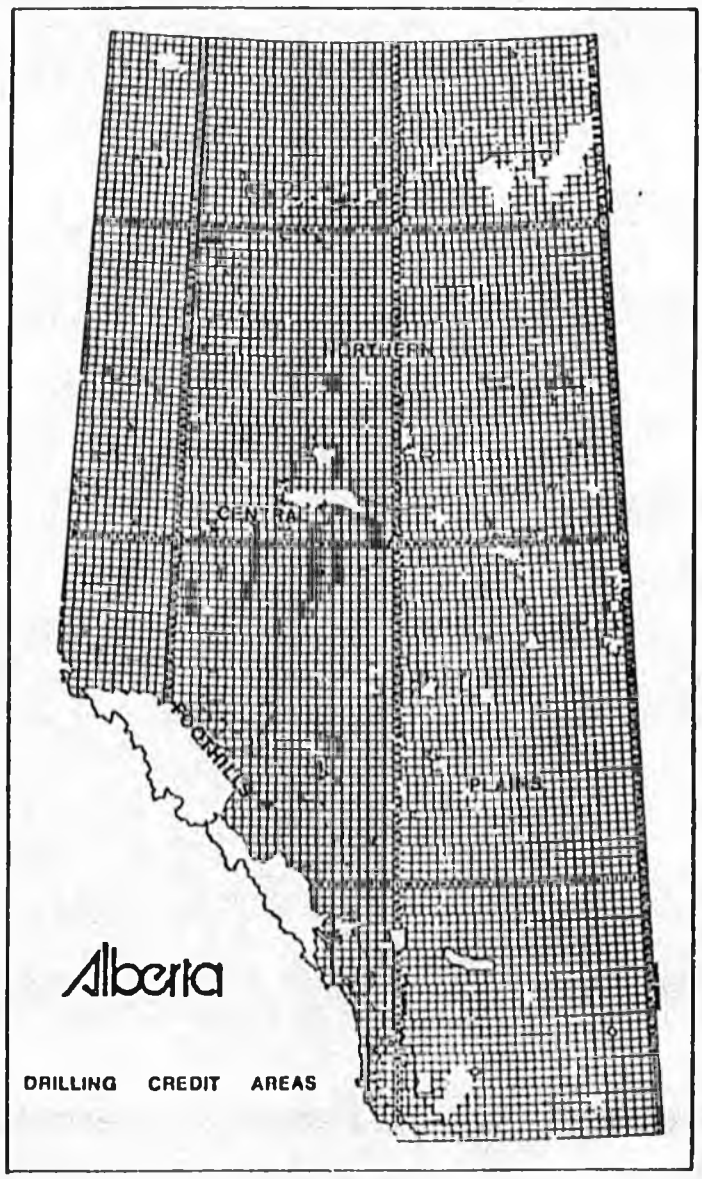

Figure 1

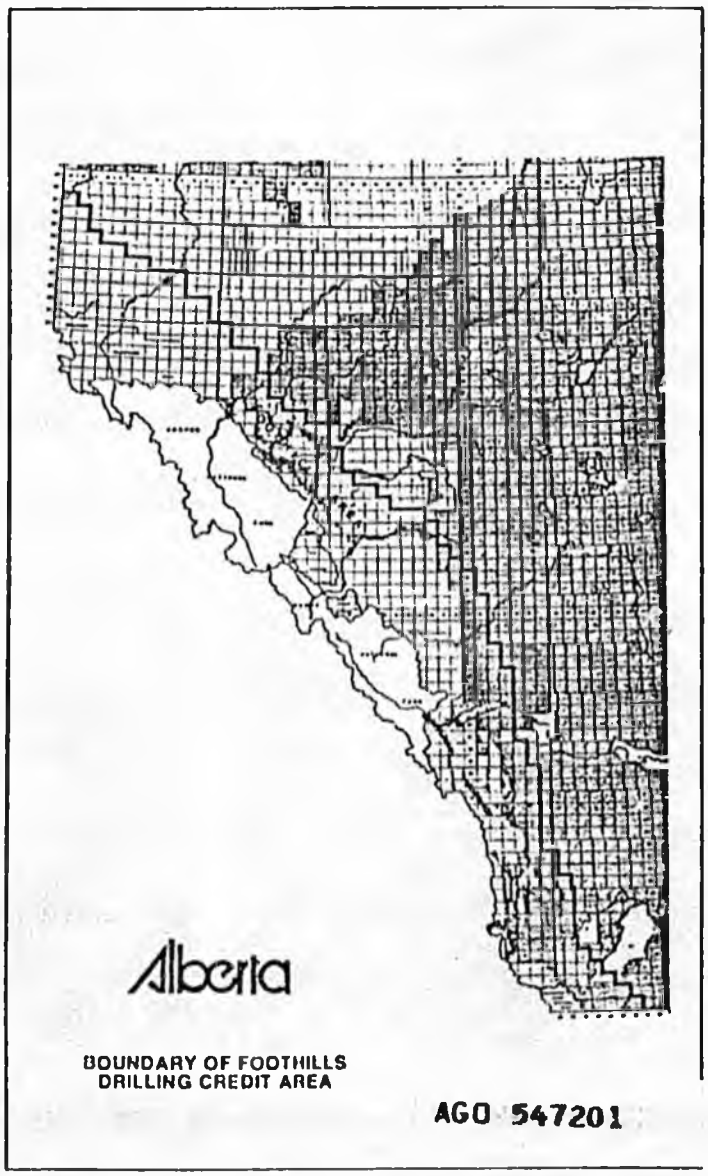

Figure 2

subject to the 1978 Regulation if it commences drilling on or after Jan. 1, 1978. This provision will not be affected if the licensing or certification date is before 1978.

(2) Drilling Credit Areas

Figure 1 shows the drilling credit areas as they will be defined under the 1978 Regulation. The Plains and Foothills Areas have not been changed. The subsisting Nortnern Area, however has been divided into the new Central and Northern Areas shown by the illustration. The boundary between the two new areas was defined by the Department on the basis of well cost data and topographic and access considerations.

Figure 2 is provided for the convenience of industry to depict the irregular eastern boundary of the Foothills Area. A similar map was issued by the Board in 1974.

(3) Drilling Credit Schedules

Drilling credits under the 1978 Regulation will be determined from Schedules F

SCHEDULE F

Applicable to the Class A Interval of an Incentive Exploratory Well that Commences Drilling on or after January 1, 1978

The Class A interval of an incentive exploratory well that commences drilling on or after January 1, 1978 shall be determined by the Board as the interval below the depth of 2,000 feet that

(i) has not been duplicated by a drilled and abandoned well within one and one-half miles.

(ii) occurs more than 500 feet below the base of the deepest accumulation of crude oil or natural gas that in the opinion of the Board has been penetrated by another well within three miles, and

(iii) occurs immediately below the base of the member or formation containing the deepest oil sands deposit that in the opinion of the Board may underlie the location of the said incentive exploratory well.

Where neither (ii) nor (iii) above applies, the Class A interval shall be determined from the depth of 2,000 feet to the total depth of the said incentive exploratory well.

	Basis for Credit Plains Area		Basis for Credit Central Area		Basis for Credit, Northern and Foothills Areas	
Depth, Feet	Cumulative Dollars	Incremental $/Foot	Cumulative Dollars	Incremental $/Foot	Cumulative Dollars	Incremental $/Foot
2,000	0	20	0	30	0	40
3,000	20,000	18	30,000	25	40,000	35
4,000	38,000	18	55,000	25	75,000	40
5,000	56,000	20	80,000	25	115,000	35
6,000	76,000	24	105,000	35	150,000	35
7,000	100,000	30	140,000	40	185,000	50
8,000	130,000	40	180,000	50	235,000	65
9,000	170,000	55	230,000	70	300,000	80
10,000	225,000	75	300,000	90	380,000	100
11,000	300,000	100	390,000	110	480,000	120
12,000	400,000	110	500,000	160	600,000	180
13,000	510,000	160	660,000	200	780,000	210
14,000	670,000	210	860,000	240	990,000	260
15,000	880,000	280	1,100,000	350	1,250,000	350
16,000	1,160,000	340	1,450,000	400	1,600,000	425
17,000	1,500,000	500	1,850,000	550	2,025,000	575
18,000	2,000,000	500	2,400,000	550	2,600,000	575

Figure 3

SCHEDULE G

Applicable to the Class B Interval of an Incentive Exploratory Well that Commences Drilling on or after January 1, 1978

The Class B interval of an incentive exploratory well that commences drilling on or after January 1, 1978 shall be determined by the Board as the interval below the depth of 2,000 feet that

(i) has been duplicated by a drilled and abandoned well within one and one-half miles.

(ii) occurs more than 500 feet below the base of the deepest accumulation of crude oil or natural gas that in the opinion of the Board has been penetrated by another well within three miles, and

(iii) occurs immediately below the base of the member or formation containing the deepest oil sands deposit that in the opinion of the Board may underlie the location of the said incentive exploratory well.

Where neither (ii) nor (iii) above applies, the Class B interval shall be determined from the depth of 2,000 feet to the total depth of the said incentive exploratory well.

	Basic for Credit Plains Area		Basic for Credit Central Area		Basis for Credit, Northern and Foothills Areas	
Depth, Feet	Cumulative Dollars	Incremental $/Foot	Cumulative Dollars	Incremental $/Foot	Cumulative Dollars	Incremental $/Foot
2,000	0	15	0	20	0	28
3,000	15,000	14	20,000	20	28,000	29
4,000	29,000	14	40,000	20	57,000	29
5,000	43,000	14	60,000	19	86,000	24
6,000	57,000	18	79,000	26	110,000	30
7,000	75,000	25	105,000	30	140,000	40
8,000	100,000	30	135,000	40	180,000	45
9,000	130,000	40	175,000	50	225,000	60
10,000	170,000	55	225,000	65	285,000	75
11,000	225,000	65	290,000	90	360,000	95
12,000	290,000	90	380,000	120	455,000	125
13,000	380,000	120	500,000	150	580,000	155
14,000	500,000	160	650,000	180	735,000	190
15,000	660,000	210	830,000	270	925,000	275
16,000	870,000	270	1,100,000	300	1,200,000	310
17,000	1,140,000	360	1,400,000	400	1,510,000	420
18,000	1,500,000	360	1,800,000	400	1,930,000	420

Figure 4

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and G *(Figures 3 and 4)*. The schedules reflect the government's decision to exclude the upper 2,000 feet from the forthcoming program, and to increase the credits for qualifying wells deeper than about 3,500 feet. For wells greater than 5,000 feet in depth, the increase is between approximately 25 and 45 percent, the difference being justified by the Department's comprehensive well cost study. An exception applies to the new Northern Area, for which credit increases at certain depths exceed 45 percent to correspond with Foothills credits.

(4) Royalty Exemptions

(4.1) Eligibility

Crude oil or gas production must originate from a Class A or Class B interval to qualify for a royalty exemption. Production from any source shallower than 2,000 feet will thus not qualify for royalty exemption under the 1978 Regulation. An exception to the foregoing exclusion is found under the following circumstances: If conventional crude oil is produced from a source shallower than 2,000 feet in the new Northern Area, and if the 2,000-foot interval would have qualified as Class A or Class B footage pursuant to the 1974 Regulations, the crude oil production will be eligible for the normal royalty exemption applicable to deeper production.

(4.2) Duration

The royalty exemptions authorized under the 1978 Regulation will apply to the initial 60 crude oil-producing months or the initial 12 gas producing months at the well, commencing with the first month in which the crude oil or gas would otherwise be subject to royalty payment.

Additional details concerning these and other principles relating to the forthcoming program will be specified in the 1978 Regulation. If any questions arise after the 1978 Regulation is studied, they may be referred to J. R. Pow or F. Phillips of the Energy Resources Conservation Board, if they pertain to the certification of a well or the determination of its Class A or Class B interval, or to C. R. Smith or E. Saldanha of the Department, if they are concerned with establishing credit or granting royalty exemption. □

Four Articles from Mineral Leasing as an Instrument of Public Policy, British Columbia Institute for Economic Policy Analysis, 1977:

1. Gregg K. Erickson, "Work Commitment Bidding"
2. Dale R. Jordan, "Petroleum Leasing in British Columbia"
3. Walter J. Mead, "Cash Bonus Bidding for Mineral Resources"
4. Arlon R. Tussing, "The Role of Public Enterprise"

Work Commitment Bidding

GREGG K. ERICKSON

One result of the growing concern in the United States over energy matters has been an increased attention to public policies governing the development of Outer Continental Shelf (OCS) oil and gas resources. The institutional structure under which all such development has thus far taken place was established in 1953 by the Outer Continental Shelf Lands Act.[1] This unamended statute provides the Secretary of the Interior with authority to sell oil and gas leases to the public on the basis of cash or royalty bids offered at sealed bid auctions.

The practice of the United States government since the first such sale in 1954 has been to offer relatively small quantities of offshore acreage on an irregular basis, soliciting always cash rather than royalty rate bids. In recent years, the rate at which acreage has moved to market has been accelerating. However, the average per acre bonus received by the government has also increased, partially reflecting worldwide supply conditions. The fact that bids are received in sealed envelopes has resulted in the winning bid being two, three, or several times the amount of the next highest bid.

Among criticisms of present policy is the assertion that this method of lease allocation diverts undesirably large amounts of *front-end money* into the coffers of the government landowner, money that could, would, and should otherwise be used for development of the resource itself.[2] One possible remedy would involve implementation of the existing statutory authority to substitute royalty rate bids, with fixed and presumably low cash bonuses. The problems created by royalty bidding, principally the premature shutdown effect and the potential for speculator induced misallocation of leases, have been well discussed in the literature. More importantly, they are well understood by persons influencing both public and private mineral resource management policies.[3]

An alternative proposed remedy to this same perceived problem is less well understood. Based in part on the method of lease allocation used in the offshore areas of the United Kingdom, it would allocate exploitation rights to the firm that would commit itself to spending the greatest sum in developing the resource. Sealed bids would be solicited as under the present system, but instead of cash the bid variable would be the *work commitment*. Proponents of this system claim that it will divert money the government

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landowner would otherwise receive via bonuses into exploration and development expenditures.[4] These additional increments of expenditure, it is further suggested, will increase future production to such an extent that the government landowner will be able to recoup the foregone bonus income in the form of the consequentially increased royalty and tax revenue. Ancillary benefits in the form of employment, resource self-sufficiency, and improved trade balances are also sometimes claimed or alluded to.

To an economist these arguments may not seem too persuasive. Nevertheless, no one appears to have devoted much effort to analyzing the economic implications of such a system, and certainly not in a form that would be comprehensive to the noneconomist policy maker.[5] This is unfortunate not only because of the substantial public and private interests involved; the system has significant implications for minerals other than petroleum and in places other than the United States OCS. The purpose here is to provide such an analysis.

EVALUATION OF WORK COMMITMENT BIDDING

In evaluating something new the first step is usually to establish a standard against which it can be measured. In this context, the system of competitive cash bidding has long attracted economists concerned with the problem of natural resource allocation, not only as an ideal against which the performance of other systems might be measured, but as a practical and proven technique for bringing resources into productive employment.

Under an idealized competitive cash bidding arrangement, bidders determine the amount they can afford to offer for a mineral lease by a very simple process: they subtract their expected costs of extraction from their expected revenues. The resulting residual is the maximum the prospective bidder can offer for the tract without buying himself an expected loss. Competition, of course, implies that multiple firms will be preparing bids on each tract.

Assuming no uncertainty about the amount of oil to be found or the price that oil will eventually bring, and disregarding the time value of money, the firm with the lowest expected costs of extraction will be capable of submitting the highest, and thus the winning, bid. This is good from society's standpoint, since it means that the resource will be developed with the minimum expenditure of scarce goods and services. The resource's contribution to economic welfare will be greater than it would have been had the tract been awarded to any of the other, less efficient bidders.

Under a work commitment system each prospective bidder will be asking himself: What is the maximum amount I can promise to spend on the development of this tract and still expect to break even? Since any cash bonus

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that would have been offered to acquire a tract under the traditional system is no longer necessary, the amount of that bonus may clearly be diverted to the work commitment without raising costs beyond the breakeven point. What is not quite so obvious, however, is that the amount a bidder will promise to spend under the commitment system will exceed the sum of the cash bonus and the amount that he would have allocated to development of the tract under the cash bonus system.

This follows from the fact that any additional increment of expenditure can almost always be spent in a way that will bring about some increase in output from the tract and a corresponding increase in revenue.

This is most easily demonstrated with a numerical example. Let us assume that a prospective bidder, in determining how much of a cash bonus he can offer for an oil and gas lease on a hypothetical tract A, has calculated the relationship between expenditures on development of the tract and expected production, and that the results of his calculations appear as plotted in Figure 1.

The vertical axis in this graph (and those that follow) measures dollars expended in the tract's development, dollars that we assume will be spent for construction of a platform and the drilling from it of wells. The horizontal scale measures the output that results from that expenditure, denominated in millions of barrels of oil. The relationship between those barrels of output and the revenue they bring their producer (at an assumed price of $10 per barrel) is shown, through appropriate choice of scales, by the dashed 45° straight line running upward to the right. By this means, the vertical scale can be used to show the value of output as well as the cost of production.

In Figure 1, the point closest to the origin indicates that with one platform and one well this operator would expend $6 million (vertical scale) producing an output of 550,000 barrels of oil, worth $5.5 million (determined by the intersection of the 45° line with a line drawn vertically from .55 million barrels). Moving upward and to the right, each subsequent point reflects seriatum the increases in expenditures and output resulting from the drilling of additional wells.

The general shape of the curve defined by these points is characteristic of situations where one major input to the productive process (in this case land) is held constant, while other inputs (in this case wells) are varied. The output curve originates at the lower left hand corner, but it rises vertically at first because the initial input of investment is unproductive: a platform and oil well costs a certain amount, and an expenditure of anything less than that threshold amount produces no oil. The cost of subsequent wells is assumed to be $1 million, no matter how many wells are drilled, creating a curve that looks like a staircase where each increment of cost (representing a new well) creates a new step. The fact that the staircase steepens as we move

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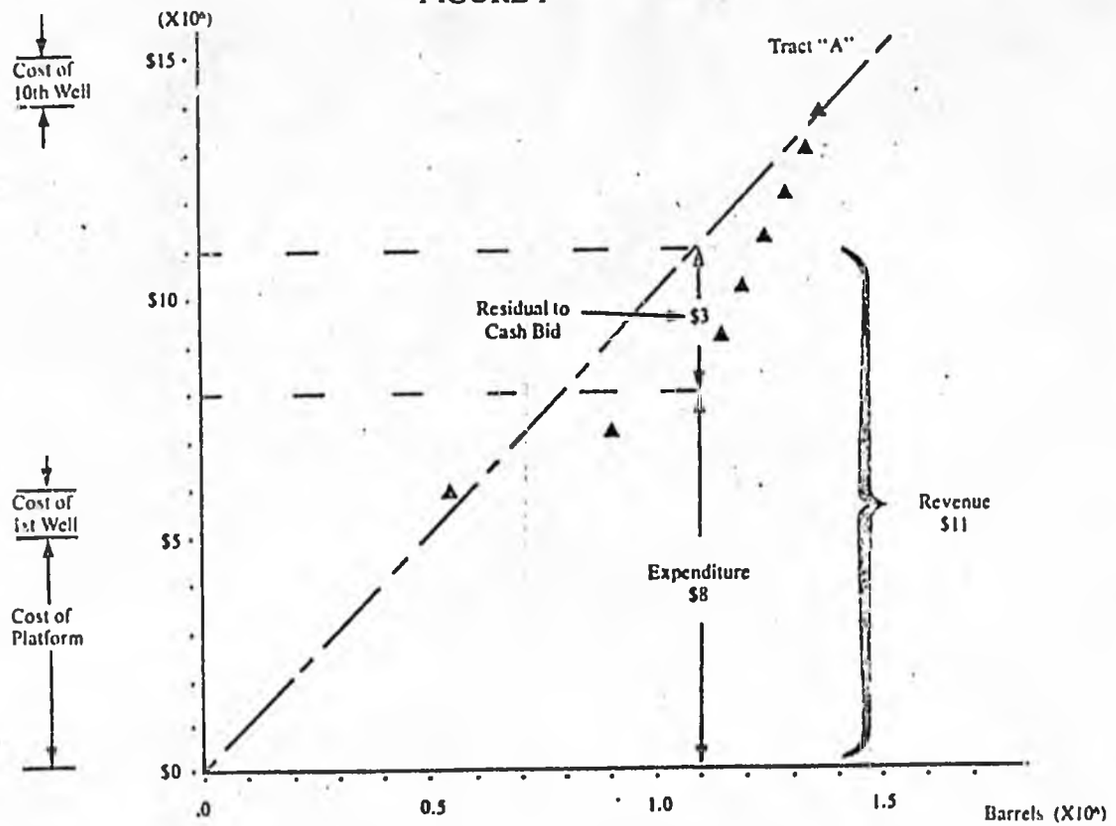
FIGURE 1



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to the right is a reflection of the diminishing returns, in terms of oil produced, to each additional well drilled into the fixed geographic area encompassed by the lease.

Naturally the prospective bidder will be looking for the point on this output curve that puts his costs as far below the 45° line (his output-revenue function) as possible. As shown in Figure 1, the maximum cash bid this operator could afford to make on tract A (and still expect to break even) is $3 million, which—if he is the winner—would require him to drill three wells.

Consider now the situation this bidder would face were a work commitment bidding system adopted. The question that now confronts him is: How much can I spend (or how many wells can I drill) on tract A and still break even? The answer is clearly $14 million (representing nine wells), indicated on the right side of Figure 2 by the output curve for tract A.

If the bidder wins tract A under a work commitment system, his oil output will be 1.4 million barrels (Figure 2) as compared to the 1.1 million barrels (Figure 1) that he would have produced had he won the tract in a cash bonus sale.

If the success of a mineral resource management policy is measured by the physical quantities of the mineral educed from the earth, the work commitment bidding is clearly superior. A resource's contribution to economic welfare, however, is not its total output (whether measured in dollars or physical quantities) but is the residual left over when the costs of all inputs to the productive process (other than the resource itself) are subtracted from the value of the outputs. In the case of tract A this residual is maximized at $3 million, when the value of the inputs is $8 million. As the input expenditure is increased above this optimum point, the residual—the resource's potential contribution to economic welfare—is gradually dissipated until, at the point where the value of inputs reaches $14 million, there is no more residual left to be dissipated.

In this particular example, the increase in output that would result from a switch to work commitment bidding ($3 million) happens to equal the amount of the residual. This coincides with the fact that the expenditure of each additional $1 million above $8 million (three wells) contributes exactly $500,000 to revenue. If the incremental contribution of the fourth and succeeding wells were greater, for example $750,000, the slope of the output curve traced by these points would be flatter, as shown by the squares in Figure 3, and the increase in production from a switch to commitment bidding would be much greater. To put it another way, it would take twice as large an increase in expenditure to dissipate the $3 million residual.

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FIGURE 2

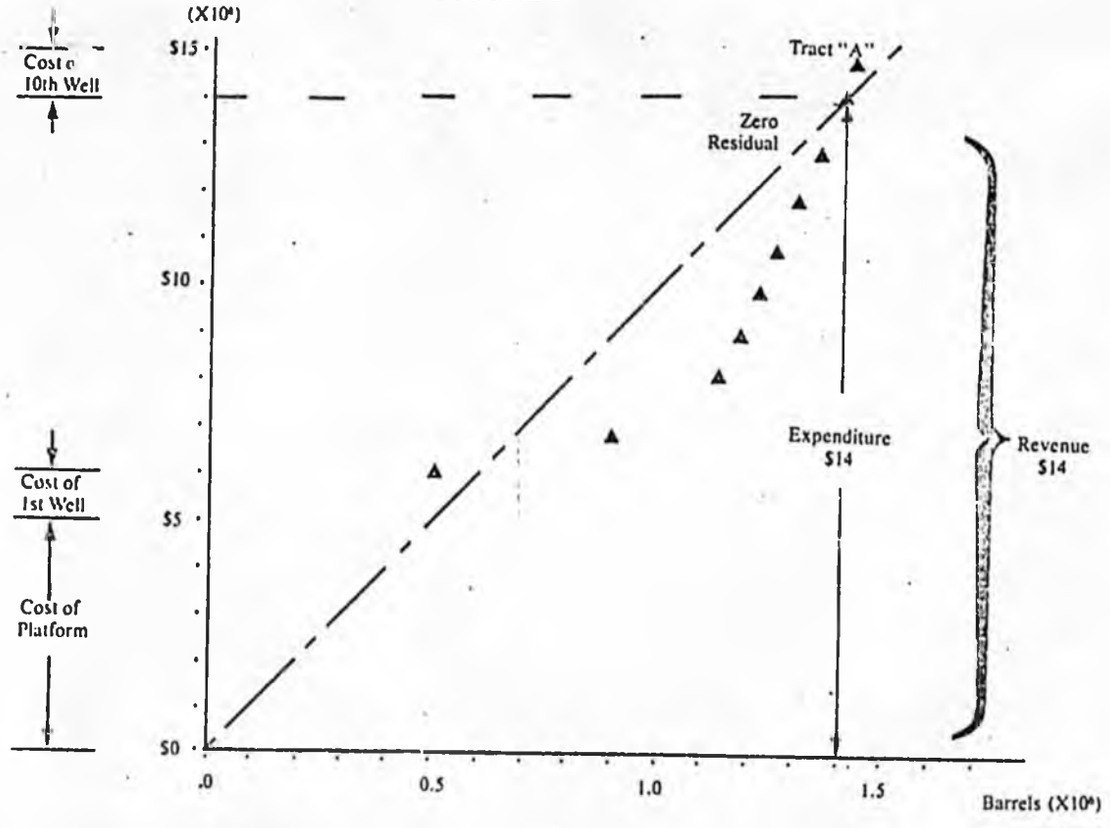

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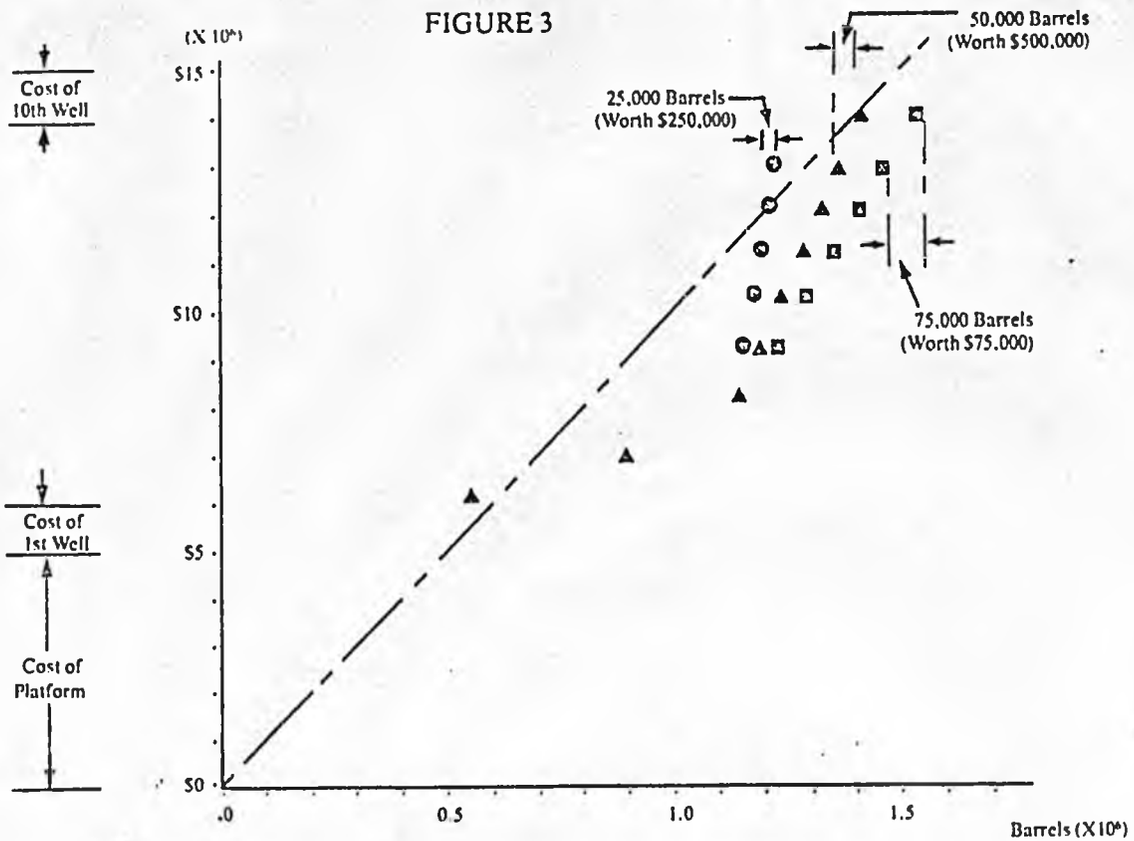
FIGURE 3



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On the other hand, a smaller incremental contribution to output and revenue by the fourth and succeeding wells (for example, an increase of only $250,000 in revenue for each $1 million well) would trace a steeper curve such as the one defined by the circles in Figure 3. The addition to revenue would clearly be less than the $3 million residual sacrificed to obtain it, which is another way of saying that the increase in production would be worth less than the bonus bid sacrificed to obtain it.

TRANSFERABILITY OF COMMITMENTS

Clearly the previously discussed simple work commitment bidding system results in more intensive development of the tract to which it is applied. Clear also is the fact that this effect is dependent on the characteristics of the tract to which it is applied, and in particular on the efficiency with which the successive increments of additional expenditures required under the commitment can be put to work to increase output.

One way to increase this efficiency is to allow an operator who assumes a work commitment in the course of acquiring a particular tract to fulfil that commitment through expenditures on a different tract or tracts.

For example, assume that a bidder has acquired both tract A and tract B as shown in Figure 4. If the work commitment assumed in order to acquire a tract must be fulfilled on that same tract, then his maximum commitment on A (Figure 2) is $14 million; and on B (as indicated in Figure 4 by the dashed lines) it is $8 million. Total output from the two tracts will be 2.2 million barrels.

TABLE 1

WORK COMMITMENT BIDDING

	Output (bbl's)	Revenue ($)	Expenditure ($)	Residual ($)
Tract A	1.4	14	14	0
Tract B	0.8	8	8	0
	2.2	22	22	0

Note: All figures in millions

If the operator is allowed to bid on the two tracts jointly or is otherwise permitted to shift a commitment made to acquire one to the other, then his total work commitment will rise to $24 million, with a corresponding increase in output. As shown in Figure 4, this is possible by operating tract A at the point on the output curve which produces the greatest residual and by transfering that residual, as an internal subsidy, to tract B, where, as indicated by the flatter slope of the output curve, it can be utilized more efficiently. The numbers are summarized in Table 2.

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FIGURE 4

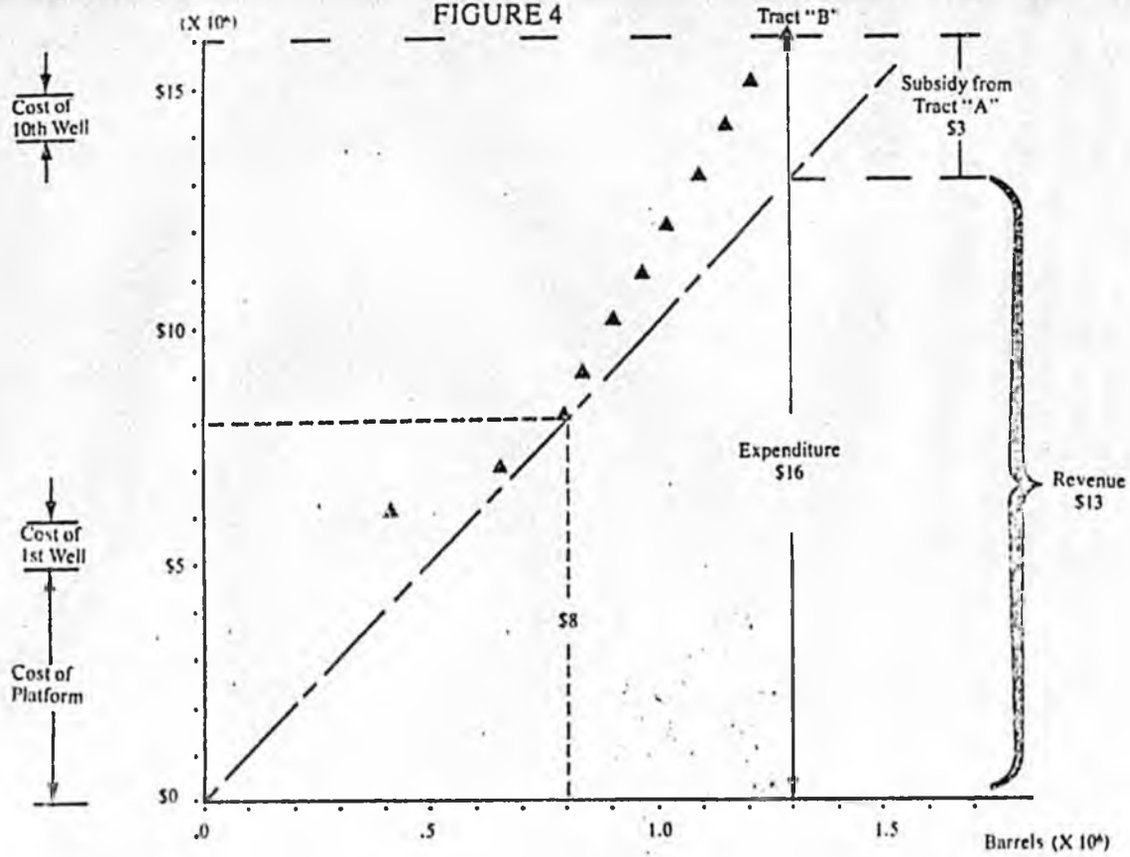

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TABLE 2

WORK COMMITMENT BIDDING
(Internal Subsidy Allowed)

	Output (bbl's)	Revenue ($)	Expenditure ($)	Residual ($)
Tract A	1.1	11	8	3
Tract B	1.3	13	16	(3)
	2.4	24	24	0

Note: All figures in millions

EXTENT OF DEVELOPMENT

In the above examples work commitment bidding has been shown to result in a more intensive development of tracts than would be obtained under cash bidding arrangements. If commitment transfers are permitted among tracts, such a system will also bring about more extensive development.

Consider the output curve of tract C in Figure 5. Tract C is clearly something of a "dog," because there is no point at which the output function crosses the 45° "breakeven" line. Under cash bidding, tract C would elicit no interest at all; even if given away free, it would not be developed.

Under a work commitment system, however, tract C may very well be acquired and drilled. Assume that a firm has already acquired tracts A and B as a package with a work commitment of $24 million and that neither tract has yet been drilled. The firm is now offered tract C. How much of a work commitment can the firm offer for it?

The firm had previously planned to use the $3 million residual generated on tract A to internally subsidize tract B. If tract C is added to the inventory, the firm could apply to C $1.5 million of the internal subsidy that would have otherwise gone to tract B and thereby make the development of tract C a feasible proposition. The calculation is shown in Table 3.

TABLE 3

WORK COMMITMENT BIDDING
(Internal Subsidy Allowed)

	Output (bbl's)	Revenue ($)	Expenditure ($)	Residual ($)
Tract A	1.10	11.0	8.0	3.0
Tract B	1.05	10.5	12.0	(1.5)
Tract C	0.75	7.5	9.0	(1.5)
	2.90	29.0	29.0	0

Note: All figures in millions

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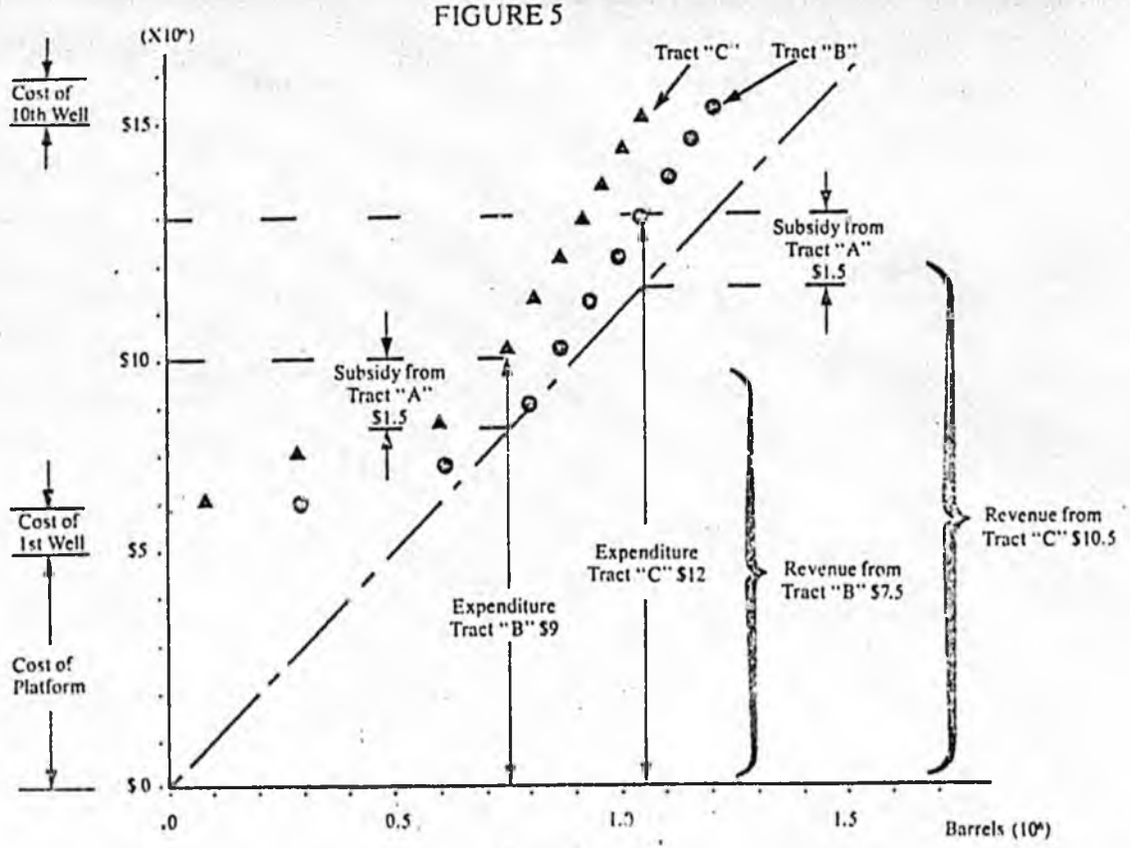
FIGURE 5



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Development of the three-tract package under the work commitment system will be feasible with a total expenditure of $29 million. Since he has already been committed to spending $24 million of this, in the course of acquiring tracts A and B, the maximum commitment bid this operator can afford to make on tract C is $5 million.

Besides illustrating the mechanism through which commitment bidding induces more extensive resource development, the tract C example also indicates how the system (with internal subsidies allowed) may work to the advantage of the firms that can acquire the most tracts. Theoretically, a newcomer with no existing inventory of tracts would be unable to make any commitment bid on tract C.

A way of evading this problem would be to make the commitments transferable. This would allow operator Jones to legally assume the obligations to which operator Smith has committed himself in the course of acquiring tracts from the government. Presumably, operator Smith would pay Jones for the favour.

The prospective bidders in these examples have been endowed with the ability to foresee accurately and precisely the output curve associated with every tract. In practice this is not the case. If there is any characteristic that sets the exploration phase of the petroleum and mineral industries apart from other businesses, it is the everyday uncertainty with which its participants must learn to cope. It is perfectly possible, for example, that Smith might acquire tract C with a work commitment bid of $14 million on the mistaken belief that its output curve is that of tract A. After building a platform and drilling the first four wells, the true shape of the curve—and the firm's predicament—would reveal itself. The required $14 million expenditure applied to tract C would leave Smith with a net loss of about $4 million. If he could somehow shed $5 million of the $14 million commitment, Smith would be able to operate the tract with only four wells already drilled and thereby cut his losses to the more acceptable level of $1.5 million. Smith would be willing to pay up to $2.5 million in cash to unload the $6 million obligation, since that is the amount of his maximum additional loss if he can't get rid of it.

Any other operator who is facing or expects to face an output curve with a flatter slope than that faced by Smith will be able to make a mutually beneficial deal with him, since, for the other party, an additional expenditure of $5 million will bring in more than the maximum $2.5 million that Smith will be willing to pay.

Besides putting the small firm in a better position to compete and mitigating the problems of uncertainty for all firms, large and small, a system which allowed the free exchange of work commitments would have the further and more important advantage of maximizing the overall

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efficiency with which work commitments are utilized. To the extent to which such a market was effective in bringing potential commitment offerers together with potential commitment takers, it would ensure that everyone would be operating at a point where a small increase in expenditure by one operator would produce no more and no less additional revenue than would the same increase applied to any other operator.

A minor but interesting benefit of a market in commitments would be the information it would provide concerning the efficiency with which the work commitment system is eliciting additional output.

This can be understood by applying the concept of the output curve (hitherto used in relation to individual tracts) to the entire universe of tracts being offered under the commitment bidding system. By combining all such tracts and treating them as a single entity, an overall output curve similar to Figure 6 can be drawn. Just as in the case of an individual tract, the point where the curve dips farthest below the 45° breakeven line will be the optimum operating point, the point which results in the resource's largest contribution to economic welfare. The distance between the breakeven line and the output curve at that point is the measure of that contribution, and it is equal to the income that would come to the government landowner were a competitive bidding system utilized. It is this residual—the difference between total revenues and total costs—that the public will be sacrificing to subsidize output.

The efficiency with which the subsidy provided by the work commitment system works to increase output will be a function of the output curve's shape to the right of the point where bonus income would be maximized. Three hypothetical configurations for this part of the curve are shown, and the difference this shape makes to the level of additional output educed by the sacrifice of the residual can be seen. The significance of the price at which commitments change hands will be determined by the slope of the output curve at the point where it intersects the 45° breakeven line. Curves Y and Z both cross at an angle which indicates that, at that point, $1 of expenditure produces $0.50 worth of additional output. In either situation the market price for assumption of a $1 million commitment would be $500,000. Curve X, however, crosses the line at a steeper slope (as shown in the inset), indicating that $1 of expenditure will produce $0.33 worth of additional output. If curve Z accurately represents the overall output curve, the market price for the assumption of a $1 million work commitment will be about $333,000.

From a policy standpoint these numbers, whatever they may be, have considerable significance since they can be used to compare the efficiency of the work commitment system in eliciting additional output with whatever other alternative policies may be available. For example, if the market for

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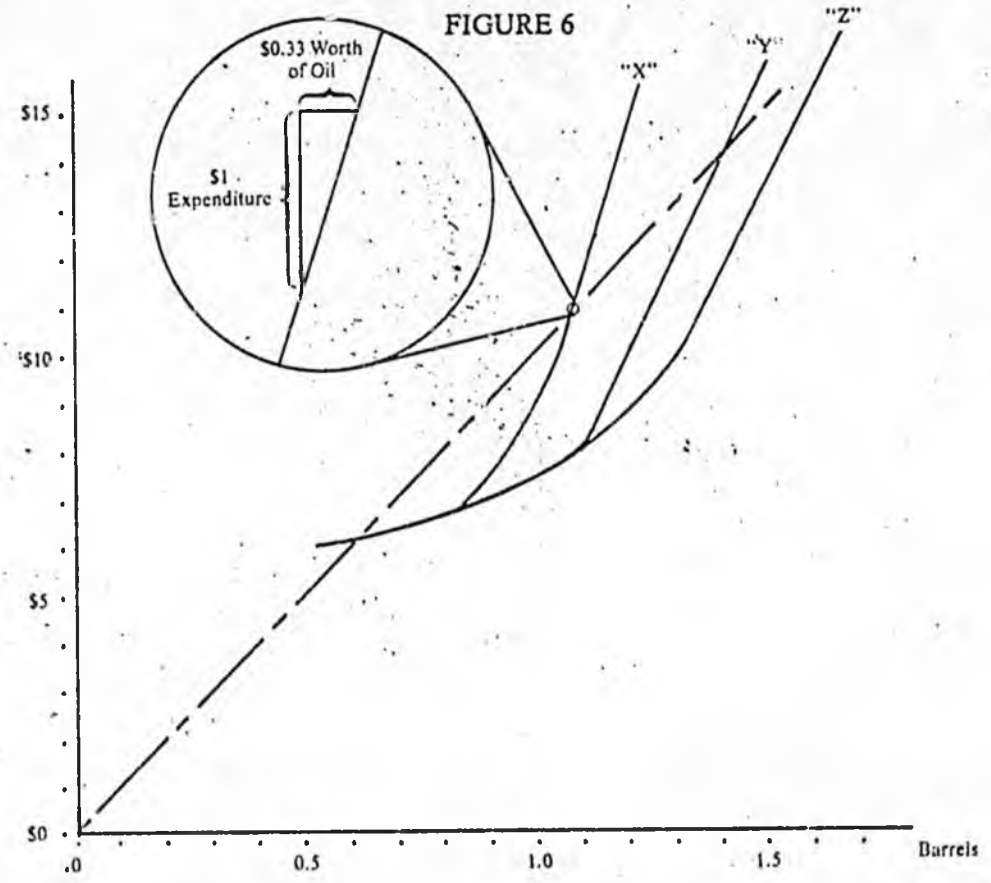
FIGURE 6



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commitments indicates that the last dollar of subsidy transferred is producing only 33 cents worth of additional oil, it may very well be that another source of oil development—for example, tar sand or oil shale—could be found that would give a better return.[6]

THE TIME FACTOR

To simplify the discussion of the work commitment system, the time dimension of both expenditures and income has thus far been ignored. Since a dollar in hand today is worth more than the promise of a dollar tomorrow, it has been assumed that all bidders have used a discounting mechanism to take account of the time value of money. Thus, they would reduce all amounts of both expenditure and income streams to their *present value*, that is, the lump sum that the bidder would be willing to receive or give in exchange for the specified income or expenditure stream.

If a work commitment system is to be implemented, it will be necessary to take careful account of the fact that a commitment fulfilled in the next year will have a very different impact on output from one of the same amount fulfilled ten years hence.

If the public is going to give up its bonus income to subsidize output, the time when that subsidy takes effect will presumably make some difference. Of course, some arbitrary time limit could be established for the fulfilment of commitments exactly as the United States government sets the five-year term on the OCS oil and gas leases it sells. If free exchanges of commitments are allowed, anyone who wished to distribute expenditures over a time frame incompatible with his commitments could simply enter the market and adjust his inventory of commitments accordingly.

Another way of handling the problem would be simply to apply some appropriate interest rate to every commitment assumed and specify that the amount of expenditure required under that commitment must increase by the amount of the compound interest accumulated in the period between the assumption of the commitment and its fulfilment.

CONCLUSION

The adoption of a work commitment bidding system implies a judgment that existing institutions for private exploitation of public resources result in a suboptimal rate of resource development.

Any argument for the adoption of such a system must first establish that this is in fact the case. Secondly, it must prove that the work commitment approach is the least costly method of achieving the desired higher rate of exploitation.[7]

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In comparing various alternative ways of achieving higher output against the work commitment system, some important features of that system are certain to stand out. First, and probably most significant, is the simple fact that the work commitment system results in a subsidy. As such, the criteria for its evaluation should be no less stringent than those applied to a direct appropriation of public funds or a tax concession adopted for the same purpose.

Secondly, the cost of the subsidy conferred under the work commitment approach is impossible to determine *a priori* and difficult of determination after the fact. If there exists a "right" level of subsidy it will be mostly a matter of luck if the foregone public revenue happens to equal that amount. For similar reasons, the benefits of the subsidy in terms of the total increase in output, development, or whatever, are not amenable to accurate quantification. As a consequence, it is doubly difficult to evaluate the system's relative efficiency.

Finally, a properly designed work commitment system allocates the uncertain amount of the subsidy in a fashion that tends to squeeze the maximum additional output from every dollar of subsidy. It does this more or less automatically. This characteristic means that the transfer of resources occasioned by the subsidy needs no affirmative action on the part of policy makers—as does a direct appropriation of public funds—in order to be continued. This fact, however, combined with the intrinsic uncertainty concerning the subsidy's magnitude makes it easier for vested interests to perpetuate such a subsidy long after any real justification for it has passed.

Notes

1. *U.S. Statutes at Large*, vol. 67, p.345. Public Law 212 (August 7, 1953).
2. For an exposition of the conventional industry wisdom on this point, see "Terms for North Sea Oil," in *Petroleum Press Service* 40 (1973): 122-24.
3. In recent testimony before the Senate Interior Committee, industry representatives were unanimous in their opposition to royalty rate bidding. *Outer Continental Shelf Oil and Gas Development Hearings Before the Subcommittee on Minerals, Materials, and Fuels of the Committee on Interior and Insular Affairs* (United States Senate, 93rd Congress, Second Session: May 6,7,8,10,1974).

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4. Arguments for the work commitment system are expounded in detail in I. White, D. Kash et al., *North Sea Oil and Gas: Implications for Future United States Development* (Norman: University of Oklahoma Press, 1973).

5. Kenneth Dam has touched on some of these matters, however, in "Oil and Gas Licensing in the North Sea", *Journal of Law and Economics* 8(October 1965) and "Pricing of North Sea Gas in Britain," *Journal of Law and Economics* 13 (April 1970). Dam recognizes the subsidy for what it is and concludes that it is unjustified.

6. If it is determined that only a portion of the residual should be applied as a subsidy, this could be accomplished by offering only a portion of the tracts on the commitments bid basis, but allowing the fulfilment of a commitment on any tract acquired from the government. Since the reduction in the subsidy will move the operating point to the left on the output curve (Figure 5) to a point at which its slope is flatter, the result will be a higher assumption price for commitments. The commonsense explanation is that the optimum amount of total expenditure will be reduced only slightly; but that acreage over which commitments that can be fulfilled by that expenditure will be reduced relatively more. Another alternative would be to combine the work commitment system with a royalty, net profits share, or other form of deferred rent collection. This is in fact the arrangement pertaining in the North Sea sector. If the government takes a very high net profit share, the amount of the subsidy will be substantially reduced.

7. There are certain circumstances where a work commitment system could result in no more extensive or intensive development. This would be the case if the commitment were devoted to an activity not contributing to output. For example, if a government awarded a mineral concession to the operator who promised to build the largest smelter, no increase in mine output would result (unless the location of the smelter made lower grade ores profitable to mine).

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Petroleum Leasing in British Columbia

DALE R. JORDAN

FACTORS AFFECTING THE LEVEL OF EXPLORATION

From data published by the provincial department of mines and petroleum resources, it would seem that exploratory drilling in British Columbia in 1974 was in a static position and may even have been declining. There was a 22 per cent drop in the number of exploratory wells drilled in 1973 compared with 1972, and a corresponding drop in the footage drilled. This decline in activity appeared to be continuing into 1974, with drilling down 10 per cent in the first seven months. This apparent decline in exploration for oil and gas in British Columbia came at a time when the demand for oil and gas was high. Prices for oil and gas had increased dramatically, and considerable concern was being expressed over national self-sufficiency in all forms of energy supplies. By comparison, exploration activity in Alberta showed the opposite pattern. In Alberta, exploratory drilling in 1973 increased 50 per cent over 1972. Statistics published by the Daily Oil Bulletin showed that during the first several months of 1974 there was a further increase over the same period in 1973.

What caused the static or possible decline of exploratory drilling in British Columbia at this particular period of strong demand and high price? There are several answers, and formulated theoretical solutions must be viewed in the light of political judgment where governments demand a greater share of resource revenues. Certainly, the federal budget proposals in the spring of 1974 discouraged exploration for oil and gas in Canada; however, it would seem that provincial government policies were largely responsible for any discouragement felt by the oil and gas explorer.

In this article I attempt to set out some of the basic causes that contributed to the 1974 situation in British Columbia. These causes are identified and any suggested solutions are offered in the realization that there is a danger of oversimplifying complex problems and the possible effects of implementing partial solutions.

For any analysis to be meaningful, a proper perspective must be maintained. One of the overriding factors influencing the oil and gas explorer's decision making is the number of geological prospects. In British Columbia, the potential hydrocarbon-bearing portion is thought to be

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restricted to the northeast part of the province. The western boundary of this 51,000 square miles is the Rocky Mountains. In 1974, an estimated 32 per cent of the oil and 18 per cent of the gas in this area had been found, leaving an estimated 0.82 billion barrels of oil and 47.56 trillion cubic feet of gas still to be discovered. Although there was considerable potential still remaining for the oil and gas explorer, the area was small compared to Alberta and Saskatchewan, and it was much smaller than the vast geological potential north of the 60th parallel.

Another factor that depressed the enthusiasm of the explorer was the apparent lack of multizone prospects. Drilling a well to test only one potential horizon increases the risk factor significantly.

Before leaving the subject of the province's hydrocarbon potential, it should be remembered that several basins existed, both offshore and in the interior, containing substantial deposits of sedimentary rock that have not been explored to any great extent. Generally, the known geology in these basins discouraged any extensive exploration. Possibly, the very expensive exploration needed in the basins required special consideration before their potential could be fully realized. This special consideration might take the form of a reduced royalty on any hydrocarbon discovered, or of a joint participation scheme whereby the British Columbia government might share in the risks involved.

Another factor to be taken into account by the oil and gas explorer when selecting his areas of interest is the access to those tracts that he feels have hydrocarbon potential. Again, British Columbia was at a disadvantage in 1974 when compared with Alberta and Saskatchewan. Access to this already restricted basin area was affected by muskeg conditions over much of the plains and by deep river valleys in the foothills. These conditions involve greater expense in conducting exploratory work, and the oil and gas explorer would often be confined to only a four-month work year, because of such terrestrial conditions. The problem of limited access presents a very real constraint on attracting the oil and gas explorer and is relevant when considering any changes in land tenure and revenue sharing.

Another important parameter in any deliberation affecting oil and gas exploration is the availability of funds for exploration.

As a general rule, funds generated from production are used to finance exploration. It seems that the risk factor employed by financial institutions effectively discourages the use of debt capital as a source of exploration funds. It is not uncommon to read that an oil and gas producer has arranged for a substantial loan, but this will nearly always be for a specific purpose related to the development of a new reservoir of oil or gas. The discovery of this reservoir would have been funded out of the company's cash flow.

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When an oil or gas explorer's cash flow comes from production outside any particular province, then for money for exploration to flow into that province, that jurisidiction must have a framework of leasing and revenue sharing that can favourably compete with other areas also requiring exploration.

It would seem that cash flows from Canadian production will continue to be a major source of exploration funds. In the case of the integrated companies (those having refinery capacity), this will be true under almost any condition short of expropriation.

However, within this framework these funds will generally gravitate to where they can expect the greatest return. It may not be enough for a province to show that it will ensure that the successful explorer will receive a reasonable rate of return. It may well be that the successful criterion for increasing the level of exploratory drilling will be a division of revenues such that the oil and gas explorer will have a sufficient cash flow for an active exploration programme, as compared with other jurisidictions. The explorers who have a cash flow generated from production and the flexibility to determine the best place to reinvest these funds have the responsibility of ensuring that they can go to where they can expect to return the greatest profit.

The ability of the producer to channel cash flow from one jurisdiction to another depends largely upon the particular laws in force where the oil or gas is being produced. The provinces of Alberta and Saskatchewan tend to attempt to discourage the outward flow of funds generated from production in their particular provinces. In both provinces, this discouragement took the form of a high royalty, coupled with a drilling incentive programme, designed to encourage continued exploration.

In Saskatchewan, the mineral tax and the royalty surcharge took away from the producer all of the recent price increases and, in fact, returned to the producer a smaller amount per barrel than he was receiving prior to the price increases. As an inducement to continued exploration in Saskatchewan, an incentive programme was developed, whereby the producer was allowed to retain an additional 30¢ for every barrel produced, providing this money was used for drilling wells, for waterflood projects, research, and other specified purposes in Saskatchewan. This incentive had not been in effect long enough in 1974 to permit a complete analysis of its performance; however, it was really restricted to only those companies that already had production in Saskatchewan. A review of these companies shows that the producers with the majority of the production were the so-called Majors, which raised the question as to whether or not these Majors were prepared to continue to explore in Saskatchewan under any conditions. It is more probable that the exploration philosophy of the

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Majors directed that they use their exploration funds searching for high reserve reservoirs (which generally means exploring outside Saskatchewan)

To encourage explorers who do not have production in Saskatchewan, the government provided an incentive credit of about 30 per cent of the costs of drilling exploration wells. This credit could then be used to reduce any royalty or mineral tax obligations that may accrue.

In Alberta, in 1974, there was also an incentive programme for exploration drilling. This incentive took the form of a credit which could be subsequently used to satisfy most of the cash obligations that may arise by virtue of the royalty obligation, rental payments and mineral taxes, and could also be used to purchase oil and gas leases. Credits established in Saskatchewan could not be used to purchase leases. The formula which determined the amount of credit that could be established for any particular exploration well was predicated upon the area of the province in which the well was located and the depth of the well. This formula was expected to return to the explorer by way of credit approximately one-third of his drilling costs.

The principal producers of crude oil in Alberta were much the same as in Saskatchewan—they were the Majors in the oil and gas industry. Again, as in Saskatchewan, it would seem that the interest of the Majors in continuing to explore in Alberta had become blunted, not because of any particular rules, but more through the apparent lack of sufficient high reserve potential which this type of company must search for.

In Alberta, in 1974 the royalty was structured to increase not only when the production increased but also when the price increased. Alberta had also adopted a new oil/old oil concept, whereby royalties were considerably reduced on what was termed new oil, which, of course, had the affect of increasing the producer's cash flow and encouraging the development expenditures. This old/new concept applied as well in the case of natural gas. Saskatchewan also had provision for a reduction in its mineral tax and royalty surcharge for new oil. This reduction was gradually phased out after a few years. Alberta, in 1974, had the lowest rate of royalty on oil and gas, received the highest price for its natural gas and had a price for crude oil equivalent to the other provinces, all of which means that in Alberta the producer of oil and gas received a higher rate of return and, consequently, had more money available to him for exploration purposes than the producer in Saskatchewan or British Columbia.

While the incentive programme adopted in Alberta and Saskatchewan offered encouragement to drill exploration wells, any analysis of the performance of a similar programme which might be suggested for the province of British Columbia must be coupled with the consideration of a lower royalty and subsequent higher cash flows to the producer.

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This type of incentive can only be effective if the producer is also offered a return on his development expenditures that is competitive with other jurisdictions into which the oil and gas explorer is free to go.

Another source of money for drilling exploratory wells previously used in North America has been the drilling fund. The drilling fund usually takes the form of buying a number of shares in a limited partnership. The attraction to the investor apart from the possibility of participating in oil and gas discoveries, is the income tax feature in the United States which permits all intangible drilling expenses to be written off in the year that expenditures were made. This can be done without qualifying under any principal business rules, as prevails in Canada. It is this principal business rule that has to the present time precluded the tapping of a similar source of exploration funds in Canada.

It is estimated that between 250 and 400 million dollars are generated annually through the sale of shares in drilling funds in the United States. The United States government, in an attempt to encourage further exploration within its own borders, has chosen to reduce the amount that can be written off against income for income tax purposes when the funds are spent outside the United States. This move precipitated the drying up of exploration funds in Canada which previously came from this source.

Over the past few years other extractive industries, particularly mining, have been channelling considerable amounts of their cash flows into oil and gas exploration. These endeavours have usually taken the form of funding a subsidiary company. The continuation of this type of fund for the purposes of exploring for oil and gas will depend upon the success of the subsidiary companies and also upon the influence that mining taxes will have upon the parent companies' cash flows.

A few years ago it was quite popular for large United States gas utility companies to provide exploration funds on the basis that they would have first call on any gas produced and exported for sale to the United States. This source of exploration funds has also dried up almost completely as a result of decisions by the National Energy Board concerning the exporting of gas and, as a result of rulings by the Federal Power Commission in the United States, which have not allowed these utility companies to include these expenditures in their rate base. The Federal Power Commission looks upon this type of exploratory funding as a mortgage loan, rather than as a prepayment for gas, as the utility companies would prefer.

THE LEASING SYSTEM

The 1974 system of leasing in British Columbia will now be reviewed, and I will attempt to analyse its effectiveness in relation to the relatively small

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hydrocarbon potential area, lack of access, difficult terrain, and exploration funds generally coming from cash flows.

The system of granting oil and gas rights on crown lands in British Columbia invoved in 1974 an exploration grant called a "permit," a subsidiary exploration grant called a "drilling reservation," and a development grant called a "lease."

Permits, which can involve upwards of 100,000 acres, could only be acquired through a competitive cash bidding system at sales which were usually held four times a year.

The permits were classified from A to D, depending upon their accessibility and the terrain conditions. The class D permits were for offshore areas. One purpose for classifying permits was to allow them, where the working conditions were difficult, to have a longer life than was otherwise provided.

Permit classification also determined the minimum amount of work the permit owner was obligated to spend in any year. These minimum work obligations were more stringent for the Class A permit, where access and terrain problems were minimal. The significance of this particular requirement was lost because, in order to conduct an equivalent amount of exploration, particularly drilling, the costs involved in the offshore areas far exceed those which would be expended on a class A type permit. The sections of the Petroleum and Natural Gas Act that governed the permit work obligations did not specify any specific exploration programme, but only that a certain amount of money be spent during each term of the permit. This obligation to spend money in exploring on a permit could be satisfied by grouping several permits together, so that expenditures incurred in exploring on any one permit would satisfy the work obligation of the grouped permits. This grouping provision is important because it allowed an explorer to acquire large tracts of land for a short period in order to conduct extensive geophysical exploration.

This obligation to spend money on exploring on a permit could also be satisfied by paying the money to the British Columbia Crown. This would seem to be about as negative a provision as one could imagine, assuming, of course, that the government of British Columbia was interested in ensuring that the companies holding permits were the ones prepared to actively explore. If the removal of this system would give rise to problems, as in the case of an explorer unable to work a permit through no fault of his own, then a far better system would be to provide a means where work obligations could be accumulated and satisfied in the following year.

Permits were valid for one year and could be renewed annually, for a period ranging from five to eight years, providing the company was not in default.

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When a permit holder had expended the minimum amount of money exploring on a permit or group of permits or had paid the money to the government, he was entitled to convert the permit into leases. To do this the permit holder had to relinquish 50 per cent of the land back to the Crown. Land selected for conversion into leases could not be in a consolidated block, but had to be in a number of leases, which had to corner one another, or be separated by at least two units—approximately one mile. The maximum size of the lease was six units—approximately three miles square.

This system of exploratory permit and subsequent conversion of half of the land to lease on a chequerboard fashion was similar to that used in Saskatchewan and part of Alberta. The system probably had its beginning in Alberta. It was designed to ensure that when crude oil was discovered, the Crown would be returned some prospective areas which were subsequently sold. This system worked reasonably well, particularly in Alberta, where some substantial discoveries of crude oil were made during the existence of the exploration agreement. Unfortunately, in the vast number of cases a discovery was not made, and the chequerboard pattern for leases led to fragmentation of rights throughout the area formerly comprising the permit. This effect tended to discourage other explorers from entering the area, and this system of selecting leases also prompted the need for the drilling reservation, which generally covered that 50 per cent of the land returned to the Crown.

Seemingly, in those parts of the province having relatively easy terrestrial access and where the potential hydrocarbon-bearing formations were not too deep, this system of chequerboard leasing may be satisfactory. However, in areas where access is a major cost and where deep expensive drilling is required, it tended to discourage anyone other than the holder of the 50 per cent leases from entering the area to explore. Certainly in offshore areas where seabed drilling cost is many times greater than land drilling, this system of lease selection is most unsatisfactory.

Leases granted on crown land in British Columbia in 1974 had a primary term of ten years, renewable for further ten-year periods if particular circumstances existed which generally related to production.

The acquisition of leases in British Columbia was handled in 1974 in two separate ways. First was the way previously mentioned, which was the result of having a permit and then earning the right to acquire leases of 50 per cent of the land. The second was through the competitive cash bidding at one of the quarterly sales held by the British Columbia Crown.

There was no obligation at that time on the part of the lessee to drill a well during the initial term of the lease. A 1974 amendment to the Petroleum and Natural Gas Act, however, permitted the minister to forward a notice to

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drill when he considered that development of the lease was not active enough. This amendment seemed to suggest that before the minister would consider sending a notice, there would, in fact, have been a discovery made on the lease. Thus, in sending the notice, the minister was merely requiring development drilling. It seemed most unlikely that the wording of this section would be interpreted such that the minister could require exploratory drilling on existing leases.

There was an apparent trend to shorten the term of leases, with Saskatchewan granting only five-year primary terms. However, in British Columbia the term of 10 years was not excessive when one considers the short period of four to five months when work can be done in the area of hydrocarbon potential. This is quite different from most of the areas in Alberta and Saskatchewan, where drilling and other geophysical operations can be conducted all the year round.

The government of British Columbia appeared to feel that a large number of leases were held by companies not particularly active in exploring in the province and that something should be done to discourage these holdings, so that lands could be offered to others who were prepared to explore. These feelings may have promoted some of the 1974 changes in the Petroleum and Natural Gas Act, whereby the rental on leases was increased from one dollar an acre to two dollars an acre. The effect of this change seemed likely to be the return to the Crown of some acreage which, under the previous rental of one dollar an acre per year, would have been retained by the lessee. However, one must assume that for the most part relinquished leases would be the least attractive, and leases with potential, even though the lessee was not prepared to conduct any immediate exploration programme, would be retained, and the two dollars an acre would be paid. The greatest effect that this rental of two dollars an acre per year seemed likely to have was to deter other explorers from entering the province. It is one thing to create a system designed to discourage excess holdings by companies not prepared to explore immediately, and quite another thing to expect these same rules to promote the entry of new companies and increase exploration activities.

The royalties on crude oil in British Columbia were essentially the highest in Canada in 1974. The rate was 40 per cent for a well producing 1,000 barrels a month and further escalated to about 58 per cent when the monthly production reached 10,000 barrels. It would seem that this royalty level, which directly affected the producer's cash flow, could only act as a deterrent to increasing the level of exploration in British Columbia much beyond its historical pattern of about fifty to sixty exploration wells a year. Other changes that may be made in regulations designed to encourage greater exploration activity will never perform to their full potential until

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the producer's return is comparable with what he can obtain in other jurisdictions.

GOVERNMENT OPTIONS

We can now examine the options available to the British Columbia government in 1974. First, the government could maintain the existing regulations without change; or they could have stricter enforcement of the rules, further reducing cash flows to the producer, making it more difficult to operate; and thirdly, they could make changes designed to encourage greater exploration activity in the province. In each of these options it is assumed that some accommodation could be made between the provincial and federal authorities with regard to the revenue-sharing aspect. If it could not, then it would seem almost certain that exploration activity would decline, not only in British Columbia but also in the rest of Canada, and that even significant changes in the regulations would fail to act as an effective inducement to continued exploration.

In the first instance, if the government were to resist changes to its rules and to continue the existing level of royalty, it could expect to receive about the same amount of exploratory drilling as there has been in the past. This is evident from the sale in August 1974, where some 7.2 million dollars was paid for the right to acquire oil and gas permits, drilling reservations, and leases. This was certainly an indication that the oil industry was not prepared to write British Columbia off because of its high royalties and rather stringent regulations. There are several reasons for this. Companies have enjoyed a general increase in their cash flow, and in 1974 enough cash flow was available to pursue exploration in a province where the rates of royalty would reduce their return on invested capital as compared to other jurisdictions—for example, Alberta or the United States. The intensive competitiveness in the oil and gas industry distinguishes it from all other industries. Companies that have invested a great deal of time and money developing the geological potential of a particular area and have found that it fits their exploration parameters are prepared to offer a good deal of bonus money when this land becomes available through a competitive sale. Also, because a number of years usually elapses between acquiring an exploration permit and the development of and production from any discoveries, the economic climate may change such that what at one time is not attractive may become economic at the time of production.

If the government of British Columbia wished to discourage continued exploration by the existing oil and gas explorers and to discourage entry by newcomers, they could most effectively do this by again raising the rates of royalty and making the tenure of agreements shorter than they were. This

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type of action would cause the companies exploring in the province and those contemplating doing so to restrain their activities; exploration would then stagnate.

Presumably, such action by the British Columbia government would not occur without consideration of these consequences and the recognition that a different vehicle should enter the void left by the existing explorers. This could take the form of a public company, such as the British Columbia Petroleum Corporation; alternatively, the government might feel that, given time, the major oil and gas producers, the fully integrated companies, may finish their exploration for high-reserve reservoirs in other parts of Canada and be prepared to return to British Columbia to look for the remaining reserves which they may need to supply their refineries.

To give any support to this latter proposition, one would have to presuppose that the exploration presently being carried on by the Majors in Canada in the Northwest Territories, in the Arctic Islands, and in the offshore areas of eastern Canada will be unsuccessful and that they will have to lower their sights, accept a lesser prospect, and return. This is very difficult to support, considering the successes already achieved in the Northwest Territories, particularly in the Delta, and in the Arctic Islands. Also, there is a vast geological potential remaining as assessed against the very few wells that have been drilled.

The supposition that a provincial public corporation could enter the exploration field and its endeavours be more beneficial to the province than the present system raises many questions about the corporation's practical efficiency and about the possible political repercussions. This article's purpose is not to examine the political repercussions that might occur when dry holes are drilled with public funds; however, we should examine some of the practical considerations involved in the operation of a public company which has an almost exclusive area within which to explore as a result of discouraging the private sector. For the government to discourage both the existing explorer and the entry of any new ones and to expect the public corporation to be able to fill this void suggests that the government is saying, "If the private companies do it, so can we." Now remember that the private companies comprise all the oil and gas explorers working in the province and those contemplating doing so, given the right opportunities. All these companies have geological staffs, many of whom will be geologists who devote most of their time over a considerable number of years entirely to the study of British Columbia's geology. The public corporation could not expect to have such an extensive source of expertise as that available in the free enterprise system. And so the public corporation would suffer from a reduction in the number of ideas generated.

It is not unusual in oil and gas exploration, with its inherent problem of

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scientific interpretation and evaluation of geological prospects, to find that one company will acquire a block of land, will explore it, and perhaps even drill on it before deciding the search is unsuccessful. The company will then return the land to its owner, the Crown. This does not mean that there are not any commercial hydrocarbons underlying this land; but rather that that particular company was unable to find them. To find these hydrocarbon deposits, a second, a third, or a fourth company should acquire this land, and, if this is done often enough, the hydrocarbon will be encountered, and production will follow. The problem with the public company being the only explorer in the province is that, unless it is fortunate enough to make the initial discovery, it is very doubtful whether there would be enough enthusiasm to have a second, third, or perhaps even a fourth try at that particular prospect, with the result that the discovery would not be made. This is surely the worst thing that could happen and is probably the most damning argument against a public corporation moving into an area with an almost exclusive right to explore.

If the British Columbia government wishes to increase the level of exploration in the province and so lead, hopefully, to a greater number of discoveries and a better position of self-sufficiency in their own requirements, there are several measures which could be taken to promote such a situation.

The first step that can and must be taken is to increase the cash flow to the producer and to assure the newcomer that if he makes a commercial discovery, he will receive a sufficient return to expand his exploration endeavours in the province. This action should take the form of restructuring the royalty on oil and probably renegotiating the contracts on gas existing between the producer and British Columbia Petroleum Corporation. The 1974 royalty rate on oil was determined by production at the wellhead, with the price not being a factor at all. This means that if the price paid to the producer for a barrel of crude oil should decrease from the present level, then the producer will suffer a decrease in his cash flow, thus his future available financing to continue exploration endeavours in British Columbia will be diminished. A preferred structure on royalty would take into account the possibility of a rising and falling price for the product so that the producer, out of whose cash flows exploratory drilling is carried out, would be the last one to suffer in the case of a decrease in price for both oil or gas. Probably this might best be accomplished by the producer selling his crude oil to the British Columbia Petroleum Corporation in the way gas is sold, but with a better pricing adjustment mechanism than that which exists with the gas contracts.

Another measure that should be taken would be a redesigning of the exploration agreement. This could be done to ensure that the holder could

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only earn leases after he had conducted actual work on the permit or in the area within reasonable proximity, and that his earnings would be restricted to a consolidated block rather than come from a sprinkling of leases throughout the permit area. This feature alone would help to ensure exploration, because the permit holder must be satisfied that he is getting, at least in his mind, the right half of the permit under lease.

The manner of acquiring oil and gas rights should be reviewed. As mentioned previously, the only method of acquiring an exploration permit under the present rule is through a competitive cash bidding system usually held on a quarterly basis. There are probably several instances where an oil and gas explorer would have been quite prepared to drill wells in British Columbia if he could have acquired the land for a minimal amount rather than having to use money he would put into exploration to purchase land through the cash bidding system. The rentals and fees charged should be the same as in Alberta, if only to appear competitive in this particular area.

CONCLUSION

The exploration for oil and gas in British Columbia cannot be considered in isolation. The proportion of the reserves of oil and gas remaining to be discovered will depend upon the number of exploration dollars allocated to the task. British Columbia's competitive position for these exploration dollars will depend in large measure on its royalty and land tenure policies.

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Cash Bonus Bidding for Mineral Resources

WALTER J. MEAD

Mineral leasing policy alternatives arise out of the fact that governments own mineral resources but, in general, do not engage in mineral resource recovery and processing. Hence, a need arises to transfer publicly owned resources to private enterprise at a price which will reflect the "fair market value" of the resource. The following analysis will, first, explore the problems to be solved by a bidding policy and, second, evaluate the cash bonus method of bidding for mineral leases.

THE PROBLEMS TO BE SOLVED

There are three problems which must be solved by any leasing system. First, the leasing system must as objectively as possible determine who or what firm is to be given the right to exploit publicly owned mineral resources. Second, a price must be determined which the lessee is to pay to the government for the right to recover mineral resoures held in trust for its citizens. Third, assuming that a nation wishes to economize on the use of its scarce resources and to maximize the standard of living of its citizens over time, the leasing system must result in an efficient method of production.

As a prerequisite to a discussion of mineral leasing alternatives there should be a clear statement of the goal(s) to be achieved. It is probably true that economists as a group have a preference for a single goal, declaring it to be one of economic efficiency. Natural resources available to any economy are scarce by definition. Achieving the highest possible standard of living requires that scarce resources be utilized with a maximum of efficiency. If resources are sold at a price below their true value, then the products into which they are converted may also be underpriced. If demand elasticities are less than zero, then the flow of resources into products and the flow of products within the current period will be excessive. Present overconsumption of products and resources will be at the expense of future consumption.

One way of achieving maximum economic efficiency is to price all resources at their "fair market value." Such pricing allows a government the opportunity of capturing the economic rent. Resources should be sold

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for the difference between future revenues and costs, appropriately discounted to their present value. The economic principle relating prices, costs, and money flows at different points in time in order to estimate present value (*PV*) is shown in the following formulation:

$$PV = \sum_{i=0}^{n} \frac{P_iQ_i - C_i}{(1+r)^i}$$

P_iQ_i is the value of the gross income flow at different points in time, C_i represents associated costs, and r represents the interest rate at which future money flows are discounted to the present. The formula clearly shows that higher future prices will increase present values while higher future costs will lower present values. Further, the greater the uncertainty and risk associated with production, the smaller will be present value. Firms utilize some variation of this present value formula in calculating their individual bids. Estimates of the quantity of minerals recoverable from a given tract will, of course, vary widely from firm to firm.

If mineral leases are sold for less than the fair market value as indicated in the above formula, then resources may be used at an excessively rapid rate, and the public, as owners of the resource, will fail to receive their full economic rent. On the other hand, if mineral resources are sold at prices in excess of the fair market value then, in the long run, some operators will be forced out of business. Use of such mineral resources in the present period will be at a suboptimal rate and the public owners will receive more than their normal economic rents.

In the past, Canada apparently has transferred some of its mineral and timber resources through various negotiated transactions rather than by utilizing the auction market approach. Similarly, other foreign governments have traditionally taken the negotiated sale approach in entering into long term oil concessions.

There are major problems involved in the negotiated approach. The correct present value of natural resources is extremely difficult to ascertain. There is no objective test in advance of ultimate production that can indicate the precise present value of mineral resources. By their nature they must first be discovered. Their presence, quantity, and quality are in doubt. With the government as the seller, negotiating with a single buyer, traditional problems of bilateral monopoly are encountered. The seller is interested in maximizing price, while the buyer is interested in minimizing price. Given this uncertainty plus opposing objectives, the civil servant is placed in a difficult position.

A visitor to Canada is reluctant to criticize Canadian experience which has circumvented the market place. Fortunately there is abundant experience within the United States to indicate the shortcomings of the negotiated approach to pricing. We may formulate two general laws which

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seem to govern when prices are determined or may be influenced by administrative judgement. First, the buyer will always complain. If the buyer believes that market prices can be reduced by protesting that they are too high, then complaints based on the argument that the operator cannot make a "fair profit" because prices are set too high could be endless. In the timber context, there are two cases where elaborate reports have been written protesting the high price of timber. One, presented by the Simpson Timber Company, protested against the high price of stumpage set by the United States forest service for the Shelton Sustained Yield Unit Agreement. Timber, in this case, is not sold at auction; its price is determined by the United States forest service. In the second case, the Edward Hines Lumber Company protested against the high cost of timber for its southeastern Oregon lumber mill. The timber was sold at an auction where competition was so weak that, in effect, it was sold at the administratively determined minimum price. By protesting, the company apparently felt that minimum prices could be reduced. In this instance, local community help was solicited on the grounds that if the company failed to make a fair profit, it would be forced to curtail operations. Under auction market procedures the government is relatively free from constant complaint and protest, because it is the impersonal market that determines the price rather than a civil servant. Under auction bidding procedures the buyers themselves set the price in competition with one another.

A second general law is that, where prices are set through administration, the government will always set prices short of the fair market value. A bureaucracy will rarely choose the path that makes its position unpleasant. Low prices are believed to generate less criticism and complaint than high prices. Where there is no auction market to test administrative judgement concerning the fair market value, we have no means to prove the second law. Sales of timber in the United States offer an opportunity to test the administratively determined price. Timber is sold by the forest service on the basis of an appraised fair market value, which becomes the minimum price acceptable to the government. Auction bidding begins at this price. In the four years from 1959 through 1962, competitive bidding for timber in the United States Douglas fir region produced an average high bid price that exceeded the forest service statement of fair market value (the appraised price) by 46 per cent.[1] In this case, the interests of the public were protected, at least in part, by reasonably effective competition. In the absence of this competitive check it is quite likely that the appraised prices would have been even lower. The shortcomings of the negotiated approach should lead to auction bidding wherever competition is possible.

CASH BONUS BIDDING

Before bidding can take place, a decision must be made between oral and

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sealed bidding. Bidding in either form may start with a stated or unstated minimum acceptable price. In the case of timber sales in the United States, the minimum acceptable price is given by the appraised price, and most timber auctions are conducted under oral auction procedures. On the other hand, in the case of oil and gas leases conducted by the federal government in the United States, the minimum acceptable price is not published, and bidding is normally by sealed bidding procedures. The government retains the right to "reject any and all bids." After bids have been received, it determines whether or not the high bid was adequate.

The factors important in choosing between oral and sealed bidding methods are as follows;

a. Of prime importance is the extent of competition. If competition is weak, then sealed bidding with its element of uncertainty makes collusive arrangements more difficult to enforce. Under sealed bidding rules there is no second chance to bid at any given sale. In contrast, under oral bidding procedures, a collusive arrangement can be policed by the participants during bidding. Further, there is always doubt about how many bidders may appear at a given sale. In oral bidding where only one bidder is present, he will bid the minimum; whereas, in sealed bidding a bidder would probably offer an amount which he believes will win the sale under conditions of more than one bidder.
b. In the timber industry where fixed investments in milling facilities normally exist prior to sales, the buyer needs a means of ensuring access to specific raw materials and specific locations. Oral auction procedures provide this means through the opportunity to cast reaction bids. In contrast, in oil and gas bidding fixed investments are made after winning a sale, hence there is less need to protect one's position through the opportunity to react to the bids of others.
c. Where the severed resource is relatively immobile, as in the case of timber, it is of greater importance that a specific nearby sale be obtained; therefore the oral auction procedures are more appropriate. In the case of oil and gas, the severed resource is highly mobile, so obtaining a specific sale is of less importance. In this case sealed bidding is not disadvantageous.
d. Where the resource to be auctioned is not homogeneous, it may be necessary for a firm to obtain a specific sale. Where this is true, the opportunity to make more than one bid to protect one's need for a specific type of resource may be of great importance. Only oral bidding facilitates this subsequent bidding opportunity.
e. Financial planning often requires that a firm carefully limit its financial exposure. Where this is necessary, oral bidding offers greater control over a total resource financial commitment. In the case of sealed bidding,

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firms may be unexpectedly successful and in the process win more sales than were desired or can be successfully financed. On the other hand, a firm's sealed bidding may be totally unsuccessful so that it becomes undercommitted. This shortcoming of sealed bidding may be corrected where resources may be freely transferred among interested buyers. This procedure is normally followed in the case of oil and gas leasing in the United States.

f. Oral bidding requires more on-the-spot decision making than does sealed bidding; therefore, oral bidding requires that a higher level of executive talent be present at the moment of the auction. In contrast, decisions made on the basis of a sealed bid offer no opportunity for subsequent action on the auction floor; therefore, the presence of expensive executive talent is not necessary.

g. The "free rider" is a problem for serious bidders under oral bidding conditions. A serious bidder will carefully examine the potential productivity of a proposed lease sale. This may, as in the case of minerals, require large investments. Under oral bidding conditions, a "free rider" can observe who is bidding, then, if he is confident that they have done their homework, he can continue to outbid them until they reach their maximum and he will win the sale. His purchase is therefore based on someone else's calculations and he, in turn, has saved the cost of the pre-exploration appraisal. Sealed bidding does not offer the free rider the same opportunity.

Once a decision has been made in favour of oral or sealed bidding, then a choice must be made on the object of bidding. A cash bonus bid is one alternative. Additional alternative bidding objects are shown in Table 1.[2]

Bonus bidding is the standard procedure used by the United States government in all of its Outer Continental Shelf (OCS) programmes. Using the present value formula given earlier, potential bidders presumably estimate the present value of the probable mineral recoverable from a tract of land. The formula provides for adequate recovery of capital and compensation for risk, uncertainty, and profit.

One strong advantage that can be claimed on behalf of a bonus system relative to royalty bidding is that it requires a lump sum payment and correspondingly modest royalty payments. Because royalty payments are due on each barrel of oil or unit of natural gas produced (or other mineral), such charges become part of the marginal cost. At the margin of production this is a transfer cost rather than a real social cost. Royalty bidding thus leads to premature abandonment of an oil or gas well. To the extent that royalty payments are required in addition to the cash bonus, there will be premature abandonment of the lease.

The disadvantages of bonus bidding are numerous. First, while the

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technology for oil exploration prior to drilling has been advanced in the last century, exploration is still subject to extremely high risk. Drilling is the only definitive test to determine the presence of oil or gas. Thus, bonus bids must be submitted by bidders and accepted or rejected by the government when neither the buyer nor the seller knows whether and in what quantities oil is present. This places the seller in a position of accepting millions of dollars for nothing but the right to spend several more millions drilling potentially dry holes. In cases in which a rich oil field is found, returns to the lessee will be and must be very high.

Second, under current procedures a bonus must be paid when the bid is submitted. When the bonus bid is large, it will represent a very heavy cash drain to the bidder far in advance of any revenue which may be generated from the oil or gas produced from the lease. This significant *front-end loading* of capital costs effectively excludes a small operator from winning leases as a solo bidder, creating an additional barrier to entry into the oil and gas production market. To overcome this entry barrier, firms commonly form joint ventures and bid jointly for a lease.

Third, because the bonus is calculated on a present value basis, the government is forced to accept discount rates used by private enterprise. If private enterprise discount rates are unreasonably high from a social standpoint, then bonus payments to the government will be correspondingly low.

Possible variations of the bonus bidding form are shown in Table 1. The present United States system includes fixed royalty requirements (typically 12½ per cent or 16⅔ per cent of wellhead value). However, a bonus bid might be paired with a sliding scale royalty requirement, permitting the royalty rate to be reduced as a field declines in productivity. As the point of economic abandonment is approached, the royalty rate might be reduced substantially or even eliminated. This procedure would, in turn, eliminate a marginal cost of production that is not a real social cost and it would permit continued production from a field until the real marginal costs equaled the marginal value of production. This is the optimum point for well abandonment from an economic point of view. If at the time that a bonus bid was submitted all bidders understood that the royalty rate would be reduced to zero under the conditions specified above, the present value of the lease would be increased by an amount equal to the present value of reduced future royalty payments. Thus a tradeoff would be effected from royalty payments to bonus payments. The principal impediment to a sliding scale lies in the difficulty of clearly identifying various points at which royalty rates would be reduced. The lessee would have an economic incentive to manage his production in such a way that minimization of royalty payments would be an operating objective, rather than economic efficiency.

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TABLE I

ALTERNATIVE BIDDING FORMS

Bonus Bidding
- a. with a fixed royalty requirement
- b. with a sliding scale royalty requirement
- c. without a royalty
- d. with or without a rental payment
- e. with a profit share
- f. with delayed bonus payments

Royalty Bidding
- a. flat (nonvariable) royalty
- b. sliding scale royalty
- c. with a fixed bonus requirement or no bonus

Profit Share Bidding
- a. net profit or gross profit
- b. with fixed bonus requirement or no bonus
- c. with a royalty requirement or no royalty

Combination of Bonus and Royalty Bidding

Bidding on the Work Programme

The royalty problem, together with the administrative problem of reducing royalty rates under a sliding scale, might be avoided entirely by using a bonus bid without a royalty payment. However, this procedure would simply magnify all three of the problems associated with bonus bidding listed above.

Present procedures in the United States include modest rental charges payable between the points of sale and production. When production begins, rental payments cease and royalty payments take over. Rental payments in OCS oil and gas lease income are insignificant. In 1972, they amounted to 0.3 per cent of total revenue from such leases.[1] The rental requirement apparently was introduced to motivate the lessees toward early production. If they were of significant size, this result would in fact occur, because rents cease when production begins.

To overcome the front-end-loading problem, provision might be made for delayed payment of the bonus. The problem that would follow from this procedure is that in some cases where no minerals were found, lessees would elect a bankruptcy route. In this event, an unfair bidding situation would be created. Responsible firms in business on a perpetual basis would not follow a bankruptcy procedure and would, therefore, be at a bidding disadvantage with respect to others that contemplated bankruptcy in the event of a "dry hole."

A bill currently pending before the United States Congress provides for a 55 per cent fixed share of net profits in lieu of the existing fixed royalty payment accompanying the bonus bid. The winner would still be

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determined on the basis of a cash bonus. A profit share payment would avoid the above problems associated with royalty payments. As a given lease approaches exhaustion and its point of economic abandonment, profits would also approach zero and payments would decline proportionately to zero. If the profit share was calculated on the basis of net accounting profits including fixed costs, then the profit share payment would decline to zero prior to the point of economic abandonment. The latter point is reached only when marginal cost (not total costs) equals the marginal revenue. There is nothing wrong with this system providing both parties understand how it works and bidders understand it at the time they submit their bonus bids. The proposed 55 per cent profit share is high and is likely to lead to inefficient operations. A profit share payment is approximately the same as an income tax on each well and is additional to the existing income tax. When the profit share payment is added to the existing income tax, a large part of the penalty for wasteful operations will have been shifted from the operator to the government. While a bonus bid paired with a fixed profit share payment has merit, a 55 per cent profit share added to normal income taxes is inappropriately high from an economic point of view.[4]

Some data are available to permit a partial evaluation of the effectiveness of bonus bidding with a fixed royalty. The United States experience with OCS bidding provides a record of thirty-five oil and gas lease sales during the period November 1954 to 29 May 1974. In addition, three sulphur lease sales and two salt lease sales have been conducted on the OCS. The record may be evaluated in terms of the number of bidders competing for each sale, the conditions of entry of new firms, the record of joint bidding, the extent of concentration among winning firms, the trend in price bid per acre, the resale record of tracts where the initial bid was refused by the seller, and the rate of return earned by the winning bidders. Data pertaining to OCS bidding as follows:

a. For oil and gas lease sales there has been an average of 3.6 bidders competing for each tract receiving bids. The trend from 1954 to date has been one of increasing bidder activity. From 1954 to 1966 the average number of bidders per tract was 2.7. From 1967 to date the average increased to 3.9. From the seller's point of view, even more bidders would be preferred. Given the fact of relatively few bidders, sealed bidding procedures would appear to be more appropriate than oral auction.
b. Entry into the oil and gas auction markets appears to be relatively free. In the first 1954 federal lease offshore from Louisiana, 199 tracts were offered. Ninety-seven of these tracts received 327 bids from 22

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different firms, some of which bid in joint bidding combinations. From 1954 to 28 March 1974, an additional 110 firms won tracts as solo bidders or joint bidders with 1 or more other firms. Thus, in addition to the unsuccessful bidders who also perform a competitive function in the bidding process, there were 132 separate firms participating as winning bidders in thirty-three OCS lease sales.[5]

c. Entry by relatively small firms into OCS lease sale bidding is facilitated through joint bidding. Joint bidding by two or more firms each unable to bid solo has the effect of increasing competition. On the other hand, when two or more large firms fully able to bid separately combine to submit a single bid, the effect may be to reduce the number of competitors. However, if through joint bidding, even among large firms a combination of, say, four firms bids more than four times as frequently as the individuals would have bid solo, then the effect of joint bidding can again be procompetitive.

d. The record shows some tendency toward concentrating winning OCS bids in relatively few hands; however, the extent of concentration also appears to be declining over time. For the nineteen oil and gas OCS lease sales which took place from 1954 through 1966, the eight largest buyers, sale by sale, purchased 85.5 per cent of the tracts. In the fourteen sales from 1967 to 28 March 1974, the percentage of total tracts purchased by the eight largest buyers declined to 62.0.[6]

Using the 184 leases issued in the 1954 and 1955 Louisiana oil and gas lease sales, a multiple regression analysis tested the proposition that firm size was positively related to the high bid by tract as the dependent variable. If large firms are able to outbid smaller firms, then one would expect a positive relationship. The regression analysis revealed no significant relationship between size class of firm (the eight big firms versus all others) and the amount of the winning bid. The same regression equation revealed that the high bid was also independent of whether firms bid jointly or solo. Further, the most significant independent variable related to high bid was number of bidders; the greater the number of bidders competing for any given tract, the higher will be the resulting winning bid. The total value of oil and gas production accumulated through 1967 was also positively related to the high bid. As one would expect the number of acres in the tract leased is also related to the high bid. Estimated water depth as a proxy for development cost was not significantly related to the high bid.[7]

e. Data on the average price bid per acre indicates that with the passage of time the effective high bid per acre has increased substantially. For the entire period 1954 through to 28 March 1974, the average high bid per acre amounted to $1,257.50. For the 1954-1966 period the average was

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$301.71 per acre. This increased more than sevenfold to $2,219.90 per acre for the period beginning in 1967. This increase is only partially accounted for by higher crude oil prices. The average price of crude oil increased from $2.89/bbl. in the earlier period, to $3.69/bbl. in the later period. Even this increase would be offset by an unknown decrease in the probability of finding oil, and by increased costs of exploration and production.

f. Lease sales through 1 October 1964 show that of the 1,377 tracts receiving bids, seventy-eight high bid offers were rejected by the government. Subsequently, 26 of these tracts were reoffered and leases awarded. For these 26 tracts, the initial rejected high bid average amounted to $42.41 per acre. The subsequently accepted high bid on resale averaged $411.38. Thus, where bids were found to be inadequate and subsequently reoffered, competition increased bonus payments on these rejected tracts nearly tenfold.

g. The most conclusive test of the workability of cash bonus bidding based on the United States record of OCS oil and gas lease sales is in terms of the rate of return on capital earned by the successful bidders. An analysis has been made of 184 offshore Louisiana oil and gas tracts leased in 1954 and 1955. Precise data are available on bonus payments, rental payments, oil and gas royalty payments, and production of oil and gas during the period from 1954 through 1967. Cost estimates were made for exploration, well drilling and equipment, and operation. Annual cost and annual wellhead values were discounted to obtain a net internal rate of return. The calculations indicate that these early OCS leases generated a 7.5 per cent before tax rate of return to the lessees.[8] Given the fact that oil companies pay relatively low U.S. income tax rates, the after tax rate of return would be only modestly lower than the 7.5 per cent before tax rate of return. This net yield clearly does not reflect monopoly power; it shows excessive degree of competition.

On the basis of this evidence we conclude that competitive bidding for oil and gas leases is sufficiently strong to protect the public interest in obtaining competitive values for its oil and gas resources. This conclusion is further supported by evidence presented above indicating an increase in the average number of bidders and a substantial increase in the average price bid per acre for oil and gas leases.

CONCLUSIONS

This article has examined the problems to be solved by any leasing system used to transfer publicly owned mineral resources to private firms for processing. The cash bonus bidding system has been used extensively in

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the United States, particularly in the leasing of OCS mineral resources. That record has been examined in some detail. While cash bonus bidding embodies problems which have been identified, it also appears to be an economically efficient method of resource conveyance. The United States record indicates that competition has been effective, if not overly effective, in permitting the government to capture the full economic rent. In addition, bonus bidding avoids a major problem of a popular alternative, that of royalty bidding. It appears to be far superior to a negotiated approach in solving the three critical problems of resource leasing: selecting the operator, determining a fair market value, and creating a climate for efficient mineral resource recovery.

Notes

1. W. J. Mead and T.E. Hamilton, *Competition for Federal Timber in the Pacific Northwest—An Analysis of Forest Service and Bureau of Land Management Timber Sales* (U.S.D.A., Forest Service Research Paper PNW-64, 1968), p. 4.
2. For a more thorough discussion of the economic issues involved in oral auctions and sealed bidding, see W.J. Mead, "Natural Resource Disposal Policy-Oral Auctions versus Sealed Bids," *Natural Resources Journal* 7 (April 1967): 194-224.
3. U.S. Department of the Interior, Geological Survey, *Outer Continental Shelf Statistics* (June 1973), p. 43.
4. For a more thorough discussion of this point, see W.J. Mead, Testimony Presented before the United States Senate, Committee on Interior and Insular Affairs, Hearings 7 May 1974.
5. The data presented above from the OCS bidding record are from Susan M. Wilcox, "Entry and Joint Venture Bidding in the Offshore Petroleum Industry," (Ph.D. diss., University of California, Santa Barbara, 1975), p. 66.
6. Ibid.
7. The multiple regression equation is as follows:

$$Y = -9.5809 - \underset{(0.1513)}{0.2279X_1} + \underset{(0.0111)}{0.0229X_2} + \underset{(0.1701)}{0.1383X_3} + \underset{(0.0544)}{0.1235X_4} + \underset{(0.0253)}{0.408X_5} + \underset{(0.0235)}{0.0357X_6}$$

where Y is the high bid and the unit of measure is $100,000, X_1 is the size class of the high bidder coded as 10 for instances where the high bidder is one of the big firms and as zero for all other firms, X_2 is the total value of all oil and gas production accumulated up to the end of 1967 and the unit of measure is $100,000, X_3 is the corporate structure of the high bidder coded as 10 for a joint venture and zero for a single firms, X_4 is the number of acres with a unit of measure in 100 acres, X_5 is the number of bidders per sale multiplied by 10, and X_6 is the estimated water depth. This equation accounts for 62 per cent of the total

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variability in the high bonus bid. The standard error of estimate is shown in parentheses: see Nossaman-Waters, *Study of the Outer Continental Shelf Lands of the United States*, vol. 1(1968), p. 553.

8. Ibid., p. 56.

The Role of Public Enterprise

ARLON R. TUSSING

My remarks are, firstly, about the role of governmental enterprise generally and, secondly, about some of the considerations involved in using governmental enterprise to foster greater control by the citizens of Canada and British Columbia over their own mineral industries. My view is that governmental ownership of producing operations is not generally the most effective way of accomplishing the social ends for which it is currently being advocated in these industries. Nevertheless, I have a few suggestions how some of the major disadvantages of public enterprise with respect to efficiency and responsibility might be overcome.

Government owned enterprises in the English-speaking countries have seldom owed their existence to an anticapitalist ideology. It is, in fact, hard to detect any systematic difference in motive, organization, or operation between the national, state and provincial, or municipal enterprises established during the incumbency of labour, socialist, and agrarian radical parties and those implemented by Tories of various names and complexions.

Despite the vast amount of existing governmental enterprise today in capitalist countries, and despite the importance of socialist movements and socialist thought in the history of modern civilization, the scholarly literature on public enterprise is remarkably skimpy. Rigorous comparisons —theoretical or empirical—of the economic performance of governmental and private enterprises in the same industry are, to the extent I can determine, nonexistent.

GOVERNMENT OWNERSHIP

The case for government ownership of undeveloped land and natural resource stocks rests on a broader base than that for government ownership of producing enterprises. The intrinsic value of any resource in its natural state is the difference between the value of goods that can be produced from it and the cost (in terms of labour, capital, materials, and organization) required to produce those goods. The size of this residual is not the product

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of any person's labour or enterprise; most of the economic value of an *in situ* resource and its appreciation over time result from such diffuse causes as the increase in population, the general advance of technology, the decline in real transport costs, or directly from governmental outlays on roads or geological mapping. On these grounds, it has become almost an axiom of distributive justice (however commonly violated) that the intrinsic value of natural resources should not be privately appropriated.

Other classical grounds for government ownership of natural resources are the desire to control external costs or capture external benefits of their exploitation, and the expected divergence of private capital costs from the social rate of time preference, which is said to result in too rapid (or too slow) development of the resource. I am skeptical about the universal applicability of the last of these arguments; who, indeed, knows what society's true discount rate should be, and why are politicians and civil servants expected to be more sensitive to it than to entrepreneurs? This reservation notwithstanding, I believe that a presumption in favour of government ownership of undeveloped land and resources is generally justified.

Turning to productive enterprise, however, there are three main economic rationales for government ownership in a capitalist society. First is the use of the state to establish or maintain productive activity that would not be profitable as private enterprise, but whose external benefits are deemed to justify a subsidy out of the public exchequer. A subsidy does not, of course, require state ownership, because either private or governmental enterprise could enjoy that subsidy. In either case, support could take the direct form of providing capital or operating expenses from the Treasury or the indirect form of tax exemptions and the use of public resources at less than their cost of fair market value. State ownership, however, may well make a subsidy more palatable to the public, because it does not conspicuously enrich (or appear to enrich) a few private entrepreneurs.

Within the category of public ownership as a vehicle for subsidization are the numerous instances of private enterprise socialized because of chronic insolvency or imminent liquidation, including the Canadian National Railways, most of the British Labour Party's nationalizations after World War II, and the recent takeover of rail passenger transportation by the United States government.

In other cases, the motive for government ownership has been the creation of "public goods," products (or by products) of an enterprise whose value a private owner could not expect to recover by market pricing. Examples of such externalities are flood control by hydropower projects and the promotion of literacy and national unification by the postal system.

Military necessity has been another justification for producing goods in state enterprises which might not meet the test of the private market.

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Nineteenth-century America had government lead mines and arsenals and plantations for naval stores; the processing of nuclear fuels now remains a governmental activity on security grounds. Many public transportation and communications ventures were begun as defence projects in Alaska, the Yukon, and British Columbia: examples are the ALCAN highway and the White Alice communications system.

Second among the rationales for public enterprise is the perceived inability of private business, because of the great size or risk of the venture in question, to assemble sufficient capital. This tradition in North America began with state ventures in canal and rail development in the early nineteenth century, then extended to river control and irrigation projects, and continues into the present in enterprises like COMSAT and Panarctic Oils. In many of these cases, the proposed activity was expected to be self-sufficient in the long run, on the basis of the revenues from its product or service, but state initiative was seen as necessary to take advantage of scale economies or to overcome high risk threshholds.

The third circumstance seen to justify government ownership is possession by an enterprise of monopoly power and/or exceptionally rich natural resources, either of which can produce substantial "unearned profits" or rents. Government ownership is one means either of preventing monopoly exploitation of consumers (or monopsony exploitation of workers and sellers) or of collecting for the public treasury monopoly profits or resource rents that would otherwise be captured by the private owners.

Government takeover of profitable businesses has been rare in the English-speaking world. There have been a few instances of ideologically motivated nationalization, but it is instructive to note that these have often been reversed, as in the cases of the iron and steel industry in Britain and, more recently, the grain trade in India. The remaining cases have principally been those of utilities—grain elevators, street railways, water, electrical or telephone systems—which had a monopoly ("natural" or otherwise) in a local service area. In the last category it is often hard to distinguish between the instances where government took over to prevent private exploitation of monopoly power and those in which government saw a monopoly as an opportunity to exploit an assured source of revenue for itself.

There are, of course, a variety of cases which overlap two or all three of these categories. Economic development of a poor or sparsely settled region is often advanced as a justification for public enterprise in transport, communications, or electrical power. In these instances the premise is often that the region lacks capital or capital markets and only the state can mobilize resources on the desired scale. At the same time, the project is seen to encourage growth by its ability to widen markets or otherwise cut costs for commodity producing sectors of the regional economy. Once estab-

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lished, moreover, such an enterprise may have a monopoly status, with the power to abuse or exploit that status, and seem thereby to demand public control or ownership.

Many governmental enterprises (and regulated utilities, which they resemble in important respects) combine subsidies for some activities with appropriation of monopoly rents or resource rents from others. A common practice in both regulated private firms and government enterprise in transportation, communications, and utilities is *cross-subsidization*, in which monopoly profits earned from one area, line of business, or class of customers are dissipated in subsidizing others that are deemed to be socially meritorious. Thus, airline and railroad tariffs on heavily travelled route segments typically exceed cost (including a "fair" return), while service on lower density segments is provided at a loss. Hydroprojects in the Western United States typically subsidize users of irrigation water from revenues earned by water sales to municipalities and industry and by sales of electric power. In Alaska, revenues from both state and federal timber sales are sacrificed to support otherwise uneconomic lumber and pulp mills.

Turning to the mineral industries of Western Canada, there is little evidence that suggests they need to be subsidized by formation of a public corporation or otherwise. The province of British Columbia does not have, for example, a great but decaying industry upon which the community depends both for energy and employment, as the British had in the coal mines of the 1940's.

The British Columbia-Yukon Chamber of Mines may occasionally assert that each mining job generates seven additional jobs in supporting industries, but there is no respectable analytical foundation for such a claim. Even if the extractive industries had such an employment multiplier, it does not necessarily follow that job creation *per se* is a benefit that deserves subsidization from the public purse, much less the creation of a government enterprise. New employment opportunities are a *net* benefit to the existing community only to the extent that they are filled by residents who would otherwise be unemployed or working at more poorly paid jobs. In an "open economy" like that of British Columbia or Alaska, there is no predictable relationship between local job creation and local unemployment, because new employment opportunity attracts immigrants who tend to offset the employment gain. Even if the new jobs directly created were reserved for long-time residents, displacement of residents from old to new jobs and their replacement by nonresidents can be expected to make overall unemployment rates relatively unresponsive to employment growth.[1]

National self-sufficiency in minerals and the earning or retention of foreign exchange are sometimes claimed as external benefits of mining that justify preferential treatment. In Canada, paradoxically, some of those

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(including the National Energy Board) who place the highest priority on national self-sufficiency in one or another mineral resource tend to advance policies that *deter* investment, on the grounds that the beneficiary of current development tends to be the export market, at the cost of future diminished Canadian self-reliance. In this country, moreover, balance of payment effects are often used as part of a case *against* mineral development for export rather than in favour of it. In a world of floating exchange rates, however, one might question whether there is any relevance at all to the balance of payments problem in its usual sense. Finally, the impacts upon environmental quality and the dispersion of population are more likely to be regarded as external *costs* of mining than as *benefits* that justify the government's promotion of mining ventures that otherwise would not be self-supporting.

It is hard to make a respectable case that mining (including oil and gas production) creates beneficial *externalities* for the surrounding community, as distinct from the net value of the minerals produced, or the factor payments (wages, profit, rents, and taxes) which make up that value. The current Canadian interest in state enterprise in the mineral industries does not seem, in summary, to be a result of the belief that they are inevitably unprofitable under private enterprise. On the contrary, it rests in part upon the notion that mineral extraction can indeed be very profitable, and that unearned profits (rents) ought to be controlled and disbursed in socially approved ways. This attitude is sometimes experienced as a concern whether the people of the nation or of the province, who are the nominal owners of its natural resources, are receiving as high a return for the products of their land as they might. One issue is, in short, whether the state is effectively maximizing its revenues from disposal of minerals.

Where effective capital markets exist together with a large enough number of potential operators to create workable competition for resource rights, the government (as landlord and/or sovereign) is more likely to maximize its revenues if it does *not* engage in production. This conclusion does not presume that particular government owned entities are necessarily less enterprising and less effective in cost control than profit motivated private corporations. There may well be a bias against efficiency in most forms of state enterprise, if only because their owners (the public) and managers do not have a clearly defined standard of performance as private managers have in the imperative to maximize the present worth of their firms. But more importantly, by operating a productive enterprise in the extractive industries, the government loses the ability it would otherwise have as landowner to exploit the competition among potential private operators.

At oil and gas lease auctions in the United States, for example, the bid prices on a single tract may vary by a factor of two, ten, or even one

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hundred. These variations reflect widely differing geological evaluations of the tract, exploration strategies, and capital and other costs. Thus each tract tends to be won by the bidder with the *most favourable combination of capital cost and expectations* among all the bidders regarding future product prices, the particular tract's recoverable reserves, and their development and lifting costs. The landlord (state or private) who operates on his own land, however, would have only one management team, one exploration strategy, one team of geologists and engineers, and one supply function for capital. Only by rare accident would the landlord's *actual* performance over the average of all his properties tend to be better than the *expectations* of the most optimistic bidder. If, therefore, he were to lease each tract to the highest bidder among the competing operators, he might anticipate receiving a greater net revenue on each property than he could expect from developing the property himself.

The foregoing prediction is implicitly supported by empirical studies of United States Outer Continental Shelf leasing by Walter Mead and others, who show that successful bidders on the average earn a discounted cash flow rate of return on lease acquisition costs substantially less than the oil industry's average rate of return on capital (see Mead's article, "Cash Bonus Bidding for Mineral Resources," contained in this volume).

The effective use of competition to optimize revenues does not dictate the use of a cash bonus bidding system for *all* minerals or even for petroleum under every circumstance. The degree of knowledge or uncertainty regarding the volume and value of minerals present and their cost of extraction, the relative weight of fixed and variable costs in total extraction costs, the number of potential competitors, and the relative preferences of the government and private operators for certain present income versus uncertain future income are all appropriate considerations in the choice of leasing or disposal systems and taxes on the mineral industries. These questions have been discussed elsewhere,[1] and other articles in this volume give close attention to the relative merits of location, leasing, and sale as systems for disposing of minerals; to royalties and severance taxes, and whether they should be reckoned on gross value or net profits; to bidding on cash bonuses, deferred bonuses, gross or net royalty rates; to the use of acreage rentals; to the optimum size and configuration of tracts; to the amount of geological information the landlord ought to obtain and publish before opening land for lease or disposal; and to the duration of the primary term of a lease or permit, its terms for renewal, and so on.

In summary, state enterprise in the business of developing and producing minerals is surely *one* way to capture and redistribute resource rents, but it is unlikely to be as effective a device for maximizing those rents as the combination of a leasing system that takes full advantage of competition

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among private firms (considering the technology and institutional characteristics of each branch of the mining industry) and an appropriate tax system.

The most powerful cases for public enterprise in developing regions (like much of Western Canada and the Territories) relate to transport facilities which create external economies for other economic sectors, including mining. In these instances, both the first motive for socialization (the desire to subsidize) and the second (the need to overcome barriers of scale and risk) may justify investment by the government on projects into which private enterprise will not venture. Neither of these motives, however, creates a case for state enterprise in mineral extraction. Capital and enterprise for mineral exploration and development are plentiful and mobile. Specialized technical inputs, such as geophysical surveys, drilling, and heavy construction can be purchased on contract in a highly competitive market (so that great petroleum and mining companies carry out very few of these activities themselves). Capital sums in the hundreds of millions, or even billions of dollars can be mobilized privately, even without government guarantees, for projects like the Trans-Alaska pipeline, in remote regions.

Development of minerals, like the collection of revenues from their development, is likely to be more rapid and more efficient if it utilizes the diversity of skills, techniques, enterprise, and access to capital in the private economy and the competition between firms differently endowed in these respects. Nationalization or municipalization of producing operations, in my view, has an inevitable price—both in state revenues and in social efficiency—the payment of which must be justified on other grounds.

The hard core of Canadian interest in public enterprise today seems to stem not from a perceived shortage of capital and entrepreneurship (much less an ideological opposition to capitalistic enterprise as such), but from a perceived surplus of foreign capital and entrepreneurship. The problem, it seems, is to assure that mineral development (and, presumptively, related activities like oil refining or oil and gas transportation) are under the control of Canadians or the people of British Columbia, rather than great multinational (read United States) corporations.

It is probably not politic of me as an American to ask what practical difference the nationality of a company's owners or management makes as long as it is subject to the same laws (and obeys them) and pays its proper share of taxes. Foreign companies in Canada have often been berated for not paying enough taxes, but it was after all a *Canadian* decision, reflecting a long-standing Canadian developmental philosophy that the extractive industries should remain largely untaxed. The satisfactions and grievances of Americans regarding the major oil companies apply in the same way to

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Mobil and Texaco, which are domestically controlled, as they do to Shell and Sohio, which are foreign controlled. I am afraid I don't see how any more in the way of real resources for Canadians could be squeezed from a government owned business than could be squeezed from American or Canadian owned private enterprise under a well designed leasing and tax system. Nevertheless, one billion American dollars invested in Canada is more conspicuous than one billion Canadian dollars invested in the United States, and the nationality of your managers and stockholders obviously does make a difference to many Canadians. (I must confess, also, that some Americans become hysterical about the very idea of the Arabs or Persians taking over United States businesses.)

Government enterprise is one way to "nationalize" the mineral industries, but it is not, of course, the *only* possible way to foster Canadian equity and enterprise. Stricter nationality criteria could well be applied to holders of claims and leases or of permits to build pipelines, concentrating plants, and refineries. Such policies raise the further question, however, whether there is in fact enough private equity capital and enterprise in Canada to effectively take the place of foreign equity and enterprise. This is an empirical question to which I do not have an answer. If the answer is negative, consideration must be given to the fact that establishing a government enterprise does not *create* any new Canadian resources. It only uses tax money or potential resource revenues to bid capital and talent away from some other employment in Canada. The cost of Canadianization (either by restrictive licensing of private industry or by government enterprise) may be minimal, however, if preferences for nationals result in bidding home significant amounts of Canadian capital and Canadian talent which would otherwise be employed in other countries. (Presumably, the net effects of even these moves would have to take into consideration remittances that would otherwise flow back to Canada from investments abroad.)

Government capital need not be regarded strictly as a *substitute* for private capital, Canadian or foreign. In North America during the first half of the nineteenth century, and in almost every country at one time or another, state companies were used as a vehicle to *attract* foreign debt or equity capital, usually British, to ventures they would not otherwise consider. A government owned (or guaranteed) railroad company was often naively regarded by Lombard Street as a safe investment, while the promotions of unknown overseas entrepreneurs were viewed with little regard in the world's principal money market.

The use of government participation is still a major instrument for encouraging foreign investment in developing areas. Joint ventures between American, European, or Japanese private companies and governmental entities of the host country are common in almost all the extractive

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industries and in many countries at different levels of economic development. Canada has at least one government enterprise created largely with this function in mind, Quebec's SOQUEM, whose activity consists mainly of joint ventures in mineral exploration with private companies. Petro Canada also *seems* to be interested in this kind of approach.

In addition to being a means by which domestic enterprise becomes a trustworthy borrower (or partner) of foreign capital, state enterprise can also be a means of offsetting a shortage of domestic equity and entrepreneurship. In this role, it has one advantage over promotion of domestic private enterprise through nationality restrictions on investment, management or licences: it avoids the spectre of open discrimination, which could lead to retaliation and might otherwise undermine trade and investment relationships that are beneficial to Canada. The nearly open border allows this country to draw on a much larger pool of capital, technology, and talent than it would with policies fostering autarky. Although this openness is a major element in the ambiguity and insecurity of Canada's national identity, its economic benefits to Canada are relatively greater than they are to the United States. (That is, its impact on the size of the resource pool available to Canada is greater than on the size of the pool available to the United States.) It is therefore a circumstance to be modified only carefully and selectively. Establishing a provincial oil company is one way of containing the side effects of a move in the direction of autarky in a single industry. Such a move might, in fact, limit these side effects even in the industry in question. Suppose the best candidate for executive officer for a British Columbia based oil company were a Texan; there might well be fewer misgivings about hiring him to work for the province than about his heading a subsidiary of an American private firm.

I will conclude this article with some suggestions for the structure and policy of public corporations in the mineral industry, suggestions aimed at combining some of the best features of government and private enterprise, rather than their worst.

First, before establishing a governmental enterprise, be clear what its purpose is to be, what the incentive for the management to accomplish that purpose will be, and, quite rigorously, what will be the measure of the enterprise's success. (I owe this first and most vital point to Milton Moore's critique of the draft of this article.)

Second, do not set up a monopoly. There is no surer formula for inefficiency and social irresponsibility. Economies of scale do exist in mining and petroleum exploration, but they are very small when compared to some other industries or relative to the opportunities for development in an area the size of British Columbia. In petroleum refining, the minimum efficient size of a refinery is probably about the size of the British Columbia

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market for petroleum products, but if a new government owned refinery needs a monopoly or protectionist legislation to be profitable, it will almost certainly be a serious burden on consumers. Industries in which scale economies are narrow and where ingenuity and intuition are still crucial, as in mineral exploration or onshore oil and gas production, are probably not the most appropriate candidates for nationalization; but where it is determined to establish a state enterprise, consideration might be given to the establishment of more than one competing public enterprise.

Third, do not clothe the corporation in sovereign immunities. Such immunity can be, and often is, a cover for inefficiency, irresponsibility, and even lawlessness. The corporation should be suable; it should pay taxes or their equivalent (federal, provincial, and local); and it should be subject to environmental and safety laws and regulations and, above all, subject to the bankruptcy laws. Its operations should not be protected by any version of an official secrets act. There is no good reason why the directors, officers, and employees should be excused from the same civil and criminal liability for their actions to which their counterparts in private enterprise are subject.

I would urge hesitation even in providing guarantees for the corporation's debt. A public mining or oil corporation will be pursuing a line of business in which private enterprise regularly borrows money without such guarantees. The more intense scrutiny of bankers and underwriters toward a corporation whose debt must stand on its own merit might well save the corporation's owners—the public—more money than the small interest differential associated with government guarantees.

Fourth, give the public and the corporation's officers and staff a material interest in its success and its efficiency. The government need not hold all the shares but only a controlling interest, not necessarily even a majority. One block of shares (enough to elect at least one director) can be held in trust for the company's employees and voted by them. The remainder of the shares would be offered to the public; they would be voted by their owners and publicly traded. Not only would this provision broaden interest and participation in management, but the market price of publicly traded shares would be a continuing indicator of management performance and of the value of the government's equity. I see no compelling reason to restrict share ownership to residents; it might in fact be useful to encourage minority participation by major oil companies or mining companies. A residence requirement for shareholders, however, would reinforce symbolically the corporation's identity as a national or provincial instrument, and would, of course, limit remittance of dividends abroad.

Fifth, the corporation's policies should be responsive to public policy but not bend to every political wind. I would suggest that only a minority of the

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government directors serve at the pleasure of the Cabinet and be regarded as spokesmen for its policies. The remaining directors representing the government's equity would be chosen indirectly for long and staggered terms.

Sixth, the corporation should be under pressure to pay dividends. A majority of the shares (and directors) should represent parties who have a material interest that the corporation *not* retain, reinvest, or dissipate all its earnings: private shareholders, the employees, and the members who serve at the pleasure of the Cabinet (who would presumably be responsive to the fiscal interest of the government). The influence of this group will be a constant corrective to tendencies of management, inside directors, and permanent directors toward complacency, empire building, pyramid building, or gold plating.

Seventh, maintain a clear distinction between the corporation and the government as landowner. The public enterprise should obtain resource rights on crown lands only in competition with other prospective operators. The corporation should not receive a concealed (and indeterminate) subsidy by access to resources at no charge or at a lower price than a competitor might offer. If it must have a preferent right, let it be at most a right to match the highest bidder.

A preferent right on the best offshore leases is a feature of the federal oil and gas corporation (FOGCO), proposed recently in the United States Congress. In view of the prices oil companies have been recently willing to spend in these lease sales, such a preference would guarantee that FOGCO would appear profitable, however incompetent its management, and that the federal treasury would lose billions of dollars in lease revenues.

Eighth, take advantage of the division of labour and competition. The corporation should not attempt to do for itself the things that even the greatest oil and mining companies contract out to others, such as seismic surveying, core drilling, well drilling, well logging, and construction. There is virtually no chance that a state corporation could improve on the performance of private firms in these exceedingly competitive areas.

In summary, I am generally skeptical of the case for public enterprise in the minerals industry but hopeful that such enterprises could be established free of many of their usual shortcomings, providing some thought is given to their purpose, organization, and standards of performance.

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Notes

1. In a study aimed at projecting the employment impact of the Trans-Alaska pipeline, we found that *unemployment* in individual labour market areas was almost totally insensitive to the level of *employment*; that is, on a *net* basis, at least, new jobs in Alaska's petroleum and wood products industries and government were entirely filled by immigrants. [Arlon R. Tussing; George W. Rogers; and Victor Fischer; with Richard Norgaard, and Gregg Erickson, *The Alaska Pipeline Report: Alaska's Economy and Gas Industry Development and Impact of Building and Operating the Trans-Alaska Pipeline*, Institute of Social, Economic and Government Research Report no. 31 (Fairbanks: University of Alaska, 1971)].
2. Arlon R. Tussing and Gregg K. Erickson, *Mining and Public Policy in Alaska* (Fairbanks: Institute of Social, Economic and Government Research, University of Alaska, 1969).

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(10/1/77) Draft subject to significant and/or substantial changes at any time.)(Draft 5)

REVISED DRAFT

A BILL

For an Act entitled: "An Act relating to the leasing and exploration of state land for oil and gas development."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

*Section 1. AS 38.05.180 is repealed and re-enacted to read:

Sec. 38.05.180 OIL AND GAS LEASING.

(a) Purpose. The legislature finds and declares that

(1) the people of Alaska have an interest in the development of the State's oil and gas resources potential to

(A) maximize the economic recovery of this important natural resource;

(B) control the exploitation of this natural resource so as to protect the public interest;

(C) maximize the competition among parties seeking to obtain the the right to explore and develop the state's oil and gas resources.

(2) the interest of the state is to encourage an assessment of its oil and gas resources and that will allow the maximum flexibility in the methods of awarding the leases to

(A) recognize the many and varied geographical regions of the state and the different costs of exploring for oil and gas in these regions;

(B) recognize the need for stimulating development in particular regions of the state;

(C) minimize the adverse impact of exploration,development, production and transportation activity on the environment of the state;

(D) maximize the state's share from profitable oil and gas production, while minimizing revenue from unsuccessful exploration wells and from marginal economic oil and gas production.

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(b) Leasing Program.

(1) The commissioner shall prepare and periodically revise, and maintain an oil and gas leasing program. This leasing program shall be submitted to the legislature for its information within 10 days of the convening of a regular session of the legislature. The leasing program shall indicate as precisely as practicable the size, timing, and location of leasing activity which the commissioner determines will best meet state needs for the following five-year period. The commissioner shall elect the timing and location of leasing, to the maximum extent practicable, so as to obtain a proper balance between the potential for environmental damage, the potential for the discovery of oil and gas and the potential for adverse impact on the local communities in the state.

(2) After the leasing program has been approved by the commissioner, no lease shall be issued unless it is for an area included in the approved leasing program and unless it contains provisions consistent with the approved leasing program, except that leasing shall be permitted to continue until such program is approved and for so long thereafter as such program is under judicial or administrative review. Leasing under paragraph (t) of this Act may be excepted from the leasing program if in the judgment of the commissioner it appears most advantageous to the state. written

(3) The commissioner shall review the leasing program approved under this section at least once each year, and he may revise and reapprove such program, at any time, in the same manner as originally developed.

(4) The commissioner shall, by regulation, establish procedures for

(A) receipt and consideration of nominations for any area to be offered for lease or to be excluded from leasing;

(B) public notice of and participation in development of the leasing program;

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(C) review by the Federal and local governments which may be impacted by the proposed leasing;

(D) periodic consultation with the Federal and local governments, oil and gas lessees and permittees, and representatives of other individuals or organizations engaged in activity in or on state land; and

(E) coordination of the program with the management program developed by the state under the Coastal Zone Management Act of 1972.

(F) the commissioner shall utilize the existing capabilities and resources of all state agencies in preparing the leasing program, and such agencies shall provide the commissioner with any nonproprietary information he requests.

(5) Within 10 days of the convening of a regular session of the lesiglature, the commissioner shall report to the legislature with respect to the use of the various bidding methods provided for in this Act. Such report shall include:

(A) The schedule of all lease sales held during the preceding calendar year and the bidding method or methods utilized;

(B) The schedule of all lease sales to be held the following year and the bidding method or methods to be utilized;

(C) The benefits and costs associated with conducting lease sales using the various bidding methods;

(D) If applicable, the reasons why a particular bidding method was selected; and

(E) If applicable, the reason why more than 50% of the area leased in the upcoming year, was or is to be leased under one particular bidding method.

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(c) The commissioner is authorized to grant to the highest responsible qualified bidder, by competitive bidding under regulations promulgated in advance, oil and gas leases on state land. The bidding shall be by sealed bid, and at the discretion of the commissioner, shall be on the basis of

(1) Royalty

(A) cash bonus bid with a royalty at not less than a 12½ percent reserved to the state which may be taken in kind or in value;

(B) a cash bonus bid with a royalty based on a sliding scale reserved to the state but not less than 12½ percent at the beginning of the lease period which may be taken in kind or in value;

(C) a fixed cash bonus with a royalty based on a sliding scale reserved to the state as the bid variable but not less than 12½ per cent at the beginning of the lease period which may be taken in kind or in value;

(2) Net profit

(A) cash bonus bid with a royalty at not less than 12½ percent which may be taken in kind or in value and a fixed share of the net profit of not less than 30 percent reserved to the state;

(B) fixed cash bonus with the net profit share reserved as the bid variable;

(C) fixed cash bonus bid with a royalty at not less than 12½ percent which may be taken in kind or in value and a percent of the net profit share reserved to the state as the bid variable.

(3) Work commitment bid based on a dollar amount for exploration with a fixed cash bonus and a fixed royalty, but not less than 12½ percent at the beginning of the lease period which may be taken in kind or in value.

(d) The commissioner may, in his decretion, defer any part of the payment of the cash bonus, as authorized in paragraph c of this Act, according to a schedule announced at the time of the announcement of the lease sale, but such payment shall be made in total no later than five years from the date of the lease sale.

(e) The commissioner is authorized to withhold acreage from leasing in a particular lease sale.

(f) The commissioner may utilize other leasing methods after public hearings, unless the legislature by joint resolution disapproves within thirty days after receipt of notice of the proposed bidding method.

(g) At least ninety days prior to notice of any lease sale under paragraph (c) (2), the commissioner shall by regulation establish rules to govern the calculation of net profits. In the event of any dispute between the state and a lessee concerning the calculation of the net profits under the regulation issued pursuant to this paragraph, the burden of proof shall be on the lessee. In determining the attribution of profits between oil and gas, costs, other than those directly attributable to the production of either oil or gas, shall be allocated proportionately based on the Btu equivalent values of the respective amounts of oil and gas produced.

(h) At least ninety days prior to notice of any lease sale under paragraph (c)(3), the commissioner shall by regulation establish rules to govern the work committment option. The commissioner shall require either (i) cash deposit for the full amount of the work commitment or, (ii) a performance bond, in form and substance and with a surety satisfactory to the commissioner, in the principal amount of such exploration work commitment assuring the commissioner that such commitment shall be faithfully discharged in accordance with this section, the regulation and the lease. As provided in the regulation, the principal amount of such

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cash deposit or bond may be periodically reduced upon proof, satisfactory to the commissioner, that a portion of the exploration work commitment has been satisfied.

(i) At the discretion of the commissioner, he may enter into an agreement or may initiate a request whereby with the consent of the majority of the effected field lease holders, the state's royalty oil and gas production may be stored or retained in storage, or the commissioner may enter into an agreement with one or more of the effected field lease holders to trade current royalty production from a field for a like amount, kind andquality of future production, provided the state receives back its stored or traded royalty oil and gas during the first half of the field life or no later than 15 years after start of production.

(j) An oil and gas lease shall cover a reasonably compact area not exceeding 5,760 acres, and be for a period of five years. An oil and gas lease may be extended for an additional five years if the commissioner determines the extension is in the best interest of the state and he bases his decision on a showing by the lessee of due exploration diligence as defined by regulation; however, rental rates will continue to increase as if the lease had originally been made for the extended period. An expiring oil and gas lease shall be automatically renewed if and for so long thereafter as oil or gas is produced in paying quantities from the lease or, if the lease is committed to a unit approved by the commissioner. A temporary cessation of production approved by the commissioner does not constitute grounds for nonrenewal or cancellation of the lease. If drilling has commenced on the expiration date of the primary term of the lease and is continued with reasonable diligence, such operations to include redrilling, sidetracking or other means necessary to reach the originally proposed

bottom hole location, the lease shall continue in effect until 90 days after drilling has ceased and for so long thereafter as oil or gas is produced in paying quantities.

(k) Oil and gas leases shall provide for payment to the state of rental on the following basis:

(1) for the first through third years, $1.00 per acre annually

(2) for the fourth and fifth years, $2.00 per acre annually

(3) for the sixth year, $4.00 per acre

(4) for the seventh year, $8.00 per acre

(5) for the eighth year, $12.00 per acre

(6) for the ninth year, $24.00 per acre

(7) for the tenth year, $36.00 per acre

(8) for the eleventh year and beyond, rental rate is 150% of the preceding year.

The commissioner may establish by regulation, that after a discovery has been made which is capable of producing in paying quantities, the rental rate which was in effect during the year of discovery is maintained for the following 5 years. Rental is payable in advance and continues until income to the state from royalty, net profit or the base parameter of other leasing methods exceeds rental income to the state for that year; after the rental income schedule has been exceeded for three consecutive years, the rental shall terminate.

(l) Upon timely application as provided by regulation, the state may issue to the holder of a federal lease a state shorelands lease covering land within the exterior boundaries of the federal lease which has been excluded on the basis of navigability or which are later administratively or judicially determined to be "shorelands."

(m) To conserve the natural resources of all or a part of an oil or gas pool, field, or like area, whether or not the part is then subject to a cooperative or unit plan of development or operation, lessees and their representatives may unite with each other, or jointly or separately with others, in collectively adopting or operating under a cooperative or a unit plan of development or operation of the pool, field, or like area, or a part of it, when determined and certified by the commissioner to be necessary or advisable in the public interest. The commissioner may, with the consent of the holders of leases involved, establish, alter, change, or revoke drilling, producing, rental, minimum royalty, and royalty requirements of the leases and make regulations with reference to the leases, with like consent on the part of the lessees, in connection with the institution and operation of a cooperative or unit plan as he determines necessary or proper to secure the proper protection of the public interest. The commissioner may provide that oil and gas leases issued under this section shall contain a provision requiring the lessee to operate under a reasonable cooperative or unit plan, and he may prescribe a plan under which the lessee shall operate. The plan shall adequately protect all parties in interest, including the state.

(n) A plan authorized by (m) of this section, which includes land owned by the state, may contain a provision vesting the commissioner, or a person, committee, or state agency with authority to alter or modify from time to time the rate of prospecting and development and the quantity and rate of production under the plan. All leases operated under a plan approved or prescribed by the commissioner are excepted in determining holdings or control under section 140 of this chapter. The provisions

of this section concerning cooperative or unit plans are in addition to, and do not affect AS 31.05.

(o) Producing acreage on a "known geologic structure" of a producing oil or gas field is excluded from chargeability as against the acreage limitation provisions of section 140 of this chapter.

(p) When separate tracts cannot be individually developed and operated in conformity with an established well-spacing or development program, a lease, or a portion of a lease, may be pooled with other land, whether or not owned by the state, under a communitization or drilling agreement providing for an apportionment of production or royalties among the separate tracts of land comprising the drilling or spacing unit when determined by the commissioner to be in the public interest. Operations or production under the agreement shall be considered as operations or production as to each lease committed to the agreement.

(q) The commissioner may, on conditions which he prescribes, approve drilling, or development contracts made by one or more lessees of oil or gas leases, with one or more persons, when, in his discretion, the conservation of natural resources or the public convenience or necessity requires it or the interests of the state are best served. All leases operated under approved drilling, or development contracts, and interests under them are excepted in determining holding or control under section 140 of this chapter. Drilling or development contracts may include, if in the judgment of the commissioner it appears most advantageous to the state, provisions for the state to share in the costs of exploration.

(r) To avoid waste or to promote conservation of natural resources, the commissioner may authorize the subsurface storage of oil or gas

whether or not produced from state land, in land leased or subject to lease under this section. This authorization may provide for the payment of a storage fee or rental on the stored oil or gas, or, instead of the fee or rental, for a royalty other than that prescribed in the lease when the stored oil or gas is produced in conjunction with oil or gas not previously produced in paying quantities.

(s) Each oil or gas lease issued by the state shall contain a provision requiring the lessee to furnish the Department of Labor a quarterly report regarding the employment of state residents on the leased property. The commissioner of labor shall promulgate regulations necessary to carry out the provisions of this subsection.

(t) Lands which have been offered for lease within the previous five years but which received no bids at public auction may, at the discretion of the commissioner, be immediately offered for lease under regulations promulgated in advance upon terms appearing most advantageous to the state. The commissioner shall utilize a sliding scale royalty based upon such formulae as he determines to be equitable. In establishing sliding scale royalty formulae the commissioner shall take into consideration operating, secondary and enhanced recovery costs.

(u) The commissioner may, by regulation, restrict joint bidding.

(v) The state shall have the right to purchase not to exceed 16 2/3% by volume of the oil and gas produced pursuant to a lease issued in accordance with this Act, at the regulated price, or, if no regulated price applies, at the fair market value at the well-head of the oil and gas saved, removed or sold, except that any oil or gas obtained by the state as royalty, net profits, or other leasing method shall be credited

against the amount that may be purchased under this subsection. Oil and gas purchased under provisions of this section may be utilized by the state in the same manner as it utilizes its royalty oil and gas.

(w) Any lessee or permittee conducting any exploration for, or development or production of, oil or gas pursuant to this Act shall provide the Commissioner access to all data obtained from such activity and shall provide copies of such specific data, as the commissioner may request.

Section 2. AS 38.05.13 is deleted.

Section 3. AS 38.05.140(c) is amended to read:

"(c) No person may take or hold at one time phosphate leases on state lands exceeding in the aggregate 10,240 acres. No person may take or hold sodium leases or permits during the life of sodium leases on state lands, exceeding in the aggregate acreage 5,120 acres, except that the commissioner may, where it is necessary in order to secure the economic mining of sodium compounds, permit a person to take or hold sodium leases or permits for up to 15,360 acres. No person may take or hold at any one time oil or gas leases exceeding in the aggregate 500,000 acres granted on tide and submerged lands, and (500,000) 200,000 acres on all lands other than tide and submerged lands, including leases held both as lessee and under option or operating agreement from others. Where more than a single person holds an interest in an oil or gas lease, each person shall be charged only with that percentage of the total acreage which corresponds to its percentage share of the total beneficial interest in the lease."

Section 4. AS 38.05145(b) is deleted.

Section 5. AS 38.05.335(c) is deleted.

(10/1/77) Draft subject to significant and/or substantial changes at any time.)(raft 6)

A BILL

For an Act entitled: "An Act relating to the leasing and exploration of state land for oil and gas development."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

*Section 1. AS 38.05.180 is repealed and re-enacted to read:

Sec. 38.05.180 OIL AND GAS LEASING.

(a) Purpose. The legislature finds and declares that

(1) the people of Alaska have an interest in the development of the State's oil and gas resources potential to

(A) maximize the economic recovery of this important natural resource;

(B) control the exploitation of this natural resource so as to protect the public interest;

(C) maximize the competition among parties seeking to obtain the right to explore and develop the state's oil and gas resources.

(2) the interest of the state is to encourage an assessment of its oil and gas resources and that will allow the maximum flexibility in the methods of awarding the leases to

(A) recognize the many and varied geographical regions of the state and the different costs of exploring for oil and gas in these regions;

(B) recognize the need for stimulating development in particular regions of the state;

(C) minimize the adverse impact of exploration, development, production and transportation activity on the environment of the state;

(D) maximize the state's share from profitable oil and gas production, while minimizing revenue from unsuccessful exploration wells and from marginal economic oil and gas production.

(b) Leasing Program.

(1) The commissioner shall prepare and periodically revise, and maintain an oil and gas leasing program. This leasing program shall be submitted to the legislature for its information within 10 days of the convening of a regular session of the legislature. The leasing program shall indicate as precisely as practicable the size, timing, and location of leasing activity which the commissioner determines will best meet state needs for the following five-year period. The commissioner shall elect the timing and location of leasing, to the maximum extent practicable, so as to obtain a proper balance between the potential for environmental damage, the potential for the discovery of oil and gas and the potential for adverse impact on the local communities in the state.

(2) After the leasing program has been approved by the commissioner, no lease shall be issued unless it is for an area included in the approved leasing program and unless it contains provisions consistent with the approved leasing program, except that leasing shall be permitted to continue until such program is approved and for so long thereafter as such program is under judicial or administrative review. Leasing under paragraph (t) of this Act may be excepted from the leasing program if in the judgment of the commissioner it appears most advantageous to the state.

(3) The commissioner shall review the leasing program approved under this section at least once each year, and he may revise and reapprove such program, at any time, in the same manner as originally developed.

(4) The commissioner shall, by regulation, establish procedures for

(A) receipt and consideration of nominations for any area to be offered for lease or to be excluded from leasing;

(B) public notice of and participation in development of the leasing program;

(C) review by the Federal and local governments which may be impacted by the proposed leasing;

(D) periodic consultation with the Federal and local governments, oil and gas lessees and permittees, and representatives of other individuals or organizations engaged in activity in or on State land;

(E) coordination of the program with the management program developed by the state under the Coastal Zone Management Act of 1972; and

(F) the commissioner shall utilize the existing capabilities and resources of all state agencies in preparing the leasing program, and such agencies shall provide the commissioner with any nonproprietary information he requests.

(5) Within 10 days of the convening of a regular session of the legislature, the commissioner shall report to the legislature with respect to the use of the various bidding methods provided for in this Act. Such report shall include:

(A) the schedule of all lease sales held during the preceding calendar year and the bidding method or methods utilized;

(B) the schedule of all lease sales to be held the following year and the bidding method or methods to be utilized;

(C) the benefits and costs associated with conducting lease sales using the various bidding methods;

(D) if applicable, the reasons why a particular bidding method was selected; and

(E) if applicable, the reason why more than 50% of the area

leased in the upcoming year, was or is to be leased under one particular bidding method.

(c) The commissioner is authorized to grant to the highest responsible qualified bidder, by competitive bidding under regulations promulgated in advance, oil and gas leases on state land. The bidding shall be by sealed bid, and at the discretion of the commissioner, based on a pre-sale analysis, of at least one of the following:

(1) Royalty

(A) cash bonus bid with a royalty at not less than 12½ percent reserved to the state which may be taken in kind or in value;

(B) a cash bonus bid with a royalty based on a sliding scale reserved to the state but not less than 12½ percent at the beginning of the lease period which may be taken in kind or in value;

(C) a fixed cash bonus with a royalty based on a sliding scale reserved to the state as the bid variable but not less than 12½ percent at the beginning of the lease period which may be taken in kind or in value;

(D) a fixed cash bonus with a royalty bid less than 12½ percent, to be taken in kind or in value.

(2) Net profit

(A) cash bonus bid with a royalty at not less than 12½ percent which may be taken in kind or in value and a fixed share of the net profit of not less than 30 percent reserved to the state;

(B) fixed cash bonus with the net profit share reserved as the bid variable;

(C) fixed cash bonus bid with a royalty at not less than 12½ percent which may be taken in kind or in value and a percent of the net profit share reserved to the state as the bid variable.

(3) Work commitment bid based on a dollar amount for exploration with a fixed cash bonus and a step royalty, but not less than 12½ percent at the beginning of the lease period which may be taken in kind or in value.

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(d) Regulations shall be established for all bidding methods to allow reduction of royalty to compensate for ~~their~~ those increasing costs in the later ~~states~~ stages of production decline, to prolong the economic life of the field.

(e) The commissioner may, in his discretion, defer any part of the payment of the cash bonus, as authorized in paragraph (c) of this Act, according to a schedule announced at the time of the announcement of the lease sale, but such payment shall be made in total no later than five years from the date of the lease sale.

(f) The commissioner is authorized to withold acreage from leasing in a particular lease sale.

(g) The commissioner may utilize other leasing methods after public hearings, unless the legislature by joint resolution disapproves within thirty days after receipt of notice of the proposed bidding method.

(h) At least ninety days prior to notice of any lease sale under paragraph (c) (2), the commissioner shall by regulation establish rules to govern the calculation of net profits. In the event of any dispute between the state and a lessee concerning the calculation of the net profits under the regulation issued pursuant to this paragraph, the burden of proof shall be on the lessee. In determining the attribution of profits between oil and gas, costs, other than those directly attributable to the production of either oil or gas, shall be allocated proportionately based on the Btu equivalent values of the respective amounts of oil and gas produced.

(i) At least ninety days prior to notice of any lease sale under paragraph (c)(3), the commissioner shall by regulation establish rules to govern the work commitment option. The commissioner shall require either (i) cash deposit for the full amount of the work commitment or, (ii) a performance bond, in form and substance and with a surety satisfactory to the commissioner, in the principal amount of such exploration work commitment assuring the commissioner that such commitment shall be faithfully discharged in accordance with this section, the regulation and the lease. As provided in the regulation, the principal amount of

such cash deposit or bond may be periodically reduced upon proof, satisfactory to the commissioner, that a portion of the expioration work commitment has been satisfied.

(j) At the discretion of the commissioner, he may enter into an agreement or may initiate a request whereby with the consent of the majority of the effected field lease holders, the state's royalty oil and gas production may be stored or retained in storage, or the commissioner may enter into an agreement with one or more of the effected field lease holders to trade current royalty production from a field for a like amount, kind and quality of future production, provided the state receives back its stored or traded royalty oil and gas during the first half of the field life or no later than 15 years after start of production.

(k) An oil and gas lease shall cover a reasonably compact area not exceeding 5,760 acres, and be for a period of five years. An oil and gas lease may be extended for an additional five years if the commissioner determines the extension is in the best interest of the state and he bases his decision on a showing by the lessee of due exploration diligence as defined by regulation; however, rental rates will continue to increase as if the lease had originally been made for the extended period. An expiring oil and gas lease shall be automatically renewed if and for so long thereafter as oil or gas is produced in paying quantities from the lease or, if the lease is committed to a unit approved by the commissioner. A temporary cessation of production approved by the commissioner does not constitute grounds for nonrenewal or cancellation of the lease. If drilling has commenced on the expiration date of the primary term of the lease and is continued with reasonable diligence, such operations to include drilling, sidetracking or other means necessary to reach the originally proposed bottom hole location, the lease shall continue in effect until 90 days after drilling has ceased and for so long thereafter as oil or gas is produced in paying quantities.

(l) Oil and gas leases shall provide for payment to the state of rental on the following basis:

(1) for the first year, $1.00 per acre

(2) for the second year, $1.50 per acre

(3) for the third year, $2.00 per acre

(4) for the fourth year, $2.50 per acre

(5) for the fifth year, $3.00 per acre

(6) for the sixth year, $4.00 per acre

(7) for the seventh year, $8.00 per acre

(8) for the eighth year, $12.00 per acre

(9) for the ninth year, $24.00 per acre

(10) for the tenth year, $36.00 per acre

(11) for the eleventh year and beyond, rental rate is 150% of the preceding year.

The commissioner may establish by regulation, that after a discovery has been made which is capable of producing in paying quantities, the rental rate which was in effect during the year of discovery is maintained for the following 5 years. Rental is payable in advance and continues until income to the state from royalty, net profit or the base parameter of other leasing methods exceeds rental income to the state for that year; after the rental income schedule has been exceeded for three consecutive years, the rental shall terminate.

(m) Upon timely application as provided by regulation, the state may issue to the holder of a federal lease a state shorelands lease covering land within the exterior boundaries of the federal lease which has been excluded on the basis of navigability or which are later administratively or judicially determined to be "shorelands."

(n) To conserve the natural resources of all or a part of an oil or gas pool, field, or like area, whether or not the part is then subject to a cooperative or unit plan of development or operation, lessees and their representatives may unite with each other, or jointly or separately with others, in collectively adopting or operating under a cooperative or a unit plan of development or operation of

the pool, field, or like area, or a part of it, when determined and certified by the commissioner to be necessary or advisable in the public interest. The commissioner may, with the consent of the holders of leases involved, establish, alter, change, or revoke drilling, producing, rental, and royalty requirements of the leases and make regulations with reference to the leases, with like consent on the part of the lessees, in connection with the institution and operation of a cooperative or unit plan as he determines necessary or proper to secure the proper protection of the public interest. The commissioner may provide that oil and gas leases issued under this section shall contain a provision requiring the lessee to operate under a reasonable cooperative or unit plan, and he may prescribe a plan under which the lessee shall operate. The plan shall adequately protect all parties in interest, including the state.

(o) A plan authorized by (m) of this section, which includes land owned by the state, may contain a provision vesting the commissioner, or a person, committee, or state agency with authority to alter or modify from time to time the rate of prospecting and development and the quantity and rate of production under the plan. All leases operated under a plan approved or prescribed by the commissioner are excepted in determining holdings or control under section 140 of this chapter. The provisions of this section concerning cooperative or unit plans are in addition to, and do not affect AS 31.05.

(p) Producing acreage on a "known geologic structure" of a producing oil or gas field is excluded from chargeability as against the acreage limitation provisions of section 140 of this chapter.

(q) When separate tracts cannot be individually developed and operated in conformity with an established well-spacing or development program, a lease, or a portion of a lease, may be pooled with other land, whether or not owned by the state, under a communitization or drilling agreement providing for an apportionment of production or royalties among the separate tracts of land comprising the drilling or spacing unit when determined by the commissioner to be in the public interest.

Operations or production under the agreement shall be considered as operations or production as to each lease committed to the agreement.

(r) The commissioner may, on conditions which he prescribes, approve drilling, or development contracts made by one or more lessees of oil or gas leases, with one or more persons, when, in his discretion, the conservation of natural resources or the public convenience or necessity requires it or the interests of the state are best served. All leases operated under approved drilling, or development contracts, and interests under them are excepted in determining holding or control under section 140 of this chapter. Drilling or development contracts may include, if in the judgment of the commissioner it appears most advantageous to the state, provisions for the state to share in the costs of exploration.

(s) To avoid waste or to promote conservation of natural resources, the commissioner may authorize the subsurface storage of oil or gas whether or not produced from state land, in land leased or subject to lease under this section. This authorization may provide for the payment of a storage fee or rental on the stored oil or gas, or, instead of the fee or rental, for a royalty other than that prescribed in the lease when the stored oil or gas is produced in conjunction with oil or gas not previously produced in paying quantities.

(t) Each oil or gas lease issued by the state shall contain a provision requiring the lessee to furnish the Department of Labor a quarterly report regarding the employment of state residents on the leased property. The commissioner of labor shall promulgate regulations necessary to carry out the provisions of this subsection.

(u) Lands which have been offered for lease within the previous five years but which received no bids at public auction may, at the discretion of the commissioner, be immediately offered for lease under regulations promulgated in advance upon terms appearing most advantageous to the state. The commissioner shall utilize a sliding scale royalty based upon such formulae as he determines to be equitable and may exclude rental schedule in subsection (l) of this act. In establishing sliding scale royalty formulae the commissioner shall take into

consideration operating, secondary and enhanced recovery costs.

(v) The commissioner may, by regulation, restrict joint bidding.

(w) The state shall have the right to purchase not to exceed 16 2/3% by volume of the oil and gas produced pursuant to a lease issued in accordance with this Act, at the regulated price, or, if no regulated price applies, at the fair market value at the well-head of the oil and gas saved, removed or sold, except that any oil or gas obtained by the state as royalty, net profits, or other leasing method shall be credited against the amount that may be purchased under this subsection. Oil and gas purchased under provisions of this section may be utilized by the state in the same manner as it utilizes its royalty oil and gas.

(x) Any lessee or permittee conducting any exploration for, or development or production of, oil or gas on state land shall provide the commissioner access to all data obtained from such activity and shall provide copies of such specific data, as the commissioner may request.

Section 2. AS 38.05.135(b) is deleted.

Section 3. AS 38.05.140(c) is amended to read:

"(c) No person may take or hold at one time phosphate leases on state lands exceeding in the aggregate 10,240 acres. No person may take or hold sodium leases or permits during the life of sodium leases on state lands, exceeding in the aggregate acreage 5,120 acres, except that the commissioner may, where it is necessary in order to secure the economic mining of sodium compounds, permit a person to take or hold sodium leases or permits for up to 15,360 acres. No person may take or hold at any one time oil or gas leases exceeding in the aggregate 500,000 acres granted on tide and submerged lands, and (500,000) 200,000 acres on all lands other than tide and submerged lands, including leases held both as lessee and under option or operating agreement from others. Where more than a single person holds an interest in an oil or gas lease, each person shall be charged only with that percentage of the total acreage which corresponds to its percentage share of the total beneficial interest in the lease."

Section 4. AS 38.05.145(b) is deleted.

Section 5. AS 38.05.335(c) is deleted.

← LOCAL HIRE →

(12/22/77) Draft subject to significant and/or substantial changes at any time.)(Draft 8)

full leasing of

A BILL

For an Act entitled: "An Act relating to the leasing and exploration of state land for oil and gas development."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

*Section 1. AS 38.05.180 is repealed and re-enacted to read:

Sec. 38.05.180 OIL AND GAS LEASING.

(a) Purpose. The legislature finds and declares that

(1) the people of Alaska have an interest in the development of the State's oil and gas resources potential to

(A) maximize the economic recovery of this important natural resource;

(B) control the exploitation of this natural resource so as to protect the public interest;

(C) maximize the competition among parties seeking to obtain the right to explore and develop the state's oil and gas resources.

(2) the interest of the state is to encourage an assessment of its oil and gas resources and that will allow the maximum flexibility in the methods of awarding the leases to

(A) recognize the many and varied geographical regions of the state and the different costs of exploring for oil and gas in these regions;

(B) recognize the need for stimulating development in particular regions of the state;

(C) minimize the adverse impact of exploration, development, production and transportation activity on the environment of the state;

(D) maximize the state's share from profitable oil and gas production, while minimizing revenue from unsuccessful exploration wells and from marginal economic oil and gas production.

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(b) Leasing Program.

(1) The commissioner shall prepare and periodically revise, and maintain an oil and gas leasing program. This leasing program shall be submitted to the legislature for its information within 10 days of the convening of a regular session of the legislature. The leasing program shall indicate as precisely as practicable the size, timing, and location of leasing activity which the commissioner determines will best meet state needs for the following five-year period. The commissioner shall elect the timing and location of leasing, to the maximum extent practicable, so as to obtain a balance between the potential for environmental damage, the potential for the discovery of oil and gas and the potential for adverse impact on the local communities in the state.

(2) After the leasing program has been approved by the commissioner, a lease shall be issued if it is for an area included in the approved leasing program and if it contains provisions consistent with the approved leasing program, except that leasing shall be permitted to continue until such program is approved and for so long thereafter as such program is under judicial or administrative review. Leasing under paragraph (t) of this Act may be excepted from the leasing program if in the finding of the commissioner it appears most advantageous to the state.

(3) The commissioner shall review the leasing program approved under this section at least once each year, and he may revise and reapprove such program, at any time, in the same manner as originally developed.

(4) The commissioner shall, by regulation, establish procedures for

(A) receipt and consideration of nominations for any area to be offered for lease or to be excluded from leasing;

(B) public notice of and participation in development of the leasing program;

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(C) review by Federal and local government agencies which may be impacted by the proposed leasing;

(D) periodic consultation with local governments, oil and gas lessees and permittees, and representatives of other individuals or organizations engaged in activity in or on State land;

(E) coordination of the program with the management program developed by the state under the Coastal Zone Management Act of 1972; and

(F) the commissioner shall utilize the existing capabilities and resources of all state agencies in preparing the leasing program, and such agencies shall provide the commissioner with any nonproprietary information he requests.

(5) Within 10 days of the convening of a regular session of the legislature, the commissioner shall report to the legislature with respect to the use of the various bidding methods provided for in this Act. Such report shall include:

(A) the schedule of all lease sales held during the preceding calendar year and the bidding method or methods utilized;

(B) the schedule of all lease sales to be held the following year and the bidding method or methods to be utilized;

(C) the benefits and costs associated with conducting lease sales using the various bidding methods;

(D) if applicable, the reasons why a particular bidding method was selected; and

(E) if applicable, the reason why more than 50% of the area leased in the upcoming year, was or is to be leased under one particular bidding method.

(c) The commissioner is authorized to grant to the highest responsible qualified bidder, by competitive bidding under regulations promulgated in advance, oil and gas leases on state land. The bidding shall be by sealed bid, and at the

discretion of the commissioner, based on a pre-sale analysis, of at least one of the following:

(1) Royalty

(A) cash bonus bid with a royalty at not less than 12½ percent reserved to the state which may be taken in kind or in value;

(B) a cash bonus bid with a royalty based on a sliding scale reserved to the state but not less than 12½ percent at the beginning of production from the lease which may be taken in kind or in value;

(C) a fixed cash bonus with a royalty based on a sliding scale reserved to the state as the bid variable but not less than 12½ percent at the beginning of production from the lease which may be taken in kind or in value;

(D) a fixed cash bonus with a royalty bid not less than 12½ percent, to be taken in kind or in value.

(2) Net profit

(A) cash bonus bid with a royalty at not less than 12½ percent which may be taken in kind or in value and a fixed share of the net profit of not less than 30 percent reserved to the state;

(B) fixed cash bonus with the net profit share reserved as the bid variable;

(C) fixed cash bonus bid with a royalty at not less than 12½ percent which may be taken in kind or in value and a percent of the net profit share reserved to the state as the bid variable.

(3) Work commitment bid based on a dollar amount for exploration with a fixed cash bonus and a sliding scale royalty, but not less than 12½ percent at the beginning of production from the lease which may be taken in kind or in value.

(d) Regulations shall be established for all bidding methods to allow reduction of royalty to compensate for these increasing costs in the later stages of production decline, to prolong the economic life of the field. The commissioner

may grant such reduction so long as it takes affect no sooner than 2 years after beginning of production from the lease.

(e) The commissioner may, in his discretion, defer any part of the payment of the cash bonus, as authorized in paragraph (c) of this Act, according to a schedule announced at the time of the announcement of the lease sale, but such payment shall be made in total no later than five years from the date of the lease sale.

(f) The commissioner is authorized to withold acreage from leasing in a particular lease sale.

(g) At least ninety days prior to notice of any lease sale under paragraph (c) (2), the commissioner shall by regulation establish rules to govern the calculation of net profits. In the event of any dispute between the state and a lessee concerning the calculation of the ret profits under the regulation issued pursuant to this paragraph, the burden of proof shall be on the lessee.

(h) At least ninety days prior to notice of any lease sale under paragraph (c)(3), the commissioner shall by regulation establish rules to govern the work commitment bidding method. The commissioner shall require either (i) cash deposit for 20% of the work commitment or, (ii) a performance bond, in form and substance and with a surety satisfactory to the commissioner, in the principal amount of 20% of such exploration work commitment assuring the commissioner that such commitment shall be faithfully discharged in accordance with this section, the regulation and the lease. As provided in the regulation, the amount of such cash deposit or the principal amount of the bond may be periodically reduced upon proof, satisfactory to the commissioner, that a portion of the exploration work commitment has been satisfied.

(i) At the discretion of the commissioner, he may enter into an agreement or may initiate a request whereby with the consent of the majority of the affected field lease holders, the state's royalty oil and gas production may be stored or retained in storage, or the commissioner may enter into an agreement with one or

more of the effected field lease holders to trade current royalty production from a field for a like amount, kind and quality of future production, provided the state receives back its stored or traded royalty oil and gas during the first half of the field life or no later than 15 years after start of production.

(j) An oil and gas lease shall cover a reasonably compact area not exceeding 5,760 acres, and be for a period of five years. An expiring oil and gas lease shall be automatically renewed if and for so long thereafter as oil or gas is produced in paying quantities from the lease or, if the lease is committed to a unit approved by the commissioner. A temporary cessation of production approved by the commissioner does not constitute grounds for nonrenewal or cancellation of the lease. A lease issued under this section covering lands on which there is a well capable of producing oil or gas in paying quantities shall not expire because the lessee fails to produce oil or gas unless the lessee is allowed reasonable time within which to place the well on a producing status. The commissioner may impose lease rentals past the original term of the lease so long as the rental rate does not exceed 150% of the preceding year. If drilling has commenced on the expiration date of the primary term of the lease and is continued with reasonable diligence, such operations to include drilling, sidetracking or other means necessary to reach the originally proposed bottom hole location, the lease shall continue in effect until 90 days after drilling has ceased and for so long thereafter as oil or gas is produced in paying quantities.

(k) Oil and gas leases shall provide for payment to the state of rental on the following basis:

(1) for the first year, $1.00 per acre

(2) for the second year, $1.50 per acre

(3) for the third year, $2.00 per acre

(4) for the fourth year, $2.50 per acre

(5) for the fifth year, $3.00 per acre

The commissioner may establish by regulation, that after a well has been plugged and abandoned, the rental rate which was in effect during the year of abandonment is maintained for the remainder of the term. Rental is payable in advance and continues until income to the state from royalty, net profit or the base parameter of other leasing methods exceeds rental income to the state for that year; after the rental income schedule has been exceeded for three consecutive years, the rental shall terminate.

(l) Upon timely application as provided by regulation, the state may issue to the holder of a federal or fee lease a state shorelands lease covering land within the exterior boundaries of the federal or fee lease which has been excluded on the basis of navigability or which are later administratively or judicially determined to be "shorelands." The length of term of such state shorelands lease shall be the same as the term of the federal or fee lease, but not to exceed five years.

(m) To conserve the natural resources of all or a part of an oil or gas pool, field, or like area, whether or not the part is then subject to a cooperative or unit plan of development or operation, lessees and their representatives may unite with each other, or jointly or separately with others, in collectively adopting or operating under a cooperative or a unit plan of development or operation of the pool, field, or like area, or a part of it, when determined and certified by the commissioner to be necessary or advisable in the public interest. The commissioner may, with the consent of the holders of leases involved, establish, alter, change, or revoke drilling, producing, rental, and royalty requirements of the leases and make regulations with reference to the leases, with like consent on the part of the lessees, in connection with the institution and operation of a cooperative or unit plan as he determines necessary or proper to secure the proper protection of the public interest. The commissioner may provide that oil and gas leases issued under this section shall contain a provision requiring the lessee to operate under a reasonable cooperative or unit plan, and he may prescribe a plan

under which the lessee shall operate. The plan shall adequately protect all parties in interest, including the state.

(n) A plan authorized by (m) of this section, which includes land owned by the state, may contain a provision vesting the commissioner, or a person, committee, or state agency with authority to alter or modify from time to time the rate of prospecting and development and the quantity and rate of production under the plan. All leases operated under a plan approved or prescribed by the commissioner are excepted in determining holdings or control under section 140 of this chapter. The provisions of this section concerning cooperative or unit plans are in addition to, and do not affect AS 31.05.

(o) Producing acreage on a "known geologic structure" of a producing oil or gas field is excluded from chargeability as against the acreage limitation provision of section 140 of this chapter.

(p) When separate tracts cannot be individually developed and operated in conformity with an established well-spacing or development program, a lease, or a portion of a lease, may be pooled with other land, whether or not owned by the state, under a communitization or drilling agreement providing for an apportionment of production or royalties among the separate tracts of land comprising the drilling or spacing unit when determined by the commissioner to be in the public interest. Operations or production under the agreement shall be considered as operations or production as to each lease committed to the agreement.

(q) The commissioner may, on conditions which he prescribes, approve drilling or development contracts made by one or more lessees of oil or gas leases, with one or more persons, when, in his discretion, the conservation of natural resources or the public convenience or necessity require it or the interests of the tate are best served. All leases operated under approved drilling, or development contracts, and interests under them are excepted in determining holding or control under section 140 of this chapter. Drilling or development contracts may include, if in the judgment of the commissioner it appears most advantageous to the state,

to share in the costs of exploration.

(r) To avoid waste or to promote conservation of natural resources, the commissioner may authorize the subsurface storage of oil or gas whether or not produced from state land, in land leased or subject to lease under this secti This authorization may provide for the payment of a storage fee or rental on the stored oil or gas, or, instead of the fee or rental, for a royalty other than that prescribed in the lease when the stored oil or gas is produced in conjunction with oil or gas not previously produced in paying quantities.

(s) Each oil or gas lease issued by the state shall contain a provision requiring the lessee to furnish the Department of Labor a quarterly report regardi the employment of state residents on the leased property. The commissioner of lab shall promulgate regulations necessary to carry out the provisions of this subsect

(t) Lands which have been offered for lease within the previous five years but which received no bids at public auction may, at the discretion of the commissioner, be immediately offered for lease under regulations promulgated in advance upon terms appearing most advantageous to the state, including leasing noncompetitively. The commissioner shall utilize a sliding scale royalty based upon such formulae as he determines to be equitable but need not adhere to the rental schedule in subsection (k) of this act nor to 5,760 acres per lease. Lease term may not exceed five years except for the renewal provisions of subsecti (k) of this act.

(u) The commissioner may, by regulation, restrict joint bidding.

(v) The state shall have the right to purchase not to exceed 16 2/3% by volume of the oil and gas produced pursuant to a lease issued in accordance with this Act, at the regulated price, or, if no regulated price applies, at the fair market value at the well-head of the oil and gas saved, removed or sold, except that any oil or gas obtained by the state as royalty, net profits, or other leasi method shall be credited against the amount that may be purchased under this sub-section. Oil and gas purchased under provisions of this section may be utilized

by the state in the same manner as it utilizes its royalty oil and gas.

(w) Any lessee or permittee conducting any exploration for, or development or production of, oil or gas on state land shall provide the commissioner access to all data obtained from such activity and shall provide copies of such specific data, as the commissioner may request.

Section 2. AS 38.05.135(b) is amended to read:

"(b) When minerals are to be leased on a competitive basis, in addition to any other notice given, notice shall also be given as provided in Section 305 and 345 of this chapter."

Section 3. AS 38.05.140(c) is amended to read:

"(c) No person may take or hold at one time phosphate leases on state lands exceeding in the aggregate 10,240 acres. No person may take or hold sodium leases or permits during the life of sodium leases on state lands, exceeding in the aggregate acreage 5,120 acres, except that the commissioner may, where it is necessary in order to secure the economic mining of sodium compounds, permit a person to take or hold sodium leases or permits for up to 15,360 acres. No person may take or hold at any one time oil or gas leases exceeding in the aggregate 500,000 acres granted on tide and submerged lands, and (500,000) 200,000 acres on all lands other than tide and submerged lands, including leases held both as lessee and under option or operating agreement from others. A person shall have five years from the effective date of this Act to conform to the 200,000 acre uplands limitation. Where more than a single person holds an interest in an oil or gas lease, each person shall be charged only with that percentage of the total acreage which corresponds to its percentage share of the total beneficial interest in the lease."

Section 4. AS 38.05.145(b) is deleted.

AGO 547288

7.Co
HB854

APR 25 1978

April 21, 1978

Honorable D. R. Getty, Minister
Alberta Energy and Natural Resources
319 Legislative Building
Edmonton, Alberta, Canada
T5K, 2B6

Dear Mr. Getty:

Governor Hammond's recently introduced oil and gas leasing legislation for Alaska has now had incorporated into it by the legislature a drilling and geophysical incentive credit system similar to Alberta's. We have looked at the concept and, based on what we know, believe that the system could become useful in Alaska. However, we do need help in understanding how it has actually worked in your province.

Could we ask your assistance in explaining the operations of the system, both conceptually and technically, to some members of our legislature. The bill, HB 854, a copy of which is enclosed, is expected to begin Senate committee hearings sometime in May.

It would be of particular help to us if someone from your department could come to Anchorage to brief my staff and to Juneau to testify before the Senate Natural Resources Committee. We would, of course, cover all expenses. The exact dates of the visit would have to wait on the progress of the bill, but it is likely to be in mid or late May, 1978.

Over the past several years, Jack Roderick, my Special Projects Coordinator, who has been in charge of this particular legislation, has kept in contact with Michael J. Day, and others, in your minerals disposition division, on land tenure matters and he, or someone of your choice, would be most welcome. I will have Mr. Roderick arrange for the visit, subject to your authorization.

AGO 547289

Thank you for your assistance in this matter. We believe Alaska can benefit from Alberta's experience with the exploration incentive credit system.

Sincerely yours,

Robert LeResche
Commissioner

cc: Dr. G. B. Mellon, Deputy Minister
Michael J. Day, Asst. Deputy Minister
Petroleum Plaza, South Tower
9915-108 Street
Edmonton, Alberta T5K 2C9

Jack Roderick

bc: House Speaker Hugh Malone
Senate President John Rader

HB
907

COMMITTEE REPORT

SENATE

FURTHER: None

5/13/78

Date: 6/9/78

Mr. President:

The Committee on RESOURCES has had HB 907

repealing Land Registration Law, AS 34.10

under consideration and (a majority of the committee) (the committee reports it back as follows)

( ) recommends it do pass ( ) recommends it do not pass

( ) recommends it do pass with attached amendment(s)

( ) recommends it be replaced with CS for _____

and _____ ( ) new title ( ) same title

( ) AND attaches a Letter of Intent ( ) New Fiscal Note

( ) reports it back without recommendation

( ) and recommends it be referred to the _____ Committee

MEMBERS SIGNING DO PASS:

OTHER RECOMMENDATIONS:

Chairman

S 60 (rev. 6/77)

02-0018 (Rev. 10/76)

STATE of ALASKA

MEMORANDUM

TO: The Honorable Kay Poland
Chairman, Senate Resources Committee

DATE: June 8, 1978

FILE NO:

TELEPHONE NO:

FROM: Peter B. Froehlich
Assistant Attorney General

SUBJECT: HB 907 (Repeal of the Land Registration Act) and Escheat of Land

At the hearing on this bill before your committee on June 7, a concern was expressed by committee members that if AS 34.10 was repealed, there would be no means to get abandoned land outside municipalities back into private use. I am writing to address that concern and to explain the escheat laws which satisfy it far better than AS 34.10.

There was also some speculation at the hearing that this was the primary purpose of the Land Registration Act when it was first enacted in 1953. However, the Act is ill suited to satisfy this purpose because it has no effect on land once the required statement of real property ownership is filed. In other words, if a land owner filed a statement and then abandoned his land or died without leaving a will or heirs, the Land Registration Act would not result in foreclosure. Foreclosure occurs only when an otherwise known land owner or transferee fails to file a statement and likewise to pay the resulting penalty. Since the Land Registration Act has been in effect for over 25 years now, it is safe to assume that most, if not all, currently patented land for which no statement has ever been filed, has already been foreclosed. Therefore, the Land Registration Act, if retained, will only affect newly patented land and land which is transferred (after a statement was once filed).

Escheat, on the other hand, covers all private land, whether a statement of real property ownership has ever been filed or not, and whether it is ever transferred between private owners or not. AS 09.50.070-160 and AS 13.11.025 establish the procedures by which land escheats to the state. Essentially, if a land owner dies without a will or heirs, his land (along with other assets) passes immediately to the state. (AS 13.11.025). The state nearly always learns of such a situation, usually from the court appointed personal representative. Also, AS 13.06.035 creates a presumption of death if a person is absent without word or explanation for 5 years. (AS 13.06.035(3)). The state would not learn of this situation as easily, but nothing in the Land Registration Act provides any assistance

either. */ The attorney general then brings an action in superior court to verify and formalize the state's title. (AS 09.50.100). The commissioner of revenue may then tell the escheated real property at auction. (AS 09.50.120(b)). If a person appears within 7 years after the judgment verifying the state's title, the commissioner of revenue must convey either the escheated property or proceeds from its sale, less expense. (AS 09.50.110).

It should be apparent then, that the escheat statutes (first enacted in 1962, 9 years after the current Land Registration Act) adequately satisfy the concern for recycling abandoned land back into private use, and much more so than the Land Registration Act. I therefore urge the committee to pass out HB 907 to eliminate the needless burden of the Act on both landowners and the Division of Lands.

Incidently, I have just received figures from the Division of Lands indicating that of the 46, 900 acres foreclosed under AS 34.10, 84% have been redeemed or repurchased, 13.5% have been sold at auction and only 2.5% remain in state ownership.

I will be available to explain this memo, the Land Registration Act, and the escheat laws further to the committee at its next hearing.

PBF:bvd

cc: Senate Resources Committee
Pat Conheady, DNR
Alice Iliff, DOL

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*/ If a statement was filed, the Act has no effect. If no statement was ever filed, the land has probably either already been foreclosed or its existence is not known because no deed was ever recorded.

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

TO: House Resources Committee

DATE: 4/27/78

FILE NO:

TELEPHONE NO:

FROM: Alice L. Iliff
Research Analyst

SUBJECT: HB 907: Repeal of AS 34.10
(Land Registration Act)

This vestige of territorial law requires that for any land situated outside a borough or city where local land ownership records are kept, its owner must file a "statement of real property ownership". The statute may have had a legitimate purpose as a temporary transitional device accompanying the installation of a recording system in territorial days, as it encouraged the introduction of land ownership information into the public record. Today, its reason for being is much more speculative.

To induce compliance with the filing requirement of the statute, it provides for modest financial penalties in the event of a failure to file. Once assessed, a penalty becomes a lien against the property. The lien is subject to foreclosure under the statute, but if (as is usually the case) the landowner fails to respond to the lien foreclusure action by answering the petition, the land owner may "redeem" the property during the first year following its "foreclosure". After the expiration of this one-year redemption period, the procedure departs from the usual foreclosure model. Instead of selling the property to satisfy the lien and turning the overage in proceeds back to the owner, the State simply keeps the property. The land may be "repurchased" by its owner, but that right of repurchase is extinguished if the land is disposed of into private ownership by the State or is held by the State for and devoted to a "public purpose" and improvements are constructed upon it. Since the existence of these rights of repurchase makes management of the land as public domain difficult and expensive (administrative costs exceeding $30,000 per year for approximately 140 parcels with negligible return), the State can only derive a benefit from this forfeited land by disposing of it into private ownership by sale. The parcels usually have changed hands since foreclosure, resulting in time consuming administrative problems for both the State and the innocent victims.

There is no longer any public purpose served by this statute. From the beginning, the only legitimate purpose of the law was to compel landowners to identify their land holdings and place them on the record. But where recordable transactions (conveyances, mortgages, and the like) take place, the advantages of recording alone induce the new owner or mortgagee to record. Another purpose commonly attributed to the law, that of providing a record of land ownership in the unorganized borough to satisfy various public and private information needs, is illusory. The recording system itself satisfies this purpose - incompletely, albeit, but just as effectively as the superfluous statement file requirement does.

Assume that there were some legitimate public policy served by a law requiring land owners to file statements of real property ownership. It is clear that the penalty and lien foreclosure devices in the statute have not been effective in securing compliance with that filing requirement

Filing a statement (or, more to the underlying objective, getting private land holdings on the record) can be encouraged by a "carrot", by a "stick", or by a combination of the two. The "carrot" in this case is the recording law itself - the landowner whose interest is recorded enjoys an important priority over he who does not record. This legal protection is a "carrot" sufficient to induce all who are aware of the recording law to use it, irrespective of the existence of any penalties for nonuse of the system.

The "stick" to induce filing is a penalty fee backed up by the lien foreclosure mechanism. This has apparently not been effective. People file because they want the benefits of the recording system; people fail to file because they are unaware of the existence of the system and the benefits which would inure to them from using it. A penalty mechanism will only encourage compliance by those who are already aware of the system but would not otherwise use it - a negligible class of persons.

A principal problem with the foreclosure action as a compliance mechanism is that it is only inflicted upon those landowners whose land holdings have been discovered due to the recordation of a conveyance. The recording of the conveyance itself, with or without an accompanying ownership statement, fulfills the legislative goal of getting land onto the public records. In these cases, the need for a statement is superfluous and the idea of penalizing the person for failing to file one borders on the absurd. In other words, when scrutinized against the actual operation of the statute, the reasoning underlying the foreclosure mechanism is seen to be circular: (1) the objective of the law is to get land holdings on the record; (2) the foreclosure process exists to encourage compliance with the law in order to satisfy that objective; (3) the only lands which are subjected to foreclosure are those whse existence comes to the attention of the Division of Lands when they are recoreded; (4) at that point, the lands have entered into the recording system and the legislative objective has been met.

In summary,

1. There is no valid public purpose served by the land registration statute. To the extent that there is any need to have a public record of land holdings in the unorganized borough, that need is fully met by the existing recording system, supplemented by the land status records of State and Federal governments.

2. The filing requirement of the land registration law imposes an undesirable paperwork burden and expense upon private landowners. This burden should not exist without some countervailing public policy.

3. Administration of the law costs the State $30,000 to $50,000 every year in employee time that could be better utilized for other effort Trying to administer AS 34.10 in light of Native lands conveyances, homesites, and any other upcoming programs of land disposal will be impossible due to lack of staff and monies, as well as inequities of this law that have been perpetrated for years to the disadvantage of the public. There is consensus among all agencies involved that the statute is unnecessary.

4. Because of the existence in perpetuity of rights of repurchase on foreclosed lands, the State cannot effectively manage these properties as public land. It can only derive benefit from them by disposing of them back into private ownership at the expense of innocent holders of repurchase rights.

5. Taking a person's land away for failure to file a superfluous piece of paper is bad public policy. It is even worse when the person failed to file simply because the person was ignorant of the filing requirement.

For all of these reasons, the statute should be repealed.

)HB 907

March 24, 1978

The Honorable Hugh Malone
Speaker of the House
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18 of the Alaska tution, and in accordance with AS 23.30.060(b) and the Uniform Rules of the Alaska State Legislature, I am transmitting a bill repealing the Land Registration Law, AS 34.10.

The Land Registration Law is a vestige of territorial days which requires that private owners of land outside cities and boroughs file statements of real property ownership. Modest penalties are imposed for failure to file. These penalties become liens against property which may be foreclosed, resulting in forfeiture of the land to the state. After foreclosure, the land may be redeemed for a period of one year, but it is also subject to a continuous "right of repurchase" by the former owner and his assigns. This right to repurchase is extinguished only by disposal of the land or construction of a public building upon it. These repurchase rights inhibit effective management of land gained by foreclosure and have been the subject of abuse by industrious opportunists who, although they have never had any relationship with either the foreclosed land or its owners, obtain some colorable interest in the land and attempt to reap a windfall by repurchasing it.

The requirement of filing statements of real property ownership is somewhat obscure and often ignored by landowners. It does not enhance the existing recording system and government records which, according to the Division of Lands, fully meet any need for public record of land holding outside of municipalities. Penalizing an individual for failure to file a superfluous document is, in my view, bad public policy, especially when the individual probably does not know of the requirement to file.

Administration of the Land Registration Law costs the state $30,000 - $50,000 per year with negligible return. Costs could easily triple with the huge amounts of land soon to be placed in private ownership, including native selections and state and municipal land disposals. It seems senseless to continue the burden of this law on taxpayers, land owners, and state agencies.

State agencies and staff involved concur in the desirability of repealing this law and incurring the substantial time and money savings which would result.

This bill would repeal the entire Land Registration Law (AS 34.10), except for one provision (AS 34.10.170) which states that land obtained by foreclosure under the chapter may be administered and disposed of in the same manner as other state land. The bill also includes a provision which continues, for three years after enactment, current rights to repurchase land lost by foreclosure; then, after published notice, those rights of formerly indefinite duration are terminated, thus clearing the state's title to that land.

The Land Registration Law is outdated, nearly universally unpopular, costly and burdensome to administer, often unfair, and yields little, if any, benefit to the state. Therefore, I urge its repeal by passage of this bill.

Sincerely,

JSH

Jay S. Hammond
Governor

TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HOUSE BILL NO. 907

Title Repeal of Land Registration Act

Requested by Governor Date 3/23/78

II. FISCAL DETAIL

Agency Affected Department of Natural Resources

Program Category Affected NR&EC

Budget Request Unit(s) Affected Land & Water Mgmt.

EXPENDITURES (Thousands of Dollars)

	FY 78	FY 79	FY 80	FY 81	FY 82	FY 83
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify)						
	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Repeal of this law will not incur additional funds. It is estimated that approximately $30,000 to 50,000 will be saved by the various agencies which administer this statute, including the Dept. of Natural Resources, the Department of Law, the District Recrder's Office, and the Court System. These savings will be reallocated to existing programs.

IV. DATE 3/23/78 PREPARED BY Patrick W. Cowhead

AGENCY Department of Natural Resources

PHONE 465-3400

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

HB
927

COMMITTEE REPORT

SENATE

FURTHER: Finance

4/26/78

Date: 5-1-78

Mr. President:

The Committee on RESOURCES has had CSHB 927
supplemental appropriations to Dept. of Natural Resources

under consideration and (a majority of the committee) (the committee reports it back as follows)

( ) recommends it do pass ( ) recommends it do not pass

( ) recommends it do pass with attached amendment(s)

( ) recommends it be replaced with CS for _____

and _____ ( ) new title ( ) same title

( ) AND attaches a Letter of Intent ( ) New Fiscal Note

( ) reports it back without recommendation

( ) and recommends it be referred to the _____ Committee

MEMBERS SIGNING DO PASS:

OTHER RECOMMENDATIONS:

K. Poland
Chairman

S 60 (rev. 6/77)

HB 727

April 12, 1978

The Honorable Hugh Malone
Speaker of the House
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. Speaker:

Under authority of art. III, sec. 18 of the Alaska Constitution, and in accordance with AS 24.30.060(b) and the Uniform Rules of the Alaska State Legislature, I am transmitting a bill making a supplemental appropriation to the Department of Natural Resources, "Federal-State Land Use Planning Commission."

This appropriation will be used to fund unanticipated wage increases and full operation of the commission during FY 79.

Sincerely,

Jay S. Hammond
Governor

STATE of ALASKA

MEMORANDUM

TO: Ron Lind, Director
Division of Budget & Management

DATE: March 29, 1978

FILE NO:

TELEPHONE NO:

FROM: Chuck Taylor, Budget Analyst
Division of Budget & Management
Office of the Governor

SUBJECT: Supplemental Appropriation for the Department of Natural Resources

The Department of Natural Resources, Federal-State Land Use Planning Commission (FSLUPC), requests a supplemental appropriation of $139,200. The FSLUPC states that this supplemental is necessary to carry forward its major objectives in cooperative management. The FSLUPC has adequate budget resources in its FY 79 budget to complete its tasks, but cannot continue its present level of effort in FY 78 without a supplemental.

It should be noted that the FSLUPC has also submitted a $139,200 supplemental request to the federal government for their share of the costs. Confirmation has not yet been received whether the federal government will support a supplemental request.

This supplemental will fully fund the State's share of the unbudgeted items described below. 1) The Commission has unanticipated wages increases ($34,300). 2) The FSLUPC will provide updated information on lands available for State selection ($16,400). 3) Until Congress enacts (d)(2) legislation, the FSLUPC will continue to serve congressional committees in an advisory capacity. Therefore, an office was established in Washington, D.C. ($32,500). 4) The FSLUPC has been making recommendations to improve coordination between the State and Federal governments. The Commission has already undertaken this in critical areas of transportation, data collection, and fish and game management. Additional funding is requested for the Alaska Resource Information System (ARIS), transportation planning, and ecological reserves ($45,600). 5) Also, the FSLUPC will continue its review of the proposed easements across native selected lands. A final assessment of the status of the Acts Implementation with alternative resolutions to present and potential problems will be transmitted to the federal government ($10,400).

02.001B (Rev. 10/76)

STATE of ALASKA

MEMORANDUM

TO: Avrum Gross, Attorney General
Department of Law

DATE: March 30, 1978

FILE NO:

TELEPHONE NO:

FROM: Ronald B. Lind, Director
Division of Budget & Management
Office of the Governor

SUBJECT: Supplemental Appropriation Legislation for the Department of Natural Resources

Please prepare a supplemental appropriation bill for the Department of Natural Resources, "Federal-State Land Use Planning Commission", in the amount of $139,200 from the general fund. These funds will be used to fund unanticipated wage increases and full operation of the Federal-State Land Use Planning Commission during FY 79.

Request for Budget Supplementary FY 1978

Objectives:

The primary goals of the Commission are to plan for the wisest and best use and management of public lands in Alaska consistent with national and State interests, and to insure that the economic growth of Alaska is orderly and compatible with environmental values and the well-being of the State's residents. Toward the attainment of these goals, the Commission's work program has the following objectives:

(1) to recommend classification and management policies for Federal lands in Alaska to Federal executive departments and to Congress;

(2) to recommend to the Governor and the Legislature of the State of Alaska policies for the management of the State's public domain;

(3) to seek resolutions to conflicts and promote coordination among the Federal and State governments and Native corporations in land use matters; and

(4) to assist in the implementation of the Alaska Native Claims Settlement Act.

It is unable to carry forward the major objectives in cooperative management it has launched over the past five years without supplementary budget help. These consist of data systems and mapping coordination or the Alaska Resource Information System (ARIS); research coordination, now incorporated in the Ecological Reserves Council; and new examinations of cooperative management between Federal, State, and local systems.

There is also a great need to provide further assistance to village corporations on land management problems which is incorporated in this request.

Budget Options

	Total Commission Supported Funding	State*	Federal*
State Lands	$ 32,778	$ 16,389	$ 16,389
Federal Lands	65,040	32,520	32,520
Cooperative Management	91,132	45,566	45,566
Claims Settlement Act	20,856	10,428	10,428
Unanticipated Wage Increases	68,618	34,309	34,309
Total	$278,424	(2) $139,212	$139,212

(2) To cover remainder of Federal fiscal year thru September 1978

The Commission has received no supplemental appropriation for wage increases or increased inflationary costs since the FY 1978 budget was submitted. Its major efforts on conveyance of Native lands, State lands, and (d)(2) lands are using its resources to the limit. Unanticipated actual costs for personnel services not requested in FY 78 budget are as follows:

- o General wage increase
- o Adjustment to cost of living allowance
- o Executive pay level increases

Total unanticipated increase to overall payroll budget is $68,618.

1. Policies for the management of the State of Alaska's public domain.

Personal Services	$28,430
Travel	4,348
	$32,778

The Commission will provide updated information on lands available for State selection. Modifications in existing land classification procedures used by the State will be recommended to assure compatibility of State practices with those being developed by the Bureau of Land Management for Alaska's National Resource Lands.

The Commission will expand on its analysis of the State of Alaska's Park system, as a component of a statewide recreational system and will analyze private demands for disposal of State lands and suggest alternative procedures designated to protect public interests. Comment on disposal plans and procedures will then be provided the State Department of Natural Resources and the Alaska Legislature on an ongoing basis.

2. To recommend classification and management policies for Federal lands in Alaska to Federal executive departments and to Congress.

Until Congress has enacted (d)(2) legislation, the Commission will continue to serve congressional committees in an advisory capacity. It will comment on the environmental, socioeconomic, and management implications of proposals before Congress, and identify alternative means of addressing major issues. It was necessary to establish an office in Washington, D.C. to serve as a coordination center between the Commission and various committees.

Personal Services	$56,664
Travel	3,918
Contract Services	4,458
	$65,040

3. Cooperative Management.

The Commission was mandated to:

> make recommendations to improve coordination and consultation between the State and Federal governments in making resource allocation and land use decision.

It has already undertaken this in the critical areas of transportation, data collection and inventory, research coordination, and fish and game management. It has budget resources to undertake a more comprehensive approach in its 1979 budget but cannot mount a major effort in 1978 without this supplemental or other funding.

a. Alaska Resource Information System (ARIS)

ARIS is the key tool to cooperative management systems. It forces interagency cooperation. It is entering a period of technical development where large sums will be spent by Federal and State agencies on data systems and mapping. It is imperative to continue this effort until the Users and Technical Committee of ARIS is well established and institutionalized as an independent Federal/State effort.

Personal Services	$49,265
Travel	2,089
	$51,354

b. Transportation Planning

There was a need to develop criteria for the evaluation of transportation proposals and make recommendations pertaining to the reservation of corridors across (d)(2) lands, this included the use of the North Slope Haul Road, which parallels the Trans-Alaska Pipeline and currently provides the only ground access to the Alaskan Arctic.

Personal Services	$17,208
Travel	2,180
Contract Fee	7,000
	$26,388

c. Ecological Reserves

Coordination for this Council is established within the University of Alaska faculty. The Commission has already committed $16,000 to support of the management coordinator. The research coordinator has developed the Ecological Reserves System report for the Commission in FY 1977. This budget is

necessary to carry out the recommendation of the Ecological Reserves Council and continue this program as a part of the overall land planning process in Alaska.

Personal Services	$11,222
Travel	2,168
	$13,390

4. To assist in the implementation of the Alaska Native Claims Settlement Act.

The Commission will continue its review of proposed easements across Native-selected lands. It will also continue to review small Federal withdrawals, which have been tentatively selected by Native corporations. Planning assistance to Native corporations will also be provided, and several small instructive publications will be modified and reprinted.

A final assessment of the status of the Act's implementation with alternative resolutions to present and potential problems will be transmitted to the Federal executive and to Congress. The Commission will remain prepared to provide clarification of legal issues to Native corporations and to comment on any proposed amendments to the Alaska Native Claims Settlement Act.

Personal Services	$18,556
Travel	2,300
	$20,856

The Commission will undertake this mandate to the limit of its present resources, but will be unable to carry out this mission in its normal thorough fashion due to erosion of the projected 1978 budget by inflation and wage increases.

The extra funds requested will make it possible to carry forward this program at usual standards.

HB
960

COMMITTEE REPORT

SENATE

FURTHER: Finance

5/30/78

Date: 6/14/78

Mr. President:

The Committee on RESOURCES has had CSHB 960 (Fin) am fish and game management

under consideration and (a majority of the committee) (the committee reports it back as follows)

( ) recommends it do pass ( ) recommends it do not pass

( ) recommends it do pass with attached amendment(s)

(X) recommends it be replaced with CS for CS HB 960 (FIN) am

and _____ ( ) new title ( ) same title

( ) AND attaches a Letter of Intent ( ) New Fiscal Note

(X) reports it back without recommendation

( ) and recommends it be referred to the _____ Committee

MEMBERS SIGNING DO PASS:

OTHER RECOMMENDATIONS:

Do not pass the Committee Substitute

DO NOT PASS from Finance

Chairman

No Rec

S 60 (rev. 6/77)

Original sponsor: Rules Committee by request (for the Special Committee on Subsistence)

Offered: 5/19/78
Referred: Rules

SUGGESTED CHANGES BY DEPARTMENT OF FISH + GAME / 5 JUN 78 Ronald O. Skoog

Resources June 5 '78

Kelly Anderson

IN THE HOUSE BY THE FINANCE COMMITTEE

CS FOR HOUSE BILL NO. 960 (Finance) am

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to fish and game management."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

HB 506

* Section 1. INTENT. The legislature finds that there is a need to develop a statewide policy on the utilization, development and conservation of fish and game resources, and to recognize that those resources are not inexhaustible and that preferences must be established among beneficial users of the resources. The legislature further determines that it is in the public interest to clearly establish subsistence use as the priority beneficial use of Alaska's fish and game resources and to recognize the needs, customs and traditions of Alaskan residents. The legislature further finds that beneficial use of those resources by all state residents should be carefully monitored and regulated, with as much input as possible from the affected users, so that the viability of fish and game resources is not threatened and so that resources are conserved in a manner consistent with the sustained-yield principle.

* Sec. 2. AS 16.05.090 is amended by adding a new subsection to read:

(c). ~~There is established in the Department of Fish and Game~~ The Commissioner shall establish in the Commissioner's office a ~~division~~ DEPARTMENTAL SECTION of subsistence hunting and fishing.

* Sec. 3. AS 16.05 is amended by adding new sections to read:

Sec. 16.05.094. DUTIES OF ~~DIVISION~~ SECTION OF SUBSISTENCE HUNTING AND FISHING. The ~~division~~ SECTION of subsistence hunting and fishing shall

(1) compile existing data and conduct studies to gather information, including data from subsistence users, on all aspects of the role of subsistence hunting and fishing in the lives of the resi-

dents of the state;

(2) quantify the amount, nutritional value, and extent of dependence on food acquired through subsistence hunting and fishing;

(3) make information gathered available to THE PUBLIC, ~~other~~ appropriate agencies, AND OTHER ORGANIZED BODIES; ~~and the legislature in a form suitable for use in developing policies relating to land, water or resource use~~;

(4) assist the DEPARTMENT AND ~~legislature or~~ the Board of Fisheries AND ~~or~~ the Board of Game in determining what uses of fish and game, as well as which users and what methods, should be termed subsistence uses, users, and methods;

(5) evaluate the impact of state and federal laws and regulations on subsistence hunting and fishing and, when corrective action is indicated, make recommendations to the DEPARTMENT; ~~governor and the legislature~~;

(6) make recommendations to the DEPARTMENT ~~Board of Game and the Board of Fisheries~~ regarding adoption, amendment, and repeal of regulations AFFECTING ~~relating to~~ subsistence hunting and fishing;

~~(7) contract with organizations or individuals capable of assisting the division in carrying out its duties~~;

(7) (8) participate with other divisions in the preparation of statewide and regional management plans so that those plans reorganize and incorporate the needs of subsistence users of fish and game.

* Sec. 4. AS 16.05.251 is amended by adding a new subsection to read:

(13) (N) ~~The Board of Fisheries shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62)~~ permitting the taking of fish for subsistence uses unless the board determines, in accordance with the Administrative Procedure Act, that adoption of such regulations will jeopardize or interfere with the maintenance of fish stocks on a sustained-yield basis. Whenever it is necessary to restrict the taking of fish to assure the maintenance of fish stocks on a sustained-yield

basis, or to assure the continuation of subsistence uses of such resources, subsistence use shall be the priority use. If further restriction is necessary, the board shall establish restrictions and limitations on and priorities for these consumptive uses on the basis of the following criteria:

(1) customary and direct dependence upon the resource as the mainstay of one's livelihood;

(2) local residency; and

(3) availability of alternative resources.

* Sec. 5. AS 16.05.255 is amended by adding new subsections to read:

(11) (b) ~~The Board of Game shall adopt regulations in accordance with the Administrative Procedure Act (AS 44.62)~~ permitting the taking of game for subsistence uses unless the board determines, in accordance with the Administrative Procedure Act, that adoption of such regulations will jeopardize or interfere with the maintenance of game resources on a sustained-yield basis. Whenever it is necessary to restrict the taking of game to assure the maintenance of game resources on a sustained-yield basis, or to assure the continuation of subsistence uses of such resources, subsistence use shall be the priority use. If further restriction is necessary, the board shall establish restrictions and limitations on and priorities for these consumptive uses on the basis of the following criteria:

(1) customary and direct dependence upon the resource as the mainstay of one's livelihood;

(2) local residency; and

(3) availability of alternative resources.

~~(c) In accordance with sound game management practices, the Board of Game shall establish open seasons for game species which coincide with the time of year when each species is most edible.~~

Anti-Waste

* Sec. 6. AS 16.05.257(a) is amended to read:

(a) The Board of Game, at its regularly scheduled annual meetings or other meetings shall consider and may adopt regulations providing for subsistence hunting in a game management unit or subunit or a portion of a unit or subunit upon

(1) recommendation of the department, based on biological evidence;

(2) the recommendation [MAJORITY VOTE] of the active local advisory committees for that game management unit or subunit or a portion of a unit or subunit;

(3) the written petition of not less than 100 interested residents of that game management unit or subunit; or

(4) the written petition of not less than 25 interested residents of an area which is requested for establishment as a subsistence area within a game management unit or subunit.

* Sec. 7. AS 16.05.257(c) is repealed and re-enacted to read:

(c) No regulations may be adopted by the Board of Game under (a), (b) or (f) of this section unless, in addition to the requirements of AS 44.62.180 - 44.62.290, the department

(1) holds public hearings, after reasonable notice, at least 30 days before the meeting at which the regulation is to be adopted, with at least one of the hearings being held in close proximity to the area potentially affected;

(2) presents at the hearings the ~~information provided for~~ BIOLOGICAL EVIDENCE REQUIRED in (e) of this section;

(3) makes the ~~information provided for~~ BIOLOGICAL EVIDENCE REQUIRED in (e) of this section available to the appropriate advisory committees and to petitioners if consideration of adoption of regulations was prompted by petitions under (a)(3) or (4) of this section; ~~comments shall be received by the board~~

~~until 10 days before any adoption of regulations~~.

* Sec. 8. AS 16.05.257(d) is amended to read:

(d) A petition submitted under (a)(3) - (4) of this section shall contain a complete description of the area requested as a subsistence area and a specification of the species within the area considered necessary for subsistence use. A petition or request made under (a)(2), (3) or (4) of this section must be filed with the department at least 75 days before the ~~next scheduled meeting of the board~~. request meeting at which the petition is to be considered

~~* Sec. 9. AS 16.05.257(e) is repealed and re-enacted to read:~~

~~(e) The department shall investigate every petition or request made under (a)(2), (3) or (4) of this section and provide the following information: (1) the concentration and carrying capacity of the species to be affected; (2) the concentration of other species; (3) the extent of competition of other species with the affected species in the area; (4) the current hunting practices in the area, including numbers of animals taken and by what methods and means, whether the take is subsistence or recreational, and characteristics of the hunters; (5) the past and present dependence of persons in the area for subsistence use of a species; (6) the biomass of the species to be affected; (7) the population trends in the area; and (8) whether the population is able to support a nonsubsistence harvest~~. habitat of the species to be affected

* Sec. ~~10~~ 9. AS 16.05.257(h)(1) is amended to read:

(1) "subsistence hunting" means the taking of game animals by a state resident for subsistence uses by means defined by the Board of Game [FOOD OR CLOTHING FOR PERSONAL OR IMMEDIATE FAMILY USE];

* Sec. ~~11~~ 10. AS 16.05.257(h)(2) is repealed and re-enacted to read:

(2) "subsistence hunting area" means an area in which only subsistence hunting of the affected species is permitted and which is managed for maximum food potential.

* Sec. ~~12~~ 11. AS 16.05.257 is amended by adding a new subsection to read:

(i) The Board of Game may make no decision denying, creating or changing a subsistence hunting area unless based on specific written findings of fact regarding all the information provided in accordance with (e) of this section. ~~No subsistence hunting area may be created if the board determines that creation of such an area will jeopardize or interfere with the maintenance of game populations on a sustained yield basis.~~

* Sec. ~~13~~ 12. AS 16.05.290 is amended to read:

Sec. 16.05.290. COMPENSATION OF BOARD MEMBERS. Each member of a board is entitled to travel expenses, [AND $100] per diem, and $100 in compensation for each day going to and from and for each day in actual attendance at board meetings and other meetings or conferences authorized by a board.

DELETE * Sec. 13. AS 16.05.300 IS AMENDED by adding a new subsection TO READ: (c)

* Sec. 14. AS 16.05.930 is amended by adding a new subsection to read:

(e) This chapter does not prevent the traditional barter of fish and game taken by subsistence hunting or fishing, except that the commissioner may prohibit the barter of subsistence-taken fish and game by regulation, emergency or otherwise, if a determination on the record is made that the barter is resulting in a waste of the resource, damage to fish stocks or game populations, or circumvention of fish or game management programs.

* Sec. 15. AS 16.05.940 is amended by adding new paragraphs to read:

(26) "subsistence uses" means the customary and traditional uses in Alaska of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation, for the making and selling of handicraft articles out of nonedible by-products of fish and wildlife resources taken for personal or family consumption, and for the customary ~~trade~~, barter or sharing

INSERT — p.6, line 15

* Sec. ~~11~~ 13. AS 16.05.300. Board Meetings (a) Each board shall hold at least one meeting a year and as many other meetings as it considers necessary. Each board shall select the time and place in the state for the transaction of business. Each board shall maintain its office at the principal office of the department.

(b) In addition, the Board of Fisheries shall hold at least one meeting or hearing a year in each of the following general areas:

(1) Upper Yukon - Kuskokwim - Arctic
(2) Western Alaska (including Kodiak)
(3) Southcentral
(4) Prince William Sound (including Yakutat)
(5) Southeast

(c) In addition, the Board of Game shall hold at least one meeting or hearing a year in each of the following general areas:

(1) Arctic - Yukon - Kuskokwim
(2) Southwestern Alaska
(3) Interior
(4) Southcentral
(5) Southeast.

for personal or family consumption; for the purposes of this paragraph, "family" means all persons related by blood, marriage, or adoption, and any person living within the household on a permanent basis;

(27) "barter" means the exchange or trade of fish or game, or their parts — taken by subsistence users.

(A) for other fish or game or their parts; or

(B) for other food or for nonedible items if the exchange is of a limited and noncommercial nature.

Alaska State Legislature

House of Representatives

Special Committee
on Subsistence

Pouch V
State Capitol
Juneau, Alaska 99811
465-4986

Official Business

May 30, 1978

MEMORANDUM

DATE: May 30, 1978

TO: All Senators

FROM: Rep. Nels A. Anderson, Jr., Chairman

SUBJECT: CSHB 960 (Finance) am

Attached find CSHB 960 (Finance) am, a bill outline and letter of intent for your information.

This comprehensive subsistence bill is the result of ten months of work by the Interim Committee on Subsistence and the Special Committee on Subsistence. The Administration and the Department of Fish and Game have frequently stated that subsistence should be the priority use of fish and game and yet up until this point have had no progress in coming to grips with the issue.

This bill provides the Department of Fish and Game a directive in establishing subsistence as the highest priority use and establishes a division of subsistence so that the legislature and the Department of Fish and Game can gain knowledge of this complex issue.

Alaska State Legislature

House of Representatives

Special Committee
on Subsistence

Pouch V
State Capitol
Juneau, Alaska 99811
465-4986

Official Business
May 30, 1978

BASIC ELEMENTS OF CSHB 960 (FINANCE) AM

SECTION 1: Statement of Intent

SECTION 2: Creation of a Division of Subsistence in the Department of Fish and Game.

SECTION 3: Duties of the Division of Subsistence

SECTIONS 4 & 5: Subsistence is the highest priority use of fish and game.

SECTIONS 6 - 12: Amendments to the existing subsistence zone statutes.

SECTION 13: $100 per day compensation to the members of the Board of Fisheries and the Board of Game while on business.

SECTION 14: Deletion of the current prohibition on barter of subsistence caught fish and game.

SECTION 15: Definition of "subsistence uses" and "barter".

Alaska State Legislature

House of Representatives

Official Business

Special Committee
on Subsistence

Pouch V
State Capitol
Juneau, Alaska 99811

LETTER OF INTENT

CSHB 960 (FINANCE) AM: "An Act relating to fish and game management."

This bill is intended to provide a coordinated plan for clarifying what subsistence use of fish and game is and for documenting subsistence uses so that they can be integrated into fish and game management planning. The bill also provides a legislative framework for the State's policy of recognizing subsistence as the priority use of fish and game.

Section two: This section provides for the creation of a division of subsistence hunting and fishing. Presently, the Department of Fish and Game has divisions of commercial fishing, sport fishing and game. As subsistence is to be the highest priority of the Department of Fish and Game, there is an obvious need for the gathering of information about subsistence hunting and fishing and the making of informed recommendations to the boards of fisheries and game. Presently, research is not being specifically directed towards the subsistence hunting and fishing economy of the state. Rather, specific species studies are conducted to determine the health of the species and the harvest to be allowed. This method does not consider the entire range of resources available to subsistence users and therefore does not allow for realistic regulations based upon the overall needs of the subsistence users. A division of subsistence given the tasks set forth in section four would have the information to make recommendations as to the needs of the subsistence users.

Section three: Duties of the division of subsistence hunting and fishing.

Sections four and five: These two sections, which are virtually identical for the Boards of Fisheries and the Board of Game, are intended to statutorily set out the priority given to subsistence use of the fish and game resources. While there are presently regulations for subsistence fishing, there is no mechanism for the promulgation of subsistence hunting regulations except with the creation of subsistence hunting areas pursuant to A.S. 16.05.257. Section seven would allow for these regulations so that subsistence hunting could be distinguished by separate regulations from sports hunting. Further, these sections set forth a priority of users if restrictions are needed because of the unavailability of resources. The priority list is an attempt to insure that those with the most dependence upon the fish and game resources are the last to be restricted.

If there is a need to restrict the taking of fish or game in order to avoid damaging the fish stocks or game populations, or in order to assure that subsistence users may continue to take fish or game, it is the intent of the Committee that sports or commercial use be restricted before subsistence use. If these restrictions are inadequate, restriction of subsistence use as well is authorized based upon the dependence on the resource, the local residence of the subsistence user, and the availability of alternate resources. It is the intent of the committee that decisions and determinations by the Board of Fisheries and the Board of Game will be subject to complete public scrutiny and that reasons will be given for any action or any failure to act.

Subsection C is intended to ensure that game meat is not wasted as a result of a hunt which is not allowed during a portion of the year when the meat is not edible. As the game resources are very limited, this subsection makes certain that the entire animal can be utilized.

Section six: This section does two things. First, it makes clear that the Board of Game must consider subsistence hunting area proposals at its regularly scheduled annual meeting. Second, it allows the Board of Game to consider recommendations from the active local advisory committees which are located in the area where the subsistence hunting proposal is being made without also needing a recommendation from the other advisory committees which have concurrent jurisdiction, in the game management unit or subunit affected. Therefore, if five local advisory committees have concurrent jurisdiction, it is only necessary to have the committee located in the affected area to make its recommendation rather than other committees which may not have any interest in the area being proposed.

Section seven: This section deals with the problem of not having sufficient information to present to the Board of Game when they are making their determinations. If the Board of Game is required to make investigations and present this information at the hearings, the participants will be able to make relevant comments. Subsection (C) (3) allows for the petitioners to dispute the investigations which have been made. Presently most of the hearings only deal with the participants personal observations. More meaningful hearings would be conducted if biological and user information were required.

Section eight: This section mandates a seventy-five (75) day period by shich time a petition must be filed with the Department of

Fish and Game. This time period is included to enable the Department to make the investigation required under section eleven.

Section nine: This section requires the Department of Fish and Game to make detailed investigation concerning subsistence hunting area proposals. The Board of Game has rejected proposals in the past stating that they did not have enough information before them to justify their creation. The only agency which is capable of providing this information is the Department of Fish and Game. Therefore, to require the Department to make this investigation would force the Board of Game to make its decisions based upon the relevant data rather than being able to deny them out of hand. As the Board has not approved any of the proposals in the past, the changes in this section would require the Board to follow the legislative history of the law and would provide a mechanism for reviewing the Board's decision.

Section ten: This section expands the uses which can be made of game taken in subsistence areas. Presently, the uses allowed are much more restrictive than the customary and traditional uses made of fish and game.

Section eleven: The definition of subsistence hunting is changed so that non-subsistence hunting of the species which is the subject of a petition or report will not be allowed. Sports hunting of other species is allowed so long as the subsistence hunting is not interfered with.

Section twelve: This section, like section eleven is intended to assure that any decisions reagarding subsistence zones made by the Board of Game are made on the basis of adequate information.

Section thirteen: This section provides for a $100 dollar per day compensation fee to be given to members of the Board of Fisheries and the Board of Game in addition to travel expenses and $100 per day per die.

Section fourteen: This section provides for the barter of subsistence caught fish and game as barter is defined in section seventeen, subsection 27 below. As barter is customary and traditional use of fish and game products, there is no necessity for it to be outlawed as is presently the case. However, if barter is to be allowed, the Department of Fish and Game should be allowed to control it so that there are no abuses. This is provided for in section sixteen. Barter is a means of rounding out a subsistence users diet and simply because one resource is available in an area and another is not should not force people to consume only what they can take themselves. The

definition of barter specifically prohibits the selling of subsistence caught fish and game but does not limit what other consideration can be given.

Section fifteen: Subsection (26) defines what uses can be made of subsistence caught fish and game. It allows it to be used for dirct personal or family consumption, for barter as defined in subsection (27) and for sharing the subsistence caught fish and game with other persons. This subsistence caught fish and game which is shared can then only be used for personal or family consumption. This subsection also broadens the definition of family to include the extended family situation.

PROPOSED REDUCTIONS IN FISCAL NOTE FOR CSHB 960 (Fin) am.

SUBSISTENCE DIVISION

73,100	delete	Juneau regional office
73,100	delete	Kodiak regional office
73,100	delete	Kotzebue regional office
219,300	SUBTOTAL	

61,387	delete 60% of secretarial amount for remaining seven offices
280,687	
350,000	Add $50,000 contractual
230,687	
171,1[illegible]	ORIGINAL FISCAL NOTE FOR DIVISION
640,413	REVISED FISCAL NOTE FOR DIVISION

[illegible]

513,413 [illegible]

regional deputy director with [illegible]

Perspective

Subsistence Issue Neglected Too Long

By Joe La Rocca

Both as a matter of equity, and as a strategic move to upgrade state and federal relationships in Alaska, the bill to create a division of subsistence hunting and fishing within the State Department of Fish and Game which passed the State House last Friday is an idea whose time is long overdue.

Although it wasn't designed nor, I think, intended to do so, the bill – if enacted into law – will go a long way towards reenforcing the state's recently-threatened right to manage resident wildlife species in Alaska.

It will also officially elevate the subsistence hunting and fishing ethics to the same practical stature as sport fishing, sport hunting and commercial fishing which have, for too long, enjoyed management priority over subsistence uses of Alaska's wildlife resources.

The state's dominant non-Native politicians have, since statehood, steadfastly ignored the urgency of the subsistence hunting and fishing issue, maintaining from the start three roughly co-equal divisions within the Department of Fish and Game to handle sport fishing, sport hunting and commercial fishing needs.

But they persistently neglected the fourth need that oozed around the edges of the other three, despite the warnings of a few foresighted individuals who, over the years, have unsuccessfully urged the politicians to give equal symbolic and tangible status to the subsistence hunting and fishing ethic.

Their failure to do so at – or soon after – statehood inevitably precipitated the bitter rift which has today corroded relationships – perhaps irreversibly – between Alaska's Native and non-Native people, and brought all wildlife in Alaska to the disastrous brink of federal control, with the active consent of Alaska's Native leaders.

Successive state administrations, including this one, have claimed that they, and their appointed boards of fish and game, have consistently recognized subsistence as the priority use of fish and game resources where there were conflicts with other consumptive uses. But their claims are largely false. Management of the state's resident fish and game species has, over the years, been pervasively biased in favor of sport and commercial interests, while subsistence uses have been systematically accorded step-child status.

The bill approved by the House last Friday purports to establish subsistence use as the priority beneficial use of Alaska's fish and game resources. But is suspect that, as a practical political matter, subsistence uses will achieve under it, at best, equal management status and treatment with sport and commercial uses if the Senate also passes, and the governor approves – and effectively implements – the statute.

Enactment of the measure should, I think, help to stem the tide of federal encroachment upon the state's right to manage resident species which drew its principal impetus in recent years from the divisive subsistence issue and the state's prolonged failure to attempt to resolve it rationally.

The bill was less than perfect when it came from committee to the floor of the House, and Friday's House action in amending the bill on the floor represented one of those rare occasions when rational considerations prevailed over political expedience.

There were two critical floor amendments which the House wisely adopted. One, authored by Rep. Sam Cotten, (D-Eagle River), removed a lengthy section which would have created a permanent interim committee of the legislature on subsistence. Supporters of Cotten's amendment correctly argued that such a move would have set a dangerous precedent that would inevitably have led to irresistible pressures for similar concessions to other special interests.

The second amendment, offered by Rep. Dick Eliason, R-Sitka, removed a provision which would have unnecessarily added two more seats to the Boards of Fisheries and the Board of Game, thus making it more difficult for both to function effectively.

Although he was justifiably motivated by ethnic self-interest, the bill's architect, Rep. Nels Anderson, (D-Dillingham), and those who supported his efforts, have served transcendant state interests as well, which have been neglected too long.

Even now, the measure is probably imperfect, and experience under it over time is likely to dictate changes needed to refine it further, or adapt it to unforeseen circumstances. But it signifies an important first step and establishes a useful framework which can be fleshed out by future legislatures, if and when necessary.

Hopefully, the Senate and governor will agree, and readily ratify the action of the House of Representatives.

THE LEGISLATURE OF THE STATE OF ALASKA
TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HB 960
Title An Act Relating to Fish and Game Management
Requested by Representative Anderson Date 5/1/78

II. FISCAL DETAIL
Agency Affected Fish and Game
Program Category Affected NRMEC
Budget Request Unit(s) Affected Boards of Fish and Game
plus New BRU for Division of Subsistance

EXPENDITURES (Thousands of Dollars)

		FY 78	FY 79	FY 80	FY 81	FY 82	FY 83
100	PERSONAL SERVICES		749.7	749.7	749.7	749.7	749.7
200	TRAVEL		36.5	36.5	36.5	36.5	36.5
300	CONTRACTUAL		93.4	93.4	93.4	93.4	93.4
400	COMMODITIES		4.5	4.5	4.5	4.5	4.5
500	EQUIPMENT		35.3	3.0	3.0	3.0	3.0
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL No Inflation Adjustment		919.4	887.1	887.1	887.1	887.1

FUNDING (Thousands of Dollars)

GENERAL FUND		919.4	887.1	887.1	887.1	887.1
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

FULL TIME		24	24	24	24	24
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

SEE REVERSE SIDE FOR DETAILED EXPLANATION

Note

IV. DATE May 2, 1978 PREPARED BY Gil Morrison
AGENCY Fish and Game
PHONE 465-4120

Original: Legislative Finance
cc. Budget and Management
Prime Sponsor (First Legislator Named)

I. Sections 2-4 establish a Division of Subsistance.

In addition to a Headquarters staff of director, deputy director, secretary, and administrative assistant, work would be accomplished by regional positions with clerical support at range 18 in Juneau, Anchorage, Kodiak, Fairbanks, Barrow, Bethel, Dillingham, Galena, Kotzebue, and Nome. Range 18 is the same level as Fisheries or Game Biologist III. This is the project manager level and would be expected to have a broad range of professional experience as well as the ability to interact well with the public. Travel is provided at $3,000 for regional positions, and $4,000 for the director and deputy. Contractual funds are for phones, printing, advertising, and space rental. (Figures assume 600/mo. for regional space and phones; 1,000/yr. for regional printing; 700/mo for HQ space and phones; 3,000/yr for HQ printing and miscellaneous). New equipment is needed for all positions.

Line item costs for the Division of Subsistance are as follows:

100 -	699.9	400 -	4.5
200 -	38.0	500 -	35.3
300 -	93.4		

Line item 500 is reduced to 3.0 for FY '80 and beyond.

II. Section 5 adds two members each to the Boards of Fisheries and Game.

The cost of each additional Fisheries Board member would be $1,500 in travel and $4,500 in per diem. The cost of each additional Game Board member would be $1,000 in travel and $2,200 in per diem. These figures do not include the additional compensation addressed in section 15 of the bill. Total cost of section 5 is $18,400, all in line 200.

III. Section 15 provides additional compensation for Board members.

Board members currently receive $100 per diem per day. The effect of section 15 would be to reduce the per diem to the same as that paid other state employees (this fiscal note assumes an average of $60), and to add compensation of $100 per day for Board members. Actual per diem paid would be reduced from $49,800 in FY '79 (both boards) to $29,900 in line item 200. Compensation of $100 per day would add $49,800 in line item 100.

IV. Section 20 creates a permanent Interim Subsistance Committee of the Legislature. There is no fiscal impact of this action in the Department of Fish and Game. However, the Division of Legislative Affairs would be fiscally impacted by this section.

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

SUBPORT BUILDING
JUNEAU 99801

June 10, 1978

The Honorable Kay Poland
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Poland:

Yesterday you requested the Department to poll the Board of Game to determine their views regarding CSHB 960 (Finance)am as written regarding the "subsistence issue" and the establishment of a "Division of Subsistence" in the Department by legislative mandate. Insofar as was possible we contacted the Board members yesterday afternoon and evening with the results as indicated below. Six of the seven members were reached--Jim Rearden, Clint Buckmaster, Charles Evans, Darrell Farmen, Pete Nelson, and Sam Harbo; Sidney Huntington was not available.

(1) All six were opposed to the legislation as written; I feel confident in saying that I believe Sidney Huntington also would be opposed.

(2) Four, and to that I would add Huntington to make five, were opposed to any such legislation being passed regardless of language; two--Chuck Evans and Clint Buckmaster--felt they could support CSHB 960 if the Department's suggested amendments were adopted.

In addition, we attempted to poll the Board of Fisheries as well, but were less successful. Only four of the seven were reached--Nick Szabo, Gordon Jensen, Herman Schroeder, and Calvin Fair. All were opposed to CSHB 960 as written. Szabo was opposed to any legislation being passed. Jensen, Schroeder, and Fair felt they could support the bill if the Department's suggested amendments were adopted.

I will stick my neck out and say that I think all members of the two Boards believe that there is little need for this kind of legislation and that the subsistence question can be handled quite adequately under a modified

regulatory system (which we are working on now). I believe too that all would object to the Legislature establishing any organizational unit within the Department by State law, as has been done already with regard to the Fisheries Rehabilitation, Enhancement and Development Division.

The Department would like to propose two additional amendments to CSHB 960. Again, both were overlooked in our previous review and, again, I apologize for that lack. Our proposals are as follows:

(1) p.5 Sec. 11 (Sec. 10 as per Dept.'s earlier recommendations) AS 16.05.257(h)(2) lines 26-29.

We suggest the elimination of this section, and instead leave the existing language presently in the Statutes. Present language reads as follows:

> (2) "subsistence hunting area" means an area designated by the board as primarily important for subsistence use and in which it is unlikely that subsistence needs will be met if recreational hunting, including hunting for trophy purposes, is permitted or if certain methods and means are continued. (s 1 ch 199 SLA 1975; am s 2 ch 269 SLA 1976)

The language stated in CSHB 960 would be too narrow and I believe not in compliance with the State Constitution because of discrimination in permitting only subsistence hunting in a "subsistence hunting area." The existing Statute language is more flexible in that control of hunting also could be handled via "methods and means," as well as by other regulatory constraints.

(2) p.6 Sec. 14. AS 16.05.930(e), lines 17-18.

Language here needs to recognize the responsibility of the Boards to set regulations. I suggest that it be amended to the following:

Line 17-18 "...except that the appropriate Board or the Commissioner by delegation of the appropriate Board may prohibit....

Thanks again for allowing us to state our views regarding this important piece of legislation.

Sincerely,

Ron Skoog

Ronald O. Skoog
Commissioner

DEPARTMENT OF FISH AND GAME

Operating Budget Summaries
(Rounded to nearest $1,000)

	FY'77 Actual	FY'78 Authorized	FY'79 Request
Commerical Fisheries - Total	$7,315.9	$7,973.2	$9,160.3
Funding: Federal Receipts	640.6	633.5	633.5
Matching General Fund	427.1	442.7	442.7
General Fund	6,217.4	6,872.0	8,059.1
Program Receipts	30.8	25.0	25.0
Game - Total	4,464.0	5,058.5	6,032.5
Funding: Federal Receipts	2,825.6	3,219.7	3,876.7
General Fund	163.9	20.0	
Fish and Game Fund	1,474.5	1,818.8	2,155.8
Sport Fish - Total	2,618.6	3,086.7	3,929.7
Funding: Federal Receipts	1,136.9	1,269.9	1,359.9
General Fund	539.9		
Fish and Game Fund	941.8	1,816.8	2,569.8
F.R.E.D. - Total	4,695.5	6,975.1	9,335.5
Funding: Federal Receipts	84.4		
General Fund	4,611.1	6,975.1	9,335.5
Administration - Total	2,290.9	2,667.8	2,824.8
Funding: Federal Receipts	365.6	319.5	350.0
General Fund	1,763.0	2,144.4	2,269.0
Interagency Receipts	139.7	75.2	75.2
Program Receipts	22.6	128.7	130.6
Vessels - Total	1,080.6	1,219.2	1,321.1
Funding: General Fund	1,072.6	1,194.2	1,311.1
Interagency Receipts	8.0	25.0	10.0
Habitat - Total	$1,105.7	$ 896.5	$1,023.6
Funding: Federal Receipts	226.2	209.0	
Matching General Fund	81.7	83.5	
General Fund	722.5	604.0	814.6
Interagency Receipts	75.3		
Pipeline Monitoring - Total	867.8	952.1	1,288.0
Funding: Federal Receipts			154.0
Program Receipts	867.8	952.1	1,134.0
Boards of Fish and Game - Total	143.4	158.3	316.7
Funding: General Fund	143.4	158.3	316.7
Crab Board - Total	224.2	336.8	285.9
Funding: Program Receipts	224.2	336.8	285.9
Total Department Budget	24,806.6	29,324.2	35,518.1
Funding: Federal Receipts	5,279.3	5,651.6	6,374.1
Matching General Fund	508.8	526.2	442.7
General Fund	16,233.8	17,969.0	22,108.0
Interagency Receipts	223.0	100.2	85.2
Program Receipts	1,145.4	1,442.6	1,675.5
Fish and Game Fund	2,416.3	3,635.6	4,934.6

DISTRIBUTION OF FISH AND GAME PERSONNEL

Residing within blackened area: 509 people
Residing within rest of state: 33 people
Rest of state excluding Aleutians and Bristol Bay: 14 people

Alaska State Legislature

House of Representatives

Official Business

Special Committee
on Subsistence

Pouch V
State Capitol
Juneau, Alaska 99811

REPRESENTATIVE NELS A. ANDERSON, CHAIRMAN

June 6, 1978

Senator Kay Poland, Chairman
Senate Resources Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Subject: CSHB 960 (Finance) am

Dear Senator Poland:

At the hearing on the subsistence bill in your committe on June 5, it was clear that one major issue was whether the proposed new Division of Subsistence Hunting and Fishing should be deleted in favor of a new section of subsistence which would operate directly out of the Commissioner's office. I would just like to reiterate my opposition to that change and exlplain why.

As the testimony at your hearing indicated, Commissioner Skoog's proposed amendment would cut off any meaningful communication between this section and the legislature, the Governor or the Boards of Fish and Game. The Commissioner's proposed amendments on page two, lines 5 - 6, and 7 and 13 assure that the legislature will not have the benefit of the section's expertise on subsistence, except as it is filtered through the Commissioner's office. The amendment on page two, lines 14 - 15 assures that those same subsistence experts will not have the same freedom in presenting regulation proposals to the Board of Game and Fisheries that the existing divisions presently enjoy.

During the Subsistence Committees' 4 day teleconference on the creation of a subsistence division, the major fear of the majority of the 79 people who testified was that the commissioner would stifle the activities of such a division.

For this reason, the original HB 960 required the governor to appoint the head of the subsistence division rather than the Commissioner. This provision was deleted in committee. That deletion was acceptable to me but I strongly reject the Commissioner's attempts to further erode the bill by attempting to eliminate the division and replace it with a section which would operate as personal staff to the Commissioner.

Further, without the ability to collect data on subsistence needs independent of the special interests of the other divisions, the "section" of subsistence would be dependent on information from the other divisions that has been shown in the part to be inadequate or geared toward sports and commercial interests. Independent field workers to address subsistence issues are mandatory and are only possible if a division is created.

To see how a "section" of subsistence would operate, one only need look at the existing Habitat Protection Section of the Department. According to Keith Specking, legislative assistant to the Governor, in his Organization Review of the Department in December 1977, the following finding applies to the existing Habitat Protection Section, which is seven or eight years old.

> "THE ROLE OF THE HABITAT PROTECTION SECTION NEEDS TO BE MORE DEFINED.
>
> That finding is based on the following management observation:
>
> THERE HAS BEEN A LACK OF CLEAR DESIGNATION FOR THE HABITAT PROTECTION SECTION'S INVOLVEMENT IN THE DEVELOPMENT, REVIEW, AND MANAGEMENT OF THE TERMS OF COOPERATIVE AGREEMENTS.
>
> ... THE HABITAT PROTECTION SECTION HAS HAD INSUFFICIENT PERSONNEL TO PROVIDE A PROFESSIONAL AND COMPREHENSIVE RESPONSE TO INTENSIVE SHORT - TERM PLANNING REQUESTS.
>
> THERE IS CURRENTLY NO MECHANISM FOR HABITAT PROTECTION SECTION'S INVOLVEMENT IN RESEARCH AND SURVEY AND INVENTORY ACTIVITIES TO FILL DATE VOIDS WHERE LINE DIVISIONS CANNOT ADEQUATELY RESPOND TO RESEARCH REQUESTS.

If this is the case with the existing habitat section, I am sure that a subsistence section would be even more loosely structured and ineffective. We should not create a section of subsistence that has no defined role, no power, inadequate personnel, and no research and data collection capability. Creating a division as provided for in the present bill would ensure that subsistence was dealt with effectively in a scientific manner rather than in a vague and politically oriented manner.

Commissioner Skoog's attempt to reduce the proposed new division to a toothless "section" is even more serious when veiwed in the content of his other ill-advised proposed changes. 1) to leave to the discretion of the Department whether or not to create a subsistence preference (page 2, lines 23 - 24 and page 3, lines 11 - 12). 2) to delete the detailed information necessary to determine whether a subsistence game zone should be created and leave in the present, hopelessly general "biological evidence" provision in existing law (page 5, lines 10 - 21).

Thank you very much for your consideration of this matter.

Sincerely,

Nels

NELS A. ANDERSON, JR., CHAIRMAN
Special Committee on Subsistence

NAA/ah

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

SUBPORT BUILDING
JUNEAU 99801

June 7, 1978

The Honorable Kay Poland
Senate Resources Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Poland:

It has just come to my attention that there would be one other discrepancy in the current Title 16 statutes should the present CSHB 960 pass in the legislature. A change would be necessary in AS 16.05.940 Definitions relative to definition number (17) "subsistence fishing." Presently this definition reads as follows:

> (17) "subsistence fishing" means the taking, fishing for, or possession of fish, shellfish, or other fishery resources for personal use and not for sale [OR BARTER] with gill net, seine, fish wheel, long line, or other means defined by the Board of Fisheries;

It would be necessary to eliminate "or barter" from this definition in order to comply with the language in CSHB 960. Actually it would be well to eliminate these words from that definition regardless of whether the bill passes or not, because it has caused numerous problems with our enforcement people in many areas of Western Alaska where barter has been a traditional activity. If this latter action were taken, then the definition proposed for "barter" should be added to the section.

Sorry for not having addressed this problem either in my testimony or in my June 6 letter. Thank you for your consideration.

Sincerely,

Ronald O. Skoog
Commissioner

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER / SUPPORT BUILDING
JUNEAU 99801

June 6, 1978

The Honorable Kay Poland
Senate Resources Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Poland:

I would like to comment further upon the language in CSHB 960 (Finance) am, relative to certain sections upon which there seems to be some controversy. My comments below follow the section numbers as referred to in the Bill.

Section 2. AS 16.05.090. I would like to restate the Department's position that the duties proposed for a "subsistence group" within the Department of Fish and Game could be better served by having that "group" designated as a "Section" in the Commissioner's Office. In that position the Section would carry greater authority in dealing with the other Divisions--Sport Fish, Commercial Fisheries, and Game--in providing the necessary coordination between the staff biologists of these Divisions and the "subsistence" staff in providing for adequate regulatory proposals to the Boards.

Section 8. AS 16.05.257(e). We still are concerned that the proposed wording used presently in the Bill will be too demanding on our staff biologists to supply all of the requested information for every such request. I had recommended in my testimony yesterday that this new language be deleted and that the existing language in Title 16 remain. The eight kinds of information identified as required would create a great burden upon Department staff. In substitute I recommend instead that the following language preface the existing language in AS 16.05.257(e):

> The department shall investigate every petition or request made under (a)(2), (3) or (4) of this section and provide the biological evidence needed to evaluate each such petition or request. No subsistence area may be created under this section if the Board of Game determines that biological evidence indicates that the creation

of such an area is likely to adversely affect a resource in that it would fall below the level of sustained yield determined to be adequate.

Section 15. AS 16.05.940(26). "Subsistence uses." I would recommend that if "subsistence uses" is to be defined that it might be best to follow the definition that currently is in the (d)(2) legislation now before Congress, as it seems likely that this definition will survive in whatever legislation finally emerges. That definition is as follows:

(26) "Subsistence uses" means the noncommercial, customary and traditional utilization within the State of wild, renewable resources for--

(1) direct personal or family use for food, shelter, fuel, clothing, tools, or transportation;

(2) the making and selling of handicraft articles (including clothing), but only out of nonedible byproducts of fish and wildlife taken for such personal or family use; or

(3) customary trade, barter, or sharing among subsistence users for personal or family use.

Section 15. AS 16.05.940(27). I reiterate my statement that the definition of "barter" should try to exclude the commercial aspects of any exchange. In this respect I think that the definition as contained in Senator Hohman's SB 506 (shown below) is quite appropriate. It eliminates the commercial problem while recognizing the "traditional" barter or trade being carried out by rural residents.

"Barter" means to exchange, trade for, or otherwise give and receive subsistence-taken fish or game or their parts in exchange for other subsistence-taken fish or game or their parts.

We have attached a revised fiscal note to cover the suggested changes to AS 16.05.300.

Sincerely,

Ron Skoog

Ronald O. Skoog
Commissioner

Enclosure

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CSHB 960 (Finance) am

Title An Act Relating to Fish and Game Management

Requested by _____ Date _____

II. FISCAL DETAIL

Agency Affected Fish and Game

Program Category Affected NR-MEC

Budget Request Unit(s) Affected Boards of Fish and Game
plus New BRU for Section of Subsistance

EXPENDITURES (Thousands of Dollars)

		FY 78	FY 79	FY 80	FY 81	FY 82	FY 83
100	PERSONAL SERVICES		747.5	747.5	747.5	747.4	747.5
200	TRAVEL		26.9	26.9	26.9	26.9	26.9
300	CONTRACTUAL		93.4	93.4	93.4	93.4	93.4
400	COMMODITIES		4.5	4.5	4.5	4.5	4.5
500	EQUIPMENT		35.3	3.0	3.0	3.0	3.0
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL No Inflation Adjustment		907.6	875.3	875.3	875.3	875.3

FUNDING (Thousands of Dollars)

GENERAL FUND		907.6	875.3	875.3	875.3	875.3
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

FULL TIME		24	24	24	24	24
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

This Fiscal Note is prepared using CSHB 960 (Finance) am as a base, and incorporating changes suggested by the Department of Fish and Game in testimony before the Senate ResourceCommittee on June 5, 1978. See reverse side for detailed explanation.

IV. DATE June 6, 1978 PREPARED BY J Morrison

AGENCY Fish and Game

PHONE 465-4120

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33 001 (Rev. 12/77)

Sections referred to are sections as renumbered in suggested changes to Bill by Department of Fish and Game.

I. Sections 2-3 establish a Section of Subsistance in the Office of the Commissioner.

In addition to a Headquarters staff of section chief (24), assistant chief (22), secretary, and administrative assistant, work would be accomplished by regional positions with clerical support at range 18 in Juneau, Anchorage, Kodiak, Fairbanks, Barrow, Bethel, Dillingham, Galena, Kotzeube, and Nome. Range 18 is the same level as Fisheries or Game Biologist III. This is the project manager level and would be expected to have a broad range of professional experience as well as the ability to interact well with the public. Travel is provided at $3,000 for regional positions, and $4,000 for the chief and assistant chief. Contractual funds are for phones, printing, advertising, and space rental. (Figures assume 600/mo. for regional space and phones; 1,000/yr. for regional printing; 700/mo. for HQ space and phones; 3,000/yr for HQ printing and miscellaneous). New equipment is needed for all positions.

Line item costs for the Division of Subsistance are as follows:

100 - 691.7	400 - 4.5
200 - 38.0	500 - 35.3
300 - 93.4	

Line item 500 is reduced to 3.0 for FY '80 and beyond.

II. Section 12 provides additional compensation for Board members.

Board members currently receive $100 per diem per day. The effect of section 12 would be to reduce the per diem to the same as that paid other state employees (this fiscal note assumes an average of $60), and to add compensation of $100 per day for Board members. Actual per diem paid would be reduced from $49,800 in FY '79 (both boards) to $29,900 in line item 200. Compensation of $100 per day would add $49,800 in line item 100.

III. Section 13 requires the Board of Game to meet at least once in each of five specified areas of the state (this new section recommended to be added by Department of Fish and Game).

This fiscal note assumes that three board members would attend 5 additional meetings with an average of four days in travel status for each member. Average travel cost per member per meeting is assumed to be $350; average per diem is $60 plus $100 per day compensation as allowed by section 12 of this bill. Total impact is as follows:

100 - 6,000
200 - 8,800

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HB 960
Title An Act Relating to Fish and Game Management
Requested by Representative Anderson Date 5/1/78

II. FISCAL DETAIL
Agency Affected Fish and Game
Program Category Affected NRMEC
Budget Request Unit(s) Affected Boards of Fish and Game
plus New BRU for Division of Subsistance

EXPENDITURES (Thousands of Dollars)

		FY 78	FY 79	FY 80	FY 81	FY 82	FY 83
100	PERSONAL SERVICES		749.7	749.7	749.7	749.7	749.7
200	TRAVEL		36.5	36.5	36.5	36.5	36.5
300	CONTRACTUAL		93.4	93.4	93.4	93.4	93.4
400	COMMODITIES		4.5	4.5	4.5	4.5	4.5
500	EQUIPMENT		35.3	3.0	3.0	3.0	3.0
600	LAND & STRUCTURES						
700	GRANTS, CLAIMS, ETC.						
	TOTAL No Inflation Adjustment		919.4	887.1	887.1	887.1	887.1
			- 15.4				
			903.0				

FUNDING (Thousands of Dollars)

GENERAL FUND		919.4	887.1	887.1	887.1	887.1
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

FULL TIME		24	24	24	24	24
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

SEE REVERSE SIDE FOR DETAILED EXPLANATION

IV. DATE May 2, 1978 PREPARED BY Bill Morrison
AGENCY Fish & Game
PHONE 465-4120

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

38-001 (Rev. 12/77)

I. Sections 2-4 establish a Division of Subsistance

In addition to a Headquarters staff of director, deputy director, secretary, and administrative assistant, work would be accomplished by regional positions with clerical support at range 18 in Juneau, Anchorage, Kodiak, Fairbanks, Barrow, Bethel, Dillingham, Galena, Kotzebue, and Nome. Range 18 is the same level as Fisheries or Game Biologist III. This is the project manager level and would be expected to have a broad range of professional experience as well as the ability to interact well with the public. Travel is provided at $3,000 for regional positions, and $4,000 for the director and deputy. Contractual funds are for phones, printing, advertising, and space rental. (Figures assume 600/mo. for regional space and phones; 1,000/yr. for regional printing; 700/mo for HQ space and phones; 3,000/yr for HQ printing and miscellaneous). New equipment is needed for all positions.

Line item costs for the Division of Subsistance are as follows:

100 -	699.9	400 -	4.5
200 -	38.0	500 -	35.3
300 -	93.4		

Line item 500 is reduced to 3.0 for FY '80 and beyond.

II. Section 5 adds two members each to the Boards of Fisheries and Game

The cost of each additional Fisheries Board member would be $1,500 in travel and $4,500 in per diem. The cost of each additional Game Board member would be $1,000 in travel and $2,200 in per diem. These figures do not include the additional compensation addressed in section 15 of the bill. Total cost of section 5 is $18,400, all in line 200.

III. Section 15 provides additional compensation for Board members.

Board members currently receive $100 per diem per day. The effect of section 15 would be to reduce the per diem to the same as that paid other state employees (this fiscal note assumes an average of $60), and to add compensation of $100 per day for Board members. Actual per diem paid would be reduced from $49,800 in FY '79 (both boards) to $29,900 in line item 200. Compensation of $100 per day would add $49,800 in line item 100.

IV. Section 20 creates a permanent Interim Subsistance Committee of the Legislature. There is no fiscal impact of this action in the Department of Fish and Game. However, the Division of Legislative Affairs would be fiscally impacted by this section.

TENTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. HB 673
Title An Act creating a Division of Subsistence Hunting and Fishing
Requested by Elizabeth Ali, Special Committee on Subsistence Date 3-20-78

II. FISCAL DETAIL
Agency Affected Fish and Game
Program Category Affected NRM&EC
Budget Request Unit(s) Affected New BRU to be created

EXPENDITURES (Thousands of Dollars)

	FY 78	FY 79	FY 80	FY 81	FY 82	FY 83
100 PERSONAL SERVICES		699.9	699.9	699.9	etc	
200 TRAVEL		38.0	38.0	38.0	etc	
300 CONTRACTUAL		93.4	93.4	93.4	etc	
400 COMMODITIES		4.5	4.5	4.5	etc	
500 EQUIPMENT		31.9	3.0	3.0	etc	
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL No inflation adjustment		867.7	838.8	838.8	838.8	838.8

FUNDING (Thousands of Dollars)

GENERAL FUND		867.7	838.8	838.8	838.8	838.8
FEDERAL FUNDS						
OTHER (Specify)						

POSITIONS

FULL TIME		24	24	24	24	24
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

In addition to a Headquarters staff of director, deputy director, secretary, and administrative assistant, work would be accomplished by regional positions at range 18 in Juneau, Anchorage, Kodiak, Fairbanks, Barrow, Bethel, Dillingham, Galena, Kotzebue, and Nome. Range 18 is the same level as Fisheries or Game Biologist III. This is the project manager level and would be expected to have a broad range of professional experience as well as the ability to interact well with the public. Travel is provided at $3000 for regional positions and $4000 for the director and deputy. Contractual funds are for phones, printing, advertising, and space rental. (Figures assume 600/mo for regional space and phones; 1000/yr for regional printing; 700/mo for HQ space and phones; 5000/yr for HQ printing and miscellaneous). New equipment is needed for all positions.

10 regional positions

IV. DATE 4/10/78 PREPARED BY Jeff Morrison
AGENCY Fish and Game
PHONE 465-4120

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/77)

My name is Sidney Huntington. My address is P.O. Box 49, Galena, AK 99741. I've lived in Alaska for 60 years. For 35 of those years, I made my living by trapping and hunting. Presently, I own and operate a small retail business in Galena. During the summer I do commercial fishing and also buy and sell fish commercially. I am presently serving on the Game Board of Alaska. I also have served as a member of different school boards for the past 18 years. Right now I belong to the Galena City School Board.

I find myself in a rather difficult position developing testimony to what I consider counteracting our Federal Government because of some very undesireable conditions and situations they seem to want us to live by and with in the future. Conditions promoted by politicians, mostly from the Lower 48. Things such as the D-2 Bill or what have you - all brought upon us by a compromised Land Claims Settlement Bill. The results of a mass of rotten politicians maneuvering against the voting citizens of Alaska. Since The Bill Passed

Alaska is large and in the state there are many different conditions. At times it calls for different methods of handing situations at hand in each separate area. For instance, the Eskimo living in the Point Barrow area hasn't the slightest idea how the Eskimo in the Chevak area lives.

You have the Indians in the Interior who used early day methods and had a more primitive live that can in no way compare with either the Eskimo of the South or on the Chain. Go to the sub-areas of Anchorage or any other larger city, no one way of life is exactly the same as another. Only that he or she is alive. Yet Mr. Udal's or whoevers bill, we may have to live by, applies to all who lives on or off this land. Sounds like some quack doctor prescription - what's od for one is good for all until you are all dead.

To put subsistence into practice before attempting to define it or say how you are going to use it, where you are going to use it, and who is going to use it will make it much harder to define. Everybody needs it now and then.

There are possibly areas where you may not have much trouble applying more subsistence if it was the people's desire to eliminate what little they now have. It might do right well along coastal areas. I've never lived there, though I am sure no resource can stand up anywhere under pressures that this fast moving new way of life man has developed. It destroys the habitat and eliminates the resources. Keeping up with the Joneses takes more dollars than it use to. How you acquire those dollars, who is to care? You have the right given you by subsistence to use that God given resource until it is no more. Blame the Department of Fish and Game when it is gone. It has got to be their fault.

I can in no way see the complete management of the resources and habitats by local control, by however many regions you want. I can see it on an advisory capacity regionally or on an . wide basis made up of people with a high concern for the resources and not for themselves. The people would be trained by the Department of Fish and Game to function as a board, to operate in the most productive manner and to get the most out of the habitat and fish and game resources. These resources are products that are renewable, almost yearly sometimes. They have been used as food and have been the very livelihood of people over many years in the past. With proper management and much effort, these resources would and should feed many more, for years to come.

One of the biggest factors against these very game resources is in most areas. The people themselves, living in their own areas, are over-hunting, hunting out of season, and killing unnecessarily, at times. These factors and many more boil down to destruction of our resources

Looking back over the years, I see two outstanding factors that almost eliminated two species of game. One is the geese on the Huslia and Dalby Rivers. The numbers of those geese are still not yet up to its normal level or what it used to be. We used to hunt those geese about the 20th of July when the older

geese or the goslin could not yet fly. We killed hundreds of them with clubs and ground-sluiced them with shotguns. In a very few years, there were no more. What brought this on? The outboard motor did. When an outboard motor you could cover hundreds of miles over night and see hundreds of geese. The old Indians used only birch bark canoes, only going a short distance getting just a few geese from one flock. They did not hurt the resource.

The beaver is the other animal which was almost eliminated. I remember so clearly, in the early 1900's, beaver pelts were selling at high prices, about $6.00 each. Heavy shooting with rifles was used to take the beaver, both in the fall and the spring. The beaver was almost eliminated by 1922. At that time the law stepped in - I mean LAW - The season for harvesting beaver was closed - Period. By 1926, it reopened only to have it closed again. The take was heavy as the price was up to $40.00 each. They opened the season again in 1929 for trapping only. Again, the expert subsistence user got his 22 rifle out and began crack shooting the beaver in the eye or the mouth leaving no bullitt mark anywhere. A high take out on the Innoko River was 140 beaver for a short spring hunt. The local Game Warden at that time was Sam White whom many people highly respected. He put into effect the now standing season, March 31 - with all beaver being tagged and sealed within 30 days. He went from camp to camp or village and taught anyone interested how to trap beaver. That set is still being used today. I do say the population of beaver is good today because, it was caught in time to make a recovery. So, I say again, be careful with subsistence. The above people were much more dependent on subsistence at that time than we are so today, but greed got the best of them. I know because, I was one of them.

To say local management and control would be sure death to our available resources. Greed alone is cutting them short. With all the high powered mechanized equipment that is readily available, the resources have nocchance. When the good Lord created Alaska, he did it so as to provide for a certain number of people who could exist on the resources this land could provide, I am sure.

With modern methods and means, a good portion of the resources have been reduced due to the high priority given the dollar. With most of the gold gone, nearly all of the salmon gone at one point, the timber going, only one noticeable item seems to grow in number each year. That is the people, demanding more from our fast depleting resources. All demanding the same right to use all of the fish, all of the game, all of the time.

With the people here now, and more coming all the time, our fish and game is not going to stand the pressure. To top it off, we even let any foreigner from other countries load up with guns and ammo to roam at will, to destruct our game and possibly the habitat. No questions asked.

The members of the Game board are unable at times to cope with do-gooders in the Lower 48 and in Alaska. We have our hands tied by Wolf lovers with warped minds- most likely warped by communistic teachings to disrupt our way of life.

The harvest of moose is heavy and getting heavier each year by adding more hunters from all directions - with the wolf taking a very healthy share. The do-gooders have done their best to disrupt our efforts to manage predator control. This control is a proven tool. To manage and maintain a good healthy number of moose and other game by thinning out a few wolves which is a very valuable fur bearing animal. Not a big game species, unless you want your dog classed as big game also.

The Federal government D-2 land or what ever concept is adopted, the management of our fish and game should be done by the State of Alaska. Preferably by a game board or whatever, to include predator control on all land in Alaska, not to eliminate but control to maintain the resources with high priority given to any part of the game resource showing signs of weakening.

I feel it is very unconstitutional to use the word subsistence to define the way of life of one person over another. Being so our government says we do just that, it seems that we are being forced to discriminate against each other both here in Alaska and other citizens who make up the U.S. A very undesireable condition.

Remember, over-practice of subsistence in some areas, when made into law, eliminates certain species in that area because

it will be over exercised and will mean ruination to most other resources and habitats also.

Those that promoted the concept of subsistence so strongly are not going to shoulder the blame, but will put the blame directly on the Department of Fish & Game whether it is in operation or not. I feel sure that the Dept. of Fish & Game is being forced to accept whatever concept is adopted - That concept could be rotten.

Who is eligible for subsistence? I am sure there is no way anyone could define it so it will be honest and fair to everyone in an area or region. If there were no one getting food stamps or on welfare, it would be somewhat easier to determine who is eligible for subsistence.

Our older people are a thousand times better off then they were in say 1925, which I am sure they deserve.

Is a man, 35 years old, with a family of ten and has a small income more eligible than a man, 50 years old, with a family of three? If a man lived in Alaska for 60 years and had a healthy income but used subsistence type food all of his life, is he cut off from subsistence? Where does the well-to-do or somewhat wealthy woman that has supplied food for her family all her life from the local resources stand?

There are many more circumstances to confront us. Each one is just as discriminative as any other you might want to bring up. I see no fair way or means to really honestly define subsistence for one citizen over another. It is a task like it would be to tell one of my children that he should get more than the other.

Our fish and game should be managed by the State of Alaska Gambe board and State what have you. There should be well trained advisory boards on a regional basis. They will be on an advisory capacity only. The training to be done by qualified staff or personell.

More active Field Law Enforcement officers are needed to enforce the laws. Foreigners from other countries should not be allowed to hunt without a guide to roam free our land and to destroy our game. Our game can not be killed to leave the meat rot in the field.

If, under any adopted subsistence regulation, it is found that our fish and game resources will not maintain a productive level because of over hunting by any hunters, subsistence or otherwise, ~~eliminating~~ subsistence permits could be issued, or else all hunting stopped. This would provide the desireable amount of subsistence needed. The subsistence regulation that is adopted will determine how much subsistence is needed.

I do not think any law has been made that says the State of Alaska or the Department of Fish & Game deprives anyone the use of the resource as a subsistence need. There are regulations that say you must do things in season. All seasons should be recognized if we are going to preserve our resources. Even if the subsistence law was passed, you still should have to abide with the law. I don't see any gain in not doing so. To break the laws would promote hardship on the so-called subsistence user in the future. The season for harvesting the animal resource, that is getting fewer in number would have to be closed until their population remained to a desired level. Don't kill just because you may have the right as a subsistence user to do so.

I can't forsee our Federal Government and the people who help run our United States be so small minded as to want us citizens of the U.S. because we live in Alaska to accept such undesireable legislation. I am sure in many instances that it could be fatal to some if not all our fish and game resources.

Thank you for letting me express what I feel.

LA11 3959 17.52 06/07/78 JA01 0004 07.37 06/08/78

TO: PRESIDENT JOHN RADER AND ALL MEMBERS OF THE SENATE

FROM: RAY MC NUTT, PRESIDENT
ALASKA PROFESSIONAL HUNTERS ASSOCIATION
PO BOX 4-1932
ANCHORAG AK 99509

THE FOLLOWING IS A COPY OF A TELEGRAM SENT JUNE 7, 1978, TO SENATOR POLAND RE HB 960 (SUBSISTENCE PRIORITY BILL):

WE URGE YOU TO DEFEAT THIS BILL IN THE SENATE.

THE IMPORTANCE OF LEGITIMATE SUBSISTENCE NEEDS HAVE BEEN ADEQUATELY PROVIDED FOR BY STATUTES AND POLICIES OF THE FISHERIES AND GAME BOARDS.

THIS BILL IS TOTALLY UNNECESSARY AS IT IS CUMBERSOME, EXPENSIVE, AND WOUD ESTABLISH AN ADDITIONAL BUREAUCRACY WHICH FURTHER COMPLICATES THE ALREADY COMPLICATED ISSUE OF FISH AND GAME MANAGEMENT. IF WE THINK IN TERMS OF SPENDING VAST SUMS OF MONEY, THE FUNDS SHOULD BE USED IN FIELD WORK TO ENHANCE FISH AND WILDLIFE POPULATIONS INSTEAD OF ESTABLISHING ANOTHER ADMINISTRATIVE DIVISION TO ADDRESS A PROGRAM THAT IS ALREADY BEING ADEQUATELY ADMINISTERED.

EOM/CCD/

TELEGRAM

RCA ALASKA COMMUNICATIONS, INC

PHONE: 586-6440

02243 ANCHORAGE ALASKA 99501 03/03 0153P ADT

PM SENATOR KAY POLAND

JUN

DEAR SENATOR POLAND, REFERENCE HR960 (SUBSISTENCE PRIORITY BILL)

WE URGE YOU TO DEFEAT THIS BILL IN THE SENATE.

THE IMPORTANCE OF LEGITIMATE SUBSISTENCE NEEDS HAVE BEEN ADEQUATELY PROVIDED FOR BY STATUTES AND POLICIES OF THE FISHERIES AND GAME BOARD.

THIS BILL IS TOTALLY UNNECESSARY, AS IT IS CUMBERSOME, EXPENSIVE, AND WOULD ESTABLISH AN ADDITIONAL BUREAUCRACY WHICH FURTHER COMPLICATES THE ALREADY COMPLICATED ISSUE OF FISH AND GAME MANAGEMENT. IF WE THINK IN TERMS OF SPENDING VAST SUMS OF MONEY, THE FUNDS SHOULD BE USED IN FIELD WORK TO ENCHANCE FISH AND WILDLIFE POPULATIONS INSTEAD OF ESTABLISHING ANOTHER ADMINISTRATIVE DIVISION TO ADDRESS A PROGRAM THAT IS ALREADY BEING ADEQUATELY ADMINISTRATED.

RAY MCNUTT PRESIDENT ALASKA PROFESSIONAL HUNTERS ASSOC

TELEGRAM
RCA ALASKA COMMUNICATIONS, INC.
PHONE 586-6440
JUNEAU, ALASKA 99801

#

27007 NL BETHEL ALASKA 90 06-07 12P ADT

PMS CHAIRPERSON KAY POLAND

SENATE RESOURCE COMMITTEE

POUCH V JUNEAU ALASKA

NUNAMKITLULSISTI AS PART OF THE ASSOCIATION OF VILLAGE COUNCIL PRESIDENTS WHICH IS REPRESENTATIVE OF 57 VILLAGES IN THE YUKON KUSKOKWIM DELTA WOULD LIKE TO EXPRESS ITS SUPPORT OF HB960 AS IT ARRIVES IN THE SENATE RESOURCE COMMITTEE. WE FEEL THAT ANY AMENDMENTS TO IT WOULD WEAKEN ITS POWERS. AS A DIVISION WITHIN THE STATE REGULATORY SYSTEM, THE IMPORTANCE OF SUBSISTENCE AND RESOURCE INVOLVED WOULD BE ADEQUATELY PROTECTED AND EFFECTIVELY REALIZED FOR THE CONTINUING EXISTENCE OF THESE IMPORTANT RENEWABLE RESOURCES TO THE STATE OF ALASKA AND ITS RESIDENTS.

TONY VASKA, NUNAMKITLUTSISTI

SENATE RESOURCES

POLAND	120	Butrovich	525
Croft	106	Huber	114
Meland	205	Colletta	107
Tillion	109		

LA21 4042 18.16 JA01 0025 20.22 06/06/78

PLEASE DELIVER THE FOLLOWING MESSAGE TO THE SENATE RESOURCE COMMITTEE:

URGE THAT YOU NOT VOTE HB960 OUT OF RESOURCES COMMITTEE. BILL IS UNCONSTITUTIONAL, UNFAIR AND VIOLATES NOT ONLY PRINCIPLES OF MODERN GAME MANAGEMENT, BUT UPSETS AN EFFECTIVE EXISTING SYSTEM.

FAIRBANKS ADVISORY COUNCIL
P. O. BOX 669
FAIRBANKS, AK 99707
NO PHONE

EOM

LA21 3802 16.57 JA01 0018 17.24 06/06/78

PLEASE DELIVER THE FOLLOWING MESSAGE TO THE SENATE RESOURCES COMMITTEE:

ALASKAN HUNTERS, FISHERMEN AND TRAPPERS HAVE NOT HAD PROPER OPPORTUNITY TO TESTIFY ON HB960. WE RESPECTFULLY REQUEST AN OPPORTUNITY TO SEND A REPRESENTATIVE OR 2 BEFORE YOUR COMMITTEE. VITAL INFORMATION HAS NOT YET BEEN PRESENTED. PLEASE SCHEDULE HEARINGS NEXT WEEK IF POSSIBLE. AS WRITTEN, THE BILL IS INTOLERABLE. THANK YOU.

THE REAL ALASKA COALITION REPRESENTING THE 37 SPORTSMEN CONSERVATION ORGANIZATION THROUGHOUT ALASKA
P. O. BOX 73478
FAIRBANKS, AK 99707
479-3367

EOM

OUR CONCERNS: ACCESS • STATE FISH & GAME MANAGEMENT • EXCESSIVE WITHDRAWALS

The REAL Alaska Coalition

Regional Offices
Box 4-1932
Anchorage, Alaska 99503
(907) 274-4959

P.O. Box 80929
Fairbanks, Alaska 99708
(907) 479-4383
(907) 479-6602

Box 3072 R 3
Juneau, Alaska 99801
(907) 586-6114

Member Groups

Alaska Chapter Safari Club International (Anchorage)
Alaska Fur Trappers Association (Tok)
Alaska Gun Collectors (Anchorage)
Alaska Professional Hunters Association (Anchorage)
Alaska Rifle Club (Anchorage)
Alaska Sports & Wildlife Club (Ketchikan)
Alaska State Rifle & Pistol Association (Anchorage)
Alaska Waterfowl Association (Anchorage)
Baranof Pistol & Rifle Club (Sitka)
Chena River Sports Club (Fairbanks)
Chitina Dipnetters (Fairbanks)
Coalition of Interior Alaska Outdoorsmen (Fairbanks)
Eagle River Sportsmen Preservation Association
Easement Defense Fund (Anchorage)
Interior Alaska Trappers Association (Fairbanks)
Interior Wildlife Association of Alaska (Fairbanks)
Isaac Walton League (Anchorage)
Juneau Rifle & Pistol Association
Kodiak Rifle & Pistol
Matanuska Valley Sportsmen Association (Palmer)
Moose Pass Sportsmen Association
Nome Sportsmen Club
Old Sitka Trap Club
Petersburg Rod & Gun Club
Sitka Sportsmens Association
Sno Shoe Gun Club (Kenai)
TVS Rifle & Pistol Club (Fairbanks)
Tanana Valley Sportsmen Association (Fairbanks)
Territorial Sportsmen (Juneau)
Totem Shooters (Eagle River)
Upper Kuskokwim Sportsmen Association (McGrath)

Sidney Huntington, an Athabascan Indian, struck out on his own trapline, by himself, at age twelve. He earned his own living, even at that age, and is completely self-taught. His formal education stopped at the third grade.

From that beginning, Sidney has lived from the land, and grown in every aspect of human development. Today, after more than sixty years of self-teaching and application, he and his wife have a grown family of twelve sons and daughters (one son won the world's longest dog sled race, the Iditarod, a few years ago; another is on the Alaska Board of Fish; one is President of Doyon, Ltd., the largest land-holding corporation in the world ; a daughter is attending the University of Alaska, etc.) Sidney runs a small, but thriving mercantile company in his home in Galena. He is still famous for his hand-crafted wooden river boats which ply the Yukon and helps hundreds of natives make a living from the fishery resource. He offers a fish-buying service for the middle Yukon.

For thirty-five years he earned a living from the land and its fish and game resources, hunting, fishing, and trapping. All of his life he has been intimately involved with individual self-sufficiency and local uses and users of fish and game. He knows the people and he knows the resources.

Just as he has shown a deep concern for proper education of future generations of Alaskans by devoting some eighteen years of service on various school boards; he likewise shows a deep concern for the fish and wildlife resources for all Alaska, and has served first on the Joint Boards of Fish and Game in 1974, and since that time on the Alaska State Board of Game.

Jim Rearden, a well-respected outdoor writer, most knowledgeable game manager, current and past member of the Alaska Board of Game pays Sidney a most worthy compliment,"I have watched and been actively involved with fish & game management policies in Alaska since statehood, both as a department employee, and for the past twelve years, as a board member. Without qualification or reservation, I can say Sidney Huntington is by far the best Native representative we have ever had on either board for nineteen years, since inception as a State." Jim goes on to explain, "to him, the resources are of primary importance, and he is equally concerned about all of Alaska."

Sidney speaks with frankness and a far-sighted wisdom which all Americans would do well to heed.

Address Reply to Office Indicated: ☐ Anchorage; ☐ Fairbanks; ☐ Juneau

My name is Sidney Huntington. My address is P.O. Box 49, Galena, AK 99741. I've lived in Alaska for 60 years. For 35 of those years, I made my living by trapping and hunting. Presently, I own and operate a small retail business in Galena. During the summer I do commercial fishing and also buy and sell fish commercially. I am presently serving on the Game Board of Alaska. I also have served as a member of different school boards for the past 18 years. Right now I belong to the Galena City School Board.

I find myself in a rather difficult position developing testimony to what I consider counteracting our Federal Government because of some very undesireable conditions and situations they seem to want us to live by and with in the future. Conditions promoted by politicians, mostly from the Lower 48. Things such as the D-2 Bill or what have you - all brought upon us by a compromised Land Claims Settlement Bill. The results of a mass of rotten politicians maneuvering against the voting citizens of Alaska. Since The Bill Passed

Alaska is large and in the state there are many different conditions. At times it calls for different methods of handing situations at hand in each separate area. For instance, the Eskimo living in the Point Barrow area hasn't the slightest idea how the Eskimo in the Chevak area lives.

You have the Indians in the Interior who used early day methods and had a more primitive live that can in no way compare with either the Eskimo of the South or on the Chain. Go to the sub-areas of Anchorage or any other larger city, no one way of life is exactly the same as another. Only that he or she is alive. Yet Mr. Udal's or whoevers bill, we may have to live by, applies to all who lives on or off this land. Sounds like some quack doctor prescription - what's good for one is good for all until you are all dead.

To put subsistence into practice before attempting to define it or say how you are going to use it, where you are going to use it, and who is going to use it will make it much harder to define. Everybody needs it now and then.

There are possibly areas where you may not have much trouble applying more subsistence if it was the people's desire to eliminate what little they now have. It might do right well along coastal areas. I've never lived there, though I am sure no resource can stand up anywhere under pressures that this fast moving new way of life man has developed. It destroys the habitat and eliminates the resources. Keeping up with the Joneses takes more dollars than it use to. How you acquire those dollars, who is to care? You have the right given you by subsistence to use that God given resource until it is no more. Blame the Department of Fish and Game when it is gone. It has got to be their fault.

I can in no way see the complete management of the resources and habitats by local control, by however many regions you want. I can see it on an advisory capacity regionally or on an area wide basis made up of people with a high concern for the resources and not for themselves. The people would be trained by the Department of Fish and Game to function as a board, to operate in the most productive manner and to get the most out of the habitat and fish and game resources. These resources are products that are renewable, almost yearly sometimes. They have been used as food and have been the very livelihood of people over many years in the past. With proper management and much effort, these resources would and should feed many more, for years to come.

One of the biggest factors against these very game resources is in most areas. The people themselves, living in their own areas, are over-hunting, hunting out of season, and killing unnecessarily, at times. These factors and many more boil down to destruction of our resources

Looking back over the years, I see two outstanding factors that almost eliminated two species of game. One is the geese on the Huslia and Dalby Rivers. The numbers of those geese are still not yet up to its normal level or what it used to be. We used to hunt those geese about the 20th of July when the older

geese or the goslin could not yet fly. We killed hundreds of them with clubs and ground-sluiced them with shotguns. In a very few years, there were no more. What brought this on? The outboard motor did. When an outboard motor you could cover hundreds of miles over night and see hundreds of geese. The old Indians used only birch bark canoes, only going a short distance getting just a few geese from one flock. They did not hurt the resource.

The beaver is the other animal which was almost eliminated. I remember so clearly, in the early 1900's, beaver pelts were selling at high prices, about $6.00 each. Heavy shooting with rifles was used to take the beaver, both in the fall and the spring. The beaver was almost eliminated by 1922. At that time the law stepped in - I mean LAW - The season for harvesting beaver was closed - Period. By 1926, it reopened only to have it closed again. The take was heavy as the price was up to $40.00 each. They opened the season again in 1929 for trapping only. Again, the expert subsistence user got his 22 rifle out and began crack shooting the beaver in the eye or the mouth leaving no bullitt mark anywhere. A high take out on the Innoko River was 140 beaver for a short spring hunt. The local Game Warden at that time was Sam White whom many people highly respected. He put into effect the now standing season, March 31 - with all beaver being tagged and sealed within 30 days. He went from camp to camp or village and taught anyone interested how to trap beaver. That set is still being used today. I do say the population of beaver is good today because, it was caught in time to make a recovery. So, I say again, be careful with subsistence. The above people were much more dependent on subsistence at that time than we are so today, but greed got the best of them. I know because, I was one of them.

To say local management and control would be sure death to our available resources. Greed alone is cutting them short. With all the high powered mechanized equipment that is readily available, the resources have nocchance. When the good Lord created Alaska, he did it so as to provide for a certain number of people who could exist on the resources this land could provide, I am sure.

With modern methods and means, a good portion of the resources have been reduced due to the high priority given the dollar. With most of the gold gone, nearly all of the salmon gone at one point, the timber going, only one noticeable item seems to grow in number each year. That is the people, demanding more from our fast depleting resources. All demanding the same right to use all of the fish, all of the game, all of the time.

With the people here now, and more coming all the time, our fish and game is not going to stand the pressure. To top it off, we even let any foreigner from other countries load up with guns and ammo to roam at will, to destruct our game and possibly the habitat. No questions asked.

The members of the Game board are unable at times to cope with do-gooders in the Lower 48 and in Alaska. We have our hands tied by Wolf lovers with warped minds- most likely warped by communistic teachings to disrupt our way of life.

The harvest of moose is heavy and getting heavier each year by adding more hunters from all directions - with the wolf taking a very healthy share. The do-gooders have done their best to disrupt our efforts to manage predator control. This control is a proven tool. To manage and maintain a good healthy number of moose and other game by thinning out a few wolves which is a very valuable fur bearing animal. Not a big game species, unless you want your dog classed as big game also.

The Federal government D-2 land or what ever concept is adopted, the management of our fish and game should be done by the State of Alaska. Preferably by a game board or whatever, to include predator control on all land in Alaska, not to eliminate but control to maintain the resources with high priority given to any part of the game resource showing signs of weakening.

I feel it is very unconstitutional to use the word subsistence to define the way of life of one person over another. Doing so our government says we do just that, it seems that we are being forced to discriminate against each other both here in Alaska and other citizens who make up the U.S. A very undesireable condition.

Remember, over-practice of subsistence in some areas, when made into law, eliminates certain species in that area because

it will be over exercised and will mean ruination to most other resources and habitats also.

Those that promoted the concept of subsistence so strongly are not going to shoulder the blame, but will put the blame directly on the Department of Fish & Game whether it is in operation or not. I feel sure that the Dept. of Fish & Game is being forced to accept whatever concept is adopted - That concept could be rotten.

Who is eligible for subsistence? I am sure there is no way anyone could define it so it will be honest and fair to everyone in an area or region. If there were no one getting food stamps or on welfare, it would be somewhat easier to determine who is eligible for subsistence.

Our older people are a thousand times better off then they were in say 1925, which I am sure they deserve.

Is a man, 35 years old, with a family of ten and has a small income more eligible than a man, 50 years old, with a family of three? If a man lived in Alaska for 60 years and had a healthy income but used subsistence type food all of his life, is he cut off from subsistence? Where does the well-to-do or somewhat wealthy woman that has supplied food for her family all her life from the local resources stand?

There are many more circumstances to confront us. Each one is just as discriminative as any other you might want to bring up. I see no fair way or means to really honestly define subsistence for one citizen over another. It is a task like it would be to tell one of my children that he should get more than the other.

Our fish and game should be managed by the State of Alaska Gambe board and State what have you. There should be well trained advisory boards on a regional basis. They will be on an advisory capacity only. The training to be done by qualified staff or personell.

More active Field Law Enforcement officers are needed to enforce the laws. Foreigners from other countries should not be allowed to hunt without a guide to roam free our land and to destroy our game. Our game can not be killed to leave the meat rot in the field.

If, under any adopted subsistence regulation, it is found that our fish and game resources will not maintain a productive level because of over hunting by any hunters, subsistence or otherwise, ~~discriminating~~ subsistence permits could be issued, or else all hunting stopped. This would provide the desireable amount of subsistence needed. The subsistence regulation that is adopted will determine how much subsistence is needed.

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I can't forsee our Federal Government and the people who help run our United States be so small minded as to want us citizens of the U.S. because we live in Alaska to accept such undesireable legislation. I am sure in many instances that it could be fatal to some if not all our fish and game resources.

Thank you for letting me express what I feel.

HB
963

To: Sen. Sumner?
Brown Bay Brown?
Re: questions you raised on HB 963 in Sen. Resources meeting 6/9

Before any oil that is transported through the TAPS could be exported/exchanged, a number of provisions in five separate federal statutes would have to be satisfied. One of these statutes, Export Administration Amendments of 1977, would require the President to make five specific findings and submit them to Congress, which has one-house veto authority. The President would specifically have to find that such exports of Alaska oil "will not diminish the total quantity or quality of petroleum available in the United States; will have a positive effect on consumer oil prices by decreasing the average crude oil acquisition costs of refiners; will be made only pursuant to contracts which may be terminated if the petroleum supplies of the United States are interrupted or seriously threatened; are in the national interest; and are in accordance with the provisions of the act."

The Exports Administration Amendments are not the only restrictions on export of Alaska crude, but they seem to be the most restrictive.

Now, as this relates to the state statute that would be amended by HB 963, it has been pointed out by the administration that arranging a Japanese swap would be facilitated if the administration had the authority to do this (on a short-term basis) without legislative approval. I outlined some of the reasons for this proposed change in a memo to Hugh Malone, which is attached. After this matter was brought to Malone's attention, he proposed the addition of Sec. 1 (a) to his original bill, and it was adopted by the House Resources Committee.

AGO 566533

X

(Malone wanted more restrictive language than I proposed in memo.)

Another reason pointed out by Arlon Tussing is that export/exchange of state royalty oil might be more acceptable politically to the Carter administration than export of the producers' oil, given all the hostility toward the producers in Congress. Tussing has suggested that the state administration might negotiate a specific deal with a Japanese refiner and request that Carter make his require findings on this particular contract. That would focus the national attention and debate on the state, rather than on the producers.

I have some fairly detailed information on the federal restrictions on exports, if you'd like to see it.

Alaska State Legislature

Senate

JUNEAU, ALASKA

May 23, 1978

TO: Hugh Malone, Speaker of the House

FROM: Kay Brown

RE: Legislative approval for short-term royalty oil sales

Proposed language for addition to HB 963:

* Section 1. AS 38.06.055 is amended to read:

(a) In addition to the approval by the board required under §50 of this chapter, no sale, exchange or other disposition of oil or gas or of the rights or waiver of the rights to receive future production of royalty oil or gas may be made by the Commissioner of Natural Resources under AS 38.05.183 without the prior approval of the legislature by a concurrent resolution concurred in by a majority of the members of each house except for sales, exchanges, or other dispositions made for a term of no more than one year [WHICH MAY BE ENTERED INTO TO RELIEVE A SHORTAGE OF STORAGE CAPACITY]. Any short-term sale, exchange or other disposition entered into pursuant to the authority of this subsection shall not be renewed without the prior approval of the legislature by a concurrent resolution concurred in by a majority of the members of each house.

Renumber sections and leave (b) and (c) as they are in HB 963.

AGO 566535

It has been pointed out by administration spokesmen working on the West Coast surplus problem, that current state law requiring legislative approval for royalty oil sales could make it difficult for state royalty oil to be used as the oil proposed for exchange.

Timing is the major problem. For example, if a swap package (which included export of Alaska royalty oil to Japan) were to be approved by President Carter and the Congress over the interim, the state administration would not be able to move forward with the deal until legislative approval was granted. Six months' notice will be required to switch from in-value to in-kind taking, and Fred Boness says the administration would not give tnis notice to the producers without first getting legislative approval. Even if legislative approval came as early as next January, the oil could not actually be exported until next summer. Further, if the Alpetco contract is approved, the Prudhoe Bay royalty oil will be available for exchange for only 25 months, which also increases the urgency for expeditious action. (Boness disagrees that Alpetco is a significant problem. If a deal were arranged, he says, it would probably be in Alpetco's interest and they would probably agree to continue the sale should it extend into their contract.)

Another problem is credibility. Boness believes it will be difficult for the administration to negotiate a deal with the Japanese

refiners and participate in working out the total swap package if it must be presented to the legislature for approval. Further, he thinks it is unlikely that the Carter Administration would consider favorably the export of state royalty oil given these legislative roadblocks.

I discussed this problem briefly with Arlon Tussing this morning and he agreed with Boness that some waiver of legislative approval would make a conditional sale or swap much easier to accomplish. I will discuss this with Tussing in more detail at the meeting in Seattle on Wednesday. It is not clear to me whether failure to change the statute would be a significant obstacle.

I have also spoken briefly to Rader, Chatterton, Miles and Gardner about this proposed change. They all agreed that such a change might be needed to accommodate this particular problem, but Miles expressed some reservations.

Practically, it seems apparent it is going to be quite difficult to get something through the legislature this session. However, since almost $300 thousand has been appropriated to work on this problem, it would be a shame to see a swap aborted because the legislature failed to amend this statute.

COMMITTEE REPORT

SENATE

6/3/78

FURTHER: NONE

Date: 6/2/78

Mr. President:

The Committee on RESOURCES has had CSHB 963 (Jud) am sales of royalty oil and gas

under consideration and (a majority of the committee) (the committee reports it back as follows)

( ) recommends it do pass ( ) recommends it do not pass

( ) recommends it do pass with attached amendment(s)

( ) recommends it be replaced with SCS for CSHB 963 (Jud) am

and _____ ( ) new title ( ) same title

( ) AND attaches a Letter of Intent ( ) New Fiscal Note

( ) reports it back without recommendation

( ) and recommends it be referred to the _____ Committee

MEMBERS SIGNING DO PASS:

OTHER RECOMMENDATIONS:

AGO 566538

Chairman

S 60 (rev. 6/77)

HCR

112

COMMITTEE REPORT

SENATE

FURTHER: FINANCE

5/26/78

Date: 5/26/78

Mr. President:

The Committee on RESOURCES has had HCR 112 am conditionally approving sale of royalty oil to Alaska Petrochemical Company

under consideration and (a majority of the committee) (the committee reports it back as follows)

( ) recommends it do pass ( ) recommends it do not pass

( ) recommends it do pass with attached amendment(s)

( ) recommends it be replaced with CS for HCR 112 am

and _____ ( ) new title ( ) same title

( ) AND attaches a Letter of Intent ( ) New Fiscal Note

(X) reports it back without recommendation

( ) and recommends it be referred to the _____ Committee

MEMBERS SIGNING DO PASS:

OTHER RECOMMENDATIONS:

R. Ellis

Chairman

S 60 (rev. 6/77)

AGO 785717

AMENDMENT

Dated May 17, 1978

to the

AGREEMENT FOR THE SALE AND

PURCHASE OF STATE 'YALTY OIL

THIS AMENDMENT entered into as of the 17th day of May, 1978, by and between THE STATE OF ALASKA, hereinafter called the "Seller," acting by and through its Commissioner of Natural Resources, and ALASKA PETROCHEMICAL COMPANY, an Alaska corporation, hereinafter called the "Buyer," and being the Amendment to the Agreement between Seller and Buyer entered into February 22, 1978.

WITNESSETH:

WHEREAS, an Agreement for the Sale and Purchase of State Royalty Oil was duly executed on February 22, 1978, between the State of Alaska, as Seller, and Alaska Petrochemical Company, as Buyer ("Agreement"); and

WHEREAS, the Agreement may be amended under Article XXII thereof; and

WHEREAS, Seller and Buyer desire to clarify certain intentions of the Buyer and Seller therein;

NOW THEREFORE, in consideration of the representations, covenants and conditions herein contained, Seller and Buyer hereby amend the Agreement as follows:

1. Article 1.13 is hereby amended by adding the following sentence at the end of Article 1.13:

"Total Project Costs shall not include any amounts paid for the purchase of crude oil."

2. Article I is hereby further amended by the addition of Article 1.14 which reads as follows:

"1.14 The terms "committed to be expended" as used in Article 1.13 and "commit to expend" as used in Article 10.2 shall mean contractually binding agreements, contracts and purchase orders."

3. Article 2.2 is hereby amended by the addition of a sentence at the end of such Article 2.2 as follows:

"Notwithstanding any other provision of this Article 2.2 Buyer shall not be entitled to receive delivery of any royalty crude oil hereunder until (a) Buyer has actually expended at least $100 million in Total Project Costs, and (b) at least twenty-five (25) months have passed since the Effective Date."

4. Article II is further amended by the addition of a new Article 2.7, to read as follows:

"2.7 Reduction of Quantity of Oil Deliverable to Buyer. Notwithstanding any provision of Article II requiring Seller to deliver to Buyer quantities of crude oil up to 150,000 barrels per day, in the event six years after the Effective Date the

capacity of the Petrochemical Facility is less than 150,000 barrels per day, the maximum quantities deliverable by Seller for the remaining term of this Agreement shall be reduced to that quantity equal to the capacity of the Petrochemical Facility at such time. Coincident with such reduction, the figure "145,000 barrels" appearing several places in Article 2.4 shall be reduced by a like amount. For the purposes of determining capacity under this Article 2.7, the capacity of the Petrochemical Facility shall not be diminished or reduced because of temporary reductions due to market conditions or shutdowns in the Petrochemical Facility, regardless of cause."

5. The first sentence of Article 4.2.1 is hereby amended and revised to read as follows:

"4.2.1 Construction Obligations. In consideration of the obligations assumed by each party herein, Buyer will proceed with reasonable diligence to design, construct, start up and thereafter initiate operation of a petrochemical manufacturing and fuels refining facility in the State of Alaska with capacity to process at least 150,000 barrels of crude oil per day."

IN WITNESS WHEREOF, the Seller has caused this Agreement to be executed by its Commissioner of Natural Resources and the Buyer has caused this Agreement to be executed by its

Chairman of the Board, thereunto duly authorized by its Board of Directors in accordance with the certified seal, duly attested, to be affixed hereto, as of the day and year first above written.

THE STATE OF ALASKA

ATTEST: Frederick H Boness

BY: Robert E LeResche
Commissioner, Department of Natural Resources
"SELLER"

APPROVED AS TO FORM:

ALASKA PETROCHEMICAL COMPANY

ATTEST: Winfred McKenzie

BY: O. Charles Koniz
Chairman of the Board
"BUYER"

AGO 785721

HCR
130

COMMITTEE REPORT

SENATE

5/26/78

FURTHER: FINANCE

Date: 5/26/78

Mr. President:

The Committee on RESOURCES has had HCR 130
sale of royalty oil to Earth Resources Company of Alaska

under consideration and (a majority of the committee) (the committee reports it back as follows)

(X) recommends it do pass ( ) recommends it do not pass

( ) recommends it do pass with attached amendment(s)

( ) recommends it be replaced with CS for _____

and _____ ( ) new title ( ) same title

( ) AND attaches a Letter of Intent ( ) New Fiscal Note

( ) reports it back without recommendation

( ) and recommends it be referred to the _____ Committee

MEMBERS SIGNING DO PASS:

Jay Kerns

Bill Ray

Ted Hoyer

K. Gillion

OTHER RECOMMENDATIONS:

R. Poland
Chairman

Do Pass

S 60 (rev. 6/77)

AGO 785722

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

11TH FLOOR, STATE OFFICE BLDG.
POUCH M — [illegible]

May 17, 1978

RECEIVED
MAY 18 1978
NORTH POLE REFINING
11:00 am

Mr. L. F. DeLong
North Pole Refining
P. O. Box 5028
North Pole, Alaska 99705

Dear Mr. DeLong:

During Legislative hearings on the contract between the State and Earth Resources Company of Alaska a question was raised concerning the relationship between North Pole's right to take royalty oil from lesses other than Prudhoe Bay and the similar provision in the Alpetco contract. I responded that there was no conflict because North Pole's right was only to unobligated oil. However, upon reviewing the executed draft of the Agreement I noted that such language was missing from Article 2.1.2.

I, therefore, checked earlier drafts of the Agreement. In the March 16, 1978, draft the words "if such oil is available and unobligated." Conclude the first sentence of Article 2.1.2. These words are dropped in the March 27, 1978, draft, however, my working copy of that draft contains a penned notation that those words are missing and should be added.

I have discussed this omission with Mr. Silides and he concurs with me that the omission is an oversight which occurred during preparation of the final copy for execution. The final executed contract therefore should contain the words "if such oil is available and unobligated." at the end of the first sentence in Article 2.1.2.

In order to affirm this correction, I am asking that you sign this letter and return it to me.

Sincerely,

Fred Boness

Frederick H. Boness
Deputy Commissioner

I concur that Article 2.1.2 should contain the inclusion discussed in this letter.

AGO 785723

GEORGE C. SILIDES
REGISTERED CIVIL ENGINEER
FAIRBANKS 456-2142

GEORGE C. SILIDES, ENGINEERING ASSOCIATES

P. O. BOX 746 — FAIRBANKS, ALASKA 99707

CONSULTING ENGINEERS PLANNERS SURVEYORS

Mr. L.F. DeLong, President
North Pole Refinery
Post Office Box 5028
North Pole, Alaska 99705

May 19, 1978

Dear Mr. DeLong,

Reference is made to Deputy Commissioner Fred Boness' letter to you dated May 17, 1978 regarding an omission in the final draft of the North Pole Refinery - State of Alaska Agreement for the purchase of royalty oil.

He is correct in saying that the words "if such oil is available and unobligated" were in the March 16, 1978 draft which was approved by both parties for presentation to the Royalty Oil Board on that date.

The request for reinsertion of the words is technically in order since their omission was inadvertent. As a practical matter, NPR obviously cannot nominate oil the State does not have, nor is there anything in your Agreement that interferes with the State's right to sell oil from the other leases for in-state use to other refiners. This is in contrast to the ALPETCO contract which dedicates oil to their exclusive use.

The basis of your Agreement is in-state use, and the recent actions of the Legislature confirms their total support to this concept. Obviously, you cannot object to the sale of royalty oil to others for in-state use. But it is a certainty, however, that you would invoke all of the elements of AS 38.05.183 if royalty oil were in any way being exported during a need for that oil to satisfy the local product market need.

Therefore, since the chance opportunity has been given to both parties to fully clarify the situation, I recommend that the correction should read "if such oil is available and unobligated to in-state use", and that Mr. Boness' letter be redrafted to reflect the added clarifying clause.

Very truly yours,

George C. Silides

CC:
Mr. Frederick Boness
Deputy Commissioner, Dept. of Nat. Resources

AGO 785724

MEMORANDUM

TO: Senator Mike Colletta May 15, 1978

FROM: George C. Silides, P.E.

SUBJECT: Summary -- Salient features of North Pole Refinery Royalty Oil contract.

1. The crude oil is to provide an assured supply to an existing facility serving the Fairbanks North Star Borough and Interior Alaska.

2. Any and all royalty oil purchased under this Agreement shall be processed at Purchaser's refinery at North Pole, Alaska.

3. Purchaser is obligated to buy a minimum of 5000 barrels/day.

4. Maximum quantity may not exceed 35,000 barrels/day from all sources combined.

5. Chief source of supply is the leases of the present Prudhoe Bay Unit Agreement (Exhibit "A").

6. If the present leases cannot supply the required volumes, North Pole Refinery may purchase royalty oil from other leases, provided that, firstly, NPR is unable to buy the needed oil from the producers; secondly, that the oil has not not been earlier obligated by the State; and thirdly, the additional oil is required to fulfill contract obligations in supplying the local market. NPR is not guaranteed that additional oil will be available at the time of need. Please note this very distinct difference with the ALPETCO contract.

7. Price is the same as if the State had taken its oil in value. NPR is also obligated for any additional costs which may be legally incurred because of taking in kind, such as cleaning and dehydrating. (Presently under litigation by the State with producers)

8. NPR takes delivery at the Lease and is responsible for the transportation of the oil.

9. Payment is monthly.

10. Security acceptable to the State must be provided.

11. NPR is responsible for disposing of all oil nominated. State is protected in the event of force majeure at NPR. State must make good faith effort to relieve NPR in the event of force majeure.

AGO 785725 +

12. Contract may be terminated by the State upon default of contract provisions by NPR.

13. NPR may terminate upon giving eight (8) months notice.

14. By advance agreement the supplier/purchaser relationship ends upon termination. This has been given OK by the FEA.

15. Contract may be amended between the parties, subject to approval by the Royalty Board and the Legislature, for each amendment.

Summary
Earth Resources Company of Alaska
Agreement for the Sale and
Purchase of State Royalty Oil

Earth Resources Company (North Pole Refining) owns and operates a 22,600 barrels per calendar day refinery at North Pole, Alaska. They are currently running approximately 20,000 barrels per day of North Slope crude and producing approximately 8,500 barrels per day of refined products for the Fairbanks area market. The remaining residual oil is returned to the TAP line. The products produced are Jet Fuel, Arctic Diesel, #1 and #2 Fuel Oil, and Industrial Turbine Fuel.

This company has been purchasing crude oil from the Prudhoe Bay producers (Exxon, Arco, Sohio and others) since the start of the refinery. They desire to purchase royalty oil to supplement their current purchases and to acquire a secure long-term source of supply.

This sales agreement provides that NPR may purchase up to 15% of the royalty oil from Prudhoe Bay plus additional quantities which are unobligated and available from Prudhoe Bay or other leases but not to exceed a total of 35,000 BPD. Should NPR not purchase a minimum of 5,000 BPD for three consecutive months, the State may cancel the Agreement.

As you know, NPR returns to the pipeline portions of the crude oil that are not marketed. They have also agreed to sell this return oil to other royalty oil purchases on fair and reasonable terms.

The price that NPR shall pay for this oil is equal to the amount the State would have received had the royalty oil been taken in-value. The price term is the same as included in the Alpetco contract.

The Point of Delivery, Passage of Title, and Responsibility passes from the State to NPR at the same point the State takes delivery. (This will be Pump Station #1.)

The State must provide crude oil for pipeline fill for NPR to fulfill NPR's tariff obligation. The State will receive payment for this quantity of crude oil upon termination of the Agreement.

NPR has agreed to process all royalty oil purchased at their North Pole refinery except in a force majeure situation or if NPR desires to trade or exchange this crude for other Alaskan crude or products. Should NPR desire to export products produced from the State, they agree to first consult with the Commissioner of Natural Resources to insure that such products are surplus to the State's needs.

The term of the Agreement is for 25 years or until the year 2003. NPR may terminate the Agreement on eight months notice. The State may terminate if NPR defaults under terms of the Agreement.

To secure payment for crude purchased by NPR, the State will receive either purchase money security interest in all oil delivered and products produced, or a letter of credit will be provided by NPR.

The provisions relating to Equal Opportunity Employment, Local Hire, and Oil Spill are the same as the Alpetco contract.

HJR

60

COMMITTEE REPORT

SENATE

FURTHER: NONE

Date: 3/[illegible]

Mr. President:

The Committee on RESOURCES has had CSHJR 60

requesting federal government to remove solid waste on land in Alaska

under consideration and (a majority of the committee) (the committee reports it back as follows)

( ) recommends it do pass ( ) recommends it do not pass

( ) recommends it do pass with attached amendment(s)

( ) recommends it be replaced with CS for _____

and _____ ( ) new title ( ) same title

( ) AND attaches a Letter of Intent ( ) New Fiscal Note

( ) reports it back without recommendation

( ) and recommends it be referred to the _____ Committee

MEMBERS SIGNING DO PASS:

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OTHER RECOMMENDATIONS:

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Chairman

S 60 (rev. 6/77)

COMMITTEE REPORT

SENATE

3/17/78

FURTHER: _____

_____

Date: 4/3

Mr. President:

The Committee on RESOURCES has had CSHJR 60 requesting federal government to remove solid waste on land in Alaska

under consideration and (a majority of the committee) (the committee reports it back as follows)

( ) recommends it do pass ( ) recommends it do not pass

( ) recommends it do pass with attached amendment(s)

( ) recommends it be replaced with CS for _____

and _____( ) new title ( ) same title

( ) AND attaches a Letter of Intent ( ) New Fiscal Note

( ) reports it back without recommendation

( ) and recommends it be referred to the _____ Committee

MEMBERS SIGNING DO PASS:

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OTHER RECOMMENDATIONS:

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_____
Chairman

S 60 (rev. 6/77)

STATE OF ALASKA
DEPT. OF ENVIRONMENTAL CONSERVATION

JAY S. HAMMOND, GOVERNOR

POUCH O – JUNEAU 99811

March 22, 1978

The Honorable Kay Poland
Chairman
Senate Resources Committee
Pouch V
Juneau, Alaska 99811

Dear Madam Chairman:

During the hearings on CSHJR 60 which were held by your Committee, and during Senate floor debate, there were concerns raised that the Legislature--through its support of the resolution--might be supporting a cleanup program that would be all-encompassing and over-reactionary in its scope. As I have testified before your Committee, the Department intends to focus its efforts on those federal facilities which have long-standing solid waste problems. For example, the open dump at the Air Force's Barter Island DEWLine site (photographs attached) has been a problem for years. Despite years of prodding from EPA and officials of the Arctic National Wildlife Range, the Air Force refused to do anything about the problem. However, now that Congress has given the State of Alaska--and other states--authority to require federal agencies to comply with State solid waste rules, we are making the Air Force clean up this area.

Our priority list for cleanup has not been put into final form yet, but we have decided upon priority ranking for some federal facilities and lands. They are:

1. Top priority--active DEWLine sites which generally have open dumps which are--at best--serious problems.

2. No. 2 priority--inactive DEWLine sites. At several locations, the Air Force just shut down the site, left a mess and walked away. We intend to make them clean up the problems but do not intend to make them remove buildings which might provide shelter for a hunter in trouble or a downed airplane pilot.

3. No. 3 priority--federal lands which have been transferred to the Natives under the Alaska Native Claim Settlement Act. A good example of this problem is the 7,500 barrels which have been stacked for years at Manning Point near

Barter Island. According to information we have, those barrels were placed on the Point by the Air Force. However, the Kaktovik Inupiat Corporation has patented the land and the Air Force was reluctant to clean up the barrels and associated debris. We are, however, requiring in a solid waste permit to the Air Force that they must clean up the debris in cooperation with the corporation.

Other priorities have not been established, but I want to assure you and other members of the Senate that the Department is not planning to require cleanup actions which would be a wasteful expenditure of public funds. We want the large, long-standing messes cleaned up; we want the federal government to meet the same requirements that industry and municipalities must meet.

As I mentioned in the Committee hearings, the Department worked closely with Senator Gravel, the National Governors' Association and Congress to get the Alaska Federal lands study, and the requirement for federal agencies to obtain State permits, written into the Resource Conservation and Recovery Act. The purpose of those amendments was to have Congress direct the federal agencies to identify, and then clean up, solid waste problems in Alaska's federal lands. Again, I want to stress that we intend to focus our efforts on major, long-standing problems, and not on minor ones.

Sincerely,

Jerry Reinwand

Jerry Reinwand
Deputy Commissioner

Enclosure

STATE OF ALASKA
DEPT. OF ENVIRONMENTAL CONSERVATION

JAY S. HAMMOND, GOVERNOR

POUCH O – JUNEAU 99811

March 22, 1978

The Honorable Kay Poland
Chairman
Senate Resources Committee
Pouch V
Juneau, Alaska 99811

Dear Madam Chairman:

As you requested at Monday's meeting of the Senate Resources Committee, I have attempted to draft amendments to CSHJR 60 which will answer the concerns of certain members which have been expressed both in Committee and on the Senate floor. The proposed amendments are:

1. On page 1, line 27 add a new section:

   WHEREAS, federal cleanup programs to remove the debris should focus on those sites at which serious environmental and health problems are created by the solid waste, such as the open dumps which exist at the DEWLine sites along the Arctic coast; and

This proposed amendment would clarify the Legislature's intent that federal cleanup action should focus on major environmental problems, and should not deal with inconsequential problems such as those noted by Senator Huber (five-gallon fuel cans in the Arctic National Wildlife Range).

2. On page 2, lines 3, 4 and 5, delete:

   "Solid wastes identified in the preliminary and final reports prepared under the dictates of Section 3 of the Resource Conservation and Recovery Act of 1976 (P.L. 94-580) so that. . ."

3. On page 2, line 7, make the following changes:

   between "(P.L. 92-203)" and "can" add: "so that it"; and

   delete "expeditiously"; and

   between "eliminated" and "and" add: "in an expeditious and cost effective manner;"

These changes would change the paragraph to read:

"BE IT RESOLVED that the Alaska Legislature strongly urges all federal agencies administering public lands in Alaska to take swift action to remove or dispose of solid waste debris on Alaska's federal land and land transferred under the Alaska Native Claims Settlement Act (P.L. 92-203) so that it can be eliminated in an expeditious and cost effective manner; and be it"

These changes specifically address Senator Huber's concern that the paragraph, as originally written, would put the Legislature on record as supporting removal of all of the solid waste identified in the extensive inventories which are contained in the two solid waste reports mandated by the Resource Conservation and Recovery Act.

In addition to the proposed changes to the resolution, I offer for your consideration two additional items which may be useful to clarify Legislative intent on this matter. The first is a draft letter of intent which focuses on the concerns of Committee members. The second is a letter from me to you, with attached photographs of the Barter Island DEWLine site open dump, which you may wish to distribute to your fellow members of the Senate when the resolution comes to the floor. The intent of my letter, and the photographs, is to clarify the Department's priorities regarding our solid waste cleanup on federal lands program. These two items may or may not have value; I simply offer them for your consideration.

If I may be of further assistance to you on this matter, please do not hesitate to contact me.

Sincerely,

Jerry Reinwand
Deputy Commissioner

Enclosures

HJR 60

STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION

JAY S. HAMMOND, GOVERNOR

POUCH O -- JUNEAU 99811

February 7, 1978

The Honorable Steve Cowper
Chairman
House Finance Committee
Pouch V
Juneau, Alaska 99811

Dear Mr. Chairman:

Al Eagle and Chris Noah have informed me of your interest in the Department's efforts to persuade the Federal government to clean up existing solid waste problems on its lands. I thought that some background information on this matter might be useful to you.

Two years ago we worked closely with Senator Gravel, who is a ranking member of the Senate Environment and Public Works Committee and the National Governors' Association, to win Congressional approval of several provisions to the 1976 Resource Conservation and Recovery Act. The key provision waived the federal government's sovereign immunity, thereby requiring federal facilities to obtain State permits for solid waste disposal sites. The definition of a disposal site was purposefully written to be sweeping in its scope so that abandoned junk on federal lands could be regulated under a State's solid waste management program.

Another important provision which we were successful in placing in the Act mandates the federal government to complete a study of the federal lands solid waste problem in Alaska. The results of the study are to be submitted to Congress, together with any recommendations for action to correct the problem. I understand that Chris has given you a copy of the first report which was completed in October. A second report will be completed in mid-April and submitted to Congress. This Department is coordinating the study--at EPA's request--and we will be using the data gathered to design a comprehensive program to require the federal government to clean up the problems.

During the course of the study, we pinpointed several extremely serious problems which warrant immediate attention. One problem is the environmental messes that exist at certain active DEW line sites. Through our permit programs, we are requiring the Air Force to take action to correct them. I

have enclosed a copy of the draft permit which we are proposing to issue to the Air Force for its Barter Island site. The draft permit is being circulated to the Air Force and interested members of the public for review and comment. When we have received comments from the Air Force and public, we will sift through them to determine if changes should be made in finalizing the permit.

We plan to take similar action where problems exist on federal lands throughout the State. The message we are sending to the federal government is that we want compliance with State solid waste laws and regulations, and we want compliance to be accomplished in an expeditious manner.

If you have any questions on this matter, please do not hesitate to contact me or my Deputy Commissioner Jerry Reinwand.

Sincerely,

Ernst W. Mueller
Commissioner

Enclosure

STATE OF ALASKA
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
POUCH O
JUNEAU, ALASKA 99811

WASTE DISPOSAL PERMIT
(SOLID WASTE MANAGEMENT PERMIT)

Permit No. NR-1-78 Date of Issuance:

This Waste Disposal Permit is issued to Department of the Air Force, Detachment 3, 46th Aerospace Defense Wing (ADCOM), Petersen Air Force Base, Colorado 80914, for the operation and maintenance of a solid waste facility located in SE 1/4, Sec. 13, T9N, R34E Umiat Meridian, at Barter Island DEW Line Station, Alaska

and is subject to the conditions and stipulations in sections A.1 through D.9, of this permit and the applicable State laws and regulations.

This permit is issued under provisions of Alaska Statutes, AS 46.03.100-110, Water, Air, and Environmental Conservation, Alaska Administrative Code as amended or revised, and other applicable State laws and regulations.

This permit is effective upon issuance and expires July 31, 1980; it may be terminated or modified in accordance with AS 46.03.120.

This permit is not valid until signed by the Deputy Commissioner of the Department of Environmental Conservation.

Deputy Commissioner
Department of Environmental Conservation

A. SITE PREPARATION--The permittee shall

1. Submit to this department for approval, on or before April 15, 1978. A disposal site development and operation plan for the permitted facility. The plan shall include:

   a. detailed facility maps or plan sheets showing existing contours, proposed developments, type of landfill method (trench or area), locations, diminsions and order of refuse cell construction and proposed finished site contours.

   b. description of the existing site soil profile.

   c. detailed narrative of the proposed developments including step by step descriptions of the proposed operating procedures for trench excavation, cell construction, scrap metal recovery and other activities associated with operation of the disposal facility.

   Upon receiving departmental approval, this permit will be amended to incorporate the approved plan activities as an integral part of the permit.

2. Maintain a working copy of the department approved development and operational plan from A.1. at Bar-M for use in constructing and operating the facility.

3. Submit a proposed schedule of operating hours and days to this department for review and approval within thirty days of the date of issuance of this permit.

4. Erect and maintain signs informing users of the site operating hours and rules, and signs directing users to the active dumping point.

B. CLEAN UP OF EXISTING SOLID WASTE--The permittee shall:

1. Remove all solid wastes from the existing open dump and transfer it to the proposed facility. Salvageable metal shall be separated and stockpiled in the proposed reclaimable metal holding area. The remaining solid waste shall be landfilled in accordance with the department approved site development plan specified in A.1. All solid wastes shall be transferred and processed, and the existing dump closed and restored not later than September 15, 1978.

2. Collect all solid wastes from the shallow waters, inter-tidal areas and beaches near the Bar-M station and the affected portions of the Arctic Wildlife Range. Collected wastes shall be transported to the proposed landfill for processing and disposal as specified in B.1.

3. Transport the abandoned metal tower located about one and one-half miles from the existing open dump to the proposed reclaimable metal holding area, on or before September 15, 1978.

4. Cleanup and restore the Manning Point site by September 15, 1979. Cleanup activities shall be coordinated with the North Slope Borough and the Kaktovik Inupiat Corporation. A plan for the cleanup will be submitted to the North Slope Borough, the Kaktovik Inuipiat Corporation and this department's Northern Region Office at least 90 days before the initiation of any cleanup action. The cleanup shall include at a minimum:

   a. Collection and removal from Alaska of all P.O.L. barrels by September 15, 1979.

   b. Removal of all collapsed buildings, and collection of all miscellaneous solid waste. Scrap lumber and wood may be open burned under terms of an Open Burning Permit to be obtained from the department's Northern Regional Office. All other materials shall be transported to the proposed landfill for salvage or disposal.

   c. Surface rehabilitation, including reseeding of disturbed areas, shall be accomplished no later than September 15, 1979.

5. Remove from Alaska, no later than September 15, 1979, all salvageable and reclaimable materials collected during the cleanup operations.

C. OPERATION--The permittee shall:

1. Consolidate and compact the deposited wastes into cells in accordance with the approved submittal required in A.1., above.

2. Cover the compacted refuse with at least six inches of compacted soil at the end of each operating day.

3. Separate salvageable metals and stockpile them in the reclaimable metals holding area indicated on the permit application. The accumulated wastes shall be transported South to a processing center and the holding area cleaned out at least once each year.

4. Collect all littered and windblown wastes in and adjacent to the disposal facility at least once each month and return them to the active dumping point for burial.

5. Prohibit open burning on the landfill and immediately extinguish any fires that may occur.

6. Prohibit the deposition of waste oil and petroleum products and chemical and hazardous wastes.

7. Incinerate all combustible and putrescible waste generated at the Bar-M station prior to disposal.

8. Comply with all portions of the permit application not otherwise addressed herein.

D. GENERAL

1. The permittee shall allow the Commissioner of Environmental Conservation or his authorized representative, upon presentation of credentials,

a. to enter upon the permittee's premises where waste collection or disposal works are located at such times and upon such terms as the Department may reasonably require, and
b. at reasonable times, to have access to and to be allowed to copy any records required to be kept under the terms and conditions of this permit and to inspect any monitoring equipment or monitoring method required in this permit.

2. Availability of Records

Except for information relating to secret processes or methods of manufacture, all records and reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Alaska Department of Environmental Conservation.

3. Civil and Criminal Liability

Nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance, whether or not such noncompliance is due to factors beyond his control, including but not limited to accidents, equipment breakdowns, or labor disputes.

4. Property Rights

The issuance of this permit does not convey any property rights in either real or personal property, or any other privileges; nor does it authorize any injury to private property or any invasion or personal rights, nor any infringements of federal, State or local laws and regulations.

5. Severability

The provisions of this permit are severable and, if any provision of this permit or the application of any provision of this permit to any circumstances is held invalid, the application of such provision to other circumstances and the remainder of this permit shall not be affected thereby. Notwithstanding the above, in the event that such invalidation materially alters the scope or conditions of this permit, the Department shall have the right, at its sole option, to terminate the permit.

6. State Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation.

7. Posting of Permit

The permittee shall post conspicuously and maintain a copy of this permit at the disposal facility.

8. Transfers

This permit is not transferable and is the property of the State of Alaska, Department of Environmental Conservation. Should operation

of the facility be contracted or a change in contractors be made, the new contractor shall be notified in writing of the existence of the permit and its conditions. A copy of the written notification shall be forwarded to the Commissioner of the Department of Environmental Conservation.

9. This permit shall be amended to provide for the upgrading or closure of the site, if the facility is classified as an "open dump" in accordance with the inventory and definitions being developed by the Environmental Protection Agency under the Resource Conservation and Recovery Act of 1976, P.L. 94-580.

updating of standards for recovered materials and for the use of recovered materials in various industrial, commercial, and governmental uses.

"DEVELOPMENT OF MARKETS FOR RECOVERED MATERIALS

"SEC. 5003. The Secretary of Commerce shall within two years after the enactment of this Act take such actions as may be necessary to— 42 USC 6953.

"(1) identify the geographical location of existing or potential markets for recovered materials;

"(2) identify the economic and technical barriers to the use of recovered materials; and

"(3) encourage the development of new uses for recovered materials.

"TECHNOLOGY PROMOTION

"SEC. 5004. The Secretary of Commerce is authorized to evaluate the commercial feasibility of resource recovery facilities and to publish the results of such evaluation, and to develop a data base for purposes of assisting persons in choosing such a system. 42 USC 6954.

"Subtitle F—Federal Responsibilities

"APPLICATION OF FEDERAL, STATE, AND LOCAL LAW TO FEDERAL FACILITIES

"SEC. 6001. Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any solid waste management facility or disposal site, or (2) engaged in any activity resulting, or which may result, in the disposal of solid waste or hazardous waste shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural (including any requirement for permits or reporting or any provisions for injunctive relief and such sanctions as may be imposed by a court to enforce such relief), respecting control and abatement of solid waste or hazardous waste disposal in the same manner, and to the same extent, as any person is subject to such requirements, including the payment of reasonable service charges. Neither the United States, nor any agent, employee, or officer thereof, shall be immune or exempt from any process or sanction of any State or Federal Court with respect to the enforcement of any such injunctive relief. The President may exempt any solid waste management facility of any department, agency, or instrumentality in the executive branch from compliance with such a requirement if he determines it to be in the paramount interest of the United States to do so. No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods not to exceed one year upon the President's making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting each such exemption. 42 USC 6961.

Exemptions.

Presidential report to Congress.

SOLID WASTE CLEANUP ON FEDERAL LANDS IN ALASKA

Study.
42 USC 6981 note.

SEC. 3. (a) The President shall direct such executive departments or agencies as he may deem appropriate to conduct a study, in consultation with representatives of the State of Alaska and the appropriate Native organizations, to determine the best overall procedures for removing existing solid waste on Federal lands in Alaska. Such study shall include, but shall not be limited to, a consideration of—

(1) alternative procedures for removing the solid waste in an environmentally safe manner, and

(2) the estimated costs of removing the solid waste.

Report to congressional committees.

(b) The President shall submit a report of the results together with appropriate supporting data and such recommendations as he deems desirable to the Committee on Public Works of the Senate and to the Committee on Interstate and Foreign Commerce of the House of Representatives not later than one year after the enactment of the Solid Waste Utilization Act of 1976. The President shall also submit, within six months after the study has been submitted to the committees, recommended administrative actions, procedures, and needed legislation to implement such procedures and the recommendations of the study.

Llangollen Landfill, Del., leachate control research program.
42 USC 6981 note.

SEC. 4. (a) In order to demonstrate effective means of dealing with contamination of public water supplies by leachate from abandoned or other landfills, the Administrator of the Environmental Protection Agency is authorized to provide technical and financial assistance for a research program to control leachate from the Llangollen Landfill in New Castle County, Delaware.

Cooperation with EPA.

(b) The research program authorized by this section shall be designed by the New Castle County areawide waste treatment management program, in cooperation with the Environmental Protection Agency, to develop methods for controlling leachate contamination from abandoned and other landfills that may be applied at the Llangollen Landfill and at other landfills throughout the Nation. Such research program shall investigate all alternative solutions or corrective actions, including—

(1) hydrogeologic isolation of the landfill combined with the collection and treatment of leachate;

(2) excavation of the refuse, followed by some type of incineration;

(3) excavation and transportation of the refuse to another landfill; and

(4) collection and treatment of contaminated leachate or ground water.

Such research program shall consider the economic, social, and environmental consequences of each such alternative.

(c) The Administrator of the Environmental Protection Agency shall make available personnel of the Agency, including those of the Solid and Hazardous Waste Research Laboratory (Cincinnati, Ohio), and shall arrange for other Federal personnel to be made available, to provide technical assistance and aid in such research. The Administrator may provide up to $250,000, of the sums appropriated under the Solid Waste Disposal Act, to the New Castle County areawide waste treatment management program to conduct such research, including obtaining consultant services.

42 USC 6901 note.

HJR 60

STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION

JAY S. HAMMOND, GOVERNOR

POUCH O – JUNEAU 99811

February 22, 1978

The Honorable Alvin Osterback
Chairman
Resources Committee
House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Mr. Chairman:

I understand that your Committee is planning to receive testimony on House Joint Resolution No. 60 (requesting the federal government to remove solid waste on land in Alaska in accordance with the Resource Conservation and Recovery Act). This department played an active role in shaping several provisions of the Federal Resource Conservation and Recovery Act (RCRA). To provide you with some background information on the issue addressed by HJR 60, I thought that it might be useful to include some history of our involvement with the Act and our basic rationale for the provisions which we persuaded Congress to include in the law.

Two years ago Deputy Commissioner Reinwand and I worked closely with the National Governors' Association and Senator Gravel, who is a ranking member of the Senate Environment and Public Works Committee, to win congressional approval of several provisions to the 1976 Resource Conservation and Recovery Act. The key provision waived the federal government's sovereign immunity, thereby requiring federal facilities to obtain state permits for solid waste disposal sites. The definition of a disposal site was purposefully written to be sweeping in its scope so that abandoned junk on federal lands could be regulated under a state's solid waste management program.

Another important provision which we were successful in placing in the Act mandates the federal government to complete a study of the federal lands solid waste problem in Alaska. The results of the study are to be submitted to Congress, together with any recommendations for action to correct the problem. A second report will be completed in mid-April and submitted to Congress. This department is coordinating the study--at EPA's request--and we will be using the data gathered to design a comprehensive program to require the federal government to clean up the problems.

During the course of the study, we pinpointed several extremely serious problems which warrant immediate attention. One problem is the environmental messes that exist at certain active DEWLine sites. Through our permit programs we are requiring the Air Force to take action to correct them. I have enclosed a copy of the draft permit which we are proposing to issue to the Air Force for its Barter Island site. The draft permit is being circulated to the Air Force and interested members of the public for review and comment. When we have received comments from the Air Force and public, we will sift through them to determine if changes should be made in finalizing the permit.

We plan to take similar action where problems exist on federal lands throughout the State. The message we are sending to the federal government is that we want compliance with State solid waste laws and regulations, and we want compliance to be accomplished in an expeditious manner.

Therefore, we support the thrust of HJR 60 and deeply appreciate the Legislature's interest in this matter. However, there are a few technical changes which we would like to recommend that the Committee consider. They are:

1. On page 2, line 1, we recommend that the words "the Environmental Protection Agency to implement" be stricken, and replaced with: "all federal agencies administering public lands in Alaska to take swift action to remove or dispose of solid wastes identified in."

   The rationale for this change is that the appropriate land management agencies, not EPA, should be responsible for cleaning up the existing solid waste problems.

2. On page 2, line 7, we recommend the inclusion of the following paragraph:

   "BE IT FURTHER RESOLVED that the Alaska Legislature strongly supports the Department of Environmental Conservation in its regulatory programs to require federal agencies to take action to solve the long-standing environmental problems created by the solid waste which the federal government has left throughout the State."

   This paragraph would buttress the Department's current and planned efforts to require the federal government to solve the solid waste problem in an expeditious manner.

Support from the Legislature would strengthen the Department's efforts in dealing with the federal agencies.

3. On page 2, line 11, between the words "Congress" and "and" insert: "the Honorable Jennings Randolph, Chairman of the Senate Environment and Public Works Committee, the Honorable Harley O. Staggers, Chairman of the House Committee on Interstate and Foreign Commerce."

We recommend inclusion of these two members of Congress as they chair the committees which have jurisdiction over solid waste legislation.

If you have any questions on this matter, please do not hesitate to contact me or my Deputy Commissioner Jerry Reinwand.

Sincerely,

Ernst W. Mueller
Commissioner

Enclosure

STATEMENT OF

JERRY REINWAND
DEPUTY COMMISSIONER
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

REGARDING
HOUSE JOINT RESOLUTION NO. 60
BEFORE THE
HOUSE RESOURCES COMMITTEE

JUNEAU, ALASKA
FEBRUARY 24, 1978

Mr. Chairman, members of the Committee, my name is Jerry Reinwand and I am Deputy Commissioner of the Alaska Department of Environmental Conservation. It is with a great deal of pleasure that I testify today on HJR 60.

The focus of the resolution--encouraging the federal government to clean up the long-standing solid waste problems which various agencies have left scattered throughout the State--is of great concern to the Department. In fact, we have been working on a solution to the problem for more than two years. A substantial part of that effort involved joining hands with the National Governors' Association and other groups to persuade Congress to give Alaska and other states the legal tools to require federal agencies to clean up their environmental blights. In the 1976 Resource Conservation and Recovery Act Congress gave the states this authority. A brief history of our effort is contained in Commissioner Mueller's letter to Chairman Osterback; therefore, I will not repeat it in this testimony.

However, I would like to inform the Committee of the Department's plans regarding cleanup on federal lands. Due to two key provisions of the Act (dealing with federal facilities compliance and the Alaska lands study) we now know with certainty the extent and location of the problem areas. We are in the final stages of establishing a priority list of areas which warrant immediate attention. Our initial targets will be the inactive and active DEWLine sites in the Arctic, and the abandoned solid waste on National Petroleum Reserve in Alaska.

To implement the cleanup at the DEWLine sites, we are in the process of issuing permits to the Air Force which will require the problem to essentially be solved by this fall. The permits will establish specific timetables for completing sequential phases of the cleanup. In the past, the Air Force has promised to take steps to solve sewage disposal and solid waste problems at the DEWLine sites, but these promises were little more than lip service in lieu of action. We do not intend to allow the Air Force to repeat this pattern of inaction. We want compliance with all permit conditions and we intend to take legal action, if necessary, to obtain compliance.

To insure that the Air Force complies with permit conditions, we are considering naming in each permit the Secretary of Defense, Secretary of the Air Force, Director of the Headquarters Aerospace Defense Command in Colorado (the official who is responsible for DEWLine operations in Alaska) and the

chief of each DEWLine site as the officials who are responsible to assure that permit conditions are met. By targeting these top federal officials as persons who are clearly responsible for permit compliance, we should cut through the perennial bureaucratic smokescreen which in the past has clouded efforts to determine who is responsible for implementing cleanup action. Under our proposed plan, everyone from the Secretary of Defense on down would know that the Department is demanding compliance and will not hesitate to grab the federal government's top officials by the scruff of the neck and haul them into State Court to achieve compliance. We think this approach is necessary if we are to short-circuit the bureaucratic finger-pointing and buck-passing which has occurred when federal agencies have failed to live up to their promises. In the past, when promised action failed to materialize, the federal agency attempted to tag either some faceless Washington, D. C., bureaucrat or its contractors as the culprits. Under our proposed plan of action this bureaucratic buck-passing will cease; all fingers of responsibility will clearly point to the Secretary of Defense as the person who is ultimately responsible for assuring compliance.

In closing I would ask the Committee's indulgence in allowing me to make one final comment which may be editorial in nature. It reflects my personal views and is not in any way to be construed as the position of the Department. As the solid waste study has shown, the federal government has littered Alaska's landscape by sprinkling solid waste across federal lands for more than 30 years. With the exception of recent cleanup

efforts in National Petroleum Reserve in Alaska, the federal land management agencies have done virtually nothing to address these problems. Instead, they have ignored them. Put simply, the federal government's track record on this aspect of land management is--at best--abysmal.

This smudged page of Alaska's environmental history has somehow been overlooked by the federal bureaucracy which is presently clamoring to place vast tracts of Alaska's lands in single-purpose classifications categories. The silent but ever-present underlying theme championed by the bureaucracy is that such action is necessary in order to protect Alaska from Alaskans. I submit that such logic is not only convoluted, it is erroneous. As was clearly demonstrated in the study, the federal government has proven for more than three decades that it is incapable of handling such routine land management and environmental problems as properly disposing of its garbage and other solid waste. I leave you to draw your own conclusions regarding the federal government's ability to act as an environmental custodian of the proposed D-2 lands, but you can color me skeptical.

Mr. Chairman, that concludes my testimony; if you or any members of the Committee have any questions, I shall be most happy to attempt to answer them.

Open dump at Barter Island with DEWLine site in background.

Open dump at Barter Island DEWLine site extending into Beaufort Sea.