

DEPARTMENT
OF

NATURAL
RESOURCES
BRIEFING

1-22-82



Official Business

Alaska State Legislature

Senate

Pouch V
State Capitol
Juneau, Alaska 99811

COMMITTEE BRIEFING

SENATE RESOURCES COMMITTEE

January 22, 1982

Friday

1:30 p.m.
Beltz Room
Room 211 Capitol

John Katz, Commissioner, Department
of Natural Resources - Briefing



Official Business

Alaska State Legislature

Senate

RESOURCES COMMITTEE

Pouch V
State Capitol
Juneau, Alaska 99811

TO: Senate Resources Committee Members
FROM: Senate Resources Committee Staff
DATE: January 23, 1982
RE: January 21st briefing by Commissioner Katz

After the meeting Friday, Commissioner Katz requested that the attached information be distributed to the Committee members.

Attachments



Alaska State Legislature
Senate

JUNEAU, ALASKA

RESOURCES COMMITTEE

TO: Representatives Sutcliffe and Fanning
FROM: Senate Resources Committee Staff
DATE: January 25, 1982
RE: January 21st Briefing by Commissioner Katz

After the meeting Friday, Commissioner Katz requested that the attached information be distributed to the Committee members.

Attachments

Alaska State Legislature

BETTYE FAHRENKAMP, CHAIRMAN
VIC FISCHER, VICE-CHAIRMAN
BRAD BRADLEY
DICK ELIASON
DON GILMAN
BOB MULCAHY
ARLISS STURGULEWSKI



POUCH V
STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3835

Senate

Committee on Resources

January 22, 1982
1:30 p.m.

Beltz Room
211 - Capitol

Joint House and Senate Resource Committees

MEMBERS PRESENT

Senator Fahrenkamp
Senator Fischer
Senator Bradley
Senator Eliason
Senator Gilman
Senator Mulcahy
Senator Sturgulewski

Representative Sutcliffe
Representative Halford
Representative Grussendorf
Representative Vaska
Representative Fanning

Briefing on the Department of Natural Resources
by John Katz, Commissioner

Major Personnel Changes and Reorganization - Have created a Division of Forestry (Ted Smith, Director) and decentralized field level operations to better serve the public.

Land Selection - Due to the D-2 legislation the state's selections were increased to 125 million acres and the time to select was extended 10 years. DNR has undertaken a comprehensive process to identify land and will refine selections through public input process. Serious issues can arise in regard to disposal of tentatively approved land. DNR is taking steps to advise people of strengths and pitfalls of such lands.

Royalty Oil - Amending pending solicitation to fit state requirement. Currently, there are six active sets of negotiations: three existing in-state refineries, one proposed refinery in Fairbanks, one in-state supplier, one mineral producer. Negotiations will be finalized next week, and contracts with specific recommendations will go to the legislature for approval by the end of this month.

State Oil and Gas Lease Program - DNR is committed to the 5-year program, and to exploration of new sources of oil and gas. The state's policy of one high value and two moderate value lease sales per year will be continued. To have high value sales that will lead to State revenues, offshore areas must be looked into.

Hard Rock Mining - The principal barrier to mining development is the infrastructure, especially surface transportation. Discussions with DOT are in progress. The backlog in mining claim adjudications is being examined for efficiency.

Coal - Working on recommendations of task force: developing coal reclamation statute, actively planning transportation system in Beluga, revising coal leasing regulations, seeking source of petracoke. The first shipments of coal from Beluga could be in 1985-1987.

Agriculture - Katz described the responsibilities of AAAC and DNR. AAAC is responsible for policy and planning for agricultural disposals; DNR is responsible for implementing the disposals. Delta II East will proceed on schedule, but Delta II West has been postponed indefinitely. DNR is working on a Homestead "sweat equity" Bill to meet public desire for small agriculture parcels.

Forestry - DNR will support legislation to create a State system of forests if the designated lands have timber values.

Fire Suppression - Funds are needed for both fire suppression and presuppression. Working with federal, private, and Native agencies to develop more coordination and long term planning.

Land Exchange - Only land exchanges of equal value and that benefit the state in a range of resource considerations can be enacted without legislative approval.

Land Disposal - When completed, DNR will provide the legislature with a demand assessment; an option paper with ranking from high to low, cost figures, and recommendations on disposal; capital costs in subdivisions, boroughs, and outside.

Water - Through the Administration, DNR is proposing a basin-wide water adjudication bill. This would determine water rights on a systematic and comprehensive basis.

Dow Shell - Working on recommendations of the government Petrochemical Task Force. There are no grounds for actual disposal of gas liquids at this time.

Northwest Gas Pipeline Project - Governor created a 5-member Task Force to determine if the State should make a financial contribution to the project, and, if so, how? The IDT report is due the end of February, with a report by Kidder-Peabody due soon after.

Resource Inventory CIP - Due to a \$9 million appropriation last year, the Department has ongoing 35 separate resource inventory projects.

The meeting was adjourned at 3:00 p.m.

(907) 465-2400

December 18, 1981

Mr. David Heatwole
President
Alaska Miners Association
509 W. Third Avenue
Suite 17
Anchorage, AK 99501

Dear Dave:

At the last meeting of the Commissioner's Hardrock Advisory Committee, you took the position on behalf of the Alaska Miners Association, that the State should take no action in response to the Attorney General's interpretation of Section 6(i) of the Alaska Statehood Act.

I have since discussed this matter with the Governor, and he has agreed with me that no remedial legislative or administrative action is required at this time. Therefore, the Department of Natural Resources will not alter existing State practice with respect to the location of mining claims on 6(a) and 6(b) lands. The reasons for our decision have been discussed publicly on prior occasions, and so I will not dwell upon them here. Basically, we have concluded that State interests related to mineral entry are adequately protected by the current matrix of collateral law.

However, it should be noted that someday circumstances beyond our control may dictate that this issue be addressed. In that event, I ask that channels of communication remain open as the association and the Department study our available options.

Thanks again for the Association's advice on this matter.

Sincerely,

John W. Katz
Commissioner

cc: Mike Whitehead

4852.5

(907)465-2400

December 30, 1981

The Honorable Ted Stevens
United States Senate
127 Russell Building
Washington, D. C. 20510

Dear Ted:

In a recent teleconference with Lloyd Meeds, counsel for Chugach Natives, Inc., we were advised that CNI might be willing to relinquish its ANCSA Sec. 14(h)(8) selections on Montague Island (Patton Bay, Macleod Harbor and Stockdale Harbor), if it would facilitate a federal-state land exchange involving state lands at Cape Yakataga and a final settlement acceptable to CNI.

You will recall from our letter of December 1, 1981, to you and the other members of the Alaska delegation that, based on numerous consultations with CNI and concerned state agencies, if an exchange took place involving Yakataga lands, it would be confined to land between the Duktoth and White Rivers. Based on preliminary estimates of appraisable values, it appears that Montague Island (while possessing significantly greater acreage) is very close in value to state lands identified at Cape Yakataga, and (subject to refined valuation), may satisfy the exchange requirements of AS 38.50.

We think that CNI's apparent willingness to consider relinquishing their legal interests on Montague Island is a significant step forward by that corporation in seeking a compromise administrative solution. Early in the study process, the State of Alaska identified a principal public purpose which would be served by a federal-state land exchange. Public testimony received by the Chugach Region Study Group in Cordova and Anchorage, as well as state agency concerns for fish, wildlife, and recreational resources, argued

strongly for the retention in public ownership of coastal lands in Prince William Sound. The State, therefore, has sought to retain in public ownership a number of important public values in Prince William Sound by shifting private corporate ownership to more remote state owned lands which meet the Congressional criteria of Section 1430, ANILCA. An exchange of state land at Cape Yakataga for national forest land on Montague Island would accomplish this public purpose, while simultaneously laying to rest a 10-year struggle by CNI to gain the fair and just settlement promised by Congress.

The Forest Service's stated objection to the loss of national forest land to CNI (and other conveyances) is that it would deny the Forest Service the ability to maintain a viable multiple-use program on the Chugach National Forest, and a continuous supply of goods and services to the nation.

These federal concerns could be met by the State's acceptance of Montague Island with a deed restriction which guaranteed continued public ownership and use (as permitted by state exchange law AS 38.50). Furthermore, the State of Alaska is considering the creation of a state forest system to insure the long-term commitment of suitable state lands for multiple-use purposes. This action would assure that multiple-use values are protected, and that the public could continue to use and enjoy Montague Island and its multiple-use values. These values would be greatly impaired if CNI chooses to exercise its selection rights under Sec. 1429 ANILCA.

The Chugach National Forest, moreover, would be capable of continuing to support a viable multiple-use program even after 103,000 acres of national forest land are conveyed to CNI (as contained in the November 13, 1981 federal offer), and Montague Island (approximately 194,000 acres) is traded to the State of Alaska - a reduction in the size of the Chugach National Forest of about 5 percent. Two-thirds of that reduction, however, would continue to serve public purposes under State of Alaska ownership.

For the foregoing reasons, I believe that there is sufficient new information to warrant a short extension of the negotiating period. I do want to reiterate, however, that the State's ultimate willingness to participate in an exchange is dependent on four factors:

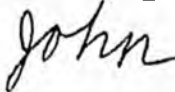
1. All of Montague Island must be transferred from the USFS to the State.
2. CNI must relinquish its section 14(h)(9) selections on Montague Island.

December 30, 1981

3. The State of Alaska must retain a manageable forest unit at Cape Yakataga. While there is no question that Montague Island possesses a multiplicity of resource values which are of interest to the State, Cape Yakataga contains some of the highest value timber lands in State ownership. Therefore, I believe that one or more manageable units must be retained in order to preserve the Legislature's option to create a State forest at Cape Yakataga - a matter which will likely be considered in the upcoming session.
4. The State must be able to demonstrate compliance with the equal value requirements of AS 38.50. This process would probably require legislative approval before an exchange could be finalized. In other words, any proposed exchange must be supportable from both a substantive and political point of view.

I recognize that these standards may be difficult to achieve. However, Chugach's long travail justifies the effort. We look forward to working with you and the rest of the Congressional delegation in an effort to bring this matter to a satisfactory resolution.

Sincerely,



John W. Katz
Commissioner

cc: Representative Young
Senator Murkowski
Mike Whitehead
John Sandor
Lionel Drage
Vernon Wiggins
Bill Horn

5102

October 9, 1981

The Honorable Frank H. Murkowski
Senator
United States Senate
Washington, D.C. 20510

Dear Senator Murkowski:

In response to your recent inquiry regarding the proposed McCarthy land exchange, the following summary of events should be useful.

Early in 1981, the State was requested by the National Park Service to consider a land exchange for approximately 18,000 acres of State land around McCarthy. The Park Service was concerned that a proposed State land disposal would result in additional land management problems in the newly created Wrangell/St. Elias National Park.

Subsequently, the Governor and former Commissioner LeResche agreed to postpone the proposed land disposal until the fall of 1981 and to negotiate with the Park Service for lands of equal value to the State. These negotiations were conducted through September and were unsuccessful due to unwillingness by the Park Service to make available lands of equal value.

A more recent overture by the Park Service to the State was a proposed three way exchange including Cook Inlet Region, Inc. This proposal does not appear likely to win Department of Interior support due to Cook Inlet's objective of receiving title to NPRA lands and BLM's opposition to such a transfer.

The Honorable Frank H. Murkowski
Page Two
October 9, 1981

The Department of Natural Resources will make one additional attempt to consummate an exchange which satisfies the requirements of Alaska Statute 38.50. Toward this end, we have postponed the proposed sale until the spring of 1982. Should this effort not be successful, the State will not likely move forward with plans for a disposal near McCarthy.

The key to successful completion of this exchange is the willingness by the Park Service to offer lands of equal quality to those they wish to receive in exchange.

Since the Alaska lands legislation significantly expands State selection opportunities, we have taken the position that the Federal government must offer lands which we are not otherwise authorized to select. This has made it more difficult for the Park Service to find mineral, oil and gas, settlement, sport hunting, or other lands which meet the equal value criterion.

If you have any further questions, please contact me.

I hope that all is well with you.

Sincerely,

John W. Katz
Commissioner

cc: The Honorable Brian Rogers

JWK:SB:db

(907) 465-2400

November 27, 1981

Mr. John Cook, Area Director
National Park Service
540 W. 5th Avenue
Anchorage, AK 99501

Dear John:

I understand that serious discussions between the State and the National Park Service regarding the proposed McCarthy land exchange are scheduled to begin during the first week in December. I am hopeful that these talks will be fruitful.

In order to ensure effective State participation in these discussions, I have asked Mr. Reed Stoops to coordinate State agency involvement. Before these talks begin, key State agencies will have completed a review of the list of possible exchange lands which you have submitted to us.

As you know, the State must consider land exchanges within the parameters set by AS 38.50, which requires that the State receive lands of equal value. Moreover, due to the liberal State selection provisions of ANILCA, the State must receive lands which are otherwise unavailable for selection using our remaining Statehood entitlement.

To date, no exchange offer has come close to equal value. As we have previously advised, we are seeking lands which benefit a broad range of resource uses to offset the multiple resource values of State lands near McCarthy.

Although the State will work diligently and in good faith to develop with you viable exchange options, I want to make it clear that if an acceptable agreement cannot be reached, the State will not consider postponing for a third time its planned McCarthy land disposal. I mention this simply to underscore the importance that I attach to the upcoming discussions.

Please feel free to call me if you have any suggestions for or comments on these exchange talks.

Sincerely,

John W. Katz
Commissioner

#1 McKinley Village
(2,500 acres)

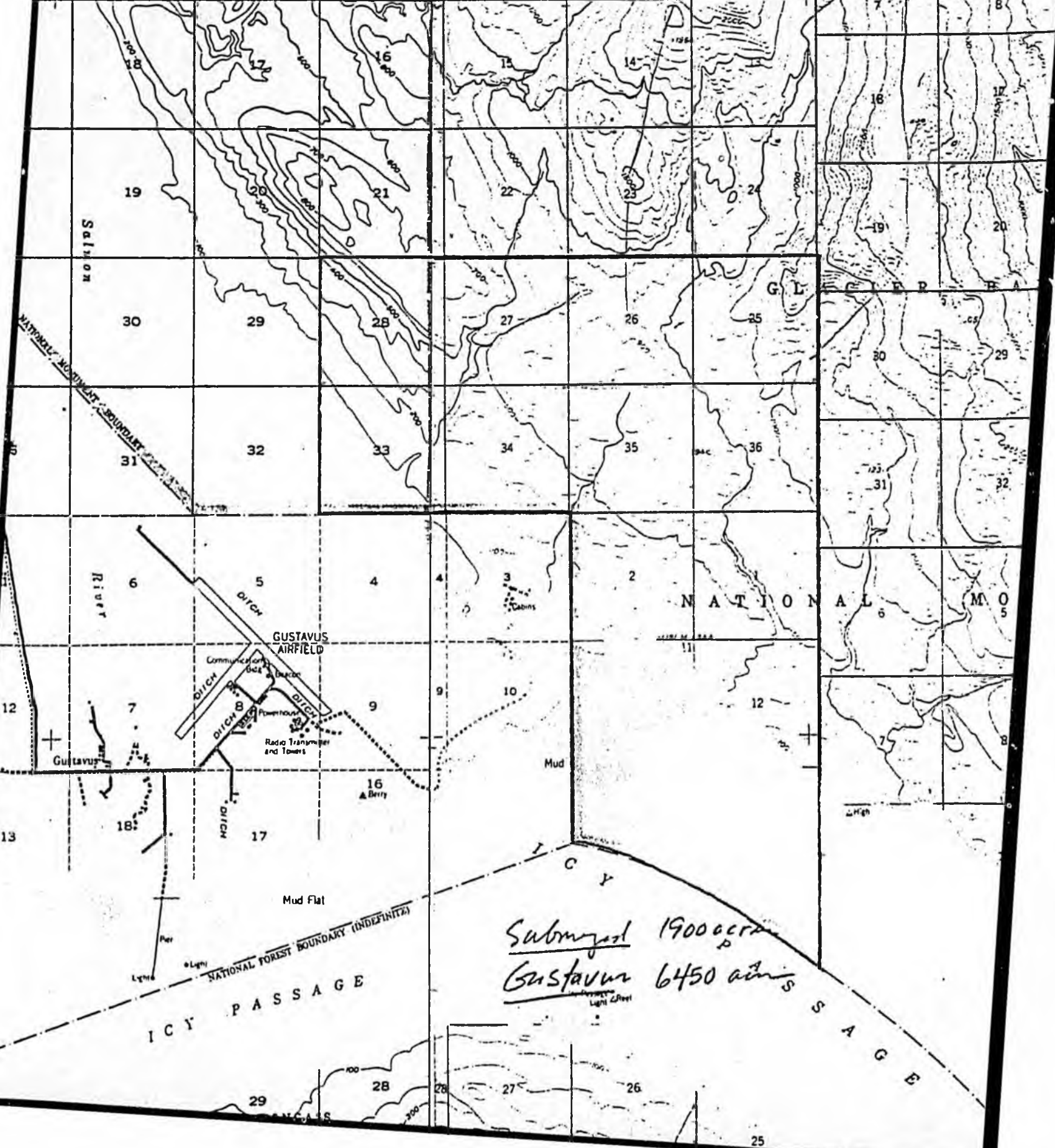


#2 Gustavus (6,450 acres)

JUNEAU (B-6) QUADRANGLE
ALASKA
1:63 360 SERIES (TOPOGRAPHIC)

UNITED STATES
DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY

45° R 59 E 2 300 000 FEET 135°40' 462000m. E 35°



Submerged 1900 acres
Gustavus 6450 acres

3 a Downtown Skagway
(3 lots)

AVENUE

AVENUE

AVENUE

AVENUE

BROADWAY

STREET

SPRING

STREET

KIRMSE TRACT

PULLEN TRACT

101-25
101-24

35
101-37

101-19
101-18
101-32

101-23
101-53

101-20
101-21
101-22

101-13
101-12

101-10
101-15
101-14

101-58
101-59

101-50
101-08

101-50
101-49

101-05
101-06

101-42

101-61

3rd

4th

5th

6th

27

26

200A 100'

25

24

12

12

12

7

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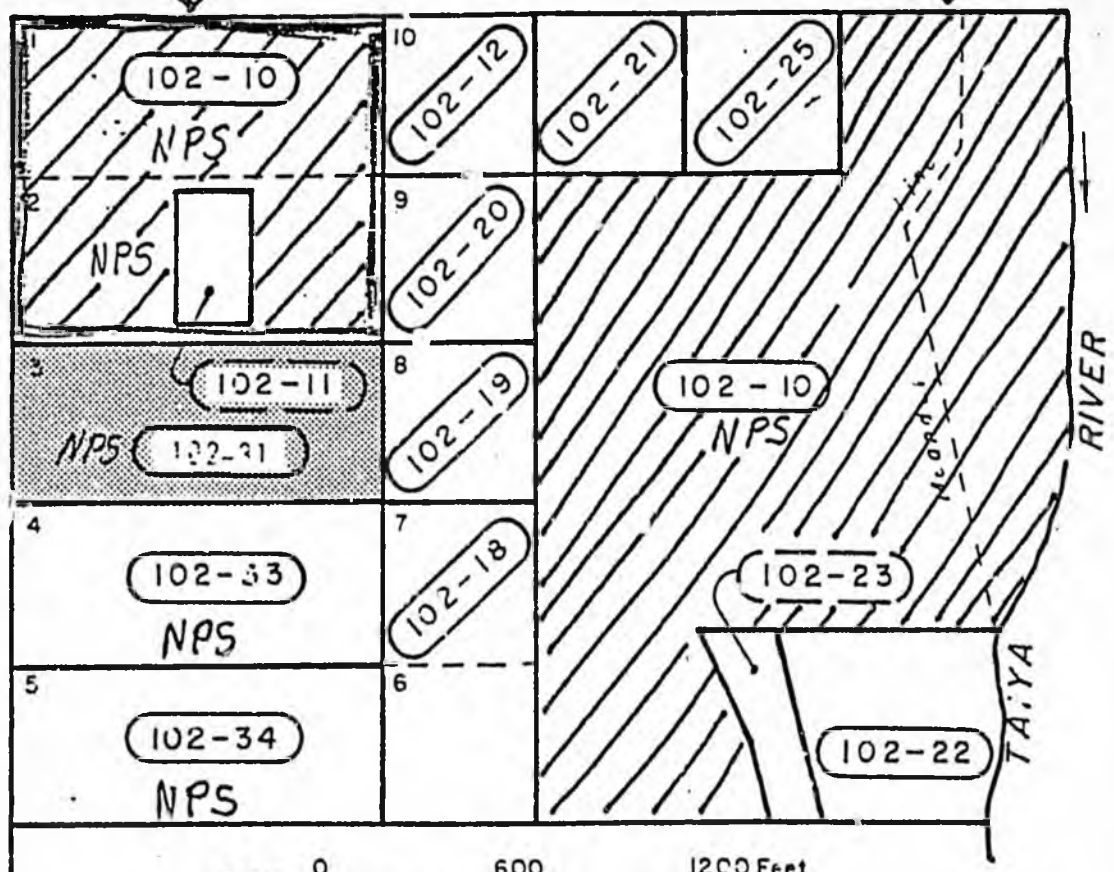
101-61

3 b Skagway - West Creek

Tract A
18 acres

Tract B
approx 35 acres

INSET "A"



Scale 0 600 1200 Feet

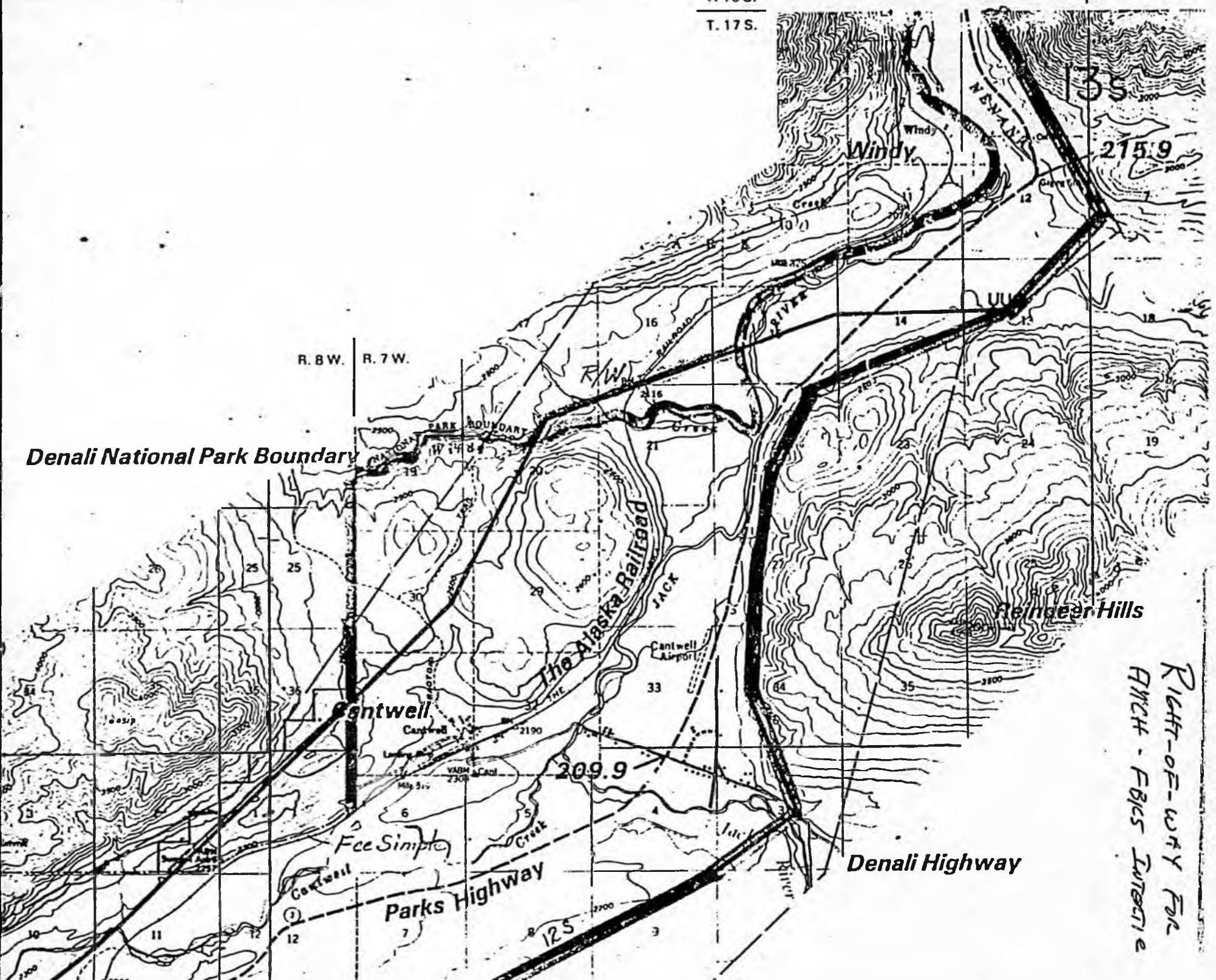
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T. 16 S.
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R. 8 W. R. 7 W.

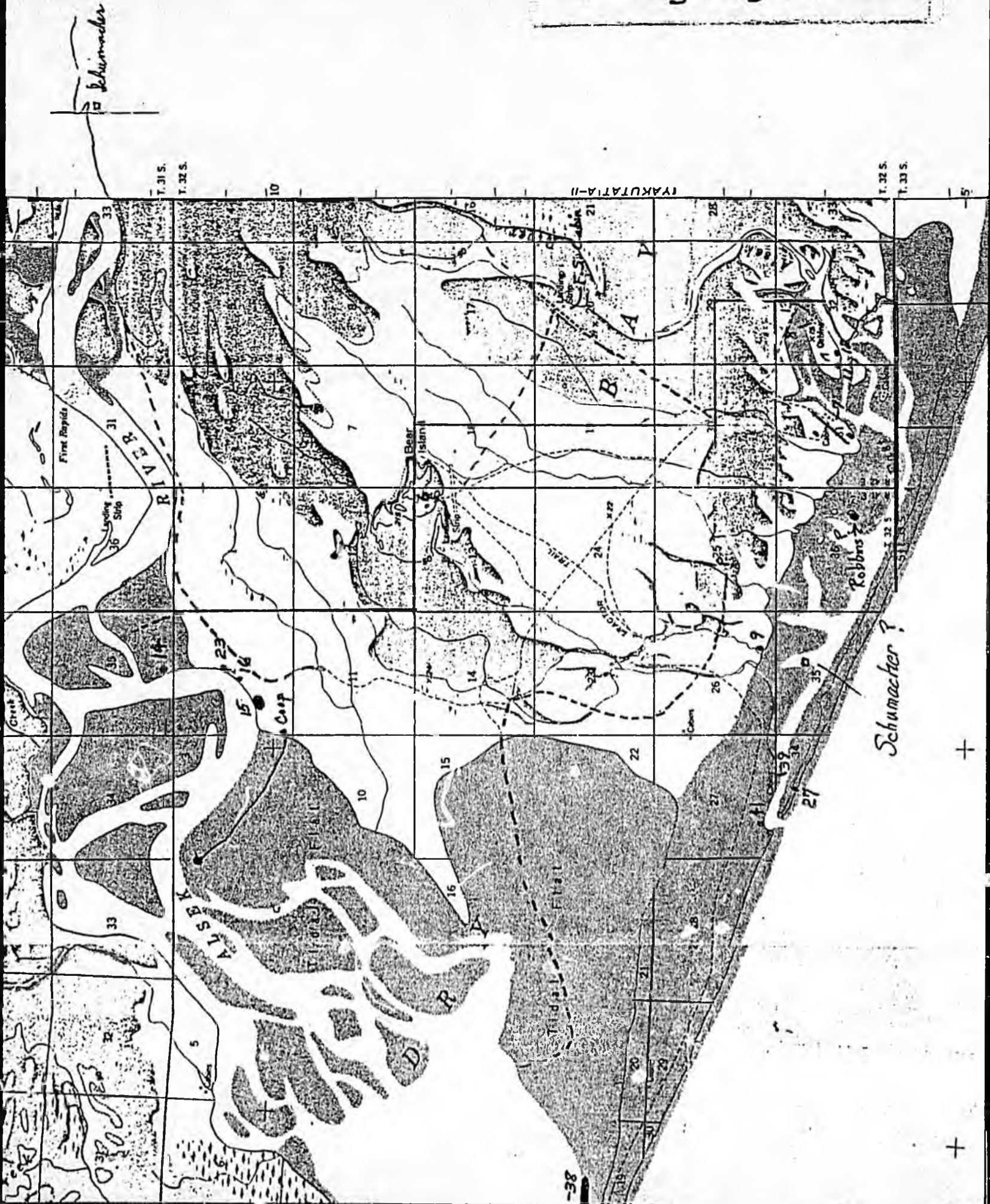
Denali National Park Boundary



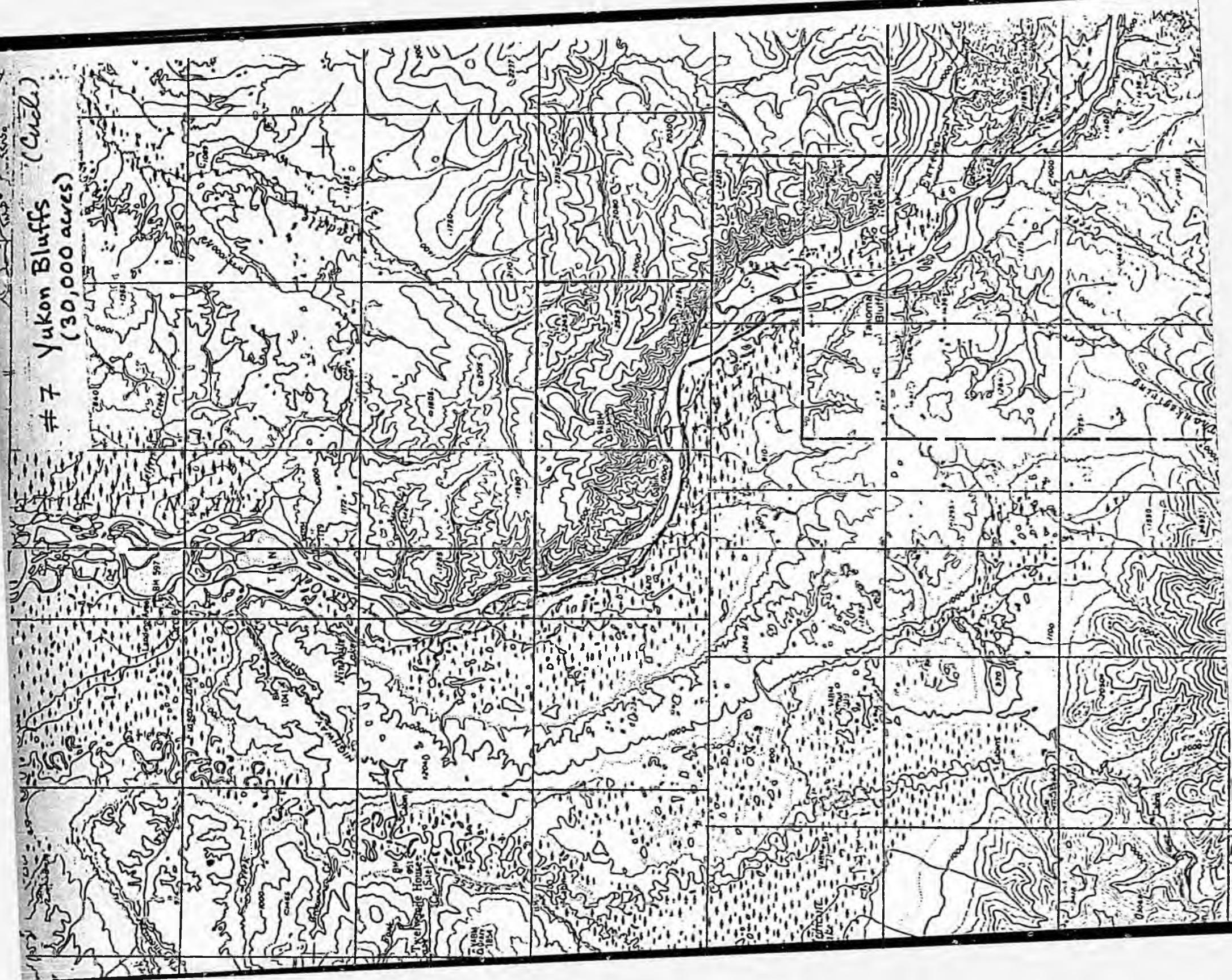
#4 Cantwell (650 acres)

RIGHT-OF-WAY FOR
FMCH - FBIS INTERIOR

#5 Dry Bay (7,500 acres)



#7 Yukon Bluffs (Cub.)
(30,000 acres)



STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

POUCH M
JUNEAU, ALASKA 99811
PHONE:

November 18, 1981

Mr. J. D. Hembree
Dow Chemical Company
2040 Dow Center
Midland, Michigan 48640

Mr. J. R. Street
Shell Chemical Company
One Shell Plaza
Houston, Texas 77001

Gentlemen:

Within the parameters of the Governor's policy statement on petrochemical development, the State will continue to pursue with the Dow-Shell Group an analysis of a petrochemical facility in Alaska.

In response to the recent recommendation of the Governor's Task Force on Petrochemicals, the State through this letter proposes to amend the Memorandum of Understanding and Intent as to term and other pertinent aspects as needed.

Pursuant to our recent conversations and subject to your concurrence, the State of Alaska hereby agrees to amend the Memorandum of Understanding and Intent between the State and the Dow-Shell as follows:

First, Article 6 shall be deleted and replaced with the following:

Sponsors agree to maintain open communications with the State on petrochemical feasibility and to provide status reports upon request.

Second, Article 26(c) shall be amended as follows:

(c) This memorandum terminates if Sponsors and the Commissioner of Natural Resources of the State

Mr. J. D. Hembree
Mr. J. R. Street

- 2 -

November 18, 1981

of Alaska have not executed an agreement for sale and purchase of the State's royalty natural gas liquids, or other agreement satisfactory to the parties, by June 30, 1982, unless extended by mutual concurrence of the parties.

In addition to the above changes in the Memorandum of Understanding, I would like to also note other items for our mutual understanding and the public record:

First, Doyon, Ltd. and E.I. duPont de Nemours are not participants in the Dow-Shell group.

Second, Earth Resources Company of Alaska, a participant in the Dow-Shell Group, has been renamed Mapco Alaska, Inc.

Third, the responsibilities of Doyon, Ltd. and E. I. duPont de Nemours under the Memorandum were assigned by Dow Chemical U.S.A. and Shell Chemical Company under their role as Sponsors.

Fourth, the Dow-Shell Group completed and submitted to the State a Feasibility Study Report for the manufacture of petrochemicals in Alaska on September 9, 1981, which justifies the further analysis of petrochemical development. The Sponsors notified the State on September 9, 1981, that they wished to continue their efforts towards the development of a petrochemical industry in Alaska.

Fifth, Alaska Interior Resources Company, Inc., with the cooperation of Dow Chemical U.S.A., studied the feasibility of providing coal-fired electric power to the petrochemical project and studied the feasibility of constructing a coal-based methanol plant in Interior Alaska. In addition, Alaska Interior Resources Company studied the feasibility of a methanol facility located in Interior Alaska utilizing methane as feedstock. These studies were submitted to the State as part of the Dow-Shell Feasibility Study Report of September 9, 1981.

Sixth, the Sponsors provided oral progress reports on the Feasibility Study to the State upon request and Sponsors submitted written monthly progress reports to the State beginning with the end of the third month following the execution of the Memorandum.

Seventh, the Sponsors entered into negotiations with North Slope producers for the purchase of natural gas liquids.

Mr. J. D. Hembree
Mr. J. R. Street

- 3 -

November 18, 1981

Eighth, the Sponsors provided engineering expertise to the State during the design of the conditioning plant/gas pipeline.

Ninth, the Sponsors completed and submitted to the State a study detailing the project's electrical power requirements and alternative means of meeting those requirements. This study was submitted to the State as part of the Dow-Shell Feasibility Study Report of September 9, 1981.

Tenth, the State assisted the Sponsors in their efforts to secure non-royalty natural gas liquids through communications with the North Slope producers.

Eleventh, the State, with the Sponsors' concurrence, did not carry out a study on a natural gas liquids pipeline.

Twelfth, the State, with the Sponsors' concurrence, expanded the membership of the Alaska Citizens Advisory Council from five to seven members.

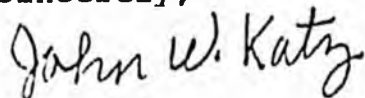
Thirteenth, the Alaska Citizens Advisory Council presented its report to the State in October, 1981. The Community Advisory Board presented its report to the Governor in September, 1981.

Fourteenth, the State examined the infrastructure, such as roads, docks, and other facilities which may be needed for the project at the potential sites.

Fifteenth, the State examined what incentives (e.g., tax exempt financing) to the building of a project by the Dow-Shell Group can appropriately be granted by the State under State law.

If you are in concurrence with the above, please indicate by signing below, and returning the original.

Sincerely,



John W. Katz
Commissioner

MEMORANDUM

State of Alaska

DEPARTMENT OF NATURAL RESOURCES - OFFICE OF COMMISSIONER

TO: The Honorable Jay S. Hammond
Governor of Alaska

DATE: December 31, 1981

FILE NO:

TELEPHONE NO: 465-2400

FROM: John W. Katz *JWK*
Commissioner

SUBJECT: State Examination of
Alaska Natural Gas
Transportation System
(ANGTS) Financing

At your request, we have designed the following process for the State's examination of ANGTS financing and of the advisability of a State contribution to pipeline financing. The Cabinet group consisting of Attorney General Wilson Condon, Revenue Commissioner Tom Williams, and myself has been joined by Senator Bettye Fahrenkamp and Representative Rick Halford of the Alaska State Legislature.

Objectives

The objectives of our work will be threefold: (1) Analysis of whether State financial participation in ANGTS appears desirable and feasible. In other words, should the State participate in ANGTS financing? (2) If State participation appears desirable and feasible, analysis of the possible structure or methods of State participation in ANGTS financing, with an emphasis on the gas conditioning plant; and (3) If State participation appears desirable and feasible, analysis of the competing and prudent uses of State funds for meeting Alaska's needs.

Significant Issues

In making these analyses, we will review a number of significant questions which would be asked by any prudent investor and some of particular interest to the State of Alaska. Among the general factors which would have to be considered would be the following: Prudhoe Bay gas marketability; impact of gas deregulation; availability of alternate gas supplies; availability of investment capital; project risk analysis; and proposed financing structure of project.

Issues of particular interest to Alaska include the following: provision of adequate information to the State; costs/benefits analysis; in-state use, including possible petrochemical development; State's financing capability; State's comparative investment options; and regulatory and tax implications of State participation in pipeline financing. A costs/benefits analysis would cover such areas as wellhead value;

royalties, severance taxes, property taxes; secondary and tertiary economic benefits, such as jobs and spinoff industries; and social and environmental effects.

Procedure

In carrying out these analyses, we will meet with the major project participants for in-depth discussions of project financing. These discussions will cover the nature of the risk which the State might assume through State participation in the project, and the structure(s) of State participation, if any. A meeting with Northwest Alaska and its financial counsel the first week of December initiated this process.

We are also in the process of hiring an investment banking firm as the State's consultant on the financing issues. Initial interviews with four investment firms have already illustrated the valuable services they will be able to provide.

Finally, we will carry out appropriate in-house research. To assist in the work, a staff group from the Departments of Natural Resources, Revenue, Law, Budget and Management, and the Legislature has been formed.

Timeline and Work Product

By March 1, 1982, we propose to provide a written interim report of our findings to that date and recommendations, if any. This report will cover review of the general issues and should allow a conceptual decision about whether the State should participate in gas pipeline financing or not.

Our ability to follow the proposed timeline will depend, in large part, on the availability and adequacy of information provided by Northwest Alaska, its investment bankers, and others. If the necessary information is not submitted in sufficient depth or in a timely fashion, our work will have to be adjusted accordingly.

By mid-May, we propose to submit a final report, if appropriate, to you and the Legislature for your consideration.



Alaska State Legislature

Official Business

Resources Committee

Pouch V
State Capitol
Juneau, Alaska 99811

TO: Senate Resources Committee
FROM: Senate Resources Committee Staff
RE: Briefing on DNR, 1/22/82
DATE: January 29, 1982

Commissioner Katz, during his 1/22/82 briefing on the Department of Natural Resources, said he would supply the Committee with the following two memorandums:

"Presale Evaluations for State Oil and Gas Lease Sales 34 and 39"

"Status of Miscellaneous Land Use Permit Regulations Litigation"

Please find them attached.

MEMORANDUM

State of Alaska

TO: The Honorable John W. Katz
Commissioner
Department of Natural Resources

DATE: January 19, 1982

FILE NO:

TELEPHONE NO:

FROM: Kay Brown
Acting Director
Division of Minerals &
Energy Management
Department of Natural Resources

SUBJECT: Presale Evaluations
for State Oil and
Gas Lease Sales 34
and 39

This memorandum is to apprise you of the need for legislative assistance in order to conduct lease sales under the Five-Year Oil and Gas Leasing Schedule. As a result of a recent ruling by the Alaska Superior Court, the Department's ability to meet its objective of maintaining a predictable sale schedule has been seriously affected.

As you are aware, prior to each oil and gas lease sale, the Department conducts an extensive presale evaluation as required by AS 38.05.180(f) to assess the resource value of each tract proposed for lease. This tract evaluation assists the Department in determining: 1) tracts that should be leased; 2) leasing (or bidding) methods for each tract; and 3) adequacy of the bid offered for each tract. This presale evaluation depends heavily on geophysical (seismic) data. In March 1981, the Department amended its miscellaneous land use permit ("MLUP") regulations to require geophysical explorers for oil and gas resources on State lands to submit to the Department copies of all raw and processed, noninterpreted data and information as a condition of its exploration permit. Under the regulations, the Department reimburses the permittee for all costs directly incurred by the submission of this information. The Department keeps this information confidential upon the request of the permittee.

The MLUP regulations were challenged in Alaska Superior Court in two different lawsuits. In the first challenge, the Department prevailed and the Superior Court validated the regulations. Chevron v. LeResche, Alaska Superior Court No. 3AN-81-4154 Civ. (September 16, 1981). In the second challenge, the permittee prevailed and the regulations were found to be invalid primarily because the Department did not have sufficient legislative authority for their adoption. Exxon v. Katz, Alaska Superior Court. No. 3AN-81-6041 Civ. (January 8, 1982). The Department has been enjoined from enforcing these regulations pending reversal on an appeal the Department plans to file sometime next week. The effect of these lawsuits is that the Department may not acquire copies of the geophysical information acquired on State lands except through outright purchase.

The dilemma the Department faces can be anticipated. Oil and Gas Lease Sale 34 (Prudhoe Bay Uplands) is scheduled for September 28, 1982, and the Department's existing geophysical data base is inadequate to conduct the required presale analysis prior to that sale. The Department was anticipating the submission of extensive geophysical information under the MLUP regulations to conduct its presale analysis; however, it is now unable to acquire that information unless that information can be purchased. The Department has learned that two of its permittees are now willing to sell geophysical information acquired from the Sale 34 area for a total of \$5.3 million. However, only \$2.7 million remain in the Department's budget for the purchase of geophysical information through the remainder of FY 83 and these monies primarily were earmarked for the purchase of geophysical information for Sale 39, the third Beaufort Sea lease sale. (Discussions with one permittee are still continuing, and it is possible that the \$5.3 million needed could be reduced to as little as \$2.3 million. A firm answer on the price is expected by Wednesday, January 20.)

In light of this dilemma, there appear to be several short-term options available to the Department on which we would appreciate your direction and assistance in pursuing:

1. Seek an immediate supplemental to the FY 82 CIP budget of up to \$5.3 million for data acquisition for Sale 34. A supplemental appropriation would have to be approved by the last week in February if the sale is to stay on schedule.
2. In the event that adequate data for Sale 34 can be purchased for less than \$2.7 million, spend the available monies for Sale 34 and later seek reinstatement of funds to cover Sale 39 costs.
3. Postpone Sale 34 for 15 months until the earliest possible date allowable by law (January 1984, assuming a decision to amend the 1932 Five-Year Leasing Schedule is made by January 22, 1982) and await the outcome of the Alaska Supreme Court's decision on the validity of the MLUP regulations. If the regulations are validated by the Supreme Court before June or July 1983, the Department would acquire information from the Sale 34 area in time for a January 1984 sale without the need for a legislative appropriation.

Under both options above, an FY 83 CIP appropriation of \$1.9 million should be requested to supplement monies needed to acquire data for Sale 39 and upcoming FY 84 sales. (The existing and planned CIP appropriations are seriously underestimated due to unanticipated higher costs). In addition, under both options, the Department should seek

explicit legislative authority this year to acquire geophysical data as a condition of a State exploration permit so that the Department may receive the benefit of future geophysical exploration on unleased State lands. Provisions of this bill are being discussed with the Department of Law and will be discussed with your staff.

TO: John W. Katz, Commissioner
Dept. of Natural Resources
Pouch M
Juneau

DATE: January 5, 1982

FILE NO:

TELEPHONE NO:

FROM: WILSON L. CONDON
ATTORNEY GENERAL
Michael Arruda
By: Michael Arruda
Assistant Attorney General
Anchorage - AGO

SUBJECT: Status of
Miscellaneous
Land Use Permit
Regulations
Litigation

You have requested, through the Division of Minerals and Energy Management, a status report on the litigation surrounding the March, 1981, amendments to the Miscellaneous Land Use Permit ("MLUP") regulations, 11 AAC 96.010 -- 11 AAC 96.250. As you recall, these amendments join oil and gas permittees into the state land use permit program by requiring that a person seeking to conduct geophysical exploration or drill a stratigraphic test well on state land first acquire a permit from the Department of Natural Resources ("Department"). Upon completion of activities under the permit, the permittee is required to make available to the Department specifically identified non-interpreted data and information acquired from those activities on state lands. 11 AAC 96.210. The Department will reimburse the permittee for all reasonable costs directly incurred by the permittee due to the submission of these data and information. 11 AAC 96.230. The regulations further provide that the Department will keep confidential all data and information submitted by the permittee when the permittee requests the Department to do so. There is no time limit on this period of confidentiality. 11 AAC 96.220. Thus, the regulations describe the terms under which the Department will allow permittees to enter state lands for the purpose of collecting valuable geophysical data and information.

The MLUP regulations are currently at issue in five civil actions in the Alaska court system. The first of these actions was filed on June 16, 1981, by Chevron U.S.A., Inc., Marathon Oil Company, and Phillips Petroleum Company (collectively, "Chevron"). Chevron complained that the MLUP regulations were invalid on both substantive and procedural grounds. The focus of Chevron's complaint was that the regulations were not authorized by AS 38.05.180 and that the legislative history of AS 38.05.180(x) expressed an intention to specifically deny the Department the authority to acquire geophysical data and information on unleased state lands. Following briefing and oral argument by counsel, the Alaska superior court, Judge Mark Rowland presiding, unequivocally validated the regulations in all respects, making the following findings and conclusions:

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2. This court finds and concludes that:

(a) the Commissioner of the Department of Natural Resources has the authority to adopt regulations;

(b) the miscellaneous land use permit regulations (11 AAC 96.010-11 AAC 96.250) are within the scope of the authority conferred upon the Department of Natural Resources;

(c) the miscellaneous land use permit regulations are consistent with the statutes the Department of Natural Resources relies upon for its authorization;

(d) the miscellaneous land use permit regulations are reasonably necessary to carry out the purpose of the statutes the Department of Natural Resources relies upon for its authorization;

(e) the miscellaneous land use permit regulations are reasonable and not arbitrary.

Thus, in accordance with AS 44.62.300, this court declares that the miscellaneous land use permit regulations (11 AAC 96.010-11 AAC 96.250) are valid.

Final Judgment, Chevron v. LeResche, No. 3AN 81-4154 CIV. (Alaska Superior Court, September 16, 1981).

An appeal to the Alaska supreme court was filed by Chevron on October 9, 1981, and that case is awaiting briefing, with Chevron's opening brief currently due on January 12, 1982.

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In the meantime, on September 2, 1981, Exxon Corporation filed a complaint in superior court for declaratory and injunctive relief to adjudicate the validity of the MLUP regulations. Exxon v. Katz, Alaska Superior Court No. 3AN 81-6041 CIV. In its complaint, and through its memoranda, Exxon seeks the invalidation of the MLUP regulations on the same grounds addressed by the superior court's final judgment in Chevron v. LeResche, with the additional claims that: (a) the MLUP regulations were not adopted in accordance with the procedures established in the Alaska Administrative Procedures Act; and (b) the MLUP regulations constitute an impermissible taking without just compensation under the Alaska and United States constitutions. Exxon also filed a motion for preliminary injunction seeking to permanently enjoin the state defendants from enforcing these regulations. The briefing in Exxon v. Katz, has been completed and oral argument has been scheduled for January 8, 1982.

Less than two months after Exxon's complaint, on October 29, 1981, Union Oil Company of California ("Union") also filed a complaint in the superior court for declaratory and injunctive relief seeking a declaration that the same amendments to the miscellaneous land use permit regulations challenged by Exxon and the conditions attached to Union's permits requiring the submission of certain geophysical exploration data and information are invalid. Union is also seeking an injunction against the Department's enforcement of these regulations. Union Oil Company of California v. State, Alaska Superior Court No. 3AN 81-7473 CIV.

In its complaint, Union seeks the invalidation of the MLUP regulations on four basic grounds: 1) they are outside the scope of the authority delegated to the Department of Natural Resources; 2) they are inconsistent with statutes relied upon for their adoption; 3) they were not properly noticed to the public under the Alaska Administrative Procedures Act; and 4) they were retroactively applied to Union's permit.

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The state defendants have denied Union's claims and have filed a third party complaint against ARCO Oil and Gas Company and ARCO Exploration Company for declaratory judgment because the ARCO companies and Union jointly conducted geophysical exploration under state permit which is subject to data submission requirements of the MLUP regulations. In their third party complaint, the state is seeking a judicial validation of the MLUP regulations on the same grounds Union has raised as bases for invalidation of the regulations, and other grounds.

Finally, on December 17, 1981, the Department of Natural Resources filed a complaint in the superior court for declaratory judgment against Shell Oil Company, Geophysical Service Incorporated, and Mobil Oil Corporation.^{1/} The Department's complaint seeks a declaration that amendments to the MLUP regulations and the conditions attached to the defendants' permits requiring the submission of certain geophysical exploration data and information are valid. In its action, the Department is seeking a judicial validation of the MLUP regulations on the same grounds now at issue in all of the above litigation.

Due to the near identity of issues raised by the parties in Exxon v. Katz, Union v. State, State v. ARCO, and State v. Shell, the state parties in those actions moved to consolidate those actions. Following an in-chambers conference with Judge Daniel Moore, only the Union v. State, State v. ARCO, and State v. Shell cases were ordered consolidated. (Judge Moore is assigned to all the MLUP cases in the superior court.) The Exxon v. Katz action will proceed inde-

^{1/} Only these parties were named because of their refusal to submit geophysical data and information acquired under state permit unless required to do so by a court. At the time this complaint was filed, the Department was unaware of any other companies refusing to comply with the MLUP regulations.

John W. Katz, Commissioner

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pendently of these cases, with oral argument to be held as scheduled on January 8, 1982.

Judge Moore indicated that a decision would be rendered in the Exxon v. Katz action within two weeks of oral argument. In the remaining consolidated actions, a motion for full summary judgment will be filed by the state parties during the week of January 11, 1982. If briefing occurs under the timing provisions of the Civil Rules, it is possible that oral argument may be held during the first or second week of February. Hopefully, these cases will reach the Alaska supreme court so that the court may consider them in tandem with the Chevron v. LeResche appeal before the court recesses for the summer.