

# COMMITTEE REPORT

## SENATE

FURTHER:

5/3/84

Date 5/30/84

Mr. President

The Committee on FINANCE considered CSHB 371(Fin)

royalty oil contracts and approving the sale of Prudhoe Bay royalty oil by the State of Alaska to the Tesoro Alaska Petroleum Company;

and <sup>afd.</sup> (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass *W.H. Resource Letter of Intent*
- do pass with attached amendment(s)
- replace with/or adopt CS for \_\_\_\_\_
- new title \_\_\_\_\_
- same title and recommends \_\_\_\_\_
- ~~and attached <sup>House Resource</sup> "LETTER OF INTENT"~~  NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

MEMBERS HAVING  
OTHER RECOMMENDATIONS

\_\_\_\_\_  
\_\_\_\_\_  
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\_\_\_\_\_  
Chairman

Chairman recommendation \_\_\_\_\_

Offered: 1/27/84  
Referred: Rules

Original sponsor: Rules/Governor

1 IN THE HOUSE BY THE FINANCE COMMITTEE  
2 CS FOR HOUSE BILL NO. 371 (Finance)  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 THIRTEENTH LEGISLATURE - SECOND SESSION  
5 A BILL  
6 For an Act entitled: "An Act relating to royalty oil contracts and approv-  
7 ing the sale of Prudhoe Bay royalty oil by the State  
8 of Alaska to the Tesoro Alaska Petroleum Company; and  
9 providing for an effective date."  
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:  
11 \* Section 1. The "Agreement for the Sale and Purchase of Royalty Oil  
12 between the State of Alaska and Tesoro Alaska Petroleum Company," dated  
13 December 9, 1983, for the sale of Prudhoe Bay royalty oil, is hereby approv-  
14 ed and ratified.  
15 \* Sec. 2. AS 38.05.183 is amended by adding a new subsection to read:  
16 (f) The commissioner may not enter into a contract for the sale  
17 of royalty oil unless the contract provides that any material amend-  
18 ment to the contract that appreciably reduces the consideration receiv-  
19 ed by the state requires prior approval of the legislature.  
20 \* Sec. 3. This Act takes effect immediately in accordance with AS 01.-  
21 10.070(c).

BC

Case 127  
original bill


LETTER OF INTENT  
FOR CSHB 371  
January 19, 1984

The House Resources Committee has considered CSHB 371, providing for approval of the Agreement between the State of Alaska and Tesoro Alaska Petroleum Company for the sale of a portion of Alaska's royalty oil. This Agreement must be approved by the legislature under the provisions of AS 38.06.055(a) which provides that "the commissioner of natural resources may not enter into a 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 under AS 38.05.183 without the prior approval of the legislature."


Section 19.1 of the Agreement provides that the Agreement may be "supplemented, amended or modified at any time, but only by written instrument duly executed by the parties to this Agreement." In making any such changes to the Agreement pursuant to this section, the Commissioner would be acting on behalf of the State of Alaska as one of the parties to the Agreement.


The Committee recognizes that a supplement, amendment, or modification of the Agreement could be a further "sale, exchange, or other disposition" within the meaning of AS 38.06.055(a). The Committee is also cognizant that pursuant to Section 20.1 of the Agreement, the Commissioner has the right to "grant" (consent to) an assignment of the Agreement.

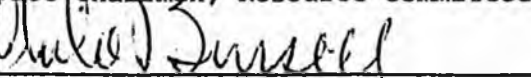
It is the intent of the Committee that it be understood that approval of CSHB 271 does not constitute prior approval of any supplement, amendment or modification or any assignment that would be a further "sale, disposition, exchange, or other disposition" within the meaning of AS 38.06.055(a) and that it is expected that any such action by the Commissioner must first be preceded by compliance with the procedures for obtaining the prior approval of the legislature.

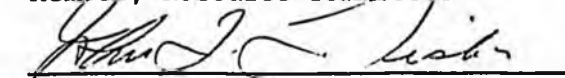
  
Representative John Ringstad  
Co-Chairman, Resource Committee

  
Representative Dick Shultz  
Co-Chairman, Resource Committee

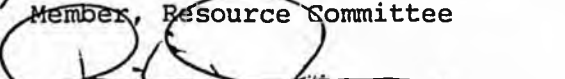
  
Representative Rick Uehling  
Vice-Chairman, Resource Committee

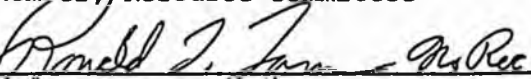
  
Representative John Cowdery  
Member, Resource Committee

  
Representative Charlie Bussell  
Member, Resource Committee

  
Representative John Liska  
Member, Resource Committee

Representative Anthony Vaska  
Member, Resource Committee

  
Representative Peter Goll  
Member, Resource Committee

  
Representative Ronald Larson  
Member, Resource Committee

adapted by House 7/6/84

STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

**REQUEST**

Bill/Resolution No.: CSHB 371(FIX)  
 Title: sale of Prudhoe Bay  
 royalty oil to Tesoro  
 Sponsor: Rules Committee  
 Requestor: Governor  
 Date of Request: 4-19-83

**FISCAL DETAIL**

Agency Affected: Natural Resources  
 Program Category Affected: Management of Energy Resources  
 ERU, Program or Subprogram(s) Affected: Oil and Gas Management

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
<b>OPERATING</b>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-

<b>CAPITAL</b>	-0-	-0-	-0-	-0-	-0-	-0-
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<b>REVENUE</b>						
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**FUNDING: (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

**SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:**

**ANALYSIS: Attach a separate page for analysis**

Prepared By: Sharon L. Barton Phone: 465-2400  
 Division: Commissioner's Office Date: 1-12-84

Approved by Commissioner: Mrs. D. Annal Deery Date: 1/12/84  
 Agency: Department of Natural Resources

Distribution (by Agency preparing fiscal note):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)

BILL SHEFFIELD  
GOVERNOR

*de*



HB 3 71

STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

April 19, 1983

The Honorable Joe L. Hayes  
Speaker of the House  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill which provides for legislative approval of a royalty oil contract between the state and Tesoro Alaska Petroleum Company for the sale of Prudhoe Bay royalty oil.

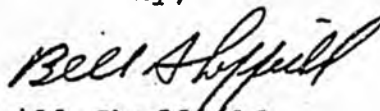
This contract is described in the findings entitled "Proposed Disposition of Royalty Oil, Tesoro Alaska Petroleum Company" issued by the Department of Natural Resources on March 16, 1983. Copies of these findings have been made available to the legislature and the public for review.

This contract is being submitted for legislative approval for two reasons. First, although this and the previous administration have consistently taken the position that the statutory requirement of legislative approval of royalty oil contracts is unconstitutional (AS 38.06.055), as a matter of comity I respect the legislature's desire to have a direct voice in major disposals of royalty oil. Therefore, this contract contains provisions requiring approval by the legislature before it becomes effective. Second, this bill would ratify the agreement for the sale of oil. This ratification would cure any procedural defect that may have occurred in the process of entering into this contract.

Although we believe that all necessary steps have been taken, the statutes and regulations governing the disposal of royalty oil represent often conflicting desires and goals, both procedural and substantive. For example, even if statutorily requiring legislative approval were constitutional, the present statutes provide, on the one hand, that the legislature is to approve the contract by enacting legislation (AS 38.06.055(a)), but, on the other

hand, they also provide that a report of the Royalty Board "shall be submitted for legislative review at the time of [sic] resolution for legislative approval of a proposed disposition of royalty oil and gas is introduced in the legislature" (AS 38.06.070(c)). Since legislative approval is required anyway as a matter of contract, I believe it only prudent to present this contract for legislative approval and ratification at this time.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill Sheffield".

Bill Sheffield  
Governor

STATE OF ALASKA LEGISLATIVE FISCAL NOTE

*Done w/ original bill*

Revision Date: \_\_\_\_\_

**REQUEST**  
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<b>CAPITAL</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>REVENUE</b>						

**FUNDING: (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
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<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

**SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:**

**ANALYSIS:** Attach a separate page for analysis

Prepared By: Sharon L. Barton Phone: 465-2400  
 Division: Commissioner's Office Date: 1-12-84

Approved by Commissioner: Wm D Arnold, Deputy Date: 1/12/84  
 Agency: Department of Natural Resources

Distribution (by Agency preparing fiscal note):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

May 29, 1984

The Honorable John Cowdry  
Alaska State House of Representatives  
Pouch V  
Juneau, Alaska 99811

Re: Tesoro Royalty Oil Contract

Dear Representative Cowdry:

This letter is in response to your request for an explanation of the difference between (1) the legislature conditionally approving a contract through amending the approval bills to attach a condition that must be satisfied before the contract becomes effective, which both we and the legal division of the legislative affairs office agree casts serious doubt upon the approval of the contract; and (2) the administration amending the contracts prior to final legislative approval. As with the local hire amendment, which was signed prior to the hearings in House Finance, and the proposed "Charter" amendment, which was signed on May 29 prior to its hearing in Senate Finance, amendments agreed to by the parties prior to final legislative approval become legitimate parts of the contract.

Whether legislative approval is seen as a matter of contract or as a matter of statutory law (which the Attorney General's Office believes is unconstitutional), legislative approval must be unconditional. This is due to the rule that a conditional approval constitutes a rejection of the contract as presented. Therefore, if the legislature attempted to condition its approval upon the occurrence of some event still to occur (i.e., by amending the agreement to attach a new provision), the legislature would be rejecting the contract as it was presented to that legislature.

On the other hand, the contract can be amended by the parties (here the administration and Tesoro), as long as that amended contract was approved by both the House and the Senate. Thus, even though the "Charter" amendment does not give rise to a different bill, the bill would still have to go back to the House for concurrence because there was a material change in the agreement after the House had already given its approval. In other words, the House had approved a different contract, and now

BILL SHEFFIELD, GOVERNOR

REPLY TO:

1031 W 4th AVENUE  
SUITE 200  
ANCHORAGE, ALASKA 99501  
PHONE: (907) 275-3550

1st NATIONAL CENTER  
100 CUSHMAN ST.  
SUITE 400  
FAIRBANKS, ALASKA 99701  
PHONE: (907) 452-1568

POUCH K - STATE CAPITOL  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3600

The Honorable John Cowdry  
Alaska State House of Representatives

May 29, 1984  
Page 2


needs to approve the amended contract. Once the House concurs in the amended contract, however, then both the House and the Senate have approved that amended contract by legislation, and both the contractual and statutory requirements necessary to effectuate the agreement have been satisfied.

Therefore, in one instance the legislature by conditionally accepting the contract is also conditionally rejecting a contract, and thus no approval has occurred. In the other instance, the parties by amending the contract have entered into a different agreement. But if that different agreement is approved by both the House and the Senate, then the requisite approvals have occurred and the agreement becomes effective upon signature of the bill by the governor. Therefore the parties to the agreement can materially amend the contract as long as those amendments are concurred in by both houses by action taken after the amendment of the contract.

If you have any questions, please do not hesitate to call.

Sincerely,

NORMAN C. GORSUCH  
ATTORNEY GENERAL

By:   
Robert M. Maynard  
Assistant Attorney General

RMM:jf

Amendment to the Agreement for the Sale and Purchase of Royalty Oil between the State of Alaska and Tesoro Alaska Petroleum Company (for the sale of Prudhoe Bay Royalty Oil), dated December 9, 1983:

(a) In order to induce Seller to enter into this Agreement and to perform its respective obligations from time to time hereunder, Purchaser represents and warrants to Seller that, as of the expected dates of delivery of royalty oil under this Agreement, no person(s) or entity that controlled the Charter Company as of July 1, 1981 (including, but not limited to, Mr. Raymond K. Mason) (collectively, together with the Charter Company, "Charter"), nor any persons or entities that control, are controlled by, or are under common control with, Charter as of such expected dates of delivery will own or hold any beneficial equity or ownership interest in Purchaser that was acquired through a transaction that included Purchaser or Tesoro Petroleum Corporation as a party and did not involve any public offering as defined in Section 4(2) of the Securities Act of 1933 (a "Prohibited Interest"). As used in this paragraph, the word "control" and its correlatives "controlling" and "controlled" refer to the power, directly or indirectly (including through one or more controlled entities) to cause the direction of the operations or management of another entity, whether through common management, majority ownership, by contract or otherwise. It shall be a condition precedent to Seller's performance of its respective obligations under this Agreement generally and, specifically, to deliver any royalty oil hereunder that the foregoing representation and warranty shall be true, complete and accurate on the date of such performance. Such representation and warranty shall be deemed affirmed by Purchaser in each notice to Seller requesting delivery of royalty oil and by Purchaser's acceptance of each such delivery, as if made by Purchaser and effective as of the date of each such notice and acceptance. In addition, Purchaser shall from time to time, upon written request from Seller, certify to Seller in a written instrument signed by Purchaser's chief executive officer, that to the best of Purchaser's actual knowledge, no Prohibited Interest exists as of the date of such certificate.

(b) If from time to time (1) Seller should have notice or knowledge of the existence of a Prohibited Interest, or (2) Purchaser should fail to deliver to Seller the certificate described in the preceding paragraph within 15 days after Seller's written request therefor, Seller will in each instance suspend deliveries of royalty oil hereunder by written notice to Purchaser, effective as of a date set forth in such notice but not later than the date seven calendar months after the date of such notice. No such suspension shall terminate this Agreement, or extend the term hereof, or operate to excuse or discharge Purchaser's obligations to accept and pay for deliveries of

*Jew*  
5-29-84  
*CM*

royalty oil prior to the effective date of such suspension or after such suspension is terminated by Seller. Seller's failure to suspend, or delay in suspending delivery of royalty oil shall not be deemed, or operate as, a waiver to exercise such right subsequently in the same or any other instance.

(c) If, during the pendency of any notice period with respect to any such suspension or during the period of such suspension, Purchaser shall certify to Seller in a written instrument signed by Purchaser's chief executive officer that any Prohibited Interest no longer exists and provide any explanatory information confirming such fact that Seller may reasonably request, Seller shall terminate such notice and suspension by written notice to Purchaser, effective as of a date set forth in such notice but not later than the date seven calendar months after the date of such notice. On and as of such effective date, Seller shall deliver, and Purchaser shall accept and pay for, royalty oil pursuant to such terms and conditions as would otherwise pertain hereunder as if such notice of suspension and suspension had not occurred.

*Esther C. Wennicke*  
Commissioner  
Department of Natural Resources

*MAY 29, 1984*  
Date

*William J. Cook*  
Attorney-in-Fact  
Tesoro Alaska Petroleum Company

*MAY 29, 1984*  
Date

**COMMITTEE REPORT**  
**SENATE**

2/16/84

FURTHER: FINANCE

Date \_\_\_\_\_

Mr. President

The Committee on RESOURCES considered CSHB 371(Fin)

royalty oil contracts and approving the sale of Prudhoe Bay royalty oil by the State of Alaska to the Tesoro Alaska Petroleum Company; efd.

and (a majority of the committee) (the committee) reports it back with the following recommendations:

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MEMBERS SIGNING  
DO PASS

MEMBERS HAVING  
OTHER RECOMMENDATIONS

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\_\_\_\_\_  
Chairman

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Chairman recommendation