SB

243

STATE OF ALASKA
THE LEGISLATURE

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

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May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

House Judiciary.

1988 - January 20

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 5/4/87 5-DAY NOTICE
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER:

**FISCAL NOTE(S) ATTACHED _____ **
IN ACCORDANCE WITH AS 24.08.035
(see below)

4/8/87

DATE TURNED INTO OFFICE 5/5/87

Mr. President:

FINANCE Committee considered SB 243

appropriating all proceeds of the Dinkum Sands Case to the budget reserve fund; efd.

and recommended:

[ ] replace with CS _____ [] same title
[] new title

[ ] attached amendment(s) and

[✓] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[ ] further referral to _____

[ ] letter of intent adopted and attached

** Committee [ ] attached or [✓] adopted fiscal note(s)
[✓] zero [ ] fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

Kim Elton
Kirk Oveson (Do Pass)
Willie Hensley
Jan Faithful
Arliss Sturgulewski
_____
_____

John Binkley Do Pass
Chairman signature and recommendation

[ ] Committee Backup Attached

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version : SB 243
Publish Date :

REQUEST:

Revision Date:
Agency Affected : Department of Revenue
Title : Appropriating all proceeds of Dinkum Sands Case to budget reserve fund
BRU :
Sponsor : Senators Bennett & Faiks
Components :
Requestor :

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL		-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by : Senator Johne Binkley, co-chairman
Phone : 465-4985
Division : Senate Finance Committee
Date : 5/5/87

Approved by Commissioner :
Date :
Agency :

Distribution (by preparer):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

DRAFT BUDGET BRIEFING DOCUMENT
United States v. Alaska, No. 84 Original (Dinkum Sands)

Synopsis

For FY 89 the Department of Law seeks $700,000 for the Dinkum Sands case, the case with perhaps the greatest long-term revenue potential for the state. As of September 30, 1987, escrowed funds from the lands at issue in the case (lease bonuses and rentals plus interest) totaled $1,176,119,256.28. In addition, each of the disputed land leases entitles the owner (either the United States or Alaska, as ultimately adjudicated in the action) to a sliding scale production royalty of between 16 2/3 percent and 65 percent of the oil and gas ultimately produced.

Background

This case presents three separate sets of issues relating to the ownership of submerged lands offshore Alaska's North Slope. The Submerged Lands Act of 1953, 43 U.S.C. 1301 et seq., made applicable to Alaska in section 6(m) of the Alaska Statehood Act, granted to the state the submerged lands within its seaward boundaries. As a general rule, the boundaries are three geographic miles seaward of the state's "coast line," defined as "the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters."

In 1979, the state and federal governments desired to lease lands offshore the North Slope, but could not agree on the application of the Submerged Lands Act to the area. An action to determine title was filed under the United States Supreme Court's original jurisdiction, and an interim agreement was entered permitting leasing of the lands pending final adjudication of ownership. The case was referred by the Court to a Special Master, J. Keith Mann, the Academic Dean of Stanford Law School, for trial and a recommended decision. The Supreme Court, however, will make the final adjudication.

A total of fifteen separate and discrete legal questions have been identified by the parties as requiring resolution. However, they can be separated into three basic categories: (1) the "enclave issues;" (2) is Dinkum Sands an island?; and (3) counterclaim issues. Each category will be described in turn.

1. The "enclave issues." These questions relate to application of the Submerged Lands Act to chains of near-shore barrier islands. The United States contends that the coast line of the mainland and of each individual island should be used to generate the three-mile lines delimiting Alaska's submerged land ownership. Where a barrier island chain is more than six miles

offshore, which is the case directly offshore Prudhoe Bay, this "strict application of the method of arcs and circles" would result in federal ownership of the "enclaves" between the state-owned three-mile belts measure from the mainland and the individual islands. The state contends that, where the islands in a chain are less than ten miles apart (as they are along most of the North Slope, including offshore Prudhoe Bay), "straight baselines" connecting the endpoints of the islands constitute the seaward limit of inland waters and therefore are part of the state's coast line, and the state's three-mile belt should be measured from those straight baselines and only the seaward shore of the islands, with the state owning all of the lands between the mainland and the islands, including the disputed "enclaves."

In addition, section 2 of the Statehood Act provides that the state "shall consist of all the territory, together with the territorial waters appurtenant thereto, now included in the Territory of Alaska." The state contends that the United States considered all such "enclaves" as underlying territorial waters at the time of Alaska's admission, and therefore they were within our seaward boundaries on the date of statehood and state ownership accordingly vested at that time. The United States disagrees.

On these issues, we had to research and prepare a detailed chronology of the United States' maritime delimitation practice, both domestic and in international relations, to show that the United States had never used strict application of the method of arcs of circles until long after Alaska's admission. The results of our research are summarized on the attached graphic timeline, which shows that the United States affirmatively rejected that method on two occasions, once before and once after Alaska's admission, and did not employ it for either domestic Submerged Lands Act purposes or in its foreign relations until long after our rights either vested or did not vest. We also had to prepare expert witnesses on the application of straight baselines to geographic situations like that presented offshore the North Slope, and depose and cross-examine expert witnesses called by the United States.

If the state prevails on any of the "enclave issues" under any theory, we will receive virtually all of the escrowed funds and will be entitled to production royalties from virtually all of the disputed lands currently under lease if commercial production ever commences.

2. Is Dinkum Sands an island? Right in the middle of the barrier island chain offshore Prudhoe Bay is a sand and

gravel formation named Dinkum Sands. Approximately 25 percent of the escrowed funds and potential production royalties are attributable to the lands within three miles of Dinkum Sands. Ownership of these disputed lands turns on whether Dinkum Sands is or is not above mean high tide -- i.e., whether it is an island. If it is, the state owns the disputed lands; if it is not, the United States owns them (unless the state prevails on the "enclave issues," in which case the state would own them irrespective of Dinkum Sands' status as an island).

In 1980-81, the state and federal governments collectively spent approximately $5 million to monitor Dinkum Sands and determine whether it is or is not above the level of mean high tide. The data showed that, at least during that period, it ranged between 3 inches and two feet below the level of mean high tide. Independent state monitoring in 1983, however, found it between 3 inches and 3 feet above the level of mean high tide. Moreover, the value (datum) for mean high tide was developed from only 12 months of observations, while 19 years of observations are required for a truly accurate calculation of that datum. Finally, it was discovered that the high point of the feature migrates as a result of geomorphologic processes (e.g., ice push; storm surge; variations in sediment transport; etc.) and is dependent on subsurface incorporated "annual ice" lenses which

melt every year. The United States claims that this "lack of permanence" as to both horizontal location and vertical elevation disqualifies it as an island.

On this issue, we were required to prepare expert witnesses on barrier island formation, computation of the tidal datum, application of that datum to Dinkum Sands, geomorphologic processes in the Arctic, historic mapping and charting of the feature, and depose and cross-examine the federal government's expert witnesses in these areas as well. In addition, we had to identify percipient eyewitnesses who had visited the area and could relate their personal observations, and depose and cross-examine both the federal government's eyewitnesses and eyewitnesses presented by the Inupiat Community of the North Slope (ICAS) and Ukpeagvik Inupiat Corporation (UIC). (ICAS and UIC had been permitted to intervene pending resolution of their claim that ANCSA did not extinguish their aboriginal title to the outer continental shelf. Under their theory, this dispute is between Alaska and the Inupiats. Their claim now has been denied, and they are no longer parties to the case.)

3. Counterclaim issues. When the state filed its answer, we also filed a counterclaim against the United States with respect to four issues: (1) Whether the pre-statehood withdrawal

and reservation of Naval Petroleum Reserve No. 4 (Pet. 4, now the National Petroleum Reserve Alaska or NPRA) defeated Alaska's title to the submerged lands within its exterior boundaries; (2) whether the pre-statehood withdrawal and reservation for the Arctic National Wildlife Refuge (ANWR) defeated the state's title to the submerged lands underlying the coastal lagoons between the Canning River and the Canadian border; (3) whether the 1975 extension of the ARCO dock is part of the state's coast line; and (4) whether the southern portion of Harrison Bay is a juridical bay and therefore inland waters of the state.

There are no escrowed funds dependent on the outcome of these issues, and it appears that the ultimate value of the lands at issue under these questions does not approach that of the lands at issue under the first two sets of issues (although the ANWR lagoon lands appear to have significant potential). Accordingly, we will not discuss the parties' various legal contentions.

Current Status

All of the issues have been fully tried, briefed and argued before the Special Master, and we are awaiting his report and recommended decision. He has given no indication when his

report will be finalized. We are pressing him to complete it, although we must do so with caution since we do not want to prejudice our case by offending him.

In the meantime, however, cases involving other states in which similar issues are presented require continued activity. The most significant of these is a case involving the State of Mississippi which presents issues similar to the "enclave issues" described above. We are reluctant to have the Supreme Court decide the issues, the most significant monetarily in our case, only on the basis of facts and arguments presented by Mississippi.

Once the Special Master's report is filed with the Supreme Court, either party may file "exceptions" with the Court -- i.e., a brief arguing why the Special Master's recommended decision should not be accepted. The other party may file a response, in which case the matter is set on for argument. It is expected that either the United States or the state, or possibly both, will file exceptions. From the time exceptions are filed, it will probably take between eight and twelve months for a final ruling by the Court, with a final decree entered shortly thereafter.

Budget

The $700,000 expenditure proposed for FY 89 consists of the following:

Outside counsel (Washburn & Kemp)	$200,000
Preparation of briefs	$ 25,000
Alaska's share of Special Master's costs and fees	$400,000
Contingency (other cases, etc.)	$ 75,000
TOTAL	$700,000

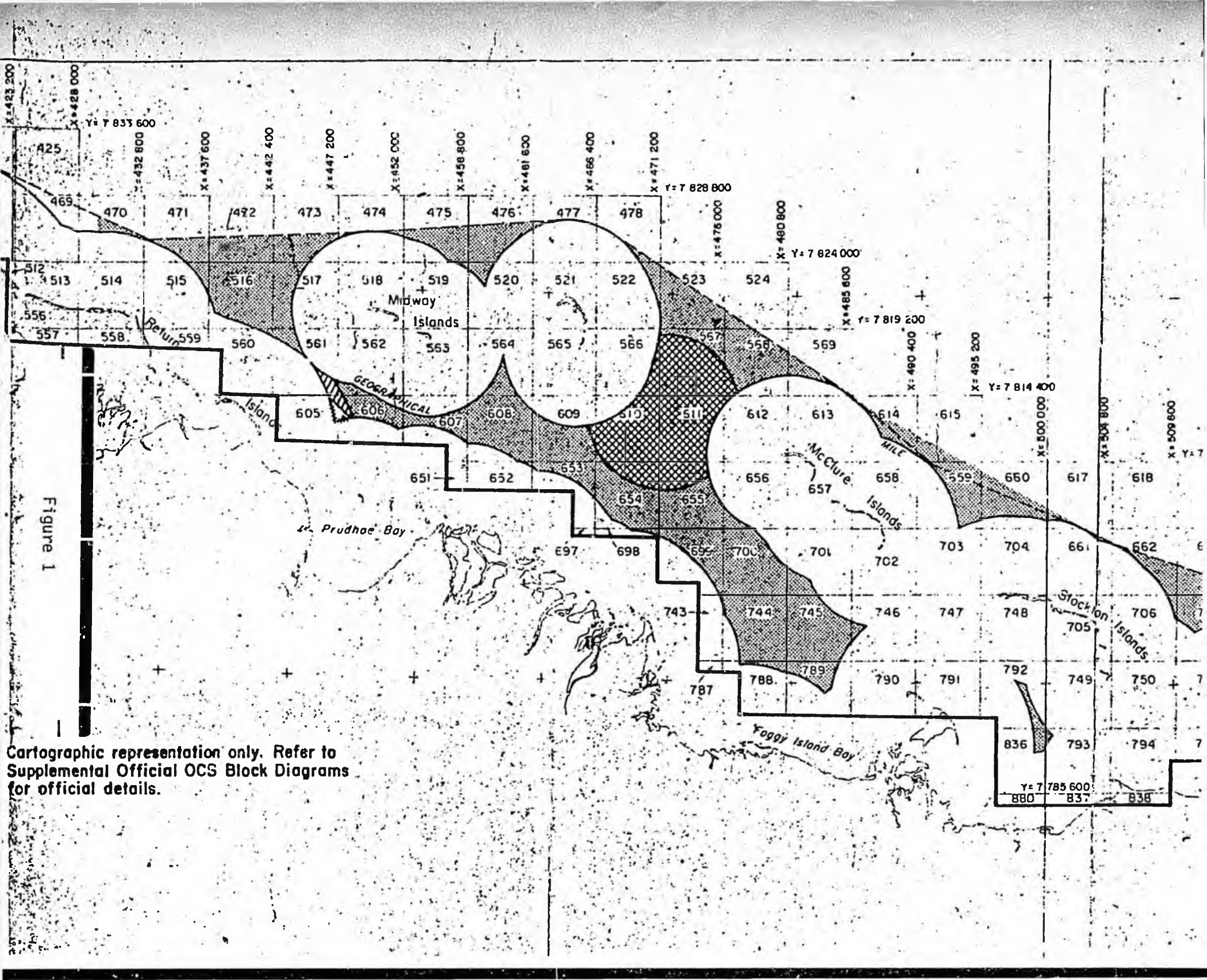


Figure 1

Cartographic representation only. Refer to Supplemental Official OCS Block Diagrams for official details.

Figure 2

STRICT APPLICATION OF 3 MILE ARCS FROM ART. 3 "NORMAL BASELINE" (PRESENT U. S. POSITION)

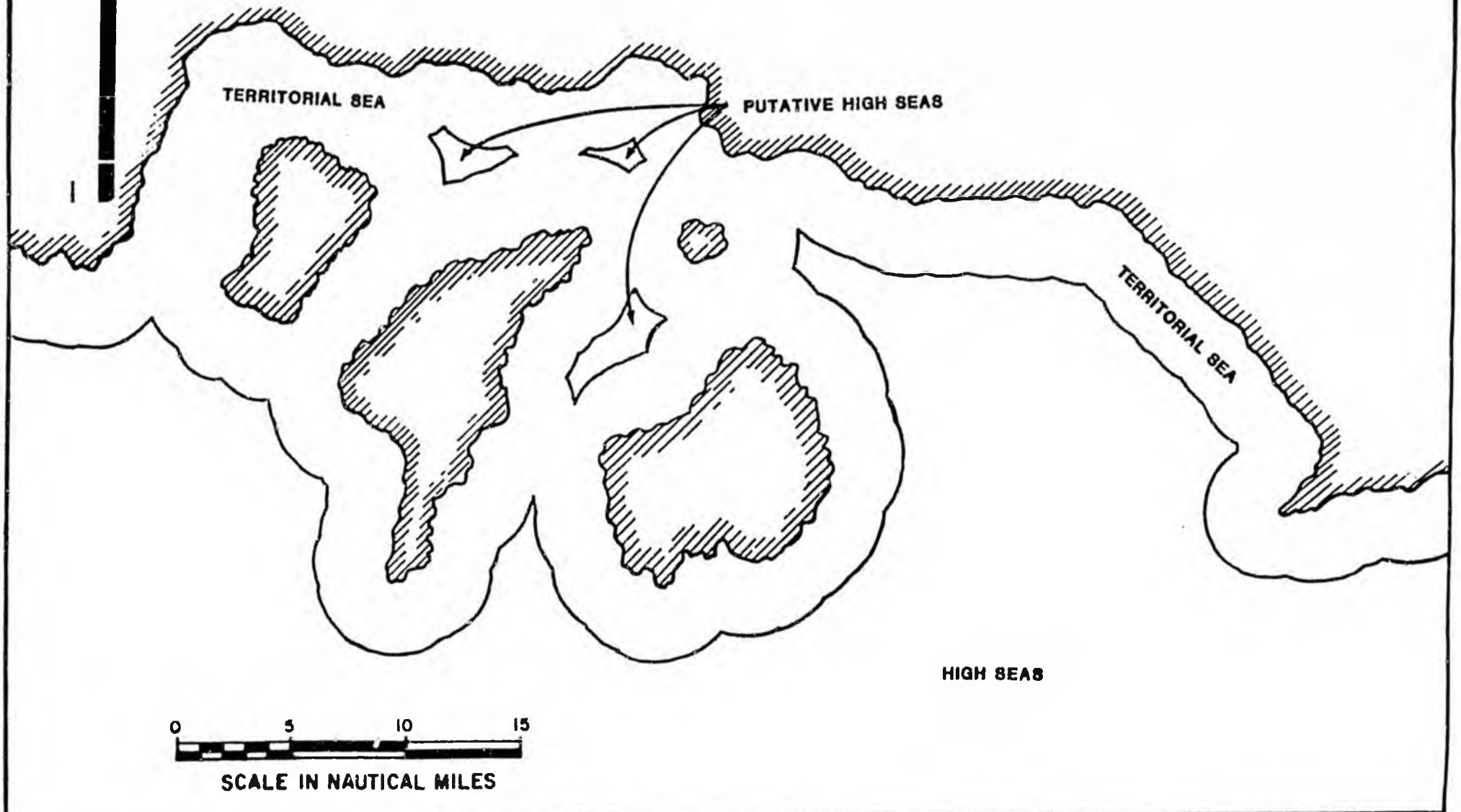


ILLUSTRATION OF THE 10 MILE RULE

(A BASELINE RULE)

Figure 3

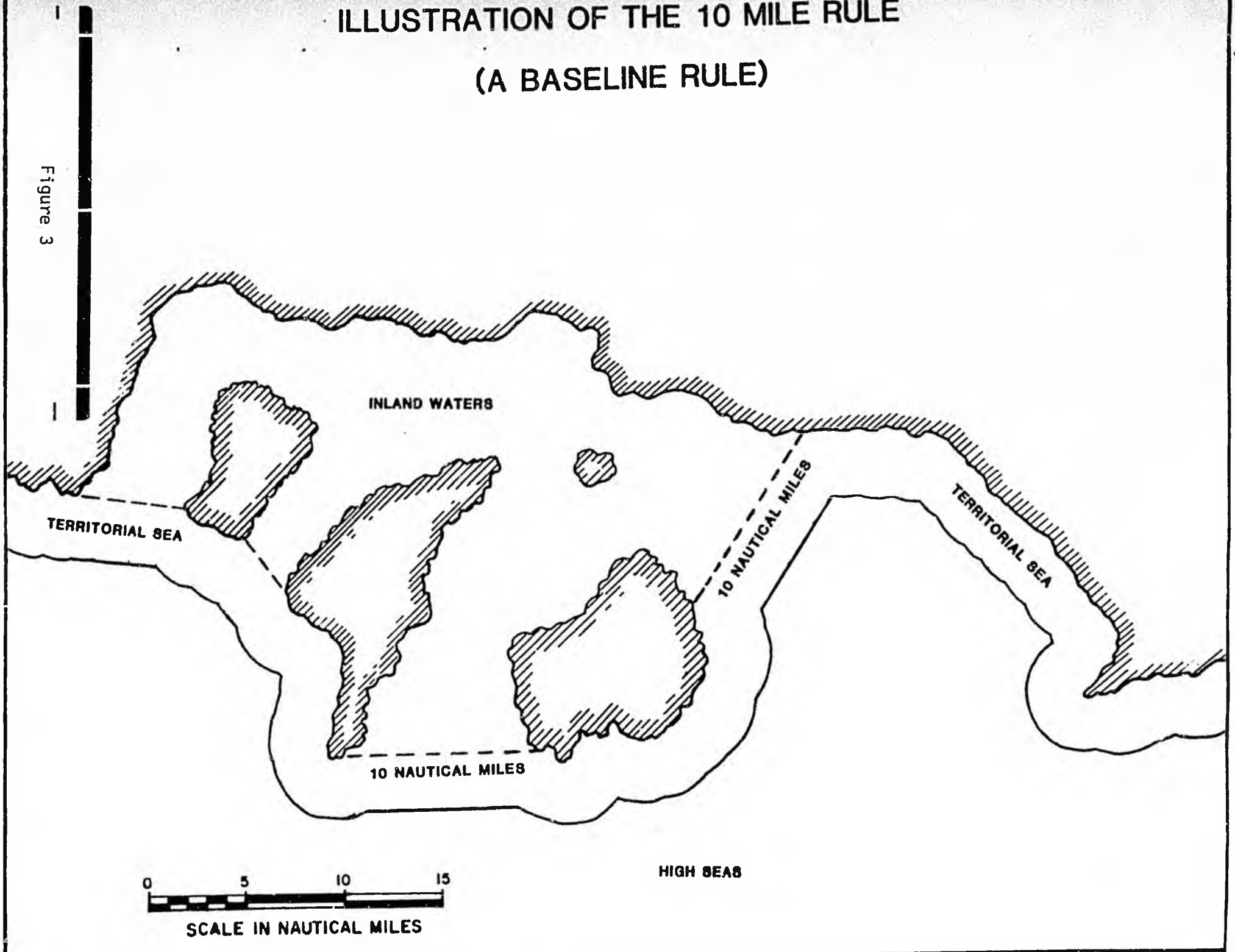
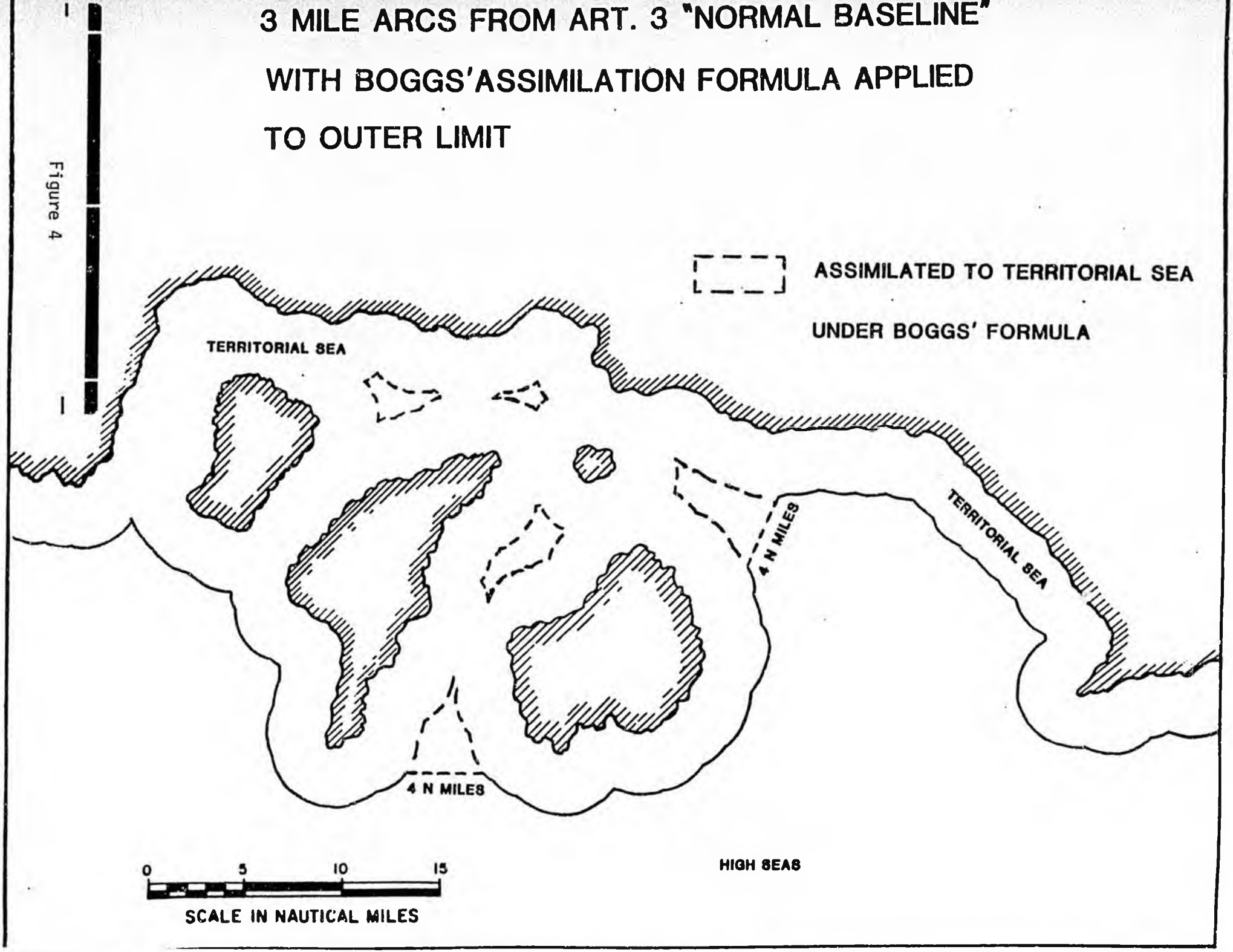


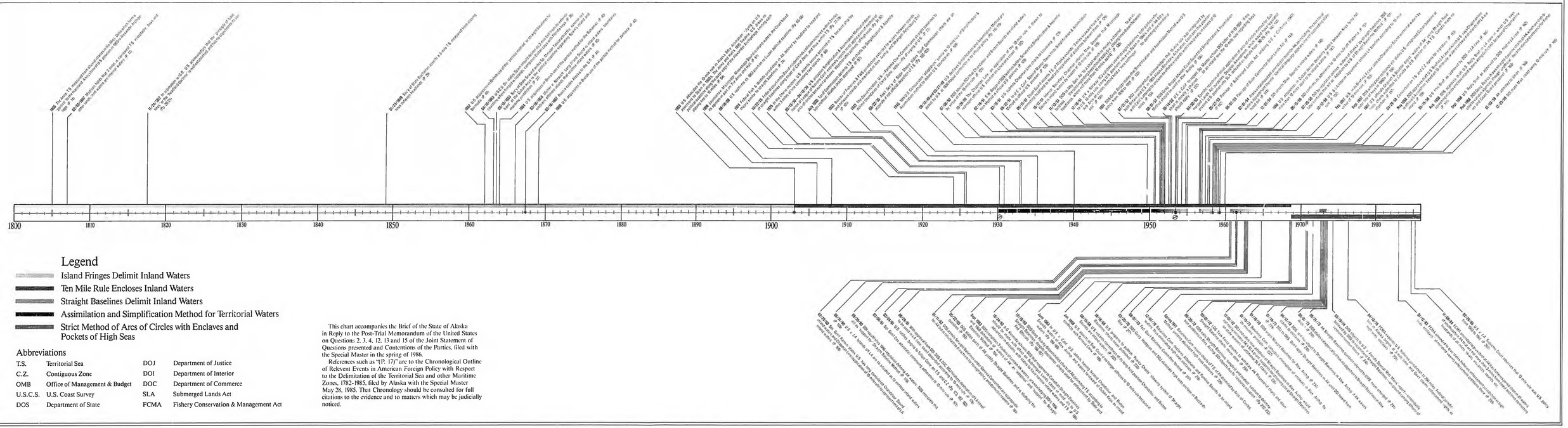
Figure 4

3 MILE ARCS FROM ART. 3 "NORMAL BASELINE" WITH BOGGS' ASSIMILATION FORMULA APPLIED TO OUTER LIMIT



United States v. State of Alaska
No. 84, Original
October Term, 1985, Before The Special Master

U.S. Baselines and Delimitation Practice



Legend

- Island Fringes Delimit Inland Waters
- Ten Mile Rule Encloses Inland Waters
- Straight Baselines Delimit Inland Waters
- Assimilation and Simplification Method for Territorial Waters
- Strict Method of Arcs of Circles with Enclaves and Pockets of High Seas

Abbreviations

T.S.	Territorial Sea	DOJ	Department of Justice
C.Z.	Contiguous Zone	DOI	Department of Interior
OMB	Office of Management & Budget	DOC	Department of Commerce
U.S.C.S.	U.S. Coast Survey	SLA	Submerged Lands Act
DOS	Department of State	FCMA	Fishery Conservation & Management Act

This chart accompanies the Brief of the State of Alaska in Reply to the Post-Trial Memorandum of the United States on Questions 2, 3, 4, 12, 13 and 15 of the Joint Statement of Questions presented and Contentions of the Parties, filed with the Special Master in the spring of 1986.

References such as "(P. 17)" are to the Chronological Outline of Relevent Events in American Foreign Policy with Respect to the Delimitation of the Territorial Sea and other Maritime Zones, 1782-1985, filed by Alaska with the Special Master May 28, 1985. That Chronology should be consulted for full citations to the evidence and to matters which may be judicially noticed.

#5

No. 84, Original

In the Supreme Court of the United States

OCTOBER TERM, 1979

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF ALASKA

BEFORE THE SPECIAL MASTER

JOINT STATEMENT OF QUESTIONS PRESENTED AND CONTENTIONS OF THE PARTIES

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In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 84, Original

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF ALASKA

BEFORE THE SPECIAL MASTER

JOINT STATEMENT OF QUESTIONS PRESENTED AND CONTENTIONS OF THE PARTIES

INTRODUCTION

1. The United States and the State of Alaska jointly submit this statement of the questions presented by the Complaint of the United States and the Counterclaim of Alaska in this case, together with the contentions of the parties on each question. The submission is designed to aid the Special Master in identifying, with more particularity than do the pleadings, the issues in dispute and the legal theories

upon which each litigant relies. At the same time, the parties are making disclosure to each other and intend hereby to restrict themselves to the contentions outlined and those fairly comprised within the present statement.

2. To aid the Special Master in identifying the disputed submerged lands in what is referred to herein as "the leased area," the parties now tender a copy of the map annexed to an Interim Agreement entered on October 26, 1979 (Appendix I, *infra*). In accordance with the provisions of that Interim Agreement, the parties are bound to accept the low-water lines and the three-mile projections drawn on that map as fixed "for all relevant periods in the past and through the date of a final judicial determination" in this case. So, also, the map has been agreed to accurately indicate, for all relevant times, the location of the Arco Pier and the formation known as Dinkum Sands and the three-mile projections from those features. There is, however, no agreement as to the controlling date or dates for determining whether Dinkum Sands is part of the coast of Alaska and that matter may be disputed.

The parties have not reached agreement on a single definition and depiction of the coastline off the Petroleum Reserve and the Arctic Wildlife Range, effective for all relevant periods, but expect to do so. At that time, we will submit appropriate maps depicting the disputed submerged lands in those areas.

3. We also append, for the convenience of the Special Master, the relevant provisions of law re-

ferred to: portions of the Submerged Lands Act of 1953, made applicable to Alaska by the Alaska Statehood Act in 1959 (App. A); pertinent Articles of the international Convention on the Territorial Sea and the Continguous Zone (App. B); a Regulation of the United States Corps of Engineers relating to permits for structures affecting the limits of the territorial sea (App. C); the Emergency Permit relating to the Arco Pier extension (omitting irrelevant provisions) (App. D); Executive Order No. 3797-A of February 27, 1923, creating Naval Petroleum Reserve No. 4 (App. E); the Notice of Proposed Withdrawal and Reservation dated January 14, 1958, reciting an application to create the Arctic National Wildlife Range (omitting irrelevant land descriptions) (App. F); Public Land Order 2214, dated December 6, 1960, establishing the Arctic National Wildlife Range (with like deletions) (App. G.); and a Regulation of the Department of the Interior relating to the effect of applications for withdrawal of public lands (App. H).

QUESTIONS PRESENTED AND CONTENTIONS

Question 1: Should Alaska's Motion for Leave to File its Counterclaim be granted?

The *United States* and the *State of Alaska* both support the Motion. Plainly, the Court has jurisdiction to entertain the Counterclaim. 28 U.S.C. 1251 (b)(2). The sovereign immunity of the United States in respect of a claim of this kind has been waived by 28 U.S.C. 2409a and the waiver embraces

an original action in this Court. *California* v. *Arizona*, 440 U.S. 59 (1979). The exercise of that jurisdiction in this instance is appropriate, in the view of both parties. The Court has intimated that disputes under the Submerged Lands Act between the United States and a State should be begun here. *United States* v. *Alaska*, 422 U.S. 184, 186 n.2 (1975); *United States* v. *Louisiana*, 363 U.S. 1, 85 n.143 (1960). With the sing[illegible] exception of the earlier *Alaska* case just cited, every such controversy has been resolved in an original action in this Court—with or without the assistance of a Special Master. In this very case, the Court has granted the United States leave to file its original Complaint and there is no reason why Alaska's Counterclaim should not receive like treatment. Although the issues raised by the Counterclaim are independent of those presented by the Complaint, they arise under the same statutory and constitutional provisions and involve offshore submerged lands adjacent to those that are the subject matter of the Complaint. Judicial economy is served by consolidating the several submerged lands disputes off the North Slope of Alaska in a single case before the same tribunal.

In the circumstances, both parties urge the Special Master to proceed to hear the Counterclaim on the merits, without first submitting an interim Report to the Court on the Motion for Leave to File and awaiting the Court's final ruling. No doubt, the Master is free to seek the Court's decision now. But, in the

present situation, that would substantially delay proceedings and is, in our view, entirely unnecessary. The Court's initial Order of February 19, 1980 in this case expressly authorizes the Special Master to deal with "additional pleadings." The subsequent Order referring the Motion for Leave to File Counterclaim may be read as indicating the Court's view that such matters are for the Special Master to determine, subject only to the Court's ultimate review when the Master has fully concluded his task. That is the approach recently followed by Judge Harper, as Special Master, in *California* v. *Arizona and United States*, No. 78, Original, in which he permitted Arizona to file a Cross-Claim against the United States and is hearing it on the merits without any Report to the Court. A like procedure was adopted by Judge Tuttle, as Special Master, in *Arizona* v. *California*, No. 8, Original, when, without submitting the matter to the Court, he permitted five Indian Tribes to intervene, and the attempt to obtain interlocutory review of his action was rejected by the Court Order of January 7, 1980. Here, moreover, the acquiescence of all parties and the obvious appropriateness of entertaining the Counterclaim leave no doubt as to the Court's ultimate ruling.

Question 2: Should the extent of Alaska's submerged lands in the leased area be determined on the basis of "straight baselines?"

Under the doctrine of *Pollard's Lessee* v. *Hagan*, 44 U.S. (3 How.) 212 (1845), as explained in later cases, every State, upon its admission to the Union, is vested by the Constitution with title to the beds of all inland navigable waters within State boundaries which previously have not been appropriated by the United States or alienated to others. This includes submerged lands underlying offshore waters that are properly characterized as "inland." The Submerged Lands Act (unnecessarily, it may be) confirms this grant, with a like exception. In the leased area (unlike the situation off the Petroleum Reserve, see Question 8, and the Arctic Wildlife Range, see Question 9), there is no claim that any "inland" offshore submerged lands were reserved or alienated before Alaska became a State. Accordingly, Alaska is entitled, *inter alia*, to all submerged lands underlying "inland" waters off the shore of the State.

Additionally, the Submerged Lands Act grants to coastal States the offshore submerged lands within their "boundaries," as there defined. There is no dispute that this grant includes lands within three miles of the "coast line," defined as "the line of low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters." The parties do not agree, however, whether, in a situation like that presented here, the so-called "3-mile rule" excludes areas shoreward of a fringe of islands which

belong to the State. At all events, in measuring the Submerged Lands Act grant to Alaska, it may be relevant to fix the "seaward limit of inland waters."

The parties agree that the principles of the international Convention on the Territorial Sea and the Contiguous Zone have some application to this determination. However, they disagree on the way those principles should be applied to the issues presented in this case and on the extent to which those principles, as applied by the United States in its dealings with other countries, control resolution of these issues.

The international Convention permits, but does not require, a coastal nation to draw "straight baselines" joining offshore islands and to employ those lines as its "coastline" for purposes of marking the seaward limit of its inland waters, when a not too distant "fringe" of barrier islands shields its mainland coast. That is the situation in the leased area. However, the United States has chosen not to draw straight baselines in this area (or any other). The question is whether this international stance governs this domestic controversy in the particular circumstances presented here.

The *United States* contends that the decision of its Executive Branch not to draw straight baselines to mark the seaward limit of its inland waters for international purposes is controlling in this litigation, at least in the absence of any indication that it had earlier adhered to a firm and continuing international policy to enclose inland waters within bar-

rier islands and later abandoned that stance solely to gain advantage in a lawsuit to the detriment of a State (like Alaska), which is denied. Accordingly, the United States submits that the disputed lands which Alaska claims as being within boundaries determined on the basis of straight baselines do not belong to Alaska.

The *State of Alaska* contends (1) that the present international stance of the United States in this respect is not binding in this litigation; (2) that, before Alaska was admitted to the Union, the United States determined that it would be appropriate to delimit inland waters in the leased area by drawing straight baselines; (3) that Alaska entered the Union with its seaward boundaries in the leased area determined on the basis of straight baselines; and (4) that the United States is bound by that determination. Accordingly, Alaska submits that the submerged lands which it claims as being within boundaries determined on the basis of straight baselines belong to it.

Question 3: Do the submerged lands between the mainland and the barrier islands in the leased area (including areas more than three miles from any upland) belong to Alaska on the ground that they underlie inland waters?

If the "straight baseline" contention is not accepted, the question remains whether all the submerged lands shoreward of the barrier islands in the leased area nevertheless belong to Alaska on the ground that they underlie "inland" waters of the State.

The *United States* contends that the submerged lands shoreward of the barrier islands in the leased area do not underlie inland waters, but, rather, areas of territorial sea and high seas, and that, insofar as those lands are more than three miles from the coast line of the mainland or any island, they do not belong to Alaska. It subm. 's (1) that, with the single exception of so-called "historic waters", the only waters (at least in the case of Alaska) that qualify as inland for purposes of the *Pollard* rule or the Submerged Lands Act are those that satisfy the criteria of the international Convention; and (2) that the waters between the mainland and the barrier islands in the leased area—whether or not the Dinkum Sands formation is a part of Alaska's coast line—do not satisfy the Convention criteria for inland waters (except under a straight baseline theory, which the United States contends is inapplicable; see Question 2). To the extent that the criteria of the international Convention do not control resolution of this issue, the United States denies that Congress considered the waters in question as inland.

The *State of Alaska* contends that the submerged lands between the mainland and the barrier islands in the leased area underlie waters which Congress considered inland waters at the time Alaska was admitted to the Union. Accordingly, Alaska submits (1) that those lands vested in Alaska at the moment of statehood under the *Pollard* rule—whether or not the Dinkum Sands formation is a part of Alaska's coast line (see Question 5), but all the more so if it

is—and cannot be divested by any subsequent change of law; and (2) that the same result obtains under the Submerged Lands Act. Alternatively, to the extent that the criteria of the international Convention govern this domestic controversy (which is denied), Alaska contends that the waters in question qualify as inland under the Convention.

Question 4: If they do not underlie inland waters of Alaska, do the submerged lands between the mainland and the barrier islands in the leased area which are more than three miles from any upland, but are totally surrounded by submerged lands owned by Alaska, belong to Alaska on the ground that they lie within Alaska's most seaward contiguous boundary?

As already noted (see Question 2), the Submerged Lands Act granted to Alaska the submerged lands within its "boundaries," as defined in the Act. There is no dispute that this grant includes lands within three miles of Alaska's coast line, including (at minimum) the lands within three miles of the mainland and a three-mile belt around islands. A literal application of a three-mile limitation in the leased area produces a small "enclave" of submerged lands totally surrounded by submerged lands which both parties agree belong to Alaska, and another larger such enclave if the Dinkum Sands formation is an island forming a part of Alaska's coast line (see Question 5). The question is whether, in this situation, such enclaves should be treated as within the grant to Alaska on the ground that they are landward of Alaska's most seaward contiguous boundary

under the Act, regardless of the international status of such enclave waters (but assuming that they are not part of Alaska's inland waters), or on the ground that they underlie territorial waters.

The *United States* contends (1) that the Act contains a three-mile limitation on the distance which Alaska's boundaries may extend seaward from the coast line; (2) that the international Convention contains the same limitation on the distance which the United States may claim its territorial sea extends seaward (so long as it adheres to a 3-mile rule and does not adopt straight baselines); (3) that such enclaves are areas of high seas under the international Convention; and (4) accordingly, that the submerged lands underlying them do not belong to Alaska. Additionally, the United States contends that, even if these enclaves are part of the territorial sea of the United States, the submerged lands underlying them do not belong to Alaska because the Submerged Lands Act grant is limited to submerged lands within three miles of the coast line (including the coast line on the landward side of islands) and does not include such enclaves.

The *State of Alaska* contends that such enclaves, even if they do not underlie Alaska's inland waters, are nevertheless included in the Submerged Lands Act grant to Alaska. It submits (1) that—except in situations governed by Section 5 of the Act (concededly not relevant in the leased area)—the Submerged Lands Act cannot be construed to create en-

claves of federal lands shoreward of Alaska's most seaward contiguous boundary and wholly surrounded by submerged lands concededly belonging to the State; (2) that the status of such enclaves as areas of high seas under the international Convention is irrelevant for purposes of the Submerged Lands Act grant to Alaska; (3) that, in any event, the international Convention should be construed as treating such enclaves as part of the surrounding territorial sea and not as areas of high seas; and (4) that the whole of the submerged lands underlying the territorial sea, of whatever dimensions, belongs to Alaska. Additionally, Alaska contends that the coast line on the landward side of islands is not a part of Alaska's coast line under the Submerged Lands Act if determining Alaska's boundaries from the coast line on the open sea side of islands results in a single contiguous boundary.

Question 5: Is the formation known as Dinkum Sands an island constituting part of Alaska's coast line for purposes of delimiting Alaska's offshore submerged lands?

The status of the Dinkum Sands formation as an island forming part of Alaska's coast line for purposes of delimiting Alaska's offshore submerged lands is disputed. As part of this inquiry, the parties agree that the relationship of the Dinkum Sands formation to the mean tidal planes of the Beaufort Sea must be determined. The parties are negotiating a monitoring agreement which, it is anticipated, will lead to a set of stipulated facts on this question.

But it is probable that a dispute will remain as to effect of the Dinkum Sands formation in delimiting the offshore submerged lands belonging to Alaska.

The *United States* contends (1) that the principles set out in the international Convention control resolution of this issue; and (2) that the Dinkum Sands formation is not an island forming a part of the coast line for purposes of measuring the territorial sea under the Convention, because it does not qualify as "a naturally formed area of land, surrounded by water, which is above water at high tide," but is, at best, a "low-tide elevation," defined as "a naturally formed area of land which is surrounded by and above water at low-tide but submerged at high tide," which enjoys no territorial sea of its own when, as here, it lies outside the territorial sea measured from the mainland or any island; and (3) that, accordingly, the Dinkum Sands formation and the submerged lands underlying a three-mile belt around the formation, and not within three miles of the mainland or any island, do not belong to Alaska. The United States further contends that the Dinkum Sands formation does not qualify as an island for any relevant purpose or any relevant period, even if (which is not admitted) the formation rises above the level of mean high water during portions of each year. In the alternative, the United States contends that the Dinkum Sands formation has no effect on the extent of Alaska's submerged lands for such periods as it is submerged at mean high tide.

The *State of Alaska* contends (1) that the principles of the international Convention do not control resolution of this question; (2) that the Dinkum Sands formation possesses a "line of ordinary low water" for purposes of the Submerged Lands Act, thereby qualifying it as an island forming part of Alaska's coast line for purposes of the Act; and (3) that Alaska therefore is entitled to the resources of the Dinkum Sands formation and of the submerged lands within a three-mile radius. In the alternative, Alaska contends that it is entitled to the resources of the Dinkum Sands formation and the submerged lands within a three-mile radius for such periods as the formation is determined to possess a line of ordinary low water. Insofar as the principles of the Convention may control the extent of the grant of submerged lands to Alaska under the Submerged Lands Act, Alaska contends that the Dinkum Sands formation qualifies as an island under the Convention for all relevant purposes and at all relevant times, even if (which is denied) it is submerged below the level of mean high water during portions of the year. Alternatively, to the extent that the principles of the Convention control, Alaska contends that it is entitled to the resources of the Dinkum Sands formation and the submerged lands within a three-mile radius for such periods as the formation is determined to be above the level of mean high water. Additionally, to the extent that the principles of the Convention control, Alaska contends that it is entitled to the resources of the Dinkum

Sands formation and the submerged lands within a three-mile radius to the same extent that the United States claims in its relations with other countries that the waters within that three-mile radius constitute a part of the United States' territorial sea.

Question 6: Should the extension of the Arco Pier constructed in 1976 be considered a part of the mainland for the purposes of measuring the three-mile Submerged Lands Act grant to Alaska in this portion of the leased area (assuming the submerged lands involved do not belong to Alaska on some other basis).

This question becomes relevant if the submerged lands between the natural mainland and the barrier islands do not belong to Alaska as otherwise underlying "inland" or territorial waters. On this assumption, the Arco Pier is so situated (on the western edge of Prudhoe Bay) that, if treated as an extension of the mainland or "coast", it would "push out" the territorial sea and Alaska's submerged lands grant. The Pier is a solid structure that would normally qualify for this purpose. Indeed, the older portion of the structure is conceded to have this effect. The issue relates only to an extension, added in 1976, under an "emergency permit" granted by the United States Corps of Engineers.

Then, as now, the regulations governing the Corps of Engineers forbade that agency from granting permission for the construction of any structure in the sea that would affect the extent of a State's offshore submerged lands without first submitting the matter

to the Solicitor of the Department of the Interior, and consulting the Attorney General of the United States, with a view to allowing those officials to exact from the potentially affected State a binding disclaimer of additional submerged lands. Such a submission was not made in this instance and no disclaimer was obtained from Alaska before the Arco Pier extension was completed, or since. Under the terms of the emergency permit and governing regulations, the Corps of Engineers is empowered to require removal of the extension.

The *United States* contends that the 1976 extension of the Arco Pier has no effect on the submerged lands belonging to Alaska. It submits that the extension can have no such effect, because the permit was issued in violation of governing regulations, because it was an emergency permit, and because the permit and governing regulations authorize the United States to require removal of the structure.

The *State of Alaska* contends that all submerged lands within three miles from the extension to Arco Pier (if not otherwise State lands) belong to the State on the ground that the extension is part of the Alaska "coast." It submits that the violation of internal regulations is irrelevant and that the structure, at least so long as it remains in existence, has its usual effect on the baseline for measuring the Submerged Lands Act grant to Alaska.

Question 7: Are Harrison Bay and Smith Bay part of National Petroleum Reserve—Alaska?

In 1923, by Executive Order, the President withdrew from the public domain some 23 million acres in northwestern Alaska and created Naval Petroleum Reserve No. 4, now known as National Petroleum Reserve—Alaska. The only question before this Court is the location of the seaward boundary of the Reserve, which concededly includes some submerged lands. It is agreed that whatever submerged lands are within the Reservation do not belong to Alaska, having been effectively withheld from the grant to the State at the time of its admission to the Union under both the *Pollard* doctrine and the Submerged Lands Act.

In 1972, the Department of the Navy purported to redefine the seaward boundary of the Reserve, by including, *inter alia*, Harrison Bay and Smith Bay. It is agreed that this redefinition is ineffective to defeat the grant made to Alaska in 1959, and that the controlling definition is that contained in the 1923 Executive Order. So far as relevant, that Order encompasses only submerged lands shoreward of "sandspits and islands forming the barrier reefs" when not more than three miles from the mainland and "small lagoons."

The *United States* and the *State of Alaska* both contend that neither Harrison Bay nor Smith Bay fits this definition and that the submerged lands therein are not within the Reserve, but are part of the grant to Alaska. Recognizing that the United

States at one time claimed these areas, that the Navy Department's redefinition Notice has never been withdrawn, and that Alaska is entitled to security of title, the parties jointly urge the Special Master to include a provision in a recommended Decree confirming Alaska's title to the submerged lands underlying Harrison Bay and Smith Bay.

Question 8: Is Peard Bay part of National Petroleum Reserve—Alaska?

The parties are *not* agreed whether Peard Bay is part of the Reserve. Peard Bay is partially enclosed by narrow "arms" extending from the mainland at either end and projecting toward each other. Within less than three miles from the extremities of these "arms," there are barrier islands further enclosing the bay. The barrier islands are, however, more than three miles from the "bottom" of the bay.

The *United States* contends that Peard Bay is part of the Petroleum Reserve because the barrier islands at its mouth are "not over three miles off shore." It submits that "shore" in the Executive Order definition includes the two mainland "arms" partially enclosing the bay.

The *State of Alaska* contends that Peard Bay is outside the Reserve because the bay is not a "small lagoon" and the barrier islands at its mouth are more than three miles "off shore." It submits that "shore" in the definition refers to the mainland at the "bottom" of the bay and does not include the narrow "arms" extending from the mainland mass.

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Question 9: Did the application for withdrawal and creation of the Arctic Wildlife Range, filed in 1958 but not finally confirmed until 1960, effectively withhold from Alaska any offshore submerged lands included within the application?

In 1958, before Alaska became a State, the Bureau of Sport Fisheries and Wildlife of the Department of the Interior filed and published in the Federal Register an application to withdraw some 6,400,000 acres of land in northeastern Alaska with a view to creating an "Arctic Wildlife Range." Under regulations of the Department then in force, the effect of the application was temporarily to segregate the lands described from disposition pending the decision of the Secretary. The Secretary did not finally act on the application until December 1960, well after Alaska became a State, when he permanently withdrew the lands and created the Wildlife Range. It is conceded that, if the application and its publication were wholly ineffective for the purposes of the submerged lands grant to Alaska, the later creation of the Range was likewise ineffective. So far as relevant, the lands applied for and the lands ultimately included in the Range are the same.

The *United States* contends that the application and tentative segregation of described lands for the Range, which later became a permanent reservation, were effective to withhold the acreage from the grant to Alaska under the Submerged Lands Act, and, if otherwise included, from the grant to the State under the *Pollard* doctrine.

The *State of Alaska* contends that the application for the Range was not effective to withhold from the State any submerged lands included in the described lands, which vested in Alaska at statehood under both the *Pollard* rule and the Submerged Lands Act.

Question 10: Assuming the acreage included in the 1958 application for the Arctic Wildlife Range was effectively withheld from Alaska, does the Range embrace the submerged lands between the mainland and the barrier islands in the area between the Canadian boundary and Brownlow Point?

So far as relevant, the application and the Secretarial order establishing the Range both describe its seaward boundary as proceeding "along the * * * line of extreme low water [of the Arctic Ocean], including all offshore bars, reefs and islands." It is disputed whether the submerged lands between the barrier reef formations and the mainland are included within this description.

The *United States* contends that the intervening waters and submerged lands are included within the Range. It submits (1) that the description, on its face, encompasses these areas; and (2) that such a construction is required in light of the purposes for which the Range was established.

The *State of Alaska* contends that the intervening waters and submerged lands are not within the Range. It submits (1) that the description on its face excludes these areas; and (2) that excluding

the disputed waters and submerged lands is consistent with the purposes of creating the Range, if that inquiry is appropriate (which is contested).

CONCLUSION

The foregoing Questions are submitted to the Special Master for his preliminary decision. Although the issues overlap and an affirmative answer to one question, if final, would moot other issues, the parties urge the Master to address each Question Presented and to submit to the Court his recommendation on each. This course will avoid the risk of a remand should the Court disagree with the Master on any point.

In accordance with the understanding reached with the Special Master at the conference of March 31, 1980, it is stipulated by the parties that the initial hearing scheduled to begin on June 24 shall be confined to the issues embraced within Questions 6 through 10, at which hearing all evidence, documentary or testimonial, relevant to those issues shall be submitted. It is not anticipated that the Special Master will require any further submission with re-

spect to Question 1. The remaining issues—embraced in Questions 2 through 5 herein—shall be considered at a later hearing, on a date to be fixed by the Master.

Respectfully submitted.

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MAY 1980

No. 84, Original

In the Supreme Court of the United States

OCTOBER TERM, 1979

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF ALASKA

BEFORE THE SPECIAL MASTER

SUPPLEMENT TO JOINT STATEMENT OF QUESTIONS PRESENTED AND CONTENTIONS OF THE PARTIES

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STATE OF ALASKA

BEFORE THE SPECIAL MASTER

SUPPLEMENT TO JOINT STATEMENT OF QUESTIONS PRESENTED AND CONTENTIONS OF THE PARTIES

INTRODUCTION

1. In May 1980, the United States and the State of Alaska jointly submitted to the Court's Special Master a Statement of Questions Presented and Contentions of the Parties. The parties then believed they had identified all disputed issues that must be resolved in order to adjudicate the respective rights of the United States and the State to submerged lands off the North Slope of Alaska between Icy Cape and the Canadian boundary. However, the hearings held on July 28 and 29, 1980, and further consideration, have disclosed other questions with respect to the same area. Both parties are concerned not to leave any such question unsettled for future litigation. Accordingly, they now waive any objection that has or could be interposed to the consideration of the following additional issues, not expressly identified in their previous

Joint Statement, and they join in requesting the Special Master to submit to the Court his recommendations thereon.

2. Although the Complaint of the United States focuses particularly on what has been termed "the leased area" (between latitude 150°W and 146°W), it properly can be read as praying that the exclusive rights of the United States to submerged lands off the shore of Alaska be quieted as against the State throughout the area of the Beaufort Sea—which may be taken to include the whole of the Alaskan North Slope from Icy Cape on the west to the Canadian border on the east. So, also, although Alaska's Counterclaim specifically challenges only the federal claim to have effectively reserved the submerged lands "inside the barrier islands north of the Arctic National Wildlife Range and underlying the inland waters of Harrison Bay, Smith Bay and Peard Bay," it may be read to embrace also any areas of submerged lands adjacent to the Arctic Ocean which the United States asserts are included within the National Petroleum Reserve or the Arctic National Wildlife Range. At least, given that the parties so construe their pleadings and affirmatively urge the Special Master to consider all issues thereby included, the Master, we submit, is authorized to treat the reference made to him as encompassing the additional questions now tendered.

Such a course will permit the ultimate entry of a decree reciting a complete description of the offshore submerged lands of the parties between Icy Cape and the Canadian border, without the necessity of supplemental proceedings at a later date. Nor will present consideration of the additional questions burden the ongoing proceedings. The Special Master has already received all evidence relevant to Question 11. The other added issues (Questions 12 and

13) ...ly extend to adjacent portions of the coast the same contentions already elaborated in Questions 2 and 3 of the original Joint Statement. It is not anticipated that the evidence relating to the new areas will do more than apply the same principles each party urges with respect to the "leased area." In these circumstances, judicial economy will be served by considering the additional questions together with those already before the Special Master.

ADDITIONAL QUESTIONS PRESENTED AND CONTENTIONS

Question 11: Are the submerged lands within Wainwright Inlet and the Kuk River, Kugrua Bay and River, and other small inlets, bays and river estuaries, between Icy Cape and Point Barrow and between Point Tangent and the Colville River, within the boundary of the National Petroleum Reserve - Alaska?

This question relates to the northern boundary of the Petroleum Reserve which is discussed in Questions 7 and 8 of the original Joint Statement (pages 17-18, 18a-20a).

The *United States* contends that, except from Point Tangent to Point Borrow (the case of the Plover Islands) and where barrier reefs less than three miles offshore create "small lagoons," the northern boundary of the Petroleum Reserve is the "coast line" along the Arctic Ocean, which includes at least short water crossings across river mouths and inlets and bays with narrow mouths. Accordingly, the United States submits that the submerged lands underlying Wainwright Inlet and the Kuk River, Kugrua Bay and River, and other smaller inlets, bays, and rivers emptying into the Arctic Ocean are

within the Petroleum Reserve, in accordance with the boundary depicted on U.S. Exhs. 87-91, except only in the area of Harrison and Smith Bays, where the boundary is depicted on U.S. Exh. 71. The United States further submits that the submerged lands underlying Kugrua Bay and River are included within the Reserve because they are within the boundary defined by a line connecting the barrier islands and the mainland arms of Peard Bay (see Question 8, Joint Statement at 18).

The *State of Alaska* contends that, except from Point Tangent to Point Barrow and where barrier reefs less than three miles offshore create "small lagoons," the northern boundary of the Petroleum Reserve is the line of mean higher high water on the shore of the mainland, which follows the sinuosities of the coast along the shore of bays, inlets and river estuaries, and does not include water crossings across bays, inlets or river estuaries. Accordingly, Alaska submits that lands submerged at mean higher high water underlying Wainwright Inlet and the Kuk River, Kugrua Bay and River, and all other inlets, bays, river estuaries or other bodies of water connected with the Arctic Ocean, are excluded from the Reserve, except only between Point Tangent and Point Barrow and where barrier reefs less than three miles offshore create small lagoons.

Question 12: Should the extent of Alaska's offshore submerged lands between Icy Cape and the Canadian border, not included within the "leased area," be determined on the basis of "straight baselines?"

The same issue originally identified as relating to the "leased area" between latitude 150°W and 146°W (see Question 2, Joint Statement at 6-8 and App. I) arises with

respect to offshore submerged lands to the west (almost entirely north of Naval Petroleum Reserve Alaska) and to the east (almost entirely north of the Arctic National Wildlife Range). There, also, barrier islands lie offshore, which, under the international Convention, could be used to define straight baselines. The drawing of straight baselines in these areas would not affect the Alaskan claim to the submerged lands shoreward of the barrier islands, because all such lands are less than three miles from the mainland or the islands and thus concededly are included within the grant to Alaska under the Submerged Lands Act unless previously reserved to the United States (as Alaska concedes in some areas and denies in others). But the effect of drawing a series of lines based on the barrier islands to define the coastline would, in some cases, extend Alaska's three mile belt of submerged lands on the seaward side of the islands. Alaska claims the "wedges" thus created and the United States denies that claim.

The *United States* and the *State of Alaska* advance the same contentions on this issue as they have already put forward with respect to Question 2 (Joint Statement at 7-8).

Question 13: Should the extent of Alaska's offshore submerged lands between Icy Cape and the Canadian border, not included within the "leased area," be determined on the basis that the waters between the mainlands and the barrier islands are inland waters, even if the "straight baseline" contention is not accepted?

The same issue originally identified as relating to the "leased area" (see Question 3, Joint Statement at 8-10) arises with respect to the other areas off the North Slope

where th e barrier islands. As noted under Question 12, *supra*, outside the leased area, there is no dispute that the submerged lands shoreward of the barrier islands belong to Alaska if they were not effectively reserved by the United States before Alaskan statehood. But, in some cases, it makes a difference whether those lands are deemed to underlie State inland waters or the State's territorial sea. If the waters are inland, their seaward limit would be defined by lines connecting the barrier islands and the effect, in some places, would be to extend Alaska's three-mile belt of submerged lands on the seaward side of those lines—much as in the case of drawing straight baselines (see Question 12, *supra*).

The *United States* and the *State of Alaska* advance the same contentions on this issue as they have already put forward with respect to Question 3 (Joint Statement at 8-10).

CONCLUSION

The parties join in seeking leave to present the foregoing additional Questions to the Special Master for his preliminary decision. If the Master agrees, he should treat Question 11 as submitted on the evidence presented at the hearing held on July 28 and 29, 1980, subject to briefing and oral argument at a later date. Questions 12

and 13, it is suggested, should be considered with t other remaining issues in the case (Questions 2 through 5, Joint Statement at 8-15).

Respectfully submitted.

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SEPTEMBER 1980

No. 84, Original

In the Supreme Court of the United States

OCTOBER TERM, 1983

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BEFORE THE SPECIAL MASTER

SECOND SUPPLEMENT TO JOINT STATEMENT OF QUESTIONS PRESENTED AND CONTENTIONS OF THE PARTIES

INTRODUCTION

1. In May 1980, the United States and the State of Alaska jointly submitted to the Special Master a Statement of Questions Presented and Contentions of the Parties. In September of that year, the parties submitted a Supplement to the earlier Joint Statement, adding three questions, Questions 11, 12 and 13, to those which had been tendered to the Special Master by the original Joint Statement. These three additional questions, like the original ten submitted questions, pertained to the respective rights of the

United States and the State of Alaska to submerged lands off the north slope of Alaska, between Icy Cape and the Canadian boundary.

2. The parties have identified two additional questions, relating to the same overall issue—the rights of the parties to the submerged lands off the north coast of Alaska between Icy Cape and the Canadian boundary—which have arisen since the Supplement to the Joint Statement was submitted to the Special Master in September 1980. As in the case of the three questions tendered in the September 1980 supplement, the parties do not believe that the addition of the two questions identified in this Second Supplement will appreciably add to the task of hearing and reporting on the issues already tendered.

3. Too, the purpose of these proceedings, as the parties stated in their Supplement to the Joint Statement, and with which the Special Master has presumably agreed, is to obtain "the ultimate entry of a decree reciting a complete description of the offshore submerged lands of the parties between Icy Cape and the Canadian border, without the necessity of supplemental proceedings at a later date." (Supplement to Joint Statement of Questions Presented, page 2.) In accordance with the procedure suggested by paragraphs 2 and 5 of the Order of the Special Master dated January 10, 1984, the parties therefore submit the additional questions set forth below, and briefly describe those questions and their respective contentions.

ADDITIONAL QUESTIONS PRESENTED AND CONTENTIONS

Question 14: Are certain geographic features within the Beaufort Sea, which appear on nautical charts published by the federal government but not on maps prepared by the State of Alaska in 1981 and 1982, to be deemed low-tide elevations and thus salient points from which the submerged-lands grant to Alaska is to be measured?

The United States has, for the north coast of Alaska, published through its National Ocean Service a series of nautical charts at a scale of approximately 1:50,000. While these charts have been periodically revised on the basis of new information obtained, the basic chart information is derived from field work done between 1948 and 1952. In 1981 and 1982, the State of Alaska contracted to have this area mapped using photogrametric methods. The product of this project was a series of maps done at a scale of approximately 1:50,000 which, insofar as relevant here, fail to show certain features which appear on the NOS charts as shoals (that is, having an elevation between mean high water and mean lower-low water), or, in the terminology of the 1958 Convention on the Territorial Sea and the Contiguous Zone, "low-tide elevations." Article 11 of that Convention provides that if these features qualify as low-tide elevations, the outer limits of the territorial sea, and hence for present purposes the seaward boundary of the submerged-lands grant to Alaska, may be measured from the low-water line on the feature.

There are six areas along the north coast of Alaska where such features, if they are treated as low-tide elevations (or, *a fortiori*, as islands) will affect the

seaward boundary of the State of Alaska. The first lies just west of Pogik Point. There, two small shoals are shown on the NOS charts as low-tide elevations approximately one-half mile from the mainland. If these features are deleted as salient points from which the outer boundary is delimited, the area belonging to the State of Alaska would be diminished by approximately 800 acres. The second area is a mudflat shown on NOS charts extending north of an island just east of Pogik Bay. The effect of this feature on the area of submerged lands is approximately 200 acres. The third area is approximately 5 miles east of Pogik Bay, and consists of two features approximately one-half mile from the mainland. Approximately 1100 acres are affected by the legal treatment of these features. The fourth area is one shown on the NOS charts as a low-tide elevation approximately one mile east of Cape Halkett. This feature has an effect of approximately 2,000 acres on the outer boundary of the State of Alaska. The fifth feature is a shoal approximately 3 miles east of Atigaru Point. Upon the status of this feature depends the title to approximately 15,000 acres of submerged land. Finally, the sixth area consists of the barrier islands east of the mouth of the Canning River. These features are shown on NOS chart No. 16045 between longitude 145° 30′ 43″ W. and 145° 34′ 34″ W. A substantial area of submerged land is determined by the status of the features.

The United States contends that the mapping of these areas done in 1981 and 1982, being the most current available, should control the question whether these features exist as low-tide elevations. In addition, the United States contends that Alaska officials made an agreement with it in 1982 that the State's

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maps would control, to the extent of conflicts with the NOS charts. And, finally, the United States contends that the alleged features are not, in fact, today low-tide elevations or islands, or are not so situated as to affect the coastline of Alaska.

For its part, Alaska asserts the presence of the features as above described and contends that its maps do not necessarily disprove the existence of the features in question. As for the first four and the sixth areas, Alaska contends that its maps are based on aerial photography taken when the tide was significantly above the relevant datum (mean lower-low water), and thus cannot serve as a basis for determining that the features do not exist as they are shown on the NOS charts. In addition, Alaska contends that the NOS charts in question represent the "large-scale charts officially recognized by the "United States, within the meaning of Article 3 of the Convention. Finally, Alaska contends that no State officials agreed that the State's maps would control, to the extent of conflicts with the NOS charts, and indeed that no State officials had the legal authority to make such an agreement.

Question 15: Is the southern portion of the area shown as "Harrison Bay" on NOS chart 16064 a juridical bay, and if so, what is the location of the line enclosing the inland waters of the bay, from which the 3-mile grant to Alaska is to be measured?

It is Alaska's position that the southern portion of Harrison Bay meets the criteria of a bay set forth in article 7 of the Convention on the Territorial Sea and the Contiguous Zone. The position of the United States is that this indentation does not meet the requirements of a juridical bay, but that two smaller

indentations do, only one of which (South Harrison Bay East Arm) affects the delimitation of the territorial sea. The United States would also draw a closing line across the mouth of the Colville River, which takes the form of a delta. The drawing of such a baseline, in the position of the United States, would be in accordance with Article 13 of the Convention. In the position of Alaska, a closing line should be drawn across southeast Harrison Bay in accordance with Article 7 of the Convention, dealing with bays.

CONCLUSION

The parties join in seeking leave to present the foregoing additional questions to the Special Master for his preliminary decision. If the Master agrees that these questions are appropriate for consideration in these proceedings, it is suggested that evidence on these questions be received at the forthcoming hearings on Questions 2-5 and 12 and 13.

Respectfully submitted.

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JULY 1984

☆ U. S. GOVERNMENT PRINTING OFFICE: 1984 421623 590

Joint Statement, and they join in requesting the Special Master to submit to the Court his recommendations thereon.

2. Although the Complaint of the United States focuses particularly on what has been termed "the leased area" (between latitude 150°W and 146°W), it properly can be read as praying that the exclusive rights of the United States to submerged lands off the shore of Alaska be quieted as against the State throughout the area of the Beaufort Sea—which may be taken to include the whole of the Alaskan North Slope from Icy Cape on the west to the Canadian border on the east. So, also, although Alaska's Counterclaim specifically challenges only the federal claim to have effectively reserved the submerged lands "inside the barrier islands north of the Arctic National Wildlife Range and underlying the inland waters of Harrison Bay, Smith Bay and Peard Bay," it may be read to embrace also any areas of submerged lands adjacent to the Arctic Ocean which the United States asserts are included within the National Petroleum Reserve or the Arctic National Wildlife Range. At least, given that the parties so construe their pleadings and affirmatively urge the Special Master to consider all issues thereby included, the Master, we submit, is authorized to treat the reference made to him as encompassing the additional questions now tendered.

Such a course will permit the ultimate entry of a decree reciting a complete description of the offshore submerged lands of the parties between Icy Cape and the Canadian border, without the necessity of supplemental proceedings at a later date. Nor will present consideration of the additional questions burden the ongoing proceedings. The Special Master has already received all evidence relevant to Question 11. The other added issues (Questions 12 and

13) :ly extend to adjacent portions of the coast the same contentions already elaborated in Questions 2 and 3 of the original Joint Statement. It is not anticipated that the evidence relating to the new areas will do more than apply the same principles each party urges with respect to the "leased area." In these circumstances, judicial economy wil! be served by considering the additional questions together with those already before the Special Master.

ADDITIONAL QUESTIONS PRESENTED AND CONTENTIONS

Question 11: Are the submerged lands within Wainwright Inlet and the Kuk River, Kugrua Bay and River, and other small inlets, bays and river estuaries, between Icy Cape and Point Barrow and between Point Tangent and the Colville River, within the boundary of the National Petroleum Reserve - Alaska?

This question relates to the northern boundary of the Petroleum Reserve which is discussed in Questions 7 and 8 of the original Joint Statement (pages 17-18, 18a-20a).

The *United States* contends that, except from Point Tangent to Point Borrow (the case of the Plover Islands) and where barrier reefs less than three miles offshore create "small lagoons," the northern boundary of the Petroleum Reserve is the "coast line" along the Arctic Ocean, which includes at least short water crossings across river mouths and inlets and bays with narrow mouths. Accordingly, the United States submits that the submerged lands underlying Wainwright Inlet and the Kuk River, Kugrua Bay and River, and other smaller inlets, bays, and rivers emptying into the Arctic Ocean are

MEMORANDUM

Division of Policy
Office of the Governor

TO: Carol D. Wilkenson
Lease Enforcement Supervisor
Department of Natural Resources

DATE: December 17, 1987

FROM: R.A. Fineberg, Policy Analyst
Division of Policy

SUBJECT: 8-g Escrow Account

Based on information you and others have provided, here is my understanding of the 8-g money. I've attached FYI the attorney general's opinion I mentioned.

Please let me know if you have any comments or corrections.

Thanks again for your help.

JQ
I understand the amount received today was $322.9 million. No breakdown yet on the additional $1.9 in rent/interest
12/31

MEMORANDUM State of Alaska

TO: Garrey Peska
Chief of Staff
Office of the Governor

DATE: December 30, 1987

FILE NO:

TELEPHONE NO:

THRU:

SUBJECT: 8 (g) 5A receipts from Beaufort Sale

FROM: Hugh Malone, Commissioner
Department of Revenue

It is clear that of the estimated $321,019,328 (27%) including interest to be received by the state from the above sale, that a minimum of $144,661,144 is required by law to be deposited in the Alaska Permanent Fund upon receipt since all of the federal receipts are subject to the 50% permanent fund deposit.

(AS 37.13.010(a)(2)) if the land claimed by the state is determined to be federal lands, then another $15,648,550 would be required to be deposited in the permanent fund.

One-half of one percent of the total, about $1,586,900, is due to the public school fund.

I recommend that 50% of the total received be transferred to the Alaska Permanent Fund on receipt, with the provision that the Alaska Permanent Fund Corporation escrow the amount that may be due the general fund from the total 50% until such time that the issues are settled.

The advantage of doing that would be that the Alaska Permanent Fund Corporation can be expected to earn a higher rate of return than the general fund. If the escrow were established in the general fund, total state earnings would probably be less.

If this procedure is followed, about $159,022,764 would be immediately available as general fund unrestricted dollars.

HM:mll

Alaska Permanent Fund Corporation
P.O. Box 4-1000 Juneau, Alaska 99802-4100
(907) 465-2047 Telex 099-46-323

DATE: December 29, 1987

TO: The Honorable Grace Schaible
Attorney General of the State of Alaska

FROM: David A. Rose, Executive Director
Alaska Permanent Fund Corporation

Hugh Malone, Commissioner
Department of Revenue

SUBJECT: Allocation of 8-G Escrow Account Payment

The Alaska Permanent Fund Corporation and the Department of Revenue request your opinion regarding the allocation to the Alaska Permanent Fund of the payment to be made under recent amendments to section 8(g)5A of the Outer Continental Shelf Lands Act (adopted by Congress and signed by the President in December 1987). A copy of these amendments is attached as exhibit 1 with deleted language in brackets and new language in italics.

Bonus payments, rent and interest from three offshore lease sales - the joint State-Federal Beaufort Sea lease of 1979 and two subsequent Federal leases - have been deposited in the 8-G Escrow Account because ownership of the tracts is in dispute. The name of the account makes reference to the section of federal law which created it. In December 1987, Congress amended this section of the Outer Continental Shelf Lands Act to provide for the distribution of twenty-seven percent (27%) of the balance in that account, plus accrued interest, to the impacted state(s). This distribution represents the minimum due to the impacted state as federal mineral revenue sharing in the event that the Federal case prevails and the Court awards the ownership of all disputed tracts to the federal government.

It is important to note that this distribution is not appropriated to the State of Alaska by Congress; rather, it is made as a distribution to the State under the Outer Continental Lands Act (as amended). Section 8(g)5A of this Act makes no reference to the State of Alaska by name. It is a general section applicable to all states for which the receipt of bonus payments, rent and interest has been placed

in escrow pending the outcome of a boundary dispute. This payment represents the amount which would be due to the state impacted by the boundary dispute as federal mineral revenue sharing.

The allocation of this payment to the Permanent Fund is governed by the following section of the Alaska Statutes:

> "A.S. 37.13.010(a) ALASKA PERMANENT FUND. (a) Under art IX, sec. 15 of the state constitution, there is established as a separate fund the Alaska permanent fund. The Alaska permanent fund consists of
>
> (1) 25 percent of all mineral lease rentals, royalties, royalty sale proceeds, net profit shares under AS 38.05.180(f) and (g), and federal mineral revenue sharing payments received by the state from mineral leases issued on or before December 1, 1979, and 25 percent of all bonuses received by the state from mineral leases issued on or before February 15, 1980;
>
> (2) 50 percent of all mineral lease rentals, royalties, royalty sale proceeds, net profit shares under AS 38.05.180(f) and (g), and federal mineral revenue sharing payments received by the state from mineral leases issued after December 1, 1979, and 50 percent of all bonuses received by the state from mineral leases issued after February 15, 1980; . . . "

According to the Department of Natural Resources, the four state leases involved in the dispute bear issue dates of January 1980; the sixteen federal leases involved in the dispute bear issue dates of July-August 1980. The balance of the 8-G Escrow Account as of November 30, 1987 is scheduled in exhibit 2, attached.

Specific questions raised by the federal payment to the state are as follows:

1. Is the allocation of distributions from the 8-G Escrow Account to the State of Alaska governed by the nature of the distribution, i.e., whether the distribution is a mineral lease rental, royalty, royalty sale proceed, net profit share, or a federal mineral revenue sharing payment?

2. Is the distribution under section 8(g)5A of the Outer Continental Shelf Lands Act a federal mineral revenue sharing payment to the State of Alaska or something else?

3. Without regard to the outcome of pending litigation, is the allocation of distributions from the 8-G Escrow Account to the State of Alaska affected, changed, or in any way influenced at this time by the issue dates of the leases in dispute?

4. In the event that the State of Alaska prevails in court, would the allocation of distributions from the 8-G Escrow Account to the State of Alaska be affected, changed, or in any way influenced at that time by the issue dates of the leases in dispute?

5. In the event that the federal government prevails in court, would the allocation of distributions from the 8-G Escrow Account to the State of Alaska be affected, changed, or in any way influenced at that time by the issue dates of the leases in dispute?

6. In the event that the court upholds the current state/federal split of all disputed leases, would the allocation of distributions from the 8-G Escrow Account to the State of Alaska be affected, changed, or in any way influenced at that time by the issue dates of the leases in dispute?

7. In the event that the federal government prevails in court, would an amount allocated to the State general fund and subsequently found due and payable to the Alaska Permanent Fund be subject to the inflation impact provisions of AS 37.13.145 for the period between the date of allocation and the court decision? Would the State be required to hold the Permanent Fund harmless for the inflation impact of that period?

8. In the event that the federal government prevails in court, would an amount allocated to the State general fund and subsequently found due and payable to the Alaska Permanent Fund be subject to the net income provisions of AS 37.13.140 for the period between the date of allocation and the court decision? Would dividends be due and payable on the income which could have been generated by that amount and would the State be required to hold the Permanent Fund harmless for those dividends?

9. In the event that the State of Alaska prevails in court, could an amount allocated to the Alaska Permanent Fund and subsequently found due and payable to the State general fund, be paid to the State general fund by means of adjustment by offset of subsequent mineral receipts?

Amendments to section 8(g)5A of the Outer Continental Shelf Lands Act is as follows:

(5)(A) When there is a boundary dispute between the United States and a State which is subject to an agreement under section 1336 of this title, the Secretary shall credit to the account established pursuant to such agreement all bonuses, rents, and royalties, and other revenues (derived from any bidding system authorized under subsection (a)(1) of this section), excluding Federal income and windfall profits taxes, and derived from any lease issued after September 18, 1978 of any Federal tract which lies wholly or partially within three nautical miles of the seaward boundary asserted by the State, if that money has not otherwise been deposited in such account. Proceeds of [such account] *an escrow account established pursuant to an agreement under section 7* shall be distributed as follows:

(i) Twenty-seven percent of all bonuses, rents, and royalties, and other revenues (derived from any bidding system authorized under subsection (a)(1)), excluding Federal income and windfall profits taxes, and derived from any lease issued after September 18, 1978, of any tract which lies wholly within three nautical miles of the seaward boundary asserted by the Federal government in the boundary dispute, together with all accrued interest thereon, shall be paid to the State either—

(I) within thirty days of December 1, 1987, or

(II) by the last business day of the month following the month in which those revenues are deposited in the Treasury, whichever date is later.

(ii) Upon the settlement of [any] *a* boundary dispute which is subject to a section 1336 agreement between the United States and a State, the Secretary shall pay to such State [all] *any additional* moneys due such State from amounts deposited in *or credited to* the escrow account. If there is insufficient money deposited in the escrow account, the Secretary shall transmit, from any revenues derived from any lease of Federal lands under this subchapter, the remaining balance due such State in accordance with the formula set forth in section 8004(b)(1)(B) of the Outer Continental Shelf Lands Act Amendments of 1985.

EXHIBIT 2

ALASKA PERMANENT FUND CORPORATION

8-G ESCROW ACCOUNT ALLOCATION

As of November 30, 1987

Lease Sale	Bonus	Rent	Interest	Subtotal	Accrued Int.	Total Due Permanent Fund 50% All Leases	25% State Leases
Beaufort Federal	477,064,586.80	1,758,304.00	461,749,796.80	940,572,687.60	10,113,303.60	128,342,608.81	128,342,608.81
Beaufort State	110,896,503.71		117,621,044.03	228,517,547.74	3,312,825.17	31,297,100.34	15,648,550.17
Beaufort State		338,751.00	359,841.70	698,592.70	10,135.03	95,678.24	95,678.24
Sale 71A	937,380.00	69,952.00	443,532.03	1,450,864.03	22,027.28	198,840.33	198,840.33
Sale 87	3,395,285.00	56,768.00	772,063.19	4,224,116.19	38,600.90	575,466.81	575,466.81
Total Escrow	592,293,755.51	2,223,775.00	580,946,277.75	1,175,463,808.26	13,496,891.98	160,509,694.53	144,861,144.36

(Draft 12/17/87)

UNDERSTANDING THE 8-G ESCROW ACCOUNT

As of Nov. 30, 1987, the account contained $1,175.5 million in bonus payments, rent and interest from three off-shore lease sales -- the joint State-Federal Beaufort Sea lease of 1979 and two subsequent Federal leases of much smaller dollar amounts. This total excludes approximately $13.5 million in accrued interest to be deposited in the escrow account as treasury notes mature.

Ownership of many of these tracts is in dispute. In a worst-case scenario (from the standpoint of state revenue), the courts could award all tracts to the federal government. In this case, Alaska would receive 27% of the total in federal revenue-sharing payments, or $321.0 million, including accrued interest. (This amount is increasing monthly.)

Congress is reported likely to release that 27% this year.

The portion of this $321.0 million that would flow to the General Fund is the total amount less contributions to the Permanent Fund (per Constitution and AS 37.13.010) and the Public School Fund (per AS 37.14.150). Depending on the outcome of litigation over disputed tracts, the General Fund portion of the $321.0 million Nov. 30, 1987 escrow total could range from a low of $158.9 million to a high of $174.6 million. Worksheets and documentation are attached.

AS 37.13.010(1) states that for mineral leases issued on or before December 1, 1979, 25% of all rentals, royalties, royalty sales and federal revenue sharing sales shall go to the Permanent Fund. Under this subsection, 25% of bonuses on all leases issued on or before February 15, 1980 goes to the Permanent Fund.

AS 37.13.010(2), increases the Permanent Fund share to 50% after December 1, 1979 for rentals, royalties, royalty sales and federal revenue sharing; similarly, under subsection (2), the Permanent Fund receives 50% of bonuses for leases issued after February 15, 1980.

AS 37.14.150 directs 0.5% of mineral lease payments to the Public School Fund; effective dates are not at issue for this portion of the 8-g revenue.

The Department of Natural Resources has been informed by the federal MMS that none of the federal leases were issued on or before Feb. 15, 1980. Therefore, these leases fall under as 37.13.010(2), which deposits 50% to the Permanent Fund. This group of leases, with the associated interest, accounts for more than 80% of the dollar total in the 8-g escrow account.

The general fund portion of the revenues within the remaining 20% ($229 million in state-issued Beaufort lease bonuses plus interest) will depend on whether these leases are determined by subsequent court decision to be State or Federal property.

This analysis assumes that interest payments follow the payments to which that interest accrues, per Attorney General's Opinion #663-86-0378 (Dec. 18, 1986) regarding interest on refunds from theTAPS tariff case.

The Departments of Revenue and Law have advised that the split between the General Fund and the Permanent Fund may require subsequent legal analysis and policy decisions.

AMOUNT IN 8-G ESCROW ACCOUNT, 11/30/87

Lease Sale:	Bonus	+	Rent	+	Interest	=	Subtotal In Escrow	+	Accrued Int.	=	Total In Escrow Plus Accrued Int.
Beaufort Federal	$ 477,064,586.80		$ 1,758,304.00		$ 461,749,796.80		$ 940,572,687.60		$ 10,113,303.60		$ 950,685,991.20
Beaufort State	110,896,503.71		338,751.00		117,980,885.73		229,216,140.44		3,322,960.20		232,539,100.64
Sale 71A	937,380.00		69,952.00		443,532.03		1,450,864.03		22,027.28		1,472,891.31
Sale 87	3,395,285.00		56,768.00		772,063.19		4,224,116.19		38,600.90		4,262,717.09
Total Escrow Acct.	$ 592,293,755.51		$ 2,223,775.00		$ 580,946,277.75		$ 1,175,463,808.26		$ 13,496,891.98		$ 1,188,960,700.24
27% of Total							$ 317,375,228.23				$ 321,019,389.06

Source: Joe Romero, Funds Administration & Investment Section, MMS, Denver (303/231-3123; 12/16/87)

CASE #1: COURT AWARDS ALL LEASES TO FEDERAL GOVERNMENT

Lease Sale:	Subtotal in Escrow (From page 1)	- 0.5% Public (AS 37.14.150)	- Permanent Fund (AS 37.13.010)	= General Fund Portion	+ Gen. Fund Portion of Accrued Int. (d)	= Gen. Fund Escrow Plus Accrued Int.
Beaufort Federal	$ 940,572,687.60	$ 4,702,863.44	$ 470,286,343.80 (c)	$ 465,583,480.36	$ 5,006,085.28	$ 470,589,565.64
Beaufort State	229,216,140.44 (b)	1,146,080.70	114,608,070.22 (c)	113,461,989.52	1,644,865.30	115,106,854.82
Sale 71A (a)	1,450,864.03	7,254.32	725,432.02	718,177.69	10,903.50	729,08[illegible]
Sale 87 (a)	4,224,116.19	21,120.58	2,112,058.10	2,090,937.51	19,107.45	2,110,044.96
Total Escrow Acct.	$ 1,175,463,808.26	$ 5,877,319.04	$ 587,731,904.13	$ 581,854,585.09	$ 6,680,961.53	$ 588,535,546.62
27% of Total	$ 317,375,228.23	1,586,876.14	158,687,614.12	$ 157,100,737.97	1,803,859.61	$ 158,904,597.59

Assumptions:
(a) All leases from sales 71A and 87 issued subsequent to 2/15/80 and therefore 50% goes to Permanent Fund.
(b) Includes bonuses, short-term lease bonus interest payments, rent and subsequent escrow account investment interest
(c) 50% of Beaufort State and Federal lease Federal Revenue Sharing to Permanent Fund under AS 37.13.010(1) because all were issued after 12/1/79.
(d) Interest and accrued interest pro-rated per Attorney General Opinion 663-86-0378 (12/18/86).

CASE #2: COURT AWARDS ALL LEASES TO STATE

Lease Sale:	Subtotal In Escrow (From page 1)	- 0.5% Public (AS 37.14.150)	- Permanent Fund (AS 37.13.010)	= General Fund Portion	+ Gen. Fund Portion of Accrued Int. (e)	= Gen. Fund Escrow Plus Accrued Int.
Beaufort Federal	$ 940,572,687.60	$ 4,702,863.44	$ 470,286,343.80 (c)	$ 465,583,480.36	$ 5,006,085.28	$ 470,589,565.64
Beaufort State						0.00
Bonus + Interest (a)	228,877,389.44	1,144,386.95	57,219,347.36 (d)	170,513,655.13	2,473,173.25	
Rent	338,751.00	1,693.76	169,375.50 (e)	167,681.75	1,615.96	
Sale 71A (b)	1,450,864.03	7,254.32	725,432.02	718,177.69	10,903.50	729,081.20
Sale 87 (b)	4,224,116.19	21,120.58	2,112,058.10	2,090,937.51	19,107.45	2,110,044.96
Total Escrow Acct.	$ 1,175,463,808.26	$ 5,877,319.04	$ 530,512,556.77	$ 639,073,932.45	$ 7,510,885.44	$ 646,584,817.89
27% of Total	$ 317,375,228.23	1,586,876.14	143,238,390.33	$ 172,549,961.76	2,027,939.07	$ 174,577,900.83

Assumptions:
(a) Includes short-term lease bonus interest payments plus subsequent escrow account investment interest
(b) All leases from sales 71A and 87 issued subsequent to 2/15/80 and therefore 50% goes to Permanent Fund.
(c) 50% of bonus, rents and interest from all federally managed leases to Permanent Fund under AS 37.13.010(2) because all were issued after 2/15/80.
(d) 25% bonus + bonus interest to the Permanent Fund under AS 37.13.010(1) because all leases were issued on or before 2/15/80.
(e) 50% lease rental to Permanent Fund undor AS 37.13.010(2) because all leases were issued after 12/1/79.
(f) Interest and accrued interest pro-rated per Attorney General Opinion 663-86-0378 (12/18/86).

CASE #3: COURT UPHOLDS PRESENT STATE/FEDERAL SPLIT

Lease Sale:	Subtotal In Escrow (From page 1)	- 0.5% Public (AS 37.14.150)	- Permanent Fund (AS 37.13.010)	= General Fund Portion	+ Gen. Fund Portion of Accrued Int. (f)	= Gen. Fund Escrow Plus Accrued Int.
Beaufort Federal	$ 940,572,687.60	$ 4,702,863.44	$ 470,286,343.80 (c)	$ 465,583,480.36	$ 5,006,085.28	$ 470,589,565.64
Beaufort State						0.00
Bonus + Interest (a)	228,877,389.44	1,144,386.95	57,219,347.36 (d)	170,513,655.13	2,473,173.25	
Rent	338,751.00	1,693.76	169,375.50 (e)	167,681.75	1,615.96	
Sale 71A (b)	1,450,864.03	7,254.32	725,432.02	718,177.69	10,903.50	729,081.20
Sale 87 (b)	4,224,116.19	21,120.58	2,112,058.10	2,090,937.51	19,107.45	2,110,044.96
Total Escrow Acct.	$ 1,175,463,808.26	$ 5,877,319.04	$ 530,512,556.77	$ 639,073,932.45	$ 7,510,885.44	$ 646,584,817.89
27% of Total	$ 317,375,228.23	1,586,876.14	143,238,390.33	$ 172,549,961.76	2,027,939.07	$ 174,577,900.83

Assumptions:
(a) Includes short-term lease bonus interest payments plus subsequent escrow account investment interest.
(b) All leases from sales 71A and 87 issued subsequent to 2/15/80 and therefore 50% goes to Permanent Fund.
(c) 50% of bonus, rents and interest from all federally managed leases to Permanent Fund under AS 37.13.010(2) because all were issued after 2/15/80.
(d) 25% bonus + bonus interest to the Permanent Fund under AS 37.13.010(1) because all leases were issued on or before 2/15/80.
(e) 50% lease rental to Permanent Fund under AS 37.13.010(2) because all leases were issued after 12/1/79.
(f) Interest and accrued interest pro-rated per Attorney General Opinion 663-86-0378 (12/18/86).

(1) "applicant" means a person making application to the corporation for financial assistance;

(2) "board" means the Board of Directors of the Alaska Resources Corporation;

(3) "corporation" means the Alaska Resources Corporation;

(4) "project" means products, markets, innovation, or technological developments for the rehabilitation, enhancement, or development of resources and includes applied research for those products, markets, or technological developments;

(5) "rehabilitation, enhancement and development" means an activity that leads to an increase in the quality or productivity of a resource, and to an increase in the benefits derived from the resource for citizens of the state;

(6) "resource" includes but is not limited to fisheries, agriculture, forest products, renewable energy, tourism, mining, basic manufacturing, and other industrial development; "resource" does not include real estate development or retail sales or services;

(7) "small enterprise" means a business enterprise with gross sales revenue of $10,000,000 or less for its annual reporting period ending immediately before an application to the corporation for financial assistance; a new business enterprise that has not completed an annual reporting period before an application but that anticipates sales revenue of $10,000,000 or less in its first annual reporting period is a "small enterprise." (§ 3 ch 179 SLA 1978; am §§ 23 — 28 ch 142 SLA 1982)

Effect of amendments. — The 1982 amendment substituted "Directors" for "Trustees" and deleted "Renewable" preceding "Resources Corporation" in paragraph (2), deleted "Renewable" preceding "Resources Corporation" in paragraph (3), deleted "renewable" preceding "resources" in paragraph (4), and rewrote paragraphs (5) and (6), and added paragraph (7).

Chapter 13. Alaska Permanent Fund.

Sec. 37.13.010. Alaska permanent fund. (a) Under art. IX, § 15 of the state constitution, there is established as a separate fund the Alaska permanent fund. The Alaska permanent fund consists of

(1) 25 percent of all mineral lease rentals, royalties, royalty sale proceeds, net profit shares under AS 38.05.180(f) and (g), and federal mineral revenue sharing payments received by the state from mineral leases issued on or before December 1, 1979, and 25 percent of all bonuses received by the state from mineral leases issued on or before February 15, 1980;

(2) 50 percent of all mineral lease rentals, royalties, royalty sale proceeds, net profit shares under AS 38.05.180(f) and (g), and federal mineral revenue sharing payments received by the state from mineral leases issued after December 1, 1979, and 50 percent of all bonuses received by the state from mineral leases issued after February 15, 1980;

(3) any other money appropriated to or otherwise allocated by law to the Alaska permanent fund.

(b) Payments due the Alaska permanent fund under (a) of this section shall be made to the fund once each month.

(c) The Alaska permanent fund shall be managed by the Alaska Permanent Fund Corporation established in this chapter. (§ 5 ch 18 SLA 1980)

Legislative history reports. — For the Free Conference Committee Report on ch. 18, SLA 1980 (FCCSSB 161), see 1980 House Journal, Supplement No. 7, April 2, 1980.

Sec. 37.13.020. Findings. The people of the state, by constitutional amendment, have required the placement of at least 25 percent of all mineral lease rentals, royalties, royalty sale proceeds, and federal mineral revenue sharing payments and bonuses received by the state into a permanent fund. The legislature finds with respect to the Alaska Permanent Fund Corporation that

(1) the corporation should provide a means of conserving a portion of the state's revenues from mineral resources to benefit all generations of Alaskans;

(2) the corporation's goal should be to maintain safety of principal while maximizing total return;

(3) the corporation should be used as a savings device managed to allow the maximum use of disposable income from the corporation for purposes designated by law. (§ 5 ch 18 SLA 1980)

Sec. 37.13.030. Purpose. It is the purpose of this chapter to provide a mechanism for the management and investment of those permanent fund assets allocated to the Alaska Permanent Fund Corporation in a manner consistent with the findings in AS 37.13.020. (§ 5 ch 13 SLA 1980)

Sec. 37.13.040. Alaska Permanent Fund Corporation. There is established the Alaska Permanent Fund Corporation. The corporation is a public corporation and government instrumentality in the Depart-

(2) to have prepared an annual accounting of the principal and income of the fund established in AS 37.14.110; and

(3) to prepare long-range investment plans for the fund established in AS 37.14.110. (§ 4 ch 182 SLA 1978)

Sec. 37.14.140. Fund utilization. The principal of the fund established in AS 37.14.110 shall be retained in the fund for investment as specified in AS 37.14.170. The income of the fund may not be appropriated for a purpose other than for the support of public education programs. (§ 4 ch 182 SLA 1978)

Sec. 37.14.150. Contributions. During each fiscal year the commissioner of the Department of Revenue shall transfer to the fund created in AS 37.14.110 a sum equal to one-half of one per cent of the total receipts derived from the management of state land, including amounts paid to the state as proceeds of sale or annual rent of surface rights, mineral lease rentals, royalties, royalty sale proceeds, and federal mineral revenue-sharing payments or bonuses. (§ 4 ch 182 SLA 1978)

Article 3. Custody and Investment of Trust Funds.

Section
160. Duties of commissioner of revenue
170. Investments

Sec. 37.14.160. Duties of commissioner of revenue. The commissioner of revenue is the treasurer of the funds created in AS 37.14.010 and 37.14.110 and shall

(1) act as official custodian of the cash and securities belonging to those funds and provide adequate safe deposit facilities for each of them;

(2) receive cash belonging to those funds;

(3) collect the principal on securities acquired for each fund established under AS 37.14.010 and 37.14.110 and credit each fund accordingly;

(4) collect interest and dividends earned on investments of the funds established under AS 37.14.010 and 37.14.110 and credit the income reserve account of each fund accordingly;

(5) invest and reinvest the principal of each fund in accordance with AS 37.14.170. (§ 4 ch 182 SLA 1978)

Sec. 37.14.170. Investments. (a) The commissioner of revenue, with the approval of each advisory board created in AS 37.14.020 and 37.14.120, may invest the principal of the funds created in AS 37.14.010 and 37.14.110 in the same manner as specified for the investment of surplus pension funds under AS 39.35.110.

(b) The commissioner of

(1) invest and reinvest t

(2) sell, exchange, conve
ments of the funds by priv

(3) vote upon a stock, b
special proxy or power of a
tion; exercise a conversion
and make payments incid
corporate reorganization or
delegate discretionary pov
nection with the delegatio
of an owner with respect t
ments held in the funds;

(4) make, execute, ackn
and conveyance and instru
the powers granted;

(5) register investments
having the power to appro

(6) do all acts whether
sidered proper for the prot
(§ 4 ch 182 SLA 1978)

Chapter

Article
1. General Obligation Bonds (§§
2. Bond Anticipation Notes (§§
3. International Airports Reven

Article 1.

Section
10. Full faith and credit for ge
gation bonds
12. Continuing debt service
tion
15. Committee shall publish
existing state indebtedn
election
20. Manner and amounts of s
30. Interest rate and maturity
40. Sale of bonds
50. Redemption
60. Form and registration of b
70. Place of payment
80. Signatures and seal
90. Terms and conditions
100. Trustee
110. Creation and membershi
bond committee

MEMORANDUM State of Alaska

TO: Milt Barker
Deputy Commissioner
Department of Revenue

DATE: March 12, 1987

FILE NO.: 223-78-0155

THRU:

TELEPHONE NO.: 465-3600

SUBJECT: Disposition of TAPS settlement proceeds

FROM: Grace Berg Schaible
Attorney General

By: Robert M. Maynard RMM
Assistant Attorney General
Department of Law

You have asked about the disposition of interest earned on TAPS settlement proceeds to the appropriate fund. Pending a prior opinion of the attorney general, the interest on those funds was held in abeyance. On December 18, 1986, we opined that the interest should have gone to the rainy day fund. Unfortunately, between the time of the receipt of the interest and the time of our opinion, the balance of the rainy day fund was transferred to the budget reserve fund by secs. 301 and 538 of ch. 130, SLA 1986. The question you have asked is whether that latter appropriation of the "balance" of the rainy day fund included the interest funds held in abeyance, and not yet physically credited to the rainy day fund. Since the rainy day fund was eliminated effective July 1, 1986 (sec. 2, ch. 58, SLA 1986), the choice is now between sending that money to the budget reserve fund or returning that money to the general fund.

It is our understanding that standard accounting practice under the state's cash accrual system would usually provide for the retroactive adjustment of fund balances as more recent information becomes available. Based on that understanding, it is our opinion that that general practice should be followed, and the interest that was held in abeyance pending the attorney general opinion should be retroactively credited to the rainy day fund, and thus transferred to the budget reserve fund.

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

RMM:jf

MEMORANDUM State of Alaska

TO: Milt Parker, Deputy Commissioner
Department of Revenue

DATE: December 18, 1986

FILE NO: 663-86-0378

TELEPHONE NO: 465-3600

FROM: Ronald W. Lorensen
Acting Attorney General

SUBJECT: Interest on royalties under TAPS settlement

By: Jonathan B. Rubini
Assistant Attorney General
Governmental Affairs-Juneau

You have asked that we supplement our opinion of April 30, 1986 to address whether interest on royalties received by the state under the TAPS settlement should be apportioned between the rainy day fund, the permanent fund and the public school fund. We believe the appropriate interpretation of sec. 762, ch. 105, SLA 1985 is that interest payments should be allocated among the three funds in proportion to the direct allocation of royalty payments. In the immediate context, the interest payments are plainly designed to compensate the state for the deprivation of such receipts during the course of the tariff disputes and should therefore be deposited in the fund which, presumably, was deprived of the underlying royalty payment.

JBR/pjg

DEC 19 1986

STATE OF THE GOVERNOR

MEMORANDUM

State of Alaska

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL AND GAS

TO: Richard A. Fineberg
Policy Analyst
Office of Management and Budget

DATE: December 16, 1987

FILE NO:

TELEPHONE NO: 762-2581

FROM: Carol D. Wilkinson
Lease Enforcement Supervisor

SUBJECT: Oil and Gas Leases
Disputed Acreage

I have compiled the following information on the Joint State/Federal Beaufort Sea sale disputed acreage. The sale was held December 11, 1979.

State Managed Leases:

FILE #	ISSUE DATE	EFFECTIVE DATE	Bonus *	Rent **	INTEREST ***
ADL 312816	1/24/80	2/1/80	$10,005,230.92	$ 89,851.00	$ 26,022.49
ADL 312823	1/24/80	2/1/80	18,380,457.69	51,884.00	47,805.53
ADL 312822	1/23/80	2/1/80	53,900,406.00	100,947.00	178,422.22
ADL 312868	1/23/80	2/1/80	28,610,409.00	56,068.00	94,706.81
		TOTAL	$110,896,503.50	$338,750.00	$346,957.05

* Total cash bonus amount.
** Annual Rental payments through 1987.
*** Interest at the rate of 10.64% was paid from the time the bidders received their award notice until the balance of the cash bonus was received by the State of Alaska.

It appears that the rental amounts should be distributed with 50% to the Permanent Fund, while only 25% of the bonus amounts would go to the Permanent Fund. I still have a question on the interest amounts. Can you provide some documentation to indicate how interest payments should be distributed? Should some portion (.5%) go to the Public School Fund?

I received the issue dates and effective dates of the federal disputed leases from Minerals Management Service. These are only the leases directly effected by the Dinkum Sands issue. I have not been able to acquire a list of other disputed leases. I'll continue to work on the additional information.

DELIVER TO: Richard Fineberg LOCATION OMB Juneau
FROM: Carol Wilkinson LOCATION DO&G Anchorage
TELEPHONE/TELECOPIER # 465-3585 TOTAL NUMBER OF PAGES 2
TRANSMITTING ON/SPEED DATE 12/16/87 TIME 4:00
PHONE FOR PROBLEMS-NAME/NUMBER Carol 762-2581
COMMENTS

02-001A (Rev. 10/78)

Federal Managed Leases:

FILE NUMBER	ISSUE DATE	EFFECTIVE DATE
Y-0179	7/24/80	8/1/80
Y-0180	7/24/80	8/1/80
Y-0181	7/16/80	8/1/80
Y-0182	7/23/80	8/1/80
Y-0183	7/23/80	8/1/80
Y-0184	7/24/80	8/1/80
Y-0188	7/28/80	8/1/80
Y-0189	7/14/80	7/1/80
Y-0190	7/14/80	7/1/80
Y-0191	7/14/80	7/1/80
Y-0192	7/14/80	7/1/80
Y-0193	7/14/80	7/1/80
Y-0194	7/15/80	8/1/80
Y-0195	7/15/80	8/1/80
Y-0196	7/16/80	8/1/80
Y-0197	7/15/80	7/1/80

I find it interesting that it took them seven months to issue these leases. Let me know if you need additional information. Beverly Sires at MMS was very helpful. If you want to call her directly, her number is 261-4417.

3364t

DIVISION OF BUDGET REVIEW
($ Millions)

SUMMARY OF REVENUES AND APPROPRIATIONS 1/14/88
FISCAL YEARS 1988 AND 1989
GENERAL FUND AND GENERAL FUND/PROGRAM RECEIPTS

ITEM	SUBTOTAL	TOTAL
FISCAL YEAR 88		
1. FY 87 Year-End Balance from Annual Financial Report		19.7
2. Adjustments to FY 88 Revenues		305.9
A. Drilling Incentive Credit	.0	
B. Extraordinary Payments to General Fund	2.8	
C. Estimated Lapse of FY 88 Appropriations	.0	
D. Administrative Transfer - AHFC Insured Mtge Pgm Bonds	10.9	
E. Repeal/Transfer of Prior Capital, Loan Balances	92.5	
F. TAPS Tariff Adjustment (1987)	2.1	
G. Federal Lease Rental Revenue Adjustment	-1.4	
H. FY 88 Restricted GF/Program Receipt Revenue	39.2	
I. Dinkum Sands	159.8	
3. FY 88 Appropriations		-2,323.0
A. FY 88 Operating Programs	-1,764.5	
- Ch.95, Sec.22: Personal Services	-37.7	
- GF/Program Receipts	-45.4	
B. FY 88 G.O. Debt	-148.0	
C. Capital Projects	-98.	
D. Loan Programs	-63.	
- Student Loan Corp GF Reimbursement	41.0	
E. Supplementals (not yet drafted)		
- Personal Services	-27.7	
- Other	-28.9	
F. Jobs Bill (not yet drafted)	-150.0	
4. FY 88 Unrestricted Revenues (& ANS Oil Price on the U.S. Gulf)		
- Mean Case ($15.89)		2,092.4
5. Estimated GF Surplus (Shortfall) FY 88		
- Mean Case		95.0
FISCAL YEAR 89		
1. Adjustments to FY 89 Revenues		295.9
A. Drilling Incentive Credit	.0	
B. Extraordinary Payments to General Fund	2.8	
C. Estimated Lapse of FY 88 Appropriations	.0	
D. Transfer of Loan Fund Balances to the General Fund	10.0	
E. FY 89 Restricted GF/Program Receipt Revenue	55.4	
F. Backup Funding Sources		
- Railbelt Energy Fund	227.7	
2. FY 89 Appropriations		-2,196.1
A. FY 89 Operating Programs	-1,886.7	
- GF/Program Receipts	-52.1	
B. FY 89 G.O. & Other Debt	-147.3	
C. Capital Projects General Fund	-69.0	
- GF/Program Receipts	-10.4	
D. Loan Programs	-30.6	
3. FY 89 Unrestricted Revenues (& ANS Oil Price on the U.S. Gulf)		
- 30% Case ($14.69)		1,784.6
- Mean Case ($16.01)		1,983.1
- 70% Case ($17.66)		2,187.6
4. Estimated GF Surplus (Shortfall) Entering FY 90		
- 30% Case		-20.6
- Mean Case		177.9
- 70% Case		382.4

revappl

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF REVENUE

TREASURY DIVISION

ELEVENTH FLOOR
STATE OFFICE BUILDING
P.O. BOX SB
JUNEAU, ALASKA 99811-0400

January 22, 1988

JAN 2[illegible]

The Honorable John Sund
House Judiciary Committee
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Sund:

At the January 20, 1988 hearing of your committee on SB 243 am, the question was raised as to what appropriations have been made to the Budget Reserve Fund. They have been:

1. Sections 301 and 538, Ch. 130, SLA 86

   These sections appropriated the balance in the emergency operating expenses account ("rainy day fund") (AS 37.05.159, now repealed), effective July 1, 1986, to the budget reserve fund (AS 37.05.156.) this amount was $433,235,000.

   The major part of the balance of the budget reserve fund, $427,360,000 was appropriated, effective March 18, 1987, to the general fund by sec. 3, Ch. 2, SLA 87. The remainder, $5,875,000, was transferred to the disaster relief fund (AS 44.[illegible]9.048) pursuant to AS 26.23.020(g)(2) and AS 26.23.050(a). This transfer was ratified by sec. 1, Ch. 2, SLA 87.

2. Section 1, Ch. 5, FSSLA 87

   This is a 1987 special session appropriation from the general fund to the budget reserve fund in the amount of $250,000,000, effective July 24, 1987. The appropriation is not required to be deposited in the budget reserve fund by any time certain. The appropriation does not lapse. The transfer thus could occur after FY 88. However, it is an outstanding obligation aginst the general fund and, until paid, like any other unexpended appropriation, will be counted against the general fund balance in determining the general fund surplus or deficit. This is relevant to the following appropriation.

3. Section 2, Ch. 5 FSSLA 87

This is a 1987 special session appropriation from the general fund to the budget reserve fund in the amount of any general fund surplus as of June 30, 1988, as will be reported in the State's "Annual Financial Report" for fiscal year 1988. The surplus, if any, appropriated by this section would be net of the appropriation to the budget reserve fund already made to the fund by section 1 of the same act. The language of the appropriation does not appear to permit any delay in transfer of the funds once the amount of the surplus is determined.

I hope this helps to clarify the status of the budget reserve fund.

Sincerely,

Milton B. Barker

Milton B. Barker
Deputy Commissioner

MBB/gb
88-18

cc: Representative Sam Cotten
Royce Weller

Revisor's notes. — Enacted as AS 37.05.156. Renumbered in 1986.

Effective dates. — Section 2, ch. 17, SLA 1986, makes this section effective April 24, 1986, in accordance with AS 01.10.070(c).

Sec. 37.05.153. Railbelt energy fund. There is established in the general fund the Railbelt energy fund. The fund consists of money appropriated to it by the legislature. The Department of Revenue shall manage the fund. Interest received on money in the fund shall be accounted for separately and may be appropriated into the fund annually. The legislature may appropriate money from the fund to assist in meeting Railbelt energy needs. (§ 1 ch 29 SLA 1986)

Revisor's notes. — Enacted as AS 44.25.050. Renumbered in 1986.

Cross references. — For railbelt energy council formed to review railbelt energy problems and needs, see ch. 30, SLA 1986, in the Temporary and Special Acts.

Effective dates. — Section 2, ch. 29, SLA 1986, makes this section effective May 24, 1986, in accordance with AS 01.10.070(c).

Sec. 37.05.155. [Renumbered as AS 37.05.151]

Sec. 37.05.156. Budget reserve fund; appropriation limit. (a) There is established as a separate fund in the state treasury the budget reserve fund. The budget reserve fund consists of appropriations to the fund. Money received by the state that is subject to the appropriation limit under (b) of this section and that exceeds that limit, may be appropriated to the budget reserve fund.

(b) Except for appropriations to the permanent fund or for Alaska permanent fund dividends, appropriations to the budget reserve fund, appropriations of revenue bond proceeds, appropriations required to pay the principal and interest on general obligation bonds, and appropriations of money received from a nonstate source in trust for a specific purpose, including revenue of a public enterprise or public corporation of the state that issues revenue bonds, appropriations from the treasury made in a fiscal year may not exceed appropriations made in the preceding fiscal year by more than five percent plus the change in population and inflation since the beginning of the preceding fiscal year. For purposes of applying this limit an appropriation is considered to be made in the fiscal year in which it is enacted and a reappropriation remains attributed to the fiscal year in which the original appropriation is enacted. The determination of the change in population for purposes of this subsection shall be based on an annual estimate of population by the Department of Labor. The determination of the change in inflation for purposes of this subsection shall be based on the Consumer Price Index for all urban consumers for Anchorage prepared by the United States Bureau of Labor Statistics. The amount of money received by the state that is subject to the appropriation

limit includes the balance in the general fund carried forward from the preceding fiscal year.

(c) If the legislature determines that the money subject to the appropriation limit received by the state in a fiscal year is less than the maximum permitted to the appropriated under (b) of this section, up to 25 percent of the balance of the budget reserve fund may be appropriated to the general fund.

(d) The Department of Revenue shall manage and invest assets of the budget reserve fund in the manner set out for the management and investment of the assets of the general fund under AS 37.10.070. Income from investment of the budget reserve fund may be appropriated to the fund each year by law.

(e) Notwithstanding other provisions of this section, appropriations may be made from the budget reserve fund needed by the governor to meet a disaster. In this subsection, "disaster" has the meaning given in AS 26.23.230. (§ 1 ch 58 SLA 1986)

Effective dates. — Section 4, ch. 58, SLA 1986, provides: "This Act takes effect July 1, 1986."

Editor's notes. — Section 3, ch. 58, SLA 1986 provides that this section "applies to fiscal year 1988 and fiscal years thereafter."

Secs. 37.05.157, 37.05.158. Reserve for capital outlay account; reserve for energy facilities development account. [Repealed, § 62 ch 14 SLA 1987.]

Sec. 37.05.159. Reserve for emergency operating expenses account. [Repealed, § 2 ch 58 SLA 1986.]

Sec. 37.05.165. Petty cash accounts [Effective January 1, 1988]. The Department of Administration shall determine the amount of the petty cash accounts needed by each state agency and inspect the petty cash accounts at least once each year to determine that the total plus amounts of receipts for unreplenished disbursements is equal to the fixed sum of cash set aside. Shortages in petty cash accounts are a personal liability of the responsible head of the agency to whom the account is set aside. The department shall adopt necessary regulations governing use and replenishment of petty cash funds. (§ 38 ch 106 SLA 1986)

Revisor's notes. — Enacted as AS 37.05.232. Renumbered in 1986.

Effective dates. — Section 69, ch. 106, SLA 1986, as amended by § 27, ch. 65, SLA 1987, makes this section effective January 1, 1988.