

ANVWR

REPORT,

2-10-88,

AI ADAMS

# Alaska State Legislature

## House of Representatives

Al Adams

Chairman

Committee on Finance

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Official Business

DATE: February 10, 1988

TO: All State Senators and Representatives

FROM: Al Adams, Chair *APA*  
House Finance Committee

RE: State Participation in ANWR land exchanges

The intent of this letter and attached documents is to demonstrate the critical importance of the State of Alaska's return to ANWR land exchange negotiations with the U.S. Department of the Interior.

To appreciate why this should occur, we need to understand the administration's course of conduct in withdrawing from exchange negotiations.

I urge you to review the enclosed materials in a positive way--to see them as a lesson to be learned. View this information as a summary of the many unfortunate errors in judgment by the state administration. But view it also as showing that there is still a unique opportunity that can be salvaged.

There are two enclosures. The first is a narrative summary of the State's decision-making process in withdrawing from the exchanges, and the events that followed. The second is a set of public records that document the summary. Together they show three disturbing facts:

1. The Department of Natural Resources, under the direction of the Sheffield administration, had completed the appraisal of its in-holdings before the State left the negotiating table in February of 1987. It was the largest appraisal effort ever undertaken by DNR. In the words of John Katz, the State had become a "co-equal" exchange participant. DOI had made the state the largest participant in exchange negotiations -- with over 35 percent of the total value brought to the exchange table. DOI, as the State had long sought, had delayed the tract selection process to conform to the State's wishes. Despite all this, the State abruptly abandoned an opportunity of perhaps overwhelming economic significance. It did so, moreover, in the blind. The Department of Revenue -- at DNR'S request -- had earlier prepared a computer program to show the potential economic benefits of state land exchanges. DNR, however, refused to run the program.

It thus chose to leave the table without any information on the potential economic benefits of state exchanges, even though its sister agency had provided it the wherewithal to do precisely that.

2. Through early 1987, DNR's resources were focused on the hard job of finalizing possible State exchanges. After its abrupt withdrawal, the agency's energies turned instead to an intensive lobbying campaign against the Native exchanges. Records show that the administration decided, at the highest policy levels, to smear the exchanges by analogizing them to the criminal Teapot Dome bribery scandal. It considered participating in the environmental lawsuit against the exchanges, coordinating its efforts with environmental groups opposed to the opening of ANWR. It also launched an intensive Washington, D.C. lobbying effort with the "primary purpose" of swaying undecided congressmen against the exchanges. The director of the Division of Oil and Gas assumed the responsibility of monitoring and responding to press coverage on the exchanges, and keeping tabs upon the strategies and personnel of the Native corporations involved. The Division of Oil and Gas became dedicated to drumming up precisely that opposition to the exchanges that Governor Cowper had cited as the reason for his withdrawal.

3. The Division spun arguments against the Native exchanges that were squarely contradicted by its own qualified staff. The acquisition of ANWR subsurface by Arctic Slope Regional Corporation was painted as a discretionary act not authorized by ANILCA. A 1986 DNR opinion unequivocally concluded exactly to the contrary. The division criticized the Native corporations for seeking a "public interest" value enhancement for their lands -- ignoring the fact that the State, while it was at the table, insisted that it, too, was entitled to such an adjustment. While the Division criticized DOI's valuation of ANWR tracts as too low, the Division's own petroleum staff was criticizing DOI's valuations as far too high, and labeling the majority of Native tract selections as marginal or poor prospects.

The enclosed summary describes each of these matters in turn. Because of the gravity of this issue, and the public policy implications raised by the State's course of conduct over the past year, I trust you will take the opportunity to read these documents.

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2. Memo: Gary Gustafson to Commissioner Wunnicke, re: ANWR Trade, 11/12/87 -- 10 pages
3. Memo: Commissioner Wunnicke to Governor Sheffield, re: ANWR Trades Issue Paper, 11/17/87 -- 2 pages
4. Memo: Commissioner Wunnicke to Commissioner Collinsworth, re: ANWR Trade, 11/18/86 -- 2 pages
5. Memo: Gary Gustafson to Lattery, Starrett, et al, re: ANWR Appraisals, 2/19/87 -- 1 page
6. Meeting notes, Dcebel, Mathias, Gustafson, Trasky, 11/20/86 -- 6 pages
7. Memo: Gary Gustafson to Commissioner Brady, re: ANWR Trade Strategy, 2/17/87 -- 5 pages
8. Memo: Rod Swope to Governor Cowper, re: Questions for ANWR Meeting, 1/12/87 -- 2 pages
9. Memo: Gary Gustafson to Tom Hawkins, re: February 2-6 ANWR Exchange Meeting, Washington, D.C., 2/10/87 -- 6 pages and 1 page list of names and phone numbers
10. Memo: Gary Gustafson to Governor Cowper, re: Trip Report: ANWR Exchange Meetings in Washington, D.C., 3/11/87 -- 4 pages
11. Memo: James Eason to Commissioner Brady, re: Recommendations to Oppose Further Land Exchanges of ANWR Acreage, 2/18/87 -- 5 pages

12. Letter: Vincent Wright to Jonathan Tillinghast, re: record request on ANWR exchanges, 2/2/88 -- 1 page
13. Notes re: Stipulations on Land Trades -- 8 pages
14. Newspaper article: Anchorage Daily News, 7/25/87 -- 2 pages
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17. Memo: James Eason to Rod Swope, re: ANWR Critique, 9/10/87 -- 3 pages
18. Memo: James Eason to Maggie Moran/John Katz, re: ANWR Land Exchange, 12/21/87 -- 1 page
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22. Memo: Gary Gustafson to Commissioner Brady, re: Trip Report: Washington, D.C., 12/15/87 -- 16 pages
23. Memo: John Katz to Governor Cowper, re: Land Trades/Strategy and Tactics on the Federal Level, 10/5/87 -- 3 pages
24. Legal Opinion: Winthrop, Stimson, Putnam & Roberts re: Legality of the Proposed Land Exchanges in the Arctic National Wildlife Refuge, 11/24/87 -- 31 pages
25. Letter: James Eason to Dan Hinkle, Marathon Oil Company, 10/30/87 -- 1 page
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27. Resolution Relating to Land Exchanges within the Coastal Plain (to Rod Swope from Lennie Gorsuch), 10/30/87 -- 3 pages
28. Memo: Gary Gustafson to Tom Hawkins, re: ANWR Land Trade Update, 10/30/87 -- 2 pages
29. Memo: Tom Hawkins to Molly McCammon, re: ASRC Trade - ANWR, 3/12/86 -- 1 page
30. United States/ASRC Land Exchange, with map, 8/9/83 -- 4 pages
31. Memo: Tom Hawkins to Bob Arnold, re: ANWR, 5/20/86 -- 3 pages
32. Memo: Tom Hawkins to Governor Cowper, re: (blank) 12/9/86 -- 3 pages
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37. Memo: Richard Kornbrath to Commissioner Brady, re: Ongoing concerns with Interior's PRESTO analysis of recoverable reserves for the 1002 area, 6/15/87 -- 5 pages
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SUMMARY OF THE STATE'S DECISION-MAKING PROCESS  
REGARDING ITS WITHDRAWAL FROM  
ANWR EXCHANGE NEGOTIATIONS

I. The State's precipitous withdrawal from the exchange process.

The State had participated in land exchange discussions with DOI since mid-1985. Ex. 1 at 2. By October, 1986, "the State became a co-equal participant in the land exchange process." Id. The delay in achieving bargaining equality occurred for a number of reasons -- including disputes over the kind and amount of acreage DOI would accept for exchange. Ex. 2 at 5-6. However, as John Katz observed, "our skirts are not totally clean on that in terms of the long hiatus . . ." Ex. 1 at 7.

In late 1986, the State committed itself to a quick and coordinated effort to finalize its land exchange package. On November 12, 1986, Gary Gustafson -- DNR's chief of land management -- recommended to Commissioner Wunnicke that "the State must act quickly if it is to interject itself as a viable player in the initial ANWR land exchange efforts." Ex. 2 at 2. According to Gustafson:

The State should immediately advance its own land trade proposal and join the ANCSA corporations at the starting gate of the ANWR selection race. This means the State has to quickly identify a trade package of State lands and proceed to have it appraised in time for submission of the trade proposal to the legislature.

Id. at 7. Commissioner Wunnicke concurred, and on November 17, 1986, recommended to Governor Sheffield that the administration appoint "an ANWR exchange team charging it with . . .

developing final list of lands to be included in exchange (December);

conducting appraisal of State land in pool;

negotiating with Interior, formulating exchange agreement.

Ex. 3 at 2.

Governor Sheffield concurred in Wunnicke's recommendation, and an ANWR exchange team was created. See Ex. 4. As part of the exchange team's effort, DNR completed the appraisal of all of the State land potentially involved in the exchanges. According to Gustafson, this "was undoubtedly the largest single appraisal effort ever taken by the Department." See Ex. 5.

The State's expedited effort was undertaken in order to ensure that the State could meet the tract selection deadlines then in existence. Those deadlines were driven by Koniag, which wanted to take its proxy statement to its shareholders before the upcoming summer. According to Gustafson, "I assured [U.S. Fish and Wildlife Service's

John] Doebel that it is our intent to meet the Koniag deadlines -- not to slow them up." Ex. 6 at 6. 1/

Moreover, in early 1987, a number of events occurred to substantially enhance the value of the exchange process to the State. These events had been accurately predicted by Gustafson in a February 17, 1987 memo to Commissioner Brady. Ex. 7. At that time, the new Cowper administration was deciding whether to continue the State's concerted efforts to negotiate exchanges. Ex. 8. Gustafson, whose division had been responsible for the State's exchange effort, acknowledged that "Governor [Cowper] is predisposed to oppose any trades . . ." Ex. 7 at 1. Even so, Gustafson argued, the threat of State withdrawal gave the State "excellent leverage with which to advance its interests." Id. The State shouldn't withdraw from the trades, Gustafson argued; rather, "the time is right to advance and negotiate

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1/ In testimony before the joint Senate and House Resources and Finance Committees on February 3, 1988, (hereinafter "Joint Hearing"), DNR's Tom Hawkins argued that the State objected to the exchange process in part because of the fast time frames driven by Koniag's schedule. Tr. at 148. The record, however, indicates that the State intended to meet those deadlines, and invested considerable resources accordingly.

for those concessions and positions which benefit the State." Among the concessions which the State might obtain, Gustafson argued, were expansion of the State's acreage; a better tract selection conflict resolution process; a restructuring of the tract selection time frame; and, possibly, even an overriding royalty. Id. at 1-3.

Gustafson proved prescient, for by the end of February, DOI had bent, or broken, on many of the points raised in his February 17, memo. DOI Assistant Secretary Bill Horn had told the State, on February 10, "that if the State feels the [tract selection] timing sequence is out of whack, he is prepared to delay the process." Ex. 9 at 5. In fact, and as the State had requested, Horn delayed tract selection until after the release of the Secretary's 1002 report. Ex. 10 at 1. Horn also agreed to "very significant" changes in the tract selection process which "conforms to earlier State suggestions." Id. at 2. And, Horn "did not dismiss the idea" of an overriding royalty. Ex. 9 at 6. Of perhaps greatest importance:

Just last week DOI agreed to expand the State's trade acreage from about 250,000 acres to over 800,000 acres. This now makes the State the largest trade participant from an acreage standpoint.

Ex. 7 at 2. As a result, the State would have been able to obtain between \$238 million and \$507 million in ANWR tracts -- a sum representing over 35% of the total value brought to the exchange table. Id. at 4. Plainly, this muscle would have enabled the State to obtain the best ANWR tracts available at tract selection.

Finally, Governor Cowper was advised that if the State remained at the table, it would have better information than anyone else. As John Katz advised the Governor:

The KIC [well] information is of course available to ASRC. ASRC is really not a participant in these land trade discussions . . . . To my knowledge, no Native corporation has any of the information relating to the KIC well. We certainly don't have it. I am fairly confident, having talked to the state geologists and geophysicists, that outside of the KIC well, we have geologic and geophysical information that is equal to or superior to anybody else's in the process, if only for the reason that our people are capable of interpreting that data with some of the most sophisticated computer models in the world.

Ex. 1 at 5. 2/

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2/ At the time of his advice, Katz did not know that the industry partner of one Native participant had access to the KIC well data. The partners of the five others, however, did not. And, even the one corporation with access ultimately selected only 3000 ANWR acres, none of which was near the KIC well.

In sum, by late February, 1987, the State had virtually completed extraordinary efforts to assemble its exchange package. Those DNR officials most intimately involved both with this exchange, and with land exchanges as a management tool, strongly believed that it was in the State's best interest to quickly complete its exchange package, and obtain a 100% interest in valuable ANWR acreage. DOI had agreed to a number of major State demands, and had shown flexibility on others. The State had become the most powerful and knowledgeable participant in the exchange process. The State was on the verge of a land transaction of massive economic significance to the people of the State.

On February 18, 1987, DNR Oil and Gas Division Director James Eason, who had not been actively involved in the exchanges to this point, recommended that the State leave the exchange table (Ex. 11), and on February 26, 1987, Governor Cowper announced the State's withdrawal.

There was, of course, no burning reason for the State to burn its bridges so precipitously in February, 1987 -- particularly in light of major concessions that DOI had and seemed willing to make. The State's haste, and its disregard of its own experts' advice, is even more disturbing in light of the administration's refusal to

gather available information on the economic consequences of participating in the exchange process. In early 1987, Gustafson had requested Department of Revenue research section chief Vince Wright to prepare a computer program to analyze the economics of the State's participation in the ANWR land exchanges. Ex. 12. DOR, in fact, prepared that program, and delivered it to Ed Phillips at DNR before the State decided to withdraw. Id. DNR, however, refused to run the program. The program disc, to this very day, sits in Mr. Phillips' desk, unused. At the Joint Hearing, Mr. Eason could only explain that the Department ignored the program because it required the agency to make assumptions about oil prices, and oil production. Tr. at 202-03. Of course, the State's ANWR position; its criticisms of the Native exchanges; and in fact virtually every significant decision involving State government, is made on the basis of assumptions about oil prices and oil production.

The better explanation -- and one offered by DNR personnel in confidence -- is that the administration didn't consider economics to be a factor.

Economics should, of course, have been a major concern, particularly because of the real threat that the State might lose its 90 percent entitlement to ANWR revenues. Were the

State forced to accept a 50 percent share, obtaining a 100 percent interest in valuable ANWR acreage would compensate for that loss. Governor Cowper has frankly acknowledged to the United States Senate that Congress has the power to reduce Alaska's share:

The CHAIRMAN. The question to you, of course, would be, how do you feel about 50 percent to the State of Alaska? Is that too much?

Governor COWPER. Well, Mr. Chairman, 90 percent is always better than 50 percent. But we also recognize that 90 percent of nothing is nothing.

Let me put it this way. The Congress has the jurisdiction to decide that question. Our position is as stated earlier, that we [are] entitled to a 90 percent share, based on a historical analysis of how that number got into the Statehood Act to begin with.

So, I think perhaps I will let it rest at that.

Ex. 39 at 2. Cowper added, in testimony before the United States House of Representatives, that retention of the 90 percent share was not a precondition to the State's support for opening ANWR:

I don't want to give anybody here the impression that the state would oppose a bill which was otherwise satisfactory to us simply because there was a provision that some reduction in the revenue share. I want to say that right here and now, however, you can count on our opposing any such motions as they may come up.

Ex. 40 at 2.

The administration was ideologically predisposed against the exchanges. The advice of its experts; the State's uniquely favorable position in the exchanges; the substantial movement of DOI on issues of major concern to the State; and hard economics, could not overcome this blind bias, and could not prevent the administration from making a hurried decision that it did not need to make.

2. The reallocation of resources to anti-exchange lobbying.

Attached as Ex. 13 is a series of meeting notes from the files of the Division of Land and Water Management. These notes capture the comments of high level policy makers during ANWR strategy sessions held in the spring of 1987. They indicate, first, that shortly after leaving the table, the State began looking for ways to rejoin the process. At an April meeting between Rod Swope, Tom Koester and John Katz, the three discussed "strategies available to insure that we can get what we want. Get back into trades -- restructure." Id. at 1.

More significantly, at a meeting between Commissioner Brady, Mr. Swope and Jim Eason, Commissioner Brady frankly acknowledged that which Alaska's Native corporations had feared: that the State was opposing the Native trades only because the State itself could not rejoin the process. Said Commissioner Brady:

See if we can develop package that is in best interest of State to get back in ballgame. If we can't figure out way, then we need to block trades. Id. at 6. [Emphasis added.]

There is a darker side to these notes. Following Brady's comments, Rod Swope asked the obvious question -- "How to stop [the Native trades]?" His answer was "political":

"Teapot Dome".

The "Teapot Dome" strategy appears in other appended notes as well. Id. at 7. It is apparent, then, that the administration decided -- at the highest policy levels -- to "block the trades" by linking them to a 60-year old bribery scandal. That horrible analogy -- used unfairly and time and time again -- was neither inadvertent nor casual. It

was, rather, a calculated attack upon some of Alaska's most respected businesses. 3/

The State considered other, equally distasteful ways of opposing the Native exchanges. Brady and Swope raised, for example, the possibility of filing "amicus briefs" in the environmental lawsuit brought by Trustees of Alaska to stop the exchanges. Id. at 6. Tom Koester and John Katz argued over whether the State could file its own lawsuit to block the exchanges under the National Environmental Policy Act. Id. at 1-2. At bottom, the State felt that, acting in concert with environmental groups, it could block the trades politically:

As long as environ. and State are opposed, trades won't go anywhere . . .

Bottom line -- State is holding the cards if State doesn't want trades to happen likely won't.

Id. at 2 and 5.

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3/ It took little time to put the "Teapot Dome" approach into action. On April 25, 1987, Commissioner Brady told the Associated Press "the last time something like this was done wrong, it showed up in the encyclopedia under Teapot Dome." Ex. 14.

From Spring, 1987, onward, a major part of the State's lobbying effort involved direct assaults on the Native exchanges. 4/

In a May 20, 1987 letter to DNR Deputy Commissioner Gorsuch, Mr. Eason complains that the Native corporations are beginning a lobbying effort of their own, and issues a plea for a major, coordinated effort by State employees against the exchanges:

Although their efforts aren't very public at this stage, I have no doubt that Interior and the corporations continue to be very active. If we do not intend for our strategy to be other than reactive, we need to determine the roster of our players, develop strategies and assign responsibilities while the State's proposal is still fresh in the public mind. I would appreciate it if you could discuss these issues with Commissioner Brady, and let me know when she will have time to pull the staff, John Katz, Tom Koester and others together.

Ex. 15.

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4/ At the joint hearing, DNR officials assured legislators, repeatedly, that the State was lobbying the larger issue of ANWR opening, and was not taking the public relations initiative on the exchanges. Commissioner Brady told the legislature: "We have never volunteered, for instance, to go back to Washington, D.C. and take the offensive on the trades." Tr. at 179. The record, as we shall see, speaks  
(Footnote Continued)

Next, on June 19-23, 1987, Eason scheduled 22 meetings with senators, representatives, and congressional aides in Washington, D.C. Ex. 16. Mr. Eason also assumed the role of public relations coordinator in the State's anti-exchange battle. He wrote memos to the Governor's office warning about local pro-exchange publicity (Exs. 17 and 18) and gathered "intelligence" on Native corporation activities. Ex. 18. He had video tapes of television programs concerning the exchanges copied and distributed within the administration. Ex. 19. Native personnel matters became Mr. Eason's concern -- as when he alerted John Katz that Chip Dennerlein would soon be replacing Michael J. T. Smith at the Native lands group. Ex. 20. In the same memo, Eason complains that a recent newspaper article "makes three unanswered editorial-like pieces in the last three weeks." Id. Radio and television appearances were coordinated through the Commissioner's office "to talk on ANWR land trades." Ex. 21.

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(Footnote Continued)  
to the contrary.

When Governor Cowper withdrew from the exchanges, he cited his fear of Congressional opposition to the exchanges in Congress. The Native corporations, for their part, have feared that the chief opponent of the exchanges in Washington, D.C. was the State itself, and that the Governor's concerns were a self-fulfilling prophecy. A December 15, 1987 trip report written by Gustafson confirms those fears. Ex. 22. During the week of December 5-12, Eason and Gustafson flew to Washington, D.C. -- at State expense -- for a trip whose "primary purpose" was to lobby congressmen against the exchanges. This despite a contemporary warning by John Katz that:

In our opinion, now is not the time to increase our visibility on the Hill with heightened lobbying activities. The land trades have not become the central focus of the ANWR debate. Instead, the committees are focusing on the issue of opening ANWR, and we do not want to divert their attention.

Ex. 23 at 3.

Nonetheless, Eason and Gustafson met with 22 congressmen and staff over a 3-day period. The memo boasted that the State had successfully turned exchange supporters, as well as undecided congressmen, against the exchanges:

There is no question but that our message got through. For instance, Representative Lindsey Thomas (GA) who was thought to be a trade

supporter, expressed considerable concern over DOI's methodology following our presentations. A number of previously uncommitted congressmen definitely seemed to tilt toward the State's posture following our disclosure reports. I put Congressman Richardson (NM), Sweeney (TX), Herger (CA), Rhodes (AZ), Lujan (NM), and Huckaby (LA) in this category. Although it's difficult to relate our contacts to exact Congressional postures, it is safe to say all our contacts bore fruit.

Ex. 22 at 3. The memo concluded:

In summary, I felt we accomplished our purpose. There seems to be little sentiment in Congress at present to support the trades.

The memo also discloses the close alliance between the State and environmental groups opposed to opening ANWR.

Gustafson said:

We also met on Wednesday with Mike Matz of the Sierra Club, Randy Snodgrass of the Wilderness Society, Tim Mahoney of the Alaska Coalition and other environmental group representatives. The environmental groups definitely support the state's position on this issue as they oppose any effort to use the trades as leverage to help open ANWR.

Id.

The State has cooperated with other anti-exchange concerns. Mobil Oil, for example, has been a vocal opponent of the exchanges. In late January, it released a legal opinion by the Washington, D.C. firm of Winthrop, Stimpson, Putnam & Roberts on the "legality" of the exchanges. Oddly, that same opinion has been in DNR's files since

December, 1987. Ex. 24. Correspondence also indicates that Mr. Eason used Marathon Oil Company to "liberally" distribute DNR's anti-exchange materials. Ex. 25-26. Throughout 1987, the State lobbied against the exchanges at every turn. It drafted and lobbied, for example, an anti-exchange resolution before the Interstate Oil Compact Commission. Ex. 27. DNR employees other than Eason also kept close tabs on Native corporation activities, including their luncheon engagements. Ex. 28.

Over the past 10 months, DNR has been carrying on an aggressive anti-exchange public relations campaign at considerable State expense. This unusual use of State funds is doubly troublesome because of the motivations suggested by the notes contained in Ex. 13. It is, at best, unusual for a Division Director to monitor and control press coverage; gather "intelligence"; and lead an organized intensive lobbying activity against his fellow Alaskans.

3. The inconsistency between DNR's criticism of the Native exchanges, and the record.

DNR's goal over the past year has been to look for opportunities to "block the trades." In many cases, DNR has gone too far.

Repeatedly -- and again at the Joint Hearing -- DNR has prefaced its critique of the ANWR exchanges by arguing that a discretionary, economically-harmful exchange has already occurred in ANWR. See Tr. at 24-25. The reference, of course, is to the 1983 ASRC exchange. The Native corporations (and DOI) have insisted that the 1983 ASRC exchange was mandated by §1431(o) of the Alaska National Interest Lands Act (ANILCA). Therefore, the State lost nothing in this congressionally-mandated exchange.

Mr. Eason has vigorously disagreed. At the Joint Hearing, he said:

You are also going to hear . . . that this [ASRC] exchange . . . was contemplated and allowed under ANILCA. . . [i]n fact, it wasn't."

Tr. at 24-25.

On March 12, 1986, Division of Land and Water Management Director Tom Hawkins issued a DNR opinion unequivocally concluding that the ASRC trade was

contemplated and allowed by §1431(o) of ANILCA, and therefore did not result in the loss of any revenues to the State. Ex. 29. Said Hawkins:

My staff and I have examined the 1983 NPS/ASRC trade package and conclude that the State's royalty share was not affected due to specific allowances in ANILCA. . . .

The State was not affected by the trade because, as noted above, ANILCA §1431(o) had already granted ASRC the right to obtain this land anyway (at its option) had it gone into commercial production. Therefore, the State's 90% royalty share under the Minerals Leasing Act was not compromised by the trade. Rather, ANILCA had already bargained away this right for the first area to go into commercial production which might then be obtained by ASRC.

Id.

Indeed, not only was the ASRC exchange mandated by ANILCA; moreover, "the State endorsed the proposed land exchange and found it to be consistent with the Alaska Coastal Management Program [on] August 3, 1983." Ex. 30.

Mr. Eason has never mentioned DNR's prior, dispositive opinion in his hearing testimony.

The State has also criticized the Native exchanges because DOI allowed "public interest values" to influence its appraisal of the Native's National Wildlife Refuge inholdings. As Assistant Secretary Horn pointed out at the Joint Hearing, commercial "fair market value" concepts

simply don't work with large, remote Alaska parcels. It may be that Native land is worth, say, \$100.00 per acre as commercial property -- just as the slopes of the Grand Canyon may be worth \$50.00 per acre as homebuilding sites. That does not, however, necessarily equate into a willing buyer/willing seller price for inholdings of great environmental value. As a result, DOI looked instead to comparable appraisals of prior exchanges that have either been approved or directed by the United States Congress. In all cases, the value given the Natives' inholdings were comparable to, or substantially less than, prior congressionally approved prices.

From the record, it appears that the State is being hypocritical in its attack on this "public interest" valuation. In a thoughtful May 20, 1986 memo, Tom Hawkins explains DOI's difficulties in valuing remote parcels, and agrees that the appraisals would be "quite low" if only commercial FMV concepts were utilized. Ex. 31 at 2-3. In fact, a major part of the State's exchange effort was to ensure that the State received public interest value adjustments for its land. On December 9, 1986, Hawkins and Gustafson told Governor Cowper:

F&WS personnel have yet to acknowledge that 'full public interest consideration values' can be claimed by the state. The theme of this discussion requires the State to justify why federal ownership would be more appropriate than State ownership of particular habitat lands.

Ex. 32 at 2-3.

DOI had been reluctant to grant the State "public interest" values, because of the argument that the land would simply be transferred from one governmental entity to another. The State maintained its position, however, that a public interest valuation of its lands was necessary as a matter of fairness and equity. As Gustafson explained about a meeting with John Doebel,

I mentioned that I could foresee a problem wherein State and Native land of like type might be valued considerably differently (with Natives getting much more value) if Natives get to negotiate public interest adjustments and we don't. He recognizes problem, but said USFWS preferred to deal with State on only the FMV appraisal basis (no adjustment). I said I thought that would be unacceptable, and proposed an "equitable servitude" or "willing buyer" adjustment to inflate State land values. Doebel said that was possible and would discuss with Gilmore (note, we need to get Horn to agree to this or something similar!) Doebel said that this kind of adjustment was not without precedence (sic), but we like to have to negotiate it out individually, just like the Natives are doing.

Ex. 6 at 3-4.

Then, when the State transmitted its "final" exchange package on February 6, 1987, John Katz forcefully argued that the threat of inholding development was equally true of State lands, and that a "public interest value" valuation was critically important:

Although some speculate that Native ownership poses a greater future development threat to parks and refuges than State ownership, the State believes this to be an overstatement. . .

In conclusion, the State requests that your final exchange land valuation process treat State and Native land values in the same manner (i.e., similar situated land should be assigned similar values).

Ex. 33 at 2-3.

DNR has criticized "public interest valuation" of Native lands as being somehow immoral or improper. Yet the same agency demanded "public interest valuation" for its lands as both necessary and appropriate. This is the same department that urged withdrawal from the exchange negotiations in order to be consistent in its principles. Consistency, apparently, has its limits.

Finally, Mr. Eason has criticized the Native exchanges because, in his view, the Natives obtained the most prospectively valuable ANWR tracts, and DOI's assigned values for those tracts were far too low.

Mr. Eason's first point is contradicted by DNR's own mapping. DNR has ranked the areas of the coastal plain on a scale of 1-5, with categories 3-5 being "marginally or poorly prospective." Ex. 34. DNR's accompanying map shows that a vast majority of Native selections are in areas ranked 3-5. Ex. 35.

DNR's "ANWR valuation" complaint was laid to rest at the Joint Hearing. As Assistant Secretary Horn pointed out, the most coveted ANWR tracts (according to both the State and DOI) were assigned values comparable to the bids actually received for the most valuable Mukluk tracts -- tracts of equal promise (at the time of bidding) to ANWR, and that were bid upon at a time when oil prices were far higher. Comparable sales aside, however, DNR's own records show that DNR's petroleum geologists strongly believe that DNR's valuation of ANWR tracts was far too high.

The heart of DNR's criticism over DOI's high valuation of ANWR tracts is the substantially lower probability that the State attaches to finding oil in ANWR. Ex. 36. In a June 15, 1987 memo, Petroleum Geologist Rich Kornbrath took issue with the analysis used by DOI to assess possible recoverable reserves in the 1002 area. According to Kornbrath, "Interior used abnormally low geologic risk (high

success factors) for its evaluation estimates." Ex. 37 at

1. As Kornbrath explained:

Of course, the final step taken by Interior is to use these same prospect estimates to affix a dollar value to individual 2,560 acre tracts for the purpose of land exchanges. The effect of the high success factors is to substantially increase the dollar value on individual tracts. (Emphasis added). 5/

Id. at 4.

Kornbrath reiterated his criticism of DOI's high values after tract selection occurred. Kornbrath noted that if the Natives had paid cash for the ANWR tracts (i.e., at a competitive sale), the value might well have been "quite a bit lower." Ex. 38 at 5. Kornbrath gave the following summary of his perception of the values placed on the ANWR tracts:

However, the BLM assigned dollar values on most tracts seem to be impressively high as compared to bids in Camden Bay and the Eastern Beaufort. We are at a loss to explain how the high values were calculated.

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5/ At the joint hearing, Mr. Eason attempted to rationalize Kornbrath's memo by saying that it referred not to low risk assessment, and hence high values, but rather to DOI's failure to map structures. Tr. at 190. As a reading of Ex. 37 will indicate, the memo has nothing whatsoever to do with mapping structures and quite explicitly does state that Interior has overvalued the ANWR tracts.

Id. at 1-2.

In sum, according to DNR, the federal government received materially more for its ANWR tracts than the State believes is justified on the basis of current information.

ARCTIC NATIONAL WILDLIFE REFUGE

February 6, 1987

10:00 a.m.

Pete Jeans: This meeting was called because there seemed to be some confusion in the Senate on what's happening with ANWR. I was called in by Bennett, Faiks, Fahrenkamp, Halford, and Hensley. There seems to be some confusion over what we're doing and what's happening in our Washington, D.C. office. I thought the best thing would be to get together, sit down and try to clear the air on this thing because there is some concern, and we want to get it cleared up.

Vern Wiggins: I was down here on another matter when Jan Faiks called me in and asked if I would tell them what's going on with ANWR. Well, I'm not part of the ANWR issue. Jan said she had some questions, so we sat down and talked about it. It became clear to me that her knowledge level about what was going on with land exchanges, not the 1002 report, was not good. She knew next to nothing and, in fact, was very misinformed on a number of things. We ended with a long distance with Bill Horn in the late afternoon. Bill is the person that is really able to answer their questions and did, about state involvement, and the discussion on land exchanges. About that time, Bettye Fahrenkamp came in on the conversation, and said that John has just been on the phone with the Committee and John has reported essentially the same thing about state involvement in the discussions on land exchange. So everybody down in the Senate side, and I haven't talked to anybody on the House side, and when I say everybody, I would include Faiks, Bennett, Halford, Kelly, Fahrenkamp, Kerttula, Hensley; are operating under zero level knowledge and in fact contradicting knowledge, on state involvement. At that point, Faiks went to Pete Jeans and talked to Pete and then I understand that Willie and Halford came up and saw the Governor yesterday.

I requested that the Governor give an update of that conversation. They felt that it was helpful about the state's involvement and state communication. At that point, Jan went to Pete and told him that we don't understand what's going on, would you see that the Governor discusses the state involvement/communications. At that point, Jan went to Pete and said we don't understand what's going on, would you take Vern to see the Governor and let Vern and the Governor discuss the state involvement. My response was fine, but I felt the person to talk about state involvement should be Bill Horn. Pete and I had the same discussion with members of the Senate.

I think there is a misconception down in the Senate about the state involvement/participation. Some of them were even under the impression that the state had never been at the table to discuss land trades at all. In fact, the Senate is barred from any discussion with Interior, had not participated in any discussions with the Interior, and it was even too late to have any discussions. I attempted, at a personal level, to change all those impressions, my mission is just simply try to get the level of understanding increased and I had hoped that you and Bill could get on the phone at the same time. Apparently, we can't get that worked up.

John Katz: I testified for about 1 1/2 hours last night to the Senate Oil & Gas Committee. I would like to think at least with respect to Committee members there, there is no misconception or misunderstanding, at least now about what the state's involvement has been and is. I think Senator Fahrenkamp was the only one of the people mentioned before who was present. If it would be helpful to you, I would be glad to capitulate that discussion in about 5 to 6 paragraphs just so that you know what has been represented.

What I said was that in the beginning of late October 1986, the state became a co-equal participant in the land exchange process. However, we had been involved in the land exchange process long before that. When I say we, I mean principally, at that time the Department of Natural Resources (DNR). The state, both at DNR and here, began to hear rumors about two years ago that Koniag Corporation was in fact in discussions about land trades with the Interior Department. Beginning 18 months ago, Interior Department appraisers began to show up in DNR offices as they were going out to the field to look at Koniag lands, and possibly some other lands. Apparently, there were very sporadic discussions at that point in time. In December 1985, Governor Sheffield wrote a letter to Bob Gilmore that, at that time appointed Tom Hawkins as the lead for the state in pursuing land trades. In February 1986, Tom responded with a letter to Gilmore that suggested about 12 million acres of state land that might be made available in land trades. That 12 million acres had evolved between the DNR and other resources agencies and this office. In March 1986, Gilmore wrote back and prioritized the state acreage but expressed a principal interest in the Tetlin area where there are some significant state inholdings. From that communication by Gilmore until early October, DNR was not very active with respect to land trades and during that period, I had 3 or 4 discussions with Bill Horn on a number of issues. Bill indicated that in fact there was a high interest on their side and they were ready to proceed. Discussions were then renewed in early October. At that point and time, I didn't feel that we were involved in the mainstream DOI decision process. I felt that we were in sort of a back channeled process involving federal bureaucrats that were a lot lower

in rank than the folks that I knew the Natives were dealing with at Interior. In late October, Bill Horn agreed to designate us as co-equals to sit at the table with the big boys, and since late October, in fact, that has been the case. The first manifestation of this occurred in early December when there was a series of meetings at which this office was present, accompanied by representatives of each of the resource agencies. In early January, there was a second set of meetings, and this week we have been involved in a third set of meetings with Interior. Incidentally, I checked this chronology this morning with DNR just so that I could provide an accurate perspective. In summary, this is what I communicated to the Senate Oil & Gas Committee, and I think there were two reactions. One is, there has been a lot more involvement than we knew about, and some people felt that that was terrific and some people wondered why we're at the table at all. But our arrangement with Bill Horn is that we can sit at the table and participate unless or until a decision is made not to support land trades. In the interim, we are participating in good faith and commenting on three principle documents: the boilerplate contract, the tract selection document, and the proposed stipulations. So, that in a nutshell, is where we've been and where we're headed unless or until you decide otherwise.

Governor: Let me inquire, what is the problem here? What is it that we're getting at?

Vern Wiggins: As I perceived it yesterday, and as I think they conveyed to Pete downstairs, the Senate has been told that the state has not been involved in this process and discussion.

Governor: We didn't tell them that. We told them that we had. I don't know what anybody else said. What I have said is that the state has been involved in the process, that we got into it kind of late, but apparently there have been some negotiations going about which the state had no knowledge, but I don't think I put any timeframe on it.

Vern Wiggins: The knowledge level downstairs is backwards.

Governor: They didn't get that from us unless they misconstrued what was said. I don't know if we ever said to the Senate whether we were involved in the trades or not. But certainly, it has been my understanding that the state has been at the table all along. Not all along, but certainly as of last fall.

Rod: That is the general perception that I have been working under, that we haven't been actively involved in these land exchanges until just recently.

Governor: Maybe what they did, was construe my statements which basically indicated that the state, in order to be at the table and fully participate, we had to have as much knowledge as everyone else.

Vern Wiggins: There are two levels at which the state is actually participating as I understand it, John. By the way, your chronology is precisely as I understand it. One is as an observer and interested and what happens in the land trades between Interior and the Native corporations; and two, the state is participating as an interested party, as a proprietor, owner of land, and an interested party, and in trading land with the Interior at two different levels.

Governor: How about this Vern, as I understood it I may be wrong in this, but the state also participates as a jurisdictional entity. In other words, the state has the authority at least to regulate the development on the KIC land.

Vern Wiggins: I included that in the first one as a proprietary interest party. You are there not just as an observer, but as a regulator, if you will. That was fully explained yesterday. I think frankly, Pete, you can concur with this. Frankly, they were aghast. Several of them had related to me flatly that they had been told that the state did not go to the table, and has not been involved in this thing until just very recently.

John Katz: I don't know what their sources of information are, but I find it anomalous that they would be contacting everybody in creation except the state Administration people that are actually involved in the process either in Juneau or back here. The only state senator that we have heard from back here over a significant period of time has been Senator Kerttula. And at least he should be aware, because we went through the Reader's Digest version of this same chronology for him on a couple of different occasions. I've got to think frankly, that there are some problems that we are not totally aware of yet.

Vern Wiggins: John, in that regard, I have thought of that very point when I was hearing it from my republican friends in the Senate, when I heard it from Willie Kensley, and Kerttula, as you mentioned, and Fahrenkamp, all three. It's obviously not a partisan issue.

Governor: Kerttula said that he was fully briefed.

Vern Wiggins: It sounds like he was briefed to me, because he had a lot of information.

Pete Jeans: That was exactly why I wanted to have this meeting. The feeling I was getting from Senator Bennett, Faiks, and also from Halford and Hensely, was that we

weren't providing them with information that we have, and that all of a sudden, Vern had come in and they got the information that we should have been sharing with them. I said wait a minute, let's get this cleared up right now, that's not the case. They were leading me to believe that Vern knew all this and that you knew all this, but we didn't.

Vern Wiggins: Unfortunately, John, the information that I was imparting to them is precisely consistent with your information and with what Pete and the Governor have reiterated as their understanding. Those of us in this room, including yourself, have been saying the same thing. The people who are on the outside of the loop are saying that's not what we were told.

John Katz: My suggestion is to put out a press statement that makes it real clear where we've been and what we've been doing. And in fact, even if we had only come into the discussions in January, there are no options that were available to the state before that are not still available. The process is still flexible and is moving forward. The state is in a position to do whatever it feels is necessary to protect its interest.

Vern Wiggins: John, that's an interesting, absolutely correct point, and Horn reiterated that yesterday several times in discussion with Jan and others.

Governor: Here's where we might have gotten off track. My impression has always been that the other participants at the table had more knowledge than the state did. In other words, if they had data either from the KIC well or from other sources that the state was not privy to. Is that right?

John Katz: I was asked that last night, and here's what I responded. The KIC information is of course available to ASRC. ASRC is really not a participant in these land trade discussions. All they require is an affirmative decision by Congress to open the coastal plain, and their land is then susceptible to immediate development. To my knowledge, no Native corporation has any of the information relating to the KIC well. We certainly don't have it. I'm fairly confident, having talked to the state geologist and geophysicist, that outside of the KIC well, we have geologic and geophysic information that is equal to or superior to anybody else's in the process, if only for the reason that our people are capable of interpreting that data with some of the most sophisticated computer models in the world.

Governor: Maybe what I did, was to get caught up in the motion that somehow KIC had information that related to the well that was shared with the regional corporations but not

with the state. I don't know where that came from, but if it is incorrect, maybe that's something that created part of the confusion. The only remarks that I made that could have been interpreted the way they are being interpreted down in the Senate, was that we are going to sit down at the table with the regional corporations and with Interior and that we had to have the same information that they had.

John Katz: Governor, some of the industry partners that are involved with Arctic Slope and KIC, are also involved with some of the other Native corporations. I don't know how that plays itself out. The industry partners are pretty close mouthed, even with their joint venture partners, on what sort of information they have.

Governor: Maybe I was misconstrued in the value of the information that is available through the KIC well. I kind of assumed that the information for the purposes of this negotiation process that the information that came out of KIC well was available to the industry which was in fact a partner or punitive partner with the regional corporations and that information, and perhaps other information, as well, was available. I don't know whether the industry turned it over to the regional corporations or not. At least it was available as a guide for negotiations. In other words, they didn't have to turn the information over to urge the regional corporations to choose a certain swatch of land there. I've got no idea of getting into a negotiating process there when one set of people have certain information, and we don't have it. I'm not going to do that.

Furthermore, of course I object to the whole thing anyhow, because no matter who's got what information, it seems to me that nobody on earth knows what decisions the Congress is going to make with respect to what parts of the ANWR are going to be open and what parts are going to be closed. There's some loose consensus on what the core calving area is, but you don't know whether that is going to be it, what stipulations are going to apply. In any event, all of those things will have a pretty profound effect in your decisions regarding which lands you want to negotiate for. I'm real uncomfortable on the process to start with, and uncomfortable with the process in which the other people have got more information than we do. That's basically what I've said. By the way, to clarify what was actually said at the press deal that we had last week, I very clearly said that we are open to persuasion. In other words, the burden of proof is not on me, the burden of proof is on the other people that stand to benefit from it as far as I'm concerned.

Vern Wiggins. As an Alaskan, that's a good position to take. John, I think the important thing on this, the

information level is a whole lot higher downstairs and upstairs. More importantly than that, or at least equally important, they are now reassured that there are no options foreclosed to the state, and that's where I think the whole discussion ought to go. Whether what happened yesterday, and who, what, why, and where, there are no options foreclosed to state. Your words are that the state is a co-equal partner at the table. There seems to be a whole lot higher comfort level with that and maybe Pete could take pulses downstairs on behalf of the Governor and you guys to be reassured of that. But I think that's the important point.

Rod: The other thing that's added to this perception, is that I have always felt, for some reason, that we recently had to flex our muscles a bit to gain access to the negotiations that were occurring.

Vern Wiggins: John, do you recall the trip in August 1985 when Bill came to Alaska and we met with Governor Sheffield? We met over in a Park Service office. Bill, at that time, made the personal invitation and request to the Governor. Bill requested to bring your proposals and land trades to the table because we are starting to talk with the Natives, and then that chronology that you went through followed. The fact that Rod indicates that there was a necessity to flex a muscle, that may have given some perception that I guess I'd characterize as unfortunate, because it's my perception that the state has always been invited and equal. Part of the problem may be bound up, John, in an age old problem, that you and I and Bill Horn understand better than anybody in this room and that is the confrontation that exists with the Park Service and the rest of the world. The Park Service has worked diligently to queer some of these kinds of things. The state has some land that the Park Service would like to have.

John Katz: Part of the problem may be the terminology that everybody is using. I don't think that it is accurate to say that the state has ever been foreclosed from the process. But I do think that it is accurate to say that the state really was not a co-equal participant in the process until October. We were given a process to pursue earlier than that, which we did pursue. Our skirts are not totally clean on that in terms of the long hiatus before DNR's next response, and neither are Interior's totally clean on that. We were not, however, forced away from the table. We did have to muscle our way in October. There was some reticence at the bureaucratic level that the U.S. Fish and Wildlife Service, and even among the Native corporations, about our participation and it required a policy level decision by Bill Horn to get us there. I kind of agree with others at your end, in the sense that all this is sort of nice history, but it is almost irrelevant, except to the extent

that perceptions of the past influence the competency of the state to participate constructively with respect to the future.

Vern Wiggins: And chats where it ought to be.

Governor: Well, does anybody have anything to add on this?

Vern Wiggins: I would only suggest one thing, John, concurring or not, whichever your feeling is. I feel it would be helpful if, before the day is out, the Governor could talk to Bill Horn. I think a reassurance and an open line of dialogue between Bill and the Governor would be very helpful. Bill was extremely open and candid and helpful yesterday, and cleared up a lot of misinformation, so I would urge that. You make the choice, Governor.

Governor: I think that this is a detailed matter that represents a complicated set of events over time, and here we are trying to deal with it over long distance. I've always been 2 or 3 jumps away from it. I wasn't there at any of it.

John Katz: I wouldn't discourage a telephone call to Bill Horn, but I don't think that it's necessary. Your agents have been in constant touch with this process, and in fact, my staff, Gary Gustafson, and I spent an hour with Bill Horn this morning and went through all our policy concerns from top to bottom. I think part of the problem may well be the following.

We feel constrained to some extent by the confidentiality that Interior understandably wants to govern this process. The way we've chosen to deal with that, as a matter of law and policy, may not be correct but what we've done is at the Interior's request. We have absolutely refused to give to the public or anybody else documents which they have provided to the Native corporations and to us. We have felt that under the State Freedom of Information Act, we are compelled to provide any written material that we give to the Interior department, and in fact we've done that. One of the things I find surprising about some of the state Senators' reactions is that there have been several articles actually quoting from those letters which were very detailed, and I think would convey to the reader the concept that the state had to be involved in order to make those kind of comments. It is arguable that the Interior Department is required, by its own rules and regulations, to have a more open process and they've chosen not to. We have honored that in order to accommodate their concerns.

Governor: Thanks a lot, John. Rod, do you have anything further to say?

Rod: No.

Vern Wiggins: I think there's a comfort level downstairs that wasn't there before barring something else, giving someone else the heebiejeebies; it should move on. Thanks, John.

John Katz: I'm not a big fan of chronologies or press statements or cover your tail kinds of things. But given what you just said, do you think there is any value in having a couple of pages of written chronology that just sets out what has been discussed. I'm not so much concerned right now about the Senate as I am just about the view of the general body politic about what your Administration is doing on this.

Governor: No, you have enough to do as it is. We'll just transcribe this conversation if you think that it covers it.

John Katz: Yes, I think it covers it. I'm comfortable.

MEMORANDUM

STATE OF ALASKA

TO:  
ESTHER C. WUNNICKE  
COMMISSIONER

FROM: GARY GUSTAFSON, CHIEF  
LAND MANAGEMENT  
LAND AND WATER MANAGEMENT

DATE: NOVEMBER 12, 1986

FILE NO: 9105

TELEPHONE NO: 762-4346

SUBJECT: ANWR TRADE

THE ISSUE

YOU HAVE ASKED FOR AN UPDATE ON THE STATUS OF PROPOSED LAND EXCHANGES INVOLVING THE ARCTIC NATIONAL WILDLIFE REFUGE (ANWR) AS WELL AS RECOMMENDATIONS TO OUTLINE THOSE ACTIONS AND FINANCES NECESSARY FOR THE STATE TO PARTICIPATE IN EXCHANGES. ACCORDINGLY, I HAVE INCLUDED A BACKGROUND AND SUMMARY REPORT OF THESE EXCHANGE NEGOTIATIONS AND RECOMMEND THE IMMEDIATE APPOINTMENT OF AN ANWR EXCHANGE TEAM TO ADVANCE STATE INTERESTS.

THE 1.5 MILLION ACRE COASTAL PLAIN OF ANWR IS CONSIDERED HIGHLY PROSPECTIVE FOR OIL AND GAS BY KNOWLEDGEABLE OBSERVERS. AS A RESULT, SECTION 1002(H) OF THE ALASKA NATIONAL INTEREST LANDS CONSERVATION ACT (ANILCA) DIRECTED THE SECRETARY OF THE DEPARTMENT OF INTERIOR (DOI) TO PREPARE A REPORT TOGETHER WITH HIS RECOMMENDATIONS ".... WITH RESPECT TO WHETHER FURTHER EXPLORATION FOR, AND THE DEVELOPMENT AND PRODUCTION OF, OIL AND GAS WITHIN THE COASTAL PLAIN SHOULD BE PERMITTED ...."

IN ANTICIPATION OF THE RELEASE OF THIS REPORT AND A SUBSEQUENT DECISION BY CONGRESS TO OPEN THE COASTAL PLAIN TO OIL AND GAS EXPLORATION AND DEVELOPMENT, DOI HAS BEEN ENGAGED IN LAND EXCHANGE NEGOTIATIONS WITH SEVERAL NATIVE CORPORATIONS FORMED PURSUANT TO THE ALASKA NATIVE CLAIMS SETTLEMENT ACT (ANCSA). MORE PARTICULARLY, THE U.S. FISH AND WILDLIFE SERVICE (USFWS) PROPOSES TO TRADE OIL AND GAS RIGHTS WITHIN ANWR'S COASTAL PLAIN FOR ANCSA VILLAGE AND REGIONAL CORPORATION LANDS (SURFACE AND SUBSURFACE ESTATE) WITHIN OR ADJACENT TO COMPONENTS OF THE NATIONAL WILDLIFE REFUGE SYSTEM IN ALASKA.

LAND EXCHANGE NEGOTIATIONS BETWEEN THE DOI AND SEVERAL ANCSA CORPORATIONS HAVE PROGRESSED TO THE POINT THAT VALUES FOR THE PROPOSED TRADE LANDS HAVE BEEN ESTABLISHED AND THE ANCSA CORPORATIONS WILL SOON BE ALLOWED TO MAKE OIL AND GAS RIGHT TRACT SELECTIONS IN THE COASTAL PLAIN. ALTHOUGH THERE WILL LIKELY BE OPPORTUNITY FUTURE TRADES, THE ANCSA CORPORATIONS (ARMED WITH

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INDUSTRY EXPERTISE) CAN BE EXPECTED TO ACQUIRE THE MOST VALUABLE PROSPECTIVE TRACTS IN THE FIRST ROUND OF ANY EXCHANGES. GIVEN THE ADVANCED STATUS OF THESE NEGOTIATIONS, THE STATE MUST ACT QUICKLY IF IT IS TO INTERJECT ITSELF AS A VIABLE PLAYER IN THE INITIAL ANWR LAND EXCHANGE EFFORTS.

## BACKGROUND REPORT

### DOI\_EXCHANGE\_TEAM

THE ANILCA SECTION 1002(H) REPORT REFERENCED ABOVE WAS ORIGINALLY SCHEDULED TO BE SUBMITTED BY THE SECRETARY OF THE DOI TO CONGRESS BY SEPTEMBER 2, 1986. HOWEVER, ENVIRONMENTALIST- SPONSORED LITIGATION, DEALING WITH WHETHER THE REPORT REQUIRES PUBLIC INPUT AND A REVISED ENVIRONMENTAL IMPACT STATEMENT PURSUANT TO THE NATIONAL ENVIRONMENTAL POLICY ACT (NEPA), HAS DELAYED RELEASE OF THE REPORT. THE SECRETARY IS EXPECTED TO RELEASE THE REPORT ON NOVEMBER 24, 1986. ONCE RELEASED, CONGRESS WILL REVIEW THE REPORT AND DECIDE THE FUTURE MANAGEMENT REGIME TO GOVERN ACTIVITIES ON ANWR'S COASTAL PLAIN.

AT THE SAME TIME THE ANILCA SECTION 1002(H) REPORT WAS BEING PREPARED, DOI BEGAN LAND TRADE NEGOTIATIONS WITH ANCSA CORPORATIONS. INFORMAL DISCUSSIONS OCCURRED OVER TWO YEARS AGO AND SOON PROGRESSED TO THE POINT THAT MANY ANCSA LANDS WERE IDENTIFIED AND APPRAISED. MOST OF THESE DISCUSSIONS OCCURRED IN WASHINGTON, D.C. AND INVOLVED BILL HORN, DOI ASSISTANT SECRETARY FOR PARKS AND REFUGES. IN AN EFFORT TO STANDARDIZE NEGOTIATIONS AND TO ENSURE THAT NEGOTIATIONS AS WELL AS OTHER DEPT OF THE FEDERAL LAND MANAGEMENT OBJECTIVES, DOI HAS APPOINTED AN ANWR LAND EXCHANGE TEAM MADE UP OF THE FOLLOWING FIVE INDIVIDUALS:

SHARON ALLENDER, USFWS SOLICITOR, WASHINGTON, D.C.  
JIM GILLETTE, USFWS REALTY CHIEF, WASHINGTON, D.C.  
TED STEPHENSON, BLM, ALASKA PROGRAM STAFF, WASHINGTON, D.C.  
PAUL KIRTON, SOLICITORS OFFICE, WASHINGTON, D.C.  
JOHN DOEBEL, USFWS, ASST. SECRETARY'S LIAISON, ANCHORAGE

IN ADDITION, THE USFWS ALASKA STATE OFFICE IN ANCHORAGE HAD BEEN ACTIVELY INVOLVED, PARTICULARLY BOB GILMORE, STATE DIRECTOR AND JOHN ROGERS, DIRECTOR GILMORE'S ASSISTANT. MR. DOEBEL IS RESPONSIBLE FOR KEEPING ASSISTANT DOI SECRETARY BILL HORN ABREAST OF ALL NEGOTIATIONS.

### ANWR\_OIL\_AND\_GAS\_VALUATION

IN 1980, PRIOR TO THE ACQUISITION OF SEISMIC AND OTHER GEOPHYSICAL DATA AND OTHER INFORMATION ON THE COASTAL PLAIN, THE U.S. GEOLOGICAL SURVEY (USGS) ESTIMATED THAT THERE WAS A FIVE PERCENT PROBABILITY THAT THE COASTAL PLAIN COULD CONTRIBUTE UP TO 1.7 TRILLION BARRELS OF CRUDE OIL AND 24 TRILLION CUBIC FEET OF

NOVEMBER 12, 1986

NATURAL GAS. USGS ALSO ESTIMATED THERE WAS A MEAN PROBABILITY THAT THE COASTAL PLAIN COULD CONTAIN UP TO 4.85 BILLION BARRELS OF CRUDE OIL AND 12 TRILLION CUBIC FEET OF NATURAL GAS.

UNDER TERMS OF ANILCA, GEOPHYSICAL SURVEYS OF THE COASTAL PLAIN HAD TO BE COMPLETED BEFORE DECEMBER 2, 1985. APPROXIMATELY 600 LINE MILES OF GEOPHYSICAL DATA WERE ACQUIRED DURING THE WINTER OF 1984-85. THESE DATA AND THEIR SUBSEQUENT ANALYSIS WILL FORM THE BASIS OF THE ANILCA SECTION 1002(H) REPORT TO CONGRESS.

ACCORDING TO OIL INDUSTRY, STATE AND FEDERAL ESTIMATES, ANWR IS CONSIDERED TO HAVE POTENTIAL OIL AND GAS RESOURCES IN EXCESS OF ONE-THIRD OF THE CURRENT U.S. OIL RESERVES AND PROBABLY MORE THAN THE INITIAL RESERVES AT PRUDHOM BAY. SPECIFIC FEDERAL ESTIMATES SHOULD BE INCLUDED IN THE ANILCA 1002(H) REPORT.

HOWEVER, PRIOR TO THE COMPLETION AND RELEASE OF THE 1002(H) REPORT, THE DOI HAS ASSIGNED PRELIMINARY VALUES (BASED UPON OIL AND GAS POTENTIAL) TO LANDS WITHIN THE COASTAL PLAIN. FOR PURPOSES OF THE PROPOSED LAND TRADES, DOI HAS DIVIDED THE COASTAL PLAIN INTO TRACTS OF 2,560 ACRES EACH. THESE TRACT SIZES WERE DERIVED BY DIVIDING EACH TOWNSHIP (23,040 ACRES) IN NINE EQUAL COMPONENT PARTS. EACH TRACT, THEREFORE, CONSISTS OF FOUR SECTIONS (640 ACRES X 4 = 2,560 ACRES). THIS PARCELIZATION IS SIMILAR TO THAT USED FOR FEDERAL OIL AND GAS LEASE SALES. USING THE ABOVE DESCRIBED TRACT GRID, DOI HAS NUMBERED AND ASSIGNED A VALUE TO EACH TRACT. THESE VALUES WILL BE KEPT CONFIDENTIAL UNTIL THE PROPOSED EXCHANGES ACTUALLY OCCUR.

IT APPEARS TO BE DOI'S INTENT TO ALLOW THE CORPORATION'S TO USE THE APPRAISED VALUE OF THEIR LANDS TO SELECT AND ACQUIRE COASTAL PLAIN OIL AND GAS TRACTS. THE METHOD OF ACQUISITION WOULD BE SIMILAR TO A MONTE CARLO GAME, IN THAT OIL AND GAS TRACTS WOULD BE SELECTED AND ACQUIRED WITHOUT PRIOR KNOWLEDGE OF THEIR ESTIMATED VALUE. THUS, ARMED WITH OIL COMPANY EXPLORATION KNOWLEDGE, THE CORPORATION'S ARE LIKELY TO SELECT THE MOST PROMISING TRACTS.

THE DEPARTMENT'S DIVISION OF MINING AND GEOLOGY HAS ALSO COMPLETED A REPORT CONCERNING THE SUBSURFACE RESOURCES AND PROSPECTIVE VALUE OF THE ANWR COASTAL PLAIN. THIS STATE REPORT WAS COMPLETED SOME TIME AGO AND HAS REMAINED CONFIDENTIAL, PENDING RELEASE OF THE ANILCA SECTION 1002(H) REPORT. THE 1002(H) REPORT WAS PARTIALLY BASED UPON INFORMATION OBTAINED FROM THE STATE.

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NOVEMBER 12, 1986

ANWR LAND STATUS

ORIGINALLY ESTABLISHED IN 1960 AS THE 8.9 MILLION ACRE ARCTIC NATIONAL WILDLIFE RANGE, ANWR NOW INCLUDES ABOUT 19 MILLION ACRES. THE COASTAL PLAIN CONSISTS OF 1.5 MILLION ACRES (APPROXIMATELY EIGHT PERCENT OF ANWR'S TOTAL ACREAGE). MANAGED BY THE USFWS, THE COASTAL PLAIN HAS ONLY ONE IN-HOLDING, THE LARGE SURFACE AND SUBSURFACE ESTATE OWNED BY THE VILLAGE OF KAKTOVIK AND THE ARCTIC SLOPE REGIONAL CORPORATION (ASRC) RESPECTIVELY.

PURSUANT TO SECTION 12(A) OF ANCSA, THE KAKTOVIK INUPIAT CORPORATION ON BARTER ISLAND IN ANWR, SELECTED 92,160 ACRES ALONG THE BEAUFORT SEA. HOWEVER, A PROVISION OF ANCSA REQUIRED ASRC, WHICH NORMALLY WOULD HAVE ACQUIRED THE SUBSURFACE ESTATE UNDER KAKTOVIK'S SURFACE ESTATE, TO SELECT IN-LIEU SUBSURFACE ACREAGE OUTSIDE ANWR AND NFRA. IN AUGUST, 1983, ASRC EXCHANGED ABOUT 100,000 ACRES OF THIS IN-LIEU SUBSURFACE ENTITLEMENT NEAR CHANDLER LAKE IN THE GATES OF THE ARCTIC NATIONAL PARK FOR 92,000 ACRES OF SUBSURFACE RIGHTS IN ANWR UNDER THE KAKTOVIK INUPIAT CORPORATION LAND. THE LAND TRADE PREEMPTED ANOTHER PROCESS ESTABLISHED BY SECTION 1431(O) OF ANILCA, WHEREBY ASRC COULD HAVE OBTAINED THESE SAME LANDS AT A LATER DATE, PROVIDED CONGRESS OPENED THE COASTAL PLAIN TO COMMERCIAL OIL AND GAS DEVELOPMENT WITHIN 40 YEARS AND ASRC SELECTED LAND WITHIN 75 MILES OF KAKTOVIK'S LAND. THE ATTACHED MAP DEPICTS THE KAKTOVIK AND ASRC OWNERSHIP ON THE COASTAL PLAIN.

NATIVE\_EXCHANGE\_EEOBIS

AT THE PRESENT TIME, THERE ARE FOUR GROUPS OF NATIVE INTERESTS INVOLVED IN ANWR LAND EXCHANGE EFFORTS. KONIAG, THE KODIAK-BASED VILLAGE/REGIONAL CORPORATION MERGER, HAS BEEN INVOLVED IN TRADE DISCUSSIONS WITH THE USFWS FOR ALMOST TWO YEARS. KONIAG OWNS SEVERAL AREAS OF LAND (E.G. KARLUK RIVER) OF GREAT INTEREST TO USFWS DUE TO THEIR LOCATION WITHIN THE KODIAK NATIONAL WILDLIFE REFUGE. THE KONIAG ANWR TEAM IS HEADED BY BILL TIMME, ART KENNEDY AND BOB PUTZ (FORMER USFWS ALASKA DIRECTOR). A DRAFT EXCHANGE AGREEMENT HAS BEEN DRAFTED AND KONIAG'S LANDS WERE APPRAISED LAST WINTER BY A TEAM OF DOI APPRAISERS. THE INITIAL EXCHANGE AGREEMENT HAS NOW BEEN REDRAFTED FOLLOWING RECENT MEETINGS IN WASHINGTON, D.C.

ANOTHER ANWR TRADE PACKAGE HAS BEEN ASSEMBLED BY DOYON, LTD., BASED IN FAIRBANKS. I HAVE BEEN UNABLE TO OBTAIN MUCH INFORMATION CONCERNING THIS PROPOSAL. PRESUMABLY, HOWEVER, MOST OR ALL OF DOYON'S LAND WAS ALSO APPRAISED LAST WINTER BY THE USFWS. THE AKHIKAGUYAK CORPORATION, LOCATED ON THE SOUTH END OF KODIAK ISLAND (NOT PART OF KONIAG), HAS ALSO ADVANCED A PROPOSAL TO TRADE UP TO 100,000 ACRES TO THE USFWS.

NOVEMBER 12, 1986

THE NEWEST AND LARGEST ANWR TRADE PACKAGE HAS BEEN ASSEMBLED BY A NATIVE CORPORATION CONSORTIUM HEADED BY COOK INLET REGION, INC. (CIRI) THE ANCHORAGE BASED REGIONAL CORPORATION. CONSISTING OF VILLAGE CORPORATION LANDS FROM THE BRISTOL BAY, CALISTA AND DOYON REGIONAL AREAS, AS WELL AS CIRI LAND HOLDINGS WITHIN THE KENAI NATIONAL WILDLIFE REFUGE, THIS CONSORTIUM HAS MOVED RAPIDLY TO PRESENT A VERY ATTRACTIVE TRADE PACKAGE TO THE USFWS.

THE CIRI ANWR TEAM IS HEADED BY THREE EXPERIENCED LAND TRADERS, MARGIE SAGERSER, MARK RINDNER AND MICHAEL C. T. SMITH. MS. SAGERSER IS A CIRI BOARD MEMBER AND FORMER CIRI VICE-PRESIDENT FOR LAND MANAGEMENT. MARK RINDNER IS A PRIVATE ATTORNEY WHO HAS HANDLED LAND USE MATTERS FOR CIRI. MICHAEL C. T. SMITH IS A FORMER DNR DEPUTY COMMISSIONER AND CURRENT LAND USE CONSULTANT, OFTEN RETAINED BY CIRI. MS. SAGERSER AND MR. SMITH WERE PREVIOUSLY THE PRINCIPALS IN THE 1976 COOK INLET LAND TRADE.

CERTAINLY IN THE CASE OF THE KONIAG AND CIRI, AND PROBABLY THAT OF DOYON, OIL COMPANY MONEY IS A DRIVING FORCE AND INTEREST. THOSE COMPANIES RUMORED TO BE HELPING FINANCE CORPORATION TRADE EFFORTS INCLUDE ARCO, TEXACO AND EXXON. //

IT IS EVIDENT THAT THE CORPORATIONS ARE WELL ORGANIZED, FINANCED AND ON THE VERGE OF CONSUMMATING PRELIMINARY LAND EXCHANGE AGREEMENTS WITH THE USFWS. THUS FAR THE CORPORATIONS VIEW THE STATE AS A POSSIBLE COMPETITOR FOR KEY ANWR LANDS AND HAVE BEEN RELUCTANT TO PROVIDE THE STATE WITH MUCH INFORMATION. IN ADDITION, THEY UNDOUBTEDLY FEAR THE STATE MIGHT CHOOSE TO OPPOSE ANCSA TRADES IN ANWR DUE TO THE LOSS OF OUR 90 PERCENT ROYALTY SHARE FROM FEDERAL LEASING.

WITH THE EXCEPTION OF SOME OF THE CIRI TEAM LANDS, THE USFWS HAS APPRAISED ALL ANCSA LANDS PROPOSED FOR EXCHANGE. HOWEVER, THESE FEDERAL APPRAISALS MUST STILL BE ADJUSTED TO ACCOUNT FOR PUBLIC INTEREST VALUES. THESE ADJUSTMENTS ARE PART OF THE ON-GOING NEGOTIATIONS.

#### STATE\_EXCHANGE\_EEEQRIS

AFTER LEARNING OF POSSIBLE LAND TRADES BETWEEN ANCSA CORPORATIONS AND THE USFWS INVOLVING ANWR, YOU ASKED THE DEPARTMENT TO INITIATE THE TRADE DISCUSSIONS WITH THE USFWS IN LATE 1985. IN FEBRUARY, 1986, TOM HAWKINS, DIRECTOR OF THE DEPARTMENT'S DIVISION OF LAND AND WATER MANAGEMENT, WROTE BOB GILMORE, USFWS STATE DIRECTOR TO FORMALLY PROPOSE A STATE/FEDERAL LAND TRADE INVOLVING ANWR.

AT THAT TIME, THE DEPARTMENT OFFERED 12 MILLION ACRES OF STATE LAND HOLDINGS WITHIN OR ADJACENT TO NATIONAL PARKS OR REFUGES IN ALASKA AS CANDIDATES FOR TRADE. INCLUDED WERE VERY IMPORTANT

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NOVEMBER 12, 1986

HABITAT AREAS SUCH AS THE SHEARWATER PENINSULA AND MARMOT ISLAND AT KODIAK, THE BLACK HILLS CARIBOU CALVING GROUNDS ON THE ALASKA PENINSULA, TRUMPETER SWAN NESTING AREA IN THE COPPER RIVER BASIN AND STATE INHOLDINGS NEAR MCCARTHY IN THE WRANGELL-ST. ELIAS NATIONAL PARK.

MR. GILMORE RESPONDED IN MARCH, 1986, CLAIMING THAT ONLY THE STATE LANDS WITHIN THE TETLIN NATIONAL WILDLIFE REFUGE MERITED HIGH PRIORITY FOR USFWS ACQUISITION BY TRADE. THE REMAINING STATE LANDS WERE REFERENCED AS HAVING ONLY LOW TO MODERATE USFWS ACQUISITION INTEREST.

IN OCTOBER OF 1986 DURING A TRIP TO WASHINGTON, D.C., YOU DISCUSSED THE ANWR TRADE MATTER WITH BILL HORN, DOI'S ASSISTANT SECRETARY FOR PARKS AND REFUGES. MR. HORN APPARENTLY RELAYED THAT DOI WAS INTERESTED IN A STATE/FEDERAL ANWR TRADE, AND THAT STATE LANDS IN NATIONAL PARK UNITS WERE ACCEPTABLE TRADE CANDIDATE AREAS. THIS PROMPTED THE STATE TO REASSEMBLE ITS ANWR TRADE PACKAGE, EXPANDING THE LIST OF CANDIDATE STATE LANDS TO INCLUDE NUMEROUS AREAS OF INTEREST TO THE NPS. MR. HORN ALSO CONTINUED TO ASSURE YOU AND JOHN KATZ THAT DOI WOULD KEEP THE STATE INFORMED OF THE PROGRESS OF DOI/ANCSA CORPORATION TRADE EFFORTS. UNFORTUNATELY, IT IS NOW EVIDENT THAT MUCH HAS OCCURRED WITHOUT STATE CONSULTATION. //

ON THE BASIS OF THE WASHINGTON, D.C. DISCUSSIONS, DIRECTOR HAWKINS ONCE AGAIN WROTE MR. GILMORE OF THE USFWS TO TRY AND SOLIDIFY A STATE LAND TRADE PROPOSAL. INCLUDED IN THIS REVISED STATE TRADE PROPOSAL WERE IN-HOLDINGS WITHIN NATIONAL PARKS FOR WHICH THE NPS HAS A LONG-STANDING INTEREST (E.G. MCCARTHY, WOLF TOWNSHIPS, KAMISHAK, ETC.). WE HAVE NOT YET RECEIVED A RESPONSE TO THIS LATEST STATE TRADE PROPOSAL.

#### RECOMMENDATION

THE ADVANCED STATUS OF THE DOI/ANCSA CORPORATION LAND EXCHANGE NEGOTIATIONS REQUIRES AN IMMEDIATE AND ACCELERATED RESPONSE FROM THE STATE OF ALASKA. ASSUMING THE COASTAL PLAIN OF ANWR IS OPENED TO OIL AND GAS DEVELOPMENT BY CONGRESS IN THE NEAR FUTURE, THE STATE MAY ASSUME TWO POSTURES IN ORDER TO PROTECT OR ENHANCE ITS INTERESTS.

FIRST, THE STATE MUST SEEK PROFORMA TO PRESERVE ITS 90 PERCENT ROYALTY INTEREST FROM FEDERAL OIL AND GAS LEASE SALES, PURSUANT TO THE MINERAL LEASING ACT. ALTHOUGH SOME MAY SUGGEST OUR 90 PERCENT ROYALTY IS AN EXCESSIVE STATE BENEFIT IN THIS TIME OF FEDERAL BUDGET AUSTERITY, THE STATE SHOULD DO EVERYTHING WITHIN ITS MEANS TO AVERT THE LOSS OF REVENUE WHICH MIGHT ACCRUE TO THE STATE.

*to meet this act at 90% because alaska  
didn't get other funds that  
other states receive related to fuel  
oil & development*

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NOVEMBER 12, 1986

SECOND, AND COINCIDENT TO ATTEMPTS TO MAINTAIN THE STATE'S CURRENT FEDERAL LEASE ROYALTY PERCENTAGE, THE STATE SHOULD IMMEDIATELY ADVANCE ITS OWN LAND TRADE PROPOSAL AND JOIN THE ANCSA CORPORATIONS AT THE STARTING GATE OF THE ANWR SELECTION RACE. THIS MEANS THE STATE HAS TO QUICKLY IDENTIFY A TRADE PACKAGE OF STATE LANDS AND PROCEED TO HAVE THEM APPRAISED IN TIME FOR SUBMISSION OF A TRADE PROPOSAL TO THE LEGISLATURE. BECAUSE STATE LAND APPRAISALS WILL LIKELY BE COMPLETED LATER THAN THE NORMAL LEGISLATIVE EXCHANGE SUBMISSION DEADLINE ESTABLISHED BY AS 38.50, THE GOVERNOR WILL HAVE TO SUBMIT THE EXCHANGE AT A LATER DATE, FOLLOWING A FINDING OF EXIGENT CIRCUMSTANCES.

THE FOLLOWING TIMEFRAME SHOULD BE CLOSELY FOLLOWED IF THE STATE IS TO BE IN POSITION TO JOIN THE ANCSA CORPORATIONS IN THE INITIAL ANWR TRACT SELECTION PROCESS (ESTIMATED BY MARCH-APRIL, 1987).

1. BRIEF GOVERNOR BILL SHEFFIELD, GOVERNOR-ELECT COWPER AND KEY LEGISLATORS ON THE CONCEPTUAL STATE EXCHANGE PROPOSAL AND DESIGNATE A STATE ANWR EXCHANGE TEAM (NOVEMBER, 1986).
2. FINALIZE STATE LAND POOL TO BE INCLUDED IN EXCHANGE (DECEMBER 1, 1986).
3. CONDUCT FAIR MARKET VALUE APPRAISALS OF STATE LANDS PROPOSED FOR EXCHANGE (FEBRUARY 15, 1987).
4. SUBMIT PROPOSED TRADE TO LEGISLATURE FOR APPROVAL (FEBRUARY 20, 1987).
5. ENTER INTO PRELIMINARY OR CONCEPTUAL EXCHANGE AGREEMENT WITH DOI (APRIL, 1987).

THE UNIQUE NATURE OF THIS EXCHANGE WILL NECESSITATE VARIANCES IN THE NORMAL AS 38.50 PROCESS. THESE VARIANCES MUST BE APPROVED BY THE LEGISLATURE AS PART OF THEIR FINAL REVIEW OF THE PROPOSAL.

OBVIOUSLY, THERE IS A TREMENDOUS AMOUNT OF WORK TO BE DONE BETWEEN NOW AND MID-MARCH. THE ONLY WAY THE STATE CAN HOPE TO SUCCESSFULLY ASSEMBLE, MARKET AND DELIVER THIS EXCHANGE IS TO IMMEDIATELY IDENTIFY AND APPOINT A QUALIFIED MULTI-DISCIPLINARY ANWR EXCHANGE TEAM AND PROVIDE THEM WITH SUFFICIENT SUPPORT (BOTH ADMINISTRATIVE AND FINANCIAL) TO COMPLETE THE ASSIGNMENT. I HAVE PROPOSED BELOW A ROUGH OUTLINE OF THE PERSONNEL AND SUPPORTING NECESSARY TO ACCOMPLISH THE TASK. IT IS ESSENTIAL THAT TEAM MEMBERS BE THE MOST EXPERIENCED AND CAPABLE STAFF MEMBERS WITHIN THEIR REALM OF EXPERTISE. TEAM MEMBERS SHOULD BE AVAILABLE FOR THE PROJECT ON A FULL-TIME BASIS FOR A THREE MONTH PERIOD FROM NOVEMBER, 1986, TO FEBRUARY, 1987, AND AT LEAST PART-TIME THEREAFTER.

PERSONNEL AND RESPONSIBILITIES

- 1. GOVERNOR'S OFFICE, WASHINGTON, D.C. - CONGRESSIONAL DELEGATION LIAISON, COORDINATION WITH DOI REPRESENTATIVES IN WASHINGTON, D.C., REPRESENT GOVERNOR'S INTERESTS.
- 2. STAFF MEMBER, DIVISION OF MINING AND GEOLOGY - RESPONSIBLE FOR ANWR SUBSURFACE EVALUATION, COORDINATION WITH GOVERNMENT, INDUSTRY INTERESTS RELATED TO RESOURCE INFORMATION, LEGISLATIVE BRIEFINGS.
- 3. ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF LAW - PREPARATION OF LEGISLATION AND EXCHANGE AGREEMENTS, LEGAL SUPPORT, COORDINATION WITH SOLICITORS OFFICE.
- 4. STAFF MEMBER, DIVISION OF LAND AND WATER MANAGEMENT - RESPONSIBLE FOR ASSEMBLAGE OF STATE EXCHANGE LAND, COORDINATION OF STATE AGENCY INVOLVEMENT, APPRAISAL PROCESS, LEGISLATIVE BRIEFINGS, NEGOTIATIONS.

IN ADDITION, IT IS ESSENTIAL TO INVOLVE OTHER AFFECTED STATE AGENCIES (E.G. ADF&G, DEC) REGARDING THOSE ISSUES WITHIN THEIR RESPONSIBILITY OR EXPERTISE.

FINANCIAL

PRIMARY COSTS ARE FOR APPRAISALS AND TRAVEL. APPRAISALS WILL LIKELY BE NEEDED FOR SUBSTANTIAL ACREAGE OF STATE LAND, AND COSTS WILL BE REDUCED IF DNR USES IN-HOUSE STAFF APPRAISERS. TRAVEL COSTS INCLUDE SEVERAL TRIPS TO WASHINGTON, D.C. FOR NEGOTIATIONS WITH DOI OFFICIALS AS WELL AS SEVERAL JUNEAU TRIPS FOR LEGISLATIVE BRIEFINGS.

- TRAVEL (2 TEAM TRIPS TO WASHINGTON
- 5 TEAM TRIPS TO JUNEAU)
- APPRAISAL (CHARTER FLIGHTS,
- OTHER CONTRACTUAL (MAPS, AER
- PHOTOS, PRINTING, POSTAGE
- EQUIPMENT (FILING CABINET)

TOTAL ESTIMATED PROJECT BUDGET

*← why do we need "team" trips to DC when we have a liaison there? Also, won't DOI officials be traveling to Alaska? Why not arrange to meet with them here?*

FINALLY, BECAUSE THE SECRETARY IS REPORT ON NOVEMBER 24, 1986, IT ANNOUNCE THE FORMATION OF A STATE THAN NOVEMBER 21, 1986.

(H)  
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NOVEMBER 12, 1986

PERSONNEL AND RESPONSIBILITIES

1. GOVERNOR'S OFFICE, WASHINGTON, D.C. -  
CONGRESSIONAL DELEGATION LIAISON, COORDINATION WITH  
DOI REPRESENTATIVES IN WASHINGTON, D.C., REPRESENT  
GOVERNOR'S INTERESTS.
2. STAFF MEMBER, DIVISION OF MINING AND GEOLOGY -  
RESPONSIBLE FOR ANWR SUBSURFACE EVALUATION,  
COORDINATION WITH GOVERNMENT, INDUSTRY INTERESTS  
RELATED TO RESOURCE INFORMATION, LEGISLATIVE BRIEFINGS.
3. ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF LAW -  
PREPARATION OF LEGISLATION AND EXCHANGE AGREEMENTS,  
LEGAL SUPPORT, COORDINATION WITH SOLICITORS OFFICE.
4. STAFF MEMBER, DIVISION OF LAND AND WATER MANAGEMENT -  
RESPONSIBLE FOR ASSEMBLAGE OF STATE EXCHANGE LAND,  
COORDINATION OF STATE AGENCY INVOLVEMENT, APPRAISAL  
PROCESS, LEGISLATIVE BRIEFINGS, NEGOTIATIONS.

IN ADDITION, IT IS ESSENTIAL TO INVOLVE OTHER AFFECTED STATE AGENCIES (E.G. ADF&G, DEC) REGARDING THOSE ISSUES WITHIN THEIR RESPONSIBILITY OR EXPERTISE.

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TRAVEL (2 TEAM TRIPS TO WASHINGTON, D.C., 5 TEAM TRIPS TO JUNEAU)	\$15,000
APPRAISAL (CHARTER FLIGHTS, ETC.)	\$25,000
OTHER CONTRACTUAL (MAPS, AERIAL PHOTOS, PRINTING, POSTAGE COPY)	\$9,800
EQUIPMENT (FILING CABINET)	\$200
 TOTAL ESTIMATED PROJECT BUDGET	 \$50,000

FINALLY, BECAUSE THE SECRETARY IS EXPECTED TO RELEASE THE 1002(H) REPORT ON NOVEMBER 24, 1986, IT WOULD BE ADVANTAGEOUS TO PUBLICLY ANNOUNCE THE FORMATION OF A STATE ANWR EXCHANGE TEAM NO LATER THAN NOVEMBER 21, 1986.

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EXHIBIT 2 PAGE 9

ESTHER C. WUNNICKE, ET AL - 9 -

NOVEMBER 12, 1986

GG/JLH  
ATTACHMENT

CC: JIM EASON, DO&G  
LAUREL MURPHY, DM&G  
RICH KORNBATH, DM&G  
JOHN KATZ, GOV. OFFICE, WASHINGTON, D.C.  
BOB ARNOLD, CO  
JIM BARNETT, CO  
NED FARQUHAR, CO  
TOM KOESTER, AGO  
NORM COHEN, ADF&G  
TOM HAWKINS, DLWM

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EXHIBIT 2 PAGE 10

3

# MEMORANDUM

# State of Alaska

TO: The Honorable Bill Sheffield  
Governor

DATE: November 17, 1986

FILE NO:

TELEPHONE NO:

FROM: *Esther*  
Esther C. Wunnicke  
Commissioner  
Department of Natural Resources

SUBJECT: ANWR Trades Issue Paper

ISSUE: Should the State broaden and accelerate its ANWR exchange efforts immediately?

1. ANWR land/status

- Of ANWR's total acreage of about 19 million acres, about 1.5 million acres make up the coastal plain.
- The only in-holding in the Refuge is the 92,160 acres of surface estate owned by Kaktovik Inupiat Corporation, the subsurface of which is owned by the Arctic Slope Regional Corporation (ASRC), and about one township of subsurface estate, also owned by ASRC. (Map attached.)

2. The U.S. Fish and Wildlife Service has shown little interest in trading ANWR lands for State lands.

- Of the 12 million acres identified by DNR this year near parks and refuges, only the lands within Tetlin National Wildlife Refuge were of interest.
- Bill Horn of Interior subsequently expressed interest in obtaining park lands as well as refuge lands.
- DNR proposed an expanded list of lands for possible trade to the Fish and Wildlife Service this month, including lands important to national parks.

3. We have just learned there has been an acceleration of efforts by Native corporations to trade for lands in ANWR.

- Four groups (led by Koniag, CIRI, Doyon, and Akhiokaguyak) have developed draft proposals or draft agreements, and most of their lands have been appraised.

DELIVER TO: <i>Gayle Gustafson</i>	LOCATION: <i>1. vru</i>
FROM: <i>Bob Brown</i>	LOCATION: <i>C.D. Johnson</i>
TELEPHONE/TELECOPIER:	TOTAL NUMBER OF PAGES:
TRANSMITTING ON SPEED:	DATE: <i>11-17-86</i>
PHONE FOR PROBLEMS/NAME/NUMBER:	TIME: <i>2:40 PM</i>

OPTIONAL FORM NO. 10

The Honorable Bill Sheffield -2-

November 17, 1986

- Several oil companies are reportedly helping advance the Native corporation proposals.
4. Interior has made much progress in its planning for exchanges.
    - An exchange team of five persons (USFWS, BLM, Solicitor's Office) has been appointed; all but one are in Washington, D.C.
    - The coastal plain has been divided into tracts of 2,360 acres and each has been assigned a preliminary value.
    - A tract selection process has reportedly been established, tract selection expected to take place in March or April, 1987, but could take place earlier.
  5. Interior is now expected to release its ANILCA 1002(h) report on November 24 for public comment.

RECOMMENDATIONS:

1. Obtain the concurrence of Governor-elect Cowper and immediately name an ANWR exchange team, charging it with:
  - briefing key legislators;
  - developing final list of lands to be included in exchange (December);
  - conducting appraisals of State land in pool;
  - negotiating with Interior, formulating exchange agreement.
2. The Exchange Team should consist of representatives from two divisions in DNR, the Attorney General's Office, and the Department of Fish and Game.
3. The naming of an exchange team should be seen only as a single element of a larger ANWR strategy.
4. Public announcement should immediately follow Interior's release of its 1002(h) report, but it should be in the context of planning an overall strategy for influencing ANWR decisionmaking.

Attachments

FORM 3 PAGE 2

01556

MEMORANDUM

State of Alaska

To: The Honorable Don Collinsworth  
Commissioner  
Department of Fish and Game

Date: November 18, 1986

File no:

Telephone no: (907) 465-2400

From: Esther C. Wunnicke  
Commissioner  
Department of Natural Resources  
Office of the Commissioner

Subject: ANWR Trade

As you know, the specter of land trades in the Arctic National Wildlife Refuge (ANWR) is of great importance to state interests and is part of our overall ANWR strategy. Accordingly, I met Monday with the Governor to recommend that the state immediately broaden and accelerate its ANWR exchange efforts. The Governor indicated that he advocates such an effort and will convey Governor-elect Cowper a personal message to that effect.

In order to assemble a state land trade package in time to meet federal ANWR exchange time frames, it is essential that your agency be involved in initial land identification discussions. Your Habitat Division proved very helpful last spring when the initial 12 million acre state land trade pool was assembled.

My recommendations to the Governor include the creation of a state ANWR Exchange Team, including the Department of Fish and Game. I perceive your participation as critical to completion of the following tasks.

1. Assemble a refined land trade pool of state land with fish and wildlife resource values which will serve as the basis for negotiations between the state, USFWS and the NPS.
2. Represent ADF&G's interests in land trade negotiations designed to identify those lands from the pool, above, which will be offered for exchange.
3. Negotiate any stipulations or other provisions pertaining to your agency's interests in the final exchange agreement.
4. Represent ADF&G in briefings on the ANWR trade proposal before the legislature, interest groups, etc.

01561

November 18, 1986

In addition, I suspect there are also other appropriate arenas for ADF&G involvement and welcome your suggestions. It would be of great assistance if you would appoint a representative to participate in the ANWR Exchange Team and notify me promptly. I will be sending related background information to your office under separate cover.

Thanks for your assistance.

EW/GG/jlh  
ATTACHMENT

cc: Norm Cohen, ADF&G  
Tom Hawkins, DLWM  
Gary Gustafson, DLWM/LMS  
Bob Grogan, OMB

01565

EXHIBIT 4 PAGE 2

# MEMORANDUM

# State of Alaska

DEPARTMENT OF NATURAL RESOURCES - Division of Land and Water Management

TO: ~~Dennis Lattery~~, LMS  
~~Steve Starrett~~, LMS  
~~Judy Robinson~~, SCRO  
Dennis Phillips, NRO

DATE: February 19, 1987

FILE NO:

TELEPHONE NO: 762-4346

FROM: Gary Gustafson, Chief  
Land Management

SUBJECT: ANWR Appraisals

I'd like to express my appreciation for the hard work and long hours expended by each of you to complete the appraisals of state land proposed for trade to the Department of Interior. As you know, the scope of the appraisal and the tight deadline for completion made this task particularly ambitious and challenging. It was undoubtedly the largest single appraisal effort ever undertaken by the department. I am very pleased with the result and feel confident your reports will facilitate the state's interests as we continue the ANWR trade process.

I also appreciate the patience of your supervisors, whose realization of the importance of this task helped to compensate for the delay in getting other appraisals completed. Again, thanks for a job well done -- and time.

cc: Tom Hawkins, DLWM  
Dick LeFebvre, DLWM  
Meg Hayes, SCRO  
Jerry Brossia, NRO  
Kyle Cherry, DLWM/LMS

GG/jth

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EXHIBIT 5 PAGE 1

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cc Jim  
Eason

ANWR

MEETING WITH DOEBEL (USFWS) AND MATHIAS (USFWS)  
WITH GUSTAFSSON (DNR) AND TRASKY (ADFG). 11/20/86 1:00

This meeting was held to present the USFWS with specific tract boundaries to better identify USFWS interest in some 12 million acres of state land with habitat value which might be exchanged. I brought with me site specific boundaries on 1:250,000 scale USGS CSU ANILCA maps for the national wildlife refuge system. Mr. Mathias was present as he is the USFWS Alaska Realty Section Head and has been involved with review of all prior Native lands propose for exchange.

Lance Trasky and I presented the following list of areas and specifically discussed habitat and wildlife values, threats from development, land management efficiency and federal CSU Refuge Plan recommendations.

1. Tetlin NWR . . . 45,000 acres..
2. Alaska Maritime NWR . . 30,000 acres
  - marmot Island
  - Tugidak Is.
3. Alaska Peninsula NWR . . . 400,000 acres
  - Blain Hills
  - mother Goose Lk.
  - Herrenden Bay
4. Yukon Delta NWR . . . 100,000
  - Kisaralik R. (upper)
5. Kodiak NWR . . . ~~100,000~~ 200,000
  - Raspberry Is.
  - Shearwater Peninsula
6. Redoubt Bay
7. Gulkana Basin
8. Nushagak / Iliamna
9. melozi
10. Kanuti NWR - John/Alatna R.

RECEIVED

D+C 15 1986

DIVISION OF OIL & GAS  
ANCHORAGE, ALASKA

EXHIBIT 6 PAGE 1  
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In addition, we emphasized <sup>that</sup> other areas identified by

Based upon comments and general observations, I perceived interest in areas #1-5, above, but very little interest in the other areas. Doebel explained that it was doubtful that his agency would consider acquiring any new lands not already within or adjacent to, NWR's. The concept of Congress creating new NWR's just isn't attractive.

I also mentioned the possibility of including development rights to state submerged lands in NWR's in the trade. Doebel seemed unattracted by but will discuss with Gilmore.

Doebel said it appeared there was enough state land of interest to USFWS that he thought we'd likely be allowed in the trade negotiations. He also said he needed to confirm with refuge managers and Gilmore as to exactly which tracts they would request in trade. He will cover that base and let me know by 11/26. He felt confident enough about state involvement to say he would draft a letter to state and hope to finalize by 11/26. He thought the letter ~~will go~~ would generally confirm our participation in trade. It will not describe the state land of interest. That will occur at same time via phone. There appears to be deliberate USFWS attempt to avoid saying much in writing about trade, due to... public disclosure laws.

He also emphasized that it is "absolutely essential" for the state to participate in the Washington, DC discussions and negotiations on Dec. 1-5. At that time, the DOI ANWR Exchange Team proposes to meet with all Native corporations to:

1. review draft exchange agreement;
2. discuss and attempt to decide ANWR tract selection process;
3. review draft exchange stipulations.

Doebel will provide me with copies of the draft exchange agreement and stipulations. The draft exchange agreement may be revised again

001: EXHIBIT 6 PAGE 2

prior to the meetings. If so, he'll attempt to get me a copy.

He expects the Dec. 1 - 5 discussions to be very involved and lengthy. In the past, he said the attorneys tend to monopolize discussions. However a lot of ground will be covered and usually the Natives bring a team of 2-4 persons to advance their causes. The discussions will likely occur from 9:00 - 12:00 and 1:30 - 3:30 everyday. In addition, there are expected to be many private meetings with DOI officials, including Bill Horn. He said we would be well advised to have an attorney in attendance. He added that if we go, it would be well to make travel arrangements ASAP. because he had difficulty getting his own trip back arranged.

We then discussed the appraisal process. First, he mentioned that all Native lands are already appraised, except for some in the CIRI package. USFWS is now arranging to get appraisers up to Alaska to do the CIRI appraisals.

~~As a result~~ It appears that each ANWR trade participant gets to negotiate its own land values. Once FMV is established, each Native corp. team (for example) will negotiate with USFWS to establish a public interest adjustment, which Doebel expects will increase most Native appraisal values by 1.5 to 4 times! Each negotiation effort ~~value~~ to establish value will be handled independently. In other words, the criteria will not necessarily be the same.

EXHIBIT 6 PAGE 3

I explained that we intended to do our own FMV appraisals using DNR appraisers in accord with state and federal appraisal standards. Doebel had no problem with this and said Gilmore had already conceptually approved this process. Furthermore, he recognized the time and money savings ~~DOI~~ addition, there are no USFWS appraisers available. I mentioned that I could foresee a problem wherein

state and Native land of like type might be valued considerably differently (with Natives getting much more value) if Natives get to negotiate public interest adjustments and we don't. He recognizes the problem, but said USFWS preferred to deal with state on only the fmv appraisal basis (no adjustments). I said I thought that would be unacceptable, and proposed a "equitable servitude" or "willing buyer" adjustment to inflate state land values. Doebel said that was possible and would discuss with Gilmore. (Note - we need to get Horn to agree to this or something similar!) Doebel said that this kind of adjustment was not without precedence, but we'd like have to negotiate it out individually, just like Natives are doing

I asked Doebel to please check 3 policy calls with Gilmore.

1. Is USFWS interested in state submerged lands within refuges?
  2. Does USFWS desire subsurface estate?
  3. Will Gilmore consider appraisal adjustment valuation enhancement for state lands?
- Doebel will discuss with Gilmore and get back AS

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00112

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must be met if any other group (i.e. CIRI, DOYON or state) want to participate. This timeframe calls for all appraisals to be completed by Feb. 15, 1987. I assured Doebel that it is our intent to meet the Koniag deadlines - not to slow them up.

Doebel then talked a bit further about the ANWR tract selection process which is still evolving. Horn apparently wants to give Koniag priority tract selection consideration due to their long-standing involvement in the exchange process. However, Doebel says this is a gut feeling, not something Horn has articulated directly.

The Native acreages in the trade are:

1. CIRI 250,000 acres
2. Koniag 125,000 "
3. Akhiokaguyak 100,000
4. DOYON 600,000 "

According to Doebel, USFWS generally ranks the CIRI lands as of highest value, followed by Koniag, Akhiokaguyak and DOYON, in that order.

Doebel also provided me with a copy of Koniag's "proposed tract selection process" which he emphasizes the USFWS has not accepted (he was very reluctant to release the draft).

I also obtained for the first time the draft exchange agrmt boilerplate and the draft land use stipulations (copies of which I subsequently provided to Lance Trasky, ADFG and Jim Eason, DOG).

Finally, Doebel mentioned that Akhiokaguyak has retained Terry Smith, who may be on a Cowper Transition Team. He also suggested that I call Bill Timme at Koniag to advise him of the state's exchange efforts so that it will not be a surprise when we appear at the Dec. 1-5 meetings in Wash. D.C. I also intend to so notify CIRI.

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00115

EXHIBIT 6 PAGE 6

# MEMORANDUM

# State of Alaska

*Jim Gust*

TO: Judith M. Brady  
Commissioner

DATE: February 17, 1987

FILE NO:

TELEPHONE NO:

FROM: *GUG*  
Gary Gustafson, Chief  
Land Management

SUBJECT: ANWR Trade Strategy

I reviewed the draft memorandum to the Governor which recommends that the state oppose further ANWR land exchanges. While I agree with the substance and conclusion of the memorandum given existing circumstances, I believe the memorandum might be strengthened if it also includes other considerations. Based upon my direct participation in the ANWR trade process, I believe it is still possible to restructure the proposed land exchange process in a manner which properly addresses state interests.

In my opinion, the state currently enjoys excellent leverage with which to advance its interests. It is now well known that the Governor is predisposed to oppose any trades unless he can be convinced that they are in the state's best interest. Accordingly, the Department of Interior (DOI) and the Native corporation trade participants wish to avoid state trade opposition. Therefore, the time is ripe to advance and negotiate for those concessions and positions which benefit the state. The following items might be negotiated should this strategy be embraced:

1. Obtain an overriding royalty from any interests traded to the Native corporations in ANWR. The concept of the state receiving an overriding royalty from any Native oil and gas interests obtained in ANWR is picking up steam. It was mentioned by Senator Murkowski in his speech before the Alaska State Legislature and was also discussed with Bill Horn on February 6th in Washington, D.C. Even the Native corporation participants appear willing to address the possibility as an alternative to state opposition to the trades. I view the best overriding royalty scenario to be a contractual arrangement between DOI, the Native corporation participants and the state with the state receiving a percentage of the federal royalty (e.g. 25 percent of a 16 2/3 percent royalty, or a 4 percent state override), with DOI able to trade only its retained share to the Natives.

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Judith M. Brady

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February 17, 1987

2. Seek Native corporation and oil industry support for retention of the existing 90-10 royalty percentage allocated the state. As you know, the existing state royalty share in ANWR will be very difficult to defend before Congress. Only by showing a united front within Alaska can the state hope to defer those who would alter this formula.
3. All areas not traded to the state or Natives should be included in a subsequent federal lease sale. Although there has been some discussion of future ANWR trades (beyond the present proposal) the state should make it clear that it will support only one trade. All remaining tracts (excluding sensitive areas) should be leased by the federal government pursuant to the Mineral Leasing Act.
4. Expand the state acreage included in the proposed trade. Just last week DOI agreed to expand the state's trade acreage from about 250,000 acres to over 300,000 acres. This now makes the state the largest trade participant from an acreage standpoint. DOI might accept yet more state refuge acreage (i.e. 360,000 acres of the Black Hills unit adjacent to the Alaska Peninsula NWR) which would further enhance the state values used to obtain ANWR oil and gas. In addition, the inclusion of national park in-holdings remains a possibility.
5. Negotiate for a ANWR tract selection conflict resolution process that better matches state interests. At present, DOI has structured the ANWR tract selection conflict resolution process in a manner that allows Bill Horn to choose among three modes: DOI acquisition priority, competitive bidding or lottery. Now that the state's trade acreage has risen substantially, it appears that only the competitive bidding process favors state interests. Furthermore, the DOI land acquisition priority is already built into DOI's land value enhancement methodology. Therefore, the state should continue to advance competitive bidding as the best method of conflict resolution.
6. Alter the terms of the land exchange contract to better address state concerns. The draft exchange contract, as prepared by DOI and Koniag, does not meet several state objectives and may preempt certain state authorities. We have identified these concerns in prior correspondence as well as during the negotiation meetings. Such items as drainage, interests conveyed, state/federal regulatory authorities, subsistence easement, force majeure clause, etc., require further attention and clarification.

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Judith M. Brady

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February 17, 1987

7. Restructure the Koniag timeframe. The existing DOI ANWR trade timeframe is driven by Koniag's desire to distribute its proxy vote on the trade prior to the summer. In addition, Koniag's financial difficulties have caused it to request continued DOI adherence to an expedited timeframe in order to obtain a scheduled financial distribution from its industry partner. However, DOI's Bill Horn and the other exchange participants do not now appear particularly wedded to this timeframe. The state and congressional delegation should ask for additional time to resolve exchange contract difficulties prior to any tract selection. This will also delay tract selection beyond the Secretary's final recommendation concerning the 1002 opening.

8. Deletion of submerged lands under navigable waters from tract selection. DOI currently intends to allow the exchange participants to nominate and select tracts which include submerged lands under waters which the state has a navigability claim. The state has claimed title to the beds of seven rivers which cross the coastal plain. In order to preserve the state's claim and to avoid unnecessary title litigation, these tracts should be removed from tract selection.

The items noted above are a few of the possible negotiation strategies which the state might entertain. The most important consideration is that the Governor's decision with respect to the proposed trades not be viewed as a disruptive or preemptive move towards the paramount goal of opening the coastal plain.

Although the revenue impacts are extremely difficult to portray, we can describe how the proposed trades might be restructured to advance the state's interests. First, it is necessary to describe the nature and extent of each of the individual trade participants' interests. This is difficult to do because not all of the participants have locked in their final acreages. In addition, DOI has not yet finalized values for any of the participants. However, using known information in combination with estimates it is possible to produce a generalized chart depicting participant interests.

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Judith M. Brady

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February 17, 1987

<u>Participants</u>	<u>Trade Acreage</u>	<u>Estimated Trade Value*</u>	<u>Maximum Possible Trade Value**</u>
Koniag	130,000	\$ 62,500,000	\$ 78,000,000
Doyon	600,000	\$135,000,000	\$ 360,000,000
Native Land Group	390,000	\$182,000,000	\$ 234,000,000
Akhiokaguyak	100,000	\$ 38,000,000	\$ 60,000,000
Old Harbor	35,000	\$ 18,000,000	\$ 21,000,000
State of Alaska	845,000	\$238,000,000	\$ 507,000,000
<b>TOTAL</b>	<b>2,100,000</b>	<b>\$673,500,000</b>	<b>\$1,260,000,000</b>

\* The estimated trade value is based upon an estimate of the amount of USFWS Class I-IV land acquisition lands held by each participant multiplied by a uniform per acre class value. The actual trade values have not yet been determined by DOI.

\*\* The maximum possible trade value is calculated by multiplying the participants acreage by \$600/acre, the ceiling established by Bill Horn. It is unrealistic to assume that any participant will achieve maximum value.

Note that the state now has about 40.2 percent of the total acreage in the proposed trade and perhaps about 35.3 percent of the estimated trade value.

On the other side of the equation, the coastal plain consists of about 1.5 million acres which will be divided into about 586 tracts of 2,560 acres each (or less where water bodies occur). I expect that DOI will not offer about 255,000 acres or 100 tracts of this total, due to possible conflicts with caribou calving areas. Therefore, the exchange participants can be expected to compete for about 486 tracts. However, since the proposed tract selection process establishes a ceiling of 15 tracts to be nominated by each participant (this may be increased to 20 tracts), the participants may select no more than 90 (or 120) tracts, assuming no conflicts. More likely, however, there will be numerous conflicts which will further reduce the number of affected tracts as the participants agree to accept undivided interests in tracts, etc., as part of conflict resolution.

I offer these procedural observations as a means of placing the proposed trades in perspective. While it is true that some of the Native participants industry representatives possess information unavailable to the state (KIC well data), the size and value of the state's trade package, combined with an overriding state royalty interest and federal leasing for retained areas, may compensate for these disadvantages. A more detailed revenue analysis of the trades which encompasses these variables would help to validate this assertion.

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000302

Judith M. Brady

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February 17, 1987

In summary, the present format for ANWR land trades clearly would not benefit the state when compared with federal leasing (under either a 90/10 or 50/50 royalty percentage formula). However, the state is currently in a position to alter the proposed ANWR trade format to more closely conform to state interests and objectives. Before making a final decision on the wisdom of the trades, the state should advance its interests at the highest policy level and attempt to restructure the trades in a more favorable posture. Such considerations as enhanced state trade acreage, an overriding state royalty on interests traded to Natives and active federal leasing on untraded lands give the state an opportunity to both advance its interests while working to achieve the overall objective of opening ANWR's coastal plain. This strategy has the additional benefit of keeping the state abreast of the status of the DOI/Native trade negotiations while we finalize a position.

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STEVE COWPER  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

M E M O R A N D U M

TO: The Honorable Steve Cowper Governor  
DATE: January 12, 1987  
PHONE: 465-3500  
FROM: Rod Swope *RS* Special Staff Assistant to the Governor  
SUBJECT: Questions for ANWR Meeting

The following questions, among others, have been raised to be discussed with you at this meeting.

1. Is it time for the state to present a definitive position to the Interior Department on Native land trades, either because of the impact of such trades on the state's 90-10 revenue split or because of the intrinsic nature of the proposed exchanges? If so, what position should be advocated? Should the state continue to participate in negotiations involving the possible exchange of state-owned inholdings in Conservation System Units for ANWR lands? What is our position regarding the proposed Native/DOI land exchanges?
2. If reduction of the state's 90-10 revenue formula would improve chances for ANWR development by providing a revenue stream for use in connection with other federal programs, should the state acquiesce in such a modification? (This question need not be decided now.)
3. What standards of protection and mitigating measures should be utilized to protect air, water, and biological resources - (particularly with regard to the Porcupine Caribou Herd), Prudhoe Bay requirements or higher?
4. Should we establish a "blue ribbon" panel or other formal mechanism to provide outside input to the Administration on ANWR or, should the Administration rely on less formal and/or existing mechanisms as suggested in the attached memorandum?
5. Should the state implement a comprehensive advocacy program to influence federal decision-making on ANWR? If so, should this program include: (a) a prominent Washington, D.C., lobbyist, (b) a public relations firm, (c) an additional staff person in the Governor's Washington, D.C., office?

8

Not if we can help it

ASK F&G

NO but consult regularly - Legist

ASK KETZ I want Bill Ross if we do it

- 6. Should the state join the existing coalition of organizations which support opening ANWR to oil and gas development, or, in the alternative, should the state act in "conscious parallelism," where appropriate, but not become a formal member? *- NO*
- 7. Should state resource agencies hire additional personnel, receive more travel monies, and/or otherwise increase their budgets to facilitate work on ANWR? If so, how much? *- Yes.*

cc: Lt. Governor Stephen McAlpine  
Commissioner Judy Brady  
Commissioner Don Collinsworth  
Commissioner Denny Kelso  
Pete Jeans  
Nadine Winters  
Bob Grogan  
Lennie Gorsuch  
Tom Koester

*Ask for  
Suppl. but  
DON'T LOAD  
IT DOWN*

# MEMORANDUM

# State of Alaska

DEPARTMENT OF NATURAL RESOURCES · Division of Land and Water Management

TO: Tom Hawkins  
Director

DATE: February 10, 1987

**CONFIDENTIAL**

FILE NO: 9105.2

TELEPHONE NO: 762-4346

FROM: Gary Gustafson, Chief <sup>GUS</sup>  
Land Management

SUBJECT: February 2 - 6 ANWR  
Exchange Meeting  
Washington, D.C.

RECEIVED  
FEB 11 1987  
DIV. OF OIL & GAS  
DIRECTOR'S OFFICE

I thought it would be useful to recap for you and others my observations of the ANWR land exchange discussions held in Washington, D.C. the week of February 2 - 6, 1987. The following narrative summarizes the major provisions of these discussions.

The meetings were very similar in form and substance to the initial discussions held in Washington, D.C. on December 1 - 5, 1986. The primary agenda topics consisted of the draft ANWR tract selection process, the draft exchange contract and the draft land use stipulations. Participants included the Department of Interior's (DOI) ANWR land exchange team and representatives from the state, DOYON, Koniag, Native Land Group, Akhiokaguyak and Old Harbor. Old Harbor is a Kodiak Island village which recently entered the exchange process. They have approximately 35,000 acres proposed for trade to DOI. Old Harbor was represented at the meeting by Walt Ebell, Bill Garner and Joe Chomski, all from Birch, Horton, et. al. (their industry partner is Texaco). I have attached the meeting attendance record for your information. In addition to myself, Martha Fox and Eric Laschever of John Katz' office also attended most of the sessions.

As usual, Sharon Allender of the Solicitor's Office ran the meetings. She began the February 2 meeting by stating that significant progress had been made on the exchange proposal since the last meeting. A number of high level briefings had occurred within DOI of late, including several involving Bill Horn. Sharon said she felt good about the process and that eventually the exchange would be perceived to be in the public interest.

The DOI ANWR exchange team had spent most of their energy since December on the draft ANWR tract selection process and the draft exchange contract, with less attention devoted to the draft land use stipulations.

After a brief overview and outline of the week's agenda, Sharon stated that it was her impression that all parties were at the table because they wished to participate in the trade. She then proceeded to question the state's sincerity given recent events, and asked us to elaborate on the state's position. Eric Laschever responded by saying that while the governor has indeed expressed serious reservations about the exchange process, the state remains an active participant and desires to be treated on an equal basis with the Native participants.

Sharon said she was surprised the state had released comments to the press regarding DOI drafts of the contract, stipulations and tract selection process. She asked that in the future the state attempt to be faithful to the negotiation process by keeping these documents confidential.

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We related that we were now responding to a pending Rural Cap request to release these documents. John Doebel (USFWS) added that his agency also has pending freedom of information requests about the exchange from Rural Cap, the Anchorage Daily News, ARCO, Texaco and Sunoil.

It was agreed that the next participant/DOI ANWR exchange negotiation session would be February 23 - 27, 1987 in Washington, D.C. This will afford the parties sufficient time to resolve any remaining problems prior to tract selection.

#### Tract Selection Process

Tract selection is currently scheduled for the week of March 24, 1987, in Washington, D.C. DOI anticipates holding tract selection in the ballroom of a hotel with separate rooms available to the participants to use for conflict resolution, conferencing and phone contacts.

Sharon expects a short cover agreement on the tract selection process will be signed in advance by all participants. This cover agreement has not yet been drafted. In addition, it is envisioned that each participant must obtain a letter from Bill Horn in which the negotiated value of the participant's exchange land is articulated. This will then be the approved value the participant brings to the ANWR tract selection process. These values must be approved by Horn by March 6th.

DOI expects to distribute an ANWR tract nomination map to the participants on February 23rd. Participants are to then mark their tract nominations and return them to DOI by March 20th. On March 23rd DOI will redistribute the map showing all participant tract nominations.

DOI is apparently also working on a "constraints policy" which may remove certain tracts from selection. As a general matter, however, DOI has decided to offer tracts for selection which the state may have pending or future title claims (by virtue of navigability or the equal footing doctrine). The state was asked to advise the other participants of such claims in advance of tract selection so they might proceed at their own peril. We disagreed with this position but offered to make this map available in a timely fashion.

DOI will hold back the tracts to which the Kaktovik Inviat Corp. (KIC) still has pending selections. KIC apparently has about 1,476.7 acres remaining pursuant to Sec. 1431(g)(3) of ANILCA. These selected areas will be depicted on the tract nomination map.

The revised tract selection process anticipates that each participant will nominate no more than 15 tracts to DOI by March 20th. However, the participants generally felt this total to be insufficient due to potential selection conflict overlaps. As a result, DOI may allow the participants to nominate as many as 20 tracts. Sharon mentioned that the Solicitor's Office is also concerned about anti-trust violations with respect to overlapping selection conflicts.

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DOI will distribute the final tract selection map the day preceeding the selection process. This map will depict all nominated tracts, but will not show conflicts. The participants asked that the map show such conflicts. DOI will consider the request and report back.

Sharon said there are four reasons why DOI may withhold tracts from selection:

1. environmental;
2. state title claims (e.g. navigable and submerged lands);
3. KIC selections; and
4. constraint policy.

Selections will proceed on March 24th by having each participant select its highest priority tract.

Any participant which selects a tract not in conflict will receive that tract, provided they have sufficient value. In each selection round, every participant will receive at least one tract or part of at least one tract, depending on mode of conflict resolution.

The method of conflict resolution remains arbitrary. Under the revised process, Bill Horn may decide among three conflict resolution mechanisms:

1. USFWS acquisition priority;
2. competitive bidding; and
3. lottery.

The state argued that this resolution process is arbitrary and will result in inequitable treatment among participants. We asked that there at least be written criteria developed and adopted for conflict resolution modes. Sharon said she would consider developing such criteria.

Koniag argued that if a participant has some value left over following tract selection, why not allow DOI to acquire the participants land in return for an instrument which could be redeemed as value at some future federal oil and gas lease sale? Sharon discouraged this approach, but agreed to look into it further.

#### Exchange Contract

DOI wants to have the draft exchange contracts in good shape by the next negotiation session (scheduled for the week of February 23rd). Koniag, Akhiokaguyak and DOYON apparently have already submitted versions to DOI. It is envisioned that each participant will have a distinct and separate contract, although all contracts must generally adhere to the Koniag format.

Sharon provided an overview of the draft exchange contract and then we proceeded to engage in a page by page analysis. It was clear that very few of the state's earlier comments and changes had been incorporated by DOI into the revised draft. Sharon stressed that the revised draft had not yet been cleared by Bill Horn.

February 10, 1987

DOI did combine the "avoidable surface loss" definition with that for "waste" per the state's suggestion. However, the question of who has jurisdiction over waste still remains (AOGCC v. DOI).

Everyone agreed that the Force Majeure clause needs to be made applicable to the entire agreement.

The contract also needs to deal with the entire state/federal jurisdictional question over development in ANWR (e.g. AOGCC, water, etc.).

DOYON suggested that participants be able to deduct all costs associated from negotiating the exchange. Sharon said absolutely not.

Participants also wanted to obtain any geological/seismic data performed by any party on the surface estate on ANWR if they hold the oil and gas rights under that surface estate - at no cost. Sharon thought that was a reasonable request. The agreement already provides that a participant has the option to buy into any data acquired on neighboring tracts.

At present, DOI imagines that rescission may occur only on a tract by tract basis so they don't get high graded. DOI will not provide different rescission terms to different participants. The cost of rescission is a 1.5 percent royalty to the U.S. Furthermore, if you rescind, you only receive 65 percent of your land back again. The U.S. will keep 35 percent of your land as well as an option to purchase the remainder at termination value. Participants have ten years from date of first test well to rescind.

DOI noted that it had added language in the subsistence easement to protect the U.S. in case of repeal of Section 303 of ANILCA. We also spent a large amount of time trying to clarify the drainage provision of the contract - with little resolution.

Sharon asked each participant to summarize its primary contract concerns:

<u>Participant</u>	<u>Concerns</u>
Native Lands Group	tract select process not well refined, selection priorities unduly locked in, concept of rescission is objectionable.
Old Harbor	timing of termination clause.
Akhiakaguyak	concept of rescission objectionable.
DOYON	conflict resolution during tract selection is unsubstantial, partial tract exclusions unnecessary, drainage, AOGCC/DOI jurisdictional overlap, termination fee, royalty calculations unclear.
Koniag	drainage calculations, unitization, conveyance process (warranty?).

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00333 00329

State timing of tract selection v. 1002 recommendation, oil and gas interests insufficient for leasing, AOGCC/DOI jurisdictional consistency (drainage, unitization, waste, etc.), unresolved state title claims in ANWR, arbitrary conflict resolution process.

The exchange contract discussion concluded with an agreement to provide DOI with any remaining major concerns by February 19, with more particulars and a draft contract by February 23rd. Martha and myself will redistribute the revised draft among affected state agencies and compile comments.

#### Land Use Stipulations

The discussion then evolved to the land use stipulations which are Appendix 5 to the exchange contract. However, the stipulations received only minor attention as the parties recognized they did not need to be completed prior to tract selection. In addition, DOI had added a provision that any conflict between the stips and any future requirements attached by the Opening Legislation would be resolved in favor of the Opening Legislation.

In order to address the state's earlier stipulation comments in greater detail, John Doebel, Ted Stephenson and Eric Kaarlela of DOI will meet with state technical representatives in Anchorage on February 12th at 1:30 PM. I will arrange to have appropriate state agency people in attendance.

#### Policy Calls

Major remaining policy calls for the state include:

1. Do we want rescission in the contract for the state?
2. Will we reserve public use easements in lands we trade to DOI?
3. Adequacy of proposed Native subsistence use easement reservation.
4. Adequacy of drainage portion of contract.

We also agreed to provide Sharon with a letter detailing the state's position on submerged lands. This will address our title claims in the 1002 area, state submerged land reservations in our trade package and state posture relative to Native conveyances of submerged land. Tom Koester will be contacted to assemble a letter.

#### Horn Meeting

On February 6th at 10:00 AM, John Katz, Martha Fox, Eric Laschever and myself met with Bill Horn in his office. We had arranged the meeting to discuss state problems associated with the exchange process and to stimulate DOI to expand our trade package by adding additional state areas.

John began the meeting by expressing some concern with the timing of the proposed tract selection process.

Bill responded that if the state feels the timing sequence is out of whack, he is prepared to delay the process. He added that the proposed March 24

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tract selection date is probably too ambitious and that late April is more realistic.

He also added that if trades go forward he expects there will be plenty of tracts left over due to the high values assigned to the ANWR tracts.

John also asked whether DOI is receptive to the state retaining an overriding royalty in any Native exchange effort. Bill did not dismiss the idea, rather he characterized it as a double-edged sword because any royalty to the state must come out of the amount of land DOI acquires in refuges. Katz then stressed that an overriding royalty doesn't capture economic rent. Horn also wanted to know if there are any regulatory impacts associated with an overriding royalty. Katz felt this problem could be avoided by properly structuring the royalty arrangement.

Horn wants a copy of our appraisals as soon as they are completed. He said his approach to finalizing values with exchange participants is based upon a "four cornered box" approach, as follows:

1. fair market value appraisal;
2. USFWS acquisition priority;
3. transactional benefits (willing seller, fire suppression cost reduction);
4. congressional comparables.

He confirmed that the state will be treated the same as Natives with respect to values establishing final exchange values to be used for tract selection.

#### Attachments

cc: Judy Brady, CO  
Bob Arnold, CO  
Jim Barnett, CO  
Rod Swope, Governor's Office, Anchorage  
Martha Fox, Governor's Office, Washington, D.C.  
Eric Laschever, Governor's Office, Washington, D.C.  
Tom Koester, AGO, Juneau  
Jim Eason, DOG  
Curt Fredrickson, DGC/OMB  
Frances Neville, AGO  
Mark Worchester, AGO

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00335

00331:

A NWR  
meetings

Feb 2, 1987

Name	Orig	PH
Ted Stephenson	34m	202 343 6511
Jim Wilkels	AKI	907 278-4511
Jim Mery	Doyon	907 452-4755
Arthur Layman, Jr.	"	202 639-7170
Bill Timme	Koniag	907 - 276-3390
Mark Rindner	NHG	907 272-3522
Eric Pascheva	Alaska Governor's Office	<del>202</del> - 303 - 621 - 5858
Walt Ebell	Old Harbor	(907) 486-6024
Paul Kirtou	SOL/DOT	907 - 343-4036
Sharon Allender	SOL/DOT	907 - 343-2172
William W. Gaener	Old Harbor/Brian Horton	202-659-5808
Paul L. Powell	A-KI	202 857-9860
Ralph & Glucka	AKI	907 338 2322
Marina Fox	Alaska Governors Office	202 624-5858
GARY GUSTAFSON	ALASKA / DNR	907 762-4346
Joe [unclear]	[unclear]	202-559-5900
Art Kennedy	KONIAG	(907) 276 66 83
U. L. GROSS	KONIAG	(907) 561 - 2608
Bob Wright	Doyon, Limited	907 - 452 - 4755
Alan Mintz	ASRC	202 - 331 - 9400
ERICK KARLELA	BLM	202 - 343 - 4537
JOHN DIESEL	FWS	907-766-3543

CC's 12

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# MEMORANDUM

# State of Alaska

DEPARTMENT OF NATURAL RESOURCES - Division of Land and Water Management

TO: The Honorable Steve Largent  
Governor

DATE: March 11, 1987

FILE NO: 9105.2

13 1987 TELEPHONE NO:

762-4346

FROM: Gary Gustafson, Chief, Division of Oil & Gas  
Land Management ANCHORAGE, ALASKA

SUBJECT: TRIP REPORT: ANWR  
Exchange Meetings  
in Washington, D.C.

As you know, I attended the third round of ANWR land exchange discussions in Washington, D.C. the week of February 23-27, 1987. I have summarized below the principal aspects of these discussions.

The meetings were again chaired by Sharon Allender from the Department of Interior's Solicitor's Office. The list of attendee's was very similar to those participating at the second session the first week of February. I have attached the attendance list for your information. The only new faces were Glenn Elison, Manager of the Arctic National Wildlife Refuge and Jeff Lowenfels, an attorney representing the Old Harbor Village Corporation. The state representatives were Martha Fox of John Katz' office and myself. The meetings were originally to have begun on February 23rd. However, a major snowfall the evening of February 22nd caused federal offices to close the next day and the meetings did not convene until February 24th. The meeting agenda included a discussion of the ANWR tract selection procedures, individual meetings with the participants on their draft exchange contracts and a group meeting to discuss the draft contract and land use stipulations.

### ANWR Tract Selection Process

According to Bill Horn, the Secretary's final ANILCA 1002(h) report to Congress will likely be released around April 15th. ANWR tract selection will not occur before the Secretary releases the report and may be postponed until after the initial round of congressional hearings on the 1002 report (expected in May). Horn says he is under pressure from some congressmen to delay ANWR tract selection until after these hearings. However, he has not yet made a decision on the matter and will monitor the situation a bit longer before making a commitment. The DOI negotiators, however, have tentatively scheduled tract selection for April 28th.

DOI distributed both a refined draft ANWR tract selection process and four copies of an ANWR 1002 area tract grid map to the participants. The grid map is an overlay to a 1002 area land ownership map and depicts prior KIC/ASRC conveyances as well as Native allotment locations and status. I distributed a 1002 area state title navigability claim map, depicting the state's ownership claim to coastal lagoons and the submerged land under seven potentially navigable rivers traversing the coastal plain.

00468

00472

EXHIBIT 10 PAGE 1

The revised tract selection procedures included one very significant change. The Assistant Secretary's discretion to resolve conflicts among the participants is now confined to only two modes: competitive bidding and lottery. If a conflict(s) occurs, one of these methods will be selected arbitrarily by Bill Horn. This change enhances the participants ability to negotiate conflicts prior to a DOI conflict resolution decision and conforms to earlier state suggestions. The revised process also eliminates DOI's option to identify tracts for a participant if the participant does not have enough remaining value to obtain one of the remaining nominated tracts.

Horn claims the lion's share of the coastal plain will not be traded. He has apparently reviewed the values assigned to the ANWR subsurface by BLM and feels these values are high enough to ensure that the majority of the estimated ANWR oil and gas reserves will remain in federal ownership. Unfortunately, there is no way to verify this claim until DOI releases the subsurface values of the tracts.

DOI has held a mock tract selection process using most of the same rules as now proposed. This mock process had the participants nominating 15 ANWR tracts and proceeding to each select one tract per round. This process resulted in only about 22 percent of the nominated tracts being awarded. The mock process lasted seven rounds before all participants exhausted their values. The exercise reinforced DOI's position that 15 tract nominations per participant are more than adequate.

Horn also dislikes the provision in the current draft that allows the participants to pay for tracts with cash, provided they first exhaust their acreage values. This will probably be eliminated from the process. He did agree to allow participants to award or assign their selections in individual rounds to other participants as part of conflict resolution. However, participants may not assign any of their value to another participant. The total value assigned to each participant at the beginning of the selection process will not be revealed to other participants.

#### Exchange Contract

A revised Koniag/DOI draft contract was distributed to each participant. Bill Timm then passed out new draft Koniag changes to the contract. This draft contract was the subject of most of our discussion on Thursday, February 26th.

At 4:00 PM on Wednesday, February 25th, Martha Fox and myself met with the DOI ANWR Exchange Team to discuss the state's individual draft exchange document. This draft was prepared by Mark Worchester and Frances Neville of the AGO, following consultation with DNR, John Katz' office and Charlie Meyers, a nationally recognized oil and gas attorney from Denver. It incorporated several major departures from the draft Koniag/DOI document.

00473

00469

EXHIBIT 10 PAGE 2

We spent a little over one hour discussing the state's version of the exchange contract. Specifically, Martha and I articulated a number of state concerns with the DOI contract, including:

1. new definition of oil and gas interests;
2. expanded definition of "authorized official" to include state personnel where applicable;
3. expanded force majeure applicability;
4. revised definition of "gas" consistent with the MMS standard (Spring, 1986);
5. redefined "cessation of production" and "first commercial production";
6. eliminate dry hole rescission references;
7. remove severability clause.

We agreed it will be necessary to meet again over at least one day to better identify and resolve state concerns.

#### Subsistence Easement

The February 26th meeting included a discussion of the subsistence easement proposed to be retained in the trade by the Natives. Martha Fox presented the state's position in response to the easement and distributed an opinion on the subject written by Lisa McCracken of the Attorney General's Office. Martha stressed that the proposed easement appears to usurp state regulation of fish and wildlife resources by granting a subsistence priority. Furthermore, a subsistence priority cannot be reserved as a property right. Rather, an access easement is the better means to achieve the goal. The AGO opinion includes a redraft of the subsistence easement which focuses on access, rather than subsistence priority. We indicated a willingness to work on a compromise position provided it would not conflict with state law.

All of the Native participants stressed that the subsistence easement is a deal-breaker which they believe must be incorporated into any final exchange contract.

#### Land Use Stipulations

John Doebel of USFWS distributed a new draft of the land use stipulations proposed as an appendix to the contract. It appears that the stipulations must be largely finalized by the time of tract selection, although they may still be changed as necessary to ensure consistency with the final 1002 report. We then participated in a short discussion of the revised draft.

March 11, 1987

Doebel and I also reported on a meeting held in Anchorage the previous week in which state agency representatives from DNR, JFG and DEC met with USFWS representatives to discuss technical aspects of the draft stipulations. We agreed that another such meeting would be useful.

Public Disclosure

With respect to public release and disclosure of the draft documents, the parties were of differing opinions. The state, NLG, Old Harbor and Akhiok all felt the drafts should be released, while DOYON and Koniag disagreed. It appeared a consensus was finally reached, however, whereby the documents will be released in several weeks, provided a cover letter is attached which clearly indicates their preliminary status.

The next negotiation session will begin the week of March 23rd and will include day-long individual meetings with each participant on their contracts. It was hoped this will settle all outstanding policy issues and result in agreement upon the body of standard and individual contract language.

cc: Judy Brady, CO  
Lennie Boston-Gorsuch, CO  
Jim Barnett, CO  
Jim Eason, DOG  
Frances Neville, AGO, Anchorage  
John Katz, Governor's Office, Washington, D.C.  
Eric Laschever, Governor's Office, Washington, D.C.  
Martha Fox, Governor's Office, Washington, D.C.  
Mark Worchester, AGO  
Bill Van Dyke, DOG  
Tom Hawkins, DLWM  
Tom Koester, AGO, Juneau

00471

00475

EXHIBIT 10 PAGE 4

# MEMORANDUM

## State of Alaska

DEPARTMENT OF NATURAL RESOURCES

TO: Judith M. Brady  
Commissioner

DATE: February 18, 1987

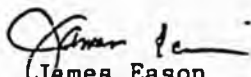
FILE NO:

465-2400 (Juneau)

TELEPHONE NO:

762-2483 (Anchorage)

FROM:

  
James Eason  
Director

SUBJECT:

Recommendation to Oppose  
Further Land Exchanges of  
ANWR Acreage

As you are well aware, the department has been participating in ANWR exchange-related discussions with representatives of the Department of the Interior (Interior), interested Native Corporations and other state agencies for several months now. During that time, we have reviewed Interior's proposed exchange agreement, the environmental and operating stipulations which presumably would be incorporated in any agreement and the written descriptions of the procedures which would govern tract selection, as well as adjudication and award of tracts when there are competing selections (i.e., tie bids).

We have analyzed the proposed exchanges from many different perspectives, assigning staff from several discrete disciplines to review the benefits and impacts of the exchanges from their respective points of view. Department personnel involved have included staff from the Divisions of Land and Water Management, Oil and Gas, and Mining and Geology, as well as the commissioner's office. These personnel have included petroleum geologists and geophysicists, engineers and professional land managers. In addition, we have coordinated the department's review closely with attorneys from the Oil and Gas and Natural Resources sections of the Department of Law, as well as with Dr. Charles Meyers, outside counsel who is recognized internationally for his expertise in oil and gas contract law.

Following a very thorough review, including an analysis of the recent written communications from CIRI and Koniag in support of the exchanges, it is the consensus of the division's staff who have participated in this review that the proposed exchanges are not in the state's best interest, and that their implementation under the procedures contemplated by Interior would substantially reduce state revenue from the future leasing of ANWR. I agree with those conclusions, and for the reasons discussed below, I urge you to oppose any and all additional land exchanges involving the subsurface of ANWR.

Although there have been numerous claims to the contrary recently, it is by no means clear to me that the proposed exchanges will increase the likelihood of Congressional passage of legislation opening the coastal plain of ANWR to oil and gas exploration and development. Congress expressly reserved unto itself by statute the decision on the future of oil and gas leasing in ANWR. Although it now appears that its schedule may slip somewhat, Interior's intent is to initial exchange agreements within the next month, before it has even submitted its report to Congress on whether it recommends that ANWR be opened, and before Congress has made its decision on that report.

EXHIBIT 11 PAGE 1

Judith M. Brady, Commissioner  
February 18, 1987  
Page 2

To date, all aspects of Interior's negotiations with the interested parties to the exchange have been secret, including the specific values and locations of available exchange lands, the exact nature of the interests to be conveyed in ANWR, and the specific requirements of stipulations to protect wilderness and wildlife values. Given these circumstances, at a minimum, opponents to the opening legislation will be able to question the objectivity of whatever subsequent recommendations Interior may make in light of the fact that it will have committed itself "in principle," and even completed tract selection, in advance. Some members of Congress may be so offended by Interior's attempts to preempt Congressional prerogatives that they may vote against opening legislation on process grounds alone.

There are negative implications of a more parochial political nature, as well, which should be considered. One of the potential exchange participants, CIRI, has been associated with past trades with the state which were highly controversial. CIRI was the recipient of extremely valuable gas producing leases in Cook Inlet which were the subject of a major series of highly critical newspaper articles this past fall. More recently, within the last month one of the Anchorage newspapers printed an editorial referencing the CIRI "windfall" from these Cook Inlet exchanges, and calling for caution by the state in its evaluation of the effects of ANWR exchanges. Thus, while ANWR exchanges with CIRI might arguably be viewed favorably by some members of Congress, they would not necessarily have the same attraction to many of Alaska's residents.

From a strict revenue perspective, any additional trades of ANWR land to Native Corporations reduce potential state revenues. Considering only those trades which have already occurred, the department estimates that Arctic Slope Regional Corporation (ASRC) alone has received title to lands which may contain 25 percent of the coastal plain's total reserve potential. The lands to which ASRC has already received title are situated above two of the most promising subsurface anomalies in ANWR. It is particularly important to note that the ASRC inholdings consist of only 112,000 acres, or approximately seven percent of the surface area of the coastal plain, yet they account for one-fourth of the most highly prospective lands within the coastal plain of ANWR.

Any additional trades like those between Interior and ASRC will reduce further the pool of prospective lands in federal ownership, and thus impact the state's expected 90 percent share of bonuses, rentals and royalties from future leasing and production from those lands. Although there are insufficient data to quantify the magnitude of these potential losses at this time, it is clear that they could be substantial. Furthermore, based upon the department's assessment of ANWR's oil and gas potential, we have every reason to believe that to be the case.

If commercial quantities of oil and gas are discovered in ANWR and produced, the resulting royalty income will be in the billions of dollars; it is the potential loss of the state's 90 percent share of that revenue stream that concerns us. We would be glad to discuss with you the range of royalty revenues that could be generated from oil and gas in ANWR.

Judith M. Brady, Commissioner  
February 18, 1987  
Page 3

Both Koniag and CIRI have claimed that additional trades will only result in the exchange of "...small amounts of acreage..." However, this argument is disingenuous, at best. Since all potential trading partners have the benefit of industry partners' recommendations, Native Corporation selections will be based upon informed evaluations of each tract's relative prospectivity. The absolute number of acres which may be obtained in one or more exchanges is not the significant factor--it is where those lands are situated relative to the prospective subsurface anomalies that is important.

Another way of viewing the potential significance of surface selection size relative to subsurface resource values is provided by comparing the "insignificant" selections of ASRC (112,000 acres) and Koniag (35,000 acres) with the total surface acreage in the Participating Area of the Prudhoe Bay Unit. The Participating Area is that area which directly overlies the oil and gas reserves contained within the larger unit boundaries. The combined selections of ASRC and Koniag total 147,000 acres; the Prudhoe Bay Unit Participating Area (including the Oil Rim and the Gas Cap of the Sadlerochit Formation) encompasses 212,266 acres. I doubt that anyone would argue that a selection of 69 percent of the oil and gas reserves of the Prudhoe Bay Unit by Native Corporations would have been "insignificant."

As a result of the Native Corporations' technical knowledge (or that of their partners), it is virtually certain that every selection round in the exchange procedures would result in a "high-grading" of the then remaining uncommitted acreage. Koniag implied in its February 10, 1987 letter Governor Cowper that since ASRC is not participating in the exchanges, none of the Native Corporations will have a competitive advantage in the selection rounds. However, it is important to note that Koniag's industry partner is Chevron, one of the partners of ASRC in the KIC well, the only exploratory well to have been drilled in ANWR.

Given the state of each participant's technical knowledge, it is virtual<sup>y</sup> certain that competing selections for the most prospective tracts will result. The selection adjudication procedures designed by Interior only exacerbate the state's relative disadvantages in those situations. There is good reason to believe (from the history of negotiations and Interior's acquisition priorities) that in the event of a tie in the selection (bidding) process it will favor exchanges for Native lands over exchanges for state lands. Additionally, there is presently no mechanism which would prevent such favoritism. Consequently, it is not inconceivable (in fact, it may be very likely) that the state's active participation in the early selection rounds would be totally unsuccessful. It is possible that we will lose the tie breaker in each and every case.

Given the bias inherent in the selection procedures, i.e., the predisposition toward exchange for Native lands and the potential for Interior's subjective inflation of native land values vis-a-vis state lands, it is unlikely that the state could gain title to any but the least prospective lands. The procedures

Judith M. Brady, Commissioner

February 18, 1987

Page 4

contemplated by Interior are truly biased toward this end, and any participation by the state, although possibly unsuccessful, would lend credence to subsequent claims of fairness and equity which Interior might advance. Stated a little differently, we strongly believe that the rules of the game are being designed in favor of the Native Corporations and Interior. As a result, we believe that the state will fair poorly in any tract selection process. We will hardly be in a position to justify or complain about a poor end result if, knowing all the risks in advance, we agree to play the game.

There are numerous additional arguments which can be made against either participating directly in the proposed exchanges, or acquiescing to the Native Corporation's request not to formally oppose the exchanges. The division is prepared to provide a point-by-point rebuttal to the arguments which have been advanced in support of the exchanges, particularly those written comments provided by CIRI and Koniag. My staff and I are prepared to discuss these issues in detail with you at your convenience, and to provide you the necessary background information to understand the economic and geological implications of the proposed exchanges.

Although I believe the state's best interest lies in opposing any additional ANWR exchanges, I also realize that you may want to consider alternatives short of opposing exchanges which might provide an acceptable compromise. If it is decided that supporting (or not actively opposing) exchanges is in the state's best interest, there is one alternative which could provide some guaranteed return to the state for the "loss" of its current 90 percent share of revenues from the leasing of ANWR.

The simplest and most direct option would be to support exchanges with one or more corporations in return for an overriding or shared royalty interest on the state's behalf on all the tracts that are conveyed. The state would not be faced with the complexity of joint management and administration of leases with the Native Corporations, but would have the benefit of a prenegotiated retained royalty interest. It is also a good way of spreading the risk. There are many facets---legal, as well as technical---which would have to be considered in structuring such agreements, but documents could be drafted which would protect the state's interests. Variations of this option could include reservation of some predetermined percentage share of bonuses and rentals, as well as the overriding or shared royalty interest. Regardless of the final form of the royalty agreement, the state would continue to receive taxes from whatever development occurs on regional corporation and federal leases. Under a properly structured royalty agreement, the state would be able to take its royalty in-value or in-kind.

In lieu of any exchanges with Native Corporations or the State, the Department of the Interior, Native Corporations, and the State of Alaska could strongly support an amendment to the Native Claims Settlement Act (or other appropriate vehicle) that would allow Native Corporations to use the value of their inholding lands, with public interest multipliers included, as payment for obtaining oil and gas leases in future competitive oil and gas lease sales in ANWR. If no oil is found under the purchased tracts, provisions could be

Judith M. Brady, Commissioner  
February 18, 1987..  
Page 5

included in the Congressional proposal that would allow the Native Corporations to have a portion of their lands returned or additional credits issued. Native Corporations should be allowed to sell or assign these "credits" or participate directly in the lease sale.

Discussion: The advantages of this proposal over the currently proposed land exchanges are numerous, and include:

- the expected public opposition to Native Corporation exchanges at both the state and national level will be, at least in part, eliminated;
- the state, federal government, and Native Corporations would be united in their efforts to allow oil and gas leasing in ANWR;
- the negotiations would be removed from the closed-door, confidential sessions that are currently occurring. Instead, Native Corporation efforts to obtain an interest in ANWR, and the USF&WS' efforts to obtain inholdings, would occur in a public, fair, competitive process;
- there would be a greater likelihood of ensuring that the end result would be in the best interest of the state and federal governments, and Native Corporation shareholders;
- administratively, this approach would be significantly less complex. Established leasing and bidding procedures and standard contracts would be used;
- potential revenue losses to the state and federal government would be significantly reduced; and
- exploration and development would not occur until all appropriate environmental requirements are completed.

The disadvantages of this proposal would be to slightly reduce the potential economic return to the Native Corporations and their oil industry "partners," and delay revenues to Native Corporations. As a working interest owner in an oil and gas lease, a Native Corporation would be assuming more of the associated risk.

me0621E  
021887

# STATE OF ALASKA

## DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

P.O. BOX 5  
JUNEAU, ALASKA 99811-0400  
PHONE: (907) 465-2300



February 2, 1988

Jonathan K. Tillinghast  
Attorney-at-Law  
One Sealaska Plaza  
Suite 301  
Juneau, Alaska 99801

Dear Jon:

In reference to your letter of January 22, 1988 regarding records request on ANWR Exchanges, the following information may be of use to you. The Department of Revenue about a year ago developed a discounted cash flow model which contained tax and royalty structure information, but to the best of my knowledge no numbers. The model was developed by Roger Marks who is located in our Oil and Gas Audit Division in Anchorage.

The model was recorded on a diskette and turned over to Ed Phillips of the Department of Natural Resources.

If I can be of further assistance, please feel free to call.

Sincerely,

*Vincent Wright*  
Vincent Wright, Chief  
Research Section

VW:smc

① Stipulations on Land Trades

--- premature - must see 1002 report  
April 20th is due date

Strategies available to ensure that we can get what we want.

1. get back into trades - restructure

2. totally new alternative  
competitive bidding

who do we talk to? what to do?

RS - under assumption that we had good legal

arguments available to stop trades  
also politically stop trades

TK - if they don't go to Congress with trades

we can stop em, if not, there's nothing

we can do.

TK - if Sec. submits his recommendations to Congress

we can do nothing

3 remedies - deal directly to DOI

⊗ (not likely to be productive)

- NEPA compliance

- DOI taking into itself,

things Congress filed 1/2/85

TK - Doesn't believe enviv. case is persuasive

doesn't think illegal for govt. to be handled

in closed door fashion

TK NEPA requirements don't apply  
lack of value is bad government, but DOI  
can do it!

JK - disagree with Koesters NEPA call! Thinks  
DOI has to do it - process ~~is~~ should be spelled  
out.

Trustees will ask for injunctive relief to hear matter while  
its in Secs hands.

JK - Roger Herrera ~~met~~ met w/ 100 Cong. - 2x  
Lt. Gov. met w/ 50 Cong. - 3-4x

Congress' knowledge of land trades is low  
Leadership of Congress

Bill Horns re letter  
House Int. Comm.

timing, process - deviation from MUA competitive  
bidding

As long as environ. & state are opposed, trades  
won't go anywhere

RS - no reason to get involved in NEPA challenge

JK - suggests TK contact Adler re timing

01496

Worse thing we can do is send mixed signals to Congre

Combined bill will be problem

2 bills -

\* Gov. should write letter to Sec. ? \*

NATIVES NEED TO BE CONVINCED THAT THEY  
~~WILL BE~~ RIDE BETTER HORSE  
SOPHISTICATED SET OF MANUEVERS

WE ALL AGREE, THAT IF

10-15 o/o

WILLIE HENSLEY CALLED

1. LITIGATION - OK
2. GOV. RAISED EXPECTATIONS - ALTERNATIVES
3. TOO EARLY TO BE LOBBYING LAND TRADES

① getting together  
\* trade exploration

WORK ON ALTERNATIVES, HAVE

NEED TO CONTACT

BRH7

3 - PAGE 3

11/19/77

HORN SAYS THERE WILL BE TIME FOR STATE & PUBLIC INPUT

9AM THURS - TELECONF <sup>ONE HOUR</sup> FRI. - ONE HOUR

349 563-8143

HORN ON RECORD - SAYS TRACT IDENTIFICATION  
WILL NOT OCCUR IN NEAR FUTURE

~~IN~~

IF STATE STAYS ON SIDELINES, GETTING SWAPS  
APPROVED WOULD BE DIFFICULT  
NOT BIG APPRECIATION OF SWAPS  
NO FOCUS ON IN-HOLDING VALUES, FED WILL NEVER  
APPROPRIATE \$ TO BUY IN-HOLDINGS  
LAND SWAPS ARE VIEWED AS SOMETHING BAD;

IF ALASKA IS BICKERING; THEN THERE WILL BE  
SIGNIFICANT BODY OF PEOPLE IN DC THAT SAY  
IF AK CAN'T GET IT TOGETHER, THEN TOO  
BAD

PEOPLE DON'T FACTOR STATE INTO SWAPS  
MURKOWSKI HAS BEEN TRYING TO COME UP WITH  
MECHANISM THAT WOULD ALLOW STATE TO  
PARTICIPATE

A DEAL MUST HAVE COMPONENT

THERE IS NO SYMPATHY FOR STATE OF ALASKA ABOUT  
LAND SWAPS

EXHIBIT 13 PAGE 4

HORN FOCUSING ON VALUE OF PUBLIC OWNERSHIP

FEDS WILL HOLD-BACK FOR THEIR OWN LEASING

\* SOMETHING MUST BE RETAINED FOR FED INTERESTS

- Whatever total of Native land is, state gets credit say 20  
state sits at table with credits + in-holding value & participate in tract selection  
has right to buy into each Native tract, up to a certain %
- protecting aspect

- state doesn't have to be active part partner, state.

KONIAG → 60 million

25% interest 45 million

- HORN'S reaction - was

15 million

60

\* BOTTOM LINE - STATE IS HOLDING THE CARDS  
IF STATE DOESN'T WANT TRADES TO HAPPEN, THEY LIKELY WON'T

- NATIVES UNDERSTAND THAT

MARLO COOK - AKHIOK LOBBYIST

MURK - TRADES CAN BE DONE IN WAY TO FACIL.

OPENING -

- WILL ASSIST PROCESS -

71500

JB - See if we can develop package that is in best interest of state to get back in ballgame.

If we can't figure out way, then we need to block trades.

Amicus brief's -

Swope - "HOW TO STOP" - POLITICAL

TEAPOT DOME

ARCO → YES OR NO -

GS - 35%

JE - Chits used only against bonus oblig., not royalty obligations

Option 4 - Let him write it

spread sheet - who benefits, who loses

Status Quo

Ky Campbell - meet. this

- Land April 1st → interview

\* Position of SB 137 \*

brilliant to say  
reconciliation speech -  
here's what

ANWR - will  
1002 - environmental

Stevens to begin ← ⊕ → 90/10 not to worry →

premature ← ⊕ → CBS Program Sunday ← ⊕ →

work out position state can live with re: ANWR trades  
once ANWR is open, you don't need trades  
memo from Mertz re: State Land Bank  
[package together at once] ?

← [inevitability] →

Tea Pot Dome

Presume to (hard-hitting)

get away from federalism v. state perspective  
up to date understanding of up

business community \*

continuing to work on "plan of action"  
not like d-2 - Governor has reason  
not ? of opening, rather who benefits

Depth of concern for environment

ANWR

FOCUS

★ REFUGE IN LOUISIANA — DEVELOPMENT W/ AUDUBON  
~~WE~~ WE ARE AWARE OF OTHER  
AREAS — IDENTIFY THEM

IT ~~IS~~ WOULD BE A MISTAKE TO BEGIN THE  
ANWR DEBATE ON THE PREMISE THAT  
~~THE~~ PRUDHOE BAY

REAL AGGRESSIVE IN DNR

DNR AS PROBLEM SOLVER

SIT-DOWN WITH PEOPLE WHO ARE DOING

STUFF — EACH WEEK WE HAVE 2-3

EXAMPLES TO ARTICULATE

STORY ABOUT DGG'S PUBLICATIONS

CHANGE SEQUENCE OF ~~THE~~ PRESS RELEASE

QUOTES FROM DIRECTORS

TRAVEL — HOOKED UP WITH RADIO

DEALING WITH REGIONAL ISSUES

FROM LITTLE NEWSPAPERS →

SET UP PROCESS — AHEAD OF THINGS

DRAFT MEMO

\* ALASKA BUSINESS MONTHLY

EXHIBIT 13 PAGE 8

\* DNR TEAM CONCEPT

11/16/85

- will be  
bombers,  
ickers.  
outes, at  
perating  
off "als  
lthi .ne  
ers and  
  
d North  
st. Gen.  
d.  
are-mile  
brage to  
running  
Unalak-  
- and  
ig from  
  
udes the  
it says  
**MALGAM**

\$1 million.

and killed on Oct. 12, 1985, that every-

See Page B-3, MACKAY

## State may return to ANWR bargaining table

The Associated Press

JUNEAU — State resource officials say all Alaska Native corporations, not just a few, should be allowed mineral lease rights in the Arctic National Wildlife Refuge.

Participation of Alaska's 13 regional Native companies was one of a list of criteria that might prompt the state to return to land negotiations with the federal government.

The state pulled out of negotiations with the corporations and the federal government to determine the process for exchanging Native lands throughout Alaska for federal land in the arctic refuge, which may contain valuable oil and gas deposits. The state

would get 90 percent of the royalties from deposits on federal land, but none if the land was traded to Natives.

Commissioner of Natural Resources Judy Brady on Thursday had listed for some lawmakers and Native corporations criteria the state wants to see before it would return to negotiations. Afterward, some Native leaders said it signals a move toward the bargaining table.

But Brady said Friday that isn't so.

"This is not an offer to sit back down at the table," Brady said, "unless it's a different table. It'd have to be out of the back room and onto the front porch."

Earlier this year, Gov. Steve Cowper

pulled Alaska out of land talks with the Interior Department and Native corporations. Cowper said negotiations were being conducted in secret and Native companies were not sharing information about oil potential in the arctic refuge.

The Interior Department and the state of Alaska are lobbying Congress to open up parts of the arctic refuge to oil development. Interior officials want to line up land trades before the decision is made.

Brady said the state would not rejoin the process unless all sides follow "good government" principles, and

See Page B-3, ANWR

EXHIBIT 14 PAGE 1  
ADN 7/25/87

# ANWR: State may step back into land trade negotiations

Continued from Page B-1

after Congress makes its decision. She's afraid the land trades would divert attention from the primary goal of opening the refuge.

"This would be the biggest land deal of the century. We are not talking trading a south 40 for a creek bed. We are talking about something so large that the last time something like this was done wrong, it showed up in the encyclopedia under Teapot Dome," Brady said.

Interior officials are negotiating with five Native corporations — Doyon, CIRI, Koniag, Akhiokaguyak and Old Harbor.

On Wednesday, Assistant Interior Secretary Bill Horn said the department wants to trade its oil and gas rights in ANWR for Native land in other parts of Alaska.

The land would be added to the federal wildlife refuge system.

The traded lands would be surveyed and have a value assigned. At the same time, Interior would assign values to the oil and gas rights in ANWR that would determine the basis for the trades.

Horn said the federal government is considering proposals to share both risks and profits — if there are any — from the subsurface trades.

But Brady said Horn's ideas are not fair to the state or Natives.

"If you don't hit it (oil), you get your land back," she said.

Under her plan, corporations could use land in lieu of cash to bid for mineral lease rights in the refuge. Alaska would not get any royalties from subsurface rights given Native corporations in the trades.

However, when federal land is leased, Alaska is entitled to 90 percent of all royalties. Ten percent would go to the federal government. Bra-



dy hopes to protect the state's lease rights.

Congress could reduce the state's royalty share.

As of Friday afternoon, Interior officials had not seen the state's proposal.

Rep. Sam Cotten, D-Eagle River, said the plan shows "good public policy. I think the governor's shown initiative in getting back to negotiating."

Jeff Lowenfels, an attorney for Old Harbor Native Corp. of Kodiak, said corporation officials are still contemplating the proposal's details.

"It's good to see the state recognizes the significance of the Native trades to opening up ANWR. And it's good to see them trying to get back to the table," Lowenfels said Friday.

Koniag Inc. Vice President Uwe Gross said corporation officials are looking forward to having the state back at the negotiating table.

"The state's active participation in the exchanges will benefit all the citizens of Alaska through obtaining its (the state's) own inholding in the coastal plain for development," Gross said.

Margaret Sagerser, project director of the Native Lands Group, applauded the state's announcement.

"The state clearly has the most to gain from being a player in the trades, and its best interests are served by participation — not by standing to one side or promoting divisiveness on opening ANWR," she said.

"The state's specific proposal still has a long way to go, and is unrealistic in several respects, but it is a first step," she said.

MEMORANDUM  
DEPARTMENT OF NATURAL RESOURCES

State of Alaska  
DIVISION OF OIL AND GAS

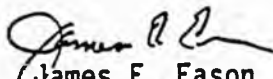
TO: Lennie Boston Gorsuch  
Deputy Commissioner

DATE: May 20, 1987

FILE NO:

TELEPHONE NO: 762-4241

FROM:

  
James E. Eason  
Director

SUBJECT: ANWR Testimony

Yesterday I received a copy of Margaret Moran's May 13, 1987 memorandum to Commissioner Brady and others entitled "ANWR Chronology". The memorandum provides a schedule of ANWR-related hearings before Congress this summer, as well as an internal (state) schedule for preparing testimony and selecting witnesses for those hearings.

There is a hearing before the Water and Power Resources Subcommittee of the House Interior and Insular Affairs Committee on June 23, 1987 to receive testimony on oil and gas production in Alaska. A notation in the memorandum indicates that Ms. Moran has asked the department to identify state witnesses for this hearing. Would it be presumptuous of me to assume that I might have some involvement in this phase of the ANWR hearings? There is a fairly tight timeline with written testimony to be completed by June 8th, so that it can be reviewed by others in Juneau and Washington, D. C. before June 15.

In addition to the hearings in Washington, there are a number of ANWR-related questions which have arisen since Commissioner Brady and the staff unveiled the state's alternative last month. For example, both Koniag and the CIRI Lands Group have made public replies, and staff from this division have compiled a great deal of "new" background material on the earlier exchange valuation. (copies of these materials were mailed to you and Commissioner Brady in yesterday's Juneau pouch) These valuation materials and the related correspondence provide support for the state's arguments against the exchanges, and they undoubtedly will be of use in countering Interior's and the Native Corporations' strategies before Congress.

It is critical, however, that we regroup as soon as it is convenient with the commissioner's schedule to review these materials, as well as the developments of the last month to plan our next moves. Although their efforts aren't very public at this stage, I have no doubt that Interior and the Corporations continue to be very active. If we do not intend for our strategy to be other than reactive, we need to determine the roster of our players, develop strategies and assign responsibilities while the state's proposal is still fresh in the public mind.

I would appreciate it if you could discuss these issues with Commissioner Brady, and let me know when she will have the time to pull the staff, John Katz, Tom Koester and others together.

0776E

DELIVER TO:	Lennie Boston Gorsuch	LOCATION:	Juneau
FROM:	Jim Eason	LOCATION:	Anchorage
TELEPHONE/TELECOPIER #	586-2754	TOTAL NUMBER OF PAGES	1
TRANSMITTING ON/SPEED		DATE	5/20/87
PHONE FOR PROBLEMS-NAME/NUMBER	Roberta Keith	TIME	9:40
COMMENTS	00380 00386		

Jim Eason

Friday, June 19, 1987

10:00 Rick Kounihan  
Congressman Phil Sharp  
House Interior Committee

10:30 Rod Moore  
Congressman Don Young  
Merchant Marine Subcommittee on Fish and Wildlife  
Congressman Gerry Studds, Chairman Merchant Marine  
Subcommittee on Fish and Wildlife

11:45 Tobin Anderson  
Senator Conrad  
Senate Energy Committee

1:00 Svend Brandt-Erichson  
Senator Ted Stevens

2:00 Mike Harvey  
Chief Counsel-Senate Energy Committee

3:00 Jeremiah Bresnahan  
Congressman Glenn Anderson  
Merchant Marine Committee

3:30 Jeff Petrich  
Chief Counsel House Interior Subcommittee on Water  
and Power Resources

Monday, June 22, 1987

9:30 Jim Martin  
Senator Wirth  
Senate Energy Committee

10:00 Tom Heming *Fleming*  
Senator Wendell Ford  
Senate Energy Committee

11:00 Tom Roberts  
Senator Frank Murkowski

11:30 Mitch Foushee  
Senator Binguman  
Senate Energy Committee

1:00 Ron Ungvársky  
Congressman Austin Murphy  
House Interior Committee

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Page 2

2:00 Ed Welch  
Don Barry  
Tom Kitsos  
Chief Counsel House Merchant Marine Committee

3:00 Dave Berick  
Senator Brock Adams

4 - 6 Briefing with Katz

Tuesday, June 23, 1987

8:15 Don Berry  
Merchant Marine

9:45 - 10:45 Testimony

10:45 Congressman Lindsay Thomas

00610

EXHIBIT 16 PAGE 2 00611

# MEMORANDUM

DEPARTMENT OF NATURAL RESOURCES

State of Alaska <sup>file</sup>

DIVISION OF OIL AND GAS

TO: Rod Swope, Special Staff Assistant  
Office of the Governor

DATE: September 10, 1987

FILE NO:

TELEPHONE NO: 762-2547

FROM:   
James E. Eason  
Director

SUBJECT:

ANWR Critique

Rod, as promised, enclosed is a copy of the executive summary of our critique of the proposed land exchanges. The critique is based upon a review of the exchange selections and appraisal values, as well as a detailed analysis of the geophysical mapping of the ANWR prospects. I cannot stress with words how important I feel it is that this message gets conveyed to the decisionmakers who will be considering the approval of these proposed exchanges. Quite simply, they are terrible. The combined effect of the former exchanges and the proposed exchanges potentially will leave the federal government with little, if any, prospective lands in ANWR to offer in competitive sales should ANWR be opened. Under that circumstance, it is almost irrelevant from a public revenue perspective whether or not ANWR is in fact opened. I realize there are other perspectives that must bear on this issue, but I believe folks have not been fully informed yet on how great the revenue loss may be and just how unfair the non-competitive selections and exchanges are.

If there is any doubt about our assessment, I suggest a look at the enclosed article from today's Daily News. It confirms precisely the disproportionate value that the corporations will receive from what the Fish and Wildlife Service has determined to be the appraised value of the exchange lands. Under Old Harbor's exchange, it will be reimbursed the full amount of its surface land's value (\$45 million) and, in addition, it will retain a 14 percent royalty for any oil that Texaco subsequently discovers and produces from Old Harbor's ANWR lands. The lands either are worth \$45 million as Fish and Wildlife Service claims, or they are worth \$45 million plus 14 percent future royalty as I, Texaco and Old Harbor clearly believe.

A more disturbing thought is that there is no reason to believe that Old Harbor's deal is a particularly good one. Given their oil and gas experience and negotiation skills, I would be willing to wager that C.I.R.I.'s deal is even better. So, if the corporations, the Fish and Wildlife Service, and the exchange participants win, it should be a simple matter to figure out who loses. Call if you have any questions.

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DELIVER TO: <u>W. Swope</u>	LOCATION: <u>...</u>
FROM: <u>J. Eason</u>	LOCATION: <u>...</u>
TELEPHONE/TELECOPIER # <u>413 3-...</u>	TOTAL NUMBER OF PAGES <u>5</u>
TRANSMITTING ON/SPEED	DATE <u>9/10/87</u> TIME <u>4:00</u>
PHONE FOR PROBLEMS-NAME/NUMBER	<u>...</u>
COMMENTS	

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EXECUTIVE SUMMARY  
OF THE ALASKA DIVISION OF OIL AND GAS CRITIQUE  
OF THE PROPOSED ANWR LAND EXCHANGES

When combined with the previous ASRC/KIC exchange, the Department of the Interior's (DOI) most recent proposed ANWR land exchanges result in the non-competitive conveyance of well over a quarter of a million acres of the most prospective lands within the Coastal Plain of ANWR for a TOTAL VALUE OF ONLY \$543.8 MILLION (the appraised value of the exchange lands tendered to DOI). In the ASRC/KIC exchange DOI received surface estate appraised at \$5.1 million in exchange for subsurface rights to approximately 100,000 acres of highly prospective mineral estate beneath the Coastal Plain of ANWR. The currently proposed exchange would convey the subsurface rights to an additional 166,278 acres of the remaining most highly prospective lands to six Native Corporations and their industry partners in exchange for 891,000 acres of surface estate with an appraised value of \$538.7 million.

Although impossible to calculate, it is likely that a competitive lease sale of this same Coastal Plain acreage would generate bonus revenues hundreds of millions of dollars higher while still retaining a significant royalty interest in any future production for the federal government. The value of the royalty interest, should significant discoveries occur, potentially may be measured in the billions of dollars.

The uniquely high hydrocarbon potential of ANWR presents DOI with a one-time-only opportunity both to reduce the national dependence on foreign oil imports and to receive significant public revenues in the process. In acknowledging the extremely high upside resource potential and realizing the uncertainties attached to DOI's assigned value for individual ANWR tracts, a prudent approach, at the very least, would require that the federal government retain a significant royalty interest in future ANWR petroleum production.

According to DOI's press release describing the latest exchange selections, "...of the 73 tracts identified, 34 were on potential oil and gas structures mapped for the 1002 study and report to Congress." However, based upon our independent mapping of the same geophysical data, every one of the 73 tracts selected for exchange lies above a structural trap.

Further, all of the mappable four-way closures (representing the best potential targets) have either been exchanged or selected for exchange. The fact that most of the industry selections do not overlie structures mapped by DOI in the final 1002 study indicates that DOI's mapping is suspect. The actual exchange selection pattern reveals that the native corporations and their industry partners have recognized and mapped these underlying structures and that they apparently have high regards for their oil and gas potential.

The combined exchanges would transfer over 250,000 acres of the 1.53 million acre Coastal Plain (approximately 18 percent) into private ownership. However, to focus on the relative number of acres conveyed through exchanges, as DOI does, is very misleading. It is the location of that acreage relative to the most prospective subsurface structures which is relevant, not the absolute number of acres exchanged. Relatively small but well-informed or simply fortuitous selections could effectively result in the exchange of all of the area's potential oil and gas reserves.

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EXHIBIT 17 PAGE 2

It is clear from both the selection pattern and our independent mapping that the tops (structurally highest and most prospective portions) of all the best structures, including the very large prospects #18 and #19 (from the 1002 study), and numerous prospects aligned along the Marsh Creek trend, have been selected already by the exchange participants, just as would be expected to occur if the acreage were offered for competitive leasing and exploration by informed bidders. The acreage remaining for any future competitive sales is situated over the structurally lower (and therefore less prospective) portions of the subsurface structures as they are currently known.

It is the uniquely high upside potential of the ANWR acreage which is attracting the wide-spread exploration interest in the Coastal Plain. It is very important to remember, however, that the most likely outcome of exploration in any frontier area, including ANWR, is that there will be more dry holes than commercial discoveries. The less prospective tracts in ANWR, those remaining after the exchange selections, may very well be condemned through early drilling of the exchange tracts, with a resultant loss in public revenues.

The incorporation of a rescission clause in any of the exchange contracts would enable a corporation to relinquish title to its subsurface estate in ANWR in exchange for the reconveyance of a portion--rumored to be as high as 65 percent--of the surface estate which it has traded for the ANWR lands. The effect of this particular stipulation, when combined with the advance cash payments the corporations are reported to have received from their respective industry partners, places the corporations in a very enviable low or no-risk position. The public interest does not enjoy parallel protection, however. In exchange for an indeterminate number of abandoned exploratory well locations on the Coastal Plain for which it will regain title, DOI will have to reconvey title to some of the valuable refuge inholdings which it has temporarily received from one or more of the corporations. Under these circumstances, the stated basis for the proposed exchange literally will disappear.

The federal government's receipt of fair market value for ANWR's oil and gas resources can be assured only through a fully open and competitive leasing program which retains a significant royalty interest in any oil and gas reserves which ultimately may be discovered and produced there. The fairness and equity offered by competitive leasing procedures are in marked contrast to the terms of DOI's proposed exchanges. Those exchanges are not equal value exchanges. In fact, the actual value of the ANWR lands proposed for exchange cannot be determined prior to the drilling and testing of numerous exploratory wells on the tracts.

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# MEMORANDUM

DEPARTMENT OF NATURAL RESOURCES

State of Alaska

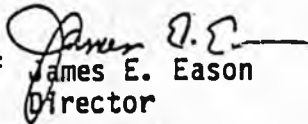
DIVISION OF OIL AND GAS

TO: Maggie Moran/John Katz  
Office of the Governor

DATE: December 21, 1987

FILE NO:

TELEPHONE NO: 762-2547

FROM:   
James E. Eason  
Director

SUBJECT: ANWR Land Exchange

It appears that the corporations do intend to increase the "heat", both locally and nationwide in their rebuttal to our criticism of the exchanges. As evidence, these two articles, one from the editorial page of the Anchorage Times this weekend and the other from the Anchorage Daily News clearly continue the theme which was suggested at the recent meeting with Governor Cowper...sever the agency from the Governor, and hopefully bring the governor back to the bargaining table.

According to our latest intelligence, Mystrom Advertising, Inc. has been approached to submit a proposal to conduct a pro exchange campaign. It is our understanding that the proposal would include mailings to each member of Congress in their home district to encourage their support of the exchanges. I will give you more details as they become available. Meanwhile, if you have any questions, please call.

I have also transmitted for your files a copy of a letter from Ms. Lynne Corn of the CRS expressing her appreciation for our earlier meeting with them to discuss the exchanges.

cc: Judith M. Brady, Commissioner  
Lennie Gorsuch, Deputy Commissioner

Enclosures

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EXHIBIT 18 PAGE 1

# MEMORANDUM

DEPARTMENT OF NATURAL RESOURCES

## State of Alaska

DIVISION OF OIL AND GAS

TO: John ~~Ray~~, Special Counsel  
Office of the Governor

DATE: December 31, 1987

and  
Judith M. Brady  
Commissioner, DNR

FILE NO:

TELEPHONE NO: 907-762-2547

FROM: James E. Eason  
Director

SUBJECT: Young/Horn Discussion  
on Land Exchanges.

Enclosed is a copy of a videotape aired on the local public television station, KAKM, on Saturday, December 26, 1987. The program consists of a discussion between Congressman Young and Assistant Secretary Bill Horn on the proposed ANWR land exchanges.

It is our understanding that this tape was delivered from Congressman Young's office to KAKM earlier the week of Christmas, although the tape appears to have been made in July prior to the Congressman's trips to ANWR. The time of the tape coincided perfectly with the recent pro-exchange media blitz, including the two editorials in the Anchorage Times which the Native corporations have undertaken.

We are forwarding only one copy to Juneau, assuming that it will be made available for viewing by Ned Slope and other interested parties. If you need additional copies or have questions, please feel free to call.

Enclosure

EXHIBIT 19 PAGE 1

ANWR

**MEMORANDUM**  
DEPARTMENT OF NATURAL RESOURCES

**State of Alaska**  
DIVISION OF OIL AND GAS

TO: John Katz, Special Counsel  
Office of the Governor

DATE: January 5, 1988

FILE NO:

TELEPHONE NO: 907/762-2547

FROM: *James E. Eason*  
Director

SUBJECT: Anchorage Daily News  
"Compass" Piece

Tom Hawkins and I were talking about strategy after our teleconference yesterday, and he remarked, "...Seems like deja' vu...looks like I may get the opportunity to fight my second no-win war this generation."

Along those lines, the "Compass" piece by Emil Christiansen appeared in this morning's Anchorage Daily News. This makes three unanswered editorial-like pieces in the last three weeks. The question is, do folks begin to believe what they hear if they only hear one side of the story?

On another ANWR-related matter, I learned yesterday afternoon that Michael C. T. Smith will be leaving the Native Lands Group later this month. His replacement for ANWR exchange matters is Chip Dinnerlein. Chip told me yesterday afternoon that he will be going to Washington tomorrow (Wednesday). Call if you have questions.

Attachment

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DELIVER TO: <i>John Katz</i>	LOCATION: <i>U.C.</i>
FROM: <i>James Eason</i>	LOCATION: <i>Oil &amp; Gas - Anch</i>
TELEPHONE/TELECOPIER # <i>207/624-5857</i>	TOTAL NUMBER OF PAGES: <i>4</i>
TRANSMITTING ON/SPEED _____	DATE: <i>1/5/88</i> TIME: <i>8:25</i>
PHONE FOR PROBLEMS-NAME/NUMBER _____	<i>submit to K with 907/762-2549</i>
COMMENTS _____	

EXHIBIT 20 PAGE 1

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OFFICE OF THE COMMISSIONER

P.O. Box 107005

Anchorage, Alaska 99510-7005

(907) 762-2483

to: Paul Meyerhoff  
fr: Carol Larsen / 762 2452-  
date: Mon. Dec. 21, 1987  
re: KENI/Newstalk

To follow up on our conversation today - I will call your office later this week to schedule Jim Eason - our Oil & Gas director - to appear on Newstalk as soon as possible - to talk on ANWR/Land Trades.

I know that the Commissioner looks forward to participating as soon as she can. Her response is attached.

Thanks again for your time today -



# MEMORANDUM

# State of Alaska

DEPARTMENT OF NATURAL RESOURCES - Division of Land and Water Management

TO: Judith M. Brady  
Commissioner

DATE: December 15, 1987

FILE NO:

TELEPHONE NO: 762-2680

THRU: Margaret J. Hayes  
Director

SUBJECT: Trip Report:  
Washington, D.C.

FROM: Gary Gustafson, Chief  
Land Management

As you know, the week of December 5-12, 1987 I flew to Washington, D.C. for a series of meetings concerning the proposed ANWR land exchanges. The primary purpose of the trip was to join Jim Eason in briefing key members of Congress and staff regarding the State of Alaska's posture regarding the proposed exchanges. In this context, we were to distribute and discuss two separate state critiques of the process used by the Department of the Interior (DOI) to value the Native corporation surface estate in-holdings as well as the federal oil and gas interests in ANWR proposed for exchange.

The Division of Oil and Gas had previously completed and distributed a critique of the DOI ANWR subsurface valuation process, while I had just recently completed an analysis of the DOI surface valuation process for the Native refuge in-holdings.

After travelling to Washington, D.C. over the weekend, I met Monday morning with John Katz and his staff to discuss strategy and plan the week's schedule. Meetings with individual Congressmen and staff were not scheduled to begin until Wednesday morning, following the arrival Tuesday night of Jim Eason from an Interstate Oil Compact Commission meeting in Santa Fe, New Mexico.

I spent a portion of Monday reviewing a draft version of H.B. 3601, a bill proposed by Congressman Jones to open ANWR. The draft bill had been circulated among affected state agencies by DGC for comment. Having previously talked with Carol Wilson, I prepared comments and telecopied them to Kurt Fredrickson of DGC in Juneau. I also drafted new bill sections dealing with a proposed water resources study, navigability determinations and rights-of-way, should they be needed. I met with Kay Gouwens of John's staff on the BLM Utility Corridor Plan, Eric Ostrovsky on RS 2477's, Maggie Moran on ANWR strategies and Eric Laschever on HB 3601.

On Tuesday, Eric Laschever and I participated in a conference call regarding HB 3601. Also participating were representatives of ADFG and DEC as well as Bill Van Dyke and Carol Wilson of DNR. We agreed on an

EXHIBIT 22 PAGE 1

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overall state approach which Kurt agreed to write-up. I also sent Kurt the draft legislation I had drafted previously.

Kay Gouwens and I then participated in a conference call with Francis Neville of the AG's Office to discuss the Oliktok Point situation. BLM had proposed a federal oil and gas lease at Oliktok Point without properly dealing with a pending state selection and without assurances that the state would receive a 90 percent royalty pursuant to the 1920 Mineral Leasing Act. I also talked several times with Anchorage Daily News reporter Ronnie Chappell in preparation for his ANWR land trade story.

Beginning Wednesday morning, Jim Eason and I (sometimes accompanied by Maggie Moran) began a series of meetings with Congressmen and staff regarding the proposed ANWR land trades. Jim focused upon the uncertainties and undervaluation associated with the DOI ANWR subsurface valuation, while I concentrated upon the inflated values for the Native in-holdings resulting from DOI negotiations. We met a total of 22 Congressmen or staff over the three days. Each meeting consisted of about 30 minutes during which we would present our reports, provide pertinent overview comments and then answer questions.

In addition, we also met Wednesday morning with about 15 staff from the Congressional Research Staff (CRS) a brain trust of federal employee's of various disciplines who are preparing an independent analysis of the proposed trades. The CRS people proved to be well informed on the subject and asked a number of good questions. We provided them with some information they did not have and also added insite into a number of issues they had not yet explored. My sense was that they will conclude the trades to be adverse to the national interest as they are procedurally flawed. The CRS report is expected out within about ten days.

Regarding the Congressional contacts, I reached a number of generalized conclusions (see attachment for schedule).

1. While everyone was aware of the proposed ANWR trades, the level of information and comprehension was not very high;
2. There was a high degree of skepticism concerning the practices of the current DOI administration;
3. Our information raised a number of eyebrows;
4. Most of the House members asked how Don Young stood on the issue; and
5. Almost everyone agreed the trades were a disruptive and unnecessary influence on the central issue of achieving a decision on whether to open ANWR.

There is no question but that our message got through. For instance, Representative Lindsey Thomas (GA) who was thought to be a trade supporter, expressed considerable concern over DOI's methodology following our presentations. A number of previously uncommitted Congressmen definitely seemed to tilt toward the state's posture following our disclosure reports. I put Congressmen Richardson (NM), Sweeney (TX), Herger (CA), Rhodes (AZ), Lujan (NM) and Huckaby (LA) in this category. Although it's difficult to relate our contacts to exact Congressional postures, it's safe to say that all our contacts bore fruit. I felt even the meeting with Dan Kish of Congressman Young's staff was productive in this regard.

We also met on Wednesday with Mike Matz of the Sierra Club, Randy Snodgrass of the Wilderness Society, Tim Mahoney of the Alaska Coalition and other environmental group representatives. The environmental groups definitely support the state's position on this issue as they oppose any effort to use the trades as leverage to help open ANWR.

Late Thursday afternoon I returned to John's office from Capitol Hill to meet with him, Kay Gouwens, and BLM's Mike Penfold, Ted Stephenson and Bob Faithful. The principal issue was the proposed Oliktok Point federal oil and gas lease sale. We made it clear that the state favors an amendment to the existing military withdrawal to allow the existing state general grant selection to attach to the mineral estate. Penfold seemed uncomfortable with that scenario, however, probably because he fears the same tact might then be applied to other federal withdrawals. He prefers BLM retention of the area with the state able to receive 90 percent of any lease royalties. However, as this option is not assured, Penfold has asked the Solicitor's Office in Washington, D.C. to prepare an opinion regarding the applicability of the 1920 Mineral Leasing Act. He said he would provide us with a draft to review before it becomes final.

We also talked about BLM's Utility Corridor Plan. Penfold made it clear that the inner corridor would never be available for state selection (at least as long as he is state director). He bases this decision on the rationale that Alaska needs a strong federal multiple use agency - and that if the state acquires too much strategic land, BLM's role will be reduced to just realty functions. At least he was honest with us. He said he would be willing to meet with you to discuss further state selection options in the outer-corridor. The Draft BLM Utility Corridor Plan currently denies even this opportunity. Any meeting will have to occur soon, however, as the plan is expected to be finalized in about three months.

In summary, I felt we accomplished our purpose. There seems to be little sentiment in Congress at present to support the trades. One other thing we may have inadvertently triggered might be the DOI LEIS. I sense our efforts, combined with the recent press accounts, have forced DOI to begin the LEIS process.

Judith M. Brady

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December 15, 1987

Attachment

cc: Lennie Gorsuch, CO  
Rod Swope, Governor's Office-Juneau  
Tom Hawkins, CO  
Jim Eason, DOG  
Tom Koester, AGO  
John Katz, Governor's Office-Washington, D.C.  
Maggie Moran, Governor's Office-Washington, D.C.

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EXHIBIT 22 PAGE 4

Wednesday, December 9, 1987

9:30 am - 11:30 am

CRS Briefing, James Madison Bldg., Room 423, Conference Room., Maggie Moran, Gary Gustafson, (contact: Lynn Cor- 287-7267).

12:00 noon

Lunch

1:00 pm

Meeting with Roy Willis, Bill Tauzin's Staff (D-La), Maggie Moran, Gary Gustafson, 222 Cannon House Office Bldg., (225-4031).

1:30 pm - 2:00 pm

Meeting with Congressman Lindsay Thomas (D-Ga), Maggie Moran, Gary Gustafson, 431 Cannon House Office Bldg., (contact: Nancy Newton 225-5831).

2:00 pm - 2:30 pm

Meeting with Congressman Bill Richardson (D-NM), Maggie Moran, Gary Gustafson, 332 Cannon House Office Bldg., (contact: Jean Barber 225-6190).

3:00 pm

Meeting with Mike Mata, Sierra Club, Maggie Moran, Gary Gustafson, 330 Pennsylvania Ave., S.E., (547-1141).

4:00 pm

Meeting with Mike Lowry (D-Wa), Kurt Marshall, Jim Evans, Maggie Moran, Gary Gustafson, 2454 Rayburn House Office Bldg.

4:30 pm

Meeting with Russ Shay, Congressman Studts Staff (D-Mass), Maggie Moran, Gary Gustafson, 543 House Office Bldg., Annex II, (226-3533).

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Thursday, December 10, 1987

9:00 am - 9:45 am Meeting with Rick Counihan, Congressman Sharp's staff (D-Indiana), Maggie Moran, Gary Gustafson, 331 House Office Bldg., Annex II, (226-2500).

10:00 am - 10:30 am Meeting with Congressman Mac Sweeney (R-Texas), Maggie Moran, Gary Gustafson, 1713 Longworth House Office Bldg., (contact: Linds Mathis 225-2831). Note: If Congressman cannot make it, Allen Halbbrook, Leg. Director, will meet with you.

10:30 am - 11:00 am Meeting with Congressman Wally Herger (R-CA), Maggie Moran, Gary Gustafson, 1108 Longworth House Office Bldg., (contact: Sharon 225-3076).

11:00 am - 11:30 am Meeting with Congressman John Rhodes (R-AZ), or Jim Huska, Legislative Director, Maggie Moran, Gary Gustafson, 510 Cannon House Office Bldg., (contact: Marcia Summers 225-2635).

11:30 am - 12:00 noon Meeting with Kathleen Latimer, Congressman Douglas Bosco's staff (D-CA), Maggie Moran, Gary Gustafson, 508 Cannon House Office Bldg., (contact: Peg Thompson 225-3311).

12:15 pm - 12:30 pm Meeting with Congressman Manuel Lujan (R-NM), Maggie Moran, Gary Gustafson, 1323 Longworth House Office Bldg., (contact: Christy Calderwood 225-6316).

12:30 pm - 1:30 pm Lunch

1:30 pm - 2:00 pm Meeting with Congressman Jerry Huckaby (D-LA), Maggie Moran, Gary Gustafson, 2421 Rayburn House Office Bldg., (contact: Collette Carter 225-2376).

Thursday, December 10, 1987 (cont.)

2:00 pm - 4:00 pm                    Senate Hearings, 406 Dirksen  
Senate Office Bldg.

5:00 pm                                Meeting with Dan Kish,  
Congressman Young's staff,  
Maggie Moran, Gary Gustafson,  
1329 Longworth House Office  
Bldg., (contact: Chris  
225-6065).

Friday, December 11, 1987

9:15 am - 9:45 am                    Meeting with Paul Carothers,  
Senator Breaux's staff (D-LA),  
Maggie Moran, Gary Gustafson,  
516 Hart Senate Office Bldg.,  
224-4623.

9:45 am - 10:15 am                   Meeting with Bob Davison,  
Energy, Power & Water  
Committee, Maggie Moran, Gary  
Gustafson, 408 Hart Senate  
Office Bldg., 224-7189.

10:30 am - 11:00 am                   Meeting with Mark Trautwein,  
Congressman Udall's staff  
(D-Ariz), Maggie Moran, Gary  
Gustafson, 1328 Longworth  
House Office Bldg., 225-8331.

11:00 am - 11:30 am                   Meeting with Walter Sanders,  
Legislative Director and  
Counsel for Congressman  
Dingell (D-MI), Maggie Moran,  
Gary Gustafson, 2456 Rayburn  
House Office Bldg., 225-2754.

12:00 noon - 1:00 pm                   Lunch

1:30 pm - 2:00 pm                    Meeting with Jeff Petrich,  
House Water and Power  
Resources Committee, Maggie  
Moran, Gary Gustafson, 1413A  
Longworth House Office Bldg.,  
225-6042.

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~~2:15 pm - 2:45 pm                   Meeting with Dan McAuliffe,  
Congressman Campbell's staff  
(D-Colo), Maggie Moran, Gary  
Gustafson, 1724 Longworth  
House Office Bldg., (contact:  
Dan Jiron 225-4761).~~

Friday, December 11, 1987 (cont.)

3:00 pm - 3:30 pm

Meeting with Jim Mathews,  
Congressman Manton's staff  
(D-NY), Maggie Moran, Gary  
Gustafson, 327 Cannon House  
Office Bldg., (contact: Betty  
Rogers 225-3965).

3:35 pm

Meeting with Steve Seiberling,  
Congressman Clarke's staff  
(D-NC), Maggie Moran, Gary  
Gustafson, 217 Cannon House  
Office Bldg., (contact: Ann  
Owens 225-6401).

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JIM EASON  
DIRECTOR, DIVISION OF OIL AND GAS  
DEPARTMENT OF NATURAL RESOURCES  
D.C. ITINERARY

Tuesday, December 1, 1987

9:30 am - 10:30 am	Briefing with John Katz and Staff, Governor's Washington, D.C. Office.
10:45 am - 11:15 am	Meeting with Greg Chapados, Svend Brandt Erichsen, Maggie Moran, Senator Stevens Office, 522 Hart Bldg., 224-3004.
12:15 pm - 1:15 pm	Lunch
1:30 pm - 2:00 pm	Meeting with Dr. Charles Broches, Maggie Moran, Congressman John Miller's Office, 1224 Longworth House Office Bldg., (contact: Sue Claeys 225-6311).
3:15 pm - 3:45 pm	Meeting with Senator Frank Murkowski, Maggie Moran, 709 Hart Senate Bldg., (contact: Carol 224-6665).
4:00 pm - 4:30 pm	Meeting with Congressman Glen Anderson (D-CA), Maggie Moran, 2329 Rayburn House Office Bldg., (contact: Mary Ellen 225-6676).

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Wednesday, December 2, 1987

1:30 pm - 2:00 pm

Meeting with Mike Harvey, Tom Williams, Senate Energy Committee, 364 Dirksen Senate Office Bldg., (224-4971).

2:45 pm - 3:15 pm

Meeting with Congressman Peter Kosmayer (D-Pa), 123 Cannon House Office Bldg., (contact: Sallie Bell 225-4276).

3:30 pm - 4:00 pm

Meeting with Dan Evans, AA for Congressman Don Bonker, 434 Cannon House Office Bldg., (contact: Linda Suter 225-3536).

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Thursday, December 3, 1987

10:00 am	Meeting with Tony Bevinetto, Senate Energy Committee, Maggie Moran, 310 Dirksen Senate Bldg., (224-1017).
11:00 am - 11:30 am	Meeting with Congressman Wayne Owens (D-Utah), Maggie Moran, 1728 Longworth House Office Bldg., (contact: Todd Swindell 225-3011).
11:45 pm - 12:45 pm	Lunch
2:00	Meeting with Congresswoman Patricia Saiki (R-Hawaii), Maggie Moran, 1407 Longworth House Office Bldg., (225-2726).
3:00 pm	Meeting with Congressman Sam Gejdenson (D-Ct), Maggie Moran, 1410 Longworth House Office Bldg., (225-2076).
4:00 pm	Meeting with Congressman Tom Carper (D-Del.), Maggie Moran, 131 Cannon House Office Bldg., (contact: Heidi Glenn 225-4165).

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Friday, December 4, 1987

9:00 am Meeting with Jim Martin,  
Senator Tim Wirth's (D-Co)  
Staff, Maggie Moran, 380  
Russell Senate Office Bldg.,  
(224-5852).

10:00 am Meeting With Gene Peters,  
Maggie Moran, 731 Hart Senate  
Office Bldg., (224-8581).

11:00 am Meeting With Brian Sweeny,  
Congresswoman Schneider's  
(R-RI) Staff, Maggie Moran,  
1512 Longworth House Office  
Bldg., (225-2735).

12:00 noon Lunch

1:00 pm Meeting with Ed Welsh, Don  
Barry, Russ Shay, Maggie  
Moran, 1334 Longworth House  
Office Bldg., (contact: Mary  
225-4047).

2:00 pm Meeting with Stan Sloss,  
National Parks and Public  
Lands, Maggie Moran, 812 House  
Office Bldg., Annex I,  
(226-7736).

Wednesday, December 9, 1987

9:30 am - 11:30 am	CRS Briefing, James Madison Bldg., Room 423, Conference Room., Maggie Moran, Gary Gustafson, (contact: Lynn Corn 287-7267).
12:00 noon	Lunch
1:00 pm	Meeting with Roy Willis, Bill Tauzin's Staff (D-La), Maggie Moran, Gary Gustafson, 222 Cannon House Office Bldg., (225-4031).
1:30 pm - 2:00 pm	Meeting with Congressman Lindsay Thomas (D-Ga), Maggie Moran, Gary Gustafson, 431 Cannon House Office Bldg., (contact: Nancy Newton 225-5831).
2:00 pm - 2:30 pm	Meeting with Congressman Bill Richardson (D-NM), Maggie Moran, Gary Gustafson, 332 Cannon House Office Bldg., (contact: Jean Barber 225-6190).
3:00 pm	Meeting with Mike Matz, Sierra Club, Maggie Moran, Gary Gustafson, 330 Pennsylvania Ave., S.E., (547-1141).
4:00 pm	Meeting with Mike Lowry (D-Wa), Kurt Marshall, Jim Evans, Maggie Moran, Gary Gustafson, 2454 Rayburn House Office Bldg.
4:30 pm	Meeting with Russ Shay, Congressman Studts Staff (D-Mass), Maggie Moran, Gary Gustafson, 543 House Office Bldg., Annex II, (226-3533).

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Thursday, December 10, 1987

9:00 am - 9:45 am

Meeting with Rick Counihan, Congressman Sharp's staff (D-Indiana), Maggie Moran, Gary Gustafson, 331 House Office Bldg., Annex II, (226-2500).

10:00 am - 10:30 am

Meeting with Congressman Mac Sweeney (R-Texas), Maggie Moran, Gary Gustafson, 1713 Longworth House Office Bldg., (contact: Linds Mathis 225-2831). Note: If Congressman cannot make it, Allen Halbrook, Leg. Director, will meet with you.

10:30 am - 11:00 am

Meeting with Congressman Wally Herger (R-CA), Maggie Moran, Gary Gustafson, 1108 Longworth House Office Bldg., (contact: Sharon 225-3076).

11:00 am - 11:30 am

Meeting with Congressman John Rhodes (R-AZ), or Jim Huska, Legislative Director, Maggie Moran, Gary Gustafson, 510 Cannon House Office Bldg., (contact: Marcia Summers 225-2635).

11:30 am - 12:00 noon

Meeting with Kathleen Latimer, Congressman Douglas Bosco's staff (D-CA), Maggie Moran, Gary Gustafson, 508 Cannon House Office Bldg., (contact: Peg Thompson 225-3311).

12:15 pm - 12:30 pm

Meeting with Congressman Manuel Lujan (R-NM), Maggie Moran, Gary Gustafson, 1323 Longworth House Office Bldg., (contact: Christy Calderwood 225-6316).

12:30 pm - 1:30 pm

Lunch

1:30 pm - 2:00 pm

Meeting with Congressman Jerry Huckaby (D-LA), Maggie Moran, Gary Gustafson, 2421 Rayburn House Office Bldg., (contact: Collette Carter 225-2376).

Thursday, December 10, 1987 (cont.)

2:00 pm - 4:00 pm Senate Hearings, 406 Dirksen  
Senate Office Bldg.

5:00 pm Meeting with Dan Kish,  
Congressman Young's staff,  
Maggie Moran, Gary Gustafson,  
1329 Longworth House Office  
Bldg., (contact: Chris  
225-6065).

Friday, December 11, 1987

9:15 am - 9:45 am Meeting with Paul Carothers,  
Senator Breaux's staff (D-LA),  
Maggie Moran, Gary Gustafson,  
516 Hart Senate Office Bldg.,  
224-4623.

9:45 am - 10:15 am Meeting with Bob Davison,  
Energy, Power & Water  
Committee, Maggie Moran, Gary  
Gustafson; 408 Hart Senate  
Office Bldg., 224-7189.

10:30 am - 11:00 am Meeting with Mark Trautwein,  
Congressman Udall's staff  
(D-Ariz), Maggie Moran, Gary  
Gustafson, 1328 Longworth  
House Office Bldg., 225-8331.

11:00 am - 11:30 am Meeting with Walter Sanders,  
Legislative Director and  
Counsel for Congressman  
Dingell (D-MI), Maggie Moran,  
Gary Gustafson, 2456 Rayburn  
House Office Bldg., 225-2754.

12:00 noon - 1:00 pm Lunch

1:30 pm - 2:00 pm Meeting with Jeff Petrich,  
House Water and Power  
Resources Committee, Maggie  
Moran, Gary Gustafson, 1413A  
Longworth House Office Bldg.,  
225-6042.

2:15 pm - 2:45 pm Meeting with Dan McAuliffe,  
Congressman Campbell's staff  
(D-Colo), Maggie Moran, Gary  
Gustafson, 1724 Longworth  
House Office Bldg., (contact:  
Dan Jiron 225-4761).

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Friday, December 11, 1987 (cont.)

3:00 pm - 3:30 pm

Meeting with Jim Mathews,  
Congressman Manton's staff  
(D-NY), Maggie Moran, Gary  
Gustafson, 327 Cannon House  
Office Bldg., (contact: Betty  
Rogers 225-3965).

3:35 pm

Meeting with Steve Seiberling,  
Congressman Clarke's staff  
(D-NC), Maggie Moran, Gary  
Gustafson, 217 Cannon House  
Office Bldg., (contact: Ann  
Owens 225-6401).

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October 5, 1987

MEMORANDUM

PRIVILEGED AND CONFIDENTIAL

TO: THE HONORABLE STEVE COWPER, Governor

ATTN: LYNN BARTLETT, Secretary to the Governor

FROM: JOHN W. KATZ, Director of State/Federal Relations  
and Special Counsel to the Governor

SUBJECT: LAND TRADES/STRATEGY AND TACTICS ON THE FEDERAL  
LEVEL

BACKGROUND

The State withdrew from the land trades discussions with the Department of the Interior (DOI) in February of this year. There were three main reasons for our withdrawal: the substance of the proposed trades, the negotiation and evaluation process, and the belief that the trades would divert attention from the State's main objective of opening ANWR to oil and gas development.

At the time of our withdrawal, we announced an alternative that met the stated objectives of both the Native corporations and the DOI -- an alternative that allows such corporations to exchange refuge inholdings for bidding rights on ANWR. However, we announced the alternative only to State groups. No formal communication from the State concerning our opposition to the trades or our alternative approach has been made either to the DOI or to Congressional groups.

The State, through its Washington, D.C. office, has made its opposition to the trades known on a behind-the-scenes basis and has focused on the main objective of opening ANWR.

Recently, there has been a change of tempo. DOI has begun lobbying for support for the trades with Congress. Native groups and oil company partners are also lobbying on Capitol Hill. One or more Native corporations recently have hired a prominent Democratic lobbyist to begin a major advocacy effort in support of the trades.

ISSUE

What role does the State now want to play before Congress on this issue?

OPTIONS

1. Send a letter to Secretary Hodel reiterating State (and for the first time formally communicating) the State's opposition to the land trades, as well as outlining the State's alternative. Attachments would consist of an analysis of the hydrocarbon consequences of the trades, recently prepared by DNR. (Attached)
2. Maintain our present profile on Capitol Hill -- discussing our opposition when the issue is raised and circulating relevant information to committee members and staff.
3. Maintain our present profile on Capitol Hill and send a copy of your letter to Secretary Hodel, with attachment, to key committee chairmen and staff.
4. Increase our profile by bringing DNR staff to Washington to actively lobby against the trades, and/or utilize the advocacy resources of this office, including our ANWR lobbying team.
5. Circulate DNR critique without sending the Hodel letter.

ANALYSIS AND RECOMMENDATIONS

Apart from the Alaska delegation, there is currently little support in Congress for the land trades. Two of the three committee chairmen with jurisdiction over ANWR, Senator Johnston and Congressman Udall, have come out strongly against the trades. The Merchant Marine Committee has been silent to this point, but we can expect the trades to find some support in that Committee because of acreage acquisition in the wildlife refuge system.

The options portray varying degrees of State involvement and Gubernatorial visibility. The principal advantage of the highest profile option (a combination of 1 and 4) is that it increases the chances that the trades will not gain any momentum. The disadvantages are: a) strong Native corporation opposition to our action, and b) some risk of diluting our message on the central issue of opening ANWR.

We recommend a combination of option of 1 and 3. Although the Hodel letter will generate substantial unhappiness in the Native community, we believe that the Secretary should

Page 3

be apprised of the State's analysis of the selections and our continued opposition to the exchanges. By forwarding copies of the letter and enclosure to key congressmen, senators, and staff, we reinforce the State's position and at the same time give them information for their dealings with DOI and Native groups.

In our opinion, now is not the time to increase our visibility on the Hill with heightened lobbying activity. The land trades have not become the central focus of the ANWR debate. Instead, the Committees are focusing on the issue of opening ANWR, and we do not want to divert their attention.

However, there is growing evidence that proponents of the trades will soon initiate a major lobbying effort. Accordingly, we should be prepared to accelerate our own advocacy efforts on short notice if the Congressional situation begins to change. This could be accomplished by bringing DNR staff to Washington and/or by using the resources of this office.

Previously Reviewed and Approved By: Department of Natural Resources

Attachments

cc: Lt. Governor Stephen McAlpine  
Commissioner Dennis Kelso  
Commissioner Judy Brady  
Commissioner Don Collinsworth  
Garrey Peska  
David Ramseur  
Rod Swope  
Bob Grogan

GERALD D. MORGAN, JR.  
RAYMOND S. CALAMARO  
PETER F. GOLD\*  
KENNETH BERLIN  
RESIDENT PARTNER

ROBERT REED GRAY  
LOUIS H. KURRELMEYER  
JOHN E. GILLICK  
RESIDENT COUNSEL

\*FEDERAL PRACTICE ONLY

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EUROPEAN OFFICE  
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TELEPHONE: 01-441-628-4931

November 24, 1987

OPINION ON THE LEGALITY  
OF THE  
PROPOSED LAND EXCHANGES IN THE  
ARCTIC NATIONAL WILDLIFE REFUGE

You have asked us to prepare an opinion concerning the legality of the proposed ANWR land exchange agreements that have been negotiated by the Secretary of the Interior. As is set forth in detail below, it is our opinion, based on the exchange documents that we have reviewed to date, that:

- (a) Interior has severely undervalued the subsurface rights of the tracts in ANWR it is exchanging with the native corporations by (i) failing to require competitive bidding, (ii) grossly undervaluing the present value of royalties that the federal government will lose as a result of the exchange, and (iii) permitting rescission of four of the exchange agreements for up to 15 years;
- (b) Interior has overvalued the inholdings it will receive from native corporations by (i) failing to recognize that 45 percent of the inholdings are as well protected from development now by section 22(g) of ANCSA as they would be if the exchange is completed, and (ii) inflating the appraised fair market value of the inholdings by a factor of three by employing an inappropriate valuation method;

- (c) Interior failed to comply with competitive bidding policies that have been followed for almost 70 years in oil and gas leasing, failed in its valuation of the exchanged properties, failed to consider alternatives that would protect the public interest and failed to consider the effects on competition;
- (d) As a result, the exchanges are not in the public interest, are not for the purposes of ANILCA and are not being made for equal value. The exchanges are therefore invalid under section 1302(h) of ANILCA, the section relied upon by Interior.

I. Factual Background

A. The Arctic National Wildlife Refuge

The tracts of land at issue lie within the coastal plain of the Arctic National Wildlife Refuge ("ANWR"). The present size and status of ANWR was established by Congress in 1980 in the Alaska National Interests Lands Conservation Act ("ANILCA"), 94 Stat. 2371. The coastal plain of ANWR is the only section of the North Slope of Alaska that is still closed to oil and gas development and has long been regarded as a potential source of significant oil and gas reserves. Oil industry spokespeople have stated that the coastal plain of ANWR "provides the world's best chances of finding super giant oil fields" and have speculated that it may produce as much oil as Prudhoe Bay. See Oil Daily August 25, 1986 and November 19, 1986.

The coastal plain also has been regarded as an area of significant environmental value. Congress' attempt to strike a balance between its desire to preserve this rich environment and the need to explore potential oil and gas reserves is reflected in section 1002 of ANILCA in which

Congress ordered that a report and recommendation concerning development be made to Congress by the Secretary of the Interior within five years (the "1002 Report"). A study was conducted by the Fish and Wildlife Service ("FWS"), a report was made by the Assistant Secretary of the Interior for Fish, Wildlife and Parks, William Horn, to the Secretary of the Interior in November 1986, and the final 1002 Report was submitted to Congress by Secretary Hodel on June 1, 1987. Assistant Secretary Horn and Secretary Hodel recommended that Congress enact legislation that would open the coastal plain of ANWR for oil and gas exploration and development. There are presently a number of bills pending in Congress to implement the Secretary's recommendation as well as a number of bills that would declare the coastal plain a wilderness area, thereby barring development.

B. The Negotiations with the Native Corporations

Over two years before the 1002 Report was submitted to Congress, representatives of the Department of the Interior ("Interior") began holding secret discussions with several Alaskan native corporations concerning possible exchanges of subsurface rights in the ANWR coastal plain for inholdings in other national wildlife refuges in Alaska that would be conveyed to the FWS by the native corporations. Interior's negotiations have taken place with six native entities, representing 18 separate native corporations. Each of the six entities has an oil company partner or partners.

The entities and their partners are: Old Harbor Corporation and Texaco; Doyon, Ltd. and Atlantic Richfield; Gana-A'Yoo, Ltd. and Atlantic Richfield; Koniag Inc. and Chevron, LP and Phillips Petroleum; Ahkiok-Kaguyak, Inc. and Shell; and Native Lands Group, L.P. and Conoco and Exxon.

During the months prior to July 1987, the native corporations and Interior reached agreement concerning which lands would be conveyed by each native group and agreed upon the value of those lands. They also agreed on the terms of the basic exchange agreements and the procedure that would be used to allocate tracts within ANWR. Prior to receipt of any selections from the native corporations, Interior divided the coastal plain into 576 tracts, with each tract containing approximately 2,560 acres. Interior then determined a minimum value for each tract. Interior claims to have calculated the value of the tracts "in the same manner as [it] would use in contemporaneous competitive federal lease sales of such tracts, plus the royalty value for such tracts discounted to net present value." See Model ANWR Tract Identification Agreement, p. 6.

From July 9 through July 11, 1987, Interior held closed-door "tract identification" meetings with the native corporations in a hotel in Arlington, Virginia to determine which tracts would be allocated to each participant. Three weeks prior to those meetings, each native corporation participant was given a map of the coastal plain with an overlay that designated the tracts. A week later, each

participant submitted lists of its tract nominations to Interior. Interior then prepared an aggregate overlay that reflected all of the primary nominations, without identifying the nominator of the individual tracts. Three days prior to the tract identification meetings, each participant was given a copy of the map and noted any errors in the representation of its selection.

The tract allocation procedure was carried out in rounds. In the first round each participant submitted a sealed bid which noted its first priority selection. The sealed bids were then opened by Interior and examined to determine which tracts were selected by only one participant and were not in violation of Interior's established "constraint provisions."\* Such tracts were automatically awarded to that participant at the minimum value established by Interior. Selections that violated the constraint provisions or that were made by more than one participant were "negotiated." The participants were given an opportunity to leave the room and negotiate among themselves to try to allocate tracts so that they could still be awarded at the minimum price. Interior's specified mechanisms for resolving tract selection conflicts included having one participant pay cash to another participant to relinquish a

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\* In the selection process, Interior imposed constraint levels. The plain was divided into six constraint regions. Each region contained a number of tracts, with each tract contained solely in a single region. The constraint provisions required that within each constraint region one-third of the acreage or value of that region be reserved for future leasing.

tract selection. If, after 90 minutes of negotiations, there was still no agreement on allocation, the native corporations could mutually agree to competitive bidding, or if they did not agree, Interior could employ competitive bidding or a random drawing to allocate disputed tracts. Each bidding round continued until all of the participants had been awarded a tract.

The tract identification session continued until each participant had used up all or substantially all of its exchange value. Thus, at the end of the tract identification session, Interior's values for the ANWR tracts and the inholdings to be conveyed had been "matched" so that supposedly equal value was given for equal value.

Only three representatives of each participating native corporation (which included officers, employees or independent consultants) were allowed in the room during the selection process. Those representatives, however, apparently were able to seek advice from their oil company partners by telephone and clearly had been aided by their partners in making their initial selections. By the end of the process, the subsurface rights in 65 whole tracts and 8 partial tracts in the coastal plain of ANWR had been allocated to the native corporations.

The 166,000 acres allocated represents 10.8 percent of the coastal plain and is valued at \$538.7 million. Interior maintains that the remaining 503 tracts will be

available for a federal leasing program and represent approximately \$3.5 billion in revenue. However, the State of Alaska has performed an analysis that shows that Interior's focus on acreage is misleading. In a critique released by the Alaska Division of Oil and Gas, the proposed exchanges are criticized as including all of the most highly prospective coastal plain lands. According to that critique, all of the tracts selected are on structural traps mapped by Alaska and all of the mappable four-way closures (the best target areas on the structural traps) are located in the selected tracts. Thus, these subsurface rights may have far greater value than indicated by the amount of acreage involved in the exchange.

## II. Interior's Valuation Procedures

### A. The ANWR Tracts Were Significantly Undervalued

As described above, the "tract identification" process essentially eliminated competitive bidding. It ensured, as a result, that native corporations paid only the minimum price for each tract as established by Interior. In addition, two other aspects of the valuation process for the ANWR tracts minimized costs to the native corporations and resulted in considerable undervaluation of the ANWR tracts.

First, no royalties will be paid to the federal government. While the model exchange agreement provided that the federal government would receive a royalty of 1.75 percent on the coastal plain tracts, it appears, from the

draft agreements (dated 6/12/87\*) between the native corporations and Interior, that this royalty has been eliminated. Considering that the MLA prescribes a 12.5 percent minimum royalty for oil and gas leases on federal lands, it appears that both the federal and Alaska state governments (which share royalty payments pursuant to the Alaska Statehood Act) are receiving less value for coastal plain tracts than they would have received if such tracts were leased competitively.

Interior asserts that the present value of these lost royalties was included in minimum tract prices which it established prior to awarding the tracts. This assertion is undermined by the fact that the oil companies appear to be willing to pay a significant royalty in addition to the minimum tract price established by Interior. For example, under the Old Harbor-Texaco agreement, Old Harbor will receive an up-front payment from Texaco (as soon as the exchanges are approved by Congress and Texaco accepts the leases) in an amount approximately equal to the total consideration Old Harbor paid to Interior plus a 1.4 percent royalty on production on the Old Harbor coastal plain tracts and a 1.5 percent royalty on all other production by Texaco in subsequently acquired ANWR coastal plain leases.\*\* Texaco

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\* It is our understanding that these are the most recent drafts of the exchange agreements.

\*\* We have learned of some of the provisions of the Old Harbor-Texaco agreement from an Old Harbor Proxy Statement urging adoption of that agreement. However, we have not been able to obtain any of the native corporation-oil company agreements.

thus thought the tracts were worth a great deal more than the value Old Harbor provided to the federal government in the form of exchanged inholdings. Texaco's willingness to pay a substantially greater price than the price received by Interior establishes that Interior significantly undervalued the tracts. The federal government, moreover, by exchanging the coastal plain tracts for less valuable native corporation inholdings, ensured that the state government would lose substantial royalties as well.

Second, four of the six draft exchange agreements give the native corporations the right to rescind "the exchange in its entirety" for "failure of consideration." Quite simply, the native corporations have the right to rescind the exchanges if no "Significant Quantities" (as defined) of oil or gas are discovered within 10 to 15 years.\* If the native corporations' rescission rights are

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\* If the native corporation retains this right in its final agreement, the native corporation will have the right to rescind the agreement at any time prior to the earlier of (1) 10 years after completion of the drilling of a test well, (2) 15 years from the date of conveyance of the rights to the ANWR lands and the inholdings, or (3) discovery of Significant Quantities. Under this provision, therefore, full consideration does not pass until after the native corporation has found large reserves of oil or gas. If Significant Quantities are not found, the rights conveyed are revoked subject to a provision which permits Interior to retain inholdings that equal in value any revenues received by the native corporation by reason of its participation in the exchange.

exercised, the native corporations will receive back a portion of the lands they exchanged as consideration for the ANWR tracts.

The values allocated by Interior to the ANWR tracts prior to the tract identification meeting presumably take into account the possibility that significant quantities of oil and gas may not be discovered in a given tract. However, the native corporations have received a right to have their "money" returned if significant quantities of oil and gas are not found. As a result, the tracts should have been valued as if significant oil or gas reserves had already been found, thus making the land many times more valuable than the minimum values assigned by Interior and used in matching with the inholding values.

B. The Lands Received by Interior Were Significantly Overvalued

The inholdings that Interior will receive under the exchange agreements total approximately 791,000 acres, including: 87,000 acres in the Alaska Maritime Refuge; 125,000 acres in the Innoko Refuge; 75,000 acres in the Katuti Refuge; 33,000 acres in the Kenai Refuge; 260,000 acres in the Kodiak Refuge; 78,000 acres in the Nowitna Refuge; and 233,000 acres in the Yukon Delta Refuge. The Secretary takes the position that the acquisition of these inholdings will consolidate Interior's holdings in other

refuges and that these inholdings "collectively represent some of the highest priority acquisition needs within the National Wildlife System in Alaska. Their uniqueness is reflected in world class habitats for migratory birds, anadromous fish, and brown bears, coupled with unsurpassed recreational opportunities." See Interior's briefing sheet on ANWR Land Exchange. Interior further alleges that the exchanges are "designed to protect the integrity, resources and purposes" of ANWR.

Neither Interior's claims about the environmental value of the inholdings received nor its valuation process, however, withstands even minimal scrutiny.

1. The Environmental Value of the Inholdings

Receipt of inholdings by Interior is valuable environmentally only if Interior can demonstrate that its receipt of the acreage will result in better protection of the fish and wildlife resources on the land. Interior can make only a de minimis showing of such benefits.

The inholdings to be conveyed fall into two categories. First, approximately 45 percent of the inholdings are already protected from development by section 22(g) of ANCSA (the "section 22(g) inholdings"). This section permits development on inholdings only if such development is permitted by the laws and regulations governing the national wildlife refuge system. The most important national wildlife refuge protection applicable to

the section 22(g) inholdings is the requirement that any development be "compatible" with the purposes of the surrounding refuge. 43 U.S.C. § 1621(g); ANILCA § 304(b); 43 C.F.R. §§ 2653.11, 2650.4-6. The National Wildlife Refuge Administration Act applies the same standards to development on lands that are actually included in a national wildlife refuge. 16 U.S.C. § 668dd(d)(1)(A). Since development of the section 22(g) inholdings is already governed by the same standard as development of actual refuge lands, acquisition of the inholdings will not provide them with any additional environmental protection since the public interest in these lands would have been equally protected even if the inholdings remained in the hands of the native corporations.

Second, with regard to the remaining 55 percent of the lands involved in the trade, the potential environmental benefits which Interior uses to justify the exchange were minimized, if not completely lost, as a result of Interior's decision to seek only the surface rights to these lands. Under the exchange agreements, the native corporations retain subsurface rights on all non-section 22(g) lands. If there is a threat to these lands it will, in all probability, arise from proposed subsurface development. In fact, the draft Doyon, Ltd. exchange agreement specifically provides that Doyon retains the same rights with respect to its refuge subsurface as it had before the exchange and that Doyon will advise the Secretary prior to the commencement of subsurface

activities. It is manifestly unlikely that the inholdings received by Interior are threatened by housing developments or other developments on the surface of the land. By excluding subsurface rights, Interior gave up its right to provide environmental protection for what may be the only portion of the exchanged lands which requires such protection.

Ironically, Interior implies that acquisition of the inholdings will reduce the checkerboard pattern on the refuges in Alaska, thereby aiding protection and regulation of the refuges. Yet a checkerboard pattern is precisely what will be created on the coastal plain by the exchange agreements. Native ownership of the coastal plain tracts will make regulation of development activities more difficult than if the United States retained ownership and leased the land for oil and gas exploration and development. In addition, while removing checkerboard land patterns on the inholdings is attractive in principle, it is doubtful that the FWS has the manpower resources to take advantage of refuge consolidation. On the Yukon Delta Refuge, for example, which totals approximately 19 million acres, the FWS has only three supervisory biologists.

2. Interior's Valuation Method

Interior's valuation scheme also cannot withstand scrutiny. As best we can determine, Interior asked the FWS realty office to appraise the fair market value of each of

the inholdings involved in the exchange.\* The mean fair market value assigned to the inholding acreage by FWS is \$75 per acre and 75 percent of the inholding acreage was valued at less than \$165 per acre. Bearing these numbers in mind it is difficult, if not impossible, to understand how Interior arrived at an average value of \$602 per acre for the inholdings (more than three times the FWS determined average fair market value). Interior's futile attempt to justify these valuations demonstrates that Interior had no basis for its decision.

Interior claims the value of the inholdings are increased by what it calls their "public interest attributes," including their fish, wildlife and recreational values. In arriving at this "public interest attributes" factor, Interior may have relied on a theory advanced in an appraisal of the Old Harbor inholdings by a private real estate appraisal company (paid for by the Old Harbor Corporation). Apparently, this appraisal company determined that an extra \$1,000 of public interest value, corresponding to the rare and scenic value of the land, needed to be added to the fair market value of each and every acre. Often the land to which this \$1,000 was added was valued at less than

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\* See attached letter from FWS to Kenneth Berlin, which summarizes FWS's appraisal values.

\$100 per acre. Since definitionally fair market value reflects the price a willing buyer would pay for the land, it would seem that if this rare and scenic premium were real it would be reflected in the FWS fair market value. The fact that it was not included seems to demonstrate that it is simply an imaginative means to inflate the inholding values.

Interior further seeks to justify the excessive values which it assigned to the native corporation inholdings by pointing out that ANILCA prohibits condemnation of such inholdings. See Assistant Secretary Horn's Memorandum to ANWR Negotiation Team, 2/20/87. Interior states that this lack of condemnation authority, therefore, limits it to "willing seller inholding acquisitions," see Assistant Secretary Horn's letter to Senator J. Bennett Johnston, 3/31/87, and that these inholdings never again may be available for purchase by Interior. The fact that Interior is unable to condemn the inholdings is no justification for its valuation procedure, and there is certainly no evidence in the record to show that this may be the only opportunity to acquire the inholdings. The willingness of the native corporations to enter into the proposed exchanges in fact demonstrates that they would be willing sellers of the inholdings for satisfactory consideration.

We believe the record will show that the value assigned to the native corporation inholdings simply reflects Interior's desire to come up with sufficient value to justify

its giveaway of the subsurface rights on ANWR. In a case such as this, in which Interior appears to have been primarily concerned with justifying its allocation of the ANWR coastal plain tracts, Interior and the native corporations all benefitted by inflated inholding valuations and real negotiations were not possible.

III. Legal Analysis

A. Purported Authority for the Exchange Agreements

Interior takes the position that the Secretary has the authority to consummate the proposed exchanges under section 1302(h) of ANILCA,\* although Secretary Hodel has assured Congress that, despite this purported authority, he will seek Congressional approval of the exchange agreements. Section 1302(h) authorizes the Secretary to exchange lands

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\* Section 1302(h) of ANILCA provides: "Notwithstanding any other provision of law, in acquiring lands for the purposes of this Act, the Secretary is authorized to exchange lands ... or interests therein ... with the [native] corporations . . . and other municipalities and corporations or individuals, the State ... or any Federal agency. Exchanges shall be on the basis of equal value, and either party to the exchange may pay or accept cash in order to equalize the value of the property exchanged, except that if the parties agree to an exchange and the Secretary determines it is in the public interest, such exchanges may be made for other than equal value." Interior also relies on section 22(f) of ANCSA which contains language similar to section 1302h.

with the native corporations to further the purposes of ANILCA. This limited exchange authority requires that any proposed exchange be made on the "basis of equal value." The only exception to the equal value requirement is a situation in which the parties agree to an exchange and the Secretary makes an affirmative determination that the proposed exchange is in the public interest.

The proposed ANWR exchanges fail to meet any of the requirements of section 1302 and are therefore unauthorized.

B. The Exchanges Will Not Be Made for Equal Value

As set forth in part II above, the valuation procedures employed by Interior significantly undervalued the ANWR tracts and at the same time vastly overvalued the inholdings to be exchanged for the ANWR tracts. The native corporations were able to select coastal plain tracts for the minimum value established by Interior since the selections were made pursuant to an elaborate, cooperative procedure which was kept secret from the public rather than through competitive bidding subsequent to public notice in the Federal Register. Leases of federal lands are seldom based on the minimum value established by Interior, since that is simply the least Interior will accept and is therefore merely a beginning point in a competitive bidding situation. The fact that the oil company partners of the native corporations were willing to pay the native corporations virtually the

same amount as the native corporations paid Interior plus, in the case of Texaco, royalties of 14 percent on the exchange tracts and 1.5 percent on other ANWR tracts is further evidence that Interior's values were drastically understated.

C. The Exchanges Are Not In Furtherance of the Purposes of ANILCA and Are Not in the Public Interest

In order to fulfill the requirement that the exchanges be for equal value, Interior developed an elaborate procedure to value the inholdings and the ANWR tracts and then "matched" those values during the tract identification meetings. Obviously concerned with the weakness of its equal value argument, Interior attempts to argue, alternatively, that the exchanges will further the purposes of ANILCA (see pages 63-65 of the model exchange agreement) and claims that the Secretary is able to "confirm his findings as contained in the records of the Department that the exchange is in the public interest and, therefore, does not require equalization of values." (id. page 65). Not only is Interior wrong in claiming that equal value was exchanged, Interior is also incorrect in claiming that the exchanges further the purposes of ANILCA and are in the public interest.

1. The Exchanges Do Not Further the Purposes of ANILCA

Section 1302(h) gives Interior the authority to exchange lands only when it is acquiring lands in a manner consistent with the purposes of ANILCA. Although Interior

could argue that it has acted consistent with the purposes of ANILCA in acquiring inholdings in national wildlife refuges other than ANWR, the legislative history of section 1302(h) indicates that in deciding whether an exchange is for the purposes of ANILCA, Interior has to consider the entire transaction, including the effect of the exchange on the lands being given up by Interior, and not just the benefit of the land that Interior acquires.

The House Committee emphasized that while the statute gave the Secretary flexibility, "of course, the committee does not expect that this flexibility will be used to undermine the essential integrity of any conservation system unit or to frustrate the purpose of any such unit." H.R. Rep. No. 95-1045, Pt. I (p.212). As the Senate Committee explained: "the federal government will still own a large amount of land, and that land base, exclusive of lands located within conservation system units . . . should provide ample opportunity to exchange." S. Rep. 96-413 (p. 304) (emphasis added). Thus, it is clear that Congress did not intend that Section 1302 would be used to disrupt one refuge for the benefit of another refuge.

The ANWR exchanges violate the "for the purposes of the Act" requirement because: (i) contrary to the intent of Congress, they will significantly reduce native landholding in Alaska; (ii) they will undermine ANWR; (iii) Interior probably did not consider whether it could have acquired the

lands it sought by a trade using lands not in a national wildlife refuge; and (iv) the evidence probably will show that the motivating purpose of the exchange was to give up the ANWR lands, not to acquire lands on other refuges.

First, the land exchanges require the native corporations to trade almost five acres of land for every acre of subsurface rights they receive in ANWR. Congress, however, never intended that Section 1302(h) be used by Interior to reduce the amount of land owned by native Alaskans or that it be used to give up all surface rights in land for subsurface mineral rights. Instead, Congress included Section 1302(h) in ANILCA so that "federal condemnation not be used to unnecessarily diminish the private land base in Alaska." S. Rep. No. 96-413, 96th Cong., 1st Session (1979) at 304. Congress stated that the exchange authority enables Interior to "make a good faith effort to find other lands within the state of Alaska (as near to existing lands as possible) for which he can exchange the land desired to be acquired." Id. Congress' desire to avoid condemnation - i.e., the taking of private lands that reduces the amount of land in private ownership--is inconsistent with a trade that requires native corporations to give up 866,000 acres of land and receive no surface lands and only subsurface rights to 166,000 acres in return.

Second, even if Congress opens ANWR to oil exploration and development, the exchanges will undermine the integrity of the refuge by creating a checkerboard pattern of private and public ownership within the refuge. Generally, Interior regards such a pattern as unacceptable and it justifies its acquisition of inholdings in other refuges as necessary to ensure adequate management on the refuges. But if Interior believes that acquiring inholdings on refuges is necessary for effective management, it acted arbitrarily if it concluded that it could manage ANWR effectively after it created a massive set of inholdings on the coastal plain.

The need for consolidated management is particularly important in ANWR. The refuge has a unique combination of environmental values and potential for oil development and in section 1302 of ANILCA, Congress made it clear that if development took place, it would do so only after a careful study of environmental issues. Presumably, if ANWR is opened to development, a carefully thought-through federal regulatory regime will be devised to protect the environment. The exchanges, however, will remove the lands involved from ANWR and from that federal regime (even if environmental stipulations are built into the exchange agreements, they are very unlikely to be as stringent or as carefully thought-through as the requirements that will be placed on federal lands). Thus, the exchange is not only contrary to Interior's policy of acquiring inholdings, but it will have a particularly strong impact on ANWR. f

The land exchanges also violate Congress' instructions to Interior that it establish a systematic program designed to ensure that inholdings in national wildlife refuges be acquired without disrupting other refuges. Congressman Udall explained: "We expect that the Secretary shall inventory the lands in Alaska for the purpose of locating suitable tracts for trade . . ." 146 Cong. Rec. H10548 (Nov. 12, 1983). Congress also expected the Secretary to ensure that agencies such as the Fish and Wildlife Service have full authority to identify lands managed by the Bureau of Land Management for trade to acquire the inholdings. Indeed, to ensure that lands outside national wildlife refuges and other conservation units were available for exchanges, Congressman Udall emphasized that:

"If BLM resists yielding prime lands under its jurisdiction, thus frustrating the land acquisition policy of another agency such as the Park Service, we intend that the Secretary step in. The Secretary shall give each agency managing conservation unit lands authority to identify areas for trade on BLM lands." 146 Cong. Rec. H10548 (Nov. 12, 1980)

There is no evidence that Interior considered alternative lands to give in exchange for the lands it will receive in the exchanges.

Finally, we expect that when the record of the exchanges is reviewed, it will become apparent that the purpose of the exchanges is to remove lands from ANWR so that they can be open to immediate development by private parties

without waiting for Interior to establish a full management and leasing regime for all ANWR. The record probably will show that Interior acquired lands via the exchanges to justify giving up ANWR lands and not vice versa. Nothing in the legislative history of ANILCA supports an argument that section 1302(h) can or should be used to open national wildlife refuges to mineral development or to transfer national wildlife refuge lands to native groups and their industry partners for development. Such an approach is not consistent with the purposes of ANILCA.

2. The Exchanges Are Not in the Public Interest

Interior's "public interest" determination under section 1302 of ANILCA is subject to review in a federal court under the arbitrary and capricious standard. Keating v. FAA, 610 F.2d 611, 612 (9th Cir. 1979); National Audubon Society v. Hodel, 606 F. Supp.825 (D. Alaska 1984). Agency actions are arbitrary and capricious if they are not based on "a consideration of the relevant factors" and "there was a clear error of judgment." Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402, 416 (1971); Village of False Pass v. Watt, 565 F. Supp. 1123, 1138 (D. Alaska 1983). Interior's public interest analysis fails both of these tests.

a. Competitive bidding

First, Interior acted arbitrarily and capriciously when it found that it was in the public interest and in furtherance of ANILCA to provide a means for development of

the coastal plain without competitive bidding. Competitive bidding for oil and gas leases of federal lands has been and remains the cornerstone of federal oil and gas leasing policy. Competitive bidding promotes the orderly development of petroleum resources on publicly-owned lands by private industry and assures that the U.S. receives the best price for the leasing of public resources.

Congress has repeatedly recognized the central role of competitive bidding in lease or sale programs for public land. For example, in 1909, Congress enacted a criminal statute (currently found at 18 U.S.C. § 1860 and entitled "bids at land sales") making it a crime to agree not to bid or to hinder anyone from participating in a competitive bid for public lands. The statute states:

Whoever bargains, contracts, or agrees, or attempts to bargain, contract, or agree with another that such other shall not bid upon or purchase any parcel of lands of the United States offered at public sale; or

Whoever, by intimidation, combination, or unfair management, hinders, prevents, or attempts to hinder or prevent, any person from bidding upon or purchasing any tract or land so offered for sale--

Shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

By making collusion or interference in bids for public lands a crime, Congress emphasized its commitment to a fair and orderly process for development of public lands.

Oil and gas lease sales in the lower 48 states are controlled by section 17 of the Mineral Leasing Act of 1920, as amended ("MLA") (30 U.S.C. §§ 181-263), which requires competitive bidding for all oil and gas leases in "known geological structures." While the law applicable to oil and gas lease sales on federal lands in Alaska differs somewhat from that applicable to oil and gas lease sales in the lower 48, such differences are primarily directed at accommodating environmental concerns. Competitive bidding remains the touchstone of the Alaska federal oil and gas leasing programs.

Oil and gas lease sales covering federal lands in Alaska are subject to three different programs: Section 100 of the Interior Appropriations Act of 1981 (P.L. 96-514) ("IAA"); section 1008(d) of ANILCA; or, section 1002(i) of ANILCA. These programs apply, respectively, to the National Petroleum Reserve - Alaska ("NPRA"), non-ANWR federal lands exclusive of the NPRA, and ANWR lands. The first two programs, which permit oil and gas leasing, each adopt a central policy of competitive bidding.

Section 100 of IAA provides for competitive leasing of all oil and gas lands in the NPRA in accordance with the bidding system employed in the Outer Continental Shelf Lands Act Amendments of 1978 (92 Stat. 629). Section 1008(d) of ANILCA establishes a leasing program for the non-North Slope lands in Alaska pursuant to the MLA. This program differs from the MLA program applicable to the lower 48 in that

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competitive bidding for oil and gas leases under section 1008(d) of ANILCA is triggered more easily than under the known geologic structure standard of the MLA. Section 1008(d) requires competitive bidding for both those federal lands on which oil and gas have been discovered and those lands within which there is a high probability that oil and gas will be discovered (designated as favorable petroleum geological provinces ("FPGP") by the Bureau of Land Management). Thus, ANILCA provides for competitive bidding in instances in which there is merely high probability that oil and gas will be discovered, rather than the higher standard applicable to the lower 48, namely that oil and gas deposits have been discovered by drilling and that such deposits have been determined to be productive.

Section 1002(i) of ANILCA withdrew the coastal plain of ANWR from all form of entry under the mineral leasing laws. Thus, Section 1008(d) of ANILCA does not currently apply to the coastal plain of ANWR. If, however, the coastal plain of ANWR were made available for oil and gas leasing by Congress, it is clear the coastal plain should be designated as an FPGP based on the extremely high probability that oil and gas will be discovered there. The coastal plain is adjacent to the giant Prudhoe Bay field, which currently supplies almost 20 percent of the total U.S. oil production. Available data indicates that the coastal plain reserves should equal and may well be even greater than Prudhoe.

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Based on the foregoing, it is clear that in enacting ANILCA, Congress did not intend to ease the standards under which competitive bidding for oil and gas leases on federal lands would be required. In fact, the contrary is true: at a minimum, competitive leasing is required when there is only a probability that oil and gas will be discovered. The Secretary's action in exchanging the withdrawn ANWR lands in order to facilitate oil and gas leasing without competitive bidding subverts 67 years of mineral leasing policy and thwarts the clear intent of sections 1002(i) and 1008(d) of ANILCA.

b. Valuation of ANWR Tracts and Inholdings

Second, as discussed above, Interior made a clear error of judgement and failed to consider relevant factors in its valuations of the ANWR tracts and the inholdings. Moreover, if the predictions concerning potential oil and gas reserves in the ANWR coastal plain are correct, the public interest has not been served by giving those tracts away to the native corporations at bargain prices. Additionally, without realizing what it was doing (because it had not seen any contracts between the native corporations and their oil company partners), Interior transferred the royalty payments in ANWR from the federal and state governments to Alaskan native corporations.

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c. Alternatives Are Available that Protect the Public Interest

Interior also made a clear error of judgment and failed to consider relevant factors in concluding that the exchanges are necessary to further the purposes of ANILCA and protect the public interest. Interior's identified purposes for the exchanges -- consolidation of refuge lands and acquisition of priority lands -- can be accomplished by other, more rational and more equitable means.

(i) Environmental Value

The inholdings are part of a conservation system designed by Congress to protect the lands from or during development. A large percentage of the inholdings to be acquired are section 22(g) lands and as such are statutorily protected from development. Moreover, Interior will receive only the surface rights to the non-section 22(g) inholdings, and it is unlikely that any of the inholdings are threatened by housing development or other surface development. The only likely threat to those lands is from possible subsurface development. Thus, Interior had no rational basis to conclude that the exchange has the environmental benefits which Interior claims.

(ii) Acquisition of Inholdings

The land exchanges are not the only available means for Interior to acquire these "priority" lands. Revenues derived from leasing the coastal plain

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tracts, for example, could be used to purchase them or Interior and Congress could devise a procedure that let native corporations bid the value of inholdings during normal competitive biddings on ANWR tracts. Such a procedure could well cost Interior much less than the exchanges, given the overvaluation of the exchanged inholdings and the undervaluation of the ANWR tracts.

(iii) Protection of the Native Corporations

If there is a fear that the native corporations will not benefit from any future development of the ANWR coastal plain, a far simpler and more equitable procedure would be to ensure their participation at the point that Congress votes to open the plain for development. There is no reason to rush into these exchanges, particularly since they do not offer the claimed benefits to all the native corporations and do not allow participation by all interested parties. If, as Interior believes, the exchanges are not subject to section 7(i) of ANCSA,\* only those native corporations which have entered into exchange agreements will share in the revenues derived from the development of the coastal plain. The state treasury, moreover, will be deprived of substantial revenues that would inure to the benefit of all residents of Alaska. Any number of alternatives would be available to ensure participation by the native corporations when and if Congress votes to open

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the plain. For example, the native corporations could be authorized to participate in the bidding process by bidding land rather than money.

d. Interior Ignored the Effects on Competition

Finally, Interior made an error of judgment and failed to consider relevant factors when it ignored the anticompetitive effect of the exchanges. As discussed above, competitive bidding has been the cornerstone of federal oil and gas leasing policy for almost 70 years. Notwithstanding that policy, Interior entered into secret negotiations with select native corporations linked to select oil company partners. The oil companies that did not participate in these exchanges have been excluded not only from participation in the first potential development of the coastal plain, but may well be excluded effectively from any participation in development of the coastal plain. Such exclusion would result from the competitive advantage gained as a result of the head start period which the participating oil companies will have. During this period the participating oil companies will have an opportunity to determine where it is most probable that oil and gas reserves

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\* Section 7(i) of ANCSA (43 U.S.C. § 1606(i)) provides that 70 percent of the timber and subsurface revenues from lands conveyed to a regional corporation pursuant to ANSCA shall be divided among the twelve regional corporations.

are located. When the remaining ANWR lands are finally made publicly available through a competitive leasing program, they will be able to use this information to guide their bidding.

IV. Conclusion

Interior's proposed land exchanges violate important public policies set forth in ANILCA and the MLA and are in violation of section 1302(h) of ANILCA.

2 Nov 2

(907)762-2547

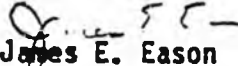
October 30, 1987

Mr. Dan Hinkle  
Marathon Oil Company  
P. O. Box 3128  
Houston, Texas 77253

Dear Dan:

As you can see, the governor has signed the cover letter for the division's critique on the ANWR exchanges. Please feel free to use (liberally) in whatever manner you see fit.

Sincerely,

  
James E. Eason  
Director

Enclosure

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EXHIBIT 25 PAGE 1

AXWR

(907)762-2547

October 26, 1987

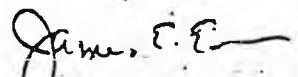
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Mr. Dan Winkle  
Marathon Oil Company  
P. O. Box 3128  
Houston, Texas 77253

Dear Dan:

As we discussed earlier, I have enclosed for your review copies of the Executive Summary and the Division's Critique of the Proposed AXMC Land Exchanges. It is my understanding that these materials are being forwarded to Secretary Hodges under a cover letter from Governor Cooper. I believe the documents speak for themselves; however, if you have any questions, please feel free to call.

Sincerely,

  
James E. Eason  
Director

Enclosure

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EXHIBIT 26 PAGE 1

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To Rod Surpe  
from Lenné

RESOLUTION RELATING TO  
LAND EXCHANGES WITHIN THE COASTAL PLAIN  
OF THE ARCTIC NATIONAL WILDLIFE REFUGE, ALASKA

BE IT RESOLVED BY THE INTERSTATE OIL COMPACT COMMISSION (IOCC) AND THE  
SIGNATORY STATES TO THIS DOCUMENT:

WHEREAS, the U. S. Congress has reserved unto itself the right to permit  
leasing of lands for the exploration and development of oil and gas within the  
coastal plain of the Arctic National Wildlife Refuge (ANWR), Alaska; and

WHEREAS, the coastal plain of ANWR has uniquely high petroleum resource  
potential and is the most outstanding onshore petroleum exploration target on  
the North American continent; and

WHEREAS, oil resources beneath the coastal plain of ANWR may be in  
excess of 40 billion barrels of in-place oil, surpassing proven reserves at  
the Prudhoe Bay and Kuparuk River oil fields; and

WHEREAS, reserves of this magnitude in ANWR would significantly increase  
domestic production, thereby reducing our nation's future requirements for  
imported oil, reducing its trade deficit and significantly improving national  
security, and could contribute billions of revenue dollars to the public  
treasury through bonus, rental and royalty payments; and

WHEREAS, the Department of the Interior has a long-term tradition of  
competitively leasing public lands for exploration of petroleum resources to  
provide fair and equal access for all resource developers and to assure

receipt of fair market value for these lands and resources, and provide for substantial revenue to the public treasury; and

WHEREAS, in contrast to competitive leasing, the Department of the Interior now proposes to exchange the subsurface rights to selected tracts within the coastal plain of ANWR for the surface estate of certain Alaska Native Corporation inholdings located in other federal refuges within Alaska; and

WHEREAS, these proposed land exchanges would establish an unfortunate precedent of substituting in lieu of a competitive process noncompetitive, negotiated exchanges which favor only a few companies and Native Corporations; and

WHEREAS, these exchanges, through loss of bonus, rental and royalty payments, could result in a substantial reduction of revenue that would otherwise be available for the public treasury;

WHEREAS, the IOCC has previously adopted a resolution in support of the opening of ANWR to oil and gas exploration and development.

BE IT RESOLVED THAT the members of the IOCC states urge the U. S. Congress to reject the proposal of the Department of the Interior to allow for noncompetitive exchanges of subsurface rights to selected tracts within the ANWR coastal plain for the surface estate of certain Native Corporation inholdings from other federal refuges within Alaska.

BE IT FURTHER RESOLVED that the U. S. Congress is urged, instead, to require competitive oil and gas leasing under the terms of the 1920 Minerals

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Lands Leasing Act, for all lands which it determines should be made available for exploration and development.

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DELIVER TO: <u>Lennie Hessel</u>	LOCATION: <u>C.O.</u>
FROM: <u>Jan Eason</u>	LOCATION: <u>Ariz</u>
TELEPHONE/TELECOPIER # _____	TOTAL NUMBER OF PAGES: <u>3</u>
TRANSMITTING ON/SPEED _____	DATE: <u>10/30/87</u> TIME: <u>5:51</u>
PHONE FOR PROBLEMS NAME/NUMBER _____	
COMMENTS: <u>Letter received from Lennie Hessel.</u>	

Distribution List

October 30, 1987

From: Tom Hawkins, Director

762-2680

ANWR Land Trade Update

By: Gary Gustafson, Chief  
and Management  
and and Water Management

Presentative corporation briefings for Congressmen and staff on the proposed ANWR land trades are scheduled for next week (November 2-6, 1987) in Washington, D.C.

Formal luncheons are scheduled individually for the House Merchant Marine and Fisheries Committee and the House Interior and Insular Affairs Committee. Several hundred formal invitations have been sent. The

F1 Top PF2 Bottom PF4 Up PF5 Down PF6 Note Screen 1 of 4  
F9 Help PF10 Next Screen PF11 Previous Screen PF12 Return

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Native corporation briefings for Congressmen and staff on the proposed ANWR land trades are scheduled for next week (November 2-6, 1987) in Washington, D.C.

Formal luncheons are scheduled individually for the House Merchant Marine and Fisheries Committee and the House Interior and Insular Affairs Committee. Several hundred formal invitations have been sent. The luncheon briefings will be conducted in the following manner. First, Margie Sagerser of CIRI will provide an overview of the entire situation. Margie will be followed by Morris Thompson (providing the regional corporation perspective) and Ralph Eluska (village corporation perspective). Finally, John Doebel of the USFWS will present his 20 minute slide show on the trades.

Also scheduled for next week are a strategy session with Don Young which will involve the Native corporation lobbyists and involved oil company representatives.

In addition, a briefing is scheduled Thursday, November 5 for the National Press Club.

You'll also be interested to note that the draft House bill on ANWR soon to emerge from House Merchant Marine and Fisheries Committee includes a statement that Congress finds and declares that the ongoing ANWR land exchange negotiations "deserve further Congressional consideration". This draft has many other troublesome aspects as well.

If anyone would like a copy, please let me know.

Distribution List:

Judith M. Brady, Commissioner  
Lennie Gorsuch, Deputy Commissioner  
John Katz, Governor's Office, Washington, D.C.  
Rod Swope, Governor's Office, Juneau  
Jim Eason, Director, DOG  
Maggie Moran, Governor's Office, Washington, D.C.  
Tom Koester, Attorney General's Office, Juneau

# MEMORANDUM

# State of Alaska

TO: Molly McCammon  
Special Staff Assistant  
Office of the Governor

DATE: March 12, 1986

FILE NO:

TELEPHONE NO:

FROM: *Tom Hawkins*  
Tom Hawkins, Director  
Division of Land & Water Management  
Department of Natural Resources

SUBJECT: ASRC Trade - ANWR <sup>F</sup>

You recently asked why it was that the National Park Service (NPS) and Arctic Slope Regional Corporation (ASRC) were able to complete a land exchange involving subsurface in the Arctic National Wildlife Refuge (ANWR), without adversely affecting the state's 90 percent royalty share from federal oil and gas leases.

My staff and I have examined the 1983 NPS/ASRC trade package and conclude that the state's royalty share was not affected due to specific allowances in ANILCA. Section 1431 (o) of ANILCA allows ASRC to replace its in-lieu subsurface selections elsewhere (under other villages) for an equal amount of acreage under Kaktovik selections. However, such replacement must occur within five years of the date such subsurface is opened for commercial development of oil and gas.

This provision essentially allows ASRC to leap about with its subsurface selections, finally settling on those of highest commercial value. However, pursuant to the ASRS/NPS trade, ASRC must commit to a certain area south of Kaktovik.

The state was not affected by the trade because as noted above, ANILCA Section 1431(o) had already granted ASRC the right to obtain this land anyway (at its option), had it gone into commercial production. Therefore, the state's 90 percent royalty share under the Minerals Leasing Act was not compromised by the trade. Rather, ANILCA had already bargained away this right for the first area to go into commercial production which might then be obtained by ASRC.

I have attached related information for your use. If you have any questions, please give either Gary Gustafson or me a call.

Attachments

RECEIVED

MAR 12 1986

GOVERNOR'S OFFICE

EXHIBIT 29 PAGE 1

OTV. reviewed on 10/10/83.  
June 30 letter - Gov - Ina Adams.

10 Aug 83

United States/ASRC Land Exchange

August 9, 1983

- ° The United States National Park Service acquired 100,000 acres of inholdings from the Arctic Slope Regional Corporation (ASRC) within the Gates of the Arctic National Park. In exchange, the ASRC was conveyed subsurface estate (previously retained by the federal government) to 92,160 acres of land within the Arctic National Wildlife Refuge. All titles and interest to the surface estate is owned by the Kaktovik Inupiat Corporation (pursuant to Sec. 1431(g)(3) of ANILCA and Sec. 14(a) of ANCSA).
- ° The exchange was authorized pursuant to Sec. 1302(h) of ANILCA and Sec. 22(f) of ANCSA.
- ° The federally acquired lands are managed as part of the national park system. The ASRC retained subsurface rights and has leased portions of that land to Shell Oil Company. The federal government does have the option to acquire the subsurface rights after the leases expire in 1991.
- ° The ASRC acquired subsurface estate, through a cooperative agreement with KIC, has been leased to Chevron. Chevron started drilling an exploratory well last year and is close to completion this year. They are also proposing to drill a number of shallow wells in the area in the coming year(s).
- ° No exploration, development or use of subsurface resources, other than oil and gas exploration or the extraction, processing, transportation and storage of sand and gravel is permitted by ASRC.
- ° Production of oil and gas from ASRC lands is prohibited and no leasing or other development leading to production of oil and gas from ASRC lands shall be undertaken until Congress authorizes such activities on refuge lands.
- ° Easement rights were retained on 26,122 acres of land conveyed to ASRC to ensure access for subsistence use by residents near Anaktuvuk Pass.
- ° With the exception of requiring changes to the proposed language of environmental stipulations, the State endorsed the proposed land exchange and found it to be consistent with the Alaska Coastal Management Program (August 3, 1983). The review was completed in 38 days. Comments were received from the Alaska Departments of Transportation and Public Facilities, Fish and Game, Commerce and Economic Development, Natural Resources, and Environmental Conservation; City of Kaktovik; the people of Anaktuvuk Pass; North Slope Borough; Nunamiut Corporation; Congressman Young and Senators Stevens and Murkowski.

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1431(o) - ANILCA

no reference to 90/10  
in agreement - feds relinquished  
all rights and interest.  
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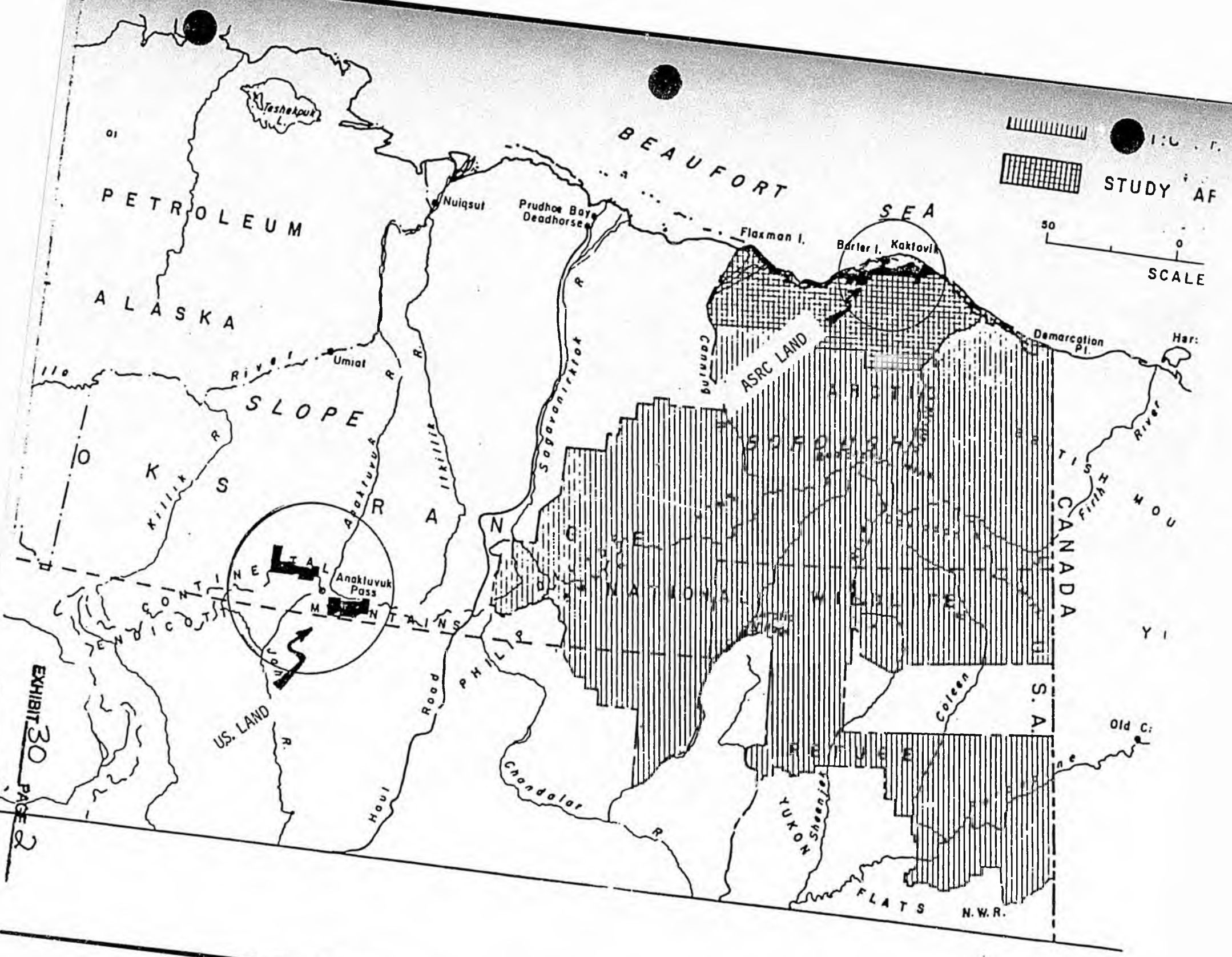


EXHIBIT 30 PAGE 2



# RINGS IN THE ANWR COASTAL PLAIN

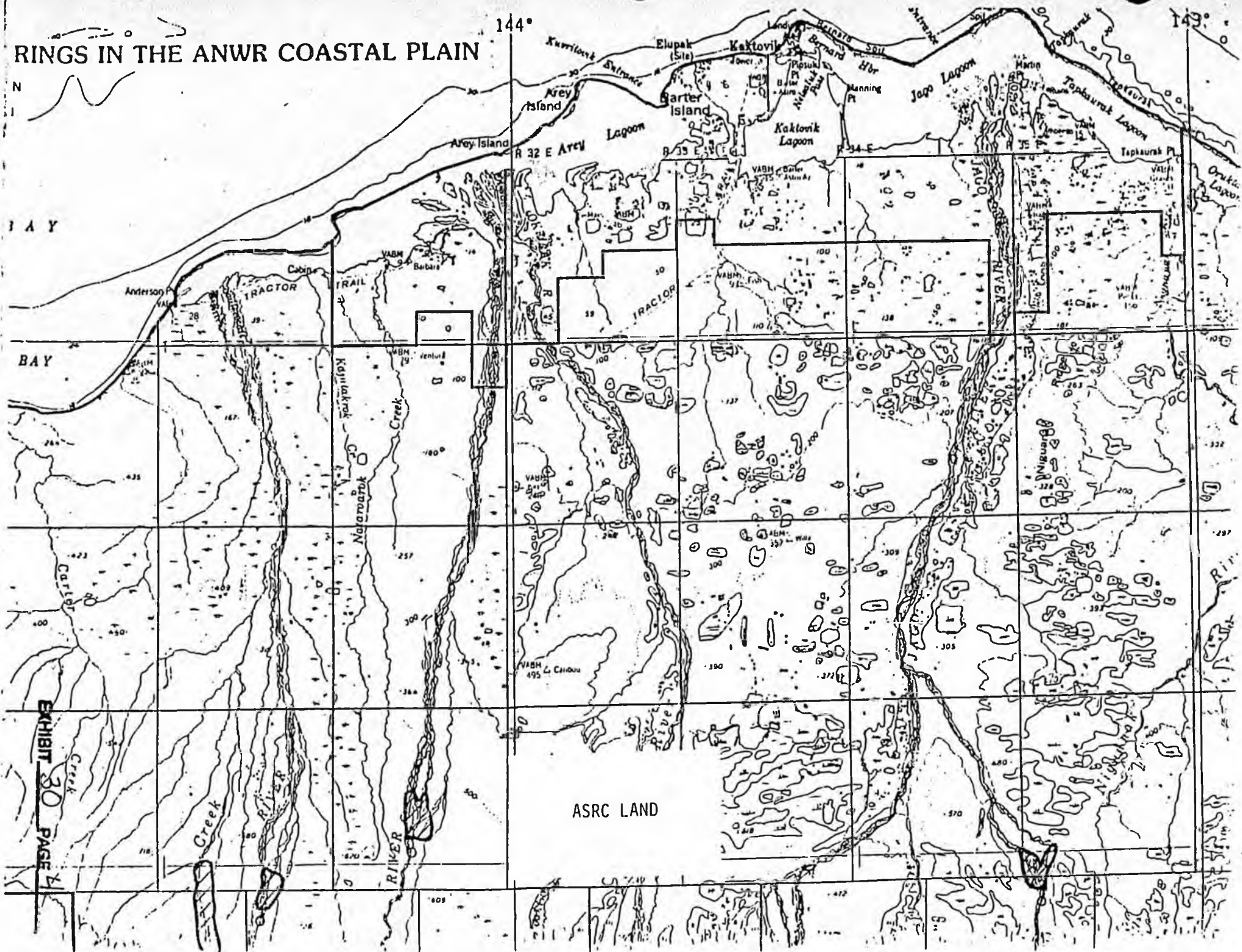


EXHIBIT 30 PAGE 4

# MEMORANDUM

DEPARTMENT OF NATURAL RESOURCES--DIVISION OF LAND AND WATER MANAGEMENT

# State of Alaska

TO: Bob Arnold  
Deputy Commissioner

DATE: May 20, 1986

FILE NO:

TELEPHONE NO: 762-4355

SUBJECT: ANWR

*Tom Hawkins*  
FROM: Tom Hawkins  
Director

This memo describes actions taken over the past few months to monitor ANWR land exchange activities and to advance state interest in potential exchange opportunities.

In early February ADF&G and ADNR jointly prepared a listing of candidate lands for possible exchange for presentation to the USF&WS (Appendix I). The list included more than 12,000,000 acres of state land within and adjacent to refuges and other ANILCA units. The listing emphasized lands which were primarily valuable for habitat and recreation resources. In March, Robert Gilmore, Alaska Regional Director for the U.S. Fish & Wildlife Service responded to the state's listing and indicated the interests of his agency. (Appendix II). In short the USF&WS marked 1 state parcel as high priority but indicated considerable interest in 7 additional parcels.

It should be recognized that the state list did not include those valuable state habitat lands that had been designated for long-term retention by the Alaska legislature. For instance the USF&WS has repeatedly expressed its interest in owning the Izembek Lagoon tidelands accorded state refuge status by the legislature in 1972. These and other state lands in critical habitat areas and game sanctuaries were not included in the ADF&G/ADNR proposal because it would take legislative action to make them available for exchange consideration. While the habitat values of these lands would most likely be preserved and protected as well in federal ownership as under current state management ADF&G determined that raiding the state's designated habitat protection system in order to acquire subsurface estate speculatively valuable for oil and gas would create its own set of perception problems.

The USF&WS response offers the state a clear opportunity to proceed to the next stage of an exchange. Land exchange negotiations with the USF&WS should proceed in order to preserve the state's standing in any exchange activities. At the very least efforts to advance the Tatlin townships would keep the state in the midst of the land exchange action. As could be expected the USF&WS did not recognize advantage in acquiring lands that are sought by the National Park Service. These parcels were included on the list to allow the federal government to realize which benefits from possible exchanges in addition to acquiring refuge lands. A second prong of the state initiative should include elevation of the USF&WS lack of interest in these parcels to the attention of Interior department policymakers.

The remainder of the assignment contained in the February 17 memorandum required monitoring of USF&WS exchange activities with parties other than the State of Alaska. USF&WS efforts in this regard began in 1984 when Koniag

EXHIBIT 31 PAGE 1

broached the subject with the Service and have been conducted on a variety of fronts since that time. DNR met with the USF&WS to find out what was happening in these exchange negotiations. The dual purpose of that meeting was to reiterate the State's position that any land tenure changes on the Arctic coastal plain should involve significant state participation and to present the aforementioned inventory of state land which may be available for exchange consideration should Congress determine that oil and gas development will be permitted in ANWR.

USF&WS's Robert Gilmore conducted the briefing, seemed quite familiar with the State's general interest, and was intrigued by the list of possible exchange land candidates offered by the State. He explained that the Service, through its refuge planning process, had identified numerous parcels of land within and adjacent to refuge system units in Alaska that had significant wildlife values but were not in federal ownership. Gilmore also explained that Koniag made the initial contact with his predecessor Keith Schreiner a number of years earlier. Possibilities for an exchange had been discussed off and on since that time. Map review exercises had been carried out with Koniag, Bristol Bay, Doyon and Arctic Slope regional corporations. The focus was initially on regional corporations because of ANCSA subsurface ownership provisions, including 7(f), and the plans of the Service to only offer Arctic National Wildlife Refuge (ANWR) subsurface estate for exchange purposes.

USF&WS recognized early that village corporations owned many of the Service's land acquisition candidates. Unfortunately region-village institutional arrangements and operating relationships didn't always allow the region to offer swaps of village surface estate. At first the Washington Office of Interior prohibited contact with village corporations. This ban has since been lifted and Gilmore has conducted a series of village contacts including meetings in King Salmon and Ft. Yukon.

Another problem facing USF&WS was the absence of a habitat rating methodology to allow the Service to prioritize among parcels identified by regions in the map review portion of the discussion. The Service has now developed a ranking system which permits them to assess their interest in acquiring particular units of candidate lands. USF&WS utilized the methodology to review the State's candidate acreage. Gilmore believes that the methodology materially advanced the state of the art and usefully substitutes for the regularly confusing array of superlatives normally used to characterize habitat values.

The next dilemma facing the Service was the matter of appraisal. Borrowing from refuges across the country Gilmore assembled a team of Service appraisers and began the task of determining values for about 1 million acres of surface estate held by the subject corporations. Familiarity with Service appraisal standards was not the problem for this task force. Applying the traditional methodology to the immense acreages, remote locations, and other unique Alaskan conditions required special training and adaptations however. The standard discount for large parcels had to be modified for this exercise because it reduced the value of the native land to unacceptable values. The absence of meaningful comparative sales also posed difficulties. Calculation of the discount appropriate for Section 22(g) of ANCSA was done administratively because it also exceeded the experience of the appraisal team. However the initial appraisal work is not essentially complete. The appraisals have been approved by the Washington office and Gilmore has a ball park estimate of the values involved.

Calculating the 22(g) factor was just one of a host of nontraditional aspects of the appraisal assignment. The Service proceeded along the lines of the zone concept developed in the Kodiak Refuge Plan to determine a standard deduction value for the fact that much of the native land was required to be managed according to the adopted refuge plan. This severely restricted the possible uses of the land and lowered its value considerably. Coupled with the fact the acreage was remote and not of great worth in traditional real estate terms, the appraised value of native land was quite low even after Gilmore's efforts to modify the traditional Service methodology.

Low value was not the problem on the other end of the exchange package. Rumors described BLM's appraisal of the subsurface value of the Arctic Coastal Plain as quite high at least in preliminary review stages of the process. When the oil and gas industry points to an area and states that it is the best prospect in the country it is easy to imagine how the folks with access to geological and seismic information from that area might be enthusiastic. But the objective approach to these possibilities places them in terms of probability and must provide for a discount factor. When BLM's analysis is unveiled it can be reviewed and contrasted with the similar study performed by the State of Alaska. As the state has experienced in numerous past exchange situations the F&WS recognized that subsurface valuation was not an exact science. BLM was hesitant to place hard and fast values on the individual lease tracts in their analysis. But without comparative values it is difficult to fashion any kind of a trade package. So Gilmore has pressed BLM to offer values that can be utilized in the exchange process. Additionally the Service has had to design a failsafe process so that participating native corporations aren't faced with the risk of losing their land base and finding no oil and gas resources. A mechanism which would guarantee a soft landing in case of exploration failures has been fashioned. None-the-less the exchange process has bogged down because Koniag is unwilling to accept the values that have been assigned to their lands by the USF&WS. Koniag has retained former USF&WS Alaska Director Bob Putz and others to press their case in Washington D.C. They argue that in addition to the real estate value the lands must receive credit for their public interest values. This effort to attach a "blue sky" increment to the land value may be successful because its permitted by law and Interior's presumed interest in offering ANWR subsurface for development. Most likely the actual exchange will not occur until Congress takes action allowing subsurface development.

Koniag's situation is reported here because their train is furthest down the track. Other regions maintain interest in ANWR subsurface and access to current status on all fronts is not available. Most recently CIRI met with Interior officials in Washington and received encouragement to fashion a joint state - ANCSA corporation package for Interior consideration. Most observers agree that such a configuration would be the most saleable package to the Department. CIRI envisions a swap that would give them ANWR subsurface while the USF&WS would acquire state acreage and the state would conclude its Kachemak State park acquisition from Seldovia and CIRI. Alternatively teamed with CIRI or some other ANCSA corporation the state could be more likely to acquire ANWR subsurface. All of these possibilities should be measured against Alaska's current 90% interest in ANWR's mineral resources and its steadfast assertion that it should be considered first in any further decision-making process.

In summary, ADF&G & DNR advanced candidate exchange lands to USF&WS. The Service's positive response calls for further action. We continue to monitor exchange efforts underway and find it would be easier to accomplish these tasks from the midst of the maelstrom than from the edges.

# MEMORANDUM

# State of Alaska

DEPARTMENT OF NATURAL RESOURCES--DIVISION OF LAND AND WATER MANAGEMENT

TO: The Honorable Steve Cowper  
Governor of the State of Alaska

DATE: December 9, 1986

FILE NO:

TELEPHONE NO: 762-4355

FROM: Tom Hawkins, Director  
Gary Gustafson, Chief, LMS

SUBJECT:

## OVERVIEW:

Participation in the recent ANWR meetings with the Interior Department (DOI) make it clear that prompt decisive action by the State is required to preserve policy options and optimize benefits for Alaskans. There are two schedules which require attention. The short range tasks focus on the land exchange process and the February 15th deadline for tract selections. The long-range picture revolves around the draft 1002 report of the Secretary to Congress. State participation is expected in public hearings scheduled for early January and written comments on the report are due by month's end. The Secretary will make his recommendations to Congress in April. We anticipate that legislation which could open the Coastal Plain will be introduced in May. DOI also envisions Congressional approval of its exchange negotiations during this same period.

## BACKGROUND:

Over the past three years numerous native corporations have discussed land exchanges with the Fish and Wildlife Service (F&WS) whose primary objective is to acquire surface ownership of refuge system holdings. Corporate goals are many but acquisition of subsurface interests with revenue generating potential is critical. The regional corporation which has been at the table the longest is Koniag. Three other native corporations have recently become active participants. Each native corporation has an oil industry partner. DOI's Assistant Secretary for Parks and Refuges Bill Hor, has established the February 15 deadline to benefit Koniag which plans to present the exchange proposal to its shareholders for a vote, before the fishing season begins. The other participants, including the state, must conform to the Koniag timeframe in order to participate in the first round of tract selections. It is interesting to note that DOYON sees the cart before the horse. DOYON's reservations center on the tract selection process preceding Secretarial recommendations or Congressional action. The following table depicts the participants, their agents, and the acreage they offer for exchange.

<u>PARTICIPANTS</u>	<u>AGENT</u>	<u>ACREAGE</u>
Native Land Group (CIRI)	Mark Rindner	230,000
Koniag	Bill Timme	130,000
Akhiok/Kaguyak	Tony Smith	100,000
DOYON	Jim Mery	600,000

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EXHIBIT 32 PAGE 1

PROCESS:

The exchange action consists of three components. Land identification, land valuation, and a conceptually approved draft contract. The Koniag timeframe requires completion of these tasks by 15 February. Land identification consists of F&WS regional office acceptance of candidate lands. Land valuation begins with a fair market value appraisal and is adjusted through negotiations with Bill Horn designed to capture public interest value considerations. For instance we believe that Koniag's 130,000 acres have an appraised value of \$35 million. Horn, presumably utilizing comparative values derived from other Congressional land transactions (Pribilof purchase, Haida exchange and others), elevated this value to \$200 million. Similar adjustments for other native participants are likely.

The BLM assumed the task of valuing ANWR's recoverable hydrocarbons. They have assigned a value to each of 560 tracts in the coastal plain. While they have used state of the art methodology for these valuations the data base is weak and the values are considered speculative. DNR's divisions of Oil and Gas and Mining and Geological and Geophysical Surveys can expand on this matter.

The tract selection process is still under negotiation. Each participant currently advocates an approach which maximizes its interests. The critical calls will be made in the dispute resolution mechanism. When more than one participant chooses the same tract DOI expects to employ one of four procedures for deciding the outcome. The amount of candidate acreage and the value of it dictate which approach is favored.

ALASKA'S ROLE:

The State and the F&WS have not agreed on which acreage will be included in an exchange. The State has pressed for inclusion of state lands sought by the National Park Service (NPS). NPS is wary that it might end up on the wrong side of an environmental issue. NPS also recognizes that this is a F&WS ballgame and they expect to participate only if invited. F&WS is resistant to first round consideration of NPS lands. As the NPS has identified interest in almost 500,000 acres of state inholdings within parks (Katmai, Lake Clark, Wrangell-St. Elias) this indecision weakens the State position.

F&WS has acknowledged that it wants the 75,000 acres of state land in the Tetlin refuge. F&WS is considering an array of 130,000 acres of valid selections and tentative approvals in seven other refuges. They have also taken under advisement approximately 325,000 acres on the Alaska Peninsula in the Black Hills caribou calving area. The exact acreage sought from State land by F&WS will not be known for a few weeks.

The valuation process and negotiation cannot commence until the acreage is identified. F&WS personnel have yet to acknowledge that "full public interest consideration values" can be claimed by the state. The theme of this discussion requires the state to justify why federal ownership would be more

The Honorable Steve Cowper  
page 3

appropriate than state ownership of particular habitat lands. This issue requires serious consideration because the public interest multiplier is so high.

SUMMARY

The time frame is extremely tight and delay would benefit the State of Alaska. DOYON's reservations match ours. In order to fully participate in the first round tract selections the State would seek to maximize its candidate exchange lands. That negotiation process could well take more time than is currently scheduled.

The parallel 1002 review and articulation of a State position on the Arctic Coastal Plain management issue should really be the primary state interest. To achieve the State's ANWR objectives will require a thoughtful strategy and a thorough advocacy. The views of many agencies must be sought.

In short the exchange process forces a mobilization of effort for the wrong battle. While required to preserve options exchange effort must be recognized as secondary to state action to open the Coastal Plain of ANWR to oil and gas exploration, development and production.

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STEVE COWPER  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
WASHINGTON, D.C.  
February 6, 1987

The Honorable William P. Horn  
Assistant Secretary for Fish,  
Wildlife and Parks  
Department of the Interior  
C St. between 18th & 19th Sts., N.W.  
Room 3156  
Washington, D.C. 20240

Dear Bill:

The State of Alaska has completed a comprehensive resource assessment of the state areas proposed for exchange to the Department of the Interior (DOI) for oil and gas rights within the Coastal Plain of the Arctic National Wildlife Refuge (ANWR). This assessment was compiled by the Department of Fish and Game with assistance from the Department of Natural Resources. A copy of the assessment report is enclosed for your review.

The report is organized so as to address each of the eight criteria included in the U.S. Fish and Wildlife Service's (USFWS) Alaska Regional Acquisition Priorities. Accordingly, each state exchange candidate area is identified and pertinent information is provided concerning: (1) important fish and wildlife resources; (2) public interest values; (3) the importance of the proposed exchange to the refuge; and (4) potential developmental activities.

This information is provided in order to supplement DOI familiarity with these state lands and resources. I expect this information will prove particularly useful as DOI and the state engage in the process of negotiating final exchange values for these lands prior to ANWR tract identification.

When Congress created Alaska as a sovereign state, Congress repeatedly stated that the vast federal land holdings in Alaska had retarded the development of the territory. Granting land to the new state was necessary to encourage growth, development, the expansion of communities and recreational areas, and basic economic vitality. The Alaska State Constitution (Article VIII, Section 1) and the Alaska

February 6, 1987

Statutes (AS 38.04.005) provide that it is the policy of the state to provide for maximum use of state land and resources consistent with the public interest.

Enclosed for your information is a generalized chart (Table 1) depicting the various classification categories and corresponding permitted uses for the state land proposed for exchange. Please note that unless specifically closed, all state land is open and available for mining and mineral locations. The locator therefore acquires the exclusive right to possess and extract any minerals and may use the surface estate as reasonably necessary to exercise this right.

All of the state areas proposed for exchange have fish and game populations of varying interest to commercial guides, outfitters, and lodge operators. State lands historically accommodate a high proportion of this type of use when located adjacent to federal conservation system units or Native corporation lands. The state generally authorizes these uses through ten year negotiated leases which provide for improvements such as lodges, campsites, airstrips, etc. In addition, most of these areas are prime candidates for trapping cabin permits, remote cabin permits and related activities.

The state also operates a successful statewide land disposal program which has transferred since statehood over 400,000 acres into private ownership through a variety of disposal programs. As you know, the state's disposal program occasionally has conflicted with the objectives of several conservation system units in Alaska. The Fireweed Mountain Subdivision within the Wrangell-St. Elias National Park and Preserve and the Village View Subdivision adjacent to Denali National Park and Preserve were examples of such conflict. Obviously, such future conflicts can be avoided by federal ownership of state inholdings. Although some speculate that Native ownership poses a greater future development threat to parks and refuges than state ownership, the state believes this to be an overstatement. Much of the Native corporation land proposed for the ANWR exchange is relatively inaccessible, remote and has developmental constraints. Furthermore, the lands within the Kenai, Kodiak, and Yukon Delta refuges are subject to the refuge management consistency parameters of Section 22(g) of ANCSA, constraints which do not apply to state land. In addition, it is unrealistic to suppose that much of this Native land could be developed in the foreseeable future, if at all, due to overriding local subsistence use

Mr. William P. Horn

- 3 -

February 6, 1987

concerns and loss of the tax exemptions provided by ANCSA and ANILCA for undeveloped Native lands.

Finally, in considering the relative value attributable to state lands as opposed to Native lands, your office might also wish to consider the likelihood that Native corporation lands within and adjacent to refuges may be entered into future land bank agreements with DOI, pursuant to Section 907 of ANILCA. Land banking has already proven to be an attractive management alternative for many corporations which desire the benefits afforded by Section 907(c) of ANILCA. Obviously, the land bank option is inapplicable to state lands.

You will notice that certain state lands adjacent to refuges as well as other state land in-holdings within three national park areas remain in our pool of available exchange candidates. Although DOI has thus far only approved about 260,000 acres of state lands and selections within refuges for trade, we feel strongly that additional areas should also be included. These areas include the Cinder River/Mother Goose Lake and Black Hills/Cathedral River areas located immediately adjacent to, and surrounded by, the Alaska Peninsula National Wildlife Refuge and other federal conservation system units. These areas were previously recommended for acquisition by the USFWS through exchange as part of the Bristol Bay Cooperative Management Plan mandated by Section 1203 of ANILCA. In addition, the state has also included certain state national park in-holdings which were identified as high priority acquisition priorities by the National Park Service. I urge your careful consideration of these additional state exchange candidate areas.

In conclusion, the state requests that your final exchange land evaluation process treat state and Native land values in the same manner (i.e., similarly situated lands should be assigned similar values).

I offer these observations as constructive suggestions for your use during the state exchange land valuation process. Please don't hesitate to contact me for clarification of this material.

Sincerely,

*John*  
John W. Katz  
Director of State/Federal  
Relations and Special  
Counsel to the Governor

Enclosures

TABLE 1 - LAND USE

<u>EXCHANGE PARCEL</u>	<u>AREA PLAN</u>	<u>CLASSIFICATION TYPE</u>	<u>COMMENTS</u>	<u>ALLOWED USES</u>
1. Tetlin	Tanana Basin	Unclassified	Not identified as state land during the area planning process.	MC, OG, MS, ROW, SL, LUP, RC, TS.
2. Alaska Maritime Sundstrom/Long Is.	None	Resource Management	Grazing.	MC, OG, MS, ROW, SL, LUP, RC, TS, GR.
3. Alaska Peninsula Herendeen Bay	Bristol Bay	Resource Management	Coal resources.	MC, OG, MS, ROW, SL, LUP, TS.
4. Yukon Delta	None	Resource Management	Guides and outfitters.	MC, OG, MS, ROW, SL, LUP, GR.
5. Togiak	Bristol Bay	Unclassified	Not identified as state land during planning process.	MC, OG, MS, ROW, SL, LUP, RC, GR.
6. Innoko	None	Resource Management	Oil and gas potential, guides and outfitters.	MC, OG, MS, ROW, SL, LUP, RC, TS, GR.
7. Koyukuk	None	Resource Management	Timber sales, guides and outfitters.	TS, GR, RC, LUP, SL, ROW, MS, OG, MC.
8. Mother Goose Lake/ Cinder River	Bristol Bay	Oil and gas/Public Recreation/Wildlife Habitat	Oil and gas leasing.	OG, MC, ROW, SL, LUP.
9. Black Hills	Bristol Bay	Oil and Gas/Wildlife Habitat	Oil and gas leasing.	OG, MC, ROW, SL, LUP.

MC = Mining Claims; OG = Oil and Gas Leases; MS = Material Sales; ROW = Rights-of-Way; SL = Surface Leases; LUP = Land Use Permits; LD = Land Disposals; RC = Remote Cabins; TS = Timber Sales; GR = Grazing.



The color-coded overlay and the overlay showing BLM's seismic prospects are intended to convey the "relative" oil and gas potential of areas within the coastal plain of the Arctic National Wildlife Refuge (ANWR). The department has also mapped the location of all prospective subsurface structures identifiable from the geophysical surveys within ANWR; however, because the data upon which these detailed structure maps are based are confidential, it cannot disclose the specific locations and configurations of those structures.

To guide you in your assessment of the relative subsurface potential within the coastal plain of ANWR, the colored overlay portrays what are referred to as "#1 ranked" through "#5 ranked" blocks of acreage, based on our interpretation of the seismic data. The #1 qualifier means those townships within the 1002 area which are underlain by all or a portion of a relatively well-defined structure with interpreted "closure" (trap) mappable from geophysical (seismic) data, and which appear to contain Ellesmerian age or other high potential reservoir rocks. The #2 qualifier means those townships with at least three-way closure (almost certainly a trap?), and with inferred Ellesmerian or other high potential reservoir rocks. For a variety of reasons, those townships with #3 through #5 ranked acreage should be considered marginally to poorly prospective.

Simply put--the #1 areas are those areas comprised of townships (23,040 acres) that are the most likely to produce oil and gas discoveries based upon an analysis of all the factors which are typically required to assure exploration success. Townships were the minimum areas selected to portray relative potential simply because the available seismic data cannot identify and define prospectiveness of smaller blocks of acreage. For example, given the seismic data grid within ANWR, it is entirely possible to overlook a subsurface structure the size of Amauligak, the recently announced discovery in the Canadian Beaufort Sea. That structure is reported by Gulf Canada to contain as much as 800-850 million barrels of oil!

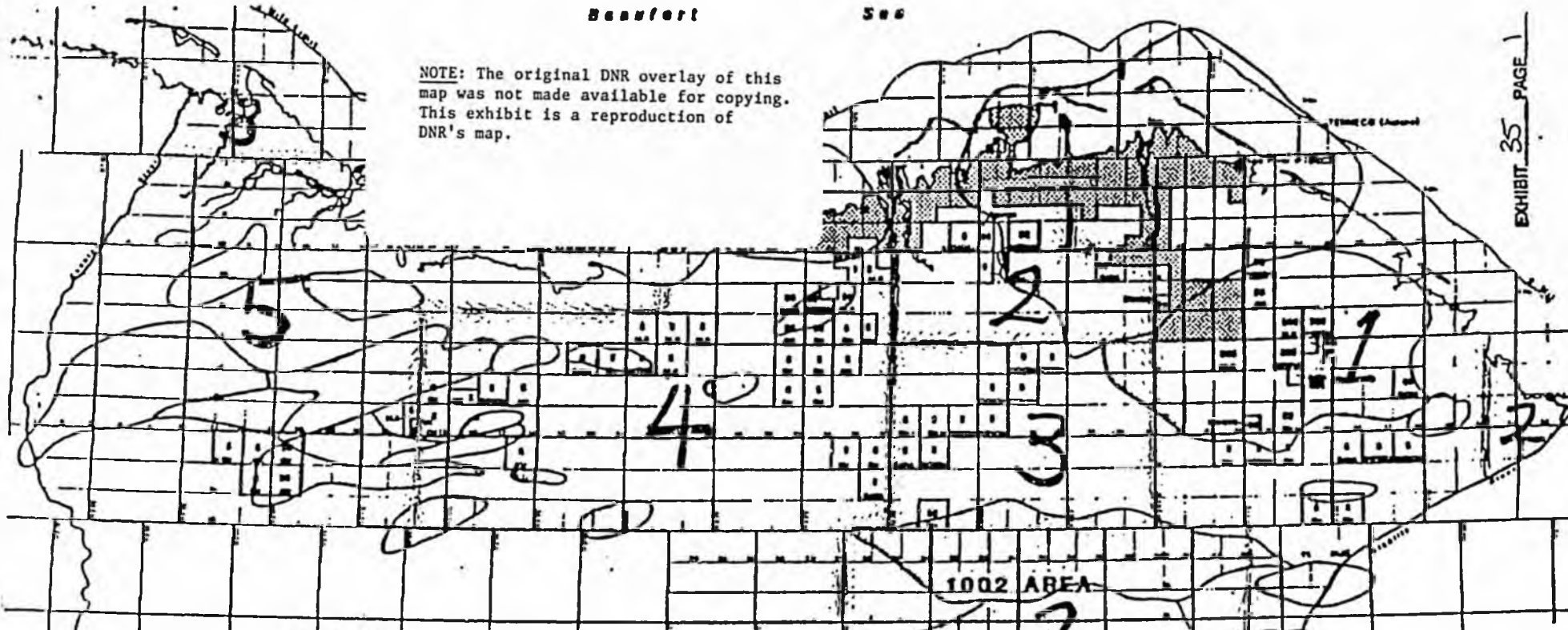
Thus, it is important to realize in interpreting these relative rankings that there is, in every instance, one or more mapped structures (or portions of structures) underlying the townships identified as #1 or #2. An individual township boundary may encompass more than the defined limits of one or more isolated structures. However, considering the relative paucity of the data, the acreage adjacent to the mapped structures ranked either as #1 or #2 must be acknowledged as also being highly prospective even though the current interpretation cannot confirm specific closure beneath the area. EXHIBIT 34 PAGE 1

Beaufort

See

NOTE: The original DNR overlay of this map was not made available for copying. This exhibit is a reproduction of DNR's map.

EXHIBIT 35 PAGE 1



EXPLANATION

- Native Communities
- AMKIOK-KAGUYAK (AKO)
- OQYON
- QANA-A'YOD (QANA)
- KONIAK
- NATIVE LANDS GROUP (NLG)
- OLD HARBOR (OH)

- Industry Partners
- AMOCO, SHELL
- ARCO
- ARCO
- CHEVRON GROUP
- PHILLIPS
- CONOCO, EXXON
- TEXACO

Beaufort Value Per Acre

- \$19,000-\$24,000
- \$201-\$2,100
- \$200 (Minimum Bid)
- AERC/KIC Lands
- Biologically mapped prospects

PROPOSED LAND EXCHANGES:  
DEPARTMENT OF THE INTERIOR INTERPRETATION  
November 1987

DEPARTMENT OF NATURAL RESOURCES

PO BOX 7016  
ANCHORAGE ALASKA 99510

DIVISION OF MINING & GEOLOGY

A Comparison of State and Federal Appraisals of  
the Arctic National Wildlife Refuge Coastal Plain

by

James J. Hansen  
Richard W. Kornbrath

The Alaska Department of Natural Resources Professional Report 90 presents the State's preliminary appraisal of the petroleum resource potential in the coastal plain of the Arctic National Wildlife Refuge (ANWR). The results of this study are compared with the resource estimates in the Department of Interior draft report titled "Arctic National Wildlife Refuge, Alaska, Coastal Plain Resource Assessment", which was issued for public review and comment on November 24, 1986.

To assess the potential for in-place oil and gas in this frontier area each study uses the geologic play as the basic unit of analysis. A geologic play is an area which can be viewed as an aggregate of prospects (areas of potential hydrocarbon accumulation) that have similar geologic characteristics and share common geologic elements. In analyzing the hydrocarbon potential of geologic plays, geoscientists familiar with the regional geology make three sets of probability judgments concerning the geological characteristics of these plays. These judgments comprise the basic geologic data necessary for a resource appraisal.

The first set of judgments concerns the individual probabilities that each geologic characteristic common to the play area is favorable for petroleum accumulation. These characteristics are: petroleum source, favorable timing of oil generation and migration, availability of potential migration paths, and reservoir rocks in which to retain the oil. These individual probabilities are multiplied together to arrive at the "marginal-play probability".

The second set of judgments involves probabilities that concern the presence of three geologic characteristics common to the individual prospects within each play area: trapping mechanism, effective porosity of the reservoir rock and hydrocarbon accumulation. The product of these probabilities is the "conditional-deposit probability".

The "success factor", which gives the probability of a well encountering commercial accumulations of oil, is a product of the marginal-play probability and the conditional-deposit probability.

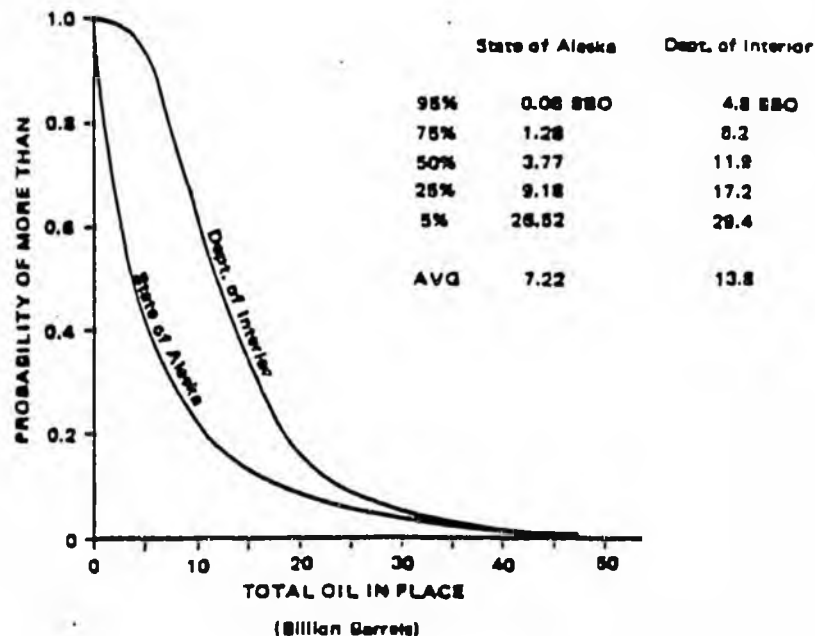
The third set of judgments involves the geologic parameters that determine the potential reservoir volume for a deposit. These reservoir characteristics include area of closure, trap fill, reservoir depth, reservoir lithology, and relative hydrocarbon mix (oil vs. gas).

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Once a range of values for each of these characteristics is determined, computer simulation programs are used to analyze these characteristics and to arrive at a probability distribution for in-place oil and gas for each play, and for the frontier area as a whole. The State uses the Resource Appraisal Simulation for Petroleum (RASP) program, which employs a Monte Carlo method of randomly sampling probability distributions for each geological characteristic as many as 3,000 times. The Interior study uses Fast Appraisal Simulation for Petroleum (FASP), which utilizes a statistical approach to probability theory. The FASP method is based on a seven-point probability distribution for each geologic characteristic (i.e., a 95% probability of a given sandstone having 10 feet of net pay, a 90% probability of it having 15 feet of net pay, etc.). FASP computes a mean and the standard deviation from each distribution, then combines these figures to arrive at the oil in-place for each probability level.

Both RASP and FASP simulations yield lognormal distributions that show the probability of these being a given quantity of in-place oil or gas. The lognormal distribution, when plotted as a "bell type" curve, is skewed to the right. This means that the simulation processes result in the generation of many small values for oil in-place and relatively few large ones. Mathematically, the generation of a lognormal distribution is the result of a multiplicative relationship of the input parameters and of the random sampling that is conducted. The effect of the multiplicative relationship is that small variance in the input parameters can result in significant changes in the final numbers.

The following figure compares the probability distribution curves for in-place oil from the two appraisals:



The Department of Interior distribution curve is right-shifted relative to the State curve, meaning that for any given probability, Interior estimates that there is more oil in-place. Alternately, Interior estimates that there is a higher probability for a given amount of oil to be in-place, relative to the State estimate. Geoscientists make subjective judgments to select the geologic characteristics that are input into these two modeling programs. Because there are limited subsurface data in ANWR, there will understandably be differences in the geologic characteristics input into each modeling program. In comparing the two studies conducted, there are four main differences concerning the input data that can account for the divergence between these two distributions:

1. Difference in Geologic Plays

With the exception of the Kemik-Thomson Sand Play, the two studies analyzed different geologic plays. For example, the State's Post-Albian Play encompasses Interior's Topset, Turbidite, and Imbricate Fold Belt plays.

2. Appraisal of Ellesmerian sequence rocks

The Interior appraisal attributes approximately 50% of the oil to Ellesmerian rocks, with an average estimated oil in-place of 7.2 BBO. The State's appraisal only assigns a small probability of there being a significant quantity of this rock sequence in the subsurface; the average estimated oil in-place is 1.13 BBO. At probability levels above 25% the State appraisal exhibits little confidence of there being any Ellesmerian rocks; the federal report indicates that above this probability level there could exist Ellesmerian rocks capable of containing up to 9 BBO. However, the Interior report does state that if most of the Ellesmerian rocks are missing in most of the 1002 area, their assessment number would be reduced considerable (DOI Report, p. 54)

3. Success factors

The State's success factor varied from 8% to 1% for the Ellesmerian rocks, was 9% for the Kemik-Thomson Sand Play, and was the highest, at 12.5%, for the Post-Albian Clastics Play. Though the success factors are not presented in the Interior appraisal, it can be inferred that their percentages were considerably higher (on the order of 10 - 25%) for all plays, since assigning higher success factors will shift the distribution curves further to the right.

4. Appraisal of pre-Mississippian rocks

State geologists disagree with Interior geologists as to the contribution of pre-Mississippian rocks for oil accumulation. Though they have little effect on the distribution curve, Interior's appraisal includes these rocks, while the State appraisal does not.

Volumes of yet undiscovered petroleum resources in frontier areas are extremely difficult to estimate with a high degree of reliability. In the case of ANWR, the lack of sufficiently detailed subsurface geologic information results in a wide variance in the geologic characteristics that form the framework for the resource appraisal methods. In fact, geoscientists will differ in their opinion as to what should constitute a geologic play. It is not surprising (in fact, it should be expected) that these somewhat subjective scientific judgments, based on limited geologic data, will vary from group to group.

In addition to the variance in geologic input, inherent problems exist in the applied methodology and presentation of the resulting data. Lognormal distributions are the result of the multiplicative relationship of the input data; small variances in these input parameters can result in large differences in the resulting totals. It is important to note the fact that both probability distributions show the possibility for a wide range of resources. This is simply a reflection of the high uncertainty in the input data, and it should not be interpreted in a negative manner.

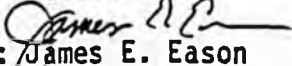
A comparison of the results of the two studies reveals the following:

1. Both reports conclude that the key elements requisite for petroleum accumulations have been demonstrated to be present beneath the coastal plain of ANWR.
2. Both reports conclude that there is a small possibility that significant and unusually large petroleum resources are present beneath the coastal plain.
3. Both reports conclude that there is a greater likelihood that the resources present are smaller in size. However, prior to its discovery, some industry officials had estimated that there was only a two percent probability that the Prudhoe Bay area contained two billion barrels of oil. They did not anticipate the twenty three and a half billion barrels of oil that are now calculated to have been initially in-place.
4. While the State study indicates smaller resources at the higher probability levels relative to the Interior study, there is close agreement between both studies at the lower probability levels.
5. Neither study can be labeled right or wrong. Both studies are valid professional estimates of resource potential under ANWR's coastal plain. Exploratory drilling will ultimately determine which estimate was more accurate.

EXHIBIT 36 1314  
PAGE 4

**MEMORANDUM**  
DEPARTMENT OF NATURAL RESOURCES

**State of Alaska**  
DIVISION OF OIL AND GAS

TO: Judith M. Brady  
Commissioner  
Thru:   
James E. Eason  
Director  
FROM: Rich Kornbrath *rk*  
Petroleum Geologist

DATE: June 15, 1987  
FILE NO:  
TELEPHONE NO: 762-2185  
SUBJECT: Ongoing concerns with  
Interior's PRESTO analysis  
of recoverable reserves  
for the 1002 area.

Attached is a brief analysis of technical problems with the Department of Interior's (Interior) 1002 area resource assessments.

As you know, we have already documented the resource assessment problems having to do with the inadequacy of the ANWR database, such as seismic grid size, the lack of well data and the complex geology. We also pointed out Interior's misapplication of regional resource assessment methodology for tract-specific valuations, as well as its apparent willingness to conduct the land exchanges based upon minimum acceptable bid values as opposed to true fair market value.

The attachment shows that Interior used abnormally low geologic risk (high success factors) for its evaluation estimates and that these percentages are not technically defensible for the purposes of an equal value land exchange should they be questioned or made public.

I believe that if this particular technical problem receives much publicity, it could be used by groups opposed to the ANWR opening as a means to discredit Interior's resource analyses and thereby delay the opening, cause ANWR to be closed, or provide support to the proponents of an NPRA-type government drilling program.

I understand that by early July Interior intends to convene the tract selection meetings in Washington, D. C. Their intent is to finalize and initial contracts regardless of the status of the Trustees' suit at that time. With this in mind, and realizing that once contracts are signed the state will have an uphill battle, I believe that we should make our concerns fully evident to Secretary Hodel. It is important that we point out the problems and make a request, officially, based upon Alaska's potential financial interests and its concerns regarding the opening, for a full, technical review of Interior's evaluation procedures prior to the tract selection meetings.

The request for a "moratorium" on initialing the exchange contracts could be based upon Alaska's contention that, given the technical problems with the evaluation procedures, as well as the other concerns with the land trades, it is prudent to delay contract finalization and have the federal and state technical staffs meet privately to discuss specific areas of concern.

cc: Lennie Gorsuch  
James Eason  
Gary Gustafson  
James Hansen  
Tom Koester

Attachment  
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EXHIBIT 37 PAGE 1

Analysis of Technical Problems with  
Recoverable Resource Estimates in the Federal 1002 Report

The Department of Interior (Interior) prepared an assessment of in-place oil resources for the 1002 area using methodology similiar to what was used by the state. Unlike the state, however, Interior went a step further and published estimates of recoverable resources based on a prospect-specific analysis and various economic assumptions. Unfortunately, the specific parameters that went into the federal estimates have not been published. The draft and final 1002 reports do not provide detailed information on the analyses, and without detail on the input parameters, it is difficult to determine exactly what federal evaluators have done.

Interior is presently involved in using the prospect-specific analysis and economic assumptions to derive dollar valuations for individual 2,560 acre tracts for the purpose of the land exchanges proposed by Assistant Secretary Bill Horn.

The Division of Oil and Gas has attempted, through communication with federal scientists, use of the limited data in the 1002 report and inference, to ascertain, specifically, how the federal estimates have been made. The problems related to the inadequacy of the ANWR database for these types of detailed analyses have been well documented in previous discussion papers and involve the seismic grid size, the lack of well data, and the complex geology. Other problems identified include Interior's misapplication of regional resource assessment methodology for tract-specific valuations, and the use of minimum acceptable bid values as opposed to true fair market value for the land exchanges. However, based on the present work, it is clear that additional technical problems may exist in the federal evaluations.

The present analysis indicates the single major difference between the state and federal in-place estimates is in the assignment of geologic risk to the individual plays.

The geologic risk or "play risk" is one minus the product of the marginal play probability and the conditional deposit probability. Marginal play probability describes the favorability of four play attributes: hydrocarbon source, timing, migration and reservoir facies. Conditional deposit probability describes the favorability of three prospect attributes conditioned on all the play attributes being

favorable: trapping mechanism, effective porosity and hydrocarbon accumulation. The following relationships are used for the standard RASP and FASP resource assessments.

Play Attributes:

$Mp = S \times T \times M \times R$ , where

$Mp$	= marginal play probability
$S$	= hydrocarbon source
$T$	= timing
$M$	= migration
$R$	= potential reservoir facies

Prospect Attributes:

$CDp = TM \times P \times HA$ , where

$CDp$	= conditional deposit probability
$TM$	= trapping mechanism
$P$	= effective porosity
$HA$	= hydrocarbon accumulation

Geologic Risk =  $1 - (Mp \times CDp)$

In this context, the geologic risk is essentially the "dry hole risk" and the "chance of success" is simply  $Mp \times CDp$ .

For example, in Professional Report 90 (the state's RASP assessment of the 1002 area), for the Permian-Triassic Clastics North Play, the following values were assigned:

$S = 1$   
 $T = 1$   
 $M = 1$   
 $R = 0.5$  therefore,  $Mp = 0.5$

$TM = 0.3$   
 $P = 0.8$   
 $HA = 0.4$  therefore,  $CDp = 0.096$

Geologic Risk =  $1 - (0.5 \times 0.096) = 0.952$  or 95%

For this particular play, there is a 95% chance of drilling a dry hole on a randomly selected prospect and conversely, only a 5% chance of drilling a successful well.

The state's success factors for the seven plays evaluated in the RASP analysis are less than 10%, except for the Post Albian Clastics Play which had the highest success factor of 12.5%.

The federal success factors, although not published, are known by us to be on the order of 20% to 30%, or better. Interior also evaluated seven plays, which are similar but not identical to the state's geologic plays.

The federal success factors are unusually high for assessments of frontier areas such as the ANWR coastal plain and, likely, could not be technically defended. The geologic risk or, conversely, success factor has a very standardized definition as demonstrated above. In regional resource appraisals throughout the United States and worldwide, success factors in excess of about 15 percent are only applied in areas where a play has prospects with demonstrated productive capability trending into the area being assessed. Further, the Folded Ellesmerian/Pre-Mississippian Play in the federal 1002 report accounts for approximately 50 percent of the oil in place in the federal appraisal. Yet, the text of the 1002 report acknowledges the extreme uncertainty of these rocks even being present in the play area. This uncertainty must be assessed by use of reasonably high geologic risk factors, and this is not, apparently carried out in the Interior calculations.

The greater problem, however, comes with the next two steps in the overall federal resource assessment. First, Interior uses a prospect-specific analysis of 26 mapped prospects and PRESTO methodology to establish recoverable resources at various probability levels and economic assumptions. As you know, this type of prospect analysis is similar to what the state conducts prior to leasing. For each prospect so analyzed, the following input parameters are required: area of the prospect, percent fill of the trap, recovery factors, net pay thickness, geologic risk, and economic inputs.

In the absence of detailed seismic mapping and subsurface data, Interior is forced to use sketchy input parameters that have been ranged with an associated triangular (three point) probability distribution. Interior's prospect analysis apparently uses the same range of values for input parameters as was used in its FASP in-place estimates. Beyond these concerns is the fact that Interior, based on our best information, has used the same, technically indefensible high success factors for the prospect-specific recoverable resource analysis as it did for its in-place resource assessment.

For comparison, the state's in-house prospect analyses used success factors of 1% to 5%. Interior is apparently using success factors of 20% to 30%, or better. These high levels of success would, normally, only be applied in areas with known or developed fields, in drainage situations, not in frontier areas such as ANWR.

Of course, the final step taken by Interior is to use these same prospect estimates to affix a dollar value to individual 2,560 acre tracts for the purpose of land exchanges. The effect of the high success factors is to substantially increase the dollar value on individual tracts. Although this result is not undesirable in terms of attempting to get a fair "price" of inholdings for the subsurface estate in the proposed trades, it

is not technically defensible, and in no way reflects the "actual" fair market value which can only be attained through competitive leasing.

MEMO

To: Jim Eason  
 Director, DO&G

D R A F T

From: Rich Kornbrath  
 Petroleum Geologist

August 4, 1987

Subject: DOI press release regarding ANWR land selections

The Resource Evaluation staff has reviewed the limited information made available by the Department of the Interior which describe the results of the recent ANWR land exchange meetings. As you know, on July 9 through 11, 1987 tract identification and selection was completed in a series of closed meetings between DOI staff and representatives of six different native groups.

The press release contains less than two pages of text, accompanying lists of nominated and selected tracts (including the DOI assigned values) and a small-scale location map. There was very little substantive information provided to enable analysis of how dollar values were derived or how competing selections were adjudicated. BLM and FWS representatives have indicated in phone conversations that no further information will be made available. According to the press release, the native groups traded a total of 891,000 acres of inholdings valued at \$538.7 million for 166,278 acres of ANWR subsurface rights valued at a comparable amount.

With the limited information now available it is difficult to determine precisely the impact of the exchanges. The staff believe, as we have discussed with you previously, that BLM staff have used a database that is entirely inadequate for the purpose for which it is being used (ie., "equal value land exchanges"). We believe that the frontier nature of the area, the limited and relatively poor quality geophysical (seismic) data, the lack of subsurface geological (well) data, and the high risk of the geologically complex structures would, likely, yield relatively low (or conservative) dollar values for individual tracts using technically correct prospect-specific analysis methodology.

However, the BLM-assigned dollar values on most tracts seem to be impressively high as compared to bids in Camden Bay and the

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eastern Beaufort Sea. We are at a loss to explain how the high values were calculated. Possible explanations include some type of "enhancement" modifier that inflated the value to take into account the lack of competition in the selection process, or the use of overly optimistic or inflated input parameters, such as the expected price of oil, discount rates, development costs, assumed reservoir thicknesses, percent fill of the trap, etc. Another factor which could have produced inflated tract values is the assignment of atypically low geologic risk factors on the individual prospects. How these "perceived subsurface values" relate to the appraised values of the surface estate from the inholdings and how much of the value was simply "negotiated" is unknown. How these values were treated with respect to the current 10% retained federal interest, the 90% state statutory revenue share or the recision clause that reduces the risk to the native groups is also unknown. Without details of the process and methodology used by BLM, we can only speculate.

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The following is a summary of the pertinent information presented in the DOI press release:

Total (approx.) federally-owned 1002 acreage = 1.53 million acres

Total number of tracts = 576 (approx. 2560 acres per tract)

Total number of tracts selected = 73 (63 whole tracts, 8 partial)

Range of tract values:

<u>Greater than \$19,000/acre =</u>	<u>8 tracts</u>
<u>\$19,000-\$1,000/acre =</u>	<u>13 tracts</u>
<u>\$1,000-\$320/acre =</u>	<u>2 tracts</u>
<u>Under \$301/acre =</u>	<u>50 tracts</u>
<u>Total</u>	<u>73 tracts</u>

Total native inholdings exchanged = 891,000 acres

Total value of native inholdings = \$538.7 million

Total subsurface estate selected = 166,278 acres

Total value of subsurface estate selected = \$538.7 million

Total value of remaining unselected tracts = \$3.5 billion

From these figures, several interesting calculations can be made that reflect DOI's assessment of value per acre:

Total value of the federally-owned 1002 acreage = \$4.0387 billion

or, \$4.0387 billion = \$2,640 per acre (average)  
1.53 million acres

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Total value of the selected subsurface estate = \$538.7 million

or,  $\frac{\$538.7 \text{ million}}{166,278 \text{ acres}} = \$3,240 \text{ per acre (average)*}$

\* The eight highest-priced tracts were valued at over \$19,000/acre, tending to inflate this average.

Total value of the native inholdings exchanged = \$538.7 million

or,  $\frac{\$538.7 \text{ million}}{891,000 \text{ acres}} = \$605 \text{ per acre}$

Total value of remaining unselected tracts = \$3.5 billion

or,  $\frac{\$3.5 \text{ billion}}{1.53 \text{ million acres} - 166,278 \text{ acres}} = \$2566 \text{ per acre}$

\*\*\*\*\*

Paragraph two on page two of the DOI press release states that "Of the 73 tracts identified, 34 were on potential oil and gas containing structures mapped for the 1002 study and report to Congress. The 503 (85.5%) tracts not identified remain available for a federal leasing program and include 87.7% of the tracts over mapped structures.". This statement is completely in error, and very misleading. Based on the value per acre that DOI assigned, these tracts must overlie potential structures or traps, otherwise the values assigned could not have been derived using prospect analysis methodology. Further, the fact that these particular tracts were selected in the first round of a non-competitive process by well informed oil companies indicates strongly that these tracts overlie mapped structures. Several important questions immediately come to mind concerning the DOI evaluation, but of course cannot be answered without detailed information on the evaluation process. What is the basis for minimum value assigned by DOI to the selected acreage? How was value assigned by DOI to areas without mapped structures? What reliability can the DOI values have if their evaluation missed or did not consider, for the evaluation purposes, some of the most promising structures (as indicated by the "bidding")?

In the Draft 1002 report on page 60, Figure 111-10, structural culminations are depicted for the highly deformed younger section of rocks. The draft report states "No prospects were adequately resolved within the detached and highly deformed ...rocks." Only the 26 deep seismically mapped potential traps were considered in the economic analysis in the final report and, presumably, for the tract-specific evaluation (tract-specific evaluations necessitate having mapped prospects). DOI has assigned a dollar value to tracts that they state, essentially, cannot be evaluated

due to insufficient map resolution. However, a minimum value of \$300/acre appears on virtually all of the tracts (over 30 of the 73 selected) overlying the "unmappable" Tertiary folds. These tracts have obvious high perceived value because they drew substantial interest by industry in the first round of a noncompetitive selection process.

The seismic mapping by the Resource Evaluation Section shows that 100% of the tracts selected overlie mapped structures. Further, our mapping indicates that the selections have targeted the specific structures that (based on the limited seismic grid) have demonstrable four-way closure. These are very well-informed selections and encompass a high percentage of the best acreage available in the coastal plain. These selections, together with the ASRC/KIC trade remove well over a quarter of a million acres of the best coastal plain acreage from any future competitive leasing program. The main producing reservoir of the giant Prudhoe Bay Field encompasses about 150,000 acres. In addition, 59% of the recoverable oil (5.9 billion barrels) is found under the best 40,000 acres in the field; 94% of the recoverable oil (9.4 billion barrels) is found under the best 100,000 acres in the field.

The fact that, as stated in the DOI press release, these latest selections only represent a small (10.8%) percentage of the entire 1002 area is misleading and totally immaterial. These selections may well represent 100% of the producible petroleum resources, and, at the very least, are the most prospective tracts that would be leased and explored in first round drilling on the coastal plain.

The opportunity to explore tracts early, prior to competitive bidding is an extremely valuable advantage. Without a doubt, those companies with knowledge of the Chevron Jago River (KIC) #1 well had a considerable advantage over the other trade participants. Likewise, early drilling of exchange tracts prior to leasing of adjacent tracts represents an advantage that is worth a considerable amount to the companies involved. Given the limited information available to us, it is impossible to confirm whether this very real "value" was taken into consideration in the selection process. The most likely result of drilling on the selected tracts prior to leasing is condemnation of adjacent leases. Unfortunately, even in the most promising prospecting areas (remember Mukluk), historically, the outcome of exploration is negative. The potential revenue loss as a result of early drilling and condemnation of adjacent unleased tracts prior to competitive lease sales could be considerable. A complete analysis of the tract selection process also needs to consider the fact that no "real" money exchanged hands between DOI and the native groups. Had DOI been forced to pay cash for the native groups' inholdings or had the native groups been forced to pay cash for the ANWR leases, the assigned values of both sets of

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properties might well have been quite a bit lower.

One final observation regarding the selections involves multiple nominations. Apparently at least 19 tracts received multiple nominations, as listed by DOI. However, the selections do not reveal whether conflicts arose on these popular tracts, and if so, how they were resolved. It seems highly unlikely that the selections could have been made without significant conflicts on tracts desired by multiple groups. It is unknown to us whether prior meetings were undertaken to pre-select the most popular tracts or whether arrangements were made through some form of negotiations at the selection meetings to resolve competing interests.

Any further analysis of these latest selections will necessitate having considerably more detailed information on the subsurface evaluation procedures, the selection process, and the surface appraisal procedures.

Summary Notes:

1. The existing seismic data is adequate to show structures that would be selected on a first round of leasing. Our mapping indicates that 100% of the tracts selected overlie structures and these structures exhibit 4-way closure.
2. The selections overlie a high percentage of the best acreage available on the coastal plain. When combined with the ASRC/KIK acreage, most of the land over the highly prospective structures is removed, clearly not leaving 87.7% of the tracts over mapped structures available for leasing as stated by Interior officials.
3. We believe the data base is inadequate to establish true fair market tract value for the purpose of "equal value" land trades. The data base includes seismic, geologic, engineering, and economic factors that are highly interpretive and when combined, yield unacceptably high uncertainties in the tract values.
4. Normal competition, which is a key element of competitive leasing, and establishing true fair market value through competitive bidding is lost for both the tracts already selected and the remaining acreage. The native corporation land holders and their partners will have a competitive advantage if allowed to evaluate their tracts. The most likely result of exploratory drilling is condemnation of adjacent leases.

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INTERNATIONAL TRADE UNION

MEMBERSHIP

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al conservation will be instructive in some kind of intelligible form as soon as that can be managed.

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ng whether it is or not. I only y comes up and says, this is a

gram, great. What data do we gram? I just would like to un- ment like that. It sounds good look and see if there is appro-

I do not know, Mr. Chairman, if you got into the Chairman's idea of the split on potential revenues. Have you discussed that with the governor?

The CHAIRMAN. No.

Senator WIRTH. I was wondering if you were familiar with the suggestion that has been made by The Chairman of the Committee?

Bennett, I do not want to be one to paraphrase your suggestion. Maybe you might just repeat that for the record, so that the governor is sure what your suggestion is, and we might get his comment on that.

The CHAIRMAN. Well, I have a bill pending, Governor, that would split the oil, if permission is granted, and that is very much an undecided question. We are not prejudging that at all.

But the bill would say that if we should allow drilling that the State of Alaska would get 50 percent, 25 percent to the Federal government, and another 25 percent would basically go for property acquisition, for the National Park Service, Fish and Wildlife Service, the Bureau of Land Management, and the Forestry Service.

The question to you, of course, would be, how do you feel about 50 percent to the State of Alaska? Is that too much?

Governor COWPER. Well, Mr. Chairman, 90 percent is always better than 50 percent. But we also recognize that 90 percent of nothing is nothing.

Let me put it this way. The Congress has the jurisdiction to decide that question. Our position is as stated earlier, that we entitled to a 90 percent share, based on a historical analysis of how that number got into the Statehood Act to begin with.

So I think perhaps I will let it rest at that.

Senator WIRTH. Governor, I thank you very much for coming down and helping us out. And we look forward to working with you as we sort our way through it.

As you know, it is a very charged and difficult issue, and we appreciate your being here. Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Wirth. Thank you, Governor. We appreciate your testimony.

Governor COWPER. Thank you, Mr. Chairman.

The CHAIRMAN. We have some more questions for you.

Senator MURKOWSKI. I am wondering, Governor, if we can accurately ascertain this year the survival/mortality rate, based on wherever the caribou finally calve this year.

Does that give us an indication of what will happen if the caribou are displaced from a preferred area?

Governor COWPER. Well, I think that you would have to have some comparative numbers.

I think that probably the most valuable thing would be to see whether the caribou were displaced from the calving area by simulated facilities, and what happened once they were displaced.

Do they wander down into areas that are less, provide them less feed? Do they wander into areas where their calves are going to be eaten up by various—

Senator MURKOWSKI. So we will have some information this year, because there are a lot of biologists up there.

intend to get some. We hope  
experiment on them.  
think we are hung up a little  
more time make reference to

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actual production facility.

experience at Prudhoe Bay,  
with the activity there.

I am over my time, but I would appreciate, for the record, if you would give us some idea, as you are able to develop it, of defining the area a little more precisely. Because it is going to create a problem.

Senator WIRTH. Would the Senator yield?

Senator MURKOWSKI. Yes.

Senator WIRTH. Thank you. I do not know if you heard about the testimony two days ago, that the Interior Department solved the core calving area problem.

They just deleted it from the final report, and that was their way of solving the problem. So as you respond to Senator Murkowski, I just want to tell you there is another ingenious way for sorting through that complicated problem.

Governor COWPER. Well, it is just one of those things. Everybody knows it is there, and nobody can describe it.

It is a little like paraphrasing the remark about pornography that Justice Stewart made some years ago. But everybody knows that there is an area where a lot of the caribou come, probably a majority of them, during most years, when the conditions are more or less normal up there.

It is our job to describe it as specifically as possible, and all we can do is use whatever data we have to try to put it together the best that we can. It will not be exact. I know that.

Senator WIRTH. I thank the Senator for yielding.

Senator MURKOWSKI. The land exchanges have been brought up, and we are faced on the Committee with the reality of, is it in the national interest, say, to pick up the bear refuge on Kodiak Island that Kodiak holds, vis a vis allowing a land exchange in ANWR.

And the question of what is good for the Federal government is not necessarily what is good for Alaska. But in your opinion do these kind of exchanges make sense from the standpoint of having that kind of a refuge in the state? That is my last question.

Governor COWPER. We are not opposed to the concept of land trades. We just think they are little bit out of order in terms of this legislation.

We think that there may be a time when they ought to be considered. I am sure the Congress would like to take a look at additions to the refuge system. And maybe that could be something that could be taken up after some disposition has been made of this particular piece of legislation.

We are not opposed to it. We just think that the process is flawed, which is what we said earlier in the year.

Senator MURKOWSKI. I think it is evident that the process has to be approved by Congress. So when you say flawed, I am a little confused as to what your specific concern is.

Governor COWPER. Well, Senator, I was referring to the way in which the meetings to negotiate the land trades were taking place.

I felt that the state frankly was a second-class person at the table. I felt we did not have the kind of information that the other parties had, and we thought that it was simply a matter that needed to be taken up not before the legislation, which would decide whether or not to open up the Coastal Plain or not, but after.

We thought that things were simply out of place there, and we said so. And that is why I ordered my people to withdraw from the negotiations. I understand that there are other views. There always are in this business. That is the view that we had.

Senator MURKOWSKI. Well, I am wondering, if you take Kodiak as an example, just because it is one that is familiar to the Committee and the desirability of adding to the national land treasure this valuable bear refuge, what in your time frame is an appropriate time for Congress to take that up? Or other exchanges that are proposed to Congress?

Governor COWPER. Well, to the extent that I have got any control over it, which is none, by the way, I think the logical way to do it would be to first answer the question as to whether or not the Coastal Plain is going to be open or not.

Nobody wants any land in there, I do not think, except for the caribou, if it is not going to be explored and developed. Once that question is answered, then it seems to me that it would be in order to have an open process to discuss whether land trades would be in the best interest of the country or not.

Senator MURKOWSKI. So you are saying that if this Committee authorized the opening of ANWP, at that point you would not object to the discussion of exchanges.

Governor COWPER. Well, actually, we do not object to the discussion at any time.

Senator MURKOWSKI. Well, Congressional action. Congress has to address it if it is going to be viable.

Governor COWPER. It seems to us that the time to do it would be after the main question has been answered.

Senator MURKOWSKI. Which is once this Committee or once the Congress authorized the opening of ANWR, then you think it would be appropriate.

Because obviously if there is going to be a land exchange, it is going to affect the leasing proposals, because it is either going to transfer into private Alaskan ownership on an exchange basis, or it is going to be part of the overall leasing.

Governor COWPER. Well, in a time sequence, you could have the bill pass, and then discuss land exchanges, and then have a lease sale. You could do it that way.

Senator MURKOWSKI. That is correct. Would you propose that that would be an appropriate way? I am just trying to get the state's position on this.

Governor COWPER. Well, I am not proposing—

Senator MURKOWSKI. Well, it is important that we have for the record what the state's position might be.

Because it is a subject that has come up before this Committee, and there are proponents in the state, obviously, and you have heard from them and so have I. And there is interest on the part of the U.S. Fish and Wildlife Service to acquire these assets.

Governor COWPER. Well, there is nothing generic about the land trade that causes them to be not in the national interest.

As a matter of fact, a good case could be made, once a decision as to whether to open up the refuge or not has been made, a good case could be made that it would be in the national interest to trade off

ly out of place there, and we  
people to withdraw from the  
are other views. There always  
hat we had.

ndering, if you take Kodiak  
that is familiar to the Com-  
to the national land treasure  
r time frame is an appropri-  
Or other exchanges that are

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o this Committee or once the  
ANWR, then you think it

to be a land exchange, it is  
because it is either going to  
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to be made, once a decision as  
has been made, a good case  
national interest to trade off

those lands within the refuge for lands that have a very high wild-  
life value, for instance, on Kodiak Island.

I think you could make that case, and I think that that case  
would rise or fall on its own merits, from the standpoint of the na-  
tional interest. That is the way we look at it.

Senator MURKOWSKI. Finally, as the debate on leasing the Coast-  
al Plain continues, there will undoubtedly be extensive discussions  
continuing on the impact of exploration on the Porcupine Caribou  
Herd.

If the debate demonstrates, Governor, to your satisfaction that  
there will be no detrimental impact on the population herd, will  
the state perhaps change its request for a 7 year delay in further  
Congressional review?

Governor COWPER. Well, the cart is kind of way out there in  
front of the horse on that one, Senator. We figure it will take us  
about 7 years to figure out whether there will be an impact or not.

If I were convinced today that there would be no impact on cari-  
bou calving through development activities, I would not have  
brought up the core caribou herd exemption to begin with.

My biologists, however, have told me that there is in fact a sub-  
stantial possibility that there will be an impact on the survival of  
the calves. And that is the reason that we brought up this tempo-  
rary deferral.

Senator MURKOWSKI. You had proposed to use the 7 years to sim-  
ulate, to gather evidence. You would put simulations in the area.

Governor COWPER. Well, we think that at the end of 7 years we  
will have a pretty good set of figures and data to justify whatever  
conclusions we—

Senator MURKOWSKI. I understand that. You understand our  
problem, is the question of, you know, if we do authorize, what do  
we exclude?

Because there is a lack of definition in the Department of Interi-  
or, and there is a lack of definition from the state. And you are  
suggesting that we work together to address this in time, and we  
are certainly willing to do that.

Governor COWPER. Well, we were not planning on throwing the  
ball back in your lap. We were going to try to define those areas,  
with the best information that we have.

Our problem is that about a week or 10 days ago we discovered  
that conflicting methodologies had been used and then sort of  
thrown in the same pot and stirred up and then out come these  
very specific areas out of that pot. Well, it just does not work.

Senator MURKOWSKI. Well, and we are both aware that there is a  
significant influence from some of the extreme environmental  
groups that do not want any activity of any kind to take place in  
the entire Coastal Plain or any portion of the Coastal Plain, and  
they will use any excuse possible or any opportunity that would  
foreclose any opening of ANWR as we propose.

Governor COWPER. Well, I am sure that is correct, Senator, and I  
guess there are also people that do not care what happens to the  
Caribou. But I am constrained to do what I can for both sides.

Senator MURKOWSKI. I think we all are, and I think the Prudhoe  
Bay experience is one that is pretty nice to have behind us, because  
it has proven successful.

these areas and the caribou to  
you.

you put the same—put similar  
that there would be no effect  
that is what, frankly, a lot of  
to not know.

is the case then. It is just that

give a pretty fair track record

Prudhoe Bay, and evidently  
stores, and those caribou have  
development, and it does not

erect, and I think that that is  
these parties that you do not  
at way except for the calving

the information that has  
concerning the activities  
indicates—the information  
has calved to date in Canada;  
for the most part are still in  
ing and migration as well?

the Porcupine herd has calved

information we have this year, to

Excuse me, the question was

Does 40 percent usually

Mr. Chairman. That is a  
type they know everybody is  
(meral laughter.)

ious manner, there are two  
herd did not even bother to

tain, but they think that it  
r, and that may be the case  
re not been up yet this year.  
contrary.

at these figures have gener-  
ment of fish and game and  
ot basing my reputation on  
tion I have.

ted, Governor, I think a ref-  
ope of the Coastal Plain is  
been the reason in the  
ports from the various

I understand as well that very few of the calves this year have  
been born in the general ANWR area, which we are still trying to  
decide where it really is.

From the standpoint of the concentration, the majority of the  
herd is still on the Canadian side of the border, and only a few car-  
ibou have reached what we generally refer to, whether it be your-  
self, Senator Stevens, or the Department of Interior, as the pre-  
ferred calving area.

And I think it would be appropriate for The Chairman, with his  
concurrence, to have for the record whatever figures are accurate,  
ultimately this year would be very helpful.

The last question that I have, and it refers to, I think, the com-  
munication that you and the senior Senator had, and that is the  
question of exploration vis-a-vis production.

And I believe you testified that your concern is the disruption of  
calving during production, not necessarily exploration, because we  
agreed exploration would be done in a time where the caribou were  
not around.

Yet in your proposal you call for a 7 year study on calving  
impact in ANWR, and I guess the concern is, how can we have a 7  
year study in ANWR before production begins? Because you are  
kind of conditioning, okay, this is an area I think we need—

Governor COWPER. Senator, that is not the import of my re-  
marks. We think that production should take place in all of the  
areas of the Coastal Plain except the so-called preferred calving  
areas or core calving areas, or whatever you want to call them.

And in those areas what we wanted to do was to defer, actually  
defer leasing—that was our position—for that period of time, so  
that we could figure out what the effect of development and pro-  
duction would be on the calving area.

Now the rest of the territory there, we have got no problem with.  
And by the way, the indication is, while nobody knows for sure ex-  
actly where we are going to wind up with defining those areas,  
probably a couple hundred thousand acres, which is a pretty low  
percentage of the acreage on the Coastal Plain.

Now with respect to Senator Stevens' previous question, which  
you just brought up, about exploration, I do not have any problem  
with exploratory activities. The problem is that I was trying to be  
real about the oil industry.

I do not think anybody wants just a license to go up and do ex-  
ploratory work. They want a lease. They want to be able to produce  
whatever they find.

And I think that the experience that we had in the national pe-  
troleum reserve, west of Prudhoe Bay, indicates that if you con-  
tract for the exploration of areas, you do not get much. I think you  
have to put some incentives in there, and that is what we were  
thinking about.

Now if it is the will of this Congress to somehow structure a pro-  
gram of exploration up there alone, then I would not see why you  
would have to accept the core calving areas, because they are not  
there when that exploratory activity takes place. They are in  
Canada.

Senator MURKOWSKI. Well, I think you are aware that one of the  
difficulties we are going to have from the standpoint of the testimo-

ny of the state is to get a grasp on what the area specifically consists of, because in your formal testimony I think your reference is quite limited.

You indicate, however, the herd has traditionally favored a particular portion of the 1002 area for bearing its young. This area has been depicted differently in the Department of Interior's draft and the 1002 report.

The state is currently working to reconcile those differences and will advise Congress of its result. Now that, with all due respect, the extent of your identification of the area, which leaves it up to a future agreement.

And I can understand that. If you do not know, you do not know. But we are talking about authorizing exploration and/or development here, and we are going to have to address very soon the question of how much of the area is significant, and indeed how much of the area are we going to consider, and on what basis?

My experience in government is to the effect that it is much better if we have suggestions coming in from the people who are concerned rather than this Committee or the Federal government coming up with a proposed answer that you can live with.

I would much rather have your input, Governor, and that of the people of Alaska as to what they feel is the area, rather than us attempting to do that.

The other area that I want to mention very briefly is the matter which is covered in your statement, but I do not think you addressed, and that is revenue-sharing. There are various proposals that have been initiated from time to time to reduce the state's traditional 90 percent share of revenues from ANWR.

Would you consider it appropriate that the state be permitted to, say, share in the reclamation fund program, as other states do? I think Alaska is the only state that has its own 9/10. The rest of them, it is a 50-50 sharing back out of reclamation.

Governor COWPER. Senator, I would very much like for Alaska to share in that fund. By way of history, I do not want to be too redundant here, because it is in my written testimony.

But by way of the Statehood Act, Alaska was allowed a 90 percent share of revenues which were from areas such as the refuge here, from oil and gas production. The reason was that the rest of the country had a 50-40-10 split.

Fifty percent went to the state, 40 percent went to the reclamation fund, 10 percent went to the Federal government. But Alaska is not eligible to share in the reclamation fund, which of course is a fund that is very beneficial, particularly to the western states.

So in recognizing that Alaska does not share in that fund, we were allowed to take 90 percent, which is higher than any other state. That is correct. On the other hand, we do not get the benefits of the Reclamation Act.

And that kind of made up for it. But we think that that was a compact that was made at statehood, and that we should be allowed to continue under that provision.

(p. 25)

Question from Mr. Tauzin from Louisiana. Governor, let me also thank you for your testimony. In reference to the manner in which Alaska shares in revenues from production on public lands, you make the point in your written statement that other states receive the equivalent of ninety percent because they receive fifty percent directly and another forty percent is invested in the reclamation fund. Would such an arrangement suit you if that were applied to the ANWR distribution of funds?

Governor Cowper. If it were applied to the ANWR, yes, it would be.

Mr. Tauzin: Thank you, sir.

Question from Mr. Thomas from Georgia. Governor, it is good to have you here in Washington. You seem to be opposed to the land exchanges in Alaska and you seem to be in favor of the 90-10 formula and opposed to a 50-50 proposition with fifty percent coming back into the wildlife resources. With all due respect, before I support any bill, the one that I have helped introduce and that I co-sponsored with our Chairman, Mr. Jones, if we go into ANWR I have to see that a substantial portion of the revenue generated is going back into our wildlife resources. We know there is going to be an impact. Anyone who has visited the area and has seen the kind of footprint left with a major oilfield is fully aware we're going to lose some habitat, that we are going to have an impact on wildlife populations. Basically, if you are opposed to the land exchanges and you are opposed to the 50-50 formula, I have to point out to you that you leave no

40

ground for a member, such as myself, in your proposition, who wants to see more resources put back into the refuge system. I would like you to respond to that.

Governor Cowper. Congressman, I am from a state which was admitted to the Union with a stipulation that we receive ninety percent of revenue from resource production on refuge lands. The reason for that has been stated but I will restate it. Most states share 50-40-10. Fifty percent goes to the state, forty percent goes to the reclamation fund, and ten percent goes back into the Federal Government. We are not allowed by law to participate in the reclamation fund. So it was thought to be just that we take the entire ninety percent. I was asked much the same question in some earlier testimony that I gave in Washington last year, and my answer was that fifty percent of something is normally better than ninety percent of nothing. I am required to adhere to my previous position. There may be a legal question involved as a matter of fact. I don't want to give anybody here the impression that the state would oppose a bill which was otherwise satisfactory to us simply because there was a provision that some reduction in the revenue share. I want to say that right here and now, however, you can count on our opposing any such motions as they may come up.

Mr. Thomas. Thank you for explaining your position on that. I would just say to fellow members of the Committee, and I am here as an honorary member, I think this has been one of the important issues we should have considered all along. If you are, as I am, of the opinion that we certainly need to look at the potential for oil development in that area, and that potential is probably very high, at the same time I

think there is an obligation on us, we are going to a very valuable wildlife refuge, to see that resources come back to enable us to expand our holdings in other areas and to enhance areas where we are certainly going to have an impact with oil development in that area. I think this should be a point we should all keep in mind as this legislation moves along.

(p. 33)

Testimony of Representative Cotten from Alaska. On the question of revenue entitlements, I think this was already discussed. Alaska, like other Western states receives the benefits of ninety percent of Federal receipts from oil and gas activity on Federal land. Congress is considering reducing the state's share to fifty percent. Obviously, as an Alaskan, I must object to such treatment. The ninety percent entitlement was agreed to at Statehood and is part of our compact with the Union of States. We want to be treated equitably. All the same, if Congress does chose to adjust the entitlement unilaterally, I support proposals by some Members of Congress to dedicate a portion of the Federal revenue stream to conservation purposes. Our national parks and refuges could be improved by the acquisition of holdings, facility construction, and new access. Another issue that is very important to Alaska is employment. Because our economy is in the doldrums, and because Congress is considering a reduction in the State's revenue allotment, I don't feel bad asking the Committees to consider special treatment for us in one respect, resident hire.

(The Representative goes on to suggest that Congress pass Federal legislation requiring resident hire on gas and oil exploration and development in the Coastal Plain.)

(P. 45)

Question from Mr. Young from Alaska. A question for either of you, preferably the Senator, on the 90-10. You heard the Governor's comment about if we got reclamation monies that that would not be acceptable but would be more acceptable if we didn't get the reclamation monies. You helped write the Constitution. Why didn't we get the reclamation monies, and secondly, why were we getting the 90 instead of the 50 like the rest of the States?

Answer of Senator Coghill. Mr. Chairman, Congressman Young, as I recollect the reason why we were allowed the 90-10 and not the forty percent into the reclamation fund is because they considered us poor folk from up North. And that they considered that we had to have every opportunity possible to make Statehood happen. In fact, they gave us transition money for four years in order for us to get our program established. I think there was no idea in the Water Reclamation Act that there would be reclamation in the Arctic and that we needed to have the revenues. My position on it is very clear. A deal is a deal. The compact between the United States Government, the people of the United States, and the people of the State of Alaska is a compact and that compact has the 90-10 provision in it. I agree with the Governor. If you mess with it, you will be in court.

RM:jap  
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EXHIBIT 40 PAGE 4