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ARCTIC NATIONAL WILDLIFE REFUGE CONTROVERSY: AN OVERVIEW

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by

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CONTENTS

ARCTIC NATIONAL WILDLIFE REFUGE CONTROVERSY: AN OVERVIEW

SUMMARY

Congress may soon decide whether to develop the coastal plain of the Arctic National Wildlife Refuge (ANWR) in Alaska, an area rich in fauna, flora, and oil potential. Current law forbids energy leasing. Development proponents argue that any ANWR oil would help secure our energy future and could be developed safely. Opponents argue that ANWR's balanced ecosystem is more valuable intact and should be legally designated as wilderness, or at least remain as an area in which energy development is forbidden.

Four committees have held hearings on ANWR and nine bills have been introduced in the 100th Congress. The hearings so far have emphasized an April 1987 Department of Interior (DOI) environmental impact statement, environmental effects, and assessments of energy needs. Legislative options include proceeding with development (relevant bills are H.R. 1082, H.R. 3601, and S. 1217) and designating the area as wilderness, thereby halting development (relevant bills are H.R. 39 and S. 1804). Another option is to take no action; this would also prevent onshore development.

Many complex and difficult issues would be involved with a decision to proceed. Though seismic studies and drilling outside the 1002 area strongly suggest (but do not prove) a probability for a significant quantity of oil, whether and how exploratory drilling might proceed (relevant bill H.R. 3601), who would pay the costs, and how the leasing options would be awarded are some of the many questions involved. How would the small Native population (around 200 people) living on the Refuge fare? What environmental protection measures would be appropriate, and how would change of habitat affect plant and animal populations? Assuming development revenues from bonuses, rents, and royalties, how would these monies be divided among the Federal Government, the State of Alaska, and others?

Land exchanges involving DOI and Alaskan Natives have been proposed (relevant bills are H.R. 2629 and S. 1493). Interior Secretary Hodel has agreed not to proceed with these exchanges until Congress authorizes them legislatively, though he insists that he has the authority to do so. This authority and the question of ownership of certain submerged lands beneath navigable waters within and offshore of ANWR (relevant bills are H.R. 2629 and S. 576) are two of the major legal issues being addressed at this time.

ISSUE DEFINITION

The coastal plain of the Arctic National Wildlife Refuge (ANWR) is the most promising U.S. onshore oil and gas prospect. It could contain as much oil as the giant field at Prudhoe Bay, which is on State land west of ANWR. On the other hand, the Refuge is home to a large variety of plants and animals in a nearly undisturbed state. The conflict between oil potential and pristine nature creates a dilemma: Should Congress open the area for oil and gas development or should the area's ecosystem be given permanent protection? What factors should determine whether to open the area? If the area is opened, how can damage be minimized? To what extent should Congress involve itself in the management of the area (if it is developed) and to what extent should Federal agencies be left on their own?

BACKGROUND AND ANALYSIS

History and Recent Congressional Actions

Much of what is now the Arctic National Wildlife Refuge was set aside in December 1960 by Public Land Order 2214. The Alaska National Interest Lands Conservation Act (ANILCA, P.L.96-487) of 1980 prohibited oil and gas development in the 1.5-million-acre coastal plain of the 19-million-acre Arctic National Wildlife Refuge (ANWR) until authorized by Congress. Under Section 1002 of ANILCA, Congress required the Department of the Interior (DOI) to report on the plant and animal resources and the oil and gas potential of the this part of ANWR, now generally called the "1002 area." This report to Congress, the Final Legislative Environmental Impact Statement (FLEIS), was submitted in April 1987. DOI recommended that the area be fully leased. (For a history of the FLEIS, see CRS Issue Brief 87026 (archived).)

Four Committees have held extensive hearings on ANWR development: House Merchant Marine and Fisheries, House Interior and Insular Affairs, Senate Energy and Natural Resources, and Senate Environment and Public Works. The hearings have so far emphasized the DOI FLEIS, the environmental effects of oil development in ANWR or at Prudhoe Bay, and assessments of the need for additional sources of oil.

Several bills relating to ANWR have been introduced. Two bills (H.R. 39, S. 1804) would designate the 1002 area as wilderness, thereby precluding oil and gas development and maintaining the area's largely untouched state. Two bills (H.R. 1082, S. 1217) would authorize the Interior Secretary to lease the coastal plain area expeditiously, and two others (H.R. 2629, S. 1493) would address a proposed land trade; H.R. 2629 (as amended) would also address the ownership of submerged lands in ANWR as would S. 576. H.R. 3601 would, among other things, establish an exploratory drilling program, allow the President to initiate a leasing program, and set up a program for the disposition of revenues from the leasing program. Finally, S. 735 would provide that income from oil and gas leasing programs in the National Wildlife Refuge System would be paid according to a formula to the State of origin, the Treasury, and the Land and Water Conservation Fund.

The Legislative Choices

Congress has three basic choices for ANWR legislation. One option is designating the area as wilderness, thereby preventing energy development. This choice, like the failure to find oil, would likely encourage alternative energy supplies and strategies. Supporters of this option argue that the entire, balanced ecosystem is most valuable in the aggregate and worth preserving intact. (Relevant bills are H.R. 39 and S. 1804.)

A second option is passing legislation permitting energy leasing in the 1002 area. Supporters of oil development argue that ANWR oil is the best onshore prospect remaining in the United States, and that its development is necessary for long-term national security and for improving the balance of trade. They also argue that effects on animals, especially caribou, will not be serious, although they concede that wilderness values will be lost. If this option is chosen, Congress could also decide at what pace and under what conditions any oil would be developed, and whether to adopt a preliminary exploration program. (Relevant bills are H.R. 1082, H.R. 3601, and S. 1217.)

The third option is taking no action, thereby preventing onshore energy development at this time. Those supporting delay often argue that not enough is known about either the probability of discoveries or about the environmental impact if development is permitted. Others argue that oil deposits should be saved for an unspecified "right time." Finally, some parties favoring preservation advocate awaiting a new Administration that might be more favorable to their view.

One difficult question is whether the petroleum is needed at a possible expense of other values in ANWR. If ANWR oil is found, it would not contribute to national security or the trade balance until 15 years from now -- when any oil would first appear in quantity. But 15 years is enough time to pursue other energy alternatives. Moreover, the oil estimate from even a large field is equivalent to one year or less of current national consumption. Proponents of development contend that because the TransAlaskan Pipeline now delivers one-fifth of U.S. oil production and because the 1002 area is the best -- and maybe the only -- prospect for keeping the pipeline flowing after 2000, ANWR must be developed. Proponents generally encourage pursuing energy alternatives under any circumstances, believing that other options cannot be prudently ignored. For some cases, the debate will be whether Congress should decide some of these issues in legislation, or leave them to the Executive agencies.

Geological Variables And Development Options

The fundamental conflict of energy development versus wilderness protection is exacerbated by uncertainty over how much oil is present in the 1002 area. This uncertainty has caused some Members of Congress to consider proposals to clarify how much petroleum is at stake in ANWR.

Hidden Petroleum Probabilities

Few have challenged the DOI interpretation of the 1002 area geological data. Seismic studies and drilling outside the 1002 area strongly suggest (but do not prove) a relatively high probability for a significant quantity of oil to be present and recoverable. Thus, some of the debate tends to be on the significance of these data from the FLEIS to Congress.

If the low range of DOI's estimate (one field of less than one billion barrels) is correct, then 30 years of production could begin in about 10 years. More likely are several fields of varying sizes producing sequentially over 50 years or more. Any associated natural gas would not be immediately economic, but its later production could extend beyond 50 years.

Exploration Options

Conventional Federal leases permit exploration and, after discovery, extend automatically until production ceases entirely. However, to reduce uncertainty, it has been suggested that Congress permit industry to begin exploration but not proceed automatically to development. Two options are possible.

One option is for DOI to offer leases and allow leaseholders to do further site-specific evaluations and to drill exploratory wells in winter. Any information or discoveries could then be evaluated and used to determine whether to proceed to full development or to terminate the activity. This approach appeals to those seeking more hard information. But it is opposed by industry and some Members because company expenditure of time and money might lead to naught even if producible oil is discovered.

A second option (proposed in H.R. 3601) is to conduct a specific "informational" drilling program whose purpose would be to expand knowledge of the prospects in the region, rather than primarily to find oil. Informational drilling could be conducted by government at its own expense, or under some kind of incentive program for industry participants. Even if oil were found, it would not likely confirm producibility with so few wells.

If Congress authorizes any type of exploratory drilling program, it will need to address at least the following issues:

1. If exploration is part of a conditional leasing process, how can industry be persuaded to participate, in view of a risk that a discovery might not lead to development rights?
2. Under any exploration option, how should the resulting information be disseminated?
3. If a purely informational drilling program actually encounters oil, how will the discovery affect subsequent leasing?

Leasing Options

DOI and industry prefer for ANWR leasing to follow the customary procedures. In the 1002 area, DOI accordingly wants the discretion to offer for sale any or all of the area. Industry could bid on all or part, and DOI could accept all to none of the bids. However, many of the prime prospects could go in one sale in a relatively small area.

Different Federal leasing programs have different customary tract sizes -- typically providing larger tracts in difficult or frontier areas such as the Outer Continental Shelf. Similarly, longer leases are frequently employed under special circumstances such as unique environmental protection requirements.

Congress may wish to consider several of these issues in any ANWR legislation:

1. Should some limit be set on the size of DOI's initial lease offerings in the 1002 area, to reduce the chance of selling all of the best prospects in the first sale?
2. Should tract size be limited in order to spur competition and higher revenues, encourage development coordination, facilitate wildlife protection, and improve coordination of rehabilitation after industry activity ends?
3. Should a particular leasing period be mandated for the area, and if so, how long should the period be?

Environmental Quality Management

If ANWR is developed, Congress would face three kinds of environmental quality management issues: resource management, pollution, and waste disposal. Congress could choose to leave these matters to administrative agencies under authorities of existing laws, a preference of many in the oil industry. But many others believe Congress should impose a higher standard of environmental protection because the area is in a wildlife refuge or because of the fragility of the Arctic environment.

Gravel and water resources are essential for oil exploration and development. Potential legislative issues include protection of water resources necessary for animals, especially fish; regulation of water use and gravel extraction; and setting fees for and allocating any revenues from exploiting these resources. Air and water pollution primarily raise questions of subtle, long-term ecological effects. Potential legislative issues include the adequacy of existing standards, research needs, and assurance that the standards are met. Waste disposal includes three major waste streams: drilling fluids, toxic wastes, and nontoxic bulk wastes. Legislative issues include the adequacy of current waste disposal requirements, the development of alternatives to landfills, and also liability concerns that can make consolidation of disposal facilities unattractive to oil companies.

General Land Management

The main Federal law governing leasing and production of petroleum on Federal land is the 1920 Mineral Leasing Act. It remains to be seen whether Congress will see this law and its resulting regulations and procedures, other Federal environmental laws, and relevant Alaskan law as adequate for 1002 development. If Congress decides that the 1002 area should operate under a unique legal status, Congress will have to determine what elements of the process from exploration to reclamation should deviate from standard practices.

The 1002 area has a small human population whose needs may be addressed specifically in ANWR legislation. The village of Kaktovik (about 200 people) and the lands of the Kaktovik Inupiat Corporation (KIC) lie along the coast. There is also a U.S. military Distant Early Warning (DEW) station near Kaktovik, with dozens of employees. The DEW network also has several unoccupied sites of former or uncompleted developments scattered in the 1002 area. Together with Kaktovik, the DEW site operates a garbage dump and a runway.

Animals and Plants: the Purpose of a Refuge

Under ANILCA, one of the purposes of ANWR is to "conserve fish and wildlife populations and habitats in their natural diversity." Opponents of development argue that the entire, balanced complex of caribou, polar and grizzly bears, wolves, falcons, wildflowers, and so on, is worth preserving intact. Resource development, in their view, would prevent such conservation, if not of entire species, then of the ecosystem's diversity. Sport hunters stress the importance of the habitats for migratory game birds taken in both Canada and the United States. Issues before Congress in this area include:

1. Should the entire area be designated wilderness to protect "populations and habitats in their natural diversity"? (See H.R. 39 and S. 1804.)
2. Should special protection be given to certain species such as caribou, bears, wolves, musk oxen, snow geese, etc.? If so, should protection take the form of habitat protection and/or management restrictions? (See Section 202(b) of H.R. 3601)
3. Should some species (e.g., wolves) be reduced to enhance populations of other species (e.g., caribou, musk oxen) that may be reduced by development? Or should special measures be taken to prevent reduction of predators?
4. Should the location of major support facilities (e.g., service centers and ports) be restricted to reduce the impact on sensitive species (e.g., polar bears, snow geese)?

Port and Offshore Activity

While Section 1003 of ANILCA prohibits energy production in ANWR until authorized by Congress, it does not cover the role the 1002 area might play as a land base for State or Federal offshore activity. Both the United States and Alaska are proceeding with offshore leasing adjacent to the 1002 area. Even if Congress does not act to open ANWR (thus preventing development), it may wish to consider controlling the use of the 1002 area as a support center, port, or pipeline corridor for offshore development.

Management of Support Services: Avoiding Past Mistakes

Activities of the independent support service industries in the Prudhoe Bay area, particularly at Deadhorse, have been widely criticized. (These firms are generally employed by, rather than part of, major oil companies.) At Deadhorse, the State leases land to small businesses that provide support services to the oil industry. Services include repair, cleaning, laundry, aircraft supply, etc. Issues include:

1. Should Congress specify the location of support facilities or require them to be located outside the Refuge?
2. Should Congress set financial standards or require bonds for participation in ANWR services to minimize abandoned service sites?
3. Should Congress require a unified service center such as the one at Kuparuk field (west of Prudhoe Bay) for ANWR?
4. Should Congress mandate that garbage be hauled out of ANWR?

To date, no bills supporting development directly address these questions.

Access: Roads and Legal Conflicts

For Congress, a key access issue is the logistical conflict between the area's management as an industrial site versus management as a refuge devoted not only to wildlife conservation but also to recreation (including sport fishing and hunting), subsistence uses, among other functions. This conflict would become more intense with the increasing human populations and road networks from development. In contrast to the free but difficult access at ANWR, access to the State-owned Prudhoe Bay complex is strictly (if not always effectively) controlled. Visitors' and workers' belongings are searched for firearms, alcohol, and drugs. None of these requirements now applies to the 1002 area. Moreover, hunting, even for subsistence, is forbidden at Prudhoe and limited in other developed areas. Similar restrictions are not found in the 1002 area, and may conflict with the purposes of the Refuge. Specific access issues which Congress may address include:

1. Should firearms be prohibited in the 1002 area for workers? For recreational visitors?
2. If firearms are allowed, should no-shooting buffer zones be required around facilities and structures? If so, how much of the area would remain open to subsistence and recreational hunting?
3. Should developed areas be closed to recreational visitors? If not, should such visitors be allowed to use industry roads? To cross them?

4. Will the increased accessibility of the area lead to excessive hunting pressure? Should public access to the area be restricted?
5. What additional personnel would be needed to enforce these prohibitions?

Subsistence Use

Natives of Kaktovik, on the north coast of the 1002 area, are the major users of the resources of the coastal plain, although they depend primarily on marine resources. Subsistence hunters in the United States and Canada also take caribou from the Porcupine Herd. Kaktovik Natives oppose both leasing in the primary caribou calving area and a restriction on discharging firearms. Congress may wish to consider the following issues regarding subsistence use:

1. Should the current rights of Native users be restricted as to either access or hunting? Should sport hunting be restricted to maintain subsistence opportunities if game populations diminish?
2. Are polar bears, which are currently legally taken only by Natives, at special risk from a potentially increasing Native population and improved Native mobility? If so, does the legally unrestricted Native take need new examination by Congress in the 1002 area?
3. What voice will subsistence users have in new regulations as 1002 development (if any) evolves?
4. What provision, if any, should be made to minimize impacts of development on Native culture?

Areas of Special Environmental Significance

The wildlife debate has focused mainly on the migratory Porcupine Caribou Herd (PCH). However, other species, such as polar and grizzly bears and wolves, may be at greater risk, in the view of some. Congress may consider special protection of the most important habitats (e.g., wilderness designation, delayed exploration, or a special regulatory regime). At this time, the areas most often mentioned for some special status include:

1. the major calving area of the PCH;
2. the area around Sadlerochit Spring (a warm spring which flows all winter);
3. the areas nearest the coast where substantial bird populations occur, and where many female polar bears make their dens; and
4. the area south and west of Angun Point which includes a portion of the snow geese's fall feeding area.

Of those bills supporting at least some development, only H.R. 3601 would explicitly provide for special treatment of certain areas. The two wilderness bills (H.R. 39, S. 1804) obviously would provide complete protection.

Revenue Allocation

If oil is present, ANWR development revenues from bonuses, rents, and royalties, as well as sales of gravel and water, could generate billions of dollars for the landowners. Peak annual royalties alone might reach from $200 million to $2.5 billion, followed by declining revenues for 30-50 years. If DOI's proposed land trade with Native corporations proceeds, these corporations (as owners of ANWR subsurface rights) would receive significant revenues from the development of their lands. (See Land Exchange, below.) If Alaska owns as much of the submerged lands as it claims, it could receive directly a substantial fraction of the revenues. (See Submerged Lands, below.) Whatever the Federal fraction of the income, Congress must decide:

1. Should Alaska continue to receive 90% of certain revenues from Federal leases on federally owned lands; and considering the terms of the Alaska Statehood Act, could Congress change Alaska's share?
2. Should any Federal revenues from ANWR be used for land acquisition in Alaska or elsewhere as part of the mitigation for reduced habitat values in a developed 1002 area? If so, how should the revenues be allocated?

Two bills, S. 735 and H.R. 3601, address the allocation of revenues from ANWR. Among other things, they would allocate certain fractions of the revenue to various conservation programs.

Legal Issues

Certain issues are being addressed not only in legislation, but also in various courts.

Land Exchange ("Megatrade")

DOI has preliminarily negotiated land exchanges with some Alaskan Native groups, trading oil and gas rights in the 1002 area for land or surface rights belonging to the Natives within seven other refuges in Alaska. (The proposal has become known as "the Megatrade.") The Secretary appears to be relying on Section 1302 of the ANILCA (16 U.S.C. 3101, 3192) for authority. This section authorizes the exchange even of lands within conservation areas for purposes of the act, if certain requirements are met. Critics deny that Section 1302 authorizes these exchanges. Interior Secretary Hodel has agreed not to proceed with the exchanges until Congress authorizes them legislatively, although he insists that he has the authority to do so.

In addition to considering the legality of the proposed exchange, Congress may wish to consider other questions.

1. Is this trade in the economic interest of the United States and the State of Alaska? Or is it otherwise in the public interest?

2. How might the trade add to or detract from an orderly lease management scheme in the 1002 area?
3. What additional rights would the Federal Government obtain on the acquired lands that it does not already possess?
4. How well did DOI insure that the trade was in fact an equal value trade?
5. In light of the legal restrictions and possible title problems on some of the lands in the seven Refuges, was the DOI appraisal of their value accurate?

H.R. 2629 and S. 1493 would forbid these trades unless specifically authorized by law.

Submerged Lands Beneath Navigable Waters

The United States and Alaska dispute the ownership of submerged lands beneath navigable waters within and offshore of ANWR. Depending on how the legal issues are decided, Alaska may own significant inholdings within ANWR. If these inholdings are opened to leasing, not only would management of the remaining Refuge lands be complicated, but substantial revenues from any oil on those inholdings would accrue to Alaska, rather than the United States. H.R. 2629, which has passed the House, and S. 576 would address these issues.

A case currently before the Supreme Court, United States v. Alaska, involves whether certain lands immediately offshore ANWR are owned by the Federal Government and are included in the Refuge. The case does not address other issues.

A second case -- Alaska v. United States -- recently filed in the Federal District Court for Alaska, challenges the current practices of the Bureau of Land Management (BLM) in Alaska for the surveying of lands and bodies of water. The State asserts that these practices wrongfully deprive Alaska of additional submerged lands it owns. These BLM practices are set out in the Manual of Surveying, and in apparent contradiction with the lawsuit, Alaska has been simultaneously urging that Congress ratify these practices legislatively as the most fair approach. (See H.R. 2629 and S. 576.)

A pivotal factor in these suits will be the test used for determining navigability for purposes of deciding title questions. The Federal District Court for Alaska, in another recent decision also captioned Alaska v. United States, devised a generous test of navigability for title purposes. The case currently is on appeal by Ahtna, Inc., a Native regional corporation which, with the United States, was a defendant.

If a generous test of navigability for title purposes prevails, and any pre-statehood actions of the Federal Government in withdrawing the lands later comprising ANWR are held to be insufficient to have reserved title to the United States, Alaska may well own significant inholdings within the coastal plain. If so, Congress will face additional legal issues involved in regulating or precluding State mineral development:

1. Can Congress preclude Alaska's development of its inholdings without owing compensation under the Fifth Amendment?
2. How should Congress regulate any Alaskan inholdings?
3. Can and should Congress approve through legislation the current surveying practices of BLM?

(For further information, see CRS Report 87-673 A, Legal Issues Related to the Ownership of the Submerged Lands within and off the Coast of the Arctic National Wildlife Refuge.)

Long-Term Issues

If no commercial quantity of oil is found in the 1002 area, substantial recovery from exploratory activities should take only a few years. If major quantities are found, development including natural gas extraction would probably last for decades or even a century. Substantial recovery might then take further centuries in the harsh Arctic environment. Thus, Congress may be debating rehabilitation that might not begin until 2060 or 2090. Few existing laws contemplate such long-term planning for a cleanup whose cause may not ever occur. Congress may consider various proposals on the long-term fate of the area:

1. Should industry pay a tax or fee to create a trust fund for long-term clean up, as opposed to one for such short-term problems as oil spills and hazardous waste spills?
2. Alternatively, should industry be required to pay for performance bonds to ensure clean up? How would such a long-term bond work?
3. What ultimate rehabilitation goal(s) should apply? Should the area be returned insofar as possible to the pristine pre-development state after oil is extracted? After gas extraction? After offshore energy extraction?
4. What additional information is needed to plan for so distant an event?

LEGISLATION

H.R. 39 (Udall)
Designates the Arctic Coastal Plain (1002 area) as wilderness. Introduced Jan. 6, 1987; referred to Committee on Interior and Insular Affairs.

H.R. 1082 (D. Young)
Authorizes the Secretary of the Interior to lease lands in the Coastal Plain of ANWR for oil and gas exploration, development, and production. Introduced Feb. 11, 1987; referred to Committees on Interior and Insular Affairs, and on Merchant Marine and Fisheries.

H.R. 2629 (D. Young)
Amends ANILCA to clarify the conveyance and ownership of submerged lands and to forbid the transfer of subsurface rights in ANWR without congressional approval. Introduced June 8, 1987; referred to Committees on Interior and Insular Affairs, and on Merchant Marine and Fisheries. Reported Aug. 3, 1987 (H.Rept. 100-262, Part I). Passed House, amended, Aug. 3, 1987.

H.R. 3601 (W. Jones)
Relating to the enhancement of the Nation's fish and wildlife resources, the National Wildlife Refuge System, and for other purposes. Introduced Nov. 3, 1987; referred to Committees on Merchant Marine and Fisheries, and on Interior and Insular Affairs.

S. 576 (Murkowski)
Amends ANILCA to clarify the conveyance and ownership of submerged lands. Introduced Feb. 23, 1987; referred to Committee on Energy and Natural Resources.

S. 735 (Bentsen)
Amends the Land and Water Conservation Fund Act to distribute revenue from oil and gas resources in units of the National Wildlife Refuge System; directs the Secretary of the Treasury to distribute such monies according to a formula, if the Congress fails to act. Introduced Mar. 12, 1987; referred to the Committee on Energy and Natural Resources.

S. 1217 (Murkowski)
Authorizes the Secretary of the Interior to lease public lands in the 1002 area for oil and gas exploration, development and production. Also authorizes the Secretary of State to begin talks with Canadian Government on the transportation of energy resources in the Arctic region. Introduced May 15, 1987; referred to Committee on Energy and Natural Resources.

S. 1493 (Bradley)
Requires approval by law of any land exchange in ANWR. Introduced July 14, 1987; referred to Committee on Energy and Natural Resources.

S. 1804 (Roth)
Amends the National Wildlife Refuge Administration Act to designate the Section 1002 area as wilderness. Introduced Oct. 21, 1987; referred to Committee on Environment and Public Works.

FOR ADDITIONAL READING

U.S. Library of Congress. Congressional Research Service. Arctic National Wildlife Refuge: Oil, gas, and wildlife, by M. Lynne Corn and John Schanz. [Washington] Oct. 23, 1987.
CRS Issue Brief 87026 (archived)

------ Legal issues related to the ownership of the submerged lands within and off the coast of the Arctic National Wildlife Refuge, by Pamela Baldwin. [Washington] 1987. 36 p.
CRS Report 87-673 A

----- The proposed St. Matthew Island land exchange: Authority of Secretary of the Interior to exchange lands under the Alaska National Interest Lands Conservation Act, by Pamela Baldwin. [Washington] June 21, 1982. 39 p.

----- Whether Congress unilaterally may amend a mineral lease revenue distribution formula that appeared in the Alaska Statehood Act, by Thomas J. Nicola. [Washington] 1987. 12 p.
CRS Report 87-63 A

----- World oil and the ANWR potential, by Robert L. Bamberger and Carl E. Behrens. [Washington] 1987. 14 p.
CRS Report 87-438 ENR

U.S. Department of the Interior. Fish and Wildlife Service, Geological Survey, and Bureau of Land Management. Arctic National Wildlife Refuge, Alaska, coastal plain resource assessment. Report and recommendation to the Congress of the United States and Final Legislative Environmental Impact Statement. Washington, 1987. 208 p.

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Pretty heavy reading... but thought you might want to scan pages 4-10 summarizes their oil company deals. Also of interest (?) is Uwe Gross's salary on pg 44

[illegible signature]

Koniag, Inc.

4300 "B" Street, Suite 407
Anchorage, Alaska 99503

PROXY STATEMENT

For Annual Meeting
To Be Held On December 5, 1987

October 8, 1987

PRINCIPAL DEFINED TERMS USED IN THIS PROXY STATEMENT

ANCSA: Alaska Native Claims Settlement Act.

ANILCA: Alaska National Interest Lands Conservation Act.

ANWR: Artic National Wildlife Refuge.

AQUA/TERRA: Aqua/Terra Consulting, Ltd. of Great Falls, Virginia.

CHEVRON: Chevron U.S.A., Inc.

CHEVRON GROUP: Chevron, Standard Alaska Petroleum Company and BP Alaska Exploration, Inc.

DIRKSEN: Dirksen Appraisal Company of Anchorage, Alaska.

DIRKSEN REPORT: Dirksen's August 1, 1987 report reviewing the FWS Appraisal.

DOI: United States Department of Interior.

EXCHANGE: Koniag's proposed exchange of Koniag Exchange Lands for Oil and Gas EDP Interests under the Exchange Agreement.

EXCHANGE AGREEMENT: The agreement providing for the Exchange.

EXCHANGE LAND VALUE: Negotiated amount of $77,442,711 attributed to the Koniag Exchange Lands.

FWS: United States Fish and Wildlife Service.

FWS APPRAISAL: The November 27, 1985 appraisal by FWS of all lands owned by Koniag within KNWR (including lands not part of the Koniag Exchange Lands).

IMPLEMENTING REGULATIONS: Regulations promulgated pursuant to the Opening Legislation to regulate petroleum exploration, development, and production in the Coastal Plain of ANWR.

KARLUK LANDS: The surface estate of approximately 34,186 acres that Koniag is seeking authority to convey to the Karluk IRA Council.

KNC: Karluk Native Corporation.

KNWR: Kodiak National Wildlife Refuge.

KONIAG: Koniag, Inc.

KONIAG ANWR LANDS: The tracts in ANWR selected by Koniag to which the Oil and Gas EDP Interests pertain.

KONIAG ANWR LEASES: The leases which Koniag would issue to the Chevron Group and Phillips concerning the Oil and Gas EDP Interests.

KONIAG EXCHANGE LANDS: The surface estate of 112,564 acres in KNWR that Koniag would convey to the United States Government under the Exchange Agreement.

LAA: The Lease Acquisition Agreement dated December 17, 1985 between Koniag and the Chevron Group.

LARSEN BAY LANDS: The surface estate of approximately 17,676 acres that Koniag is seeking authority to convey to the Traditional Tribal Council for Larsen Bay.

LEASE AGREEMENTS: The Lease Acquisition Agreement and the Phillips Agreement collectively.

LEIS: The Legislative Environmental Impact Study which DOI intends to perform relating to the Exchange.

MERGER: The 1980 merger of KNC and NNPI with Koniag.

NNPI: Nu-Nachk Pit, Inc.

OIL AND GAS EDP INTERESTS: Oil and gas exploration, development, and production rights held by the United States Government in certain lands in ANWR.

PHILLIPS: Phillips Petroleum Company.

PHILLIPS AGREEMENT: The Agreement dated July 1, 1987 between Koniag and Phillips Petroleum Company

REDUCTION: The agreed reduction of the Chevron Group's future leasehold rights in the Oil and Gas EDP Interests to an undivided 51%.

KONIAG, INC.

NOTICE OF ANNUAL MEETING OF SHAREHOLDERS
To Be Held on December 5, 1987

The Annual Meeting of the Shareholders of Koniag, Inc. ("Koniag") will be held at 10:00 a.m. on Saturday, December 5, 1987, at Banquet Room, Kodiak Buskin River Inn, Kodiak, Alaska, for the following purposes:

1. The adoption of certain propositions:

   a. **Proposition I:** To authorize Koniag to exchange its interest in the surface estate of approximately 112,564 acres of land within the Kodiak National Wildlife Refuge for certain oil and gas exploration, development and production rights held by the United States Government in certain lands in the Arctic National Wildlife Refuge. Some or all of these rights in turn would be leased to Chevron U.S.A., Inc., Standard Alaska Production Company, and BP Alaska Exploration, Inc. and to Phillips Petroleum Company, in return for minimum cash payments to Koniag totalling approximately $58,300,000 and certain contingent payments, including Koniag's right to receive royalties from the production of any oil and gas from those lands. Agreements that have already been signed with these oil companies would be ratified.

      Additionally, the Board of Directors would be granted the absolute discretion to amend the agreements with the oil companies and the United States Government except that any material changes to the interests granted to Koniag under the exchange agreement with the United States Government would be subject to certain conditions.

   b. **Proposition II:** To authorize Koniag to transfer to the tribal organizations for Karluk and Larsen Bay or to entities designated by them, upon the fulfillment of certain conditions (including the enactment of special legislation), certain lands currently owned by Koniag that are adjacent to these villages.

   c. **Proposition III:** To authorize, by means of an advisory vote, Koniag to expend funds to investigate, develop and seek Congressional authorization for a proposal to create a shareholder distribution permanent fund, which would be funded with a portion of any revenues which may be generated by interests acquired by Koniag in the Arctic National Wildlife Refuge.

2. To elect three (3) directors to serve a term of three (3) years.
3. The transaction of such other business as may properly come before the meeting.

The Board of Directors has fixed the close of business on October 7, 1987, as the Record Date. Shareholders of record on the books of Koniag on that date will be entitled to vote at the meeting and any adjournment thereof.

IMPORTANT: THE ENCLOSED PROXY PERMITS YOU TO VOTE WITHOUT ATTENDING THE MEETING. WE URGE YOU TO COMPLETE, DATE AND SIGN THE PROXY AND RETURN IT IN THE ENCLOSED, STAMPED ENVELOPE AS SOON AS POSSIBLE.

IF YOU MAIL IN THE PROXY, YOU CAN STILL REVOKE IT AT ANY TIME BEFORE OR AT THE MEETING AND VOTE IN PERSON AT THE MEETING AS LONG AS YOU FOLLOW THE INSTRUCTIONS FOR REVOCATION CONTAINED IN THE ACCOMPANYING PROXY STATEMENT.

ALL PROXIES MUST BE RECEIVED AT THE ANCHORAGE, ALASKA OFFICE OF JAMES PRESTON, C.P.A., ON OR BEFORE 5:00 P.M., DECEMBER 2, 1987, IN ORDER TO ASSURE THEIR BEING VOTED.

ANY PROXIES RECEIVED AFTER THAT TIME WILL NOT BE VOTED AT THE MEETING.

DATED this 8th day of October, at Anchorage, Alaska.

KONIAG, INC.

Michael Pagano

Michael Pagano
Secretary/Treasurer

TABLE OF CONTENTS

Page

Page

MAPS

EXHIBITS

KONIAG, INC.

4300 "B" Street, Suite 407
Anchorage, Alaska 99503

PROXY STATEMENT

This Proxy Statement and accompanying Form of Proxy are being furnished by the Board of Directors of Koniag, Inc. ("Koniag") in connection with the Board of Director's solicitation of proxies for use at the Annual Meeting of Shareholders of Koniag to be held on Saturday, December 5, 1987, at 10:00 a.m. at the Banquet Room of the Kodiak Buskin River Inn, Kodiak, Alaska, and at any adjournment or adjournments thereof. At this meeting, or any adjournment or adjournments thereof, the shareholders of Koniag will vote on the following:

1. **PROPOSITION I.** To authorize Koniag to exchange its interest in the surface estate of approximately 112,564 acres of land within the Kodiak National Wildlife Refuge for certain oil and gas exploration, development and production rights held by the United States Government in certain lands in the Arctic National Wildlife Refuge. Some or all of these rights in turn would be leased to Chevron U.S.A., Inc., Standard Alaska Production Company, and BP Alaska Exploration, Inc. and to Phillips Petroleum Company in return for minimum cash payments to Koniag totalling approximately $58,300,000 and certain contingent payments, including Koniag's right to receive royalties from the production of any oil or gas from those lands. Agreements that have already been signed with these oil companies would be ratified. Additionally, the Board of Directors would be granted the absolute discretion to amend the agreements with the oil companies and the United States Government except that any material changes to the interests granted to Koniag under the exchange agreement with the United States Government would be subject to certain conditions.
2. **PROPOSITION II.** To authorize Koniag to transfer to the tribal organizations for Karluk and Larsen Bay or to entities designated by them, upon the fulfillment of certain conditions (including the enactment of special legislation), certain lands currently owned by Koniag that are adjacent to these villages.
3. **PROPOSITION III.** To authorize, by means of an advisory vote, Koniag to expend funds to investigate, develop and seek Congressional authorization for a proposal to create a shareholder distribution permanent fund, which would be funded with a portion of any revenues which may be generated by interests acquired by Koniag in the Arctic National Wildlife Refuge.
4. To elect three (3) directors to serve a term of three (3) years.
5. To transact such other business as may properly come before the meeting.

BECAUSE THE PROPOSED EXCHANGE WITH THE UNITED STATES GOVERNMENT AND THE LEASE AGREEMENTS WITH THE OIL COMPANIES, AND THE CONVEYANCES TO THE TRIBAL ORGANIZATIONS OF KARLUK AND LARSEN BAY WILL NOT PROCEED UNLESS HOLDERS OF TWO—THIRDS OF THE VOTING SHARES OF KONIAG VOTE IN FAVOR, A FAILURE TO VOTE ON THESE MATTERS (EITHER IN PERSON OR BY PROXY) HAS THE SAME EFFECT AS A VOTE AGAINST THE RELEVANT TRANSACTIONS. FOR INFORMATION CONCERNING THE VOTE REQUIRED FOR THE OTHER ITEMS ON THE MEETING AGENDA, SEE BELOW.

Only those shareholders of record on the books of Koniag at the close of business on October 7, 1987, will be entitled to vote at the meeting.

If the accompanying form of proxy is properly executed and returned, the shares represented thereby will be voted by the persons named as proxy holders or their designees, in the manner specified by you on the proxy. In the absence of instructions to the contrary, the shares will be voted in the following manner:

1. *On Proposition I—to authorize Koniag to exchange its interest in the surface estate of approximately 112,564 acres of land within the Kodiak National Wildlife Refuge for certain oil and gas exploration, development and production rights held by the United States Government in certain lands in the Arctic National Wildlife Refuge and to ratify agreements providing for the leasing of some or all of those rights to Chevron U.S.A., Inc., Standard Alaska Production Company, and BP Alaska Exploration, Inc. and to Phillips Petroleum Company:* the shares will be voted in **favor** of granting the authorization and ratifying the agreements.
2. *On Proposition II—to authorize Koniag to transfer to the tribal organizations for Karluk and Larsen Bay or their designees, upon the fulfillment of certain conditions (including the enactment of special legislation), certain lands currently owned by Koniag that are adjacent to these villages:* the shares will be voted in **favor** of the authorization.
3. *On Proposition III—an advisory vote to authorize Koniag to investigate, develop and seek Congressional approval of a proposal to create a shareholder distribution permanent fund which would be funded with a portion of any revenues which may be generated by the interests acquired by Koniag in the Arctic National Wildlife Refuge:* the shares will be voted in **favor** of the development of a proposal for such fund.
4. *For election to the Board of Directors:* The shares will be voted cumulatively for the nominees listed in the proxy statement and named in the form of the proxy: William F. Hartman, Evelyn Mullan, and Michael Pagano, in the manner determined by the proxy holder to elect as many of such nominees as possible.
5. On any other matters which may be properly brought before the meeting: the shares will be voted in the proxy holder's discretion.

Copies of this Proxy Statement and forms of proxies are being mailed to the shareholders of Koniag on or about October 8, 1987.

Proxies must be signed, dated and delivered to Jim Preston, C.P.A., 130 West International Airport Road, Suite 103, Anchorage, Alaska 99518 no later than 5:00 p.m. on December 2, 1987.

PLEASE SIGN, DATE AND MAIL THE ENCLOSED PROXY AS PROMPTLY AS POSSIBLE WHETHER OR NOT YOU PLAN TO ATTEND THE MEETING IN PERSON.

REVOKING PROXIES

Any shareholder who signs a proxy may revoke the proxy by taking either of the following actions:

1. Signing either (i) another proxy or (ii) a written notice revoking the proxy, dated as of a later date than the proxy to be revoked, and delivering by mail or otherwise such later dated proxy or notice revoking the proxy to the following address so that it is *received* on or before 5:00 p.m. on December 2, 1987:

   James Preston, C.P.A.
   130 West International Airport Road
   Suite 103
   Anchorage, Alaska 99518

2. Appearing at the meeting in person and casting a ballot.

VOTING

As of the Record Date for the Annual Meeting, there are 225,100 Class A and 148,000 Class B shares of Common Stock outstanding. A combined total of 365,275 Class A and Class B shares are entitled to vote at the Annual Meeting. Pursuant to Section 7(h) of the Alaska Native Claims Settlement Act, the remaining shares, which are not held by Alaska Natives, are not entitled to be voted. On each issue to be voted upon, except the election of directors, shareholders are entitled to one vote for each share of common stock. In the election of directors the shareholders have the right to cumulate their votes. For a more complete explanation of cumulative voting, see "Election of Directors—Cumulative Voting."

The following schedule indicates the vote required to adopt each of the items on the Agenda:

ISSUE	VOTE
1. Proposition I Land Exchange/Lease Agreements	2/3 of all outstanding voting shares
2. Proposition II Karluk and Larsen Bay Conveyances	2/3 of all outstanding voting shares
3. Proposition III Shareholder Distribution Permanent Fund Advisory Vote	a majority of those shares voting on the Proposition
4. Election of Directors	the three candidates receiving the three highest number of votes provided their combined votes equal a majority of the votes cast

SUMMARY OF PROPOSITIONS

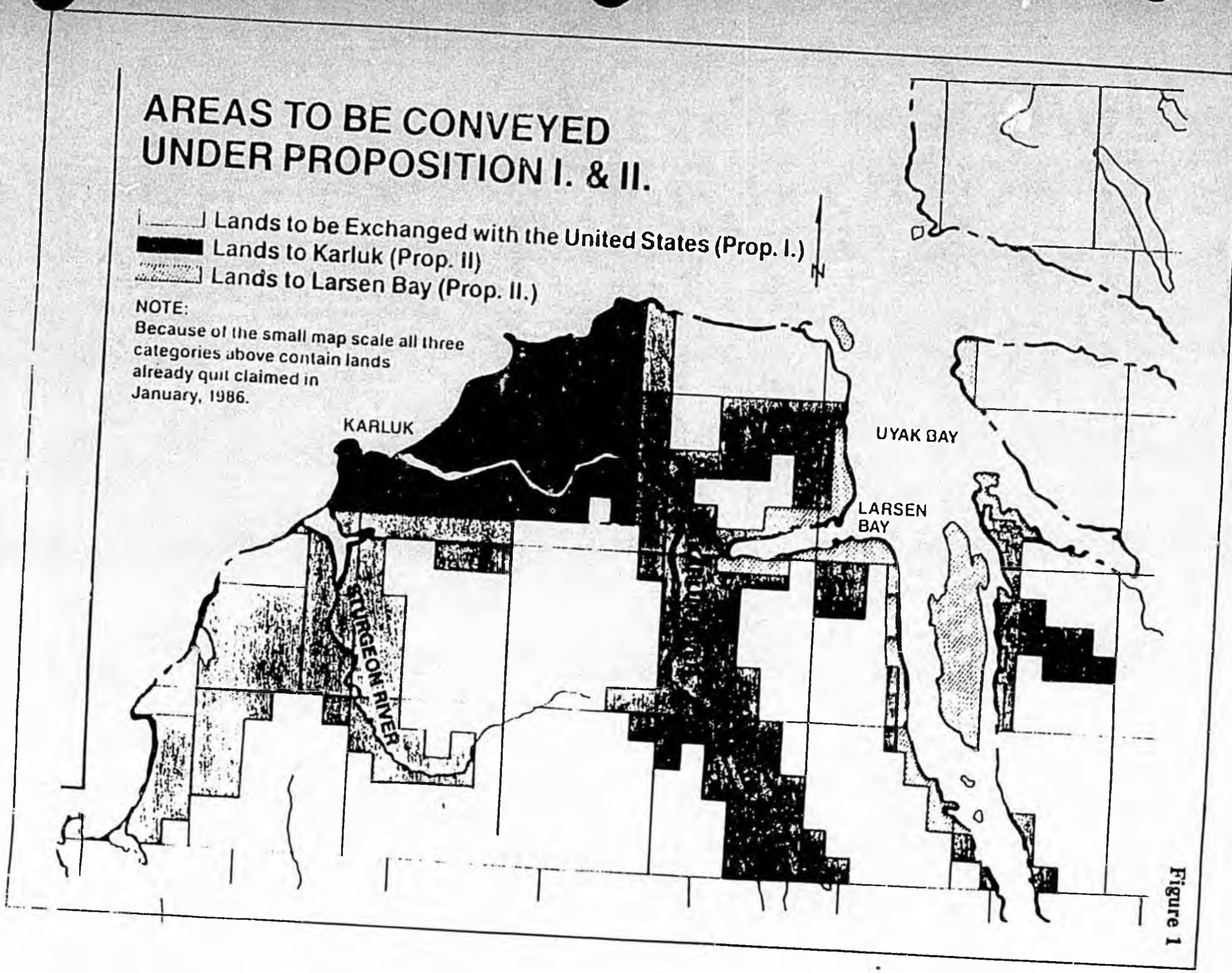
The following pages of this Proxy Statement summarize each of the propositions to be voted upon. Following these summaries is a more detailed description of each of the issues. In deciding how you should vote, please read these summaries and then carefully examine the additional information provided in the remainder of this Proxy Statement for your consideration.

Background to Proposed Transactions

In 1980, the shareholders of Afognak Native Corporation, Akhiok-Kaguyak, Inc., Karluk Native Corporation ("KNC"), Leisnoi, Inc., Nu-Nachk Pit, Inc., (the Village Corporation for Larsen Bay) ("NNPI") and Old Harbor Native Corporation (collectively the "Village Corporations") approved a merger of these Village Corporations with Koniag. Under the merger, Koniag acquired the assets of the Village Corporations and each shareholder of the merged Village Corporations received additional stock in Koniag. The assets of these Village Corporations included approximately 300,000 acres of lands which were conveyed or to be conveyed under the Alaska Native Claims Settlement Act ("ANCSA") in the Kodiak National Wildlife Refuge ("KNWR"). Subsequently, shareholders on behalf of Afognak Native Corporation, Akhiok-Kaguyak, Inc., Leisnoi, Inc., and Old Harbor Native Corporation sued to set aside the merger with respect to their respective Village Corporations.

While this litigation was pending, the then administration of Koniag entered into discussions with the United States Department of Interior ("DOI") regarding the conveyance by Koniag to the United States Government of approximately all of the lands in KNWR (approximately 300,000 acres) which Koniag had acquired under the merger. Legislation was introduced in Congress which provided for the acquisition of these lands by the United States Government in exchange for its issuance of "OCS Bid Credits" in an amount equal to the value of the lands. The OCS Bid Credits were to be accepted by the United States in payment of lease bonuses and other amounts due under federal leases of oil and gas interests in outer continental shelf lands. In 1982, Koniag entered into an agreement with Chevron U.S.A., Inc. ("Chevron") for the sale of such OCS Bid Credits (See "Proposition I—Lease Agreements—Certain Transactions"). In 1983, after the management of Koniag had changed, the Board of Directors withdrew its support of the OCS Bid Credit Legislation which resulted in the legislation being withdrawn from consideration by the Senate after it had passed the House of Representatives.

The new management of Koniag also entered into a court approved settlement agreement of the litigation regarding the merger. Under that settlement, the merger between Koniag and the four corporations represented by the plaintiffs was set aside and the assets of these four Village Corporations were returned to them. The merger between Koniag, KNC and NNPI (the "Merger"), which was not challenged in the litigation, was not affected by the settlement. As the result of this Merger, Koniag either owns or has the right to receive conveyance under ANCSA to 125,520 acres of land in KNWR. See "Proposition I—Exchange—Background."



AREAS TO BE CONVEYED UNDER PROPOSITION I. & II.
Lands to be Exchanged with the United States (Prop. I.)
Lands to Karluk (Prop. II)
Lands to Larsen Bay (Prop. II.)
NOTE:
Because of the small map scale all three categories above contain lands already quit claimed in January, 1986.
N
KARLUK
UYAK BAY
LARSEN BAY
STURGEON RIVER

Figure 1

SUMMARY OF PROPOSITION I—PROPOSED EXCHANGE AND LEASE AGREEMENTS.

Introduction

Koniag and DOI have reached an agreement in principle (hereinafter "Exchange Agreement") [redacted] Koniag to exchange 112,564 acres of land owned by or to be conveyed [redacted] KNWR for certain rights to explore, develop and produce the oil and gas which may be under certain lands in the Arctic National Wildlife Refuge ("ANWR") (such rights hereinafter "Oil and Gas EDP Interests" and such proposed exchange hereinafter "Exchange"). Koniag has also negotiated certain agreements with Chevron, Standard Alaska Petroleum Company ("Standard") and BP Alaska Exploration, Inc. ("BPAE") (Chevron, Standard and BPAE hereinafter the "Chevron Group") and with Phillips Petroleum Company ("Phillips") under which Koniag would grant to the Chevron Group and Phillips the right to lease the Oil and Gas EDP Interests from Koniag. As payment for granting those rights to the Chevron Group and to Phillips, Koniag would receive payments in the amount of approximately $58,300,000 in cash and a 20% royalty interest in any oil or gas produced from the lands in ANWR which are subject to Koniag's Oil and Gas EDP Interest. The royalty interest would have no value if no oil or gas were produced from these lands.

Under Alaska law, any exchange or lease of all or substantially all of a corporation's assets which is not made in the ordinary course of business must be submitted to the shareholders for approval by two-thirds of the outstanding shares. While the Board of Directors believes that the Exchange Agreement and lease agreements may not involve all or substantially all of Koniag's assets, it has determined, because of the significance of these transactions to Koniag and its shareholders, to condition the Board's approval of the transactions on their approval by two-thirds of the outstanding voting shares. If less than two-thirds of all of the outstanding voting shares of Koniag fail to vote in favor of authorizing the Exchange Agreement and ratifying the lease agreements, Koniag will not carry out the Exchange Agreement and the lease agreements will terminate. Because passage is determined by two-thirds of the total shares eligible to vote, and not just those voting, *the failure of a shareholder to return a proxy or to vote on this Proposition, if in attendance, will have the same effect as a vote against the Proposition.*

Summary of Proposed Exchange With DOI

Koniag, along with other Native Regional and Village Corporations (including Old Harbor Native Corporation and Akhiok-Kaguyak, Inc., within the Koniag region), has been in negotiations with DOI regarding the possible exchange of lands owned by the corporations for the right to explore for oil and gas under certain lands in the Coastal Plain of ANWR and to develop and produce any oil and gas which may be found there. The objective of these negotiations has been that the Koniag lands and the Oil and Gas EDP Interests to be exchanged should be of approximately equal value.

While a formal exchange agreement between DOI and Koniag has not been executed, Koniag and DOI have agreed in principle on the Exchange Agreement regarding the terms of the Exchange, the lands to be conveyed by Koniag to the United States and the Oil and Gas EDP Interests that Koniag would receive if the Exchange were completed.

Under the Exchange Agreement, Koniag would convey to the United States Government the surface estate of 112,564 acres in KNWR (hereinafter "Koniag Exchange Lands"). These lands are shown on the map designated as Figure 1. While the Exchange Agreement would require Koniag to convey title to the Koniag Exchange Lands, Koniag

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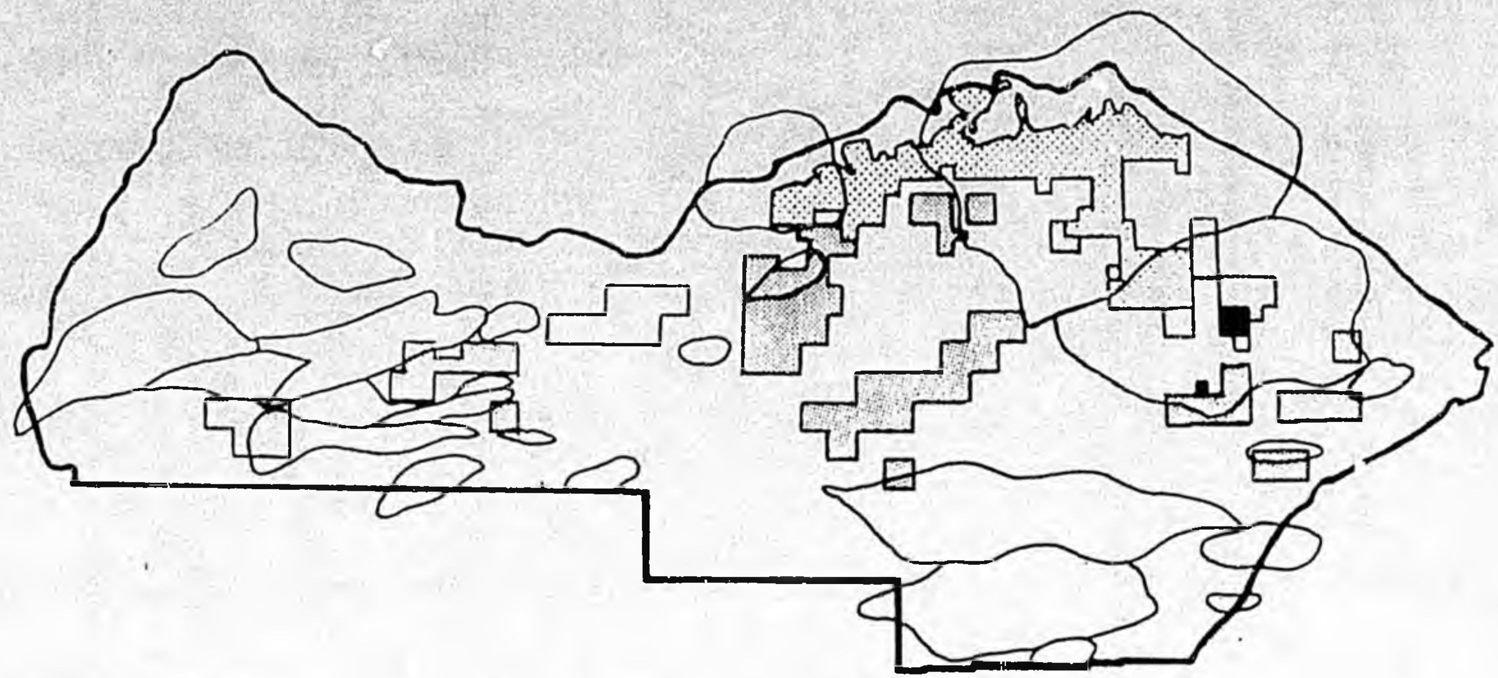
[illegible]

ARCTIC NATIONAL WILDLIFE REFUGE - 1002 AREA
TRACTS IDENTIFIED BY NATIVE CORPORATIONS FOR EXCHANGE



Existing Kaktovik Inupiat Corp. Conveyance
Koniag Identified Tracts
Other Native Corporation Identifications
Seismically Mapped Structures

0 MILES 20
0 KILOMETERS 32

DATA SOURCE
BUREAU OF LAND MANAGEMENT
JULY 1987

Figure 2

would retain an easement on these lands which would preserve for the residents of Karluk and Larsen Bay access to the lands conveyed for essentially the same hunting, fishing and subsistence uses they now enjoy. (See "Proposition I—Proposed Exchange—Koniag Exchange Lands.") Excluding the lands to be exchanged, Koniag would retain approximately 51,862 acres of the land acquired from KNC and NNPI under the Merger, after it has satisfied its responsibilities to make the conveyances under Section 14(c) of ANCSA and the Plan of Merger. These retained acres are the subject of Proposition II proposing their conveyance to the tribal governments of Karluk and Larsen Bay or their designees. See "Proposition II—Proposed Conveyances to Karluk and Larsen Bay."

After extensive negotiations, Koniag and DOI arrived at an attributed value of $77,442,711 for the lands to be conveyed by Koniag, which attributed value may be more or less than the fair market value of the lands. See "Proposition I—Proposed Exchange—Valuation of Koniag Exchange Lands." To assist in its negotiations with DOI, Koniag obtained valuations of the Koniag Exchange Lands from the United States Fish and Wildlife Service ("FWS") and from consultants retained by Koniag. FWS had a conflict of interest in performing its valuation since it is a part of DOI, which is proposing to acquire the Koniag Exchange Lands. In any case, the valuations are of limited usefulness. See "Proposition I—Proposed Exchange—Valuation of Koniag Exchange Lands."

Through a tract identification process completed in early July, 1987, Koniag (with the assistance of the Chevron Group and the concurrence of Phillips) identified tracts of land in ANWR comprising approximately 3,186 acres, the Oil and Gas EDP Interests in which Koniag will receive if the Exchange is completed. See Figure 2 and "Proposition I—Proposed Exchange—Tract Selection Process."

The Oil and Gas EDP Interests were valued by DOI at $77,394,000, based upon the lands' potential for oil and gas development. See "Proposition I—Proposed Exchange—Receipt of Oil and Gas EDP Interests." DOI had a conflict of interest in performing this valuation since it is using the rights that it is valuing to pay for the lands being obtained from Koniag. There is no assurance that there is any oil and gas beneath the lands to which the Oil and Gas EDP Interests pertain. See "Proposition I—Risk Factors" and "Proposition I—Proposed Exchange—Receipt of Oil and Gas EDP Interests."

The Exchange will not occur unless Congress takes action to approve legislation which authorizes further oil and gas exploration, development and production in the Coastal Plain of ANWR and which approves the Exchange Agreement itself. This process could take several years. See "Proposition I—Proposed Exchange—Congressional Action." Hearings on opening ANWR to oil and gas exploration, development and production have already occurred. However before DOI can propose to Congress that it approve the Exchange, DOI must perform a Legislative Environmental Impact Study ("LEIS"). Work on the LEIS has been suspended at the present time and it would take approximately six months or more to complete the LEIS once the work is resumed. Until such time as the LEIS is completed, formal agreements implementing the Exchange Agreement will not be executed by the Secretary of the Interior. There is also presently pending a lawsuit brought by certain environmental groups seeking to stop the Exchange process, including the preparation of the LEIS, until after Congress has decided whether or not to permit further oil and gas operations in ANWR. Koniag has intervened in this lawsuit and at the present time its outcome cannot be predicted. See "Proposition I—Litigation Affecting the Exchange."

Summary of Lease Agreements With Oil Companies

In 1985, when Koniag first began discussions with DOI regarding the Exchange, it became apparent that Koniag did not have the expertise to select tracts in ANWR which had the best oil and gas potential, and that the negotiation process could be long and expensive. Consequently, the Board of Directors decided to enter into an agreement with an oil company which would provide the expertise and financial support necessary to negotiate the Exchange and which would grant to the oil company the right to lease from Koniag some or all of the Oil and Gas EDP Interests obtained in the Exchange. After a series of negotiations with the Chevron Group as well as other companies, Koniag entered into an agreement with the Chevron Group in December of 1985. The Chevron Group was ultimately selected for two reasons: first, at the time of the agreement, its proposal provided the most bonus monies (i.e., up-front payments not based upon a share of production) as well as royalty share to Koniag and, second, the members of the Chevron Group were the only companies that had any data from a well drilled in the Coastal Plain of ANWR, and thus it was believed that they could give Koniag the best advice on land selection in ANWR. As the negotiations with DOI progressed it became apparent that Koniag would receive Oil and Gas EDP Interests on less land than it originally had anticipated. Because of the structure of the agreement with the Chevron Group, this would result in Koniag receiving lower lease bonuses than was acceptable to the Board of Directors. As the result of further negotiations with the Chevron Group, the Chevron Group agreed to reduce its future leasehold rights to an undivided 51% interest and permit Koniag to enter into another transaction with respect to the remaining 49% interest. After negotiations with other oil companies, in July, 1987, Koniag entered into an agreement with Phillips ("Phillips Agreement"). See "Proposition I—Lease Agreements—Background of Lease Agreements."

Under the Lease Acquisition Agreement with the Chevron Group, as amended by provisions for the reduction (the "Reduction") of the Chevron Group's interest to 51% ("LAA"), the Chevron Group paid Koniag $1,000,000 upon the execution of the LAA in 1985 (which amount includes an overpayment of $490,000 arising from the Reduction). Koniag has also received $633,254 (which amount includes an overpayment of $310,294 arising from the Reduction) from the Chevron Group as interest on an assumed principal balance of an escrow account. The Chevron Group is to make additional payments of $1,020,000 upon the occurrence of certain events, a portion of which amount will be credited against the lease bonuses. See "Proposition I—Lease Acquisition Agreement—Payments by Chevron Group." If Congress authorizes the opening of ANWR and approves the Exchange Agreement on conditions satisfactory to the Chevron Group, the Chevron Group will pay Koniag the sum of $1,842,630 as lease bonuses before the application of any credits or adjustments. Of this amount, $276,395 will be paid upon the issuance of leases by Koniag to the Chevron Group of the Oil and Gas EDP Interests, and $1,566,235 upon the Chevron Group's approval of the regulations issued by DOI governing operations. If the Chevron Group receives the right to drill an exploratory well in connection with its leases from Koniag and there is at least two years between the time the authorization to drill could be obtained and the time of a first lease sale by the United States Government of unleased lands within six miles of such well, the amount of the lease bonuses will be increased by ten percent (10%). If the Chevron Group actually drills a well before a lease sale it will pay Koniag the sum of $1,530,000. Koniag is also entitled to receive an overriding royalty interest and payments from production of varying amounts from certain other interests which may be acquired by the Chevron Group. See "Proposition I—Lease Acquisition Agreement—Payments by Chevron Group."

Under the Phillips Agreement, Phillips paid to Koniag the sum of $1,000,000 upon execution. Phillips will make a further payment to Koniag of $7,250,000 upon Phillips' approval of legislation enacted by Congress opening ANWR and approving the Exchange Agreement, a payment of $27,500,000 upon the issuance by Koniag of leases of the Oil and Gas EDP Interests to Phillips and a payment of $19,250,000 upon the third anniversary of the issuance of such leases. The total amount of payments due Koniag from Phillips is $55,000,000. See "Proposition I—Phillips Agreement—Payments by Phillips."

If leases are issued, they will be held 51% by Chevron Group and 49% by Phillips with Chevron being the operator of any such leases. Under the leases Koniag will be paid a royalty of 20% of the value of all oil and gas produced (based upon a field price or, if there is none, determined by a formula) or, at its election, Koniag may take in kind 20% of the oil and gas produced. At the time the lessees under the leases have received from production an amount equal to the total of certain costs and expenses, and interest thereon, related to the leases granted by Koniag, Koniag can elect to convert its 20% royalty interest to 30% of the net profits from the operations under the lease; at the time the lessees have received twice such costs and expenses, Koniag can elect to convert its 20% royalty interest or 30% net profits interest, as the case may be, in the operations under the lease to a 40% net profits interest. At the present time it has not yet been determined whether the costs and expenses of the Chevron Group and Phillips will be accounted for separately or in the aggregate in determining when this right is exercisable. Once a conversion is made to a net profits interest, Koniag cannot return to a royalty calculation. See "Proposition I—Lease Acquisition Agreement—Terms of Koniag ANWR Leases" and "Proposition I—Phillips Agreement—Koniag ANWR Leases."

The proceeds received to date under the LAA and the Phillips Agreement (collectively the "Lease Agreements") have been used to defray the cost of negotiations of the Exchange Agreement, and the operations of Koniag. The Board of Directors has not developed a long term plan for the use or investment of the total proceeds other than the proposal being submitted herewith for a Shareholder Distribution Permanent Fund. See "Proposition I—Lease Agreement—Use of Proceeds by Koniag."

Pursuant to Proposition I, the Board of Directors will be authorized to enter into such amendments of the Lease Agreements as it determines to be advisable. Except as specified in the next sentence, it will also have the right to authorize such amendments of the Exchange Agreement as it determines advisable. However, it will be able to authorize material amendments to the terms of the Oil and Gas EDP Interests to be granted under the Exchange Agreement only in response to a request of the Secretary of the Interior arising from the findings of the LEIS or to legislation which is enacted by Congress.

For further information on the tax and accounting treatment of the Exchange and Lease Agreements, see "Proposition I—Financial Effects of the Proposed Exchange and Lease Agreements."

Summary of Risk Factors

There are a number of potential risks associated with the Exchange Agreement and the Lease Agreements. These include: (i) uncertainties concerning the valuations of the Oil and Gas EDP Interests and the Koniag lands to be exchanged for them (and the DOI and FWS conflicts of interest with respect to their value); (ii) the possibility that DOI will fail to execute the Exchange Agreement; (iii) the possibility that Congress will fail either to open ANWR to oil and gas development or to authorize the Exchange Agreement; (iv) the possibility that such legislation, if enacted, might not be acceptable to the Chevron Group or Phillips; (v) the possibility that the regulations promulgated under the legislation which opens the Koniag ANWR Lands to oil and gas development might not be acceptable to the Chevron Group; (vi) the possibility that revenues received from the Oil and Gas EDP Interests may be subject to the provisions of Section 7(i) of ANCSA pursuant to an arbitration by Sealaska Corporation against Koniag; (vii) the possibility that litigation by environmental groups may delay or prevent exploration of the Oil and Gas EDP Interests; (viii) the risk that no oil or gas will be found that can be produced and transported economically and in accordance with applicable environmental and other regulations; (ix) the possibility that the economic return from any oil and gas discovery may not be sufficient to warrant conversion by Koniag of its royalty interest to a net profits interest under the leases of the Oil and Gas EDP Interests; (x) the possibility that Phillips and the Chevron Group may terminate the leases of the Oil and Gas EDP Interests before any exploration occurs; and (xi) the risk that Koniag may be responsible for performing final reclamation activities on the Koniag ANWR Lands if they are not performed by Phillips and the Chevron Group. These risks as well as others are discussed in more detail in the section entitled "Risk Factors" which should be carefully reviewed.

SUMMARY OF PROPOSITION II—PROPOSED CONVEYANCES TO KARLUK AND LARSEN BAY.

The second proposition submitted for shareholder approval is the authorization for Koniag to convey approximately 34,186 acres of land in the vicinity of Karluk, Alaska to the Karluk Indian Reorganization Act Council or its designee and approximately 17,676 acres of land in the vicinity of Larsen Bay, Alaska to the Traditional Tribal Council of Larsen Bay or its designee. The lands in question were received by Koniag as the result of the Merger with KNC and NNPI, the Village Corporations for Karluk and Larsen Bay. Based on an estimate by Dirksen that extrapolates from (and relies on the methodology of) the appraisal performed by FWS, which appraisal did not include most of these lands, the lands have an estimated "highest and best use" value of approximately $8,450,000 (excluding any impact of Section 22(g) of ANCSA and any consideration of the exchange value of the lands to DOI). See "Proposition II—Proposed Authority to Convey—Scope of Proposed Authority to Convey." The conveyances would be made without Koniag receiving any consideration for them.

The conveyances are proposed to be made only after certain conditions have been met: (i) the consummation of the Exchange with DOI (which consummation cannot occur without the approval of Proposition I by the Koniag shareholders) and (ii) the passage of federal legislation satisfactory to Koniag granting to Koniag the authority to make the conveyances and resolving certain other issues, including tax considerations. See "Proposition II—Proposed Authority to Convey—Conditions Upon Issuance of Conveyances."

The Board of Directors has been advised by legal counsel that it is unclear whether, in the absence of special legislation, Koniag has legal authority to transfer the lands in question without receiving fair market value payment in return.

The Board of Directors believes that the conveyances would result in better relationships between Koniag and the former shareholders of KNC and NNPI. It would also provide the opportunity for these former shareholders, acting through their tribal governments or their designees, to have approximately the same level of control over the lands which are adjacent to their villages as are enjoyed by the shareholders of other Village Corporations in the Koniag region. The land which may be conveyed shall revert to Koniag if certain events occur. See "Proposition II—Proposed Authority to Convey—Reverter Provisions."

For a discussion of the risks involved in making such conveyances and their financial and tax consequences, see "Proposition II—Financial Effects of the Proposed Conveyances."

Because the conveyances could be considered a transfer of a significant amount of Koniag's assets, and thereby affect the value of the shareholders' interests in Koniag, and because the conveyances could be claimed to disproportionately benefit certain Koniag shareholders (those residing in Karluk and Larsen Bay), the Board of Directors believes that it should not proceed with them, nor seek the necessary legislative authority for them, unless they are authorized by the vote of two-thirds of the outstanding voting shares of Koniag entitled to vote at the Annual Shareholders Meeting.

SUMMARY OF PROPOSITION III—SHAREHOLDER DISTRIBUTION PERMANENT FUND PROPOSAL.

The third matter to be submitted to the shareholders is an advisory vote being requested by the Board of Directors for guidance as to whether to commit further time and money to the development of a formal proposal for the creation of a shareholder distribution permanent fund and, if the Board deems it advisable, the promotion of special legislation authorizing the creation of the fund. The fund's purpose would be to make annual distributions to the present shareholders and their heirs, irrespective of whether or not they may be shareholders of Koniag after 1991. If a majority of the shares voting on the proposition favors its adoption, the Board of Directors will seek to develop a proposal for such a fund for submission for formal approval by the shareholders. NO FUND WILL BE ESTABLISHED AT THIS TIME. IT IS PRESENTLY CONTEMPLATED THAT ANY SUCH FUND WOULD BE CREATED ONLY AFTER A SHAREHOLDER VOTE APPROVING A FORMAL PROPOSAL.

The Board of Directors believes that if the Exchange occurs, a portion of the monies received by Koniag from the Lease Agreements could be used to set up the fund. The fund could be further capitalized by contributing to it a significant undivided interest (which may be less than 50%) in Oil and Gas EDP Interests so that a portion of any royalty or net profit interest which might be generated would be owned by and flow directly to the fund. It is the present Board of Directors' intention that the fund be managed by professional financial managers and that the fund be independent of Koniag and the control of any Board of Directors after its creation.

There are significant legal and tax consequences to be considered and policy determinations to be made before a formal proposal can be prepared and submitted. Special legislation may be required in order to achieve the fund's intended benefits. If the Board deems it advisable such legislation would be sought as part of the legislation authorizing the Exchange. The Board of Directors does not want to proceed with the development of such a concept and the pursuit of such legislation unless such further action is authorized by a majority of the shareholders voting on the proposition.

Because of tax and legal considerations, it may not be possible to develop a viable proposal for the creation of such a fund. IN VOTING UPON THIS PROPOSITION AND THE OTHERS SUBMITTED ON THE AGENDA, YOU SHOULD NOT RELY UPON THE ESTABLISHMENT OF THE FUND IN DETERMINING HOW TO CAST YOUR VOTES.

EXTENT OF SUMMARY

The foregoing briefly summarizes the issues upon which the Shareholders are requested to vote at the Annual Meeting. The summary is qualified in its entirety by the more detailed description contained elsewhere in this Proxy Statement.

PROPOSITION I—PROPOSED EXCHANGE AND LEASE AGREEMENTS

STATEMENT OF PROPOSITION I

Proposition I states:

IT IS NOW RESOLVED by the shareholders of Koniag, Inc. (i) that the Board of Directors of Koniag, Inc. be and hereby is authorized and empowered to authorize the execution and performance by Koniag, Inc. of an exchange agreement ("Exchange Agreement") with the United States Government for the exchange of the interest in the surface estate of approximately 112,564 acres of land owned by or to be conveyed to Koniag, Inc. within the Kodiak National Wildlife Refuge for certain oil and gas exploration, development and production rights held by the United States Government in certain lands in the Arctic National Wildlife Refuge, and that all acts taken by the Board with respect to the Exchange Agreement are hereby ratified, (ii) that that certain Lease Acquisition Agreement dated December 17, 1985, by and between Koniag, Inc. and Chevron U.S.A., Inc., Standard Alaska Production Company, and BP Alaska Exploration, Inc. ("LAA") and that certain Agreement dated July 1, 1987, by and between Koniag, Inc. and Phillips Petroleum Company ("Phillips Agreement"), and any amendments to either be and hereby are ratified, and (iii) that the Board of Directors be and hereby is authorized and empowered to authorize the execution of any amendments to the Exchange Agreement, the LAA or the Phillips Agreement; provided, however, that any material amendments to the Exchange Agreement with respect to the interests to be conveyed to Koniag, Inc. by the United States Government may be authorized only if in response either to a request made by the Secretary of the Interior arising from the findings of the legislative environmental impact statement or to legislation enacted by Congress.

EXCHANGE

Background of Proposed Exchange

As a result of the Merger between Koniag and KNC and NNPI, Koniag succeeded to the rights of these Village Corporations under ANCSA to certain land entitlements. Among these rights was the right to receive conveyances from the United States Government of approximately 125,520 acres of land in KNWR, which lands had been selected by KNC and NNPI prior to the Merger, and which include some of the most critical habitat for brown bear in KNWR, being described by some as the heart of KNWR.

In 1985, the present management of Koniag, upon authorization from the Board of Directors, began discussions with DOI regarding the acquisition by the United States Government of a portion of the lands in KNWR which had been or would be acquired by Koniag as the successor-in-interest to KNC and NNPI. Any significant development of the lands proposed to be exchanged would directly conflict with the traditional use of them by the shareholder residents of Karluk and Larsen Bay. Because these lands were part of KNWR before their conveyance under ANCSA, they are subject to the provisions of Section 22(g) of ANCSA, which provides for the reservation to the United States Government of a right of first refusal if such lands are ever sold and for a requirement that the lands be subject to the laws and regulations governing use and development of KNWR. Pursuant to the implementing regulations, such lands may be used and developed so long as such uses will not materially impair the values for which the refuge was established. Because the lands proposed to be exchanged by Koniag comprise some of the most important brown bear habitat in KNWR, FWS in its draft Comprehensive Conservation Plan for KNWR ("CCP") proposed a system of protection levels to be imposed on the Koniag Exchange Lands which would result in fairly stringent limitations being placed on the activities which could occur on these lands. Many of the lands were proposed to be classified in a manner to preclude any development of them which would disturb their surface or result in any structures being erected upon them. While the final CCP dropped the concept of pre-established protection levels or zones, it nevertheless retained the concept that any use or development of these lands would be extremely limited.

Thus, given the potential restrictions on Koniag's use of the lands, the Board of Directors determined that if the existing rights of the residents of Karluk and Larsen Bay to use the lands for traditional purposes could be preserved, the exchange of these lands for other property with a greater development potential would be in the best interests of all of the shareholders.

Concurrent with these discussions with DOI, DOI was preparing a legislative environmental impact statement for Congress on the question of further oil and gas exploration, development and production in the Coastal Plain of ANWR. A study of the wildlife resources and mineral potential of the Coastal Plain was mandated by Section 1002 of the Alaska National Interest Lands Conservation Act ("ANILCA") enacted in 1980. As part of that report, a seismic study was performed which was funded by twenty-two members of the oil and gas industry including the Chevron Group and Phillips. A draft report was subsequently released in November 1986, and the final report was sent to Congress in April 1987. The Secretary of the Interior has recommended leasing the entire Coastal Plain for the exploration, development and production of oil and gas with appropriate stipulations to protect the environment.

The Coastal Plain of ANWR is located on the northeastern edge of Alaska, bordered by the Beaufort Sea. Its mineral potential was described in the report to Congress as follows:

> The 1002 area [Coastal Plain of ANWR] is the Nation's best single opportunity to increase significantly domestic oil production. It is treated by geologists as the most outstanding petroleum exploration target in the onshore United States. Data from nearby wells in the Prudhoe Bay area and in the Canadian Beaufort Sea and Mackenzie Delta, combined with promising seismic data gathered on the 1002 area, indicate extensions of producing trends and other geologic conditions exceptionally favorable for discovery of one or more supergiant fields (larger than 500 million barrels). (Arctic National Wildlife Refuge, Alaska Coastal Plain Resource Assessment, Report and Recommendation to the Congress/Final Legislative Environmental Impact Statement, April, 1987. Prepared by the U.S. Fish and Wildlife Service, in cooperation with the U.S. Geological Survey and the Bureau of Land Management, Department of the DOI.)

However, notwithstanding such belief of DOI, there is no assurance that there is in fact oil and gas in the 1002 area, or on any of the lands in which Koniag may acquire an interest.

The Koniag/DOI negotiations for an exchange were subsequently joined by Doyon Limited (a Regional Corporation for the Interior of Alaska), Gana-a'Yoo Limited (a Doyon region Village Corporation), the Native Lands Group (a partnership comprised of Cook Inlet Region Inc., Aleut Corporation, and eleven Village Corporations) as well as Old Harbor Native Corporation and Akhiok-Kaguyak Inc., which are two Village Corporations in the Koniag region. These exchanges would allow DOI to acquire Native lands in environmentally significant areas and allow Alaska Natives to acquire potentially valuable rights to explore, develop and produce any oil and gas which might be found on certain lands in ANWR.

Proposed Exchange

1. *Koniag Exchange Lands*

The Koniag Exchange Lands consist of approximately 112,564 acres of surface estate of land in KNWR primarily in the areas of Karluk River and Sturgeon River drainages. The Koniag Exchange Lands are shown on the map designated as Figure 1 in this Proxy Statement. Koniag will convey to the United States Government the Koniag Exchange Lands for which a conveyance has been issued by the United States Government under ANCSA, and will relinquish its right to receive title to the Koniag Exchange Lands which have yet to be conveyed to it. The Koniag Exchange Lands have not yet been surveyed and, therefore, the actual acreage may vary slightly after a final survey is performed.

An essential feature of the proposed exchange is the retention by Koniag of an easement covering all Koniag Exchange Lands which will grant to the residents of Karluk and Larsen Bay the right of access to enter upon and cross the Koniag Exchange Lands for the purpose of engaging in customary and traditional uses of wild, renewable resources for direct personal or family consumption of food, shelter, fuel, clothing, tools or transportation; for making and selling of handicraft articles out of non-edible byproducts of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal or family consummption; and for customary trade ("Subsistence Access Easement"). The Subsistence Access Easement is intended to permit the residents of Karluk and Larsen Bay to continue their existing use of the Koniag Exchange Lands for subsistence and traditional purposes. The Subsistence Access Easement, however, does not guarantee the right to take wildlife. That right is now, and will continue to be, regulated by state and federal law; even if Koniag were to retain title to the Koniag Exchange Lands, it would not be able to enlarge upon the rights granted under those laws.

2. *Receipt of Oil and Gas EDP Interests*

In exchange for the Koniag Exchange Lands, the DOI will convey to Koniag all right, title and interest of the United States Government in and to the Oil and Gas EDP Interests pertaining to lands identified by Koniag in ANWR ("Koniag ANWR Lands"), including the right to explore and prospect for oil and gas, to drill wells, to produce oil and gas from the wells, and generally to do all things necessary toward the recovery of any oil and gas discovered on the Koniag ANWR Lands. The Koniag ANWR Lands are shown on the map designated as Figure 2 in this Proxy Statement, the legal descriptions of which are Sections 3, 4, 9 and 10, T.6 N., R.37 E., Umiat Meridian, and Section 31, T.6 N., R.37 E., Umiat Meridian. DOI will also grant to Koniag the right to use the surface of the Koniag ANWR Lands for the recovery and production of the oil and gas acquired by Koniag. These rights also include certain rights of access across other lands in ANWR, the right to remove and use sand and gravel from ANWR lands at a reasonable price and certain limited water rights, if such rights should be found to exist. All of these Oil and Gas EDP Interests granted to Koniag are subject to certain environmental stipulations which will govern the activities of Koniag or its oil company lessees in ANWR, and are subject to such other terms and conditions as Congress may require generally in any legislation which authorizes further oil and gas activities in ANWR. The environmental restrictions are attached as Appendix 4 to the Exchange Agreement and will be superseded by any regulations adopted by DOI in conjunction with the issuance and supervision of federal leases in ANWR, and which govern oil and gas activities in ANWR generally.

The Oil and Gas EDP Interests in the Koniag ANWR Lands are subject to the claims of the State of Alaska for title to lands beneath navigable water bodies. Koniag knows of no water bodies on the Koniag ANWR Lands which have been determined to be navigable or with respect to which the State has asserted a claim. If such a claim is asserted and is upheld by the courts, then the State of Alaska would own that portion of the Koniag ANWR Lands beneath the navigable water body and Koniag would not own any interest in the oil or gas which may be within such State-owned lands nor would it have a claim against the United States Government for conveying less than all of the interests in the Koniag ANWR Lands.

The Oil and Gas EDP Interests are not granted in perpetuity but will terminate upon the completion of the reclamation of the Koniag ANWR Lands; this reclamation must commence within two years following the last of (i) December 31, 2030; (ii) the 25th anniversary of the date of first commercial oil or gas production from the Koniag ANWR Lands; or (iii) the cessation of production from such lands if certain further oil and gas activities are not commenced within two years of such cessation.

The Koniag ANWR Lands comprise two tracts of land in ANWR totalling 3,186 acres and the Oil and Gas EDP Interests in these tracts have a value determined by DOI to be $77,394,000. This valuation determination was made by DOI based upon its assessment of the lands' value for oil and gas. This valuation was not subject to negotiation. Since DOI was valuing both the Oil and Gas EDP Interests and the Koniag Exchange Lands (see "Proposition I—Proposed Exchange—Valuation of Koniag Exchange Lands"), it is apparent that acceptance of the DOI assessment and value should be subject to a degree of caution. DOI, however, has represented that in valuing the Oil and Gas EDP Interests it has applied the same methodology which it would utilize in other situations in dealing with these interests on behalf of the United States. PLEASE TAKE NOTE that the Board of Directors has not sought any independent evaluation of the fairness of the value which the DOI placed on the Oil and Gas EDP Interests in the Koniag ANWR Lands. In transactions involving dollar amounts as large as those involved in the Exchange, a corporation would typically have an investment banking institution evaluate and issue an opinion as to the fairness of the consideration involved in the transaction. However, the Board of Directors has been advised by Tom Cantwell, a geological consultant, that the cost of acquiring the available unprocessed geophysical data for the Coastal Plain would be approximately $3,400,000 and that the cost of analyzing such data would be an additional $500,000 to $1,000,000. Because of the cost and difficulty in acquiring and analyzing the geological and geophysical data to make such evaluation, the Board of Directors instead has obtained from DOI its representation that, in determining the value of the Oil and Gas EDP Interests, DOI utilized the same methodology which it customarily follows in valuing oil and gas interests for the purpose of establishing the minimum acceptable bid in a federal lease sale of such interests, and that the DOI valuation of the Oil and Gas EDP Interests is equal to such minimum acceptable bid plus an amount equal to the net present value of the estimated anticipated royalty interest which customarily would have been reserved to the United States Government under a federal lease (which royalty interest is less than that to be reserved to Koniag under the Lease Agreements), which interest will not be reserved in the transfer of the Oil and Gas EDP interests to Koniag. In addition, as described below, **Koniag has structured its Lease Agreements with the Chevron Group and Phillips to assure Koniag that it will receive a minimum of approximately $58,300,000 if the transactions contemplated in this Proposition I are consummated. Receipt of this $58,300,000 is not contingent on any discovery of oil or gas, and the Board has separately assessed these transactions on the assumption that this amount may comprise the total payment received by Koniag.**

THE DOI HAS MADE NO REPRESENTATIONS OR WARRANTIES AS TO THE EXISTENCE, LOCATION, PRODUCIBILITY, QUANTITY OR QUALITY OF OIL AND GAS RESOURCES IN OR UNDER ANY OF THE KONIAG ANWR LANDS. THEREFORE, KONIAG, AND TO THE EXTENT PROVIDED IN THE LEASE AGREEMENTS, THE CHEVRON GROUP AND PHILLIPS, WILL BEAR THE ENTIRE RISK AS TO THE EXISTENCE, LOCATION, PRODUCIBILITY, QUANTITY OR QUALITY OF OIL AND GAS RESOURCES IN OR UNDER THE KONIAG ANWR LANDS.

3. *Congressional Action*

If the Exchange Agreement is executed by the Secretary of the Interior (see "Proposition I—Risk Factors"), it will be submitted to Congress for ratification and approval. Until and unless legislation is enacted which ratifies and approves it (such legislation hereinafter as "Exchange Legislation"), the Exchange will not be carried out by the United States Government and Koniag.

The Exchange is further conditioned upon Congress enacting legislation which opens the Koniag ANWR Lands for further exploration, development and production of oil or oil and gas ("Opening Legislation"). Whether Opening Legislation will be enacted and, if so, whether the legislation will be in a form satisfactory to Koniag, is presently unknown. At the present time, all of the Coastal Plain, including the Koniag ANWR Lands, is closed to any further oil and gas exploration and to all oil and gas development and production. Congress is presently holding hearings on the DOI recommendation to open the Coastal Plain of ANWR, including the Koniag ANWR Lands, to further oil and gas exploration, development and production.

4. *Tract Selection Process*

On June 16, 1987, Koniag entered into the ANWR Tract Identification Agreement with the DOI and certain other Native Corporations ("Tract Agreement"), which provided for the mechanism pursuant to which Koniag identified Koniag ANWR Lands.

The selection of the Koniag ANWR Lands was made by Koniag upon the recommendation of the Chevron Group and with the concurrence of Phillips. While there were a number of tracts which were available for selection by Koniag and which had been nominated for consideration by

Koniag (such nominations having been made with the advice of the Chevron Group), Koniag was limited as to the tracts it could select in this process in that it could not select tracts which had a cumulative value in excess of the value of the Koniag Exchange Lands. NEITHER THE CHEVRON GROUP NOR PHILLIPS MADE ANY REPRESENTATIONS OR WARRANTIES AS TO THE EXISTENCE, LOCATION, PRODUCIBILITY, QUANTITY OR QUALITY OF OIL AND GAS RESOURCES IN OR UNDER ANY OF THE KONIAG ANWR LANDS. THEREFORE, INSOFAR AS KONIAG'S 20% ROYALTY INTEREST IS CONCERNED, KONIAG WILL BEAR THE ENTIRE RISK AS TO THE EXISTENCE, LOCATION, PRODUCIBILITY, QUANTITY OR QUALITY OF OIL AND GAS RESOURCES IN OR UNDER THE KONIAG ANWR LANDS.

PLEASE TAKE NOTE that a copy of the Tract Agreement can be reviewed at the business offices of Koniag during regular business hours. A copy of the Tract Agreement will be sent to you upon request.

5. *Valuation of Koniag Exchange Lands*

The major factor bearing upon the fairness of the consideration to be received by Koniag from DOI is the value attributed to the Koniag Exchange Lands as the result of extensive negotiations between Koniag and DOI. This attributed value of the Koniag Exchange Lands ranges between $170 per acre and $850 per acre, covering a total of 112,564 acres, with a total overall attributed value of $77,442,711 ("Exchange Land Value"). Of the Koniag Exchange Lands, 101,013 acres had attributed values ranging between $552 per acre and $850 per acre and the remaining 11,551 acres had attributed values ranging from $170 per acre to $510 per acre. In determining these attributed values Koniag and DOI have also deducted (i) a negotiated value for the retained Subsistence Access Easement equal to 2% of the gross value and (ii) a negotiated value reflecting the impact of the restrictive provisions of Section 22(g) of ANCSA equal to 13% of the gross value.

PLEASE TAKE NOTE, THE FOLLOWING DISCUSSION OF THE VALUATIONS OF THE KONIAG EXCHANGE LANDS SHOULD BE REVIEWED WITH CAUTION. As discussed below, the reliability of appraisals and other valuations in determining the market value of unique resources is always subject to question. This is especially true with respect to the Koniag Exchange Lands which are not susceptible to traditional valuation techniques and which are subject to governmental regulations whose impact has yet to be determined. An example of this, as also discussed below, is the opinion of Dirksen Appraisal Company that the impact of the application of Section 22(g) of ANCSA on the market value of the Koniag Exchange Lands could result in a 10% to 90% decrease in the market value of the lands. Despite these substantial uncertainties with respect to the valuations, the following discussion is included because this information was available to the Board of Directors in its deliberations and because decisions of the Alaska courts involving ANCSA corporations indicate that such appraisals may be helpful to shareholders in evaluating proposals.

The DOI caused employees of FWS to appraise the value as of November 27, 1985 of all lands owned by Koniag within KNWR including some lands which are not part of the Koniag Exchange Lands ("FWS Appraisal"). It was represented to Koniag during the course of the negotiations that the FWS Appraisal was performed using a market data approach to estimate value, and included an aerial inspection of the Koniag Exchange Lands. Under a market data approach, value is assessed by analyzing sales of similar, recently sold properties in order to arrive at the most probable sales price of the property being appraised. An abbreviated development approach was also used to estimate the value of some of the land identified as suitable for the development of recreational cabin sites. That approach focuses on the projected income from the property once it is developed. Neither approach gave any value to the unique habitat attributes of the land or the value to the public generally for having the land as part of the refuge system. Under the FWS Appraisal the estimated average value per acre is $172.17 for a total of $19,380,000 for the Koniag Exchange Lands. The FWS Appraisal also estimated that the effects of Section 22(g) of ANCSA would reduce the value of the Koniag Exchange Lands to $10,820,000. Because Section 22(g) limits the uses to which the Koniag Exchange Lands may be put, an analysis of the lands' market value which is based on the value of the lands for different uses would be directly affected by Section 22(g). Land which has uni... ...es and upon which development is restricted, generally, will have a lower value than land without such restrictions and limitations.

After reviewing the FWS Appraisal, Koniag hired Aqua/Terra Consulting, Ltd. of Great Falls, Virginia ("Aqua/Terra") to value the public interest values of the Koniag Exchange Lands. Aqua/Terra issued a report prepared by Robert A. Jantzen, President of Aqua/Terra Consulting, Ltd. and former Director of FWS. Aqua/Terra does not perform appraisals, but has extensive experience as a wildlife habitat specialist. Aqua/Terra was not, at the time of its contract with Koniag, and is not presently, a contractor of the United States Government. Aqua/Terra also retained the services of Richard J. Hensel, former refuge manager of KNWR, in preparing and analyzing data related to the contributions to the economy derived from the Koniag Exchange Lands. Aqua/Terra was selected by Koniag based upon the recommendation of the Fish and Wildlife Foundation, a public foundation created for the purpose of acquiring lands for inclusion in the national refuge system.

The Aqua/Terra Report recommended consideration of three components in valuing the Koniag Exchange Lands: (i) the real estate value as determined by the market data approach; (ii) the value of the natural resources taken from or produced on the lands that directly affect the economy of the region and state, which are not reflected in the appraised value; and (iii) the value of the intangible benefits to the public from ownership, such as scenery, wilderness, preservation of brown bear habitat and uniform management of KNWR and its wildlife population. Focusing on the second factor, it was the opinion of Aqua/Terra that the value of this factor was at least $51,830,648, which was arrived at by an analysis of revenues generated from the Koniag Exchange Lands by commercial salmon fisheries, sports fisheries, bear and deer hunting activities and trapping. The study offered no opinion as to the value of the third component. The Aqua/Terra Report suggested the value of Koniag's 125,661 acres in KNWR, which included all of the Koniag Exchange Lands, fell somewhere between $72,000,000 and $154,000,000; the former amount was derived by adding together the findings of the FWS Appraisal and the Aqua/Terra Report, and the latter amount was derived by additionally taking into account the otherwise unvalued intangible benefits to the public of such ownership (scenery, wilderness, bear habitat, refuge management, etc.), using an arithmetic extrapolation from an analysis of the acquisition price of the Pribilof Bird Cliffs by the United States Government under Section 1417(b) of ANILCA. In arriving at these values, the Aqua/Terra Report did not consider the effects of the application of Section 22(g) on the Koniag Exchange Lands.

Koniag also retained the Dirksen Appraisal Company of Anchorage, Alaska ("Dirksen") to review the FWS Appraisal. Dirksen is headed by Paul P. Dirksen, SRPA-MAI who has extensive experience in appraising properties on Kodiak Island and in Alaska generally. Dirksen is independent of Koniag but has performed from time to time appraisals of property owned by Koniag in conjunction with possible sales of such property. Dirksen has been a contractor of the U.S. Government from time to time, and holds U.S. Government contracts at the present time. Dirksen issued a report dated August 1, 1987 of its review of the FWS Appraisal ("Dirksen Report"). That review, which did not constitute an appraisal, included a physical inspection of the Koniag Exchange Lands, the utilization of the same assumptions of highest and best use made in the FWS Appraisal and a review and analysis of the methodology used in the FWS Appraisal. The Dirksen Report stated that, based upon the FWS Appraisal's assumptions of highest and best use, the FWS Appraisal overstated the market value of the Koniag Exchange Lands by 40% to 45%, and that the impact of Section 22(g) of ANCSA would result in a further reduction in value that could range from a low of 10% to a high of 90% depending upon the lands involved and the ultimate resolution of the degree of control which FWS can exercise over the Native inholdings in the Refuge under such provision. Thus, the Dirksen Report concluded that the FWS Appraisal methodology should have resulted in a fair market value determination of $12,863,000 to $13,210,000, subject to further reductions to reflect the impact of Section 22(g). The Dirksen Report argued, however, that the FWS Appraisal erred in its determination of highest and best use, because the highest and best use of the land was for wildlife habitat. The Dirksen Report further noted that while the use of wildlife habitat values could result in an increase in the market value of the Koniag Exchange Lands, these same wildlife habitat values are likely to be protected under Section 22(g) of ANCSA, and thus the groups which provide a market for habitat lands would not be likely to pay for rights already protected.

PLEASE TAKE NOTE that there have been no valuations of the Koniag Exchange Lands other than the appraisal and reports discussed above. The Board of Directors of Koniag has determined that further appraisals or valuations would not materially assist the Board in evaluating the fairness of the negotiated value placed on the Koniag Exchange Lands. The Board's determination was based upon, among other things, recognition of the inherent difficulties in valuing the lands, including the scarcity of market data, the absence of income generated from customarily recognized sources on the lands, and the effect of various governmental restrictions including Section 22(g) of ANCSA.

PLEASE ALSO TAKE NOTE that a copy of the relevant portions of the FWS Appraisal, the Aqua/Terra Report, and the Dirksen Report, can be reviewed at the business offices of Koniag during regular business hours. A copy of these reports and appraisals will be sent to you upon request.

6. *Termination of Exchange Agreement*

The consummation of the Exchange Agreement requires its authorization by the shareholders of Koniag, the enactment of Opening Legislation and the enactment of Exchange Legislation. After execution of the Exchange Agreement, either party shall have the right to cancel it at any time after December 31, 1993, upon thirty days' written notice to the other party if the Opening Legislation or the Exchange Legislation has not been enacted. Koniag may also cancel the Exchange Agreement upon written notice to the Secretary of the Interior prior to December 31, 1993, and the enactment of either Opening Legislation or Exchange Legislation, upon the payment to DOI of its costs in negotiating the proposed exchange. The amount of these costs has not been determined at this time. During the time the Exchange Agreement is in effect, neither party can encumber the lands or interests to be conveyed under it or alter substantially the physical condition or otherwise effect a material change in the management of any lands or interests proposed to be exchanged or conveyed, except that Koniag has the right to place and remove all or part of the Koniag Exchange Lands in and from the Alaska Land Bank Program established by Section 907 of ANILCA.

Koniag further has the right to cancel the Exchange Agreement upon written notice to DOI (i) within sixty days of the enactment of Opening Legislation which is not in a form and content satisfactory to Koniag, or (ii) within sixty days of the enactment of Exchange Legislation which amends or seeks to amend any of the terms of the Exchange Agreement, which alters or seeks to alter any of Koniag's rights under the Exchange Agreement without Koniag's prior written consent or which includes provisions which are not addressed in the Exchange Agreement and which are not in form and content satisfactory to Koniag.

Koniag has the right to rescind the Exchange Agreement after it is consummated if, as the result of judicial, legislative or administrative action beyond the control of Koniag or its lessee under a Koniag ANWR Lease, either (i) the necessary permits and authorizations to drill a well or conduct operations in conjunction with such drilling are not issued or Koniag or its lessees are prevented from commencing to drill such well on or before the 270th day following its submission of all necessary permit applications, or (ii) Koniag or its lessees are prohibited from completing the drilling of such well within two winter drilling seasons. If Koniag so elects to rescind, it may require the United States Government in exchange for its interests in the Oil and Gas EDP Interests either to reconvey to it certain of the Koniag Exchange Lands or to convey to it such other federal lands or property as Koniag and DOI jointly determine. The value of the Koniag Exchange Lands to be reconveyed (or of the other federal lands or property if Koniag so elects) will be equal to the Exchange Value of the Koniag Exchange Lands less an amount equal to all monies received by Koniag under the Lease Agreements as reduced by Koniag's costs in negotiating the Exchange Agreement and in defending any litigation challenging its rights thereunder. The order in which the Koniag Exchange Lands would be reconveyed is to be set out in an appendix to the Exchange Agreement, was reached as the result of negotiations and leaves for last the reconveyance of the most valuable habitat lands. Rather than reconvey such lands, the United States has the right to purchase the Koniag Exchange Lands to be reconveyed for an amount equal to their Exchange Value.

At any time after the consummation of the Exchange Agreement, the Secretary may suspend Koniag's oil and gas activities if it is determined that those activities would cause major, long-term and irreparable harm to fish and wildlife, their habitat, the environment or human health, or that such suspension is in the interest of national security or defense. Such suspension may be for a period up to five years, at the end of which period the Secretary may either extend it for another period not to exceed five years or extinguish all of Koniag's interest in the Oil and Gas EDP Interests for just compensation. At any time during any period of suspension, Koniag can require the Secretary to either terminate the suspension or extinguish its rights for just compensation. If the parties are unable to agree as to what constitutes just compensation to be paid by the United States Government, then Koniag may bring an action to have a judicial determination of the amount it is to be paid. This right of the United States Government is similar to that provided by statue with respect to leases issued by it for oil and gas rights on the outer continental shelf and was required by DOI to be included in the Exchange Agreement because of the environmental sensitivity of ANWR.

7. *Miscellaneous*

PLEASE TAKE NOTE that a copy of the Exchange Agreement is available at the business offices of Koniag during regular business hours. A copy of that Agreement will be sent to you upon your request.

The United States of America, acting through the Secretary of the Interior, is the other material party to the DOI. There is no material relationship of the United States Government to Koniag or any of Koniag's officers or directors except as may arise from the provisions of ANCSA generally.

LEASE AGREEMENTS

Background of Lease Agreements

In the course of the early discussions with DOI regarding the Exchange, it became apparent to the Board of Directors that Koniag lacked the expertise and information necessary to select the Koniag ANWR Lands and that, because of Koniag's financial position at the time, it would also require additional funds to defray the costs of negotiating the Exchange and securing Congressional approval of it. In the spring of 1985, Koniag entered into negotiations with the Chevron Group. After a break in those negotiations, during which time Koniag solicited proposals from other oil companies, Koniag and the Chevron Group renewed their negotiations, which negotiations resulted in the execution of the LAA.

As negotiations with DOI progressed further, it also became apparent to the Board of Directors that as the result of the valuation process of the Koniag Exchange Lands and the interests in ANWR, the lease bonuses to be paid to Koniag under the LAA would be less than the value of the Koniag Exchange Lands determined by a market value approach. This would result in the risk of receiving consideration equal to such market value being directly related to the risk of the discovery of oil and gas in commercial quantities on the Koniag ANWR Lands. As the result of further negotiations with the Chevron Group, the parties agreed to amend the LAA to provide for the Reduction, which reduced the future leasehold rights of the Chevron Group to an undivided 51% interest, reducing its obligations under the LAA proportionately, and permitted Koniag to enter into another transaction with respect to the remaining 49% interest. On July 1, 1987, Koniag entered into the Phillips Agreement which granted to Phillips the right to acquire such 49% interest. The discussion of the LAA and Phillips Agreement as provided herein reflect the Reduction and the subsequent disposition of the 49% interest to Phillips.

Lease Acquisition Agreement

The following section addresses the material features of the LAA regarding the selection, exploration, development and production of the Oil and Gas EDP Interests to be acquired by Koniag under the proposed exchange.

1. *Obligations of Koniag*

Koniag agreed to use its best efforts consistent with its interests to negotiate an exchange agreement with DOI which would maximize the inclusion in the lands to which the Oil and Gas

EDP Interests pertain of those tracts that the Chevron Group had determined as having the greatest potential for the production of oil and gas. Throughout the process of negotiating the Exchange Agreement and securing passage of Opening Legislation and Exchange Legislation, Koniag is obligated to provide the Chevron Group with an opportunity to review and comment on the proposed agreements and legislation prior to Koniag's taking a position on such agreements and legislation. In selecting the Koniag ANWR Lands, Koniag was further obligated to take into account the conclusions and recommendations of the Chevron Group but it was under no obligation to select any of the lands so recommended unless it elected to do so. Upon the election of the Chevron Group, Koniag is obligated to issue leases to the Chevron Group granting it an undivided 51% of the Oil and Gas EDP Interests subject to certain terms and conditions ("Koniag ANWR Leases"). The remaining 49% of the Oil and Gas EDP Interests will be granted to Phillips. (See "Proposition I—Phillips Agreement-Koniag ANWR Leases").

2. *Obligations of Chevron Group*

The Chevron Group was obligated to provide Koniag with certain information regarding the lease bonuses that it was willing to pay Koniag for Koniag ANWR Leases of the various tracts which information was needed by Koniag to select the Koniag ANWR Lands. This information was provided as to the thirty tracts with the highest lease bonus values. The Chevron Group is also obligated to pay certain sums to Koniag upon the occurrence of various events (see "Proposition I—Lease Acquisition Agreement—Payments by Chevron Group"), and to take Koniag ANWR Leases upon the execution of the Exchange Agreement and the enactment of Opening Legislation and Exchange Legislation all in a form and content satisfactory to the Chevron Group.

3. *Termination of the LAA*

The LAA terminates upon the first to occur of the following events: (i) the conclusion of the term of the last of the Koniag ANWR Leases issued under the LAA; (ii) the effective date of the regulations promulgated pursuant to the Opening Legislation to implement the exploration, development, and production of the Coastal Plain of ANWR (the "Implementing Regulations") if such date is prior to the execution of the Exchange Agreement; (iii) if Koniag has received conveyance of the Oil and Gas EDP Interests and the Chevron Group has disapproved the Opening Legislation or Exchange Legislation, then during the following ten year period, upon the failure of the Chevron Group either to take Koniag ANWR Leases when offered or to exercise its rights of first refusal with respect to third party offers to lease the Oil and Gas EDP Interests; (iv) the failure of the Chevron Group to pay the balance of the lease bonuses due after the issuance of Koniag ANWR Leases, if the Chevron Group has disapproved the Implementing Regulations; (v) if Opening Legislation and Exchange Legislation are not enacted during the Congress into which such legislation is introduced and similar bills are not introduced in the subsequent session of Congress; or (vi) twenty years after the date of the LAA if the Implementing Regulations have not been promulgated or if the lease bonuses have not been paid in full by the Chevron Group.

The LAA may be terminated at the option of the Chevron Group upon any of the following: (i) the issuance of Implementing Regulations which are unsatisfactory to the Chevron Group; (ii) the rejection by the shareholders of Koniag of the proposal to authorize Koniag's execution of the Exchange Agreement and ratify the LAA; (iii) at successive intervals of three years after the effective date of the LAA if enactment of Opening Legislation, Exchange Legislation, and the promulgation of Implementing Regulations have not all three occurred by the time of each of the intervals.

The LAA may also be terminated if the parties agree in writing that there is no substantial likelihood that any of the Oil and Gas EDP Interests with respect to which the Chevron Group has an interest in acquiring a lease will be included in an Exchange Agreement.

Upon the termination of the LAA, Koniag shall retain all sums paid to it by the Chevron Group as of that date; provided, however, in the following two instances, Koniag is required to refund all sums received from the Chevron Group: (1) if the LAA or the Exchange Agreement is declared to be invalid by a final judicial order under which it is determined that Koniag did not observe the requisite procedures under its articles and bylaws in entering into the LAA; and (2) after five years from the effective date of the Implementing Regulations, if the Chevron Group has disapproved the Implementing Regulations, Koniag has not received a third party offer to lease the Oil and Gas

EDP Interests and the Chevron Group elects to terminate the LAA rather than pay the remaining lease bonus if such election is made upon the request of Koniag.

4. *Issuance of Leases*

Koniag will issue Koniag ANWR Leases to the Chevron Group upon the Chevron Group's approval of the Opening Legislation and the Exchange Legislation. These Koniag ANWR Leases will become effective upon receipt by Koniag of the Oil and Gas EDP Interests in the Koniag ANWR Lands. However, the Chevron Group will not have the right to conduct any operations involving the Koniag ANWR Leases prior to the payment of 100% of the lease bonuses due under the LAA.

5. *Terms of Koniag ANWR Leases*

The Koniag ANWR Leases will lease to the Chevron Group an undivided 51% working interest in the Oil and Gas EDP Interests in the Koniag ANWR Lands, including the right to explore for, develop, produce, take, own and market the oil and gas in and under the Koniag ANWR Lands, to drill wells thereon, and to conduct such other activities with respect to the Oil and Gas EDP Interests as are necessary to exercise the Chevron Group's rights under the Koniag ANWR Leases. Each of the Koniag ANWR Leases has a primary term of twelve years and will commence on the latest of the following events: (1) the conveyance of the Oil and Gas EDP Interests to Koniag from the United States Government; (2) the payment of the full lease bonus; and (3) the effective date of the Implementing Regulations. The primary term may be extended if, during the primary term, oil and gas is discovered in quantities sufficient to pay the operating costs on the lands subject to the lease, or for so long as there is production, or operations are being conducted, on the lands subject to the lease.

The Koniag ANWR Leases provide for Koniag to be paid, in addition to the lease bonus (see "Proposition I—Lease Acquisition Agreement—Payments by Chevron Group" and "Proposition I—Phillips Agreement—Payments by Phillips") a royalty of 20% of the value of the oil and gas produced from the lease. This royalty can be paid in kind or in cash at Koniag's option. If the royalty is paid in cash, the value of the oil and gas is based upon field price; if there is no actual field price, the Koniag ANWR Leases include a formula for calculating a price. Koniag has the right to convert its royalty to a 30% share of the net profits (as defined) from the production of oil and gas from the lease at the first time that the lessees have received total proceeds (as defined) from the oil and gas produced from the lease in an amount which is in excess of all of the expenditures made by the lessees regarding the lease plus interest thereon, and the right to convert its royalty or 30% net profits interest, as the case may be, to a 40% share of the net profits from the lease at the time the proceeds equal twice the expenditures plus interest. At the present time it has not yet been determined whether the costs and expenses of the Chevron Group and Phillips will be accounted for separately or in the aggregate in determining when this right is exercisable. Once Koniag has elected to convert its royalty interest to a share of the net profits, it may not convert its net profits share back to a royalty.

Koniag will also be paid an annual rental under the Koniag ANWR Leases in the amount of $10 per acre for approximately 2,560 acres and $5 per acre for approximately 623 acres.

6. *Payments by Chevron Group*

The Chevron Group under the LAA is obligated to make the following payments to Koniag:

(a) $1,000,000 which was paid upon the execution of the LAA. As a result of the Reduction, the Chevron Group is entitled to a credit against future payments of $490,000.

(b) Quarterly payments of interest to be computed at the prime rate on an assumed principal balance of an escrow account which was initially $5 million and has been reduced to $2,550,000 as a result of the Reduction. This escrow account has never been formally funded. To date, payments of interest in the amount of $633,254 have been received. As a result of the Reduction, the Chevron Group is entitled to a credit against future payments of $310,294;

(c) Progress payments in the amount of $255,000 each upon the occurrence of each of the following events: (i) the reaching of an agreement with DOI as to the lands to be exchanged and the action of the Board of Directors to submit the Exchange Agreement and the LAA to the shareholders for approval and ratification; (ii) the approval of the Exchange by the shareholders and the execution of the Exchange Agreement by Koniag and the Secretary of the Interior: (iii) the transmittal to Congress of the report of the Secretary of the Interior recommending the Opening Legislation and Exchange Legislation which is approved as to form and content by Koniag (or, if Koniag does not so approve, the fulfillment of (iv)); (iv) passage by both the House and Senate during the same Congress of Opening Legislation and Exchange Legislation satisfactory as to form and content to Koniag. The Chevron Group may withhold payments of any of the progress payments required by (iii) or (iv) if it disapproves of the Opening or Exchange Legislation with respect to its form or content. The progress payments to be made upon the events described in (ii), (iii) and (iv) above are to be treated as advance payments of lease bonuses under (d) and drilling premium payments under (e). The Chevron Group will also be entitled to take as a credit against these progress payments the credits identified in (a) and (b) above:

(d) $276,395 upon the issuance of the Koniag ANWR Leases (no payment would be due after the credit for 50% of the progress payments described in (c) hereof) and $1,566,235 upon Koniag's receipt of title to the Oil and Gas EDP Interests and approval by the Chevron Group of the regulations promulgated under the Opening Legislation or the election of the Chevron Group to waive such approval ($1,460,129 after the balance of the progress payments credit). These amounts will also be subject to a further downward adjustment in the amount of the prior overpayments, if such overpayments have not been fully credited against the amounts due under (b) and (c) hereof;

(e) A Drilling Premium Payment in the amount of $184,236 if the Chevron Group has the right to drill an exploratory well under an issued Koniag ANWR Lease on any of the Koniag ANWR Lands and a minimum of twenty-four months would elapse between the date the authorization to drill a well could be obtained and unleased federal lands which are within six miles of such Koniag ANWR Lands are offered at a federal lease sale. Such payment will be made on the date such authorization could first be obtained irrespective of whether or not it is applied for. An additional Drilling Premium Payment of $1,530,000 is to be paid as of the date of the first federal lease sale, if a well is actually drilled during the period specified in this subsection. Against these Drilling Premium Payments, the Chevron Group is entitled to receive a credit in the amount of $382,500 for a portion of the Progress Payments it will make, as described in (c) hereof:

(f) An overriding royalty interest of 0.51% of any oil and gas produced from any interest acquired by the Chevron Group in any lands within six miles of any lands subject to a Koniag ANWR Lease issued to the Chevron Group unless such interest was acquired from Arctic Slope Regional Corporation under an agreement dated February 6, 1984;

(g) An overriding royalty interest of 0.255% of any oil and gas produced from a federal lease acquired by the Chevron Group in any land not recommended for selection by Koniag by the Chevron Group which is cornering or contiguous to any lands subject to a Koniag ANWR Lease if the Chevron Group has drilled to its objective depth an exploratory well on such Koniag ANWR Lease prior to the federal lease sale:

(h) A Bonus Differential Payment equal to 51% of the amount by which the average per acre bonus of any lease acquired at a federal lease sale by the Chevron Group or any member thereof, of lands proposed by the Chevron Group for selection by Koniag, exceeds three times the average per acre bonus amount the Chevron Group would have paid Koniag had such land been selected by Koniag. Such Bonus Differential would be paid out of 20% of 100% of the Chevron Group's or any member's thereof, share of production from such federal lease. No Bonus Differential will be due, however, if an exploratory well has been drilled prior to such lease sale by the Chevron

Group within fifteen miles of any portion of such federal lease, and the Bonus Differential will be proportionately reduced if the interest acquired by the Chevron Group is less than 100% of the working interest.

Phillips Agreement

1. *Obligation of the Parties*

Koniag is obligated to lease to Phillips an undivided 49% working interest in the Oil and Gas EDP Interests. Phillips has agreed that Chevron will be the operator on all the Koniag ANWR Leases where the Chevron Group holds the balance of the working interest.

2. *Termination of Phillips Agreement*

The Phillips Agreement may be terminated by Phillips within thirty days of the enactment of the Opening Legislation and the Exchange Legislation, if such Legislation is unacceptable to Phillips in either form or content. All amounts paid by Phillips to Koniag prior to such termination shall be retained by Koniag.

Koniag has the right to terminate the Phillips Agreement if it elects to cancel the Exchange Agreement because it has determined that the consummation of the Exchange with DOI is not in its best interests. If such cancellation occurs after the enactment of the Opening or Exchange Legislation, Koniag shall refund to Phillips $500,000 of the monies paid by Phillips to it. The Phillips Agreement shall also terminate if the shareholders of Koniag fail to approve the Phillips Agreement, in which event Koniag shall refund to Phillips all amounts paid by Phillips to Koniag as of that date.

3. *Terms of Koniag ANWR Leases*

If Phillips does not exercise its rights to terminate the Phillips Agreement, it shall be granted Koniag ANWR Leases, which leases shall be the same leases as those granted to the Chevron Group (see "Proposition I—Lease Acquisition Agreement—Terms of Koniag ANWR Leases"), except that Phillips' interest shall be reflected therein as being an undivided 49% of the working interest.

4. *Payments by Phillips*

Phillips is obligated to pay Koniag $55,000,000 in accordance with the following schedule:

(a) $1,000,000 upon the execution of the Phillips Agreement;

(b) $7,250,000 upon the expiration of the thirty day period following the enactment of the Opening Legislation and Exchange Legislation and the receipt by Phillips of notice from Koniag to DOI that Koniag waives its right to cancel the Exchange Agreement. However, this amount and any further amounts will not be payable if Phillips terminates the Phillips Agreement within the thirty day period;

(c) $27,500,000 upon the issuance to Phillips by Koniag of the Koniag ANWR Leases;

(d) $19,250,000 upon the third anniversary of the issuance to Phillips by Koniag of the Koniag ANWR Leases.

Fairness of Consideration Under Lease Agreements

In the Board's view, the major factor in assessing the fairness of the consideration offered by Phillips and the Chevron Group is the value of the Koniag Exchange Lands. The proposed Exchange provides that Koniag will receive from DOI the Oil and Gas EDP Interests in exchange for the Koniag Exchange Lands. Koniag, in turn, will lease substantially all of the Oil and Gas EDP Interests to the Chevron Group and Phillips in exchange for a minimum amount of approximately $58,300,000 plus contingent amounts that include Drilling Premium Payments and oil and gas royalties. The Exchange Agreement and the Lease Agreements comprise parts of a single transaction under which Koniag effectively is exchanging the Koniag Exchange Lands for rights under the Lease Agreements, and consequently the Koniag Board has focused its attention on whether the Lease Agreements fairly compensate Koniag for the Koniag Exchange Lands. In making this determination, the Board has placed primary emphasis on the minimum compensation of approximately $58,300,000 to be received under the Lease Agreements because of the uncertainty that the contingent amounts (including the oil and gas royalties and Drilling Premium Payments) will ever be realized and the difficulties in valuing certain of them.

As described above, there are substantial uncertainties in valuing the Koniag Exchange Lands. (See "Proposition I—Proposed Exchange—Valuation of Koniag Exchange Lands.") However, Dirksen has advised the Board of its view that any price for the Koniag Exchange Lands in excess of the FWS Appraisal would tend to be within reason, and Aqua/Terra has advised the Board of its view that a price of $58,300,000 for the Koniag Exchange Lands is fair and reasonable to Koniag and its shareholders from a financial point of view. Copies of letters to the Board from Aqua/Terra and Dirksen are attached as Exhibits A and B. The Board has reviewed these letters, the FWS Appraisal, the Aqua/Terra Report and the Dirksen Report and is persuaded that approximately $58,300,000 constitutes fair value for the Koniag Exchange Lands.

PLEASE TAKE NOTE that the Board of Directors has not sought any independent evaluation of the fairness of the consideration to be paid under the Lease Agreements, the value of the royalty interest or other contingent interests which Koniag will receive, or the value of any residual interest in the Oil and Gas EDP Interests which Koniag will receive if the Koniag ANWR Leases terminate before Koniag is required to return its interest in the Oil and Gas EDP Interests to the United States pursuant to the terms of the Exchange Agreement.

The Board's determination not to seek or obtain such an evaluation was based on, among other things, the scarcity and expense of obtaining and evaluating available geophysical, geological and similar data with respect to the ANWR Lands, the difficulty in evaluating the quantity, quality or type of oil or gas required to make exploration, production and development economically feasible, and the significant inherent risks in any oil and gas exploration in a field which has not yet been explored. See "Proposition I—Proposed Exchange—Receipt of Oil and Gas EDP Interests." The terms of both the LAA and the Phillips Agreement were respectively negotiated after discussions with a number of companies and reflect the most economically attractive terms which Koniag was able to secure at the respective dates they were negotiated. In reaching the decision to enter into these transactions, the Board of Directors considered not only the direct economic consideration to be paid to Koniag but also the information available to the Chevron Group as the result of its well in the Coastal Plain of ANWR, which information was not available to DOI or any other oil company and which the Board thought would enhance the Chevron Group's ability to make recommendations to Koniag with respect to its selection of tracts in ANWR.

Use of Proceeds by Koniag

The Board of Directors has invested the initial proceeds from the Lease Agreements with various investment managers or institutions to the extent that such proceeds have not been required to defray the costs of operations of Koniag, including the costs incurred by it in negotiating the Lease Agreements and the Exchange. Should the Exchange fail to be consummated or the Lease Agreements be terminated prior to the issuance of Koniag ANWR Leases, the proceeds received from the Lease Agreements would cover the present estimated out-of-pocket expenses which may be incurred by Koniag as the result of its participation in the Exchange process and the negotiation and performance of the Lease Agreements.

Because of the uncertainties about the consummation of the Exchange and the issuance of Koniag ANWR Leases, the Board of Directors has determined not to begin developing a plan for the use or investment of the total proceeds other than the preliminary efforts disclosed herein under Proposition III regarding consideration of a shareholder distribution permanent fund. At such time as Congressional approval and the issuance of the Koniag ANWR Leases appears likely, the Board intends to develop a plan for the use and investment of the proceeds under the Lease Agreements and Koniag ANWR Leases.

Certain Transactions

The names and addresses of the other parties with respect to the Lease Agreements are:

Phillips Agreement ..	Phillips Petroleum Company 9055 East Tufts Parkway Denver. Colorado 80237
LAA	Chevron U.S.A. Inc Chevron Park 6001 Bollinger Canyon Road San Ramon. California 99583-2390
	Standard Alaska Production Company 5151 San Felipe P.O. Box 4587 Houston. Texas 77210
	BP Alaska Exploration Inc. 100 Pine Street. Suite 3100 San Francisco. California 94111

There is no material relationship between Phillips and Koniag. its subsidiaries, officers or directors except for the Phillips Agreement.

The only material relationships between the Chevron Group and its members, and Koniag, its subsidiaries, officers and directors, other than the LAA. are as follows:

(a) On December 20, 1982, Koniag, Inc. and Chevron entered into the Certificates Agreement ("Certificates Agreement") under which Koniag was paid $300,000 by Chevron and Chevron agreed to provide certain loan guarantees and other consideration for an assignment by Koniag of the OCS Bid Credits it would receive upon the passage of then pending legislation. The Certificates Agreement further provided that, should such legislation fail to be enacted. Chevron would have a right of first refusal until December 31, 1986, to negotiate with Koniag for the purchase of any rights, lands, minerals or other assets transferred to Koniag by the United States Government in consideration of Koniag's conveyance to the United States Government of the lands described in the legislation. While this obligation to negotiate arose only after the transfer of such interests by the United States Government, Koniag entered into discussions with Chevron and the Chevron Group concerning a lease of the Oil and Gas EDP Interests to be acquired under the Exchange because of Koniag's past business relationship with Chevron. After providing the Chevron Group with this initial opportunity, Koniag solicited proposals from, and negotiated with. other oil companies prior to recommencing negotiations with Chevron. The Chevron Group proposal was preferred because it offered the highest lease bonuses available at that time and because only the Chevron Group had drilling data from the Coastal Plain of ANWR (and, consequently, potentially superior information concerning the relative value of the tracts being offered).

All loans guaranteed by Chevron have been discharged by Koniag and Koniag has no further obligations under the Certificates Agreement.

(b) As of June 1. 1974. Koniag entered into an agreement with Chevron (then known as Standard Oil Company of California) which granted to Chevron the right to lease up to 300,000 acres of certain lands available for selection by Koniag under ANCSA on the Alaska Peninsula. and which required Chevron to lease a minimum of 100,000 acres of these lands. Chevron transferred 25% of its interest to Getty Oil Company ("Getty"), now a subsidiary of Texaco, Incorporated. Three leases totalling 68.438 acres were issued. and they were subsequently surrendered on April 29. 1983 to Koniag. On July 25, 1984. the parties amended the original agreement: under the amendment, Koniag was paid a non-refundable lease bonus on the remaining 31,562 acres, which Getty and Chevron were obligated to lease, and the time for the exercise by Getty and Chevron of their right to lease up to 300,000 acres was extended to December 31, 1989. This agreement is still in full force and effect.

(c) On November 26, 1979, Koniag, NANA Regional Corporation and Sealaska, Inc. entered into a Joint Bidding Agreement with Standard and BPAE for the acquisition of leases in the joint federal-state Beaufort Sea lease sale. Pursuant to the terms of such agreement and the successful bids of the group, Koniag acquired a 1% interest in nine leases. Koniag subsequently sold its interest in one of the leases. Six of the leases were subsequently committed to a unit production agreement under state law (the Point Thompson Unit). BPAE transferred its interests in the leases in 1986. Koniag is presently seeking to divest itself of its remaining interests in the leases.

(d) Judith Meidinger, a director and Chairman of the Board of Koniag, was President and the owner of Counselors Inc., which provided various services to the oil industry. Counselors Inc. previously held contracts for services to be provided by it to Standard and BPAE. Counselors Inc. also entered into contracts with certain oil industry associations, the members of which include members of the Chevron Group and Phillips. Mrs. Meidinger was involved in the initial negotiations with the Chevron Group but she was not directly involved in the final negotiations of the Lease Agreements or the Exchange.

PLEASE TAKE NOTE, copies of the LAA (excluding certain confidential information) and the Phillips Agreement are available at the business office of Koniag during regular business hours. A copy of these agreements will be sent to you upon your request.

AUTHORIZATION TO BE GRANTED

The adoption of Proposition I will authorize the Board of Directors (i) to authorize the execution and performance of an agreement, the terms of which are consistent with the Exchange Agreement; (ii) to exercise, on behalf of Koniag, the rights of Koniag under such executed agreement including the amendment of such agreement without additional shareholder authorization, except that material changes to the Oil and Gas EDP Interests can be made only if in response either to a request made by the Secretary of the Interior arising from findings of the LEIS to be prepared by DOI or to legislation enacted by Congress.

LITIGATION AFFECTING PROPOSED EXCHANGE AND LEASE AGREEMENTS

1. *Trustees for Alaska, et al. v. William Horn, et al., Civ. Action No. A87-118 (Civil).*

On March 19, 1987, a lawsuit which may affect the Exchange was begun in the United States District Court for the District of Alaska. The plaintiffs include Trustees for Alaska, American Wilderness Alliance, National Wildlife Refuge Association, Northern Alaska Environmental Center, The Sierra Club, The Wilderness Society and the National Audubon Society. The defendants are (i) William P. Horn, Assistant Secretary of the Interior for Fish, Wildlife and Parks, (ii) Donald P. Hodel, Secretary of the Interior, (iii) Frank Dunkle, Director, U.S. Fish and Wildlife Service, (iv) James Griffith, Acting Regional Director, U.S. Fish and Wildlife Service, (v) the DOI, and (vi) the United States Fish and Wildlife Service.

Because the plaintiffs' action, if successful, could delay or prevent the proposed exchanges or could result in the imposition of additional conditions for such exchanges, Koniag, along with certain other Native participants, has intervened in the lawsuit on the side of the defendants.

The complaint in the lawsuit asks for declaratory and injunctive relief. It claims that the defendants have violated and are violating Section 102 of the National Environmental Policy Act ("NEPA"), regulations implementing NEPA, the Administrative Procedure Act, ANILCA, ANCSA, and the Wilderness Act by "actively pursuing exchange negotiations involving the Coastal Plain of the Arctic National Wildlife Refuge and committing federal personnel and financial resources before Congress decides whether to allow oil and gas development in that area; and by proceeding with those negotiations on an expedited basis without preparing an environmental impact statement and without complying with other procedures required by NEPA and the NEPA implementing regulations." The plaintiffs have asked for a preliminary and permanent injunction against "all further negotiations and deliberations regarding the proposed exchange unless Congress enacts legislation opening the area for oil and gas leasing, and until the proper procedures are followed."

The Secretary of the Interior and the other original defendants filed a motion to dismiss the complaint on April 14, 1987. The motion contends that plaintiffs lack "standing" to challenge defendants' authority to negotiate, that the defendants' actions are not yet "ripe" for a review by a court, that the Administrative Procedure Act gives the court no jurisdiction to stop the negotiations and that plaintiffs have not stated any good grounds for their lawsuit.

On April 22, 1987, the plaintiffs filed a motion for preliminary injunction, supported by other papers, claiming that the defendants are violating NEPA in two distinct ways: by prematurely committing government resources to negotiations before a final decision is reached by Congress: and (2) by not preparing an Environmental Impact Statement on the proposed exchange based upon public participation "as early and as frequently as possible." Plaintiffs also argue that the exchange negotiations violate ANILCA, ANCSA and the Wilderness Act. The government defendants have filed statements with the court indicating their intention to prepare a LEIS on the proposed exchanges.

Following briefing of the issues raised both by defendants' motion to dismiss (joined in by the Native Corporation intervenors) and plaintiffs' motion for a preliminary injunction (opposed by the Native Corporation intervenors as well as by the original defendants), the matter was argued on July 16, 1987. The judge indicated that he would decide the matter later. There is no definite date by which the judge must decide these motions. As of October 1, 1987, the judge had not rendered a decision on these motions.

Because of the early status of this litigation, the Board of Directors cannot predict its outcome.

2. *Sealaska Arbitration*

On July 16, 1987, Sealaska Corporation ("Sealaska"), an Alaska Native Regional Corporation, initiated an arbitration against Koniag. The arbitration is pursuant to the Settlement Agreement entered into as of June 29, 1982, between all of the Alaska Regional Corporations created under ANCSA ("Settlement Agreement") which provides for the manner in which revenues from the subsurface estate of lands conveyed to a Regional Corporation by ANCSA are to be shared pursuant to the provisions of Section 7(i) of ANCSA. Cook Inlet Regional Corporation is the only other corporation to have joined the Arbitration. The issues involved in the arbitration are whether revenues derived from the interests to be acquired by Koniag in the Exchange are subject to the revenue sharing provisions of Section 7(i) of ANCSA, and whether Koniag's refusal to provide the LAA to the officers of Sealaska constitutes a violation of the Settlement Agreement. Koniag refused to make the LAA available to the officers of Sealaska because of confidentiality provisions of the LAA, and has taken the position that the Settlement Agreement explicitly states that in the event of an exchange where the surface estate of lands acquired under ANCSA are exchanged for the subsurface estate of other lands, revenues derived from the subsurface estate so acquired are not subject to the provisions of Section 7(i). Koniag further maintains that agreements which relate solely to subsurface which is not subject to sharing under Section 7(i) should not be required to be disclosed. As part of the arbitration process, it is likely that the panel will determine if revenues derived from the interest acquired by Koniag in the Koniag ANWR Lands are required to be shared by Koniag pursuant to the provisions of Section 7(i). If such a finding is made, then approximately 65.5% of the revenues under the Lease Agreements, after deducting certain expenses as authorized by the Settlement Agreement, would be required to be paid by Koniag to the other eleven Regional Corporations in proportion to their original respective enrollments and approximately 2% of such net revenues would be paid to the Village Corporations in the Koniag region and to the at-large (Class B) shareholders of Koniag.

Koniag believes the Sealaska position that revenues received by Koniag under the Lease Agreements are subject to sharing under Section 7(i) is without merit. Section 7(i) applies only to revenues from timber and the subsurface estate conveyed to Regional Corporations under ANCSA.

It is Koniag's position that the revenues from the subsurface interests in the Koniag ANWR Lands are not subject to the provisions of Section 7(i) for several reasons. First, as discussed above, the Settlement Agreement specifically excludes from sharing any revenues derived from subsurface interests acquired in an exchange for surface lands. Second, because the Koniag Exchange Lands were originally Village Corporation lands which were acquired by Koniag through a merger and not from its land entitlements under ANCSA, and because Village Corporation lands are not subject to Section 7(i), the revenues from the Koniag Exchange Lands or from the interests received for them under the proposed exchange, are likewise not subject to sharing under Section 7(i). Sealaska has yet to inform Koniag of the basis for its position that such revenues are subject to sharing under Section 7(i).

The Board would reassess the advisability of the Exchange in the event that Sealaska were to prevail in the arbitration.

A copy of the Settlement Agreement is available at the business offices of Koniag, Inc. during regular business hours. A copy of that Agreement will be sent to you upon your request.

RISK FACTORS

There are a number of potential risks involved in the Exchange and the Lease Agreements.

The DOI is under no obligation to execute the proposed Exchange Agreement. The decision whether to execute that Agreement will be made only after the LEIS is prepared and public comments on it have been received. At the present time, DOI has not commenced the LEIS because of an understanding which the Secretary of the Interior reached with the Chairman of the Senate Energy Committee. The Chairman has expressed serious concerns about the Exchange and the other proposed exchanges and their impact on pending legislation to open ANWR to oil and gas activities. It is Koniag's understanding that further discussions are to be held, at which time, based on those discussions, DOI will make a determination whether to commence the LEIS or to delay further the process in light of the concerns of the Chairman. If a further delay is experienced, the Board will make a determination in light of the circumstances then existing as to the action it may take. Such action could include seeking introduction of legislation without the sponsorship of DOI.

While DOI has indicated its good faith commitment to the Exchange, information may be developed as part of the LEIS process which could result in the Koniag ANWR Lands not being available because of environmental concerns or because the Secretary has determined that there are adverse environmental consequences of the Exchange which preclude execution of the Exchange Agreement by DOI.

Because the Exchange Agreement is subject to the enactment of certain legislation, there exists a risk that Congress will either (i) not enact the required legislation, or (ii) enact Opening Legislation which so restricts development of the Koniag ANWR Lands so as to render the Oil and Gas EDP Interests noneconomic, or (iii) enact Exchange Legislation which seeks to modify or alter the terms of the Exchange Agreement. Koniag has the option to terminate the Exchange Agreement prior to its consummation if the legislation which is enacted is not satisfactory to it. However, once executed, the Exchange Agreement requires Koniag to preserve and not encumber the Koniag Exchange Lands until December 31, 1993, or until such time as Koniag has terminated the Exchange Agreement in accordance with its terms. The consequences of such termination with respect to the Lease Agreements are addressed in the respective sections dealing with the LAA and Phillips Agreement.

Under the terms of the LAA, the Chevron Group is not required to take leases from Koniag or pay Koniag the lease bonus amounts unless it approves the form and content of the Opening Legislation and Exchange Legislation. The obligation of the Chevron Group to pay the balance of the lease bonuses after any leases have been issued is contingent upon its approval of the regulations promulgated under the Opening Legislation. The failure of the Chevron Group to approve such regulations could result in the termination of the LAA, in which event Koniag would not receive any further revenues under the LAA. If such termination occurred after the expiration of Koniag's right to terminate the Exchange Agreement, then Koniag would retain the undivided 51% interest in the Koniag ANWR Leases which would have been held by the Chevron Group. Similarly, Phillips has the opportunity to terminate the Phillips Agreement if it finds the form and content of the enacted Opening Legislation and Exchange Legislation to be unacceptable to it. If such termination occurs, Phillips has no obligation to pay any additional amounts to Koniag. Should either the Chevron Group or Phillips or both exercise their rights to terminate their respective agreements, the Board of Directors intends to consider the reasons for such termination and the advisability of Koniag proceeding with the Exchange. Should it then be determined to be advisable, the Board of Directors intends to take all reasonable actions to enter into an equivalent transaction with another company prior to the expiration of its rights to terminate under the Exchange Agreement. It is not known whether Koniag could enter into a timely transaction with another oil company for such interests as then may be available or the nature of the terms of any such subsequent transaction.

There are certain operational risks involved in the Koniag ANWR Leases, the most recognizable of which is the risk that there may not be any oil or gas under the Koniag ANWR Lands which could be produced economically. If there is no production, Koniag will not receive any royalty under the Koniag ANWR Leases. Although the Koniag ANWR Leases require the lessees under such leases to use reasonable diligence in drilling, producing and operating wells once a commercial discovery is made, either Phillips or the Chevron Group could determine not to explore and drill for oil or gas, and could leave the Koniag ANWR Lands in an unproductive state for substantial periods before the leases would terminate. In addition, environmental groups opposed to oil and gas operations could seek to enjoin them because of alleged environmental considerations. If such litigation does occur, it could, at a minimum, delay operations, resulting in higher costs (which would delay and/or reduce any net profits interest which Koniag may have), and could, if successful, prevent any operations from occurring.

Any discovery of oil and gas in commercial quantities on the Koniag ANWR Leases would not be capable of production until development and transportation facilities (including facilities located off the Koniag ANWR Lands) are in place. The construction of any such facilities could be delayed or prohibited due to environmental factors, by third party litigation, governmental permit requirements or for other reasons. Thus, any production from which Koniag may be entitled to royalties may not occur for a substantial period of time, if at all.

There is also no guarantee that the economic return from any oil and gas discovery which may be made would be such as to allow Koniag to exercise its right to convert its royalty interest to a net profits interest or that if the conditions to allow the conversion were met, the proceeds from such net profits interest would exceed those to be derived under the gross royalty provisions of the Koniag ANWR Leases.

The possibility also exists that the Koniag ANWR Leases may be terminated by Phillips and the Chevron Group before any exploration efforts are undertaken. If such termination occurs, it is not possible to determine now whether such interests owned by Koniag could be leased to a third party or the terms of any such subsequent lease.

Under the Exchange Agreement, Koniag is obligated to perform certain final reclamation activities with respect to the oil and gas activities undertaken by it or with its approval under the Exchange Agreement on the Koniag ANWR Lands or other lands in ANWR. While, under the Lease Agreements, these obligations are assumed by the Chevron Group and Phillips, Koniag will be responsible for their nonperformance but will have a claim against the Chevron Group and Phillips for any costs which it may incur.

The Exchange is also subject to the risk that revenues received by Koniag from the Oil and Gas EDP Interests may be subject to the provisions of Section 7(i) of ANCSA. See "Proposition I—Litigation Affecting Proposed Exchange and Lease Agreements." Koniag believes that this risk is not very high. If it were determined prior to the consummation of the Exchange that revenues from the Oil and Gas EDP Interests were subject to Section 7(i), the Board would reconsider its position on the Exchange Agreement and its advisability for Koniag.

As discussed previously (see "Proposition I—Proposed Exchange—Receipt of Oil and Gas EDP Interests"), there is substantial uncertainty as to the value of the Oil and Gas EDP Interests and the value of the contingent interests under the Lease Agreements. The Board of Directors believes this risk is acceptable given that, in the Board's view, the consideration to be received under the Lease Agreements which is not dependent upon the discovery of oil and gas (approximately $58,300,000) is a fair value for the Koniag Exchange Lands. There is also uncertainty as to the value of the Koniag Exchange Lands. (See "Proposition I—Proposed Exchange—Valuation of Koniag Exchange Lands.")

The Board of Directors believes that many of the risks identified herein are inherent in either the oil and gas industry or the legislative process. The Board has attempted to minimize these risks to Koniag by setting the deadline for the Chevron Group and Phillips to give notice of their acceptance of the legislation in advance of the expiration of Koniag's right to terminate the Exchange if the Opening Legislation or the Exchange Legislation is not acceptable. While under the Lease Agreements, Koniag will not receive an amount equal to the Exchange Value of the Koniag Exchange Lands unless there is production from the Koniag ANWR Lands, the lease bonuses to be paid under the Phillips Agreement are a minimum of $55,000,000 and in the Board's view this amount, plus the potential for a 20% royalty, would be fair consideration for the Koniag Exchange Lands. Thus, if Phillips approves such Legislation, then irrespective of the risks involved in the exploration, development and production of the oil and gas interests, the Board of Directors believes that Koniag will receive fair consideration for the Koniag Exchange Lands even if it has to bear the risk that no production of oil or gas may occur. If Phillips fails to approve such legislation, then Koniag could terminate its obligations under the Exchange Agreement and retain title to the Koniag Exchange Lands. In that event, the Chevron Group would have no express right under the LAA to require that Koniag not terminate the Exchange Agreement. If Koniag did terminate the Exchange Agreement, it would still remain obligated by certain provisions of the LAA concerning confidentiality of information proprietary to the Chevron Group and certain rights of the Chevron Group to acquire a portion of any interest which Koniag may subsequently acquire in certain lands within ANWR. If such termination of the Exchange Agreement did occur, the costs of negotiating the Exchange Agreement and the Lease Agreements would have been defrayed by the monies received by Koniag under the Lease Agreements prior to that time.

During the negotiations, Koniag had an opportunity to include in the Exchange Agreement provisions which would grant it the right to rescind the Exchange if it failed to discover certain quantities of oil and gas within a specified period. This right of rescission would have granted Koniag the same rights afforded it by its right to rescind if it is unable to drill and complete a well as discussed in "Proposition I—Proposed Exchange—Termination of Exchange Agreement" above. However, in consideration for such right, the United States would have retained 1.75% of the total production which would have been paid out of Koniag's royalty interest in the Koniag ANWR Leases, reducing Koniag's royalty share by 8.75%. In order to exercise such right of rescission, Koniag would have been required to obtain the agreement of Phillips and the Chevron Group to surrender their leases. Given the guaranteed minimum compensation of approximately $58,300,000 to Koniag under the Lease Agreements, the limited conditions under which the right of rescission would be exercisable by Koniag and the cost of the right, the Board of Directors believed the cost to Koniag of this right of rescission would exceed the benefits and therefore elected not to include it in the Exchange Agreement.

FINANCIAL EFFECTS OF THE PROPOSED EXCHANGE AND LEASE AGREEMENTS

1. Effects on Financial Statements

Because the fair value of lands conveyed under ANCSA could not be determined at the time of conveyance and in keeping with generally accepted accounting principles, Koniag does not reflect on its balance sheet the value of the lands or rights to receive land which it received under ANCSA, or which it received as the result of the Merger and which were conveyed pursuant to ANCSA. The acquisition of the Oil and Gas EDP Interests in the Koniag ANWR Lands through the Exchange will have no effect on the balance sheet of Koniag, since the value of the Oil and Gas EDP Interests will be booked at the same value (*i.e.*, zero) as the value of the Koniag Exchange Lands as carried on the books of Koniag. The Exchange itself will also not result in the recognition of income to Koniag for book purposes. However, the lease bonuses and other amounts to be paid to Koniag under the Lease Agreements and Koniag ANWR Leases will be booked as income to Koniag when earned.

2. Income Tax Considerations

The Board of Directors has been advised by its auditors that it is not clear under the tax laws what part, if any, of the Exchange will qualify as a tax-free exchange to Koniag until its final form is known. If the Exchange or some part thereof does not qualify for tax-free treatment, Koniag would recognize taxable gain or loss in an amount equal to the difference between Koniag's tax basis in the portion of the property and rights exchanged that do not qualify for tax-free treatment and the fair market value of the corresponding portion of the Oil and Gas EDP Interests. Koniag's basis in the portion of the Koniag Exchange Lands already conveyed to Koniag by the United States Government at the time of the Exchange will be equal to their fair value at the time of their receipt from the United States Government. It is unclear whether Koniag will have any basis in its rights to the land yet to be conveyed to Koniag by the United States Government and if so how that basis will be determined. DOI and Koniag have determined that the Exchange Land Value is $77,442,711 and DOI has determined that the value of the Koniag ANWR Lands is $77,394,000. Koniag has obtained several estimates of the fair market value of the Koniag Exchange Lands which vary significantly among themselves and from the Exchange Land Value. See "Proposition I—Proposed Exchange—Valuation of Koniag Exchange Lands." None of these valuations are, however, binding on the Internal Revenue Service. The fair market value of the Oil and Gas EDP Interests is also unclear. Depending on the amounts ultimately determined for the basis of the Koniag Exchange Lands and for the fair market value of the Oil and Gas EDP Interests, Koniag could recognize substantial amounts of income, no income at all, or a tax loss.

Koniag has also been advised by its auditors that the payments made by the Chevron Group under the LAA and by Phillips under the Phillips Agreement prior to issuance of the Koniag ANWR Leases will be treated as option payments and will not be income to Koniag until it is determined whether or not the Koniag ANWR Leases will be issued. In the event that payments made by the Chevron Group and Phillips prior to issuance of the Koniag ANWR Leases are considered option payments for federal income tax purposes, then at such time as the options are either exercised (by the execution of leases) or expire, Koniag would recognize taxable income. If the options expire, there would be no offsetting basis adjustment and the entire amount would be included in Koniag's taxable income. If the payments from the Chevron Group and Phillips are not option payments for federal income tax purposes, these payments will constitute income upon receipt by Koniag.

If the options are exercised and leases are entered into, Koniag will recognize income in the amount of the lease bonus payments received. Koniag will, however, be entitled to a depletion deduction which will offset in part or totally the lease bonus payments. The depletion deduction will be cost depletion and will be calculated on Koniag's basis in the Oil and Gas EDP Interests. If the Oil and Gas EDP Interests were received in a tax-free exchange, as mentioned above, their basis would be the same as Koniag's basis in the Koniag Exchange Lands. ANCSA properties (properties received pursuant to ANCSA) are entitled to an alternative basis, if greater, based on the fair market value of the subsurface estate on the date of first commercial development. It is undetermined at this point whether the Oil and Gas EDP Interests will qualify as ANCSA property. If they do, an alternative basis valuation will be obtainable, assuming it exceeds the original basis. If the Exchange is taxable, Koniag's basis in the Oil and Gas EDP Interests will be their fair market value on the date of the Exchange unless the ANCSA alternative basis provisions apply.

If there is no commercial development, Koniag will recognize taxable income at some point in the future based on depletion recapture for the amount taken as an offset to the lease bonus payments.

PLEASE TAKE NOTE that Koniag will not obtain a tax opinion from counsel in connection with the tax treatment of the Exchange and the Lease Agreements. Moreover, any change in the tax laws may adversely affect the tax treatment of the proposed Exchange and the Lease Agreements. As part of the Exchange Legislation, Koniag will seek clarification that the Oil and Gas EDP Interests will be accorded the same tax treatment as lands subject to ANCSA. In the event that the Board determines that the tax treatment of the Exchange Agreement and the Lease Agreements will result in adverse tax consequences which are not mitigated by the Exchange Legislation, the Board will reconsider the advisability of Koniag's participation in the Exchange.

The above section refers exclusively to federal tax consequences. Alaska's corporate income tax is based on federal taxable income and generally follows the federal rules. In general, therefore, Koniag's Alaska income tax liability should be determined by applying the applicable Alaska tax rate at the time of the transaction to the amount of any gain recognized for federal tax purposes.

RIGHTS OF DISSENTING SHAREHOLDERS

Under the State of Alaska's Business Corporation Act, if a sale or exchange of all or substantially all of the assets of a corporation other than in the usual and regular course of business is authorized by a vote of the shareholders, a shareholder who opposes such sale or exchange may exercise what are called "dissenters' rights" and require the corporation to buy the shareholder's shares at their fair market value. As indicated above, it is not clear whether the Exchange Agreement and Lease Agreements constitute an exchange of substantially all of the assets of Koniag. In addition, while there is no judicial authority on the applicability of dissenters' rights to Alaska Native Corporations in these circumstances, ANCSA prohibits the transfer or alienation of Native Corporation stock until January 1, 1992, except in certain limited situations not applicable hereto. In light of the foregoing, Koniag believes that shareholders who oppose the Exchange Agreement and Lease Agreements will not be entitled to receive payment for their shares if the Exchange is approved and the Lease Agreements are ratified. Consequently, these shareholders will remain shareholders of Koniag.

PROPOSITION II—PROPOSED CONVEYANCES TO KARLUK AND LARSEN BAY

STATEMENT OF PROPOSITION II

Proposition II states:

IT IS NOW RESOLVED by the shareholders of Koniag, Inc. that the Board of Directors of Koniag Inc., be and hereby is authorized and empowered to convey, without consideration, the surface estate of approximately 34,186 acres in the vicinity of Karluk, Alaska to the Karluk IRA Council or its designee, and the surface estate of approximately 17,676 acres in the vicinity of Larsen Bay, Alaska to the Traditional Tribal Council for Larsen Bay, an unincorporated association, or its designee: provided, however, the following conditions in the determination of such Board of Directors shall have been met prior to the issuance of any such conveyances: (a) the consummation of the proposed Exchange with the United States of lands in the Kodiak National Wildlife Refuge for certain oil and gas exploration, development and production rights in and to certain lands in the Arctic National Wildlife Refuge; and (b) the enactment of federal legislation satisfactory to Koniag authorizing Koniag to make such conveyances without consideration, eliminating any unintended adverse tax consequences arising from the conveyances and including such other terms and conditions as Koniag shall determine to be necessary or appropriate. The actual amount of the acreage to be conveyed will be subject to adjustment resulting from the fulfillment of Koniag's obligations under Section 14(c) of ANCSA. Should either of these recipients designate another entity to receive conveyance, that designated entity must be comprised of a membership which is limited to all former shareholders of the Village Corporation for that community, or their heirs and descendants, unless any federal legislation which may be enacted provides otherwise. Any conveyances made pursuant to this resolution will provide that upon the occurrence of any of the following events, title to the lands so conveyed will automatically revert to and vest in Koniag:

(a) A final judicial determination by a court of competent jurisdiction that the proposed Exchange is invalid or which it sets aside for any reason:

(b) A final judicial determination by a court of competent jurisdiction that the merger between Karluk Native Corporation, Nu-Nachk Pit, Inc., and Koniag is invalid or which sets it aside for any reason:

(c) A final judicial determination by a court of competent jurisdiction that the conveyances authorized hereby were not properly authorized, constitute waste of the assets of the corporation or are invalid for any reason

BACKGROUND

As the result of the Merger between Koniag and KNC and NNPI ... [illegible] succeeded to the rights of KNC and NNPI with respect to their assets as of the date of [illegible] Merger, including but not limited to their rights to receive land under the provisions of ANCSA [illegible] shareholder of KNC and NNPI received one share of Class B Koniag stock for each share of [illegible] Corporation stock held by them. Koniag Class B shareholders are entitled to receive direct dis[illegible]tion of Alaska Native Fund and Section 7(i) monies, in addition to any dividends declared by Koniag.

As the successor-in-interest to KNC and NNPI, Koniag has the right [illegible] receive title to 169,196 acres of land on Kodiak Island which had been selected by the two Villa[illegible] Corporations, as well as title to their respective interests in the Afognak Joint Venture which ha[illegible] been created pursuant to the provisions of ANILCA in exchange for certain land entitlements [illegible] the participants.

Under the terms of the Merger, the Karluk IRA Council was to re[illegible] 1,860 acres of land and the Larsen Bay Traditional Council, 2,030 acres. These lands were th[illegible] equivalent of ten acres for each shareholder who was originally enrolled to KNC and NNPI respe[illegible]ely. After discussions with the two recipient entities as to the location of these lands, Koniag, a[illegible] successor-in-interest to KNC and NNPI, made the required conveyances. The two tribal organiza[illegible]ns had sought to have Koniag convey certain lands which had been identified by each of the fo[illegible]er shareholders as his preferred location. While there was no obligation on the part of Koniag [illegible] honor such requests, it attempted to do so, except with respect to lands which had been identifie[illegible] in the areas designated by FWS as being potentially the most valuable for the Exchange. Koniag ha[illegible] been advised by FWS that if these lands were conveyed in satisfaction of Koniag's Merger obligati[illegible], the Exchange might not be possible.

All of the lands proposed to be exchanged with DOI as discussed in Proposition I are lands which Koniag acquired in the Merger with KNC and NNPI.

Because of the Merger, Karluk and Larsen Bay are the only Native villages on Kodiak Island where the majority of the lands surrounding the village are owned by Konia[illegible] Any decision affecting the use or disposal of such lands is made by Koniag, which is under no legal obligation to consider the desires of the village residents. The present Board of Directors has sought to administer these lands, where possible, in accordance with the wishes of the residents of th[illegible] villages. Because there is no legal obligation to do so, future Boards of Directors may choose to follow a different course. The Board of Directors believes that it is important that the Native reside[illegible] of each village in the Kodiak region have a more direct voice in the management of lands adjac[illegible] to their villages than that which exists in Karluk and Larsen Bay. Because of this concern, th[illegible] Board of Directors is requesting that it be granted the authority to convey certain lands to the re[illegible]ective Tribal councils or their designees for each village.

PROPOSED AUTHORITY TO CONVEY

1. Scope of Proposed Authority to Convey

Under the proposal, Koniag would be authorized to convey to the K[illegible]luk IRA Council the surface estate of approximately 34,186 acres as shown on the map designat[illegible] as Figure 1 ("Karluk Lands"). Koniag would be authorized to convey to the Traditional Tribal [illegible]ouncil for Larsen Bay the surface estate of approximately 17,676 acres as also shown on Figure 1 ("Larsen Bay Lands"). These lands have not yet been surveyed and therefore the actual acreage may vary slightly upon performance of a final survey. Approximately 10,160 acres of the Karluk La[illegible]ds and the Larsen Bay Lands are located within the boundaries of KNWR and are subject to th[illegible] restrictions of Section 22(g) of ANCSA. The balance of the Karluk Lands and the Larsen Bay Land[illegible] approximately 41,702 acres, are located outside the boundaries of KNWR and are not subject to th[illegible] provisions of Section 22(g). Of the lands proposed for conveyance, approximately 1,570 acres of the Karluk Lands and 1,567 acres of the Larsen Bay Lands are lands for which Koniag has the right to receive title and which have yet to be conveyed to Koniag. At the time that Koniag recei[illegible] conveyance of these lands from the United States Government, Koniag would then convey [illegible]h lands to the tribal councils if the other requirements for these conveyances have been met. Th[illegible] actual amount of land to be conveyed will be subject to the fulfillment of Koniag's obligations to m[illegible] certain conveyances to third parties under Section 14(c) of ANCSA. The number of acres stated here are net of all Section 14(c) claims of which Koniag is aware but negotiations are still in progress with the State of Alaska's Municipal Land Trustee as to the amount of acreage to be transferred by Koniag to it in trust for a municipal corporation which may be created at Karluk. If such negotiations are completely unsuccessful and Koniag is required to transfer the maximum amount of land required under Section 14(c)(3) of ANCSA, it would then be able to convey 33,326 acres to Karluk IRA Council.

The Board of Directors has not commissioned a formal appraisal of the lands to be conveyed. However, Dirksen did perform at Koniag's request an estimate of value based upon the same assumptions and methodology used by FWS to value the Koniag Exchange Lands. See "Proposition I—Proposed Exchange—Valuation of Koniag Exchange Lands". In a report dated September 15, 1987, Dirksen estimated the total value of the lands to be conveyed to the Karluk IRA and Larsen Bay Tribal Counsel to be $8,442,000. This estimate is based upon a "highest and best use" analysis and does not reflect either the effect of Section 22(g) of ANCSA or the value that such lands might have in an exchange with DOI. Such estimates of value are subject to the same problems as previously identified in the discussion of valuation of the Koniag Exchange Lands (See "Proposition I—Proposed Exchange—Valuation of Koniag Exchange Lands") but are even less reliable (because most of these lands were not part of the lands appraised by FWS).

2. Recipients of the Conveyances

Koniag proposes to convey the Karluk Lands to the Karluk IRA Council or its designee; the Larsen Bay Lands would be conveyed to the Larsen Bay Tribal Council, an unincorporated association, or its designee. Depending upon the conditions set by legislation authorizing the conveyances (see "Proposition II—Proposed Authority to Convey—Conditions of Issuance of Conveyances"), tax considerations, political perceptions regarding tribal sovereignty and other factors, it may be appropriate for each of the tribal governments to establish and designate other entities to receive the conveyances. If the respective tribal councils designate other entities to receive title, then each such entity will be limited to a membership of all former shareholders of the respective Village Corporation, or their heirs and descendants, unless any authorizing legislation provides otherwise.

3. Conditions of Issuance of Conveyance

No conveyances of the Karluk Lands and the Larsen Bay Lands would be made until the Board of Directors has determined that the following conditions have been met:

(a) The consummation of the Exchange and the receipt by Koniag of the Oil and Gas EDP Interests, which consummation cannot occur without the approval of Proposition I authorizing the Exchange;
(b) Enactment of federal legislation satisfactory to Koniag which authorizes Koniag to convey, without consideration, the Karluk Lands and Larsen Bay Lands to the Karluk IRA Council and the Larsen Bay Tribal Council respectively, eliminates any unintended adverse tax consequences arising from the conveyances, and includes such other terms and conditions as Koniag shall determine to be necessary or appropriate.

The Board of Directors believes that the Karluk Lands and Larsen Bay Lands should not be conveyed until the Exchange has been consummated and, as a result thereof, Koniag has either received or will be legally entitled to receive sufficient funds (approximately $58,300,000 less whatever amount may be allocated to the shareholder permanent distribution fund if such fund is created (see "Proposition III")) from the Lease Agreements to "replace" the capital of the corporation (shareholders equity) which had been lost in prior years.

The Board of Directors is further conditioning such conveyances upon the enactment of authorizing federal legislation satisfactory to the Board. At the present time it is unclear whether Koniag has the authority to make a transfer of this magnitude without monetary or other financial consideration. In addition, the tax treatment of the conveyances could be problematic in the absence of legislative relief, and there are other matters that need to be addressed legislatively. Consequently, no conveyances will be made until satisfactory legislation has been enacted.

4. Reverter Provisions in the Conveyances

Any conveyance issued pursuant to the authorization granted by this Proposition II shall provide that upon the occurrence of any of the following events, title to the lands conveyed will automatically revert to and vest in Koniag:

(a) A final judicial determination by a court of competent jurisdiction that the Exchange is invalid or which sets it aside for any reason;

(b) A final judicial determination by a court of competent jurisdiction that the Merger between KNC, NNPI, and Koniag is invalid or which sets it aside for any reason;

(c) A final judicial determination by a court of competent jurisdiction that the conveyances of the Karluk Lands and the Larsen Bay Lands were not authorized, constituted waste of the assets of the corporation or were invalid for any reason.

The first reverter condition reflects the premise upon which the conveyances are being submitted for shareholder authorization. If the Exchange is set aside, title to the lands would revert to Koniag for such further action as the Board of Directors and shareholders may determine to be appropriate.

Since Koniag acquired title to the lands as the result of the Merger, the second reverter condition provides that upon a determination of the invalidity of that Merger, title to the lands would vest in Koniag. This condition allows Koniag to then be in a position to reconvey these lands to the reestablished Village Corporations from which it received them if a court so ordered. Since no compensation is to be received by Koniag for the proposed conveyance, this provision is necessary to avoid any risk that Koniag, having conveyed the lands to entities comprised of the former shareholders of the Village Corporations, could nonetheless be required, should the Merger be challenged successfully, to compensate the Village Corporations for the loss of their lands.

The third reverter condition, the reversion of title to Koniag if the conveyance is held to be invalid, unauthorized or constitute waste, is included to minimize the exposure and potential injury to Koniag if such a finding is made, by insuring that title to the lands would revert to Koniag and thus Koniag would be restored to its present position. This provision is necessary given the risk that the recipient of the conveyances might transfer title to a third party and thus may not be in a position to return title to Koniag in the event of such a judicial determination.

All of these provisions would be a condition of the title of any subsequent owners of the lands and would be applicable to them as well as the original recipients. These reverter provisions may affect the marketability of the lands by the tribal councils. This effect could extend beyond the period during which the reversionary conditions could occur because of transaction costs associated with evaluating the risk (at least until such time as title insurance becomes available).

5. Lack of Consideration

PLEASE TAKE NOTE, BECAUSE THE PROPOSED CONVEYANCES, IF MADE, WOULD NOT INVOLVE THE PAYMENT OF ANY MONETARY CONSIDERATION TO KONIAG, THE CONVEYANCES WOULD RESULT IN A DECREASE IN THE UNDERLYING VALUE OF THE KONIAG STOCK.

FINANCIAL EFFECTS OF THE PROPOSED CONVEYANCES

1. Effect Upon the Financial Statements

Because the Karluk lands and the Larsen Bay lands would be conveyed without financial or monetary consideration, their conveyance as authorized would result, if such lands were shown as an asset with a value for financial statement purposes, in a decrease in the reported value of the assets of Koniag by an amount equal to the fair market value of such lands as of the date of their conveyance under ANCSA, with corresponding decrease in the contributed capital or shareholder equity account. The effect of this accounting transaction would be to decrease the book value of each share of outstanding Koniag stock.

At the present time, however, Koniag does not carry on its books any value for the lands or rights to obtain land received pursuant to the provisions of ANCSA, including the Karluk Lands and the Larsen Bay Lands. Consequently, for financial statement purposes, no corresponding adjustment to shareholder equity will be shown on the financial statements of Koniag when the lands are conveyed.

It is possible that the conveyances may occur after January 1, 1992, at which time the stock of Koniag may be transferable. Because it is not possible to forecast the conditions under which such shares of Koniag stock may be sold, the existence of a market or the market value of such shares, it is not possible at this time to determine the effect of the proposed conveyance upon the market value of the Koniag stock if it becomes transferable.

2. **Income Tax Considerations**

The proposed conveyances could have adverse tax consequences to Koniag and its shareholders. Koniag will seek legislation to minimize or eliminate any such adverse tax consequences. However, under current tax laws the conveyance could be interpreted by the Internal Revenue Service to be equivalent to a preferential dividend to Koniag shareholders who are former shareholders of KNC and NNPI. Even though the properties would not be received by such shareholders directly, the distribution to the tribal councils for the benefit of these shareholders could be viewed by the Internal Revenue Service as a distribution of property with respect to stock. Should this occur, Koniag would be subject to a tax on the excess of the fair market value over the tax basis of the properties distributed.

From the shareholder perspective, the fair market value of the properties received by the tribal council could be treated as a distribution with respect to stock. If it is so treated, shareholders would be considered to have received a dividend to the extent of Koniag's current or accumulated earnings and profits (as calculated for federal income tax purposes) at the time of the distribution but not to exceed an amount equal to the fair market value of the properties. Koniag's earnings and profits cannot currently be precisely determined and could be as much as the entire amount of the distribution. Any distribution in excess of current or accumulated earnings and profits would reduce the shareholders' basis in their Koniag stock, and any amount remaining after such basis was reduced to zero would be treated as income from the sale of property.

As mentioned above, Koniag intends to pursue legislative relief to avoid these potential adverse tax consequences to itself and its shareholders. The actual tax consequences to both Koniag and the shareholders will depend on the status of the tax laws at the time of conveyance, the income position of Koniag, the value of the lands to be conveyed, the tax status of the recipients, and the legislative relief obtained.

PLEASE TAKE NOTE that Koniag will not obtain a tax opinion from counsel in connection with the tax treatment of the proposed conveyances. The Board does not intend to carry out the proposed conveyances should it determine that the conveyances would have materially negative tax consequences for Koniag or its shareholders and that these consequences have not been remedied by legislation satisfactory to Koniag.

The above section refers exclusively to federal tax consequences. Alaska's corporate income tax is based on federal taxable income and generally follows the federal rules. In general, therefore, Koniag's Alaska income tax liability should be determined by applying the applicable Alaska tax rate at the time of the transaction to the amount of any gain recognized for federal tax purposes. This discussion does not refer to any potential state tax liability of Koniag other than for corporate income tax. The potential state tax consequences to individual shareholders will depend on their personal situation and on the state in which they reside. Individuals should, therefore, consult their personal tax advisors about both the impact of federal taxes on their personal situations and about potential state tax liabilities.

VOTE REQUIRED

Because of the magnitude of the proposed conveyances of the Karluk Lands and Larsen Bay Lands and the fact that they could be said to disproportionately benefit certain Koniag shareholders, the Board of Directors has determined that authorization of the conveyances should be subject to a higher standard of shareholder consent than a majority vote. For this reason, the Board of Directors has conditioned further Board action to seek the ... of Proposition II on its receipt of the affirmative vote of at least two-thirds (2/3) of the ... voting shares eligible to vote at the Annual Meeting.

CERTAIN TRANSACTIONS

Other than as specified below, there is no mate... nship between the Karluk IRA Council or the Larsen Bay Tribal Council and Koniag, its ... officers or directors except for those matters generally pertaining to the management ... luk Lands and the Larsen Bay Lands. Jimmy Johnson, a director of Koniag, is a forme... ber of NNPI and a resident of Larsen Bay and would benefit from the approval of the pr... nveyances in the same manner as would the other residents of Larsen Bay and former sh... of NNPI.

PROPOSITION III—SHAREHOLDER D... TION PERMANENT FUND—ADVISOR...

STATEMENT OF PROPOSITION III

Proposition III states:

IT IS NOW RESOLVED by the shareholder... ag, Inc. that the Board of Directors is authorized and empowered to investigate a... p a proposal for submission to the shareholders of the corporation for the creati... areholder distribution permanent fund to be funded with a portion of the revenues whi... generated by the oil and gas exploration development and production rights acquired b... in the Arctic National Wildlife Refuge and, if it deems it to be advisable, to seek enactm... cial legislation to authorize the creation of the fund.

BACKGROUND

If the Exchange is consummated and Koniag ... R leases are issued under the Lease Agreements, Koniag will be paid significant amount of money as lease bonuses. These monies (approximately $58,300,000) are almost equal to three ... the initial capitalization of Koniag under ANCSA from the Alaska Native Fund. It is the desire of the Board of Directors that a portion of these monies and of a portion of any royalty or ... profit interest that Koniag may receive under the Koniag ANWR Leases be set aside in a separate entity for the purpose of generating income to be paid to the present shareholders of Koniag and their heirs. The creation of such a fund would allow all present shareholders of Koniag to share directly in any benefits which may be derived from the Exchange. In the past, Koniag has been unable to pay dividends. While it is the goal of the Board of Directors to manage Koniag so that it will be in a ... ion to pay dividends to its shareholders, there can be no assurance that any such dividends w... paid. The Board of Directors wishes to assess the possibility of developing a structure for a Sh... der Distribution Permanent Fund, which if established and capitalized properly, could cons... generate distributions to the present shareholders and their heirs. The Board may also wis... in order to minimize the legal and tax issues associated with such a fund, to seek the enactment ... special legislation authorizing its creation.

Because the development of a plan for a fund will require a substantial commitment of the Koniag staff and may require Koniag to seek the enactment of special legislation, the Board of Directors is soliciting an advisory vote of interest of the shareholders before causing the Corporation to proceed with the development of this proposal.

DESCRIPTION OF CONCEPT

The proposal would create a fund separate from Koniag, formed to protect and preserve the assets transferred to it, to invest and reinvest the original contributions and subsequent proceeds therefrom, and to distribute all or a portion of its net income each year to the beneficiaries of such fund. The fund would be a trust or other form of organization. The beneficial interests in the fund would be held by the present shareholders of Koniag and their heirs. This interest would be separate from their ownership of stock in Koniag so that a sale of the stock of Koniag, to the extent permitted by law, would not also result in a transfer of the shareholder's interest in the entity.

The reason for the use of a separate fund is to segregate a substantial amount of money and future income producing assets from the remaining assets of Koniag. The assets to be distributed to the fund would be irrevocably and permanently set aside for the purpose of producing income to be distributed on an annual basis to the existing shareholders of Koniag and their heirs. Koniag would retain no control over the new fund or the assets to be conveyed thereto. Separate trustees or other administrators would be named and would be independent of Koniag.

It is presently anticipated that as much as $20 to $25 million of the monies received by Koniag as bonuses under the Koniag ANWR Leases could be distributed to the fund, and that an undivided interest in the Koniag ANWR Leases and in the royalty income generated therefrom could also be distributed to the fund. The actual amount of funds and the actual amount of the undivided interest to be distributed to the fund would be subject to the determination of the Board and would be set out in a subsequent proposal seeking shareholder approval of the formation of the Fund.

Because of legal, financial, tax and policy considerations, further work, including the possible enactment of special legislation, must occur before a final proposal will be submitted to the shareholders for approval. If legislation is required, it is anticipated that it will be sought as part of the legislation authorizing the Exchange which may be introduced in Congress during the 100th Congress.

A FAVORABLE ADVISORY VOTE AUTHORIZING THE DEVELOPMENT OF A PROPOSAL WILL NOT GUARANTEE THE CREATION OF THE FUND OR CONSTITUTE ITS ESTABLISHMENT. While the Board of Directors will seek to develop a proposal to be submitted to the shareholders, further research may disclose legal, financial or tax considerations the impact of which would seriously jeopardize the benefits sought to be obtained.

BECAUSE THIS IS ONLY AN ADVISORY VOTE AND DOES NOT REQUIRE OR GUARANTEE THE CREATION OF SUCH FUND, YOU SHOULD NOT RELY UPON THE ESTABLISHMENT OF THE FUND IN DETERMINING HOW TO CAST YOUR VOTES ON THE OTHER PROPOSITIONS ON THE AGENDA.

VOTE REQUIRED

The proposition will be deemed approved, and further work on developing a proposal will proceed, if a majority of the shares voting on the proposition vote in favor of it.

ELECTION OF DIRECTORS

At the Annual Meeting, the Company's Shareholders will elect three Directors to serve for a term of three years and until their successors are elected and qualify.

The only voting securities of Koniag are its shares of Class A and Class B common stock (The "Common Stock").

CUMULATIVE VOTING

When voting for Koniag Directors, each Shareholder has the number of votes equal to the number of shares owned times the number of Directors to be elected. Three Directors will be elected at this Annual Meeting. If you own 100 shares of Common Stock, for example, you have 300 votes you can cast in the election for directors. With cumulative voting, you may cast your votes all for one person, or distribute them among as many candidates as you wish, in the amounts you wish. This method of voting was designed to protect the interests of minority shareholders.

The three candidates receiving the highest number of votes cast shall be elected, provided that they have a combined vote total equal to a majority of the votes cast. In the event they do not, further rounds of balloting will be held until this standard is satisfied.

NOMINEES OF THE BOARD OF DIRECTORS

The Company's Board of Directors has nominated the persons named below for election as Directors at the Company's Annual Meeting. Unless otherwise instructed by the shareholders in the proxy, the persons named as proxies in the enclosed proxy form intend to vote all shares represented by properly signed proxies for the nominees listed below. The proxy holders will vote such shares cumulatively in the manner they determine to provide for the election of the greatest number of such nominees. Although the Board of Directors believes that all of its nominees will be available to serve as Directors of Koniag, should any one or more of them be unable or unwilling to serve, or withdraw their name from consideration, it is intended that the proxies will be voted for the election of a substitute nominee or nominees designated by the Board of Directors.

The following table lists the names, addresses and ages of the nominees of the Board of Directors, and, if they were previously elected or appointed to serve as a director, the year in which they were appointed or elected.

Nominee's Name & Address	Age	Annual Meeting First Elected/Appt.
William Forrest Hartman Box 733 Kodiak, AK 99615	56	1985
Evelyn Mullan 150 Farnsworth Soldotna, AK 99669	36	1985
Michael Pagano 8040 Fairwood Circle Anchorage, AK 99503	30	1981

William Forrest Hartman was born and raised in Kodiak. He has been employed as a civilian employee by the United States Coast Guard since March 1973, and presently works in the capacity of Heavy Equipment Operator Leader. Mr. Hartman is also a fisherman. He served in the U.S. Army from 1948 to 1952 and has served on the Shuyak Inc. Board of Directors since 1974, and is presently Vice President of Shuyak Inc. Mr. Hartman presently serves on the Finance Committee and the Scholarship Committee of the Board of Directors of Koniag. He has served on the Koniag Board since May, 1985. Mr. Hartman is on the Executive Committee of the Afognak Joint Venture in which Koniag holds a 33% interest and which was indebted to Koniag in the amount of $62,201 as of August 31, 1987.

Evelyn Mullan is a resident of Soldotna, Alaska, but has been actively involved in Native matters for many years in Ouzinkie. She was involved in the organization of the Tribal Council for Ouzinkie and served on it from 1982 to February 1985. She has also served on the Kodiak Area Native Association Board of Directors, as a Commissioner for the Kodiak Island Housing Authority, and as Vice Chairperson of the Local Advisory School Board of Ouzinkie. She is also a Director and Secretary of the Ouzinkie Native Corporation, which corporation received $31,465 from Koniag during fiscal year 1986, pursuant to Section 7(j) of ANCSA. Mrs. Mullan was Secretary of Koniag in 1986.

Michael Pagano was born on Kodiak Island and is presently a resident of Anchorage, Alaska. He has served on the Board of Directors of Koniag since 1981 and has held the office of Secretary/Treasurer of Koniag since October 1986. He owns and operates a commercial set-net salmon fishing business on Uganik Bay during the summer months and attends college during the winter. In May, 1986, he received an Associate Degree in Applied Sciences in Business Administration from Anchorage Community College and presently intends to attend the University of Alaska this winter to continue his studies in Business Administration.

Mr. Pagano is presently a director of Leisnoi, Inc., which corporation received $27,475 from Koniag during the fiscal year 1986, pursuant to Section 7(j) of ANCSA. He is the son of Frank Pagano and nephew of Judith Meidinger.

NOMINATION BY SHAREHOLDER PETITION

Pursuant to Article 2, Section 2.7c. of the Bylaws of Koniag, twenty-five shareholders signing a petition may nominate a candidate for the position of director. The Election & Rules Committee of Koniag, Inc. received the following nomination by shareholder petition for the Koniag, Inc. Board of Directors:

Nancy E. Anderson is a resident of Kodiak, Alaska. She is 58 years old. Mrs. Anderson graduated from Mt. Edgecumbe High School in 1948 and earned a degree in Business Education in 1975 from Kodiak Community College. During the past five years she has been employed as a secretary/receptionist for Natives of Kodiak, Inc. At the present time she is employed as a part-time chauffeur by Kodiak Cab Company and part time by Alaska Delta, Inc. doing general office work.

Mrs. Anderson served as a director of Koniag from 1974 to 1983. She has served as Vice Chairperson of the Board, and has served on the following committees of the Board of Directors: Bylaws, Personnel, Audit, Executive and Finance. Mrs. Anderson was a director of Koniag at the time of the merger and was a defendant in the litigation challenging the merger. As the result of a settlement with the plaintiffs in that litigation, Mrs. Anderson and the other individual defendants who were directors of Koniag at the time of the Merger, agreed not to serve on the Board of Directors of Koniag, or as an employee of Koniag, until after September 26, 1987. Mrs. Anderson was also obligated under that settlement to pay $2,500 to the villages represented by the plaintiffs.

NOMINATIONS AT THE ANNUAL MEETING

Nominations may also be made by the shareholders from the floor at the annual meeting as allowed by the Bylaws, Article II, Section 2.7(e), of the Corporation.

DIRECTORS WHOSE TERMS WILL CONTINUE

Name & Address	Age	[illegible]	Year Current Term Expires
Emil Christiansen, Sr. .... P.O. Box 63 Old Harbor, AK 99643	33	1985	1988
James ("Jimmy") Johnson .... P.O. Box 15 Larsen Bay, AK 99624	47	1985	1988
Judy Meidinger .... 2711 Valley Forge Cir. Anchorage, AK 99502	47	1983	1988
Peter J. Olsen .... P.O. Box 2723 Kodiak, AK 99615	26	1985	1989
Frank Pagano .... 2247 W. 46th Anchorage, AK 99503	60	1976	1989
Thomas H. Panamaroff .... P.O. Box 123 Kodiak, AK 99615	26	1986	1989

Frank Pagano was born in Kodiak. He is married to Ellen Simeonoff. They have three adult children. He served in the U.S. Army in the Korean War and is retired from the Alaska Army National Guard. In 1982, he retired from the United States Federal Aviation Administration (FAA). From August, 1982, to the fall of 1985, he was employed by Counselors Inc. From January 1, 1986 to April 1, 1987, Mr. Pagano was employed part-time by Leisnoi Inc. in the capacity as President, and part-time by Koniag as President. Since April 1, 1987, Mr. Pagano has been employed full-time by Koniag

Mr. Pagano presently serves as President of Koniag, Inc., a position he has held since February, 1984. Mr. Pagano is also the President of Kodiak Island Seafoods, Inc., Kodiak Swiftsure Corp. and The Kazim Company, and is Chairman of the Board of Swiftsure Alaska, Inc. all of which are subsidiaries of Koniag. Mr. Pagano resigned from the Board in March, 1982, along with others, and expressed concerns regarding the management of Koniag and its failure to settle the litigation regarding the Merger. In response to his efforts to recall the former Board in 1982, the former Board and management filed a complaint with the Alaska Securities Commission against him and sued him and others for defamation. While the Alaska Securities Commission, based on the record presented by the former management of Koniag, found that his recall proxy solicitation violated the Alaska securities laws, the new management stipulated in the settlement of the appeal of the Commission's decision that based upon information available to Koniag but not produced by the former management, the validity of the Commission's findings were called into question. As the result of the settlement, Mr. Pagano was reimbursed by Koniag for his costs and attorneys' fees.

Mr. Pagano has served as a police officer for the City of Kodiak and has also been a commercial fisherman. His experience and background is in personnel administration, investigations and program management. During fiscal year 1986, Mr. Pagano was also a member of the Leisnoi Board and President of the Corporation. Mr. Pagano resigned as President of Leisnoi Inc. on April 1, 1987, and from the Board of Directors of Leisnoi Inc. on July 24, 1987. He is the father of Michael Pagano and the brother-in-law of Judith Meidinger.

Peter J. Olsen was born in Anchorage and raised in Kodiak. He graduated from Kodiak High School in 1979. He graduated from Oregon State University College of Forestry in the spring of 1984. From 1971 to 1978 he was employed as a commercial fisherman. From 1979 to 1983 he was employed by Afognak Native Corporation doing timber cruises for timber sales, administration and reforestation site preparation and forest planning. Since the summer of 1984, he has been employed by Afognak Native Corporation as a forester. Mr. Olsen is currently vice-president of Koniag, a position which he has held since December, 1985. Mr. Olsen is also a member of the State of Alaska Forestry Board.

The Afognak Native Corporation received $47,617.46 from Koniag during fiscal year 1986 pursuant to Section 7(j) of ANCSA. In addition, pursuant to an agreement dated October 10, 1983, between Koniag and Afognak Native Corporation, Koniag agreed to pay Afognak Native Corporation the principal sum of $250,000.00 in settlement of the litigation regarding the Merger. Payment is to be made over a ten (10) year period. During the last fiscal year, Koniag paid Afognak Native Corporation $36,396.89 in principal and interest. Since the end of the last fiscal year and prior to the date of this Proxy Statement, Koniag has paid in full the outstanding balance of this settlement.

Thomas H. Panamaroff was born in Kodiak, Alaska, and is a long-time resident. He is a graduate of Kodiak High School and in 1983 received a Bachelor of Science Degree in Finance from the University of Oregon College of Business Administration with a major in Finance.

During the summers from 1972 through 1983 he seined salmon in commercial fisheries. During 1984 he served as Administrative Assistant to State Senator Bob Mulcahy of Kodiak, researching fisheries and resource-related legislation as well as assisting constituents with their concerns. From 1985 to the present he has been employed as the Administrative Assistant to State Senator Fred F. Zharoff, responsible for budget analysis, capital project requests of the communities in Alaska State Senate District N. and various other tasks assigned by the Senate. He has been a director of Koniag since October, 1986.

Emil Christiansen, Sr. is a resident of Old Harbor, Alaska. He graduated from Kodiak High School in 1973. Mr. Christiansen was appointed as a director by the Board on June 14, 1985 to complete the unexpired portion of the term of Emil Norton, who resigned in 1985. Mr. Christiansen is a self-employed fisherman and owner of a boat which he operates. He has been self-employed for more than five years.

Mr. Christiansen is indebted jointly with several of his brothers to Kodiak Island Seafood, Inc., a wholly owned subsidiary of Koniag, in the amount of $3,569 as of October 1, 1987, which debt arose from the purchase by Mr. Christiansen, Mr. Carl Christiansen and Mr. Harold Christiansen of a Butler Building in Old Harbor. Mr. Christiansen is a director of Old Harbor Native Corporation, which corporation received $31,095 from Koniag during fiscal year 1986, pursuant to Section 7(j) of ANCSA.

James ("Jimmy") Johnson is 47 years old and a resident of Larsen Bay, Alaska. He has been a director since 1985. He graduated from high school in 1958 and attended Mankato State College for three years. He has been involved in commercial fishing for thirty five years. Since April 1984, he has managed L.B. Utility Co.

Because of personal debts, Mr. Johnson filed for personal bankruptcy on January 21, 1985, and an order discharging his debts was entered September 17, 1985.

During fiscal year 1986 ending March 31, 1987, Mr. Johnson attended 28% of regularly scheduled and special meetings of the Board of Directors and committee meetings of committees on which he has served.

Judith Meidinger was born at Woody Island, Alaska, and has been a resident of Anchorage for 17 years. She has been most recently employed as President of Counselors Inc. (1981-1986) which provided management and community relations services to the oil industry of Alaska. Counselors Inc. has since ceased operations. She has also served as Executive Vice President of Alaska Native Foundation, Inc. (1978-1981) and Executive Director of Copper River Housing Authority (1976-1977). Mrs. Meidinger is presently serving as a member of the National Petroleum Council and as a member of the Trade Alaska Board of Advisers to the Governor of the State of Alaska.

Mrs. Meidinger is Chairman of the Koniag, Inc. Board of Directors, and she has served in this capacity since February, 1985. She is aunt to Michael Pagano and sister-in-law to Frank Pagano.

REMUNERATION

Remuneration For Fiscal Year Ending March 31, 1986

	Gross Wages	Director's Compensation	Personal Benefits
Uwe L. Gross (Executive Vice President and Chief Executive Officer)	$101,052*	-0-	2,528
K.S. Kearney (Controller)	$ 44,200	-0-	-0-
Frank Pagano (President and Director)	$ 30,000	-0-	1,469
Judith Meidinger (Chairman of the Board and Director)		6,625	675
Evelyn Mullan (Secretary and Director)	-0-	4,800	368
Total Officers and Directors' Fees (12 persons)	$210,146		

* Of this amount $6,947 was paid to Mr. Gross for annual leave time which he was unable to use because of Koniag's business.

The Company maintained a non-contributory, defined benefit pension plan for its employees which was terminated April 20, 1985. The Company now maintains a simplified employee pension plan under which the contributions for all employees by the Company are discretionary each year.

The Company's Directors were paid $200 per day during fiscal year 1986 for attending meetings of the Board of Directors or Committees of the Board and are currently paid $275 per day. Those Directors required to travel to attend Board and Committee Meetings are also paid per diem in an amount which is equal to that permitted under federal guidelines for the locality.

CERTAIN TRANSACTIONS

Except as disclosed herein, none of the present management or Board Members is indebted to Koniag or any of its subsidiaries.

BOARD COMMITTEES AND CERTAIN OTHER COMMITTEES OF KONIAG

The Board of Directors designated the following committees during the fiscal year 1986, from April 1, 1986 to March 31, 1987:

Executive Committee	*Land*
Judith Meidinger	Emil Christiansen
Frank Pagano	Evelyn Mullan
Michael Pagano	Michael Pagano
Peter J. Olsen	Peter J. Olsen

Bylaw/Personnel	*Audit/Finance*
Judith Meidinger	Michael Pagano
Evelyn Mullan	William Hartman
James Johnson	Evelyn Mullan
Peter J. Olsen	Tom Panamaroff

14(c) Committee	*Election & Rules*
Sonny Chichenoff*	Howard Valley*
Julie Knagin*	Pat Harris*
Peter Olsen Sr.*	Tom Panamaroff
Richard Simeonoff*	

*These persons are shareholders but not directors of Koniag.

These committees perform the following functions:

Executive Committee	acts on behalf of full Board of Directors between regular meetings of the Board of Directors.
Land	monitors and makes recommendations regarding the lands held by Koniag as well as those to be conveyed pursuant to ANCSA.
Bylaw/Personnel	reviews board and management actions on adherence to and recommends changes to Bylaws; recommends personnel policies for management/staff.
Audit/Finance	considers and makes recommendations regarding budgets, financial advisors and financial matters; also makes recommendations regarding auditors, monitors annual audits and reviews of internal operations and finances.
14(c) Committee	makes determinations on behalf of Koniag as required by Section 14(c)(1), (2) and (3) of the Alaska Native Claims Settlement Act.
Election & Rules	monitors and enforces annual meeting election procedures.

INFORMATION CONCERNING KONIAG'S ACCOUNTANTS

Koniag's certified public accountants for the last fiscal year were Peat Marwick Main & Co. A representative of Peat Marwick Main & Co. will be present at the Annual Meeting with the opportunity, if he desires, of making a statement, and with the responsibility to respond to appropriate questions.

Peat Marwick Main & Co. examined the financial records of Koniag as well as its subsidiaries and performed the audit for fiscal year 1986. In addition to its audit work, Peat Marwick Main & Co. prepared the corporate tax returns and provided tax counseling. During fiscal year 1986, 48% of the total amount paid to Peat Marwick Main & Co. was for services which were not related to the audit.

OTHER BUSINESS

As of the date of this proxy statement, management knows of no business which will be presented for action at the meeting other than the election of directors. If any other business requiring a vote of shareholders should come before the meeting, the persons designated as your proxies will vote, or refrain from voting, in accordance with their best judgment.

SOLICITATION OF PROXIES

The proxy accompanying this proxy statement is solicited by the Board of Directors of Koniag. Proxies may be solicited on behalf of the Board of Directors by officers, directors and employees of Koniag and by certain paid part-time shareholder coordinators. Solicitations of proxies may be made personally, or by mail, telephone, telegraph or messenger. All of the costs of solicitation of proxies by the Board of Directors will be paid by Koniag. The Company does not expect the expense incidental to the solicitation of the proxies by the Board of Directors to exceed $100,000.

October 8, 1987

KONIAG, INC.

By: Michael Pagano

Michael Pagano,
Secretary/Treasurer

Aqua Terra Consul[illegible]
11411 Jordan L[illegible]
Great Falls, Virgini[illegible]
(703) [illegible]4-309[illegible]

September 24, 19[illegible]

Boa[illegible] of Directors
Koni[illegible]g, Inc.

This letter is in response to your request that we examine the fairness [illegible] Koniag, Inc. ("Koniag") and its shareholders of an offer from a consortium [illegible] companies for subsurface interests to be obtained by Koniag in the Arctic Nati[illegible] [illegible] These interests are to be obtained by Koniag from the Department of Interior ([illegible] Wildlife [illegible] for surface inholdings owned by Koniag within the boundar[illegible] of Kodiak National Wildlife Refuge [illegible]

We have previously provided to Koniag an estimate of public interest value [illegible] lands proposed for exchange to DOI. That report was submitted August 5, [illegible] associated with [illegible] on approximately 125,661 acres proposed for exchange. Our estimate of a conservative [illegible] and was [illegible] value for these lands, in addition to the U.S. Fish and Wildlife Service ("FW[illegible] public interest of approximately $20,000,000, was $51,830,648. The public interest value was derived [illegible] MAI [illegible] values of natural resources taken from or produced on the subject lands that directly impact the regional and state economy. Our estimate plus the FWS appraisal using standard real estate appraisal techniques led ~~us to the~~ opinion that the 125,661 acres should be valued [illegible] approximately $72,000,000. No attempt was made to review the MAI apprai[illegible] [illegible] conservative, [illegible] FWS nor did we attempt to pla[illegible] a value on the 22(g) provision in ANCSA which [illegible] provided [illegible] the value to some extent. That aspect was an unknown factor to be negotiated by K[illegible] would have [illegible] with DOI. [illegible] in discussion

Recent information provided to us by Koniag indicates that agreement has b[illegible] reached between Koniag and DOI for exchange of approximately 112,000 acres with an attributed value of $77,000,000. This is about 13,660 acres less than we considered in our report. Fur[illegible] we understand that a private energy development consortium has proposed to acquire the sub[illegible]surface rights in ANWR covered by the Koniag/DOI exchange for approximately $58,300,000 plus a 20% royalty for any energy extraction resulting from those rights. We have reviewed our original report and the subsequent information provided by Koniag and have made the following analyses:

1. Based on our 1986 evaluation of about $573/acre the reduced acreage [illegible] exchanged would be valued at approximately $64,176,000 ($57[illegible] × 112,000).
2. The private offer of $58,300,000 is approximately 91 per cent of our adjusted value. We did not assume any value for the 20% royalty. However, given the curr[illegible] information on energy potential beneath ANWR, we believe this should be viewed posi[illegible] in the deci[illegible] process of accepting or rejecting the private offer.
3. We have made the assumption that the attributed value of $77,000,0[illegible] between Koniag and DOI included intangible benefits to the public such as scenic [illegible], wilderness, preservation of habitat, and economy of management. These are values that should be rightfully considered by a governmental entity acquiring land for the public good.
4. Tangible and intangible public interest values as above are not necessarily persuasive to private buyers in the marketplace. One would hope so, but should not [illegible]ably expect so. Consequently, the $77,000,000 attributed value does not necessarily reflect the price that a private buyer would be willing to pay for the Koniag lands.

We also considered the retention of access rights for subsistence purposes by Koniag. Additionally, a subsequent, independent review of the FWS MAI appraisal by Dirksen Appraisal Company suggests a 40 to 45 percent overstatement of value by FWS appraisers, initially. If we accepted a 40% overstatement on the initial FWS appraisal the real estate value would be $14,300,000 for the original 125,661 acres or $12,745,000 for the 112,000 acres. Our 1986 public interest value of $412.50/acre applied to the 112,000 acres yields $46,196,000. The sum of adjusted real estate value (per Dirksen) and public interest value applied to the current acreage figure (112,000) yields an approximate value of $58,941,000. This is approximately equal to the current offered price with no consideration of royalty values.

Based upon the foregoing comparisons and assumptions, it is our opinion that the current offer of $58.3 million is fair and reasonable to Koniag and its shareholders.

Sincerely yours,

AQUA/TERRA CONSULTING, LTD.

By: /s/ ROBERT A. JANTZEN
Robert A. Jantzen

EXHIBIT B

DIRKSEN APPRAISAL COMPANY

PAUL P. DIRKSEN, SRPA - MAI 0250 Tuttle Place #6 • Anchorage · (907) 562-...

September 24, 1987

Mr. Uwe L. Gross
Executive Vice President
and Chief Executive Officer
Koniag, Inc.
4300 B Street, Suite 407
Anchorage, Alaska 99503

Reference: Valuation of Larsen Bay
and Karluk Properties.

Dear Mr. Gross:

At your request, we have performed a limited analysis of the Fish and Wild... ...rvice (FWS) appraisal, using the assumptions and methodology of the their appraisers. As ... ...ned in those reports, certain portions of the FWS appraisals overstate value. The magnitude of ... ...verstatement on cabin sites is on the order of 100%. Values of land characterized as interior is overstated on the order of 50% or more.

In addition, the potential negative impact of 22G on the lands to be traded ma... large. While the degree of control that can be exercised under 22G has yet to be determined, ...ould cause a value reduction ranging from a low of 10% to a high of 90%. Regardless of ... interpretation ultimately adopted, it is likely to have a large negative impact on value attribut... ... habitat.

In summary, I believe that the FWS appraisal overstates value on the order of 4... 45%. I have not, however, performed a full appraisal. Only a full appraisal would permit me to ... ...t to a specific value.

Under the circumstances, if one accepts the assumptions in the FWS appraisal ... their value as modified, any sale or exchange at a price equal to or exceeding the FWS stated ... would tend to be within reason.

Sincerely,

/S/ PAUL P. DIRKSEN

Paul P. Dirksen
MAI-SRPA
President

/mg

call
Uth?

PROXY STATEMENT

ANNUAL MEETING OF SHAREHOLDERS

OF

OLD HARBOR NATIVE CORPORATION

Date of Annual Meeting: September 23, 1987

Date of Proxy Statement: August 28, 1987

TABLE OF CONTENTS

OLD HARBOR NATIVE CORPORATION
P.O. Box 71
Old Harbor, Alaska 99643
(907) 286-2204

PROXY STATEMENT

Old Harbor Native Corporation
Annual Shareholders' Meeting
September 23, 1987

INTRODUCTION

This Proxy Statement is furnished to you in connection with the solicitation of proxies for use at Old Harbor Native Corporation's annual shareholders' meeting to be held at the City Office at Old Harbor, Alaska on September 23, 1987, at 7:00 p.m. The solicitation of the Proxy accompanying this Proxy Statement is made on behalf of the Board of Directors of Old Harbor Native Corporation ("Old Harbor").

At the annual shareholders' meeting, the shareholders of Old Harbor will consider and vote on the election of directors, the ratification of the selection of independent public accountants and the amendment of certain provisions of the Articles of Incorporation and By-Laws. However, the main business of the meeting will be to consider and vote on a proposed trade of Old Harbor lands for oil rights in lands located in northern Alaska. All of the matters to be considered and voted on at the meeting are as follows:

(1) Approving the Trade of Old Harbor Lands for Oil and Gas Rights. Approving the trade of approximately 90,000 acres of Old Harbor's native lands for oil and gas exploration and production rights in Arctic National Wildlife Refuge lands, and approving the leasing of those rights to Texaco Inc. in exchange for the payment to Old Harbor of approximately $45,700,000 and the right to receive royalties upon any oil and gas which is recovered from those lands.

These lands were evaluated at $45m by USFWS.

(2) Amending the By-Laws to increase the authorized number of directors from seven (7) to nine (9) and to provide for a staggered election of directors so that three directors are elected at each annual meeting.

(3) Election of Directors. Electing nine (9) of the following fourteen (14) nominees to the Board of Directors:

Wilmer Andrewvitch	Walter Erickson
Ron Berntsen	Sven Haakanson
Ralph Capjohn	George Inga, Sr.
Bernandine Christiansen	Linda Lester
Carl Christiansen	Eugene Naumoff
Emil Christiansen, Sr.	Annie Pestrikoff
Harold Christiansen	Leona (Haakanson) Plummer

(4) Amending the Articles of Incorporation to increase the authorized amount of capital stock from 2,500 shares to 10,000 shares.

(5) Amending the Articles of Incorporation to change the registered agent and registered office of Old Harbor.

(6) Ratification of Independent Public Accountants. Ratifying the selection of Peat Marwick Main & Co. as Old Harbor's independent public accountants for the fiscal year ending December 31, 1987.

(7) Other Business. Transacting such other business as may properly come before the meeting.

The Proxy gives the persons named as proxy holders the right to vote your shares of stock as indicated on the Proxy, or as otherwise specified by you. Only shareholders of record on the books of Old Harbor on August 15, 1987 will be entitled to vote at the meeting. If the enclosed form of Proxy is dated, signed and delivered to Peat Marwick Main & Co., 601 W. 5th Avenue, Suite 700, Anchorage, Alaska 99501 by no later than 5:00 p.m. on September 21, 1987, it will be voted as marked by you, or, if you do not mark the Proxy, as indicated thereon (i.e., "FOR" all proposals, but not voted for the election of directors).

You may revoke your Proxy before it has been exercised by either a written notice revoking the Proxy or by a later, duly-executed Proxy, and by delivering the revocation notice, or the subsequent Proxy, to Peat Marwick Main & Co. at its above address before 5:00 p.m. on September 21, 1987. Your Proxy will also be revoked if you attend the meeting in person and tell the person registering shareholders on September 23, 1987 that you wish to vote in person, thereby revoking your Proxy. WE URGE YOU TO SIGN, DATE AND DELIVER THE ENCLOSED PROXY AS INDICATED ABOVE AS PROMPTLY AS POSSIBLE WHETHER OR NOT YOU PLAN TO ATTEND THE MEETING IN PERSON. Unless otherwise instructed, each valid Proxy returned which is not revoked will be voted as directed, and at the Proxy holders' discretion on any other matters which may properly be brought before the meeting, except as otherwise provided by law or by the By-Laws of Old Harbor.

There are 3350 shares of $1.00 par value common stock of Old Harbor presently outstanding of which 3,329.727 shares are entitled to vote at the meeting. Shareholders are entitled to one vote for each share of common stock, except that shareholders have the right to cumulate their votes in the election of directors. This means that you may either vote the number of shares owned by you for as many persons as there are directors to be elected, or you may cumulate your votes by giving one candidate as many votes as the number of directors to be elected multiplied by the number of your shares equals, or by distributing your votes on the same principle among any number of candidates.

PROPOSED LAND TRADE AND TEXACO AGREEMENTS

SUMMARY

Introduction

The following pages of this Proxy Statement first summarize and then detail a proposed trade by Old Harbor of most of its native lands to the United States in exchange for the right to explore and produce oil and gas resources underneath land located in the Arctic National Wildlife Refuge ("ANWR"). The trade also involves the possible payment by Texaco Inc. ("Texaco") to Old Harbor of approximately $45,700,000 in cash if the trade were permitted to take place. In exchange for that payment, Old Harbor would lease to Texaco the oil and gas exploration and production rights which Old Harbor will receive if the trade takes place. Old Harbor would also receive, among other things, a 14% royalty interest in any oil or gas Texaco extracts from the ANWR lands which Old Harbor receives rights to in the trade.

The Board of Directors believes that the prosperity of Old Harbor's shareholders and the maintenance and betterment of their way of life is dependent upon developing a strong financial foundation for the corporation. The Board of Directors believes that the proposed land trade is an excellent opportunity for Old Harbor to develop such a financial foundation through the substantial payments to be received from Texaco by Old Harbor for the right to lease the rights in the ANWR lands and through the possibility of significant future income from royalties if any oil and gas is recovered from the ANWR lands. At the same time, Old Harbor's shareholders and the members of their community will continue to be able to hunt and fish and otherwise use the Old

Harbor lands just as they do now. Further, Old Harbor will continue to own the land on which the village of Old Harbor and the homes of its people are located as well as parts of other land located on Sitkalidak Island and on the north shore of Kiliuda Bay.

For these reasons, the Board of Directors of Old Harbor recommends a vote "FOR" the approval of the land trade with the DOI and the leasing arrangements with Texaco.

The Land Exchange Agreement between Old Harbor and the DOI, and the agreements with Texaco, constitute a sale, exchange, or other disposition of all or substantially all of the property and assets of Old Harbor. Approval of the proposed land trade and ratification of the various agreements documenting the trade must be approved by an affirmative vote of the holders of at least two-thirds of the outstanding shares of Old Harbor.

Your vote will be important in determining whether or not the proposed trade will be able to proceed to the next step toward completion. In arriving at your decision, please read this summary of the proposed trade and then please carefully examine the remainder of this Proxy Statement for important details you should consider concerning the proposed trade.

Risk

The proposed land trade and the lease arrangements with Texaco involve numerous risks. See "Risk Factors."

Summary of Proposed Land Trade

In 1971 the Alaska Native Claims Settlement Act ("ANCSA") became law. It authorized the creation of our corporation, Old Harbor. It also authorized the payment of some money to Old Harbor and the conveyance to Old Harbor of title to land around our village. Through ANCSA and the more recent Alaska National Interests Lands Conservation Act ("ANILCA"), Old Harbor has received or has become entitled to receive approximately 105,000 acres of land and an ownership interest in the Afognak Joint Venture. The Afognak Joint Venture owns surface rights in lands located on Afognak Island, Alaska. See "Transactions with Other Corporations in which Directors or Officers or their Families Have an Interest."

Of Old Harbor's 105,000 acres, approximately 65,000 acres are on Sitkalidak Island within the Alaska Maritime National Wildlife Refuge ("AMNWR"), approximately 35,000 acres are on Kodiak Island within the Kodiak National Wildlife Refuge ("KNWR"), and approximately 5,000 acres are on Kodiak Island bordering on the KNWR. See "Background to Proposed Land Trade."

Old Harbor, along with several other native village and regional corporations, have been negotiating with the United States Department of the Interior ("DOI") about a possible trade of native corporation land for the right to explore and produce underground oil and gas resources within the coastal plain of ANWR. Old Harbor would receive exploration and production rights in ANWR which the DOI has estimated to be equal in value to the native lands Old Harbor has agreed to give up in the trade. The rights in ANWR were valued by the DOI based upon its estimate of the potential for oil and gas development in ANWR. Old Harbor's land to be included in the trade was valued through a series of negotiating sessions between Old Harbor and the DOI. See "Proposed Land Trade."

Although Old Harbor and the DOI have not yet signed a formal agreement concerning a trade of Old Harbor lands for oil exploration and production rights in ANWR, they have agreed in principle upon the specific Old Harbor lands to be included in the trade and the value to be placed on those lands. Old Harbor and the DOI, through a process which took place in July, 1987, also have agreed upon the specific tracts of ANWR land to which Old Harbor would receive exploration and production rights if the trade took place.

Under the proposed trade with the DOI, Old Harbor would be trading approximately 90,000 of its 105,000 acres to the DOI. Those 90,000 acres are located on Kodiak Island and Sitkalidak Island. The 15,000 acres which Old Harbor would retain are located around the village of Old Harbor, on the north shore of Kiliuda Bay, and on Sitkalidak Island. Although Old Harbor would be giving up actual ownership of the approximately 90,000 acres included in the trade, under the proposal Old Harbor would nevertheless retain an easement to use the land for essentially the same hunting, fishing and other subsistence uses it currently enjoys.

One of the most important factors in determining the value of what Old Harbor would receive in the trade (and from Texaco, as described below) is the value placed on the approximately 90,000 acres Old Harbor would be giving up in the trade. After considering various approaches and after extensive negotiations, Old Harbor and the DOI set a value of $45,700,000 on those Old Harbor lands to be included in the trade. Then, through the tract selection process which was completed in early July, 1987, Old Harbor identified tracts of land in ANWR, totaling approximately 58,000 acres, to which Old Harbor will receive

buy → buyer?

exploration and production rights if the trade is completed. The rights in the ANWR tracts Old Harbor selected were valued by the DOI at approximately $45,700,000. No independent valuation of those rights has been obtained. See "Risk Factors" and "Proposed Land Trade."

Even if the Old Harbor shareholders approve the proposed trade, it would not take place unless the U.S. Congress passes legislation approving the land trade and authorizing the opening of the coastal plain of ANWR for exploration and production of oil and gas (the "Required Legislation"). This could take two or three years or more. Hearings have taken place in Congress on the legislation opening ANWR for oil and gas exploration and production. There has been significant political resistance to the proposals which have been suggested as part of that legislation.

Summary of the Terms of the Texaco Agreements

When the Board of Directors of Old Harbor made the judgment to consider participation in the land trades, it realized that Old Harbor had neither the oil and gas industry expertise to select tracts in ANWR nor the financial resources to negotiate with the DOI. Consequently, the Board negotiated with and entered into agreements with Texaco involving both the land trade with the DOI and the use and possession of the underground resources in the tracts of ANWR to be selected.

Under Old Harbor's agreements with Texaco, Texaco will have the option to lease Old Harbor's rights in the ANWR tracts if Congress approves the land trades and the opening of ANWR to oil and gas exploration and production. In return for that possibility of exploring and producing resources in ANWR, Texaco will pay Old Harbor as follows:

must be a good deal for Texaco!!

1. Texaco will reimburse Old Harbor for the expenses Old Harbor incurs in the land trade process, even if the land trade is not completed.

This assumes the shareholders' approval (?)

2. Upon the approval by the Old Harbor shareholders of the land trade proposal and the Texaco agreements, Texaco will pay Old Harbor $5,000,000 in a lump sum and $50,000 quarterly until Congress passes the Required Legislation, or December 31, 1993, whichever comes sooner. Old Harbor will be entitled to keep these payments whether or not Texaco ultimately elects to lease or Congress passes the Required Legislation.

ANCSA corp pol'l support ?

3. If Congress passes the Required Legislation, Texaco will pay Old Harbor a lump sum payment of $2,000,000.

4. If and when Congress passes the Required Legislation, Texaco will have up to 40 days in which to exercise its option to lease Old Harbor's rights in the ANWR tracts. If Texaco chooses to lease, it must pay Old Harbor approximately $38,700,000 (the $45,700,000 negotiated value of the Old Harbor lands, less (a) $4,500,000 of the $5,000,000 sum mentioned in 2 above, (b) the entire $2,000,000 sum mentioned in 3 above, and (c) all but $250,000 of the expenses which Texaco has reimbursed Old Harbor for during the land trade process). If Texaco chooses not to exercise its option to lease Old Harbor's ANWR rights, Old Harbor can try to negotiate a lease with another oil company. Also, Old Harbor can cancel the Land Exchange Agreement with the DOI at that time if the legislation authorizing the opening of ANWR is not satisfactory to Old Harbor.

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5. If Texaco leases Old Harbor's rights in the ANWR tracts, Texaco will pay Old Harbor a royalty of 14% of the value of any oil produced from the tracts. Pursuant to the lease, Texaco will also pay Old Harbor a 1-1/2% overriding royalty interest in any leases covering any lands within the coastal plain of ANWR which Texaco acquires from anyone after the commencement of its lease of Old Harbor's ANWR rights, subject to a proportionate reduction according to Texaco's partial interest in any such leases.

6. If Texaco elects to lease Old Harbor's ANWR rights, Texaco will make a bona fide effort to employ and train qualified residents of the village of Old Harbor during the conduct of oil operations on the ANWR tracts. Texaco also will provide $10,000 annually for scholarships for Old Harbor shareholders or their children for postsecondary education. See "Texaco Agreements."

The Board of Directors intends to place Texaco's $5,000,000 lump sum payment in bank certificates of deposit, U.S. Treasury Bills or other conservative, low-risk investments until the Board develops a plan for the use or investment of the total proceeds ultimately to be received from Texaco. THE BOARD HAS NO PRESENT INTENTION TO DISTRIBUTE ANY PART OF THE $5,000,000 PAYMENT TO THE OLD HARBOR SHAREHOLDERS. The Board has determined not to develop a plan for the use, distribution or investment of the total Texaco proceeds until more of the contingencies to the completion of the land trade have been satisfied or removed. When the Board has developed such a plan, it will submit the plan to the Old Harbor shareholders for their approval. See "Use of Texaco Proceeds."

Texaco is involved in bankruptcy reorganization proceedings before a bankruptcy court in New York. Although the bankruptcy court has approved Texaco's assumption of the agreements with Old Harbor, there can be no assurance that Texaco will be able to perform any or all of its obligations under those agreements. See "Texaco Bankruptcy."

Litigation

Litigation is pending which may prevent or adversely affect the proposed land trade. See "Litigation Affecting the Land Trade."

Tax Matters

The proposed trade of Old Harbor's native lands for oil and gas rights in the ANWR tracts may be considered a tax deferred exchange for federal income tax purposes. It is hoped that legislation approving the land trades will contain provisions making certain that the trade is tax-deferred for federal income tax purposes and exempting from federal income tax any royalty or other income to Old Harbor from the ANWR tracts. However, absent those legislative decisions, all income of Old Harbor from the ANWR tracts will be subject to federal income taxation. Furthermore, Old Harbor's receipt of approximately $45,700,000 of payments from Texaco will, for federal income tax purposes, be taxable income to Old Harbor, subject to possible deductions allowed for depletion, and each particular payment will be taxable income to Old Harbor when Old Harbor receives it. See "Income Tax Considerations."

Extent of Summary

The foregoing is a very brief, incomplete summary of certain matters relating to the proposed land trade. That summary must be considered together with a careful reading and examination of the remainder of this part of the Proxy Statement. The following section describes the risks involved in the proposed transaction and is followed by a detailed description of the terms of the proposed land trade and the agreements with Texaco.

RISK FACTORS

You should recognize that proceeding with the proposed land trade with the DOI and the leasing arrangement with Texaco involves substantial risks.

Old Harbor Will be Relinquishing Title to its Native Lands

If the proposed land trade takes place, Old Harbor will be giving up legal title to most of its native lands other than the lands immediately surrounding the village of Old Harbor (to which Old Harbor will keep full legal title). See "Background to Proposed Land Trade" and the map attached to this Proxy Statement as Appendix A. While Old Harbor will retain an easement for its shareholders and their families to hunt and fish on the lands it is giving up and to use them for similar subsistence purposes, it will not have the right to develop, build on, sell, lease or transfer those lands.

Old Harbor will not receive any land in exchange for the land it gives up in the trade. Rather, it will receive from the DOI rights to explore and produce oil and gas resources in certain selected tracts in the coastal plain of ANWR. Old Harbor also expects to receive from Texaco approximately $45,700,000 in cash by the completion of the trade, and royalties in any oil and gas which is recovered from the ANWR tracts. However, neither Old Harbor nor any of its shareholders will have the right to settle on the ANWR lands, to hunt or fish there, or to develop, build on or sell, lease or transfer those lands or use them for any purpose other than oil and gas exploration and production. If little or no oil or gas is produced from the ANWR tracts, Old Harbor will not be entitled to the return of its native lands.

Negotiated Value of Native Lands

The oil and gas exploration and production rights which Old Harbor has selected to receive if the trade takes place, and the cash which Texaco will pay Old Harbor for the right to lease those rights, have been determined by specific reference to the value of the native land Old Harbor would be giving up in the trade. That value was agreed upon by Old Harbor and the DOI after extensive negotiations. The basis of those negotiations was an appraisal performed by the DOI's Fish and Wildlife Service and two appraisals performed by a private real estate appraisal company. There can be no assurance that any of the foregoing appraisals has accurately estimated the value of Old Harbor's native lands, that one appraisal has made a better estimate of value than another, or that the compromise which Old Harbor and the DOI reached accurately reflects the value of Old Harbor's native lands. See "Valuation of Old Harbor Lands."

DOI Valuation of ANWR Rights

As part of the tract selection process which took place in July 1987, the DOI placed values on the rights in various tracts in ANWR which it has proposed to trade for native lands owned by Old Harbor and the other native entities involved in the land trade process. Those values were not negotiated, but rather were estimated and fixed by the DOI. See "Fairness of Consideration Offered by Texaco; Valuation of ANWR Rights."

There can be no assurance that the ANWR oil and gas exploration and production rights were accurately valued, nor can there be any assurance that the values set by the DOI fairly estimate the oil and gas potential in the ANWR tracts selected by Old Harbor.

Completing the Land Trade without a Pre-Arranged Oil Company Lease

Old Harbor could be obligated to trade its native lands for rights in the ANWR tracts even if Texaco elects not to lease those rights or elects to lease but cannot meet its contractual obligations to Old Harbor. If Texaco chooses not to lease the ANWR rights from Old Harbor after the appropriate Congressional legislation is in place, Old Harbor would have a limited amount of time to make alternative plans with another oil company before electing whether or not to complete the land trade with the DOI. See "Termination of Land Exchange Agreement." If Old Harbor cannot quickly make acceptable arrangements with another oil company, the DOI may take the position that Old Harbor must nevertheless complete the land trade. This is because under the proposed Land Exchange Agreement, although Old Harbor may refuse to go forward if the appropriate legislation is not satisfactory to Old Harbor, Old Harbor is not expressly permitted to refuse to complete the land trade solely because of losing its arrangement with an oil company.

In addition, if Texaco elects to lease the rights in the ANWR tracts selected by Old Harbor, but then delays in making the required payment of the balance of approximately $45,700,000 due to Old Harbor (see "Payments by Texaco"), Old Harbor will have completed the land trade before having received that payment from Texaco. Further, if Texaco, because of bankruptcy proceedings or otherwise, does not ultimately make that payment to Old Harbor, Old Harbor may be faced with the situation of having given up its native lands without having an arrangement in place with an oil company and without having received any of the balance of the approximately $45,700,000 it was expecting to receive.

Speculative Nature of Oil and Gas Exploration Activities; Market Factors; Operating Hazards

Exploration for oil and gas is an inexact science and involves a very high degree of risk. Although Old Harbor could receive substantial royalties on Old Harbor's selected ANWR tracts, there can be no assurance that any of those tracts, or any

ANWR tracts for which Old Harbor will be entitled to an overriding royalty, contains oil or gas, or, that if they do, such oil or gas is of a marketable quality or quantity. NEITHER THE DOI NOR TEXACO MAKES ANY REPRESENTATIONS OR WARRANTIES AS TO THE EXISTENCE, LOCATION, PRODUCIBILITY, QUANTITY OR QUALITY OF OIL AND/OR GAS RESOURCES IN OR UNDER ANY OF THE ANWR LANDS. Therefore, there can be no assurance that any oil or gas will ever be recovered from the ANWR tracts selected by Old Harbor or that Old Harbor will ever receive any royalties under its agreements with Texaco or otherwise.

In addition, even if the ANWR lands hold oil and/or gas which is recoverable, there can be no assurance that any of that oil or gas would be recovered or, if recovered, could be marketed, or, if marketed, that favorable price and contractual terms could be negotiated. This is because the cost of recovery could exceed the price obtainable for oil and gas, and that price depends upon numerous factors, including the extent of domestic production and foreign imports, market demand, the effect of governmental regulations, and competition with other enterprises engaged in oil and gas exploration and production activities.

Furthermore, exploring for and producing oil and gas involves hazards such as unusual or unexpected formations, pressures or other conditions, blowouts, fires, failure of equipment, down hole collapses and other hazards. On occasion, substantial uninsured liabilities to third parties may be incurred, the payment of which could ultimately be Old Harbor's responsibility if Texaco were unable to pay those liabilities or meet its indemnification obligations to Old Harbor under the lease agreement. Thus, because of uncertain market conditions and potential operating hazards, there can be no assurance that oil or gas will be recovered from the ANWR lands.

No Experience in the Oil and Gas Business

Since Old Harbor has no experience in the oil and gas business, it will need to rely entirely on outside consultants and advisors in dealing with Texaco about the oil and gas lease in particular and with respect to the recovery of oil and gas from the ANWR lands in general. Because of Old Harbor's lack of experience, the recovery of oil and gas from the ANWR lands will depend almost entirely on the efforts and incentive of Texaco.

Legal and Political Resistance

Litigation is pending which seeks to stop or hinder the completion of the proposed land trade. See "Litigation Affecting the Land Trade." Even if that litigation is dismissed, similar litigation to stop or hinder the proposed land trade could arise at various points as the legislative process progresses and all parties move closer to the completion of the trade. Also, even if the trade is completed and Texaco begins its exploration and production activity, litigation could arise which challenges the manner in which the exploration and production is conducted, based on environmental or other concerns.

In addition, even if current political resistance to the proposed land trades subsides, future political resistance could arise due to a number of factors, including changes in the members of Congress and shifts in executive branch (including DOI) policy caused by a change in presidential administrations in 1988.

Because of the possible effects of litigation and political resistance, there can be no assurance that the land trade will be allowed to take place.

Tax Risks

There can be no assurance that Old Harbor's exchange of its native lands for oil and gas rights in ANWR will be a non-taxable event for federal income tax purposes or that the rights in ANWR which Old Harbor receives will take on the same federal income tax attributes carried by Old Harbor's native lands under ANCSA. There can also be no assurance that any of the Required Legislation will exempt Old Harbor's receipt from Texaco of approximately $45,700,000 or subsequent royalties from federal income taxation. See "Income Tax Considerations."

BACKGROUND TO PROPOSED LAND TRADE

In 1971, the United States Congress settled all Alaska native land claims with the passage of ANCSA. As part of the settlement under ANCSA, Alaska natives received approximately forty-million acres of land in addition to certain monetary payments. ANCSA directed that corporations organized under Alaska law be formed to manage the land and funds for the benefit of the Alaska natives and to facilitate the distribution of the land and funds to the Alaska natives.

Approximately 200 native village corporations were formed. They hold the land received under ANCSA. Old Harbor is one of those native village corporations. In addition, 13 native regional corporations were formed. They hold the subsurface rights to village corporation lands. All of the shareholders of Old Harbor are also shareholders of one of those regional corporations, Koniag, Inc. Under ANCSA, each eligible Alaska native received shares of stock in his or her regional corporation and local village corporation.

Through ANCSA and ANILCA, Old Harbor has received or has become entitled to receive approximately 105,000 acres of land located on Kodiak Island and Sitkalidak Island. Of the 105,000 acres, approximately 65,000 acres are on Sitkalidak Island, within AMNWR, approximately 35,000 acres are on Kodiak Island, within KNWR, and approximately 5,000 acres are on Kodiak Island, bordering on the KNWR and located in the Shearwater area.

In 1980, ANILCA required the U.S. Fish and Wildlife Service ("FWS"), as the lead agency for the DOI, to conduct a study of the wildlife resources and mineral potential of the coastal plain of ANWR and to submit a report to Congress. The FWS conducted that study, which included an evaluation of the mineral resources by, among other methods, a seismic study funded by twenty-two members of the oil and gas industry, including Texaco. A draft report became available in November, 1986, and the final report was sent to Congress on April 21, 1987. The FWS has recommended leasing the entire ANWR coastal plain for the exploration and production of oil and gas with appropriate operating stipulations to protect the environment.

ANWR is located on the northeastern edge of Alaska, bordered by the Beaufort Sea. Its mineral potential was described in the report to Congress as follows:

> The 1002 area [Coastal Plain of ANWR] is the Nation's best single opportunity to increase significantly domestic oil production. It is treated by geologists as the most outstanding petroleum exploration target in the onshore United States. Data from nearby wells in the Prudhoe Bay area and in the Canadian Beaufort Sea and Mackenzie Delta, combined with promising seismic data gathered on the 1002 area, indicate extensions of producing trends and other geologic conditions exceptionally favorable for discovery of one or more supergiant fields (larger than 500 million barrels). (Arctic National Wildlife Refuge, Alaska, Coastal Plain Resource Assessment, Report and Recommendation to the Congress/Final Legislative Environmental Impact Statement, April, 1987. Prepared by the U.S. Fish and Wildlife Service, in cooperation with the U.S. Geological Survey and the Bureau of Land Management, Department of the Interior).

The DOI has conducted negotiations for a land exchange of surface rights in refuge areas outside of ANWR which are currently controlled by Alaskan natives for subsurface mineral (oil and gas) rights in ANWR. This would allow the DOI to acquire native lands in environmentally significant areas and allow Alaskan natives to acquire potentially valuable subsurface mineral rights in ANWR. Old Harbor has been negotiating with the DOI for the transfer of approximately 90,000 acres of the corporation's Kodiak and Sitkalidak Island lands in exchange for subsurface exploration and production rights in ANWR of estimated equal value.

The lands which Old Harbor would be transferring are outlined on the map attached to this Proxy Statement as Appendix A. They are shaded in blue. They will be referred to in this Proxy Statement as the "Old Harbor Lands." Old Harbor would keep approximately 15,000 acres of land located around the village of Old Harbor and in other areas, as more particularly outlined on the map attached as Appendix A. Those lands are shaded in yellow.

Through a draft of an agreement dated June 12, 1987 (the "Land Exchange Agreement"), Old Harbor and the DOI have tentatively reached an understanding of the structure of the proposed trade and the process for accomplishing the trade. If the process proceeds as Old Harbor and the DOI expect, the proposed trade will be presented to Congress as part of the Required Legislation.

When the Board of Directors first decided to consider participation in a land trade with the DOI, the Board sought out a major oil company to assist it in assessing the oil and gas potential of the ANWR lands, identifying specific ANWR tracts to trade for, and eventually exploring and developing those ANWR tracts the rights to which Old Harbor would ultimately obtain if the trade occurred. The Board's decision to explore this type of relationship with an oil company was based on Old Harbor's lack of oil and gas industry expertise and lack of financial resources to pursue negotiations with the DOI. After exploring such a relationship with a number of oil companies, Old Harbor eventually negotiated and entered into the agreements with Texaco.

A description of the material features of Old Harbor's proposed agreement with the DOI and the agreements with Texaco are set forth below.

PROPOSED LAND TRADE

The material features of Old Harbor's proposed land trade are set forth in the Land Exchange Agreement. Those features are as follows:

Conveyance of Old Harbor Lands and Retainment of Easement

Old Harbor will convey to the United States the Old Harbor Lands and will relinquish all right, title and interest to those lands. Upon the conveyance, Old Harbor will retain an easement allowing the local residents of the village of Old Harbor the right to continue to use the conveyed lands to engage in customary and traditional uses of wild, renewable resources for direct personal or family consumption of food, shelter, fuel, clothing, tools or transportation (i.e., hunting and fishing); for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter or sharing for personal or family consumption; and for customary trade.

As indicated earlier, the Old Harbor Lands consist in part of acreage which Old Harbor is entitled to receive from the U.S. government but which has not yet been conveyed to Old Harbor. Since that acreage entitlement is included as part of the Old Harbor Lands, if the land trade takes place the entitlement will be extinguished.

Receipt of Oil and Gas Rights

In exchange for the Old Harbor Lands, the DOI will grant to Old Harbor all right, title and interest of the United States in any oil and gas interests in and under the lands selected by Old Harbor in ANWR, including the right to explore and prospect for oil and gas, to drill wells, to produce oil and gas from the wells, and generally to do all things necessary towards the recovery of the oil and gas interests. The selection of the ANWR lands to which those rights will pertain was made in accordance with a Tract Identification Agreement, a copy of which can be reviewed at the business office of Old Harbor during regular business hours. A copy of the Tract Identification Agreement will be sent to you at your request. See "Tract Selection Process."

The DOI also will grant to Old Harbor the right to use the surface of the ANWR lands selected by Old Harbor for the recovery and production of the oil and gas interests set forth above. This will include the right of access across lands within ANWR as may be reasonably necessary and economically practicable for Old Harbor to exercise its rights of recovery and production of oil and gas interests. The DOI will also transfer certain water rights to Old Harbor and the right to remove sand and gravel from the ANWR lands at a reasonable price. After Old Harbor has completed all operations for the purpose of exploring, developing and producing oil and gas resources from the lands selected in

ANWR, Old Harbor will give up its oil and gas exploration and production rights in ANWR. Nevertheless, the easements retained by Old Harbor over the Old Harbor Lands will continue after Old Harbor has given up its ANWR rights.

Although Old Harbor will obtain rights to explore and produce oil and gas in the selected ANWR tracts, it will not own those tracts. Therefore, neither Old Harbor nor its shareholders or their families will have any right to settle on or develop those tracts or to hunt or fish on them.

THE DOI MAKES NO REPRESENTATIONS OR WARRANTIES AS TO THE EXISTENCE, LOCATION, PRODUCIBILITY, QUANTITY OR QUALITY OF OIL AND GAS RESOURCES IN OR UNDER ANY OF THE ANWR LANDS. THEREFORE, OLD HARBOR WILL BEAR THE ENTIRE RISK AS TO THE EXISTENCE, LOCATION, PRODUCIBILITY, QUANTITY OR QUALITY OF OIL AND GAS RESOURCES IN OR UNDER THE ANWR LANDS SELECTED BY OLD HARBOR.

Tract Selection Process

Through the tract selection process, Old Harbor, with Texaco's assistance, selected a total of approximately 58,000 acres of ANWR land in which it would have oil and gas exploration and production rights if the land trade took place.

The DOI began the tract selection process by dividing the coastal plain of ANWR into 576 tracts, each of approximately 2,560 acres. The DOI then computed the exchange value of each ANWR tract in the same manner as it would have calculated minimum acceptable bids in a contemporaneous, competitive federal lease sale of an ANWR tract, with one exception. In a typical, competitive federal lease sale, royalties which ordinarily are paid to the U.S. government by the lessee are assumed to be costs to the lessee and therefore reduce the value per acre of a tract. However, in the proposed land trades, the government will not receive any royalties. Therefore, in valuing the ANWR tracts, the government increased the tract values by this royalty component. Thus, the value of each ANWR tract in which Old Harbor would receive rights if the trade took place reflects the DOI's estimate of the value of the royalties which the government will not be receiving from such tracts. Because the values of the ANWR tracts were increased by the royalty component, each participant in the land trade ultimately selected rights in less ANWR acreage than it would have received if the values of the ANWR tracts had not been increased by the royalty component.

Each participant in the proposed land exchange, including Old Harbor, then took part in a tract identification process in early July, 1987 in which each participant identified the ANWR tracts in which it wanted to acquire oil and gas exploration and production rights. If more than one participant selected the same tract, the rights to such tract were awarded by bid or random drawing. The participant which did not receive the tract in conflict then was allowed to select the next tract it desired to receive.

When a participant was awarded rights to a tract, the exchange value of the participant's native lands to be traded was reduced by the value given to the tract by the DOI. The process involved a number of rounds of identification and selection until each participant had little or no exchange value remaining with which to bid for a tract. To permit the participants to use up as much exchange value of their native lands as possible, the participants also were allowed to select rights in partial tracts and were allowed to pool their remaining exchange values with other participants to jointly select partial tracts.

Through this process, Old Harbor identified and was allocated rights in approximately 58,000 acres of ANWR land, consisting of 22 full tracts, one partial tract, and shares of an undivided one-half interest in a partial tract with another participant, Native Lands Group. The exchange participants as a whole chose 65 whole tracts and 8 partial tracts covering 166,278 acres with an aggregate exchange value of $538,700,000. Old Harbor's and the other participants' selections are outlined on the map of the coastal plain of ANWR attached to this Proxy Statement as Appendix B. Old Harbor's selections are shaded in green. The exchange value used by Old Harbor was $45,694,000, leaving a remaining exchange value of approximately $39,000. If the land trade takes place and Old Harbor still has that remaining unused exchange value, Old Harbor would retain acreage on Sitkalidak Island estimated to be equal in value to that unused exchange value.

Valuation of Old Harbor Lands

One of the major factors bearing upon the fairness of the consideration to be received by Old Harbor from the DOI is the value placed on the Old Harbor Lands. (Another major factor is the value of the oil and gas rights in the selected ANWR tracts. See "Fairness of Consideration Offered by Texaco; Value of ANWR Rights.") The value of the Kodiak lands to be transferred to the DOI by Old Harbor ranges between $340 per acre and $574 per acre, covering a total of approximately 35,571 acres, with a total overall value of $14,863,030. The value which has been placed upon the Sitkalidak Lands pursuant to negotiations between the DOI and Old Harbor is $563.50 per acre, covering a total of approximately 54,784 acres, for a total value of $30,870,784.

The value placed on the Old Harbor Lands is the result of extensive negotiations between Old Harbor and the DOI. The DOI began the negotiation process by presenting to Old Harbor an appraisal performed by the DOI's Fish and Wildlife Service dated November 27, 1985 covering the Kodiak lands. That appraisal divides the lands into seven different tracts and appraises each tract separately. Taking into account the restrictions imposed by ANCSA on the use and development of refuge lands owned by native corporations, the appraisal estimates tract values ranging from $85.20 to $521.88 per acre. Without taking into consideration those restrictions, the appraisal estimates tract values ranging from $135.52 to $1,043.75 per acre. The Fish and Wildlife Service generally used a market data approach to estimate the value of the lands. With this approach, value is predicted by analyzing sales of similar, recently sold properties in order to arrive at the most probable sales price of the property being appraised. An abbreviated development approach was also used to estimate the value of some of the land identified as suitable for the development of recreational cabin sites. That approach focuses on the projected income from the property once it is developed.

After considering the Fish and Wildlife Service's appraisal, Old Harbor hired Mundy-Day & Associates, a private real estate appraisal company in Anchorage, to perform appraisals of the Kodiak and Sitkalidak lands. The appraisal of the Kodiak lands is dated February 24, 1987. The appraisal of the Sitkalidak lands is dated April 30, 1987. Each of those appraisals estimated the "public interest value" of the lands to be $1,000 per acre. According to the appraisals, public interest value is determined using a market data type of approach, except that a premium is added for rare and scenic parcels of wilderness land.

After a series of negotiations involving disagreements over the appraisals, including the type of value to be determined and the approaches used to determine that value, the DOI and Old Harbor finally agreed on the values to be placed on the various parcels constituting the Old Harbor Lands.

PLEASE TAKE NOTE that other than the appraisals discussed above, there have been no independent appraisals of the Old Harbor Lands. The Board of Directors of Old Harbor has determined that further appraisals would not materially assist the Board in evaluating the fairness of the negotiated value placed on the Old Harbor Lands. The Board's determination was based on, among other things, recognition of the inherent difficulties in valuing those lands, including the scarcity of market data, the absence of income generated from those lands, and the effect of various governmental restrictions on portions of those lands.

PLEASE TAKE FURTHER NOTE that a copy of the Mundy-Day & Associates appraisals and the Fish and Wildlife Service appraisal can be reviewed at the business offices of Old Harbor during regular business hours. A copy of those appraisals will be sent to you upon request. ?

Termination of Land Exchange Agreement

The proposed land trade set forth in the preceding paragraphs requires ratification of the terms of the Land Exchange Agreement by the shareholders of Old Harbor and the enactment of the Required Legislation. Once the Land Exchange Agreement is signed, the DOI may terminate it if written notice of shareholder approval of that agreement is not received by the Secretary of the DOI within 120 days following the effective date of the Agreement. The Agreement also may be terminated by either party upon 30 days notice if the Required Legislation is not enacted by December 31, 1993, subject, in Old Harbor's case, to the prior written consent of Texaco. Old Harbor may terminate the Land Exchange Agreement upon written notice to the DOI before December 31, 1993 and before the enactment of the Required Legislation upon payment of the DOI's cost of negotiating the Land Exchange Agreement and after obtaining the prior written consent of Texaco.

Subject to obtaining Texaco's prior written consent, Old Harbor will also have the right to cancel the Land Exchange Agreement without any obligation upon written notice to the DOI (i) within 60 days of the enactment of legislation authorizing the opening of ANWR which is not in a form and content satisfactory to Old Harbor; (ii) within 60 days of the enactment of any provisions of the legislation approving the land trade which amends or seeks to amend any of the terms of the Land Exchange Agreement or alters or seeks to alter any of Old Harbor's rights and obligations under that Agreement without Old Harbor's prior written consent; or (iii) within 60 days of the enactment of any provisions of the legislation approving the land trade which are not addressed by the Land Exchange Agreement and are not in a form and content satisfactory to Old Harbor. Upon any such cancellation, Old Harbor will retain full ownership of the Old Harbor Lands.

Miscellaneous

PLEASE TAKE NOTE that a copy of the Land Exchange Agreement is available at the business offices of Old Harbor during regular business hours. A copy of that Agreement will be sent to you upon your request.

The United States of America, acting through the Secretary of the Interior, is the other party to the Land Exchange

Agreement. There is no material relationship of the United States to Old Harbor or any of Old Harbor's officers or directors.

TEXACO AGREEMENTS

The material features of Old Harbor's agreements with Texaco (the "Texaco Agreements") regarding the selection, exploration, development and production of the ANWR underground resources are as follows:

Preliminary Obligations of Old Harbor

Old Harbor will sign a Land Exchange Agreement with the DOI to obtain mineral (oil and gas) interests and the right to explore and produce oil and/or gas from those mineral interests underlying tracts within the coastal plain of ANWR identified by Texaco. Old Harbor also will select specific tracts of land as identified by Texaco within ANWR pursuant to the Land Exchange Agreement process, up to the entire value of the Old Harbor Lands as determined by the DOI and set forth in the Land Exchange Agreement. As noted above, although the Land Exchange Agreement has not yet been signed, the tract selection process has been completed. Old Harbor also will promote the Required Legislation.

Preliminary Obligations of Texaco

Texaco will advise Old Harbor in negotiating policy with the DOI regarding the Land Exchange Agreement which may affect Texaco's interest and will advise Old Harbor in establishing recommendations to the DOI concerning environmental and other appropriate exploration and development stipulations. Texaco also will identify specific tracts of land within ANWR which Old Harbor will select during the Land Exchange Agreement process to the extent allowed by the DOI. This has already taken place. TEXACO IN NO WAY WARRANTS OR REPRESENTS THAT OIL AND/OR GAS IS PRESENT UNDER THOSE TRACTS.

Termination of the Texaco Agreements

If the Required Legislation is not enacted by December 31, 1993, Texaco thereafter may elect to terminate the Texaco Agreements; if the DOI should terminate the Land Exchange Agreement, Old Harbor must immediately notify Texaco and the Texaco Agreements will terminate; and if the Land Exchange Agreement is voided by any final administrative or court order and all avenues of appeal have been exhausted or have expired, the Texaco Agreements will terminate.

Election to Lease by Texaco

Upon enactment of the Required Legislation, Texaco will have the exclusive right to:

(a) Lease all of Old Harbor's rights in the ANWR lands by giving written notice to Old Harbor of its election to lease; or

(b) Elect not to lease any of those rights. Upon an election not to lease, the Texaco Agreements would terminate and Old Harbor would be entitled to keep all monies which Texaco has paid it through the termination date. See "Payments by Texaco."

Terms of the Texaco Lease

The form of the oil and gas lease which Texaco and Old Harbor will sign upon Texaco's election to lease is available for review at the corporate offices of Old Harbor. Under that lease, Texaco will pay to Old Harbor as a royalty 14% in amount or value of the oil and gas recovered from the leased area. Old Harbor also will receive a 1.5% overriding royalty interest in any leases covering any lands within the coastal plain of ANWR which Texaco acquires from a third party after the date of the lease entered into between Old Harbor and Texaco pursuant to the Texaco Agreements, subject to a proportionate reduction according to Texaco's partial interest in any such leases.

Under the lease, Texaco will also be required to pay an annual rental to Old Harbor of $3.00 per acre. The lease will be issued for an initial term of five (5) years and will automatically be extended to ten (10) years once Texaco has begun one well to evaluate all or any part of the leased area. The lease will then be automatically extended for as long as oil or gas is produced in paying quantities. The lease will terminate only under very limited circumstances. Although the lease requires Texaco to use reasonable diligence in drilling, producing and operating wells on the leased property, there is no guarantee that Texaco will in fact explore and drill for oil or gas, and Texaco may leave the leased area in an unproductive state for substantial periods before Old Harbor may terminate the lease. See "Risk Factors."

Payments by Texaco

Under the Texaco Agreements, Texaco will pay Old Harbor the following amounts at the following times:

(a) Texaco will pay $5,000,000 to Old Harbor upon shareholder approval of the Land Exchange Agreement. Once those sums are received, Old Harbor will keep them whether or not the Required Legislation is enacted and whether or not Texaco decides to lease the rights in the ANWR tracts selected by Old Harbor.

(b) Texaco will pay another $2,000,000 to Old Harbor after shareholder approval of the Land Exchange Agreement, but not earlier than 3 working days following enactment of the Required Legislation (whichever is later).

(c) Texaco will reimburse Old Harbor for Old Harbor's expenses incurred in connection with the Land Exchange Agreement, except expenses associated with litigation, not to exceed a total cost to Texaco of $750,000 from January 8, 1987 up to and including enactment of the Required Legislation (whichever is later).

(d) Texaco will reimburse Old Harbor for any reasonable expenses connected with litigation arising out of the Land Exchange Agreement subject to the prior written consent of Texaco, to a maximum extent of $100,000 in any calendar year and subject to a further maximum of $675,000 up to and including December 31, 1993. Those litigation expenses will be deducted from the payments provided for in subparagraph (f) below which accrue after the expenses are incurred.

(e) Upon Texaco's election to lease all of the rights in ANWR tracts which Old Harbor receives in exchange for the Old Harbor Lands, Texaco will deliver to Old Harbor a sum of money representing the negotiated value of the Old Harbor Lands (approximately $45,700,000) less (i) $4,500,000 of the $5,000,000 sum mentioned in (a) above, (ii) the entire $2,000,000 sum mentioned in (b) above, and (iii) all but $250,000 of the expenses which Texaco has reimbursed Old Harbor for during the land trade process. This sum shall be subject to an escalation factor equal to one half of the prime rate of Rainier Bank Alaska per year beginning January 1, 1989 and continuing until Old Harbor executes and delivers the lease with Texaco; and

(f) Upon obtaining shareholder approval of the Land Exchange Agreement, and continuing thereafter until enactment of the Required Legislation or until the Land Exchange Agreement has been terminated, Texaco will pay to Old Harbor $50,000 per quarter.

Employment of Old Harbor Residents; Scholarship Funds

Texaco also will make a bona fide effort to employ and train qualified residents of Old Harbor during the conduct of operations by Texaco on the ANWR lands to which Old Harbor's rights pertain and shall contribute at least $10,000 annually for scholarships for qualified residents of Old Harbor who are pursuing an education at an accredited college or university commencing in 1987.

Fairness of Consideration Offered by Texaco; Valuation of ANWR Rights

One of the major factors which bears upon the fairness of the consideration offered by Texaco is the value of the ANWR rights to be received by Old Harbor in exchange for the Old Harbor Lands. As indicated earlier, the other major factor is the value of the Old Harbor Lands. The Land Exchange Agreement provides that Old Harbor will receive mineral interests and other interests with respect to the rights in the ANWR lands that are equivalent in value to the Old Harbor Lands traded. See "Valuation of Old Harbor Lands." The Texaco Agreements provide that Texaco will deliver to Old Harbor a sum of money equivalent in value to the Old Harbor Lands traded upon Texaco's election to lease Old Harbor's ANWR rights as set forth above.

PLEASE TAKE NOTE that the Board of Directors has not sought any independent evaluation of the fairness of the value which the DOI placed on the rights in ANWR lands selected by Old Harbor or the value of the royalty interests which Old Harbor will receive under its lease agreement with Texaco or any residual interest in the rights in ANWR Lands which Old Harbor will receive if Texaco's lease with Old Harbor terminates before Old Harbor must return its interest in the ANWR lands to the DOI pursuant to the Land Exchange Agreement. See "Risk Factors." In transactions involving dollar amounts as large as those involved in the proposed land trade, a corporation would typically hire an expert, such as an investment banking institution, to evaluate and issue an opinion concerning the fairness of the consideration involved in the transaction. However, the Board of Directors of Old Harbor has determined that such a fairness opinion would not materially assist the Board in evaluating the fairness of the DOI's valuation of the ANWR rights or the fairness of the consideration to be received by Old Harbor from Texaco, and the Board has therefore not sought or obtained such an opinion.

The Board's determination not to seek or obtain such an opinion was based on, among other things, the scarcity of available geophysical, geological and similar data with respect to the ANWR lands, the difficulty in evaluating the quantity, quality or type of oil or gas required to make exploration, production and development economically feasible, and the significant inherent risks in any oil and gas exploration in a field which has not yet been explored. After due consideration, the Board has determined that studies done of the ANWR lands by a group of oil companies, including Texaco, and the data made available by the DOI concerning those lands, has provided a sufficient basis for Old Harbor to accept the DOI's valuation of the rights in ANWR tracts selected by Old Harbor and to negotiate and ultimately agree on the consideration to be received from Texaco under the Texaco Agreements.

Use of Texaco Proceeds

The Board of Directors intends to invest Texaco's initial $5,000,000 lump sum payment in bank certificates of deposit, U.S. Treasury Bills, or other low risk, interest-bearing financial products for Old Harbor's benefit until the Board develops a plan for the ultimate use or investment of the total of approximately $45,700,000 to be received from Texaco. THE BOARD HAS NO PRESENT INTENTION TO DISTRIBUTE TO THE SHAREHOLDERS ANY OF THE INITIAL $5,000,000 PAYMENT.

Because of the uncertainty about Congressional approval of the Required Legislation, and because of pending litigation and Texaco's bankruptcy proceedings, the Board has determined not to begin developing a plan for the use or investment of the total proceeds. If and when appropriate legislation appears close to Congressional approval, legal challenges have been stopped, and Texaco appears willing to lease Old Harbor's ANWR rights and able to perform its obligations under its agreements with Old Harbor, the Board intends to develop a plan for the use and investment of all of the Texaco proceeds which Old Harbor will receive upon Texaco's election to lease the ANWR rights and of all of the royalty or other payments which may be received during the term of Texaco's lease. The Board will submit the plan, when developed, to the shareholders for their approval.

Texaco Bankruptcy

On April 12, 1987, Texaco filed a voluntary petition under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court for the Southern District of New York. Chapter 11 proceedings permit a company to temporarily seek protection from creditors and to attempt to reorganize its affairs in order to emerge in a better position to pay its debts and meet its obligations.

In these Chapter 11 proceedings, Texaco is allowed the opportunity to reject certain agreements which it considers burdensome to its estate and to assume certain agreements which it considers beneficial to its estate. On June 12, 1987, Texaco, with the approval of the Bankruptcy Court, elected to assume the Texaco Agreements. As a result of this assumption, Texaco is legally obligated to perform under the Texaco Agreements just as it was before its Chapter 11 filing. If Texaco failed to perform under the Texaco Agreements at some future date during the course of these Chapter 11 proceedings, or if the Texaco Chapter 11 case were converted to one under Chapter 7 of the Bankruptcy Code (in which the company would be liquidated) and the Texaco Agreements were then rejected, such action would constitute a default under the Texaco Agreements and would, under the Bankruptcy Code, entitle Old Harbor to a priority administrative claim for any damages which would, absent bankruptcy, be recoverable for breach of the Texaco Agreements.

Because Texaco is in Chapter 11 proceedings, there can be no assurance that Texaco will in the near future be able to meet its obligations, including payment of all or any part of the $5,000,000 to which Old Harbor would become entitled upon obtaining shareholder approval of the land trade and the Texaco arrangement. Similarly, there can be no assurance that, upon the enactment of the Required Legislation, Texaco will be able to pay Old Harbor the balance of the approximately $45,700,000 which may become due or to otherwise meet its obligations to Old Harbor.

<u>Miscellaneous</u>

The name and address of the other party to the Texaco Agreements is Texaco Inc. whose address is 4800 Fournace Place, Bellaire, Texas 77401. There is no material relationship between Texaco and Old Harbor, its subsidiaries, officers or directors, except for the Texaco Agreements.

Texaco will reimburse Old Harbor for the expenses involved with the preparation of the portion of this Proxy Statement which refers to the Land Exchange Agreement and the Texaco Agreements. Expenses related to the other portions of this Proxy Statement will be borne by the Company.

LITIGATION AFFECTING THE LAND TRADE

On March 19, 1987, a lawsuit which may affect the proposed land trade was begun in the United States District for the District of Alaska. The case is called Trustees for Alaska, American Wilderness Alliance, National Wildlife Refuge Association, Northern Alaska Environmental Center, The Sierra Club, The Wilderness Society, and the National Audubon Society, plaintiffs, v. William P. Horn, Assistant Secretary of Interior for Fish Wildlife and Parks; Donald P. Hodel, Secretary, U.S. Department of Interior; Frank Dunkle, Director, U.S. Fish and Wildlife Service; James Griffith, Acting Regional Director, U.S. Fish and Wildlife Service; The United States Department of the Interior; and The United States Fish and Wildlife Service, defendants. It is Civil Action No. A87-118 CIV in the court files in Anchorage.

Several Alaska native corporations, including Koniag, Inc., Akhiok-Kaguyak and Native Lands Group have intervened in the litigation. Old Harbor is not part of the lawsuit, but the outcome of the lawsuit may affect the Land Exchange Agreement and the Texaco Agreements.

The complaint in the lawsuit asks for declaratory and injunctive relief. It claims that the defendants have violated and are violating Section 102 of the National Environmental Policy Act ("NEPA"), regulations implementing NEPA, the Administrative Procedure Act, ANILCA, ANCSA, and the Wilderness Act by "actively pursuing land exchange negotiations involving the coastal plain of the Arctic National Wildlife Refuge and committing federal personnel and financial resources before Congress decides whether to allow oil and gas development in that area; and by proceeding with those negotiations on an expedited basis without preparing an environmental impact statement and without complying with other procedures required by NEPA and the NEPA implementing regulations." The plaintiffs have asked for a preliminary and permanent injunction against "all further negotiations and deliberations regarding the proposed land exchange unless Congress enacts legislation opening the area for oil and gas leasing, and until the proper procedures are followed."

The Secretary of the Interior and the other original defendants filed a motion to dismiss the complaint on April 14, 1987. The motion contends that plaintiffs lack "standing" to challenge defendants' authority to negotiate, that the defendants' actions are not yet "ripe" for review by a court, that the Administrative Procedure Act gives the court no jurisdiction to stop the negotiations and that plaintiffs have not stated any good grounds for their lawsuit.

On April 22, 1987, the plaintiffs filed a motion for preliminary injunction claiming that the defendants are violating NEPA in two distinct ways: (1) by prematurely committing government people and money to negotiations before a final decision is reached by Congress; and (2) by not preparing an Environmental Impact Statement on the proposed land exchange based upon public participation "as early and as frequently as possible." Plaintiffs also argue that the land exchange negotiations violate ANILCA, ANCSA, and the Wilderness Act.

Following briefing of the issues raised both by defendants' motion to dismiss (joined in by the native corporation interveners) and plaintiffs' motion for a preliminary injunction (opposed by the native corporation interveners as well as by the original defendants), the matter was argued on July 16, 1987. The judge indicated that he would decide the matter later. There is no definite date by which the judge must decide these motions. As of the date of this Proxy Statement the judge has not rendered a decision on these motions.

If this lawsuit were dismissed, the DOI and Old Harbor would likely be able to finalize and sign their Land Exchange Agreement and continue promoting the Required Legislation. This assumes, however, that no new lawsuits with a similar purpose are in the meantime begun. If the District Court lawsuit were decided against the defendants, it could temporarily stall or completely stop the land trade process. It could also create new requirements for the native corporations, the DOI and/or the oil companies to satisfy before proceeding.

Because of the unique circumstances of the District Court case and the uncertainty in the applicable law, the Board of Directors cannot predict the outcome of the lawsuit.

INCOME TAX CONSIDERATIONS

Introduction

The following discussion is only a general summary of the United States federal income tax aspects of the proposed land trade and their effect on Old Harbor. Due to the uniqueness of the transaction, including the special tax treatment given to the ANCSA settlement lands and funds received by Old Harbor, the federal income tax consequences of the proposed transaction for Old Harbor are uncertain. In addition, as discussed below, any legislation approving the exchange may well preempt or modify the tax consequences that would otherwise ensue in the absence of such legislation. However, because the substantial cash payments which may be received by Old Harbor from Texaco in the land trade process would substantially exceed the maximum amount of federal income tax liability which Old Harbor is likely to incur, the Board recommends proceeding with the land trade in spite of the risk of taxation on all or part of the proposed transaction.

The Board also has determined, on the basis of the factors noted above, that it is not practicable in advance of the meeting to obtain either an opinion of counsel (other than the advice specifically mentioned below) or a ruling from the Internal Revenue Service on the federal income tax consequences for Old Harbor from the proposed transaction.

Tax-Deferred Exchange

Old Harbor will not incur any current federal income tax liability on the trade of the Old Harbor Lands for the oil and gas rights in ANWR if the trade qualifies as a tax-deferred "likekind" exchange under Section 1031 of the Internal Revenue Code. The Board has been advised by special tax counsel, Feldman, Waldman & Kline, A Professional Corporation, 235 Montgomery Street, Suite 2700, San Francisco, California, 94104, that, if this transaction only involved the exchange of the Old Harbor Lands for oil and gas rights in the ANWR tracts, the exchange in all likelihood would qualify as a tax-deferred exchange. However, the Board has been advised by such tax counsel that the concurrent lease of the oil and gas rights to Texaco may cause the exchange with the DOI to be a taxable event. Although such tax counsel has advised the Board that there are strong arguments that can be made that the exchange should be tax-deferred notwithstanding the leasing of the oil and gas rights to Texaco, a contrary position could be taken by the Internal Revenue Service and there can be no assurance that the courts would not sustain the Internal Revenue Service's position that the exchange is taxable.

If the trade qualified as a tax-deferred exchange, no tax would be due at the time of exchange, and Old Harbor would receive a tax basis in the oil and gas rights equal to the basis it had in the Old Harbor Lands. However, if the proposed trade did not qualify as a tax-deferred exchange, Old Harbor would incur a tax on the difference between the fair market value of the oil and gas rights Old Harbor receives and Old Harbor's tax basis in the Old Harbor Lands. ANCSA provides that the tax basis in the Old Harbor Lands is the fair market value of those lands at the time Old Harbor received them. The fair market value of the Old Harbor Lands when Old Harbor received them has not been determined. Since Old Harbor's tax basis in the Old Harbor Lands is unclear, it is impractical to estimate the amount of tax liability, if any, which Old Harbor would incur if the trade did not qualify as a tax-deferred exchange.

If the exchange were taxable, then, under present law and present tax rates (which are subject to change from time to time), the tax on the difference between the fair market value of the oil and gas rights which Old Harbor receives and Old Harbor's tax basis in the Old Harbor Lands would be at a maximum rate of 40% if the trade took place in 1987 (which is very unlikely) and a maximum rate of 34% if the trade took place in 1988 or afterwards. This assumes that at the time the trade takes place a lower capital gains rate for corporations has not been reintroduced into the Internal Revenue Code.

Texaco Payments

Under the Texaco agreements, Texaco will pay Old Harbor certain sums whether or not Texaco elects to lease the oil and gas rights from Old Harbor. If Texaco elects to lease those rights, it will pay Old Harbor (1) an additional lump-sum for the balance of the total of $45,700,000 which is payable to Old Harbor, (2) $3.00 per acre per year, (3) a 14% royalty on any oil and gas recovered under the Texaco lease, and (4) a 1.5% overriding royalty on oil and gas recovered pursuant to certain third party leases.

Each of these foregoing payments will likely constitute taxable income to Old Harbor, subject to a possible offset by the deduction allowed for depletion. The depletion deduction, if allowed, might reduce the tax liability of Old Harbor in the year in which Old Harbor receives the $5,000,000 lump sum payment upon shareholder approval of the land trade and would reduce the tax liability of Old Harbor in the year in which Old Harbor receives the lump sum payments from Texaco for the balance of the $45,700,000, as well as when Old Harbor receives any royalty payments.

State of Alaska Income Taxation

Alaska has adopted by reference the pertinent sections of the Internal Revenue Code applicable to the proposed transaction with the result that the tax consequences of the exchange and lease should be the same under Alaska law as under federal law, except that the maximum rate of tax imposed by Alaska on the taxable income of a corporation is 9.4%.

Possible Legislation

Since Congress originally provided for tax-free treatment of Old Harbor's initial receipt of ANCSA settlement lands and funds, it is possible that the legislation to be proposed for approving the land trades will provide that the exchange of native lands for oil and gas rights also will be taxfree. If that legislation passes with such a provision, it will not matter whether the trade otherwise qualifies as a tax-deferred exchange under the Internal Revenue Code. It is not certain whether the legislation to be proposed for approving the land trades will also contain a provision exempting the Texaco payments from federal income taxation, or whether such a provision, if proposed, would be retained in the final bill if and when it is enacted into law.

AMENDING BY-LAWS TO INCREASE AUTHORIZED NUMBER OF DIRECTORS AND TO STAGGER ELECTION OF DIRECTORS

The By-Laws of Old Harbor currently provide that the affairs and business of the corporation shall be managed by a board of seven (7) directors. Each director currently serves a one-year term. Under Alaska law, if Old Harbor's board of directors consisted of at least nine members, the By-Laws could provide for the election of directors at staggered intervals instead of for the annual election of the entire board, and the directors could serve terms greater than one year.

The Board of Directors of Old Harbor recommends a vote "FOR" the amendment of the By-Laws to provide for a nine member board and to provide for staggered elections as follows:

Nine directors, who will constitute the entire Board of Directors, will be elected at the September 23, 1987 annual shareholders meeting. Three directors will be elected for a term of three years, three for a term of two years, and three for a term of one year, and each will hold office until his or her successor has been elected and qualified for office. For the foregoing purpose, a year will be determined as the time between an annual shareholders' meeting and the next annual shareholders' meeting. The three nominees receiving the highest number of votes will have three year terms, the three nominees receiving the next highest number of votes will have two year terms, and the three nominees receiving the next highest number of votes will have one year terms. In the case of a tie vote concerning which nominees are elected to the Board or which nominees so elected will have a particular term, the tie will be broken by random drawing. As the one, two or three year term of each director elected at the September 23, 1987 annual shareholders' meeting comes to an end, his successor will be elected for a three year term.

The vote required for approval of the foregoing amendments is the affirmative vote of a majority of the outstanding common stock of Old Harbor.

ELECTION OF DIRECTORS

The Board of Directors has nominated the fourteen (14) people described below as the nominees to the Board of Directors. Assuming passage of the proposed By-Law amendment to increase the size of the Board, nine (9) of the fourteen (14) nominees will be elected to the Board of Directors.

Because the land trade transaction described in this Proxy Statement, if approved by the Old Harbor shareholders, will be a major event in Old Harbor's existence, with important long-term consequences for Old Harbor and each of Old Harbor's shareholders, the Board nominated more people for election as directors than there are seats on the Board in order to give the shareholders as broad a selection of potential directors as is practical and has decided not to endorse or recommend any particular candidates for election.

The Proxy will be voted according to the choices you make in the Proxy. As indicated on the Proxy, you may vote for as many as, but no more than, nine (9) of the nominees listed below. Also, you have cumulative voting rights as explained on page 3 of this Proxy Statement. The proxy holders will vote in accordance with the instructions you give them and will not have or exercise any discretion except to distribute your votes equally among the nominees which you have voted for if you do not specifically indicate how many votes your selected nominees are supposed to receive.

(Please note that if the proposal to amend the By-Laws to increase the authorized number of directors and to stagger the election of directors is not passed at the annual shareholders' meeting, the election of directors will be postponed to an adjourned meeting date and new proxies will be solicited).

The following sets forth the names and brief biographies of those persons nominated by the Board of Directors for election as directors:

Wilmer Andrewvitch:

Wilmer Andrewvitch's address is P.O. Box 67, Old Harbor, Alaska 99643 and he is 27 years of age. Wilmer has been employed by the Senior Citizens of Old Harbor as a van driver and by the City of Old Harbor as a part-time office worker and to perform odd jobs.

*/ Ronald Berntsen:

Ronald Berntsen has served on the Board of Directors of Old Harbor from 1971 to the present. He is currently the Secretary-Treasurer of Old Harbor. Ronald's address is P.O. Box 27, Old Harbor, Alaska 99643 and he is 44 years of age. Ronald is self employed as a salmon fisherman. He was also employed by the City of Old Harbor as Public Works Foreman during 1986, by Clyde Terry Construction as a heavy equipment operator in the summer of 1985, and as a heavy equipment operator, and pipe layer, for the Alaska Public Health Service during 1983. He is also a member of the City of Old Harbor Volunteer Fire Department.

Ralph Capjohn:

Ralph Capjohn is a self employed salmon fisherman who was employed by the City of Old Harbor as a carpenter during the summer of 1976. He has also been employed by the Kodiak Island Borough School District as a Custodian of the Old Harbor City schools from 1982 to the present. Ralph's address is P.O. Box 15, Old Harbor, Alaska 99643 and he is 49 years of age. Ralph is a cousin of Harold Christiansen, Carl Christiansen, Emil Christiansen, George Inga, Linda Lester, Eugene Naumoff, and Leona Plummer, all of whom are also nominees for the Board of Directors. Ralph is a cousin of Terry Cratty who is a present director.

Bernadine Lou Christiansen:

Bernadine Lou Christiansen is the owner and operator of a video rental business in Old Harbor. Her address is P.O. Box 108, Old Harbor, Alaska 99643 and she is 31 years of age. Bernadine is the sister-in-law of Harold Christiansen, Carl Christiansen, Emil Christiansen and Sven Haakanson, and is the aunt of Linda Lester and Leona Plummer, all of whom are nominees to the Board of Directors. Bernadine is the aunt of Terry Cratty who is a present director.

Carl Christiansen:

Carl Christiansen is self employed as a salmon and crab fisherman. His address is P.O. Box 65, Old Harbor, Alaska 99643 and he is 45 years of age. Carl is a member of the Old Harbor City Council and the Old Harbor Tribal Council. Carl is the brother of Harold Christiansen and Emil Christiansen, the

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*/ Incumbent director.

brother-in-law of Sven Haakanson and Bernadine Christiansen, an uncle of Linda Lester and Leona Plummer and the cousin of Ralph Capjohn and Eugene Naumoff, all of whom are nominees to the Board of Directors. Carl is the uncle of Terry Cratty who is a present director.

Emil Christiansen, Sr.:

Emil Christiansen, Sr. is self employed as a salmon and crab fisherman. His address is P.O. Box 63, Old Harbor, Alaska 99643 and he is 34 years of age. Emil is a member of the Old Harbor City Council and the Old Harbor Tribal Council. Emil is the brother of Harold Christiansen and Carl Christiansen, a brother-in-law of Sven Haakanson and Bernadine Christiansen, an uncle of Linda Lester and Leona Plummer, and the cousin of Ralph Capjohn and Eugene Naumoff, all of whom are nominees to the Board of Directors. Emil is the uncle of Terry Cratty who is a present director.

*/ Harold Christiansen:

Harold Christiansen has served on the Board of Directors of Old Harbor from 1971 to the present. His address is P.O. Box 114, Old Harbor, Alaska 99643 and he is 39 years of age. Harold has been self employed as the owner of Old Harbor Food Store since 1977 and is also employed as a salmon and crab fisherman. Harold is the brother of Carl Christiansen and Emil Christiansen, Sr., the brother-in-law of Sven Haakanson and Bernadine Christiansen, the cousin of Ralph Capjohn and Eugene Naumoff, and the uncle of Leona Plummer and Linda Lester, all of whom are nominees for the Board of Directors. Harold is currently a member of the Old Harbor City Council. Harold is the uncle of Terry Cratty who is a present director.

*/ Walter Erickson:

Walter Erickson has served on the Board of Directors of Old Harbor from 1971 to the present. He is currently the Vice-President of Old Harbor. Walter's address is P.O. Box 89, Old Harbor, Alaska 99643 and he is 62 years of age. Walter is self employed as a salmon fisherman. He has been the owner of Walt's Village Store from 1972 to the present. Walter is a member of the Board of Directors of the Kodiak Area Native Association, the President of the Old Harbor Tribal Council, a member of the Old Harbor City School Advisory Board and a member of the Old Harbor City Council. He is the brother-in-law of Annie Pestrikoff who is also a nominee for the Board of Directors.

*/ Sven Haakanson:

Sven Haakanson has served on the Board of Directors of Old Harbor from 1971 to the present. Sven is currently the Chairman of the Board of Directors and the President of Old Harbor. Sven's address is P.O. Box 35, Old Harbor, Alaska 99643 and he is 52 years of age. Sven has been self employed as a salmon fisherman from 1982 to the present. He is currently Mayor of the City of Old Harbor and has been the Chairman of the Board of Directors of Kodiak Island Housing Authority from 1976 to the present. Sven is the brother-in-law of Harold Christiansen, Carl Christiansen, Bernadine Christiansen and Emil Christiansen, the uncle of Linda Lester, the father of Leona Plummer and a cousin of George Inga, all of whom are also nominees to the Board of Directors. He is the uncle of Terry Cratty who is a present director. Sven filed a voluntary petition for bankruptcy under Chapter 7 of the U.S. Bankruptcy Code earlier this year.

George Inga, Sr.:

George Inga, Sr. served as a Director of Old Harbor from 1971 through 1977. George's address is P.O. Box 106, Old Harbor, Alaska 99643 and he is 62 years of age. George is a self employed fisherman who has also been employed by the City of Old Harbor in the Maintenance Department from 1971 to the present. George is a second cousin of Sven Haakanson and Ralph Capjohn, and a second cousin, once removed, of Leona Plummer, all of whom are also nominees for the Board of Directors. George is currently a member of the Old Harbor Tribal Council.

Linda Lester:

Linda Lester's address is 1510 Simeonoff Street, Kodiak, Alaska 99615 and she is 29 years of age. Linda has been employed by Mark-Air as a ticket agent and by Union Oil Sales as a receptionist. Linda is the sister of Terry Cratty who is a current member of the Board of Directors and a niece of Harold Christiansen, Carl Christiansen, Emil Christiansen, Sven Haakanson and Bernadine Lou Christiansen, and a cousin of Leona Plummer, Ralph Capjohn and George Inga, all of whom are nominees to the Board of Directors.

Eugene Naumoff:

Eugene Naumoff is self employed as a salmon gill netter and also has been a crewmember for the seine vessel owned by William Wolkoff. Eugene's address is P.O. Box 33, Old Harbor, Alaska 99643 and he is 33 years of age. Eugene is a cousin of Harold Christiansen, Carl Christiansen, Emil Christiansen, Ralph

Capjohn, Linda Lester and Leona Plummer, all of whom are also nominees to the Board of Directors. Eugene is a cousin of Terry Cratty who is a present director.

*/ Annie Pestrikoff:

Annie Pestrikoff has served on the Board of Directors of Old Harbor from 1984 to the present, and for several years prior to 1980. In addition, Annie serves as a secretary and bookkeeper for Old Harbor. Annie's address is P.O. Box 93, Old Harbor, Alaska 99643 and she is 59 years of age. Annie has been employed by the City of Old Harbor and the Old Harbor Library. Annie is active in the Three Saints Russian Orthodox Sisterhood and volunteers her services as bookkeeper for this organization and for the Old Harbor Tribal Council Bingo. She is the sister-in-law of Walt Erickson.

Leona (Haakanson) Plummer:

Leona (Haakanson) Plummer has been working as a medical bookkeeper for Dr. Peter Marbarger in Anchorage, Alaska since 1984. Leona's address is 1001 Boniface Parkway, Space 4P, Anchorage, Alaska 99504 and she is 24 years of age. Leona has been a member of the Jaycees for two years and has served as the secretary for her local chapter for the past six months. Leona has been a member of Credit Women International for three years and currently is an advisor for their investment committee. Leona also is involved with the Russian Orthodox Sisterhood in Anchorage. Leona is the daughter of Sven Haakanson, a cousin of Linda Lester, Ralph Capjohn, George Inga and Eugene Naumoff, and the niece of Harold Christiansen, Carl Christiansen, Emil Christiansen and Bernadine Lou Christiansen, all of whom are nominees to the Board of Directors. Leona is a cousin of Terry Cratty who is a present director.

BOARD AND COMMITTEE MEETINGS

The Board of Directors met a total of eight (8) times during the fiscal year ended December 31, 1986. Each nominee who is an incumbent director attended at least 75% of all regular and special meetings of the Board during the 1986 fiscal year.

The Board does not maintain any committees which perform audit, nominating or compensation functions. These functions are performed by the Board as an entirety.

OFFICERS

The current officers of Old Harbor are as follows:

President	Sven Haakanson
Vice-President	Walter Erickson
Secretary-Treasurer	Ronald Berntsen

REMUNERATION OF OFFICERS AND DIRECTORS

The officers and directors of Old Harbor receive no compensation for their services to Old Harbor in those capacities other than compensation of $75.00 per meeting for attending board meetings, special meetings or workshops, plus a per diem allowance of up to $110.00 per day while attending those meetings or workshops and while travelling on Old Harbor business.

The compensation received by the five most highly compensated directors and officers for his or her services in all capacities to Old Harbor during the 1986 fiscal year was:

Name	Position	Amount
Sven Haakanson	President and Director	$ 4,208.38
Annie Pestrikoff	Director	3,452.09
Walter Erickson	Vice President and Director	978.00
Ronald Berntsen	Secretary and Director	485.00
Harold Christiansen	Director	260.00

The total aggregate compensation in the 1986 fiscal year for all officers and directors as a group (10 persons) was $11,210.31.

TRANSACTIONS WITH OTHER CORPORATIONS IN WHICH DIRECTORS OR OFFICERS OR THEIR FAMILIES HAVE AN INTEREST

All of the shareholders of Old Harbor are also shareholders of Koniag, Inc. Koniag, Inc. is one of thirteen native regional corporations which were formed pursuant to ANCSA. Old Harbor and Koniag, Inc. are members of the Afognak Joint Venture. A member of Old Harbor's Board of Directors is appointed as a representative to the Board of Directors of the Afognak Joint Venture.

The Afognak Joint Venture was the result of Congressional legislation in December, 1980 approving as a part of Public Law 96-487 certain modifications in the land selection process by Old Harbor and other native village corporations. The legislation provided for certain of the native village and regional corporations' entitlements to be exchanged for surface and subsurface rights in lands located on Afognak Island, Alaska. One of the provisions of the exchange was the formation of a joint venture to accept ownership of the Afognak Island rights. Old Harbor has a 13.38% interest in the joint venture. The Afognak Joint Venture is currently attempting to organize a timber/logging operation on Afognak Island.

Since the beginning of Old Harbor's last fiscal year, there have been no other financial transactions, and there are no presently proposed financial transactions, by Old Harbor with any entity in which a director, executive officer, Board nominee or member of his or her family is employed by, is an officer or director of, or owns directly or indirectly an interest in, the entity, and in which the transactions in the aggregate exceed $20,000.

AMENDING ARTICLES OF INCORPORATION TO INCREASE AUTHORIZED AMOUNT OF CAPITAL STOCK

The Articles of Incorporation of Old Harbor authorize Old Harbor to issue 2,500 shares of common nonassessable voting stock with a par value of $1.00 per share. Due to an oversight by the Board of Directors of Old Harbor, Old Harbor has issued 3,350 shares of that common stock without having first increased the number of shares authorized for issuance. To correct this oversight, the Articles of Incorporation must be amended to authorize Old Harbor to issue no less than 3,350 shares of its common stock.

The Board of Directors recommends a vote "FOR" the amendment of the Articles of Incorporation of Old Harbor to give Old Harbor the authority to issue 10,000 shares of common nonassessable voting stock with a $1.00 par value per share. The vote required for approval of this amendment is the affirmative vote of a majority of the outstanding common stock of Old Harbor. Although 10,000 shares is not required to be authorized to permit 3,350 shares to be issued, the Board of Directors recommends that the authorized number of shares be set at 10,000 to facilitate future issuances of common stock if Old Harbor decides from time to time to issue additional shares. The Board of Directors has no present intention of causing Old Harbor to issue any additional shares of common stock.

AMENDING ARTICLES OF INCORPORATION TO CHANGE OLD HARBOR'S REGISTERED AGENT AND REGISTERED OFFICE

The registered agent of Old Harbor is currently Roy H. Madsen and the registered office of Old Harbor is currently P.O. Box 726, Kodiak, Alaska 99615. To facilitate the receipt and processing of notices, demands and processes served upon Old Harbor, the Board of Directors recommends a vote "FOR" the amendment of the Articles of Incorporation to name its local counsel, Jamin, Ebell, Bolger & Gentry, as its registered agent and to provide that the address of Old Harbor's registered office is 326 Center Avenue, Suite 203, P.O. Box 4269, Kodiak, Alaska 99615. The vote required for approval of this amendment is the affirmative vote of a majority of the outstanding common stock of Old Harbor.

RATIFICATION OF SELECTION OF INDEPENDENT PUBLIC ACCOUNTANTS

The firm of Peat Marwick Main & Co., which served Old Harbor as independent public accountants for the 1986 fiscal year, has been selected by the Board of Directors as Old Harbor's independent public accountants for the 1987 fiscal year. Representatives of that firm will be present at the annual shareholders' meeting, will be afforded the opportunity to make a statement if they desire to do so, and will be available to respond to appropriate questions.

All proxies will be voted for ratification of the selection of Peat Marwick Main & Co. unless authority to vote for the ratification of that selection is withheld or an abstention is noted. If Peat Marwick Main & Co. for any reason should unexpectedly decline or be unable to act as independent public accountants, the proxies will be voted for a substitute firm of independent public accountants to be designated by the Board of Directors.

The only services rendered by Peat Marwick Main & Co. during the 1986 fiscal year were audit services, which included consultation in connection with various audit-related accounting matters, and preparation of corporate tax returns. For the 1986 fiscal year, the total fees for all nonaudit services were approximately 54% of the total fees for both audit and nonaudit services performed by Peat Marwick Main & Co. and paid for by Old Harbor. Old Harbor has had no disagreements with Peat Marwick Main & Co. in connection with audits of the 1985 or 1986 fiscal years.

The ratification of the selection of Peat Marwick Main & Co. as Old Harbor's independent public accountants requires approval of a majority of the total number of outstanding shares entitled to vote at the annual shareholders' meeting.

The Board of Directors recommends a vote "FOR" ratification of the selection of Peat Marwick Main & Co. as Old Harbor's independent public accountants.

ANNUAL REPORT

Enclosed with this Proxy Statement are the audited financial statements and accountants report for the fiscal years ending December 31, 1985 and 1986.

OTHER MATTERS

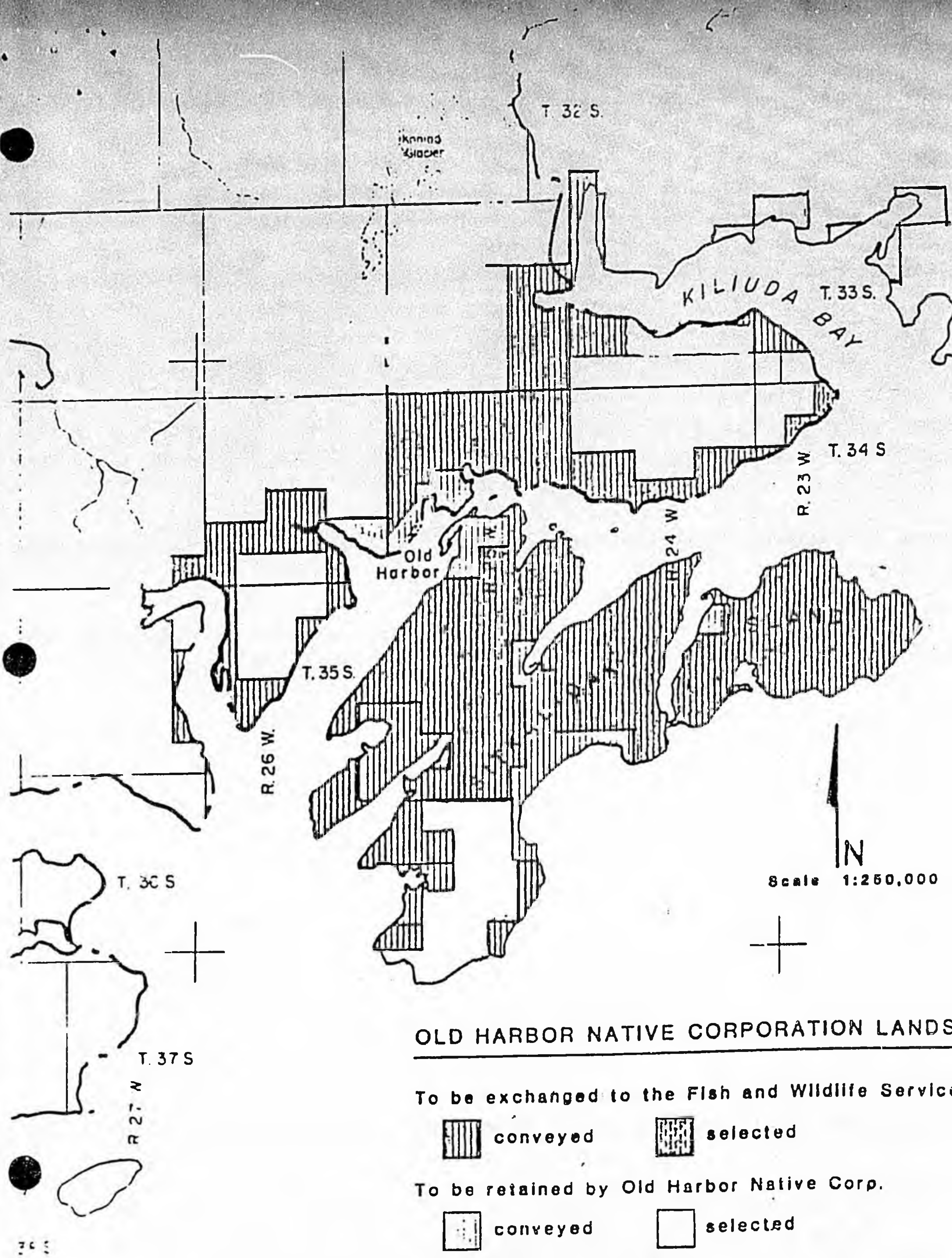
The Board of Directors knows of no other matters which will be brought before the annual shareholders meeting, but if such matters are properly presented at the meeting, the proxies solicited by this Proxy Statement will be voted in accordance with the judgment of the persons holding such proxies. All shares represented by duly-executed proxies will be voted at the meeting.

Texaco will bear the costs involved in preparing the part of this Proxy Statement which concerns the Land Exchange Agreement and the Texaco Agreements. Old Harbor will bear all other costs involved in preparing, assembling, printing and mailing proxy materials. The total amount estimated to be spent on the solicitation of proxies is $85,000.00. The total amount already expended on the solicitation of proxies as of the date of this Proxy Statement is approximately $60,000.00.

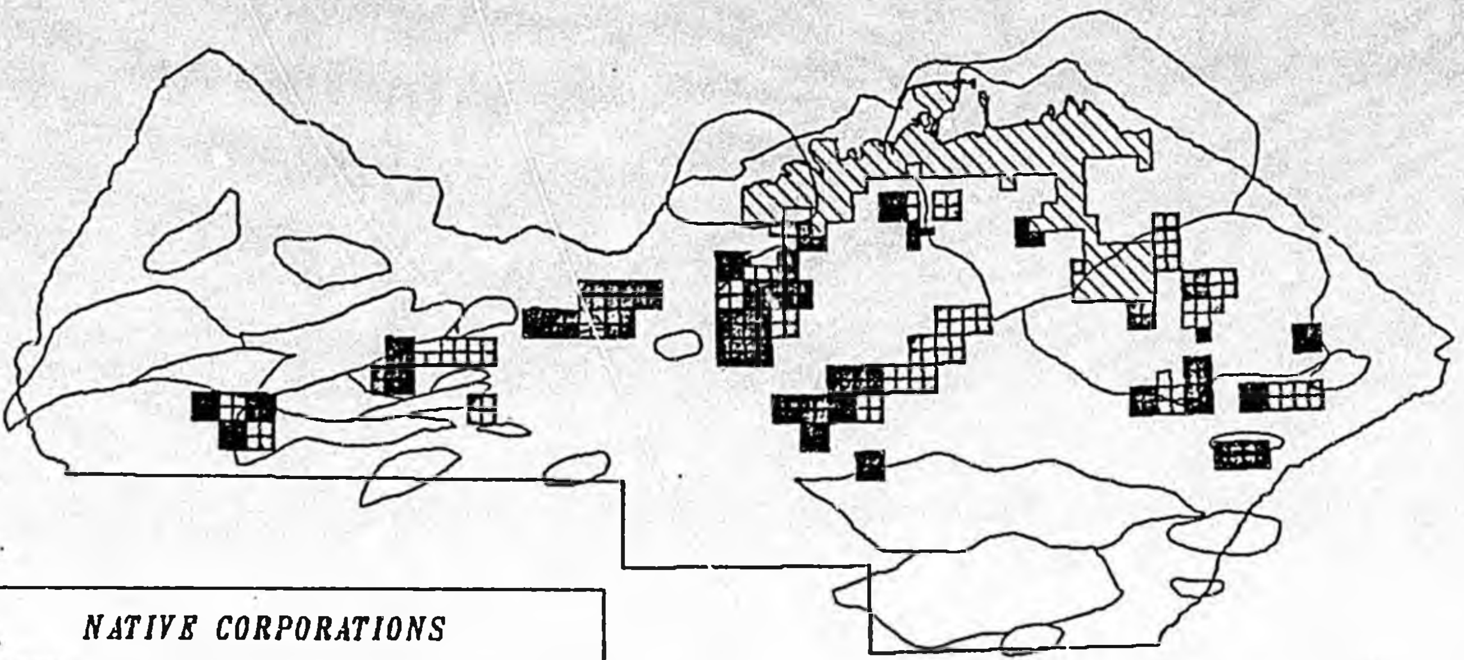
Old Harbor, Alaska
August 28, 1987

By Order of the Board of Directors

RONALD BERNTSEN, Secretary


T. 32 S.
Ikonina Glacier
KILIUDA BAY
T. 33 S.
T. 34 S
R. 23 W.
24 W.
Old Harbor
T. 35 S.
R. 26 W.
T. 36 S
T. 37 S
R. 27 W
N
Scale 1:250,000
OLD HARBOR NATIVE CORPORATION LANDS
To be exchanged to the Fish and Wildlife Service
conveyed
selected
To be retained by Old Harbor Native Corp.
conveyed
selected

NATIVE LAND EXCHANGE SELECTIONS
ARCTIC NATIONAL WILDLIFE REFUGE - 1002 AREA



NATIVE CORPORATIONS

- EXISTING KAKTOVIK INUPIAT CORP.
- DOYON
- GANA-A' YOO
- AKHIOK-KAGUYAK
- NATIVE LANDS GROUP
- OLD HARBOR
- KONIAG
- NATIVE LAND GROUP / AKHIOK-KAGUYAK POOL
- NATIVE LANDS GROUP / OLD HARBOR POOL
- SEISMICALLY MAPPED STRUCTURES

0 MILES 20
0 KILOMETERS 32

U.S. FISH & WILDLIFE SERVICE
REGION 7 - ALASKA

GRAPHICS BY
BRANCH OF IRM/GIS

DATA SOURCE
BUREAU OF LAND MANAGEMENT
JULY 1987

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

TRANS ALASKA PIPELINE SYSTEM	Docket Nos. OR 78-1-041, -042, and -043 (TAPS Remand)

PREPARED DIRECT TESTIMONY

OF

THOMAS E. KELLY

Q. What is your name and address and occupation?

A. My name is Thomas E. Kelly. I am the sole proprietor of a consulting firm specializing in the field of earth sciences. My office is located at 470 Maynard Building, 119 First Avenue South, Seattle, Washington 98104.

Q. Please describe the business of your firm.

A. As a consultant, I perform services for clients interested in the development of natural resources, with particular emphasis on land management and development of oil and gas resources in Alaska.

Q. Please briefly describe your education.

A. I received a bachelor's degree in geology from Texas A & M, and a master's degree in geology from the same institution.

Q. Have you ever lived in Alaska?

A. Yes. I lived in Alaska from 1958 until 1983, with the exception of five years (from 1962-1967) when I resided in Houston, Texas. I have been actively involved in Alaska natural resource matters for approximately 27 years.

Q. Before moving to Alaska, what positions did you hold?

A. Upon completion of military service, I was employed by Continental Oil Company and spent most of my time as a well-site geologist in the Rocky Mountain area.

Q. What positions did you hold while living in Alaska?

A. From 1958 to 1967, I was employed by Halbouty Alaska Oil Company. In 1967 I was appointed by then Governor of the State of Alaska, Walter J. Hickel, to be the Commissioner of the Department of Natural Resources for the State of Alaska. In December of 1970 I left public office and established my own consulting firm in Anchorage. I have continued that endeavor since that time, although I moved to Seattle, Washington, in 1983. I maintain offices in Seattle and Anchorage, Alaska, and frequently visit Alaska when performing my consulting work.

Q. What were your duties with the Halbouty Oil Company?

A. From 1958 to 1962, I was resident geologist and Alaska manager for Halbouty Alaska Oil Company. My duties consisted of conducting all phases of oil and gas exploration then in progress by the company. This included coordinating geophysical programs, well site geology (including field work on exploratory wells), and completion work (putting a well in a position capable of producing oil or gas). I worked on petroleum economics of particular wells or fields, which requires estimating recoverable reserves. I developed reserve estimates for the West Fort Gas Field, which Halbouty Alaska Oil Company discovered in 1960. I also performed extensive reserve studies for Halbouty Alaska Oil Company on the Swanson River Oil Field. In 1962, I was transferred to Houston, Texas, and named executive vice president of Halbouty Alaska Oil Company. In addition to these duties, in 1966, I was named general manager of Michel T. Halbouty Interests. Mr. Halbouty is a world-renowned consulting geologist and petroleum engineer, producer, and operator. I left Halbouty Alaska Oil Company and Michel T. Halbouty Interests in the fall of 1967 to accept the position of Commissioner of Natural Resources in Alaska.

Q. What were your principal duties as Commissioner of Natural Resources?

A. As Commissioner of Natural Resources, I was responsible for the management of the State's natural resources, including its lands, waters, minerals, oil and gas, agriculture, timber, and parks and recreation facilities. All of the management of

Alaska's resources other than fish and game are vested in the various divisions of the Department of Natural Resources.

Q. While you were Commissioner of Natural Resources did you perform studies and estimates of the petroleum resources in the State of Alaska?

A. Yes. I was called upon by the State to give testimony, both oral and written, to the State House of Representatives and State Senate on the location and value of oil and gas resources in Alaska. During my tenure as Commissioner of the Department of Natural Resources, Prudhoe Bay was conclusively established as the largest oil field ever discovered in North America. Following each competitive state lease sale, I participated directly in analyzing the reasonableness of the apparent high bid before determining whether or not the State would accept them.

My testimony before and reports to the State Legislature were used by the State for such purposes as formulating budget projections for the State of Alaska. I negotiated the first contract for the State's sale of its royalty share of oil in the Cook Inlet Basin. I personally conducted the well-publicized 1969 competitive oil and gas lease sale in the Prudhoe Bay area.

Q. Since the time you left public service, have you continued to address questions of petroleum reserves in the State of Alaska?

A. Yes. My work frequently involves reserve estimates to determine the economic viability of a field, to determine the effect of taxation on the economics of a field, and to value fields for estate tax purposes. For example, I conducted studies and prepared reports for the Kenai Peninsula Borough to use in assessing the Cook Inlet platforms for ad valorem tax valuation. I evaluated the oil production to the limit from each of the 14 platforms in the Cook Inlet Basin.

I have prepared reserve estimates and economic projections for Amarex, Inc., Getty Oil Company, Enstar Corporation and the Cook Inlet Regional Corporation, all of which have leasehold or ownership interests in Alaska. Finally, I have prepared extensive evaluations of specific oil and gas properties owned by several estates with overriding royalty interests in leases in Alaska.

Q. Have you participated in the negotiation of oil and gas leases on ASRC's property?

A. I have participated in the negotiation of all ASRC leases, exploration and production agreements, and lease options, as well as ASRC's participation rights on leases in which it has no ownership interest (e.g., State and federal leases).

Q. Have you performed geological studies and reserve estimates on the Alaska North Slope?

A. Yes. I have prepared technical reports on a number of areas on the Alaska North Slope, including the overthrust belt, the coastal plain, and offshore Beaufort Sea.

Q. Have you appeared as an expert witness in this case before?

A. Yes. I appeared on behalf of ASRC in Phase I of this case. My testimony at that time (Tr. 8873-8890) was directed to the likely expectations of the parents of the TAPS carriers about reserve estimates for Prudhoe Bay and for other crude oil resources on the Alaska North Slope between 1969 and 1974.

Q. What is the purpose of your testimony in this remand proceeding?

A. The purpose of my testimony is two-fold. The first purpose of my testimony is to describe in detail ASRC's significant hydrocarbon interests in proven, probable, and possible reserves on the Alaska North Slope. ASRC has substantial oil and gas interests both on its land and on other properties on the Alaska North Slope. Because all of ASRC's crude oil interests lie on the Alaska North Slope, the Trans Alaska Pipeline System ("TAPS") is the only means of transporting these crude oil resources to the market. The TAPS tariff thus has a significant impact on the value of and the extent to which ASRC's crude oil resources will be developed and shipped on TAPS.

The second purpose of my testimony is to analyze the throughput assumption used by the proponents of the TAPS settlement offer that was partially approved by the Federal Energy Regulatory Commission on October 23, 1985. That throughput assumption, I believe, is unduly conservative and underestimates a realistic throughput forecast for TAPS over the next two and one-half decades.

Q. How much land does ASRC hold an ownership interest in on the Alaska North Slope?

A. ASRC currently owns approximately 4.625 million acres of surface and subsurface estate on the Alaska North Slope. It is entitl[illegible] to a total of approximately 5.034 million acres under the various provisions of the Alaska Native Claims Settlement Act of 1971, 43 U.S.C. SS 1601-28 ("ANCSA"). Thus, it is still entitled to receive conveyances to over 400,000 acres of land on the Alaska North Slope. As of November 1, 1985, approximately 2.1 million acres of ASRC's land holdings were under oil and gas leases to a number of major oil companies. ASRC has between one-half to three-quarters of a million acres of unleased lands with definite, demonstrable geological potential for oil and gas. ASRC is currently negotiating contracts that will involve leases on some of its remaining leasable land in the near future.

Q. Does ASRC have interests in non-ASRC lands?

A. Yes. ASRC has overriding royalty interests in a number of leases held by oil companies on State and federal lands across the Alaska North Slope. In addition, ASRC has net profits interests and options to acquire overriding royalty and/or a working interest in leases covering lands it does not own.

Q. Do any of ASRC's 4.6 million acres or its interests in non-ASRC land include land that contains crude oil reserves?

A. Yes. ASRC has interests in oil and gas reserves on both its own land and on non-ASRC land. Because its interests are extensive and varied, I would like to categorize them in terms of proven reserves, probable reserves, and possible reserves, terms commonly used in the industry and by government agencies. To the extent my discussion of reserves may seem a bit technical, I refer you to pages 4-8 of Dr. Bruce Netschert's Phase I Remand testimony (Exhibit IR-1-0 at 4-8) for a description of the oil exploration process and a definition of some of the terms that are used in describing that process. I have included as Exhibit __-__-__ (TEK-1) to my testimony a map of the Alaska North Slope that shows ASRC's land holdings, its currently leased property, and all of the fields and geological structures that I will refer to in my testimony concerning proven, probable, and possible reserves in which ASRC has an interest.

Q. What are ASRC's interests in proven reserves on the Alaska North Slope?

A. ASRC has an interest in proven reserves on non-ASRC land in the Point Thomson Field. [Exhibit __-__-__ (TEK-1), Item A.] ASRC's interest in gas condensate reserves (which is equivalent to crude oil) consists of a 0.5 percent overriding royalty in approximately 11,000 acres of Chevron USA and Sohio leases estimated to contain about 200 million barrels of high gravity (51° API) condensate attributable to the Chevron-Sohio leasehold. A reasonable but conservative estimate of the volume of recoverable crude oil attributable to ASRC's overriding royalty on the Chevron-Sohio leasehold is 1.0 million barrels of proven reserves. The Point Thomson Field is believed to be a commercial field that will in all likelihood connect with TAPS sometime in the early to mid-1990's. ASRC's approximately one million barrels in proven reserves will thus likely begin to be shipped on TAPS in the mid-1990's.

Currently, there are no proven crude oil reserves on ASRC's own lands, but it does have royalty interests ranging from 12.5 to 16.67 percent on a number of proven natural gas accumulations underlying its lands at Kemik [Exhibit __-__-__ (TEK-1), Item B], Gubik, and East Umiat [id., Item C] that are now leased primarily to Chevron USA.

Q. What are probable reserves?

A. Probable reserves are reserves that can be quantified because many exploratory tests and techniques have been used, including in some instances test wells, to establish that it is probable that a defined geologic anomaly (structure or stratigraphic trap) contains hydrocarbons. In some instances, state-of-the-art geophysics can virtually assure the presence of hydrocarbons below the surface although a confirming well has not yet been drilled. For example, in Phase I, Dr. Bruce Netschert testified that the Lisburne and Kuparuk reservoirs contained probable reserves. Tr. 8519. Today, of course, those fields are classified as having proven reserves.

Q. Does ASRC have any ownership interest in probable reserves on its own lands?

A. Yes. The first discovery of oil on the Alaska North Slope occurred at Umiat in the late 1940's. That discovery resulted from exploration by the United States Navy on the Naval Petroleum No. 4, later renamed National Petroleum Reserve, Alaska ("NPRA"). The Umiat field has always been regarded as a marginal economic field even though it contains an estimated 250 million barrels of probable recoverable crude oil reserves west of the Colville River.

Extending eastward across the Colville River is a continuation of the surface anticline called the Umiat anticline, or "East Umiat." East Umiat underlies ASRC's property and quite probably contains oil and associated gas although no specific reserve estimate has been made to my knowledge. The property is under lease to Chevron and ASRC's royalty interest is 16.67 percent. When considered together with other nearby possible oil accumulations on lands either owned by ASRC or in which ASRC holds working interests on federal leases (as described below), the probable oil reserves at East Umiat are likely, at some future time, to be classified as commercial oil deposits. The probable crude oil reserves underlying ASRC's property are between 50-100 million barrels. ASRC's royalty interest in those probable reserves is between 8.3 and 16.7 million barrels of crude oil.

Q. Does ASRC hold any interest in probable reserves on non-ASRC land?

A. Yes. ASRC holds a number of separate interests in probable reserves on property that it does not own. ASRC holds interests in 26 separate lease blocks acquired by Shell Western

E&P, Inc. ("SWEPI"), *et al.* in the Diapir field as a result of the federal Outer Continental Shelf Sale 87 in October 1984 ("OCS Sale 87"). ASRC's interest initially consists of a 0.0025 percent overriding royalty on SWEPI's interest in over 66,000 hectares (about 163,000 acres), which interest is automatically convertible to a 30 percent net profits interest in 5 percent of SWEPI's working interest at twice payout. For the purposes of my testimony, "payout" means the time period in which cumulative gross proceeds equal 100 percent of the cumulative chargeable costs and expenditures, including the cost of acquiring leases plus all direct, reasonable, and necessary costs of exploration, development and production on a lease-by-lease or unit basis.

While ASRC's interest is relatively small, the estimated recoverable reserves attributable to the prospect areas in which ASRC holds overriding royalty interests is significant and ASRC's probable reserves from this area are substantial. Based on detailed seismic evaluation and likely reservoir properties inferred from nearby wells, the probable reserves attributable to ASRC's interests in the 26 separate lease blocks that fall within six distinct lease areas in OCS Sale 87 is set forth below.

PARAMETERS FOR ASRC'S INTERESTS IN SWEPI LEASEHOLDS

Camden Bay Area (see Exhibit 1, Item D):	3 prospects
Prospective Acres:	40,000
Thickness of possible pay (seismic):	190-400 feet
Porosity:	20-30%
Estimated Recoverable Reserves (Total):	3.6 Billion bbl.

ASRC reserves to twice payout
Vol. x (1 - 2PO%) x SWEPI INT.% x NET LSE% x .0025 = 1.70MM

ASRC RESERVES AFTER TWICE PAYOUT

	Vol.		SWEPI INT.%		NET LSE%		.30NP		.05		
Area 1	640MM	x	.333	x	.80	x	.30	x	.05	=	2.557MM
Area 2	1,280MM	x	.333	x	.80	x	.30	x	.05	=	5.114MM
Area 3	840MM	x	.25	x	.80	x	.30	x	.05	=	2.520MM
									Subtotal	=	10.192MM
									Camden Bay Total ASRC bbl	=	11.892MM

Demarcation Bay Area (see Exhibit 1, Item E):	3 prospects
Prospective Acres:	29,000
Thickness of possible pay:	400 feet
Porosity:	18-30%
Estimated Recoverable Reserves (Total):	2.75 Billion bbl.

ASRC reserves to twice payout
Vol. x (1 - 2PO%) x SWEPI INT.% x NET LSE% x .0025 = 1.279MM

ASRC RESERVES AFTER TWICE PAYOUT

	Vol.		SWEPI INT.%		NET LSE%		.30NP		.05		
Area 4	450MM	x	.333	x	.80	x	.30	x	.05	=	1.798MM
Area 5	480MM	x	.333	x	.80	x	.30	x	.05	=	1.918MM
Area 6	660MM	x	.50	x	.80	x	.30	x	.05	=	3.960MM
									Subtotal	=	7.676MM
									Demarcation Bay Total ASRC bbl	=	8.955MM
									TOTAL ASRC bbl in Camden and Demarcation Bay areas (all SWEPI leaseholds)	=	20.847MM

In short, ASRC has probable reserve ownership in the 26 separate lease blocks in the OCS Sale 87 of approximately 20 million barrels of crude oil.

In addition, SWEPI acquired at OCS Sale 87 five Milne Point-Seal Island area tracts in which ASRC has an overriding royalty interest. [Exhibit __-__-__ (TEK-1), Item F.] The Milne Point and Seal Island fields located northwest of Prudhoe Bay are believed to contain approximately 200 million barrels of recoverable oil. The SWEPI acreage is proximate to but not currently included within the existing unitized area for the Milne Point-Seal Island fields. Therefore, no reserves are specifically attributable to ASRC interests at this time, although it is likely that future development of the Milne Point-Seal Island field may extend into SWEPI leases in which ASRC holds an overriding royalty interest.

Q. Can you summarize ASRC's interests in probable reserves on the Alaska North Slope?

A. Certainly. ASRC's interests in probable reserves on the Alaska North Slope include interests in a number of fields ranging in size from 50 million barrels to 1.6 billion barrels. ASRC's royalty interest in those probable reserves is in the range of 20 to 40 million barrels of crude oil and condensate.

Q. You also mentioned ASRC's interests in possible reserves. What are possible reserves?

A. Possible reserves are a quantification of the volume of oil and gas in a favorable geological setting (oil and/or gas has been previously discovered in the same or comparable exploration fairways or trends), although no well(s) have actually encountered oil and/or gas. Quite often statistical analysis and sedimentary parameters are used to estimate possible reserves. For my purposes I have limited possible reserves to include only surface and subsurface (seismic) anticlinal closures that have been mapped in detail over the past 15 years by lessees of ASRC's lands. A mappable feature is a geological feature about which sufficient data exists to draft interpretations on maps.

I have excluded from my definition of possible reserves broad areas with imputed reserves based on volume of sediments within a defined basin or basinal segment as is often the basis of possible reserve estimates by the Minerals Management Service of the United States Department of Interior in frontier (unexplored) areas. Subtle geological features that are largely stratigraphically controlled are not included within my estimate of possible reserves.

Much of the Alaska North Slope still must be characterized as "possible reserves" because substantial exploration remains to be done with respect to geological formations that make the Alaska North Slope one of the most promising untapped resources for oil and gas in North America.

Q. What are the possible reserves on ASRC's land?

A. ASRC's fee and subsurface interests in the Western, Central, and Eastern Arctic (also known as the Arctic National Wildlife Refuge or "ANWR"), while speculative in nature, could far exceed their proven and probable reserve interests that I have already described.

I have eliminated from the "possible reserve" category all mappable structures along the overthrust belt of the foothills region north of the Brooks Range with the exception of ANWR. Five exploratory wells have tested unsuccessfully for hydrocarbons in separate closures along the Western and Central Arctic segments of the overthrust belt, but those test wells evaluated only a portion of that exploratory trend. Nonetheless, for purposes of this testimony, I have excluded this potential trend from possible reserves.

Q. You mentioned ASRC has interests in possible reserves in the Western Arctic. What are they?

A. ASRC's lands comprise over 500,000 acres in the Western Arctic west of the NPRA. [Exhibit __-__-__ (TEK-1), Item G.] Much of these lands are currently under lease to Chevron, Unocal, and Amoco. Previous lessees included Shell and Mobil. ASRC has a royalty interest of 16.67 percent on these leases and has a net profits interest that varies according to the exploratory agreement of which each lease is a part. Over 150,000 acres of ASRC's leased lands are included within the crestal contour of 10 separate anticlines all with demonstrable seismically controlled closure. Only one such anomaly has been drilled, the Union Oil Tungak Creek No. 1 well, which was drilled to a depth of approximately 8,000 feet in 1982. Although abandoned as a dry hole due to seasonal drilling restrictions, there is reason to believe that had drilling continued to deeper geologic horizons, the possibility of encountering hydrocarbons would have increased.

Nine of the closed anticlines (which is a four-directional convex fold in the earth) on ASRC's properties in the Western Arctic are north of the overthrust belt in a region of East-West harmonic-like folding with relatively steep flanked anticlines separated by broader synclines (which is a four-directional concave fold in the earth). Oil seeps (which are extrusions of oil onto the surface) have been reported by field crews of the lessees on ASRC's Western Arctic lands within a number of these closed anticlines.

While ASRC's interests in the Western Arctic are remote from the standpoint of transportation to TAPS, a large discovery in the NPRA could easily serve as the catalyst for feeder pipelines from the Western Arctic to TAPS.

In addition to its other Western Arctic holdings, ASRC owns over 50,000 acres of subsurface lands in the South Walapka area south of Barrow, Alaska. [Exhibit __-__-__ (TEK-1), Item H.] ASRC leased these lands to Chevron and Sohio in 1984 in advance of an exploratory well drilled by ARCO Alaska in the winter of 1984-85 on adjacent lands. ASRC's royalty interest in these leases is 12.5 percent and it also holds net profits interests in those leases. The well was abandoned and no information was released by the operator. Proven gas reserves are located immediately north of these ASRC lands on lands controlled by the North Slope Borough. The South Walapka area continues to be prospective for oil occurring at a down dip position in sands that are projected to extend over ASRC leases, which are truncated or onlapped by transgressing shales in a south-to-north direction. These ASRC leases are possible reserves on ASRC land.

Q. You also mentioned possible reserves on ASRC lands in the Central Arctic. Where are they?

A. ASRC owns lands comprising over 600,000 acres in the Central Arctic north of Township 10 South (north of the Southern Foothills Province) that are currently leased to Chevron USA. [Exhibit __-__-__ (TEK-1, Item I.] ASRC's royalty interest in these leases is 16.67 percent. At least 12 mappable anticlines, affecting both Cretaceous rocks and older Ellesmerian sequences, extend east-west throughout this area as determined by outcrop samples and exploratory wells drilled over a 20-year period. Nearly 200,000 acres of ASRC's lands in the Central Arctic are located within crestal contours on anticlines that have never been tested. These acres do not include the East Umiat and Gubik anticlines that were previously discussed in my testimony concerning proven and probable reserves. Active exploratory efforts are in progress on several of these prospect areas, and they constitute substantial possible reserves for ASRC.

In addition, ASRC has received, or is entitled under ANCSA to receive, over 100,000 acres of subsurface lands within the village of Nuiqsut's withdrawal of lands under section 11(a)(1) of the Act. A portion of these lands are subject to oil and gas leases issued by the State of Alaska prior to the conveyance of the surface estate to Kuugpik Corporation, the village corporation for Nuiqsut. ASRC is the subsurface owner of the Kuugpik lands and has succeeded the State as lessor under the previously issued oil and gas leases.

The most recent oil discovery on the Alaska North Slope (by Texaco) is located near the head of the Colville Delta [Exhibit __-__-__ (TEK-1), Item J], a few miles north of these ASRC lands. ASRC is currently evaluating the geological and geophysical data in the Nuiqsut area in an effort to determine the probable extent of Texaco's discovery, and it is pursuing exploration contracts with a number of companies in the Nuiqsut area, which will result in exploration leases.

Texaco has announced that it will drill as many as three confirmation wells during the 1985-86 winter season surrounding the discovery well, and Amerada Hess will likely drill two additional confirmation test wells in the same area. ARCO recently announced plans to drill on former State of Alaska leases now owned by ASRC approximately seven to eight miles south of the Texaco discovery. Depending on the outcome of the ARCO well, the "possible reserve" category assigned the Nuiqsut area lands could be upgraded to probable or proven reserves within a very short period of time.

The size and significance of the Texaco discovery must await the outcome of several confirmation wells. However, the discovery well tested from 400 to 1,000 barrels of oil per day on initial tests, which is comparable to the volume of oil produced from many wells in the Kuparuk reservoir. Additional test information may become public within the next several months which will assist more precise quantification of reserves in this new field.

Q. You also stated ASRC has possible reserves in the Arctic National Wildlife Refuge (or "ANWR"). What are they?

A. ASRC presently owns approximately 92,000 acres of subsurface rights within the the village withdrawal for Kaktovik (under section 11(a)(1) of ANCSA) located at the northernmost portion of the coastal plain within ANWR. [Exhibit __-__-__ (TEK-1), Item K.] ASRC has leased its land within ANWR to Chevron, Sohio, and BP Alaska Exploration Company, and it has a 20 percent royalty interest on those leases along with net profits interests. Those companies have conducted two seasons of extensive seismic surveys on ASRC's lands and are currently preparing to continue drilling an exploratory test, which was suspended at the "break-up", or thaw, last spring.

Because of the highly sensitive and confidential nature of operations in ANWR, it is not possible for me to elaborate on the oil and gas potential for this area. Many technical papers have been written over the past ten years that treat the possible petroleum potential of ANWR, however. Those papers establish that ANWR is perhaps one of the most attractive prospective oil and gas area in all of North America. See e.g., Mull, C. G. and Kososki, B. A., undated, "Hydrocarbon Potential of the Arctic National Wildlife Range, Alaska," U.S. Geological Survey Administrative Report transmitted to the U.S. Fish and Wildlife Service, Division of Wildlife Refuges, on August 31, 1976; Tailleur, I. L. and Pessel, G. H., 1976, "Subsurface Geology and Some Implications Concerning Future Petroleum Exploration in Eastern Arctic Slope, Alaska," (abs.), Am. Assoc. Petroleum Geologists, Vol. 60, No. 12, at 2190; Grantz, A., and Mull, C. G., 1978, "Preliminary Analysis of the Petroleum Potential of the Arctic National Wildlife Range, Alaska," U.S. Geological Survey, Open File Report 78-__. The Memorandum of the Alaska Department of Natural Resources produced by Alaska in this remand proceeding states that ANWR is "considered highly prospective for oil and gas," Memorandum, Department of Natural Resources, Division of Oil and Gas (Mar. 23, 1984), and I understand that one of the model simulations used in the Phase I Remand incorporated estimates of ANWR's reserve potential. Exhibit IR-12-2 at 3.

For present purposes, it is sufficient to note that exploration of ANWR is in its earliest stages and that surface occurrences of hydrocarbons (seeps, outcrop samples, etc.) continue to suggest that the area may contain several highly attractive hydrocarbon prospects.

Q. Can you summarize ASRC's possible reserves on its own lands?

A. Yes. ASRC's possible reserves on its own lands in the Western, Central, and Eastern Arctic are between 2 and 4 billion barrels in fields ranging in size from 250 million to 700 million barrels, and its royalty and net profits interest in possible reserves is 250-500 million barrels.

Q. Does ASRC have any interests in possible reserves on non-ASRC land?

A. Yes. ASRC owns working interests in federal oil and gas leases in NPRA and state competitive oil and gas leases onshore and offshore Beaufort Sea. At least one area on trend with Umiat and under lease to SWEPI is believed to have a good possibility for entrapment of hydrocarbons. Principal adjacent leaseholders include Chevron and ARCO in a prospect approximately 12 miles long and 2 miles wide. ASRC's working interest in the SWEPI lease is 2 percent and is located at the most updip crestal closure of a faulted, breached anticline. Because the objective horizons at this structural feature (sometimes referred to by ASRC as "Duckhead") [Exhibit __-__-__ (TEK-1), Item L] are more deeply buried and below permafrost depth, they are likely to be more productive than comparable reservoirs at Umiat. The potential recoverable reserves at "Duckhead" based on known reservoir characteristics at Umiat, suggest a potential of three times that of Umiat, or 750 million barrels. ASRC's working interest in this possible reservoir would be 5.6 million barrels.

Q. Can you summarize ASRC's interests in possible reserves?

A. Certainly. ASRC has vast interests in possible reserves, both on its own land and on non-ASRC land. ASRC has an interest in possible reserves in the range of 2 to 5 billion barrels of crude oil, with ASRC having direct royalty ownership in 250-500 million barrels of possible reserves.

Q. Does that conclude your discussion of ASRC's interests in proven, probable, and possible reserves?

A. Yes. As you can see, ASRC has some interests in proven reserves that will come on line to TAPS in the near future. In addition, it has substantial probable reserves and very promising possible reserves, all of which will ultimately be served to some as yet unknown extent by TAPS.

Q. Will TAPS tariffs have an impact on ASRC's proven, probable, and possible reserves?

A. Yes.

First, TAPS tariffs will significantly affect ASRC's benefit from its lease bids and negotiated bonuses. The costs of exploring, developing, and producing oil on the Alaska North Slope are many times those in the lower-48 states. ASRC must compete with lower cost areas for exploration dollars, and to the extent the wellhead price of crude oil is lowered by the TAPS tariff, ASRC's ability to fully evaluate and market its resource is diminished. Oil companies will pay less for leases on ASRC lands thereby decreasing the value of those ASRC lands that will be leased under ASRC's leasing program during the next several years. Oil companies will invest fewer exploration dollars in both those lands and lands that have already been leased thereby decreasing the likelihood of discovery or commercial development and lowering the range of future income to ASRC from royalty and net profits interests.

Second, the level of the TAPS tariff will directly affect the value of each barrel of oil shipped by ASRC on TAPS. The value of ASRC's approximately one million barrels of oil in the Point Thomson Field, for example, will be directly affected by the level of TAPS tariffs. Moreover, because much of ASRC's probable, and possible reserve interests are contained in marginal economic fields, the cost of transporting oil from ASRC's properties to market will have a dramatic impact on ASRC's capacity to reap the benefits from many of its oil and gas leases on its own lands and those in which it has an interest. It could preclude production altogether in some of its fields.

Many of ASRC's fields may become commercial only when aggregated with other smaller fields on its properties. The size of the TAPS tariff will be a critical factor in determining whether to develop some of these smaller fields, particularly when they are not clustered in the same general area, which is the case for most of ASRC's prospects except for the prospect groups in OCS Sale 87. The South Walapka and Western Arctic areas will be most affected by TAPS tariffs.

High tariffs will also have an impact on the amount of production from specific fields even when they do become commercial prospects and are developed. "Recoverable oil" is a term that is subject to economic definition: if the TAPS tariff is high, commercial fields on ASRC property will shut down more quickly than they would if the TAPS tariff were low.

Moreover, exploration activity on ASRC lands that has been discontinued, such as on the southern foothills overthrust belt in which five wells were drilled, will be affected over the long term by economic factors such as the TAPS tariff. Exploration in these frontier areas will be affected directly by the economics of production of oil on the Alaska North Slope, a major component of which is the transportation cost of shipping that oil to market.

Q. Have you reviewed the throughput assumptions used by the proponents of the settlement to establish a tariff regime in support of the settlement offer partially approved by the Federal Energy Regulatory Commission on October 23, 1985?

A. Yes.

Q. Do you believe that the throughput projection used by the settlement proponents is reasonable?

A. No. I believe it is unduly conservative in a number of respects. While I think it is fair to say that TAPS throughput will decline over the next 25 years, I do not believe it will decline to the degree stated by the settlement proponents, and their underestimation of a number of significant hydrocarbon resources on the Alaska North Slope convinces me that substantially greater throughput will occur on TAPS over the next quarter century.

Q. What potential throughput sources have the settlement proponents underestimated?

A. As part of the discovery in this case, the State of Alaska furnished to ASRC a chart containing a "TAPS Medium Throughput Forecasts" which it used for calculating settlement tariffs. [Exhibit __-__-__ (TEK-2).] In several specific areas, the throughput forecast provided by the State of Alaska is unrealistic.

First, annual reports provided by ARCO in this remand case and their 1985 Second Quarter Report [Exhibit __-__-__ (TEK-3)] portray a substantially more optimistic throughput potential for the Prudhoe Bay, Kuparuk, Lisburne, and the West Sak fields. For example, the Supplement to the 1982 [ARCO] Annual Report states that programs instituted at Prudhoe Bay are "expected to increase gross oil recovery by some 4 billion barrels over the life of the Prudhoe Bay field." Id. at 4. The same document indicates that the company's recovery from the Kuparuk oil resevoir "with full field development and a sucessful waterflood program, could be as high as 750 million barrels." Id. at 6. This would be the return in that field to ARCO alone. The 1983 [ARCO] Annual Report states that the Ugnu Sands in the Kuparuk region "are estimated to contain from 6 billion to 11 billion barrels of oil in place." Id. at 13. The 1984 [ARCO] Annual Report states that "West Sak contains an estimated 15 billion to 25 billion barrels of oil in place . . . [and that] West Sak could start up in the early 1990's and continue producing well into the twenty-first century." Id. at 17. Finally, the ARCO 1985 Second Quarter Report states that Lisburne will "gradually increase production to approximately 70,000 barrels per day by 1990, leading to peak production of about 100,000 barrels per day in the mid-1990's." Id. at 22. All the discussions in these ARCO reports indicate that, at least from ARCO's point of view, the throughput on TAPS will be substantially greater from Prudhoe Bay, Kuparuk, Lisburne, and West Sak than is forecast by the State for purposes of the settlement.

In addition, three of the general categories in the State of Alaska's "TAPS Medium Throughput Forecasts" are far too conservative. One category is described as "Federal Beaufort." It is my understanding that the estimates for throughput for the "Federal Beaufort" category include OCS Sale 71 and OCS Sale 87. If this is the case, throughput estimates for both of these federal lease sales are far too low in my estimation. Based on my knowledge of the Beaufort Sea, the potential to be derived from OCS Sale 71 and OCS Sale 87 will result in substantially greater throughput for TAPS than is estimated on the State chart. Over $3 billion was spent in lease bonuses alone in the OCS sales, and the cost of the first exploratory well was considerably more than $100 million. No reasonable profit-to-risk ratio can support the State's projected throughput for this area when compared to actual costs and future costs to develop and produce oil from the offshore Beaufort Sea.

The same is true of the category called "Federal Onshore." It is my understanding that that category includes both NPRA and ANWR. The throughput estimates for oil produced on "Federal Onshore" leases in NPRA and ANWR are far too conservative than what is likely to be produced from those regions.

The State of Alaska's chart also includes the category "Other." It is my understanding that "Other" includes all State offshore and onshore leases, including Point Thomson, Flaxman Island, Seal Island, and Gwyder Bay. The recent discovery in the Colville Delta and the hundreds of thousands of acres under State lease in the Kuparuk uplands area surely will in the aggregate produce more barrels per day than the State's throughput forecast indicates. In my view, the throughput estimates for "Other," which include all of these State leases is also far too conservative in light of the potential from the regions included within that category.

Finally, none of ASRC's lands or leaseholds are included within the State of Alaska's throughput forecast. As my testimony above describes, I believe there is substantial potential for production from ASRC's lands, much of which will be shipped through TAPS at some point within the next 25 years.

Q. Is there any other reason why you believe the State throughput forecast is unduly conservative?

A. Yes. The chart produced by the State of Alaska to ASRC is internally inconsistent. The bottom line of the chart is entitled "North Slope Total" and is intended to reflect the total throughput in thousands of barrels per day anticipated for TAPS for each year until 2011. Starting in the year 2000, however, the "North Slope Total" numbers are in fact substantially lower than the actual total obtained by adding the throughput for each category in the column above the "North Slope Total" number. For example, in the year 2000, the chart shows a "North Slope Total" of 825,000 barrels per day. However, by adding the throughput expected from each of the nine identified categories for the year 2000, the throughput total is 925,000 barrels per day, or 100,000 barrels per day more than is reflected in the "North Slope Total" for that year. This problem is reflected in each year from the year 2000 to the year 2011. In each case, the "North Slope Total" number is at least 80,000 barrels per day less than the actual total (e.g., 2008) and as much as 120,000 barrels per day below the actual total (e.g., 2011). I do not know why this discrepancy occurs in the State of Alaska's chart, but clearly their own numbers dictate higher throughputs in the last 11 years of the pipeline than were in fact used by the State of Alaska in estimating the future tariffs that would result from the TAPS settlement.

Q. Have you reviewed the throughput projections of Dr. Bruce Netschert in the Phase I Remand case?

A. Yes. Dr. Netschert forecast two different throughput scenarios: a Netschert Constant throughput of 1.6 million barrels per day over the life of the pipeline and a Netschert declining throughput scenario, which is less conservative than the declining scenario used by the TAPS settlement proponents. Prepared Direct Testimony of Dr. Bruce Netschert, Exhibit IR-1-0 at 29. I believe that a realistic forecast for throughput for TAPS over the life of the line lies somewhere between the two Netschert estimates. The National Petroleum Council report on which Dr. Netschert based his declining throughput is in fact considerably more optimistic regarding crude oil reserves on the Alaska North Slope than is the Netschert declining throughput scenario. The National Petroleum Council report is more consistent with my own view of the crude oil resource on the Alaska North Slope, which will result in substantially higher throughputs in the later years of TAPS than are indicated by the State of Alaska's "TAPS Medium Throughput Forecasts." In estimating throughput for TAPS, I believe Dr. Netschert's declining throughput forecast should be used as a baseline for the most conservative scenario for throughput for TAPS over the life of the line.

Q. Does that complete your testimony?

A. Yes.

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Violate NEPA p. 15
intended to influence Congress
Violate ANILCA p. 21
1002 / 1302h

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ALASKA

TRUSTEES 2nd Brief

TRUSTEES FOR ALASKA, AMERICAN WILDERNESS ALLIANCE, NATIONAL WILDLIFE REFUGE ASSOCIATION, NORTHERN ALASKA ENVIRONMENTAL CENTER, THE SIERRA CLUB, THE WILDERNESS SOCIETY, and THE NATIONAL AUDUBON SOCIETY	)	
Plaintiffs	)	Civil Action No. A87-118
v.	)	AMENDED REPLY TO DEFENDANTS' AND DEFENDANT-INTERVENORS' OPPOSITIONS TO MOTION FOR PRELIMINARY INJUNCTION
WILLIAM P. HORN, Assistant Secretary of Interior for Fish, Wildlife and Parks; DONALD P. HODEL, Secretary, U.S. Department of the Interior; FRANK DUNKLE, Director, U.S. Fish and Wildlife Service; JAMES GRIFFITH, Acting Regional Director, U.S Fish and Wildlife Service; the UNITED STATES DEPARTMENT OF THE INTERIOR; and the UNITED STATES FISH AND WILDLIFE SERVICE	)	
Defendants	)	

I. INTRODUCTION

The defendants1/ raise three fundamental arguments: (1) the court lacks jurisdiction on grounds of standing, ripeness, administrative finality, and the "political" nature of the case; (2) Plaintiffs are not likely to prevail on the merits; and (3) the standards for a preliminary injunction are not met. All of the jurisdictional arguments continue the pattern begun in the earlier Trustees for Alaska v. Hodel litigation of attempting to insulate government decisionmaking from botn public and judicial scrutiny.

The NEPA case has been simplified tremendously by Interior's agreement to perform a full, two-stage legislative environmental impact statement (LEIS), with public notice and hearings, once the basic terms of the land exchange agreement are reached. Horn Affidavit, para. 15. Plaintiffs concede, with some reservations, that this agreement resolves Count 2 of the Complaint.2/ However, Defendants' remaining arguments are not persuasive.

II. THE COURT HAS JURISDICTION OVER THIS ACTION

A. Plaintiffs Have Standing to Maintain This Action

The intervenors add little to the standing arguments that were raised in the Motion to Dismiss and addressed in Plaintiffs'

1/ Unless indicated, defending parties will be referred to jointly as "Defendants". The Response Briefs will be identified as "Interior Response", "NLG Response", and "Koniag Response."

2/ Plaintiffs continue to disagree with the timing of the proposed LEIS, which will not occur until after an "agreement in principle" is reached on the basic terms of the proposed land exchange, violating the basic purposes of NEPA. But given Interior's agreement to perform an LEIS if the negotiations are allowed to proceed, Plaintiffs accept the Interior proposal on when to initiate the NEPA process.

response thereto. Moreover, like the federal defendants, the intervenors rely almost entirely on general principles of standing law, and ignore almost entirely the extensive case law indicating that plaintiffs who use and enjoy a region that is subject to agency decisions have standing to vindicate procedural interests under NEPA. Pl. Response Brief at 3-15.

Plaintiffs' members use and enjoy the coastal plain of the Arctic National Wildlife Refuge for recreational and other purposes. The organizations have a long history of protecting these interests by advocating for the protection and preservation of this area. In particular, the organizations filed an earlier lawsuit that entitled them to comment on a draft of Interior's report to Congress. The organizations themselves, and members of the organizations, filed comments on the draft report. Pl. Exh. 21, attached to Pl. Response to Motion to Dismiss; Pl. Exh. 23, attached hereto. But the naked right to comment is meaningless. The significance of the right to comment is the potential it provides to influence the final decision in the matter. If unlawful actions prejudice the objectivity of the final decision, plaintiffs' procedural rights to a fair and objective decision guaranteed by NEPA are harmed, and they have standing to protect these procedural rights. By analogy, parties to lawsuits have a right to fair and objective consideration of their positions, violations of which (e.g. by jury tampering) would be actionable. There is no difference here.

Interior argues that this argument must fail because Plaintiffs cannot prove that Congress "will be biased." But neither can a plaintiff seeking to force an agency to prepare an EIS prove that the EIS will change the final result. Such proof is unnecessary to confer standing under NEPA because NEPA governs the decisionmaking process. City of Davis v. Coleman, 521 F.2d 661, 670-72 (9th Cir. 1975). The same is true in the context of legislative decisionmaking. Realty Income Trust v. Eckerd, 564 F.2d 447, 452-54 (D.C. Cir. 1977); Atchison, Topeka and Santa Fe Ry. Co. v. Callaway, 431 F. Supp. 722, 729-30 (D.D.C. 1977). See Interior Response at 17. Plaintiffs are entitled to prevent the Defendants from prejudicing the Congressional decision, which is the subject of an existing EIS on which a final decision has not been made, whether or not the decision is ultimately in their favor, just as litigants have a right to fair process regardless of who wins the case. Standing is based on actual or potential harm. Kerr-McGee Chemical Corp. v. U.S. Department of the Interior, 709 F.2d 597, 600 (9th Cir. 1983) (harm may be "threatened or actual").3/

Interior also suggests that Plaintiffs were required to prove the extent of their interests in exhibits in support of their Motion for Preliminary Injunction. Standing under NEPA

3/ Interior distorts this position by arguing that Plaintiffs seek to vindicate Congress' interest in not being prejudiced by the illegal land exchange negotiations. This is not the case any more than a litigant is interested in preserving the Judge or the Jury's right not to be influenced by prejudicial factors. The interest is in the opportunity for the litigant's position to be considered free from any unlawful prejudicial factors. Nor do Plaintiffs seek to prevent either the Native Corporations or Interior from influencing Congress in a lawful fashion, for example in testimony before the relevant Congressional committees.

requires the establishment of a "geographical nexus" to the area in question, e.g. by showing that members use and enjoy the area for recreational, aesthetic, commercial or other factors. Plaintiffs' Exhibit 23, attached hereto, is a series of affidavits proving that members of the Plaintiff organizations have used, and will continue to use the coastal plain for recreational and in some cases commercial purposes, that all had comments submitted on their behalf by the plaintiff organizations, see Pl. Exh. 21, and that some filed personal comments.4/

Plaintiffs also demonstrated how the decisionmaking process in question affects their interests. Plaintiffs submitted affidavits demonstrating that the Defendants and the Defendant-Intervenors themselves have cited publicly the role of the proposed land exchanges in influencing Congress' decision. Pl. Exhs. 4, 10, 11, 12, 13, 14, 15, 22. Again, Plaintiffs need not show that Congress will be influenced, just that they may be influenced.

Finally, NLG argues that the First Amendment affects Plaintiffs' standing. NLG Response at 10-11. There is no

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4/ Interior claims these affidavits had to be filed with our initial motion. Defendants raised standing in opposition to the Motion for Preliminary Injunction, and affidavits submitted in Plaintiffs' Reply are completely appropriate. We did not "rely" on this point in our opening brief, in the context of Local Rule 5, since it arises only in the affirmative defense. Moreover, it is incredible that the Defendants challenge this aspect of standing (use of the region) when such use was found by this Court and the Ninth Circuit in Trustees for Alaska v. Watt and Trustees for Alaska v. Hodel, see Pl. Response at 3-4, and thus has a collateral estoppel effect here. Plaintiffs submitted affidavits to support their use of the area in Trustees for Alaska v. Hodel, Pl. Exh. 24, attached hereto, the truth of which were not contested by Interior. Finally, Interior can demonstrate no prejudice from the submission of affidavits now.

merit whatsoever to the First Amendment argument. <u>See</u> Part II.D <u>infra</u>. Plaintiffs do not seek to prevent NLG or the other Corporations from communicating with their government. Indeed, since these parties were not even named defendants, there was no attempt to enjoin them from <u>anything</u>. The intervenors' first amendment rights do not include the right to a government response, especially if that response violates statutory requirements. If Interior's actions are unlawful and affect Plaintiffs' rights, we have standing to vindicate those rights.

B. This Case is Ripe for Judicial Review

The Defendants' ripeness argument distills to the following: Plaintiffs will not actually be "harmed" by the Defendants' activities until the proposed land exchange agreements are finalized and adopted by Congress, and only then can Plaintiffs seek judicial review of the legality of the negotiations themselves.

The problem with the Defendants' analysis is that, as in <u>Trustees for Alaska v. Hodel</u>, by the time the defendants would allow us into court, the possibility of meaningful judicial relief would be almost nonexistent. 806 F.2d 1378 (9th Cir. 1986). Moreover, Plaintiffs argue that the land exchange negotiations themselves are illegal, and not that the product of the negotiations will result in an irrational agency decision on the merits. Proceeding with the negotiations will put the Court in no better position to decide these issues. In short, all of the basic criteria for ripeness are present. The issues are fit for judicial resolution; and substantial harm to Plaintiffs' ability to obtain relief will result from the deferral of judicial review until after the harm has already occurred, i.e. until after Congress' decisionmaking process has already been tainted by the commitment of federal resources to the land exchange process. Abbott Laboratories v. Gardner, 387 U.S. 136, 148-49 (1966); see Pl. Response at 16-26.

The easiest way to demonstrate that the issues raised in this case are ripe is to compare them with issues that would not be ripe. For example, Plaintiffs question whether the proposed land exchange would meet the standards in section 1302(h) of ANILCA, and whether Interior is properly accounting for section 22(g) of ANCSA, which was the primary basis for this Court's decision striking the St. Matthews Island land exchange on the merits in National Audubon Societv v. Hodel, 606 F. Supp. 825 (D. Ak. 1984). Similarly, we doubt whether the valuation process employed by Mr. Horn ensures that the public will receive a good bargain in these exchanges. Pl. Exh.5, Attachment 1. The Defendants would be correct in arguing that such issues are not ripe until the agency makes its final decision. The Court cannot properly review such matters until a final agency record has been built, and the agency may change its mind on how to apply these valuation factors before the agency action is final. This is clearly distinguishable, however, from the question of whether the agency has authority to proceed with the negotiations at all. The agency decided that it has such authority, and that the ongoing process does not violate NEPA or the other cited statutes. Plaintiffs disagree. These issues are ripe for judicial review.

NLG contends that the lack of a "final agency action" under the Administrative Procedure Act, 5 U.S.C. 704, precludes judicial review of this action.5/ Review is available under the APA regardless of the lack of a "final" land exchange agreement. Section 702 of the APA (the APA) establishes the general rule that persons adversely affected or aggrieved by agency action are entitled to judicial review. That section of the APA also provides a waiver of sovereign immunity for suits brought against federal agencies under the APA. See Rowe v. U.S., 633 F.2d 799 (9th Cir. 1980) cert. denied 451 U.S. 970.

This general presumption of reviewability under the APA, see Sierra Ass'n. for Environment v. F.E.R.C., 791 F.2d 1403 (9th Cir. 1986), is subject only to narrow exceptions. Section 701 states that the judicial review provisions of the APA apply except to the extent that other statutes specifically preclude judicial review or where an agency's action is committed to discretion by law. The Defendants do not argue that judicial review is statutorily precluded, and Plaintiffs disposed of the "committed to agency

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5/ This argument ignores the fact that the Complaint pleads a number of grounds for relief in addition to the APA. For example, relief is sought under the Declaratory Judgment Act. Such relief is appropriate where "there is a substantial legal controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." Lake Carriers Assn. v. MacMullan, 92 S.Ct 1749, 1755 (1972), quoting Maryland Casualty Co. v. Pacific Coal & Oil Co., 61 S.Ct 510, 512 (1941). Here, Plaintiffs and Defendants have a concrete legal disagreement about whether NEPA, ANILCA, ANCSA, and the Wilderness Act prohibit the negotiations. Since the harm sought to be redressed will already have occurred if we wait for Congress to reach a final decision on the coastal plain issue, there is sufficient immediacy to warrant relief now. Similarly, relief is sought under the All Writs Act, 28 U.S.C. 1651(a), which allows this Court to preserve the status quo pending review of the legality of agency action. Federal Trade Commission v. Dean Foods Co., 384 U.S. 597, 603-04 (1966).

discretion." Pl. Response Brief, at 27-32.

A second limited exception is provided in section 704 of the APA. 5 U.S.C. 704. NLG Response at 7, 28-29. NLG asserts that this section limits APA review to "final agency action." On its face, however, section 704 provides a cause of action for "agency action made reviewable by statute and final agency action for which there is no other adequate remedy . . . " (emphasis added). In this light, section 704 creates an opportunity for judicial review of final agency action that is otherwise nonreviewable in addition to the general provision for review of agency action "made reviewable by statute". FTC v. Standard Oil Co. of California, 449 U.S. 232, 238 (1980)(judicial review available only upon final agency action or where that action is directly reviewable by statute). The Supreme Court has ruled definitively that a cause of action exists to enforce the procedural obligations of NEPA. Aberdeen & Rockfish v. SCRAP, 422 U.S. 289, 319 (1975). Thus, the finality clause does not even come into play. Plaintiffs also seek statutory review under ANILCA, ANCSA, and the Wilderness Act.

Another exception to the finality requirement exists when an agency has taken action which is taken in excess of its statutory authority or delegated powers. See United States v. Feaster, 410 F.2d 1354, 1366-67, cert. denied 396 U.S. 962 (1969). "This Court cannot infer lightly that Congress does not intend judicial protection of rights it confers against agency action taken in excess of delegated powers." Feaster, supra, at 1367, citing Leedom v. Kyne, 358 U.S. 184 (1958). The Ninth Circuit adopted the Feaster test for the reviewability of non-final agency action to decide whether an agency has violated a specific statutory provision or was acting in excess of its delegated powers. See Hunter v. National Mediation Board, 754 F.2d 1496, 1498 (9th Cir. 1985). See also Gellis v. Casey, 338 F. Supp. 651 (S.D.N.Y. 1972, a court may correct a preliminary agency decision when the agency has plainly exceeded its statutory authority). This is precisely what the Plaintiffs are claiming here.

Section 706 of the APA reaffirms the availability of judicial review under these circumstances: "The reviewing court shall hold unlawful and set aside agency action . . . found to be -- in excess of statutory jurisdiction, authority, or limitations. . . . [or] without observance of procedures required by law." 5 U.S.C. 706(2)(B)&(C). Plaintiffs allege that Interior has acted in violation of procedures required by statute and regulation. Plaintiffs also allege that the agency, in pursuing a land exchange agreement when Congress specifically removed such action from Interior's discretion, has acted beyond the scope of its delegated powers. These issues are all reviewable under the APA.

NLG's characterization of FTC v. Standard Oil Co. of California, 449 U.S. 232, 242 (1980) is completely inaccurate. In Standard Oil, the FTC issued a complaint stating that the defendant "may be" violating applicable laws which the FTC had been given authority to enforce. The defendant sought judicial review of this preliminary complaint. The court held that review of the agency decision to "institute the proceedings," an enforcement action clearly within the agency's statutory authority, would hinder the agency's ability to pursue its delegated authority. The defendant did not even contend (as Plaintiffs do here) that the agency action itself had any legal or practical effect. See Standard Oil, supra at 242. It was also clear (unlike the present case) that the agency was acting well within its statutory authority. Thus, the court was reluctant to interfere with the proper functioning of the agency. Id.

NLG also misconstrues National Forest Preservation Group v. Butz, 485 F.2d 408, 411 (9th Cir. 1973) and Lewis v. Hickel, 427 F.2d 673, 677 (9th Cir. 1970) cert. denied, 400 U.S. 992 (1971) to mean that "the basic decision whether or not to enter into an exchange" is unreviewable. See NLG Response at 29. As explained in our Response Brief at 31, however, Butz held that while a pure policy decision may be unreviewable, specific legal questions regarding whether the agency acted within its statutory or regulatory limits was subject to judicial review.6/ Lewis v. Hickel holds only that the determination of whether a land exchange would be in the public interest absent any discernable statutory standards was a decision committed to agency discretion. 427 F.2d at 677. By contrast, in National Audubon Society v. Hodel, where the land exchange was subject to specific statutory criteria under section 1302 of ANILCA, Judge Fitzgerald engaged in an extensive analysis of whether the agency met this test. 606

6/ The basic policy decision may have been within the agency's discretion in Butz. But sections 1002 - 1004 of ANILCA divest Interior of such discretion in light of Congress' clear intention to reserve the decision regarding the fate if the coastal plain to itself. Pl. P.I. Brief, at 32-39.

F. Supp. 825 (1984).

C. This Action Does Not Involve a "Political Question"

Defendants assert that judicial review is precluded by the so-called "political question" doctrine. However, the Defendants use the word "political" in its colloquial rather than its precise legal sense. As the Supreme Court said in the leading modern case on this issue:

> The doctrine of which we treat is one of "political questions," not of "political cases." The courts cannot reject as "no lawsuit" a bona fide controversy as to whether some action denominated "political" exceeds constitutional authority.

Baker v. Carr, 82 S.Ct. 691, 710 (1962).7/ Thus, the mere fact that the case involves a "political" subject does not mean that judicial review is precluded, unless the precise standards for the limited exception to judicial authority are met. The Defendants do not even cite, much less analyze these standards.

The essential questions presented in this case are legal, not political. As such, these issues are fit for judicial review. Northrop Corp. v. McDonnel Douglas Corp., 705 F.2d 1030 (9th Cir.), cert. den. 104 S.Ct. 156 (1983). It is the basic role of the courts, of course, to pass on the legality of actions taken by the other two branches of government. Marbury v. Madison, 1 Cranch 137, 2 L.Ed. 60 (1803).

7/ The same is necessarily true for nonconstitutional issues such as the interpretation of treaties, Trans World Airlines v. Franklin Mint Corp., 104 S.Ct. 1776, 1783-84 n. 25, reh. den. 104 S.Ct. 2691 (1984), statutes, Quinn v. Robinson, 783 F.2d 776 (9th Cir. 1986), or actions at law, Oneida County v. Oneida Indian Nation, 105 S.Ct. 1245, reh. den. 105 S.Ct. 2173 (1985).

Only if the specific elements of the political question doctrine are met can this Court withhold review of the legality of the Defendants' actions. The Supreme Court set six grounds for deciding whether a case involved a political question: (1) a textually demonstrable constitutional commitment of the issue to a coordinate political department; (2) a lack of judicially discoverable and manageable standards; (3) the impossibility of deciding without an initial policy determination reserved for judicial discretion; (4) the impossibility of deciding without expressing lack of respect for the coordinate branches of government; (5) unusual need for adherence to a political decision already made; and (6) the potential for embarrassment from multifarious pronouncements by various departments. Northrop Corp., supra, 705 F.2d at 1046, citing Baker v. Carr, supra, 82 S.Ct at 710. This test is extremely narrow. Quinn v. Robinson, supra, 783 F.2d at 788.

None of these factors are even remotely implicated here. The legal questions presented, whether the actions of the Interior Department are lawful under specific statutes and regulations, are squarely within the province of the judiciary. Clear judicial standards are set forth for the legal issues presented. See Pl. Response at 27-32. The legal issues do not require the Court to decide whether a land exchange would be good or bad public policy -- the entire point is that Congress reserved this basic policy decision to itself. Pl. P.I. Brief at 32-39. Deciding that Interior is acting outside of its legal authority will not express any lack of respect for coordinate branch of government any more than in any case in which the court rules that an agency has violated the law. There is no "political" decision already made, since Defendants admit that they have not yet passed on the wisdom of any proposed land exchange. This case involves whether Interior has the legal authority to make such a decision at all. Finally, there is no potential that a judicial ruling on the issues of law in this case will result in embarrassment due to "multifarious pronouncements of various departments."

The intervenors try in two ways to render this case nonjusticiable as a political question. First, Koniag argues that the case turns on Interior's motive in engaging in these negotiations. Koniag Response at 25. See Citizens for Management of Alaska Lands v. Dept. of Agriculture, 447 F. Supp. 753 (D. Alaska 1978). But unlike the Citizens case, motive is irrelevant here. NEPA and the CEQ regulations prohibit agency resource commitments that have a prejudicial effect on the decisionmaking process, regardless of motive. Similarly, ANILCA, ANCSA, and the Wilderness Act simply prohibit the Defendants' actions. Motive is again irrelevant. The Court need only pass on the legality of Defendants' actions, not Interior's motives.

Citizens and two other cases relied on by Defendants, Chamber of Commerce v. Department of Interior, 439 F. Supp. 762 (D.D.C. 1977) and Wingfield v. OMB, 7 ELR 20,362 (D.D.C. 1977), are unpersuasive for two additional reasons. These cases preceded another district court case in the same court, Atchison, supra, and two D.C. Circuit cases, Realty, supra, and Izaak

Walton League v. Marsh, 655 F.2d 346 (D.C. Cir. 1981), all of which disagreed with the reasoning in the earlier cases. More importantly, these cases simply affirm our position that if a final proposal is submitted to Congress, the political question doctrine may well preclude meaningful relief since the court cannot order Congress not to consider the proposal. The cases in which political question factors do not preclude relief are those in which relief is sought before such problems are encountered. Trustees for Alaska v. Hodel, supra; Atchison, supra.

D. The First Amendment Does Not Affect Jurisdiction Here

NLG claims that this action infringes a constitutional right to "talk to Interior." While NLG undoubtedly has a constitutional right to petition the government, this does not include a right to have Interior respond through detailed negotiations, particularly if prohibited by statute or regulation. NLG cites no cases demonstrating that the First Amendment guarantees two-way communications, for no such cases exist.

Plaintiffs do not seek to enjoin NLG or any other group's right to petition Interior. Indeed, we do not seek to enjoin the intervenors from doing anything, and did not even name them as defendants in the case. We seek to enjoin only Interior's ongoing illegal pursuit of the negotiations.8/

8/ The cases cited by NLG involve largely the use of "long-arm" statutes to find personal jurisdiction against parties based on their contacts with the Department of the Interior regarding proposed land exchanges. These cases are completely inapposite.

III. PLAINTIFFS ARE LIKELY TO PREVAIL ON THE MERITS

A. The Negotiations Violate NEPA

The Defendants mischaracterize Count 1, which asserts that NEPA and the CEQ regulations prohibit agencies from taking actions or committing agency resources that prejudice a NEPA decision by increasing the government's stake in the controversy, by creating institutional inertia, or by foreclosing options. Pl. P.I. Brief at 11-23. Interior prepared an LEIS on the 1002 Report, but a final decision has not been made by Congress . Thus, Count 1 in no way relates to the separate LEIS that would have to be prepared if land exchange negotiations are allowed to proceed. Due to this basic misunderstanding, most of Defendants' arguments are irrelevant to Count 1.9/

The purpose of NEPA is to ensure that environmental factors are taken into account in decisions that may have a substantial effect on the environment, and that a full range of alternatives

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9/ Interior and NLG also make the absurd argument that because the Supreme Court has overturned various lower courts in specific NEPA cases, this Court obviously would be incorrect in enforcing NEPA here. While the cases cited did overturn lower courts in NEPA cases, not a single one is on point. United States v. SCRAP involved a provision of the Interstate Commerce Act that expressly overrode NEPA. 412 U.S. 669, 690-91 (1972). Aberdeen and Rockfish v. SCRAP, like Kleppe, involved the timing of an initial EIS. 422 U.S. 289 (1975). Flint Ridge Development Corp. v. Scenic Rivers Assn. involved an express statutory conflict. 426 U.S. 776, 788 (1976). Vermont Yankee v. NRDC addressed the agency's right to decide what procedures should be used in evaluating a given issue. 435 U.S. 519 (1978). Andrus v. Sierra Club ruled simply that NEPA's LEIS requirement did not apply to appropriation requests. 442 U.S. 347, 349 (1979). In sharp contrast to these cases finding that courts erred on specific aspects of NEPA, New York v. Kleppe, quoted above, sets forth the general rule that lower courts should vigorously enforce NEPA's procedural requirements. 97 S.Ct. at 6-7.

are considered before an "irreversible and irretrievable commitment of resources" is made. Pl. P.I. Brief at 13-15; 42 U.S.C. 4332(C)(v). If an agency begins to implement one possible alternative identified in an EIS before a decision is reached based on the EIS analysis, the process is meaningless. Unless the ultimate decisionmaker is left with the "widest freedom of choice," Realty, supra, 564 F.2d at 456-57, NEPA's goal of "informed decisionmaking" is not met. Thus, in New York v. Kleppe, the Supreme Court said:

> It is axiomatic that if the government, without preparing an adequate impact statement, were to make an "irreversible commitment of resources" . . . a citizen's right to have environmental factors taken into account by the decisionmaker would be irreparably impaired. For this reason, the lower courts have enjoined the government from such resource commitments without first preparing impact statements.

97 S.Ct. 4, 6-7 (1976).

In the nonlegislative EIS context, the final EIS and the agency record of decision is the critical point before which resources that prejudice the final result should not be committed. In this case, and in all cases involving an LEIS, it is axiomatic that resources should not be committed to one alternative before the actual decisionmaker, Congress, has acted. Such actions create momentum behind the alternative that has begun, increase the government's stake in that particular option, and foreclose other viable options. In this case, plaintiffs also proved that the exchanges will be used intentionally to bias Congress. Pl. P.I. Brief, at 16-23.

In fact, the intervenors use this very argument to show irreparable harm. They have devoted time and effort to the proposed exchange, they have spent a lot of miney, and it would be "unfair" not to allow the exchanges to go forward. Sagesar affidavit, Gross affidavit, Eluska affidavit. <u>This is precisely the argument that will be used in Congress.</u>

The ongoing negotiations also foreclose other options for dividing the coastal plain. In fact, the State has set forth a viable alternative proposal for land exchanges after Congress reaches its basic decision. Pl. Exh. 25, attached hereto. But once the specific details of Interior's proposal are worked out, after the parties to the negotiations have spent so much time, effort, and money on these proposals, the State alternative is less likely to receive serious attention.

Only Koniag appears to understand this fundamental point. However, they argue that NEPA only prohibits prejudicial agency actions before the <u>agency</u> makes its decision, and when Congress is the final decisionmaker, no such prohibition applies. Koniag cites no case law to support this point. In fact, the proposed distinction makes little sense, and would frustrate the purposes of NEPA in cases where agencies prepare the EIS but Congress makes the final decision. Either the premature commitment of resources will influence Congress to pursue the option initiated by the agency, in violation of NEPA's goals, or the agency is wasting public resources. Moreover, cases dealing with NEPA in the legislative context have found no distinction between the role of NEPA in protecting administrative and legislative decisions. <u>Atchison</u>, <u>supra</u>, 431 F. Supp. at 727; <u>Realty</u>, <u>supra</u>, 564 F.2d at 454; <u>Izaak Walton</u>

League, supra, 655 F.2d at 365. See also Trustees for Alaska v. Hodel, supra.10/

Because of their persistent relation of Count 1 to any EIS that would be prepared on a land exchange itself, rather than the 1002 EIS, all of the Defendants improperly base their defense on Kleppe v. Sierra Club, 427 U.S. 390 (1976) and progeny. The reasoning behind Kleppe is that agencies should be free to determine at what point in the process an EIS should be prepared, to determine that a proposal has formulated, that the agency has a sound basis for the EIS, and to prevent unnecessary EISs if the agency abandons the proposal. 427 U.S. at 402-09. Since Count 1 relates to actions that may be taken after the EIS is completed, none of these arguments apply. The 1002 EIS is in Congress' hands. To preserve the objectivity of the Congressional decisionmaking process, and plaintiffs' right to a fair legislative decision, it is necessary to halt defendants' prejudicial actions. No "unnecessary" EIS will result; in fact, waiting for a Congressional decision may prevent an unnecessary EIS on the proposed land exchange if Congress decides against development of the coastal plain or that some form of leasing other than land exchanges

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10/ The CEQ regulations generally refer to actions taken by agencies. 40 CFR 1502.2(f); 40 CFR 1506.1. However, there is no logical reason to treat the matter differently when Congress, rather than the agency itself, is the final decisionmaker. The CEQ regulations are to be given controlling weight in interpreting NEPA itself. Andrus v. Sierra Club, 99 S.Ct. 2335, 2341 (1979). Since CEQ interpreted NEPA as precluding prejudicial resource commitments before an agency makes a NEPA decision, the same result should apply when Congress is the final decisionmaker. This result is also required by the prevailing NEPA case law cited above and in our earlier briefs.

is appropriate.

Due to the irrelevance of Kleppe to count 1, the vast majority of NEPA cases cited by intervenors need not be refuted individually. With one exception, these cases all involve a single EIS situation where plaintiffs sought to enjoin agency actions leading to the preparation of the project EIS.11/

The only case relied on by the defendants that deals with a 2-stage process is Rapid Transit Associates v. Southern California Rapid Transit District, 752 F.2d 373 (9th Cir. 1985), and this case squarely supports plaintiffs' position. The administrative process in that case specifically called for a first-round EIS to select the basic project from a range of alternatives, and a second-round EIS to address the site-specific impacts of the preferred alternative. If the agency had initiated design on one project alternative before a decision was reached on the first EIS, the case would be analagous to the instant situation. They did not. Only after the primary decision was made on the selection of alternatives, after the completion of a full EIS and public notice and comment, did the agency commit any resources to the specific project.

This is precisely what should occur here. The 1002 EIS has been prepared, but no decision has been made on whether to allow oil development, and if so, how and where. In the interim, Inte-

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11/ For example, in B.R.S. Land Investors v. United States, 596 F.2d 353 (9th Cir. 1979), the project had not proceeded to the point where an EIS was appropriate. But there was no decision pending on an existing EIS which could have been biased by the ongoing discussions, as there is here.

rior is committing resources to a project that presumes not only that development will occur, but how (Native land exchanges) and where (by allowing tract selection).

Finally, Defendant NLG argues that section 910 of ANILCA exempts Interior from all compliance with NEPA, rather than just the requirement to prepare an EIS. This argument flies in the face of the plain language of section 910, which, even if applicable to the land exchanges, only exempts the agency from the obligation to prepare an EIS. Given the requirement that agencies comply with NEPA to the "maximum extent feasible," the Supreme Court has ruled that NEPA compliance can be avoided only when there is a "clear and unavoidable statutory conflict." <u>Flint Ridge</u>, <u>supra</u>, 426 U.S. at 788. In fact, the Supreme Court found in <u>Flint Ridge</u> that the agency had a duty to comply with all other NEPA duties, despite a specific statutory exemption from the EIS requirement. <u>Id</u>.

Interior's agreement to prepare an EIS renders the section 910 issue in this case largely moot. However, in light of NLG's argument that section 910 exempts Interior from any NEPA compliance, we address briefly why section 910 does not apply to land exchanges. On its face, section 910 applies to Native <u>conveyances</u> under ANCSA and ANILCA, and not to land exchanges that happen to involve Native Corporation lands that were <u>previously conveyed</u> pursuant to ANCSA or ANILCA. Moreover, there is no support in the legislative history for the proposition that section 910 applies to land exchanges under section 1302 of ANILCA. Instead, the legislative history makes clear that this provision was intended to ensure that Native Corporations promptly received their initial land entitlements.

Section 910 was first passed by the House Interior Committee in 1978, as section 810 of H.R. 39. H.R. Rep. 95-1045, Pt. I, at 42. It exempted from the EIS requirement only conveyances pursuant to the expedited procedures established in sections 801 and 802 of the bill. In October 1978, the Senate adopted broader language to cover conveyances under ANCSA as well. S. Rep. 95-1300, at 32-26. This formulation was passed by both houses in the 96th Congress. H.R. Rep. 96-97, at 81; S. Rep. 96-413, at 54. Since both provisions applied only to conveyances made pursuant to ANCSA and "this title" of ANILCA, land exchanges under section 1302 of ANILCA could not possibly have been covered by the section 910 exemption as then drafted.

In the final months of congressional deliberations, the expedited conveyance provisions that were formerly contained in what became Title IX, were moved to Title XIV, as section 1437. Hence, "this title" in section 910 was changed to "this Act." There is absolutely no evidence of any intent to broaden the exception to include, in addition to Native land <u>conveyances</u>, section 1302 land exchanges that involve Native lands.

B. Defendants' Actions Violate ANILCA

Intervenors argue that all of the substantive prohibitions against Interior's actions involving the coastal plain, which are based on Congress' crystal clear instructions to leave the coastal plain decision to Congress, are overridden by the perfunctory "notwithstanding any other provision of law" preface to section 1302(h) of ANILCA.

First, this argument ignores entirely the canon of statutory construction that specific statutory provisions govern over general language. Markair, Inc. v. C.A.B., 744 F.2d 1383, 1385 (9th Cir, 1984); Monte Vista Lodge v. Guardian Life Ins. Co., 384 F.2d 126, 129 (9th Cir. 1967), cert. den. 390 U.S. 950 (1968). Congress was extremely precise in its instructions regarding the controversial 1002 area. It stretches credibility to assert that despite the clear instructions in sections 1002-1004, and the admonition in the legislative history that Congress intended to make the coastal plain decision itself, P.I. Brief at 32, the general land exchange authority in section 1302(h) controls.

Moreover, section 1302(h) itself only authorizes land exchanges "for the purposes of" ANILCA. Given the stated purposes of the Arctic National Wildlife Refuge in section 303(2), the detailed study program set forth in section 1002, and the absolute prohibition against oil and gas development or activities leading thereto in sections 1003 and 1004, it once again is incredible to assert that such a proposed land exchange is "for the purposes of ANILCA." Congress will decide what uses are appropriate for the coastal plain, and until that time, Interior is divested of discretion to make such fundamental management decisions. Congress did "not expect that [section 1302's] 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. 95-1045, Pt. I, at 212.

IV. PLAINTIFFS ARE ENTITLED TO A PRELIMINARY INJUNCTION

The Defendants would have the Court believe that the Plaintiffs rely exclusively on potentially questionable Ninth Circuit injunction standards in light of the Supreme Court's ruling in Amoco Production Co. v. Gambell, supra. These characterizations are highly misleading. In light of Amoco, Plaintiffs were careful to demonstrate that they are entitled to injunctive relief even under the most stringent reading of that case. Pl. P.I. Brief at 39-50.

Intervenors argue irreparable harm in three major areas, none of which are persuasive. First, they argue that a preliminary injunction will eliminate forever their opportunity to exchange inholdings for subsurface tracts within the Arctic National Wildlife Refuge. This argument is absurd. A preliminary injunction will prevent the land exchange negotiations from proceeding only until the Court rules on the merits of whether the negotiations are lawful. If the Defendants prevail, the negotiations will simply begin where they left off. If the Plaintiffs prevail, Defendants are not entitled to their desired result in any event.

Even if a permanent injunction is issued against the land exchange negotiations, this will not preclude forever the possibility of these land exchanges, so long as Congress ultimately authorizes them. Since the Defendants themselves have established Congressional approval as a prerequisite for final land exchanges, requiring Congressional approval before rather than after the fact cannot constitute irreparable harm.

The intervenors argue that preventing the land exchange negotiations denies them any profitable economic uses of their lands. This claim is completely inconsistent with their almost simultaneous claim that if negotiations are stopped now, they will lose all opportunities for an exchange since they will be forced to put these lands to other economic uses. In addition to being inconsistent, this argument makes no sense. The lands in question are being offered for trade because they are perceived to be less valuable than oil and gas rights in the coastal plain. Requiring the corporations to wait for Congress to decide whether development will be allowed in the region before they can negotiate such trades again does not constitute irreparable harm. It is particularly ironic for Koniag to use this argument, when they have been trying to exchange the lands in question since 1981, and they themselves withdrew from a past land exchange.

Third, the intervenors argue that enjoining the negotiations will cause them to have wasted precious time and money. A Court in equity cannot consider this factor, however, when the waste of time and money resulted from the Defendants' illegal conduct. Moreover, as NLG itself admits, loss of money alone is insufficient to constitute irreparable harm. NLG Response at 43. Similarly, delay alone cannot constitute irreparable harm, U.S. v. Jefferson County, 720 F.2d 1511, 1520 (11th Cir. 1983), citing Sampson v. Murray, 445 U.S. 61, 90 (1974), particularly when the Defendants' hoped-for result must await Congressional action whether an injunction issues or not.

Finally, the Defendants argue that the public interest demands that an injunction be rejected, based on the potential benefits of the proposed land exchange. But the policy decision on the appropriate use and management of the coastal plain will be made by Congress. The public interest is best protected by preventing the Defendants from engaging in unlawful activities that prejudice Congress' decision on these important issues. Defendants are correct that they may "influence" Congress, but only through the normal legislative process. They cannot be permitted to do so by exceeding their statutory authority.

CONCLUSION

For the above reasons, Plaintiffs' request for a preliminary injunction should be granted.

DATED this 6th day of ~~June~~ July, 1987.

Respectfully submitted,

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February 10, 1988

Mr. Ned Farquhar
House Resources Committee
P.O. Box V
Juneau, Alaska 99810

Dear Ned:

As we discussed, enclosed is a copy of the memorandum on the antitrust considerations of the proposed land exchanges. Give me a call if you have any questions or if I can be of any further help.

Hope to meet you sometime in Alaska!

Best regards.

Sincerely,

Chuca

Aileen Meyer

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Department of Interior
Proposed ANWR Land Exchanges

Antitrust Considerations

The land exchanges in the coastal plain of the Artic Natural Wildlife Refuge ("ANWR") violate the policies set forth in the U.S. antitrust laws and were conducted in a manner that resulted in inadequate consideration to the federal government.

Facts

When Congress passed the Mineral Leasing Act of 1920 ("MLA"), it made the requirement of competitive bidding the cornerstone of the federal government's oil and gas leasing program on federal lands that are determined to be within favorable geological provinces. Congress specifically reiterated the requirement of competitive bidding for oil and gas leases in non-ANWR lands in Alaska in Section 1008 of the Alaska National Interests Land Conservation Act ("ANILCA") and Section 100 of the Interior Appropriations Act of 1981. Congress has required competitive bids because they maximize income to the federal government and give all persons interested in leasing land a fair chance to obtain a lease. This policy has not lessened over the years. In fact, Congress is currently considering legislation to require competitive leasing of all federal oil and gas lands.

Despite these articulated policies, the competitive bidding process was ignored during the ANWR tract selections. The Department of Interior ("Interior") went to great lengths to ensure that the ANWR coastal plain tracts would be allocated to the native corporations at the cheapest price possible. Prior to the tract selection sessions, Interior set a minimum acceptable price for each tract, as it normally does before competitive bidding, and the participating native corporations made 15 primary tract nominations. The selection sessions proceeded in rounds. In the first round, each participant identified its first priority tract, and if only one participant nominated a tract and there were no constraint problems, that participant received the nominated tract at the minimum price. If two or more participants nominated a tract, they were given an opportunity to leave the room to resolve the conflict among themselves. Suggested resolution mechanisms included agreements to take the tract together or relinquish a selection for payment.*/ If the conflict was not resolved in this way, Interior would allocate the tract either by random drawing or competitive bidding. The selection session continued with each native corporation nominating its first priority tract from the remaining available tracts until the native corporations had used up substantially all of thevalue of their exchange lands. This process resulted in seriously inadequate consideration to the federal government since such lands normally are leased at far more than the minimum price.

The Exchanges Were Anticompetitive.

The exchanges violate the policies set forth in two doctrines of the antitrust laws. First, the antitrust laws forbid companies from agreeing on the price of bids which they submit to the federal government.*/ Secondly, they prohibit companies from controlling access to a market unless such companies make access available to competitors on fair and reasonable terms.

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*/In other words, the native corporations that nominated the same tract, incredibly, were encouraged to resolve the conflict by having one corporation pay another corporation, rather than the federal government, for the right to the tract.

*/United States v. Fishbach and Moore, Inc., 750 F.2d 1184 (3rd Cir. 1984), cert. denied 105 S. Ct. 1397 (1985); United States v. Azzarelli Construction Co., 612 F.2d 292, 294 (7th Cir. 1979). cert. denied, 447 U.S. 920 (1980); Otter Tail Power Co. v. United States , 410 U.S. 366 (1973).

In the absence of involvement by Interior, the actions of the private companies here would have fit squarely within bid rigging prohibitions since competitors left the room in which the bids were being taken to allocate the tracts among themselves at the minimum price set by Interior. The competitors were encouraged to work things out among themselves by, under one alternative, agreeing to pay each other to withdraw from contested bids. In addition, we believe it is likely (although we do not have supporting documentary evidence) that the native corporations agreed among themselves, in advance of their negotiations with Interior to insist that Interior structure the tract selection process so that tracts would be allocated at Interior's minimum price. Although the native corporations and Interior presumably would argue that Interior's involvement technically exempts the native corporations from antitrust liability since they were following procedures and policies established by a governmental entity,*/ those procedures violate the bid rigging prohibitions of antitrust policy and should be condemned by Congress.

The antitrust laws also require any company that controls an "essential facility" or a "strategic bottleneck"

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*/Note, however, that the native corporations might have insisted on these procedures during the negotiations and that it is not clear under what legal authority Interior set up this allocation procedure.

in a market to make access to that facility available to its competitors on fair and reasonable terms. Otter Tail Power Co. v. United States, 410 U.S. 366 (1973). The exchanges violate the policies underlying this doctrine since they will create a strategic bottleneck that will effectively prevent all oil companies that do not have native corporation partners from bidding on all leases in ANWR, not just on leases involved in the exchanges. This bottleneck will occur because the oil companies involved in the exchanges will be able to begin exploration activities as soon as ANWR is open to development, while oil companies not involved in the exchanges will have to wait to begin oil exploration until the federal oil leasing regime begins -- a time consuming process. By the time the ANWR tracts not involved in the exchanges are open to public bidding, the companies involved in the exchanges will have received such a competitive advantage from knowing the results of their earlier oil exploration that other oil companies will in all likelihood choose to withdraw from the bidding process.*/ Thus, a strategic bottleneck will be created unless the exchange participants agree to make their exploration data available to their competitors. Despite this bottleneck problem, the

*/Whether the essential facilities or the strategic bottleneck doctrine is technically violated will depend principally on (i) the definition of the relevant market and (ii) whether the exchanges will give the participants monopoly power against companies that did not take part in the exchanges.

exchange agreements currently provide that the exploration data which the native corporations are required to submit to Interior will be withheld from the public to the maximum extent possible under the Freedom of Information Act. Instead, Congress should require, at a minimum, release of all exploration data gathered as a result of the exchanges.

The Value Received by the Government

Bid rigging is prohibited because it prevents the government from receiving the fair market value of the asset which is or should be subject to bids. As expected, the procedures used in the exchanges resulted in serious undercompensation for the ANWR tracts involved in the exchanges.

First, as described above, the "tract identification" process eliminated competitive bidding. It ensured, as a result, that native corporations paid only the minimum price for each tract as established by Interior.

Second, because the exchanges transfer the subsurface rights in ANWR from the federal government to private corporations, the federal government will receive no royalties in oil and gas produced in the tracts. In contrast, if the land exchanges do not take place and the ANWR coastal plain lands are leased competitively in accordance with federal leasing law, the federal and Alaska state governments (which share royalty payments pursuant to the Alaska Statehood Act) will receive at least the 12.5 percent minimum royalty imposed by the MLA. Thus, they 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 the 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 payment from Texaco (after the exchanges are approved by Congress) in an amount approximately equal to the total consideration Old Harbor paid to Interior plus a 14 per cent royalty on production on Old Harbor's ANWR tracts plus a 1.5 percent royalty on all other production from tracts subsequently acquired by Texaco in the ANWR coastal plain. Texaco thus thought that 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.

Conclusion

The exchanges violate important antitrust policies and will result in significant losses of revenue to the federal government and the State of Alaska.

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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. <u>The Negotiations with the Native Corporations</u>

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, BP 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

answers q'n of Gibson

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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 <u>all</u> 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 14 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

rescission

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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 Kanuti 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, withstand~~s~~ even minimal scrutiny.

1. <u>The Environmental Value of the Inholdings</u>

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 <u>de minimis</u> 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 <u>same</u> 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

22(g)

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.

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:

DOI's not acquiring NPS lands wh. may be > vulnerable to development?

> "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 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 coast l 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.

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.

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 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) <u>Protection of the Native Corporations</u>

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 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

preview

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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.

United States Department of the Interior

FISH AND WILDLIFE SERVICE
1011 E. TUDOR RD.
ANCHORAGE, ALASKA 99503

TAKE PRIDE IN AMERICA

IN REPLY REFER TO:

ARD

SEP 15 1987

Mr. Kenneth Berlin
Winthrop, Stimson, Putnam, and Roberts
1155 Connecticut Avenue, N.W.
Washington, D.C. 20036

Dear Mr. Berlin:

As you requested in our telephone conversation of September 10, 1987, I am enclosing a summary of appraisal values for Native corporation inholdings located in national wildlife refuges in Alaska.

Please keep in mind that the properties described by the enclosure will not cross-walk directly to the properties included in the current exchange proposal. This reflects differences both in the size and configuration of appraisal tracts versus exchange proposal tracts. Also most of the appraisal figures were generated in 1985 and would require updating and appropriate revision in order to be current.

I hope the enclosure is responsive to your needs. Please let me know if we may be of further assistance.

Sincerely,

John H. Doebel
John H. Doebel
Associate Regional Director

Enclosure

cc: Sharon Allender

NATIVE CORPORATION APPRAISED VALUES

Refuge	Corporation	Acres	Total $	$/Acre
Nowitna	Doyon	139,393	9,554,910	69
	Dineega	12,124	1,278,795	105
	Doyon/Dineega	2,529	132,950	53
Kanuti	Doyon	244,835	16,570,090	68
	Evansville	15,562	984,050	63
	K'oyitl'ots'ina	68,186	4,910,050	72
	K'oyitl'ots'ina/ Doyon	1,440	108,000	75
Innoko	Doyon	387,823	22,386,580	58
	Gana-a 'Yoo	53,774	3,803,055	71
	Hee-yea-lingde	54,186	3,171,620	59
	Zho-Tse	18,100	1,181,250	65
	Doyon/Gana-a 'Yoo	7,971	629,890	79
	Doyon/Hee-yea-lingde	1,774	88,700	50
	Doyon/Zho-Tse	4,181	274,625	66
Kodiak	Larsen Bay	81,714	13,103,000	160
	Karluk	78,025	12,248,000	157
	Cemetery/Historic	4,880	1,412,000	289
	Koniag	164,619	26,763,000	163
	Akiok	103,487	21,843,000	211
	Kaguyak	87,242	19,193,000	220
	Old Harbor	35,099	7,422,000	211
Alaska Maritime	Old Harbor	61,991	2,460,940	40
	Aleut	32,850	1,360,000	41
Yukon Delta	Bethel Native Corp	58,101	3,196,000	55
	Nima	53,197	3,724,000	70
	Calista	712	46,000	65
	Nunakauiak-Yupik	27,172	2,113,000	78
	Tununrmiut-Rinit	58,135	4,770,000	82
	Chevak Company	32,165	2,370,000	74
	Sea Lion	33,870	2,989,000	88
	Paimiut	24,385	1,707,000	70
	Askinuk	32,185	2,560,000	80
Kenai	Point Possession	4,433	2,231,000	503
	Tyonek	32,938	14,000,000	425
	Cook Inlet Region	8,203	10,620,000	1,295
	Kenai Native Assoc.	18,775	13,985,000	745
	Salamatof	3,030	2,205,000	728

Alaska, U.S. May Lose In Oil Land Transfer

Study Cites 'Billions' in Potential Royalties

By Cass Peterson
Washington Post Staff Writer

An Interior Department proposal would result in a transfer of virtually all the best tracts in a prospective Alaska oil field to native groups backed by major oil companies, according to an analysis by Alaska mineral officials.

The analysis, prepared by the Alaska Division of Oil and Gas, concludes that the proposed land exchange in the Arctic National Wildlife Refuge could cost state and federal treasuries "billions of dollars" in foregone royalties if significant discoveries are made.

The document is likely to stoke a controversy over oil development in the arctic refuge, on the Beaufort Sea in extreme northeast Alaska. The analysis was provided to The Washington Post in advance of a hearing on the issue Tuesday by House Interior and Merchant Marine subcommittees.

The Interior Department recommended earlier this year that the arctic refuge be opened to oil development, contending that it is the best prospect for major new domestic supplies. Conservation groups are strongly opposed, arguing that development would irreparably damage the coastal refuge and its population of caribou, musk oxen and other arctic wildlife.

Congress has yet to determine whether the refuge should be leased or left untouched.

Nonetheless, the Interior Department proposed last summer to exchange 166,000 acres in the arctic refuge for 891,000 acres held by native corporations in other Alaska refuges. The native corporations, in turn, have arranged leasing contracts with major oil firms. The exchange was negotiated in secret last July, and it was put on hold after public disclosure raised an outcry.

Department officials maintain, however, that the proposed trade is fair. The department values the oil and gas tracts at $543.8 million, about the same as the wildlife refuge lands it would receive in exchange.

According to the department, the native groups selected 73 tracts, only 34 of them on potential oil and gas structures as defined by Interior Department geologists. More than 80 percent of the 1.53 million-acre refuge would still be available for competitive bidding, department officials said.

Alaska officials, analyzing the same data, said every one of the 73 tracts lies over a high-potential area. "The selection pattern and our independent mapping indicate that . . . *all* the best structures . . . have been selected already by the exchange participants," their assessment said. "To focus on the relative number of acres conveyed through exchanges, as DOI does, is very misleading."

The distribution of oil rights in the arctic refuge, should drilling be permitted, is of critical importance to Alaska. If the land is leased competitively under federal law, the state receives 90 percent of bonus bids and rental and royalty revenues. If the oil rights are transferred to native groups, the state gets nothing.

"The value of the royalty interest alone, should significant discoveries occur, potentially may be measured in the billions of dollars," the assessment said.

State officials said the contract arrangements between native groups and oil firms strongly suggest that the Interior Department has undervalued the tracts it is seeking to trade.

In its proposed contract with Texaco Inc., for example, the Old Harbor Native Corp. would receive $45.7 million in cash, exactly the value of its traded land. However, Old Harbor also would receive royalties of 14 percent on any oil production from its 58,000 acres of arctic refuge tracts and 1.5 percent on any other oil Texaco produces in the refuge, whether on Old Harbor tracts or not.

The Interior Department is seeking to limit royalties on federal leases in the arctic refuge to 12.5 percent.

The agreement between the Chevron and Phillips Petroleum companies and the Koniag Native Corp. provides for royalties of 20 percent, with provisions to convert that into as much as 40 percent of net profit. The Koniag group essentially selected one tract in the arctic refuge, about 3,200 acres, which Chevron/Phillips would lease for a payment up front of $58.[illegible] million.

REP. GEORGE MILLER
. . . calls analysis "deeply troubling"

The hefty price is considered significant because Chevron is the only oil firm with any concrete clue of what may lie beneath the tundra in the arctic refuge. It drilled a 15,000-foot exploratory well there two years ago, on land held by two native corporations, but has kept the results tightly under wraps.

Assistant Interior Secretary William P. Horn said he has not looked at the native corporations' contracts, but is confident that the department fairly estimated values in the arctic refuge.

"The models were set up to err on the upside, not on the downside," he said. "We feel pretty solid that the numbers are good."

But Rep. George Miller (D-Calif.), chairman of the House Interior subcommittee on water and power resources, said the state's analysis is "deeply troubling."

"At the same time we're being told that we need cutbacks of millions of dollars in programs for children and the elderly and the poor, we see the Department of the Interior engaged in the disposal of valuable resources in a manner that could cost the Treasury billions of dollars," he said.

The department has defended the proposed exchange as an "unequaled opportunity" to add high-quality wildlife habitat to the national refuge system. The native lands include brown bear habitat on Kodiak Island and waterfowl nesting areas in the Yukon Delta.

But critics contend that the refuges would still be vulnerable to development because native corporations would continue to hold mineral rights.

GAO United States
General Accounting Office

Seattle Regional Office

Room 1992, Jackson Federal
Building
915 Second Avenue
Seattle, WA 98174

February 1, 1988

Honorable Sam Cotten
Co-Chairman, House Resources Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811-0101

Dear Mr. Cotten:

As discussed with your staff by phone today, since October, 1987, the General Accounting Office (GAO) has had an on-going review of the proposed ANWR land exchange.

The review was requested on July 23, 1987, by Representative George Milller, Chairman, House Subcommittee on Water and Power Resources, Committee on Interior and Insular Affairs, and on August 7, 1987, by Senator James McClure, Ranking Minority Member, Senate Committee on Energy and Natural Resources. GAO's objectives are to address the questions asked in the two congressional requests. They include:

--Determine the legality of the currently proposed land exchanges.

--Assess the appropriateness of the factors the Department of Interior considered and the methodology it employed in the proposed land exchanges.

--Evaluate the baseline data used by the Department of Interior and the resulting computations to determine if the government's interests were adequately protected in arriving at the land values involved in the exchanges.

We anticipate completing our review and issuing a report about June 30, 1988. Thank you for your interest in GAO's current efforts and if I can be of any further assistance please contact me in Anchorage at 786-3306 or in Seattle, Washington at 206-442-5356.

Sincerely,

Steven N. Calvo

Steven N. Calvo
Evaluator-In-Charge
U.S. General Accounting Office

THE PROPOSED LAND TRADES

In Congress:

- The trades have met with little approval. Key congressmen and senators have announced opposition to the trades, including the Chairman of the Senate Energy Committee and the House Water and Power Resources Subcommittee. Congressional opposition was first noticed in August 1986 when eleven key senators wrote the Interior Department asking that the trades be ended.

- The trades have distracted Congress. The General Accounting Office and Congressional Research Service are conducting investigations of the trades. The trades have caused controversy and prevented focusing on the main issue of opening the coastal plain.

- The trades are being actively lobbied by support groups. Soon after the trade agreements were concluded last fall, ANCSA corporations and oil companies began strong lobbying efforts on Capitol Hill. The State of Alaska has tried to oppose the trade proposals but has focused most of its concern on opening the coastal plain.

- The trades must be dropped entirely for Congress to act on coastal plain legislation. The House of Representatives will use the existence of the trade proposals to avoid addressing the main issue of opening the coastal plain. Unless the trades are dropped or postponed until after Congress acts on coastal plain legislation, proponents will continue to preoccupy Congress with the trade issue.

State interests:

- The trades promote private interests at public expense. The trades are a noncompetitive disposal of potentially valuable public assets. By avoiding the usual lease sale process, the Interior Department deprives the United States Treasury and the State of Alaska of hundreds of millions or billions of dollars.

- The trades could virtually eliminate any return to the State of Alaska from ANWR oil and gas activity. If the trades occur, select oil companies and ANCSA corporations will gain a preview of the subsurface before federal leasing of adjacent lands. If the trade tracts prove dry, there will be substantially less competition at ensuing lease sales on adjacent acreage.

- The State is in an ideal situation without the trades. Under existing law the State should receive 90% of the proceeds from federal oil and gas leasing, including lease sale bonuses. (This might be reduced to 50% by Congress.) Thus the State will receive at least 50% of the federal revenue on all lease tracts in the coastal plain. To endorse the trades it would have to agree that this entitlement should be reduced to zero on trade tracts.

- The trades affect excellent acreage. The State and industry representatives indicate that the trade lands encompass at least 45-50% of the oil and gas potential of the coastal plain. The tracts are scattered across numerous structures throughout the coastal plain. Several major oil companies (not participating in the trades) oppose the trades because they affect such good acreage and may prevent full and free leasing competition on the coastal plain.

- Alaskans have a basic economic interest in averting the trades. The trades threaten hundreds of millions or billions of dollars of state revenue. Half of the bonus and royalty revenue would go to the Permanent Fund. If the trades occur, permanent fund dividend checks will be hundreds or thousands of dollars lower (1).

- The State withdrew from the trades for three reasons: 1) they made the ANWR issue more complex; 2) the trades do not protect Alaska's interests; and 3) the trade proposal was premature, before Congress acts on coastal plain legislation.

- The State should not become involved in the trades now. None of the state's concerns have been resolved. Other interests (some having better subsurface information) have gained control of the best coastal plain trade acreage. The State should continue to fight to retain the existing 50-90% entitlement in all tracts, rather than foresake interest in many tracts for control over a few.

Legal issues:

- The trades have been challenged in federal court for subverting the intent of the Alaska Lands Act and the National Environmental Policy Act.

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1 - The Interior Department released and then withdrew a "state revenue analysis" purported to show how the State actually would benefit from the trades. This "state revenue analysis" has only recently become available and has not yet been fully analyzed, but shows serious deficiencies.

- An opinion prepared for Mobil Oil states that the trades contradict the Alaska Lands Act and seventy years of federal oil leasing law and policy.

- The State of Alaska clearly has sovereign and revenue interests that are not protected in the trades. There may be grounds for the State to oppose the trades in court.

<u>Other issues:</u>

- <u>The refuges can be protected in other ways.</u> Key senators and congressmen have proposed buying refuge inholdings with some portion of the federal receipts from coastal plain oil and gas leasing.

- <u>The trade process has been secretive and exclusive.</u> The newspapers, state documents, and the response in Congress reflect the secretiveness and exclusiveness of the trade process, which seems to have been preconceived to benefit some interest groups at the expense of others.

- <u>The pressure for State involvement is intended to reduce opposition to the trades.</u> If the State returns to the bargaining table, the Interior Department trade process will gain new credibility.

January 27, 1988

Estimated Reserves Anticipated From ANWR
Acreage Involved With The Native Corporations
Land Swaps

— excludes KIC.
— divides into the prospective structures
— doesn't inc. bonuses.

A conservative estimate indicates that the reserves likely to be recovered from the ANWR acreage involved in the current land swaps between the Department of Interior and the Native Corporations range from 500 million to 1.5 billion barrels.* Anticipated total revenue from the production and sale of these reserves, beginning in the late 1990s, would likely be 15 billion to 45 billion dollars, assuming a conservative crude price of approximately [illegible] dollars per barrel. An assumed royalty of 1/6 of the revenues would produce royalty amounts ranging from 2 1/2 billion to as high as 7 1/2 billion dollars.

Under current law the State of Alaska is entitled to [illegible] of these amounts. This would produce a total revenue to the State ranging from 2.[illegible] billion dollars to in excess of [illegible] billion dollars.

The proposed land swaps will deprive the State of Alaska of its [illegible] share of [illegible] of the anticipated [illegible] prospects in ANWR because of the [illegible] interests by the DOI under the [illegible] approximately 42 1/2% of the [illegible]

This represents, assuming a state population of [illegible] a loss of direct revenue per person [illegible] $16,250 which would otherwise [illegible]

* DOI has estimated that the reserves could range from [illegible] to [illegible] billion barrels with an outside high of [illegible] billion. Clearly if these estimates prove correct, the [illegible] set forth hereafter will increase in direct relation to the increase in recoverable reserves.

— Mobil's analysis of data – projections of risk/production – what Mobil can reasonably expect. —

TESTIMONY OF REP. SAM COTTEN
Co-Chair, Resources Committee
Alaska State House

Before the House Committees
on Interior and Insular Affairs and
Merchant Marine and Fisheries

November 17, 1987

Mr. Chairman, and members of both committees, I appreciate this opportunity to address you on the issue of oil and gas exploration and development in the coastal plain of the Arctic National Wildlife Refuge.

This issue is important to Alaska. In my lifetime our economy has never seen such hard times and we are interested in every sensible economic opportunity that comes along.

On the other hand, we are proud of our environment and our heritage, and we recognize the national importance of the Arctic Refuge. We might have the chance to bolster national security, reduce our dependence on foreign oil, and bring in some important jobs and revenue for the State of Alaska and the nation, but we <u>must</u> take care in doing so.

Today, while oil seems to be in plentiful supply, we can take a measured approach to oil and gas leasing in the coastal plain.

Last spring my state legislative committee heard many hours of testimony on issues in the coastal plain debate. I will cover those issues in my written testimony, which I would ask permission to submit for the record, and will summarize them for you today.

Environmental Protection

With due respect for Chairman Udall, whose strong interest in the management of federal lands in Alaska I respect, I do not believe that the Congress should designate the coastal plain into the National Wilderness Preservation System. The oil and gas resource potential of the area is so high that it should, in the national interest, be tested.

Like Chairman Udall, I recognize the national importance of the environmental resources of the coastal plain. The air and water are clean and should be protected. The habitat value of the coastal plain is very high, especially for some Arctic species that need broad ranges for survival -- polar bear, caribou, wolf, and musk ox in particular.

The industry and its state and federal regulators have learned a lot at Prudhoe Bay and other North Slope fields. The record at Prudhoe is not spotless, but it is generally very good. And it serves as a valuable predicate for oil and gas exploration and development on the coastal plain.

I believe that there should be high standards for environmental protection in the Arctic Refuge, based on North Slope experience to date. Roads and facilities should be kept to a minimum and carefully planned and located. Wastes should be managed to prevent long-term degradation of the Refuge. Rehabilitation and reclamation standards should be high. Monitoring and enforcement should be provided for from the beginning, in ways that assure full cooperation among the state, local, and federal governments and the industry.

Some might object to the imposition of these standards by Congress. But if the coastal plain is rich in oil and gas, as many experts believe could be the case, we will be able to afford to protect its other important resources in the event of oil and gas development.

<u>Revenue Entitlements</u>

The State of Alaska, like other western states, receives the benefit of 90% of federal receipts from oil and gas activity on federal lands. Congress is considering reducing the State of Alaska's share to 50% on the coastal plain.

Obviously, as an Alaskan, I must object to such treatment. The 90% 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 chooses 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 inholdings, facility construction, and new access.

Resident hire

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.

There's a history in our state of drawing transient labor for our major projects. While the residents provide services and facilities for tens of thousands of workers, many of the payroll dollars are spent in other states. The boom and bust cycle that has so characterized our history could be somewhat dampened if the Congress were to require resident hire on oil and gas exploration and development in the coastal plain.

My understanding, gained from constitutional scholars, is that Congress alone has the authority to impose such conditions, in the form of federal legislation. I hope that the committees will do so.

Land trades

I am pleased that the committees have chosen not to address the proposed land trades at this time. If the Congress decides to make the coastal plain available for oil and gas leasing, the land trade issue deserves thorough review, subsequent to the larger decision. Suffice it to say for now that the trades have stirred a lot of controversy and might not serve the state and national interests at all.

Exploration only?

I have heard about proposals that would allow only exploration -- perhaps just a few exploratory wells -- in the coastal plain.

State, industry, and federal geologists agree that the area's subsurface is so complicated, and the potential is so high, that such limited exploration could be entirely inadequate. We might not learn very much from just a few wells.

Also, by separating the exploration and development phases, the federal government might forsake large amounts of bonus and royalty revenue. I don't know of a leasing scenario which could provide for both exploration-only and rights to develop. Both are necessary to provide for full and free competition when the rights are offered. In this case full and free competition is likely to increase the landowner's receipts.

Summary

Mr. Chairman, and committee members, thank you again for listening to some of our concerns as Alaskans. In most cases you'll find that our interests coincide with yours: we want to assure the nation's energy security; we want to see that any coastal plain oil and gas activity is carefully conducted; and we want benefits to accrue equitably to the nation and the sovereign state of Alaska. I look forward to answering any questions from the committee.

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

November 4, 1987

The Hon. Sam Cotten
Co-Chairman, Resources Committee
Alaska House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Mr. Cotten:

On November 17, 1987, the Subcommittee on Water and Power Resources, Committee on Interior and Insular Affairs, together with the Subcommittee on Fisheries and Wildlife Conservation and the Environment, Committee on Merchant Marine and Fisheries, will hold a joint oversight hearing on the Arctic National Wildlife Refuge (ANWR).

The focus of this hearing will be Alaskan perspectives on the Secretary of the Interior's report and recommendations for oil and gas development of the coastal plain of ANWR.

On behalf of Chairman Gerry E. Studds and myself, we extend you the invitation to provide testimony at this special hearing.

The hearing will begin at 2:00 p.m. and will be held in 1334 Longworth House Office Building. Please delivery 100 copies of your written statement to 1522 Longworth no later than 24 hours prior to the hearing.

We look forward to exploring this important subject with you on November 17. In the meantime, if you have any questions, please contact Jeff Petrich at 202-225-6042.

Sincerely yours,

George Miller

GEORGE MILLER, Chairman
Subcommittee on Water and Power Resources

Alaska State Legislature

Senate Resources Committee

Sen. John B. (Jack) Coghill, Chairman
Sen. Paul Fischer, Vice-Chairman
Sen. Lloyd Jones
Sen. Arliss Sturgulewski
Sen. Jim Duncan
Sen. Fred Zharoff
Sen. Dick Eliason

Box V
Juneau, Alaska 99811
(907) 465-4907

Coghill → Cotten 11/87

November 19, 1987

The Honorable Sam Cotten
Alaska House of Representatives
P.O. Box 296
Eagle River, AK 99577

Dear Representative Cotten:

I have recently received your memorandum to Senator Faiks regarding "ANWR land trades." It's very interesting reading, especially the attached information from the Division of Oil and Gas. The information just goes to show you the State should have been in there knocking out a land trade also. Perhaps all the parties interested in ANWR could have come out as happy as the parties in the recent Eklutna exchange.

I don't want to belabor the apparent misunderstandings your memo seems to indicate, but perhaps it was the House that failed to take action on ANWR. It's my understanding that your Resource Committee held numerous ANWR hearings. Just because the Senate was able to pass an ANWR resolution to the House, is not a reason to conclude there was no legislative action.

As far as I know, SJR 7 had no magic restrictions preventing the House from exercising its independent process. If your committee had of been able to move any ANWR resolution through the House to the Senate, then the ball would have been in our court to concur or not. If that had taken place and we still had no joint action, then I think the accusations in your memo regarding Senate leadership might have held a little water. My understanding is that you wouldn't hear SJR 7 in your committee.

Regarding the land trades language in SJR 7, I must remind you that the Senate only endorsed the "principle" of the exchanges. You have to agree that section 1302 of ANILCA gives the Secretary of Interior the authority to do exactly what has occurred. I still find it disturbing that the State has not been involved in this exchange process. In my opinion, the Senate took action on "a strong ANWR resolution"; I hope you'll be able to take action as well.

Sincerely,

Jack

Senator John B. (Jack) Coghill

cc: Members of the Alaska Legislature

Alaska State Legislature

SENATOR
ARLISS STURGULEWSKI
Chairman, Senate Community and Regional Affairs Committee
Vice-Chairman, Senate Judiciary Committee
Member, Senate Resources Committee

2957 SHELDON JACKSON STREET
ANCHORAGE, ALASKA 99508

While in Juneau
P. O. BOX V
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Senate

TO: Senator Jack Coghill
Chairman, Senate Resources Committee

January 25, 1988

FROM: Senator Arliss Sturgulewski

RE: Arctic National Wildlife Refuge Report

As you are aware, I am strongly supportive of opening ANWR to environmentally responsible oil development and I am the prime sponsor of SJR 7 which urges Congress to do so.

As such, I thank you for the opportunity to comment on your proposed report on the Arctic National Wildlife Refuge. Though I have a number of minor concerns, I will limit my comments to one substantive area.

The report gives an unqualified endorsement to the ANWR land trades <u>as they are currently proposed</u>. The final conclusion in the Land Exchange section of your report says, "After all the oil and gas in Alaska has been pursued developed and consumed, this value-for-value exchange effort could stand as a lasting testimony to our commitment, wisdom and foresight on behalf of future generations."

I am not an opponent of the concept of land trades, particularly if the state is involved in the trades. The exchanges as now proposed, however, raise far too many serious questions for me to be able to endorse the report without qualification unless it addresses all major issues. This is particularly true in light of new information presented by the Department of Natural Resources and the Federal Office of Management and Budget since the Senate Resource Committee hearings.

In particular, the report consistently refers to the exchanges as "value-for-value" exchanges and exchanging "land titles of equal value". The report lists negotiated values for native lands, however, it omits the D.O.I. appraised values for these same lands. The appraised values are less than one quarter of the negotiated values ($118.9 million vs. $538.7 million).

The report also lists values for Native corporation nominated ANWR tracts. These values exactly match the negotiated values of offered native lands, but based on what is known of existing contracts between the participating Native corporations and oil companies, the values appear substantially low.

The values provided in the report combine to present a picture that is less than complete. This problem is compounded by the inclusion of a map that shows tract nominations and D.O.I. identified deep prospects, but does not show more promising shallow structures identified in later information and which correspond closely to Native tract nominations.

The report quotes a spokesperson of the Native Lands Group saying, "Native involvement will broaden the supportive constituencies within the Democratic Congress." I believe this is true _if_ there is a perception that the trades are fair and serve a legitimate public purpose.

Because there is a growing perception, however, that the land trades are not in the state's or the nation's best interest, many people are reevaluating their commitment to the trades. In fact, in the text of the report, contrary to its conclusions or executive summary, there is an admission that, "...any tactical or real advantage to these exchanges has been negated."

I am concerned that if the Senate Resources Committee goes on the record strongly in support of the land trades, without fully considering and including all the facts, we may actually hurt the effort to open ANWR by this report.

Opening ANWR remains my overriding goal. For this reason I hope you will carefully review all the information that has become available since our subcommittee hearings and include the new information in your report as well as correcting other drafting problems.

Alaska State Legislature

SENATE

Office of the President

P.O. Box V
State Capitol
Juneau, Alaska 99811

November 27, 1987

MEMORANDUM

TO: Representative Sam Cotten, Co-Chairman
House Resources Committee

FROM: Senator Jan Faiks
President of the Senate

Jan Faiks

SUBJECT: Senate Joint Resolution 7

Thank you for the opportunity to again state the Senate's full support for oil and gas exploration, development, and production in the Coastal Plain of the Arctic National Wildlife Refuge (ANWR). Please be assured that I share your disappointment at the Alaska House of Representatives' failure to pass any form of a resolution supporting oil and gas leasing in the Coastal Plain of ANWR during the five months the Legislature was in session this year.

In your November 13 memorandum you stated that SJR 7 endorses the proposed land trades, and that this was the reason for the failure of the House to act on the resolution. In fact, SJR 7 does not address any of the proposed land exchanges, it only "supports the principle of value-for-value exchange."

You also stated that the proposed land trades have stalled discussion on ANWR in the U.S. Congress. Yet almost everyone I have spoken with who has been working in support of leasing in the Coastal Plain feels that Congress has entered into serious discussions on ANWR sooner than predicted.

You have requested that the Senate reconsider the language in SJR 7 so that a strong ANWR resolution can be passed early next session. At this point, I believe that the best approach would be for the House Resources Committee to pass what it considers to be an acceptable version of SJR 7. Then, assuming that the resolution passes the full House of

Representatives, the Senate would have the opportunity to concur with any House amendments. Should the Senate not concur with any House amendments SJR 7 would then go before a conference committee.

Your interest in expediting the passage of a strong ANWR resolution as early as possible next session is certainly encouraging. The Senate stands willing to work with the House of Representatives through the conference committee process to resolve differences in the wording of SJR 7.

cc: All legislators

Enclosure

REPRESENTATIVE
SAM COTTEN
DISTRICT 15

P.O. BOX 296, EAGLE RIVER, AK 99577
POUCH V, JUNEAU, AK 99811

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

M E M O R A N D U M

TO: The Hon. Jan Faiks
President, Alaska State Senate
FROM: Rep. Sam Cotten SC
DATE: November 13, 1987
SUBJECT: ANWR land trades

Last session the Legislature failed to pass a resolution supporting oil and gas leasing in the coastal plain of the Arctic Refuge for one reason: the leadership of the State Senate insisted that the resolution include language endorsing coastal plain land trades proposed by the Interior Department and several ANCSA corporations. When the Senate passed SJR 7 ten days before the end of the legislative session, it intended to force acceptance of the land trades as part of the legislative resolution. Senate leaders told me that they would not accept a resolution lacking the Senate's land trade language.

I believed then, and believe even more strongly now, that the proposed land trades could do enormous violence to the general interests of the people of the State of Alaska, even though they might benefit oil companies and the involved ANCSA corporations. I also believe, despite the arguments to the contrary last session, that the proposed trades have diverted and stalled discussion of the larger issue before the U.S. Congress. They certainly have not smoothed the progress of coastal plain legislation on Capitol Hill. In fact influential U.S. representatives and senators have told the Interior Department to hold off on further trade actions and have requested an investigation of the trades by the General Accounting Office. Fortunately the trades are inactive at present, despite expensive lobbying activity by some ANCSA corporations in Washington. (Notably the Anchorage Public Policy Forum was not able to come up with a proponent of the trades for a public meeting last week. I understand from APPF that state senators who had included the pro-trade language in SJR 7 were not willing to speak on the issue, and ANCSA corporations were unwilling to have a representative defend the trades at the meeting.)

In addition to their effects in Washington, there are numerous substantive arguments against the trades, especially if the concerns of Alaska's public are considered. The trades could eliminate hundreds of millions of dollars of bonus and royalty revenue for the people of Alaska, including the Alaska Permanent Fund. They have been conducted secretly and without market tests that might assure that the federal government is receiving a fair return on the disposal of public assets. They could threaten future leasing on nearby state and federal acreage. State geologists believe that the trades include the best oil and gas land in the coastal plain, perhaps worth more than the remaining land. At this point the benefits of the trades are restricted to a few oil companies and ANCSA corporations; they include no provisions for any revenue return to the State from royalties or bonuses, and I understand that there are no revenue-sharing provisions for ANCSA corporations not directly participating. The enclosed critique of the trades by the State of Alaska gives more detail on some of the problems posed by the trades. My staff has also prepared an analysis of them that I would be pleased to share with you and other members of the Senate.

I know that the Senate majority endorsed the trades last year in SJR 7. Yet it seems incomprehensible that any Alaska public policymaker would continue to hold this position in light of the many revelations this summer. I hope that you and other senators will reconsider the language in SJR 7, as passed last year, so that we may pass a strong ANWR resolution early in the coming session.

cc: All senators
    All representatives

Enclosure

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

The Department of the Interior (DOI) has tentatively agreed to exchange the subsurface rights to certain tracts within the Coastal Plain of the Arctic National Wildlife Refuge (ANWR) for the surface estate of certain Native Corporation inholdings from other federal refuges within Alaska. The methodology which DOI apparently employed in estimating the value of the oil and gas estate within ANWR is inadequate for that purpose, and its application under the circumstances is technically unsound. As a result, the individual tract values which DOI assigned to the ANWR lands are unlikely to approximate those that would result from a competitive auction. In fact, the actual value of those resources is currently unknown, and it could only be estimated with reasonable accuracy after the drilling, testing and production of numerous wells within ANWR.

In order to understand the inadequacies of DOI's appraisals, one must first recognize the distinction between oil and gas reserves analysis and oil and gas resource analysis. This distinction is crucial because DOI apparently has used a hybrid, poorly documented resource analysis procedure ostensibly to generate estimated values which, in fact, could only be estimated from a more sophisticated reserves analysis.

This review focuses primarily on the deficiencies of DOI's assessment of the potential amount and value of oil and gas underlying the proposed exchange lands. However, in addition to the uncertainties as to the actual volume of oil and gas which may be discovered in ANWR, there are equally critical uncertainties surrounding future price and cost estimates to develop those discoveries. The interplay of each of these factors--all of which are now highly speculative--will significantly influence the estimated values of the proposed exchange tracts.

Reserves evaluation is conducted only after the discovery and delineation of oil and gas deposits within a field. Reserve evaluation relies upon objective data gathered from the completion and testing of wells, its results are highly reliable and they are reproducible by independent analysts. On the other hand, oil and gas resource evaluation of prospective areas such as the Coastal Plain of ANWR usually is conducted before any wells are drilled. It is an iterative, probabalistic computer-assisted modelling procedure which relies upon numerous subjective estimates of potential reservoir characteristics. These subjective estimates generate a probability distribution of potential "outcomes" from hypothetical drilling. These "outcomes" are expressed as anticipated amounts of hydrocarbons associated with corresponding probabilities of occurrence.

These resource estimates are based on subjective assertions about possible geophysical and geological characteristics (parameters) of a particular region such as ANWR. The computer model specifies a method of sampling from pre-specified probability distributions of these characteristics. This sampling generates a joint probability distribution of reservoir characteristics. The correct combination of characteristics results in a simulated hydrocarbon discovery. Other combinations generate a simulated dry hole. Thousands of passes through the probability distributions for each parameter result in the probability distribution of potential resource values. But note, the range of potential outcomes is dependent upon the subjectively determined range of values for each individual reservoir characteristic. Thus, resource estimates represent the "best guess" of both men and model as to the likely distribution and value of oil and gas resources. The accuracy of the "best guess" will be strongly influenced by the quality and quantity of available data. In the final analysis, only drilling will verify the estimates.

Both reserves analysis and resource analysis have particular applications, and each has its own unique limitations. Obviously, the purposes for which each is used are determined, among other things, by both the relative availability of objective geological, engineering and economic data and the degree of certainty which the analyst (usually an investor in the case of reserves analysis and a bidder in the case of resource analysis) is trying to achieve. Investors routinely rely upon detailed reserves analysis of a delineated oil and gas field to loan money to develop the field's reserves. The same reliance should never be placed on resource estimates.

Resource analyses typically are used by petroleum exploration companies as a management decision tool to compare the relative prospectiveness of frontier areas to assist in directing the companies' future exploration efforts. A much more sophisticated but similar modelling approach is used to estimate tract values for bidding purposes. The Minerals Management Service, the State of Alaska and the Bureau of Land Management also conduct independent resource analyses before competitive oil and gas lease sales on lands which they manage. These analyses serve two important functions. First, they provide some indication of the relative prospectiveness of each potential subsurface trap identified within an area proposed for leasing. Secondly, and of greater utility, they provide ranges of estimated tract values which are used to set bidding terms and establish minimum acceptable bonus bids.

The calculated minimum bid for each tract is used as a benchmark after the sale for determining whether to accept or reject the highest bonus bid submitted for each lease. The calculation of each tract's minimum bonus bid before a sale is a modelling exercise which relies upon the manipulation of many highly subjective values. In recognition of this fact, the numbers are not treated by government agencies as absolutes in deciding whether or not to accept the apparent high bids.

Although one can speculate about the range of values which a lease may have, the actual value of a given lease cannot be accurately estimated until the lease area has been thoroughly explored by the drilling and testing of exploratory wells. For each productive lease, the number of wells required to delineate adequately the underlying reserves and to accurately estimate their value is dependent upon the geological and economic characteristics unique to that lease. It is for this reason that the minimum bid for each competitively offered lease is not considered to represent the actual value of the resources beneath the lease. It is simply one estimate based upon the then available information. In competitive leasing, the failure of a particular lease to attract the precalculated minimum bid simply means that additional considerations will be evaluated before a decision is made whether to award the lease or to reoffer it at a later date.

The determination that "fair market value" is being received in any competitive leasing program which relies upon resource analysis presumes that public value is measured by more than the bonus bids offered. In fact, resource analysis presumes that value received by the lessor may consist of future rentals, royalties and taxes in addition to the advance bonuses received from lessees for the right to explore and develop a lease. In many cases, high bonus bids are received for tracts which subsequently are found to be nonproductive; in others, relatively low bids may win leases which ultimately prove to be highly productive, and thus extremely valuable. This fact in itself illustrates the highly speculative nature of any analysis prior to drilling. To reiterate a point made earlier, "best guesses" are just that.

Under real world competitive circumstances, bonus bids represent a percentage of the firm's estimate of the net economic value of the lease (or economic rent). The percentage that the bonus represents will vary according to the firm's perception of the geological and economic risks attendant to the lease, as well as its assessment of the potential competition for the lease. This net economic value is a residual after all costs (including taxes and royalties) have been deducted from potential revenues and the net revenue has been discounted by a "risk adjusted" discount rate representing a normal rate of profit. The firm's potential net revenues are estimated by a procedure analagous to resource analysis.

Given the subjective nature of the resource evaluation process, either too much or too little is paid for a particular lease but, on average, the competitive process transfers the net economic value to the lessor. In the long-run, negative and positive windfalls should tend to offset one another.

In theory, the net result when numerous competitive sales are conducted over time is that fair market value is received for the leasing of the public resource. Competitive leasing can thus proceed in the face of the relative uncertainty surrounding resource estimates because, on average, the future royalty and tax "windfall" revenues from unanticipated exploration successes or from discoveries which far exceed pre-leasing expectations will tend to compensate for the anticipated royalties and taxes which never materialize from estimated highly prospective leases that turn out to be dry.

There is only one certainty with subsurface resource analysis--it can never accurately estimate before leasing and drilling the present value of the combined future bonuses, rentals, royalties and taxes which may be produced from a discovery on a lease tract. The wide variance in bids for a particular tract in a lease sale offers further evidence of this estimating problem. Yet, using methodology designed for resource analysis and relying upon data insufficient for the task, DOI claims to have calculated a value of each ANWR tract which it proposes to exchange, and that this value is an accurate estimate of that tract's value. As the previous discussion indicates, this is highly unlikely. In fact, its evaluation is inadequate as an accurate present value estimate. However, just as important for the reasons described below, its utility as a responsible resource analysis also is largely discredited.

The geophysical data used to map the structures described in DOI's 1002 report constitute a reconnaissance grid which averages approximately three miles by six miles. Such a large grid size, when combined with the lack of well data control and the extremely complex geologic characteristics of ANWR, virtually guarantees that many potential oil and gas traps of significant size may not be recognized, while others will be so poorly defined that their dimensions and geometry will be misinterpreted. Far more detailed data would be required to define accurately the potential subsurface traps within the Coastal Plain of ANWR.

Amauligak, Gulf Canada's recently announced discovery in the Canadian Beaufort Sea, is approximately twenty-one square miles in area. That discovery, which contains an estimated 850 million barrels of recoverable oil, provides an excellent example of the problems associated with relying on a regional seismic reconnaissance grid and inadequate geological data to predict the value of ANWR tracts. Were that field located in the Coastal Plain of ANWR, it would be entirely fortuitous to recognize its existence, much less to define its limits accurately with the existing data. If a deposit this size--a giant oil field by world standards--cannot be detected or accurately mapped, it should be obvious that the tracts overlying it cannot be appraised accurately.

DOI undoubtedly failed to accurately estimate the value of those tracts where subsurface traps exist but cannot be identified from the existing data. However, in addition, it clearly failed to map numerous structures which can be identified from the reconnaissance data available. According to DOI's press release describing the July 1987 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 highest potential targets) have either been exchanged or selected for exchange.

It is clear from the selection pattern and our independent mapping of the geophysical data that the tops (structurally highest and most prospective portions) of all the best structures, including the very large prospects numbers 18 and 19 (from the 1002 study), as well as the numerous prospects aligned along the Marsh Creek trend, have been selected as a result of the ASRC and latest exchanges. This is precisely the same result that would be expected to occur if the Coastal Plain acreage were made available for competitive bidding and exploration by well-informed bidders.

Many of the structures which we have identified involve the relatively shallow Tertiary sediments, which apparently either were not mapped in detail or completely analyzed by DOI. These structures involve sedimentary rocks which are the same age as those which produce the oil-stained outcrops along the flanks of the famous Marsh Creek anticline, the prominent surface structure which first attracted petroleum explorationists to ANWR. The selection of the overlying tracts by the Native Corporations and their industry partners indicates that they have recognized and mapped the underlying structures, and that they must have high regards for their oil and gas potential.

DOI concluded further that "...503 (85.5%) tracts not identified remain available for a federal leasing program and include 87.7% of the tracts over mapped structures." For the reasons described in the preceding paragraph, this is simply not the case. The fact that DOI apparently failed to identify the potential traps beneath many of the tracts which they propose to exchange does not alter the fact that they exist. The Tertiary structures obviously have some real value even though DOI has failed to map them in detail and to attribute proper value to them.

DOI dramatically downplays the potential detrimental effects of proceeding with the proposed exchanges in the absence of objective and independently reproducible determinations of the actual value for each tract. For DOI to claim, as it does in its press release, that "...these latest selections only represent a small (10.8%) percentage of the entire 1002 area." is disingenuous in the extreme. In fact, based upon our subsurface mapping, these selections, when considered in combination with the 1983 ASRC land exchange, would result in the noncompetitive conveyance of more than 250,000 of the most prospective acres within the Coastal Plain of ANWR. This amount represents approximately 18 percent of the entire Coastal Plain of ANWR.

To focus on the relative number of acres conveyed through exchanges as DOI does, however, 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 selections could effectively result in the exchange of all of the area's potential oil and gas reserves. The potential effect of a fortuitous selection involving a relatively small area is demonstrated by the Prudhoe Bay Field.

Although the entire area surrounding the Prudhoe Bay structure was recognized to be highly prospective before the first exploratory well was drilled, we now know that the vast majority of the prolific oil and gas reserves in that region are confined to a surprisingly small area. In fact, the surface area above the main producing reservoir of the giant Prudhoe Bay Field encompasses only about 150,000 acres. Fifty-nine percent of the reservoir's recoverable oil (5.9 billion barrels) lies beneath just 40,000 acres in that field, and fully 94% of the recoverable oil (9.4 billion barrels) lies beneath the best 100,000 acres of the field.

Among the millions of acres of state-owned lands between the Canning and the Colville Rivers, this particular 150,000 acres is uniquely valuable. DOI cannot assure the public that it has not already exchanged the subsurface rights to equally valuable lands within ANWR to the Arctic Slope Regional Corporation. Similarly, DOI can offer no guarantees that the proposed exchanges will not potentially transfer billions of dollars in oil and gas reserves to other Native Corporations and their industry partners in return for 891,000 acres of surface estate with an estimated value of $538.7 million (not based upon fair market value appraisals).

The details of one particular exchange contract, that between Old Harbor and its industry partner, Texaco, illustrate quite clearly that the corporations will receive substantially more from the exploration of the tracts which they selected than DOI has claimed those lands to be worth. In this example, the total value of the corporation's exchange lands, and thus the value of the ANWR tracts it selected, was placed at $45.7 million by DOI. Yet, if ANWR is opened, the corporation's industry partner is committed to pay $45.7 million plus a 14 percent royalty on any oil and gas produced from those lands.

The DOI exchange procedures apparently neither estimate nor acknowledge the value of that 14 percent royalty interest. Whatever the amount may ultimately be, it would accrue directly to the corporation shareholders instead of to the federal (and/or state) treasury, as would be the case if the tracts were leased competitively. Furthermore, Texaco has agreed to pay Old Harbor a 1 1/2 percent royalty on any leased lands in the Coastal Plain not owned by Old Harbor.

In relative terms, the proposed land exchanges provide almost absolute economic protection for the Native Corporations with no parallel protection for the federal government. In fact, the exchange contract provisions virtually assure that any loss for DOI (and the public) will be a windfall for the corporations and their industry partners. In the final analysis, the exchanges are a no-loss proposition for the corporations, and a no-win situation for the public. Economic and geological risk has been transferred to the taxpaying public and a few select oil companies.

For example, one of the exchange contracts currently contains a rescission clause which enables the 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. In light of the total uncertainty surrounding whether the ANWR lands have oil and gas reserves, this provision was created to enable the corporations to regain title to a portion of their former surface inholdings should exploration by their industry partners prove unsuccessful.

However, if as has been reported, each of the corporations has already received advance cash payments from its respective industry partner for the future right to explore and develop the lands which it has selected, the corporations bear little or no risk in the exchanges. Their risk is offset effectively by the cash advances from industry. Moreover, this protection is further enhanced for any corporation that insists upon a rescission clause if its ANWR selections are nonproductive.

Under the same circumstances, however, the public interest will not fare so well. 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. The stated basis for its proposed exchange literally will disappear. Meanwhile, DOI will have foregone the undoubtedly high bonus bids, rentals and royalties which it could have received had it competitively leased the ANWR lands instead of exchanging them under noncompetitive procedures.

Of equal importance, should exploration prove unsuccessful, DOI will have assured the early condemnation of adjacent unleased acreage by allowing expedited drilling of the exchanged lands, all of which overlie portions of prospective subsurface structures. The absolute revenue loss from the premature condemnation of surrounding unleased acreage cannot be calculated should one or more of the exchange tracts prove to be dry. However, given ANWR's perceived hydrocarbon potential, the foregone bonus revenues, alone, could amount to hundreds of millions of dollars. Whatever that loss ultimately might be, it would not be industry's loss, and it would not be the Native Corporations' loss--it would be the public's loss. There is no effective way to limit the potential public revenue loss from the early condemnation of unleased tracts by drilling on adjacent exchange lands short of prohibiting the drilling of any additional exploratory wells in ANWR before competitive leasing occurs.

To assure that the corporations receive the full value of their inholdings, but that neither they nor their industry partners benefit from windfalls at public expense, would necessitate limiting total revenues to the full appraised value of those surface inholdings. From a public perspective it would make sense to limit the corporation's future revenues from its ANWR subsurface rights to the appraised value of its exchanged inholdings (plus interest) minus the cash advance it has received from its industry partner. Once the full appraised value (plus interest) of its surface lands is recouped, the corporation's interest in the subsurface estate would revert to the federal government, and the corporation's former percentage revenue share would subsequently accrue to DOI as a royalty on the continuing production.

A combined strategy of prohibiting additional drilling until after competitive leasing has occurred and limiting the Native Corporations' future revenues from exchanges to the appraised value of their surface inholdings would minimize the loss of public revenue. However, it would not remedy the worst flaw of the proposed exchanges, the fact that they simply are bad public policy. Proceeding with the exchanges would ratify DOI's precedent of substituting noncompetitive, negotiated exchanges which favor only a few companies and Native Corporations for open competitive leasing procedures which would treat all participants equally, and which assure the federal government's receipt of fair market value for the leasing of public resources.

In summary, DOI's resource analysis is no substitute for competitive sales as a means to estimate the value of the potential oil and gas resources which are proposed for exchange. However, that evaluation, which relies upon regional geophysical and geological mapping is adequate to establish a competitive leasing program in ANWR. The federal government's receipt of fair market value for ANWR's oil and gas resources can only be assured through a fully open and competitive leasing program which retains a significant royalty interest in any oil and gas reserves which are discovered and produced there. Both the Prudhoe Bay and the Amauligak fields provide graphic examples of why DOI's proposed exchanges entail unacceptable risks for prudent managers of the public resources.

1080E 09/18/87

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

When combined with the 1983 ASRC exchange, the Department of the Interior's (DOI) most recent proposed ANWR land exchanges result in the non-competitive conveyance of more than 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 exchange, DOI received surface estate appraised at $5.6 million in exchange for subsurface rights to approximately 92,000 acres of highly prospective mineral estate beneath lands owned by the Kaktovik Inupiat Corporation in 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 Corporation groups and their industry partners in exchange for 891,000 acres of surface estate with an estimated value of $538.7 million.

Although impossible to calculate, it is almost certain that a competitive lease sale of this same coastal plain acreage would generate substantially higher revenues than those resulting from the ASRC exchange and the latest proposed exchange. The value of the royalty interest alone, should significant discoveries occur, potentially may be measured in the billions of dollars. Bonus revenues are likely to be higher than the exchange values because the open competition in a competitive lease sale necessitates higher bids to "win" the most prospective tracts.

The details of one particular exchange contract, that between Old Harbor and its industry partner, Texaco, illustrate quite clearly that the corporations will receive substantially more from the exploration of the tracts which they selected than DOI has claimed those lands to be worth. In this example, the total value of the corporation's exchange lands, and thus the value of the ANWR tracts it selected, was placed at $45.7 million by DOI. Yet, if ANWR is opened, the corporation's industry partner is committed to pay to them $45.7 million plus a 14 percent royalty on any oil and gas produced from those lands.

The DOI exchange procedures apparently neither estimate nor acknowledge the value of that 14 percent royalty interest. Whatever the amount may ultimately be, it would accrue directly to the corporation shareholders instead of to the federal (and/or state) treasury, as would be the case if the tracts were leased competitively. In addition, the agreement provides that Texaco will also pay Old Harbor a 1 1/2 percent royalty from production by Texaco on any leased land in ANWR not owned by Old Harbor.

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 petroleum production from all the ANWR tracts.

The methodology which DOI apparently employed in estimating the value of the oil and gas estate in ANWR is inadequate for that purpose, and as a result, the individual tract values which DOI assigned to the ANWR lands are unlikely to approximate those that would result from a competitive lease sale. A reserves analysis, which relies upon objective data from the completion and testing of wells, would be necessary to establish a reliable value for the subsurface resources beneath the ANWR tracts. DOI has employed a resource analysis procedure which relies on probabilistic computer-assisted modelling of subjective geologic variables to assign values to the individual tracts. Subsurface resource analysis can never accurately estimate, prior to leasing, drilling, and testing, the present value of the combined future bonuses, rentals, royalties and taxes which may be realized from a discovery on a lease tract.

In addition to the limitations of resource analysis methodology, the utility of DOI's evaluation is further constrained by the inadequacy of data available in ANWR. The geophysical data used to map structures in ANWR constitute a reconnaissance grid which averages three miles by six miles. Such a large grid size, when combined with the lack of well data control and the extremely complex geology, virtually guarantees that many potential oil and gas traps of significant size may not be recognized.

Amauligak, a recent discovery in the Canadian Beaufort Sea with an estimated 850 million barrels of recoverable oil, is approximately twenty-one square miles in area. Were that field located in the Coastal Plain of ANWR, it would be entirely fortuitous to recognize its existence, much less to define its limits accurately with the existing data. If a deposit this size--a giant oil field by world standards--cannot be detected or accurately mapped, it should be obvious that the tracts overlying it cannot be appraised accurately.

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 the state's 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 target areas on the structures) 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 incomplete. 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 selection pattern and our independent mapping indicate that not only the mappable closures, but 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. Based upon our current knowledge, the acreage remaining for any future competitive sales is situated over the structurally lower (and therefore less prospective) portions of the subsurface structures on which selections were made or on other less prospective unselected structures.

Together, the ASRC and latest proposed 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.

It is the uniquely high upside potential of the ANWR acreage which is attracting the wide-spread exploration interest in the Coastal Plain. However, unsuccessful exploration on the exchanged lands, prior to leasing, is one possible outcome. The less prospective tracts in ANWR, those remaining after the exchange selections, could 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.

STEVE COWPER
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

October 27, 1987

Cowper → Cotten 10/87

The Honorable Sam Cotten
Alaska State Representative
P.O. Box 296
Eagle River, AK 99577

Dear Sam,

Thank you for again sharing your concerns over the proposed ANWR land exchanges. Your reaction to this proposal to dispose of public resources without adequate compensation is the same as mine. Furthermore, the trades divert congressional attention away from our primary objective of opening the ANWR coastal plain to responsible oil and gas development and adversely impact potential state and federal royalty revenue from subsequent leasing.

As you know, my administration continues to closely monitor the progress of the proposed trades. At the present time, Secretary Hodel has placed the trades on hold, pending further congressional consideration of the entire ANWR opening issue. In addition, the state is cooperating with the General Accounting Office in an investigation of the process used by the United States Fish and Wildlife Service (USFWS) and Bureau of Land Management to value the ANWR subsurface and the Native corporation inholdings. I am confident that my office in Washington, D.C., is well able to observe and deal with the trade proposals. John Katz continues to believe that the proposed trades enjoy very little support and have generated considerable opposition from key congressmen. Both the Senate and the House are now considering bills to require ANWR trade proposals to receive full congressional review and authorization.

Assistant Secretary Bill Horn has indicated that the next step in the land trade process will be the preparation of a Legislative Environmental Impact Statement (LEIS) by the USFWS. The LEIS process, however, has not yet been initiated. When it is, the state will provide all information necessary to ensure that state interests are addressed and protected. The LEIS process will include opportunities for public involvement.

We are now in possession of all relevant materials related to the proposed trades, including the final exchange contract, land used stipulations and related appendices. At the appropriate time in the LEIS review process, we will formally articulate state concerns and vigorously defend state interests. In the meantime, we will continue informal efforts to convince congressional leaders that the trades are adverse to state and national interests. Part of our effort will include promotion of the state's alternative proposal, whereby the Native corporations could be assigned bid credits (of equal value to their refuge inholdings) which would then be used to bid in any competitive federal oil and gas lease sale.

I am not convinced that it is necessary for the state to join the Trustees for Alaska in their suit against the Department of the Interior regarding the administrative process used to develop the trade proposal. It seems clear that the Trustees have raised the relevant legal issues, and I see no advantage to direct state participation in this matter. I'd rather focus our energies directly on Capitol Hill.

As we forge ahead with our primary objective, the opening of ANWR, we do not intend to allow the proposed trades to sandbag the congressional review process. In this regard, I believe a well-publicized frontal attack on the trades may be counterproductive. Instead we should continue to release factual data to support our position that the trades compromise important public interest considerations. I intend to personally communicate this to key congressmen, as well as the Secretary of Interior, during my November visit to Washington, D.C.

Your continued support in this matter is much appreciated.

Sincerely,

Steve Cowper
Governor

cc/enc: Commissioner Brady
DNR

REPRESENTATIVE
SAM COTTEN
DISTRICT 15

P.O. BOX 296, EAGLE RIVER, AK 99577
POUCH V, JUNEAU, AK 99811

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

Cotten → Cowper 9/87

The Honorable Steve Cowper
Governor
State of Alaska
P.O. Box A
Juneau, AK 99810

September 18, 1987

Dear Governor Cowper:

The Department of the Interior recently finalized land exchange agreements with ANCSA corporations that could place the oil and gas rights to 166,000 acres of the ANWR coastal plain in private ownership. The acreage included in the trades is thought to be the best in ANWR, lying atop known geological structures hoped to contain large amounts of oil and gas.

The proposed trades could have enormous revenue impacts affecting both the U.S. Treasury and the State of Alaska. The federal government appears to be forsaking potentially huge bonus and royalty revenues, and may be acting in a manner that will reduce leasing revenue from adjacent acreage remaining in federal ownership.

As you stated in February, the State of Alaska is in the uncomfortable position of wanting to see the ANWR coastal plain opened to environmentally responsible oil and gas development, but at the same time opposing the proposed land trades because they could eliminate the State's revenue share. To my knowledge, the potential revenue impact on the state has not been estimated, but the trades could take billions of dollars from the people of the state.

The Interior Department and the involved ANCSA corporations have begun to lobby in favor of the exchanges on Capitol Hill. Without the State's steady and noticeable opposition to the trades as presented, it seems likely that the trades will be part of the final ANWR resolution.

It is very important to Alaska -- perhaps as important as any issue in Congress right now -- for the State to oppose the proposed land trades vigorously and offer better alternatives. Congress needs to know the possible impact on the national treasury and deserves to see the State's alternative leasing/land exchange proposal (put forward by Commissioner Brady in April). This proposal could return more inholdings to the federal government, restore openness to a closed process, and assure equitability now missing from the trades.

Additionally, there has been some question about the legal process underlying the exchanges. Trustees for Alaska has filed suit against the Interior Department to stop the land exchanges. Given the magnitude of the State's interest in the potential development, I hope that the State will consider joining or supporting this suit in some fashion. Whether or not the case would be winnable, it might be important for the State to indicate its concern in the courts as well as on Capitol Hill.

It is also important for the State to review the proposed exchange agreements thoroughly to be certain that we know their potential effects on other state interests than revenue. Included among possible concerns would be submerged lands, environmental regulation, oil and gas conservation, and continued surface access.

I recognize that opposing the land trades is not easy, especially in the face of our congressional delegation's support for them. But your leadership on this issue is very much needed. As you said last February, we are talking about actions that could affect Alaskans for generations to come.

Sincerely,

Sam Cotten

Rep. Sam Cotten
Co-Chair, House Resources Ct.

cc: Commissioner Judy Brady
Commissioner Don Collinsworth
Hon. John Katz
Commissioner Denny Kelso
Attorney General Grace Berg Schaible

REPRESENTATIVE
SAM COTTEN
DISTRICT 15

P.O. BOX 296, EAGLE RIVER, AK 99577
P.O. BOX V, JUNEAU, AK 99811

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

February 16, 1987

The Honorable Frank Murkowski
United States Senate
317 Hart Building
Washington, D. C. 20510

Dear Senator Murkowski:

I am writing with regard to the proposed land exchanges in the Arctic National Wildlife Refuge. As you may know, the House Resources Committee of the Alaska State Legislature has been investigating the proposed land exchanges and last week heard about them from the Interior Department, ANCSA Corporations, and the State of Alaska.

As you stated in your annual address to the Legislature on February 13th, the protection of the state's interest is vital in any ANWR land exchange. I agree with you that one way of protecting the state's interests would be to provide that the state's entitlement to revenues from the traded ANWR acreage will not be reduced by the exchange.

However, in our hearing last week, we heard from Bob Gilmore of the U.S. Fish and Wildlife Service (who stated that he has the "responsibility for making the exchanges happen") that the exchanges are "a long way down the road," and that inclusion of a provision to retain the state's revenue entitlement would require renegotiation of the proposed land exchange contract. To my understanding there would also need to be an adjustment of the subsurface appraisals of ANWR acreage to reflect the lower revenue potential for holders of the limited subsurface interests after the trades occur.

Senator Murkowski, it is my belief that the time has come for our congressional delegation to work as closely and immediately as possible with the Interior Department to assure that the state's revenue entitlement is protected in any land exchange agreement. Obviously, we cannot afford for the agreements to proceed to finalization without this protection.

I hope that you will be able to help out on this issue which needs your personal attention right now.

Sincerely,

Sam Cotten

Sam Cotten, Co-Chairman
House Resources Standing Committee

cc: The Honorable Steve Cowper
Governor, State of Alaska

Mr. John Katz, Special Assistant
Office of the Governor, Washington D. C.

Mr. Robert Gilmore, Regional Director
United States Fish and Wildlife Service

REPRESENTATIVE
SAM COTTEN
DISTRICT 15

P.O. BOX 296, EAGLE RIVER, AK 99577
P.O. BOX V, JUNEAU, AK 99811

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

The Honorable Ted Stevens
United States Senate
Washington, D.C. 20010

March 9, 1987

Dear Senator Stevens:

Thank you for addressing the Alaska Legislature in part on the issue of opening the Arctic National Wildlife Refuge coastal plain to oil and gas exploration and drilling. I agree with you that the issue is very important to Alaskans and that the State of Alaska needs a coordinated policy on ANWR issues. For your information I am enclosing a copy of HJR 9, presently under consideration by the Resources Committee of the Alaska State House.

You will note that the resolution proposes five consensus policy points: 1) ANWR should be opened immediately, except that leasing of the core calving area should be deferred; 2) discussion of proposed land trades which could harm the State's interests should end; 3) Congress should make no adjustments in the State's existing entitlement to oil and gas leasing revenues on public land without the State's concurrence; 4) environmental protections should be guaranteed on those lands available for leasing; and 5) Alaska work forces should be employed in any ANWR development. These consensus points, I believe, should generally guide our congressional and executive negotiators as they discuss ANWR issues in Washington. And the House Resources Committee, which I co-chair, has been conducting a methodical and comprehensive review of these proposed policy points in an open forum here in Alaska.

With regard to your speech to the Legislature, I must candidly say that I do not agree with your statement that "debate within Alaska over the merits of land exchanges and possible modification of the 90-10 revenue sharing formula may interfere with our efforts to organize a national ANWR movement." The ANWR issue could be more important to

Alaskans than any other lands issue for the foreseeable future; it deserves full and free debate before we arrive at a consensus negotiating position. The State cannot be expected to forsake a potentially gigantic revenue source on the basis of the political information available today, especially when so little is known about the proposed land trades.

I was puzzled by your statement that "reduction of Alaska's revenue share to 50 percent was part of the price of opening the 23 million acre National Petroleum Reserve--Alaska." In fact, based on legal research conducted by the Attorney General's office after your speech, it is clear that Alaska would have received no revenue share from oil and gas production within the former Naval Petroleum Reserve No. 4 when it was managed by the Navy. Naval petroleum reserves are explicitly exempt from the revenue-sharing provisions of the Mineral Leasing Act of 1920. It seems more reasonable to say that the NPRA Act of 1976 probably <u>raised</u> Alaska's revenue entitlement (from 0% to 50%) for production from this area.

You are right that Alaskans need to understand and react to national needs in the ANWR debates. The coastal plain could produce oil and gas that will increase national security, reduce our nation's burgeoning trade deficit, measurably boost the nation's economy, improve foreign relations, and cut the cost of energy to American consumers. But this does not mean that Alaska's rights and needs should be submerged at the beginning of a long debate.

Alaska's rights include the 90% entitlement to oil and gas revenues from public land, established as part of the solemn compact between Alaska and Congress at the time of Statehood. Whether or not Alaskans will consent, at some future time, to a reduction of this entitlement is unknowable, but for now it seems incumbent upon us as Alaska policymakers to negotiate toward the maximum national <u>and</u> state benefit.

I realize that this must be a difficult time for Alaska's congressional delegation. I know that you value the comments and suggestions of Alaskans, especially on major policy issues like ANWR. And I look forward to continuing to work together, as Alaskans, toward opening ANWR under the best possible conditions serving national and state interests.

Sincerely,

Sam Cotten

Rep. Sam Cotten
Co-Chair, House Resources Committee

cc: Governor Cowper

REPRESENTATIVE
SAM COTTEN
DISTRICT 15

P.O. BOX 296, EAGLE RIVER, AK 99577
P.O. BOX V, JUNEAU, AK 99811

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

February 16, 1987

The Honorable Ted Stevens
United States Senate
522 Hart Building
Washington, D. C. 20510

Dear Senator Stevens:

I am writing with regard to the proposed land exchanges in the Arctic National Wildlife Refuge. As you may know, the House Resources Committee of the Alaska State Legislature has been investigating the proposed land exchanges and last week heard about them from the Interior Department, ANCSA Corporations, and the State of Alaska.

As Senator Murkowski stated in his annual address to the Legislature on February 13th, the protection of the state's interest is vital in any ANWR land exchange. I agree with him that one way of protecting the state's interests would be to provide that the state's entitlement to revenues from the traded ANWR acreage will not be reduced by the exchange.

However, in our hearing last week, we heard from Bob Gilmore of the U.S. Fish and Wildlife Service (who stated that he has the "responsibility for making the exchanges happen") that the exchanges are "a long way down the road," and that inclusion of a provision to retain the state's revenue entitlement would require renegotiation of the proposed land exchange contract. To my understanding there would also need to be an adjustment of the subsurface appraisals of ANWR acreage to reflect the lower revenue potential for holders of the limited subsurface interests after the trades occur.

Senator Stevens, it is my belief that the time has come for our congressional delegation to work as closely and immediately as possible with the Interior Department to assure that the state's revenue entitlement is protected in any land exchange agreement. Obviously, we cannot afford for the agreements to proceed to finalization without this protection.

I hope that you will be able to help out on this issue which needs your personal attention right now.

Sincerely,

Sam Cotten

Sam Cotten, Co-Chairman
House Resources Standing Committee

cc: The Honorable Steve Cowper
Governor, State of Alaska

Mr. John Katz, Special Assistant
Office of the Governor, Washington D. C.

Mr. Robert Gilmore, Regional Director
United States Fish and Wildlife Service

REPRESENTATIVE
SAM COTTEN
DISTRICT 15

P.O. BOX 296, EAGLE RIVER, AK 99577
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ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

February 16, 1987

The Honorable Don Young
House of Representatives
2331 Rayburn House Office Building
Washington, D. C. 20515

Dear Representative Young:

I am writing with regard to the proposed land exchanges in the Arctic National Wildlife Refuge. As you may know, the House Resources Committee of the Alaska State Legislature has been investigating the proposed land exchanges and last week heard about them from the Interior Department, ANCSA Corporations, and the State of Alaska.

As Senator Murkowski stated in his annual address to the Legislature on February 13th, the protection of the state's interest is vital in any ANWR land exchange. I agree with him that one way of protecting the state's interests would be to provide that the state's entitlement to revenues from the traded ANWR acreage will not be reduced by the exchange.

However, in our hearing last week, we heard from Bob Gilmore of the U.S. Fish and Wildlife Service (who stated that he has the "responsibility for making the exchanges happen") that the exchanges are "a long way down the road," and that inclusion of a provision to retain the state's revenue entitlement would require renegotiation of the proposed land exchange contract. To my understanding there would also need to be an adjustment of the subsurface appraisals of ANWR acreage to reflect the lower revenue potential for holders of the limited subsurface interests after the trades occur.

Representative Young, it is my belief that the time has come for our congressional delegation to work as closely and immediately as possible with the Interior Department to assure that the state's revenue entitlement is protected in any land exchange agreement. Obviously, we cannot afford for the agreements to proceed to finalization without this protection.

I hope that you will be able to help out on this issue which needs your personal attention right now.

Sincerely,

Sam Cotten

Sam Cotten, Co-Chairman
House Resources Standing Committee

cc: The Honorable Steve Cowper
Governor, State of Alaska

Mr. John Katz, Special Assistant
Office of the Governor, Washington D. C.

Mr. Robert Gilmore, Regional Director
United States Fish and Wildlife Service

REPRESENTATIVE
SAM COTTEN
DISTRICT 15

P.O. BOX 296, EAGLE RIVER, AK 99577
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ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

M E M O R A N D U M

To: Rod Swope, Special Assistant
Office of the Governor

From: Ned Farquhar, Special Assistant Ned
Representative Sam Cotten

Date: February 10, 1987

Re: ANWR Land Exchange Meeting

This summarizes our telephone call of Friday, February 6th regarding the Resources Committee's February 13, 1987 meeting at 1:00 p.m., Capitol 124 on the topic of ANWR land exchanges.

The committee will hear from Bob Gilmore, who will do a general briefing on the land exchange proposals, and from interested ANCSA corporations.

From the state, the committee will be interested in:

(1) The administration's policy position (as much is known) on the proposed trades;

(2) The state's participation to date and in the future - what state lands have been offered and are now being considered? What problems does the state identify in proposed agreements, appraisals, and trade processes? What timeline does the state see (and what would it prefer) for movement on land trades and state policy making? Would the state support the "recission" clause?; and

(3) Legal analysis - what does the state believe would be legal in the way of exchanges or ANWR development <u>without</u> Congressional approval? What regulatory authorities would the state and federal governments lose in a land trade, if any? Does the 7(i) revenue-sharing clause apply to exchange lands?

I hope that the state will be able to have present appropriate technical and policy staff. Thanks for your assistance.

cc: Bob Arnold, DNR
Tom Hawkins, DNR
Tom Koester, AGO
Norm Cohen, ADF&G
Dennis Kelso, DEC

ANWRI.TXT

HIGHLIGHTS OF FEBRUARY 1987 HEARING

<u>State involvement:</u>

1. Katz says State wanted to participate at same "key policy levels" as ANCSA corporations, but had "difficulty insinuating itself" in the negotiations (pp.43,47-48); State was in "back channel" (p.43); Katz provides a chronology of state involvement (pp.46-47)

2. State only learned of exchanges by "rumors" till latter 1985 (p.46)

3. Koniag says State was only involved in negotiations from September or October 1986 (pp.42-43); Koniag describes negotiations to which state was not invited (p.43)

4. Acc. to Katz and Swope, state had no position on trades but participated as a sovereign and landowner (p.45)

5. The State expected tract selection March 2, 1987 (Katz, p.48; Gilmore, p.5)

<u>"Secrecy"</u>

1. Gilmore says public will see documents after they are signed (pp.7,18); says he doesn't know if state negotiators are prohibited from releasing documents (p.20); says Interior is moving at pace needed by ANCSA corporations (p.25); says Interior will release documents then corrects that statement on p.39

2. CIRI/NLG doesn't object to releasing documents (p.30); reveals its industry partners (p.31)

3. Koniag opposes release of documents (p.40); will not reveal its partners (p.41);

4. State wants documents released, has been required to maintain secrecy (Katz, p.49); state doesn't like proposed "conflict resolution" by negotiation (Hawkins, p.52)

<u>State interests</u>

1. Katz talks about wanting overriding royalties for state (p.50); says timelines are "very, very constrained" (p.48)

2. CIRI says it doesn't oppose overriding royalties (p.30); Koniag sounds more negative (p.37)

3. Koniag says the agreement it drafted protects state's rights (p.39)

4. State says the agreements have not been amended per state's suggestions in December and January (Hawkins, p.51); "preemption" of state authorities (p.53)

5

HOUSE RESOURCES STANDING COMMITTEE
February 13, 1987
1:00 p.m.

Members Present:

Representative Sam Cotten, Co-Chair
Representative Adelheid Herrmann, Co-Chair
Representative Mike Navarre
Representative Drue Pearce
Representative John Sund
Representative Cliff Davidson
Representative Dick Shultz
Representative Henry Springer

Members Absent:

Representative Lyman Hoffman

COMMITTEE CALENDAR

Arctic National Wildlife Refuge: Land Exchanges

WITNESS REGISTER

Mr. Robert Gilmore, Regional Director
U. S. Fish and Wildlife Service
1011 East Tudor Road
Anchorage, Alaska 99501
Telephone: 786-3542
Position Statement: Department of Interior: Overview

Margie Zagerser
Native Land Groups
Cook Inlet Region, Inc.
2525 "C" Street
Anchorage, Alaska 99501
Telephone: 274-8638
Position Statement: Urged state support for ANWR land exchanges.

Art Kennedy, Consultant
Koniag, Inc.
3300 "C" Street
Anchorage, Alaska 99501
Telephone: 276-6683
Position Statement: Urged state support for ANWR land exchanges.

Rod Swope, Special Assistant
Office of the Governor
P. O. Box A
Juneau, Alaska 99811
Telephone: 465-3500
Position Statement: The state does not have a position on land trades at this time.

John Katz, Special Assistant
Office of the Governor
444 North Capital, N. W.
Suite 518
Washington, D. C. 2001-1512
Telephone: (202) 624-5858
Position Statement: Chronology of state's position.

Tom Hawkins, Director
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Position Statement: Specifics of the land trade documents.

ACTION NARRATIVE

TAPE #16, SIDE ONE
Recording

Number 001

Chairman Cotten called the House Resources meeting to order at 1:06 p.m. Present were Representatives Cotten, Pearce, Herrmann, Davidson, Navarre, Sund, Shultz, Springer and Representative Kay Brown. Chairman Cotten announced the calendar and asked Mr. Robert Gilmore, Regional Director, U. S. Fish and Wildlife Service, to come forward.

Number 037

Bob Gilmore, representing the U. S. Department of Interior, begins to testify, "I have a brief statement with some brief information at the tail end of it, leaving as much time as possible for the committee to ask questions because I can start at the beginning and talk about it until I got to the end of it and we wouldn't get out of here, it is such a complicated subject. I will go briefly through the overview and then if there are questions I will be glad to answer them. I am pleased to appear before you today on behalf of the Department of the Interior to discuss efforts now under way concerning potential exchanges involving oil and gas interests in the Arctic National Wildlife Refuge. The Alaska Native Claims Settlement Act (ANCSA) of 1971 and the Alaska National Interest Land Conservation Act (ANILCA) of 1980 allowed for native selections of millions of acres of prime habitat within refuges in Alaska. Depending on the amount of land ultimately committed, it is estimated that 13 to 15 million acres of inholdings will be established in Alaska's 16 refuges. That was the map that I left on the plane, Mr. Chairman.

"Should Congress decide to open the coastal plain of the Arctic Refuge to oil and gas developments, several native corporations in the State of Alaska have proposed to exchange some of their inholdings within the existing Alaska refuges for oil and gas resources of comparable value on specifically described tracts in the general vicinity of the Arctic Refuge. As a matter of policy, any Alaskan land exchange in the Arctic Refuge will only come about if Congress opens the the refuge to oil and gas exploration and development. In addition, should any exchange be successfully negotiated, they will be subject to Congressional review. During the past 18 months, the Dept. of Interior representatives have been meeting with the native corporations and state representatives to discuss the terms and conditions it might be associated with in the exchange. The Fish and Wildlife Service has identified to the participants and others, approximately 5 million acres of refuge inholding that represent high priority resource area. The participants have cooperated with the Fish and Wildlife Service to develop exchange proposals that are responsive to these priorities. While the final configuration of the proposal is still being negotiated, indications are that from one to two million acres may be available for exchange in 12 of the 16 refuges. To date, there has been no identification of tracts in the Arctic Refuge (inaudible) in such an exchange."

Number 102

Mr. Gilmore notes, "Some briefs points: The responsibility for making this exchange happen rests with the Regional Director in the Fish and Wildlife Service in Alaska. The priority system that we established for identifying those potential inholding lands and those lands that are in fact inholding now, in the National Wildlife Refuge system is a rather extensive document but it does clearly lay out, in a priority order, what the Fish and Wildlife Service's priorities are if anything happened to resources under the (inaudible) of Congress. In that priority list starting out with migratory birds and moving endangered species and moving migratory birds, resident species, recreation and all the way down to the last one which says, 'To prevent threat of destruction or some other kind of threat that would prevent the natural resources that are out there now and continuing to exist.'"

At the same time we identify those inholding lands that we would be interested in, we follow along the policy of the Fish and Wildlife Service, not to acquire subsurface when we acquire land. As a general rule in the lower 48, we do not seek the subsurface, for numerous reasons, the federal government does not have enough money to buy what people think is under the surface, and secondly, we have a very difficult time with anybody agreeing what might be there so we could figure out what it might be worth. In keeping with that policy, we did not seek nor do we seek any subsurface rights under the refuge or in the withholding inholdings."

not acquiring inholders subsurface

Number 140

Generally speaking, we have avoided the 14 (h)(1) site with the exception of the possible leavement of one. The participants, up to this point and time, are the Koniag Corporation, Akhiok-Kaguyak, Old Harbor, Doyon, the Native Lands Group, and the State of Alaska. The benefits as we see them assure us that the high priority resource areas are held in the public trust in perpetuity, and those are the one that we are the most interested in, the ones we are trying to assure that they are under the federal protection for as long as we are around. It eliminates the prospect of the lands might be converted to other uses, that was one of our primary concerns. It protects continued subsistence uses by local rural residents and allows for early exploration activities on the coastal plains to generate direct and indirect revenue to the State and the Native Corporations and make opening the coastal plains calculable to some, it is easy to say it is not very calculable."

subsistence easement

Number 157

Mr. Gilmore states, "I'll talk about about the exchange agreement for just a moment. In considering in the fact that it still is being negotiated and the final aspects of that agreement might very well be ready by the middle of March. It is consistent with the 1002(h) report, a very important point that everything is being negotiated in the agreement does not conflict with what they put out in the 1002(h) report earlier this past year. In exchange that is based on comparable value, to clarify that, it is not an acre for acre exchange, it is value for value, meaning if an acre of Native land was worth $400, they would be able to receive $400 worth of value on the subsurface of the Arctic Refuge which may not be anywhere near an acre. Matter of fact, I don't think it would be. This involves only gas and oil interests for specific periods, meaning when the exchange is brought about and if there is an exchange, those involved in the exchange would only receive the opportunity to explore for and develop oil and gas. Gravel, water and other subsurface minerals would not be available and it is only for a specific period of time, (some time in the future) when it was determined that there was no additional resources there or no interest by the corporation. To continue, it would convert back to the federal government.

The Title XI access rights would be waived in this process, it would be consistent with the leasing program and apparently carried out by the federal government. We would allow and would encourage subsistence easements on the inholdings that would be exchanged which is an interesting concept since if someday somebody decided they don't like subsistence, to a great degree, and decide to change it, in this exchange the native corporations would retain an easement and a right for subsistence on their land in perpetuity. There are recisions in termination clauses which are far too complicated for me to discuss at this point."

rescission clause

Land

Number 198

Mr. Gilmore states, "One item that was very important to the Interior Department, because we anticipate a fairly large lease sale in the area after the exchange is completed, is that we get the 'down-hole' information of any exploratory activities of the participants in the exchange.

acquire well data -

(didn't in ASRC/KIC exchange)

"One other item I feel I should make clear because you asked a specific question. At the present time the subsurface value that is determined by the Bureau of Land Management, that process is nearly complete but it still has to go through several approval levels by the Department in Washington and until then it will not be available for public review.

(State withdrew on 2/27/87; tract selection kept getting postponed till July 87)

"In regards to the time frame that you might expect, we anticipate some fairly active movement about the last week in March in regards to possible tract selection that the Natives would tell us what tracts they would like to have under the Arctic Refuge and we in turn would begin to move at that point. This is a little optimistic but it is what we are trying to achieve at this point and time."

March 87 tract selection

State was still in as of 2/13/87

Number 223

Rep. Davidson asks for a copy of Mr. Gilmore's remarks. Mr. Gilmore answers, "Yes I will make them available, unfortunately I have been in and out of the office. I picked this copy of at six o'clock this morning and as you can see I have already masticated it somewhat. I will see that you get copies."

Number 232

Rep. Shultz asks, "How is BLM making a determination as to the value of that land."

Mr. Gilmore states, "We ran seismic surveys the last two seasons and the raw data from those seismic surveys were available to the government BLM. BLM's geologists and engineers and other specialist have evaluated the subsurface and are attempting to come to some value of what they think is under every parcel of land that might be available out there.

"The land parcels, as I recall, is about 2,000 acres of of the tract site would be in the Arctic Refuge. Under each one of those tracts, BLM's responsibility will be to determine if there is an oil and gas potential down there and what it is worth."

Number 260

Rep. Shultz states, "The refuges in the State of Alaska, in federal control, are open at the present time for hunting and fishing and now we are inserting language that refers to subsistence corridors into this land that you are swapping for, that you mentioned, is that right."

Mr. Gilmore answers, "I don't think so."

Rep. Shultz asks, "You're not referring to the hunting and fishing rights that presently exists with the people, right."

Mr. Gilmore states, "The hunting and fishing subsistence rights that those people have at this point and time will always be there. We are obligated to make sure that that happens. The hunting and fishing rights of all people, we don't anticipate any curtailment of their activities. There are and have been, as you know at Prudhoe, different controls in the oil fields than we have on the refuge at this time. I would expect in there that there would be some control and I think it would be appropriate for the wildlife point of view not to have hunting within certain distances of the road or certain distances from development. I don't anticipate any severe curtailment of the activity in the refuge."

Rep. Shultz states, "What I was saying was that under the present time in the federal refuges, the government has hunting and fishing that's allowed for the public. Right?"

Mr. Gilmore, "Correct."

Rep. Shultz states, "That now you are inserting a subsistence clause, so in other words, if this goes through, then you will be able to stop everything except the subsistence use on that portion of that land that you got."

Mr. Gilmore states, "We can do that now, yes sir, that is correct. If the wildlife is in danger, and we feel there is some.......the last thing that we have the opportunity (?) is subsistence. We can also deal with that. The point is that we have that opportunity right now."

Rep. Shultz asks, "Then why would you want to include it in there."

Mr. Gilmore states, "The Natives would like to include it. The problem, I think if you understand, that there is a great deal of discussion and consternation about subsistence and in the future, as this State grows, it may in fact become an issue of real discussion in the State and if for some reason or other, it were repealed, then the native corporations have asked that the subsistence preference remain on these lands that they are exchanging away. We are in agreement with that right now."

Rep. Shultz asks, "Let's just say that the subsistence was repealed, would you identify or would recognize subsistence use on all federal lands in the future, excluding these."

Mr. Gilmore states, "The hypothetical that you put forward, was if there were no subsistence, the lands that would be exchanged under this agreement would still have a subsistence preference, all the other lands would not."

Number 309

Chairman Cotten states, "I was not clear on the time line on the agreements and I would like to know have there been any public hearings on the agreements, or do you intend to have any before they are signed."

Number 314

Mr. Gilmore answers, "I think what we have is an opportunity and a window between March and June. A two step process which is having tract selection carried out so the native corporations can go back and talk to their constituents. At the same time, the agreement may be very well have not been signed until June or July. If that is the case, we have indicated earlier on that we had hoped that sometime between March and June/July we could get out to the public and explain, in more detail, what we're doing. They would be public meetings."

Chairman Cotten asks, "Are there was some draft agreements that are in existence right now."

Mr. Gilmore answers, "Yes there are."

Chairman Cotten asks, "Are they available to the Legislature."

Mr. Gilmore answers, "I think that they probably are available since the State has had a copy of the draft agreement for sometime. I suspect if they are in the state government hands, they certainly should be in yours."

This is wrong - see p. 40 p. 49 so 3 pgs -

Chairman Cotten states, "They aren't, we've asked for them, and don't have them. Can we get a copy from you?"

He ends up retracting this later

Mr. Gilmore answers, "Yes, sir you can but I really wish you would get them from the State but I will be glad to give it to you. I think there is a letter over there responding to it."

Number 337

Chairman Cotten states, "The question about the determining value in the lands and the coastal plains has been raised and the other question about who has what information has also been raised. In order to do the best evaluation, those who have the most information will be able to make the best guess about what is underneath the ground. Does BLM currently hold the well that has been drilled up there? Does BLM currently hold the down holed information?"

Mr. Gilmore answers, "No sire, they do not." !!!

Chairman Cotten states, "So some people would have a better idea than you as to what might lie under the ground then."

Gilmore says the KIC data might confuse Interior

Mr. Gilmore answers, "Not to quibble over words too much but the more that I get into this oil business, every time I say something like that I get in trouble. Somebody will have what they think is a better idea, they may have gained some information that would have helped them and they have gained some information that left them further in the dark, so I'm told. I'm not a petroleum engineer or whatever it is that those people do to dig those holes."

Chairman Cotten states, "I just have a hard time imagining that you would know less if you had the well information."

Mr. Gilmore states, "Well you could be further in the dark." !!!

Number 356

Rep. Davidson states, "Director Gilmore the~~re seems~~ to be a heightened sense of urgency. In fact a stampede seems imminent but you do not have contractual ~~language~~ for this Committee to examine as far as land exchanges are concerned. We do not have values on subsurface rights. What explains this sense of urgency or this, what I perceive anyway, a sense to hurry along on this issue?"

Mr. Gilmore answers, "We're moving at the pace requested by the the native corporations."

Number 368

Rep. Sund asks, "Just a couple questions, you're dealing with Fish & Wildlife, and I guess I know you have been negotiating with the State on land exchanges. Where is the negotiations with the State, and you've been working with the native groups and that, is there any negotiations going on with the State for exchange of State land held in wildlife refuges?"

Gilmore says State has = info true?

Mr. Gilmore answers, "Yes there is and the State is in same place, I think, as the rest of the negotiators. They have their own document, they've been to the table, they been to the negotiating sessions. I think, and I haven't been to the negotiating session and I am a little fuzzy at exactly what the State might have at this point, but I think they have everything that all the other negotiators have."

Rep. Sund states, "There is wildlife refuges and national parks, are any of the inholdings in the parks being discussed here."

Number 380

Mr. Gilmore answers, "I can't answer that question. When the subject came up, it would be terribly inappropriate for the Fish and Wildlife Service to begin to take on land exchanges within parks. The State brought those apparently large acreage up. I suggests that they go to the Regional Director of the Park Service and explain what was going on and tell him that if he was interested in the exchanging of land that he, in fact, should get involved in the process and contact the same Assistant Secretary that I do."

Number 392

Rep. Sund asks, "Is it possible, is this a three party negotiation, do you have to be with Parks and Wildlife Service at the table separately. Is there within the Department of Interior, manage both parks and refuges, can you exchange park lands for lands in the refuge?"

Gilmore says NPS didn't want to get involved

Mr. Gilmore answers, "Yes, you can. The Park Service had they chosen to get involved a year or so ago, would be at the table with all the rest of us."

Rep. Sund asks, "Is it too late."

Mr. Gilmore answers, "Not as far as I'm concerned, it isn't. But it is a long way down the road. As you move along, I think it is fair to say that several groups have come in with their proposals as late as December and January. We just got some proposals. It will be very difficult and it would depend on the completeness of the documentation and how they want to work it, but I don't think it is too late."

Number 409

Rep. Kay Brown asks, "Does federal law require competitive bidding for disposal of oil and gas rights in the refuge land."

Mr. Gilmore answers, "You're a little out of my bailiwick in regards to oil and gas responsibility, but generally, anything that the government makes available goes out for competitive bidding."

Rep. Brown asks, "How does the proposals being contemplated fit in with that requirement for competitive bidding."

Mr. Gilmore answers, "In this particular case, they don't fit in because it is an exchange of value for value. There is no bidding involved. We exchange lands quite often in the federal government, for this or that, to better achieve what the public expects us to achieve. When we so do so, we don't have a process, that I know of, that says, is there anybody else that's got anything better involved which would make it a competitive bid process of people bringing other lands into exchange.

Number 426

Rep. Brown states, "But it would seem to be that the effect is actually to dispose of sometimes valuable properties, potential oil and gas development and public interest overall would be concerned by of disposing of those properties by competitive bid."

Gilmore: not competitive bec. wants companies to make $

Mr. Gilmore responds, "I think there are two pieces of interest to answer that question. 1) I do not think we are disposing of it, I think we're giving the people in this state, an opportunity to make some dollars off of this land. Secondly, I feel that an exchange of this sort does in fact, fit within the concept of what we're trying to achieve. What you are going to see is, maybe 15% or 20% of the surface acreage will be utilized in the exchange. The remainder of it will be up for the highest bid lease sale."

Number 440

Rep. Brown states, "But is it not likely that the most promising parts of the structure will, in fact, be selected and will not be available for competitive bid."

Mr. Gilmore states, "Well there is an awful lot of people that hope they can do that, yes. But again, that is depending on the information and the capability of the people who do it."

Number 443

Rep. Springer asks, "Did I understand you right that one of the goals or one of the stipulations in regards to wildlife is that the human activities don't diminish the status of the different species up there, or did I misunderstand you."

Mr. Gilmore states, "No sir, I don't think you misunderstood me, I think what we are trying to do at this point and time in the general 1002(h) report where we have laid out what we think development scenarios can be and explain what effect it would have on wildlife. We feel like that the effects from the scenario, in the report, does not bring about significant problems for wildlife."

Rep. Springer states, "I have a hard time understanding what is being used as a base because some species like musk ox and so on, have a fairly constant density or number of animals in a specific herd but when you get into lower forms of life like different small earth species or insects and so on, you don't have that. It is a fluctuating thing that changes drastically from one year to another. This is a natural phenomenon. I don't understand what are we going to use as a base from a management standpoint to truth work."

Number 465

Mr. Gilmore answers, "Well we spent five million dollars in five years gathering a base data bank of information in regards to fish and wildlife species on the coastal plain. Probably the most extensive study ever done on any refuge in the United States or in the Lower 48. We think we have as good a base information as can be obtained at this point and time. Obviously, if you spent five more years out there you could get it a little better. What we have, we feel fairly confident at this point that we know what is going on out there and have some idea about what effects different types of development plan."

Rep. Springer states, "Yes, I understand that, but what I basically don't understand is are some species that have a natural condition, uninfluenced by man, a very strong fluctuations, like snowing out, for example. What are they going to use as a base and say at that point or that point human activity was responsible for diminishing or not."

Mr. Gilmore answers, "If we proceed through this, we will have a complete monitoring program that starts from five years ago and monitors right on through the times that there is either no development out there or something different changes. We are going to have an annual monitoring exercise that tells us basically what is going on out there. As is recognized, the Arctic Science of Wildlife Management is not specific enough to get down to real numbers of animals, so we look at trends. When we see trends of something happening out there, we do have and will have in the stipulations that will accompany these such actions as this, the opportunity and the prerogative to change whatever is going on out there for the benefit of wildlife."

Number 490

Rep. Springer states, "That is exactly my point because I have experienced the same thing during the oil pipeline construction. Because of the unexact nature of natural sciences, that is open to the whim of field observance and administrators and that causes me a great amount of concern. Thank you I appreciate your answer."

Number 497

Chairman Cotten states, "Mr. Gilmore one of the questions that came up today in Senator Murkowski's speech was something that this committee had slightly discussed before, and that had to do with the question of the State's interest in the land as it sits right now. As you know if the land were leased right now the State would receive 90% of any bonus or royalties. If the land were transferred to private ownership, the people of Alaska wouldn't receive those. One proposition that has been put forth would be for the State to, in the event that a transfer to private ownership, receive an overriding royalty. In response to a direct question, at least one of our U.S. Senators said he supports that concept very much. I feel like that would go a long way toward resolving the question of fairness to the general population of Alaska. How could that be included in an agreement between the Department of Interior and the interested private parties?"

overriding royalty

Mr. Gilmore answers, "I would to say that I would have to go back and study up on what an overriding royalty is."

Chairman Cotten states, "The point is that the State would continue to receive the interest they would have received had it remained in federal ownership."

would have to redo the deals for over. royalty (Horn says on 3/6/87 no overriding royalties)

Mr. Gilmore states, "I guess at that point the agreements that we have worked out, if I understand it correctly, with the corporations would have to be completely redone. In the event that some dollar amounts were taken from their potential proceeds, in the future, or in this case it would be their land value, if there was something on their land value or in the exchange it diminished their opportunity to make what they want to make. I suspect we would have to renegotiate."

Number 521

Chairman Cotten responds, "I suspect that that would probably be satisfactory with me. I noticed that earlier, that you said that you were proceeding at the pace that was suggested to you by the native groups. I would suggest that you might want to spend maybe a little more time with that proposition, serious consideration. I certainly don't have a big problem with the lands being transferred. I was concerned about the public interest and the revenue interests of the general population of Alaska had. If the land did get transferred to private ownership, as long as the State's interests were protected, I think we would all benefit under those circumstances."

Number 530

Mr. Gilmore states, "I was dealing with a hypothesis that you set up, I think I must respond a little bit on the other side of the issue. The hypothesis that you set up was that it's safe to go with a stand now, but I think that it might be wise to consider that Congress has got to open it first. At that point and time, whether Congress decides to allow it to be 90/10 or not, the big question, at least that's what we're led to believe, and as most of you probably know, I'm hearing a great deal of discussion in the Lower 48 from the congressional people of patterning the opening after the NPRA which is a 50/50."

Chairman Cotten states. "This committee expects to hear more about that, in more detail, at a later time. There has been some suggestion that as a part of the State working off that for legal reasons, we may have a case and we may not. But that is something that we as a State again would no doubt hope that we could maintain the existing language."

Number 540

Rep. Sund states, "That's just a follow up, Mr. Chairman, that the prior existing rights series that is obviously had to have made a determination of whether the State has prior existing rights in that land to any royalty share of the oil. I wondered if you have any legal opinions or what position you take and the issue is if it's federal land and there is prior existing rights for the State to get 90% royalty share. If you take and trade it away the State is getting a zero consideration for that prior existing right, as I understand the position you are taking now. I was wondering if you had any research or legal opinion done on that."

Number 550

Mr. Gilmore states, "That has so many avenues that I don't know if I can answer all those and keep in mind what your question totally was. First off, our position is fairly simple. We have laid the report on the door of Congress and we expect it to take whatever action they choose to take. In regards to whether it is 90/10 or 50/50 will be up to them, not us. One piece of information that we do have, that Congress has already shown us what some of their intentions are and that is to take in the NPRA, when they provide for opening the NPRA, they changed it to to 50/50. That is all we have to go on at this point and time. As far as I know, there has been no solicit or revue of prior state interest. As I understand it, partially what you are saying, I saw some of the information that has been brought forward. Did I get part of it?"

Number 560

Rep. Sund states, "We're getting there. In terms of establishing the value to the land in the land exchange, it seems to be that's a pretty basic consideration of it. If you're in the native group position of how much acreage or value for value land you are going to get, how much of that oil that is under the lands is going to be yours or theirs for the receipt you're in. It is pretty important, if it's a 90/10, then they get 10% or if it is 50/50, they get 50% or if the state is found to have a zero prior existing right and they get it all, that seems to me that the impact is pretty heavily on the value in terms of trading this land back and forth. I was wondering what basis or formula you have been using."

Number 570

Mr. Gilmore states, "The formula is fairly simple as far as we're concerned. We are trading on the basis that Congress will make that decision whenever the decision is. Our point of view is that the oil values up there are given amount and that anybody that who became owner of those oil values by exchange would get the full amount."

Number 580

Rep. Sund states, "So the negotiations table now is that whoever gets the land on the coastal plains is going to get 100% of the value of the oil underneath. You are setting up a trade based on that, so if Congress comes in and says no, we're only going to give them 50% and we are going to give 50% to the State, then what do the amount of land that you're going to get in the inholdings is going to be cut in half."

Mr. Gilmore states, "I suspect that we'll do some renegotiating. I couldn't answer whether it would be a half or not. I think that I see it in Senator Murkowski's talk and I don't want to go back over it too much but certainly you're not overlooking the taxes that has become accrued to the State as a result of anybody, private or what have you, finding oil and developing it."

Number 586

Rep. Sund notes, "It has been our experience in the State that alot more comes from severance in royalty than comes from taxes. Is there a list of the land or the lands that have been proposed for inholdings for exchange?"

Mr. Gilmore answers, "Yes, as I indicated, I have a map that I left on the plane which would have shown all of the inholdings in the refuges and we, in turn, prioritize with inholdings, indicating those that were the highest priority to us and to low priority."

Rep. Sund asks, "About the list that you gave in your talk."

Mr. Gilmore states, "I did not give that list in my talk."

Rep. Sund states, "No, but in the priority list, you might endanger species and right on down the list."

Mr. Gilmore, "Yes, right, and that is available."

Number 595

Chairman Cotten asks, "On the other hand, have you been able to identify the lands in the wildlife refuge that would be offered for exchange."

All 1002 lands available

Mr. Gilmore answers, "Lands in....which refuge." Chairman Cotten states, "That one." Mr. Gilmore states, "No, no sir, the reason I wouldn't identify it, at this point and time everything in the 1002(h) area is available for exchange except those lands that belong to Kaktovik and ASRC. Everything else would be available for exchange."

Chairman Cotten asks, "And then would be nominated by those interested parties. Is that the process?"

Mr. Gilmore answers, "That would be the native corporations selection, they would tell us what they want and at that point when we know what the value of that piece is, then we know where we are. We will know that before we go into the selection process."

Number 605

Rep. Sund asks, "Do they have access to the BLM seismic data that you have for evaluating those lands."

Mr. Gilmore answers, "I really don't know what the native corporations have for information."

Rep. Sund asks, "You don't know whether BLM shared that seismic data with them."

Mr. Gilmore answers, "The raw data, I believe is available to everybody. They interpreted that, it would depend on who interpreted it. And they interpreted that that BLM is using is not available. In other words, BLM interpreted the raw data and that information is not available."

Number 611

Rep. Brown states, "On the issue of value, it seems pretty obvious that the one well that has been drilled or has a great effect on how that evaluation takes place. I'm wondering how you feel you can make a valid assessment of the value without having that information. You stated that you don't have that information."

Mr. Gilmore answers, "Unfortunately that would be a little bit like crying over spilt milk because whether I wanted it or not, I can't get it. It's not available to me."

Rep. Brown states, "The premise you're putting forward is that the values being exchanged here are equal."

Mr. Gilmore states, "That is the only....let's see if I can go back over that. If, a 1,000 acres was worth a 1,000 dollars, then the native corporations that owned that 1,000 acres would get a 1,000 dollars worth of subsurface someplace, which may be a square foot. That's the value for value that I'm talking about."

Rep. Brown states, "Right, at that same point, that it could be a square foot or it could be ten miles, depending on whether there is oil there or not. The only way we are going to know whether there is in fact, oil there is through the drilling of wells and some parties have that information and other parties do not. It seems like the negotiations would be obscured in that way."

Mr. Gilmore replies, "I think you'll find the well that is drilled out there is on private land. Whatever information they have, they have a right to it. At this point and time everybody that is attempting to exchange for lands in the open lands have no more information than the others."

untrue — Koniag / Chevron akis — KIC data

Number 633

Rep. Brown states, "That may or may not be the case. I can see how some of the other parties may have access to that information. Could you elaborate a little bit on how the reverter clause fits into the valuation?"

Mr. Gilmore answers, "I don't understand it well enough to get into the details of it, but if I did, I would surely make a mess of it. I would prefer not to do that but I would greatly like the opportunity, when we get it finished up, to be able to come back and explain to you how it works when we have finished the negotiations."

Number 639

Rep. Brown asks, "Are you one of the people involved in the negotiations."

Mr. Gilmore answers, "Yes, I get involved in negotiations in about one of every three. I go catch up about one out of every three. I have one person who works for me, almost full time, keeping the exchanged pieces put together."

Number 643

Rep. Brown asks, "Do you have petroleum specialists, geophysicists, geologists representing the federal government in these negotiations."

Mr. Gilmore answers, "The BLM supplies those."

Number 648

Rep. Brown asks, "Could you tell us the name of the person who could explain the reverter clause."

no info on rescission till agreements are over

Mr. Gilmore answers, "Yes, one of my people could explain it very well. John Doble could explain it, but I'm not going to let him explain it until we've finished negotiations in agreement."

Rep. Brown asks, "In your opinion, does..... or as I understand it or what I have read about it, it provides that the land could be traded but if what were to be drilled and dry holed and the lands would revert back."

Number 659

Mr. Gilmore notes, "There are options in there for recision, I think that is the right word, and at this point and time there is a fairly large segment on recisions which is complicated and that is the reason I don't want to get into it at this point and time, because I would surely mess it up and somebody would say but he said so and so. I am being very cautious about that because I don't understand it well enough, at this point. It is very technical and it is being developed by a group of lawyers and my people and BLM's people. Most of the work on the recision is being done by a group of lawyers and that is the reason why I am kind of nervous about getting into it."

Number 660

Rep. Brown asks, "Does the fact that there is a clause of this type in the agreement affect your value and the value you place on those lands in the agreement."

Mr. Gilmore answers, "Yes there are assured risks and I think I know where you're going, what kind of question you're trying to ask me, and yes there are assured risks between the native corporations or the participants and us. Nobody is going to get it all. In other words, if they go out there and they can't find a hole or something there in the recision, and in the recision, their costs in the recision for the natives and their costs for each one of the terms so that there isn't a complete give away or a complete scoop. There are reservations in the recision that provide for protection of the American people's interest. I couldn't do it if it weren't there."

Number 670

Rep. Shultz asks, "Did you say earlier that the State was proposing to trade some land for the State."

Mr. Gilmore answers, "Yes."

Rep. Shultz asks, "Do you know exactly where approximately or how much an acreage we're talking about."

Mr. Gilmore answers, "We're talking in the refuge business now, I don't know what they proposed to the parks other than what was initially laid out, but it is somewhere in the vicinity of 700,000 or 800,000 acres, I believe."

Rep. Shultz asks, "The State."

Mr. Gilmore answers, "Yes the State would like to be involved in the exchange."

Rep. Shultz asks, "Are we though, we might like to be but are we."

disputed by Katz, p. 46, 47, 48

Mr. Gilmore answers, "As far as I'm concerned, you are. You're an active member of all the negotiations and have been for a year and a half."

Number 680

does State endorse the trades?

Chairman Cotten asks, "Would you say that by saying that, are you suggesting any way that the state has endorsed the land trades in any way, because they are attempting to participate."

Mr. Gilmore answers, "I don't know the answer to that. I've seen several positions taken by the State and I really don't know right now where the State is but my impression from the sincerity of the negotiations and the people involved in the negotiations, the State is proceeding as an active, interested partner in the State."

Chairman Cotten asks, "So you wouldn't say that the State, has in any way, endorsed these trades."

Mr. Gilmore answers, (inaudible - end of tape).

Change Tape
Tape 16, Side 2

Number 000

Chairman Cotten states, "I don't accept that, I think that we're going to probably ask the State the same questions."

Mr. Gilmore states, "I am trying my best not to put words out of my mouth, speaking for the State."

Rep. Shultz asks, "What is the State asking for in return."

Mr. Gilmore answers, "I think what they are asking is the same as any other group in the participants and have the right to select parcels in the coastal plain or oil development."

Number 020

Rep. Navarre asks, "Are the State negotiators under any constraints from the Department of the Interior not to release information to the Alaska Legislature."

traders restricted all documents

Mr. Gilmore answers, "I don't know. There is none that I know of but I don't perceive to know most of everything that goes back on in the Department of the Interior, even though I am the rep out here."

Rep. Navarre asks, "Are we then just not getting the cooperation."

invitation was extended to Horn 2/5/87, he sent Gilmore

Chairman Cotten states, "It sounds like there is more than one person from the Department of Interior that is making decisions here and they aren't all here today."

Number 025

Mr. Gilmore answers, "My responsibility is to make the decisions out here, and of course there are lots of people going to be involved in making decisions of a action such as this. There are petroleum people, land managing people, wildlife people and lawyer types or solicitor types, all of those people must be involved in a decision of this sort."

Chairman Cotten states, "We appreciate you being here and we recognize that you are here and you don't have to be and we have invited you and you showed up and we appreciate that very much."

Rep. Navarre states, "I guess our interest is in seeing that the legislature be involved in the decision also, the Alaska Legislature."

Mr. Gilmore states, "In response to both of those statements, I would look forward to coming back at any time you need any additional information. I would be glad to come back down and go through whatever part of the process that you need to understand or whatever we can provide the state legislature. There has been no intention to keep anyone short sheeted in this operation but it has been such a difficult text of trying to pull together four or five major groups of people, with different interests, into an exchange of a sort that is brand new to most of us. It is complicated and we would be glad to come back and explain any part of it that we might be able to do in the future."

Number 067

Rep. Sund states, "I just have a new issue here on terms of how do you establish a value for wildlife refuge inholding.

Do you have an appraiser that goes out and does it or do you have some formulas?"

Mr. Gilmore answers, "Oh yes, what we have is a standard government appraisal process."

Rep. Sund asks, "For wildlife refuge."

Mr. Gilmore answers, "For wildlife refuge or anything, any land. In other words, we're not appraising a wildlife refuge, we're appraising private holdings within a refuge."

Rep. Sund asks, "Is that available within the regs or someplace where we could get a copy. I would be interested in reading what goes into the consideration, what is a snowy owl worth."

Number 090

Mr. Gilmore answers, "I guess I'm going to get a little more detailed. When we run a standard appraisal, the appraisal techniques that are used today are the land appraisals. They do not take into consideration the wildlife that lives on it, that is a standard government appraisal. The wildlife that lives on it is one part of the evaluation of what the land is worth. In a government appraisal, it is appraised for it's highest and best use. If the highest and best use happens to be for hunting and fishing, then that's worth, generally so much an acre based on other appraisals that have been run throughout the State and throughout the Lower 48. If the highest and best use is condos, then obviously, the value goes up considerably. It is based on the highest and best use, the government appraisal. When you attempt to translate a piece of land, land value, rate value into it's value for fish and wildlife, which is in the ANILCA, I believe, provides for public interest and that is where you are trying to evaluate a snowy owl or what have you. There have been some rather definitive works done over the past 15 or 20 years attempting to arrive at values for fish and wildlife. Briefly, one simple example, it is very complicated if you try to do it but if a fish were to swim up the Karluk River and spawn, we have a general idea of about how many little fish might be produced and, in fact, would escape back out into the ocean. We also know what each one of those fish is worth per pound and depending on how many fish swim back down that river and are available for the commercial catch which we have a pretty good idea based on the statistic work that the State does. We have an idea of what that system is worth in commercial fish. Now when you get over to how much it's worth for a guy who has one on the tip end of a rod, that came from France, you've got a pretty good idea what he was willing to pay for it, to come out and catch a fish or five fish, or whatever. There are ways to get to some relative values. At this point and time, the economists aren't in total agreement as to the best way to do it."

Rep. Sund states, "I just wanted to follow up on that point, though, which value are you using. You're taking the basic land values and then putting it on top. Is there any instream water appropriation, the value of appropriated water going on in any of these trades? "

DOI will negotiate "public interest value"

Mr. Gilmore answers, "That is taken into consideration in the standard government land appraisal. Right now we are at a point where we have identified the land value, the appraised value of those lands. Any value over and above that will be arrived at through negotiations between the department and the native corporations."

Number 150

Rep. Shultz states, "Just to quickly respond to the questions asked, no, we are not interested in putting any part of the Delta Barley agriculture project into a refuge (laughing). But other than that, is the State in their negotiations, are they asking for subsistence corridors." Mr. Gilmore answers, "No, not that I know of." Rep. Shultz responds, "I just want to ask another question, let's say that this goes through the clauses put in there on the subsistence, it could conceivably, I would think, happen that an area that is traded could be shut down only for subsistence use. The other part of the refuge that has customarily and traditionally been used for hunting and fishing, it would not be necessary to close down but because of closing down this one area, and allowing only subsistence corridors into it, could in essence shut down the entire refuge as that accessibility to everyone's estate."

Mr. Gilmore responds, "With that kind of hypothesis, yes it could but equally, no it would not necessarily have to. It goes both ways."

Rep. Shultz states, "I can see where there is mechanized vehicles or whatever it may be, float planes, well I guess float plane operations would be o.k."

Mr. Gilmore notes, "I would add to that that discussions of that sort are fair and square kind of discussions, but we hope that we have learned enough through the past years on management wildlife not to get to that position, so we could, in fact, reduce the value or reduce the text so we don't get to it in negotiation."

Rep. Shultz asks, "If in essence that did happen, are you negotiating something to the effect that it may, in this area where you would have subsistence, utilization of this land only that those corridors could be utilized to get to the different part of the refuge."

Mr. Gilmore answers, "Yes, we wouldn't close it down to that bad of extent."

Number 190

Rep. Cliff Davidson states, "Mr. Gilmore, you spoke and referred the salmon in the Karluk River, my understanding is that you're talking about a habitat evaluation process. My understanding is that the value that you will place on the land, chronologically, is present value, yet you indicated the future value predicated on what would happen. As we know, land values change according to use or abuse and I was just wondering how you correlate the value now with what is supposed to be heightened value in the future, say in the ANWR lands."

Mr. Gilmore asks, "Will you try that again, I'm not sure I quite understand the point you're trying to get at. The heightened value, I'm sorry, maybe we better try that again."

Rep. Davidson responds, "I'll try. If we evaluate a certain parcel of land in the Kodiak Wildlife Refuge, a thousand dollars say, that's present value according to the MAI appraisals, proposals or their guidelines. Yet, future use of that land is not considered, it is only on that present value, yet we're going to trade that for value for value with land in ANWR and yet, we don't know the value of the subsurface rights, we don't know what the exchange of partners are giving for what. I guess I'm wanting you to comment on that."

Number 226

Mr. Gilmore answers, "Well we do a pretty precisely, when we make the exchange, exactly what each parcel is worth. In regards to the appraisal of the land, as I indicated, it is appraised for it's highest and best use. That does take into consideration it's future use, highest and best use. That means, as I said to you, it would be pretty hard for any of us at this table right now, I think, to assume that somebody would put a condo on the Karluk (River). The point being, though, if that were determined by the appraiser and he felt that that was possible, then that would in fact take into consideration for future use. Now, at the time the exchange is to be made, we're looking at the highest and best use value for the lands that we're giving to the native corporations. We're looking at

Gilmore ignores 22(9)

present value as determined by geologists or petroleum economist or whatever and BLM. We think we're going to get a value for value exchange. We're relatively confident, right now, that we can come to fairly close figures."

Number 248

Rep. Davidson states, "My understanding that back in 1983, some of this land that we're talking about now was worth as much as $600 an acre, on that appraisal basis and yet today we're talking about $178 to a $150 an acre."

Mr. Gilmore answers, "I certainly can't respond to where you may have gotten your $600 an acre, or where you got your $178. The $600 an acre figure, generally bounces around the State, comes from the Pribilof terms and conditions of which Congress provided an eight million dollar settlement in the Pribilof's. That boils down to about, when you divide the acreage into dollars, $600. I don't think, as a matter of fact I'm fairly sure, when we started into the appraisal process, probably the most extensive appraisal that has ever been done in the State of Alaska and in many places in the whole United States. We were not able to find the comparables that were necessary, I thought, to come up with real solid figures so we had to do some additional work, working with people in Canada and the Lower 48. I would say that probably the $600 acre is a float figure that we used alot in Alaska as a result of some discussions earlier on. I don't know where the value would have come from on a $600 acre other than that."

DOI couldn't come up w/ comparables for surface appraisals

Number 271

Chairman Herrmann states, "Mr. Gilmore, I have a concern about what you said about a pace requested by the native corporations. From in my district there is alot of national wildlife refuges as you well know and alot of plans coming forward for those refuges. I have alot of concerns about planning processing and where the planners come from, like Washington D.C., Denver, Colorado, and they have the attitude that is not necessarily the attitude of alot of people in the State of Alaska. My concern is that I know in those plans that you do have a very strong interest in inholders in that land so you can say that you're working on the pace requested by the native corporations, but I think that during this whole ANWR discussion, it will come in a full circle. Everybody will be interested in this certain case and so I have some concern there. Also, you talk about highest and best use, those terms are just like in the State's best interest and those kind of things. Also, if you could just give us your interpretations of what will happen regarding (7) (i), your opinion on that."

Number 295

DOI moving at ANCSA corporations pace

Mr. Gilmore responds, "Let's see if I can go back and pick up what were your concerns. My statement in regards to the pace is that we have been moving along at a pace that we felt the natives needed to move on because the lands that we want to preserve are extremely important to us and we feel like if we don't move at their pace we may not get to protect them. That is one reason why we're moving at their pace and I might add, we're quite comfortable with the pace that we're moving at so it is not causing us a great deal of discomfort. In regards to the planners, that you're concerned about, I'm a little surprised because the planners that we've been sending out for the past three years have all been in Alaska for the past five years. They have lived in the villages, they've lived in peoples houses and based on all of the information that I can receive, and I can't get it all of course and I appreciate your insight also, is that the planning effort that we're putting out here now is being well accepted by most of the people that we have talked with. I would appreciate any additional information I might have to any way you can improve it anymore. In regards to (7)(i), I consider that a native corporation responsibility and I'm not getting in it."

Number 320

Chairman Cotten states, "I'm going to have some follow up questions on that in writing as to, as I understand it, BLM will make a determination, for instance on (7)(i) with the existing Kaktovik and ASRC lands. That hasn't been decided yet, is that true."

Mr. Gilmore answers, "That is true."

Chairman Cotten asks, "Does BLM make that decision."

Mr. Gilmore answers, "I'm not sure just exactly what decision BLM does make and I would not try to speak for BLM at this point."

Chairman Cotten notes, "Again I will defer that and present it in writing to you."

Mr. Gilmore responds, "If you present it to me, I'll make sure that we get BLM's answer to you in response."

Chairman Cotten thanks Mr. Gilmore for his willingness to come forward today and for his willingness to return at the request of the committee.

Number 330

Rep. Shultz asks, "I was wondering if I could get just a map showing the Wrangell - Mt. St. Elias Park, the land that is being proposed and also the one in the Tetlin Wildlife Refuge."

Mr. Gilmore states, "I can get you Tetlin, but I can't get you Wrangell - Mt. St. Elias. I would suggest that you get that from the State, if there are State lands in the Wrangell - Mt. St. Elias."

Rep. Shultz asks, "Are we talking all of the State lands that is presently in the Mt. St. Elias Park."

Mr. Gilmore answers, "I don't know the answer to that." Answer is No - no park inholdings

Number 345

Chairman Cotten introduces Margie Sagerser with the Native Lands Group (NLG).

"My name is Margie Sagerser and I am here representing the Native Lands Group, which is a consortium of native corporations and one of the participants negotiating for oil and gas rights in the Arctic National Wildlife Refuge. I have a written testimony which I believe is in your packets. In lieu of reading it, I would prefer to go through this and highlight the areas I think are important and then give as much time for answering questions as we need. By way of background, I feel it is important that you understand what the NLG is. It is a new name that I am sure that you have not heard before, it is an assemblage of native corporations that have joined together in a partnership pooling their lands, negotiating with the Department of Interior for oil and gas rights in the ANWR. The regional corporation involved is Cook Inlet Region, Inc. They are one of thirteen native corporations in this partnership. The other twelve are village corporations, primarily in western Alaska and the Kenai Peninsula. All of us hold lands within either the Yukon Delta National Wildlife Refuge or Kenai National Wildlife Refuge.

Number 381

"I am here today to urge your support for the ANWR land exchange confidence because the NLG believes that these exchanges are in the best interest of the State of Alaska and that the State of Alaska will benefit because, I believe, that we will facilitate in the opening of ANWR and therefore, assist the state in acquiring a revenue stream out of the ANWR development. I think that my understanding is that the State interests are just as well. We heard today from Senator Murkowski, that he felt as we believe that the native exchanges, in particular, bring some very special things to the congressional debate that is going to be going on in the future. In particular, the native land exchanges are bringing to the table critical wildlife habitat or highly used recreational properties that we believe that when push comes to shove, the environmental community will analyze and see that indeed they are receiving benefits from the opening of ANWR.

Number 401

"In addition, we also strongly believe that we bring to the lobbying effort a constituency that the State cannot do on its own nor can the oil industry do on its own. We are Native Americans. We are of concern to many people in the democratic process and I think that they would be very interested in hearing how we feel that we can participate in the economic benefits of ANWR. We think that we will find sympathetic ears in Congress.

"I think besides just the benefits that the state receives by us helping to open ANWR, the State will receive other benefits for supporting native lands exchanges. We are local corporations. Monies that will be derived from these exchanges will stay within the State of Alaska. In speaking for our group alone, we have participants, particularly those in western Alaska, that receive very little chance to reach the economic benefits. These are areas that receive alot of assistance from the State now, I think one reason is because there are so few economic benefits for those. We feel that this is one of the few opportunities to allow rural Alaskans an opportunity that I think that Governor Cowper has already expressed an interest in and to see that rural Alaska is a sound area of the State and I'm sure its from each area of interest for the legislative body.

"Additionally, we have the ability to have strong local hire as in the State contractors provisions. We have, to my knowledge, all of the participants, speaking for the NLG in particular, we have arrangements with oil industry partners, ours in particular, does include provisions for shareholder/buyer and for contracting preferences. Many of them, Cook Inlet in particular, and the other corporations as well, have joint ventures that employ Alaskans and infuse the money into the economy and are very much looking forward to utilizing these contractors preferences and shareholders hire preferences to achieve the goal we all want, which is Alaska hire.

"Also I think the State benefits because of these arrangements that we have with the oil industry. At least speaking for the NLG partnership, we have already negotiated leasing terms with these partners which will mean that we will get... participate several years with a head start on the exploration because we are not subject to the stringent oil and gas leasing provisions within the federal government. I think that the benefit of an early start is going to be particularly beneficial because of exploration and hopefully development of ANWR is still a long term project and the sooner we begin on that process the greater the benefit."

"We believe that the potential negative impact to the State revenues, from supporting these exchanges, are out weighed by other revenue benefits. We heard today that again from Senator Murkowski that the decision to open ANWR is a very difficult decision, we have heard that as well and believe it, We don't understand your position of trying to have a strong front regarding the 90/10 issue but we think that that provision is uncertain and it may be very difficult to maintain. Senator Murkowski also said quite clearly that the impact of exchanges into the ANWR was going to be minimal and that I think the number that he used was up to 15% may be subject to exchanges. Mr. Gilmore explained to you in detail that these exchanges are going to be known at value basis and that they are likely to be a great disparity between the value of the land that we offer and it must be the value that is placed on the ANWR. We have every reason to believe that a viable, strong leasing program will remain even if these exchanges are ultimate. We also wish you to understand that, it is very much within your interests that native corporations are private corporations. You will receive severance taxes, income taxes, all of the other taxing situations that the sovereign will levy against the private corporation. It is my understanding, in the North Slope situation today, over half of the revenues come from a taxing situation. There will be revenues going to the state on these private inholdings. Also, I think the State benefits from the opening of ANWR and where we can assist in opening ANWR because, I believe, that if ANWR is closed to leasing or if it is committed to wilderness area, then it is unlikely, or certainly much more difficult for having adjacent State land brought into production. In the decision making, on the revenue rate, you have to make some political calls. I think it's a harsh political climate out there and I think that the native corporations do insist in the opening of ANWR.

I think that the State would also benefit, given the fact that they may be revenue impact for land exchanges, may be able to minimize those by participating itself in exchange. I'm sure that you will hear later on in the day from the state people themselves but their participation, the NLG supports their participation has an exchange participant. We feel that that will allow State to acquire highly prospective tracts to bid on ANWR. On those tracts, be able to set its own destiny, and then would own 100% of the reserves and you could set your own lease terms on however that works and whatever the decision is. At any rate, you can be at the table and participate in selection of the tracts.

"We believe that the State is a viable exchange participant and in some ways a very competent competitor. We feel that they have, at their disposal, as much information, perhaps even more, than the NLG partnership and that that representation, in fact, has been made in negotiations sessions in Washington by state people and had no reason to doubt that they were not in a position fully capable of making selections with ANWR. I believe the State is going to probably address the time, their participation as for as how long they have been in it, I think they have for perhaps for several years entertained the idea of the exchange. Right now it is my understanding that they will not be intrigued until they are being treated as equal partners in every respect."

Number 500

Ms. Sagerser states, "In summary, I think that I would like to reiterate what Senator Murkowski said today, he spent a great deal of time saying that the opening of ANWR is going to require a very united Alaska. I think a good way to assure that the State is united, is for this committee and the State in general to sit down and embrace the idea of land exchanges in the state. I think that given the harsh political realities, careful assessments of those land exchanges is the way the State can best maximize its benefits from ANWR development."

Number 540

Chairman Cotten states, "I would like to just point out that in our resolution, we don't say that we are opposed to all land trades. We do suggest, at least I suggest, that I would oppose lands trades if they're not in the best interest of the State and if they would reduce or eliminate the State's interest. We don't say that we're automatically opposed to all land trades. I understand that the fact that you represent a private corporation and you have a responsibility to your share holders to pursue economic benefits to the shareholders and certainly, I understand the position you are coming from.

"I'm going to just take a parting of the Chair and ask a couple questions myself first."

Number 549

Chairman Cotten states, "First of all we asked Mr. Gilmore about the draft agreements between the Department of Interior and the NLG and the other corporations. I think he said that he would deliver those draft agreements to the committee. He said, yes that we could see them. Does your group have any opposition to our receipt of those draft agreements."

Number 554

Ms. Sagerser answers, "Again I think those agreements are in a very preliminary stage and I think you should keep in mind that those are preliminary agreements and it is obvious that we don't have control that level of information.

NLG doesn't oppose releasing documents (Koniag does on p. 40)

Number 560

Chairman Cotten asks, "Would your group have any opposition to the legislature seeing those draft agreements."

Ms. Sagerser shook her head in the negative, no verbal response.

Chairman Cotten states, "You referred several times to Senator Murkowski's statements and of course you can't overlook one of the statements he made in support of an overriding royalty situation. Your absence of comment of that was noticeable. I won't make you respond to that. But if you would like to, please."

Number 565

NLG seems to accept overriding royalty concept -

Ms. Sagerser answers, "I think the overriding royalty is one way of sharing the economic benefits. I'm not sure that that is what the State would wish or would be in the best interest for the State. Overriding royalty means that you would turn over your participation in ANWR to another entity. You would be depending on the native corporations, essentially for competent development of ANWR. I would think that the State would rather have more control of it's own destiny."

Number 570

Chairman Cotten states, "I guess maybe you misunderstood what I mean when I say an overriding royalty. What I mean is that if the land were open right now for development and if there were leases and bonus' received and royalties received, right now the State would receive 90%. I would just say the chances of land fine but the State to continue to receive the same thing it would have received under federal ownership. When I discuss an overriding royalty that is what I am saying, that the State protect it's financial interests."

Number 581

Chairman Cotten asks, "One quick other question about tract selection which is an interesting one because as you point out, the NLG probably doesn't have better information than the State about what lies under the ground. Perhaps during the tract selection your industry partners may, I should ask you, would your industry partners assist you in your tract selection."

NLG reveals its industry partners, but Koniag will not (p. 41)

Ms. Sagerser answers, "Yes."

Chairman Cotten asks, "Who are your industry partners."

Ms. Sagerser answers, "Our industry partners are Conoco and Exxon."

Number 590

Rep. Shultz asks, "AHTNA is not part of the NLG."

Ms. Sagerser answers, "No."

Rep. Shultz states, "AHTNA is not, but Doyon is which includes Tetlin."

Ms. Sagerser answers, "Doyon is one of the native corporations participating in the discussion of negotiations. They are not a member of the NLG."

backscatter

Rep. Shultz states, "Some of the land that is going to be given up is in the Tetlin Refuge at the present time. The one thing that I'm asking is the (~~vaska~~ ?) radar is going to go in, the Air Force is going to put (vaska ?) radar in my district, all nine sights that have been chosen, all are in my district, so it's going to go. We're going to be a party, we wanted to be on the map and we are. The point is, it is going to take a considerable amount of land, to put this radar system in because some of these, it's 14,000 feet long or something like that. For one of them, I think, the receiver sight and the transmitter sight is something like 5,000 or 6,000 feet. The land is going to have to be acquired. The second choice that the Air Force has is all on the Tetlin Wildlife Refuge at the present time. I am just wondering, in the negotiations, if in fact it has been taken into consideration. If we had to go back and establish a precedent as to what that land is worth, or if 18 acres of land that were purchased in the Tetlin Refuge, at one time by the school district, and it amount to be equivalent to about $23,000 an acre. Taking that into consideration, if they had to acquire 9,000 or 10,000 acres of land to put this radar system in, we're looking at, not only would they be able to trade land and become part of the (7)(i), possibly, and share in the profits from that. They would also have the ability to sell the land to the Air Force for a tremendous amount of money which could amount to several million dollars. I'm just wondering and to ask Bob, has any consideration been given when the feds have been talking about swapping land to - the other land that they're talking about is owned by us - but over in the Tok area, they're second choice is in fact on the Tetlin Wildlife Refuge. Is there any talk of making a swap in that area rather than making the swap and turning around in five or ten months later and buying this land? Can I ask Margie that?"

Margie Sagerser answers, "The NLG does not include any package, any land in the Tetlin Refuge on the matter of the negotiations that are happening."

Number 627

Rep. Sund states, "I want to know whether my map is right. We're at 1.9 million acres that is being talked about in this coastal plains and 1.5 and about 15-20%, if I remember in Senator Murkowski's comments, is what's being subject to the land swaps here. That's about 300,000 acres, if you multiply 20% X 1.5. The whole Prudhoe area, if I can figure it out right, is about 384,000 acres. If you got lucky on your land selections, you could land swap the entire area that is the equivalent of Prudhoe Bay and leave nothing left over to lease. We're talking about a surface acreage that is the size of the surface acreage over Prudhoe Bay. That could be swapped out one for one here and if you got, like I say, lucky and picked the tracts, there isn't anything left over. I would just like your comments on that."

15% est. not inc. State land

Ms. Sagerser comments, "First of all, whether that 15% was land, number of acres or amount of value is unclear to me. Also that number, I assume, includes the State of Alaska participation and at this point they may become the largest participant in the exchange. You would, perhaps, be sharing in the prospects."

Rep. Sund states, "Again, from southeast Alaska, that is the only way we share any of this, is what comes through the State government. I was just curious, how many acres are in NLG that you are looking at swapping, or how many surface acres is in the ANWR in your negotiations?"

Ms. Sagerser answers, "Our current proposal amounts to approximately 260,000 acres that we are offering for exchange."

Rep. Sund asks, "Yes, but how much are you expecting to get in ANWR for that?"

Number 652

Ms. Sagerser answers, "Much, much less. We are not privy to the ANWR evaluation numbers. We have just been told that the reduction is going to be substantial, some people have even said that as much as 20 to 1. I don't know. That information is being held very close by the federal government for obvious reasons and they have just forewarned us that the reduction, because of the value, is going to be great."

Rep. Sund asks, "One more question in a little different area, you forwarded an argument here in favor of why the state would benefit here and by decrease social spending in your area because you have more money and that would put up in the Red Dog/Cominco argument that there would be one reason the State should get involved here or support this is because we put more money in that area of the State and therefore be less social transfer system going on. I kind of went with it in the Red Dog area because they created a borough and they are going to have a fixed tax base to be able to support some borough government. How does that effect the native corporations and the village corporations in the Yukon and Kenai areas? I want to follow that argument somewhat."

Number 669

Ms. Sagerser answers, "Again, I think that there are few opportunities to view economic benefits to rural Alaska. In their probable past record, I don't know how that works, but I can say that indeed some of these participants are in desperate need of cash. Some of the things that they are talking about are things like providing medical services in their villages. Now I can only imagine that that will help of providing social and economic benefits by the State as a whole. I also can point to Cook Inlet, as an example, we are a successful corporation and we have taken great strides in establishing foundations, having nonprofit organizations that can excuse some of that capital to our shareholders. I can only imagine that the other village corporations have those very same desires and wishes to be be able to transfer some of that benefit to their shareholders."

Rep. Sund states, "I just hope the shareholders find a way to invest it in there area. I think they're facing the same problems everybody else is. Cook Inlet has a large amount of money invested outside the State too. Many of the village corporations in my area, the ones that have been successful have got their money invested outside Alaska. Those that have invested in Alaska have gone bankrupt. That is an apparent problem with investing funds."

Chairman Cotten states, "I think we'll try to wrap this up too. I think Rep. Brown and Springer have indicated that they wanted to ask questions."

Number 691

Rep. Brown asks, "Has the group already entered into exploration, development agreements with your industry partners?"

TAPE NUMBER 17 SIDE ONE
Number 000

Margie Sagerser, continued: (some of testimony is inaudible as speaker's voice is very soft) I can only say that we feel very comfortable with the good strong lease terms.

Rep. Brown: What is the position of your group on sharing of any revenues that might come to the group through the 7(i) position?

Margie Sagerser: 7(i) sharing, and I'd like to respond to Representative Cotten's question whether BLM determines 7(i) sharing. BLM does not determine 7(i) sharing. Seven (i) sharing is determined by two documents: the Native Claims Settlement Act to begin with and an agreement between the regional corporations on how to interpret the positions of the Act. Those agreements essentially say very specifically which lands or section of 7(i) that we want. Currently our proposal does not include land that we traded for revenue sharing portion prescribed by those two documents.

Representative Cotten: I guess I misunderstood...I had a conversation the other day with you about it and I thought you said that the submerged lands would be in it and the surface lands wouldn't be, but I must have been mistaken.

Margie Sagerser: At this point, the Department of Interior has only allowed us to put forward in our proposal the surface estate holdings. Those, and, well the twelve corporations that are village corporations, they only own the surface, so we have only surface lands in our proposal that is at the instruction of the Department of Interior.

Number 050

(Tape malfunctioned)

Margie Sagerser: I believe that we are going to make our appeal to Assistant Secretary.

Number 061

Representative Cotten: I guess that's what I meant when I thought BLM finally made the determination.

Margie Sagerser: He and Mr. Gilmore will make the determination of what lands they want to make....

Number 071

Representative Springer: I'm very intrigued with the whole principal of land exchange. On page 2 it says that twenty-two native corporations both village and regional, are involved. Is that from the standpoint of mechanism instead of ad hoc group or did CIRI take a lead role in coming together? How did this come about?

Margie Sagerser: Our group has thirteen, there are others and Mr. Gilmore indicated to you which they were, other native corporations under there. Some of them are represented in large corporations so they're actually share holders of several village corporations. Our particular proposal and group was formed on actually the request of the Department of Interior. They felt very strongly that they needed somebody to reach to western Alaska to acquire the critical habitat that we have in the proposal. They were aware of Cook Inlet's past record and the ability to work with these corporations and to work with them and encouraged us to put together such a proposal so indeed they would have a world class habitat to deal with when they were talking about exchanges.

Number 110

Representative Springer: So the first initiative actually came from the Department of Interior then?

Margie Sagerser: For our proposal, only for ours. The others I'm sure got to the table in different ways.

Representative Springer: Okay, in this by any chance are Bering Straits and NANA Corporations involved in that too, or is that privileged information.

Margie Sagerser: To my knowledge they are not involved in the exchange negotiations.

Representative Springer: Then there's actually nothing--I probably shouldn't ask you the question--that prevents another group to form a multitude of little ad hoc groups with land holdings that say we've got a deal for you. Another question is are there any native allotments involved? The reason I ask is that in the multitude of management plans for the different federal holdings there is a very controversial issue about the desire on the part of the Federal Government to absorb the native allotments which are in different refuge and park systems and are there native allotment holders which hold right now very prime property within those refuges involved in that group?

Number 126

Margie Sagerser: Most of the lands are conveyed and in those conveyances if there were native allotments they would have been excluded from the conveyance. The village corporations then do not own title to those. They are only offering what they have title to. There are areas of Alaska that have many, many native allotments. I believe our lands are relatively clear of native allotments. I'm sure that there some existing (inaudible) but the village corporations just cannot do more than they have time for.

Representative Springer: Okay, maybe I didn't phrase my questions right. In your group here, it's just corporations--there are no individual allotment holders that have joined in with you?

Margie Sagerser: Yes. I'm sorry if I misunderstood you. There are no individuals.

Representative Cotten: Thank you very much Margie. We are going to try to squeeze, you've got a meeting at 3:00...we got started a few minutes late, so we might run over a few minutes.

Margie Sagerser: Thank you very much. I appreciate being able to testify.

Number 156

Representative Cotten: Art Kennedy is here, I believe, to speak for the Koniag Corporation. Welcome.

Mr. Kennedy: Mr. Chairman, members of the committee, I'm Art Kennedy, I'm the legislative and governmental affairs consultant to Koniag, and have been involved probably longer than most people in the exchange process, dating clear back 'til 1982-1983. Instead of reiterating what Mr. Gilmore and Margie have said on various issues I'd like to submit my full reports to the record and briefly summarize a part that hasn't been touched on in the extent and then answer questions.

To begin with, Koniag currently understands the position of the State, or as we understand it, that it has several concerns, and the first concern is that ANWR is open for further exploration and development and production of oil and gas. Second that the State's ninety percent share of revenue not be diminished. Third, that because ANWR is a federally established refuge that it is not parcelled out, and fourth, that the state has an opportunity to participate in development, both as a partner in the exchange, and as a sovereign. It is Koniag's understanding that the exchange will be a positive factor in opening ANWR. The possibility of the acquisition of many acres of valuable refuge inholdings as the result of the opening of ANWR should assist the State's in an effort to restore the opening of ANWR.

With respect to the State's right to share in revenues, Koniag has advised both the Department of Interior and John Katz, the State's representative in Washington, that this is an issue between the State and the United States. Koniag's only concern is that it not be required to pay for one hundred percent of the value of any tract of land that they receive, only to find out its interest is encumbered. If the State is to receive a share of the royalties from interest conveyed to Koniag, then that fact should be reflected in the value that Koniag is to be charged for the tract. Koniag does not believe that the interest to be conveyed by the exchanges would constitute a parcelling up of the ANWR refuge any more than a lease sale would have the same result. Given the nature of the interest in the acquired, the service remains in the ownership and control of the United States. The exchange participant would have no greater right to use the service than a federal oil and gas lease team would have, and in fact the price to use the service would be regulated in the same manner as the lessee would be. In both cases the interest acquired would be terminated after a fixed period of years and/or the conclusion of production, whichever is longer. Koniag also recognizes the concerns that the State has regarding its right to influence and regulate development in ANWR. It is our belief that the proposed agreements and stipulations recognize the role of state law and regulation of developing process. It is apparent that the development of ANWR will appear only after circumstances will minimize environmental effects of such development. Because of stipulations governing operations on the tracts to be acquired are expressly subject to regulations which may be adopted in the future, and as the State and Federal

Government further develop coordinating the regulatory process the operation of such acquired tracts would be subject to the product of that coordination.

Number 221

There are many advantages to the exchanges as seen by Koniag. The exchanges will provide Congress with an unique opportunity to acquire approximately one million acres of critical inholdings in existing refuges. Much of the land being acquired, as in the case of the Kodiak refuge, represents the heart of that habitat, which without public ownership, threatens the viability of that refuge. By returning them to the public ownership, these lands will be available for use for the general public for recreation, sports fishing, hunting and other activities, and in a broader sense, the exchanges provide an opportunity on a statewide basis to mitigate the impact of development in ANWR. Rather than being compensated for the environmental impact solely by the value of the oil and gas produced, the exchanges provide a mechanism to strengthen other refuges as well. The opening of ANWR, which normally would be viewed only in the terms of its environmental costs, now offers some environmental benefits to the refuge system as a whole. Because of the possibility of activities on the exchange tracts in advance of the lease sale, and the requirement that data so generated be provided to the Department of Interior, the exchanges provide an opportunity for more information to be acquired at no direct cost to the government. This information will be used to further refine BLM's data base and will directly impact the valuation process for a future lease sale. Thus the lease sale will generate higher minimum bids than without the information before bidding and bidding should be more vigorous because of the highly competitive position of the industry.

probably wrong, acc to Mobil + State

On the Alaskan scene such early operations should provide an immediate stimulus to the economy. Exploratory activities will result in more expeditious expenditures in the State, and sooner. Rather than waiting for the lease sale to be held after legislation the State will feel immediate effects from the operations conducted on the exchange tracts.

With that, I appreciate having the opportunity to come down to Juneau, and voice Koniag's concerns and opinions. I will try to answer any questions the committee may have.

Number 257

Representative Cotton: Thank you Mr. Kennedy. I have a couple of quick questions. I'll ask you the same ones I asked the previous persons in regard to the draft agreements. We've not had the opportunity to see those and it appears that we may not; there still seem to be a few smirks when I ask that question, but would Koniag have any objection to the Legislature seeing the draft agreements?

Mr. Kennedy: I'm surprised, Mr. Chairman, that you don't have them, because when comments were made by the State, they were circulated to at least 15 c.c.'s, and knowing the bureaucratic process I cannot believe that one of those copies has not found its way into your office or anybody else's. Especially, due to some of the remarks that have been made to the Press, have direct bearing on someone having read those agreements.

Representative Cotten: Well, I haven't read them...we've asked for them....

Number 260

Mr. Kennedy: Well, officially you probably don't have them, but I'd venture to state also that that draft that was circulated that was commented on by the State was a very early-on draft.

Representative Cotten: We saw the comments...

Mr. Kennedy: Well, the comments were based on a very early draft. Many of the concerns in there, especially with regard to the State's regulatory sovereign powers have been fully addressed. The draft agreement as now presented protects the State's rights and states, in effect, that the leases will be operating as stipulations apply as per all existing state and federal law and regulations.

not acc to State - DOI ignored State's 12/86 and 1/87 letters on contract stips

Number 282

Mr. Gilmore: Mr. Chairman, if I might clarify for you. I think I might have unfairly put my state colleague on the spot. That agreement is still not available. I will follow through with my promise that I will get it for you as soon as it is available. I was reminded by those who attended the last negotiating session that my confusion was with the stipulations in the agreement, so I will get it to you as soon as it is available.

Representative Cotten: When will that be?

Mr. Gilmore: I will have to call you on the phone and tell you that, I don't know how close we are to finishing it up.

Representative Cotten: Mr. ~~Chairman~~, will that be before it is signed?

he is the

Mr. Gilmore: I can't honestly answer that question. I don't know that you'll see it before it is signed.

Representative Cotten: Who is objecting to the Legislature seeing it?

Mr. Gilmore: Well, it is a contract being negotiated between private parties and the government, and for that reason the government has a responsibility to keep portions of that negotiation confidential.

Representative Cotten: Some of the other parties don't mind, so...

Mr. Gilmore: Well, if that is the case, I'm sure that it can be worked out.

Number 301

Mr. Kennedy: Chairman Cotten, I would like to compare your request to the next time you are in a business deal, selling your house, or buying a car, we ask to come down and view the document and comment on it before you sign it.

Representative Cotten: Who would like to see it, I'm sorry?

Mr. Kennedy: Anybody who'd like to...

Representative Cotten: Between two private parties?

Mr. Kennedy: A contract between two private parties should be kept that way until....

see p. 8

Representative Cotten: There's one private party here, and one not-so-private party. The United States Government is not a private party.

Koniag won't allow release of documents

Mr. Kennedy: It may be viewed that way, but until there is an agreement I think that the negotiations should remain in a confidential nature.

Representative Cotten: Well, that's been part of the whole problem, it's been shrouded in, I shouldn't use the word secrecy, but nobody knows what's in these agreements and if we have to wait until they're signed, sealed and delivered until we get to see them, we have very little chance of ...

Mr. Kennedy: You've dwelled on a very important note there, it will not be signed, sealed and delivered before you get to see them. All the agreements that are being signed are predicated upon being ratified by Congress and they can be changed by Congress.

Representative Cotten: Oh, they can be?

Mr. Kennedy: Yes....

Number 317

Representative Cotten: One other question, I wanted to ask you who are the industry partners of Koniag.

Koniag will not reveal partners (later shown to be Chevron / Standard who have KIC well data)

Mr. Kennedy: I can not tell you that at this time because my understanding that my clients, Koniag, have signed confidentiality statements with their partner and before I could tell you I would have to ask them permission to do so.

Representative Sund: I guess that brings up the old point here, we're being asked to either approve or disapprove the whole land exchange concept without being able to see what the terms of the exchange are, and I find that real difficult to do. I don't know what assumption to take, whether I should assume that we should support land exchanges and pray that you will take the State's best interests at heart, or whether we should just disapprove land exchanges until somebody wants to come forth and tell us what part of the deal is.

Representative Cotten: Of course, the point is, we don't get to approve or disapprove but we're being asked to support....

Representative Sund: ....support the concept without being able to see what the impact of state government is going to be.

Mr. Kennedy: Representative Sund, may I respond to your question. We are not asking you to take a position on the exchanges until you have seen the drafts. I don't know what the rush of state government, the Governor, or the Legislature is to approve or disapprove agreements that you have not yet had the time to look at and review. There is ample time from the time they're signed and signed in tentative form and presented to Congress and Congress makes a decision on it. Congress makes a decision on whether there is a land exchange, and the State Legislature and the Governor and everybody else can voice their opinion to Congress on whether to approve or disapprove. To come out at this time to make a judgement you don't know anything about seems kind of not understanding the whole process.

Representative Cotten: Well that's why we're here, trying to understand the process, trying to make a case for (inaudible) and what the State's best interest's are.

Mr. Kennedy: I think the State's best interests are in opening ANWR.

Number 350

Representative Herrmann: I don't know who to direct this to, but as far as I understand, the State is part of the negotiating, that they are involved in the negotiations. Isn't that right?

Mr. Kennedy: Yes. Yes, the State is a part at the table at this time as a full member, exchange member. I have been to every exchange meeting that involves a group except one. The State is now at the table with the group; they have all the information that every other member and if you with to make a request of them for this exchange document, the basic one, the model one, it's up to them whether they want to give it to you or not, but each model agreement is going to be changed to suit the individual group needs. I mean, Koniag' agreement won't look like Doyon's, except in the overall framework, or the State's who are given different requirements.

State is "now" at the table - contradicts DOI stmts about 1½ years of involvement - also see Katz p 47, 48

wrong on info - at least as far as subsurface

Number 365

Representative Navarre: If we don't take any action, if we don't approve to support or not support....the land exchanges, then in effect, we're approving them.

Mr. Kennedy: No, I'm saying that we suggest that you hold your approval or disapproval until you have a chance to see the agreement.

Representative Navarre: Right, and that's going to be after the fact.

Mr. Kennedy: But the agreements are strictly an intent that will become fact only after Congress ratifies them.

Representative Davidson: Mr. Kennedy, you stated that you had been to every meeting except one and that now the State was in fact at the table. I was just wondering what percentage of the dealings would you say the State was at?

Mr. Kennedy: Okay, the chronology of events that took place as far as meetings....Koniag early on, three, four years ago, were at the table by themselves. We tried to get other regions involved. The other regions didn't show interest at that time. After many, many months of dealing one-on-one with the Interior Department other regions started showing an interest, the plan the Fish and Wildlife Service laid before us were that we could not just bring any land and dump it on them. They wanted valuable habitat, one. Two, that habitat had to be an inholding from an existing refuge, and three, it had to reflect future protection of an habitat resource, and so they were limiting who could come to the table, under that scenario. But, about last May, a large group did get together, probably three, four of the present, and some...six people, three or four of the present exchanges and several who aren't here now because they had nothing to offer. And, it got to be a circus to the point that Koniag volunteered to do all the ground work in preparing the model agreement. That was done throughout the summer with negotiation with the Department of Interior, and then this past fall a meeting was called and all those were at that one meeting and anyone else that was interested to come and go over that draft and begin negotiating on stipulations and other aspects. There has been about a meeting a month since September that all participants have been at. The State's been at all of them, I think, since October.

not the State. (Katz's "back channel" p. 47)

State got in in October

Representative Davidson: So then all those meetings that you've been to, what percentage would you say the State was at?

Mr. Kennedy: Group meetings I'd say two thirds of them. But the State in the meantime has been meeting one on one with the Department of Interior and exchanging correspondence, and also, every time we had a meeting in Washington we would trot up to Capitol Hill to call John Katz and tell him what we were doing.

Representative Davidson: My understanding is that you said you were involved in this process since 1982?

Mr. Kennedy: 1983 as far as the exchange of Koniag lands.

Representative Davidson: I still don't understand what percentage of all the meetings you went to was the State at the table.

Mr. Kennedy: Out of all these that I went to, I'd say probably, all of them back to 1982, probably ten to fifteen percent.

Representative Shultz: I just want to know approximately what time, when did the State get involved? How many months ago?

Mr. Kennedy: I can only speak for when I knew they were involved at our meetings, factually, and that was beginning, I believe in September. But I know they had some conversations with some of the State's people. They had gone to the Department of Interior as long as a year and a half ago to present a proposed exchange.

Koniag says State only got involved in Sept

Representative Cotten: We'll be hearing from the State people.

Representative Navarre: Do you and your partners have access to the Kaktovik data?

Mr. Kennedy: I can't answer that because I'm not sure who the other partner is. I was not privy to negotiating the oil company partner, associate, whatever you want to call it, contract; I don't know, that's not my role in this process.

Representative Navarre: You mentioned that before you could tell us who your partners are, you have to ask them. So, would you ask them and get back to us with a response yes or no?

Mr. Kennedy: Yes, I will have them respond one way or another.

Before we're done talking, could I fill in one blank that was brought up earlier. It's a question about recision.

Mr. Gilmore didn't have the information on that. I can give you some broad understandings on that.

Representative Cotten: I prefer to wait as a lot of people are expecting the hearing to be over at 3:00. I'll wait around after the State testifies, but I want to keep as close to schedule as possible.

Mr. Kennedy: Thank you very much for the opportunity.

Representative Cotten: Please stay with us if you can. Mr. Swope, will you join us? Yes, Rod Swope is with us from the Governor's office, and John Katz, I believe, is still on the line, from Washington D.C., and I will turn the program for the administration over to Mr. Swope.

Number 455

Mr. Swope: Thank you Mr. Chairman, Members of the Committee. I commend you on some very well informed, pointed questions. Also with us is Tom Hawkins, with the Division of Natural Resources. I'll just very quickly say that, as you know, the majority of the discussions regarding land exchanges recently have occurred back in Washington D.C., so in terms of the sorts of questions you're asking I think that John Katz, as well as Tom Hawkins, who has participated in most of those meetings, should have the answers.

I know a question that you're going to want to know an answer to so I'll go ahead and give it at this time. At the outset the State does not have a position on land exchanges. During a teleconference with all of the Native Corporations we did express a concern that the land trades may not be in the overall best interests of the citizens of the State. In response, the native corporations requested an opportunity to provide the State with additional information. Since that time we've met with both CIRI and Doyon to discuss the land trades with them and hear the information they've had, and I think that at this point it's safe to say that we remain open to persuasion with regard to land exchange.

released 2/27/8

Representative Cotten: So could I interpret that, I mean I don't want to ask you if you've "quit beating your wife" as Mr. Gilmore suggested that I ask him, but would you say that the State has endorsed in any way, shape or form, the land trades.

State has no position on trades

Mr. Swope: No, I would not. I think that I would prefer to say that the State does not have a position on land trades at this time. We do have concerns, and I think that some of them are concerns that the committee has. We are certainly concerned with the overall interests of the citizens of the State, so I think that until we are persuaded that the land trades either are in the best interests of all citizens of the state, or not, we are not inclined to take a position.

Did you wish to have someone else in the Administration speak today?

Representative Cotten: I'd like to have both Tom Hawkins and John Katz come up on some of the specific comments you had. Tom, why don't you go ahead and take that seat.

Number 486

John Katz, via teleconference from Washington, D. C.:
. . .published in writing and I think that will establish a context which will then permit Mr. Hawkins to talk about some of the specifics of the land trade documents.

Teleconference operator: Mr. Katz, is that you speaking right now?

Mr. Katz: Yes, it is.

Operator: I believe Mr. Hawkins was going to go first, but I'll defer to the Chairman.

Mr. Katz: No, he's not. We talked in advance.

Representative Cotten: John, we missed the first part of your remarks here, so if it is the Office of the Governor's intention for you to speak first, that's fine with us, but we did miss the first part of that sentence so would you please start over?

Mr. Katz: With your permission I will address about four of the questions which you posed in writing to the Administration, and then I think that will set the context in which Tom Hawkins will testify and he and I have agreed upon this order in advance.

First of all, with respect to state policy, Mr. Swope accurately reflected what that is, but I want to translate it into the context of the actual negotiation back here. As he indicated, the Governor indicated some previous position against land trades. The native corporations indicated that they were in possession of information that perhaps the Governor had not been made aware of; he indicated that he would like to have that information. Some of it has been submitted, some additional information will probably be forthcoming and he has suspended judgement on the trades until he has an opportunity to review the full spectrum of materials. In terms of how that has been translated here, we have said to the Interior Department officials and to the native corporations that we have not taken a position with respect to whether these land trades are in the national interests, or in the states best interests. However, unless and until a negative decision is made we will participate in good faith at the negotiation table in an effort to try to improve the three land exchange documents that are under consideration. In fact the State has been participating as both a landowner, that is as an entity with lands on the table, and also as the sovereign, that is as the representative of the people of Alaska.

State is participating to protect sovereign interests

I want to briefly trace through the chronology of how long the state has participated and what that participation has entailed. Incidentally, in this regard, I have corroborated this chronology both with officials at the Interior Department and with officials at the Department of Natural Resources.

The State first began to hear rumors about the land trades approximately two years ago. Those rumors manifested themselves concretely when Interior Department land appraisers showed up in Interior Department and DNR offices probably about 18 or 19 months ago.

land trades were "rumored" before Horn told Sheffield

In August of 1985, when Assistant Secretary ~~Phil Form~~ Bill Horn was in Alaska, he visited with Governor Sheffield and told him about the existence of native land trades. About the same

KATZ's CHRONOLOGY

time he cooperated with me in this office, those land trade discussions were, in fact, taking place. There were some very intermittent discussions between state and interior officials after August, but they were not in the form of negotiation, and we were not then at the table. In November of 1985, Regional Director Gilmore wrote the Governor and basically invited the State's participation in the land trade discussions. In December of 1985, the Governor wrote back designating Tom Hawkins as the lead contact point for the State. In January of 1986, Mr. Gilmore responded in writing acknowledging the Governor's letter and acquiescing in the State's involvement.

In February of 1986, the Department of Natural Resources wrote a letter to the Interior Department proposing the possibility of the examination of approximately twelve million acres of land.

In March, Mr. Gilmore wrote back and he prioritized the State's twelve million acres in terms of the federal interest in that acreage, and basically he said that the only acreage that he was extremely interested in at that point in time was acreage within the Tetlin National Wildlife Refuge, and expressed lesser interest in some other acreage.

From that time until October of 1986, there were either intermittent discussions between state officials and federal officials, not so much in the form of negotiations, but to keep up contacts about how the land trades were going. There were a couple of written out contacts, but most of them were verbal.

During that entire period of time, the State was trying to elevate its participation to the level enjoyed by the native corporations. We knew that the native corporations were dealing at key policy levels here in Washington D. C. and as quickly as possible we wanted to make the transition between the discussions we were having in Alaska, which we felt were a back channel, to the real discussions which were occurring back here.

In October of 1986, Assistant Secretary Horn acquiesced in the full fledged participation of the State of Alaska in the discussions both as sovereign and as land owners. The first really concrete manifestation of that involvement occurred early in December of 1986 when in fact the State for the first time was present at the negotiating table in possession of all the documents that had been made available to the native corporations involved.

Subsequently, in January, 1987, there was a one week series of meetings again in which the State participated as a full partner, and once again in February, there have been a series of discussions just recently completed in which the State was a full partner.

On February 23, the next round of discussions has been scheduled here in Washington. I think it is safe to say, and this view is corroborated by every other participant in the process with whom we've spoken, that irrespective of the history, and frankly of the difficulty of the State insinuating itself as a full fledged partner in discussions until November, that we have lost no options in the process and in fact every option that is available to a native corporation or the federal government is still available to the state of Alaska at this point in time.

Katz says it's been hard getting State involved

Now, with respect to future timing we are advised that on or about March 2, the Interior Department desires to begin the tract selection process, and that that process will continue from March 2 to approximately March 24. On March 2, it is expected that there will be agreements in principal among the parties and with the Interior Department. Assistant Secretary Horn has indicated, notwithstanding that time frame, that no land trades will be presented to the Secretary of Interior for consideration until the Secretary has independently reviewed and made his comments to Congress within the context of the so-called 10-02 report. After that, the Secretary will be called upon to consider the land trades and may present one or more of those to the Congress. The timelines I have outlined are very, very constrained, and I think after you have heard Tom Hawkins testimony you may well wonder whether all of the problems can in fact be resolved prior to the timelines involved.

DOI intends to do tract selection on March 2

With respect to the legal basis of these trades both for the federal government and for the state; with respect to the federal government the Interior Department seems to maintain that it has the administrative authority to execute these land trades but it has made it very clear that it's a matter of policy with the Congress that no trades will be approved on an Administrative basis but in fact they will be submitted to Congress for review and ultimate approval. On the State side of things, we have made it very clear in the context of our discussions that these land trades must come before the state legislature for approval.

There are two alternative modes for that consideration. One is the process that is provided in AS 38.50 which is the generic land exchange statute which governs relations between the executive branch and the legislature. That process calls for a very structured series of steps involving first the executive branch in terms of the compilation and analysis and presentation of information and then subsequently the review of that information by the legislature in the normal legislative process. And, incidentally that is the procedure we would prefer to follow.

The second possible mode involves the presentation of the land trades to the Legislature at the time when they have crystallized. The only reason for pursuing that mode is if the timelines that are set by the Interior Department and the Congress will not admit the more structured and more elongated 38.50 process.

With respect to a couple of points that have come out in prior remarks. First, the confidentiality of the negotiations and the distribution of documents. It was made very clear to us, I would say almost as a precondition of our participation, but certainly as an extremely important component of our participation, that we were not to distribute or make available successive drafts of the land exchange documents. We felt that, a bit uncomrortable with that, and wondered in our own minds whether that procedure is even complying with federal policy regulation, but it was not for us at that point to make that determination. However, in terms of our own State Freedom of Information Act, we felt that any material which the State produced was in fact available for public scrutiny under the terms of the State Freedom of Information Act. And in fact, have made those documents available upon request. Now those documents are in a form where encumbrances, extrapolations to the documents themselves, can be made. So, to summarize our position here, we are divided by the ground rules that we thought existed with respect to federal documents and recognizing that those documents are evolving over time and with respect to the State's documents we have in fact made those available. I was very pleased to hear what Mr. Gilmore said earlier about the possibility of federal distribution of their documents. In our judgement the public consideration of debate would be benefited if in fact that was permitted to occur.

With respect to another point asked by the Committee, we early-on suggested the possibility of Interior Department consideration of State and other inholdings within National Park areas. That proposal was rebuffed by the Interior Department on the grounds that this was basically a program and a mandate of U.S. Fish and Wildlife Service in an effort to remove inholdings within National Wildlife refuge areas, and that Park Service inholdings might be considered but they would be considered in a so-called phase two, later round. That made us somewhat uncomfortable because we don't know how the tract selection process will work or what may be available in a later round.

Finally, with respect to the issue of an overriding royalty, we have requested on numerous occasions that the Interior Department include an overriding royalty in the land exchange document. We did that, recognizing that we really weren't impairing the interests of native corporations so long as, as a prior witness said, they are not penalized or "dinged" for the fact that the State was able to acquire an overriding royalty interest. The position that we have advocated has been adamantly and consistently rebuffed by the Interior Department. We continue to advocate it and are hopeful that there will be some additional flexibility in that process.

I think, with that, Mr. Chairman, I'll turn this back to you and Mr. Hawkins.

Representative Cotten: Thank you John. Let me ask one quick question, and I'll turn it over to Mr. Hawkins.

I want to make sure I understood you correctly. Did you say that the Legislature would need to approve the trade before the administration could support them?

Mr. Katz: No, Sir. What I said was that under state law the executive branch is obligated to submit the trades to the legislature for approval under either 38.50 or some other process. Of course, the executive branch is free to take an affirmative position with respect to the trades without legislative approval but those land trades cannot be executed and finalized without legislative approval.

Representative Cotten: You're just talking about the state land, right?

Mr. Katz: Yes, Sir, that's the fact of the case.

Representative Cotten: Thank you very much, John. I'll ask Mr. Hawkins to supplement your remarks with any comments he has.

TAPE 17 SIDE TWO
Number 001

Tom Hawkins: Thank you Mr. Chairman. It's good again to be here.

John Katz has delivered an accurate summary of the chronology of participation by the state of Alaska in the talks concerning the ANWR exchange. He has also usefully augmented Rod Swope's description of the State's policy position on these matters.

Our view is that if ANWR is to be opened by Congress, the State must search for ways that enable the Interior to pursue all of its goals. At this time, Interior appears to have as goals: assuring environmentally sensitive oil and gas exploration and development on a portion of the Arctic coastal plain, and enlarging the refuge system generally by reducing inholdings. Recognizing these goals, we have advanced lands for inclusion in that refuge system in exchange, or possible exchange, for oil and gas rights. We have reviewed planning by Interior for the trades generally, met with the native participants, and avoided condemning the actions contemplated, despite the loss of potential royalties to the state.

We have, however, raised what we consider to be substantial questions about the process for planning for the exchanges, and criticized specific elements of these plans. Five general areas of attention, primarily detailed in the documents before you, are, first: we are very interested in maximizing the State's stake, or potential opportunity to participate. Second, we have been extremely concerned about the stipulation and mitigation strategies design by Interior to deal with this particular development. Third, we've been very interested in the tract selection process and have had some concerns about how conflict resolution would ensue during that program. Fourth, we've paid particular attention to the contract and elements of the contract which give different segments of the State interests particular cause for concern.

Finally, we have discussed earnestly, the issue of timelines.

As I said, a precise analysis of the exchange plan was delivered to Interior by the State in late December, and early January. There has been progress on a number of concerns we raised. For instance, on the matter of identifying state lands of interest to Interior, we initially and in conjunction with the Department of Fish and Game, identified twelve million acres primarily valuable for habitat purposes, for consideration by Interior. They came back, initially, with a prime interest in about 100,000 acres. Over the ensuing time, we have discussed back and forth what state lands would be of interest.

I provided you a map and a listing showing general locations and listing the particular categories of state land looked at by Interior and then in the list I've listed those parcels that Interior showed interest in, up through number 10. Parcels 11, 12, 13, 14, and 15 are a part of the discussion but actually appraised by us, but have not been accepted to the negotiations themselves. From where we started to where we are today, in terms of the size of the state's potential stake, we're looking at roughly 792,000 acres.

Second, we'll discuss the matter of stipulations. In the December meetings, when we were presented with the first set of stipulations, we had concern that those stipulations and mitigating strategies were not consistent with the same idea or stipulations advanced in the 10-02 report. We raised those concerns and in those documents offered a number of problems the state had. There has been continual progress towards improving those stipulations, those environmental standards, and particularly recently the Department has made it abundantly clear that the results of the statutory opening of ANWR and the results of the 10-02 report will be the standards for activities, so on the issue of environmental standards we've seen some progress, and we're pleased with it.

Our third area of concern is in the tract selection process. That concern breaks down into two segments. One, the valuation questions, which you raised and discussed earlier. We are not certain that the Bureau of Land Management has sufficient information to make an accurate valuation of the subsurface values. Second, in terms of the valuation of the surface interest, in other words the interest to be acquired by Interior, we've been pleased as the standards which allow the land value to be established have evolved, but essentially, Mr. Gilmore did a good job of describing that fair market value and additional considerations both went into that valuation process, and so the establishment of a standard government appraisal was one aspect of those values. There were additional aspects, including comparative purchases by Congress, like the Pribilof Island example, and other attributes, as those have been defined, and as the Interior Department has explained that State lands would be valued and treated like other lands being considered, we have less concern about the surface valuation process. A second part of the tract selection process that's made us nervous is the dispute and the resolution mechanism. Our primary concern which is in our documents is that we believe that the discretion to the Secretary of Interior as to which methodology for choosing between conflicting nominations or bids for parcels, is too arbitrary. We've always preferred competitive bidding. The fact that lottery and refuge acquisition values are also choices for resolution, and the choice of those choices is available to the Secretary has us concerned us.

State prefers comp'v bidding

Turning to the contract, you have heard in detail a number of things about the contract. Two particular flavors of concern have been advanced by the State. One of those is in the preemption area; the preemption of state rules, state authorities. They break down into areas of water rights, subsistence, jurisdiction of other state agencies and the submerged lands questions. We think we've made good progress in the area of water rights. We continue to have difficulty with some of the subsistence easement language because we believe that it preempts language which currently controls that situation. As far as jurisdiction its another area where EPA, DEC, Fish and Game, Fish and Wildlife Service, Alaska Oil and Gas Conservation Commission are groups with overlapping jurisdictions, and we think that the Department of Interior has made considerable progress towards dealing with this particular preemption issue.

Finally, submerged lands as a preemption issue. One, we've identified potential submerged lands, conflicts on the 10-02 area on the coastal plain. We also have the situation dealing with submerged lands within lands that the State might offer to the Fish and Wildlife Service and whether the State can convey those to the Fish and Wildlife Service. So far we're not satisfied that those potential ownerships of the State have been segregated in this process, and we have continuing concerns there.

The second flavor of our contract concern has to do with the area of the interest conveyed. The State is somewhat different than the other players in this process in that we don't have yet an industry partner and consequently we're faced with the perhaps opportunity of leasing to a third party at a later time, lands that are subsurface interests that we might acquire inside the refuge. Our concern is that the interests offered in the contract are not sufficiently clear that our oil and gas attorneys, both private consultants and existing attorney general analysts, believe that its worth as much as a normal oil and gas situation. We are requesting additional attention to that particular interest. Finally, there are a number of technical oil and gas concerns in terms of compensatory royalty per drainage provisions that concern that same segment of the state analysis team. Those issues have been raised to Interior and we are eager to see a lot of additional attention paid to it.

Finally, the fifth point, and I believe the last unanswered of your questions, is the issue of timing. There is a lot of work and a barely constrained schedule. Our experience today has been that Interior has flexed as problems have been encountered and we've had the opportunity to address them and work them out, and we continue to look for that opportunity as well as expand major energy to achieve an analysis of the situation so that we're in a position to decide whether or not to proceed. Thank you.

Number 247

Representative Cotten: We've got about two and a half hours in. I'm going to try to get out of here in a few minutes. I think that next Thursday we have another hearing on general topic of environmental and local hire issues. We have Tuesday open if the committee has interests in asking the State people to come back and answer more questions. If you do have a couple of questions, it's fine now, but I would prefer to shut the meeting down in the next few minutes.

Representative Shultz: I just want to go back to one other question. 450 million dollars is going to be spent, and I don't think it's a state question and again it has to go back previously. The question I asked: the lands that are going to be utilized for the back scatter radar that are presently sitting in the refuge; are they in fact part of the negotiations, or not?

Mr. Hawkins: My staff has followed the back scatter radar and we're familiar with the sites under consideration by the Air Force. It is my understanding at this time there isn't a conflict between the state lands sought by Interior in Tetlin and the proposals of the Air Force, but I will research that and hand you maps that show if that conflict does exist.

Representative Shultz: It is my understanding that the second choice is all in the refuge at the present time, it's all federal. That's the question. That's the question I was trying to get to awhile ago. Is the federal government, when you're asking and when you're negotiating, are you folks taking into account that the possible sites that may end up being on refuge land when you're talking about the land swap?

Mr. Hawkins: Yes, Sir.

Mr. Davidson: Yes, I just was wondering if we could get a copy of Mr. Hawkins' remarks.

Mr. Hawkins: Yes, they're yellow now, but I'll have to get them.

Representative Brown: Tom, is what's happening here that sometime between now and late March there will be either an agreement reached or not reached and if the State and Interior do not come together on an agreement the process will proceed without an opportunity to acquire lands in this way? Is that correct?

Mr. Hawkins: Mr. Chairman, Representative Brown, that appears to be correct. There will be other phases perhaps but there's a train that's on a fast track, and there's probably other trains. The first train seems to be the one, if you're going to participate, the one upon which you'd like to be aboard.

Number 295

Representative Cotten: Somebody mentioned to me that there is a recent correspondence from Secretary Horn to the congressional delegation and the Governor that would be of interest to the committee. Is that available?

Mr. Katz: There is in fact such a letter. We can make it available to you. It basically lays out in slightly greater detail the chronology that I just provided the committee and then talks a little bit about the timing, but we can get it to you forthwith.

Number 311

Representative Cotten: Apparently we already have it and I didn't know it. Thank you, John.

If there is nothing else, we are adjourned. (3:28 p.m.)

Alaska State Legislature
HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES

[redacted]
POUCH V
JUNEAU, ALASKA 99811
(907) 465-3715

February 5, 1987

The Honorable William Horn
Assistant Secretary for Fish,
  Wildlife and Parks
U. S. Department of the Interior
Washington, D. C. 20240

Dear Secretary Horn:

We are writing to invite you or a representative of your office to appear before the House Resources Committee of the Alaska Legislature on the issue of proposed land trades in the Arctic National Wildlife Refuge. Our meeting on this topic is scheduled for Friday, February 13, from 1:00 - 3:00 p.m., in the State Capitol Building.

Several members of the Committee and other legislators are deeply interested in the land exchange proposals. At this time in our consideration of HJR 9 (enclosed), it would be very informative to have the Interior Department come before us to:

(1) describe any proposed/possible land exchanges in ANWR, and their possible national and state benefits;

(2) explain the proposed land exchange agreements;

(3) describe the land and subsurface appraisal process; and

(4) explain why inholdings in national parks have not been included in the proposed exchanges.

The meeting will not be limited to these issues, but we expect discussion on at least these topics and would be most interested in starting out with a briefing by Interior Department policy makers.

We look forward to your response and appreciate your cooperation. Please contact Representative Cotten's office to arrange any details.

Sincerely,

Rep. Sam Cotten
co-Chairman
(907) 465-3711

Rep. Adelheid Herrmann
co-Chairman
(907) 465-4942

SC:smc

Alaskan Land Proposal Stirs High-Stakes Game

By WALLACE TURNER

Special to The New York Times

Sat Feb. 28, 1987

ANCHORAGE — While others argue publicly whether oil-drilling rigs should invade the Arctic National Wildlife Refuge, the calving ground of the continent's largest caribou herd, a related game with billion-dollar stakes has been going on in the back room.

The players are the Interior Department's Fish and Wildlife Service, several Alaska native groups in partnership with major oil companies, and the State of Alaska, a latecomer to the table. The stakes involve who will profit if the exploration proceeds and the area does, as experts predict, prove to be one of the largest oil and gas fields in North America.

"The only way drilling is going to be opened up is if there is something in it for everyone," said George Kriste, an executive of Cook Inlet Region Inc., one of the Alaska native corporations negotiating to obtain mineral rights in the refuge's coastal plain. "This is a very emotionally charged issue."

So, as environmentalists, oil companies and others argue the wisdom of drilling in the protected area, the quiet game being played in the background is part of an effort to convince Congress, which will have the final say, that there is indeed something in it for everyone.

Now, U.S. Owns the Land

As things now stand, the wildlife refuge is owned by the Federal Government, which would ordinarily get the royalties, the owner's share of oil and gas produced from the land. Under current law, however, 90 percent of Federal royalties are turned over to the state, so it is Alaska that would reap a windfall if a major oilfield came in.

But the Interior Department, which has proposed opening the 1.5 million-acre coastal plain to mineral development, is seeking to trade the subsurface rights to land it owns inside the refuge for environmentally valuable land held by Alaska natives elsewhere. In addition to countering some of the conservationist opposition, this would give a big share of potential oil profits to the Indians, Eskimos and Aleuts.

Senator Ted Stevens, a Republican, said the Alaska Congressional delegation supported the land trade "because it will help build support for allowing oil and gas leasing in the coastal plain area."

And some leaders among the Alaska natives raise the possibility that if their interests are ignored, they might join with environmentalists in opposing mineral exploration.

"If the interests who want to drill in the wildlife refuge are going to use the Alaska native peoples as a battering ram to beat their way in, they are going to have to let the natives have a stake in what comes out of it," said State Senator Willie Hensley, an Eskimo from Kotzebue.

Some officials familiar with the confidential negotiations have said the natives could acquire two-thirds of the drilling area. But the State of Alaska, though it would retain the power to tax any production, would lose its 90 percent share of royalties on land that the Federal Government trades to the native groups.

And while state officials have been in on the talks since October, they have no proposal on the table for Alaska itself to share in actual ownership of the subsurface rights. To do that, it would have to trade state-owned land for tracts inside the drilling area, and Gov. Steve Cowper has been hesitant to make such a commitment.

"I have no way of knowing the potential of the area," the Governor said, "and what we would get for our investment might turn out to be worthless."

But it might turn out to be worth quite a bit.

The coastal plain in the refuge "is generally considered to have the greatest oil and gas potential of any onshore area in North America," says a staff report issued by State [redacted] chairman of the Natural Resources Committee in the Alaska House, who wants the state to acquire mineral rights of its own.

$11 Billion Royalties Nearby

Using seismic test data taken two years ago, Interior Department geologists estimated a 95 percent chance that 600 million barrels of oil exists beneath the coastal plain, and a 5 percent chance that it could amount to 29.4 billion barrels, which would make it as big as the Prudhoe Bay field, 125 miles to the west.

The royalties from that field, where the state owned all the subsurface rights, have totaled more than $11 billion over 10 years. Thus, the land swap would have the potential to make some Alaska Indians, Eskimos and Aleuts the richest North American aborigines.

Robert Gilmore, regional director for the Fish and Wildlife Service, said an agreement for the land trades would probably be ready to present to Congress by June or July.

Virtually all Alaska interests support drilling, although some natives in the Arctic have been lukewarm, while environmentalists oppose it. John Katz, the state's lobbyist in Washington, said Congressional opinion on the issue had not yet crystallized.

Meanwhile, Governor Cowper says he is certain the state will get its proper share. "It's difficult for me to believe that a Democratic-controlled Senate would approve a trade that I opposed," he said. "I don't believe they would stuff land-trade language into a bill to open the coastal plain for drilling when it had to be done over the body of the Democratic Governor of Alaska."

Hi Sam- did you know you made the NY Times?

Sharman

Plan may gain share of refuge for Alaska

Proposal would allow natives to swap land for leases

By Harry McFarland
Times Business Writer

The state's chief land manager on Saturday offered a plan that could guarantee Alaska a share of billions of dollars in royalties, rents and bonuses from any oil that may be produced in the future from the 1.2 million-acre coastal plain of the Arctic National Wildlife Refuge.

The plan would cancel proposed land trades between the U.S. Fish & Wildlife Service and 17 native corporations. Gov. Steve Cowper has pulled the state out of the land trade talks because he says the talks are not in Alaska's best interest.

Representatives of the federal government and native corporations questioned the need for the state's new plan.

On land owned by the native corporations, any state revenues would be limited to severance and corporate taxation — there would be no royalty earnings.

"From a strict revenue perspective, there is no combination of exchanges which could provide equivalent (to the status quo) fiscal benefits to the state," Gary Gustafson, director of land management in the Alaska Division of Land & Water Management, told state senators during hearings on Saturday.

"In other words, any exchanges reduce the state's share of potential bonuses, royalties and annual rentals," Gustafson said.

Under provisions of the statehood act, Alaska is guaranteed 90 percent of the earnings from federal lease sales, though some members of Congress are now seeking to reduce the state's share of those revenues.

Under the state's proposed plan, native corporations would bid for federal leases like an oil company would with "assigned value" land rather than cash. The state would still collect 90 percent of the revenues under this bidding system.

The state proposal would also include a provision that would allow the natives to retrieve their traded inholdings if no oil were found on the ANWR tracts they acquired or to retain credit to be used in bidding in other national lease sales, Gustafson said.

A 1983 land swap that gave nearly 100,000 acres in subsurface rights to Arctic Slope Regional Corp. would not be affected by the state's plan.

"The whole premise (of the state's plan) is built on the 90-10 split," said Jim Doebel, associate regional director of Fish & Wildlife and chief land negotiator for the federal agency. "Nobody I know believes that will happen."

Doebel declined to comment further, saying a formal Fish & Wildlife opinion may be drafted later.

"How does that (the state proposal) accomplish any better what we're doing now?" said Judy Meidinger, an official of the Kodiak-based Koniag Inc.

Koniag has offered 107,000 acres of inholdings in the Kodiak National Wildlife Refuge for the right to acquire access to ANWR land.

Any land swaps between the federal government and native corporations will have to receive congressional approval. Congress also will decide whether to allow any oil and gas exploration in the arctic refuge; a draft U.S. Department of Interior report recommends that drilling be permitted in the coastal plain.

Gustafson, who was the state's chief negotiator when the state was offering 645,000 acres of lands, said the proposal was a suggestion and not an absolute.

"It is a way," he said, "but not the only way."

As evidence that the state is flexible, he offered a second proposal in which Alaska would negotiate a royalty share from native corporations in exchange for Cowper administration support of land trades.

Arbitrator to determine ANWR profit-sharing

Times 3/15/87 B-1

By Harry McFarland
Times Business Writer

An arbitrator has been asked to determine whether the Arctic Slope Regional Corp. will have to share with its 11 native corporation counterparts around the state any revenues the regional native corporation would earn if oil is found on its Arctic National Wildlife Refuge land.

The dispute focuses on a provision (Section 7i) of the Alaska Native Claims Settlement Act of 1970 that mandates that 70 percent of the mineral revenues from lands conveyed to native corporations are shared equally by the 12 regional native corporations.

The arbitrator's ruling could also affect four other native regional corporations — Arctic Slope, Koniag Inc., Doyon Ltd. and Cook Inlet Region Inc. — and several village corporations which have offered to trade for land in the potentially oil-rich ANWR coastal plain.

Challenging Arctic Slope's claim to all the mineral revenues from ANWR holdings acquired by trade are Juneau-based Sealaska Corp., Dillingham-based Bristol Bay Native Corp. and Anchorage-based Aleut Corp.

"We believe the claims are non-meritorious," said an attorney, who because he represents a native corporation watching the arbitration proceedings, asked not to be identified. He said the four corporations have agreed to abide by the arbitrator's decision, and the losers would not take the dispute into court.

Koniag official Judy Meidinger said the Kodiak-based regional native corporation decided not to participate in the arbitration, even though it may be bound by a decision against Arctic Slope.

State and federal officials, who say they are sitting out the battle on the issue, believe that provision is unenforceable on any lands that a native corporation has acquired through a trade rather than under provisions of ANCSA.

No native corporation can drill in ANWR unless Congress votes to approve drilling in the refuge. Congress also has to agree to allow the U.S. Fish & Wildlife Service to trade ANWR access for native corporation holdings in national refuges around the state.

Officials of the four native corporations involved in the arbitration were unavailable on Saturday.