ANWR-

REVENUE ISSUES,

BACKGROUND,

COURT PAPERS

INTERCOM

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ANWR: MORE THAN AN ALASKA ISSUE:

SAPC launches information program

SAPC employees testify at ANWR public hearings

***Ed. Note:** This year Congress is expected to decide on whether the Arctic Coastal Plain of the Arctic National Wildlife Refuge (ANWR) will be opened to oil and gas exploration. The draft 1002h report released last November recommended that the area be opened for exploration, based upon the fact it contains large structures which geologists say could contain the most significant hydrocarbon reserves in the U.S. At public hearings in Anchorage January 5th, SAPC employees, were among the many individuals who testified in favor of opening the coastal plain to exploration and development. Following the public hearing and comment period, which will end January 23, the Secretary of Interior is expected to recommend to Congress that the Refuge be opened to full oil and gas leasing. However, the question of whether to permit exploration in this small portion of northeastern Alaska is perceived by some in a narrow sense—that ANWR is an issue of concern to Alaska's residents and the petroleum industry. Late last year Standard Alaska Production Co. (SAPC) launched an information campaign to inform lower 48 businessmen and lawmakers how important the domestic petroleum industry is to the national economy, and ultimately, U.S. security. The following text contains excerpts from that information program, as well as comments by SAPC President **George N. Nelson** and others involved in the program.*

SAPC Environmental Scientist Mark Fraker was among many Standard Alaska employees who testified at the ANWR public hearing in Anchorage January 5. The majority of testimony from the public favored opening the coastal plain of ANWR for oil and gas leasing.

Energy security — a national concern

Development of Alaska's arctic over the past 10 years has brought more than $30 billion in business to all 50 states, providing major benefits to thousands of U.S. firms. Standard Alaska Production Company (SAPC) itself has spent $15 billion since Prudhoe development began in 1974.

These and other expenditures related to Alaska petroleum development have served to develop 20 percent of America's domestic petroleum production—oil which presently comes from the North Slope of Alaska. The nearly five billion barrels produced from Alaska's Prudhoe Bay field over the past 10 years has reduced the cost of foreign imports by more than $130 billion.

The United State's dependence on foreign oil is quickly increasing. Today we import more than one-third of our supply, and by the year 2000, could be importing as much as two-thirds. Our economy and national security mandate that we not allow ourselves to become more dependent on unreliable foreign suppliers. The Middle East, one of our principal suppliers, is no more stable today than it was in 1973 or 1979 when we suffered devastating shortages.

Our own proven petroleum reserves and production capacity are dwindling. Alaska's 20 percent contribution to domestic oil production will begin to fall in the next five years as Prudhoe Bay production declines. By the year 2000, production from all Alaska arctic oil fields will have declined from the current level of 1.8 million barrels per day to about 600,000 barrels per day. Unless other domestic reserves are developed, we are certain to become increasingly dependent on foreign suppliers.

> "Development of Alaska's arctic over the past 10 years has brought more than $30 billion in business to all 50 states..."

ANWR: What is its petroleum potential?

The geology of the two largest producing oilfields in North America—Prudhoe and Kuparuk—is essentially the same as that which underlies the coastal plain of ANWR. This fact, together with the evidence of numerous oil seeps and other favorable conditions, largely explains the opinion that the coastal plain of ANWR represents the greatest unexplored oil resource area in North America.

The Marsh Creek anticline, an extremely large geological structure, has long been recognized from surface features and outcrops. In addition, recently acquired geophysical data confirm the existence of other potential oil-bearing structures which may contain reserves comparable to Prudhoe Bay and Kuparuk River fields.

In the draft 1002h assessment prepared late last year, seven different geological "plays" or regions of promising geology, were identified—each with characteristics favorable for oil and gas. In-place resource potentials were calculated: There is a 95 percent chance of at least 4.8 billion barrels of in-place oil and a five percent chance of in-place oil resources of 29.4 billion barrels.

If commercial discoveries are made in ANWR's coastal plain—an area which represents less than eight percent of the area's 19 million acres, or, half of the land area of the State of Washington—the infrastructure built to accommodate one or more oilfields could also support exploration and development in other areas, such as offshore state and federal acreage to the north of the coastal plain and also, State land to the east of Prudhoe but west of ANWR.

(continued on page 2)

Endicott modules ahead of schedule

By the end of 1986 construction of the large oilfield modules for Standard Alaska's Endicott Project were 85 percent complete and ahead of schedule at New Iberia, La.

About 900 contract and Standard Oil Production Company employees are on location, working to complete five major modules, plus additional equipment housed in smaller modules and open skid bases.

Construction status on the individual modules:

- Power Generation/Control Module. 92%
- Utilities and Chemical storage. 87%
- Phase Separation and NGL. 87%
- Seawater and Produced Water 83%
- Gas Compression. 78%

Early this coming summer the completed modules and other equipment totaling 22,000 tons will be transported to Alaska's North Slope on four barges, which will be pulled by large, ocean-going tugs. The sealift is expected to arrive at Endicott in late July.

Published Monthly in Anchorage by the Standard Alaska Production Company for its employees.

ANWR: more than an Alaskan issue (continued from page 1)

America needs jobs—economic activity

Development on the coastal plain of ANWR will generate economic activity and jobs in every State. If a major discovery is made on the coastal plain, billions of dollars will be spent to construct and operate oil field facilities. This spending will involve the manufacturing, construction, transportation and service sectors, and indirect spinoffs in local areas. Some other important facts:

- The U.S. tanker fleet is predominantly employed to transport North Slope oil. Unless new supplies of petroleum are developed, those tankers will be retired and their crews terminated.
- Imported oil accounts for more than one-third of the U.S. trade deficit ($53 billion in 1984). We can reduce this substantially and enhance our trade opportunities by developing domestic resources within the coastal plain area.
- A recent study by Battelle/DRI determined that oil and gas development on ANWR could increase the U.S. Gross National Product (GNP) by one percent and create more than a million new jobs around the nation.

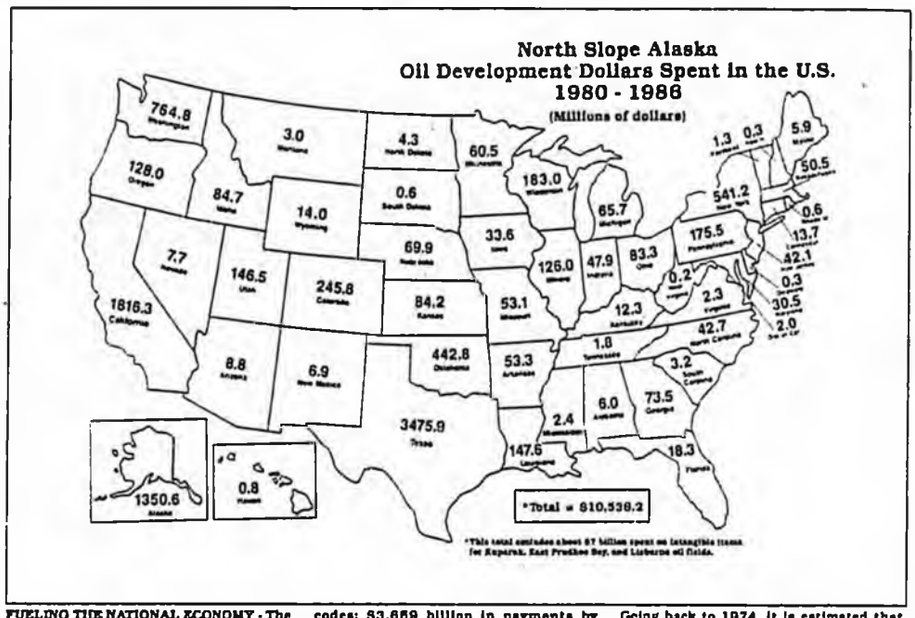
Environmental integrity—development footprint

Every significant species on the coastal plain has thrived alongside 20 years of oil exploration and production on the North Slope of Alaska and in northern Canada. Caribou and a variety of important bird life co-exist with oil development at nearby Prudhoe Bay. The Central Arctic caribou herd which inhabits the Prudhoe field during part of the year has more than quadrupled in size since oil production began in 1977. Two other major North Slope caribou herds—the Western Arctic herd and the Porcupine Herd, to the east, are also increasing in size, and are expected to soon reach historical high levels. Extensive biological studies in northern Alaska and Canada have shown that wolf predation and hunting, not oilfield development, has the greatest impacts on caribou populations.

Through the use of modern technology and development techniques, impact on permafrost, tundra vegetation and water quality can be minimal. The government and oil industry have spent tens of millions of dollars learning how to operate in the arctic without ruining esthetic or habitat values. A little known fact is just how small an area oil-related facilities occupy. For example, during the debate in the late 1960s on whether to allow construction of the trans Alaska pipeline, the newspaper buzz-phrase was "pipeline bisecting Alaska." Maps with the "line" from Prudhoe to Valdez made the pipeline appear unnaturally wide, as if it covered a large area of Alaska. In fact, the 800-mile-long pipeline right-of-way from Prudhoe Bay to Valdez occupies less than 14 square miles!

On the North Slope, the Prudhoe Bay unit involves about 242,000 acres of leased acreage. The Kuparuk River unit, which many geologists believe to be more typical of what might be found in ANWR, covers about 150,000 acres of leased land. But in both these huge oilfields, and the smaller Milne Point field, to the north, only 8,000 acres are actually occupied by production pads, roads, pipelines or other facilities.

By the time any discoveries in the coastal plain are developed, optimistically by the year 2000, technological progress within the industry will allow development to occur using even less space, through new directional drilling techniques and smaller, more compact field production facilities.



FUELING THE NATIONAL ECONOMY - The map above provides a dramatic visual presentation of the national economic impacts from oil development on Alaska's North Slope from 1980-86. The $10.5 billion depicted here ($10,538.2) includes $6.745 billion in payments by Standard Alaska to U.S. vendors traceable to ZIP codes; $3.669 billion in payments by ARCO, Alaska Inc. for tangible items for the East side of Prudhoe Bay, Kuparuk and Lisburne; and $124 million in payments by Conoco to develop Milne Point (1983-86). It does not include about $7 billion on intangible items for Kuparuk, East Prudhoe Bay and Lisburne oilfields. Going back to 1974, it is estimated that the cost of developing the Prudhoe, Kuparuk, Milne Point, Lisburne and Endicott fields has exceeded $36 billion. Conservatively, Standard Oil's share of that amount has been about $15 billion.

Development on the Coastal plain of ANWR will generate economic activity and jobs in every state.

Alaska wilderness inventory

Alaska has more than 50 million acres of congressionally designated wilderness lands, which comprise about 15 percent of the state. Alaska also has 70 million acres of other National Wildlife Refuges and National Parks. Eight million acres, or 44 percent of the 19-million-acre Arctic National Wildlife Refuge, has already been designated wilderness.

"Opponents of ANWR development have introduced house Bill 4922 which calls for a wilderness designation of ANWR's coastal plain," comments **George N. Nelson**, SAPC President. "Such a law would forever prevent oil and gas activity in this vital area.

"We have the new State administration and legislature behind us on the ANWR issue," Nelson adds, "but we must continue to make contact with lower 48 Congressmen and Senators, State governors and administrations, as well as business leaders. We need to make a concerted effort to show the nation that exploration of ANWR's coastal plain is not simply a State or regional issue or an oil industry issue. We need to convey to the 100th Congress that ANWR is also a national issue which could have far-reaching implications for our country's economy and national security."

During November and early December, SAPC mailed nearly 2,500 ANWR information packets to businessmen and lawmakers in the lower 48. The cover letters for each of the packets described the specific economic benefits Alaska petroleum development has provided that particular state.

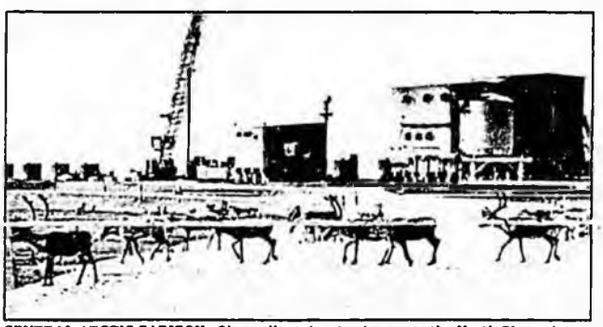
"It's impressive enough that petroleum revenues have been providing about 85 percent of Alaska's income," commented George Nelson. "But the widespread impact of Alaska's oil industry really strikes home when you consider billions of dollars which have gone to State and local economies in the lower 48, not to mention, federal taxes."

SAPC's **Roger Herrera**, who has recently been making presentations on ANWR to various groups in the lower 48, says that educating the nation on the strategic importance of ANWR will be a difficult job.

"The arctic coastal plain is a long ways from where most people live," says Herrera. "As in the D-2 land battle in the 1970s, Congressmen who haven't been to the arctic can't conceptualize ten thousand acres—let alone the 1.5 million acres they would designate wilderness under House Bill 4922. They have no frame of reference in discussing such huge chunks of land—or in the case of the coastal plain—how relatively little area the oil industry is considering for exploration.

"The upcoming debates on ANWR will often take emotional tacks completely outside the realm of logic and fact," Herrera continues. "If we can keep the dialogues on a steady, logical course, and stick to the facts, I think Congress will agree that it is in the nation's best interest to allow exploration and development in the coastal plain—that the petroleum industry is capable of operating in this area without adversely effecting the environment."

Ed. Note: Intercom will closely follow upcoming ANWR debates and dialogues, and will occasionally feature special interviews on the subject.



CENTRAL ARCTIC CARIBOU - Since oil production began on the North Slope almost a decade ago, the population of the Central Arctic caribou herd, which now numbers about 18,000, has more than quadrupled. The other two main North Slope caribou herds, the Western Arctic herd and Porcupine Herd, are also reaching historical high levels.

ANWR Hearings

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General Information for Requested Witness

Hearing times and Places

1st Hearing: Friday, March 6th, Fairbanks, Borough Assembly Chambers
Saturday, March 7th, Fairbanks

2nd Hearing: Friday, March 13th, Anchorage, Z.J. Loussac Municipal Library
Saturday, March 14th, Anchorage

3rd Hearing: Friday, March 20th, Ketchikan, Community College / Forum Room
Saturday, March 21st, Ketchikan

4th Hearing: Friday, March 27th, Kodiak, Assembly Chambers
Saturday, March 28th, Kodiak

Friday Format: 9am opening of hearing
Testimony from:
US Fish and Wildlife Service
Bureau of Land Management

Testimony will include a 30-minute background presentation on the agencies' role in development of the draft 1002 (h) report for Congress, on the ANWR. The remaining time will be for the answering of questions from the committee.

12pm Break for Lunch

Friday Afternoon
Format: 1pm reconvene hearings
Testimony will be heard from the state departments of Natural Resource, Fish and Game, and Environmental Conservation. 30 minutes will be allowed for the agency to present its role in the development of the 1002 (h) report, with the remaining time being for questions from the committee.

5pm recess until 9am the following day.

Saturday Format: 9am reconvene hearings
Testimony will be heard from requested witnesses, including industry and individuals with specific expertise on ANWR, related to the 1002(h) report.

11am Testimony will be heard from the general public, with 3 minutes allowed for comment and 2 minutes for questions from the committee.

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Saturday Continued

12pm to 1pm Lunch Break

1pm reconvene general public testimony

3pm close location hearing

Saturday's hearing may run over to 5pm, depending on public interest.

The purpose of these hearings is two fold. One is to build a public record which the Alaska State Legislature will utilize, in making an informed decision on proposed development activities in the coastal plain of the ANWR. The second is to allow the public as great an opportunity as possible to have input into this decision making process, and access to the same information which the legislature will be basing it's findings.

Requested Witness will have a limited amount of time for general comments. Time allocations will be determined by the structure of the presentation, i.e. single witness or panel; and by the total number of witnesses. Only two hours are set aside for this portion of the hearing.

General Witness Catagories

Environmental
- representative organizations
- biological experts

Labor
- union leaders

Industry
- environmental
- engineering
- geology
- regulatory

Native
- organization
- corporate

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Industry related areas of concern

1. Regulatory framework industry would be working within in ANWR.
   - Environmental protection
   - Permitting process
   - Timelines associated with permits

2. Work that industry has done or participated in, dealing with ANWR and the 1002 report.
   - Geologic data gathering
   - Development feasibility studies
   - Wildlife assessments including: offshore - Bow Head
     onshore - PCH
     Subsistence

3. Specific involvement in development of the 1002 report

4. How the information that has beer collected influences industries evaluation of ANWR's potential to be an oil producer.

5. What sort of development scenarios might take place, given a range of recoverable oil reserve being located in ANWR.

6. How long would it take to get a range of discoveries into production.

7. How long might the range of reserves last

8. What other advantages to development on the North Slope exist if recoverable economic reserves are discovered in ANWR.

Reservation of helium-gas-bearing land on the public domain, see section 167a of Title 50, W and National Defense.

Resettlement lands for Navajo tribe, transfer of interests of United States as lessor under chapter, see section 640d-10 of Title 25, Indians.

Review of withdrawals in certain states which closed lands to appropriation under this chapte see section 1714 of Title 43, Public Lands.

Revocation of reservation of certain lands in and around Yaquina Head and restoration to publ lands, except that such lands be withdrawn from entry under this chapter, see section 178 of Title 43.

Status of offers for noncompetitive oil and gas leases on lands conveyed to Alaska nativ corporations or individual Alaska natives, see section 1633 of Title 43.

Steese National Conservation Area, mineral exploration and development, see section 460mm- of Title 16, Conservation.

SUBCHAPTER I—GENERAL PROVISIONS

§ 181. Lands subject to disposition; persons entitled to bene fits; reciprocal privileges; helium rights reserved

Deposits of coal, phosphate, sodium, potassium, oil, oil shale, gilsonit (including all vein-type solid hydrocarbons), or gas, and lands containin such deposits owned by the United States, including those in nationa forests, but excluding lands acquired under the Appalachian Forest Ac approved March 1, 1911 (36 Stat. 961), and those in incorporated citie towns, and villages and in national parks and monuments, those acquire under other Acts subsequent to February 25, 1920, and lands within th naval petroleum and oil-shale reserves, except as hereinafter provided, sha be subject to disposition in the form and manner provided by this chapte to citizens of the United States, or to associations of such citizens, or to an corporation organized under the laws of the United States, or of any Stat or Territory thereof, or in the case of coal, oil, oil shale, or gas, t municipalities. Citizens of another country, the laws, customs, or regul tions of which deny similar or like privileges to citizens or corporations c this country, shall not by stock ownership, stock holding, or stock contro own any interest in any lease acquired under the provisions of this chapte

The term "oil" shall embrace all nongaseous hydrocarbon substanc other than those substances leasable as coal, oil shale, or gilsonite (inclu ing all vein-type solid hydrocarbons).

The term "combined hydrocarbon lease" shall refer to a lease issued in special tar sand area pursuant to section 226 of this title after November 1 1981.

The term "special tar sand area" means (1) an area designated by th Secretary of the Interior's orders of November 20, 1980 (45 F 76800–76801) and January 21, 1981 (46 FR 6077–6078) as containin substantial deposits of tar sand.

The United States reserves the ownership of and the right to extra helium from all gas produced from lands leased or otherwise grante under the provisions of this chapter, under such rules and regulations shall be prescribed by the Secretary of the Interior: *Provided further*, Th in the extraction of helium from gas produced from such lands it shall l so extracted as to cause no substantial delay in the delivery of gas produc from the well to the purchaser thereof.

(Feb. 25, 1920, c. 85, § 1, 41 Stat. 437; Feb. 7, 1927, c. 66, § 5, 44 Stat. 1058; Aug. 1946, c. 916, § 1, 60 Stat. 950; Sept. 2, 1960, Pub.L. 86–705, § 7(a), 74 Stat. 790; No 16, 1981, Pub.L. 97–78, § 1(1), (4), 95 Stat. 1070.)

Historical Note

References in Text. The Appalachian Forest Act, referred to in the first undesignated paragraph, is Act Mar. 1, 1911, c. 186, 36 Stat. 961, as amended, also known as the "Weeks law", which is classified to sections 480, 500, 513 to 519, 521, 552 and 563 of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 552 of Title 16 and Tables volume.

1981 Amendment. Pub.L. 97-78, in first par., substituted "gilsonite (including all vein-type solid hydrocarbons)," for "native asphalt, solid and semisolid bitumen, and bituminous rock (including oil-impregnated rock or sands from which oil is recoverable only by special treatment after the deposit is mined or quarried)", and added, following first par., three paragraphs which defined "oil", "combined hydrocarbon lease", and "special tar sand area", respectively.

1960 Amendment. Pub.L. 86-705 included deposits of native asphalt, solid and semisolid bitumen, and bituminous rock.

1946 Amendment. Act Aug. 8, 1946, reenacted: existing par., less three provisos, as first sentence of first par., inserting "potassium" after "sodium", which was also included in the 1927 amendment, and substituting provision for disposition of deposits "in incorporated cities, towns, and villages, and in national parks and monuments, those acquired under other Acts subsequent to February 25, 1920, and lands within the naval petroleum and oil-shale reserves" for such disposition "in national parks, and in lands withdrawn or reserved for military or naval uses or purposes" and phrase "associations of such citizens" for "any association of such persons"; former third proviso as second sentence of first par.; former first proviso, as second par., inserting reservation of ownership provision and deleting "permitted" preceding "leased or otherwise granted"; and former second proviso as proviso in second par.

1927 Amendment. Act Feb. 7, 1927, included deposits of potassium.

Short Title of 1981 Amendment. Pub.L. 97-78, Nov. 16, 1981, 95 Stat. 1070, which generally made provision for a combined hydrocarbon lease through an amendment of this section and sections 182, 184, 209, 226, 241, 351, and 352 of this title and the enactment of provisions set out as a note under this section, is popularly known as the Combined Hydrocarbon Leasing Act of 1981.

Short Title of 1976 Amendment. Pub.L. 94-377, § 1(a), Aug. 4, 1976, 90 Stat. 1083, as amended by Pub.L. 95-554, § 8, Oct. 30, 1978, 92 Stat. 2075, provided that: "This Act [enacting sections 202a, 208-1 and 208-2 of this title, amending sections 184, 191, 201, 203, 207, 209 and 352 of this title, repealing sections 201-1 and 204 of this title, and enacting provisions set out as notes under sections 184, 201, 201-1, 203, and 204 of this title] may be cited as the 'Federal Coal Leasing Amendments Act of 1976'."

Short Title of 1960 Amendment. Section 1 of Pub.L. 86-705 provided that Pub.L. 86-705, which amended sections 181, 182, 184, 187a, 226, 226-1, 226-2, and 241 of this title, and enacted provisions set out as notes under sections 187a and 226 of this title may be cited as the "Mineral Leasing Act Revision of 1960."

Short Title of 1946 Amendment. Act Aug. 8, 1946, c. 916, 60 Stat. 950, as amended, which enacted sections 187a, 187b, 226c, and 236b of this title, amended sections 181, 184, 188, 193, 209, 225, 226, and 285 of this title, repealed sections 223a, 226a, and 226b of this title, and enacted a provision set out as a note under section 181 of this title, is popularly known as the O'Mahoney-Hatch Act.

Short Title of 1927 Amendment. Act Feb. 7, 1927, c. 66, 44 Stat. 1057, as amended, which enacted sections 281 to 287 of this title, amended sections 181 and 193 of this title, and repealed sections 141 to 152 of this title, is popularly known as the Potash Leasing Act of 1927 and the Potassium Act of 1927.

Short Title. This chapter is popularly known as the General Leasing Act, the Mineral Lands Leasing Act, the Mineral Lands Leasing Act of 1920, the Mineral Leasing Act, the Mineral Leasing Act of 1920, and the Oil Lands Leasing Act.

Savings Provisions. Provisions of Federal Land Policy and Management Act of 1976, Pub.L. 94-579, Oct. 21, 1976, 90 Stat. 2743, not to be construed as permitting any person to place, or allow to be placed, spent oil shale, etc., on any Federal land other than land leased for the recovery of shale oil under the Act of Feb. 25, 1920, section 181 et seq. of this title, see section 701(d) of Pub.L. 94-579, set out as a note under section 1701 of Title 43, Public Lands.

Section 15 of Act Aug. 8, 1946 provided: "No repeal or amendment made by this Act [enacting sections 187a, 187b, 226c, and 236b of this title, amending sections 181, 184, 188, 193, 209, 225, 226, and 285 of this title, and repealing sections 223a, 226a and 226b of this title] shall affect any right acquired under the law as it existed prior to such repeal or amendment, and such right shall be governed by the law in effect at the time of its acquisition; but any person holding a lease on the effective date of this Act [Aug. 8, 1946] may, by filing a statement to that effect, elect to have his lease governed by the applicable provisions of this Act instead of by the law in effect prior thereto."

Construction and Applicability of 1981 Amendments. Section 1(10), (11) of Pub. L. 97-78 provided that:

"(10) Nothing in this Act [see Short Title of 1981 Amendment note under this section] shall affect the taxable status of production

from tar sand under the Crude Oil Windfall Profit Tax Act of 1980 (Public Law 96–223), reduce the depletion allowance for production from tar sand, or otherwise affect the existing tax status applicable to such production.

"(11) No provision of this Act [see Short Title of 1981 Amendment note under this section] shall apply to national parks, national monuments, or other lands where mineral leasing is prohibited by law. The Secretary of the Interior shall apply the provisions of this Act to the Glen Canyon National Recreation Area, and to any other units of the national park system where mineral leasing is permitted, in accordance with any applicable minerals management plan if the Secretary finds that there will be no resulting significant adverse impacts on the administration of such area, or on other contiguous units of the national park system.

Admission of Alaska as State: Selection of lands. Admission of Alaska into the Union was accomplished Jan. 3, 1959, upon issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub.L. 85–508, July 7, 1958, 72 Stat. 339, set out as notes preceding section 21 of Title 48, Territories and Insular Possessions.

Selection of lands by Alaska from lands made available by Statehood provisions including lands subject to leases, permits, licenses or contracts issued under this chapter, see section 6(h) of Pub.L. 85–508, set out as a note preceding section 21 of Title 48.

Outer Continental Shelf; Mineral Leases. Grant by the Secretary of the Interior of mineral leases on submerged lands of outer Continental Shelf, see sections 1331 et seq. of Title 43, Public Lands.

Legislative History. For legislative history and purpose of Pub.L. 86–705, see 1960 U.S. Code Cong. and Adm.News, p. 3313. See, also, Pub.L. 97–78, 1981 U.S.Code Cong. and Adm. News, p. 1740.

Cross References

Conveyances to occupants of unpatented mining claims, reservation of mineral rights, see section 707 of this title.
Designation of areas unsuitable for surface coal mining, see section 1272 of this title.
Foreign interests in leases of public lands made under this section, see section 7435 of Title 10, Armed Forces.
Helium reserve lands, development of other mineral resources on, see section 529 of this title.
Jurisdiction and control over naval petroleum reserves covered by leases granted under this section, see section 7421 of Title 10, Armed Forces.
Laws applicable, see sections 275 and 285 of this title.
Permits to take coal for local domestic needs without royalty payments, etc., see section 208 of this title.
Rents and royalties on geothermal leases, see section 1004 of this title.
Rights-of-way for pipelines through Federal lands, see section 185 of this title.

West's Federal Forms

Complaint for establishment of oil shale claims, see § 1725.

West's Federal Practice Manual

Classification of lands, see § 5572.
Geothermal resources, see § 5467.
Mineral leasing, see § 5391 et seq.
Minerals on federal lands, see § 5301 et seq.
Multiple mineral development, see § 5328.

Code of Federal Regulations

Coal management, see 43 CFR Chap. II, Subchap. C, Group 3400.
Federal lands program, see 30 CFR Chap. VII, Subchap. D.
Geothermal resources leasing, see 43 CFR 3200.0–3 et seq.
Helium conservation, see 43 CFR 16.1 et seq.
Leasing, minerals other than oil and gas, see 43 CFR Chap II, Subchap. C, Group 3500.
Mineral exploration, extraction on Department of Defense lands, see 32 CFR 235.1 et seq.
Minerals management, see 43 CFR Chap. II, Subchap. C, Group 3000.
Nondiscrimination in federally-assisted programs of the Department of the Interior, see 43 CFR 17.1 et seq.
Oil and gas leasing, see 43 CFR Chap II, Subchap. C, Group 3100.
Rights-of-way under Mineral Leasing Act, see 43 CFR 2880.0–3 et seq.
Royalty Management, see 30 CFR Chap. II, Subchap. A.

Library References

Mines and Minerals ⇐4, 5.
Public Lands ⇐7.

C.J.S. Mines and Minerals §§ 9, 19, 128.
C.J.S. Public Lands §§ 3 to 5, 41.

Notes of Decisions

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1. Historical

Prior to establishment of the lease system for mineral lands, these lands, like other public lands, were subject to disposition by patent and, upon issuance of patent, administrative control ceased and the patent could be set aside or cancelled only by judicial proceedings in the courts. Pan Am. Petroleum Corp. v. Pierson, C.A.Wyo.1960, 284 F.2d 649, certiorari denied 81 S.Ct. 1661, 366 U.S. 936, 6 L.Ed.2d 848.

2. Constitutionality

This chapter is not violative of the due process clause of U.S.C.A. Const.Amend. 5, in that this chapter does not provide methods of giving notice to those persons claiming an interest in lands affected by this chapter; the Land Department having under authority given to it by this chapter required notice to be given of all applications for leases. Hodgson v. Midwest Oil Co., D.C.Wyo.1924, 297 F. 273.

3. Construction with other laws

This section, section 122 of this title and section 299 of Title 43, relating to disposal of surface rights and for leasing of oil and gas deposits of public lands withdrawn from settlement by executive order must be read together, each as the complement of the other, and as so read they disclose an intention to divide oil and gas lands into two estates for purpose of disposal, one including the underlying oil and gas deposits and the other the surface, and to make the latter servient to the former. Bourdieu v. Seaboard Oil Corporation of Delaware, 1940, 100 P.2d 528, 38 Cal. App.2d 11.

4. Purpose

This section was intended to expand not contract the Secretary of Interior's control over mineral lands of United States. Boesche v. Udall, Dist.Col.1963, 83 S.Ct. 1373, 373 U.S. 472, 10 L.Ed.2d 491.

Purpose of this chapter was to promote orderly development of oil and gas deposits in publicly owned lands of United States through private enterprise. Harvey v. Udall, C.A.N.M. 1967, 384 F.2d 883. See, also, Geosearch, Inc. v. Andrus, D.C.Wyo.1981, 508 F.Supp. 839.

This chapter was intended to promote wise development of natural resources and to obtain for the public reasonable financial returns on assets belonging to the public. Mountain States Legal Foundation v. Andrus, D.C.Wyo. 1980, 499 F.Supp. 383.

5. Policy

This chapter may be regarded as the expression of a new policy for the disposition of public lands open to exploration or entry by leave instead of by complete alienation. West v. Work, 1926, 11 F.2d 828, 56 App.D.C. 191, certiorari denied 46 S.Ct. 639, 271 U.S. 689, 70 L.Ed. 1153. See, also, Pan Am Petroleum Corp. v. Pierson, C.A.Wyo.1960, 284 F.2d 649, certiorari denied 81 S.Ct. 1661, 366 U.S. 936, 6 L.Ed.2d 848.

6. Law governing

Even if Congress could under Constitution readily enact complete code of law governing transactions in federal mineral leases among private parties, that was not enough to require that federal law govern dealings of private parties in oil and gas lease validly issued under this chapter. Wallis v. Pan Am. Petroleum Corp., La.1966, 86 S.Ct. 1301, 384 U.S. 63, 16 L.Ed.2d 369, on remand 366 F.2d 210.

Federal law does not govern all questions of contract interpretation involving leases issued under this chapter, but it applies to questions with significant implication for federal policy and which require uniform resolution throughout federal system, and thus federal law governed determination of whether Interior Department improperly rejected individual applicants' offers to lease, after their application cards were drawn, on basis that filing service company's "Amendment and Disclaimer" of illegal standard contract clause was ineffective. Lowey v. Watt, 1982, 684 F.2d 957, 221 U.S.App.D.C. 435.

Savings clause of 1960 amendment to this chapter was applicable only to existing leaseholders, and leases issued as result of offers pending on date of enactment of 1960 amendment were subject to terms and conditions imposed by amendment. Miller v. Udall, 1963, 317 F.2d 573, 115 U.S.App.D.C. 162.

7. Mineral and mining laws

The term "public-land laws" is ordinarily used to refer to statutes governing alienation of public land, and generally is distinguished from both "mining laws" referring to statutes governing the mining of hard minerals on public lands, and "mineral leasing laws", used to designate statutes governing the leasing of public lands for gas and oil. Udall v. Tallman, Dist.Col.1965, 85 S.Ct. 792, 380 U.S. 1, 13 L.Ed.2d 616, rehearing denied 85 S.Ct. 1325, 380 U.S. 989, 14 L.Ed.2d 283.

8. Reservation in United States

Where the United States reserves the mineral estate, together with the right to prospect for, mine, and remove the same, in a grant of the surface estate, there is a servitude laid on the surface estate for the benefit of the mineral estate. Transwestern Pipeline Co. v. Kerr-McGee Corp., C.A.N.M.1974, 492 F.2d 378, certiorari dismissed 95 S.Ct. 691, 491 U.S. 1097, 42 L.Ed.2d 689.

Where reservation of mineral rights to state and federal governments was based upon federal and state statutes, reservation did not constitute an "encumbrance" which would prevent vendors from conveying fee simple title to property free and clear of all encumbrances, and purchaser's failure to pay installment was a defalcation of so material and substantial a nature as to terminate purchaser's rights in contract. Mortenson v. Financial Growth, Inc., 1969, 456 P.2d 181, 23 Utah 2d 54.

9. Lands subject to disposition—Generally

"Public domain lands" are those which usually were never in state or private ownership. Wallis v. Pan Am. Petroleum Corp., La. 1966, 86 S.Ct. 1301, 384 U.S. 63, 16 L.Ed.2d 369, on remand 366 F.2d 210.

The words in this section "lands containing such deposits owned by the United States," do not apply where Congress has directed that the disposal of such lands is to be under other laws. West v. Work, 1926, 11 F.2d 828, 56 App.D.C. 191, certiorari denied 46 S.Ct. 639, 271 U.S. 689, 70 L.Ed. 1153.

Lands acquired by the United States for national-forest purposes under the provisions of the General Exchange Act of March 20, 1922, sections 485 and 486 of Title 16, are subject to both the general mining laws and this chapter. 1943, 40 Op.Atty.Gen. 260.

10. —— Indian lands

Where United States held lands of Ute Indians in trust, these lands were within the control of the United States and had not been so disposed of as to destroy the equitable interest of the Indians in them even though by provision of this section lands containing phosphate etc. were removed from disposal except by lease. Confederated Bands of Indians v. U.S., 1948, 112 Ct.Cl. 123.

The Attorney General of date May 12, 1[illegible] in response to a request for an opinion on question whether or not, this chapter was applicable to executive order Indian reservations, advised that this chapter was not applicable in view of the fact that this chapter referred solely to the public domain, and the chapter nowhere mentioned Indians, Indian lands, or Indian reservations of any kind, in view of the long settled rule of construction that general laws providing for the disposition of public lands do not apply to lands which have been set aside or reserved for public use unless the contrary clearly appears from the context or the circumstances attending the legislation, in view of the fact that this title never applied to Indian reservations whether created by treaty, act of Congress, or executive order, in view of section 185 of this title, concerning rights of way through the public lands including the forest reserves, and section 191 of this title, providing in mandatory language for the disposition of all the royalty moneys realized, and in view of the legislative history of these sections. 1924, 34 Op.Atty.Gen. 171.

11. —— Military reservations

This chapter does not apply to federal military lands. Kingwood Oil Co. v. Henderson County Bd. of Sup'rs, Ky.1963, 367 S.W.2d [illegible]

12. —— Naval petroleum and oil-shale reserves

Neither Secretary of Interior nor Secretary of Navy were authorized to grant oil lease on naval oil reserve in February, 1922, in compromise of fuller's earth placer mining claim. U.S. v. Pan-American Petroleum Co., C.C.A. Cal.1932, 55 F.2d 753, certiorari denied 53 S.Ct. 14, 287 U.S. 612, 77 L.Ed. 532.

13. —— Submerged lands

This section applies only to "public lands" which in context of this section does not include lands beneath marginal seas. Justheim v. McKay, 1956, 229 F.2d 29, 97 U.S.App.D.C. 146, certiorari denied 76 S.Ct. 789, 351 U.S. 933, 100 L.Ed. 1461.

This section is not applicable to the submerged lands below low tide off the coasts of the United States and outside the inland waters within the States. 1947, 40 Op.Atty.Gen. 540.

14. —— Withdrawn lands

Application to purchase coal lands granted to state as school lands did not prevent withdrawal by federal government under this chapter. Work v. Braffet, Dist.Col.1928, [illegible] S.Ct. 363, 276 U.S. 560, 72 L.Ed. 700.

The Department of Interior's 1947 policy directive known as the Krug memorandum which stated that lands located north of the eleventh standard parallel in Teton County, Wyoming, were withdrawn from leasing, with few exceptions, was not contrary to law but was a proper exercise of the Secretary's discretionary power and authority. Learned v. Watt, D.C.Wyo.1981, 528 F.Supp. 980.

15. Aliens entitled to benefits

Only sovereign may complain of trust in realty in favor of alien disqualified to hold title under this chapter and such a trust is valid until alienage is judicially established at government's instance. Isaacs v. De Hon, C.C.A.Alaska 1926, 11 F.2d 943.

In issuing decision barring Kuwaiti citizens and corporations from acquiring interests in oil and gas leases on public lands under this chapter, Secretary of the Interior departed from clear legislative purpose underlying the alien qualification provision of this chapter, this section being concerned about discrimination against the United States citizens by foreign countries. Santa Fe Intern. Corp. v. Watt, D.C.Del.1984, 591 F.Supp. 929.

Fact that Kuwait owned 200,000 shares of oil company which owned all the shares of another company which owned 26 percent of shares of corporation proposing to construct northern tier oil pipeline did not establish that Kuwait had "stock ownership" in corporation proposing to construct pipeline so as to violate provision of this chapter prohibiting grant of right-of-way across federal lands to foreigners. No Oilport! v. Carter, D.C.Wash.1981, 520 F.Supp. 334.

16. Reciprocal countries

Great Britain is a reciprocal country under this section, conditioned upon the assumptions concerning applicable British statutes and regulations. 1936, 38 Op.Atty.Gen. 476.

17. Nature of lease

Mineral lease of government land under this chapter does not give the lessee the full ownership of a fee patentee, nor does it convey an unencumbered estate in the minerals, and Secretary of Interior's connection with the lands continues to subsist and he has the power, in a proper case to correct any errors in the transaction. Boersche v. Udall, Dist.Col.1963, 83 S.Ct. 1373, 373 U.S. 472, 10 L.Ed.2d 491.

18. Rights and privileges of lessees

Lessee of mineral rights in public lands withdrawn from settlement was entitled to equitable aid to prevent incompatible use of surface by homestead entryman. Kinney-Coastal Oil Co. v. Kieffer, Wyo.1928, 48 S.Ct. 580, 277 U.S. 488, 72 L.Ed. 961.

If oil shale placer locations on public lands assigned to plaintiff and upon which it sought to obtain a patent were valid, no mineral lease to such lands could validly issue under this chapter but if the claims were invalid, rights of plaintiff were subject to any intervening oil and gas lease. Union Oil Co. of Cal. v. Udall, 1961, 289 F.2d 790, 110 U.S.App.D.C. 124.

19. Withdrawal of lands from location

The effect of this section was to withdraw from location, all oil, gas and petroleum lands which were at that time property of the United States, and to place them within the exclusive jurisdiction of the Department of Interior to be administered by the Secretary, whose actions and determinations as regards such lands and mineral interests as to the leasing thereof are not subject to judicial review even in a direct proceeding. Thomas v. Union Pac. R. Co., D.C.Colo.1956, 139 F.Supp. 588, affirmed 239 F.2d 641.

This section withdrawing from location lands with oil shale deposits did not withdraw requirement that assessment work be performed on previously located mining claims. Hamilton v. Ertl, 1961, 360 P.2d 660, 146 Colo. 80.

§ 182. Lands disposed of with reservation of deposits of coal, etc.

The provisions of this chapter shall also apply to all deposits of coal, phosphate, sodium, oil, oil shale, gilsonite (including all vein-type solid hydrocarbons), or gas in the lands of the United States, which lands may have been or may be disposed of under laws reserving to the United States such deposits, with the right to prospect for, mine, and remove the same, subject to such conditions as are or may hereafter be provided by such laws reserving such deposits.

(Feb. 25, 1920, c. 85, § 34, 41 Stat. 450; Sept. 2, 1960, Pub.L. 86-705, § 7(a), 74 Stat. 790; Nov. 16, 1981, Pub.L. 97-78, § 1(1), 95 Stat. 1070.)

Historical Note

1981 Amendment. Pub.L. 97-78 substituted "gilsonite (including all vein-type solid hydrocarbons)," for "native asphalt, solid and semisolid bitumen, and bituminous rock (including oil-impregnated rock or sands from which oil is recoverable only by special treatment after the deposit is mined or quarried)".

1960 Amendment. Pub.L. 86-705 included native asphalt, solid and semisolid bitumen, and bituminous rock.

Legislative History. For legislative history and purpose of Pub.L. 86-705, see 1960 U.S. Code Cong. and Adm.News, p. 3313. See, also, Pub.L. 97-78, 1981 U.S.Code Cong. and Adm. News, p. 1740.

Cross References

Foreign interests in leases of public lands made under this section, see section 7435 of Title 10 Armed Forces.
Jurisdiction and control over naval petroleum reserves covered by leases granted under this section, see section 7421 of Title 10.
Laws applicable, see sections 275 and 285 of this title.

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Applicable lands, see § 5393.
Minerals on federal lands, see § 5301 et seq.

Library References

Mines and Minerals ⇐4.
C.J.S. Mines and Minerals §§ 9, 19.

Notes of Decisions

1. Superior rights under this section

Courts are without jurisdiction to grant relief in favor of one claiming only preference right of entry on coal lands by virtue of section 72 of this title, as against one in possession under lease from United States pursuant to this section, so long as title remains in United States. Wilson v. Elk Coal Co., C.C.A. Wash.1925, 7 F.2d 112, certiorari denied 46 S.Ct. 203, 269 U.S. 587, 70 L.Ed. 426.

§ 183. Cancellation of prospecting permits

The Secretary of the Interior shall reserve and may exercise the authority to cancel any prospecting permit upon failure by the permittee to exercise due diligence in the prosecution of the prospecting work in accordance with the terms and conditions stated in the permit, and shall insert in every such permit issued under the provisions of this chapter appropriate provisions for its cancellation by him.

(Feb. 25, 1920, c. 85, § 26, 41 Stat. 448.)

Cross References

Foreign interests in leases of public lands made under this section, see section 7435 of Title 10 Armed Forces.
Jurisdiction and control over naval petroleum reserves covered by leases granted under this section, see section 7421 of Title 10.
Laws applicable, see sections 275 and 285 of this title.
Surrender of leases, see section 188a of this title.

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Termination of leases and permits, see § 5401.

§ 184. Limitations on leases held, owned or controlled by persons, associations or corporations

(a) Coal leases or permits, acreage; regulations

(1) No person, association, or corporation, or any subsidiary, affiliate, or persons controlled by or under common control with such person, association, or corporation shall take, hold, own or control at one time, whether acquired directly from the Secretary under this chapter or otherwise, coal

leases or permits on an aggregate of more than forty-six thousand and eighty acres in any one State and in no case greater than an aggregate of one hundred thousand acres in the United States: *Provided*, That any person, association, or corporation currently holding, owning, or controlling more than an aggregate of one hundred thousand acres in the United States on the date of enactment of this section shall not be required on account of this section to relinquish said leases or permits: *Provided, further*, That in no case shall such person, association, or corporation be permitted to take, hold, own, or control any further Federal coal leases or permits until such time as their holdings, ownership, or control of Federal leases or permits has been reduced below an aggregate of one hundred thousand acres within the United States.

(2) Repealed. Pub.L. 94-377, § 11(b), Aug. 4, 1976, 90 Stat. 1090.

(b) Sodium leases or permits, acreage

(1) No person, association, or corporation, except as otherwise provided in this subsection, shall take, hold, own, or control at one time, whether acquired directly from the Secretary under this chapter, or otherwise, sodium leases or permits on an aggregate of more than five thousand one hundred and twenty acres in any one State.

(2) The Secretary may, in his discretion, where the same is necessary in order to secure the economic mining of sodium compounds leasable under this chapter, permit a person, association, or corporation to take or hold sodium leases or permits on up to fifteen thousand three hundred and sixty acres in any one State.

(c) Phosphate leases, acreage

No person, association, or corporation shall take, hold, own, or control at one time, whether acquired directly from the Secretary under this chapter, or otherwise, phosphate leases or permits on an aggregate of more than twenty thousand four hundred and eighty acres in the United States.

(d) Oil or gas leases, acreage, Alaska; options, semiannual statements

(1) No person, association, or corporation, except as otherwise provided in this chapter, shall take, hold, own or control at one time, whether acquired directly from the Secretary under this chapter, or otherwise, oil or gas leases (including options for such leases or interests therein) on land held under the provisions of this chapter exceeding in the aggregate two hundred forty-six thousand and eighty acres in any one State other than Alaska[1]. *Provided, however*, That acreage held in special tar sand areas shall not be chargeable against such State limitations. In the case of the State of Alaska, the limit shall be three hundred thousand acres in the northern leasing district and three hundred thousand acres in the southern leasing district, and the boundary between said two districts shall be the left limit of the Tanana River from the border between the United States and Canada to the confluence of the Tanana and Yukon Rivers, and the left limit of the Yukon River from said confluence to its principal southern mouth.

(2) No person, association, or corporation shall take, hold, own, or control at one time options to acquire interests in oil or gas leases under the provisions of this chapter which involve, in the aggregate, more than two hundred thousand acres of land in any one State other than Alaska or, in the case of Alaska, more than two hundred thousand acres in each of its two leasing districts, as hereinbefore described. No option to acquire any

interest in such an oil or gas lease shall be enforcible if entered into for a period of more than three years (which three years shall be inclusive of any renewal period if a right to renew is reserved by any party to the option) without the prior approval of the Secretary. In any case in which an option to acquire the optionor's entire interest in the whole or a part of the acreage under a lease is entered into, the acreage to which the option is applicable shall be charged both to the optionor and to the optionee, but the charge to the optionor shall cease when the option is exercised. In any case in which an option to acquire a part of the optionor's interest in the whole or a part of the acreage under a lease is entered into, the acreage to which the option is applicable shall be fully charged to the optionor and a share thereof shall also be charged to the optionee as his interest may appear, but after the option is exercised said acreage shall be charged to the parties pro rata as their interests may appear. In any case in which an assignment is made of a part of a lessee's interest in the whole or part of the acreage under a lease or an application for a lease, the acreage shall be charged to the parties pro rata as their interests may appear. No option or renewal thereof shall be enforcible until notice thereof has been filed with the Secretary or an officer or employee of the Department of the Interior designated by him to receive the same. Each such notice shall include, in addition to any other matters prescribed by the Secretary, the names and addresses of the parties thereto, the serial number of the lease or application for a lease to which the option is applicable, and a statement of the number of acres covered thereby and of the interests and obligations of the parties thereto and shall be subscribed by all parties to the option or their duly authorized agents. An option which has not been exercised shall remain charged as hereinbefore provided until notice of its relinquishment or surrender has been filed, by either party, with the Secretary or any officer or employee of the Department of the Interior designated by him to receive the same. In addition, each holder of any such option shall file with the Secretary or an officer or employee of the Department of the Interior as aforesaid within ninety days after the 30th day of June and the 31st day of December in each year a statement showing, in addition to any other matters prescribed by the Secretary, his name, the name and address of each grantor of an option held by him, the serial number of every lease or application for a lease to which such an option is applicable, the number of acres covered by each such option, the total acreage in each State to which such options are applicable, and his interest and obligation under each such option. The failure of the holder of an option so to file shall render the option unenforcible by him. The unenforcibility of any option under the provisions of this paragraph shall not diminish the number of acres deemed to be held under option by any person, association, or corporation in computing the amount chargeable under the first sentence of this paragraph and shall not relieve any party thereto of any liability to cancellation, forfeiture, forced disposition, or other sanction provided by law. The Secretary may prescribe forms on which the notice and statements required by this paragraph shall be made.

(e) Association or stockholder interests, conditions; combined interests

(1) No person, association, or corporation shall take, hold, own or control at one time any interest as a member of an association or as a stockholder in a corporation holding a lease, option, or permit under the provisions of this chapter which, together with the area embraced in any direct holding, ownership or control by him of such a lease, option, or permit or any other interest which he may have as a member of other

associations or as a stockholder in other corporations holding, owning or controlling such leases, options, or permits for any kind of minerals, exceeds in the aggregate an amount equivalent to the maximum number of acres of the respective kinds of minerals allowed to any one lessee, optionee, or permittee under this chapter, except that no person shall be charged with his pro rata share of any acreage holdings of any association or corporation unless he is the beneficial owner of more than 10 per centum of the stock or other instruments of ownership or control of such association or corporation, and except that within three years after September 2, 1960 no valid option in existence prior to September 2, 1960 held by a corporation or association on September 2, 1960 shall be chargeable to any stockholder of such corporation or to a member of such association so long as said option shall be so held by such corporation or association under the provisions of this chapter.

(2) No contract for development and operation of any lands leased under this chapter, whether or not coupled with an interest in such lease, and no lease held, owned, or controlled in common by two or more persons, associations, or corporations shall be deemed to create a separate association under the preceding paragraph of this subsection between or among the contracting parties or those who hold, own or control the lease in common, but the proportionate interest of each such party shall be charged against the total acreage permitted to be held, owned or controlled by such party under this chapter. The total acreage so held, owned, or controlled in common by two or more parties shall not exceed, in the aggregate, an amount equivalent to the maximum number of acres of the respective kind of minerals allowed to any one lessee, optionee, or permittee under this chapter.

(f) Limitations on other sections; combined interests permitted for certain purposes

Nothing contained in subsection (e) of this section shall be construed (i) to limit sections 227, 228, 251 of this title or (ii), subject to the approval of the Secretary, to prevent any number of lessees under this chapter from combining their several interests so far as may be necessary for the purpose of constructing and carrying on the business of a refinery or of establishing and constructing, as a common carrier, a pipeline or railroad to be operated and used by them jointly in the transportation of oil from their several wells or from the wells of other lessees under this chapter or in the transportation of coal or (iii) to increase the acreage which may be taken, held, owned, or controlled under this section.

(g) Forbidden interests acquired by descent, will, judgment, or decree; permissible holding period

Any ownership or interest otherwise forbidden in this chapter which may be acquired by descent, will, judgment, or decree may be held for two years after its acquisition and no longer.

(h) Cancellation, forfeiture, or disposal of interests for violation; bona fide purchasers and other valid interests; sale by Secretary; record of proceedings

(1) If any interest in any lease is owned, or controlled, directly or indirectly, by means of stock or otherwise, in violation of any of the provisions of this chapter, the lease may be canceled, or the interest so owned may be forfeited, or the person so owning or controlling the interest may be compelled to dispose of the interest, in any appropriate proceeding instituted by the Attorney General. Such a proceeding shall be instituted in

the United States district court for the district in which the leased property or some part thereof is located or in which the defendant may be found.

(2) The right to cancel or forfeit for violation of any of the provisions of this chapter shall not apply so as to affect adversely the title or interest of a bona fide purchaser of any lease, interest in a lease, option to acquire a lease or an interest therein, or permit which lease, interest, option, or permit was acquired and is held by a qualified person, association, or corporation in conformity with those provisions, even though the holdings of the person, association, or corporation from which the lease, interest, option, or permit was acquired, or of his predecessor in title (including the original lessee of the United States) may have been canceled or forfeited or may be or may have been subject to cancellation or forfeiture for any such violation. If, in any such proceeding, an underlying lease, interest, option, or permit is canceled or forfeited to the Government and there are valid interests therein or valid options to acquire the lease or an interest therein which are not subject to cancellation, forfeiture, or compulsory disposition, the underlying lease, interest, option, or permit shall be sold by the Secretary to the highest responsible qualified bidder by competitive bidding under general regulations subject to all outstanding valid interests therein and valid options pertaining thereto. Likewise if, in any such proceeding, less than the whole interest in a lease, interest, option, or permit is canceled or forfeited to the Government, the partial interests so canceled or forfeited shall be sold by the Secretary to the highest responsible qualified bidder by competitive bidding under general regulations. If competitive bidding fails to produce a satisfactory offer the Secretary may, in either of these cases, sell the interest in question by such other method as he deems appropriate on terms not less favorable to the Government than those of the best competitive bid received.

(3) The commencement and conclusion of every proceeding under this subsection shall be promptly noted on the appropriate public records of the Bureau of Land Management.

(i) Bona fide purchasers, conditions for obtaining dismissals

Effective September 21, 1959, any person, association, or corporation who is a party to any proceeding with respect to a violation of any provision of this chapter, whether initiated prior to said date or thereafter, shall have the right to be dismissed promptly as such a party upon showing that he holds and acquired as a bona fide purchaser the interest involving him as such a party without violating any provisions of this chapter. No hearing upon any such showing shall be required unless the Secretary presents prima facie evidence indicating a possible violation of this chapter on the part of the alleged bona fide purchaser.

(j) Waiver or suspension of rights

If during any such proceeding, a party thereto files with the Secretary a waiver of his rights under his lease (including particularly, where applicable, rights to drill and to assign) or if such rights are suspended by the Secretary pending a decision in the proceeding, whether initiated prior to enactment of this chapter or thereafter, payment of rentals and running of time against the term of the lease or leases involved shall be suspended as of the first day of the month following the filing of the waiver or suspension of the rights until the first day of the month following the final decision in the proceeding or the revocation of the waiver or suspension.

(k) Unlawful trusts; forfeiture

Except as otherwise provided in this chapter, if any lands or deposits subject to the provisions of this chapter shall be subleased, trusteed, possessed, or controlled by any device permanently, temporarily, directly, indirectly, tacitly, or in any manner whatsoever, so that they form a part of or are in any wise controlled by any combination in the form of an unlawful trust, with the consent of the lessee, optionee, or permittee, or form the subject of any contract or conspiracy in restraint of trade in the mining or selling of coal, phosphate, oil, oil shale, gilsonite (including all vein-type solid hydrocarbons), gas, or sodium entered into by the lessee, optionee, or permittee or any agreement or understanding, written, verbal, or otherwise, to which such lessee, optionee, or permittee shall be a party, of which his or its output is to be or become the subject, to control the price or prices thereof or of any holding of such lands by any individual, partnership, association, corporation, or control in excess of the amounts of lands provided in this chapter, the lease, option, or permit shall be forfeited by appropriate court proceedings.

(l) Rules and regulations; notice to and consultation with Attorney General; application of antitrust laws; definitions

(1) At each stage in the formulation and promulgation of rules and regulations concerning coal leasing pursuant to this chapter, and at each stage in the issuance, renewal, and readjustment of coal leases under this chapter, the Secretary of the Interior shall consult with and give due consideration to the views and advice of the Attorney General of the United States.

(2) No coal lease may be issued, renewed, or readjusted under this chapter until at least thirty days after the Secretary of the Interior notifies the Attorney General of the proposed issuance, renewal, or readjustment. Such notification shall contain such information as the Attorney General may require in order to advise the Secretary of the Interior as to whether such lease would create or maintain a situation inconsistent with the antitrust laws. If the Attorney General advises the Secretary of the Interior that a lease would create or maintain such a situation, the Secretary of the Interior may not issue such lease, nor may he renew or readjust such lease for a period not to exceed one year, as the case may be, unless he thereafter conducts a public hearing on the record in accordance with subchapter II of chapter 5 of Title 5 and finds therein that such issuance, renewal, or readjustment is necessary to effectuate the purposes of this chapter, that it is consistent with the public interest, and that there are no reasonable alternatives consistent with this chapter, the antitrust laws, and the public interest.

(3) Nothing in this chapter shall be deemed to convey to any person, association, corporation, or other business organization immunity from civil or criminal liability, or to create defenses to actions, under any antitrust law.

(4) As used in this subsection, the term "antitrust law" means—

(A) the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890 (15 U.S.C. 1 et seq.), as amended;

(B) the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914 (15 U.S.C. 12 et seq.), as amended;

(C) the Federal Trade Commission Act (15 U.S.C. 41 et seq.), as amended;

(D) sections 73 and 74 of the Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes", approved August 27, 1894 (15 U.S.C. 8 and 9), as amended; or

(E) the Act of June 19, 1936, chapter 592 (15 U.S.C. 13, 13a, 13b, and 21a).

(Feb. 25, 1920, c. 85, § 27, 41 Stat. 448; Apr. 30, 1926, c. 197, 44 Stat. 373; July 3, 1930, c. 854, § 1, 46 Stat. 1007; Mar. 4, 1931, c. 506, 46 Stat. 1524; Aug. 8, 1946, c. 916, § 6, 60 Stat. 954; June 1, 1948, c. 365, 62 Stat. 285; June 3, 1948, c. 379, § 6, 62 Stat. 291; Aug. 2, 1954, c. 650, 68 Stat. 648; Aug. 13, 1957, Pub.L. 85-122, 71 Stat. 341; Aug. 21, 1958, Pub.L. 85-698, 72 Stat. 688; Sept. 21, 1959, Pub.L. 86-294, § 1, 73 Stat. 571; Mar. 18, 1960, Pub.L. 86-391, § 1(c), 74 Stat. 8; Sept. 2, 1960, Pub.L. 86-705, § 3, 74 Stat. 785; Aug. 31, 1964, Pub.L. 88-526, § 1, 78 Stat. 710; Aug. 31, 1964, Pub.L. 88-548, 78 Stat. 754; Aug. 4, 1976, Pub.L. 94-377, §§ 11, 15, 90 Stat. 1090, 1091; Nov. 16, 1981, Pub.L. 97-78, § 1(2), (5), 95 Stat. 1070.)

[1] So in original. Probably should be followed by a colon.

Historical Note

References in Text. The date of enactment of this section, referred to in subsec. (a)(1), probably means the date of enactment of Pub. L. 94-377, which was Aug. 4, 1976.

The Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890, as amended, referred to in subsec. (*l*)(4)(A), is Act July 2, 1890, c. 647, 26 Stat. 209, as amended, known as the Sherman Act, which is classified to sections 1 to 7 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1 of Title 15 and Tables volume.

The Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914, as amended, referred to in subsec. (*l*)(4)(B), is Act Oct. 15, 1914, c. 323, 38 Stat. 730, as amended, known as the Clayton Act, and is classified generally to sections 12, 13, 14 to 19, 20, 21, and 22 to 27 of Title 15, Commerce and Trade, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of Title 15 and Tables volume.

The Federal Trade Commission Act, referred to in subsec. (*l*)(4)(C), is Act Sept. 26, 1914, c. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (section 41 et seq.) of chapter 2 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 58 of Title 15 and Tables volume.

Sections 73 and 74 of the Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes", approved August 27, 1894, as amended, referred to in subsec. (*l*)(4)(D), are sections 73 and 74 of Act Aug. 27, 1894, c. 349, 28 Stat. 509, popularly known as the Wilson Tariff Act, and are classified to sections 8 and 9 of Title 15.

The Act of June 19, 1936, chapter 592, referred to in subsec. (*l*)(4)(E), is Act June 19, 1936, c. 592, 49 Stat. 1526, known as the Robinson-Patman Anti-discrimination Act, which enacted sections 13a, 13b, and 21a of Title 15, Commerce and Trade, and amended section 13 of Title 15. For complete classification of this Act to the Code, see Short title note set out under section 13 of Title 15 and Tables volume.

Codification. In subsec. (*l*)(2), "subchapter II of chapter 5 of Title 5" was substituted for "the Administrative Procedure Act" on authority of Pub.L. 89-554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

1981 Amendment. Subsec. (d)(1). Pub.L. 97-78, § 1(5), added proviso that acreage held in special tar sand areas not be chargeable against State limitations.

Subsec. (k). Pub.L. 97-78, § 1(2), substituted "gilsonite (including all veintype solid hydrocarbons)," for "native asphalt, solid and semisolid bitumen, bituminous rock,".

1976 Amendment. Subsec. (a)(1). Pub.L. 94-377, § 11(a), added "or any subsidiary, affiliate, or persons controlled by or under common control with such person, association, or corporation" preceding "shall take, hold, own or control", "and in no case greater than an aggregate of one hundred thousand acres in the United States" following "in any one State," the proviso relating to the non-relinquishment of leases or permits by an entity owning or controlling more than an aggregate of one hundred thousand acres, and the proviso prohibiting the ownership or control of further Federal leases or permits until reduction to below an aggregate of one hundred thousand acres.

Subsec. (a)(2). Pub.L. 94-377, § 11(b), struck out subsec. (a)(2) providing for application, hearing and granting of additional acreage, not to exceed 5120 acres in any one State, to a person, association or corporation requiring such extra acreage to carry on business economically, and the subsequent reevaluation of such entity's continuing need for such extra acreage.

Subsec. (*l*). Pub.L. 94-377, § 15, added subsec. (*l*).

1964 Amendments. Subsec. (a)(1). Pub.L. 88-526 deleted ", except as otherwise provided in this subsection," following "corporation" and increased the aggregate number of acres from 10,240 to 46,080 acres.

Subsec. (c). Pub.L. 88-548 increased the aggregate number of acres from 10,240 to 20,480 acres.

1960 Amendments. Pub.L. 86-705 generally revised the provisions and divided them into subsecs. (a) to (k). Other changes concerned: maximum acreage in Alaska, unreported options, their unenforceability, form for notice of options party to give notice, inclusion of options in acreage determinations, charge of association or corporate holdings against principal stockholders, hearings requirement based upon prima facie evidence of violations, running of time against a lease and the payment of rentals during a waiver or suspension of a lessee's rights.

Pub.L. 86-391 authorized issuance of phosphate permits.

1959 Amendment. Pub.L. 86-294 provided that: the right of cancellation or forfeiture for violations shall not apply so as to affect adversely the interest of a bona fide purchaser in a lease acquired in conformity with acreage limitations; that bona fide purchasers in such situations have right to be dismissed as parties from proceedings; and that if a party to proceedings files waiver of rights to drill or assigns his interests, or if such rights are suspended pending decision, he shall, if he is not in violation of provisions, have the right to have his interest extended for a period of time equal to the period between filing of waiver or order of suspension and final decision, without payment of rental.

1958 Amendment. Pub.L. 85-698 increased the limitation on the acreage which may be taken or held under coal leases or permits in any one State from 5,120 to 10,240 acres, permitted applications for additional coal leases or permits not exceeding 5,120 additional acres in the State, provided for hearings on such applications authorized reevaluation and cancellation of leases and permits for additional acreage, and prohibited assignment, transfer, or sale of any of the additional acreage without the Secretary's approval.

1957 Amendment. Pub.L. 85-122 deleted from the second sentence the words "or permits exceeding in the aggregate five thousand one hundred and twenty acres in any one State, and" following the words "phosphate leases".

1954 Amendment. Act Aug. 2, 1954, increased the acreage that any one person can hold in the aggregate from fifteen thousand three hundred and sixty acres to forty-six thousand and eighty acres, increased the number of acres that can be held under option from one hundred thousand acres to two hundred thousand acres, and extended the term of the option from 2 to 3 years.

1948 Amendments. Act June 1, 1948, substituted in the second proviso of section "within two years after the passage of this Act" for "on or before August 8, 1950" in order to allow options to be exercised up to that time.

Act June 3, 1948, increased the aggregate acreage allowed one person, etc., from two thousand five hundred and sixty acres to five thousand one hundred and twenty acres of coal or sodium leases, and increased the aggregate acreage allowed one person, etc., from seven thousand six hundred and eighty acres to fifteen thousand three hundred and sixty acres of oil or gas leases.

1946 Amendment. Act Aug. 8, 1946, principally doubled the amount of land that may be leased by any person or corporation in any one State and abolished the former acreage limitation of 2,560 acres on one structure; excluded operating contracts and leases held in common from the definition of "association"; inserted the provisions relating to options; and omitted the provisions relating to cooperative or unit plans and operating, drilling or development contracts.

1931 Amendment. Act Mar. 4, 1931, amended section generally.

1930 Amendment. Act July 3, 1930, amended section generally.

1926 Amendment. Act Apr. 30, 1926, amended section generally.

Effective Date of 1959 Amendment. Section 2 of Pub.L. 86-294 provided that: "The rights granted by the second and third sentences of the amendment contained within section 1 of this Act [amending this section to provide that holder of interest in lease has right to be dismissed from cancellation or forfeiture proceedings upon showing he acquired his interest as bona fide purchaser and without violation of provisions, and to provide right to have his lease extended if rights thereunder to drill and to assign are suspended or waived during such proceedings and it is determined he is not in violation of provisions] shall apply with respect to any proceeding now pending or initiated after the date of enactment of this Act [Sept. 21, 1959]."

Savings Provisions. Savings provisions, see note set out under section 181 of this title.

Section 11(b) of Pub.L. 94-377 provided in part that repeal by such section of subsec. (a)(2) of this section is subject to valid existing rights.

Transfer of Functions. The functions of the Secretary of the Interior, referred to in subsec. (*l*), to promulgate regulations under

this chapter relating to the fostering of competition for Federal leases, the implementation of alternative bidding systems authorized for the award of Federal leases, the establishment of diligence requirements for operations conducted on Federal leases, the setting of rates for production of Federal leases, and the specifying of the procedures, terms, and conditions for the acquisition and disposition of Federal royalty interests taken in kind, were transferred to the Secretary of Energy by section 7152(b) of Title 42, The Public Health and Welfare. Section 7152(b) of Title 42 was repealed by Pub. L. 97-100, Title II, § 201, Dec. 23, 1981, 95 Stat. 1407, and the functions of the Secretary of Energy were returned to the Secretary of the Interior. See House Report No. 97-315, pp. 25, 26, Nov. 5, 1981.

Admission of Alaska as State. Admission of Alaska into the Union was accomplished Jan. 3, 1959, upon issuance of Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub.L. 85-508, July 7, 1958, 72 Stat. 339, set out as notes preceding section 21 of Title 48, Territories and Insular Possessions.

Legislative History. For legislative history and purpose of Act June 1, 1948, see 1948 U.S.Code Cong.Service, p. 1639. See, also, Act June 3, 1948, 1948 U.S.Code Cong.Service, p. 1640; Act Aug. 2, 1954, 1954 U.S.Code Cong. and Adm.News, p. 2852; Pub.L. 85-122, 1957 U.S.Code Cong. and Adm.News, p. 1404; Pub.L. 85-698, 1958 U.S.Code Cong. and Adm. News, p. 3671; Pub.L. 86-294, 1959 U.S.Code Cong. and Adm.News, p. 2620; Pub.L. 86-391, 1960 U.S.Code Cong. and Adm.News, p. 1805; Pub.L. 86-705, 1960 U.S.Code Cong. and Adm. News, p. 3313; Pub.L. 88-526, 1964 U.S.Code Cong. and Adm.News, p. 3293; Pub.L. 88-548, 1964 U.S.Code Cong. and Adm.News, p. 3334; Pub.L. 94-377, 1976 U.S.Code Cong. and Adm. News, p. 1943; Pub.L. 97-78, 1981 U.S.Code Cong. and Adm.News, p. 1740.

Cross References

Acreage limitations for coal leases not waived by consolidation of coal leases into logical mining unit, see section 202a of this title.
Authority of Secretary of the Navy to enter into agreements such as those provided for under this section, see section 7[illegible]a of this title.
Foreign interests in leases of public lands made under this section, see section 7435 of Title 10, Armed Forces.
Jurisdiction and control over naval petroleum reserves covered by leases granted under this section, see section 7421 of Title 10.
Laws applicable, see sections 275 and 285 of this title.
States authorized to consent to operation and development of lands acquired from United States, under agreements for conservation of oil and gas resources, see section 184a of this title.
Surrender of leases, see section 188a of this title.

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Acreage limitations, see § 5395.
Coal acreage, see § 5429.
Coal permits and leases, see § 5424 et seq.
Lease option limitations, see § 5404.
Minerals on federal lands, see § 5301 et seq.
Phosphate leases and permits, see § 5440.
Sodium leases and permits, see § 5436.

Library References

Mines and Minerals ⟹5.1(3), (7).
C.J.S. Mines and Minerals § 128.

Notes of Decisions

1. Retroactive effect

Bona fide purchaser protection afforded by 1959 amendment to this section was intended to have retroactive application to extent that it was possible. Southwestern Petroleum Corp. v. Udall, C.A.N.M.1966, 361 F.2d 650.

Amendment of this section by changing limitation of holdings from leases to limitation of number of acres was inapplicable to lease existing before amendment. Carter Oil Co. v. Pacific-Wyoming Oil Co., 1928, 267 P. 85, 38 Wyo. 361.

2. Acreage limitations

Under this section prohibiting anyone from holding more than 46,080 acres of oil or gas leases, and under regulation that such limitation includes applications for leases or offers to lease, applicant was chargeable with 9,551.57 acres he held under lease and the 669.81 acres for which he was the first qualified applicant with result that his applications for 35,614.1 acres did not increase his acreage beyond limit of 46,880 acres. Brown v. Udall, 1964, 335 F.2d 706, 118 U.S.App.D.C. 284.

3. Oil and gas lease options

Provision of this section rendering unenforceable any option not filed with Secretary of Interior and any option running for more than three years without prior approval of Secretary does not warrant creating at large a federal common law of federal mineral lease contracts among private interests. Wallis v. Pan Am. Petroleum Corp., La.1966, 86 S.Ct. 1301, 384 U.S. 63, 16 L.Ed.2d 369, on remand 366 F.2d 210.

4. Cancellation, forfeiture or disposition of lease—Generally

See, also, Notes of Decisions under section 188 of this title.

This section, as amended, lays upon the Secretary of the Interior or his subordinates the plain duty to bring an action in the United States district court where leased lands are situated, if he seeks to cancel leases on the ground of fraud, if the lands contain valuable deposits of oil or gas. Pan Am. Petroleum Corp. v. Pierson, D.C.Wyo.1960, 181 F.Supp. 557, reversed on other grounds 284 F.2d 649, certiorari denied 81 S.Ct. 1661, 366 U.S. 936, 6 L.Ed.2d 848.

5. —— Bona fide purchaser rights

The Secretary of Interior has broad authority to cancel oil and gas leases for violations of this chapter and regulations thereunder, as well as for administrative errors committed before the lease was issued; however the Secretary's authority is limited by the bona fide purchaser amendment to this section. Winkler v. Andrus, C.A.Wyo.1980, 614 F.2d 707, on remand 494 F.Supp. 946.

After mineral lease had been issued, plaintiff which had filed offer to lease subsequent to filing of offer which had been accepted was entitled to seek administrative cancellation of lease and issuance of lease to it, but such right was not vested right or existing legal or equitable title, interest or ownership and did not come within protection of U.S.C.A. Const. Amend. 5 and right of assignee of lease as bona fide purchaser was superior to right of plaintiff, even though lease was defective. Southwestern Petroleum Corp. v. Udall, C.A.N.M.1966, 361 F.2d 650.

6. Bona fide purchaser—Generally

Interior Board of Land Appeals' conclusion that Bureau of Land Management records did not furnish assignees of first drawees in simultaneous drawings for noncompetitive oil and gas leases on public land with notice that broker for first drawees might have impermissible interest in leases was supported by substantial evidence, and therefore assignees of first drawees were bona fide purchasers and assignee of second drawees could not contest issuance of leases to first drawees, even if first drawees were unqualified by broker's alleged interest and issuance was thus improper. Geosearch, Inc. v. Watt, C.A.Wyo.1983, 721 F.2d 694, certiorari denied 104 S.Ct. 2347, 80 L.Ed.2d 820.

The bona fide purchaser amendment to this section was added to protect bona fide purchasers of federal oil and gas leases who acquired their holdings in good faith from the possible consequences of violations of this chapter by their predecessors in title, to foster development of oil and gas resources on public lands and to protect innocent investors and operators. Winkler v. Andrus, C.A.Wyo.1980, 614 F.2d 707, on remand 494 F.Supp. 946.

For assignee of lease issued under section 226 of this title to qualify as "bona fide purchaser" under common-law standards, generally applicable under the bona fide purchaser amendment to this section he must have acquired his interest in good faith, for valuable consideration and without notice of violation of departmental regulations. Southwestern Petroleum Corp. v. Udall, C.A.N.M.1966, 361 F.2d 650.

Although actions of the Wyoming state office of the Bureau of Land Management in issuing oil and gas lease to second drawee prior to termination of 90-day appeal period and misdirected efforts of first drawee, whose application was rejected, in filing his appeal in the wrong state and thereafter omitting to file a stay or notice of lis pendens in the proper federal judicial district could not be condoned, such actions did not change the fact that the assignee of the lease, who took the assignment from the second drawee without exercising reasonable prudence, was not a "bona fide purchaser" within the meaning of this section. Winkler v. Andrus, D.C.Wyo.1980, 494 F.Supp. 946.

7. —— Commencement of status

For purpose of determining whether assignee of oil and gas lease was a bona fide purchaser within the meaning of this section, it was the date of the assignment which was critical as to the bona fides of the assignee. Winkler v. Andrus, C.A.Wyo.1980, 614 F.2d 707, on remand 494 F.Supp. 946.

8. —— Consideration for interest

Defendant was a bona fide purchaser of federal oil and gas lease, without actual or implied knowledge of any facts which would have put him on notice of an unrecorded as-

assignment by his vendor to another, or which would have created a further duty to inquire thereinto, where the price defendant paid was low but not unreasonably so in view of the short remaining lease term and the highly speculative nature of the investment, where the Bureau of Land Management records were not such as to create a duty of further inquiry into matters not of record at the Bureau, and where the vendor's statement that the assignment would be without warranty was not unusual but, in fact, was the expected course of conduct. O'Kane v. Walker, C.A.N.M.1977, 561 F.2d 207.

9. —— Examination of records

In order for an assignee of a federal mineral lease to be protected as a bona fide purchaser, examination of Bureau of Land Management records must be made; however, assignees are not required to go outside the records relating to the particular parcel of land assigned, which records are kept in the Bureau state office. Winkler v. Andrus, C.A.Wyo.1980, 614 F.2d 707, on remand 494 F.Supp. 946.

Prospective assignee of mineral lease issued under section 226 of this title in taking assignment of federal oil and gas lease could presume regularity in issuance of lease where land office serial register pages, tract book and plat showed particular lands to be available for leasing and particular lease to be in good standing and assignee was not bound to make searching examination of land office records pertaining to other lands in order to ascertain whether defect in lease application may have existed. Southwestern Petroleum Corp. v. Udall, C.A.N.M.1966, 361 F.2d 650.

§ 184a. Authorization of States to include in agreements for conservation of oil and gas resources lands acquired from United States

Notwithstanding the provisions of any applicable grant, deed, patent, exchange, or law of the United States, any State owning lands or interests therein acquired by it from the United States may consent to the operation or development of such lands or interests, or any part thereof, under agreements approved by the Secretary of the Interior made jointly or severally with lessees or permittees of lands or mineral deposits of the United States or others, for the purpose of more properly conserving the oil and gas resources within such State. Such agreements may provide for the cooperative or unit operation or development of part or all of any oil or gas pool, field, or area; for the allocation of production and the sharing of proceeds from the whole or any specified part thereof regardless of the particular tract from which production is obtained or proceeds are derived, and, with the consent of the State, for the modification of the terms and provisions of State leases for lands operated and developed thereunder, including the term of years for which said leases were originally granted, to conform said leases to the terms and provisions of such agreements: *Provided*, That nothing in this section contained, nor the effectuation of it, shall be construed as in any respect waiving, determining or affecting any right, title, or interest, which otherwise may exist in the United States, and that the making of any agreement, as provided in this section, shall not be construed as an admission as to the title or ownership of the lands included.

(Jan. 26, 1940, c. 14, 54 Stat. 17.)

Historical Note

Codification. Section was not enacted as part of Act Feb. 25, 1920, c. 85, 41 Stat. 437, known as the Mineral Lands Leasing Act, which comprises this chapter.

§ 185. Rights-of-way for pipelines through Federal lands

(a) Grant of authority

Rights-of-way through any Federal lands may be granted by the Secretary of the Interior or appropriate agency head for pipeline purposes for the

transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom to any applicant possessing the qualifications provided in section 181 of this title in accordance with the provisions of this section.

(b) Definitions

(1) For the purposes of this section "Federal lands" means all lands owned by the United States except lands in the National Park System, lands held in trust for an Indian or Indian tribe, and lands on the Outer Continental Shelf. A right-of-way through a Federal reservation shall not be granted if the Secretary or agency head determines that it would be inconsistent with the purposes of the reservation.

(2) "Secretary" means the Secretary of the Interior.

(3) "Agency head" means the head of any Federal department or independent Federal office or agency, other than the Secretary of the Interior, which has jurisdiction over Federal lands.

(c) Inter-agency coordination

(1) Where the surface of all of the Federal lands involved in a proposed right-of-way or permit is under the jurisdiction of one Federal agency, the agency head, rather than the Secretary, is authorized to grant or renew the right-of-way or permit for the purposes set forth in this section.

(2) Where the surface of the Federal lands involved is administered by the Secretary or by two or more Federal agencies, the Secretary is authorized, after consultation with the agencies involved, to grant or renew rights-of-way or permits through the Federal lands involved. The Secretary may enter into interagency agreements with all other Federal agencies having jurisdiction over Federal lands for the purpose of avoiding duplication, assigning responsibility, expediting review of rights-of-way or permit applications, issuing joint regulations, and assuring a decision based upon a comprehensive review of all factors involved in any right-of-way or permit application. Each agency head shall administer and enforce the provisions of this section, appropriate regulations, and the terms and conditions of rights-of-way or permits insofar as they involve Federal lands under the agency head's jurisdiction.

(d) Width limitations

The width of a right-of-way shall not exceed fifty feet plus the ground occupied by the pipeline (that is, the pipe and its related facilities) unless the Secretary or agency head finds, and records the reasons for his finding, that in his judgment a wider right-of-way is necessary for operation and maintenance after construction, or to protect the environment or public safety. Related facilities include but are not limited to valves, pump stations, supporting structures, bridges, monitoring and communication devices, surge and storage tanks, terminals, roads, airstrips and campsites, and they need not necessarily be connected or contiguous to the pipe and may be the subjects of separate rights-of-way.

(e) Temporary permits

A right-of-way may be supplemented by such temporary permits for the use of Federal lands in the vicinity of the pipeline as the Secretary or agency head finds are necessary in connection with construction, operation, maintenance, or termination of the pipeline, or to protect the natural environment or public safety.

sary to protect public health or safety or the environment, he may abate such activities prior to an administrative proceeding.

(3) Deliberate failure of the holder to use the right-of-way for the purpose for which it was granted or renewed for any continuous two-year period shall constitute a rebuttable presumption of abandonment of the right-of-way: *Provided*, That where the failure to use the right-of-way is due to circumstances not within the holder's control the Secretary or agency head is not required to commence proceedings to suspend or terminate the right-of-way.

(p) Joint use of rights-of-way

In order to minimize adverse environmental impacts and the proliferation of separate rights-of-way across Federal lands, the utilization of rights-of-way in common shall be required to the extent practical, and each right-of-way or permit shall reserve to the Secretary or agency head the right to grant additional rights-of-way or permits for compatible uses on or adjacent to rights-of-way or permit area granted pursuant to this section.

(q) Statutes

No rights-of-way for the purposes provided for in this section shall be granted or renewed across Federal lands except under and subject to the provisions, limitations, and conditions of this section. Any application for a right-of-way filed under any other law prior to the effective date of this provision may, at the applicant's option, be considered as an application under this section. The Secretary or agency head may require the applicant to submit any additional information he deems necessary to comply with the requirements of this section.

(r) Common carriers

(1) Pipelines and related facilities authorized under this section shall be constructed, operated, and maintained as common carriers.

(2)(A) The owners or operators of pipelines subject to this section shall accept, convey, transport, or purchase without discrimination all oil or gas delivered to the pipeline without regard to whether such oil or gas was produced on Federal or non-Federal lands.

(B) In the case of oil or gas produced from Federal lands or from the resources on the Federal lands in the vicinity of the pipeline, the Secretary may, after a full hearing with due notice thereof to the interested parties and a proper finding of facts, determine the proportionate amounts to be accepted, conveyed, transported or purchased.

(3)(A) The common carrier provisions of this section shall not apply to any natural gas pipeline operated by any person subject to regulation under the Natural Gas Act [15 U.S.C.A. § 717 et seq.] or by any public utility subject to regulation by a State or municipal regulatory agency having jurisdiction to regulate the rates and charges for the sale of natural gas to consumers within the State or municipality.

(B) Where natural gas not subject to State regulatory or conservation laws governing its purchase by pipelines is offered for sale, each such pipeline shall purchase, without discrimination, any such natural gas produced in the vicinity of the pipeline.

(4) The Government shall in express terms reserve and shall provide in every lease of oil lands under this chapter that the lessee, assignee, or

beneficiary, if owner or operator of a controlling interest in any pipeline or of any company operating the pipeline which may be operated accessible to the oil derived from lands under such lease, shall at reasonable rates and without discrimination accept and convey the oil of the Government or of any citizen or company not the owner of any pipeline operating a lease or purchasing gas or oil under the provisions of this chapter.

(5) Whenever the Secretary has reason to believe that any owner or operator subject to this section is not operating any oil or gas pipeline in complete accord with its obligations as a common carrier hereunder, he may request the Attorney General to prosecute an appropriate proceeding before the Secretary of Energy or Federal Energy Regulatory Commission or any appropriate State agency or the United States district court for the district in which the pipeline or any part thereof is located, to enforce such obligation or to impose any penalty provided therefor, or the Secretary may, by proceeding as provided in this section, suspend or terminate the said grant of right-of-way for noncompliance with the provisions of this section.

(6) The Secretary or agency head shall require, prior to granting or renewing a right-of-way, that the applicant submit and disclose all plans, contracts, agreements, or other information or material which he deems necessary to determine whether a right-of-way shall be granted or renewed and the terms and conditions which should be included in the right-of-way. Such information may include, but is not limited to: (A) conditions for, and agreements among owners or operators, regarding the addition of pumping facilities, looping, or otherwise increasing the pipeline or terminal's throughput capacity in response to actual or anticipated increases in demand; (B) conditions for adding or abandoning intake, offtake, or storage points or facilities; and (C) minimum shipment or purchase tenders.

(s) Omitted

(t) Existing rights-of-way

The Secretary or agency head may ratify and confirm any right-of-way or permit for an oil or gas pipeline or related facility that was granted under any provision of law before the effective date of this subsection, if it is modified by mutual agreement to comply to the extent practical with the provisions of this section. Any action taken by the Secretary or agency head pursuant to this subsection shall not be considered a major Federal action requiring a detailed statement pursuant to section 102(2)(C) [42 U.S.C.A. § 4332(2)(C)] of the National Environmental Policy Act of 1970 (Public Law 90–190; 42 U.S.C. 4321).

(u) Limitations on export

Any domestically produced crude oil transported by pipeline over rights-of-way granted pursuant to this section, except such crude oil which is either exchanged in similar quantity for convenience or increased efficiency of transportation with persons or the government of an adjacent foreign state, or which is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign state and reenters the United States, shall be subject to all of the limitations and licensing requirements of the Export Administration Act of 1979 (50 U.S.C. App. 2401 and following) and, in addition, before any crude oil subject to this section may be exported under the limitations and licensing requirements and penalty and enforcement provisions of the Export Administra-

tion Act of 1979 the President must make and publish an express finding that such exports will not diminish the total quantity or quality of petroleum available to the United States, and are in the national interest and are in accord with the provisions of the Export Administration Act of 1979: *Provided,* That the President shall submit reports to the Congress containing findings made under this section, and after the date of receipt of such report Congress shall have a period of sixty calendar days, thirty days of which Congress must have been in session, to consider whether exports under the terms of this section are in the national interest. If the Congress within this time period passes a concurrent resolution of disapproval stating disagreement with the President's finding concerning the national interest, further exports made pursuant to the aforementioned Presidential findings shall cease.

(v) State standards

The Secretary or agency head shall take into consideration and to the extent practical comply with State standards for right-of-way construction, operation, and maintenance.

(w) Reports

(1) The Secretary and other appropriate agency heads shall report to the House and Senate Committees on Interior and Insular Affairs annually on the administration of this section and on the safety and environmental requirements imposed pursuant thereto.

(2) The Secretary or agency head shall notify the House and Senate Committees on Interior and Insular Affairs promptly upon receipt of an application for a right-of-way for a pipeline twenty-four inches or more in diameter, and no right-of-way for such a pipeline shall be granted until sixty days (not counting days on which the House of Representatives or the Senate has adjourned for more than three days) after a notice of intention to grant the right-of-way, together with the Secretary's or agency head's detailed findings as to terms and conditions he proposes to impose, has been submitted to such committees, unless each committee by resolution waives the waiting period.

(3) Periodically, but at least once a year, the Secretary of the Department of Transportation shall cause the examination of all pipelines and associated facilities on Federal lands and shall cause the prompt reporting of any potential leaks or safety problems.

(4) The Secretary of the Department of Transportation shall report annually to the President, the Congress, the Secretary of the Interior, and the Secretary of Energy any potential dangers of or actual explosions, or potential or actual spillage on Federal lands and shall include in such report a statement of corrective action taken to prevent such explosion or spillage.

(x) Liability

(1) The Secretary or agency head shall promulgate regulations and may impose stipulations specifying the extent to which holders of rights-of-way and permits under this chapter shall be liable to the United States for damage or injury incurred by the United States in connection with the right-of-way or permit. Where the right-of-way or permit involves lands which are under the exclusive jurisdiction of the Federal Government, the Secretary or agency head shall promulgate regulations specifying the extent

to which holders shall be liable to third parties for injuries incurred in connection with the right-of-way or permit.

(2) The Secretary or agency head may, by regulation or stipulation, impose a standard of strict liability to govern activities taking place on a right-of-way or permit area which the Secretary or agency head determines, in his discretion, to present a foreseeable hazard or risk of danger to the United States.

(3) Regulations and stipulations pursuant to this subsection shall not impose strict liability for damage or injury resulting from (A) an act of war, or (B) negligence of the United States.

(4) Any regulation or stipulation imposing liability without fault shall include a maximum limitation on damages commensurate with the foreseeable risks or hazards presented. Any liability for damage or injury in excess of this amount shall be determined by ordinary rules of negligence.

(5) The regulations and stipulations shall also specify the extent to which such holders shall indemnify or hold harmless the United States for liability, damage, or claims arising in connection with the right-of-way or permit.

(6) Any regulation or stipulation promulgated or imposed pursuant to this section shall provide that all owners of any interest in, and all affiliates or subsidiaries of any holder of, a right-of-way or permit shall be liable to the United States in the event that a claim for damage or injury cannot be collected from the holder.

(7) In any case where liability without fault is imposed pursuant to this subsection and the damages involved were caused by the negligence of a third party, the rules of subrogation shall apply in accordance with the law of the jurisdiction where the damage occurred.

(y) Antitrust laws

The grant of a right-of-way or permit pursuant to this section shall grant no immunity from the operation of the Federal antitrust laws.

(Feb. 25, 1920, c. 85, § 28, 41 Stat. 449; Aug. 21, 1935, c. 599, § 1, 49 Stat. 678; Aug. 12, 1953, c. 408, 67 Stat. 557; Nov. 16, 1973, Pub.L. 93-153, Title I, § 101, 87 Stat. 576; Aug. 4, 1977, Pub.L. 95-91, Title III, §§ 301(b), 306, Title IV, § 402(a), (b), Title VII, §§ 703, 707, 91 Stat. 578, 581, 583, 584, 606, 607; July 12, 1985, Pub.L. 99-64, Title I, § 123(b), 99 Stat. 156.)

Unconstitutionality of Legislative Veto Provisions

The provisions of section 1254(c)(2) of Title 8, Aliens and Nationality, which authorize a House of Congress, by resolution, to invalidate an action of the Executive Branch, were declared unconstitutional in Immigration and Naturalization Service v. Chadha, 1983, 103 S.Ct. 2764. See similar provisions in subsec. (u) of this section.

Historical Note

References in Text. The National Environmental Policy Act of 1969, referred to in subsec. (h)(1), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (section 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables volume.

The date of enactment of this subsection, referred to in subsec. (k), the effective date of this provision, referred to in subsec. (q), and the effective date of this subsection, referred to in subsec. (t), probably mean the date of

approval of Pub. L. 93-153, which was Nov. 16, 1973.

The Natural Gas Act, referred to in subsec. (r)(3)(A), is Act June 21, 1938, c. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (section 717 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 717w of Title 15 and Tables volume.

The Export Administration Act of 1979, referred to in subsec. (u), is Pub.L. 96-72, Sept. 29, 1979, 93 Stat. 503, as amended, which is classified principally to section 2401 et seq. of the Appendix to Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 2401 of the Appendix to Title 50 and Tables volume.

The Federal antitrust laws, referred to in subsec. (y), are classified generally to chapter 1 (section 1 et seq.) of Title 15, Commerce and Trade.

Codification. Subsec. (s) of this section provided that the Secretary, in consultation with Federal and State agencies, review the need for a national system of transportation and utility corridors across Federal lands and report to Congress and to the President by July 1, 1975.

1985 Amendment. Subsec. (u). Pub. L. 99-64, § 123(b)(1), substituted "Export Administration Act of 1979 (50 U.S.C.App. 2401 and following)" for "Export Administration Act of 1969 (Act of December 30, 1969; 83 Stat. 841)".

Pub. L. 99-64, § 123(b)(2), substituted "Export Administration Act of 1979" for "Export Administration Act of 1969" following "enforcement provisions of the" and again following "accord with the provisions of the".

1973 Amendment. Pub.L. 93-153 completely rewrote the section substituting 25 subsecs. lettered (a) through (y) covering all aspects of the granting of rights-of-way for pipelines through Federal lands for the former single unlettered paragraph under which rights-of-way of 25 feet on each side of the pipeline could be granted and under which the pipeline was to be operated as a common carrier.

1953 Amendment. Act Aug. 12, 1953, permitted companies subject to Federal regulation, or public utilities subject to State regulations, to pass through the public domain without incurring the obligation to become a common carrier.

1935 Amendment. Act Aug. 21, 1935, substituted "may be granted by the Secretary of the Interior" for "are granted" and inserted "and conditions" following "regulations" in two instances, and "and shall accept, convey, transport, or purchase without discrimination, oil or natural gas produced from Government lands in the vicinity of the pipe line in such proportionate amounts as the Secretary of the Interior may, after a full hearing with notice thereof to the interested parties and a proper finding of facts, determine to be reasonable:" following "and maintained as common carriers.".

Change of Name. The Committee on Interior and Insular Affairs of the Senate was abolished and replaced by the Committee on Energy and Natural Resources of the Senate, effective Feb. 11, 1977. See Rule XXV of the Standing Rules of the Senate, as amended by Senate Resolution 4 (popularly cited as the "Committee System Reorganization Amendments of 1977"), approved Feb. 4, 1977.

Transfer of Functions. Enforcement functions of Secretary or other official in Department of Interior related to compliance with grants of rights-of-way and temporary use permits for Federal land and such functions of Secretary or other official in Department of Agriculture, insofar as they involve lands and programs under jurisdiction of Department of Agriculture, related to compliance with associated land use permits authorized for and in conjunction with grants of rights-of-way across Federal lands issued under this section with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversary of date of initial operation of the Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§ 102(e), (f), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out in Appendix 1 to Title 5, Government Organization and Employees.

"Secretary of Energy or Federal Energy Regulatory Commission" was substituted for "Interstate Commerce Commission or Federal Power Commission" in subsec. (r)(5) pursuant to sections 301(b), 306, 402(a), (b), 703, and 707 of Pub.L. 95-91, which are classified to sections 7151(b), 7155, 7172(a), (b), 7293, and 7297 of Title 42, The Public Health and Welfare, and which transferred the functions vested in the Interstate Commerce Commission, and the Chairman and members thereof, relating to the transportation of oil by pipeline to the Secretary of Energy (except for certain functions which were transferred to the Federal Energy Regulatory Commission within the Department of Energy), and terminated the Federal Power Commission and transferred its functions to the Secretary of Energy (except for certain functions which were transferred to the Federal Energy Regulatory Commission).

"Secretary of Energy" was substituted for "Interstate Commerce Commission" in subsec. (w)(4) pursuant to sections 306 and 707 of Pub.L. 95-91, which are classified to sections 7155 and 7297 of Title 42, and which transferred the functions vested in the Interstate Commerce Commission, and the Chairman and members thereof, relating to the transportation of oil by pipeline to the Secretary of Energy (except for certain functions).

Outer Continental Shelf; Pipeline Rights-of-Way. Pipeline rights-of-way in connection

with oil, gas, and other leases on submerged lands of outer Continental Shelf, see section 1334 of Title 43, Public Lands.

Legislative History. For legislative history and purpose of Act Aug. 12, 1953, see 1953 U.S.Code Cong. and Adm.News, p. 2357. See, also, Pub.L. 93-153, 1973 U.S.Code Cong. and Adm.News, p. 2417; Pub.L. 99-64, 1985 U.S. Code Cong. and Adm.News, p. 108.

Cross References

Allocation and export to other countries in accordance with section 6271 of Title 42, not precluded by this section, see section 6271 of Title 42, The Public Health and Welfare.
Applicability of this section to rights-of-way, permits, leases, etc., issued pursuant to construction of trans-Alaska oil pipeline system, see section 1652 of Title 43, Public Lands.
Construction of section as not effecting any lands within borders of naval petroleum reserves and naval oil-shale reserves or agreements concerning operations thereunder, see section 236a of this title.
Conveyance of Federal lands covered by right-of-way granted under this section, see section 1768 of Title 43, Public Lands.
Deepwater ports provisions construed as not amending or otherwise limiting application of provisions of this section, see section 1522 of Title 33, Navigation and Navigable Waters.
Foreign interests in leases of public lands made under this section, see section 7435 of Title 10, Armed Forces.
Jurisdiction and control over naval petroleum reserves covered by leases granted under this section, see section 7421 of Title 10.
Laws applicable, see sections 275 and 285 of this title.
Pipeline rights-of-way, see section 3167 of Title 16, Conservation.
Restrictions on exportation of domestically produced crude oil from the United States, see section 2406 of Title 50, Appendix, War and National Defense.
Rights-of-way over Federal land with respect to approved crude oil transportation system or the Long Beach-Midland project to be governed by this section, see section 2009 of Title 43, Public Lands.

Federal Practice and Procedure

Scope of rule 301, Federal Rules of Evidence, Title 28, see Wright & Graham: Evidence § 5123.

West's Federal Forms

Bonds and undertakings, see §§ 1521 to 1524.

West's Federal Practice Manual

Claims Court—
Jurisdiction, see § 1840.
Limitations and laches, see § 1894.
Minerals on federal lands, see § 5301 et seq.
Rights-of-way for pipe lines, see § 5449.

Code of Federal Regulations

Reimbursement of costs, see 10 CFR 1530.1 et seq.
Rights-of-way under Mineral Leasing Act, see 43 CFR 2880.0-3 et seq.
Short supply controls and monitoring, see 15 CFR 377.1 et seq.

Library References

Commerce ⇐85.4.
Mines and Minerals ⇐6.
C.J.S. Commerce § 142(9).
C.J.S. Mines and Minerals §§ 128 to 130.

Notes of Decisions

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1. Construction with other laws

Requirement of this section that rights-of-way for pipe lines be subject to express condition that lines be constructed, operated, and maintained as common carriers, was not impliedly repealed by enactment of Natural Gas Act, section 717 et seq. of Title 15. Chapman v. El Paso Natural Gas Co., 1953 204 F.2d 46, 92 U.S.App.D.C. 154.

2. Retroactive effect

This section which states that an applicant for a right-of-way or permit shall reimburse the United States for administrative and other costs incurred in processing the application and that the holder of a right-of-way or permit shall reimburse the United States for monitoring costs, though it made pipeline service company and oil companies liable for additional costs incurred by the United States in connection with the construction and operation of the trans-Alaska pipeline after the effective date of this section, did not contain even a suggestion that pipeline service company and oil companies were liable to reimburse the United States for costs incurred by it prior to the enactment of this section. Alyeska Pipeline Service Co. v. U.S., 1980, 624 F.2d 1005, 224 Ct.Cl. 240.

Where this section contained certain common carrier provisions affecting pipe lines granted rights of way through public lands, and an amendment to this section provided such common carrier provisions would not apply to the operation of the pipe lines where they were subject to state or municipal regulation, such amendment applied to present and future operation of pipe lines and present and future regulation of such lines, drawing upon antecedent grants only as a condition for its present effect. Mondakota Gas Co. v. Federal Power Commission, 1956, 232 F.2d 358, 98 U.S.App.D.C. 101, certiorari denied 77 S.Ct. 45, 352 U.S. 846, 1 L.Ed.2d 51.

3. Pipeline facilities and purposes within section—Generally

This chapter by the very terms of its preamble could not serve as basis for promulgation of fee regulations by the bureau of land management to reimburse government for costs in processing and monitoring applications of utilities for rights-of-way for electric transmission lines and related equipment across public lands. Public Service Co. of Colorado v. Andrus, D.C.Colo.1977, 433 F.Supp. 144.

4. —— Pumping stations

Pumping stations are part of the "pipeline" within provision of this section relating to rights-of-way over public lands for the transportation of oil or natural gas and the statutory "right-of-way" provides not only for 25 feet on each side of the pipe, but also for 25 feet on each side of facilities which constitute part of "pipeline." Wilderness Soc. v. Morton, 1973, 479 F.2d 842, 156 U.S.App.D.C. 121, certiorari denied 93 S.Ct. 1550, 411 U.S. 917, 36 L.Ed.2d 309.

Wherever it is made to appear to the satisfaction of the Secretary of the Interior that the establishment of a pumping station in a public domain in connection with a pipe line for the transportation of oil and gas is reasonably necessary for the operation of the pipe line, he has authority to authorize the grantee to construct such a pumping station and provide the site reasonably necessary for that purpose. 1931, 36 Op.Atty.Gen. 480.

5. Federal lands within section

Indians' nonexclusionary easement which allows them access to their usual and accustomed fishing sites does not constitute "lands held in trust for an Indian or an Indian tribe" as such phrase is used in provision of subsec. (b)(1) of this section prohibiting granting of right-of-way over Indian lands. No Oilport! v. Carter, D.C.Wash. 1981, 520 F.Supp. 334.

6. Width limitations

Special land use permit for use of 46-foot-wide strip adjacent to and parallel with right-of-way for proposed trans-Alaska oil pipeline was "right-of-way" "for the transportation of oil" within meaning of provision of this section which places limitation on width of rights-of-way across public lands. Wilderness Soc. v. Morton, 1973, 479 F.2d 842, 156 U.S. App.D.C. 121, certiorari denied 93 S.Ct. 1550, 441 U.S. 917, 36 L.Ed.2d 309.

Where right-of-way granted over federal lands was within 50-foot width limitation, there was no violation of limitation even though exact site of right-of-way was not determined within two-mile corridor. No Oilport! v. Carter, D.C.Wash.1981, 520 F.Supp. 334.

7. Submission of construction, etc., plans

Plans submitted in connection with application for right-of-way over federal lands for construction of northern tier oil pipeline were sufficient to comply with requirement that applicant for right-of-way submit plan of construction, operation, and rehabilitation. No Oilport! v. Carter, D.C.Wash.1981, 520 F.Supp. 334.

8. Technical and financial capability of applicants

In considering application for construction of northern tier oil pipeline which would involve grant of right-of-way through federal lands, Secretary of Interior was not required to make finding as to applicant's technical and financial capability to construct, operate, maintain and terminate project but was required to be satisfied as to applicant's capability to do so. No Oilport! v. Carter, D.C.Wash. 1981, 520 F.Supp. 334.

9. Hearings

Secretary of Interior has substantial discretion as to hearings to be conducted in connection with application for right-of-way through federal lands. No Oilport! v. Carter, D.C. Wash.1981, 520 F.Supp. 334.

10. Reimbursement of Government costs

Secretary of Interior did not exceed his authority under Independent Offices Appropriation Act [31 U.S.C.A. § 9701] and Mineral Leasing Act [30 U.S.C.A. § 181 et seq.] in promulgating regulations for determining fees to charge applicants for Bureau of Land Management's costs in processing certain right-of-way applications, despite applicant's contention that Secretary exceeded his authority in issuing the regulations because he failed to consider and articulate "fair and equitable" factors, including "value to the recipient," and to state which costs were to be reimbursed and basis upon which they were to be calculated; although the regulations did not parrot the words "fair and equitable" or "value to the recipient," this deficiency was mitigated in at least four ways, including fact that costs related only to processing of the application. Sohio Transp. Co. v. U.S., C.A.Fed.1985, 766 F.2d 499.

The Secretary did not have authority under this chapter or applicable regulations to assess against a pipeline service company and the oil companies that formed the service company any part of a $12,253,730 fee paid to the Department of the Interior to reimburse the government for its expenses incurred in processing permit to build and operate trans-Alaska oil pipeline. Alyeska Pipeline Service Co. v. U.S., 1980, 624 F.2d 1005, 224 Ct.Cl. 240.

11. Common carrier obligations

Where pipe line company was granted a right of way through public lands under this section which contained certain common carrier provisions affecting it, and an amendment of this section provided that such common carrier provisions would not apply in certain cases, Federal Power Commission had authority under this amendment to release pipe line company from continuing common carrier service. Mondakota Gas Co. v. Federal Power Commission, 1956, 232 F.2d 358, 98 U.S.App.D.C. 101, certiorari denied 77 S.Ct. 45, 352 U.S. 846, 1 L.Ed.2d 51.

This section authorizing Secretary of Interior to grant rights-of-way for natural gas pipe lines, on condition that lines be constructed, operated, and maintained as "common carriers", in absence of more specific language embraces the common law meaning of the term "common carriers". Chapman v. El Paso Natural Gas Co., 1953, 204 F.2d 46, 92 U.S.App. D.C. 154.

Pipelines are operated as common carriers and, as such, they are subject to the Interstate Commerce Act, section 1 et seq. of Title 49. Thomas v. Amerada Hess Corp., D.C.Pa.1975, 393 F.Supp. 58.

Defendant oil company which operated pipeline company violated this section by failing to operate system as common carrier in that it did not hold out lines as being available to transport for others and, when requested, refused to provide transportation for others. Denver Petroleum Corp. v. Shell Oil Co., D.C. Colo.1969, 306 F.Supp. 289.

12. Compliance with State standards

Record in action to block construction of northern tier oil pipeline which involved right-of-way through federal lands established that there was compliance with requirement that state standards for right-of-way construction be considered. No Oilport! v. Carter, D.C. Wash.1981, 520 F.Supp. 334.

13. Time of grant

Where notice to proceed with construction would not be issued until exact location of right-of-way over federal lands was established, grant of right-of-way before exact location within two-mile corridor was established did not violate provisions of this chapter. No Oilport! v. Carter, D.C.Wash.1981, 520 F.Supp. 334.

§ 186. Reservation of easements or rights-of-way for working purposes; reservation of right to dispose of surface of lands; determination before offering of lease; easement periods

Any permit, lease, occupation, or use permitted under this chapter shall reserve to the Secretary of the Interior the right to permit upon such terms as he may determine to be just, for joint or several use, such easements or rights of way, including easements in tunnels upon, through, or in the lands leased, occupied, or used as may be necessary or appropriate to the working of the same, or of other lands containing the deposits described in this chapter, and the treatment and shipment of the products thereof by or under authority of the Government, its lessees, or permittees, and for other public purposes. The Secretary of the Interior, in his discretion, in making any lease under this chapter, may reserve to the United States the right to

lease, sell, or otherwise dispose of the surface of the lands embraced within such lease under existing law or laws hereafter enacted, insofar as said surface is not necessary for use of the lessee in extracting and removing the deposits therein. If such reservation is made it shall be so determined before the offering of such lease. The said Secretary, during the life of the lease, is authorized to issue such permits for easements herein provided to be reserved.

(Feb. 25, 1920, c. 85, § 29, 41 Stat. 449.)

Cross References

Foreign interests in leases of public lands made under this section, see section 7435 of Title 10, Armed Forces.
Jurisdiction and control over naval petroleum reserves covered by leases granted under this section, see section 7421 of Title 10.
Laws applicable, see sections 275 and 285 of this title.

Code of Federal Regulations

Rights-of-way under Mineral Leasing Act, see 43 CFR 2880.0-3 et seq.

§ 187. Assignment or subletting of leases; relinquishment of rights under leases; conditions in leases for protection of diverse interests in operation of mines, wells, etc.; State laws not impaired

No lease issued under the authority of this chapter shall be assigned or sublet, except with the consent of the Secretary of the Interior. The lessee may, in the discretion of the Secretary of the Interior, be permitted at any time to make written relinquishment of all rights under such a lease, and upon acceptance thereof be thereby relieved of all future obligations under said lease, and may with like consent surrender any legal subdivision of the area included within the lease. Each lease shall contain provisions for the purpose of insuring the exercise of reasonable diligence, skill, and care in the operation of said property; a provision that such rules for the safety and welfare of the miners and for the prevention of undue waste as may be prescribed by said Secretary shall be observed, including a restriction of the workday to not exceeding eight hours in any one day for underground workers except in cases of emergency; provisions prohibiting the employment of any child under the age of sixteen in any mine below the surface; provisions securing the workmen complete freedom of purchase; provision requiring the payment of wages at least twice a month in lawful money of the United States, and providing proper rules and regulations to insure the fair and just weighing or measurement of the coal mined by each miner, and such other provisions as he may deem necessary to insure the sale of the production of such leased lands to the United States and to the public at reasonable prices, for the protection of the interests of the United States, for the prevention of monopoly, and for the safeguarding of the public welfare. None of such provisions shall be in conflict with the laws of the State in which the leased property is situated.

(Feb. 25, 1920, c. 85, § 30, 41 Stat. 449; Oct. 30, 1978, Pub.L. 95-554, § 5, 92 Stat. 2074.)

Historical Note

1978 Amendment. Pub.L. 95-554 substituted "provisions prohibiting the employment of any child under the age of sixteen in any mine below the surface" for "provisions prohibiting the employment of any boy under the age of sixteen or the employment of any girl or woman, without regard to age, in any mine below the surface".

Legislative History. For legislative history and purpose of Pub.L. 95-554, see 1978 U.S. Code Cong. and Adm.News, p. 4736.

Cross References

Assignment or sublease of oil or gas lease notwithstanding this section, see section 187a of this title.
Foreign interests in leases of public lands made under this section, see section 7435 of Title 10, Armed Forces.
Jurisdiction and control over naval petroleum reserves covered by leases granted under this section, see section 7421 of Title 10.
Laws applicable, see sections 275 and 285 of this title.
Relinquishment in writing of all rights under oil and gas lease notwithstanding this section, see section 187b of this title.
Surrender of leases, see section 188a of this title.

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Assignment generally, see § 5400.
General provisions in leases, see § 5401.5.
Oil and gas assignment, see § 5412.
Termination, see § 5401.
Wage and hour statutes, see § 1209.

Notes of Decisions

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1. Assignments or subleases

Where owner of royalty interest in leasehold assigned a portion thereof to assignee and filed affidavit in office of Bureau of Land Management at Cheyenne, Wyoming, about a month prior to date of assignment from assignee to subassignee, even if filing of affidavit constituted constructive notice to subassignee of rights of assignor in and to overriding royalty estate, since court found as between assignor and subassignee that assignee had not committed fraud in procuring of assignment of overriding royalty interest to him, and since court also found that assignment from assignee to subassignee was predicated on valuable consideration, filing of affidavit did not constitute constructive notice of any facts which rendered title of subassignee voidable upon any ground of fraud or lack of consideration. Wight v. Chandler, C.A.Wyo.1959, 264 F.2d 249.

The matter primarily intended to be covered by the prohibition against an assignment or subletting a lease issued under the authority of this chapter was a voluntary change by the lessee of his relations to the lease through assignment or subleasing. Hodgson v. Federal Oil & Development Co., C.C.A.Wyo.1925, 5 F.2d 442, affirmed 47 S.Ct. 502, 274 U.S. 15, 71 L.Ed. 901, 54 A.L.R. 869.

This section and administrative regulations relating to assignment of oil and gas leases from the United States or any interest therein are for the benefit and protection of the government, and their prohibition is available only to the government, and not to an individual. Recovery Oil Co. v. Van Acker, 1947, 180 P.2d 436, 79 Cal.App.2d 639.

2. Miscellaneous transfers

Transfer by operation of law as by foreclosure of lien, does not avoid lease. Hockman v. Sunhew Petroleum Corporation, 1932, 11 P.2d 778, 92 Mont. 174.

3. State laws relating to lease provisions

In proviso of this section that none of "such provisions" shall be in conflict with laws of states in which leased property is situated, term "such provisions" means only provisions of preceding sentence, relating to employment practices, prevention of undue waste and monopoly, and diligence requirements, and not including land use planning controls, and, also, proviso assures only that Secretary of Interior shall observe state standards in drafting terms of lease, and proviso is not recognition of concurrent state jurisdiction. Ventura County v. Gulf Oil Corp., C.A.Cal.1979, 601 F.2d 1080, affirmed 100 S.Ct. 1593, 445 U.S. 947, 63 L.Ed.2d 782.

§ 187a. Oil or gas leases; partial assignments

Notwithstanding anything to the contrary in section 187 of this title, any oil or gas lease issued under the authority of this chapter may be assigned or subleased, as to all or part of the acreage included therein, subject to final approval by the Secretary and as to either a divided or undivided interest therein, to any person or persons qualified to own a lease under this chapter, and any assignment or sublease shall take effect as of the first day of the lease month following the date of filing in the proper land office of three original executed counterparts thereof, together with any required bond and proof of the qualification under this chapter of the assignee or sublessee to take or hold such lease or interest therein. Until such approval, however, the assignor or sublessor and his surety shall continue to be responsible for the performance of any and all obligations as if no assignment or sublease had been executed. The Secretary shall disapprove the assignment or sublease only for lack of qualification of the assignee or sublessee or for lack of sufficient bond: *Provided, however,* That the Secretary may, in his discretion, disapprove an assignment of a separate zone or deposit under any lease, or of a part of a legal subdivision. Upon approval of any assignment or sublease, the assignee or sublessee shall be bound by the terms of the lease to the same extent as if such assignee or sublessee were the original lessee, any conditions in the assignment or sublease to the contrary notwithstanding. Any partial assignment of any lease shall segregate the assigned and retained portions thereof, and as above provided, release and discharge the assignor from all obligations thereafter accruing with respect to the assigned lands; and such segregated leases shall continue in full force and effect for the primary term of the original lease, but for not less than two years after the date of discovery of oil or gas in paying quantities upon any other segregated portion of the lands originally subject to such lease. Assignments under this section may also be made of parts of leases which are in their extended term because of any provision of this chapter. Upon the segregation by an assignment of a lease issued after September 2, 1960 and held beyond its primary term by production, actual or suspended, or the payment of compensatory royalty, the segregated lease of an undeveloped, assigned, or retained part shall continue for two years, and so long thereafter as oil or gas is produced in paying quantities.

(Feb. 25, 1920, c. 85, § 30a, as added Aug. 8, 1946, c. 916, § 7, 60 Stat. 955, and amended July 29, 1954, c. 644, § 1(6), 68 Stat. 585; Sept. 2, 1960, Pub.L. 86-705, § 6, 74 Stat. 790.)

Historical Note

1960 Amendment. Pub.L. 86-705 changed the last sentence of this section to restrict automatic extensions after Sept. 2, 1960.

1954 Amendment. Act July 29, 1954, authorized partial assignment of a lease in its extended term regardless of reason for extension.

Savings Provisions. Savings provisions, see note set out under section 181 of this title.

Leases Issued Prior to Sept. 2, 1960. Section 6 of Pub.L. 86-705 provided in part that: "The provisions of this section 6 [amending this section] shall not be applicable to any lease issued prior to the effective date of this Act [Sept. 2, 1960]."

Legislative History. For legislative history and purpose of Act July 29, 1954, see 1954 U.S.Code Cong. and Adm.News, p. 2695. See, also, Pub.L. 86-705, 1960 U.S.Code Cong. and Adm.News, p. 3313.

Cross References

Foreign interests in leases of public lands made under this section, see section 7435 of Title 10, Armed Forces.

Jurisdiction and control over naval petroleum reserves covered by leases granted under this section, see section 7421 of Title 10.

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Bonds and undertakings, see §§ 1521 to 1524.

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Assignment, see § 5412.
Extension, see § 5411.

Library References

Mines and Minerals ⟹5.1(6).
C.J.S. Mines and Minerals § 130.

Notes of Decisions

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1. Law governing

Inasmuch as Louisiana law permits transfer of mineral lease by written instrument, provision in this section that oil and gas leases shall be assignable did not justify use of federal rather than state law in determining rights of private parties with respect to joint venture agreement and option agreement pertaining to oil rich islands leased to private party by United States and located in mouth of Mississippi River. Wallis v. Pan Am. Petroleum Corp., La.1966, 86 S.Ct. 1301, 384 U.S. 63, 16 L.Ed.2d 369, on remand 366 F.2d 210.

Leases which could be created only by virtue of amendments to this section providing for segregating assignments were governed by such amendments including provision making relinquishments effective as of date of filing. Wright v. Paine, 1961, 289 F.2d 766, 110 U.S. App.D.C. 100.

2. Approval by Secretary

Inasmuch as Secretary of Interior, who must approve all assignments before lease obligations or record titles are shifted finally, is entirely free to disapprove assignees however valid their assignments might otherwise be, provisions of this chapter of curtailing alien ownership and limiting any lessee or option holder to maximum number of acres did not warrant creating at large a federal common law of federal mineral lease contracts among private interests. Wallis v. Pan Am. Petroleum Corp., La.1966, 86 S.Ct. 1301, 384 U.S. 63, 16 L.Ed.2d 369, on remand 366 F.2d 210.

Congress in this chapter has not undertaken to assume exclusive control of federal mineral lands under this chapter but it has imposed two significant controls which must be satisfied before the state police power in area of conservation may ultimately attach; the first is that a federal mineral lessee may not assign his lease without the consent of federal government, and the second is that a pooling or communitization agreement involving federal and nonfederal lands must be approved by the federal government. Texas Oil & Gas Corp. v. Phillips Petroleum Co., D.C.Okl.1967, 277 F.Supp. 366, affirmed 406 F.2d 1303, certiorari denied 90 S.Ct. 80, 396 U.S. 829, 24 L.Ed.2d 80.

In action to recover rentals paid by plaintiff to the Bureau of Land Management on oil and gas leases assigned by plaintiff to defendant on the ground that defendant's neglect to file the assignments for approval obligated plaintiff as record owner of the leases to pay the rentals, defendant's failure to file the assignments for approval in keeping with the regulations did not effect a reassignment of the leases to the plaintiff without the latter's consent and against its wishes. Pan Am. Petroleum Corp. v. Gibbons, D.C.Utah 1958, 168 F.Supp. 867, affirmed 262 F.2d 852.

Where this section provided in part that assignment of interest in government lease must be approved by Secretary of Interior before assignment is valid, and assignment to interpleaded defendant by plaintiff who sought to recover moneys withheld on sale to defendant of oil runs had not been approved, and evidence was not such that court could say that assignment would be approved, plaintiff was entitled to all moneys from sale of oil runs on the lease. Oasis Oil Co. v. Bell Oil & Gas Co., D.C.Okl.1952, 106 F.Supp. 954.

3. Responsibility for lease obligations

Fact that assignments of certain federal oil and gas leases were unapproved by Bureau of Land Management was immaterial in determining whether assignee was liable for rental due under such leases, since assignee could not avoid rental obligations of the leases by simply not offering them to the Bureau for approval. Gibbons v. Pan American Petroleum Corp., C.A.Utah 1958, 262 F.2d 852.

The lessee of an oil and gas lease will be released by the act of the lessor in substituting the assignee in the place of the lessor, but even though there is no such substitution, an assign-

ee becomes primarily responsible for the payment of rent as between the assignor and assignee. Pan Am. Petroleum Corp. v. Gibbons, D.C.Utah 1958, 168 F.Supp. 867, affirmed 262 F.2d 852.

4. Extension of lease term

Secretary of the Interior had authority to make decision relating to the extension of lease by assignments made under 30 U.S.C.A. § 187a to operate prospectively only, which decision placed a different construction on 30 U.S.C.A. § 187a from that previously reached by the Associate Solicitor of the Department of the Interior. Safarik v. Udall, 1962, 304 F.2d 944, 113 U.S.App.D.C. 68, certiorari denied 83 S.Ct. 206, 371 U.S. 901, 9 L.Ed.2d 164.

5. Effectiveness of assignment

Partial assignment of lease of government-owned oil lands, though filed in Land Office on September 24 prior to expiration date of lease on October 31, was ineffective, where rental for first year of extended lease was not paid, and therefore first applicant, who applied on November 2 for lease, was first qualified applicant and was entitled to lease, and not second applicant, who filed applicant on November 20, though Land Office did not until November 19 vacate its November 10 approval of assignment and declare assignment void. McGarry v. Udall, 1962, 216 F.Supp. 314, affirmed 317 F.2d 595, 115 U.S.App.D.C. 184.

6. Enforceability of assignments

Where plaintiffs assigned original prospecting permit for oil and gas on public lands to assignee on certain conditions, right of the parties arose out of and in agreement between private parties, and unless contrary to declared public policy, they were enforceable in accordance with its terms and conditions and applicable law and were not extinguished by subsequent federal legislation. Oldland v. Gray, C.A.Colo.1950, 179 F.2d 408, certiorari denied 70 S.Ct. 803, 339 U.S. 948, 94 L.Ed. 1362.

§ 187b. Oil or gas leases; written relinquishment of rights; release of obligations

Notwithstanding any provision to the contrary in section 187 of this title, a lessee may at any time make and file in the appropriate land office a written relinquishment of all rights under any oil or gas lease issued under the authority of this chapter or of any legal subdivision of the area included within any such lease. Such relinquishment shall be effective as of the date of its filing, subject to the continued obligation of the lessee and his surety to make payment of all accrued rentals and royalties and to place all wells on the lands to be relinquished in condition for suspension or abandonment in accordance with the applicable lease terms and regulations; thereupon the lessee shall be released of all obligations thereafter accruing under said lease with respect to the lands relinquished, but no such relinquishment shall release such lessee, or his bond, from any liability for breach of any obligation of the lease, other than an obligation to drill, accrued at the date of the relinquishment.

(Feb. 25, 1920, c. 85, § 30b, as added Aug. 8, 1946, c. 916, § 8, 60 Stat. 956.)

Historical Note

Savings Provisions. Savings provisions, see note set out under section 181 of this title.

Cross References

Foreign interests in leases of public lands made under this section, see section 7435 of Title 10, Armed Forces.

Jurisdiction and control over naval petroleum reserves covered by leases granted under this section, see section 7421 of Title 10.

West's Federal Forms

Bonds and undertakings, see §§ 1521 to 1524.

West's Federal Practice Manual

Assignment, see § 5412.

Library References

Mines and Minerals ⇐5.1(7).
C.J.S. Mines and Minerals § 128.

Notes of Decisions

1. Time of relinquishment

Application of regulation interpreted as providing that only upon notation of relinquishment of noncompetitive oil and gas lease on tract books, lands shall be open to further offers so as to disqualify as premature lease offer filed prior to notation but after date upon which prior lease would have expired was not plainly erroneous or inconsistent with regulation. Wright v. Paine, 1961, 289 F.2d 766, 110 U.S.App.D.C. 100.

§ 188. Failure to comply with provisions of lease

(a) Forfeiture

Except as otherwise herein provided, any lease issued under the provisions of this chapter may be forfeited and canceled by an appropriate proceeding in the United States district court for the district in which the property, or some part thereof, is located whenever the lessee fails to comply with any of the provisions of this chapter, of the lease, or of the general regulations promulgated under this chapter and in force at the date of the lease; and the lease may provide for resort to appropriate methods for the settlement of disputes or for remedies for breach of specified conditions thereof.

(b) Cancellation

Any lease issued after August 21, 1935, under the provisions of section 226 of this title shall be subject to cancellation by the Secretary of the Interior after thirty days' notice upon the failure of the lessee to comply with any of the provisions of the lease, unless or until the land covered by any such lease is known to contain valuable deposits of oil or gas. Such notice in advance of cancellation shall be sent the lease owner by registered letter directed to the lease owner's record post-office address, and in case such letter shall be returned as undelivered, such notice shall also be posted for a period of thirty days in the United States land office for the district in which the land covered by such lease is situated, or in the event that there is no district land office for such district, then in the post office nearest such land. Notwithstanding the provisions of this section, however, upon failure of a lessee to pay rental on or before the anniversary date of the lease, for any lease on which there is no well capable of producing oil or gas in paying quantities, the lease shall automatically terminate by operation of law: *Provided, however,* That when the time for payment falls upon any day in which the proper office for payment is not open, payment may be received the next official working day and shall be considered as timely made: *Provided,* That if the rental payment due under a lease is paid on or before the anniversary date but either (1) the amount of the payment has been or is hereafter deficient and the deficiency is nominal, as determined by the Secretary by regulation, or (2) the payment was calculated in accordance with the acreage figure stated in the lease, or in any decision affecting the lease, or made in accordance with a bill or decision which has been rendered by him and such figure, bill, or decision is found to be in error resulting in a deficiency, such lease shall not automatically terminate unless (1) a new lease had been issued prior to May 12, 1970, or (2) the lessee fails to pay the deficiency within the period prescribed in a notice of deficiency sent to him by the Secretary.

(c) Reinstatement

Where any lease has been or is hereafter terminated automatically by operation of law under this section for failure to pay on or before the anniversary date the full amount of rental due, but such rental was paid on or tendered within twenty days thereafter, and it is shown to the satisfaction of the Secretary of the Interior that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee, the Secretary may reinstate the lease if—

(1) a petition for reinstatement, together with the required rental, including back rental accruing from the date of termination of the lease, is filed with the Secretary; and

(2) no valid lease has been issued affecting any of the lands covered by the terminated lease prior to the filing of said petition. The Secretary shall not issue any new lease affecting any of the lands covered by such terminated lease for a reasonable period, as determined in accordance with regulations issued by him. In any case where a reinstatement of a terminated lease is granted under this subsection and the Secretary finds that the reinstatement of such lease will not afford the lessee a reasonable opportunity to continue operations under the lease, the Secretary may, at his discretion, extend the term of such lease for such period as he deems reasonable: *Provided,* That (A) such extension shall not exceed a period equivalent to the time beginning when the lessee knew or should have known of the termination and ending on the date the Secretary grants such petition; (B) such extension shall not exceed a period equal to the unexpired portion of the lease or any extension thereof remaining at the date of termination; and (C) when the reinstatement occurs after the expiration of the term or extension thereof the lease may be extended from the date the Secretary grants the petition.

(d) Additional grounds for reinstatement

(1) Where any oil and gas lease issued pursuant to section 226(b) or (c) of this title or the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351 et seq.) has been, or is hereafter, terminated automatically by operation of law under this section for failure to pay on or before the anniversary date the full amount of the rental due, and such rental is not paid or tendered within twenty days thereafter, and it is shown to the satisfaction of the Secretary of the Interior that such failure was justifiable or not due to lack of reasonable diligence on the part of the lessee, or, no matter when the rental is paid after termination, it is shown to the satisfaction of the Secretary that such failure was inadvertent, the Secretary may reinstate the lease as of the date of termination for the unexpired portion of the primary term of the original lease or any extension thereof remaining at the date of termination, and so long thereafter as oil or gas is produced in paying quantities. In any case where a lease is reinstated under this subsection and the Secretary finds that the reinstatement of such lease (A) occurs after the expiration of the primary term or any extension thereof, or (B) will not afford the lessee a reasonable opportunity to continue operations under the lease, the Secretary may, at his discretion, extend the term of such lease for such period as he deems reasonable, but in no event for more than two years from the date the Secretary authorizes the reinstatement and so long thereafter as oil or gas is produced in paying quantities.

(2) No lease shall be reinstated under paragraph (1) of this subsection unless—

(A) with respect to any lease that terminated under subsection (b) of this section prior to January 12, 1983:

(i) the lessee tendered rental prior to January 12, 1983, and the final determination that the lease terminated was made by the Secretary or a court less than three years before January 12, 1983, and

(ii) a petition for reinstatement together with the required back rental and royalty accruing from the date of termination, is filed with the Secretary on or before the one hundred and twentieth day after January 12, 1983, or

(B) with respect to any lease that terminated under subsection (b) of this section on or after January 12, 1983, a petition for reinstatement together with the required back rental and royalty accruing from the date of termination is filed on or before the earlier of—

(i) sixty days after the lessee receives from the Secretary notice of termination, whether by return of check or by any other form of actual notice, or

(ii) fifteen months after termination of the lease.

(e) Conditions for reinstatement

Any reinstatement under subsection (d) of this section shall be made only if these conditions are met:

(1) no valid lease, whether still in existence or not, shall have been issued affecting any of the lands covered by the terminated lease prior to the filing of such petition: *Provided, however,* That after receipt of a petition for reinstatement, the Secretary shall not issue any new lease affecting any of the lands covered by such terminated lease for a reasonable period, as determined in accordance with regulations issued by him;

(2) payment of back rentals and either the inclusion in a reinstated lease issued pursuant to the provisions of section 226(b) of this title of a requirement for future rentals at a rate of not less than $10 per acre per year, or the inclusion in a reinstated lease issued pursuant to the provisions of section 226(c) of this title of a requirement that future rentals shall be at a rate not less than $5 per acre per year, all as determined by the Secretary;

(3)(A) payment of back royalties and the inclusion in a reinstated lease issued pursuant to the provisions of section 226(b) of this title of a requirement for future royalties at a rate of not less than 16⅔ percent computed on a sliding scale based upon the average production per well per day, at a rate which shall be not less than 4 percentage points greater than the competitive royalty[1] schedule then in force and used for royalty determination for competitive leases issued pursuant to such section as determined by the Secretary: *Provided,* That royalty on such reinstated lease shall be paid on all production removed or sold from such lease subsequent to the termination of the original lease;

(B) payment of back royalties and inclusion in a reinstated lease issued pursuant to the provisions of section 226(c) of this title of a requirement for future royalties at a rate not less than 16⅔ percent: *Provided,* That royalty on such reinstated lease shall be paid on all production removed or sold from such lease subsequent to the cancellation or termination of the original lease; and

(4) notice of the proposed reinstatement of a terminated lease, including the terms and conditions of reinstatement, shall be published in the Federal Register at least thirty days in advance of the reinstatement.

A copy of said notice, together with information concerning rental, royalty, volume of production, if any, and any other matter which the Secretary deemed significant in making this determination to reinstate, shall be furnished to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate at least thirty days in advance of the reinstatement. The lessee of a reinstated lease shall reimburse the Secretary for the administrative costs of reinstating the lease, but not to exceed $500. In addition the lessee shall reimburse the Secretary for the cost of publication in the Federal Register of the notice of proposed reinstatement.

(f) Issuance of noncompetitive oil and gas lease; conditions

Where an unpatented oil placer mining claim validly located prior to February 24, 1920, which has been or is currently producing or is capable of producing oil or gas, has been or is hereafter deemed conclusively abandoned for failure to file timely the required instruments or copies of instruments required by section 1744 of Title 43, and it is shown to the satisfaction of the Secretary that such failure was inadvertent, justifiable, or not due to lack of reasonable diligence on the part of the owner, the Secretary may issue, for the lands covered by the abandoned unpatented oil placer mining claim, a noncompetitive oil and gas lease, consistent with the provisions of section 226(e) of this title, to be effective from the statutory date the claim was deemed conclusively abandoned. Issuance of such a lease shall be conditioned upon:

(1) a petition for issuance of a noncompetitive oil and gas lease, together with the required rental and royalty, including back rental and royalty accruing from the statutory date of abandonment of the oil placer mining claim, being filed with the Secretary—

(A) with respect to any claim deemed conclusively abandoned on or before January 12, 1983, on or before the one hundred and twentieth day after January 12, 1983, or

(B) with respect to any claim deemed conclusively abandoned after January 12, 1983, on or before the one hundred and twentieth day after final notification by the Secretary or a court of competent jurisdiction of the determination of the abandonment of the oil placer mining claim;

(2) a valid lease not having been issued affecting any of the lands covered by the abandoned oil placer mining claim prior to the filing of such petition: *Provided, however,* That after the filing of a petition for issuance of a lease under this subsection, the Secretary shall not issue any new lease affecting any of the lands covered by such abandoned oil placer mining claim for a reasonable period, as determined in accordance with regulations issued by him;

(3) a requirement in the lease for payment of rental, including back rent[illegible] accruing from the statutory date of abandonment of the oil placer mining claim, of not less than $5 per acre per year;

(4) a requirement in the lease for payment of royalty on production removed or sold from the oil placer mining claim, including all royalty on production made subsequent to the statutory date the claim was deemed conclusively abandoned, of not less than 12½ percent; and

(5) compliance with the notice and reimbursement of costs provisions of paragraph (4) of subsection (e) of this section but addressed to the petition covering the conversion of an abandoned unpatented oil placer mining claim to a noncompetitive oil and gas lease.

(g) Treatment of leases

(1) Except as otherwise provided in this section, a reinstated lease shall be treated as a competitive or a noncompetitive oil and gas lease in the same manner as the original lease issued pursuant to section 226(b) or (c) of this title.

(2) Except as otherwise provided in this section, the issuance of a lease in lieu of an abandoned patented oil placer mining claim shall be treated as a noncompetitive oil and gas lease issued pursuant to section 226(c) of this title.

(h) Statutory provisions applicable to leases

The minimum royalty provisions of section 226(j) of this title and the provisions of section 209 of this title shall be applicable to leases issued pursuant to subsections (d) and (f) of this section.

(i) Royalty reductions

(1) In acting on a petition to issue a noncompetitive oil and gas lease, under subsection (f) of this section or in response to a request filed after issuance of such a lease, or both, the Secretary is authorized to reduce the royalty on such lease if in his judgment it is equitable to do so or the circumstances warrant such relief due to uneconomic or other circumstances which could cause undue hardship or premature termination of production.

(2) In acting on a petition for reinstatement pursuant to subsection (d) of this section or in response to a request filed after reinstatement, or both, the Secretary is authorized to reduce the royalty in that reinstated lease on the entire leasehold or any tract or portion thereof segregated for royalty purposes if, in his judgment, there are uneconomic or other circumstances which could cause undue hardship or premature termination of production; or because of any written action of the United States, its agents or employees, which preceded, and was a major consideration in, the lessee's expenditure of funds to develop the property under the lease after the rent had become due and had not been paid; or if in the judgment of the Secretary it is equitable to do so for any reason.

(j) Discretion of Secretary

Where, in the judgment of the Secretary of the Interior, drilling operations were being diligently conducted on the last day of the primary term of the lease, and, except for nonpayment of rental, the lessee would have been entitled to extension of his lease, pursuant to section 226–1(d) of this title, the Secretary of the Interior may reinstate such lease notwithstanding the failure of the lessee to have made payment of the next year's rental, provided the conditions of subparagraphs (1) and (2) of subsection (c) of this section are satisfied.

(Feb. 25, 1920, c. 85, § 31, 41 Stat. 450; Aug. 8, 1946, c. 916, § 9, 60 Stat. 956; July 29, 1954, c. 644, § 1(7), 68 Stat. 585; Oct. 15, 1962, Pub.L. 87–822, § 1, 76 Stat. 943; May 12, 1970, Pub.L. 91–245, §§ 1, 2, 84 Stat. 206; Jan. 12, 1983, Pub.L. 97–451, Title IV, § 401, 96 Stat. 2462.)

[1] So in original. Probably should be "royalty".

Historical Note

References in Text. The Mineral Leasing Act for Acquired Lands, referred to in subsec. (d)(1), is Act Aug. 7, 1947, c. 513, 61 Stat. 913, which is classified generally to chapter 7 (section 351 et seq.) of this title. For complete classification of this Act to the Code, see section 351 of this title and Tables volume.

1983 Amendment. Subsec. (d). Pub.L. 97-451 added subsec. (d). Former subsec. (d) was redesignated (j).

Subsecs. (e) to (i). Pub.L. 97-451 added subsecs. (e) to (i).

Subsec. (j). Pub.L. 97-451 redesignated former subsec. (d) as (j).

1970 Amendment. Subsec. (b). Pub.L. 91-245, § 1, added the proviso authorizing continuance of a lease where timely paid rent is nominally deficient or miscalculated due to an error either in acreage figure stated in the lease, in any decision affecting the lease, or in a bill or decision rendered by the Secretary, except where a new lease was issued prior to May 12, 1970 or the lessee failed to pay the deficiency within the period allowed by the Secretary.

Subsec. (c). Pub.L. 91-245, § 2, added provisions allowing reinstatement of a lease despite a twenty-day delay in payment of rent, made the payment of back rental accruing from the date of termination of the lease a prerequisite to such reinstatement, restricted the Secretary's power to issue a new lease on the lands covered by the terminated lease, gave the Secretary discretion to extend the term of a reinstated lease so as to afford the lessee a reasonable opportunity to continue operations under the lease, and struck out requirement that the petition for reinstatement of any lease terminated prior to Oct. 15, 1962 be filed within 180 days after Oct. 15, 1962.

1962 Amendment. Pub.L. 87-822 designated existing pars. as subsecs. (a) and (b) and added subsecs. (c) and (d).

1954 Amendment. Act July 29, 1954, provided for automatic termination of a lease on failure to pay rental on or before the anniversary date of the lease, for any lease on which there is no well capable of producing oil or gas in paying quantities.

1946 Amendment. Act Aug. 8, 1946, principally added second paragraph relating to cancellation of leases by the Secretary of the Interior.

Effective Date of 1983 Amendment. Amendment by section 401 of Pub.L. 97-451 applicable to oil and gas leases issued before, on, or after Jan. 12, 1983, except that in the case of a lease issued before such date, no provision of such amendment or any rule or regulation prescribed under such amendment to alter the express and specific provisions of such lease, see section 305 of Pub.L. 97-451, set out as a note under section 1701 of this title.

Savings Provisions. Savings provisions, see note set out under section 181 of this title.

Authority for Issuance of Leases Unaffected by Reinstatement of Leases. Section 2 of Pub.L. 87-822 provided that: "Nothing in this Act [amending this section] shall be construed as limiting the authority of the Secretary of the Interior to issue, during the periods in which petitions for reinstatement may be filed, oil and gas leases for any of the lands affected."

Outer Continental Shelf; Cancellation of Leases. Cancellation of mineral leases on submerged lands of outer Continental Shelf, see sections 1334 and 1337 of Title 43, Public Lands.

Legislative History. For legislative history and purpose of Act July 29, 1954, see 1954 U.S.Code Cong. and Adm.News, p. 2695. See, also, Pub.L. 87-822, 1962 U.S.Code Cong. and Adm.News, p. 3236; Pub.L. 91-245, 1970 U.S. Code Cong. and Adm.News, p. 3002; Pub.L. 97-451, 1982 U.S.Code Cong. and Adm.News, p. 4268.

Cross References

Cancellation, forfeiture or disposal of lease interests for violations relating to ownership and control, see section 184 of this title.
Civil penalties for failure to pay rent on terminated leases, see section 1719 of this title.
Foreign interests in leases of public lands made under this section, see section 7435 of Title 10, Armed Forces.
Jurisdiction and control over naval petroleum reserves covered by leases granted under this section, see section 7421 of Title 10, Armed Forces.
Laws applicable, see sections 275 and 285 of this title.
Surrender of leases, see 188a of this title.

West's Federal Practice Manual

Oil and gas lease termination, see § 5417.
Termination generally, see § 5401.

Code of Federal Regulations

Location of mining claims, see 43 CFR 3831.1 et seq.
Oil and gas leasing, see 43 CFR 3100.0-3 et seq.

Library References

Mines and Minerals ⟹5.1(7).
C.J.S. Mines and Minerals § 174.

Notes of Decisions

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1. Retroactive effect

Amendment in 1954 of this section pertaining to automatic termination of leases of certain federal oil or gas wells was not applicable to leases in effect prior to passage of this chapter and which were automatically extended through termination of a unit agreement. Gibbons v. Pan Am. Petroleum Corp., C.A.Utah 1958, 262 F.2d 852.

This section providing that the failure of lessee to pay rental on or before the anniversary date of the lease for any lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates the lease, does not apply retroactively to contracts entered into prior to its effective date in the absence of consent indicated by the parties to the contract in line with the regulations issued pursuant thereto. Pan Am. Petroleum Corp. v. Gibbons, D.C.Utah 1958, 168 F.Supp. 867, affirmed 262 F.2d 852.

2. Forfeiture and cancellation of leases—Generally

This section providing that a lease of public lands may be cancelled by an appropriate proceeding in federal district court and that a lease shall be subject to cancellation by Secretary of Interior after 30 days' notice upon failure of lessee to comply with any provisions of the lease, unless land is known to contain valuable deposits of oil and gas, concerns only cancellations based on post-lease events and it does not affect Secretary of Interior's administrative authority to cancel lease on basis of prelease factors. Boersche v. Udall, Dist.Col. 1963, 83 S.Ct. 1373, 373 U.S. 472, 10 L.Ed.2d 491.

In action to quiet title to noncompetitive oil and gas lease, cancelled by Bureau of Land Management as erroneously issued to plaintiff on application filed while application of individual defendant for such a lease and corporate defendant's placer mining claim locations on leased public lands were of record, district court cannot determine that either plaintiff or defendants have any interest in lands until exhaustion of their administrative remedies in pending proceedings before Bureau to determine defendants' rights. Call v. Richfield Oil Corp., D.C.Cal.1951, 101 F.Supp. 972.

3. —— Waiver of right

Mere acceptance of royalties will not deny to lessor his right to terminate lease for failure to comply with covenant to produce and market gas, but where lessors have acquiesced in acts of lessees in development of field, making no claim that lease was forfeited, in addition to acceptance of royalties, they will not be permitted to terminate lease. Eggleson v. McCasland, D.C.Okl.1951, 98 F.Supp. 693.

4. —— Acreage limitations

Secretary of Interior had administrative power to cancel a noncompetitive oil and gas lease covering an 80-acre tract when application for lease covered only 80 acres, and an adjoining tract was available for leasing but was not included as required under a regulation providing that application cover at least 640 acres except where lands sought to be leased are surrounded by other land which is not available for leasing. Boesche v. Udall, Dist.Col.1963, 83 S.Ct. 1373, 373 U.S. 472, 10 L.Ed.2d 491.

5. —— Production and marketing of minerals

Federal lease could not be cancelled administratively because it was a currently-producing oil and gas lease. Naartex Consulting Corp. v. Watt, 1983, 722 F.2d 779, 232 U.S.App. D.C. 293, certiorari denied 104 S.Ct. 2399, 81 L.Ed.2d 355.

Where provisions of an oil and gas lease from the United States respecting forfeiture of lease for nondevelopment gave the government a right to forfeit lease only after written notice was given and failure to develop continued thereafter, the lessee's failure to drill wells called for by lease did not in itself work a "forfeiture" of lease. Rush v. Kirk, C.C.A.Wyo. 1942, 127 F.2d 368.

Where lessee under oil and gas lease was unable to obtain market for gas during term of lease because it was not financially feasible to expend fund necessary to make connection with transmission line, but lessee expended in excess of $800,000 in developing general area in which lease was located in hope that it could create market for gas existing in that area and it appeared that market might soon become available, lease would not be terminated for failure to comply with covenant to produce and market. Eggleson v. McCasland, D.C.Okl.1951, 98 F.Supp. 693.

Temporary suspension of about 13 months in pumping oil from producing wells did not entitle lessor to a termination or a forfeiture of oil and gas lease requiring defendant to

produce oil and providing for termination for failure to perform terms or conditions of lease unless performed within 30 days after written notice from lessor, where defendant kept lessor informed of difficulties encountered in an effort to market oil, lessor made no objections and gave no notice that defendant was in default at any time but permitted defendant to expend $6,500 on another well, and wells had been reopened and oil had been pumped and marketed 11 months before action for cancellation of lease was commenced. Stimson v. Tarrant, D.C.Mont.1941, 43 F.Supp. 657, affirmed 132 F.2d 363, certiorari denied 63 S.Ct. 1164, 319 U.S. 751, 87 L.Ed. 1705.

6. —— Injunction against termination

Proposed action by government officials to cancel, by administrative procedure, oil and gas leases affected lessee's rights by clouding his title, and entitled him to equitable relief by way of injunction. Pan Am. Petroleum Corp. v. Pierson, C.A.Wyo.1960, 284 F.2d 649, certiorari denied 81 S.Ct. 1661, 366 U.S. 936, 6 L.Ed.2d 848.

Lessee was not entitled to enjoin Secretary of Interior from instituting proceedings to cancel oil leases on government land; remedy at law being adequate. Bell Oil & Gas Co. v. Wilbur, 1931, 50 F.2d 1070, 60 App.D.C. 256.

7. Reinstatement

Secretary of Interior did not abuse his discretion in refusing to reinstate oil and gas leases, which were automatically terminated for failure to make timely rental payments, upon finding that lessee, who alleged that a particular employee who was responsible for mailing rental checks and who had satisfactorily performed a task in the past had failed to send in the rental payments on time and falsely told her supervisor that the payments had been mailed, failed to exercise reasonable diligence. Ram Petroleums, Inc. v. Andrus, C.A. Nev.1981, 658 F.2d 1349.

Although narrow, Secretary of Interior's interpretation of provision of this section governing reinstatement where late payment of rental was either justifiable or not due to lack of reasonable diligence on part of lessee as being justifiable only where late payment is caused by factors outside lessee's control and as satisfying reasonable diligence standard only where rental payment is mailed sufficiently in advance to account for normal delays in mail delivery was not arbitrary or capricious or abuse of discretion and regulation was properly applied to deny reinstatement although late payment was due solely to employee negligence or misconduct. Ramoco, Inc. v. Andrus, C.A.Utah 1981, 649 F.2d 814, certiorari denied 102 S.Ct. 569, 454 U.S. 1032, 70 L.Ed.2d 475.

Since oil and gas leases issued by United States Bureau of Land Management and state of Wyoming lapsed by their own terms because of failure of debtors in possession to make required delay rental payments the bankruptcy court in proceedings brought under former section 701 et seq. of Title 11 was powerless to order reinstatement. In re Trigg, C.A.N.M.1980, 630 F.2d 1370.

8. Rental payments

Where agreement required defendant to reimburse plaintiff acquiring leases from the United States the funds used for purpose of acquisition of the leases, and not for payment of delay rentals, this section and section 226 of this title eliminating free second and third years and requiring advance delay rental of 50¢ per acre for each year did not make the delay rentals a personal obligation of the defendant. King-Stevenson Gas & Oil Co. v. Texam Oil Corp., Okl.1970, 466 P.2d 950.

§ 188a. Surrender of leases

The Secretary of the Interior is authorized to accept the surrender of any lease issued pursuant to any of the provisions of this chapter, or any amendment thereof, where the surrender is filed in the Bureau of Land Management subsequent to the accrual but prior to the payment of the yearly rental due under the lease, upon payment of the accrued rental on a pro rata monthly basis for the portion of the lease year prior to the filing of the surrender. The authority granted to the Secretary of the Interior by this section shall extend only to cases in which he finds that the failure of the lessee to file a timely surrender of the lease prior to the accrual of the rental was not due to a lack of reasonable diligence, but it shall not extend to claims or cases which have been referred to the Department of Justice for purposes of suit.

(Nov. 28, 1943, c. 329, 57 Stat. 593; 1946 Reorg. Plan No. 3, § 403, eff. July 16, 1946, 11 F.R. 7876, 60 Stat. 1100.)

Historical Note

Codification. Section was not enacted as a part of Mineral Lands Leasing Act, which comprises this chapter.

Transfer of functions. "Bureau of Land Management" was substituted for "General Land Office" on authority of Reorg. Plan No. 3 of 1946, § 403, set out in Appendix 1 to Title 5, Government Organization and Employees.

Library References

Mines and Minerals ⇐5.1(7).
C.J.S. Mines and Minerals § 128.

§ 189. Rules and regulations; boundary lines; State rights unaffected; taxation

The Secretary of the Interior is authorized to prescribe necessary and proper rules and regulations and to do any and all things necessary to carry out and accomplish the purposes of this chapter, also to fix and determine the boundary lines of any structure, or oil or gas field, for the purposes of this chapter. Nothing in this chapter shall be construed or held to affect the rights of the States or other local authority to exercise any rights which they may have, including the right to levy and collect taxes upon improvements, output of mines, or other rights, property, or assets of any lessee of the United States.

(Feb. 25, 1920, c. 85, § 32, 41 Stat. 450.)

Historical Note

Transfer of Functions. The functions of the Secretary of the Interior to promulgate regulations under this chapter relating to the fostering of competition for Federal leases, the implementation of alternative bidding systems authorized for the award of Federal leases, the establishment of diligence requirements for operations conducted on Federal leases, the setting of rates for production of Federal leases, and the specifying of the procedures, terms, and conditions for the acquisition and disposition of Federal royalty interests taken in kind, were transferred to the Secretary of Energy by section 7152(b) of Title 42, The Public Health and Welfare. Section 7152(b) of Title 42 was repealed by Pub.L. 97-100, Title II, § 201, Dec. 23, 1981, 95 Stat. 1407, and the functions of the Secretary of Energy were returned to the Secretary of the Interior. See House Report No. 97-315, pp. 25, 26, Nov. 5, 1981.

Outer Continental Shelf; Rules and Regulations with Respect to Leases. Rules and regulations with respect to mineral leases on submerged lands of outer Continental Shelf to be prescribed by Secretary of the Interior, see section 1334 of Title 43, Public Lands.

Cross References

Foreign interests in leases of public lands made under this section, see section 7435 of Title 10, Armed Forces.
Jurisdiction and control over naval petroleum reserves covered by leases granted under this section, see section 7421 of Title 10.
Laws applicable, see sections 275 and 285 of this title.
Surrender of leases, see section 188a of this title.

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Mineral Leasing Act, see § 5392.

Code of Federal Regulations

Appeals procedure, see 30 CFR 290.1 et seq.
Approval, sales agreements or contracts covering disposal of oil and gas lease products except as to Indian or Naval petroleum reserve lands, see 30 CFR 207.1 et seq.
Audits and inspections, see 30 CFR 217.50 et seq.
Disposal of government royalty oil, see 30 CFR 208.1 et seq.

Exploration and mining operations of solid minerals (other than coal), see 43 CFR 3570.0-1 et seq.
Leasing of minerals other than oil and gas, see 43 CFR 3500.0-3 et seq.
Mining and reclamation of lands, surface exploration, see 43 CFR 23.1 et seq.
Onshore oil and gas unit agreements, unproven areas, see 43 CFR 3180.0-1 et seq.
Special laws and rules, see 43 CFR 2091.0-7 et seq.
Timber, free use, see 43 CFR 5510.1 et seq.

Notes of Decisions

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1. Mandatory nature of section

As respects whether lands on which oil and gas lease was sought were within a producing field, this section authorizing Secretary of Interior to determine boundaries of all oil and gas field structures was not mandatory but permissive. Wann v. Ickes, 1937, 92 F.2d 215, 67 App.D.C. 291.

2. Rules and regulations—Generally

The Secretary of the Interior is bound by his own regulation promulgated pursuant to this chapter so long as it remains in effect, since it has the force of law. McKay v. Wahlenmaier, 1955, 226 F.2d 35, 96 U.S.App.D.C. 313.

This section, authorizing Secretary of Interior to make rules and regulations, did not authorize Secretary to condition the granting of rights-of-way for natural gas pipeline on signing of stipulation embodying specific and detailed regulations and conditions for operation of pipe line as common carrier. Chapman v. El Paso Natural Gas Co., 1953, 204 F.2d 46, 92 U.S.App.D.C. 154.

Regulation by Secretary of Interior relative to the leasing of federal coal lands, when published in the Federal Register as one of general applicability and legal effect had force and effect of a statute and as such was binding upon Secretary until repealed or modified by him. Sheridan-Wyoming Coal Co. v. Krug, 1949, 172 F.2d 282, 84 U.S.App.D.C. 172, reversed on other grounds 70 S.Ct. 392, 338 U.S. 621, 94 L.Ed. 393.

Under this section, giving the Interior Department the right to prescribe rules and regulations to carry this chapter into effect, regulations enacted pursuant to such power should be given the full force and effect of this section when not inconsistent with or repugnant to this section. Hodgson v. Midwest Oil Co., D.C.Wyo.1924, 297 F. 273, case transferred to Circuit Court of Appeals, 46 S.Ct. 100, 269 U.S. 534, 70 L.Ed. 399.

Provision of 30 U.S.C.A. § 189 that the Secretary of the Interior is authorized to prescribe necessary and proper rules and regulations and to do any and all things necessary to carry out and accomplish the purposes of the Mineral Lands Leasing Act [30 U.S.C.A. § 181 et seq.] grants the Secretary broad powers and authority commensurate with the broad responsibilities imposed upon his office. Getty Oil Co. v. Clark, D.C.Wyo.1985, 614 F.Supp. 904.

Since Congress has said that the pertinent sections of this chapter shall not be construed to affect the rights of the states or other local authority to exercise any rights which they may have, this must likewise be a limitation on Secretary of the Interior as to his regulation-making authority set out in this section. Texas Oil & Gas Corp. v. Phillips Petroleum Co., D.C.Okl.1967, 277 F.Supp. 366, affirmed 406 F.2d 1303, certiorari denied 90 S.Ct. 80, 396 U.S. 829, 24 L.Ed.2d 80.

3. —— Abandonment of mineral sites

The regulation adopted by Department of Interior under this chapter, providing that, if permittee shall fail to plug properly any dry or abandoned well, the district supervisor, after giving 30 days' notice to parties in interest, may plug such well at expense of permittee or his surety, conferred upon supervisor, a "discretionary power" which was a proper exercise of the administrative authority vested in the Secretary of Interior. Forbes v. U.S., C.C.A.Mont.1942, 125 F.2d 404, affirmed 127 F.2d 862.

4. —— Acreage limitations

Regulation providing that offer for each oil and gas lease may not be for less than 640 acres except when land is surrounded by lands not available for leasing was not unreasonably interpreted in rejecting part of one offer as to 160 acres of land adjoining land available for leasing and accepting part of same offer as to 120 acres of land isolated from land available for leasing. Southwestern Petroleum Corp. v. Udall, 1963, 325 F.2d 633, 117 U.S.App.D.C. 60.

5. —— Mineral sale prices

Secretary of the Interior can fix price at which operator on oil lands leased from government shall sell his share of oil after paying government's royalty. Wilbur v. Texas Co., 1930, 40 F.2d 787, 59 App.D.C. 275, certiorari denied 51 S.Ct. 24, 282 U.S. 843, 75 L.Ed. 748.

6. —— Qualifications for leases and permits

Rule cannot add to qualifications of applicant for prospecting permit. West v. U.S., 1929, 30 F.2d 739, 58 App.D.C. 329.

7. —— Royalties

Regulation which was adopted by Secretary of Interior and which limited distribution of royalty oil to small business enterprises was invalid. Plateau, Inc. v. Department of Interior, C.A.N.M.1979, 603 F.2d 161.

Secretary of the Interior may establish reasonable values for royalty purposes. California Co. v. Udall, 1961, 296 F.2d 384, 111 U.S. App.D.C. 262.

8. State rights—Generally

Congress, having provided for leasing the public lands to private corporations and persons whose property, income, business and occupations ordinarily were subject to State taxation, meant by the proviso of 30 U.S.C.A. § 189 to say in effect that, although 30 U.S. C.A. § 181 et seq. deals with the letting of public lands and the relations of the Government to the lessees thereof, nothing in 30 U.S. C.A. § 181 et seq. shall be construed to affect the right of the States to levy and collect taxes as though the Government were not concerned. Mid-Northern Oil Co. v. Walker, Mont.1925, 45 S.Ct. 440, 268 U.S. 45, 69 L.Ed. 841.

Nothing in proviso of this section governing federal mine leases stating that nothing in chapter would be construed or held to affect rights of states or other local authority to exercise any rights which they may have, including right to levy and collect taxes upon improvements, output of mines, or other rights, property, or assets of any lessee of United States gives states any power over those lands which they do not already possess. Kirkpatrick Oil & Gas Co. v. U. S., C.A.Okl. 1982, 675 F.2d 1122.

Saving clause of this section, preserving to states "any rights which they may have" was express recognition of right of states to tax activities of government's lessee pursuant to lease, but did not give states or their subdivisions right to apply local regulations impermissibly conflicting with achievement of congressionally approved use of federal lands. Ventura County v. Gulf Oil Corp., C.A.Cal. 1979, 601 F.2d 1080, affirmed 100 S.Ct. 1593, 445 U.S. 947, 63 L.Ed.2d 782.

Oil and gas conservation laws of Oklahoma, including forced pooling order in question, applied to federal lands which were located in Oklahoma and with respect to which plaintiffs owned oil and visions nor federal statutes and regulations contained specific prohibition against exercise of state police power over working interests of plaintiffs in lands in question, as statutes and regulations did not evince congressional intent to exercise exclusive control over the same, and as the required federal approval of assignments of its leases and communitization agreement involving federal land with nonfederal lands had been granted. Texas Oil & Gas Corp. v. Phillips Petroleum Co., D.C.Okl.1967, 277 F.Supp. 366, affirmed 406 F.2d 1303, certiorari denied 90 S.Ct. 80, 396 U.S. 829, 24 L.Ed.2d 80.

Even assuming that an assignor's right to retain interests upon assignment is more restricted in the instance of federal oil and gas leases than is the case in private lease transfer, such restriction deals with the federal government's relationship with the assignor and the assignee, and is not germane to the state's exercise of its taxing power. Hagood v. Heckers, 1973, 513 P.2d 208, 182 Colo. 337.

9. —— Communitization requirements

Under this chapter, state communitization order may not bind federally owned land, or extend leases of such land within unit, without consent of Secretary, and, therefore, in absence of approval, production from other property in unit cannot be attributed to federal property and thereby extend terms of federal oil and gas lease requiring production of oil or gas in paying quantities. Kirkpatrick Oil & Gas Co. v. U. S., C.A.Okl.1982, 675 F.2d 1122.

10. —— Income taxes

For purposes of state income taxation, federal law was not determinative of the characterization of the interests of nonresidents who, under this chapter, were granted oil and gas leases for federal lands located in Colorado, who assigned their interest to various parties, and who, in consideration therefor, received, inter alia, future overriding royalties. Hagood v. Heckers, 1973, 513 P.2d 208, 182 Colo. 337.

11. —— License taxes and fees

Leasing Act Feb. 25, 1920, § 32 [30 U.S.C.A. § 189], providing that nothing in said Act [30 U.S.C.A. § 181 et seq.] shall affect the rights of the States to exercise any rights which they may have, including the right to levy and collect taxes upon improvements, etc., was applicable to an annual license tax imposed by the State of Montana. Mid-Northern Oil Co. v. Walker, Mont.1925, 45 S.Ct. 440, 268 U.S. 45, 69 L.Ed. 841.

12. —— Severance taxes

Even assuming that Montana's coal severance tax may reduce royalty payments to the federal government under leases executed in Montana, this fact alone did not demonstrate that the tax is inconsistent with this chapter; indeed, in this section, Congress expressly authorized the states to impose severance taxes on federal lessees without imposing any limits

on the amount of such taxes, and there was nothing in the language or legislative history of this section to support an assertion that Congress intended to maximize and capture through royalties all "economic rents" from the mining of federal coal, and then to divide the proceeds with the state in accordance with formula. Commonwealth Edison Co. v. Montana, Mont.1981, 101 S.Ct. 2946, 453 U.S. 609, 69 L.Ed.2d 884, rehearing denied 102 S.Ct. 889, 453 U.S. 927, 69 L.Ed.2d 1023.

§ 190. Oath; requirement; form; blanks

All statements, representations, or reports required by the Secretary of the Interior under this chapter shall be upon oath, unless otherwise specified by him, and in such form and upon such blanks as the Secretary of the Interior may require.

(Feb. 25, 1920, c. 85, § 33, 41 Stat. 450.)

Cross References

Foreign interests in leases of public lands made under this section, see section 7435 of Title 10, Armed Forces.

Jurisdiction and control over naval petroleum reserves covered by leases granted under this section, see section 7421 of Title 10.

Laws applicable, see sections 275 and 285 of this title.

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Jurat, see § 1487.

§ 191. Disposition of moneys received

All money received from sales, bonuses, royalties including interest charges collected under the Federal Oil and Gas Royalty Management Act of 1982 [30 U.S.C.A. § 1701 et seq.], and rentals of the public lands under the provisions of this chapter and the Geothermal Steam Act of 1970 [30 U.S.C.A. § 1001 et seq.], notwithstanding the provisions of section 20 thereof [30 U.S.C.A. § 1019], shall be paid into the Treasury of the United States; 50 per centum thereof shall be paid by the Secretary of the Treasury to the State other than Alaska within the boundaries of which the leased lands or deposits are or were located; said moneys paid to any of such States on or after January 1, 1976, to be used by such State and its subdivisions, as the legislature of the State may direct giving priority to those subdivisions of the State socially or economically impacted by development of minerals leased under this chapter, for (i) planning, (ii) construction and maintenance of public facilities, and (iii) provision of public service; and excepting those from Alaska, 40 per centum thereof shall be paid into, reserved, appropriated, as part of the reclamation fund created by the Act of Congress known as the Reclamation Act, approved June 17, 1902, and of those from Alaska, 90 per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof: *Provided*, That all moneys which may accrue to the United States under the provisions of this chapter and the Geothermal Steam Act of 1970 from lands within the naval petroleum reserves shall be deposited in the Treasury as "miscellaneous receipts", as provided by section 7433(b) of Title 10. All moneys received under the provisions of this chapter and the Geothermal Steam Act of 1970 not otherwise disposed of by this section shall be credited to miscellaneous receipts. Payments to States under this section with respect to any moneys received by the United States, shall be made not later than the last business day of the month in which such moneys are warranted by the United States

Treasury to the Secretary as having been received, except for any portion of such moneys which is under challenge and placed in a suspense account pending resolution of a dispute. Such warrants shall be issued by the United States Treasury not later than 10 days after receipt of such moneys by the Treasury. Moneys placed in a suspense account which are determined to be payable to a State shall be made not later than the last business day of the month in which such dispute is resolved. Any such amount placed in a suspense account pending resolution shall bear interest until the dispute is resolved.

(Feb. 25, 1920, c. 85, § 35, 41 Stat. 450; May 27, 1947, c. 83, 61 Stat. 119; Aug. 3, 1950, c. 527, 64 Stat. 402; July 10, 1957, Pub.L. 85-88, § 2, 71 Stat. 282; July 7, 1958, Pub.L. 85-508, §§ 6(k), 28(b), 72 Stat. 343, 351; Apr. 21, 1976, Pub.L. 94-273, § 6(2), 90 Stat. 377; Aug. 4, 1976, Pub.L. 94-377, § 9, 90 Stat. 1090; Sept. 28, 1976, Pub.L. 94-422, Title III, § 301, 90 Stat. 1323; Oct. 21, 1976, Pub.L. 94-579, Title III, § 317(a), 90 Stat. 2770; Jan. 12, 1983, Pub.L. 97-451, Title I, § 104(a), 111(g), 96 Stat. 2451, 2456.)

Historical Note

References in Text. The Federal Oil and Gas Royalty Management Act of 1982, referred to in text, is Pub.L. 97-451, Jan. 12, 1983, 96 Stat. 2447, which is classified generally to chapter 29 (section 1701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of this title and Tables volume.

The Geothermal Steam Act of 1970, referred to in text, is Pub.L. 91-581, Dec. 24, 1970, 84 Stat. 1566, which is classified principally to chapter 23 (section 1001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables volume.

The Reclamation Act, referred to in text, is Act June 17, 1902, c. 1093, 32 Stat. 388, as amended, which is classified generally to chapter 12 (section 371 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 371 of Title 43 and Tables volume.

Codification. "Section 7433(b) of Title 10" was substituted for "the Act of June 4, 1920 (41 Stat. 813), as amended June 30, 1938 (52 Stat. 1252)", which was classified to section 524 of former Title 34, Navy, on authority of Act Aug. 10, 1956, c. 1041, § 49(b), 70A Stat. 640, the first section of which enacted Title 10, Armed Forces.

Provisions of this section which authorized the payment of monies to the Territory of Alaska were omitted as superseded by the provisions authorizing the payment of monies to the State of Alaska.

1983 Amendment. Pub.L. 97-451, § 104(a), struck out "as soon as practicable after March 31 and September 30 of each year" after "Secretary of the Treasury" and "of those from Alaska", and added at the end provisions directing that payments to States be made not later than the last business day of the month in which such moneys are warranted by the United States Treasury to the Secretary as having been received, that warrants be issued by the Treasury not later than 10 days after receipt of the money by the Treasury, that moneys placed in a suspense account which are determined to be payable to a State be made not later than the last business day of the month in which a dispute is resolved, and that amounts placed in a suspense account pending resolution bear interest until the dispute is resolved.

Pub.L. 97-451, § 111(g), inserted reference to interest charges collected under the Federal Oil and Gas Royalty Management Act of 1982.

1976 Amendments. Pub.L. 94-579 substituted provisions setting forth determination of amount, time for payments, and manner of expenditure by the States of all moneys received from sales, etc., under the provisions of this chapter and the Geothermal Steam Act of 1970, and proviso relating to naval petroleum reserve moneys, for provisions setting forth determination of amount and time for payment to the States of all moneys received from sales, etc., under the provisions of this chapter, and provisos relating to naval petroleum reserve moneys, additional moneys from sales, etc., under this chapter and the Geothermal Steam Act of 1970, and expenditure of State oil shale funds.

Pub.L. 94-422 added proviso that all moneys paid to any State from sales, bonuses, royalties, and rentals of oil shale in public lands may be used by any State for planning, construction, and maintenance of public facilities as legislature of State may direct.

Pub.L. 94-377 substituted "40 per centum thereof shall be paid into, reserved" for "52½ per centum thereof shall be paid into, reserved", added "and the Geothermal Steam Act of 1970, notwithstanding the provisions of section 20 thereof" preceding "shall be paid into the Treasury of the United States", "and the Geothermal Steam Act of 1970" preceding "from lands within the naval petroleum reserves" and preceding "not otherwise disposed of by this section", respectively, the proviso

relating to the payment of an additional 12½ per centum of all money received from lands under the provisions of this chapter and the Geothermal Steam Act of 1970 to the State within whose boundaries the lands are located, to be used for construction of public facilities, and the proviso relating to the use of funds received by Colorado and Utah under the specified leases.

Pub.L. 94-273 substituted "March" for "December" and "September" for "June".

1958 Amendment. Pub.L. 85-508, §§ 6(k), 28(b), eliminated provisions which related to disposition of proceeds or income derived by the United States from mineral school sections in the Territory of Alaska and substituted ", and of those from Alaska 52½ per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof" for ", and of those from Alaska 52½ per centum thereof shall be paid to the Territory of Alaska for disposition by the Legislature of the Territory of Alaska" preceding the proviso, respectively.

1957 Amendment. Pub.L. 85-88 inserted ", and of those from Alaska 52½ per centum thereof shall be paid to the Territory of Alaska for disposition by the Legislature of the Territory of Alaska" preceding the proviso.

1950 Amendment. Act Aug. 3, 1950, in providing that payments to States be made bi-annually instead of annually, substituted "as soon as practicable after December 31 and June 30 of each year" for "after the expiration of each fiscal year".

1947 Amendment. Act May 27, 1947, extended provisions by allocating 37½% of the money received from sales, bonuses, royalties, and rentals of public lands to the Territory of Alaska, for the construction and maintenance of public schools or other public educational institutions and added provisions relating to disposition of proceeds or income derived by the United States from mineral school sections in the Territory of Alaska.

Effective Date of 1983 Amendment. Amendment by section 104(a) of Pub.L. 97-451 applicable with respect to payments received by the Secretary of the Treasury after Oct. 1, 1983, unless the Secretary by rule, prescribes an earlier effective date, see section 104(c) of Pub.L. 97-451, set out as a note under section 1714 of this title.

Amendment by section 104(a) of Pub.L. 97-451 applicable to oil and gas leases issued before, on, or after Jan. 12, 1983, except that in the case of a lease issued before such date, no provision of such amendment or any rule or regulation prescribed under such amendment to alter the express and specific provisions of such lease, see section 305 of Pub.L. 97-451, set out as a note under section 1701 of this title.

Savings Provisions. Amendment by Pub.L. 94-579 not to be construed as terminating any valid lease, permit, patent, etc., existing on Oct. 21, 1976, see section 701 of Pub.L. 94-579, set out as a note under section 1701 of Title 43, Public Lands.

Funds held by Colorado and Utah from Interior Department Oil Shale Test Leases. Section 317(b) of Pub.L. 94-579 provided that: "Funds now held pursuant to said section 35 [this section] by the States of Colorado and Utah separately from the Department of the Interior oil shale test leases known as C-A; C-B; U-A and U-B shall be used by such States and subdivisions as the legislature of each State may direct giving priority to those subdivisions socially or economically impacted by the development of minerals leased under this Act for (1) planning, (2) construction and maintenance of public facilities, and (3) provision of public services."

Admission of Alaska as State. Effectiveness of amendment of this section by Pub.L. 85-508 was dependent upon the admission of Alaska into the Union under sections 6(k) and 8(b) of Pub.L. 85-508. Admission was accomplished Jan. 3, 1959 upon issuance of Proc.No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub.L. 85-508. See notes preceding section 21 of Title 48, Territories and Insular Possessions.

Outer Continental Shelf; Revenues from Leases. Disposition of revenues from leases on submerged lands of outer Continental Shelf, see sections 1337 and 1338 of Title 43, Public Lands.

Legislative History. For legislative history and purpose of Act May 27, 1947, see 1947 U.S.Code Cong.Service, p. 1060. See, also, Act Aug. 3, 1950, 1950 U.S.Code Cong.Service, p. 2890; Pub.L. 85-88, 1957 U.S.Code Cong. and Adm.News, p. 1294; Pub.L. 85-508, 1958 U.S. Code Cong. and Adm.News, p. 2933; Pub.L. 94-273, 1976 U.S.Code Cong. and Adm.News, p. 690; Pub.L. 94-377, 1976 U.S.Code Cong. and Adm.News, p. 1943; Pub.L. 94-422, 1976 U.S.Code Cong. and Adm.News, p. 2442; Pub.L. 94-579, 1976 U.S.Code Cong. and Adm. News, p. 6175; Pub.L. 97-451, 1982 U.S.Code Cong. and Adm.News, p. 4268.

Cross References

Disbursement of money received from mining of source material on coal lands, see section 541f of this title.

Disposition of receipts derived from leases on lands acquired for military or naval purposes, see section 355 of this title.

Disposition of royalties from mining of gold, silver or quicksilver, see section 292 of this title.

Foreign interests in leases of public lands made under this section, see section 7435 of Title 10, Armed Forces.

Jurisdiction and control over naval petroleum reserves covered by leases granted under this section, see section 7421 of Title 10.

Late charges on payments to States required by this section, see section 1721 of this title.

Laws applicable, see sections 275 and 285 of this title.

Loans to States to relieve social and economic impact occasioned by development of mineral leases, see section 1747 of Title 43, Public Lands.

Offsite leases, provisions for payments to be credited against annual rental, see section 241 of this title.

Reduction of payment for entitlement land by amounts received under this section, see section 6903 of Title 31, Money and Finance.

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Mineral leasing revenues, see § 5392.

Library References

United States ⇐81.
C.J.S. United States § 121.

Notes of Decisions

1. Moneys subject to disposition

Word "minerals" as used in section 715a of Title 16 providing for distribution of all revenues received by Secretary of Interior from "sale or other disposition of * * * minerals" in connection with operation of areas of National Wildlife Refuge System would be read restrictively so that such statute would govern distribution of mineral leasing revenues only from acquired land; therefore, distribution of mineral leasing revenues from wildlife refuge which was created by reservation of land in public domain was governed by this chapter. Kenai Peninsula Borough v. Andrus, D.C.Alaska 1977, 436 F.Supp. 288, affirmed 612 F.2d 1210, affirmed 101 S.Ct. 1673, 451 U.S. 259, 68 L.Ed.2d 80.

2. Public lands within section

The Attorney General in advising the President as to whether or not this chapter was applicable to executive order Indian reservations, drew an argument, from the mandatory character of the language of this section for the disposition of all the royalty moneys raised, in support of his opinion that this chapter was not so applicable. 1924, 34 Op.Atty. Gen. 171, 181.

3. Payments to States

New Mexico's claim against the Secretary of the Treasury stating that this chapter requires payment to states of 50% of federal royalties diluted by windfall profits tax was an action against the United States, although Secretary of Treasury was nominal defendant in suit; thus, suit was essentially one for money which government owned and was a claim under the Tucker Act, sections 1346(a)(2) and 1491 of Title 28, over which the Claims Court possessed exclusive jurisdiction. State of N.M. v. Regan, C.A.N.M.1984, 745 F.2d 1318, certiorari denied 105 S.Ct. 2138, 85 L.Ed.2d 496.

While Rattlesnake National Recreation Area and Wilderness Act of 1980, section 460ll-3 of Title 16, authorized exchange of Montana Power Company's lands for equal value of "bidding rights" for competitive Federal coal leases and proposed "Exchange Agreement" would require Treasury to pay State of Montana 50 percent share of total received, including bidding rights, this section provides for remitting "money" received by Treasury and since bidding rights are not money, State payment may not be based on their receipt. 1983, 62 Op.Comp.Gen. 102.

§ 192. Payment of royalties in oil or gas; sale of such oil or gas

All royalty accruing to the United States under any oil or gas lease or permit under this chapter on demand of the Secretary of the Interior shall be paid in oil or gas.

Upon granting any oil or gas lease under this chapter, and from time to time thereafter during said lease, the Secretary of the Interior shall, except whenever in his judgment it is desirable to retain the same for the use of the United States, offer for sale for such period as he may determine, upon notice and advertisement on sealed bids or at public auction, all royalty oil

and gas acc[illegible] or reserved to the United States under such lease. Such advertisement and sale shall reserve to the Secretary of the Interior the right to reject all bids whenever within his judgment the interest of the United States demands; and in cases where no satisfactory bid is received or where the accepted bidder fails to complete the purchase, or where the Secretary of the Interior shall determine that it is unwise in the public interest to accept the offer of the highest bidder, the Secretary of the Interior, within his discretion, may readvertise such royalty for sale, or sell at private sale at not less than the market price for such period, or accept the value thereof from the lessee: *Provided,* That inasmuch as the public interest will be served by the sale of royalty oil to refineries not having their own source of supply for crude oil, the Secretary of the Interior, when he determines that sufficient supplies of crude oil are not available in the open market to such refineries, is authorized and directed to grant preference to such refineries, in the sale of oil under the provisions of this section, for processing or use in such refineries and not for resale in kind, and in so doing may sell to such refineries at private sale at not less than the market price any royalty oil accruing or reserved to the United States under leases issued pursuant to this chapter: *Provided further,* That in selling such royalty oil the Secretary of the Interior may at his discretion prorate such oil among such refineries in the area in which the oil is produced: *Provided, however,* That pending the making of a permanent contract for the sale of any royalty, oil or gas as herein provided, the Secretary of the Interior may sell the current product at private sale, at not less than the market price: *And provided further,* That any royalty, oil, or gas may be sold at not less than the market price at private sale to any department or agency of the United States.

(Feb. 25, 1920, c. 85, § 36, 41 Stat. 451; July 13, 1946, c. 574, 60 Stat. 533.)

Historical Note

1946 Amendment. Act July 13, 1946, inserted first two provisos which were enacted in order to assist small business enterprise by encouraging the operation of oil refineries not having an adequate supply of crude oil.

Outer Continental Shelf; Royalties from Leases. Payment of royalties from mineral leases on submerged lands of outer Continental Shelf, see section 13[illegible] of Title 43, Public Lands.

Cross References

Cancellation or modification of contracts entered into pursuant to this section, see section 192a of this title.

Foreign interests in leases of public lands made under this section, see section 7435 of Title 10, Armed Forces.

Jurisdiction and control over naval petroleum reserves covered by leases granted under this section, see section 7421 of Title 10.

Laws applicable, see sections 275 and 285 of this title.

Preferences to certain oil refineries not having their own stock of oil reserves, ineligibility under this section, see section 192b of this title.

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Payment of royalty in oil or gas, see § 5418.

Code of Federal Regulations

Disposal of government royalty oil, see 30 CFR 208.1 et seq.

Library References

Mines and Minerals ⇐5.1(8).
C.J.S. Mines and Minerals § 128.

Notes of Decisions

1. Construction with other laws

Section 524 of former Title 34 [now covered by section 7421 et seq. of Title 10] dealing entirely with the naval petroleum reserves, conferring upon the Secretary of the Navy wide discretion as to administering the naval reserves, and providing that he may conserve, develop, use, and operate the properties in the naval reserves either directly or by contract, lease, or otherwise, though section 524 of former Title 34 is a rider to an appropriation bill, is complete in itself and independent of other statutes, such as this section and the following sections of this title, dealing with general public land matters. U.S. v. Mammoth Oil Co., C.C.A.Wyo.1926. 14 F.2d 705, affirmed 48 S.Ct. 1, 275 U.S. 13.

Section 524 of former Title 34 [now covered by section 7421 et seq. of Title 10] conferring power upon the Secretary of the Navy to conserve, develop, use, and operate the property in the petroleum naval reserves in his discretion directly or by contract lease, or otherwise, and to use, store, exchange, or sell the oil and gas products thereof and those from all royalty oil from lands within such reserves, provided such sums as have been or may be turned into the United States treasury from royalties on such lands prior to July 1, 1921, not to exceed $500,000 are made available for this purpose until July 1, 1922, limited exchange of royalty oils to not exceeding named sum for fuel oil for current use of navy in existing depots, and did not authorize exchange for new storage facilities, in view of this section, section 191 of this title, requiring all proceeds of sales of royalty oils to be turned into the United States treasury, sections 484 and 487 of Title 31 [now section 3302 of Title 31 and see sections 2208, 2210, 4501 to 4840, 7201 to 7854, and 9501 to 9840 of Title 10], sections 5, 11, and 12 of Title 41, and section 573 of former Title 34 [now covered by sections 2301 and 2303 to 2305 of Title 10]. Pan-American Petroleum Co. v. U.S., C.C.A.Cal.1926, 9 F.2d 761, affirmed 47 S.Ct. 416, 273 U.S. 456, 71 L.Ed. 734.

The geographical preference scheme for purchase of royalty oil from United States Department of Interior under this section is not in conflict with primary policy objectives of subsequently enacted Emergency Petroleum Allocation Act of 1973, section 751 et seq. of Title 15, and thus both statutes could be given simultaneous effect. Laketon Asphalt and Refining, Inc. v. U.S. Dept. of Interior, D.C.Ind. 1979, 476 F.Supp. 668, affirmed 624 F.2d 784.

2. Sale at public bidding

The provision of this section that all royalty accruing to the government under any lease should, on demand of Secretary of Interior, be paid in oil or gas, authorizes Secretary to take royalty oil in kind or in money and he must offer for sale at public bidding or auction only the oil he elects to take in kind, and this section does not apply to oil which he elects to take in money. U.S. v. Ohio Oil Co., C.C.A. Wyo.1947, 163 F.2d 633, certiorari denied 68 S.Ct. 459, 333 U.S. 833, 92 L.Ed. 1117, rehearing denied 68 S.Ct. 738, 333 U.S. 865, 92 L.Ed. 1143.

3. Private sale to preferred refineries—Generally

Use of geographic preference system by the Department of Interior to allocate royalty crude oil under this section was rationally related to purpose of amendment of this section to distribute royalty oil to refineries not having their own source of supply for crude oil. Laketon Asphalt Refining, Inc. v. U.S. Dept. of Interior, C.A.Ind.1980, 624 F.2d 784.

The so-called preference eligible refiners status, based solely on geographic location, for purchase of royalty oil from federal government was not arbitrary and irrational on asserted ground that it bore no relationship to governmental interest in furthering assistance to all eligible refiners including a refiner from outside the geographic area whose prior contracts for purchase of royalty oil were not renewed because it lacked the requisite preference eligibility. Laketon Asphalt and Refining, Inc. v. U.S. Dept. of Interior, D.C.Ind.1979, 476 F.Supp. 668, affirmed 624 F.2d 784.

4. —— Resale of oil in kind

Royalty oil exchange agreements as authorized by the Department of Interior were not contrary to mandate of this chapter that the oil was to be sold to eligible refiners "not for resale in kind." Laketon Asphalt Refining, Inc. v. U.S. Dept. of Interior, C.A.Ind.1980, 624 F.2d 784.

§ 192a. Cancellation or modification of contracts

Where, under any existing contract entered into pursuant to the first proviso in the second paragraph of section 192 of this title, any refinery is required to pay a premium price for the purchase of Government royalty oil, such refinery may, at its option, by written notice to the Secretary of the Interior, elect either—

(1) to terminate such contract, the termination to take place at the end of the calendar month following the month in which such notice is given; or

(2) to retain such contract with the modifications, that (a) the price, on and after March 1, 1949, shall be as defined in the contract, without premium payments, (b) any credit thereby resulting from past premium payments shall be added to the refinery's account, and (c) the Secretary may, at his option, elect to terminate the contract as so modified, such termination to take place at the end of the third calendar month following the month in which written notice thereof is given by the Secretary.

(Sept. 1, 1949, c. 529, § 1, 63 Stat. 682.)

Historical Note

Codification. Section was not enacted as part of Act Feb. 25, 1920, c. 85, 41 Stat. 437, known as the Mineral Lands Leasing Act, which comprises this chapter.

Legislative History. For legislative history and purpose of Act Sept. 1, 1949, see 1949 U.S.Code Cong.Service, p. 1909.

Cross References

Applicability of this section to existing contracts for purchase of government royalty oil entered into after July 13, 1949, see section 192b of this title.
Disposition of receipts derived from leases or permits issued under authority of this section, see section 192c of this title.
Foreign interests in leases of public lands made under this section, see section 7435 of Title 10, Armed Forces.
Jurisdiction and control over naval petroleum reserves covered by leases granted under this section, see section 7421 of Title 10.

Library References

Mines and Minerals ⇐5.1(7), (8).
C.J.S. Mines and Minerals § 128.

§ 192b. Application to contracts

The provisions of sections 192a to 192c of this title shall apply to all existing contracts for the purchase of Government royalty oil entered into after July 13, 1946, and prior to September 1, 1949, irrespective of whether a determination of preference status was made in connection with the award of such contracts, but shall not apply to any such contract which subsequent to its award has been transferred, through the acquisition of stock interests or other transactions, to the ownership or control of a refinery ineligible for a preference under section 192 of this title, and the regulations in force thereunder at the time of such transfer.

(Sept. 1, 1949, c. 529, § 2, 63 Stat. 682.)

Historical Note

Codification. Section was not enacted as part of Act Feb. 25, 1920, c. 85, 41 Stat. 437, known as the Mineral Lands Leasing Act, which comprises this chapter.

Legislative History. For legislative history and purpose of Act Sept. 1, 1949, see 1949 U.S.Code Cong.Service, p. 1909.

Cross References

Disposition of receipts derived from leases or permits issued under authority of this section, see section 192c of this title.
Foreign interests in leases of public lands made under this section, see section 7435 of Title 10, Armed Forces.

Jurisdiction and control over naval petroleum reserves covered by leases granted under this section, see section 7421 of Title 10.

§ 192c. Rules and regulations governing issuance of certain leases; disposition of receipts

The Secretary of the Interior is authorized under general rules and regulations to be prescribed by him to issue leases or permits for the exploration, development, and utilization of the mineral deposits, other than those subject to the provisions of chapter 7 of this title, in those lands added to the Shasta National Forest by the Act of March 19, 1948 (Public Law 449, Eightieth Congress), which were acquired with funds of the United States or lands received in exchange therefor: *Provided,* That any permit or lease of such deposits in lands administered by the Secretary of Agriculture shall be issued only with his consent and subject to such conditions as he may prescribe to insure the adequate utilization of the lands for the purposes set forth in the Act of March 19, 1948: *And provided further,* That all receipts derived from leases or permits issued under the authority of sections 192a to 192c of this title shall be paid into the same funds or accounts in the Treasury and shall be distributed in the same manner as prescribed for other receipts from the lands affected by the lease or permit, the intention of this provision being that sections 192a to 192c of this title shall not affect the distribution of receipts pursuant to legislation applicable to such lands.

(Sept. 1, 1949, c. 529, § 3, 63 Stat. 683.)

Historical Note

References in Text. The Act of March 19, 1948 (Public Law 449, Eightieth Congress), referred to in text, is Act Mar. 19, 1948, c. 139, 62 Stat. 83. See Shasta National Forest codification note set out under sections 486a to 486w of Title 16, Conservation.

Codification. Section was not enacted as part of Act Feb. 25, 1920, c. 85, 41 Stat. 437, known as the Mineral Lands Leasing Act, which comprises this chapter.

Transfer of Functions. Functions of the Secretary of the Interior under this section, with respect to the use and disposal from lands under the jurisdiction of the Secretary of Agriculture of those mineral materials which the Secretary of Agriculture is authorized to dispose of from other lands under his jurisdiction under sections 601 to 604 and 611 to 615 of this title, see Pub.L. 86-509, June 11, 1960, 74 Stat. 205, set out as a Transfer of Functions from Secretary of Interior to Secretary of Agriculture note under section 2201 of Title 7, Agriculture.

Legislative History. For legislative history and purpose of Act Sept. 1, 1949, see 1949 U.S.Code Cong.Service, p. 1909.

Cross References

Applicability of this section to all existing contracts for purchase of government royalty oil entered into after July 13, 1946, see section 192b of this title.
Foreign interests in leases of public lands made under this section, see section 7435 of Title 10, Armed Forces.
Jurisdiction and control over naval petroleum reserves covered by leases granted under this section, see section 7421 of Title 10.
Removal of nonleasable minerals from lands within recreation areas in accordance with this section, see section 460q-5 of Title 16, Conservation.

Code of Federal Regulations

Audits and inspections, see 30 CFR 217.50 et seq.
Leasing, minerals other than oil and gas, see 43 CFR Chap. II, Subchap. C, Group 3500.
Minerals, see 36 CFR 228.1 et seq.

Library References

Mines and Minerals ⇐5.1(8).
C.J.S. Mines and Minerals § 128.

§ 193. Disposition of deposits of coal, and so forth

The deposits of coal, phosphate, sodium, potassium, oil, oil shale, and gas, herein referred to, in lands valuable for such minerals, including lands and deposits in Lander, Wyoming, coal entries numbered 18 to 49, inclusive, shall be subject to disposition only in the form and manner provided in this chapter, except as provided in sections 1716 and 1719 of Title 43, and except as to valid claims existent on February 25, 1920, and thereafter maintained in compliance with the laws under which initiated, which claims may be perfected under such laws, including discovery.

(Feb. 25, 1920, c. 85, § 37, 41 Stat. 451; Feb. 7, 1927, c. 66, § 5, 44 Stat. 1058; Aug. 8, 1946, c. 916, § 11, 60 Stat. 957; Oct. 30, 1978, Pub.L. 95-554, § 4, 92 Stat. 2074.)

Historical Note

Codification. Section was from Act Feb. 25, 1920, in which words now reading "in Lander, Wyoming, coal entries numbered 18 to 49, inclusive," originally read "described in the joint resolution entitled 'Joint resolution authorizing the Secretary of the Interior to permit the continuation of coal mining operations on certain lands in Wyoming,' approved August 12, 1912, (Thirty-seven Statutes at Large p. 1346)." The change was effected by interpolation, in lieu of the reference to the 1912 resolution, the actual description of lands contained in said resolution.

1978 Amendment. Pub.L. 95-554 provided for disposition of minerals as provided in sections 1716 and 1719 of Title 43.

1946 Amendment. Act Aug. 8, 1946, excluded from section 5 of Act Feb. 7, 1927, the incorporation, by reference, of section 181 of this title, and reenacted inclusion of deposits of potassium.

1927 Amendment. Act Feb. 7, 1927, included deposits of potassium.

Legislative History. For legislative history and purpose of Pub.L. 95-554, see 1978 U.S. Code Cong. and Adm.News, p. 4736.

Cross References

Foreign interests in leases of public lands made under this section, see section 7435 of Title 10, Armed Forces.
Jurisdiction and control over naval petroleum reserves covered by leases granted under this section, see section 7421 of Title 10.
Laws applicable, see sections 275 and 285 of this title.

West's Federal Forms

Complaint, see § 1725 and Comment thereunder.

Notes of Decisions

1. Deposits subject to disposition

Under this chapter, the Department of the Interior has the right to grant leases upon placer mining claims to the owners thereof, and when the Department has made findings of fact and spoken with respect to the ownership, or has recognized the ownership of a placer mining act claim for the purpose of granting a lease to the owner, unless the decision is impeached for fraud, jurisdictional irregularities, or on account of being based upon erroneous propositions of law, that adjudication is final, and will not be disturbed by the courts. Hodgson v. Mountain, etc., Oil Co., D.C.Wyo.1924, 297 F. 269. See, also, Hodgson v. Midwest Oil Co., D.C.Wyo.1924, 297 F. 273.

2. Claims existent on Feb. 25, 1920—Generally

"Cash Coal Entry No. 13" was not within the exception in this section precluding Secretary of Interior from disposing of mineral lands, including coal lands, other than by lease, except as to valid claims existent at date of passage of this chapter and thereafter maintained in compliance with the laws under which initiated, where such entry had been cancelled on May 7, 1883 and therefore had not been "existent at the date of the passage" of this chapter and notice had not been filed or the lands paid for as required by law. Southport Land & Commercial Co. v. Udall, C.A.Cal.1967, 371 F.2d 526.

This section has no effect on the right to relocate where the original location was made before the enactment of this section. U.S. ex rel. Krushnic v. West, 1929, 30 F.2d 742, 58 App.D.C. 332, modified on other grounds 50 S.Ct. 103, 280 U.S. 306, 74 L.Ed. 445.

3. —— Discovery requirements

In enacting this chapter, Congress contemplated that preexisting oil shale claims could satisfy discovery requirement of section 22 et seq. of this title. Andrus v. Shell Oil Co., Colo.1980, 100 S.Ct. 1932, 466 U.S. 657, 64 L.Ed.2d 593.

4. —— Work or improvements

Where oil shale mining claims, originally asserted under sections 22, 26, 28 and 29 of this title and sought to be matured under this section had not substantially met conditions of section 28 of this title respecting assessment work, default in doing such assessment work did not inure only to benefit of relocators but, under sections 22, 26, 28 and 29 of this title, claims were subject to cancellation with return of full possessory rights to the government. Hickel v. Oil Shale Corp., Colo.1970, 91 S.Ct. 196, 400 U.S. 48, 27 L.Ed.2d 193, mandate conformed to 370 F.Supp. 108.

Locator of mining claim defaulting in annual assessment work for one year, but resuming assessment work before intervention of any relocation by third parties, was entitled to patent after aggregate of $500 worth of labor had been performed, notwithstanding 30 U.S.C.A. § 193, withdrawing certain mineral deposits from private acquisition, since locator was not by reason thereof subjected to any forfeitures that did not apply to this title, and mere fact that oil shale claims were no longer subject to relocation did not affect the rights of the original locator under existing law. Wilbur v. U.S. ex rel. Krushnic, 1930, 50 S.Ct. 103, 280 U.S. 306, 74 L.Ed. 445.

5. Election as to procedure

Under this section, the owner of a claim maintained and perfected in accordance with the requirements of section 35 of this title has the option to proceed either under section 35 of this title or this chapter. Hodgson v. Midwest Oil Co., D.C.Wyo.1924, 297 F. 273.

Where persons claiming rights under section 35 of this title applied for a lease, they elected to prosecute the claim further by submitting it to the Interior Department under this chapter, and gave up their right to prosecute it under section 35 of this title, especially where they transferred their alleged titles to the government by deed as a condition precedent to receiving a lease. Robbins v. Elk Basin Consol. Petroleum Co., D.C.Wyo.1922, 285 F. 179.

§ 193a. Preference right of United States to purchase coal for Army and Navy; price for coal; civil actions; jurisdiction

The United States shall, at all times, have the preference right to purchase so much of the product of any mine or mines opened upon the lands sold under the provisions of this Act, as may be necessary for the use of the Army and Navy, and at such reasonable and remunerative price as may be fixed by the President; but the producers of any coal so purchased who may be dissatisfied with the price thus fixed shall have the right to prosecute suits against the United States in the United States Claims Court for the recovery of any additional sum or sums they may claim as justly due upon such purchase.

(May 28, 1908, c. 211, § 2, 35 Stat. 424; Apr. 2, 1982, Pub.L. 97-164, Title I, § 160(a)(10), 96 Stat. 48.)

Historical Note

References in Text. This Act, referred to in text, is Act May 28, 1908, c. 211, 35 Stat. 424. Sections 1, 3, and 4 of this Act related to consolidation of claims permitted and the limit of acreage, prohibition against unlawful trusts, etc., and contents of patents, respectively, and are not classified to the Code.

Codification. Section was not enacted as part of Act Feb. 25, 1920, c. 85, 41 Stat. 437, known as the Mineral Lands Leasing Act, which comprises this chapter.

Section was formerly classified to section 453 of Title 48, Territories and Insular Possessions.

1982 Amendment. Pub. L. 97-164 substituted "United States Claims Court" for "Court of Claims".

Effective Date of 1982 Amendment. Amendment by Pub. L. 97-164 effective Oct. 1, 1982, see section 402 of Pub. L. 97-164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

Legislative History. For legislative history and purpose of Pub. L. 97-164, see 1982 U.S. Code Cong. and Adm. News, p. 11.

Cross References

Foreign interests in leases of public lands made under this section, see section 7435 of Title 10, Armed Forces.

Jurisdiction and control over naval petroleum reserves covered by leases granted under this section, see section 7421 of Title 10.

§ 194. Repealed. Pub.L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 644

Historical Note

Section, Acts Feb. 25, 1920, c. 85, § 38, 41 Stat. 451; Mar. 3, 1925, c. 462, 43 Stat. 1145, related to fees and commissions of registers (successors to consolidated offices of registers and receivers), the predecessors of managers.

SUBCHAPTER II—COAL

§ 201. Leases and exploration

(a) Division into tracts; bidding and award; negotiated sales on exercise of right-of-way permits; leases to public agencies; fair market value of leases; leases in National Forests; comprehensive land-use plans; notice of proposed lease offering

(1) The Secretary of the Interior is authorized to divide any lands subject to this chapter which have been classified for coal leasing into leasing tracts of such size as he finds appropriate and in the public interest and which will permit the mining of all coal which can be economically extracted in such tract and thereafter he shall, in his discretion, upon the request of any qualified applicant or on his own motion, from time to time, offer such lands for leasing and shall award leases thereon by competitive bidding: *Provided*, That notwithstanding the competitive bidding requirement of this section, the Secretary may, subject to such conditions which he deems appropriate, negotiate the sale at fair market value of coal the removal of which is necessary and incidental to the exercise of a right-of-way permit issued pursuant to Title V of the Federal Land Policy and Management Act of 1976 [43 U.S.C.A. § 1761 et seq.]. No less than 50 per centum of the total acreage offered for lease by the Secretary in any one year shall be leased under a system of deferred bonus payment. Upon default or cancellation of any coal lease for which bonus payments are due, any unpaid remainder of the bid shall be immediately payable to the United States. A reasonable number of leasing tracts shall be reserved and offered for lease in accordance with this section to public bodies, including Federal agencies, rural electric cooperatives, or nonprofit corporations controlled by any of such entities: *Provided*, That the coal so offered for lease shall be for use by such entity or entities in implementing a definite plan to produce energy for their own use or for sale to their members or customers (except for short-term sales to others). No bid shall be accepted which is less than the fair market value, as determined by the Secretary, of the coal subject to the lease. Prior to his determination of the fair market

value of the coal subject to the lease, the Secretary shall give opportunity for and consideration to public comments on the fair market value. Nothing in this section shall be construed to require the Secretary to make public his judgment as to the fair market value of the coal to be leased, or the comments he receives thereon prior to the issuance of the lease. He is authorized, in awarding leases for coal lands improved and occupied or claimed in good faith, prior to February 25, 1920, to consider and recognize equitable rights of such occupants or claimants.

(2)(A) The Secretary shall not issue a lease or leases under the terms of this chapter to any person, association, corporation, or any subsidiary, affiliate, or persons controlled by or under common control with such person, association, or corporation, where any such entity holds a lease or leases issued by the United States to coal deposits and has held such lease or leases for a period of ten years when such entity is not, except as provided for in section 207(b) of this title, producing coal from the lease deposits in commercial quantities. In computing the ten-year period referred to in the preceding sentence, periods of time prior to August 4, 1976, shall not be counted.

(B) Any lease proposal which permits surface coal mining within the boundaries of a National Forest which the Secretary proposes to issue under this chapter shall be submitted to the Governor of each State within which the coal deposits subject to such lease are located. No such lease may be issued under this chapter before the expiration of the sixty-day period beginning on the date of such submission. If any Governor to whom a proposed lease was submitted under this subparagraph objects to the issuance of such lease, such lease shall not be issued before the expiration of the six-month period beginning on the date the Secretary is notified by the Governor of such objection. During such six-month period, the Governor may submit to the Secretary a statement of reasons why such lease should not be issued and the Secretary shall, on the basis of such statement, reconsider the issuance of such lease.

(3)(A)(i) No lease sale shall be held unless the lands containing the coal deposits have been included in a comprehensive land-use plan and such sale is compatible with such plan. The Secretary of the Interior shall prepare such land-use plans on lands under his responsibility where such plans have not been previously prepared. The Secretary of the Interior shall inform the Secretary of Agriculture of substantial development interest in coal leasing on lands within the National Forest System. Upon receipt of such notification from the Secretary of the Interior, the Secretary of Agriculture shall prepare a comprehensive land-use plan for such areas where such plans have not been previously prepared. The plan of the Secretary of Agriculture shall take into consideration the proposed coal development in these lands: *Provided*, That where the Secretary of the Interior finds that because of non-Federal interest in the surface or because the coal resources are insufficient to justify the preparation costs of a Federal comprehensive land-use plan, the lease sale can be held if the lands containing the coal deposits have been included in either a comprehensive land-use plan prepared by the State within which the lands are located or a land use analysis prepared by the Secretary of the Interior.

(ii) In preparing such land-use plans, the Secretary of the Interior or, in the case of lands within the National Forest System, the Secretary of Agriculture, or in the case of a finding by the Secretary of the Interior that because of non-Federal interests in the surface or insufficient Federal coal, no Federal comprehensive land-use plans can be appropriately prepared,

TITLE 30

MINERAL LANDS AND MINING

CHAPTER 3A—LEASES AND PROSPECTING PERMITS

2. COAL

4. OIL AND GAS

5. OIL SHALE

State entities affected by shale development; other consistent leasing provisions applicable.

(e) Coordination of Federal and State planning processes, minimization of duplication of permits, avoidance of delays, and anticipation and mitigation of impacts of development; specific considerations affecting issuance; recommendations of Governor for guidance of Secretary: balance between national interest and State's interests; reasons for Secretary's determination: written communication to Governor and publication in Federal Register.

1. GENERAL PROVISIONS

§ 181. Lands subject to disposition; persons entitled to benefits; reciprocal privileges; helium rights reserved

Deposits of coal, phosphate, sodium, potassium, oil, oil shale, gilsonite (including all vein-type solid hydrocarbons), or gas, and lands containing such deposits owned by the United States, including those in national forests, but excluding lands acquired under the Appalachian Forest Act, approved March 1, 1911 (36 Stat. 961), and those in incorporated cities, towns, and villages and in national parks and monuments, those acquired under other Acts subsequent to February 25, 1920, and lands within the naval petroleum and oil-shale reserves, except as hereinafter provided, shall be subject to disposition in the form and manner provided by this chapter to citizens of the United States, or to associations of such citizens, or to any corporation organized under the laws of the United States, or of any State or Territory thereof, or in the case of coal, oil, oil shale, or gas, to municipalities. Citizens of another country, the laws, customs, or regulations of which deny similar or like privileges to citizens or corporations of this country, shall not by stock ownership, stock holding, or stock control, own any interest in any lease acquired under the provisions of this chapter.

The term "oil" shall embrace all nongaseous hydrocarbon substances other than those substances leasable as coal, oil shale, or gilsonite (including all vein-type solid hydrocarbons).

The term "combined hydrocarbon lease" shall refer to a lease issued in a special tar sand area pursuant to section 226 of this title after November 16, 1981.

The term "special tar sand area" means (1) an area designated by the Secretary of the Interior's orders of November 20, 1980 (45 FR 76800–76801) and January 21, 1981 (46 FR 6077–6078) as containing substantial deposits of tar sand.

The United States reserves the ownership of and the right to extract helium from all gas produced from lands leased or otherwise granted under the provisions of this chapter, under such rules and regulations as shall be prescribed by the Secretary of the Interior: *Provided further*, That in the extraction of helium from gas produced from such lands it shall be so extracted as to cause no substantial delay in the delivery of gas produced from the well to the purchaser thereof.

(As amended Nov. 16, 1981, Pub.L. 97–78, § 1(1), (4), 95 Stat. 1070.)

1981 Amendment. Pub.L. 97–78 substituted "gilsonite (including all vein-type solid hydrocarbons)," for "native asphalt, solid and semisolid bitumen, and bituminous rock (including oil-impregnated rock or sands from which oil is recoverable only by special treatment after the deposit is mined or quarried)" and added three paragraphs which defined "oil", "combined hydrocarbon lease", and "special tar sand area", respectively.

Short Title of 1981 Amendment. Pub.L. 97–78, Nov. 16, 1981, 95 Stat. 1070, which generally made provision for a combined hydrocarbon lease through an amendment of this section and sections 182, 184, 209, 226, 241, 351, and 352 of this title and the enactment of provisions set out as a note under this section, is popularly known as the Combined Hydrocarbon Leasing Act of 1981.

Short Title of 1976 Amendments. Section 1(a) of Pub.L. 94–377, Aug. 4, 1976, 90 Stat. 1083, as amended by Pub.L. 95–554, § 8, Oct. 30, 1978, 92 Stat. 2075, provided that: "This Act [enacting sections 202a, 208–1 and 208–2 of this title, amending sections 184, 191, 201, 203, 207, 209 and 352 of this title, repealing sections 201–1 and 204 of this title, and enacting provisions set out as notes under sections 184, 201, former section 201–1, 203 and former section 204 of this title] may be cited as the 'Federal Coal Leasing Amendments Act of 1976'."

Savings Provisions. Provisions of Federal Land Policy and Management Act of 1976, Pub.L. 94–579, Oct. 21, 1976, 90 Stat. 2743, not to be construed as permitting any person to place, or allow to be placed, spent oil shale, etc., on any Federal land other than land leased for the recovery of shale oil under the Act of Feb. 25, 1920, section 181 et seq. of this title, see section 701(d) of Pub.L. 94–579, set out as a note under section 1701 of Title 43, Public Lands.

Construction and Applicability of 1981 Amendments. Section 1(10), (11) of Pub. L. 97–78 provided that:

"(10) Nothing in this Act [see Short Title of 1981 Amendment note under this section] shall affect the taxable status of production from tar sand under the Crude Oil Windfall Profit Tax Act of 1980 (Public Law 96–223), reduce the depletion allowance for production from tar sand, or otherwise affect the existing tax status applicable to such production.

"(11) No provision of this Act [see Short Title of 1981 Amendment note under this section] shall apply to national parks, national monuments, or other lands where mineral leasing is prohibited by law. The Secretary of the Interior shall apply the provisions of this Act to the Glen Canyon National Recreation Area, and to any other units of the national park system where mineral leasing is permitted, in accordance with any applicable minerals management plan if the Secretary finds that there will be no resulting significant adverse impacts on the administration of such area, or on other contiguous units of the national park system."

Legislative History. For legislative history and purpose of Pub.L. 97–78, see 1981 U.S.Code Cong. and Adm.News p. 1740.

West's Federal Forms

Complaint for establishment of oil shale claims, see § 1725.

West's Federal Practice Manual

Classification of lands, see § 5572.
Geothermal resources, see § 5467.
Mineral leasing, see § 5391 et seq.
Multiple mineral development, see § 5328.

Notes of Decisions

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4. Purpose

This chapter was intended to promote wise development of natural resources and to obtain for the public reasonable financial returns on assets belonging to the public. Mountain States Legal Foundation v. Andrus, D.C.Wyo.1980, 499 F.Supp. 383.

7. Aliens, disability of

In issuing decision barring Kuwaiti citizens and corporations from acquiring interests in oil and gas leases on public lands under this chapter, Secretary of the Interior departed from clear legislative purpose underlying the alien qualification provision of this chapter, this section being concerned about discrimination against the United States citizens by foreign countries. Santa Fe Intern. Corp. v. Watt, D.C.Del.1984, 591 F.Supp. 929.

Fact that Kuwait owned 200,000 shares of oil company which owned all the shares of another company which owned 26 percent of shares of corporation proposing to construct northern tier oil pipeline did not establish that Kuwait had "stock ownership" in corporation proposing to construct pipeline so as to violate provision of this chapter prohibiting grant of right-of-way across federal lands to foreigners. No Oilport! v. Carter, D.C.Wash.1981, 520 F.Supp. 334.

18. —— Generally

The Department of Interior's 1947 policy directive known as the Krug memorandum, which stated that lands located north of the eleventh standard parallel in Teton County, Wyoming, were withdrawn from leasing, with few exceptions, was not contrary to law but was a proper exercise of the Secretary's discretionary power and authority. Learned v. Watt, D.C.Wyo.1981, 528 F.Supp. 980.

23. Remedies of lessee

Where the United States reserves the mineral estate, together with the right to prospect for, mine, and remove the same, in a grant of the surface estate, there is a servitude laid on the surface estate for the benefit of the mineral estate. Transwestern Pipeline Co. v. Kerr-McGee Corp., C.A.N.M.1974, 492 F.2d 878, certiorari dismissed 95 S.Ct. 691.

Fact that lessee of mineral rights was granted exclusive right and privilege to mine, remove, and dispose of all potassium and associated deposits and fact that surface owner, a pipeline company which had originally been granted a right-of-way to build a compressor and which had subsequently acquired the land had taken the land in both instances subject to all valid existing rights defeated surface owner's claim that Congress intended that pipeline facilities have surface support and that it was entitled to lateral and subjacent support for its compressor station. Id.

Right of lessee of mineral rights to mine land prevailed over right of pipeline company which held the surface rights in a grant from the United States which reserved the mineral estate to the government, and lessee of mineral rights was empowered to remove the minerals and, if necessary, to subside the surface in so doing. Id.

25. Jurisdiction

District court had jurisdiction to determine whether complaint, which was founded on this chapter and regulations promulgated pursuant thereto, stated a claim under federal law upon which relief could be granted. Pullman v. Chorney, D.C.Colo.1981, 509 F.Supp. 162, affirmed 712 F.2d 447.

28a. Interpretation of contracts

Federal law does not govern all questions of contract interpretation involving leases issued under this chapter, but it applies to questions with significant implication for federal policy and which require uniform resolution throughout federal system, and thus federal law governed determination of whether Interior Department improperly rejected individual applicants' offers to lease, after their application cards were drawn, on basis that filing service company's "Amendment and Disclaimer" of illegal standard contract clause was ineffective. Lowey v. Watt, 1982, 684 F.2d 957, 221 U.S.App.D.C. 435.

35. Application for leases

Filing service's disclaimer of any interest it may have had in its client's oil and gas leases was valid for purposes of regulation which requires disclosure of all interests in lease, where filing service's unilateral waiver of its rights was most speedy and cost efficient way to protect interest of its clients, need for change was clear, and filing service was not coerced into relinquishing its rights under contract. Coyer v. Watt, C.A.Wyo.1983, 720 F.2d 626, certiorari denied 104 S.Ct. 2346, 80 L.Ed.2d 820.

Filing service company's "Amendment and Disclaimer" of illegal exclusive sales agency clause contained in standard agreements clients executed before filing applications for noncompetitive leases to be issued pursuant to this chapter was effective to waive any illegal interest of the company in filed lease applications, even though the company received no new consideration for such "Amendment and Disclaimer" and did not give its clients immediate notice of such waiver, and even though the "Amendment and Disclaimer" was conditional in form. Lowey v. Watt, 1982, 684 F.2d 957, 221 U.S.App.D.C. 435.

Right to be fairly and equally considered applies only among competing applicants for federal oil and gas leases filed under provisions of this chapter, and applicants for oil and gas leases on Alaska North Slope land ultimately allocated to Arctic Slope Regional Corporation under Alaska Native Claims Settlement Act of 1971, section 1601 et seq., of Title 43, therefore could not argue that they were not fairly treated vis-a-vis such corporation. Rowe v. U.S., D.C.Alaska 1979, 464 F.Supp. 1060, affirmed in part, reversed in part on other grounds 633 F.2d 799, certiorari denied 101 S.Ct. 2047, 451 U.S. 970, 68 L.Ed.2d 349.

Where applicant for federal oil and gas leases on Alaska North Slope lands filed simultaneous offers within preset deadline, fact that first-year rental payments under such offers were not returnable did not indicate that Department of Interior agreed to be bound to issuance of leases to successful drawees, and Secretary of Interior therefore was not prevented from rejecting offers and allocating lands in question to Arctic Slope Regional Corporation pursuant to Alaska Native Claims Settlement Act of 1971, section 1601 et seq., of Title 43. Id.

§ 182. Lands disposed of with reservation of deposits of coal, and so forth

The provisions of this chapter shall also apply to all deposits of coal, phosphate, sodium, oil, oil shale, gilsonite (including all vein-type solid hydrocarbons), or gas in the lands of the United States, which lands may have been or may be disposed of under laws reserving to the United States such deposits, with the right to prospect for, mine, and remove the same, subject to such conditions as are or may hereafter be provided by such laws reserving such deposits.

(As amended Nov. 16, 1981, Pub.L. 97-78, § 1(1), 95 Stat. 1070.)

1981 Amendment. Pub.L. 97-78 substituted "gilsonite (including all vein-type solid hydrocarbons)," for "native asphalt, solid and semisolid bitumen, and bituminous rock (including oil-impregnated rock or sands from which oil is recoverable only by special treatment after the deposit is mined or quarried)".

Legislative History. For legislative history and purpose of Pub.L. 97-78, see 1981 U.S.Code Cong. and Adm.News, p. 1740.

West's Federal Practice Manual

Applicable lands, see § 5393.

§ 183. Cancellation of prospecting permits

West's Federal Practice Manual

Termination of leases and permits, see § 5401.

§ 184. Limitations on leases held, owned or controlled by persons, associations or corporations

(a) Coal leases or permits, acreage; regulations

(1) No person, association, or corporation, or any subsidiary, affiliate, or persons controlled by or under common control with such person, association, or corporation shall take, hold, own or control at one time, whether acquired directly from the Secretary under this chapter or otherwise, coal leases or permits on an aggregate of more than forty-six thousand and eighty acres in any one State and in no case greater than an aggregate of one hundred thousand acres in the United States: *Provided*, That any person, association, or corporation currently holding, owning, or controlling more than an aggregate of one hundred thousand acres in the United States on the date of enactment of this section shall not be required on account of this section to relinquish said leases or permits: *Provided, further*, That in no case shall such person, association, or corporation be permitted to take, hold, own, or control any further Federal coal leases or permits until such time as their holdings,

ownership, or control of Federal leases or permits has been reduced below an aggregate of one hundred thousand acres within the United States.

(2) Repealed. Pub.L. 94-377, § 11(b), Aug. 4, 1976, 90 Stat. 1090.

[See main volume for text of (b) and (c)]

(d) Oil or gas leases, acreage, Alaska; options, semiannual statements

(1) No person, association, or corporation, except as otherwise provided in this chapter, shall take, hold, own or control at one time, whether acquired directly from the Secretary under this chapter or otherwise, oil or gas leases (including options for such leases or interests therein) on land held under the provisions of this chapter exceeding in the aggregate two hundred forty-six thousand and eighty acres in any one State other than Alaska. *Provided, however*, That acreage held in special tar sand areas shall not be chargeable against such State limitations. In the case of the State of Alaska, the limit shall be three hundred thousand acres in the northern leasing district and three hundred thousand acres in the southern leasing district, and the boundary between said two districts shall be the left limit of the Tanana River from the border between the United States and Canada to the confluence of the Tanana and Yukon Rivers, and the left limit of the Yukon River from said confluence to its principal southern mouth.

[See main volume for text of (2); (e) to (j)]

(k) Unlawful trusts; forfeiture

Except as otherwise provided in this chapter, if any lands or deposits subject to the provisions of this chapter shall be subleased, trusteed, possessed, or controlled by any device permanently, temporarily, directly, indirectly, tacitly, or in any manner whatsoever, so that they form a part of or are in any wise controlled by any combination in the form of an unlawful trust, with the consent of the lessee, optionee, or permittee, or form the subject of any contract or conspiracy in restraint of trade in the mining or selling of coal, phosphate, oil, oil shale, gilsonite (including all vein-type solid hydrocarbons), gas, or sodium entered into by the lessee, optionee, or permittee or any agreement or understanding, written, verbal, or otherwise, to which such lessee, optionee, or permittee shall be a party, of which his or its output is to be or become the subject, to control the price or prices thereof or of any holding of such lands by any individual, partnership, association, corporation, or control in excess of the amounts of lands provided in this chapter, the lease, option, or permit shall be forfeited by appropriate court proceedings.

(l) Rules and regulations; notice to and consultation with Attorney General; application of antitrust laws; definitions

(1) At each stage in the formulation and promulgation of rules and regulations concerning coal leasing pursuant to this chapter, and at each stage in the issuance, renewal, and readjustment of coal leases under this chapter, the Secretary of the Interior shall consult with and give due consideration to the views and advice of the Attorney General of the United States.

(2) No coal lease may be issued, renewed, or readjusted under this chapter until at least thirty days after the Secretary of the Interior notifies the Attorney General of the proposed issuance, renewal, or readjustment. Such notification shall contain such information as the Attorney General may require in order to advise the Secretary of the Interior as to whether such lease would create or maintain a situation inconsistent with the antitrust laws. If the Attorney General advises the Secretary of the Interior that a lease would create or maintain such a situation, the Secretary of the Interior may not issue such lease, nor may he renew or readjust such lease for a period not to exceed one year, as the case may be, unless he thereafter conducts a public hearing on the record in accordance with subchapter II of chapter 5 of Title 5 and finds therein that such issuance, renewal, or readjustment is necessary to effectuate the purposes of this chapter, that it is consistent with the public interest, and that there are no reasonable alternatives consistent with this chapter, the antitrust laws, and the public interest.

(3) Nothing in this chapter shall be deemed to convey to any person, association, corporation, or other business organization immunity from civil or criminal liability, or to create defenses to actions, under any antitrust law.

(4) As used in this subsection, the term "antitrust law" means—

(A) the Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890 (15 U.S.C.A. § 1 et seq.), as amended;

(B) the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914 (15 U.S.C.A. § 12 et seq.), as amended;

(C) the Federal Trade Commission Act (15 U.S.C.A. § 41 et seq.), as amended;

(D) sections 73 and 74 of the Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes", approved August 27, 1894 (15 U.S.C.A. §§ 8 and 9), as amended; or

(E) the Act of June 19, 1936, chapter 592 (15 U.S.C.A. §§ 13, 13a, 13b, and 21a).

(As amended Aug. 4, 1976, Pub.L. 94-377, §§ 11, 16, 90 Stat. 1090, 1091; Nov. 16, 1981, Pub.L. 97-78, § 1(2), (5), 95 Stat. 1070.)

References in Text. The date of enactment of this section, referred to in subsec. (a)(1), probably means the date of enactment of Pub. L. 94-377, which was Aug. 4, 1976.

The Act entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", approved July 2, 1890, as amended, referred to in subsec. (*l*)(4)(A), is Act July 2, 1890, c. 647, 26 Stat. 209, as amended, known as the Sherman Act, which is classified to sections 1 to 7 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1 of Title 15 and Tables volume.

The Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914, as amended, referred to in subsec. (*l*)(4)(B), is Act Oct. 15, 1914, c. 323, 38 Stat. 730, as amended, known as the Clayton Act, and is classified generally to sections 12, 13, 14 to 19, 20, 21, and 22 to 27 of Title 15, Commerce and Trade, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of this Act to the Code, see References in Text note set out under section 12 of Title 15 and Tables volume.

The Federal Trade Commission Act, referred to in subsec. (*l*)(4)(C), is Act Sept. 26, 1914, c. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (section 41 et seq.) of chapter 2 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 58 of Title 15 and Tables volume.

Sections 73 and 74 of the Act entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes", approved August 27, 1894, as amended, referred to in subsec. (*l*)(4)(D), are sections 73 and 74 of Act Aug. 27, 1894, c. 349, 28 Stat. 509, popularly known as the Wilson Tariff Act, and are classified to sections 8 and 9 of Title 15.

The Act of June 19, 1936, chapter 592, referred to in subsec. (*l*)(4)(E), is Act June 19, 1936, c. 592, 49 Stat. 1526, known as the Robinson-Patman Anti-discrimination Act, which enacted sections 13a, 13b, and 21a of Title 15, Commerce and Trade, and amended section 13 of Title 15. For complete classification of this Act to the Code, see Short title note set out under section 13 of Title 15 and Tables volume.

Codification. "Subchapter II of chapter 5 of Title 5" was substituted for "the Administrative Procedure Act" on authority of section 7(b) of Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 631, section 1 of which enacted Title 5, Government Organization and Employees.

1981 Amendment. Subsec. (d)(1). Pub.L. 97-78, § 1(5), added proviso that acreage held in special tar sand areas not be chargeable against State limitations.

Subsec. (k). Pub.L. 97-78, § 1(2), substituted "gilsonite (including all veintype solid hydrocarbons)," for "native asphalt, solid and semisolid bitumen, bituminous rock,".

1976 Amendment. Subsec. (a)(1). Pub.L. 94-377, § 11(e), added "or any subsidiary, affiliate, or persons controlled by or under common control with such person, association, or corporation" preceding "shall take, hold, own or control", "and in no case greater than an aggregate of one hundred thousand acres in the United States" following "in any one State," the proviso relating to the non-relinquishment of leases or permits by an entity owning or controlling more than an aggregate of one hundred thousand acres, and the proviso prohibiting the ownership or control of further Federal leases or permits until reduction to below an aggregate of one hundred thousand acres.

Subsec. (a)(2). Pub.L. 94-377, § 11(b), struck out subsec. (a)(2) providing for application, hearing and granting of additional acreage, not to exceed 5120 acres in any one State, to a person, association or corporation requiring such extra acreage to carry on business economically, and the subsequent reevaluation of such entity's continuing need for such extra acreage.

Subsec. (*l*). Pub.L. 94-377, § 15, added subsec. (*l*).

Transfer of Functions. The functions of the Secretary of the Interior, referred to in subsec. (*l*), to promulgate regulations under this chapter relating to the fostering of competition for Federal leases, the implementation of alternative bidding systems authorized for the award of Federal leases, the establishment of diligence requirements for operations conducted on Federal leases, the setting of rates for production of Federal leases, and the specifying of the procedures, terms, and conditions for the acquisition and disposition of Federal royalty interests taken in kind, were transferred to the Secretary of Energy by section 7152(b) of Title 42, The Public Health and Welfare. Section 7152(b) of Title 42 was repealed by Pub. L. 97-100, Title II, § 201, Dec. 23, 1981, 95 Stat. 1407, and the functions of the Secretary of Energy were returned to the Secretary of the Interior. See House Report No. 97-315, pp. 25, 26, Nov. 5, 1981.

Valid Existing Rights Unaffected by Repeal of Subsec. (a)(2) by Pub.L. 94-377. Section 11(b) of Pub.L. 94-377 provided in part that repeal by such section of subsec. (a)(2) of this section is subject to valid existing rights.

Legislative History. For legislative history and purpose of Pub.L. 94-377, see 1976 U.S.Code Cong. and Adm.News, p. 1943. See, also, Pub.L. 97-78, 1981 U.S.Code Cong. and Adm.News, p. 1740.

West's Federal Forms

Forfeiture proceedings, matters pertaining to, see § 5891 et seq.

West's Federal Practice Manual

Acreage limitations, see § 5395.
Coal acreage, see § 5429.
Lease option limitations, see § 5404.
Phosphate leases and permits, see § 5440.
Sodium leases and permits, see § 5436.

Notes of Decisions

1a. Purpose

The bona fide purchaser amendment to this section was added to protect bona fide purchasers of federal oil and gas leases who acquired their holdings in good faith from the possible consequences of violations of this chapter by their predecessors in title, to foster development of oil and gas resources on public lands and to protect innocent investors and operators. Winkler v. Andrus, C.A.Wyo.1980, 614 F.2d 707, on remand 494 F.Supp. 946.

2. Contract rights generally

Applicants for federal oil and gas leases on Alaska North Slope had no cognizable contract or property interest in such leases or their issuance, and Secretary of Interior therefore was under no requirement to issue or reject such leases before upholding land selections and subsequent conveyances to Arctic Slope Regional Corporation pursuant to Alaska Native Claims Settlement Act of 1971, section 1601 et seq. of Title 43. Rowe v. U.S., D.C.Alaska 1979, 464 F.Supp. 1060, affirmed in part, reversed in part on other grounds 633 F.2d 799, certiorari denied 101 S.Ct. 2047, 451 U.S. 970, 68 L.Ed.2d 349.

2a. Power of Secretary

The Secretary of Interior has broad authority to cancel oil and gas leases for violations of this chapter and regulations thereunder, as well as for administrative errors committed before the lease was issued; however the Secretary's authority is limited by the bona fide purchaser amendment to this section. Winkler v. Andrus, C.A.Wyo.1980, 614 F.2d 707, on remand 494 F.Supp. 946.

3. Private transactions

Defendant was a bona fide purchaser of federal oil and gas lease, without actual or implied knowledge of any facts which would have put him on notice of an unrecorded assignment by his vendor to another, or which would have created a further duty to inquire thereinto, where the price defendant paid was low but not unreasonably so in view of the short remaining lease term and the highly speculative nature of the investment, where the Bureau of Land Management records were not such as to create a duty of further inquiry into matters not of record at the Bureau, and where the vendor's statement that the assignment would be without warranty was not unusual but, in fact, was the expected course of conduct. O'Kane v. Walker, C.A.N.M.1977, 561 F.2d 207.

5. Cancellation of leases

Federal lease could not be cancelled administratively because it was a currently-producing oil and gas lease. Naartex Consulting Corp. v. Watt, 1983, 722 F.2d 779, 232 U.S.App.D.C. 293, certiorari denied 104 S.Ct. 2399.

7. Bona fide purchasers

Interior Board of Land Appeals' conclusion that Bureau of Land Management records did not furnish assignees of first drawees in simultaneous drawings for noncompetitive oil and gas leases on public land with notice that broker for first drawees might have impermissible interest in leases was supported by substantial evidence, and therefore assignees of first drawees were bona fide purchasers and assignee of second drawees could not contest issuance of leases to first drawees, even if first drawees were unqualified by broker's alleged interest and issuance was thus improper. Geosearch, Inc. v. Watt, C.A.Wyo.1983, 721 F.2d 694, certiorari denied 104 S.Ct. 2347, 80 L.Ed.2d 820.

Although actions of the Wyoming state office of the Bureau of Land Management in issuing oil and gas lease to second drawee prior to termination of 90-day appeal period and misdirected efforts of first drawee, whose application was rejected, in filing his appeal in the wrong state and thereafter omitting to file a stay or notice of lis pendens in the proper federal judicial district could not be condoned; such actions did not change the fact that the assignee of the lease, who took the assignment from the second drawee without exercising reasonable prudence, was not a "bona fide purchaser" within the meaning of this section. Winkler v. Andrus, D.C.Wyo.1980, 494 F.Supp. 946.

9. —— Examination of records

In order for an assignee of a federal mineral lease to be protected as a bona fide purchaser, examination of Bureau of Land Management records must be made; however, assignees are not required to go outside the records relating to the particular parcel of land assigned, which records are kept in the Bureau state office. Winkler v. Andrus, C.A.Wyo.1980, 614 F.2d 707, on remand 494 F.Supp. 946.

9a. —— Date of assignment

For purpose of determining whether assignee of oil and gas lease was a bona fide purchaser within the meaning of this section, it was the date of the assignment which was critical as to the bona fides

of the assignee. Winkler v. Andrus, C.A.Wyo. 1980, 614 F.2d 707.

12a. Remand

Appeals from series of orders entered in controversy pertaining to drawing of noncompetitive oil and gas lease offers were remanded to permit district court to take evidence as to whether oil and gas lease assignee's constructive knowledge of the existence of administrative proceeding involving a contest between first drawee and the assignee's assignor, together with knowledge that the 90-day period to commence an action for judicial review had not run out served to disqualify the assignee from the status of bona fide purchaser under this section. Winkler v. Andrus, C.A.Wyo. 1980, 614 F.2d 707.

13. Review

Secretary of Interior's decision to review applications for oil and gas leases on Alaska North Slope lands and allocation of such lands to Arctic Slope Regional Corporation pursuant to Alaska Native Claims Settlement Act of 1971, section 1601 et seq., of Title 43, was well within his discretion and not subject to review in federal district court. Rowe v. U.S., D.C.Alaska 1979, 464 F.Supp. 1060, affirmed in part, reversed in part on other grounds 633 F.2d 799, certiorari denied 101 S.Ct. 2047, 451 U.S. 970, 68 L.Ed.2d 349.

§ 185. Rights-of-way for pipelines through Federal lands

(a) Grant of authority

Rights-of-way through any Federal lands may be granted by the Secretary of the Interior or appropriate agency head for pipeline purposes for the transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom to any applicant possessing the qualifications provided in section 181 of this title in accordance with the provisions of this section.

(b) Definitions

(1) For the purposes of this section "Federal lands" means all lands owned by the United States except lands in the National Park System, lands held in trust for an Indian or Indian tribe, and lands on the Outer Continental Shelf. A right-of-way through a Federal reservation shall not be granted if the Secretary or agency head determines that it would be inconsistent with the purposes of the reservation.

(2) "Secretary" means the Secretary of the Interior.

(3) "Agency head" means the head of any Federal department or independent Federal office or agency, other than the Secretary of the Interior, which has jurisdiction over Federal lands.

(c) Inter-agency coordination

(1) Where the surface of all of the Federal lands involved in a proposed right-of-way or permit is under the jurisdiction of one Federal agency, the agency head, rather than the Secretary, is authorized to grant or renew the right-of-way or permit for the purposes set forth in this section.

(2) Where the surface of the Federal lands involved is administered by the Secretary or by two or more Federal agencies, the Secretary is authorized, after consultation with the agencies involved, to grant or renew rights-of-way or permits through the Federal lands involved. The Secretary may enter into interagency agreements with all other Federal agencies having jurisdiction over Federal lands for the purpose of avoiding duplication, assigning responsibility, expediting review of rights-of-way or permit applications, issuing joint regulations, and assuring a decision based upon a comprehensive review of all factors involved in any right-of-way or permit application. Each agency head shall administer and enforce the provisions of this section, appropriate regulations, and the terms and conditions of rights-of-way or permits insofar as they involve Federal lands under the agency head's jurisdiction.

(d) Width limitations

The width of a right-of-way shall not exceed fifty feet plus the ground occupied by the pipeline (that is, the pipe and its related facilities) unless the Secretary or agency head finds, and records the reasons for his finding, that in his judgment a wider right-of-way is necessary for operation and maintenance after construction, or to protect the environment or public safety. Related facilities include but are not limited to valves, pump stations, supporting structures, bridges, monitoring and communication devices, surge and storage tanks, terminals, roads, airstrips and

campsites, and they need not necessarily be connected or contiguous to the pipe and may be the subjects of separate rights-of-way.

(e) Temporary permits

A right-of-way may be supplemented by such temporary permits for the use of Federal lands in the vicinity of the pipeline as the Secretary or agency head finds are necessary in connection with construction, operation, maintenance, or termination of the pipeline, or to protect the natural environment or public safety.

(f) Regulatory authority

Rights-of-way or permits granted or renewed pursuant to this section shall be subject to regulations promulgated in accord with the provisions of this section and shall be subject to such terms and conditions as the Secretary or agency head may prescribe regarding extent, duration, survey, location, construction, operation, maintenance, use, and termination.

(g) Pipeline safety

The Secretary or agency head shall impose requirements for the operation of the pipeline and related facilities in a manner that will protect the safety of workers and protect the public from sudden ruptures and slow degradation of the pipeline.

(h) Environmental protection

(1) Nothing in this section shall be construed to amend, repeal, modify, or change in any way the requirements of section 102(2)(C) [42 U.S.C.A. § 4332(2)(C)] or any other provision of the National Environmental Policy Act of 1969 [42 U.S.C.A. § 4321 et seq.].

(2) The Secretary or agency head, prior to granting a right-of-way or permit pursuant to this section for a new project which may have a significant impact on the environment, shall require the applicant to submit a plan of construction, operation, and rehabilitation for such right-of-way or permit which shall comply with this section. The Secretary or agency head shall issue regulations or impose stipulations which shall include, but shall not be limited to: (A) requirements for restoration, revegetation, and curtailment of erosion of the surface of the land; (B) requirements to insure that activities in connection with the right-of-way or permit will not violate applicable air and water quality standards nor related facility siting standards established by or pursuant to law; (C) requirements designed to control or prevent (i) damage to the environment (including damage to fish and wildlife habitat), (ii) damage to public or private property, and (iii) hazards to public health and safety; and (D) requirements to protect the interests of individuals living in the general area of the right-of-way or permit who rely on the fish, wildlife, and biotic resources of the area for subsistence purposes. Such regulations shall be applicable to every right-of-way or permit granted pursuant to this section, and may be made applicable by the Secretary or agency head to existing rights-of-way or permits, or rights-of-way or permits to be renewed pursuant to this section.

(i) Disclosure

If the applicant is a partnership, corporation, association, or other business entity, the Secretary or agency head shall require the applicant to disclose the identity of the participants in the entity. Such disclosure shall include where applicable (1) the name and address of each partner, (2) the name and address of each shareholder owning 3 per centum or more of the shares, together with the number and percentage of any class of voting shares of the entity which such shareholder is authorized to vote, and (3) the name and address of each affiliate of the entity together with, in the case of an affiliate controlled by the entity, the number of shares and the percentage of any class of voting stock of that affiliate owned, directly or indirectly, by that entity, and, in the case of an affiliate which controls that entity, the number of shares and the percentage of any class of voting stock of that entity owned, directly or indirectly, by the affiliate.

(j) Technical and financial capability

The Secretary or agency head shall grant or renew a right-of-way or permit under this section only when he is satisfied that the applicant has the technical and financial capability to construct, operate, maintain, and terminate the project for

which the right-of-way or permit is requested in accordance with the requirements of this section.

(k) Public hearings

The Secretary or agency head by regulation shall establish procedures, including public hearings where appropriate, to give Federal, State, and local government agencies and the public adequate notice and an opportunity to comment upon right-of-way applications filed after the date of enactment of this subsection.

(l) Reimbursement of costs

The applicant for a right-of-way or permit shall reimburse the United States for administrative and other costs incurred in processing the application, and the holder of a right-of-way or permit shall reimburse the United States for the cost incurred in monitoring the construction, operation, maintenance, and termination of any pipeline and related facilities on such right-of-way or permit area and shall pay annually in advance the fair market rental value of the right-of-way or permit, as determined by the Secretary or agency head.

(m) Bonding

Where he deems it appropriate the Secretary or agency head may require a holder of a right-of-way or permit to furnish a bond, or other security, satisfactory to the Secretary or agency head to secure all or any of the obligations imposed by the terms and conditions of the right-of-way or permit or by any rule or regulation of the Secretary or agency head.

(n) Duration of grant

Each right-of-way or permit granted or renewed pursuant to this section shall be limited to a reasonable term in light of all circumstances concerning the project, but in no event more than thirty years. In determining the duration of a right-of-way the Secretary or agency head shall, among other things, take into consideration the cost of the facility, its useful life, and any public purpose it serves. The Secretary or agency head shall renew any right-of-way, in accordance with the provisions of this section, so long as the project is in commercial operation and is operated and maintained in accordance with all of the provisions of this section.

(o) Suspension or termination of right-of-way

(1) Abandonment of a right-of-way or noncompliance with any provision of this section may be grounds for suspension or termination of the right-of-way if (A) after due notice to the holder of the right-of-way, (B) a reasonable opportunity to comply with this section, and (C) an appropriate administrative proceeding pursuant to section 554 of Title 5, the Secretary or agency head determines that any such ground exists and that suspension or termination is justified. No administrative proceeding shall be required where the right-of-way by its terms provides that it terminates on the occurrence of a fixed or agreed upon condition, event, or time.

(2) If the Secretary or agency head determines that an immediate temporary suspension of activities within a right-of-way or permit area is necessary to protect public health or safety or the environment, he may abate such activities prior to an administrative proceeding.

(3) Deliberate failure of the holder to use the right-of-way for the purpose for which it was granted or renewed for any continuous two-year period shall constitute a rebuttable presumption of abandonment of the right-of-way: *Provided*, That where the failure to use the right-of-way is due to circumstances not within the holder's control the Secretary or agency head is not required to commence proceedings to suspend or terminate the right-of-way.

(p) Joint use of rights-of-way

In order to minimize adverse environmental impacts and the proliferation of separate rights-of-way across Federal lands, the utilization of rights-of-way in common shall be required to the extent practical, and each right-of-way or permit shall reserve to the Secretary or agency head the right to grant additional rights-of-way or permits for compatible uses on or adjacent to rights-of-way or permit area granted pursuant to this section.

(q) Statutes

No rights-of-way for the purposes provided for in this section shall be granted or renewed across Federal lands except under and subject to the provisions, limitations, and conditions of this section. Any application for a right-of-way filed under any other law prior to the effective date of this provision may, at the applicant's option, be considered as an application under this section. The Secretary or agency head may require the applicant to submit any additional information he deems necessary to comply with the requirements of this section.

(r) Common carriers

(1) Pipelines and related facilities authorized under this section shall be constructed, operated, and maintained as common carriers.

(2)(A) The owners or operators of pipelines subject to this section shall accept, convey, transport, or purchase without discrimination all oil or gas delivered to the pipeline without regard to whether such oil or gas was produced on Federal or non-Federal lands.

(B) In the case of oil or gas produced from Federal lands or from the resources on the Federal lands in the vicinity of the pipeline, the Secretary may, after a full hearing with due notice thereof to the interested parties and a proper finding of facts, determine the proportionate amounts to be accepted, conveyed, transported or purchased.

(3)(A) The common carrier provisions of this section shall not apply to any natural gas pipeline operated by any person subject to regulation under the Natural Gas Act [15 U.S.C.A. § 717 et seq.] or by any public utility subject to regulation by a State or municipal regulatory agency having jurisdiction to regulate the rates and charges for the sale of natural gas to consumers within the State or municipality.

(B) Where natural gas not subject to State regulatory or conservation laws governing its purchase by pipelines is offered for sale, each such pipeline shall purchase, without discrimination, any such natural gas produced in the vicinity of the pipeline.

(4) The Government shall in express terms reserve and shall provide in every lease of oil lands under this chapter that the lessee, assignee, or beneficiary, if owner or operator of a controlling interest in any pipeline or of any company operating the pipeline which may be operated accessible to the oil derived from lands under such lease, shall at reasonable rates and without discrimination accept and convey the oil of the Government or of any citizen or company not the owner of any pipeline operating a lease or purchasing gas or oil under the provisions of this chapter.

(5) Whenever the Secretary has reason to believe that any owner or operator subject to this section is not operating any oil or gas pipeline in complete accord with its obligations as a common carrier hereunder, he may request the Attorney General to prosecute an appropriate proceeding before the Secretary of Energy or Federal Energy Regulatory Commission or any appropriate State agency or the United States district court for the district in which the pipeline or any part thereof is located, to enforce such obligation or to impose any penalty provided therefor, or the Secretary may, by proceeding as provided in this section, suspend or terminate the said grant of right-of-way for noncompliance with the provisions of this section.

(6) The Secretary or agency head shall require, prior to granting or renewing a right-of-way, that the applicant submit and disclose all plans, contracts, agreements, or other information or material which he deems necessary to determine whether a right-of-way shall be granted or renewed and the terms and conditions which should be included in the right-of-way. Such information may include, but is not limited to: (A) conditions for, and agreements among owners or operators, regarding the addition of pumping facilities, looping, or otherwise increasing the pipeline or terminal's throughput capacity in response to actual or anticipated increases in demand; (B) conditions for adding or abandoning intake, offtake, or storage points or facilities; and (C) minimum shipment or purchase tenders.

(s) Right-of-way corridors

In order to minimize adverse environmental impacts and to prevent the proliferation of separate rights-of-way across Federal lands, the Secretary shall, in

consultation with other Federal and State agencies, review the need for a national system of transportation and utility corridors across Federal lands and submit a report of his findings and recommendations to the Congress and the President by July 1, 1975.

(t) Existing rights-of-way

The Secretary or agency head may ratify and confirm any right-of-way or permit for an oil or gas pipeline or related facility that was granted under any provision of law before the effective date of this subsection, if it is modified by mutual agreement to comply to the extent practical with the provisions of this section. Any action taken by the Secretary or agency head pursuant to this subsection shall not be considered a major Federal action requiring a detailed statement pursuant to section 102(2)(C) [42 U.S.C.A. § 4332(2)(C)] of the National Environmental Policy Act of 1970 (Public Law 90-190; 42 U.S.C.A. § 4321).

(u) Limitations on export

Any domestically produced crude oil transported by pipeline over rights-of-way granted pursuant to this section, except such crude oil which is either exchanged in similar quantity for convenience or increased efficiency of transportation with persons or the government of an adjacent foreign state, or which is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign state and reenters the United States, shall be subject to all of the limitations and licensing requirements of the Export Administration Act of 1979 (50 U.S.C.App. 2401 and following) and, in addition, before any crude oil subject to this section may be exported under the limitations and licensing requirements and penalty and enforcement provisions of the Export Administration Act of 1979 the President must make and publish an express finding that such exports will not diminish the total quantity or quality of petroleum available to the United States, and are in the national interest and are in accord with the provisions of the Export Administration Act of 1979: *Provided*, That the President shall submit reports to the Congress containing findings made under this section, and after the date of receipt of such report Congress shall have a period of sixty calendar days, thirty days of which Congress must have been in session, to consider whether exports under the terms of this section are in the national interest. If the Congress within this time period passes a concurrent resolution of disapproval stating disagreement with the President's finding concerning the national interest, further exports made pursuant to the aforementioned Presidential findings shall cease.

(v) State standards

The Secretary or agency head shall take into consideration and to the extent practical comply with State standards for right-of-way construction, operation, and maintenance.

(w) Reports

(1) The Secretary and other appropriate agency heads shall report to the House and Senate Committees on Interior and Insular Affairs annually on the administration of this section and on the safety and environmental requirements imposed pursuant thereto.

(2) The Secretary or agency head shall notify the House and Senate Committees on Interior and Insular Affairs promptly upon receipt of an application for a right-of-way for a pipeline twenty-four inches or more in diameter, and no right-of-way for such a pipeline shall be granted until sixty days (not counting days on which the House of Representatives or the Senate has adjourned for more than three days) after a notice of intention to grant the right-of-way, together with the Secretary's or agency head's detailed findings as to terms and conditions he proposes to impose, has been submitted to such committees, unless each committee by resolution waives the waiting period.

(3) Periodically, but at least once a year, the Secretary of the Department of Transportation shall cause the examination of all pipelines and associated facilities on Federal lands and shall cause the prompt reporting of any potential leaks or safety problems.

(4) The Secretary of the Department of Transportation shall report annually to the President, the Congress, the Secretary of the Interior, and the Secretary of

Energy any potential dangers of or actual explosions, or potential or actual spillage on Federal lands and shall include in such report a statement of corrective action taken to prevent such explosion or spillage.

(x) Liability

(1) The Secretary or agency head shall promulgate regulations and may impose stipulations specifying the extent to which holders of rights-of-way and permits under this chapter shall be liable to the United States for damage or injury incurred by the United States in connection with the right-of-way or permit. Where the right-of-way or permit involves lands which are under the exclusive jurisdiction of the Federal Government, the Secretary or agency head shall promulgate regulations specifying the extent to which holders shall be liable to third parties for injuries incurred in connection with the right-of-way or permit.

(2) The Secretary or agency head may, by regulation or stipulation, impose a standard of strict liability to govern activities taking place on a right-of-way or permit area which the Secretary or agency head determines, in his discretion, to present a foreseeable hazard or risk of danger to the United States.

(3) Regulations and stipulations pursuant to this subsection shall not impose strict liability for damage or injury resulting from (A) an act of war, or (B) negligence of the United States.

(4) Any regulation or stipulation imposing liability without fault shall include a maximum limitation on damages commensurate with the foreseeable risks or hazards presented. Any liability for damage or injury in excess of this amount shall be determined by ordinary rules of negligence.

(5) The regulations and stipulations shall also specify the extent to which such holders shall indemnify or hold harmless the United States for liability, damage, or claims arising in connection with the right-of-way or permit.

(6) Any regulation or stipulation promulgated or imposed pursuant to this section shall provide that all owners of any interest in, and all affiliates or subsidiaries of any holder of, a right-of-way or permit shall be liable to the United States in the event that a claim for damage or injury cannot be collected from the holder.

(7) In any case where liability without fault is imposed pursuant to this subsection and the damages involved were caused by the negligence of a third party, the rules of subrogation shall apply in accordance with the law of the jurisdiction where the damage occurred.

(y) Antitrust laws

The grant of a right-of-way or permit pursuant to this section shall grant no immunity from the operation of the Federal antitrust laws.

(As amended Nov. 16, 1973, Pub.L. 93-153, Title I, § 101; 87 Stat. 576; Aug. 4, 1977, Pub.L. 95-91, Title III, §§ 301(b), 306, Title IV, § 402(a), (b), Title VII, §§ 703, 707, 91 Stat. 578, 581, 583, 584, 606, 607; July 12, 1985, Pub.L. 99-64, Title I, § 123(b), 99 Stat. 156.)

Unconstitutionality of Legislative Veto Provisions

The provisions of section 1254(c)(2) of Title 8, Aliens and Nationality, which authorize a House of Congress, by resolution, to invalidate an action of the Executive Branch, were declared unconstitutional in Immigration and Naturalization Service v. Chadha, 1983, 103 S.Ct. 2764. See similar provisions in subsec. (u) of this section.

References in Text. The National Environmental Policy Act of 1969, referred to in subsec. (h)(1), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (section 4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables volume.

The date of enactment of this subsection, referred to in subsec. (k), the effective date of this provision, referred to in subsec. (q), and the effective date of this subsection, referred to in subsec. (t), probably mean the date of approval of Pub. L. 93-153, which was Nov. 16, 1973.

The Natural Gas Act, referred to in subsec. (r)(3)(A), is Act June 21, 1938, c. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (section 717 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 717w of Title 15 and Tables volume.

The Export Administration Act of 1979, referred to in subsec. (u), is Pub.L. 96-72, Sept. 29,

1979, 93 Stat. 503, as amended, which is classified principally to section 2401 et seq. of the Appendix to Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 2401 of the Appendix to Title 50 and Tables.

The Export Administration Act of 1969, referred to in subsec. (u), is Pub. L. 91-184, Dec. 30, 1969, 83 Stat. 841, as amended, which was formerly classified to sections 2401 to 2413 of Title 50, App., War and National Defense, and was terminated on Sept. 30, 1979, pursuant to the terms of that Act.

The federal antitrust laws, referred to in subsec. (y), are classified generally to section 1 et seq. of Title 15.

1985 Amendment. Subsec. (u). Pub. L. 99-64, § 123(b)(1), substituted "Export Administration Act of 1979 (50 U.S.C.App. 2401 and following)" for "Export Administration Act of 1969 (Act of December 30, 1969; 83 Stat. 841)".

Pub. L. 99-64, § 123(b)(2), substituted "Export Administration Act of 1979" for "Export Administration Act of 1969" following "enforcement provisions of the" and again following "accord with the provisions of the".

1973 Amendment. Pub.L. 93-153 completely rewrote the section substituting 25 subsecs. lettered (a) through (y) covering all aspects of the granting of rights-of-way for pipelines through Federal lands for the former single unlettered paragraph under which rights-of-way of 25 feet on each side of the pipeline could be granted and under which the pipeline was to be operated as a common carrier.

Change of Name. The Committee on Interior and Insular Affairs of the Senate was abolished and replaced by the Committee on Energy and Natural Resources of the Senate, effective Feb. 11, 1977. See Rule XXV of the Standing Rules of the Senate, as amended by Senate Resolution 4 (popularly cited as the "Committee System Reorganization Amendments of 1977"), approved Feb. 4, 1977.

Transfer of Functions. Enforcement functions of Secretary or other official in Department of Interior related to compliance with grants of rights-of-way and temporary use permits for Federal land and such functions of Secretary or other official in Department of Agriculture, insofar as they involve lands and programs under jurisdiction of Department of Agriculture, related to compliance with associated land use permits authorized for and in conjunction with grants of rights-of-way across Federal lands issued under this section with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversary of date of initial operation of the Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§ 102(e), (f), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out in the Appendix to Title 5, Government Organization and Employees.

"Secretary of Energy or Federal Energy Regulatory Commission" was substituted for "Interstate Commerce Commission or Federal Power Commission" in subsec. (r)(5) pursuant to sections 301(b), 306, 402(a), (b), 703, and 707 of Pub.L. 95-91, which are classified to sections 7151(b), 7155, 7172(a), (b), 7293, and 7297 of Title 42, The Public Health and Welfare, and which transferred the functions vested in the Interstate Commerce Commission, and the Chairman and members thereof, relating to the transportation of oil by pipeline to the Secretary of Energy (except for certain functions which were transferred to the Federal Energy Regulatory Commission within the Department of Energy), and terminated the Federal Power Commission and transferred its functions to the Secretary of Energy (except for certain functions which were transferred to the Federal Energy Regulatory Commission).

"Secretary of Energy" was substituted for "Interstate Commerce Commission" in subsec. (w)(4) pursuant to sections 306 and 707 of Pub.L. 95-91, which are classified to sections 7155 and 7297 of Title 42, and which transferred the functions vested in the Interstate Commerce Commission, and the Chairman and members thereof, relating to the transportation of oil by pipeline to the Secretary of Energy (except for certain functions).

Legislative History. For legislative history and purpose of Pub.L. 93-153, see 1973 U.S.Code Cong. and Adm.News, p. 2417. See, also, Pub.L. 99-64, 1985 U.S.Code Cong. and Adm.News, p. 108.

West's Federal Forms

Bonds and undertakings, see §§ 1521 to 1524.

West's Federal Practice Manual

Claims Court—
Jurisdiction, see § 1840.
Limitations and laches, see § 1894.
Rights-of-way for pipe lines, see § 5449.

Notes of Decisions

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1. Construction

The historic authority of the Bureau of Land Management of the Department of Interior to issue special land use permits applies only if the uses to be made thereunder are really temporary and revocable. Wilderness Soc. v. Morton, 1973, 479 F.2d 842, 156 U.S.App.D.C. 121, certiorari denied 93 S.Ct. 1550, 411 U.S. 917, 36 L.Ed.2d 309.

This chapter by the very terms of its preamble could not serve as basis for promulgation of fee regulations by the bureau of land management to reimburse government for costs in processing and monitoring applications of utilities for rights-of-way for electric transmission lines and related equipment across public lands. Public Service Co. of Colorado v. Andrus, D.C.Colo.1977, 433 F.Supp. 144.

2. —— With other laws

Evidence established that if preliminary injunction did not issue to enjoin Secretary from issuance of permit to oil pipeline company to construct haul road and to use gravel from public lands therefor in connection with construction of trans-Alaska pipeline system, conservation organizations would suffer irreparable injury. Wilderness Soc. v. Hickel, D.C.D.C.1970, 325 F.Supp. 422.

2a. Purpose

In enacting the right-of-way limitation of 25 feet on either side of oil pipeline, Congress intended that construction be limited within the right-of-way and did not intend that those building pipelines could make use of land outside statutory right-of-way for construction purposes. Wilderness Soc. v. Morton, 1973, 479 F.2d 842, 156 U.S.App.D.C. 121, certiorari denied 93 S.Ct. 1550, 411 U.S. 917, 36 L.Ed.2d 309.

5. Generally

Administrative practice of the Department of the Interior of granting special land use permits for use of land adjoining statutory rights-of-way in the construction of pipeline across public lands is not entitled to deference in the construction of provision of this section limiting width of rights-of-way for oil pipelines. Wilderness Soc. v. Morton, 1973, 479 F.2d 842, 156 U.S.App.D.C. 121, certiorari denied 93 S.Ct. 1550, 411 U.S. 917, 36 L.Ed.2d 309.

Nothing in provision of this section pertaining to grants of rights-of-way for oil pipelines bars resort to other specific statutory grants of rights-of-way, including rights-of-way for communications facilities. Id.

6a. Retroactive effect

This section which states that an applicant for a right-of-way or permit shall reimburse the United States for administrative and other costs incurred in processing the application and that the holder of a right-of-way or permit shall reimburse the United States for monitoring costs, though it made pipeline service company and oil companies liable for additional costs incurred by the United States in connection with the construction and operation of the trans-Alaska pipeline after the effective date of this section, did not contain even a suggestion that pipeline service company and oil companies were liable to reimburse the United States for costs incurred by it prior to the enactment of this section. Alyeska Pipeline Service Co. v. U.S., 1980, 624 F.2d 1005, 224 Ct.Cl. 240.

Even if this section could be construed as permitting the Secretary of the Interior, without first promulgating regulations, to require pipeline service company and oil companies to reimburse the government for expenses incurred in processing permit to build and operate the trans-Alaska oil pipeline, this section still could not be applied retroactively to cover costs the government incurred before this section was enacted. Id.

7. Common carrier obligations

Pipelines are operated as common carriers and, as such, they are subject to the Interstate Commerce Act, section 1 et seq. of Title 49. Thomas v. Amerada Hess Corp., D.C.Pa.1975, 393 F.Supp. 58.

12. Objections

City which had leased property from federal government through which federal government had granted right-of-way for construction of northern tier oil pipeline could not maintain action for declaratory and injunctive relief. No Oilport v. Carter, D.C.Wash.1981, 520 F.Supp. 334.

13. Determination of facts

Where pipeline construction company made no actual applications to federal and state authorities for permits and rights-of-way covering land on which it proposed to locate variety of facilities for the construction and operation of proposed pipeline, the legality of the permits and rights-of-way was not ripe or suitable for judicial determination and the issue of legality of such permits and rights-of-way would not be considered on appeal from order which denied permanent injunction against the construction of the pipeline. Wilderness Soc. v. Morton, 1973, 479 F.2d 842, 156 U.S.App.D.C. 121, certiorari denied 93 S.Ct. 1550, 411 U.S. 917, 36 L.Ed.2d 309.

13a. Evidence

Issuance of permit for construction of northern tier oil pipeline which involved grant of right-of-way through federal lands was prima facie evidence that Secretary of Interior was satisfied as to applicant's financial capabilities. No Oilport v. Carter, D.C.Wash.1981, 520 F.Supp. 334.

Evidence established that while pipeline companies' applications for permits to build haul road across public lands and to use gravel from public lands for oil pipeline right-of-way 54 feet in width which would run from South Pacific Coast of Alaska to North Arctic Coast constituted request for pipeline right-of-way in excess of width permissible under this section. Wilderness Soc. v. Hickel, D.C.D.C.1970, 325 F.Supp. 422.

14a. Reimbursement

The Secretary did not have authority under this chapter or applicable regulations to assess against a pipeline service company and the oil companies that formed the service company as part of a $12,253,730 fee paid to the Department of the Interior to reimburse the government for its expenses incurred in processing permit to build and operate trans-Alaska oil pipeline. Alyeska Pipeline Service Co. v. U.S., 1980, 624 F.2d 1005, 224 Ct.Cl. 240.

Pipeline service company and oil companies that formed the service company to act as their agent in construction and maintenance of the trans-Alaska oil pipeline were entitled to a refund of a $12,253,730 fee that they paid to the Department of the Interior to reimburse the government for its expenses incurred in processing the permit to build and operate the pipeline even though the

service company and the oil companies had bound themselves contractually in a right-of-way agreement to make the payments. Id.

Bureau of Land Management's assessment of its environmental impact statement costs to applicant for oil pipeline right-of-way in the form of its fees was proper; the charges were not taxes. Sohio Transp. Co. v. U.S., 1984, 5 Cl.Ct. 620, affirmed 766 F.2d 499.

14b. Fair market rental value

Record in proceeding to block construction of northern tier oil pipeline which involved right-of-way through federal lands did not establish any abuse of discretion in determination that fair market rental value of right-of-way was $80,000. No Oilportl v. Carter, D.C.Wash.1981, 520 F.Supp. 334.

16. Permits

Special land use permits may not lawfully be granted by the Department of the Interior for the use of public lands outside the statutory right-of-way for purposes of construction of oil pipelines. Wilderness Soc. v. Morton, 1973, 479 F.2d 842, 156 U.S.App.D.C. 121, certiorari denied 93 S.Ct. 1550, 411 U.S. 917, 36 L.Ed.2d 309.

Bureau of Land Management of the Department of Interior was not entitled to utilize special land use permits as means of avoiding provisions of this section which limit the extent of rights-of-way for oil pipelines. Id.

17. Pumping stations

Pumping stations are part of the "pipeline" within provision of this section relating to rights-of-way over public lands for the transportation of oil or natural gas and the statutory "right-of-way" provides not only for 25 feet on each side of the pipe, but also for 25 feet on each side of facilities which constitute part of "pipeline." Wilderness Soc. v. Morton, 1973, 479 F.2d 842, 156 U.S.App. D.C. 121, certiorari denied 93 S.Ct. 1550, 411 U.S. 917, 36 L.Ed.2d 309.

18. Limitations

Under this section, the Secretary of the Interior may require reimbursement of costs incurred by the government only if he acts pursuant to regulation and only for expenses incurred after the effective date of the amendment; these limitations are intended to give applicants and permittees the opportunity to be heard before the amount of reimbursement is fixed and to have advance notice of the expenses they will incur if their application is granted. Alyeska Pipeline Service Co. v. U.S., 1980, 624 F.2d 1005, 224 Ct.Cl. 240.

Special land use permit for use of 46-foot-wide strip adjacent to and parallel with right-of-way for proposed trans-Alaska oil pipeline was "right-of-way" "for the transportation of oil" within meaning of provision of this section which places limitation on width of rights-of-way across public lands. Wilderness Soc. v. Morton, 1973, 479 F.2d 842, 156 U.S.App.D.C. 121, certiorari denied 93 S.Ct. 1550, 441 U.S. 917, 36 L.Ed.2d 309.

19. Review

Court of appeals would not determine issues relating to adequacy of environmental impact statement in connection with construction of trans-Alaska pipeline where the pipeline could not be constructed because the illegality of special land use permit made it impossible to construct the pipeline until Congress could amend this chapter. Wilderness Soc. v. Morton, 1973, 479 F.2d 842, 156 U.S.App.D.C. 121, certiorari denied 93 S.Ct. 1550, 411 U.S. 917, 36 L.Ed.2d 309.

20. Authorizations

In situations in which Secretary of Interior is authorized to grant or deny right-of-way, as opposed to situations in which an agency head is authorized to grant or deny right-of-way, only Secretary of Interior's consistency determination is relevant. No Oilportl v. Carter, D.C.Wash. 1981, 520 F.Supp. 334.

21. Indian or Indian tribe trusts

Provision of subsec. (b)(1) of this section prohibiting grant of right-of-way over lands held in trust for an Indian or Indian tribe applies to lands held in fee. No Oilportl v. Carter, D.C.Wash. 1981, 520 F.Supp. 334.

Indians' nonexclusionary easement which allows them access to their usual and accustomed fishing sites does not constitute "lands held in trust for an Indian or an Indian tribe" as such phrase is used in provision of subsec. (b)(1) of this section prohibiting granting of right-of-way over Indian lands. Id.

22. Coast Guard lands

Secretary of Interior did not act beyond his jurisdiction in granting right-of-way through portion of Coast Guard station. No Oilportl v. Carter, D.C.Wash.1981, 520 F.Supp. 334.

Statement by Secretary of Department of Transportation that grant of right-of-way through Coast Guard station would necessitate relocation of air rescue station presently located at station did not constitute determination that right-of-way was inconsistent with purpose of Coast Guard station. Id.

Record in proceeding to block construction of northern tier oil pipeline did not establish claim that Secretary of Department of Transportation, who headed agency having jurisdiction over Coast Guard lands, determined that grant of right-of-way through Coast Guard lands would be inconsistent with purposes of Coast Guard station. Id.

23. Plans

Plans submitted in connection with application for right-of-way over federal lands for construction of northern tier oil pipeline were sufficient to comply with requirement that applicant for right-of-way submit plan of construction, operation, and rehabilitation. No Oilportl v. Carter, D.C.Wash. 1981, 520 F.Supp. 334.

24. Situs

Where notice to proceed with construction would not be issued until exact location of right-of-way over federal lands was established, grant of right-of-way before exact location within two-mile corridor was established did not violate provisions of this chapter. No Oilportl v. Carter, D.C.Wash. 1981, 520 F.Supp. 334.

Where right-of-way granted over federal lands was within 50-foot width limitation, there was no violation of limitation even though exact site of right-of-way was not determined within two-mile corridor. Id.

25. Technical and financial capability

In considering application for construction of northern tier oil pipeline which would involve grant of right-of-way through federal lands, Secretary of Interior was not required to make finding as to applicant's technical and financial capability to construct, operate, maintain and terminate project but was required to be satisfied as to applicant's capability to do so. No Oilportl v. Carter, D.C.Wash.1981, 520 F.Supp. 334.

Fact that Secretary of Interior in considering proposal for construction of northern tier oil pipeline which involved grant of right-of-way through federal lands stated that if accepted applicant could not come up with financial backing within one year another proposal would be substituted did not rule out possibility that Secretary was satisfied that applicant had financial capability to complete project. Id.

26. State standards

Record in action to block construction of northern tier oil pipeline which involved right-of-way through federal lands established that there was compliance with requirement that state standards for right-of-way construction be considered. No Oilportl v. Carter, D.C.Wash.1981, 520 F.Supp. 334.

27. Hearings

Secretary of Interior has substantial discretion as to hearings to be conducted in connection with application for right-of-way through federal lands. No Oilportl v. Carter, D.C.Wash.1981, 520 F.Supp. 334.

28. Stipulations

Stipulations imposed in connection with grant of right-of-way over federal lands in connection with construction of northern tier oil pipeline were adequate except as to whether habitats of Indian tribe's treaty fishery had been adequately protected. No Oilportl v. Carter, D.C.Wash. 1981, 520 F.Supp. 334.

§ 186. Reservation of easements or rights-of-way for working purposes; reservation of right to dispose of surface of lands; determination before offering of lease; easement periods

Notes of Decisions

1. Action of Secretary

In absence of any unresolved factual issues, Secretary was not required to hold hearings before deciding to reject applications for federal oil and gas leases on Alaska North Slope Lands and allocating lands to Arctic Slope Regional Corporation pursuant to Alaska Native Claims Settlement Act of 1971. Rowe v. U.S., D.C.Alaska 1979, 464 F.Supp. 1060. Affirmed in part, reversed in part on other grounds 633 F.2d 799, certiorari denied 101 S.Ct. 2047, 451 U.S. 970, 68 L.Ed.2d 349.

Action of Secretary in making "deficiency withdrawals" of Alaska North Slope public lands, and denying applications for federal oil and gas leases as to lands affected by such withdrawals, allocating such lands instead to Arctic Slope Regional Corporation pursuant to Alaska Native Claims Settlement Act of 1971, section 1601 et seq., of Title 43, was not arbitrary, capricious or abuse of Secretary's discretion. Id.

§ 187. Assignment or subletting of leases; relinquishment of rights under leases; conditions in leases for protection of diverse interests in operation of mines, wells, and so forth; State laws not impaired

No lease issued under the authority of this chapter shall be assigned or sublet, except with the consent of the Secretary of the Interior. The lessee may, in the discretion of the Secretary of the Interior, be permitted at any time to make written relinquishment of all rights under such a lease, and upon acceptance thereof be thereby relieved of all future obligations under said lease, and may with like consent surrender any legal subdivision of the area included within the lease. Each lease shall contain provisions for the purpose of insuring the exercise of reasonable diligence, skill, and care in the operation of said property; a provision that such rules for the safety and welfare of the miners and for the prevention of undue waste as may be prescribed by said Secretary shall be observed, including a restriction of the workday to not exceeding eight hours in any one day for underground workers except in cases of emergency; provisions prohibiting the employment of any child under the age of sixteen in any mine below the surface; provisions securing the workmen complete freedom of purchase; provision requiring the payment of wages at least twice a month in lawful money of the United States, and providing proper rules and regulations to insure the fair and just weighing or measurement of the coal mined by each miner, and such other provisions as he may deem necessary to insure the sale of the production of such leased lands to the United States and to the public at reasonable prices, for the protection of the interests of the United States, for the prevention of monopoly, and for the safeguarding of the public welfare. None of such provisions shall be in conflict with the laws of the State in which the leased property is situated.

(As amended Oct. 30, 1978, Pub.L. 95-554, § 5, 92 Stat. 2074.)

1978 Amendment. Pub.L. 95-554 substituted "provisions prohibiting the employment of any child under the age of sixteen in any mine below the surface" for "provisions prohibiting the employment of any boy under the age of sixteen or the employment of any girl or woman, without regard to age, in any mine below the surface".

Legislative History. For legislative history and purpose of Pub.L. 95-554, see 1978 U.S.Code Cong. and Adm.News, p. 4736.

West's Federal Practice Manual
Assignment generally, see § 5400.
General provisions in leases, see § 5401.5.
Oil and gas assignment, see § 5412.
Termination, see § 5401.
Wage and hour statutes, see § 1209.

Notes of Decisions

2. State power

In proviso of this section that none of "such provisions" shall be in conflict with laws of states in which leased property is situated, term "such provisions" means only provisions of preceding sentence, relating to employment practices, prevention of undue waste and monopoly, and diligence requirements, and not including land use planning controls, and, also, proviso assures only that Secretary of Interior shall observe state standards in drafting terms of lease, and proviso is not recognition of concurrent state jurisdiction. Ventura County v. Gulf Oil Corp., C.A.Cal.1979, 601 F.2d 1080, affirmed 100 S.Ct. 1593, 445 U.S. 947, 63 L.Ed.2d 782.

3. Assignments or subleases

Defendant, who declared a unit in order to protect sublessee's equity position by holding leases that were soon to expire and also to prevent wasteful drilling of unnecessary wells, acted in good faith in exercise of pooling option under mineral leases. Gorenflo v. Texaco, Inc., D.C.La. 1983, 566 F.Supp. 722.

§ 187a. Same; oil or gas leases; partial assignments

West's Federal Forms
Bonds and undertakings, see §§ 1521 to 1524.

West's Federal Practice Manual
Assignment, see § 5412.
Extension, see § 5411.

Notes of Decisions

2. Secretary of Interior—Powers and duties

Discretion of whether or not to grant oil and gas leases on public lands is not exercised by Secretary when mere notice is given inviting offers and delineating procedures to be followed. Rowe v. U.S., D.C.Alaska 1979, 464 F.Supp. 1060, affirmed in part, reversed in part on other grounds 633 F.2d 799, certiorari denied 101 S.Ct. 2047, 451 U.S. 970, 68 L.Ed.2d 349.

§ 187b. Same; oil or gas leases; written relinquishment of rights; release of obligations

West's Federal Forms
Bonds and undertakings, see §§ 1521 to 1524.

West's Federal Practice Manual
Assignment, see § 5412.

§ 188. Failure to comply with provisions of lease

(a) Forfeiture

[See main volume for text of (a)]

(b) Cancellation

[See main volume for text of (b)]

(c) Reinstatement

[See main volume for text of (c)]

(d) Reinstatement of terminated oil and gas leases

(1) Where any oil and gas lease issued pursuant to section 226(b) or (c) of this title or the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351 et seq.) has been, or is hereafter, terminated automatically by operation of law under this section for failure to pay on or before the anniversary date the full amount of the rental due, and such rental is not paid or tendered within twenty days thereafter, and it is shown to the satisfaction of the Secretary of the Interior that such failure was justifiable or not due to lack of reasonable diligence on the part of the lessee, or, no matter when the rental is paid after termination, it is shown to the satisfaction of the Secretary that such failure was inadvertent, the Secretary may reinstate the lease as of the date of termination for the unexpired portion of the primary term of the original lease or any extension thereof remaining at the date of termination, and so long thereafter as

oil or gas is produced in paying quantities. In any case where a lease is reinstated under this subsection and the Secretary finds that the reinstatement of such lease (A) occurs after the expiration of the primary term or any extension thereof, or (B) will not afford the lessee a reasonable opportunity to continue operations under the lease, the Secretary may, at his discretion, extend the term of such lease for such period as he deems reasonable, but in no event for more than two years from the date the Secretary authorizes the reinstatement and so long thereafter as oil or gas is produced in paying quantities.

(2) No lease shall be reinstated under paragraph (1) of this subsection unless—

(A) with respect to any lease that terminated under subsection (b) of this section prior to January 12, 1983;

(i) the lessee tendered rental prior to January 12, 1983, and the final determination that the lease terminated was made by the Secretary or a court less than three years before January 12, 1983, and

(ii) a petition for reinstatement together with the required back rental and royalty accruing from the date of termination, is filed with the Secretary on or before the one hundred and twentieth day after January 12, 1983, or

(B) with respect to any lease that terminated under subsection (b) of this section on or after January 12, 1983, a petition for reinstatement together with the required back rental and royalty accruing from the date of termination is filed on or before the earlier of—

(i) sixty days after the lessee receives from the Secretary notice of termination, whether by return of check or by any other form of actual notice, or

(ii) fifteen months after termination of the lease.

(e) Reinstatement conditions

Any reinstatement under subsection (d) of this section shall be made only if these conditions are met:

(1) no valid lease, whether still in existence or not, shall have been issued affecting any of the lands covered by the terminated lease prior to the filing of such petition: *Provided, however,* That after receipt of a petition for reinstatement, the Secretary shall not issue any new lease affecting any of the lands covered by such terminated lease for a reasonable period, as determined in accordance with regulations issued by him;

(2) payment of back rentals and either the inclusion in a reinstated lease issued pursuant to the provisions of section 226(b) of this title of a requirement for future rentals at a rate of not less than $10 per acre per year, or the inclusion in a reinstated lease issued pursuant to the provisions of section 226(c) of this title of a requirement that future rentals shall be at a rate not less than $5 per acre per year, all as determined by the Secretary;

(3)(A) payment of back royalties and the inclusion in a reinstated lease issued pursuant to the provisions of section 226(b) of this title of a requirement for future royalties at a rate of not less than 16⅔ percent computed on a sliding scale based upon the average production per well per day, at a rate which shall be not less than 4 percentage points greater than the competitive royalty schedule then in force and used for royalty determination for competitive leases issued pursuant to such section as determined by the Secretary: *Provided,* That royalty on such reinstated lease shall be paid on all production removed or sold from such lease subsequent to the termination of the original lease;

(B) payment of back royalties and inclusion in a reinstated lease issued pursuant to the provisions of section 226(c) of this title of a requirement for future royalties at a rate not less than 16⅔ percent: *Provided,* That royalty on such reinstated lease shall be paid on all production removed or sold from such lease subsequent to the cancellation or termination of the original lease; and

(4) notice of the proposed reinstatement of a terminated lease, including the terms and conditions of reinstatement, shall be published in the Federal Register at least thirty days in advance of the reinstatement.

A copy of said notice, together with information concerning rental, royalty, volume of production, if any, and any other matter which the Secretary deemed significant in making this determination to reinstate, shall be furnished to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on

Energy and Natural Resources of the Senate at least thirty days in advance of the reinstatement. The lessee of a reinstated lease shall reimburse the Secretary for the administrative costs of reinstating the lease, but not to exceed $500. In addition the lessee shall reimburse the Secretary for the cost of publication in the Federal Register of the notice of proposed reinstatement.

(f) Unpatented oil placer mining claims

Where an unpatented oil placer mining claim validly located prior to February 24, 1920, which has been or is currently producing or is capable of producing oil and gas, has been or is hereafter deemed conclusively abandoned for failure to file timely the required instruments or copies of instruments required by section 1744 of Title 43, and it is shown to the satisfaction of the Secretary that such failure was inadvertent, justifiable, or not due to lack of reasonable diligence on the part of the owner, the Secretary may issue, for the lands covered by the abandoned unpatented oil placer mining claim, a noncompetitive oil and gas lease, consistent with the provisions of section 226(e) of this title, to be effective from the statutory date the claim was deemed conclusively abandoned. Issuance of such a lease shall be conditioned upon:

(1) a petition for issuance of a noncompetitive oil and gas lease, together with the required rental and royalty, including back rental and royalty accruing from the statutory date of abandonment of the oil placer mining claim, being filed with the Secretary—

(A) with respect to any claim deemed conclusively abandoned on or before January 12, 1983, on or before the one hundred and twentieth day after January 12, 1983, or

(B) with respect to any claim deemed conclusively abandoned after January 12, 1983, on or before the one hundred and twentieth day after final notification by the Secretary or a court of competent jurisdiction of the determination of the abandonment of the oil placer mining claim;

(2) a valid lease not having been issued affecting any of the lands covered by the abandoned oil placer mining claim prior to the filing of such petition: *Provided, however,* That after the filing of a petition for issuance of a lease under this subsection, the Secretary shall not issue any new lease affecting any of the lands covered by such abandoned oil placer mining claim for a reasonable period, as determined in accordance with regulations issued by him;

(3) a requirement in the lease for payment of rental, including back rentals accruing from the statutory date of abandonment of the oil placer mining claim, of not less than $5 per acre per year;

(4) a requirement in the lease for payment of royalty on production removed or sold from the oil placer mining claim, including all royalty on production made subsequent to the statutory date the claim was deemed conclusively abandoned, of not less than 12½ percent; and

(5) compliance with the notice and reimbursement of costs provisions of paragraph (4) of subsection (e) of this section but addressed to the petition covering the conversion of an abandoned unpatented oil placer mining claim to a noncompetitive oil and gas lease.

(g) Treatment of reinstated leases

(1) Except as otherwise provided in this section, a reinstated lease shall be treated as a competitive or a noncompetitive oil and gas lease in the same manner as the original lease issued pursuant to section 226(b) or (c) of this title.

(2) Except as otherwise provided in this section, the issuance of a lease in lieu of an abandoned patented oil placer mining claim shall be treated as a noncompetitive oil and gas lease issued pursuant to section 226(c) of this title.

(h) Minimum royalties

The minimum royalty provisions of section 226(j) of this title and the provisions of section 209 of this title shall be applicable to leases issued pursuant to subsections (d) and (f) of this section.

(i) Reduction of royalties

(1) In acting on a petition to issue a noncompetitive oil and gas lease, under subsection (f) of this section or in response to a request filed after issuance of such a lease, or both, the Secretary is authorized to reduce the royalty on such lease if in

his judgment it is equitable to do so or the circumstances warrant such relief due to uneconomic or other circumstances which could cause undue hardship or premature termination of production.

(2) In acting on a petition for reinstatement pursuant to subsection (d) of this section or in response to a request filed after reinstatement, or both, the Secretary is authorized to reduce the royalty in that reinstated lease on the entire leasehold or any tract or portion thereof segregated for royalty purposes if, in his judgment, there are uneconomic or other circumstances which could cause undue hardship or premature termination of production; or because of any written action of the United States, its agents or employees, which preceded, and was a major consideration in, the lessee's expenditure of funds to develop the property under the lease after the rent had become due and had not been paid; or if in the judgment of the Secretary it is equitable to do so for any reason.

(j) Discretion of Secretary

Where, in the judgment of the Secretary of the Interior, drilling operations were being diligently conducted on the last day of the primary term of the lease, and, except for nonpayment of rental, the lessee would have been entitled to extension of his lease, pursuant to section 226—1 of this title, the Secretary of the Interior may reinstate such lease notwithstanding the failure of the lessee to have made payment of the next year's rental, provided the conditions of subparagraphs (1) and (2) of subsection (c) of this section are satisfied.

(As amended Jan. 12, 1983, Pub.L. 97–451, Title IV, § 401, 96 Stat. 2462.)

References in Text. The Mineral Leasing Act for Acquired Lands, referred to in subsec. (d)(1), is Act Aug. 7, 1947, c. 513, 61 Stat. 913, which is classified generally to chapter 7 (section 351 et seq.) of this title. For complete classification of this Act to the Code, see section 351 of this title and Tables volume.

1983 Amendment. Subsec. (d). Pub.L. 97–451 added subsec. (d). Former subsec. (d) was redesignated (j).

Subsecs. (e)–(i). Pub.L. 97–451 added subsecs. (e), (f), (g), (h), and (i).

Subsec. (j). Pub.L. 97–451 redesignated former subsec. (d) as (j).

Legislative History. For legislative history and purposes of Pub.L. 97–451, see 1982 U.S.Code Cong. and Adm.News, p. 4268.

West's Federal Forms

Forfeiture proceedings, matters pertaining to, see § 5891 et seq.

West's Federal Practice Manual

Oil and gas lease termination, see § 5417.
Termination generally, see § 5401.

Notes of Decisions

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2. Cancellations

Federal lease could not be cancelled administratively because it was a currently-producing oil and gas lease. Naartex Consulting Corp. v. Watt, 1983, 722 F.2d 779, 232 U.S.App.D.C. 293, certiorari denied 104 S.Ct. 2399.

11. Liability for rentals

Secretary of Interior did not abuse his discretion in refusing to reinstate oil and gas leases, which were automatically terminated for failure to make timely rental payments, upon finding that lessee, who alleged that a particular employee who was responsible for mailing rental checks and who had satisfactorily performed a task in the past had failed to send in the rental payments on time and falsely told her supervisor that the payments had been mailed, failed to exercise reasonable diligence. Ram Petroleums, Inc. v. Andrus, C.A. Nev.1981, 658 F.2d 1349.

15a. Rules and regulations

Although narrow, Secretary of Interior's interpretation of provision of this section governing reinstatement where late payment of rental was either justifiable or not due to lack of reasonable diligence on part of lessee as being justifiable only where late payment is caused by factors outside lessee's control and as satisfying reasonable diligence standard only where rental payment is mailed sufficiently in advance to account for normal delays in mail delivery was not arbitrary or capricious or abuse of discretion and regulation was properly applied to deny reinstatement although late payment was due solely to employee negligence or misconduct. Ramoco, Inc. v. Andrus, C.A.Utah 1981, 649 F.2d 814, certiorari denied 102 S.Ct. 569, 454 U.S. 1032, 70 L.Ed.2d 475.

17. Reinstatement

Since oil and gas leases issued by United States Bureau of Land Management and state of Wyoming lapsed by their own terms because of failure of debtors in possession to make required delay rental payments the bankruptcy court in proceedings brought under former section 701 et seq. of Title 11 was powerless to order reinstatement. In re Trigg, C.A.N.M.1980, 630 F.2d 1370.

18. State orders

Under this chapter, state communitization order may not bind federally owned land, or extend leases of such land within unit, without consent of Secretary, and, therefore, in absence of approval,

production from other property in unit cannot be attributed to federal property and thereby extend terms of federal oil and gas lease requiring production of oil or gas in paying quantities. Kirkpatrick Oil & Gas Co. v. U. S., C.A.Okl.1982, 675 F.2d 1122.

§ 189. Rules and regulations; boundary lines; State rights unaffected; taxation

Transfer of Functions. The functions of the Secretary of the Interior to promulgate regulations under this chapter relating to the fostering of competition for Federal leases, the implementation of alternative bidding systems authorized for the award of Federal leases, the establishment of diligence requirements for operations conducted on Federal leases, the setting of rates for production of Federal leases, and the specifying of the procedures, terms, and conditions for the acquisition and disposition of Federal royalty interests taken in kind, were transferred to the Secretary of Energy by section 7152(b) of Title 42. The Public Health and Welfare section 7152(b) of Title 42 was repealed by Pub.L. 97-100, Title II, § 201, Dec. 23, 1981, 95 Stat. 1407, and the functions of the Secretary of Energy were returned to the Secretary of the Interior. See House Report No. 97-315, pp. 25, 26, Nov. 5, 1981.

West's Federal Practice Manual
Mineral Leasing Act, see § 5392.

Notes of Decisions

Assignments 7a
Law governing 2a

2a. Law governing

For purposes of state income taxation, federal law was not determinative of the characterization of the interests of nonresidents who, under this chapter, were granted oil and gas leases for federal lands located in Colorado, who assigned their interest to various parties, and who, in consideration therefor, received, inter alia, future overriding royalties. Hagood v. Heckers, 1973, 513 P.2d 208, 182 Colo. 337.

4. State power

Nothing in proviso of this section governing federal mine leases stating that nothing in chapter would be construed or held to affect rights of states or other local authority to exercise any rights which they may have, including right to levy and collect taxes upon improvements, output of mine or other rights, property, or assets of any lessee of United States gives states any power over those lands which they do not already possess. Kirkpatrick Oil & Gas Co. v. U. S., C.A. Okl.1982, 675 F.2d 1122.

Saving clause of this section, preserving to states "any rights which they may have" was express recognition of right states to tax activities of government's lessee pursuant to lease, but did not give states or their subdivisions right to apply local regulations impermissibly conflicting with achievement of congressionally approved use of federal lands. Ventura County v. Gulf Oil Corp., C.A.Cal.1979, 601 F.2d 1080, affirmed 100 S.Ct. 1593, 445 U.S. 947, 63 L.Ed.2d 782.

6. —— Taxation

Even assuming that Montana's coal severance tax may reduce royalty payments to the federal government under leases executed in Montana, this fact alone did not demonstrate that the tax is inconsistent with this chapter; indeed, in this section, Congress expressly authorized the states to impose severance taxes on federal lessees without imposing any limits on the amount of such taxes, and there was nothing in the language or legislative history of this section to support an assertion that Congress intended to maximize and capture through royalties all "economic rents" from the mining of federal coal, and then to divide the proceeds with the state in accordance with formula. Commonwealth Edison Co. v. Montana, Mont.1981, 101 S.Ct. 2946, 453 U.S. 609, 69 L.Ed.2d 884, rehearing denied 102 S.Ct. 889, 453 U.S. 927, 69 L.Ed.2d 1023.

States have the power, under this section, to tax income generated from federal lands under the jurisdiction of the Mineral Leasing Act. Hagood v. Heckers 1973, 513 P.2d 208, 182 Colo. 337.

Lessees of federal lands under this chapter acquired interest in land and such lessees retained an interest in tangible property, for purposes of 1965 Perm.Supp., C.R.S. section 138-1-15 deeming nonresident's income to be derived from Colorado sources if it is attributable to ownership of such property in state, when they transferred their rights in such leases and permitted transferees to extract oil and gas but retained percentage interest in production, notwithstanding lessees' contention that their right to payment from production rested on contract and constituted intangible personal property right. Hagood v. Heckers, 1972, 502 P.2d 961, 31 Colo.App. 172, affirmed 513 P.2d 208.

7a. Assignments

Even assuming that an assignor's right to retain interests upon assignment is more restricted in the instance of federal oil and gas leases than is the case in private lease transfer, such restriction deals with the federal government's relationship with the assignor and the assignee, and is not germane to the state's exercise of its taxing power. Hagood v. Heckers, 1973, 513 P.2d 208, 182 Colo. 337.

§ 190. Oath; requirement; form; blanks

West's Federal Forms
Jurat, see § 1487.

§ 191. Disposition of moneys received

All money received from sales, bonuses, royalties including interest charges collected under the Federal Oil and Gas Royalty Management Act of 1982 [30 U.S.C.A. § 1701 et seq.], and rentals of the public lands under the provisions of this chapter and the Geothermal Steam Act of 1970 [30 U.S.C.A. § 1001 et seq.], notwithstanding the provisions of section 20 thereof [30 U.S.C.A. § 1019], shall be paid into the Treasury of the United States; 50 per centum thereof shall be paid by the Secretary of the Treasury to the State other than Alaska within the boundaries of which the leased lands or deposits are or were located; said moneys paid to any of such States on or after January 1, 1976, to be used by such State and its subdivisions, as the legislature of the State may direct giving priority to those subdivisions of the State socially or economically impacted by development of minerals leased under this chapter, for (i) planning, (ii) construction and maintenance of public facilities, and (iii) provision of public service; and excepting those from Alaska, 40 per centum thereof shall be paid into, reserved, appropriated, as part of the reclamation fund created by the Act of Congress known as the Reclamation Act, approved June 17, 1902, and of those from Alaska, 90 per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof: *Provided*, That all moneys which may accrue to the United States under the provisions of this chapter and the Geothermal Steam Act of 1970 from lands within the naval petroleum reserves shall be deposited in the Treasury as "miscellaneous receipts", as provided by section 7433(b) of Title 10. All moneys received under the provisions of this chapter and the Geothermal Steam Act of 1970 not otherwise disposed of by this section shall be credited to miscellaneous receipts. Payments to States under this section with respect to any moneys received by the United States, shall be made not later than the last business day of the month in which such moneys are warranted by the United States Treasury to the Secretary as having been received, except for any portion of such moneys which is under challenge and placed in a suspense account pending resolution of a dispute. Such warrants shall be issued by the United States Treasury not later than 10 days after receipt of such moneys by the Treasury. Moneys placed in a suspense account which are determined to be payable to a State shall be made not later than the last business day of the month in which such dispute is resolved. Any such amount placed in a suspense account pending resolution shall bear interest until the dispute is resolved.

(As amended Apr. 21, 1976, Pub.L. 94-273, § 6(2), 90 Stat. 377; Aug. 4, 1976, Pub.L. 94-377, § 9, 90 Stat. 1090; Sept. 28, 1976, Pub.L. 94-422, Title III, § 301, 90 Stat. 1323; Oct. 21, 1976, Pub.L. 94-579, Title III, § 317(a), 90 Stat. 2770; Jan. 12, 1983, Pub.L. 97-451, Title I, § 104(a), 111(g), 96 Stat. 2451, 2456.)

References in Text. The Federal Oil and Gas Royalty Management Act of 1982, referred to in text, is Pub.L. 97-451, Jan. 12, 1983, 96 Stat. 2447, which is classified principally to chapter 29 (section 1701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note under section 1701 of this title and Tables volume.

The Geothermal Steam Act of 1970, referred to in text, is Pub.L. 91-581, Dec. 24, 1970, 84 Stat. 1566, which is classified principally to chapter 23 (section 1001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables volume.

The Reclamation Act, referred to in text, is Act June 17, 1902, c. 1093, 32 Stat. 388, as amended, which is classified generally to chapter 12 (section 371 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 371 of Title 43 and Tables volume.

Codification. "Section 7433(b) of Title 10" was substituted for "the Act of June 4, 1920 (41 Stat. 813), as amended June 30, 1938 (52 Stat. 1252)", which had been classified to section 524 of former Title 34, Navy, on authority of section 49(b) of Act Aug. 10, 1956, c. 1041, 70A Stat. 640, section 1 of which enacted Title 10, Armed Forces.

Provisions which authorized the payment of monies to the Territory of Alaska were omitted as superseded by the provisions authorizing the payment of monies to the State of Alaska.

1983 Amendment. Pub.L. 97-451, § 104(a), struck out provision which had directed that moneys received by the Treasury of the United States from sales, bonuses, royalties, interest charges, and rentals of public lands be paid out by the Secretary of the Treasury to the States "as soon as practicable after March 31 and September 30 of each year" and added provisions directing that payments to States be made not later than the last business day of the month in which such moneys are warranted by the United States Treasury to the Secretary as having been received, that warrants be issued by the Treasury not later than 10 days after receipt of the money by the Treasury, that moneys placed in a suspense account which are determined to be payable to a State be made not later than the last business day of the month in which a dispute is resolved, and that amounts placed in a suspense account pending resolution bear interest until the dispute is resolved.

Pub.L. 97-451, § 111(g), inserted reference to interest charges collected under the Federal Oil and Gas Royalty Management Act of 1982.

1976 Amendments. Pub.L. 94-579 substituted provisions setting forth determination of amount, time for payments, and manner of expenditure by the States of all moneys received from sales, etc., under the provisions of this chapter and the Geothermal Steam Act of 1970, and proviso relating to naval petroleum reserve moneys, for provisions setting forth determination of amount and time for payment to the States of all moneys received from sales, etc., under the provisions of this chapter, and provisos relating to naval petroleum reserve moneys, additional moneys from sales, etc., under this chapter and the Geothermal Steam Act of 1970, and expenditure of State oil shale funds.

Pub.L. 94-422 added proviso that all moneys paid to any State from sales, bonuses, royalties, and rentals of oil shale in public lands may be used by any State for planning, construction, and maintenance of public facilities as legislature of State may direct.

Pub.L. 94-377 substituted "40 per centum thereof shall be paid into, reserved" for "52½ per centum thereof shall be paid into, reserved", added "and the Geothermal Steam Act of 1970, notwithstanding the provisions of section 20 thereof" preceding "shall be paid into the Treasury of the United States", "and the Geothermal Steam Act of 1970" preceding "from lands within the naval petroleum reserves" and preceding "not otherwise disposed of by this section", respectively, the proviso relating to the payment of an additional 12½ per centum of all money received from lands under the provisions of this chapter and the Geothermal Steam Act of 1970 to the State within whose boundaries the lands are located, to be used for construction of public facilities, and the proviso relating to the use of funds received by Colorado and Utah under the specified leases.

Pub.L. 94-273 substituted "March" for "December" and "September" for "June".

Effective Date of 1983 Amendment. Amendment by Pub.L. 97-451 applicable with respect to payments received by the Secretary of the Treasury after Oct. 1, 1983, unless the Secretary by rule, prescribes an earlier effective date, see section 104(c) of Pub.L. 97-451, set out as a note under section 1714 of this title.

Funds held by Colorado and Utah from Interior Department Oil Shale Test Leases. Section 317(b) of Pub.L. 94-579 provided that: "Funds now held pursuant to said section 35 [this section] by the States of Colorado and Utah separately from the Department of the Interior oil shale test leases known as C-A; C-B; U-A and U-B shall be used by such States and subdivisions as the legislature of each State may direct giving priority to those subdivisions socially or economically impacted by the development of minerals leased under this Act for (1) planning, (2) construction and maintenance of public facilities, and (3) provision of public services."

Savings Provisions. Amendment by Pub.L. 94-579 not to be construed as terminating any valid lease, permit, patent, etc., existing on Oct. 21, 1976, see note under section 1701 of Title 43, Public Lands.

Legislative History. For legislative history and purpose of Pub.L. 94-273, see 1976 U.S.Code Cong. and Adm.News, p. 690. See, also, Pub.L. 94-377, 1976 U.S.Code Cong. and Adm.News, p. 1943; Pub.L. 94-422, 1976 U.S.Code Cong. and Adm.News, p. 2442; Pub.L. 94-579, 1976 U.S. Code Cong. and Adm.News, p. 6175; Pub.L. 97-451, 1982 U.S.Code Cong. and Adm.News, p. 4268.

Cross References

Reduction of payment for entitlement land by amounts received under this section, see section 6903 of Title 31, Money and Finance.

Notes of Decisions

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1. Construction

Word "minerals" as used in section 715a of Title 16 providing for distribution of all revenues received by Secretary of Interior from "sale or other disposition of * * * minerals" in connection with operation of areas of National Wildlife Refuge System would be read restrictively so that such statute would govern distribution of mineral leasing revenues only from acquired land; therefore, distribution of mineral leasing revenues from wildlife refuge which was created by reservation of land in public domain was governed by this chapter. Kenai Peninsula Borough v. Andrus, D.C. Alaska 1977, 436 F.Supp. 288, affirmed 612 F.2d 1210, affirmed 101 S.Ct. 1673, 451 U.S. 259, 68 L.Ed.2d 80.

2. Standing to sue

Exploration company challenging the granting of oil company's application for oil and gas leases on military lands, as well as state in which such lands were located, had cause of action to challenge the agency action, since exploration company qualified as aggrieved party adversely affected by the challenged agency action, and state could attack allegedly capricious determinations by agency affecting the state's payments under this chapter. Arkla Exploration Co. v. Watt, D.C. Ark.1982, 548 F.Supp. 466.

3. Payment for exchanges

While Rattlesnake National Recreation Area and Wilderness Act of 1980, section 460ll-3 of Title 16, authorized exchange of Montana Power Company's lands for equal value of "bidding rights" for competitive Federal coal leases and proposed "Exchange Agreement" would require Treasury to pay State of Montana 50 percent share of total received, including bidding rights, this section provides for remitting "money" received by Treasury and since bidding rights are not money, State payment may not be based on their receipt. 1983, 62 Op. Comp.Gen. 102.

§ 192. Payment of royalties in oil or gas; sale of such oil or gas

West's Federal Practice Manual

Payment of royalty in oil or gas, see § 5418.

Notes of Decisions

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1. Construction with other laws

The geographical preference scheme for purchase of royalty oil from United States Department of Interior under this section is not in conflict with primary policy objectives of subsequently enacted Emergency Petroleum Allocation Act of 1973, section 751 et seq. of Title [illegible] and thus both statutes could be given simul[illegible] effect. Laketon Asphalt and Refining, [illegible] v. U.S. Dept. of Interior, D.C.Ind.1979, 476 F.Supp. 668, affirmed 624 F.2d 784.

9. Moot matters

Issues raised in action against Department of Interior and its Secretary by corporation which operated refinery and whose application for royalty oil was rejected did not become moot by virtue of transfer of authority to Secretary of Energy to promulgate regulations on the disposition of federal royalty interest. Plateau, Inc. v. Department of Interior, C.A.N.M.1979, 603 F.2d 161.

10. Rules and regulations

Use of geographic preference system by the Department of Interior to allocate royalty crude oil under this section was rationally related to purpose of amendment of this section to distribute royalty oil to refineries not having their own source of supply for crude oil. Laketon Asphalt Refining, Inc. v. U.S. Dept. of Interior, C.A.Ind. 1980, 624 F.2d 784.

Regulation which was adopted by Secretary of Interior and which limited distribution of royalty oil to small business enterprises was invalid. Plateau, Inc. v. Department of Interior, C.A.N.M. 1979, 603 F.2d 161.

11. Arbitrary and capricious determination—Generally

The so-called preference eligible refiners status, based solely on geographic location, for purchase of royalty oil from federal government was not arbitrary and irrational on asserted ground that it bore no relationship to governmental interest in furthering assistance to all eligible refiners including a refiner from outside the geographic area whose prior contracts for purchase of royalty oil were not renewed because it lacked the requisite preference eligibility. Laketon Asphalt and Refining, Inc. v. U.S. Dept. of Interior, D.C.Ind. 1979, 476 F.Supp. 668, affirmed 624 F.2d 784.

11a. —— Burden of proof

In action brought by independent refinery challenging regulations authorizing the Department of Interior to use geographic areas to allocate royalty crude oil under this chapter, refinery failed to carry its burden of showing that the geographic divisions, which had effect of limiting refinery's previously accorded ability to purchase royalty oil, was wholly arbitrary such as to constitute a denial of equal protection. Laketon Asphalt Refining, Inc. v. U.S. Dept. of Interior, C.A.Ind.1980, 624 F.2d 784.

12. Royalty oil exchange agreements

Royalty oil exchange agreements as authorized by the Department of Interior were not contrary to mandate of this chapter that the oil was to be sold to eligible refiners "not for resale in kind." Laketon Asphalt Refining, Inc. v. U.S. Dept. of Interior, C.A.Ind.1980, 624 F.2d 784.

§ 193. Disposition of deposits of coal, and so forth

The deposits of coal, phosphate, sodium, potassium, oil, oil shale, and gas, herein referred to, in lands valuable for such minerals, including lands and deposits in Lander, Wyoming, coal entries numbered 18 to 49, inclusive, shall be subject to disposition only in the form and manner provided in this chapter, except as provided in sections 1716 and 1719 of Title 43, and except as to valid claims existent on February 25, 1920, and thereafter maintained in compliance with the laws under which initiated, which claims may be perfected under such laws, including discovery.

(As amended Oct. 30, 1978, Pub.L. 95-554, § 4, 92 Stat. 2074.)

1978 Amendment. Pub.L. 95-554 provided for disposition of minerals as provided in sections 1716 and 1719 of Title 43.

Legislative History. For legislative history and purpose of Pub.L. 95-554, see 1978 U.S.Code Cong. and Adm.News, p. 4736.

West's Federal Forms

Complaint, see § 1725 and Comment thereunder.

Notes of Decisions

½. Constitutionality

An attempt by the Board of Land Appeals or reviewing court to overrule 1927 decision holding that present development and marketability at a reasonable profit is not necessary for deposits of oil shale, which decision had been ratified by Congress, would be violative of congressional legislative authority and improper. Shell Oil Co. v. Kleppe, D.C.Colo.1977, 426 F.Supp. 894.

3. Exceptions

Token assessment work, or assessment work that does not substantially satisfy requirements of section 2, of this title is not adequate to maintain claims to oil shale lands within meaning of this section. Hickel v. Oil Shale Corp., Colo.1970, 91 S.Ct. 196, 400 U.S. 48, 27 L.Ed.2d 193, mandate conformed to 370 F.Supp. 108.

Decisions that failure to maintain annual assessment work on placer oil shale claims, originally asserted under sections 22, 26, 28, and 29 of this title and sought to be matured under this section, does not require return to the government of full possessory rights to lands must be confined to situations where there had been substantial compliance with assessment work requirements of section 28 of this title. Id.

Every default in assessment work does not cause claim to oil shale lands under sections 22, 26, 28, and 29, of this title, as asserted under this section, to be lost; default, however, might be the equivalent of abandonment. Id.

4. Revocation of claims

Udall v. Oil Shale Corp., 406 F.2d 759 [main volume] reversed 91 S.Ct. 196, 400 U.S. 48, 27 L.Ed.2d 193, mandate conformed to 370 F.Supp. 108.

In enacting this chapter, Congress contemplated that preexisting oil shale claims could satisfy discovery requirement of section 22 et seq. of this title. Andrus v. Shell Oil Co., Colo.1980, 100 S.Ct. 1932, 466 U.S. 657, 64 L.Ed.2d 593.

Where oil shale mining claims, originally asserted under sections 22, 26, 28 and 29 of this title and sought to be matured under this section had not substantially met conditions of section 28 of this title respecting assessment work, default in doing such assessment work did not inure only to benefit of relocators but, under sections 22, 26, 28 and 29 of this title, claims were subject to cancellation with return of full possessory rights to the government. Hickel v. Oil Shale Corp., Colo. 1970, 91 S.Ct. 196, 400 U.S. 48, 27 L.Ed.2d 193, mandate conformed to 370 F.Supp. 108.

6. Jurisdiction of land tribunals

Department of Interior had subject matter jurisdiction over contests involving performance of assessment work on oil shale mining claims, which were originally asserted under sections 22, 26, 28, and 29 of this title and sought to be matured under this section, and which Commissioner had cancelled for failure to perform annual assessment work required under section 193 of this title. Hickel v. Oil Shale Corp., Colo.1970, 91 S.Ct. 196, 400 U.S. 48, 27 L.Ed.2d 193, mandate conformed to 370 F.Supp. 108.

7. Estoppel

Interior Department was estopped from challenging validity of pre-1920 oil shale claims on ground that claims did not constitute discoveries of a valuable mineral deposit where prudent investors detrimentally relied upon the deliberate actions and statements of high government authorities. Shell Oil Co. v. Kleppe, D.C.Colo.1977, 426 F.Supp. 894.

§ 193a. Preference right of United States to purchase coal for Army and Navy; price for coal; civil actions; jurisdiction

The United States shall, at all times, have the preference right to purchase so much of the product of any mine or mines opened upon the lands sold under the provisions of this Act, as may be necessary for the use of the Army and Navy, and at such reasonable and remunerative price as may be fixed by the President; but the producers of any coal so purchased who may be dissatisfied with the price thus fixed shall have the right to prosecute suits against the United States in the United States Claims Court for the recovery of any additional sum or sums they may claim as justly due upon such purchase.

(As amended Apr. 2, 1982, Pub. L. 97-164, Title I, § 160(a)(10), 96 Stat. 48.)

1982 Amendment. Pub. L. 97-164 substituted "United States Claims Court" for "Court of Claims".

Effective Date of 1982 Amendment. Amendment by Pub. L. 97-164 effective Oct. 1, 1982, see section 402 of Pub. L. 97-164, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

Legislative History. For legislative history and purpose of Pub. L. 97-164, see 1982 U.S. Code Cong. and Adm. News, p. 11.

2. COAL

§ 201. Leases and exploration

(a) Division into tracts; bidding and award; negotiated sales on exercise of right-of-way permits; leases to public agencies; fair market value of leases; leases in National Forests; comprehensive land-use plans; notice of proposed lease offering

(1) The Secretary of the Interior is authorized to divide any lands subject to this Chapter which have been classified for coal leasing into leasing tracts of such size as he finds appropriate and in the public interest and which will permit the mining of all coal which can be economically extracted in such tract and thereafter he shall, in his discretion, upon the request of any qualified applicant or on his own motion, from time to time, offer such lands for leasing and shall award leases thereon by

competitive bidding: *Provided*, That notwithstanding the competitive bidding requirement of this section, the Secretary may, subject to such conditions which he deems appropriate, negotiate the sale at fair market value of coal the removal of which is necessary and incidental to the exercise of a right-of-way permit issued pursuant to Title I of the Federal Land Policy and Management Act of 1976 [43 U.S.C.A. § 1761 et seq.]. No less than 50 per centum of the total acreage offered for lease by the Secretary in any one year shall be leased under a system of deferred bonus payment. Upon default or cancellation of any coal lease for which bonus payments are due, any unpaid remainder of the bid shall be immediately payable to the United States. A reasonable number of leasing tracts shall be reserved and offered for lease in accordance with this section to public bodies, including Federal agencies, rural electric cooperatives, or nonprofit corporations controlled by any of such entities: *Provided*, That the coal so offered for lease shall be for use by such entity or entities in implementing a definite plan to produce energy for their own use or for sale to their members or customers (except for short-term sales to others). No bid shall be accepted which is less than the fair market value, as determined by the Secretary, of the coal subject to the lease. Prior to his determination of the fair market value of the coal subject to the lease, the Secretary shall give opportunity for and consideration to public comments on the fair market value. Nothing in this section shall be construed to require the Secretary to make public his judgment as to the fair market value of the coal to be leased, or the comments he receives thereon prior to the issuance of the lease. He is authorized, in awarding leases for coal lands improved and occupied or claimed in good faith, prior to February 25, 1920, to consider and recognize equitable rights of such occupants or claimants.

(2)(A) The Secretary shall not issue a lease or leases under the terms of this Chapter to any person, association, corporation, or any subsidiary, affiliate, or persons controlled by or under common control with such person, association, or corporation, where any such entity holds a lease or leases issued by the United States to coal deposits and has held such lease or leases for a period of ten years when such entity is not, except as provided for in section 207(b) of this title, producing coal from the lease deposits in commercial quantities. In computing the ten-year period referred to in the preceding sentence, periods of time prior to August 4, 1976, shall not be counted.

(B) Any lease proposal which permits surface coal mining within the boundaries of a National Forest which the Secretary proposes to issue under this chapter shall be submitted to the Governor of each State within which the coal deposits subject to such lease are located. No such lease may be issued under this chapter before the expiration of the sixty-day period beginning on the date of such submission. If any Governor to whom a proposed lease was submitted under this subparagraph objects to the issuance of such lease, such lease shall not be issued before the expiration of the six-month period beginning on the date the Secretary is notified by the Governor of such objection. During such six-month period, the Governor may submit to the Secretary a statement of reasons why such lease should not be issued and the Secretary shall, on the basis of such statement, reconsider the issuance of such lease.

(3)(A)(i) No lease sale shall be held unless the lands containing the coal deposits have been included in a comprehensive land-use plan and such sale is compatible with such plan. The Secretary of the Interior shall prepare such land-use plans on lands under his responsibility where such plans have not been previously prepared. The Secretary of the Interior shall inform the Secretary of Agriculture of substantial development interest in coal leasing on lands within the National Forest System. Upon receipt of such notification from the Secretary of the Interior, the Secretary of Agriculture shall prepare a comprehensive land-use plan for such areas where such plans have not been previously prepared. The plan of the Secretary of Agriculture shall take into consideration the proposed coal development in these lands: *Provided*, That where the Secretary of the Interior finds that because of non-Federal interest in the surface or because the coal resources are insufficient to justify the preparation costs of a Federal comprehensive land-use plan, the lease sale can be held if the lands containing the coal deposits have been included in either a comprehensive land-use plan prepared by the State within which the lands are located or a land use analysis prepared by the Secretary of the Interior.

(ii) In preparing such land-use plans, the Secretary of the Interior or, in the case of lands within the National Forest System, the Secretary of Agriculture, or in the

INFORMATION PACKET

House Resources Committee
February 4 & 5, 1987

Arctic National Wildlife Refuge
HJR 7 and HJR 9

Packet contains:

Position statement of Gov. Cowper
Administration Budget request

Maps and texts excerpted from U.S. Interior Department 1002(h) study (draft):

- Study area
- Geology/Oil and Gas
- Caribou movement/use
- Alternatives
- National Interest

"What's Best for Alaska" - Rep. Cotten's Office

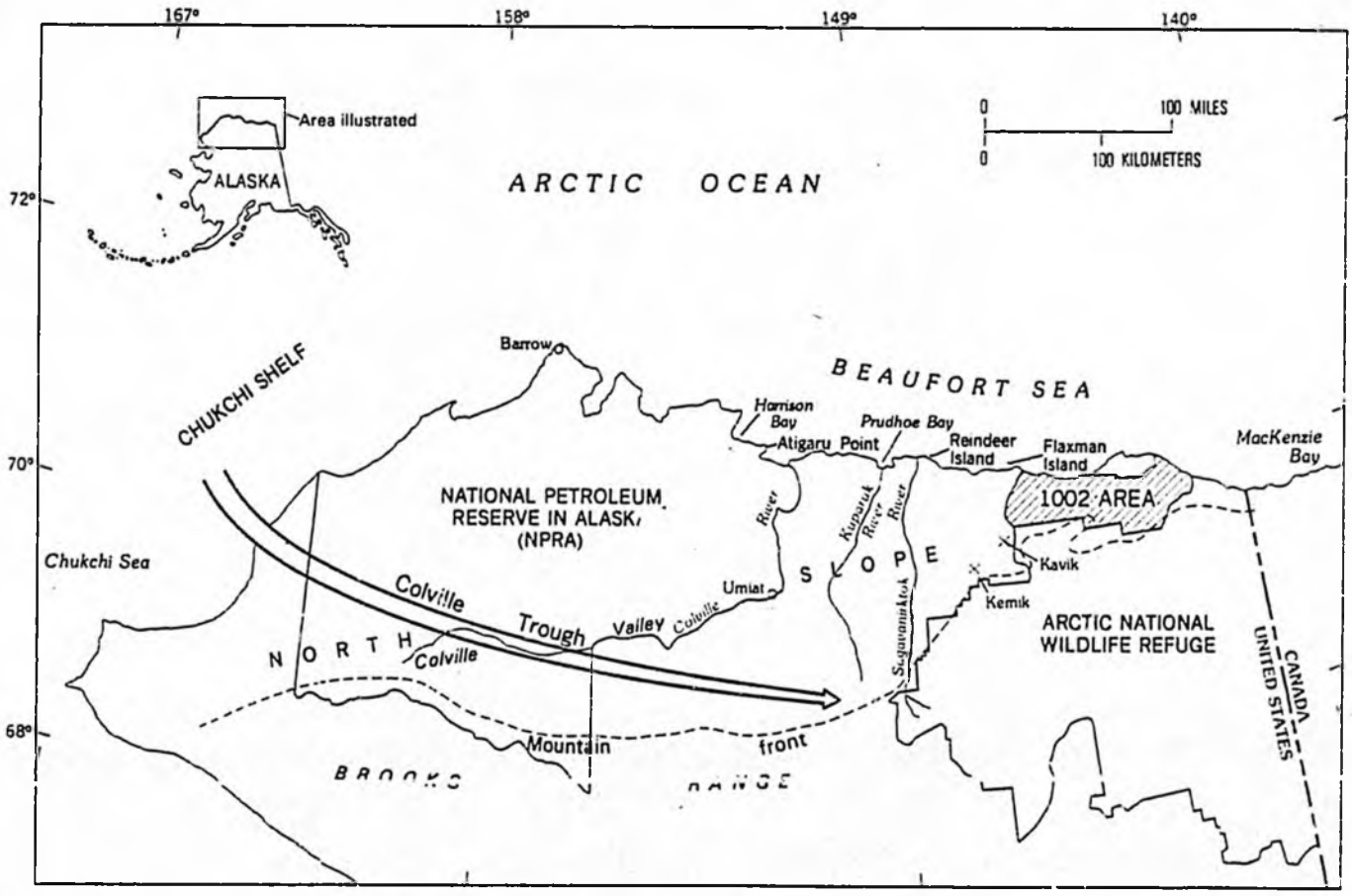


Figure I-1.—Index map of northern Alaska showing location of 1002 area in relation to the Arctic National Wildlife Refuge (Arctic Refuge), the National Petroleum Reserve in Alaska (NPRA), and Prudhoe Bay.

STEVE COWPER
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

STATE OF ALASKA'S OFFICIAL POSITION ON THE ARCTIC NATIONAL WILDLIFE REFUGE

Local Hire

There are two principal ways that the economy of Alaska receives benefits from oil and gas development in the state. The first is through taxes and royalties that are collected by the State of Alaska and then redistributed into the economy in various forms. The second is through salaries and wages that are paid directly to employees and then channeled into the economy through individual expenditures. The second benefit can only be achieved when all or a substantial portion of the employees engaged in work with ANWR are Alaska residents who live and make personal expenditures within the state. It is therefore a matter of prime importance that the State of Alaska support the hiring of Alaska residents on any development with ANWR.

90/10 Revenue Share

Revenues received by the United States from mineral leasing on public lands are distributed under Section 35 of the Mineral Leasing Act of 1920, 30 U.S.C., Statute 191. Other states receive 50 percent of such revenues, with an additional 40 percent of such revenues benefitting those states through projects paid for out of the reclamation fund created in the Reclamation Act, approved June 17, 1902. Because Alaska is not covered by the Reclamation Act and no projects in Alaska are paid for out of the reclamation fund, we receive 90 percent of the revenues. Ten percent of such revenues from all states are deposited in the United States Treasury. This distribution formula applies to both unreserved public lands and reserved public lands in wildlife refuges, including the ANWR.

Congress extended the Mineral Leasing Act to Alaska in Section 28(b) of the Alaska Statehood Act, and considered this one of the "major provisions" of that Act. Provisions of a Statehood Act are obligatory on the United States, and any modification of the revenue distribution formula with respect to public lands (including reserved public lands in wildlife refuges) would probably violate the solemn compact between the United States and Alaska which formed the basis for Alaska's admission to the Union.

Congress incorporated this revenue distribution formula in the Statehood Act because so much land in Alaska was owned by the federal government, and almost one-fourth of it had been included in withdrawals and reservations prior to statehood. Modifying the distribution formula only for the reserved lands in the ANWR would discriminate against Alaska in relation to other states, in effect making Alaska the only state in which public land mineral revenues are not distributed under the Mineral Leasing Act. This would contrast with Congress' traditional practice of treating all states equally.

The Mineral Leasing Act represented a historic tradeoff in the history of public land law. In enacting it, Congress terminated the historic policy of disposing of public lands; instead, it determined to retain the public lands in federal ownership but to use the revenues from those lands for the benefit of the states in which the lands were located. Changing the revenue distribution formula would radically alter this historic compromise on which federal public land administration has been based for decades.

National Advocacy

State relations with the Congress and relevant federal agencies is an important component of any advocacy effort. The all encompassing nature of this issue and the necessity of dedicating large amounts of personnel time indicate that existing resources of the state probably will not be sufficient to effectively advocate the state's position on ANWR at the national level. Acquisition of the services of law and consulting firm in Washington, D.C., pursuant to a carefully structured procurement process, will probably be necessary. It may also be necessary to supplement our Washington, D.C. Governor's Office with another person to engage in day-to-day lobbying, assist in liaison with Washington, D.C. interest groups, attend hearings and meetings, help coordinate various elements of the Washington, D.C. advocacy program, and maintain communications with agency personnel and others in Alaska.

The Department of the Interior's "1002 Report"

Congress is to consider whether the coastal plain of the ANWR ought to be open for oil and gas exploration, development, and production. We concur with the finding of the Department of the Interior's 1002 report that there is substantial oil and gas potential in the coastal plain and that exploration should proceed to determine the extent of that potential. Given current world oil consumption trends, oil under the coastal plain may soon be needed to meet America's demands and help ensure its energy security.

The development of the coastal plain will alter the environment, and to some degree affect the Porcupine Caribou herd. This herd, which numbers some 180,000 animals, annually migrates between Canada's Northwest Territories and Alaska's arctic coastal plain where it spends a portion of each summer. The Porcupine herd, the second largest in the U.S., uses the coastal plain as its calving area. Therefore, any oil and gas exploration there must be done in a manner that is consistent with the chief purpose of the refuge - preservation of wildlife values.

Similarly, we are concerned about the potential impacts to land, air, and water quality, including the proper disposal of waste products that result from drilling activities. Our past experience in Prudhoe Bay and other North Slope petroleum developments will be helpful in determining appropriate measures to avoid potential problems. However, the draft 1002 report does not adequately address these environmental issues.

The state will be providing specific comments and recommendations to the Secretary of the Interior regarding the 1002 report. The Department of Interior's deadline for providing those comments is February 6, 1987.

BUDGET REQUIREMENTS

The following budget requests/needs were identified by the indicated agency as being necessary to effectively deal with various aspects of ANWR decision making. This budget request would be presented to the Legislature as a request by the Governor's Office for a supplemental appropriation.

Department of Law

- FY 87

Three trips to Washington, D.C., to consult with Washington officials (air fare $1,204, per diem $558).	$5,186
Outside counsel with Charles Meyers of Gibson, Dunn & Crutcher, author of Williams & Meyers, Oil & Gas Law. (This contract would continue into FY 88).	$25,000

- FY 88

Based on the ANILCA experience, an equivalent of ten trips to Washington, D.C., would likely be necessary.	$17,620
TOTAL	$47,806

Department of Natural Resources

- FY 87

Three trips to Washington, D.C., to consult with Washington officials (air fare $1,204, per diem $558).	$5,186
Charter flights for appraisal staff to field inspect @ 900,000 acres of state land (selected and TA's).	$12,500
Aerial photos, USGS maps, printing, reproductions, films, etc., for land appraisal work.	$1,500
Seven trips from Anchorage to Juneau for DLWM staff to participate in legislative briefings, interagency discussion, etc. (air fare $328, per diem $210).	$3,766

- FY 88

Three trips to Washington, D.C., to consult with Washington officials to work on land exchanges.	$5,186
Seven trips from Anchorage to Juneau for DLWM and DOG staff to participate in legislative briefings, interagency discussions, etc.	$3,766
Title litigation reports, insurance, reproductions, printings.	$2,500
TOTAL	$34,404

Department of Fish and Game

- FY 87

Three trips to Washington, D.C., to consult with Washington officials (air fare $1,204, per diem $558).	$5,186

- FY 88

Three trips to Washington, D.C., to consult with Washington officials to work on land exchanges.	$5,186
TOTAL	$10,372

Department of Environmental Conservation

- FY 87

Two full time equivalents at the Environmental Engineer III level will be needed. One would serve as the prime organizer and reviewer. The second would take the lead in preparing description of past management practices. Staff in all areas of the agency would be drawn upon as well. Both positions would be stationed in Fairbanks. The cost per position is approximately $70,000 per year (including salary and associated costs). This can be prorated for FY 87, depending on a starting date.	$140,000
Two trips to ANWR per year for field work.	$4,000
Six meetings in Anchorage per year to consult with regional staff.	$1,500

Four trips to Washington, D.C., for technical consultations with Washington officials.	$5,186
TOTAL	$150,686

Governor's Office, Washington, D.C.

- FY 87

Full-time position to lobby, assist in liaison with Washington, D.C., interest groups, attend hearings and meetings, help coordinate various elements of an advocacy program, and maintain contact with agency personnel and others in Alaska.	$40,000
Lobbying firm (eight months effort @ $9,000 per month).	$72,000
Public relations/media firm (eight months effort @ $9,000 per month).	$72,000
TOTAL	$184,000

In summary based on input from the indicated agency, the following additional money would be needed for the state to deal effectively with the various aspects of ANWR:

FY 87 Supplemental	Governor's Office	$184,000
	Law	30,186
	DNR	22,952
	DFG	5,186
	DEC	150,686
	TOTAL	$393,010

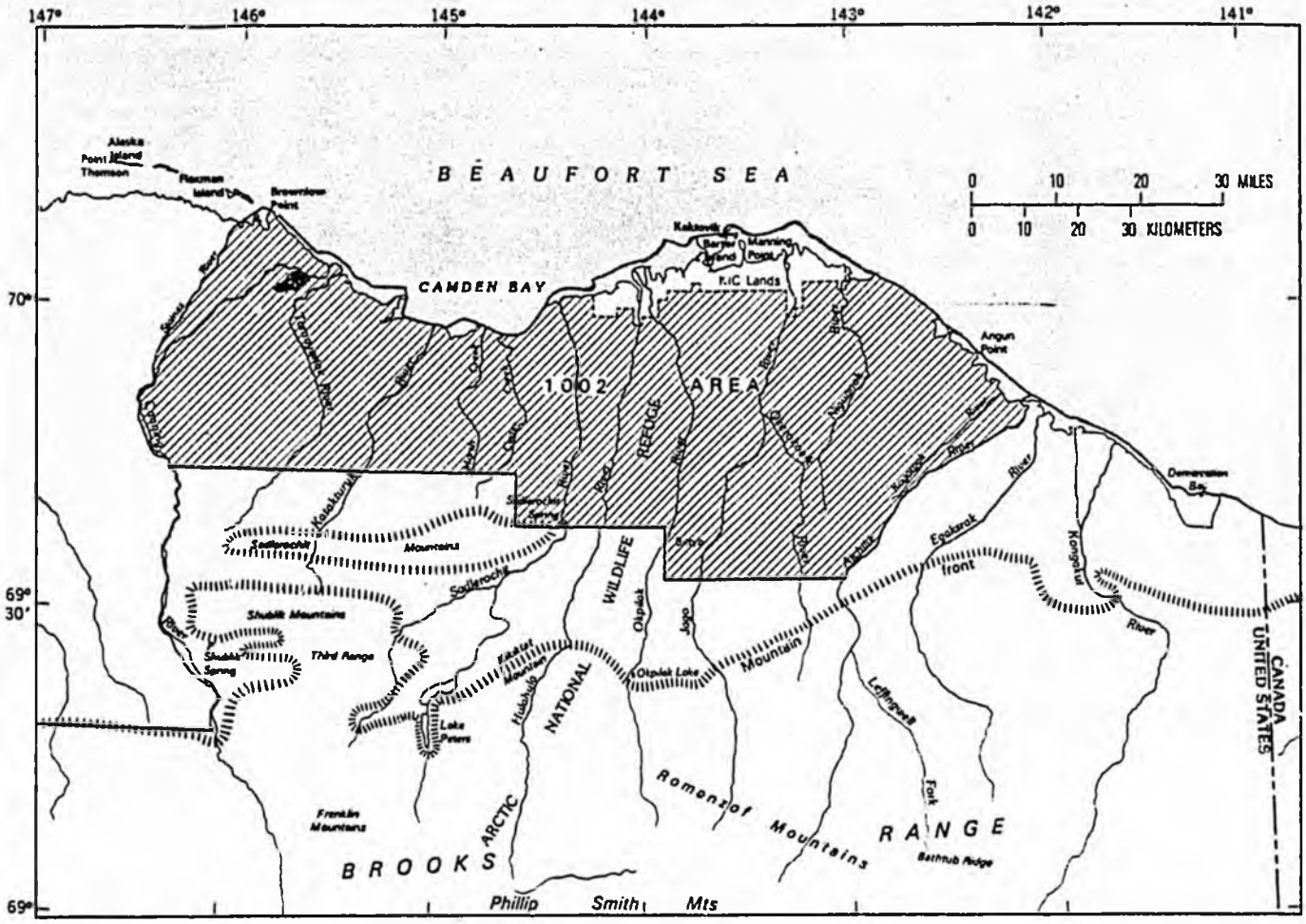


Figure II-1.—Map of northeastern Alaska showing the 1002 area and important nearby geographic features.

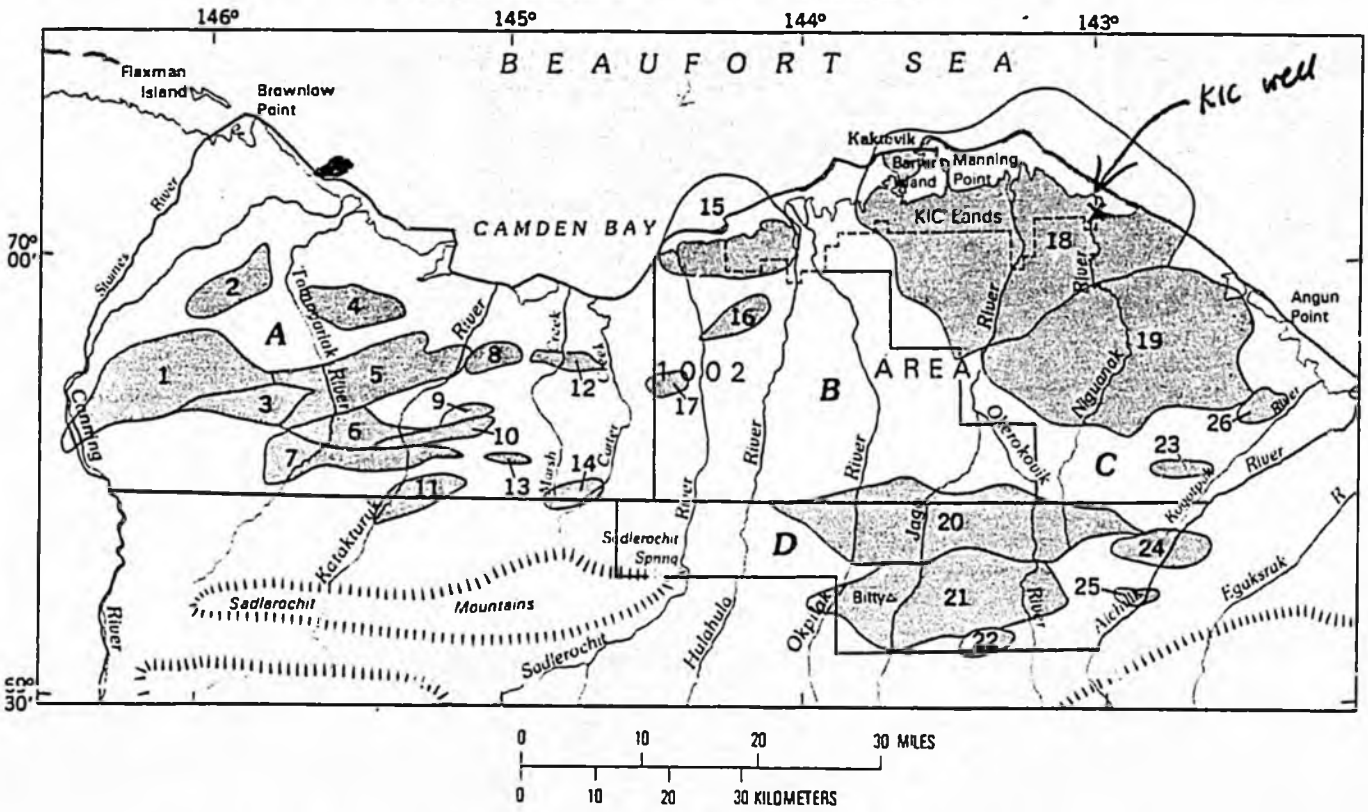


Figure III-1.—Seismically mapped prospects (1-26) and resource blocks (A-D) in the 1002 area.

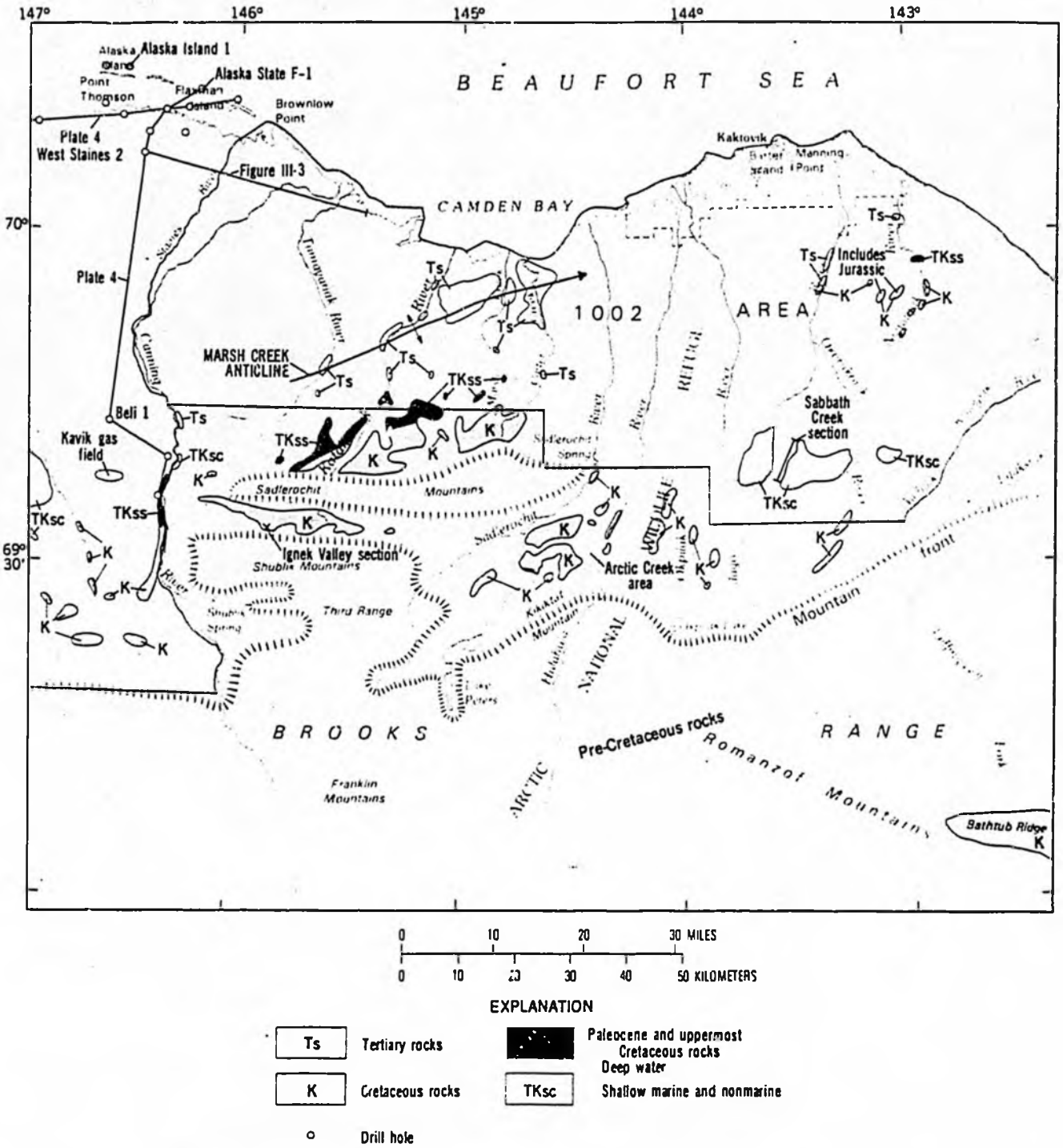


Figure III-3.—Map of the 1002 area and adjacent mountains showing locations of Cretaceous and Tertiary outcrops and lines of sections of figure III-8 and plate 4.

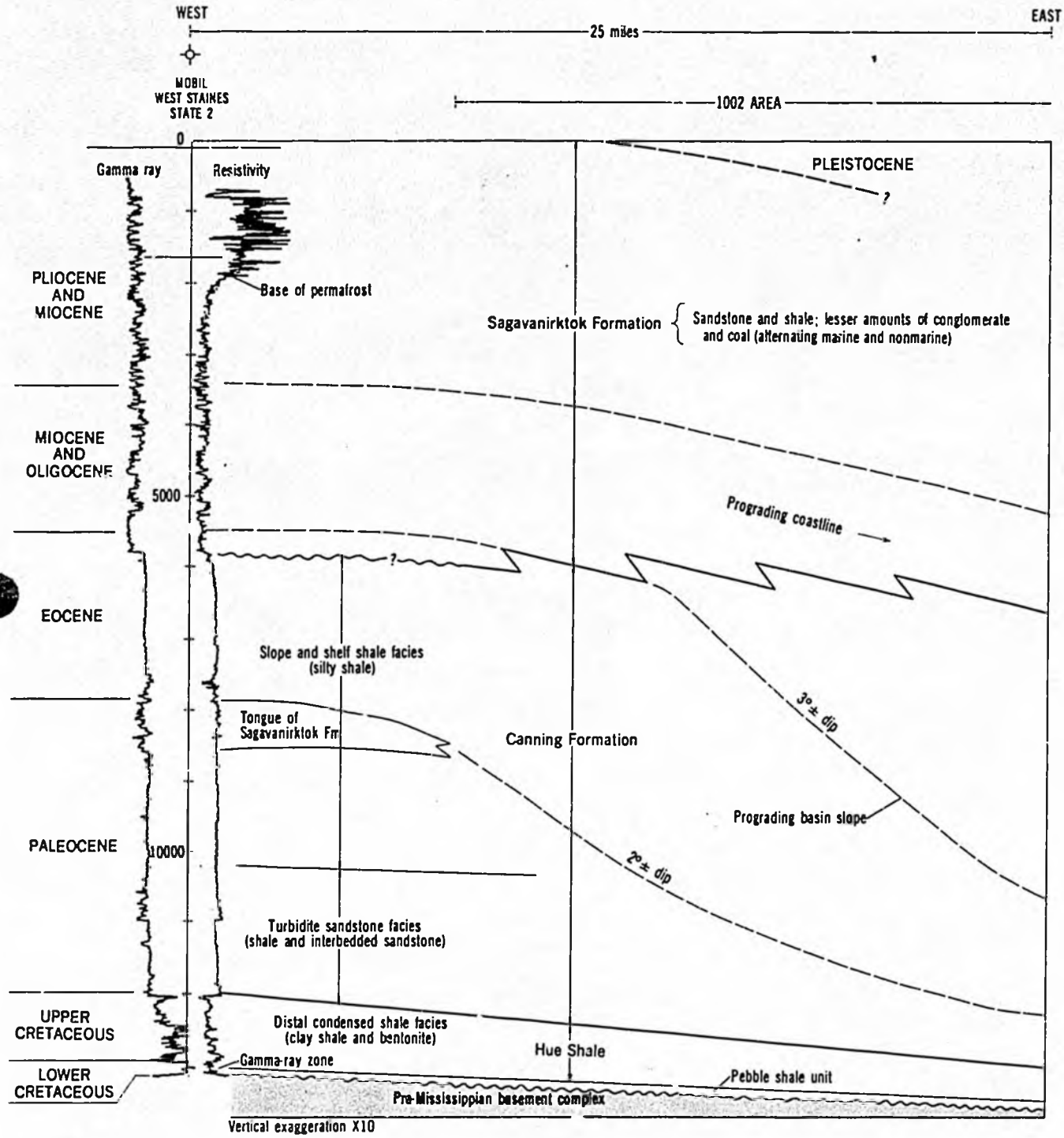


Figure III-8.—Diagrammatic section showing stratigraphic relations of the Brookian sequence between the Mobil West Staines State 2 well and the northwest corner of the 1002 area. Dashed lines represent time lines as inferred from seismic reflections. Depths on well logs are in feet. Ages based on micropaleontologic data correlated from wells to the west. See figure III-5 for location of section.

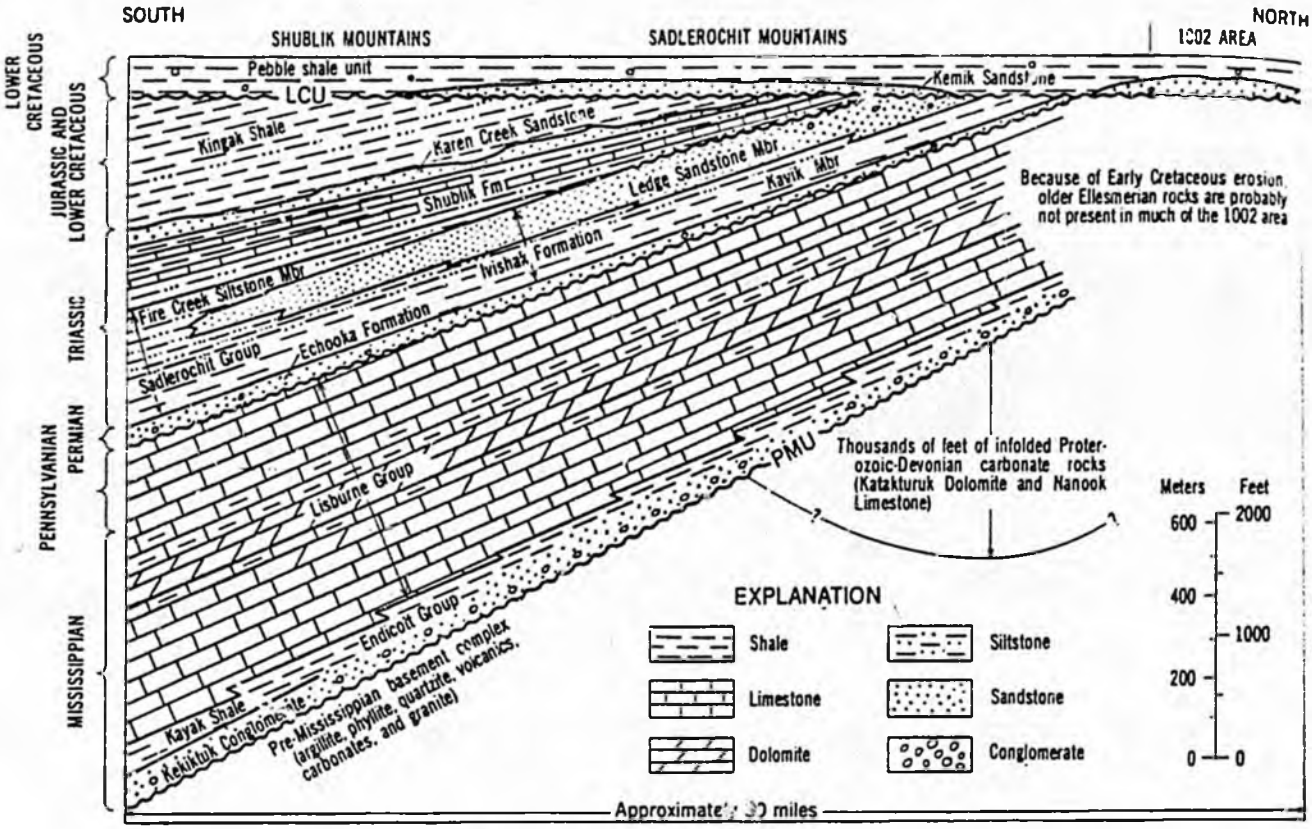


Figure III-5.—Diagrammatic section showing stratigraphic relations of the Ellesmerian sequence along the mountain front south of the 1002 area.

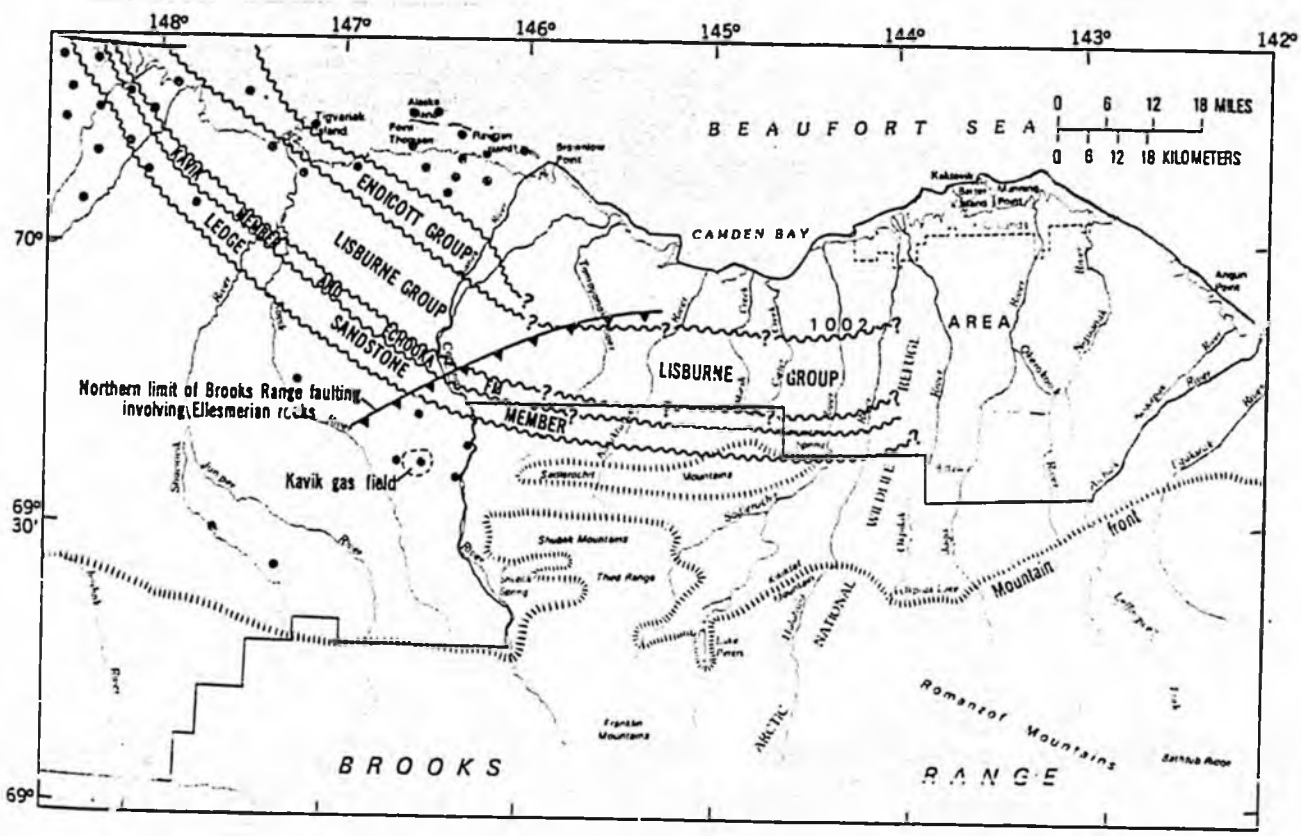
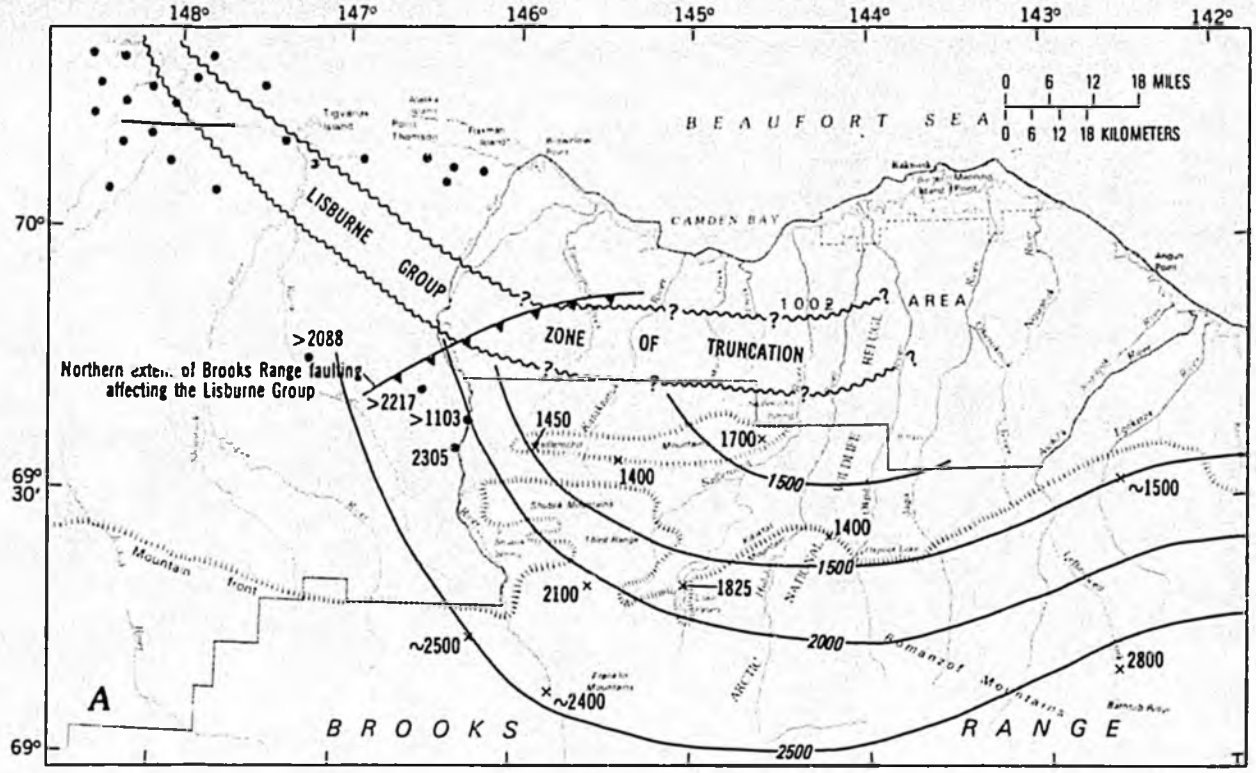
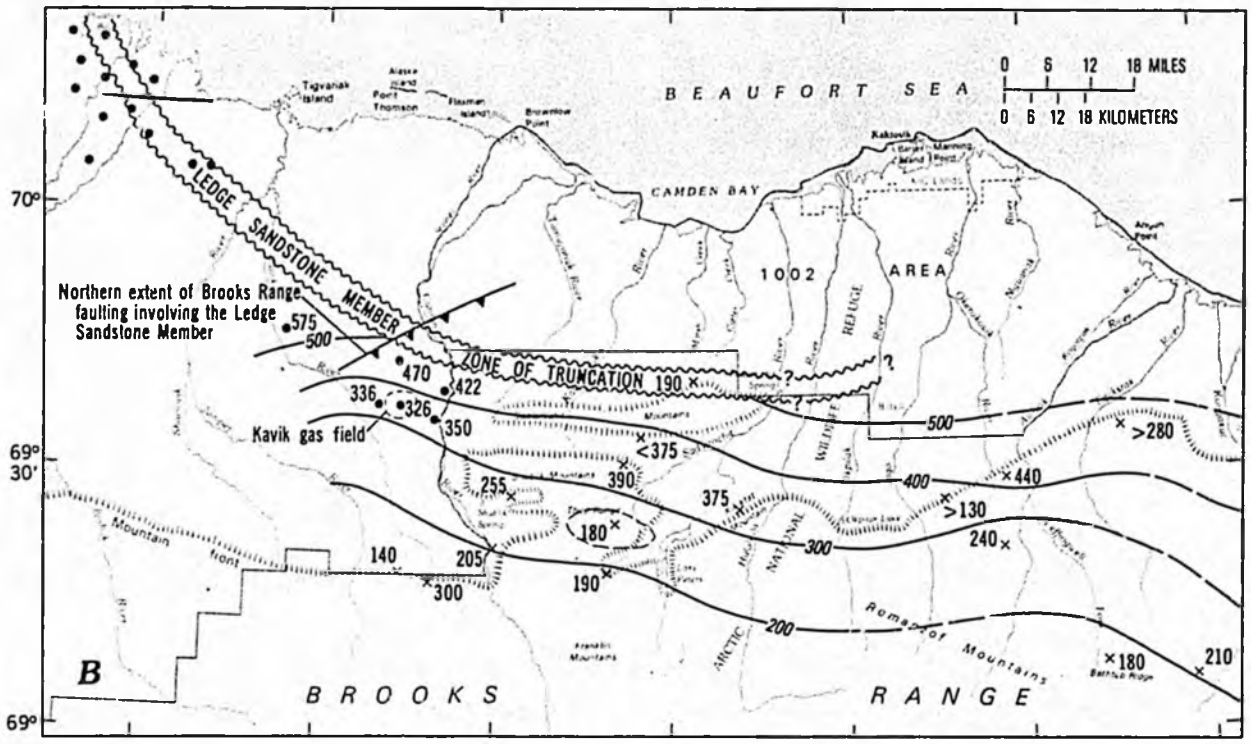


Figure III-6.—Map summarizing the northern limits of the Ellesmerian potential reservoir rocks preserved under the Lower Cretaceous unconformity. (Based on regional control.)





EXPLANATION

Control points—Showing thickness in feet

•350 Well

×140 Outcrop

—400— Isopach—Showing thickness in feet. Dashed where approximately located

Figure III-7.—Maps (facing and above) summarizing regional and local geologic trends of the Lisburne Group (A), Ledge Sandstone Member of the Ivishak Formation (B), and Kemik Sandstone and Thomson sand (C).

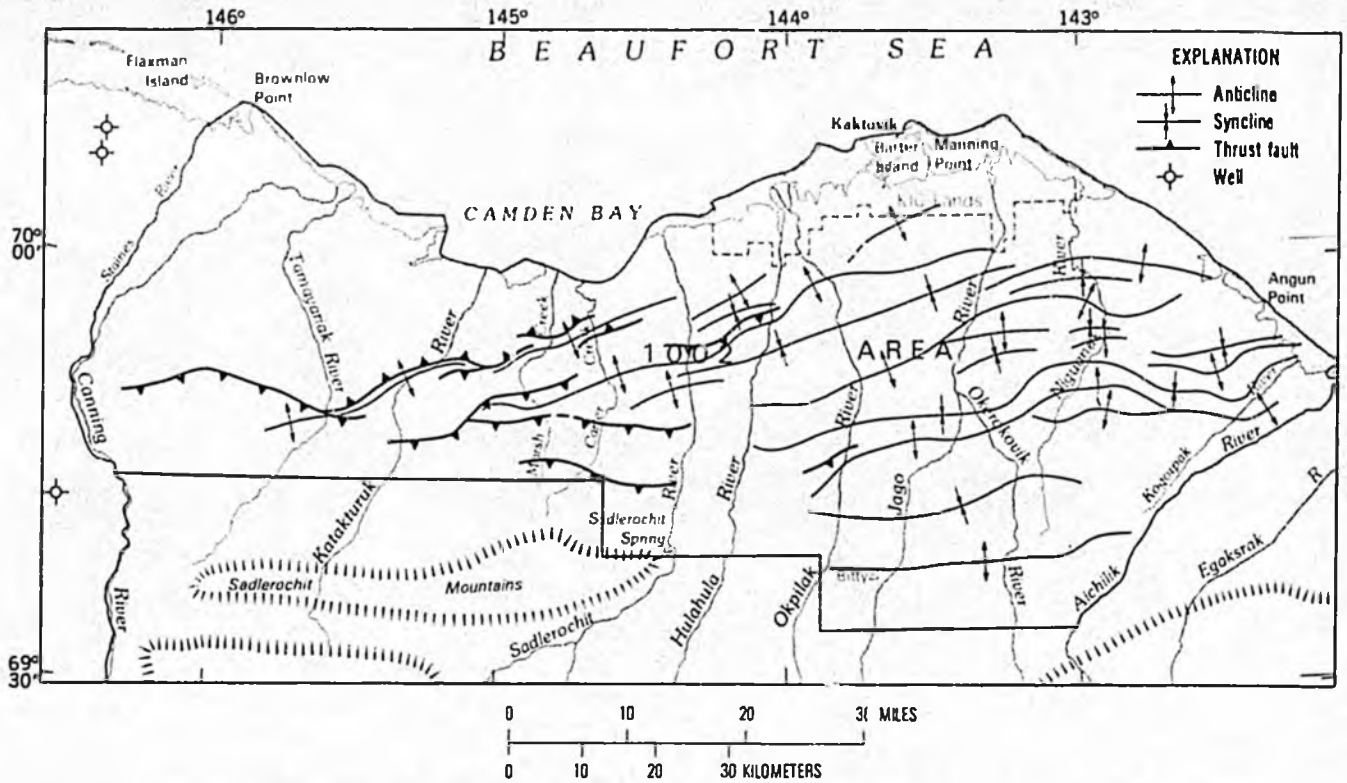


Figure III-9.--Generalized near-surface structural trends in Brookian rocks, based on seismic data. Because of structural complexity, not all features are shown, particularly in the east part of the 1002 area.

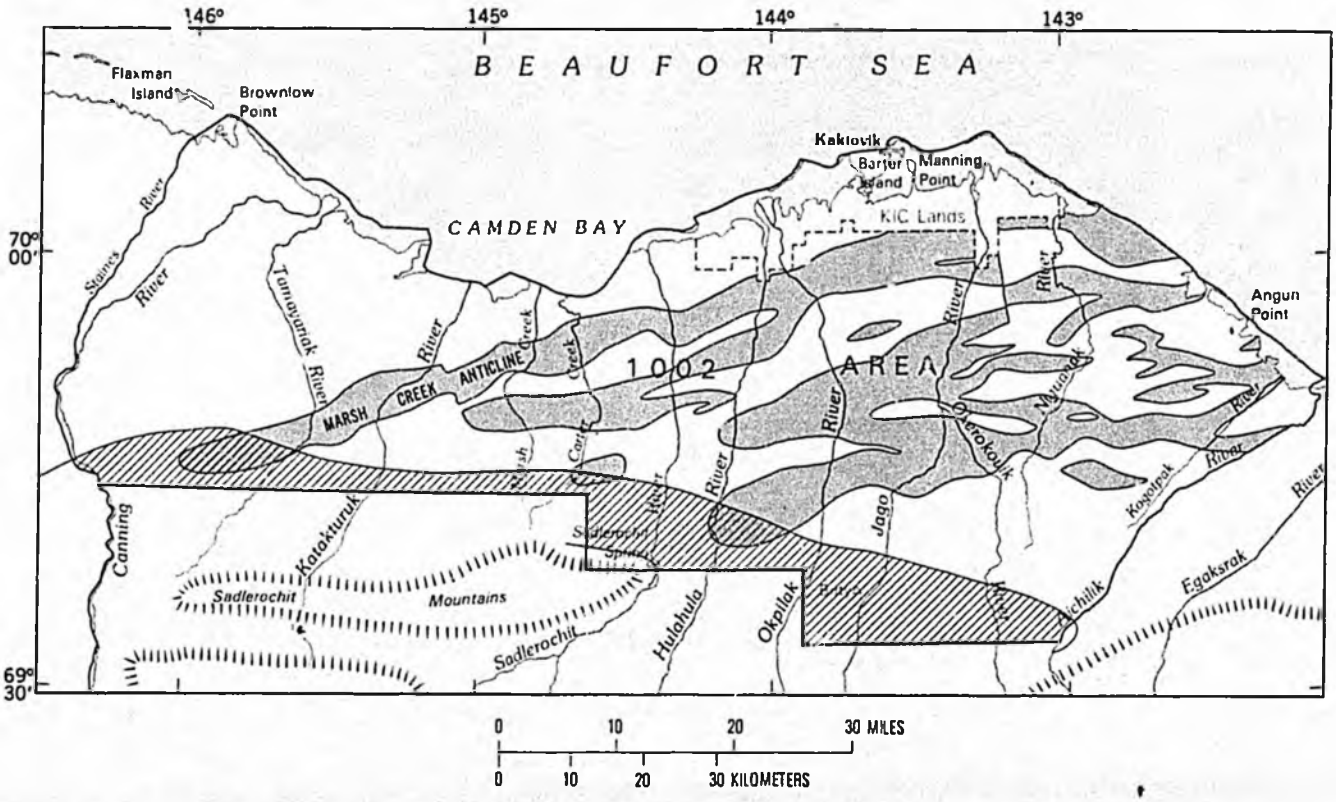
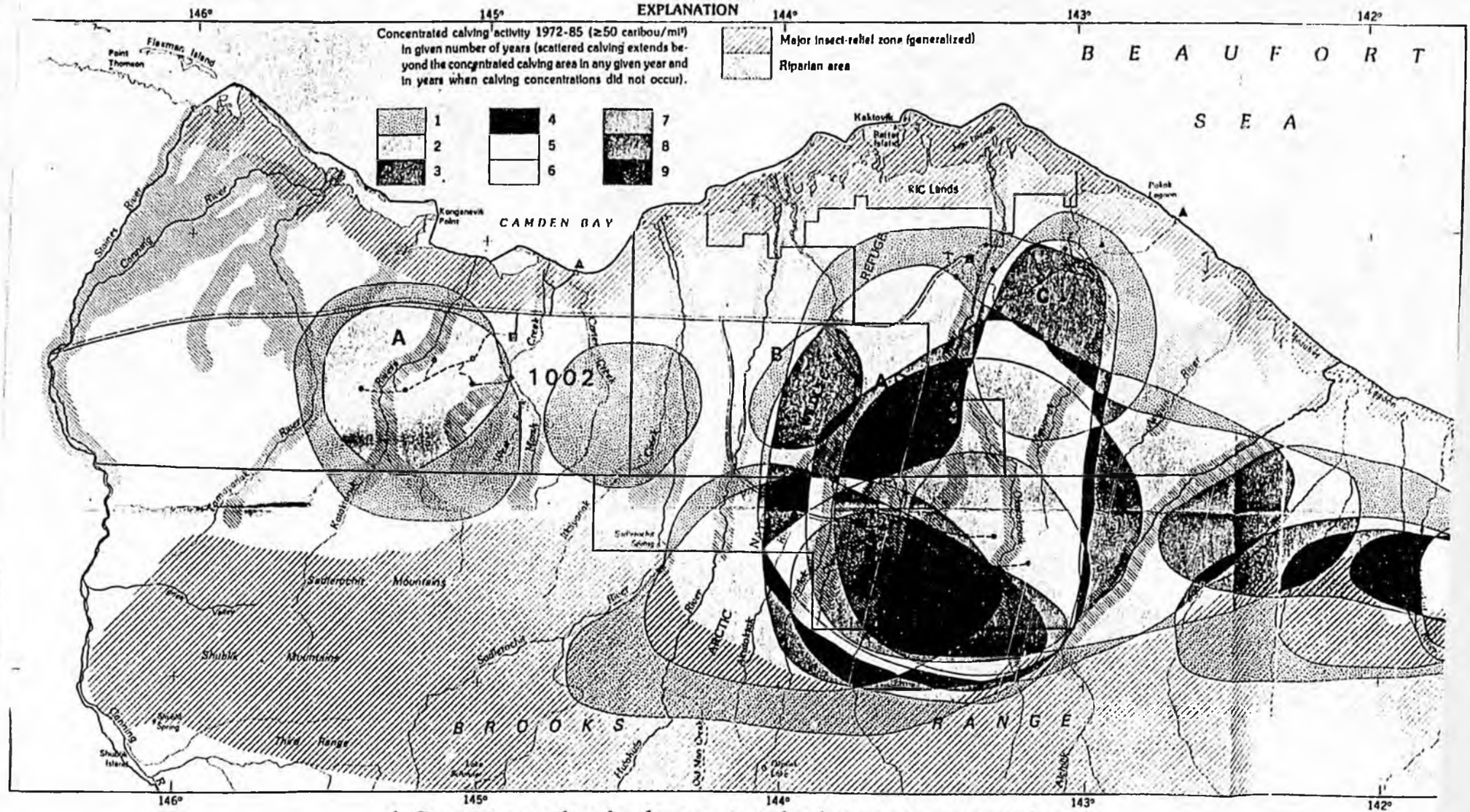


Figure III-10.--Trends of structural culminations in highly deformed Mesozoic and Tertiary rocks (shaded) and area of monoclinal north-dipping strata (line pattern) that may have petroleum potential in the 1002 area.



A. Porcupine caribou herd concentrated calving and insect-relief areas

CARIBOU IMPACTS - conclusion
Fr. 1002(h) study

occur in the area of exploration wells if caribou entered the area while well drilling activities were underway. Because human activity would be low, effects would most likely result from some avoidance and displacement around well pads.

The expanding population trend for the CAH in the past decade would indicate that the CAH is not at carrying capacity (the number of healthy animals that can be maintained by habitat on a given unit of land). However, the point at which cumulative effects and expanding developments all modify suitable displacement habitat is unknown. Also unknown is carrying capacity of the PCH. Given the geography of the calving areas and current densities in those areas, the availability of suitable alternative habitats is not apparent.

A major change in distribution as an adverse result of displacement of both that portion of the CAH using the 1002 area as well as the entire PCH could occur if the 1002 area were fully developed. The main oil pipeline would bisect the 1002 area between the western and northeastern boundaries. Disturbance would occur from the presence and activities of up to 6,000 people, hundreds of vehicles, and major construction and production activities scattered throughout the 1002 area, including sensitive caribou calving areas. Use of approximately 25 percent of the total PCH core calving area and 29 percent of the coastal insect-relief habitat could be reduced or eliminated. Potentially a much larger portion, nearly 80 percent of coastal insect-relief habitat, could be affected if development proves to be a barrier to caribou movements. Loss of calving habitat, barriers to free movement causing reduced access to insect-relief and other areas, disturbance, stress, and other factors would cumulatively reduce both available habitat and habitat values on remaining areas, resulting in caribou population declines.

These changes in habitat availability and value, combined with increased harvest, could result in a major population decline and change in distribution of 20-40 percent, based on the amount of calving and insect-relief habitats to be adversely affected. Because of the many variables involved and lack of relevant experience in estimating impacts on this herd and because of the difficulty in quantifying impacts, this estimate is uncertain.

For the CAH, a moderate change in distribution or decline in that portion of the CAH using the 1002 area could occur. The effect on the entire CAH population throughout its range may also be moderate. Those effects on the segment of the CAH within the 1002 area would be similar to those on the PCH that occur from disturbance, displacement, barriers to free movement. The population [illegible] or distribution change would be 5-10 percent [illegible] CAH throughout its range.

Conclusion

Surface geologic exploration and study conducted throughout the year would be controlled by specific time and area closures to avoid conflicts with caribou calving and movements during the insect-relief period. Seismic activity would be confined to winter work only. Based upon experience from the 1983-1985 exploration program in the 1002 area, only negligible effects would occur. Localized avoidance and disturbance of a minor nature may

CHAPTER V

ALTERNATIVES

ALTERNATIVE A–FULL LEASING OF THE 1002 AREA

Under the alternative of full leasing, it is assumed that Congressional action would allow all Federal subsurface ownerships of the 1002 area to be available for development through a leasing program administered by the Department of the Interior. This action would also open to oil and gas development and production the private lands within the refuge. The exact terms of the leasing program would be developed in response to specific legislation passed by the Congress. If the Congress chooses to authorize leasing in the entire 1002 area, the legislation would probably contain the important elements of the Mineral Leasing Act and the NPRA legislations, with special provisions to meet the unique needs of the Arctic Refuge.

Presumably, major portions of the 1002 area would be leased and additional geophysical exploratory work would take place on all leased areas before exploration wells are drilled. Leaseholders would likely focus first on those areas and geologic structures believed to have the highest probability of containing commercial quantities of oil. It is feasible for phased development to occur.

The 1002 area contains a combination of identified potential petroleum prospects having a mean conditional estimated total of 3.2 billion barrels of economically recoverable oil under current and foreseeable economic conditions (Chapter III). These prospects are grouped into 4 geographic areas (blocks) of the 1002 area to facilitate an analysis of the effects of oil development on the environment. These blocks are depicted in Chapter III (fig. III-16).

Alternative A assumes that:

1. Although both oil and gas would be leased, initially only oil will be developed and transported to market. Associated gas will be reinjected and/or used for field operations in the manner similar to other North Slope fields, until it becomes economical and adequate markets are identified.

2. Oil production will start about the year 2000.

3. Development will be unitized within the 1002 area and on privately owned subsurface resources in the vicinity of Kaktovik.

4. A single trunk oil pipeline will transport oil from Federal leases and from any private lands in the 1002 area to Pump Station 1 of the Trans-Alaska Pipeline System (TAPS).

5. Development, production, and transportation of oil from the 1002 area are considered to be independent of any offshore production; however, infrastructure could be shared.

6. The State of Alaska will allow a trunk oil pipeline to cross State lands between the western boundary of the 1002 area and Pump Station 1 at Prudhoe Bay (a distance of about 50 miles).

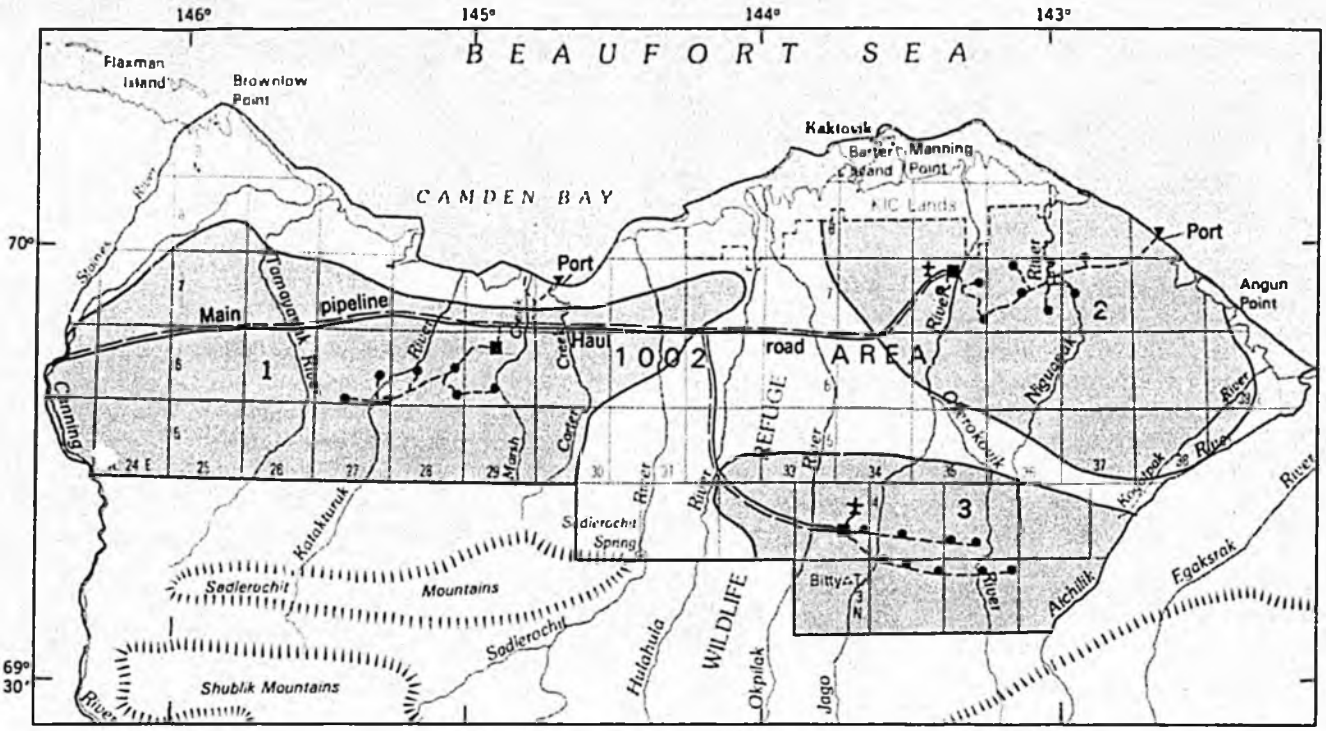
7. Once the Congress approves leasing, but prior to lease sales, industry will be allowed to conduct additional geophysical and surface geological exploration work.

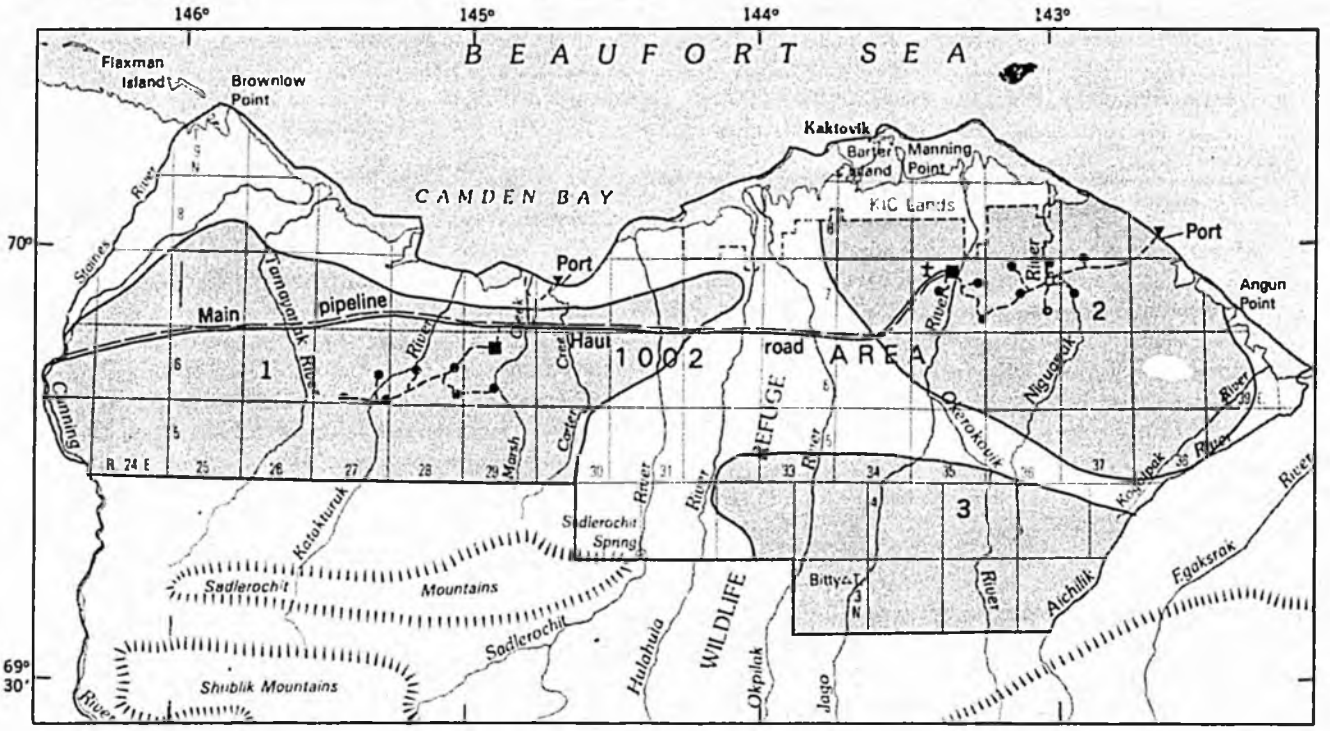
8. Surface occupancy for oil and gas purposes will not be permitted within areas formally designated by the Congress as Wilderness.

According to the size, number, and characteristics of prospects described in Chapter III, and production and transportation scenarios described in Chapter IV, the number and types of facilities likely to be required for development and production of oil resources in the 1002 area are listed in table V-1. Figure V-1 shows a conceptual placement of production and transportation facilities based on typical North Slope prospect characteristics for three localities within the 1002 area.

Actual placement of oil production facilities and marine facilities on the 1002 area, or location of the trunk pipeline from producing fields to TAPS Pump Station 1, depends upon site-specific geotechnical, engineering, environmental, and economic data that can be determined only after a specific prospect has been drilled, and a discovery made and confirmed.

Chapter IV describes the types and numbers of facilities that might be necessary for oil production in the 1002 area. Typically, these include for each developed prospect: central processing facility (CPF) and initial pump station for the oil pipeline, all-weather airfield, consolidated production and reinjection well pads, and an internal network of roads and gathering lines connecting pads and the CPF. A trunk oil pipeline would connect the CPF to Pump Station 1. From Pump Station 1, oil from the 1002 area would move through the existing TAPS to Valdez and then by tanker to market. Depending on the amount of final throughput, one or several additional pump stations may be required.





0 10 20 30 MILES

0 10 20 30 KILOMETERS

EXPLANATION

Central production facility

■ 90 acres

□ 40 acres

• Drill pad—23 acres

± Airstrips—30 and 130 acres

-- Connecting road

▼ Seawater treatment plant

Figure V-1.—Hypothetical generalized development of the 1002 area under full leasing (upper) or limited leasing (lower) if economic quantities of oil are discovered. Numbers indicate three localities (shaded) having typical prospect characteristics.

Table V-1.—Number and area of in-place oil-related facilities assumed to be associated with development of estimated mean conditional recoverable oil resources made available by full leasing or limited leasing of the 1002 area.

[mi, miles; cu yds, cubic yards; ac, acres]

Facility	Approximate units[1] Full leasing	Limited leasing
Main oil pipeline within the 1002 area[2]	100 mi (610 ac)	80 mi (490 ac)
Main road paralleling main pipeline and from marine facilities[2]	120 mi (730 ac)	100 mi (610 ac)
Spur roads with collecting lines within production fields	160 mi (980 ac)	120 mi (730 ac)
Marine and salt water treatment facilities	2 (200 ac)	2 (200 ac)
Large central processing facilities	7 (630 ac)	6 (540 ac)
Small central processing facilities	4 (160 ac)	3 (120 ac)
Large permanent airfields	2 (260 ac)	2 (260 ac)
Small permanent airfields	2 (60 ac)	1 (30 ac)
Permanent drilling pads	50-60 (1,200-1,600 ac)	30-40 (700-1,000 ac)
Borrow sites	10-15 (500-750 ac)	8-13 (400-650 ac)
Gravel for construction, operation, and maintenance	40 million-50 million cu yds	35 million-40 million cu yds
Major river or stream crossings	Maximum 25	Maximum 15

[1]Figures given in miles refer to linear miles of the facilities. Areas were calculated on the basis of 50-foot widths each for the main oil pipeline and main road, totaling a 100-foot right-of-way for the main transportation corridor. A 50-foot right-of-way was assumed for spur roads with collecting lines. The numbers of nonlinear units are also provided.

[2]The distance from the 1002 western boundary to TAPS Pump Station 1 is approximately 50 miles, across State of Alaska land. This 50 miles is not included in the mileage estimates.

ALTERNATIVE B—LIMITED LEASING OF THE 1002 AREA

This alternative discusses a leasing program that would develop if the Congress chose to pass legislation, based on environmental considerations, that would limit the amount of the 1002 area available for leasing. There would be no leasing, exploration, development, or transportation of oil from or through the traditional core calving area of the Porcupine caribou herd (Chapter II and pl. 2A). The remainder of the 1002 area would be offered for leasing; presumably, all potentially economic prospects would be leased, explored, and developed. The assumptions in this alternative are the same as for full leasing, including the opening of the KIC and ASRC lands. Approximately 2.4 billion barrels (800 million barrels less than in Alternative A) of economically recoverable oil are estimated as the mean conditional resource which might be available for development under this alternative.

A conceptual placement of production and transportation facilities under the limited leasing alternative is also shown on figure V-1.

Production and transportation facilities were described in the full leasing alternative. Under limited leasing, facilities would not be constructed in the core caribou calving area. All other facility requirements would be virtually the same (table V-1).

ALTERNATIVE C–FURTHER EXPLORATION

Under this alternative, the Secretary would recommend additional exploration, to include exploratory drilling, to permit acquisition of more data to aid the Secretary and the Congress in their decision of whether or not to authorize leasing of the 1002 area. Acquisition of additional data could be by the Government, or industry, or both.

Section 1002 of ANILCA has afforded the Department of the Interior the opportunity to acquire a substantial amount of exploration data in the 1002 area. During two winter field seasons, private industry obtained 1300 line miles of seismic data on a 3x6-mile seismic grid over a large part of the 1002 area. A substantial amount of gravity, magnetic, geochemical, paleontological, and shallow stratigraphic data was also collected. The BLM and GS acquired additional data through in-house research and field investigations over several field seasons.

Analysis of the available geological and geophysical data has revealed that the 1002 area is a very complex geological terrane, and additional geological and geophysical data might provide a basis for a more defined assessment of the oil and gas potential of the 1002 area. Additional seismic data could better define some of the more complex geologic structures that have been identified. It is expected that if a decision was made to allow leasing of the 1002 area, industry would want to obtain more detailed seismic data over particular areas of interest in order to make a more accurate determination of oil and gas potential prior to a lease sale. These data would also be made available to the Department for its use in determining the fair market value of tracts to be leased.

The location and size of geologic structures have been generally defined. However, the nature of the rocks present remains virtually unknown, owing to a lack of deep stratigraphic, paleontological, and geochemical data specific to the 1002 area. Therefore, only indirect inferences based on surface and near-surface geological data and on well data outside the 1002 area can be made as to the nature of source and reservoir rock and the type of hydrocarbon present. A program to drill off-structure test wells would provide subsurface geological information on the 1002 area and eliminate some of the uncertainties in the oil and gas assessment such as the probability of the occurrence of adequate source and reservoir rocks, and also the probable mix of hydrocarbons. This type of information might better define the more prospective parts of the 1002 area that should be considered for leasing.

Four deep test wells could be drilled off-structure similar to the stratigraphic test wells (COST wells) drilled in the Outer Continental Shelf. These wells would provide more definitive data on the stratigraphy, paleontology, geophysics, and geochemistry of the rock formations present. Core samples would be taken to determine the quality of the source rocks, the characteristics of the reservoir rocks, and the availability of seals to trap hydrocarbons. Possible locations for stratigraphic test wells are:

1. East of the Canning River in the northwest block (Block A, fig. III-16) to test primarily for geologic conditions similar to those of the Prudhoe Bay field.

2. Near the Hulahula River between the Marsh Creek anticline to the west and larger mapped geologic structure to the east (Block B, fig. III-16 and fig. III-9).

3. In the northeastern part of the 1002 area north of the large mapped geologic structure and south of the Kaktovik lands (Block C, fig. III-16, and fig. III-9).

4. Near the large mapped geologic structure in the southern foothills (Block D, fig. III-16, and fig. III-9).

ALTERNATIVE D–NO ACTION

This alternative describes the probable future management of the 1002 area if the Congress chose to take no further legislative action regarding the 1002 area of the Arctic Refuge. According to the provisions of sections 1002 and 1003 of ANILCA, an act of the Congress would be prerequisite to leasing or other development leading to oil and gas production on the Arctic Refuge. If the Congress chose instead to designate all or part of the 1002 area as wilderness, that too would take legislative action. If instead, the Congress chose to allow the management of the 1002 area to continue under existing legal authorities guided by the Arctic Refuge comprehensive conservation planning (CCP) process outlined by section 304(g) of ANILCA, no additional Congressional action would be required.

The management goals of the Arctic National Wildlife Refuge, until further defined by the CCP process, are to maintain the existing availability and quality of refuge habitats with natural forces governing fluctuations in fish and wildlife populations and habitat change; provide the opportunity for continued subsistence use of natural resources by local residents, in a manner consistent with sound natural resource management; and provide recreational and economic opportunities compatible with the purposes for which the refuge was established.

Section 304(g) of ANILCA mandates that management of the 16 National Wildlife Refuges in Alaska, including the Arctic Refuge, be assessed through the CCP process. This process requires that the plan: (1) designate areas within the refuge according to their respective resources and values; (2) specify the programs proposed for conserving fish and wildlife and maintaining the values for which the refuge was established; and (3) specify uses which may be compatible with the major purposes of the refuge. The preferred alternatives identified in this process

would establish the long-term basic management direction for each refuge. This planning process allows for the evaluation of a range of alternatives for refuge management and consultation with the appropriate State agencies and Native Corporations. The FWS is using the environmental impact statement (EIS) process to implement the CCP's. Following a series of public scoping activities and a comment period on a draft EIS, a preferred alternative would be chosen by the Alaska FWS Regional Director, described in a final EIS, and documented by a Record of Decision.

Currently, the CCP process for the Arctic Refuge is in the first or scoping and data-collection phase and calls for completion of the CCP by the spring of 1988. The 1002 area has been deleted from this planning process, pending the decision of the Congress as to its future management. If this no-action alternative were selected by the Congress, the 1002 area would be added to the planning process as an integral part of the Arctic Refuge. Depending on the stage of planning, at least the CCP, and perhaps some step-down management plans, would need to be amended or supplemented to include management of the 1002 area.

Under section 1008 of ANILCA, a policy was established to permit certain oil and gas activities, including leasing and development, on Alaska refuges in areas where such activities are deemed to be compatible with the major purposes for which a particular refuge was established. Because of the provisions of sections 1002 and 1003, section 1008 does not apply to any part of the Arctic Refuge. Selection of Alternative D would preclude production of oil and gas from the Arctic Refuge, and leasing or other develoment leading to oil and gas products.

Step-down management plans for the Arctic Refuge would be developed for specific activities once the CCP was completed. These management plans might address activities such as public use, wildlife inventories and other scientific research, wild and scenic rivers, wilderness management, and fire management. Harvest of fish and wildlife would generally be conducted in accordance with the State of Alaska Department of Fish and Game regulations, and subsistence use of the refuge would continue.

The Arctic Refuge would be managed under the legal authorities found in ANILCA and the National Wildlife Refuge System Administration Act of 1966 (Public Law 89-669). Other laws and their amendments that affect the management of the 1002 area and the Arctic Refuge in general include but are not limited to the Migratory Bird Treaty Act, Endangered Species Act, Antiquities Act, Clean Air Act, Clean Water Act, Coastal Zone Management Act, Fish and Wildlife Act of 1956, Marine Mammal Protection Act, National Environmental Policy Act, National Historic Preservation Act, Refuge Recreation Act, Refuge Revenue Sharing Act, and the State of Alaska Fish and Game Regulations. Provisions of the Wilderness Act would apply to those 8 million acres of the Arctic Refuge outside the 1002 area.

Activities proposed for the 1002 area would be subject to a compatibility determination as required by ANILCA section 304(b) and the Refuge Administration Act. Permissible activities could include hunting, fishing, subsistence harvest, river trips, hiking, photography, and certain other forms of recreation and compatible scientific research. Guiding for recreational activities, trapping, and other commercial activities determined to be compatible with refuge purposes also would be allowed. These commercial activities could conceivably include activities as diverse as onshore support and transportation facilities for offshore oil and gas activities. Any proposed activity would be reviewed for compatibility before it could be permitted. Because compatibility determinations are very site-specific, and the list of probable activities long and speculative, effects of specific activities are not assessed in Chapter VI.

The establishment of aids to navigation and facilities for national defense would be authorized under ANILCA section 1310. Weather, climate, and research facilities could also be permitted.

Title XI of ANILCA governs access on Federal lands in Alaska. Authorized forms of access on the Arctic Refuge include snowmachines (during periods of adequate snow cover), aircraft, motorboats, and other means if found compatible.

Refuge management could include activities such as wildlife surveys, reintroduction of native fish and wildlife species, fisheries management, prescribed burning for habitat enhancement, and construction of public use facilities where appropriate. Although these activities are allowed by law, their actual implementation and the extent of implementation would be decided through the CCP process and the subsequent management plans.

Implementation of Alternative D would preclude the development of estimated oil resources, as discussed in Chapters III and VII.

ALTERNATIVE E–WILDERNESS DESIGNATION

Under this alternative, the Congress would designate the 1.55-million-acre 1002 area as wilderness, within the meaning of the 1964 Wilderness Act (Public Law 88-577).

No further study or public review is necessary for the Congress to designate the 1002 area as wilderness. Previous studies and public debate have sufficiently covered the issue. A wilderness review of the Arctic Refuge was conducted in the early 1970's pursuant to the provisions of the Wilderness Act. A draft report was prepared in 1973; however, the draft was never made final nor was public comment obtained.

The issue of wilderness designation for all of the Arctic Refuge, including the 1002 area, was debated extensively by the Congress and the public in widely held hearings from 1976 through 1980 during the development and passage of ANILCA (Eastin, 1984). The House of Representatives generally favored designation of the 1002 area as wilderness, whereas the Senate generally did not. The Senate view was that designating the area as wilderness was premature until a resource assessment of the oil and gas potential was completed and reviewed by the Congress. The Senate view prevailed and became the section 1002 portion of Title X of ANILCA.

The draft report resulting from the original wilderness study recommended that all of the original 8.9 million acres of the Arctic Refuge be designated as wilderness, with the exception of 74,516 acres consisting of tracts at Camden Bay (456 acres), Beaufort Lagoon (420 acres), Demarcation Point (10 acres), Lake Peters (10 acres), the village of Kaktovik (141 acres), the military withdrawal on Barter Island (4,359 acres), and land in the vicinity of Barter Island that was to be selected by the Kaktovik Inupiat Corporation (KIC) under the Alaska Native Claims Settlement Act (ANCSA) (69,120 acres). Section 702(3) of ANILCA ultimately designated approximately 8 million acres of wilderness on the Arctic Refuge which encompassed all of the pre-ANILCA refuge with the exception of the 1002 area.

This alternative considers wilderness designation of the entire 1.55-million-acre 1002 area, except for the abandoned DEW line sites at Beaufort Lagoon and Camden Bay, native allotments, and land owned by KIC. The 1002 area would still be included in the CCP process, as described in Alternative D, but would be managed as wilderness under the provisions of the Wilderness Act, the National Wildlife Refuge System Administration Act, and ANILCA.

Permitted uses in wilderness include hunting, fishing, backpacking, river trips, and photography. Commercial activity would be restricted to commercial guiding for such activities. These activities may be restricted or eliminated if necessary in designated wilderness areas under the provisions of other laws or regulations. Motorized equipment would generally be prohibited. Exceptions would include operation of aircraft, including landing. Wilderness designation would not affect the air space over the area. The use of motorboats and snowmachines (during periods of adequate snow cover) would be authorized for traditional activities--for example, subsistence uses or for access to inholdings such as native allotments. Cabins could be constructed in wilderness areas if they were necessary for subsistence trapping, public safety, or administration of the area.

In contrast to the "no-action" alternative, use of motorized equipment by the FWS in administering the area would only be allowed consistent with the minimum-tool concept. (Minimum-tool concept is use of the minimum action or instrument necessary to successfully, safely, and economically accomplish wilderness management objectives.) Situations for which motorized access might be used include emergencies involving public health or safety and search-and-rescue operations. Landing of aircraft would be permitted. Other government agencies (local, State, and Federal) would also be allowed to use motorized equipment in carrying out legitimate activities in wilderness consistent with the minimum-tool concept. An example would be the use of helicopters by the Department of the Interior to carry out the ANILCA section 1010 Alaska Mineral Resource Assessment Program (AMRAP). Management activities such as wildlife control, prescribed burning, habitat rehabilitation, predator control, reintroduction of native fish and wildlife species, and wildlife surveys would be permissible, though not necessarily practiced, in the designated wilderness area. The appropriateness of these activities would be addressed in the CCP.

As in the "no-action" alternative, placement and maintenance of navigation aids, communication sites and related facilities, and facilities for national defense could be permitted (ANILCA section 1310). Facilities for weather, climate, and fisheries research could also be permitted.

Implementation of this alternative precludes the development of estimated oil resources, as discussed in Chapters III and VII.

REFERENCE CITED

Eastin, K. E. 1984, Wilderness review for Arctic National Wildlife Refuge's 1002 area: U.S. Department of the Interior, Office of the Solicitor, 21 p.

CHAPTER VII

OIL AND GAS--NATIONAL NEED FOR DOMESTIC SOURCES AND THE 1002 AREA'S POTENTIAL CONTRIBUTION

INTRODUCTION

Section 1002(h)(5) of ANILCA requires an evaluation of how hydrocarbon resources in the 1002 area of the Arctic Refuge relate to the national need for additional domestic sources of oil and gas. This chapter discusses this national need, and describes the potential contribution of oil from the 1002 area. Benefits which would accrue to the nation are described. They include gains in national income, reduced vulnerability to disruptions in the world market, and improvements in the balance of payments and national security. The analysis focuses only on oil because it is not anticipated that natural gas from the 1002 area will become economic to produce and transport to market within the timeframe considered.

The estimates used in this chapter depend on many variables. If the 1002 area were opened and leased in a timely manner, production would not be expected until about the year 2000. Therefore, the refuge's contribution to U.S. energy needs has been determined by comparing its production potential against projected energy needs, beginning about 15 years from now and extending perhaps 30 years out to the year 2030, possibly beyond. It is difficult to anticipate world oil prices beyond the year 2000 and the rate of real growth of the U.S. economy--two important determinants of the future demand for energy. Nevertheless, potential production from the 1002 area can be compared against various forecasts about future U.S. energy demand and supply. This chapter relies mainly on the Department of Energy's (DOE) long-term projections contained in its 1985 National Energy Policy Plan, but also considers several private forecasts.

THE 1002 AREA'S POTENTIAL CONTRIBUTION TO U.S. NEEDS

The unique geologic features underlying the 1002 area create the potential for discoveries which would make a very substantial contribution to domestic oil reserves. Despite the area's remote location and hostile environment, it is the most attractive petroleum exploration target in the onshore U.S. Data from outcropping rocks within the area and from nearby wells, combined with seismic information gathered from 1983 to 1985, indicate geologic conditions which would be extremely favorable for major discoveries.

The billions of barrels of oil that may exist in the 1002 area could make an important contribution to the national need for domestic sources of oil. Alaska North Slope crude oil, especially that from Prudhoe Bay, now contributes almost 20 percent of domestic production. Production from Prudhoe Bay has peaked and a decline is expected no later than 1988. Arctic Refuge oil could help moderate this decline and substantially reduce the need for increased imports.

The oil resources and possible production capability of the larger potential oil fields in the 1002 area are substantial by U.S. standards. Estimates of oil in place range from 4.8 billion barrels (BBO) to more than 29.4 BBO. Recoverable resource estimates range from 0.6 BBO to 9.2 BBO. In some cases, the potential recoverable reserves of the 1002 area's fields may sizably exceed 1 BBO. Only 13 domestic fields with total reserves greater than 1 BBO have been discovered in this country. Their original reserves, remaining reserves, current production rate, and year of discovery are displayed in table VII-1.

If productive, the 1002 area's fields could be the largest domestic fields discovered since Prudhoe Bay and Kuparuk River in 1968 and 1969. Except for these, no U.S. field with reserves exceeding 1 BBO has been discovered since 1948. The size of the 1002 area's structures and their potential for oil accumulations are geologically the Nation's best onshore targets for the discovery of very large oil fields. If productive, the large fields would join the list of "giant" oil fields which have contributed over two-thirds of total domestic oil production. The previously discovered giants, except for the two Alaskan fields, are over 75 percent depleted (table VII-1), and even the Prudhoe Bay field is almost half depleted.

For purposes of assessing the 1002 area's possible contribution, the conditional mean recoverable resource estimate of 3.2 BBO has been used. The estimate for limited leasing is 2.4 BBO. These figures do not consider resources that may occur in undefined but potential stratigraphic traps (see Chapter III).

Contribution to Domestic Oil Demand and Supply

It is important to assess the 1002 area's potential contribution to the national need for domestic oil production in light of supply and demand conditions. Oil consumption in the U.S. has exceeded domestic production for more than 20 years. Using the daily production estimates for the 1002 area, table VII-2 compares the area's contribution with the Department of Energy's (DOE) reference case projections for domestic oil supply and demand, taken from the 1985 DOE National Energy Policy Plan, to illustrate the magnitude of the contribution 1002 area oil production

Table VII-1.–U.S. oil fields having ultimate recovery exceeding 1 billion barrels of oil.

[BBO, billion barrels of oil; MBO/Y, million barrels of oil per year. From Oil and Gas Journal (1986) and Roadifer (1986)]

Field	Year discovered	Original reserves (BBO)	Remaining reserves (BBO)	Current production (MBO/Y)
Prudhoe Bay, AK	1968	9.47	5.10	568
East Texas	1930	6.00	1.11	48
Wilmington, CA	1932	2.55	.36	41
Midway-Sunset, CA	1894	2.16	.45	54
Kern River, CA	1899	1.99	.92	51
Yates, TX	1926	1.95	.90	45
Wasson, TX	1936	1.68	.57	33
Kuparuk River, AK	1969	1.59	1.30	79
Elk Hills, CA	1911	1.47	.70	47
Panhandle, TX	1921	1.46	.07	11
Kelly-Snyder, TX	1948	1.35	.15	19
Huntington Beach, CA	1920	1.12	.07	8
Slaughter, TX	1936	1.03	.06	24

could make in the face of increasing demand and steadily declining domestic production.

The U.S. has stabilized its oil production capability and temporarily moderated the decline in domestic reserves since 1974. This is largely due to successful exploration and intensive exploitation of known fields, including the use of improved and enhanced oil recovery (EOR) technology, and to the 1.5 million barrels per day produced at Alaska's Prudhoe Bay.

U.S. crude oil production peaked at 9.64 million barrels per day (MBO/D) in 1970 and has been relatively constant over the last decade, being 8.90 MBO/D in 1985. However, in February 1986, the Department of Energy (DOE, 1986) predicted that domestic oil production would decrease by about 3 percent per year beginning in 1987, declining to about 8.05 MBO/D in 1990 and to 6.53 MBO/D by 1995. These estimates represent a substantial reduction from previous DOE forecasts. In June 1986, the Chevron Corporation predicted that production would decrease to 8.8 MBO/D in 1986 and steadily decline to 6.2 MBO/D by the year 2000 (Chevron, 1986). Other recent estimates suggest levels as low as 4.0 MBO/D by the year 2000. The lower forecasts are largely the result of reduced oil and gas prices, price uncertainty, consequent reduced drilling levels and discovery rates, higher annual production declines in known fields, and decreased emphasis on production stimulation projects (Spaulding, 1986, Doscher and Kostura, 1986; Kuuskraa, 1986).

Table VII-2.—The 1002 area's potential contribution to U.S. oil demand, production, and imports.

[In thousands of barrels per day. U.S. demand, production, and import data from U.S. Department of Energy, 1985d, tables 4-6 and 4-7]

Year	2000	2005	2010
U.S. OIL DEMAND	16,100	15,800	15,700
1002 area oil production:			
Full leasing	147	659	404
Percent of U.S. total demand	.91	4.17	2.57
Limited leasing	105	473	300
Percent of U.S. total demand	.65	2.99	1.91
U.S. OIL PRODUCTION	8,600	8,200	7,400
1002 area oil production:			
Full leasing	147	659	404
Percent of U.S. total production	1.71	8.04	5.46
Limited leasing	105	473	300
Percent of U.S. total production	1.22	5.77	4.05
U.S. OIL IMPORTS	7,500	7,600	8,300
1002 area oil production:			
Full leasing	147	659	404
Percent of U.S. total imports	1.96	8.67	4.87
Limited leasing	105	473	300
Percent of U.S. total imports	1.40	6.22	3.61

Oil reserves decreased over 27 percent, about 11 billion barrels from 1970 to 1985 and declined annually during 14 of these 15 years despite extensive exploration and active field exploitation programs.

J. P. Riva (Riva, 1984; Riva and others, 1985; Gall, 1986), of the Science Policy Research Division of the Library of Congress, predicted that shrinking American oil reserves will plunge by 1990 to their lowest levels since shortly after World War II, based on current drilling rates. Riva predicts a decline from the 1985 reserve figure of 28.4 BBO to 25.1 BBO in 1990, and perhaps to as low as 23.2 BBO in 1995. The most significant declines in reserves will occur in the older, traditional oil-producing areas of the western United States, Texas, the Gulf Coast, and the Midcontinent. In the frontier regions of Alaska and offshore California, prospects are better for substantial reserve additions.

If current production and reserves in known fields are assumed (the reserves/production ratio), theoretically the Nation's oil reserves would be exhausted in about 9 years. But because oil-field production conventionally declines about 10 percent per year compounded, in practice it will take about 30 years to exhaust known reserves.

Production capability and reserves can be increased by (1) exploring for new fields; (2) extending or finding new reservoirs in known fields; (3) producing more of the total oil-in-place by enhanced recovery methods, infill drilling, well stimulation, etc.; and (4) developing improved production technology. Use of each technique depends on projected prices of oil and gas, economics, and relative costs of the technique.

From 1977 through 1985, a period of high oil prices and the greatest boom in domestic exploration history, an average of 930 million barrels of new reserves were discovered each year (MBO/Y). Revisions and adjustments added an average of 1483 MBO/Y. Consumption during the same period averaged almost 3000 MBO/Y. Reserves therefore decreased by an average of 565 MBO/Y. Approximately 7 percent of the increase resulted from discovery of new fields; 31 percent from the discovery of extensions and new zones in known fields; and 62 percent from EOR, other increased recovery methods, and statistical revisions. Oil is being consumed faster than it is being discovered, and the Nation is reducing its oil inventory.

The historical quantities of petroleum discovered per foot of exploratory drilling dramatically demonstrate the increasing difficulty in finding large oil and gas fields (table VII-3). No reversal of the trend has occurred since 1979.

Oil fields with recoverable reserves exceeding 100 (MBO) are frequently described as national class giants. Giant fields with reserves exceeding 500 MBO are supergiants or world class giants. Giants and supergiants are few in number, but contribute the bulk of the world's oil production. In fact, fewer than 300 supergiant oil fields (out of 30,000 oil fields worldwide) contain more than 80 percent of the world's known oil reserves. Over 40 supergiants have been discovered in the U.S., almost all prior to 1939. Only one was discovered from 1977 to 1985. More significantly, only five have been discovered since 1951: McArthur River (1965), Prudhoe Bay (1968), and Kuparuk River (1969), all in Alaska; Jay in Florida (1970); and East Anschutz Ranch in the Overthrust Belt in Wyoming (1981). Point Arguello in the Outer Continental Shelf (OCS) off California may be added to this list once the reserves are fully defined.

Table VII-3.—Historical recoverable U.S. oil and natural gas finding rates.

[Modified from U.S. Geological Survey]

Period during which footage was drilled	Increment feet of exploratory drilling (billions)	Finding rate per foot exploration drilling Oil (barrels)	Gas (MCF)
1859-1949	0.0-0.5	236	916
1949-1958	0.5-1.0	51	347
1958-1967	1.0-1.5	21	252
1967-1977	1.5-2.0	20	186
1977-1979	2.0-2.1	9	134

Discovery patterns for giant oil fields are only slightly more favorable. About two-thirds of the U.S. giants were found before 1940, 94 since, and the number of such discoveries decreases in each successive decade.

The onshore basins in the U.S. that hold the greatest potential for very large discoveries have already been explored, except for the 1002 area. While there are some very attractive offshore areas yet to be explored, the 1002 area is particularly promising because it contains extensions of other producing trends, and wells on adjacent properties show highly favorable evidence of petroleum deposits. These evidences, when combined with the structural traps mapped or inferred for the area, indicate that the 1002 area is currently the unexplored area in the U.S. with the greatest potential to contain giant and supergiant fields.

Not only might discovery of a supergiant field in the 1002 area make a significant contribution to domestic reserves and production, it could do so at a relatively low average cost per barrel because of economies of scale. The combination of high production and low average costs makes the total net economic value much higher for large fields. Moreover, because average costs are lower, larger fields can be produced economically and can contribute to the economy even when world oil prices are lower.

Contribution to National Objectives

The potential contribution from the 1002 area's production goes well beyond that of simply providing a certain percentage of U.S. domestic oil needs that might otherwise have to be obtained from foreign sources of supply. Production of oil from the 1002 area can also help achieve this Nation's national economic and security objectives as well.

FOSTERING ADEQUATE ENERGY SUPPLIES AT REASONABLE COSTS

DOE's 1985 National Energy Policy Plan has as its general goal fostering adequate energy supplies at reasonable costs. Adequate supply requires "a flexible energy system that avoids undue dependence on any single source of supply, foreign or domestic, and thereby contributes to national security (and) implies freedom of choice about the mix and measure of energy needs to meet our industrial, commercial, and personal requirements." The National Energy Policy Plan also recognizes leasing Federal lands as important in the Nation's effort to ensure long-term energy supplies.

REDUCING DEPENDENCE ON IMPORTED OIL

Since 1970 this Nation has been heavily dependent on foreign petroleum supplies to meet domestic demand. The prospect is for continued U.S. dependence on foreign oil. Imports in 1985 were expected to average about 5 MBO/Y, to supply about one-third of domestic oil needs. DOE's latest forecasts show that U.S. dependence on foreign oil is expected to increase significantly by the end of the century and beyond. Table VII-2 compares the percent of the 1002 area oil contribution to U.S. oil imports.

The Nation's oil imports come from two general sources: members of the Organization of Petroleum Exporting Countries (OPEC), such as Saudi Arabia, Venezuela, Indonesia; and non-OPEC nations, such as Mexico, Canada, the United Kingdom.

Because of decreasing production in the U.S. and other non-OPEC nations it is likely that this Nation will become significantly more dependent on imports from the oil-rich Persian Gulf OPEC nations no later than the mid-1990's. If so, oil prices will also increase as supply competition decreases, and the Persian Gulf OPEC nations regain market leverage and control of the international oil market.

As imports have increased, the U.S. has become vulnerable to the actions of oil-exporting countries and has essentially become a price taker in the international oil market. The cost of imported oil to the U.S. economy is not only the price paid for the oil but also the losses caused by a disruption in supply, should one occur. Because domestic production substitutes for oil imports, the Nation benefits not only from the savings that result when the costs of producing additional domestic oil are less than the world price, but also benefits from the reduction in the economy's vulnerability to supply disruptions. The potential contribution of the 1002 area's oil resources should be gauged as a displacement of potentially costly and insecure imported oil by less costly, more secure production from domestic fields. The costs of a price change or a supply disruption will be less if the economy relies more on less expensive domestic supplies than on imported oil. U.S. oil reserve and production trends suggest a shift toward greater vulnerability, possibly exacerbated by the declines of 1985-86. Thus, the 1002 area's oil may be able to significantly reduce the economy's vulnerability to world oil market changes.

ENHANCING NATIONAL SECURITY

Continued dependence on imports for a substantial part of U.S. oil consumption creates many national security concerns. The potential for a supply disruption limits the flexibility of U.S. foreign/national security policy, including the ability to respond to security threats. There is also potential for the U.S. to be drawn into dangerous political and military situations involving import nations. Dependence on oil imports entails dependence on extended supply lines (tanker routes), which are targets for attack; this adds to the defense burden. Key weapons systems in the Nation's current arsenal and under development are designed to use hydrocarbon fuel. The most secure sources of supply for such fuel are clearly domestic sources.

Secure oil supply lines can have a direct bearing on the achievement of national economic goals that depend on uninterrupted economic activity. Interruption of these supply lines, on the other hand, disrupts the production and consumption of goods and reduces economic activity. This occurred, for example, in the aftermath of the OPEC oil embargo in 1973 when a recession resulted.

ACHIEVING A MORE FAVORABLE BALANCE OF INTERNATIONAL TRADE

The deficit in the U.S. international trade balance has increased significantly in the last decade. In 1984, it totaled a record $123 billion. In that same year, the gross cost of importing crude oil and refined petroleum products amounted to more than $59 billion, almost 50 percent of the deficit. If oil imports increase as projected, achieving a favorable trade balance will be even more difficult. The deficit trade balance in recent years has meant that more U.S. dollars are spent on foreign goods, leaving fewer dollars available to consumers and businesses for buying U.S. goods and services. Production from the 1002 area reduces not only the need for imported oil but also the amount of foreign exchange required to pay for imports, bringing a more favorable trade balance. Using the mean estimate of the 1002 area's anticipated production amounts, oil from the 1002 area could result in U.S. dollar savings

spent on imports of $1.7 billion in the year 2000, $8.1 billion in 2005, and $5.8 billion in 2010.

PROVIDING ECONOMIC BENEFITS TO THE NATION

The importance of oil in the economy is widely recognized. In 1985, 42 percent of the energy used in the U.S. came from oil, of which approximately 9 MBO/Y was produced domestically and 6.8 MBO/Y was imported.

The cost of a resource that is so widely consumed in our economic system has a strong effect on economic productivity. The higher the cost of oil, the more other resources (labor, materials, energy) must be used or given up in acquiring it. As a result, these other resources are no longer available in the economy to help produce the income and the goods and services that support the American standard of living. Thus, the higher the cost of the oil used, the lower the productivity of the U.S. economy. The national need for oil is a need for the economic productivity and the gains in income that result when lower-cost oil is used to produce goods and services.

If oil can be produced from the 1002 area at a cost lower than the revenues generated from its sale, it will result in a net increase in national income and the Nation will realize a net economic benefit. The "net national economic benefit" (NNEB) is the expected net value of oil production, or the difference between revenues from sale of oil and the costs of exploration, development, production, and transportation. The NNEB includes economic benefits expected to accrue as bonuses, royalties, rental fees, taxes, and after-tax business profits. The NNEB expected from the mean potential oil production of 3.2 BBO from the 1002 area for full leasing is $79.4 billion in undiscounted 1984 dollars, and $14.6 billion discounted (10 percent real) dollars. Assuming production from a 9.2-billion-barrel field, a more optimistic economic assumption, and oil prices of $40 per barrel, the undiscounted NNEB would exceed $325 billion (1984 dollars). Potential oil production from limited leasing would contribute $54.0 billion undiscounted, and $9.4 billion discounted. (The discounted value was derived by using a discounted cash flow simulation model, in which annual revenues and annual costs for projected years of production are discounted to the present.)

PROVIDING FEDERAL, STATE, AND LOCAL REVENUES

Lease production from the 1002 area could be expected to generate revenues to the public as lease bonus payments and rentals, royalties, Federal corporate income taxes, severance tax payments to the State of Alaska, and State corporate income taxes. The revenues expected from providing this return to the public are shown in table VII-4 for the full leasing and limited leasing alternatives. Federal revenues include royalties, lease rental payments, and corporate income taxes. State and local revenues include property, severance, conservation, and corporate income taxes. Transfer payments from the Federal Government are not included, and the figures do not include Federal revenue sharing.

Table VII-4.—Estimated revenues, in billions of dollars, from full leasing and limited leasing.

[Bonuses, royalties, and lease rental payments are shown as Federal revenues. Portions of some of the seismically mapped structures lie outside the 1002 area. If these non-Federal subsurface areas are leased by others (for example, the State of Alaska or Native Corporations), portions of bonus, rent, and royalty income shown here as Federal revenue would accrue to those organizations]

	Full leasing	Limited leasing
Federal revenues:		
Undiscounted 1984 dollars..	$ 38.9	$ 25.9
Discounted dollars (10% real).....	8.0	5.1
State and local revenues:		
Undiscounted 1984 dollars..	16.1	11.0
Discounted dollars (10% real).....	3.6	2.4

CONTINUED USE OF THE TRANS-ALASKA PIPELINE SYSTEM

The Trans-Alaska Pipeline System (TAPS) is already in place and has been assumed as available to transport oil from the 1002 area. Oil from the 1002 area could play an important role in helping to offset the production declines slated for the Alaska North Slope, thereby reducing the per barrel transportation costs for oil from existing fields. Inclusion of the 1002 area's oil is, therefore, likely to prolong the useful life of TAPS and to permit additional production from North Slope fields which would otherwise be uneconomical.

THE 1002 AREA'S OIL POTENTIAL COMPARED TO U.S. PROVED OIL RESERVES

Table VII-5 compares the 1002 area's estimated conditional economically recoverable oil resource to U.S. proved reserves. DOE's Energy Information Administration has estimated total U.S. proved oil reserves to be 28.446 BBO as of January 1, 1985. The 1002 area's oil potential equals 11.7 percent of this. The DOE National Energy Policy Plan (NEPP) has estimated that U.S. proved reserves will be only 11.602 BBO in the year 2000, thus making the 1002 area's oil resources 28.8 percent of the total. For limited leasing, the 1002 area's estimated recoverable resource would equal 8.4 percent of proved U.S. reserves in 1985, and 20.6 percent in the year 2000. These

comparisons should be used with caution, however, because of differences in the items being compared. "Proved reserves" are those that have been demonstrated with reasonable certainty to be recoverable from known reserves. The 1002 area's economically "recoverable resources," on the other hand, are, by definition, speculative and less precise. The 1985 reserves figure is based on current oil prices at the time of the estimates. The recoverable resources figure for the year 2000 is based on DOE's NEPP reference case assumptions regarding world oil prices.

Table VII-5.—The 1002 area's conditional, economically recoverable oil resources compared with total U.S. proved oil reserves.

[In billions of barrels. Year 1985 data from Department of Energy (1985, p.5); year 2000 data, for lower 48 States only, from Department of Energy (1985e, table 3-15]

	Year	
	1985	2000
U.S. proved reserves	28.5	[illegible].60
1002 area's recoverable resources:		
Full leasing	3.23	3.23
Percent of U.S. total	11.35	27.80
Limited leasing	2.36	2.36
Percent of U.S. total	8.30	20.34

ANTICIPATED MARKETS FOR THE 1002 AREA'S OIL

Assuming that potential oil production from the 1002 area is similar in quality to current North Slope production, the marketing location for the 1002 area's oil could be expected to follow similar marketing patterns. Crude oil markets are already established for production from the Alaskan North Slope (ANS), and this system could probably be used for oil from the 1002 area. Oil produced from Prudhoe Bay and Kuparuk is transported via TAPS to Valdez and from Valdez by tankers to ports on the West, Gulf, and East coasts. The Trans-Panama Pipeline at the Panama Canal is used extensively to transport crude oil from the Pacific Ocean to the Atlantic. Crude oil is off-loaded on the Pacific side and loaded onto tankers on the Atlantic side for shipment to Gulf of Mexico, East Coast ports, Puerto Rico, and the Virgin Islands.

Significant discoveries have been made in California's OCS areas in the Santa Barbara Channel and Santa Maria Basin, and elsewhere. This potential production could effectively back-out a portion of the future ANS production that would otherwise be marketed on the West Coast. However, production from known ANS fields is projected to begin declining in 1987 and fall to approximately 29 percent of 1984 production by the year 2000 (Alaska Department of Revenue, Petroleum Revenue Division, 1985). At the same time, crude oil production from any discoveries in the 1002 area is not projected to be on-line until the late 1990's or after the year 2000. Therefore, the market opportunities for the 1002 area's oil could conceivably be available in roughly the same proportions as current ANS markets.

Because of the statutory ban on export of U.S. oil, the West Coast market is well established as the primary area for ANS crude oil; this is logical if viewed solely on the basis of transportation cost. Shipments to the West Coast increased to a peak of 0.9 MBO/D in 1980. Over the period 1980-84, an average 52 percent of ANS crude oil was marketed on the West Coast. Alaskan crude oil in excess of West Coast demand is transported to the Panama Canal for shipment to other markets.

CONCLUSION

In summary, the 1002 area has a very significant potential to contribute to the national need for oil. Despite the degree of uncertainty, there is some chance that the area may contain a field the size of Prudhoe Bay. There is an even better chance of one or more smaller fields, still supergiants, totaling more than 3 billion barrels. Only actual exploration can provide the information needed to determine the extent and distribution of the resources, and, therefore, the potential benefit to the economy.

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file 90/10
AWWR

February 12, 1988

Sam:

The history of the 90/10 goes like this.

The Reclamation Act was passed in 1902, and projects were funded by appropriation.

The Mineral Leasing Act passed in 1920, and included the provision that states would receive 37.5% of the proceeds of federal leasing within their boundaries. Another 52.5% would go to the Reclamation Fund, and 10% to the federal treasury.

The Statehood Act incorporated this provision by reference. except that Alaska was not given access to the Reclamation Fund and therefore was entitled to receive the 90% entitlement directly.

(Note: Murkowski's presentation was rather confusing and sounds like rationalization for inadequate performance on his part. The arguments at Statehood were that 1) Alaska should receive some large measure of compensation for the amount of federal land reserved and withdrawn from economic development and state selection; and 2) Alaska should not participate in the Reclamation Fund because it would qualify for too many projects, if projects were assigned on basis of need. Other western states might have supported the measure in part to remain in control of the Reclamation Fund and in part to create precedent for a state receiving 90% directly.)

In 1976 Congress passed amendments to the Mineral Leasing Act that included the adjustment to Reclamation formula funding. As a result the western states are to receive 50% of the proceeds directly and only 40% goes into the Reclamation Fund. Tom Koester doesn't know why this change was made but there are several reasons that might make sense: 1) Congress was trying to increase incentives for oil and gas development on federal lands; 2) western states, recognizing the diminished need for reclamation, wanted to increase their direct take from public land development.

TESTIMONY OF G. THOMAS KOESTER ON S. 735
BEFORE THE SENATE SUBCOMMITTEE ON PUBLIC LANDS
July 14, 1987

Thank you, Mr. Chairman.

My name is G. Thomas Koester. I am an Assistant Attorney General for the State of Alaska.

The State of Alaska opposes S. 735 on both legal and policy grounds. As a legal matter, we view S. 735 as an impermissible attempt to amend a major component of the statehood compact under which Alaska was admitted to the Union. As a matter of policy, S. 735 would abrogate the historic compromise in public land law under which the United States changed its policy of disposing of federally owned lands to one of retaining title but dedicating the proceeds of those lands to the states in which the lands are located.

Section 35 of the Mineral Leasing Act of 1920, 30 U.S.C. § 191, currently governs the distribution of revenues from oil and gas leasing of federal public domain lands. Under that statute, 90 percent of those revenues are dedicated to the benefit of the states in which the lands are located. In the lower 48 states, this dedication takes the form of a direct grant of 50 percent of the revenues and deposit of an additional 40 percent in the Reclamation Fund, established under the Reclamation Act of 1902, 43 U.S.C. §§ 372 et seq. Because Alaska is not covered by the Reclamation Act, Alaska receives the full 90 percent under the statute.

This dedication of federal oil and gas revenues to the states represented a historic compromise in the history of public

land law. Around the turn of the century, there was a major change in federal land policy. The traditional practice of federal land disposal to encourage development and western migration was abandoned, and a new policy of federal land retention was instituted. To compensate the states for this continued federal ownership, which in many cases precludes economic development and in all cases precludes state and local taxation, Congress dedicated 90 percent of the mineral leasing revenues from those lands to the states.

During Congressional consideration of statehood for Alaska, considerable attention was given to the distribution of mineral leasing revenues from federal lands in Alaska. The result of those lengthy deliberations was that the revenue distribution provisions of the Mineral Leasing Act of 1920 were expressly incorporated into the Alaska Statehood Act.

The provisions of a statehood act admitting a new state to the Union constitute a compact -- a legally enforceable contract -- between the citizens of the new state and the United States. Such a compact does not impose obligations only on one of the parties; instead, obligations are imposed on both the new state and the United States. The specific terms of such a compact are obligatory and subsequently cannot be unilaterally amended by either party. As the United States Supreme Court once noted with respect to the Act admitting Wisconsin to the Union, a statehood act provision is "an unalterable condition of the admission, obligatory upon the United States." Beecher v. Wetherby, 95 U.S. (5 Otto) 517, ___ (1877).

Congress incorporated the Mineral Leasing Act of 1920 into the compact under which Alaska was admitted to the Union in section 28(b) of the Alaska Statehood Act. In part, this undoubtedly was no more than Congressional recognition of the long-standing policy, applicable to virtually all of the western states, of dedicating 90 percent of the proceeds of public lands to the states in which the lands are located -- i.e., the historic compromise adopted in 1920.

At the same time, however, the legislative history of the Alaska Statehood Act makes clear that Congressional incorporation of the Mineral Leasing Act in the statehood compact also was Congress' way of partially compensating Alaska for the substantial amount of federal land which had been withdrawn and reserved by the federal government for various purposes, and the attendant loss of economic productivity caused by those withdrawals and reservation. Ironically, a number of those withdrawals and reservations were for wildlife refuges, the specific federal lands for which S. 735 seeks to change the revenue distribution formula.

To fully appreciate Congress' incorporation of the Mineral Leasing Act's 90 percent entitlement for Alaska in the statehood compact under which Alaska was admitted, one must look at the facts confronted by Congress at that time. A significant concern during the deliberations on Alaska statehood was whether the Alaska economy was sufficient to support a new state and the essential government services which the new state would have to provide. Much of that concern was a result of the fact that more

than 99 percent of all the land in Alaska was owned by the federal government. Little or no development had taken place because of federal land management practices, and federal land therefore was not contributing to the economic development of the territory. In addition, because it was federally owned, it would be exempt from any taxes which might be levied by a new state government.

To ensure that the new State of Alaska would have sufficient economic resources to meet the necessary expenses of state government, Congress included a substantial land grant in the Alaska Statehood Act. In doing so, however, Congress discovered that more than one-fourth of the land in Alaska -- more than 95 million acres -- was included in federal withdrawals and reservations, several of which were wildlife refuges. Those withdrawn and reserved lands appeared to include most of the valuable resources in Alaska.

As a partial remedy to this situation, which one committee report characterized as "the problem of federal reservations," Congress consciously granted Alaska 90 percent of the oil and gas leasing revenues from federal lands in Alaska. Characterizing this as one of the "major provisions" of the Alaska Statehood Act, Congress concluded that this would minimize the adverse impact of federal withdrawals on the new state's economic viability and would ensure that the new state would benefit from any development of the substantial resources which might be found within those federal withdrawals.

Attached to the printed text of my testimony are a number of excerpts from the legislative history of the Alaska Statehood Act which demonstrate that both supporters and opponents of Alaska Statehood were well aware that Congress was including, as part of Alaska's statehood compact, an entitlement to 90 percent of all oil and gas lease revenues from federal lands in Alaska in perpetuity. While it would serve no purpose to go over all of them in detail, a few examples illustrate the broader Congressional understanding.

Senator Barrett of Wyoming, a supporter of statehood for Alaska, authored the language of what became section 28(b) of the Alaska Statehood Act, the section that incorporates the Mineral Leasing Act into the statehood compact. During a Senate hearing on statehood for Alaska, he remarked: "So I think it would be eminently fair and just and right and proper, when we write this bill up, that we . . . let the Federal Government retain the title to the minerals except such public lands as are granted to you, but give the Territory now and the State of Alaska-to-be ninety percent of the income from the minerals under the Leasing Act royalties that come in from now on out." Later in the hearing, he introduced the language that now appears as section 28(b) of the Alaska Statehood Act with the words: "I propose to insert a new section 21 on the last page of the bill and provide in here that 90 percent of the income from coal and 90 percent of the income from the leasing act minerals shall go to the new State of Alaska." He noted that the Secretary of

Interior had suggested such a provision be included in the statehood bill.

Representative Dawson of Utah, also a supporter of statehood for Alaska, commented on the House floor that "[t]hese [revenue sharing] provisions are the foundation upon which Alaska can and will build to the enormous benefit of the national economy shared by her sister States."

Senator Talmadge of Georgia, an opponent of statehood, noted during the Senate floor debate that the Statehood Act land grant and the various revenue sharing measures, specifically including the entitlement to 90 percent of oil and gas leasing revenues, "have been referred to variously as a 'dowry' and 'the greatest giveaway of natural resources in the history of this country.'"

Finally, and perhaps most significantly, Senator Butler of Maryland, a statehood opponent, reminded his Senate colleagues that grants made in statehood legislation are irrevocable and cannot be changed by a subsequent Congress:

> A bill which grants statehood is not some minor piece of legislation, but is a major function of the national legislature. We cannot undertake to perform that function without reminding ourselves that we are asked to make a grant which cannot be revoked. We cannot, therefore, consider these bills as we would ordinary legislation in the sense that ordinary legislation may be amended or changed in subsequent years as experience dictates.

When placed in its proper historical perspective, it is not surprising that Congress included an entitlement to 90 percent of the proceeds from federal oil and gas leasing in the

Alaska Statehood Act. The Mineral Leasing Act, and its revenue distribution formula under which 90 percent of the revenues from federal lands are dedicated to the states in which the lands are located, represents a historic trade-off in the development of public land law. In enacting it, Congress terminated its traditional policy of disposing of the public lands. Instead, it determined that the federal government should retain those public lands, but should dedicate most of the mineral revenues from those lands to the benefit of the states in which the lands are located.

Virtually all of the public land states were admitted to the Union prior to the enactment of the Mineral Leasing Act, and its dedication of 90 percent of public land revenues to the states, in 1920. As a result, the statehood acts admitting those states do not include a provision similar to the one incorporated in the Alaska Statehood Act. However, incorporation of the Mineral Leasing Act in the Alaska Statehood Act simply reflects the Congressional understanding that the Mineral Leasing Act indeed was a historic compromise and, as a result of that compromise, the public land states are to receive the benefit of 90 percent of the revenues from federal lands within their borders in return for the continued federal ownership and management of those lands.

Passage of this bill would significantly alter one of the carefully considered terms and conditions under which Alaska was admitted to the Union. It would be an impermissible unilateral attempt to amend the solemn compact between the national

government and the citizens of Alaska. Alaska has not agreed to this modification of the compact between Alaska and the United States and, without such agreement, it would have no force or effect.

It also would signal a marked departure from the historic compromise, under which Congress dedicated 90 percent of the proceeds of the public lands to the states in return for continued federal ownership, which has guided federal public land policy throughout the United States for more than six decades.

Alaska supports the goals of the Land and Water Conservation Fund. At the same time, the state is concerned that such a laudable goals not be accomplished at the cost of a fundamental change in the provisions of the solemn compact under which Alaska entered the Union and the historic compromise which has guided federal public land policy for more than two generations.

Thank you very much for the opportunity to testify on this bill. We hope that we can work constructively with this subcommittee and the Congress to improve the effectiveness of the Land and Water Conservation Fund without sacrificing Alaska's statehood birthright and more than sixty years of federal public land policy. Again, thank you very much.

ALASKA STATEHOOD ACT LEGISLATIVE HISTORY:
CONGRESSIONAL INCORPORATION OF MINERAL LEASING
ACT 90% REVENUE SHARING FORMULA IN
ALASKA STATEHOOD COMPACT

1. During Senate hearings on Alaska Statehood, one senator explained that he thought the new State of Alaska should get all of the lands within its boundaries but, because that probably was not possible, the Statehood Act should include a grant of 90 percent of Mineral Leasing Act revenues "from now on out."

> Senator BARRETT. . . .
>
> . . .
>
> So I think it would be eminently fair and just and right and proper, when we write this bill up, that we provide here that the [Mineral] Leasing Act of 1920, as amended, and let them retain title to the lands up there, except that which is granted -- personally I hate to see that done, but to be realistic we probably have to do that -- let the Federal Government retain the title to the minerals except such public lands as are granted to you, but give the Territory now and the State of Alaska-to-be ninety percent of the income from the minerals under the Leasing Act royalties that come in from now on out.

Hearings on S. 49 and S. 35 before the Senate Committee on Interior and Insular Affairs, 85th Cong., 1st Sess. 30-31 (1957).

2. Later in those hearings, the same senator offered an amendment to the proposed statehood legislation under consideration which would provide that "90 percent of the income from the leasing act minerals shall go to the new State of Alaska," noting that the Secretary of Interior supported a bill under consideration in the House of Representatives which would do precisely that but "suggested that the statehood bill was the proper place to insert such a provision." The language of the proposed amendment is identical to the language of what ultimately was enacted as section 28(b) of the Alaska Statehood Act. Both the author of the proposed amendment and one of his colleagues hoped that giving Alaska a 90 percent entitlement might ultimately result in their states getting the same thing. Whether that would result or not, however, they agreed that Alaska should receive such an entitlement as part of its statehood act.

> Senator ANDERSON. . . . As far as I am concerned, I hope you [Alaska's non-voting Delgate Bartlett] would agree with me that what we tried to do was to make it possible for Alaska to come

in as a State and live self-respectingly among the States.

We did not strip her of every dollar she could get, but tried to give her all the money to make Alaska a good and fine progressive State. I believe the bill does that.

. . .

Senator BARRETT. . . . I am offering an amendment here for the consideration of the committee. I think this is probably as good a time as any to do it.

I discussed this amendment this morning when you were absent, Senator Anderson. I propose to insert a new section 21 on the last page of the bill and provide in here that 90 percent of the income from coal and 90 percent of the income from the leasing act minerals shall go to the new State of Alaska.

When I mentioned that this morning, Delegate Bartlett told me that the House committee had considered a bill doing precisely that and had reported it out favorably. Since then I have looked up the record and I find that the Secretary of the Interior has filed a favorable report on the bill and agreed that it should be enacted into law but suggested that the statehood bill was the proper place to insert such a provision.

Maybe it would be well to have in these hearings a copy of the report that the Secretary of the Interior made on the House bill.

Senator JACKSON. Without objection, the report and the amendment of the Senator from Wyoming will be included in the record at this point, if that is agreeable. The report and the amendment should go together.

(The documents referred to are as follows:)

BARRETT AMENDMENT TO S. 49

Sec. 22. . . .

(b) Section 35 of the Act entitled "An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain," approved February 25, 1920, as amended (30 U.S.C. 191) is hereby amended by inserting immediately before the colon preceding the first proviso thereof the following: ",and of those from Alaska 52 1/2 per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof".

[Secretary of Interior's Report]

DEAR MR. ENGLE [Chairman of the House Committee on Interior and Insular Affairs]: This is in reply to your request for the views of this Department on H. R. 3477, a bill relating to moneys received from mineral lands in Alaska.

We recommend that H. R. 3477 be enacted. We believe, however, that the subject matter of the bill would be more appropriately covered in statehood legislation.

. . .

Senator ANDERSON. Do you not think Senator Barrett, that supplements the statement I made, that whatever makes it possible for the State to exist is a good bill?

I think Senator Barrett should be commended for that proposal. I thing there are some other States that the proposal could be applicable to but we may get our rights some time if Alaska does.

Senator JACKSON. That may be a good precedent for the other 11 Western States.

Senator ANDERSON. It happens that Wyoming and New Mexico are the 2 principal contributors to the Federal Treasury on this particular section, $100 million in Wyoming and $130 million or $140 million in New Mexico which we could have used very nicely in our State.

Senator JACKSON. We may have some problems with the other 37 States on this issue.

Senator BARRETT. I do not think so, particularly. I think we would be remiss a bit if we did not include it here, particularly since the Bureau of the Budget and the Secretary of the Interior and everyone interested has approved this.

Hearings on S. 49 and S. 35 before the Senate Interior and Insular Affairs Committee, 85th Cong., 1st Sess. 66-67 (1957).

3. A House committee report, in a section entitled "The Problem of Federal Reservations," noted that a partial solution to the depressing effect of federal withdrawals on the economic viability of a new Alaska state government would be to specify that the act of admission would grant Alaska 52 1/2 percent of Mineral Leasing Act revenues. This would be in addition to the 37 1/2 percent that all other public land states receive because, while those states were covered by the Reclamation Act, Alaska would not be.

As previously noted, tremendous acreages of land in Alaska have been tied up in the status of Federal reservations and withdrawals for various purposes. The committee feels strongly that this practice has been carried to extreme lengths in Alaska, to a point which has hampered the development of such resources for the benefit of mankind. As a result, a long list of potential basic industries in the territory, including the forest industry, hydroelectric power, oil and gas, coal, various other minerals, and the tourist industry, can exist in Alaska only as tenants of the Federal Government, and on the sufferance of the various Federal agencies. The committee considers that to be an unhealthy situation.

The failure of these industries to grow under such a restrictive policy is a proof of its unwisdom. The committee feels that this policy must be changed if statehood for Alaska is to be a success.

In its approach to the statehood issue, the committee has attempted to make a start toward such a change by various specific provisions in the bill. . . .

> A second provision in section 28 amends the Mineral Leasing Act of 1920, as amended, by granting 52 1/2 percent per annum of the net proceeds realized from coal, phosphates, oil, oil shale, and sodium on the public domain in Alaska shall be paid to the State of Alaska for disposition by the legislature thereof.
>
> The payment of these proceeds is recommended in return for Alaska not being covered by the Reclamation Act of 1902, as amended. The Reclamation Act provides that in the 17 Western States 52 1/2 percent of the oil- and gas-lease revenues goes into the reclamation fund; 37 1/2 percent is returned to the respective States, and the remaining 10 percent is retained by the Federal Government for administration purposes.

H.R. Rep. No. 624, 85th Cong., 1st Sess. 7-8 (1957).

4. The same point is reiterated in the sectional analysis.

> Subsection [28](b) amends the act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain approved February 25, 1920, by providing that 52 1/2 percent of the proceeds received therefrom shall be covered into the State treasury for disposition by the State legislature.
>
> The payment of these proceeds is recommended in return for Alaska not being covered by the Reclamation Act of 1902, as amended. The Reclamation Act provides that 52 1/2 percent of the oil and gas revenues goes into the reclamation fund; 37 1/2 percent is returned to the respective States and the remaining 10 percent is retained by the Federal Government for administration purposes.

Id. at 23.

5. A Senate Report made Alaska's entitlement to 90 percent of federal oil and gas leasing revenues even clearer.

> Some of the additional costs connected with statehood will be met by granting the State a reasonable return from Federal exploitation of

resources within the new State. In the past the United States has controlled the lion['']s share of such resources and, in some instances, retained the lion's share of the proceeds. This situation, though it has not proved conducive to development of the Alaskan economy, may have been proper at times when the United States paid a large part of the expense of governing the Territory. However, the committee deems it only fair that when the State relieves the United States of most of its expense burden, the State should receive a realistic portion of the proceeds from resources within its borders. The divisions of proceeds established in the bill are determined by comparisons with other States and consideration of the geographic facts which apply to Alaska.

. . .

Section 22 of the bill extends to the State the provisions of Public Law 88, 85th Congress, which was approved July 10 of this year. Under this new law the Territory receives a total of 90 percent of the profits from government coal mines and 90 percent of the profits from operations under the Mineral Leasing Act. Prior to the 1957 law, Alaska received none of the proceeds from government coal mines and 37 1/2 percent of the proceeds from mineral leasing operations. Without section 22 in the bill, the new State would not be within the purview of the 1957 act.

S. Rep. 1163, 85th Cong., 1st Sess. 3 (1957).

6. During the floor debate on Alaska statehood in the House of Representatives, one congressman outlined the relationship between the extensive federal withdrawals and the entitlement to 90 percent of all mineral leasing revenues which, in addition to the land grant, would form the "foundation" of Alaska's entry into the Union.

Mr. DAWSON of Utah. . . .

Further, over 92-million acres -- both in and out of the defense area -- already have been withdrawn by the Federal Government, and these include much of the most valuable resources. They include, for example, nearly 21-million acres of the

best forest lands and nearly 49-million acres of oil and gas reserves.

. . .

As to that lion's share of lands which would remain under Federal control, Alaska would receive -- for the support of its public schools -- 5 percent of the net proceeds from the sale of any land by the Federal Government.

Additionally, Alaska would receive 90 percent of the proceeds from the operation of Government coal mines and from the production of coal, phosphates, oil, oil shale, and sodium from the public domain. Reflecting Alaska's exclusion from the Reclamatioin Act of 1902, these are the same provisions which this Congress approved -- by consent -- for the Territory of Alaska last year in Public Law 85-88.

. . .

These provisions are the foundation upon which Alaska can and will build to the enormous benefit of the national economy shared by her sister States. We cannot make Alaska a "full and equal" State in name and then deny her the wherewithal to realize that status in fact.

85 Cong. Rec. 9360-9361 (1958).

7. During the floor debate in the Senate, an opponent of statehood for Alaska argued that the sharing of mineral revenues with the new State of Alaska, as a means to "alleviate" the adverse effect of continued federal control of significant acreage and resources, would result in Alaska being too dependent on those federal revenues.

Mr. ROBERTSON. . . .

The uniqueness of the Alaska land situation is further emphasized in the committee report, which points out that on the occasion of admission of existing States land grants amounted to a maximum of 6 to 11 percent of the total land area, and much acreage already had passed into private taxpaying ownership, whereas in Alaska, even after

a grant of unprecedented propotions to the proposed State, the Federal Government would continue to control more than two-thirds of the total acreage and an even larger percentage of the resources.

To alleviate this situation to some extent, the bill proposes to share with the State profits from Government coal mines, mineral leases, and the fur monopoly, which, of course, would make the State government a pensioner dependent on the Central Government to a much greater extent than the existing States which already, in my opinion, have jeopardized their constitutional rights by too ready acceptance of Federal handouts for a variety of public works and welfare programs.

85 Cong. Rec. 12020 (1958).

8. A supporter of Alaska statehood introduced a Department of Interior memorandum outlining the "new sources of revenue available to Alaska," one of which was listed as "oil and gas leases (90 percent to the State)." Another supporter then pointed out that oil had just been discovered in Alaska, and that discovery "will have a tremendous impact on the ability of the new State to provide the essential resources to support itself."

Mr. CHURCH. . . .

Mr. President, I wonder if the Senator from Florida will permit me to offer at this point in his address a memorandum which I have received from the Department of the Interior, which is directed to the very subject on which the Senator is now elaborating, namely, the capacity of Alaska to support statehood.

We have heard in the course of this debate many exaggerated statements about how statehood would impose an impossible burden upon the undeveloped economy of Alaska. If one were to listen uncritically to such statements, one might be led to conclude that statehood would drive the Alaskan economy into insolvency and bring ruin upon the people there.

I think this memorandum effectively gives a rebuttal to that argument, in that it shows

precisely what the additional costs for statehood would be, and what the additional income to the newly formed State government would be, by virtue of the provisions contained in the pending bill.

. . .

The PRESIDING OFFICER. Without objection, the memorandum referred to by the Senator from Idaho will be printed in the Record.

The memorandum is as follows:

. . .

New Revenues Available to Alaska

Oil and gas leases (90 percent to the State).....$3,000,000

. . .

Mr. JACKSON. . . .

I should like to point out one further consideration in connection with the financial ability of the proposed new State to take care of its responsibilities. Just 11 months ago we witnessed the first oil strike of any substance in Alaska. A little more than a year ago about 5 million acres were under lease, or applications were pending with respect thereto. The most recent check, in May, showed 32 million acres covered by oil leases or lease applications.

The program involves all the major oil companies and numerous independent oil companies. We have been advised in the Committee on Interior and Insular Affairs, where some of the legislation on this subject is handled, that the signs are most hopeful for a tremendous oil development in the area which will become a State.

I add that one point because it will have a tremendous impact on the ability of the new State to provide the essential resources to support itself. This is a factor not indicated in the

Secretary's analysis of the ability of the new State to do the job.

85 Cong. Rec. 12207-12208 (1958).

9. An opponent of statehood again pointed to the 90 percent entitlement in the statehood bill as evidence of the "prevailing doubt" regarding the ability of the new state to support itself.

Mr. TALMADGE. . . .

The prevailing doubt of Alaska's ability to support itself is evidenced by the generous special considerations which are made for it in this statehood act.

. . .

In addition [to a large land grant], it would be granted:

. . .

Ninety percent of the profits from Government coal mines and operations under the Mineral Leasing Act, of which 37 1/2 percent of the latter would be earmarked for roads and schools.

. . .

These considerations have been referred to variously as a "dowry" and "the greatest giveway of natural resources in the history of this country."

85 Cong. Rec. 12297 (1957).

10. Finally, the permanent and irrevocable nature of the granting of statehood was described.

Mr. BUTLER. . . .

Despite all its complex features, the primary purpose of the bill is to grant statehood. A bill which grants statehood is not some minor piece of legislation, but is a major function of the national legislature. We cannot undertake to

> perform that function without reminding ourselves that we are asked to make a grant which may not be revoked. We cannot, therefore, consider these bills as we would ordinary legislation in the sense that ordinary legislation may be amended or changed in subsequent years as experience dictates. . . .
>
> . . .
>
> My research has also developed that there is contained in the bill provisions which have the effect of giving away more revenue and more property than has ever been given to any State in its enabling act.

85 Cong. Rec. 12316-12317 (1958).

Alaska State Legislature
HOUSE OF REPRESENTATIVES
COMMITTEE ON RESOURCES

POUCH V
JUNEAU, ALASKA 99811
(907) 465-3715

MEMORANDUM

To: Rep. Sam Cotten, Co-Chair
Rep. Adelheid Herrmann, Co-Chair
Resources Committee members

From: Ned Farquhar, Staff Ned Farquhar

Subject: ANWR revenue issues

Date: March 2, 1987

BACKGROUND

This memorandum treats state-federal revenue issues related to proposed oil and gas activity in the Arctic National Wildlife Refuge (ANWR). The State of Alaska is entitled to 90% of the revenue derived by the federal government from mineral leasing activity (including oil and gas) on public lands in Alaska, including national wildlife refuge lands. Because of ANWR's oil and gas potential, the State of Alaska has a large stake in the federal decision regarding ANWR's status. Alaska's revenue entitlement is being discussed in Alaska and in Washington, and is mentioned in HJR 9 by the Resources Committee.

ISSUES

1. The coastal plain is presently closed to oil and gas leasing. Section 1002(i) of ANILCA closed the coastal plain of ANWR to oil and gas exploration and drilling by withdrawing it from the operation of mineral leasing laws, including the Mineral Leasing Act of 1920. Until Congress acts to reopen the coastal plain, public lands within ANWR cannot be made available for oil and gas leasing. (Attachment One - ANILCA Sec 1002(i).)

2. Congress intends to return 90% of the mineral leasing revenue from public lands to all states. During the early 1900's, when the federal government adopted policies favoring retention of public lands, Congress decided that the States and their political subdivisions should benefit fiscally from the presence of retained federal land not subject to property taxation. The Mineral Leasing Act of 1920, as amended, implemented this policy by requiring that 90% of leasable mineral revenues would be returned to the States. (Attachment Two - pertinent sections of the Mineral Leasing Act.)

3. Alaska and the other western states receive 90% of mineral leasing revenues, but on a different formulation. Western states participating in the Reclamation Fund, created by the Reclamation Act of 1902, receive 50% of leasable mineral revenues directly, and another 40% is invested in the Reclamation Fund. Alaska is not contiguous and has less need for irrigation/impoundment development; thus it does not participate in the Reclamation Fund and receives 90% of mineral leasing revenues directly.

4. Alaska receives 90% of public land mineral leasing revenues as part of the solemn compact between the United States and Alaska at Statehood. When Congress enacted the Alaska Statehood Act, it included a "major provision" (according to the Legislative History) returning 90% of the mineral leasing revenues from federal public land directly to the new State of Alaska. This was in the form of an amendment to the Mineral Leasing Act of 1920. According to the Attorney General, such provisions of a Statehood Act are "obligatory" upon the United States. Based on the nature of the Statehood compact, Alaska would have a "very strong (legal) argument" if Congress were to attempt to amend the formula unilaterally. (Attachment Three - Attorney General's opinion on ANWR issues.)

5. Participation in the Reclamation Fund has directly benefited the western states, except Alaska. The Reclamation Fund is a token mechanism for funding irrigation and impoundment projects in western states. In 1982, for instance, public land revenues to the Fund (mineral leasing, land and timber sales) from the participating western states totalled about $450 million, but expenditures on reclamation projects in the same states were about $800 million (including some general fund payments and revenue from reclamation projects). Through its history the Reclamation Fund has been fortified by large contributions of general fund dollars, in addition to public land and reclamation project revenues. (Attachment Four - Map showing western states Reclamation Fund contributions/receipts for 1982.)

6. Alaska public lands subject to 90% revenue-sharing include ANWR. In the Kenai Moose Range case (1981), the United States Supreme Court held that "(r)evenues generated by oil and gas leases on federal wildlife refuges consisting of reserved public lands...must be distributed according to the formula provided in...the Mineral Leasing Act of 1920." Thus ANWR public lands, if not closed to leasing by ANILCA 1002(i), would be subject to the Mineral Leasing Act of 1920, including the 90% revenue sharing provision.

7. The former Naval Petroleum Reserve No. 4 ("Pet-4") was exempt from the 90% revenue sharing provision; Alaska has never had a 90% entitlement on the Pet-4/NPRA acreage. In his recent speech before the Alaska Legislature, Senator Stevens stated: "Many in Congress remember that reduction of Alaska's share to 50% was part of the price of opening the 23 million acre National Petroleum Reserve-Alaska." In fact, naval petroleum reserves (including the former Pet-4) are specifically exempted from the leasing and revenue-sharing provisions of the Mineral Leasing Act of 1920. The State of

Alaska never enjoyed a 90% entitlement to revenues from production on Pet-4/NPRA acreage; thus there was never a "reduction of Alaska's share to 50%." Only if Pet-4 had been turned over to the Department of the Interior without special legislation affecting Alaska's revenue share could NPRA have been public land subject to the usual 90% revenue-sharing arrangement.

8. When Congress established the National Petroleum Reserve - Alaska (NPRA) in 1976, it raised Alaska's revenue share from 0% to 50%. Appearing before the Committee, U.S. Fish and Wildlife Service Alaska Region Director Bob Gilmore said that the Interior Department expects Congress to use the NPRA model (a 50% entitlement for Alaska) as a basis for opening ANWR, and that the Interior Department would use a similar mechanism if it agreed to an overriding revenue retention provision in the pending land trade contracts. In fact, the legislation which opened Pet-4 to oil and gas leasing, including revenue sharing, is a poor example for reduction of the State of Alaska's revenue share from ANWR. The State's revenue expectations for the affected acreage jumped from 0% to 50% with the passage of the NPRA Act in 1976, which removed the land from its exempt status under the Mineral Leasing Act of 1920.

9. If the United States proceeds with land trades affecting Alaska's 90% entitlement, would the State be able to challenge the exchanges on the basis of its prior existing right? In a recent letter to Asst. Interior Secretary Bill Horn, Rep. Cotten asked whether the Interior Department believes that it may trade Alaska's existing right without Alaska's concurrence. No response has been received. However, in the attached opinion, the Attorney General indicates little faith that the courts would accept the argument that the 90% entitlement in the Statehood compact

Rep. Cotten - ANWR revenues

"also constituted an implied promise not to convey federal lands to third parties..."

10. Congress must generally treat the States equally; can it create a new leasing mechanism, or segregate ANWR lands, with the purpose of reducing or eliminating Alaska's rightful share of mineral leasing revenues from ANWR? Rep. Cotten has asked the Attorney General whether there are "foreseeable circumstances under which federal lands in the coastal plain could be considered other than 'public land' subject to the Mineral Leasing Act and the 90/10 federal-state revenue-sharing arrangement."

SUMMARY

The State of Alaska has a strong case to support its contention that the 90% revenue sharing entitlement is part of the Statehood compact and that any oil and gas revenues derived from federal lands in ANWR must be subject to this provision as it exists. If Congress decides to open ANWR, and wishes to do so in a manner that will not be susceptible to legal challenge, Alaska's concurrence will be necessary on any reduction in the existing 90% entitlement.

Attachments

findings and order of the Secretary shall be set aside by such court if they are not found to be supported by substantial evidence as provided in section 706(2)(E) of title 5, United States Code.

(3) If any person fails to pay an assessment of a civil penalty against him under paragraph (1) after it has become final, or after the appropriate court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General of the United States, who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(4) The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this subsection unless the matter is pending in court for judicial review or recovery of assessment.

(h) REPORT TO CONGRESS.—Not earlier than five years after the enactment date of this Act and not later than five years and nine months after such date, the Secretary shall prepare and submit to Congress a report containing—

(1) the identification by means other than drilling of exploratory wells of those areas within the coastal plain that have oil and gas production potential and estimate of the volume of the oil and gas concerned;

(2) the description of the fish and wildlife, their habitats, and other resources that are within the areas identified under paragraph (1);

(3) an evaluation of the adverse effects that the carrying out of further exploration for, and the development and production of, oil and gas within such areas will have on the resources referred to in paragraph (2);

(4) a description of how such oil and gas, if produced within such areas, may be transported to processing facilities;

(5) an evaluation of how such oil and gas relates to the national need for additional domestic sources of oil and gas; and

(6) the recommendations of the Secretary with respect to whether further exploration for, and the development and production of, oil and gas within the coastal plain should be permitted and, if so, what additional legal authority is necessary to ensure that the adverse effects of such activities on fish and wildlife, their habitats, and other resources are avoided or minimized.

(i) EFFECT OF OTHER LAWS.—Until otherwise provided for in law enacted after the enactment date of this Act, all public lands within the coastal plain are withdrawn from all forms of entry or appropriation under the mining laws, and from operation of the mineral leasing laws, of the United States.

PROHIBITION ON DEVELOPMENT

16 USC 3143.

SEC. 1003. Production of oil and gas from the Arctic National Wildlife Refuge is prohibited and no leasing or other development leading to production of oil and gas from the range shall be undertaken until authorized by an Act of Congress.

WILDERNESS PORTION OF STUDY

Report to President. 16 USC 3144.

SEC. 1004. (a) As part of the study, the Secretary shall review the suitability or nonsuitability for preservation as wilderness of the

Federal lands described in section 1001 and report his findings to the President.

(b) The President shall advise the Senate and the House of Representatives of his recommendations with respect to the designation of the area or any part thereof as wilderness together with a map thereof and a definition of its boundaries. Presidential recommend. to Congress.

(c) Subject to valid existing rights and the provisions of section 1002 of this Act, the wilderness study area designated by this section shall, until Congress determines otherwise, be administered by the Secretary so as to maintain presently existing wilderness character and potential for inclusion in the National Wilderness Preservation System. Already established uses may be permitted to continue, subject to such restrictions as the Secretary deems desirable, in the manner and degree in which the same were being conducted on the date of enactment of this Act.

WILDLIFE RESOURCES PORTION OF STUDY

16 USC 3145

SEC. 1005. The Secretary shall work closely with the State of Alaska and Native Village and Regional Corporations in evaluating the impact of oil and gas exploration, development, production, and transportation and other human activities on the wildlife resources of these lands, including impacts on the Arctic and Porcupine caribou herds, polar bear, muskox, grizzly bear, wolf, wolverine, seabirds, shore birds, and migratory waterfowl. In addition the Secretary shall consult with the appropriate agencies of the Government of Canada in evaluating such impacts particularly with respect to the Porcupine caribou herd. Consultation with Canadian Government

TRANSPORTATION ALTERNATIVES PORTION OF STUDY

16 USC 3146

SEC. 1006. In studying oil and gas alternative transportation systems, the Secretary shall consult with
tation and shall consider—

(1) the extent to which environ
feasible alternative routes could be e

(2) the prospective oil and gas prod
of Alaska for each alternative transp

(3) the environmental and econo
associated with such alternative rout

ARCTIC RESEARCH S

SC 3147

SEC. 1007. (a) The Secretary, the Sec
Secretary of Energy shall initiate and
mission, facilities and administration of
Laboratory (NARL), at Point Barrow, Ala
the historical responsibilities carried out
bution to applied and basic Arctic resea
cally address and the Secretary shall mal
need for redirecting the United States Ar
role of the NARL facilities in developi
policy.

(b) The Secretaries shall assess the
(1) developing relevant scientific
environment and utilizing applied re
unique problems the Arctic presents i
(B) minimize the impact of resource d

d Arctic
arch
ratory,
ement.

ATTACHMENT ONE

ANILCA Sec. 1002(i), 1003

Reservation of helium-gas-bearing land on the public domain, see section 167a of Title 50, War and National Defense.

Resettlement lands for Navajo tribe, transfer of interests of United States as lessor under this chapter, see section 640d-10 of Title 25, Indians.

Review of withdrawals in certain states which closed lands to appropriation under this chapter, see section 1714 of Title 43, Public Lands.

Revocation of reservation of certain lands in and around Taquina Head and restoration to public lands, except that such lands be withdrawn from entry under this chapter, see section 17[illegible] of Title 43.

Status of offers for noncompetitive oil and gas leases on lands conveyed to Alaska native corporations or individual Alaska natives, see section 1633 of Title 43.

Steese National Conservation Area, mineral exploration and development, see section 460mm-1[illegible] of Title 16, Conservation.

SUBCHAPTER I—GENERAL PROVISIONS

§ 181. Lands subject to disposition; persons entitled to benefits; reciprocal privileges; helium rights reserved

Deposits of coal, phosphate, sodium, potassium, oil, oil shale, gilsonite (including all vein-type solid hydrocarbons), or gas, and lands containing such deposits owned by the United States, including those in national forests, but excluding lands acquired under the Appalachian Forest Act, approved March 1, 1911 (36 Stat. 961), and those in incorporated cities, towns, and villages and in national parks and monuments, those acquired under other Acts subsequent to February 25, 1920, and lands within the naval petroleum and oil-shale reserves, except as hereinafter provided, shall be subject to disposition in the form and manner provided by this chapter to citizens of the United States, or to associations of such citizens, or to any corporation organized under the laws of the United States, or of any State or Territory thereof, or in the case of coal, oil, oil shale, or gas, to municipalities. Citizens of another country, the laws, customs, or regulations of which deny similar or like privileges to citizens or corporations of this country, shall not by stock ownership, stock holding, or stock control own any interest in any lease acquired under the provisions of this chapter.

The term "oil" shall embrace all nongaseous hydrocarbon substances other than those substances leasable as coal, oil shale, or gilsonite (including all vein-type solid hydrocarbons).

The term "combined hydrocarbon lease" shall refer to a lease issued in a special tar sand area pursuant to section 226 of this title after November 16, 1981.

The term "special tar sand area" means (1) an area designated by the Secretary of the Interior's orders of November 20, 1980 (45 FR 76800–76801) and January 21, 1981 (46 FR 6077–6078) as containing substantial deposits of tar sand.

The United States reserves the ownership of and the right to extract helium from all gas produced from lands leased or otherwise granted under the provisions of this chapter, under such rules and regulations as shall be prescribed by the Secretary of the Interior: *Provided further*, That in the extraction of helium from gas produced from such lands it shall be so extracted as to cause no substantial delay in the delivery of gas produced from the well to the purchaser thereof.

(Feb. 25, 1920, c. 85, § 1, 41 Stat. 437; Feb. 7, 1927, c. 66, § 5, 44 Stat. 1058; Aug. 8, 1946, c. 916, § 1, 60 Stat. 950; Sept. 2, 1960, Pub.L. 86–705, § 7(a), 74 Stat. 790; Nov. 16, 1981, Pub.L. 97–78, § 1(1), (4), 95 Stat. 1070.)

Historical Note

References in Text. The Appalachian Forest Act, referred to in the first undesignated paragraph, is Act Mar. 1, 1911, c. 186, 36 Stat. 961, as amended, also known as the "Weeks law" which is classified to sections 480, 500, 513 to 519, 521, 552 and 563 of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 552 of Title 16 and Tables volume.

1981 Amendment. Pub.L. 97–78, in first par., substituted "gilsonite (including all vein-type solid hydrocarbons)," for "native asphalt, solid and semisolid bitumen, and bituminous rock (including oil-impregnated rock or sands from which oil is recoverable only by special treatment after the deposit is mined or quarried)", and added, following first par., three paragraphs which define "oil", "combined hydrocarbon lease", and "special tar sand area", respectively.

1960 Amendment. Pub.L. 86–705 included deposits of native asphalt, solid and semisolid bitumen, and bituminous rock.

1946 Amendment. Act Aug. 8, 1946, reenacted: existing par., less three provisos, as first sentence of first par., inserting "potassium" after "sodium", which was also included in the 1927 amendment, and substituting provision for disposition of deposits "in incorporated cities, towns, and villages, and in national parks and monuments, those acquired under other Acts subsequent to February 25, 1920, and lands within the naval petroleum and oil-shale reserves" for such disposition "in national parks, and in lands withdrawn or reserved for military or naval uses or purposes" and phrase "associations of such citizens" for "any association of such persons"; former third proviso as second sentence of first par.; former first proviso, as second par., inserting reservation of ownership provision and deleting "permitted" preceding "leased or otherwise granted"; and former second proviso as proviso in second par.

1927 Amendment. Act Feb. 7, 1927, included deposits of potassium.

Short Title of 1981 Amendment. Pub.L. 97–78, Nov. 16, 1981, 95 Stat. 1070, which generally made provision for a combined hydrocarbon lease through an amendment of this section and sections 182, 184, 209, 226, 241, 351, and 352 of this title and the enactment of provisions set out as a note under this section, is popularly known as the Combined Hydrocarbon Leasing Act of 1981.

Short Title of 1976 Amendment. Pub.L. 94–377, § 1(a), Aug. 4, 1976, 90 Stat. 1083, as amended by Pub.L. 95–554, § 8, Oct. 30, 1978, 92 Stat. 2075, provided that: "This Act [enacting sections 202a, 208–1 and 208–2 of this title, amending sections 184, 191, 201, 203, 207, 209 and 352 of this title, repealing sections 201–1 and 204 of this title, and enacting provisions set out as notes under sections 184, 201, 201–1, 203, and 204 of this title] may be cited as the 'Federal Coal Leasing Amendments Act of 19[illegible]'."

Short Title of 1960 Amendment. Section 1 of Pub.L. 86–705 provided that Pub.L. 86–705, which amended sections 181, 182, 184, 187a, 226, 226–1, 226–2, and 241 of this title, and enacted provisions set out as notes under sections 187a and 226 of this title may be cited as the "Mineral Leasing Act Revision of 1960."

Short Title of 1946 Amendment. Act Aug. 8, 1946, c. 916, 60 Stat. 950, as amended, which enacted sections 187a, 187b, 226c, and 236b of this title, amended sections 181, 184, 188, 193, 209, 225, 226 and 285 of this title, repealed sections 223–226a, and 226b of this title, and enacted a provision set out as a note under section 181 of this title, is popularly known as the O'Mahoney-Hatch Act.

Short Title of 1927 Amendment. Act Feb. 7, 1927, c. 66, 44 Stat. 1057, as amended, which enacted sections 281 to 287 of this title, amended sections 181 and 193 of this title, and repealed sections 141 to 152 of this title, is popularly known as the Potash Leasing Act of 1927 and the Potassium Act of 1927.

Short Title. This chapter is popularly known as the General Leasing Act, the Mineral Lands Leasing Act, the Mineral Lands Leasing Act of 1920, the Mineral Leasing Act, the Mineral Leasing Act of 1920, and the Oil Lands Leasing Act.

Savin[illegible] Land[illegible] Pub.L[illegible] to be [illegible] pla[illegible] etc., [illegible] leased [illegible] Act of [illegible] title, [illegible] out as [illegible] Public [illegible]

Sec[illegible] repeal[illegible] ing se[illegible] title, [illegible] 209, 2[illegible] ing se[illegible] shall [illegible] as it [illegible] ment, [illegible] law i[illegible] any [illegible] date [illegible] stater[illegible] gover[illegible] Act i[illegible] to."

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"(1[illegible] 1981 [illegible] shall [illegible]

ATTACHMENT TWO
Mineral Leasing Act,
affected lands

on the amount of such taxes, and there was nothing in the language or legislative history of this section to support an assertion that Congress intended to maximize and capture through royalties all "economic rents" from the mining of federal coal, and then to divide the proceeds with the state in accordance with formula. Commonwealth Edison Co. v. Montana, Mont.1981, 101 S.Ct. 2946, 453 U.S. 609, 69 L.Ed.2d 884, rehearing denied 102 S.Ct. 889, 453 U.S. 927, 69 L.Ed.2d 1023.

§ 190. Oath; requirement; form; blanks

All statements, representations or reports required by the Secretary of the Interior under this chapter shall be upon oath, unless otherwise specified by him, and in such form and upon such blanks as the Secretary of the Interior may require.

(Feb. 25, 1920, c. 85, § 33, 41 Stat. 450.)

Cross References

Foreign interests in leases of public lands made under this section, see section 7435 of Title 10, Armed Forces.

Jurisdiction and control over naval petroleum reserves covered by leases granted under this section, see section 7421 of Title 10.

Laws applicable, see sections 275 and 285 of this title.

West's Federal Forms

Jurat, see § 1487.

§ 191. Disposition of moneys received

All money received from sales, bonuses, royalties including interest charges collected under the Federal Oil and Gas Royalty Management Act of 1982 [30 U.S.C.A. § 1701 et seq.], and rentals of the public lands under the provisions of this chapter and the Geothermal Steam Act of 1970 [30 U.S.C.A. § 1001 et seq.], notwithstanding the provisions of section 20 thereof [30 U.S.C.A. § 1019], shall be paid into the Treasury of the United States; 50 per centum thereof shall be paid by the Secretary of the Treasury to the State other than Alaska within the boundaries of which the leased lands or deposits are or were located; said moneys paid to any of such States on or after January 1, 1976, to be used by such State and its subdivisions, as the legislature of the State may direct giving priority to those subdivisions of the State socially or economically impacted by development of minerals leased under this chapter, for (i) planning, (ii) construction and maintenance of public facilities, and (iii) provision of public service; and excepting those from Alaska, 40 per centum thereof shall be paid into, reserved, appropriated, as part of the reclamation fund created by the Act of Congress known as the Reclamation Act, approved June 17, 1902, and of those from Alaska, 90 per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof: *Provided,* That all moneys which may accrue to the United States under the provisions of this chapter and the Geothermal Steam Act of 1970 from lands within the naval petroleum reserves shall be deposited in the Treasury as "miscellaneous receipts", as provided by section 7433(b) of Title 10. All moneys received under the provisions of this chapter and the Geothermal Steam Act of 1970 not otherwise disposed of by this section shall be credited to miscellaneous receipts. Payments to States under this section with respect to any moneys received by the United States, shall be made not later than the last business day of the month in which such moneys are warranted by the United States

Treasury to the Secretary as having been received, except for any portion of such moneys which is under challenge and placed in a suspense account pending resolution of a dispute. Such warrants shall be issued by the United States Treasury not later than 10 days after receipt of such moneys by the Treasury. Moneys placed in a suspense account which are determined to be payable to a State shall be made not later than the last business day of the month in which such dispute is resolved. Any such amount placed in a suspense account pending resolution shall bear interest until the dispute is resolved.

(Feb. 25, 1920, c. 85, § 35, 41 Stat. 450; May 27, 1947, c. 83, 61 Stat. 119; Aug. 3, 1950, c. 527, 64 Stat. 402; July 10, 1957, Pub.L. 85-88, § 2, 71 Stat. 282; July 7, 1958, Pub.L. 85-508, §§ 6(k), 28(b), 72 Stat. 343, 351; Apr. 21, 1976, Pub.L. 94-273, § 6(2), 90 Stat. 377; Aug. 4, 1976, Pub.L. 94-377, § 9, 90 Stat. 1090; Sept. 28, 1976, Pub.L. 94-422, Title III, § 301, 90 Stat. 1323; Oct. 21, 1976, Pub.L. 94-579, Title III, § 317(a), 90 Stat. 2770; Jan. 12, 1983, Pub.L. 97-451, Title I, § 104(a), 111(g), 96 Stat. 2451, 2456.)

Historical Note

References in Text. The Federal Oil and Gas Royalty Management Act of 1982, referred to in text, is Pub.L. 97-451, Jan. 12, 1983, 96 Stat. 2447, which is classified generally to chapter 29 (section 1701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of this title and Tables volume.

The Geothermal Steam Act of 1970, referred to in text, is Pub.L. 91-581, Dec. 24, 1970, 84 Stat. 1566, which is classified principally to chapter 23 (section 1001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables volume.

The Reclamation Act, referred to in text, is Act June 17, 1902, c. 1093, 32 Stat. 388, as amended, which is classified generally to chapter 12 (section 371 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 371 of Title 43 and Tables volume.

Codification. "Section 7433(b) of Title 10" was substituted for "the Act of June 4, 1920 (41 Stat. 813), as amended June 30, 1938 (52 Stat. 1252)", which was classified to section 224 of former Title 34, Navy, on authority of Act Aug. 10, 1956, c. 1041, § 49(b), 70A Stat. 640, the first section of which enacted Title 10, Armed Forces.

Provisions of this section which authorized the payment of monies to the Territory of Alaska were omitted as superseded by the provisions authorizing the payment of monies to the State of Alaska.

1983 Amendment. Pub.L. 97-451, § 104(a), struck out "as soon as practicable after March 31 and September 30 of each year" after "Secretary of the Treasury" and "of those from Alaska", and added at the end provisions directing that payments to States be made not later than the last business day of the month in which such moneys are warranted by the United States Treasury to the Secretary as having been received, that warrants be issued by the Treasury not later than 10 days after receipt of the money by the Treasury, that moneys placed in a suspense account which are determined to be payable to a State be made not later than the last business day of the month in which a dispute is resolved, and that amounts placed in a suspense account pending resolution bear interest until the dispute is resolved.

Pub.L. 97-451, § 111(g), inserted reference to interest charges collected under the Federal Oil and Gas Royalty Management Act of 1982.

1976 Amendments. Pub.L. 94-579 substituted provision setting forth determination of am

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ATTACHMENT TWO, cont.
Mineral Leasing Act,
revenue disposition

ATTACHMENT THREE

Attorney General's opinion on Alaska's 90% revenue entitlement in ANWR

MEMORANDUM

TO: Honorable Bill Sheffield
Governor
State of Alaska

DATE: April 28, 1986

FILE NO: 663-86-0339

TELEPHONE NO: 465-3600

FROM: Harold M. Brown
Attorney General

By: G. Thomas Koester GTK
Assistant Attorney General
Department of Law

SUBJECT: ANWR issues -- federal 90 percent revenue sharing

As part of an overall analysis of potential oil and gas leasing in the Arctic National Wildlife Refuge ("ANWR"), you asked this department to prepare a preliminary analysis of two specific issues: (1) the effect of a possible land trade on the state's 90 percent royalty share of oil and gas production from federal lands in wildlife refuges; and (2) legal arguments which might be raised with respect to possible congressional consideration of a reduction in the state's current 90 percent royalty share.

In brief, we believe (1) a land trade would eliminate the state's 90 percent royalty share of production from the lands traded by the United States to third parties and probably would result in the state receiving no royalty from oil and gas produced on the exchange lands received by the federal government, and (2) there are both legal and policy arguments the state can make against a congressional reduction of the state's royalty share, but we cannot be certain that they would prevail.

I. Background

When the United States issues oil and gas leases for lands within wildlife refuges, distribution of the revenues received by the United States from that leasing depends on whether the refuge lands from which the revenues are derived are acquired lands or reserved public domain lands. "[A]cquired lands are those granted or sold to the United States by a State or citizen and public domain lands were usually never in state or private ownership." Wallis v. Pan American Petroleum Corp., 384 U.S. 63, 65 n.2 (1966).

Oil and gas leasing on acquired lands is governed by the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351 et seq. Under that Act, revenues from oil and gas leases on acquired lands are to be "distributed in the same manner as prescribed for other receipts from the lands affected by the lease." 30 U.S.C. § 355. As applied to wildlife refuges created from acquired lands, this provision requires that oil and gas revenues be distributed according to the formula contained in the Wildlife

Refuge Revenue Sharing Act, 16 U.S.C. § 715s, which provides that 75 percent of the revenues go to the federal government and 25 percent of the revenues go to the county in which the wildlife refuge is located.

Oil and gas leasing on public domain lands reserved for wildlife refuge purposes, on the other hand, is governed by the Mineral Leasing Act of 1920, 30 U.S.C. §§ 191 et seq. Under that Act, the state is entitled to 90 percent of the revenues from such lands in refuges in Alaska and 10 percent is paid into the United States Treasury. */ See generally Watt v. Alaska, 451 U.S. 259 (1981).

Congress extended the Mineral Leasing Act distribution formula for revenues from public domain lands, including reserved public domain lands in wildlife refuges, to Alaska in section 28(b) of the Alaska Statehood Act. Congress considered this one of the "major provisions" of the Act. H.R. Rep. No. 624, 85th Cong., 1st Sess. 3 (June 25, 1957) ("House Report"). Congress did so, in large part, because so much of Alaska was "tied up in the status of Federal reservations and withdrawals for various purposes," stating that this "practice has been carried to extreme lengths in Alaska." House Report at 7. One result of that "unhealthy situation," id. at 8, is that substantial mineral leasing revenues in Alaska are derived from public lands in federal withdrawals and reservations, including wildlife refuges, a situation unique to Alaska. See Watt, 451 U.S. at 261, n.1.

The Mineral Leasing Act, and its revenue distribution formula under which 90 percent of the revenues are dedicated to the state, represented a historic tradeoff in the history of public land law. In enacting it, Congress terminated its historic policy of disposing of the public lands. Instead, it determined

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*/ States other than Alaska receive only 50 percent of public domain land mineral revenues. However, an additional 40 percent of those revenues are paid into the Reclamation Fund established under the Reclamation Act of 1902. Those funds, in turn, are used to fund reclamation projects in those states. Alaska is not covered by the Reclamation Act and receives no benefits under it. Congress considered it only fair that the additional 40 percent share of public domain land revenues be paid to Alaska "in return for Alaska not being covered by the Reclamation Act of 1902." See H.R. Rep. No. 624 (to accompany H.R. 7999), 85th Cong., 1st Sess. 23 (June 25, 1957).

that the federal government should retain those public lands remaining in the states, but should use most of the mineral revenues from those lands for the states' benefit. The 90-10 revenue distribution formula in the Mineral Leasing Act "was to compensate for the states' inability to tax the lands to pay for governmental services." Fairfax and Yale, The Financial Interest of Western States in Non-tax Revenues from the Federal Public Lands 19, published by the Western Legislative Conference, Council of State Governments, and the Lincoln Institute of Land Policy (1985).

In contrast, the Wildlife Refuge Revenue Sharing Act, under which 25 percent of certain wildlife refuge revenues are shared with the counties in which the refuges lie, was intended to reduce local opposition to federal acquisition of land for refuge purposes. The revenue sharing formula was intended to compensate localities for the loss of property tax revenue when the federal government acquired the land and, as a result, it was removed from the local tax roles. As a general proposition, this rationale would not fit federal acquisition of large tracts of either state land or undeveloped Native corporation land, neither of which currently are subject to local property taxes. See Alaska Const. art. IX, § 4; 43 U.S.C. § 1620(d).

Nonetheless, the distinction between acquired land in wildlife refuges and public domain land reserved for refuge purposes is central to resolution of the first question you asked us to discuss. The fact that Congress extended the Mineral Leasing Act to Alaska in the Statehood Act bears directly on your second question.

II. The Effect of a Land Trade on the State's 90 Percent Royalty Share

We understand that the Department of the Interior is contemplating certain land trades under which federal lands in ANWR would be exchanged for privately-owned Native corporation lands constituting inholdings in other federal conservation system units in Alaska. If such exchanges take place, and the exchanged ANWR lands are offered for oil and gas leasing, the Native corporations would be the lessors entitled to receive the revenues. The revenues would not be received by the federal government as result of leasing under the Mineral Leasing Act, and those revenues would not be subject to the Mineral Leasing Act's 90-10 distribution formula. Accordingly, there would be no basis for the state to claim any portion of the revenues derived. In other words, land trades would totally eliminate the state's 90 percent royalty share from such ANWR lands.

In addition, it should be noted that the state would have no right to any federal oil and gas revenues derived from the lands obtained by the United States from the Native corporations. Those lands would be acquired lands, not reserved public domain lands, and the revenue distribution from federal oil and gas leases on those lands would be governed by the Mineral Leasing Act for Acquired Lands. As noted earlier, revenues from oil and gas leasing of acquired lands in wildlife refuges are governed by Wildlife Refuge Revenue Sharing Act, which provides that 25 percent of any such revenues are to go to the county in which the refuge is located and 75 percent to the federal government. None of the revenues go to the state.

The state could argue that this should not be the result. The rationale for the Wildlife Refuge Revenue Sharing Act distribution scheme -- i.e., compensating municipalities for lost property tax receipts -- does not apply to undeveloped Native corporation lands, which are not subject to local property taxes under the Alaska Native Claims Settlement Act (at least until 1991). See 43 U.S.C. § 1620(d). Moreover, the state can argue that the United States cannot eliminate its 90 percent share of revenues from reserved public domain lands by trading them on the ground that doing so would violate the solemn compact memorialized in the Alaska Statehood Act.

However, we believe both arguments probably would be unavailing in court. The first argument appears to be more of a policy argument than a legal argument, more appropriately directed to Congress and not the courts. The second argument would require the court to find that the extension of the Mineral Leasing Act to Alaska also constituted an implied promise not to convey federal lands to third parties, which simply is not supported by the legislative history of section 28(b) of the Statehood Act.

III. Congressional Reduction of the State's 90 Percent Royalty Share

As noted in section I above, Congress extended the Mineral Leasing Act distribution formula for revenues from public domain lands, including reserved public domain lands in wildlife refuges, to Alaska in section 28(b) of the Alaska Statehood Act. Alaska accepted the provisions of the Statehood Act in article XII, section 13, of the Alaska Constitution. Provisions of a Statehood Act become obligatory on the United States upon acceptance of those provisions by the new state. See, e.g., Cooper v. Roberts, 59 U.S. (18 How.) 173 (1856); see generally 1981 Op. Att'y Gen. No. 3, at 3-5 (April 2). Particularly in light of

Congress' characterization of the extension of the Mineral Leasing Act to Alaska as one of the "major provisions" of the Alaska Statehood Act, the state has a very strong argument that continued application of the Mineral Leasing Act's distribution formula to oil and gas leasing revenues from reserved federal public domain lands in ANWR is required as part of Alaska's statehood compact (at least as long as those lands remain federally-owned).

At the same time, we must point out that the United States might successfully argue that Congress has the plenary authority to modify the distribution formula for oil and gas revenues from ANWR. In Watt v. Alaska, Justice Stevens (concurring in the Court's decision that the Mineral Leasing Act's 90-10 distribution formula applied to oil and gas revenues from the Kenai National Moose Range) stated:

> The question of how to divide the revenues from oil and gas leases on public lands in the Kenai Peninsula is clearly a matter for Congress to decide. If Congress is displeased with the decisions of this Court and the Court of Appeals [i.e., the decisions that Alaska is entitled to 90 percent of the revenues], it may promptly reverse them by revising the relevant statutes.

451 U.S. at 274. We did not make a statehood compact argument in that case and it was not before the Court. Nonetheless, Justice Stevens' comment undoubtedly will be cited by the United States in the event Congress changes the current 90-10 distribution formula in the Mineral Leasing Act or establishes a different distribution formula specifically for revenues from ANWR.

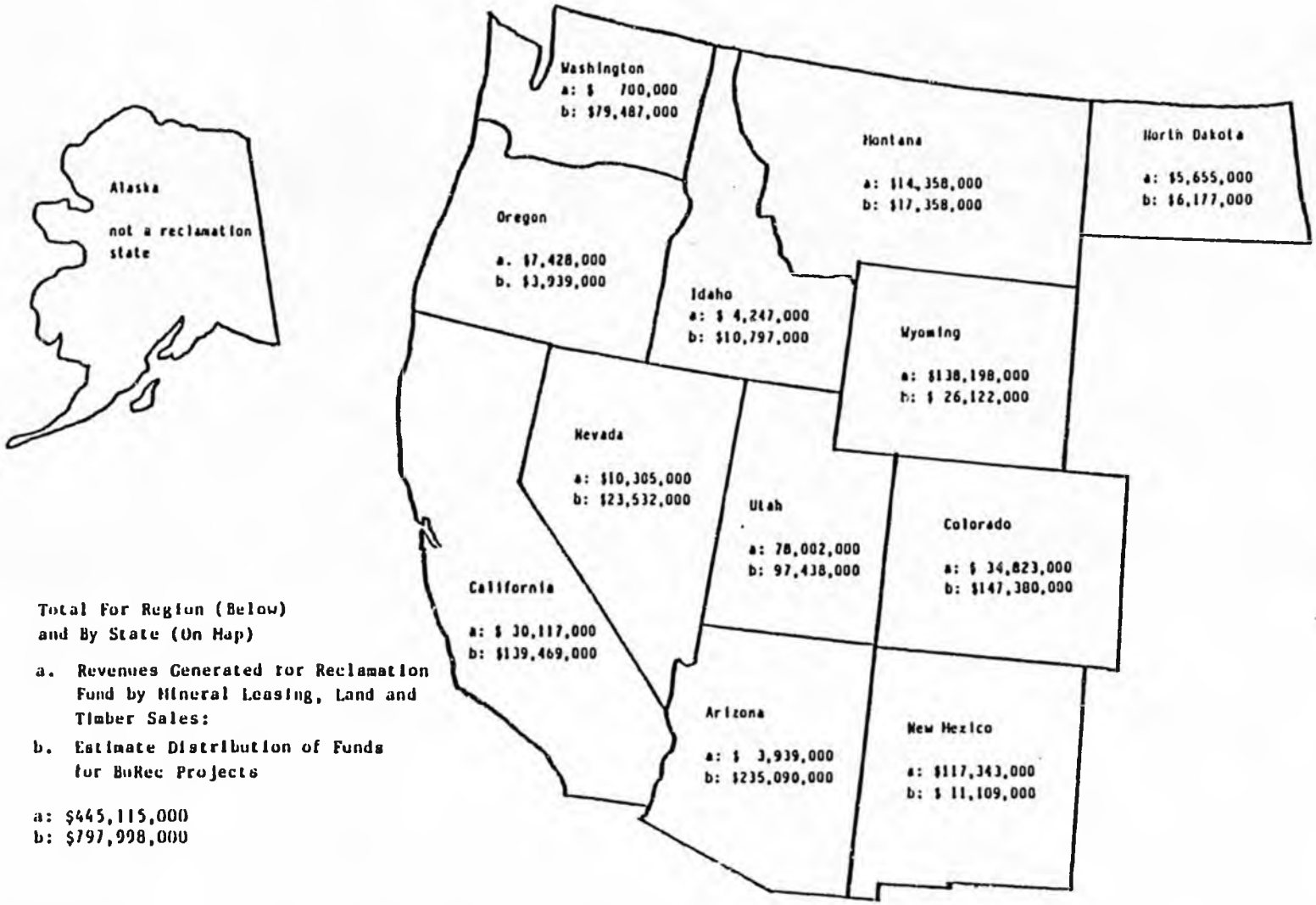
We hope this responds to your request. If we can provide additional information, please contact us at your convenience.

GTK:dlm
cc: John Katz
Office of the Governor
Washington, D.C.

ATTACHMENT FOUR

Reclamation funding for the western states, 1982

From Fairfax and Yale, 1985



Total For Region (Below) and By State (On Map)

a. Revenues Generated for Reclamation Fund by Mineral Leasing, Land and Timber Sales:

b. Estimate Distribution of Funds for BuRec Projects

a: $445,115,000
b: $797,998,000

Figure 11. Revenues Generated for Reclamation Fund, and Estimated Distribution of Funds for Bureau of Reclamation Projects (1982)

SENATE-HOUSE JOINT SUPPLEMENT

2/24/87 TUESDAY No. 5

A D D R E S S

By

THE HONORABLE TED STEVENS

UNITED STATES SENATOR

STATE OF ALASKA

Before a Joint Session

of the

First Session

Fifteenth Alaska State Legislature

February 24, 1987

Juneau, Alaska

SENATE-HOUSE JOINT S PPLEMENT

No. 5 2/24/87

REMARKS BY SENATOR TED STEVENS

TO THE FIRST SESSION OF THE 15TH ALASKA STATE LEGISLATURE

JUNEAU, ALASKA

TUESDAY, FEBRUARY 24, 1987

A FOUR-YEAR CELEBRATION OF THE BICENTENNIAL OF OUR NATION'S CONSTITUTION COMMENCES THIS SEPTEMBER. AS ALASKANS, WE HAVE PLENTY OF REASONS TO JOIN IN THE NATIONAL CELEBRATION.

THE CONSTITUTION NOT ONLY PROTECTS THE RIGHTS OF INDIVIDUALS. IT ALSO PROTECTS THE RIGHTS OF STATES WITH SMALL POPULATIONS IN OUR FEDERAL SYSTEM. AND, IT WAS THIS CONSTITUTIONAL SYSTEM THAT MADE STATEHOOD POSSIBLE, REQUIRED A JUST SETTLEMENT OF THE CLAIMS OF OUR NATIVE PEOPLE AGAINST THE FEDERAL GOVERNMENT, AND NOW PROTECTS OUR RIGHTS, LIBERTIES, AND FREEDOMS FROM ATTU TO TOK AND BARROW TO KETCHIKAN TO THE SAME EXTENT AS ALL OTHER AMERICANS.

I HOPE THAT WE WILL LINK THE CELEBRATION OF THE 30TH ANNIVERSARY OF ALASKA STATEHOOD WITH THE THIRD YEAR OF THE BICENTENTENNIAL CELEBRATION. THE CONSTITUTION OF THE UNITED STATES IS THE WORLD'S OLDEST CONSTITUTION IN FORCE, AND IT IS AS RELEVANT TO OUR LIVES TODAY AS IT WAS TO THE LIVES OF OUR FOUNDING FATHERS 200 YEARS AGO.

LAST YEAR, I REPORTED TO YOU THAT RESPECTED OIL ECONOMISTS PREDICTED WORLD CRUDE OIL PRICES WOULD COLLAPSE IN 1986. THAT PREDICTION BECAME FACT WITH ASTONISHING SWIFTNESS. THE DECLINE IN STATE OIL-RELATED REVENUES HAS CREATED A GREAT FISCAL AND ECONOMIC CRISIS FOR ALL OF US.

AT THE BEGINNING OF THIS YEAR, THOSE SAME ECONOMISTS PREDICTED WORLD OIL PRICES WOULD STABILIZE SOMEWHERE AROUND $18 DOLLARS A BARREL. — BUT REPORTS THIS PAST TEN DAYS INDICATE THAT NO ONE REALLY KNOWS WHAT'S HAPPENING IN THE OIL PATCH.

DOMESTIC OIL PRODUCTION HAS DECLINED FROM 9.1 MILLION BARRELS A DAY AT THE BEGINNING OF LAST YEAR TO 8.3 MILLION BARRELS A DAY IN JANUARY OF THIS YEAR, A LOSS OF NEARLY 800,000 BARRELS A DAY. DEMAND IS UP SOMEWHAT, BUT IMPORTS, PARTICULARLY FROM SAUDI ARABIA, ARE UP 25 PERCENT — MORE THAN 1.2 MILLION BARRELS A DAY FROM THIS TIME LAST YEAR.

OPEC'S DECEMBER AGREEMENT IS FRAGILE, AND COULD COLLAPSE AS A RESULT OF CHEATING BY OPEC MEMBERS SUCH AS IRAQ AND THE UNITED ARAB EMIRATES AND OTHER EVENTS. UNDER THESE CIRCUMSTANCES, OIL PRICES CANNOT RECOVER SOON ENOUGH TO SOLVE ALASKA'S CURRENT CRISIS.

WE ALASKANS ARE AT YET ANOTHER CROSSROADS. THOSE OF US WHO HOLD PUBLIC OFFICE LOOK FOR WAYS NOT ONLY TO DEAL WITH THE IMMEDIATE CRISIS BUT ALSO TO BUILD A STRONGER ECONOMY FOR ALASKA IN THE FUTURE.

SENATOR MURKOWSKI, CONGRESSMAN YOUNG, AND I HAVE BEEN WORKING TO BRING NEW INVESTMENT TO ALASKA TO HELP STABILIZE OUR BELEAGURED ECONOMY AND CREATE JOBS.

* MORE THAN 100 MILLION DOLLARS WILL BE SPENT THIS YEAR IN ALASKA ON CONSTRUCTION PROJECTS ASSOCIATED WITH THE NEW LIGHT INFANTRY DIVISION. MILLIONS MORE WILL BE SPENT ON MILITARY CONSTRUCTION AND OTHER MILITARY ACTIVITIES ELSEWHERE IN ALASKA.

OUR STRATEGIC LOCATION AND THE EXISTENCE OF UNDERUTILIZED MILITARY FACILITIES MAKES ALASKA A NATURAL OPTION FOR THE DEPARTMENT OF DEFENSE TO CONSIDER IN DEPLOYING OUR NATION'S MILITARY FORCES. MY STAFF AND I ARE WORKING TO SEE WHAT NATIONAL DEFENSE NEEDS MATCH UP WITH LOCATIONS IN ALASKA. THIS COULD LEAD TO STATIONING NEW MILITARY UNITS IN ALASKA.

THE LOCAL HIRE LEGISLATION WE SPONSORED SHOULD ENSURE THAT ALASKANS ARE GIVEN FIRST CRACK AT THE SERVICE AND CONSTRUCTION JOBS CREATED BY THIS MILITARY SPENDING.

* AT MY REQUEST, CONGRESS ADDED MILLIONS OF DOLLARS TO THE FISCAL YEAR 1987 INTERIOR APPROPRIATIONS ACT TO FUND THE CONSTRUCTION OF NEW VISITOR FACILITIES IN DENALI NATIONAL PARK, KENAI NATIONAL WILDLIFE REFUGE, AND OTHER FEDERAL CONSERVATION UNITS THROUGHOUT ALASKA. FUNDING FOR THE BLM'S LAND CONVEYANCE PROGRAMS WAS ALSO INCREASED BY NEARLY 8 MILLION DOLLARS.

AND NEARLY 25 MILLION DOLLARS WILL BE SPENT ON WATER RESOURCES AND HARBOR PROJECTS IN ALASKA, INCLUDING 10 MILLION DOLLARS ON CONSTRUCTION ASSOCIATED WITH THE CRATER LAKE PORTION OF THE SNETTISHAM PROJECT HERE IN SOUTHEAST.

* CONGRESS INCLUDED IN THE 1986 TAX REFORM ACT MY AMENDMENT TO ALLOW ALASKA NATIVE CORPORATIONS TO SELL THEIR NET OPERATING LOSSES TO PROFITABLE CORPORATIONS. THAT PROVISION WILL BOOST LOCAL ECONOMIES AND GIVE MANY FINANCIALLY-TROUBLED NATIVE CORPORATIONS A NEW OPPORTUNITY TO CONTINUE TO PARTICIPATE WITH THE REST OF THE ALASKA ECONOMY. THOSE CORPORATIONS WILL BE ABLE TO PAY THEIR LOCAL DEBTS, REPAY LOCAL BANKS, AND CONTINUE TO BE MAJOR EMPLOYEES IN ALASKA.

* THIS YEAR, TENS OF MILLIONS OF FEDERAL DOLLARS WILL BE SPENT ON SALMON ENHANCEMENT, FISHERIES RESEARCH, FISHERIES MARKET DEVELOPMENT, AND SALMON TREATY IMPLEMENTATION. MOST OF THAT FUNDING WILL DIRECTLY BENEFIT OUR FISHING INDUSTRY.

CONGRESS ALSO APPROVED MY PROPOSAL TO CREATE A NATIONAL SEAFOOD PROMOTIONAL COUNCIL TO ENCOURAGE AMERICANS TO CONSUME MORE SEAFOOD. EXPANSION OF THE DOMESTIC MARKET FOR FISH AND SHELLFISH IS CRUCIAL TO THE FUTURE OF THE ALASKA FISHING INDUSTRY.

* ONE PROJECT THAT COULD GET STARTED IN THE NEAR TERM IS THE ALASKA GAS PIPELINE. MY POLICY IS TO WORK WITH BOTH COMPANIES SEEKING TO TRANSPORT NORTH SLOPE GAS TO MARKET. CURRENT FOREIGN EXCHANGE RATES, LOW INTEREST RATES, AND INCREASED PACIFIC RIM DEMAND HAS INJECTED REAL COMPETITION INTO THIS AREA -- AND, I HOPE YOU'LL AGREE WITH ME THAT WHICHEVER COMPANY CAN GET THE GASLINE GOING FIRST DESERVES OUR TOTAL SUPPORT.

AT MY REQUEST, CONGRESS INCLUDED A PROVISION IN LAST YEAR'S TAX REFORM ACT TO PRESERVE IMPORTANT TAX BENEFITS FOR THE ALASKA NATURAL GAS TRANSPORTATION SYSTEM. I'M NOW WORKING WITH YUKON-PACIFIC TO CLEAR AWAY REGULATORY OBSTACLES THAT CONCERN POTENTIAL CUSTOMERS AND INVESTORS IN THE FAR EAST.

AS I AM SURE YOU ARE, I AM DEDICATED TO SECURING CONGRESSIONAL AUTHORIZATION FOR ENVIRONMENTALLY-SOUND OIL AND GAS EXPLORATION, DEVELOPMENT, AND PRODUCTION ON THE COASTAL PLAIN OF THE ARCTIC NATIONAL WILDLIFE REFUGE. ANWR IS VITAL TO THE LONG-TERM ECONOMIC HEALTH OF ALASKA AND THE LONG-TERM SECURITY OF OUR NATION.

THE TRANS-ALASKA PIPELINE NOW TRANSPORTS 1.8 TO 1.9 MILLION BARRELS A DAY TO VALDEZ. BUT, UNDER CURRENT SCENARIOS, THE PIPELINE WILL MOVE ONLY 500,000 BARRELS A DAY BY THE YEAR 2000. IF THE COASTAL PLAIN WERE OPENED AND EXPLORATION EFFORTS WERE SUCCESSFUL, PRODUCTION FROM THE PLAIN WOULD COME ON LINE AT A CRUCIAL POINT IN THE HISTORY OF ALASKA AND THE NATION.

EARLY ON IN OUR FOUR-YEAR EFFORT TO PREPARE FOR THE ANWR DEBATE, I CAME TO THE REALIZATION THAT IT WOULD BE A MISTAKE TO CHARACTERIZE ANWR AS AN ALASKA ISSUE. UNLESS THE NATION IS PERSUADED THAT EXPLORING THE ANWR COASTAL PLAIN IS NECESSARY TO MAINTAIN OUR ENERGY SECURITY, ANY EFFORT TO OPEN ANWR IS DOOMED.

ALASKANS ALONE CANNOT CONVINCE THE NATION AND CONGRESS OF ANWR'S IMPORTANCE TO NATIONAL SECURITY. WE MUST WORK WITH ORGANIZATIONS AND INDIVIDUALS THROUGHOUT THE REST OF THE COUNTRY TO GET THAT MESSAGE ACROSS.

UNFORTUNATELY, DEBATE WITHIN ALASKA OVER THE MERITS OF LAND EXCHANGES AND POSSIBLE MODIFICATIONS OF THE 90-10 REVENUE SHARING FORMULA MAY INTERFERE WITH OUR EFFORTS TO ORGANIZE A NATIONAL ANWR MOVEMENT.

IF THE TIDE TURNS AGAINST US IN CONGRESS ON ANWR, A WELL-PLANNED SERIES OF ADMINISTRATIVE LAND EXCHANGES MAY ULTIMATELY PROVE TO BE THE ONLY OPTION WE HAVE TO FORCE A THOROUGH EXAMINATION OF THE COASTAL PLAIN'S OIL AND GAS RESOURCES.

I HAVE INDICATED BEFORE THAT IN THE INTERESTS OF GETTING THE COASTAL PLAIN OPENED, ALASKA MIGHT HAVE TO ACCEPT A MODIFICATION OF THE 90-10 REVENUE-SHARING FORMULA. ONE PROPOSAL ALREADY BEING DISCUSSED WOULD DEVOTE A SUBSTANTIAL PORTION OF THE REVENUE FROM ANWR TO FINANCE A NATIONAL WILDLIFE REFUGE AND NATIONAL PARK MANAGEMENT FUND, A MOVE THAT WOULD BROADEN SUPPORT FOR OPENING ANWR IN CONGRESS.

HAVING WORKED TO PUT THE 90-10 DISTRIBUTION INTO THE STATEHOOD ACT, I AM AS CONCERNED ABOUT PROTECTING THE STATE'S FISCAL INTEREST AS ANYONE.

UNDER THAT FORMULA, ALASKA RECEIVES 90 PERCENT OF ALL FEDERAL REVENUES FROM MINERAL DEVELOPMENT ON PUBLIC LANDS IN ALASKA INSTEAD OF THE 50 PERCENT SHARE THAT OTHER STATES RECEIVE. THE JUSTIFICATION FOR THAT SPECIAL TREATMENT WAS THAT ALASKA AGREED NOT TO SHARE IN THE FEDERAL RECLAMATION FUND WHICH RECEIVES 40 PERCENT OF FEDERAL MINERAL REVENUES FROM PUBLIC LANDS IN THE LOWER 48 STATES AND HAWAII.

IF THE ANWR COASTAL PLAIN COULD BE OPENED BY ADMINISTRATIVE ACTION, WE WOULD RECEIVE A 90 PERCENT SHARE OF FEDERAL RECEIPTS FROM OIL AND GAS LEASING. FULL-FLEDGED OIL AND GAS EXPLORATION AND PRODUCTION IN ANWR, HOWEVER, IS EXPRESSLY FORBIDDEN BY THE 1980 ALASKA LANDS ACT. ANWR LANDS ARE NO LONGER "PUBLIC LANDS" -- THE REFUGE WAS SPECIFICALLY SET ASIDE BY AN ACT OF CONGRESS.

OUR STATE WON'T RECEIVE A DIME OF REVENUE UNLESS CONGRESS OPENS THIS AREA TO OIL AND GAS DEVELOPMENT. AND, REGARDLESS OF OUR WISHES, SOME OF OUR MAJOR SUPPORTERS ON ANWR IN CONGRESS ARE ALREADY ADVOCATING AN ADJUSTMENT IN THE 90-10 SPLIT AS PART OF THE PRICE OF OPENING ANWR.

MANY IN CONGRESS REMEMBER THAT REDUCTION OF ALASKA'S SHARE TO 50 PERCENT WAS PART OF THE PRICE OF OPENING THE 23 MILLION ACRE NATIONAL PETROLEUM RESERVE—ALASKA. THAT CHANGE WAS NOT SUGGESTED BY THE ALASKA CONGRESSIONAL DELEGATION. IT WAS A TAKE IT OR LEAVE PROPOSITION. WE TOOK IT. AND, WE DID NOT HEAR ONE OBJECTION FROM THE LEGISLATURE, THE GOVERNOR, OR ANY OTHER ALASKAN. UNFORTUNATELY, DESPITE THE FACT THAT NPRA WAS SET ASIDE FOR FIFTY YEARS AS A PETROLEUM RESERVE, NO PRODUCTION HAS OCCURRED.

THE DEBATE OVER THE LAND EXCHANGES AND THE 90-10 SPLIT LEADS SOME ALASKANS TO ASSUME THAT THE ONLY BENEFIT TO ALASKA FROM OPENING ANWR WOULD BE DIRECT FEDERAL REVENUE SHARING PAYMENTS TO THE STATE TREASURY. YOU KNOW THAT ISN'T THE CASE.

FIRST OF ALL, ALTHOUGH THE STATE CANNOT TAX OIL AND GAS RESOURCES ON FEDERAL LAND WHILE THEY ARE IN THE GROUND, IT CAN, TAX THOSE RESOURCES ONCE THEY ARE SEVERED AND TRANSPORTED BY PRIVATE CORPORATIONS. FROM THE STARTUP OF PIPELINE IN 1977 TO MID-1986, SEVERANCE TAXES ON NORTH SLOPE CRUDE HAVE PRODUCED 8.9 BILLION DOLLARS IN REVENUES, ONLY ABOUT 10 PERCENT LESS THAN THE 9.9 BILLION DOLLARS PRODUCED BY THE STATE'S ROYALTY ARRANGEMENTS.

SECOND, THE STATE IS ALSO FREE TO TAX THE INCOME OF THE CORPORATIONS INVOLVED IN THE EXPLORATION AND DEVELOPMENT OF THE COASTAL PLAIN. STATE CORPORATE INCOME TAXES LEVIED ON THE NORTH SLOPE GAS PRODUCERS HAVE PRODUCED 3.1 BILLION DOLLARS IN REVENUES.

IN OTHER WORDS, IF THE ANWR COASTAL PLAIN DOES HOLD ANOTHER PRUDHOE BAY-SIZED FIELD, THE STATE OF ALASKA COULD EXPECT TO RECEIVE ROUGHLY 80 PERCENT OF THE REVENUES WE RECEIVED FROM PRUDHOE BAY EVEN IF ROYALTIES WERE SPLIT 50-50 WITH THE FEDERAL GOVERNMENT.

WE CAN'T AFFORD TO SAY WE WANT 90 PERCENT OR WE'LL OPPOSE OPENING ANWR — NINETY PERCENT OF NO ROYALTY IS NOTHING. I HOPE WE WILL ALL FOCUS ON MAXIMIZING TOTAL INCOME ALASKA WILL RECEIVE FROM ANWR -- REVENUE SHARING, SEVERANCE AND CORPORATE TAXES, AND PRIVATE SECTOR ECONOMIC ACTIVITY.

I HASTEN TO ADD THAT I'M READY TO DISCUSS AND DEBATE HERE LAND EXCHANGES AND CHANGES IN THE 90-10 SPLIT. BUT, LET'S AVOID HARSH RHETORIC THAT MAY LEAD OUTSIDERS TO CONCLUDE THAT ALASKA ISN'T UNITED IN SEEKING TO OPEN THE COASTAL PLAIN TO OIL AND GAS EXPLORATION.

SENATE-HOUSE JOINT SUPPLEMENT

No. 5 2/24/87

I'M PROUD TO HAVE HAD THE OPPORTUNITY TO WORK WITH YOU AND PAST MEMBERS OF THE ALASKA STATE LEGISLATURE ON FEDERAL ISSUES OF IMPORTANCE TO ALASKA. ANWR IS GOING TO BE A TOUGH BATTLE, TOUGHER THAN MOST EXPECT, BUT WE CAN WIN IF WE ARE UNITED.

I NOTED THE QUESTION PRESENTED TO SENATOR MURKOWSKI ABOUT THE NUCLEAR FREEZE ALASKA RESOLUTION. LET ME CLOSE BY COMMENTING ON THAT. FOR OVER FORTY YEARS, WE HAVE HELD A NUCLEAR UMBRELLA OVER THE FREE WORLD. I HAVE DEDICATED A GREAT PORTION OF MY LIFE THESE LAST FEW YEARS TO HELPING TO BRING ABOUT MAJOR REDUCTIONS IN NUCLEAR WEAPONS -- NOT LIMITATIONS ON FUTURE GROWTH BUT ACTUAL VERIFIABLE REDUCTIONS. AND, I HAVE SUPPORTED THE STRATEGIC DEFENSE INTIATIVE BECAUSE IT HOLDS THE HOPE OF A NON-NUCLEAR DEFENSE AGAINST NUCLEAR WEAPONS.

THE FACT REMAINS THAT WE AMERICANS STILL PROTECT THE FREEDOM OF THOSE WHO DO NOT LIVE UNDER COMMUNISM, AND ALASKANS HOLD A STRATEGIC POSITION, GEOGRAPHICALLY AND POLITICALLY, IN THE DEFENSE OF OUR NATION AND OUR ALLIES.

I AM FIGHTING TO ENSURE WE HAVE A CAPABILITY TO DEFEND ALASKA — AND I BELIEVE WE ARE SUCCEEDING IN THAT BATTLE. OFTEN, I AM ASKED WHETHER THERE ARE NUCLEAR WEAPONS IN ALASKA. THE SIMPLE ANSWER IS THAT THE LOCATION OF OUR NUCLEAR DEFENSES IS CLASSIFIED. EVEN IF I KNEW THE ANSWER TO THE QUESTION, I COULD NOT REPLY CONSISTENT WITH MY ROLE IN SHAPING DEFENSE POLICY IN THE CONGRESS.

BUT I CAN TELL YOU THAT EVERYTHING WE ARE DOING TO ASSURE OUR DEFENSE CAPABILITY HERE IN ALASKA IS INCONSISTENT WITH THE CONCEPT OF STATING ALASKANS OPPOSE ANY NUCLEAR PRESENCE -- EITHER AS PROPULSION MECHANISMS OF NUCLEAR-POWERED VEHICLES OR IN NUCLEAR WEAPONS -- HARMLESS UNTIL ARMED -- THAT ARE OUR CAPABILITY TO RETALIATE AND THEREFORE DETER AGRESSION AGAINST US OR OUR ALLIES. THAT DETERRANCE HAS WORKED AND CONTINUES TO WORK.

I BELIEVE WE WILL MAINTAIN OUR FREEDOMS IF WE MAINTAIN OUR CAPABILITY TO DEFEND OURSELVES. AMERIKA WAS A TELEVISION PROGRAM, NOT A PREDICTION OF THINGS TO COME. BUT, IF ALL STATES AND ALL ALLIES WERE TO PASS A RESOLUTION LIKE THE ONE BEFORE YOU, WHERE WOULD WE DEPLOY OUR DETERRENT FORCE? I HOPE YOU SERIOUSLY CONSIDER THE MESSAGE SECRETARY SHULTZ SENT TO YOUR LEGISLATURE.

MEMORANDUM

State of Alaska

DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL AND GAS

TO: Judith M. Brady
Commissioner

THRU: James E. Eason
Director

FROM: Edward Phillips
Petroleum Economist

DATE: January 12, 1987

FILE NO:

TELEPHONE NO: 561-2020

SUBJECT: Arctic National Wildlife Refuge (ANWR) Land Trades and Potential State Revenue

DNR geologists and geophysicists are in unanimous agreement that lands within the coastal plain of ANWR represent the best remaining potential for major oil and gas discoveries in Alaska. This estimated potential substantially exceeds that of remaining unleased state lands. Under current law, federal leasing of ANWR lands for oil and gas development would yield 90 percent of any bonuses, rentals and royalty income to the state. In addition, the state would receive severance, corporate, property and conservation taxes from development of ANWR leases. However, the royalty share alone could constitute upwards of 70 percent of total state revenue from potential ANWR development.

Both past and proposed ANWR land trades with native corporations reduce the revenue potential to the state by eliminating the state's share of potential federal bonuses, rentals and royalties, but not state taxes. Although the state's overall severance tax revenues would increase from development of ANWR regardless of whether or not the royalty share is reduced by exchanges, this gain is inconsequential by comparison to the state's potential royalty loss from additional federal exchanges with third parties.

Given ANWR's oil and gas potential, these losses could be substantial. The attached table reflects the staff estimates of the relative state revenue impacts of ANWR development assuming no additional exchanges and no legislative reduction in the state's 90 percent share of revenues from leasing in ANWR. The revenue projections contained in Table 1 are derived from the geological, geophysical and economic information contained in the Draft ANWR Coastal Plain Resource Assessment (1002 Report). The draft report data and assumptions were used by the federal government to compute the Net National Economic Benefits (NNEB) from leasing ANWR and to provide the justification for the policy recommendations contained within the report.

Specific assumptions underlying the attached revenue projections are not crucial to the basic issue, which is one of relative shares, or how the potential pie is sliced rather than absolute amount(s) involved. No revenue projection or forecast that has the year 2000 as a base year can be treated as a likely outcome. It is more properly viewed as "one possible outcome." The use of federal revenue numbers just assures us that we are all speaking the same language.

The assumptions underlying the estimates of potential land trade-related revenue gains and losses to the state have geological, geophysical and economic components. The 1002 Report indicates that if oil is discovered, the average recoverable reserves are estimated at 3.2 billion barrels. This quantity was used for the NNEB estimate derived by BLM for the draft 1002 report, and provides the "assumed" reserve base or recoverable reserves for this discussion. In our analysis, production would commence (from two fields) in 2000 at a 1984 dollar price of $33.00 per barrel, and escalate at one percent per year in real terms (production from one of the fields could be delayed for a year or two without substantially affecting the results). All estimates are in 1984 dollars, hence they are net of inflation, but they are not discounted to reflect the time value (time preference) of funds to the state.

The estimates are for the years 2000 through 2010. Production cannot realistically be expected much before that time, and the Department of Revenue currently does not provide estimates of Prudhoe Bay revenues embodying the federal price assumptions for periods beyond 2010.

As Table I illustrates, potential ANWR revenues to the state (even given current ASRC/KIC inholdings) could be substantial, exceeding those of Prudhoe Bay by the year 2003. By the year 2010, ANWR's revenue potential is almost double that of Prudhoe Bay using the federal price assumptions. This would be true of almost any set of prices exceeding the development threshold for ANWR. Based upon the assumptions we have analyzed, any further transfers of prospective ANWR lands from federal jurisdiction reduces the state's per-barrel revenue potential by about 70 percent as a result of loss to the state of potential royalties, bonuses and rentals. As can be seen from Table 1, the potential royalty revenue at stake exceeds six billion dollars.

We believe a significant transfer of revenue potential has already occured by virtue of ASRC's receipt of subsurface title to the two inholdings near Kaktovik. The Oil and Gas Section of DMGGS has estimated that up to 25% of ANWR's oil and gas reserve potential may be contained in lands already received by ASRC. Thus, this land trade could cost the state as much as $1.6 billion (1984 $) in lost royalty revenues if the assumptions used in the draft 1002 report and in this analysis are assumed. The volume of oil and gas discovered and its relative locations will ultimately determine the extent of the revenue "loss" associated with the previous ASRC/KIC land trades and any future land trades.

Attachment

0274P

TABLE I

ESTIMATED POTENTIAL INCOME 2000 TO 2010*
(10^6 1984$)

Year	Prudhoe Bay Royalty	Prudhoe Bay Severance	Prudhoe Bay Total	ANWR (with current ASRC inholding) Royalty	ANWR Severance	ANWR Total	ANWR Revenue as % of P.B. Revenue
2000	1056	670	1726	155	0 ?	155	9
2001	923	573	1496	528	234	762	51
2002	814	488	1302	767	412	1179	85
2003	711	419	1130	779	418	1197	106
2004	625	362	987	790	425	1215	123
2005	534	313	847	711	431	1142	135
2006	430	266	696	629	341	970	139
2007	359	223	582	560	266	826	142
2008	294	179	473	506	206	712	151
2009	235	138	373	448	148	596	160
2010	159	100	259	406	105	511	197
	6140	3731	9871	6279	2986	9265	
Assume 50%				3495	2986	6485	

this reduction to 50% results in a total revenue reduction of 30% over this period of time

* using federal price assumptions

0273P

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

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March 2, 1987

The Honorable Sam Cotten
Co-Chairman
Resources Committee
P.O. Box V
Juneau, AK 99811

Re: 90-10 Revenue distribution
for federal lands

Dear Representative Cotten:

In a February 26, 1987 memorandum, you asked a number of questions regarding federal-state sharing of oil and gas revenues in the event of oil and gas leasing in the Arctic National Wildlife Refuge ("ANWR"). You asked:

> 1) If the Congress were to repeal the provisions of ANILCA closing the ANWR coastal plain to oil and gas exploration and drilling, without amending the Mineral Leasing Act of 1920 or the Statehood Act, would the State be entitled to 90 percent of the federal oil and gas revenues derived from Refuge lands? Are there foreseeable circumstances under which federal lands in the coastal plain could be considered other than "public land" subject to the Mineral Leasing Act and the 90-10 federal-state revenue sharing arrangement?
>
> 2) Was PET 4 (the former Naval Petroleum Reserve) "public land" subject to the same 90-10 revenue sharing arrangement as other public land in Alaska? When the NPRA Act passed in 1976, did it reduce or expand the state's revenue entitlement from the affected acreage?

Before answering your specific questions, it may be helpful briefly to review the background of the 90-10 revenue sharing arrangement which currently exists. The distribution of oil and gas revenues from federal lands depends on whether they are "acquired lands" or "public domain lands." In general, "acquired lands are those granted or sold to the United States by a State or citizen and public domain lands were usually never in state or private ownership." Wallis v. Pan American Pet. Corp., 384 U.S. 63, 65 n.2 (1966).

Oil and gas leasing on acquired lands is governed by the Mineral Leasing Act for acquired lands, 30 U.S.C. §§ 351 et seq. Under that Act, revenues from oil and gas leases on acquired lands are to be "distributed in the same manner as prescribed for other receipts from the lands affected by the lease." 30 U.S.C. § 355. As applied to wildlife refuges created from acquired lands, this provision requires that oil and gas revenues be distributed according to the formula contained in the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, which provides that 75 percent of the revenues go to the federal government and 25 percent of the revenues go to the county in which the wildlife refuge is located. The rationale for this distribution formula is that the lands were on local tax roles while in private ownership, and giving some of the receipts from the lands to the local county compensates the county for the loss of those property tax revenues.

Oil and gas leasing on public domain lands is governed by the Mineral Leasing Act of 1920, 30 U.S.C. §§ 181 et seq. Under that Act, 90 percent of the revenues are dedicated to the benefit of the states */ and 10 percent are paid into the United States Treasury.

This 90-10 revenue distribution formula applies to both vacant, unappropriated and unreserved public domain

---

*/ For lower 48 states, 50 percent of federal oil and gas revenues from public domain lands are paid directly to the states and 40 percent is deposited into the Reclamation Fund created by the Reclamation Act of 1902. Because Alaska is not covered by the Reclamation Act and receive no benefits from the Reclamation Fund, we receive the full 90 percent of such revenues from federal public domain lands in Alaska.

lands and (with limited exceptions not applicable here) public domain lands withdrawn and reserved for specific purposes, including withdrawals and reservations for wildlife refuges. I represented Alaska in Watt v. Alaska, 451 U.S. 259 (1981), in the United States Supreme Court. The precise issue in that case was whether the 90-10 revenue distribution formula applied to the withdrawn and reserved lands of the Kenai National Moose Range. The Supreme Court, over the United States' objection, held that it did.

Like the lands in the Moose Range, the lands in ANWR were withdrawn and reserved from the public domain for refuge purposes; they are not acquired lands. There is no substantive distinction between the Moose Range lands and the lands in ANWR, and there is no substantive legal basis for concluding that federal oil and gas leasing revenues from ANWR would be distributed differently than those from the Moose Range under existing law.

The revenue distribution formula in the Mineral Leasing Act represented an historic trade-off in the history of public land law. In enacting it, Congress terminated its historic policy of disposing of the public lands. Instead, it determined that the federal government should retain those public lands remaining in the states, but should use most of the mineral revenues from those lands for the state's benefit. See generally, Fairfax and Yale, The Financial Interest of Western States in Non-Tax Revenues From the Federal Public Lands (manuscript copy published by the Western Legislative Conference, Council of State Governments, and the Lincoln Institute of Land Policy in 1985). This historic compromise has governed distribution of mineral revenues from federal lands, particularly in the western states, since 1920, and we can see no foreseeable circumstances under which that fundamental compromise would be changed at this time.

Accordingly, the answers to your first set of questions are: (1) The state would be entitled to 90 percent of the federal oil and gas revenues derived from ANWR lands if Congress repealed the closure of the ANWR coastal plain in ANILCA without amending the Mineral Leasing Act of 1920 or the Statehood Act; and (2) we see no foreseeable circumstances under which the ANWR coastal plain would not be subject to the Mineral Leasing Act.

As noted briefly above, there are a few limited exceptions in the Mineral Leasing Act. One of these is for

"lands within the naval petroleum and oil-shale reserves." 30 U.S.C. § 181. The revenue distribution provisions of the Mineral Leasing Act provide that all monies which may accrue to the United States "from lands within the naval petroleum reserves shall be deposited in the Treasury as 'miscellaneous receipts' ..." 33 U.S.C. § 191.

In other words, at the time of the historic compromise when the United States decided to retain large tracts of lands and share the benefits of mineral development with the states in which those lands were located, it expressly exempted from that sharing any benefits deriving from the naval petroleum and oil-shale reserves. Former Naval Petroleum Reserve No. 4 ("PET 4"), now known as the National Petroleum Reserve in Alaska ("NPRA"), accordingly has never been subject to the Mineral Leasing Act of 1920 and the 90-10 revenue distribution formula had no application to any revenues from NPRA. In section 11 of the Alaska Statehood Act, Congress retained the exclusive legislative authority over PET 4 as long as it remained a naval reserve, so its status as far as federal-state relations has always been somewhat different than other federal lands. When Congress finally opened NPRA to competitive leasing in 1980, it did so independently of the Mineral Leasing Act. It was that separate congressional action in 1980 -- not the Mineral Leasing Act -- which resulted in the state receiving 50 percent of revenues from oil and gas leasing in NPRA. See 42 U.S.C. § 6508. Absent that congressional action, the state would have been entitled to none of the revenues from NPRA.

Summarizing, the answers to your second set of questions are: (1) PET 4 was never subject to the same 90-10 revenue sharing arrangement; instead, it was a specific (and single) exception to the 90-10 revenue sharing formula; and (2) when Congress authorized leasing in NPRA, it provided that the state was to receive 50 percent of the revenues instead of none of those revenues which is what the current law at that time would have provided in the absence of congressional action.

I hope this answers your questions. If we can be of further assistance, please contact us at your convenience.

Sincerely,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By: G. Thomas Koester

G. Thomas Koester
Assistant Attorney General

GTK/dlm
cc: Lieutenant Governor Stephen McAlpine
Commissioner Judy Brady, DNR
Commissioner Don W. Collinsworth, F&G
Commissioner Dennis Kelso, DEC
John Katz, Office of the Governor
Bob Grogan, Office of the Governor
Rod Swope, Office of the Governor

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

MEMORANDUM

To: Tom Koester, AGO

From: Rep. Sam Cotten, Co-Chair NF for SC
House Resources Committee

Subject: ANWR revenue entitlements

Date: February 26, 1987

There are several questions the Resources Committee may need addressed before it takes a position on the issue of federal-state revenue sharing of oil and gas revenues derived from prospective oil and gas production on public lands within the Arctic National Wildlife Refuge.

1) If the Congress were to repeal the provision of ANILCA closing the ANWR coastal plain to oil and gas exploration and drilling, without amending the Mineral Leasing Act of 1920 or the Statehood Act, would the State be entitled to 90% of the federal oil and gas revenues derived from Refuge lands? Are there foreseeable circumstances under which federal lands in the coastal plain could be considered other than "public land" subject to the Mineral Leasing Act and the 90/10 federal-state revenue sharing arrangement?

2) Was Pet 4 (the former Naval Petroleum Reserve) "public land" subject to the same 90/10 revenue sharing arrangement as other public land in Alaska? When the NPRA Act passed in 1976, did it reduce or expand the state's revenue entitlement from the affected acreage?

If you have questions please contact my staff. We are having a hearing in House Resources on the issue of ANWR revenue entitlements on Tuesday March 2 and would like to have any comments back from you by Friday or Monday. Many thanks.

TO: Rep. Cotten
Attn: Ned

2-18-87

Ned —

NPR statutes attached {See 6502 + 6508

No apparent legis. history in U.S. Code Congressional + Administrative News on 50% split.

Statutory update att'd. at back
See 6502 & 6508

CHAPTER 78—NATIONAL PETROLEUM RESERVE IN ALASKA

§ 6501. Definition

As used in this chapter, the term "petroleum" includes crude oil, gases including natural gas), natural gasoline, and other related hydrocarbons, oil ·hale, and the products of any of such resources.

Pub.L. 94–258, Title I, § 101, Apr. 5, 1976, 90 Stat. 303.)

Historical Note

References in Text. "This chapter", re·erred to in text, was in the original "this ti·le", meaning Title I of Pub.L. 94–258, which :nacted this chapter and amended section ›244 of this title. For distribution of Pub.L. ›4–258 in the Code, see Short Title note set ›ut hereunder and Tables volume.

Short Title. Section 1 of Pub.L. 94–258 provided "That this Act [enacting this chapter and section 7420 of Title 10, Armed Forces, and amending section 6244 of this title and sections 7421 to 7436 and 7438 of Title 10] may be cited as the 'Naval Petroleum Reserves Production Act of 1976'."

Legislative History. For legislative history and purpose of Pub.L. 94–258, see 1976 U.S. Code Cong. and Adm.News, p. 492.

Code of Federal Regulations

National Petroleum Reserve in Alaska, management and protection of, see 43 CFR 2360 et seq.

Library References

Mines and Minerals ⟹1 et seq.

C.J.S. Mines and Minerals §§ 4 to 6.

§ 6502. Designation of National Petroleum Reserve in Alaska; reservation of lands; disposition and conveyance of mineral materials, lands, etc., preexisting property rights

The area known as Naval Petroleum Reserve Numbered 4, Alaska, established by Executive order of the President, dated February 27, 1923, except for tract Numbered 1 as described in Public Land Order 2344, dated April 24, 1961, shall be transferred to and administered by the Secretary of the Interior in accordance with the provisions of this Act. Effective on the date of transfer all lands within such area shall be redesignated as the "National Petroleum Reserve in Alaska" (hereinafter in this chapter referred to as the "reserve"). Subject to valid existing rights, all lands within the exterior boundaries of such reserve are hereby reserved and withdrawn from all forms of entry and disposition under the public land laws, including the mining and mineral leasing laws, and all other Acts; but the Secretary is authorized to (1) make dispositions of mineral materials pursuant to the Act of July 31, 1947 (61 Stat. 681), as amended [30 U.S.C.A. § 601 et seq.], for appropriate use by Alaska Natives, (2) make such dispositions of mineral materials and grant such rights-of-way, licenses, and permits as may be nec-

promulgate such rules and regulations as he deems necessary and appropriate for the protection of such values within the reserve.

(c) Contract responsibilities and functions

The Secretary of the Interior shall, upon the effective date of the transfer of the reserve, assume the responsibilities and functions of the Secretary of the Navy under any contracts which may be in effect with respect to activities within the reserve.

(d) Equipment, facilities, and other properties used in connection with operation of reserve; transfer without reimbursement

On the date of transfer of jurisdiction of the reserve, all equipment, facilities, and other property of the Department of the Navy used in connection with the operation of the reserve, including all records, maps, exhibits, and other informational data held by the Secretary of the Navy in connection with the reserve, shall be transferred without reimbursement from the Secretary of the Navy to the Secretary of the Interior who shall thereafter be authorized to use them to carry out the provisions of this chapter.

(e) Unexpended funds previously appropriated for use in connection with reserve and civilian personnel ceilings assigned to management and operation of reserve

On the date of transfer of jurisdiction of the reserve, the Secretary of the Navy shall transfer to the Secretary of the Interior all unexpended funds previously appropriated for use in connection with the reserve and all civilian personnel ceilings assigned by the Secretary of the Navy to the management and operation of the reserve as of January 1, 1976.

(Pub.L. 94–258, Title I, § 103, Apr. 5, 1976, 90 Stat. 303.)

Historical Note

References in Text. "This chapter", referred to in subsec. (d), was in the original "this title", meaning Title I of Pub.L. 94–258, which enacted this chapter and amended section 6244 of this title. For distribution of Pub.L. 94–258 in the Code, see Short Title note set out under section 6501 of this title and Tables volume.

Legislative History. For legislative history and purpose of Pub.L. 94–258, see 1976 U.S. Code Cong. and Adm.News, p. 492.

§ 6504. Administration of reserve

(a) Congressional authorization as precondition for production and development of petroleum

Except as provided in subsection (e) of this section, production of petroleum from the reserve is prohibited and no development leading to production of petroleum from the reserve shall be undertaken until authorized by an Act of Congress.

(b) Conduct of exploration within designated areas to protect surface values

Any exploration within the Utukok River, the Teshekpuk Lake areas, and other areas designated by the Secretary of the Interior containing any signif-

essary to carry out his responsibilities under this Act, and (3) convey the surface of lands properly selected on or before December 18, 1975, by Native village corporations pursuant to the Alaska Native Claims Settlement Act [43 U.S.C.A. § 1601 et seq.]. All other provisions of law heretofore enacted and actions heretofore taken reserving such lands as a Naval Petroleum Reserve shall remain in full force and effect to the extent not inconsistent with this Act.

(Pub.L. 94–258, Title I, § 102, Apr. 5, 1976, 90 Stat. 303.)

Historical Note

References in Text. This Act, referred to in text, is Pub.L. 94–258, Apr. 5, 1976, 90 Stat. 303, which enacted this chapter and section 7420 of Title 10, Armed Forces, and amended section 6244 of this title and sections 7421 to 7436 and 7438 of Title 10. For complete classification of this Act to the Code, see Short Note set out under section 6501 of this title and Tables volume.

"This chapter", referred to in text, was in the original "this title", meaning Title I of Pub.L. 94–258, which enacted this chapter and amended section 6244 of this title. For distribution of Pub.L. 94–258 in the Code, see Short Title note set out under section 6501 of this title and Tables volume.

The public land laws, referred to in text, are classified generally to Title 43, Public Lands.

The mining laws, referred to in text, are classified generally to Title 30, Mineral Lands and Mining.

Mineral leasing laws, referred to in text, have been defined in sections 505, 530, and 541e of Title 30, Mineral Lands and Leasing, to mean Acts Oct. 20, 1914, c. 330, 38 Stat. 741; Feb. 25, 1920, c. 85, 41 Stat. 437; Apr. 17, 1926, c. 158, 44 Stat. 301; and Feb. 7, 1927, c. 66, 44 Stat. 1057. The Act of Oct. 20, 1914, was repealed by Pub.L. 86–252, § 1, Sept. 9, 1959, 73 Stat. 490. The Act of Feb. 25, 1920, is popularly known as the Mineral Lands Leasing Act and is classified generally to subchapters I to VII (section 181 et seq.) of chapter 3A of Title 30. The Act of Apr. 17, 1926, is classified generally to subchapter VIII (section 271 et seq.) of chapter 3A of Title 30. The Act of Feb. 7, 1927, is classified principally to subchapter IX (section 281 et seq.) of chapter 3A of Title 30. For complete classification of these Acts to the Code, see Tables volume.

The Act of July 31, 1947 (61 Stat. 681), as amended, referred to in text, is classified generally to subchapter I (section 601 et seq.) of chapter 15 of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Tables volume.

The Alaska Native Claims Settlement Act, referred to in text, is Pub.L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (section 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables volume.

Legislative History. For legislative history and purpose of Pub.L. 94–258, see 1976 U.S. Code Cong. and Adm.News, p. 492.

§ 6503. Transfer of jurisdiction, duties, property, etc., to Secretary of Interior from Secretary of Navy

(a) Transfer of jurisdiction over reserve; date of transfer

Jurisdiction over the reserve shall be transferred by the Secretary of the Navy to the Secretary of the Interior on June 1, 1977.

(b) Protection of environmental, fish and wildlife, and historical or scenic values; promulgation of rules and regulations

With respect to any activities related to the protection of environmental, fish and wildlife, and historical or scenic values, the Secretary of the Interior shall assume all responsibilities as of April 5, 1976. As soon as possible, but not later than the effective date of transfer, the Secretary of the Interior may

amendments on competition. Such plans or amendments shall not be implemented until sixty days after they have been submitted to such committees; and

(3) shall report annually to the Committees on Interior and Insular Affairs of the Senate and the House of Representatives on the progress of, and future plans for, exploration of the reserve.

(e) Development and continuation of operation by Secretary of Navy prior to transfer of reserve of gas fields supplying villages, etc., at or near Point Barrow, Alaska; rates; continuation of service by Secretary of Interior after transfer

Until the reserve is transferred to the jurisdiction of the Secretary of the Interior, the Secretary of the Navy is authorized to develop and continue operation of the South Barrow gas field, or such other fields as may be necessary, to supply gas at reasonable and equitable rates to the native village of Barrow, and other communities and installations at or near Point Barrow, Alaska, and to installations of the Department of Defense and other agencies of the United States located at or near Point Barrow, Alaska. After such transfer, the Secretary of the Interior shall take such actions as may be necessary to continue such service to such village, communities, installations, and agencies at reasonable and equitable rates.

(Pub.L. 94–258, Title I, § 104, Apr. 5, 1976, 90 Stat. 304.)

Historical Note

References in Text. This Act, referred to in subsec. (b), is Pub.L. 94–258, Apr. 5, 1976, 90 Stat. 303, which enacted this chapter and section 7420 of Title 10, Armed Forces, and amended section 6244 of this title and sections 7421 to 7436 and 7438 of Title 10. For complete classification of this Act to the Code, see Short Note set out under section 6501 of this title and Tables volume.

The antitrust laws, referred to in subsec. (d)(1), are classified generally to section 1 et seq. of Title 15, Commerce and Trade.

Change of Name. The Committee on Interior and Insular Affairs of the Senate was abolished and replaced by the Committee on Energy and Natural Resources of the Senate, effective Feb. 11, 1977. See Rule XXV of the Standing Rules of the Senate, as amended by Senate Resolution 4 (popularly cited as the "Committee System Reorganization Amendments of 1977"), approved Feb. 4, 1977.

Legislative History. For legislative history and purpose of Pub.L. 94–258, see 1976 U.S Code Cong. and Adm.News, p. 492.

Code of Federal Regulations

Oil and gas leasing, see 43 CFR 3130.0–1 et seq.

§ 6505. Executive department responsibility for studies to determine procedures used in development, production, transportation, and distribution of petroleum resources in reserve; reports to Congress by President; establishment of task force by Secretary of Interior; purposes; membership; report and recommendations to Congress by Secretary; contents

(a)(1) The President shall direct such Executive departments and/or agencies as he may deem appropriate to conduct a study, in consultation

icant subsistence, recreational, fish and wildlife, or historical or scenic value, shall be conducted in a manner which will assure the maximum protection of such surface values to the extent consistent with the requirements of this Act for the exploration of the reserve.

(c) Continuation of ongoing petroleum exploration program by Secretary of Navy prior to date of transfer of jurisdiction; duties of Secretary of Navy prior to transfer date

The Secretary of the Navy shall continue the ongoing petroleum exploration program within the reserve until the date of the transfer of jurisdiction specified in section 6503(a) of this title. Prior to the date of such transfer of jurisdiction the Secretary of the Navy shall—

(1) Cooperate fully with the Secretary of the Interior providing him access to such facilities and such information as he may request to facilitate the transfer of jurisdiction;

(2) provide to the Committees on Interior and Insular Affairs of the Senate and the House of Representatives copies of any reports, plans, or contracts pertaining to the reserve that are required to be submitted to the Committees on Armed Services of the Senate and the House of Representatives; and

(3) cooperate and consult with the Secretary of the Interior before executing any new contract or amendment to any existing contract pertaining to the reserve and allow him a reasonable opportunity to comment on such contract or amendment, as the case may be.

(d) Commencement of petroleum exploration by Secretary of Interior as of date of transfer of jurisdiction; powers and duties of Secretary of Interior in conduct of exploration

The Secretary of the Interior shall commence further petroleum exploration of the reserve as of the date of transfer of jurisdiction specified in section 6503(a) of this title. In conducting this exploration effort, the Secretary of the Interior—

(1) is authorized to enter into contracts for the exploration of the reserve, except that no such contract may be entered into until at least thirty days after the Secretary of the Interior has provided the Attorney General with a copy of the proposed contract and such other information as may be appropriate to determine legal sufficiency and possible violations under, or inconsistencies with, the antitrust laws. If, within such thirty day period, the Attorney General advises the Secretary of the Interior that any such contract would unduly restrict competition or be inconsistent with the antitrust laws, then the Secretary of the Interior may not execute that contract;

(2) shall submit to the Committees on Interior and Insular Affairs of the Senate and the House of Representatives any new plans or substantial amendments to ongoing plans for the exploration of the reserve. All such plans or amendments submitted to such committees pursuant to this section shall contain a report by the Attorney General of the United States with respect to the anticipated effects of such plans or

Senate Resolution 4 (popularly cited as the "Committee System Reorganization Amendments of 1977"), approved Feb. 4, 1977.

Legislative History. For legislative history and purpose of Pub.L. 94–258, see 1976 U.S. Code Cong. and Adm.News, p. 492.

Cross References

Studies prepared and transmitted to Congress pursuant to this section as satisfying requirements for studies of certain rivers designated for potential addition to national wild and scenic river system, see section 1276 of Title 16, Conservation.

§ 6506. Applicability of antitrust provisions; plans and proposals submitted to Congress to contain report by Attorney General on impact of plans and proposals on competition

Unless otherwise provided by Act of Congress, whenever development leading to production of petroleum is authorized, the provisions of subsections (g), (h), and (i) of section 7430 of Title 10 shall be deemed applicable to the Secretary of the Interior with respect to rules and regulations, plans of development and amendments thereto, and contracts and operating agreements. All plans and proposals submitted to the Congress under this chapter or pursuant to legislation authorizing development leading to production shall contain a report by the Attorney General of the United States on the anticipated effects upon competition of such plans and proposals.

(Pub.L. 94–258, Title I, § 106, Apr. 5, 1976, 90 Stat. 306.)

Historical Note

References in Text. "This chapter", referred to in text, was in the original "this title", meaning Title I of Pub.L. 94–258, which enacted this chapter and amended section 6244 of this title. For distribution of Pub.L. 94–258 in the Code, see Short Title note set out under section 6501 of this title and Tables volume.

Legislative History. For legislative history and purpose of Pub.L. 94–258, see 1976 U.S. Code Cong. and Adm.News, p. 492.

§ 6507. Authorization of appropriations; Federal financial assistance for increased municipal services and facilities in communities located on or near reserve resulting from authorized exploration and study activities

(a) There are authorized to be appropriated to the Department of the Interior such sums as may be necessary to carry out the provisions of this chapter.

(b) If the Secretary of the Interior determines that there is an immediate and substantial increase in the need for municipal services and facilities in communities located on or near the reserve as a direct result of the exploration and study activities authorized by this chapter and that an unfair and excessive financial burden will be incurred by such communities as a result of the increased need for such services and facilities, then he is authorized to assist such communities in meeting the costs of providing increased municipal services and facilities. The Secretary of the Interior shall carry out the provisions of this section through existing Federal programs and he shall

with representatives of the State of Alaska, to determine the best overa procedures to be used in the development, production, transportation, an distribution of petroleum resources in the reserve. Such study shall includ but shall not be limited to, a consideration of—

(A) the alternative procedures for accomplishing the developmen production, transportation, and distribution of the petroleum resourc from the reserve, and

(B) the economic and environmental consequences of such altern tive procedures.

(2) The President shall make semiannual progress reports on the impl mentation of this subsection to the Committees on Interior and Insular A fairs of the Senate and the House of Representatives beginning not late than six months after April 5, 1976, and shall, not later than one year afte the transfer of jurisdiction of the reserve, and annually thereafter, report an findings or conclusions developed as a result of such study together wit appropriate supporting data and such recommendations as he deems desira ble. The study shall be completed and submitted to such committees, to gether with recommended procedures and any proposed legislation necessa ry to implement such procedures not later than January 1, 1980.

(b)(1) The Secretary of the Interior shall establish a task force to conduc a study to determine the values of, and best uses for, the lands contained in the reserve, taking into consideration (A) the natives who live or depend upon such lands, (B) the scenic, historical, recreational, fish and wildlife, and wilderness values, (C) mineral potential, and (D) other values of such lands.

(2) Such task force shall be composed of representatives from the government of Alaska, the Arctic slope native community, and such offices and bureaus of the Department of the Interior as the Secretary of the Interior deems appropriate, including, but not limited to, the Bureau of Land Management, the United States Fish and Wildlife Service, the United States Geological Survey, and the Bureau of Mines.

(3) The Secretary of the Interior shall submit a report, together with the concurring or dissenting views, if any, of any non-Federal representatives of the task force, of the results of such study to the Committees on Interior and Insular Affairs of the Senate and the House of Representatives within three years after April 5, 1976, and shall include in such report his recommendations with respect to the value, best use, and appropriate designation of the lands referred to in paragraph (1).

(Pub.L. 94–258, Title I, § 105(b), (c), Apr. 5, 1976, 90 Stat. 305.)

Historical Note

Codification. In the original, subsecs. (a) and (b), respectively, were subsecs. (b) and (c) of section 105 of Pub.L. 94–258 and have been redesignated as (a) and (b) for codification purposes. Section 105(a) of Pub.L. 94–258 amended section 6244 of this title.

Change of Name. The Committee on Interior and Insular Affairs of the Senate was abolished and rep'aced by the Committee on Energy and Natural Resources of the Senate, effective Feb. 11, 1977. See Rule XXV of the Standing Rules of the Senate, as amended by

consult with the heads of the departments or agencies of the Federal Government concerned with the type of services and facilities for which financial assistance is being made available.

(Pub.L. 94–258, Title I, § 107, Apr. 5, 1976, 90 Stat. 366.)

Historical Note

References in Text. "This chapter", referred to in text, was in the original "this title", meaning Title I of Pub.L. 94–258, which enacted this chapter and amended section 6244 of this title. For distribution of Pub.L. 94–258 in the Code, see Short Title note set out under section 6501 of this title and Tables volume.

Legislative History. For legislative history and purpose of Pub.L. 94–258, see 1976 U.S. Code Cong. and Adm.News, p. 492.

§ 6508. Competitive leasing of oil and gas

There shall be conducted, notwithstanding any other provision of law and pursuant to such rules and regulations as the Secretary may prescribe, an expeditious program of competitive leasing of oil and gas in the National Petroleum Reserve in Alaska: *Provided,* That (1) activities undertaken pursuant to this section shall include or provide for such conditions, restrictions, and prohibitions as the Secretary deems necessary or appropriate to mitigate reasonably foreseeable and significantly adverse effects on the surface resources of the National Petroleum Reserve in Alaska (the Reserve); (2) the provisions of section 202 and section 603 of the Federal Lands Policy and Management Act of 1976 (90 Stat. 2743) [43 U.S.C.A. §§ 1712, 1782] shall not be applicable to the Reserve; (3) the first lease sale shall be conducted within twenty months of December 12, 1980: *Provided,* That the first lease sale shall be conducted only after publication of a final environmental impact statement if such is deemed necessary under the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4332); (4) the withdrawals established by section 102 of Public Law 94–258 [42 U.S.C.A. § 6502] are rescinded for the purposes of the oil and gas leasing program authorized herein; (5) bidding systems used in lease sales shall be based on bidding systems included in section 205(a)(1)(A) through (H) of the Outer Continental Shelf Lands Act Amendments of 1978 (92 Stat. 629) [43 U.S.C.A. § 1337(a)(1)(A)-(H)]; (6) lease tracts may encompass identified geological structures; (7) the size of lease tracts may be up to sixty thousand acres, as determined by the Secretary; (8) each lease shall be issued for an initial period of up to ten years, and shall be extended for so long thereafter as oil or gas is produced from the lease in paying quantities, or as drilling or reworking operations, as approved by the Secretary, are conducted thereon; and (9) all receipts from sales, rentals, bonuses, and royalties on leases issued pursuant to this section shall be paid into the Treasury of the United States: *Provided,* That 50 per centum thereof shall be paid by the Secretary of the Treasury semiannually, as soon as practicable after March 30 and September 30 each year, to the State of Alaska for (a) planning, (b) construction, maintenance, and operation of essential public facilities, and (c) other necessary provisions of public service: *Provided further,* That in the allocation of such funds, the State shall give priority to use by subdivisions

of the State most directly or severely impacted by development of oil and gas leased under this section.

Any agency of the United States and any person authorized by the Secretary may conduct geological and geophysical explorations in the National Petroleum Reserve in Alaska which do not interfere with operations under any contract maintained or granted previously. Any information acquired in such explorations shall be subject to the conditions of 43 U.S.C. 1352(a)(1)(A).

Any action seeking judicial review of the adequacy of any program or site-specific environmental impact statement under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) concerning oil and gas leasing in the National Petroleum Reserve-Alaska shall be barred unless brought in the appropriate District Court within 60 days after notice of the availability of such statement is published in the Federal Register. Any proceeding on such action shall be assigned for hearing at the earliest possible date and shall be expedited by such Court.

The detailed environmental studies and assessments that have been conducted on the exploration program and the comprehensive land-use studies carried out in response to sections 105(b) and (c) of Public Law 94–258 [42 U.S.C.A. § 6505] shall be deemed to have fulfilled the requirements of section 102(2)(c) of the National Environmental Policy Act (Public Law 91–190) [42 U.S.C.A. § 4332(2)(C)], with regard to the first two oil and gas lease sales in the National Petroleum Reserve-Alaska: *Provided*, That not more than a total of 2,000,000 acres may be leased in these two sales: *Provided further*, That any exploration or production undertaken pursuant to this section shall be in accordance with section 104(b) of the Naval Petroleum Reserves Production Act of 1976 (90 Stat. 304; 42 U.S.C. 6504).

(Pub.L. 96–514, Title I, § 100, Dec. 12, 1980, 94 Stat. 2964.)

Historical Note

References in Text. "This section" referred to the first three times it appears in the original read "this Act" meaning Pub.L. 96–514, Dec. 12, 1980, 94 Stat. 2957. For complete classification of this Act to the Code, see Tables volume.

The National Environmental Policy Act of 1969, referred to in text, is Pub.L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (section 4321 et seq.) of this title. Section 102 of such Act is classified to section 4332 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables volume.

Section 104(b) of the Naval Petroleum Reserves Production Act of 1976 (90 Stat. 304), referred to in text, is section 104(b) of Pub.L. 94–258, Title I, § 104, Apr. 5, 1976, 90 Stat. 304, which is classified to section 6504(b) of this title.

Codification. Section was enacted as part of the Department of the Interior and Related Agencies Appropriations Act, 1981, and not as part of the Naval Petroleum Reserves Production Act of 1976 which enacted this chapter.

TITLE 42

THE PUBLIC HEALTH AND WELFARE

CHAPTER 78—NATIONAL PETROLEUM RESERVE IN ALASKA

§ 6502. Designation of National Petroleum Reserve in Alaska; reservation of lands; disposition and conveyance of mineral materials, lands, etc., preexisting property rights

The area known as Naval Petroleum Reserve Numbered 4, Alaska, established by Executive Order of the President, dated February 27, 1923, except for tract Numbered 1 as described in Public Land Order 2344, dated April 24, 1961, shall be transferred to and administered by the Secretary of the Interior in accordance with the provisions of this Act. Effective on the date of transfer all lands within such area shall be redesignated as the "National Petroleum Reserve in Alaska" (hereinafter in this chapter referred to as the "reserve"). Subject to valid existing rights, all lands within the exterior boundaries of such reserve are hereby reserved and withdrawn from all forms of entry and disposition under the public land laws, including the mining and mineral leasing laws, and all other Acts; but the Secretary is authorized to (1) make dispositions of mineral materials pursuant to the Act of July 31, 1947(61 Stat. 681), as amended [30 U.S.C.A. § 601 et seq.], for appropriate use by Alaska Natives and the North Slope Borough, (2) make such dispositions of mineral materials and grant such rights-of-way, licenses, and permits as may be necessary to carry out his responsibilities under this Act, (3) convey the surface of lands properly selected on or before December 18, 1975, by Native village corporations pursuant to the Alaska Native Claims Settlement Act [43 U.S.C.A. § 1601 et seq.], and (4) grant such rights-of-way to the North Slope Borough, under the provisions of title V of the Federal Land Policy and Management Act of 1976 [43 U.S.C.A. § 1761 et seq.] or section 28 of the Mineral Leasing Act, as amended [30 U.S.C.A. § 185], as may be necessary to permit the North Slope Borough to provide energy supplies to villages on the North Slope. All other provisions of law heretofore enacted and actions heretofore taken reserving such lands as a Naval Petroleum Reserve shall remain in full force and effect to the extent not inconsistent with this Act.

(As amended Pub.L. 98–366, § 4(a), July 17, 1984, 98 Stat. 470.)

References in Text. Title V of the Federal Land Policy and Management Act of 1976, referred to in cl. (4), is Title V of Pub.L. 94–579, Oct. 21, 1976, 90 Stat. 2776, which is classified generally to subchapter V (§ 1761 et seq.) of chapter 35 of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 43 and Tables.

Section 28 of the Mineral Leasing Act, referred to in text, cl. (4), is classified to section 185 of Title 30, Mineral Lands and Mining.

1984 Amendment. Pub.L. 98–366 added "and the North Slope Borough" after "Alaska Natives".

Pub.L. 98–366 struck out "and" after "responsibilities under this Act,".

Pub.L. 98–366 inserted ", and (4) grant rights-of-way to the North Slope Borough, under the provisions of title V of the Federal Land Policy and Management Act of 1976 or section 28 of the Mineral Leasing Act, as amended, as may be necessary to permit the North Slope Borough to provide energy supplies to the villages on the

North Slope" preceding the period following "Alaska Native Claims Settlement Act".

Legislative History. For legislative history and purpose of Pub.L. 98–366, see 1984 U.S. Code Cong. and Adm. News, p. 692.

§ 6504. Administration of reserve

[See main volume for text of (a) to (d)]

(e). Repealed. Pub.L. 98–366, § 4(b), July 17, 1984, 98 Stat. 470.

(As amended Pub.L. 98–366, § 4(b), July 17, 1984, 98 Stat. 470.)

1984 Amendment. Subsec. (e). Pub.L. 98–366 struck out subsec. (e) which had read: "Until the reserve is transferred to the jurisdiction of the Secretary of the Interior, the Secretary of the Navy is authorized to develop and continue operation of the South Barrow gas field, or such other fields as may be necessary, to supply gas at reasonable and equitable rates to the native village of Barrow, and other communities and installations at or near Point Barrow, Alaska, and to installations of the Department of Defense and other agencies of the United States located at or near Point Barrow, Alaska. After such transfer, the Secretary of the Interior shall take such actions as may be necessary to continue such service to such village, communities, installations, and agencies at reasonable and equitable rates."

Effective Date of 1984 Amendment. Section 4(b) of Pub.L. 98–366 provided in part that the repeal of subsec. (e) of this section is effective Oct. 1, 1984.

Legislative History. For legislative history and purpose of Pub.L. 98–366, see 1984 U.S. Code Cong. and Adm. News, p. 692.

§ 6505. Executive department responsibility for studies to determine procedures used in development, production, transportation, and distribution of petroleum resources in reserve; reports to Congress by President; establishment of task force by Secretary of Interior; purposes; membership; report and recommendations to Congress by Secretary; contents

(a) Omitted

(b)(1) The President shall direct such Executive departments and/or agencies as he may deem appropriate to conduct a study, in consultation with representatives of the State of Alaska, to determine the best overall procedures to be used in the development, production, transportation, and distribution of petroleum resources in the reserve. Such study shall include, but shall not be limited to, a consideration of—

(A) the alternative procedures for accomplishing the development, production, transportation, and distribution of the petroleum resources from the reserve, and

(B) the economic and environmental consequences of such alternative procedures.

(2) The President shall make semiannual progress reports on the implementation of this subsection to the Committees on Interior and Insular Affairs of the Senate and the House of Representatives beginning not later than six months after April 5, 1976, and shall, not later than one year after the transfer of jurisdiction of the reserve, and annually thereafter, report any findings or conclusions developed as a result of such study together with appropriate supporting data and such recommendations as he deems desirable. The study shall be completed and submitted to such committees, together with recommended procedures and any proposed legislation necessary to implement such procedures not later than January 1, 1980.

(c)(1) The Secretary of the Interior shall establish a task force to conduct a study to determine the values of, and best uses for, the lands contained in the reserve, taking into consideration (A) the natives who live or depend upon such lands, (B) the scenic, historical, recreational, fish and wildlife, and wilderness values, (C) mineral potential, and (D) other values of such lands.

(2) Such task force shall be composed of representatives from the government of Alaska, the Arctic slope native community, and such offices and bureaus of the Department of the Interior as the Secretary of the Interior deems appropriate, including, but not limited to, the Bureau of Land Management, the United States Fish and Wildlife Service, the United States Geological Survey, and the Bureau of Mines.

(3) The Secretary of the Interior shall submit a report, together with the concurring or dissenting views, if any, of any non-Federal representatives of the task force, of the results of such study to the Committees on Interior and Insular Affairs of the Senate and the House of Representatives within three years after April 5, 1976, and shall include in such report his recommendations with respect to the value, best use, and appropriate designation of the lands referred to in paragraph (1).

Codification. Subsec. (a) of this section amended section 6244 of this title.

§ 6508. Competitive leasing of oil and gas

[See main volume for text of first and second undesignated paragraphs]

Any action seeking judicial review of the adequacy of any program or site-specific environmental impact statement under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) concerning oil and gas leasing in the National Petroleum Reserve-Alaska shall be barred unless brought in the appropriate District Court within 60 days after notice of the availability of such statement is published in the Federal Register.

[See main volume for text of fourth undesignated paragraph]

(As amended Pub.L. 98-620, Title IV, § 402(41), Nov. 8, 1984, 98 Stat. 3360.)

1984 Amendment. Pub.L. 98-620 struck out provision in the third paragraph that required that any proceeding on such action be assigned for hearing at the earliest possible date and be expedited by the Court.

Effective Date of 1984 Amendment. Amendment by Pub.L. 98-620 not to apply to cases pending on Nov. 8, 1984, see section 403 of Pub.L. 98-620, set out as a note under section 1657 of Title 28, Judiciary and Judicial Procedure.

Legislative History. For legislative history and purpose of Pub.L. 98-620, see 1984 U.S.Code Cong. and Adm.News, p. 5708.

Notes of Decisions

1. Discovery

In action challenging certain oil and gas lease sales by the Bureau of Land Management within the Alaska national petroleum reserve, in view of statutory mandate to expedite, district court did not abuse its discretion in foreclosing discovery and setting an abbreviated briefing schedule. Kunaknana v. Clark, C.A.Alaska 1984, 742 F.2d 1145.

CHAPTER 79—SCIENCE AND TECHNOLOGY POLICY, ORGANIZATION AND PRIORITIES

SUBCHAPTER I—NATIONAL SCIENCE, ENGINEERING, AND TECHNOLOGY POLICY AND PRIORITIES

§ 6601. Congressional findings; priority goals

EXECUTIVE ORDER NO. 12039

Ex. Ord. No. 12399, Dec. 31, 1982, 48 F.R. 379, set out in the credit of this Executive Order, was superseded by Ex. Ord. No. 12534, Sept. 30, 1985, 50 F.R. 40319, set out as a note under section 14 of the Federal Advisory Committee Act in Appendix 2 to Title 5, Government Organization and Employees.

SUBCHAPTER II—OFFICE OF SCIENCE AND TECHNOLOGY POLICY

§ 6614. Policy planning; analysis; advice; establishment of Advisory Panel

[See main volume for text of (a)]

(b)(1) The Director shall establish an Intergovernmental Science, Engineering, and Technology Advisory Panel (hereinafter referred to as the "Panel"), whose purpose shall be to (A) identify and define civilian problems at State, regional, and local levels which science, engineering, and technology may assist in resolving or ameliorating; (B) recommend priorities for addressing such problems; and (C) advise and assist the Director in identifying and fostering policies to facilitate the transfer and utilization of research and development results so as to maximize their application to civilian needs.

WATT, SECRETARY OF THE INTERIOR, ET AL. v. ALASKA

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 79–1890. Argued January 13, 1981—Decided April 21, 1981*

The Kenai National Moose Range was created in 1941 as a national wildlife refuge by withdrawing acreage from public lands in Alaska. Commercially significant quantities of oil underlie the Range, and the Secretary of the Interior issued oil and gas leases for the Range, beginning in the 1950's. The Secretary has distributed revenues from these leases according to the formula provided in § 35 of the Mineral Leasing Act of 1920, whereby 90% of the revenues are paid to Alaska and 10% to the United States Treasury. In 1964, § 401 (a) of the Wildlife Refuge Revenue Sharing Act was amended so as to add the word "minerals" to the list of refuge resources, the revenues from which were to be distributed according to the formula provided in § 401 (c) of that Act, whereby 25% of the revenues are paid to counties in which the wildlife refuge lies, and the remaining funds are used by the Department of the Interior for public purposes. The Department's Solicitor then made a determination, in which the Comptroller General concurred, that the amended § 401 (a) superseded § 35 of the Mineral Leasing Act of 1920, with the result that the formula under § 401 (c) was to be applied to oil and gas lease revenues from wildlife refuges. Petitioner Kenai Peninsula Borough, the "county" within which Moose Range lies, thereafter brought suit in Federal District Court, seeking a declaration that the amended § 401 (a) governed the distribution of oil and gas revenues from the Range. Alaska also filed suit in the same court, seeking a declaration that § 35 still governed such distribution, and the suits were consolidated. The District Court granted summary judgment for Alaska, and the Court of Appeals affirmed.

Held: Revenues generated by oil and gas leases on federal wildlife refuges consisting of reserved public lands, as here, must be distributed according to the formula provided in § 35 of the Mineral Leasing Act of 1920. Absent any expression of congressional intention to repeal

*Together with No. 79–1904, *Kenai Peninsula Borough* v. *Alaska et al.*, also on certiorari to the same court.

§ 35 by implication, the term "minerals" in § 401 (a) of the Wildlife Refuge Revenue Sharing Act applies only to minerals on land acquired for wildlife refuges. Pp. 265–273.

612 F. 2d 1210, affirmed.

POWELL, J., delivered the opinion of the Court, in which BRENNAN, WHITE, BLACKMUN, REHNQUIST, and STEVENS, JJ., joined. STEVENS, J., filed a concurring opinion, *post*, p. 273. STEWART, J., filed a dissenting opinion, in which BURGER, C. J., and MARSHALL, J., joined, *post*, p. 276.

Deputy Solicitor General Claiborne argued the cause for petitioners in No. 79–1890. With him on the briefs were *Solicitor General McCree, Assistant Attorney General Moorman,* and *Dirk D. Snel. Charles K. Cranston* argued the cause and filed briefs for petitioner in No. 79–1904.

G. Thomas Koester, Assistant Attorney General of Alaska, argued the cause for respondents in both cases. With him on the brief was *Wilson L. Condon,* Attorney General.

JUSTICE POWELL delivered the opinion of the Court.

The narrow issue presented by these cases is which of two federal statutes provides the formula for distribution of revenues received from oil and gas leases on national wildlife refuges reserved from public lands.

I

The Kenai National Moose Range was created in 1941 by the withdrawal of nearly two million acres from public lands on the Kenai Peninsula in Alaska. See Exec. Order No. 8979. 3 CFR 1043 (1938–1943 Comp.). See also Public Land Order No. 3400, 29 Fed. Reg. 7094–7095 (1964) (adjusting the boundaries). The Kenai Moose Range, as its name suggests, provides a refuge and breeding ground for moose. The Fish and Wildlife Service in the Department of the Interior administers it as part of the national wildlife refuge system.

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Commercially significant quanties of oil underlie the Kenai Moose Range.[1] Pursuant to authority under the Mineral Leasing Act of 1920, 30 U. S. C. § 181 *et seq.*, the Secretary of the Interior has issued oil and gas leases for the Kenai Moose Range. beginning in the mid-1950's. See *Udall* v. *Tallman*, 380 U. S. 1 (1965). The United States has received substantial revenues from these leases.[2] From first receipt in 1954, the Secretary has distributed these revenues according to the formula provided in § 35 of the Mineral Leasing Act of 1920, 41 Stat. 450, as amended, 30 U. S. C. § 191. This formula prescribes that 90% of the revenues be paid to the State of Alaska and 10% to the United States Treasury.[3]

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[1] Today, the Kenai Moose Range is the only national wildlife refuge created from public lands where oil is being pumped. See Brief for Federal Petitioners 4, n. 4. Substantial quantities of oil, however, are thought to underlie other reserved refuge lands in Alaska.

[2] Between 1966 and 1976, Kenai Range generated more than $57 million in oil lease revenues. App. 64. In 1964 Kenai Range generated more than $3.8 million in revenues from oil and gas leases. In that same year, refuges on reserved public land in the contiguous 48 States generated $3,143 in oil and gas revenues. App. to Brief for Federal Petitioners 1a–2a. In interpreting Congress' directions for distribution of oil revenues from reserved refuge lands, it should be remembered that historically Kenai alone has generated such revenues.

[3] In pertinent part, the current § 35, as set forth in 30 U. S. C. § 191, provides:

"All money received from sales, bonuses, royalties, and rentals of the public lands under the provisions of this chapter . . . shall be paid into the Treasury of the United States; . . . of those from Alaska . . . 90 per centum thereof shall be paid to the State of Alaska for disposition by the legislature . . . ."

States other than Alaska receive only 50% of public land mineral revenues under the Act. *Ibid.*

By its terms, the Mineral Leasing Act applies to specified minerals, including oil and gas, on all lands owned by the United States, except those lands excluded by the Act. 30 U. S. C. § 181. See *Udall* v. *Tallman*, 380 U. S. 1, 4, and n. 3 (1965).

In 1975, the Director of the Fish and Wildlife Service inquired of the Solicitor of the Department of the Interior whether revenues from oil and gas leases in wildlife refuges created by withdrawal of public lands should be distributed according to § 401 (c) of the Wildlife Refuge Revenue Sharing Act, 49 Stat. 383, as amended, 16 U. S. C. § 715s (c), rather than under the Mineral Leasing Act of 1920. The Director's inquiry was prompted by the 1964 amendments to § 401 (a), which added the word "minerals" to a list of refuge resources, the revenues from which were to be distributed according to the statutory formula.[4] Pub. L. 88–523, 78 Stat. 701. According to this formula, 25% of the revenues are paid to counties wherein the refuge lies, and remaining funds are used by the Department of the Interior for public purposes.[5]

[4] Prior to 1964, § 401 governed distribution of revenues from "the sale or other disposition of surplus wildlife, or of timber, hay, grass, or other spontaneous products of the soil, shell, sand, or gravel, and from other privileges on refuges." Act of June 15, 1935, ch. 261, 49 Stat. 378, 383. The current version of § 401 (a) is given in the text, *infra*, at 265.

[5] Section 401 (c) currently provides:

"(1) The Secretary shall pay out the fund, for each fiscal year . . . , to each county in which is situated any fee area whichever of the following amounts is greater:

"(A) An amount equal to the product of 75 cents multiplied by the total acreage of that portion of the fee area which is located within such county.

"(B) An amount equal to three-fourths of 1 per centum of the fair market value, as determined by the Secretary, of that portion of the fee area . . . which is located within such county.

"(C) An amount equal to 25 per centum of the net receipts collected by the Secretary in connection with operation of and management of such fee area during the fiscal year . . . .

"(2) At the end of each fiscal year the Secretary shall pay out of the fund for such fiscal year to each county in which any reserve area is situated, an amount equal to 25 per centum of the net receipts collected by the Secretary in connection with the operation and management of such area during such fiscal year . . . ." 16 U. S. C. § 715s (c) (1976 ed., Supp. III).

Section 401 (b) allows the Secretary to pay any expenses related to revenue production or distribution from this fund. Section 401 (e) pro-

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The Solicitor ruled that the 1964 amendment governed, superseding § 35 of the Mineral Leasing Act of 1920. App. to Pet. for Cert. in No. 79-1890, p. 26a. The Comptroller General concurred in the view of the Solicitor. 55 Comp. Gen. 117 (1975). Upon request for reconsideration by the State of Alaska in 1976, the Comptroller General affirmed his initial decision. See Op. Comp. Gen. in File: B-118678, June 11, 1976, reprinted in App. to Pet. for Cert. in No. 79-1890, p. 42a.

The Kenai Peninsula Borough then brought suit against the Secretary of the Interior in the United States District Court for the District of Alaska, seeking a declaration that the amended § 401 (a) of the Wildlife Refuge Revenue Sharing Act governed the distribution of oil and gas revenues from the Kenai Moose Range. Kenai Borough is the "county" within which the Moose Range lies. If § 401 (a) governs, it will receive 25% of the revenues and the State none. The State of Alaska then filed suit in the same court against the Secretary and various federal officials, seeking a declaration that § 35 of the Mineral Leasing Act still governed distribution of these same oil and gas revenues. If that provision applies, the State will continue to receive 90% of the funds and, so far as federal law is concerned, Kenai Borough none. The District Court consolidated the lawsuits.[6]

The District Court granted summary judgment for the State of Alaska. 436 F. Supp. 288 (1977). Upon exami-

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vides that funds remaining after expenses and the States are paid are transferred to the Migratory Bird Conservation Fund, established for the laudable purpose of purchasing migratory bird refuges.

[6] Since this litigation commenced in 1976, 90% of oil and gas revenues from the Kenai Range has been paid into an escrow account that now contains more than $23 million. Brief for Federal Petitioners 4, n. 4. In addition to declaratory relief, Kenai Borough sought an accounting of revenues paid to the State since 1964 under the Mineral Leasing Act of 1920 but allegedly due the Borough, and recovery of such payments. The State sought a resumption of accustomed payments under the Mineral Leasing Act.

nation of the apparently conflicting statutes, the court held that the term "minerals" in the amended Wildlife Refuge Revenue Sharing Act referred only to oil and gas found on land *acquired* for wildlife refuges. *Id.*, at 292. Distribution of oil and gas revenues from leases on public land *reserved* for wildlife refuges, it held, continues to be determined by § 35 of the Mineral Leasing Act of 1920.[7] *Ibid.* The court viewed the legislative history of the 1964 amendments as demonstrating that Congress was concerned primarily with the difficulties of acquiring land for refuges and that Congress expected no increase in revenues from the Kenai Moose Range to result from the amendments. *Id.*, at 291–292.

The Court of Appeals for the Ninth Circuit affirmed. 612 F. 2d 1210 (1980). That court found the legislative history largely ambiguous. *Id.*, at 1213. It refused to find that the addition of the word "minerals" to the amended Wildlife Refuge Revenue Sharing Act had repealed by implication the Mineral Leasing Act of 1920 without a clear showing that this was the intent of Congress. See *Morton* v. *Mancari*, 417 U. S. 535, 549–551 (1974). The court further approved the District Court's holding because it gave effect to each statute. 612 F. 2d, at 1214–1215.

We granted certiorari. 449 U. S. 818 (1980).[8] We now affirm.

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[7] In general, "acquired lands are those granted or sold to the United States by a State or citizen and public domain lands were usually never in state or private ownership." *Wallis* v. *Pan American Pet. Corp.*, 384 U. S. 63, 65, n. 2 (1966). The Mineral Leasing Act of 1920 applies only to public lands. *Id.*, at 65.

[8] In 1978, Congress rejected new amendments to § 401 (a) that would have defined minerals as "including, but not limited to, crude petroleum and nautral gas." H. R. 8394, 95th Cong., 2d Sess. (1978). The House Report recommending this bill stated that the language was added to "insure" that after the effective date oil and gas revenues from Kenai would be distributed according to the formula in § 401 (c). H. R. Rep. No. 95–1197, p. 8 (1978). The Report disclaims any intention to affect

II

The Secretary and the Kenai Borough rely primarily on the "plain language" of § 401 (a) of the Wildlife Refuge Revenue Sharing Act. They contend that it provides without ambiguity that mineral resources from all national wildlife refuges be distributed according to the formula described in § 401 (a) of the Act. As currently phrased, § 401 (a) provides:

> "[A]ll revenues received by the Secretary of the Interior from the sale or other disposition of animals, salmonoid carcassas [*sic*], timber, hay, grass, or other products of the soil, minerals, shells, sand, or gravel, [or] from other privileges . . . shall be . . . reserved in a separate fund for disposition as hereafter prescribed." 16 U. S. C. § 715s (a) (1976 ed., Supp. III).

The provision defines the wildlife refuge system to include lands "acquired or reserved" for conservation and protection of certain fish and wildlife. No restriction is placed upon the common meaning of "minerals." Given this clarity, it is argued, resort to the legislative history is unnecessary or improper.

We agree with the Secretary that "[t]he starting point in every case involving construction of a statute is the language itself." *Blue Chip Stamps* v. *Manor Drug Stores*, 421 U. S.

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the outcome of these cases, then pending in the Court of Appeals. *Ibid.* The Sentate then rejected even this amendment, Members stating that it would be inappropriate to make any judgment about the proper allocation of these resources while these cases were still in the courts. 124 Cong. Rec. 31436–31440. (1978) (remarks of Sen. Culver and Sen. Gravel).

The sole issue that has been before the courts during this five years of litigation is the intent of Congress in adding the single term "minerals" to the statute in 1964. Congress declined to clarify its intent in 1978. Accordingly, we are left to resolve by judicial construction what should be addressed as a question of legislative policy judgment: the appropriate distribution among federal, state, and local government of natural resource revenues.

723, 756 (1975) (POWELL, J., concurring). See *Rubin* v. *United States*, 449 U. S. 424 (1981). But ascertainment of the meaning apparent on the face of a single statute need not end the inquiry. *Train* v. *Colorado Public Interest Research Group*, 426 U. S. 1, 10 (1976); *United States* v. *American Trucking Assns., Inc.*, 310 U. S. 534, 543–544 (1940). This is because the plain meaning rule is "rather an axiom of experience than a rule of law, and does not preclude consideration of persuasive evidence if it exists." *Boston Sand Co.* v. *United States*, 278 U. S. 41, 48 (1928) (Holmes, J.).[9] The circumstances of the enactment of particular legislation may persuade a court that Congress did not intend words of common meaning to have their literal effect. *E. g., Church of the Holy Trinity* v. *United States*, 143 U. S. 457, 459 (1892); *United States* v. *Ryan*, 284 U. S. 167, 175 (1931).

Sole reliance on the "plain language" of § 401 (a) would assume the answer to the question at issue. These cases involve two statutes, each of which by its literal terms applies to the facts before us. Restatement of the terms of § 401 (a) cannot answer which statute Congress intended to control. Recognizing this, the Secretary invokes the maxim of construction that the more recent of two irreconcilably conflicting statutes governs. 2A C. Sands, Sutherland on Statutes and Statutory Construction § 51.02 (4th ed. 1973). Without depreciating this general rule, we decline to read the statutes as being in irreconcilable conflict without seeking to ascertain the actual intent of Congress. Our examination of the

[9] "Of course it is true that the words used, even in their literal sense, are the primary, and ordinarily the most reliable, source of interpreting the meaning of any writing: be it a statute, a contract, or anything else. But it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary; but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning." *Cabell* v. *Markham*, 148 F. 2d 737, 739 (CA2) (L. Hand, J.), aff'd, 326 U. S. 404 (1945).

legislative history is guided by another maxim: " 'repeals by implication are not favored,' " *Morton* v. *Mancari*, 417 U. S., at 549, quoting *Posadas* v. *National City Bank*, 296 U. S. 497, 503 (1936). "The intention of the legislature to repeal must be 'clear and manifest.' " *United States* v. *Borden Co.*, 308 U. S. 188, 198 (1939), quoting *Red Rock* v. *Henry*, 106 U. S. 596, 602 (1883). We must read the statutes to give effect to each if we can do so while preserving their sense and purpose. *Mancari, supra*, at 551; see *Haggar Co.* v. *Helvering*, 308 U. S. 389, 394 (1940).

III

Congress gave extensive consideration to the purpose and probable effect of the 1964 amendments to the Wildlife Refuge Revenue Sharing Act. Pub. L. 88–523, 78 Stat. 701. Nonetheless, and we think it significant, there is no explanation in the legislative history for the addition of the single word "minerals" to the list of refuge resources subject to the Act. See H. R. Rep. No. 1753, 88th Cong., 2d Sess. (1964) (hereinafter 1964 H. R. Rep.); S. Rep. No. 1096, 88th Cong., 2d Sess. (1964) (hereinafter 1964 S. Rep.); 110 Cong. Rec. 19882–19883 (1964) (remarks of Rep. Ostertag). Our study of the few legislative materials pertinent to the insertion of "minerals" persuades us that Congress intended to work no change in the pre-existing formula for distribution of mineral revenues from federal wildlife refuges.

A

Prior to 1964, § 35 of the Mineral Leasing Act of 1920 governed distribution of revenues from mineral leases on wildlife refuges withdrawn from public lands. This conclusion cannot be seriously questioned. First, from the time the first mineral revenues were generated on such lands until well after 1964, the Secretary invariably distributed the revenues as provided in the Mineral Leasing Act. Second, the Comptroller General long ago ruled that the only other arguably

applicable statute, the then unamended Wildlife Refuge Revenue Sharing Act, Act of June 15, 1935, ch. 261, 49 Stat. 383 (hereinafter 1935 Refuge Act), see n. 4, *supra*, did not govern the disposal of revenues from mineral leases on wildlife refuges. 21 Comp. Gen. 873 (1942). See also Comp. Gen., B-105133, Oct. 10, 1951, App. 82.[10]

Third, our opinion in *Udall* v. *Tallman*, 380 U. S. 1 (1965), strongly suggests that the Mineral Leasing Act of 1920 governed the distribution of revenues from reserved refuge lands prior to 1964. That case involved the authority of the Secretary to issue oil leases on the Kenai Moose Range after the lands had been withdrawn from the public domain by

[10] The Secretary speculates that Congress in 1964 probably assumed that oil and gas revenues from refuges on reserved lands were governed by the 1935 Refuge Act. The basis for this argument is language in the 1935 Refuge Act, continued today, that the Act governed the disposition of "shell, sand, or gravel, and from other privileges on refuges." See n. 4, *supra*. It sometimes was contended that "other privileges" included oil and gas leases. See Memorandum of July 6, 1951, Chief Counsel of the Fish and Wildlife Service, App. 87.

As noted, the Comptroller General rejected this contention in 1942 and 1951. For the reasons elaborated in the text, we believe that it was understood by Congress that the 1935 Refuge Act did not govern the leasing of minerals. Indeed, even the 1946 opinion of the Solicitor of the Department of the Interior that the provision authorized oil leases on acquired refuge lands, App. 68, is contradicted by Congress' passage of the Mineral Leasing Act for Acquired Lands, Act of Aug. 7, 1947, ch. 513, 61 Stat. 913, 30 U. S. C. § 351 *et seq.*, which subsequently conferred this very authority on the Department. See also 40 Op. Atty. Gen. 9 (1941).

The dissent also speculates—inconsistently, we think—that Congress embraced this often discredited interpretation of the 1935 Refuge Act. *post*, at 279–280, n. 3. The dissent criticizes the Court for concluding that Congress' insertion of "minerals" in § 401 (a) did not change pre-existing law. *Post*, at 278–279. The dissent then explains that Congress added "minerals" in 1964 not to change the law, but to reaffirm that the 1935 Refuge Act already governed disposition of oil revenues from reserved refuge lands. *Post*, at 279–280, n. 3. In other words, the dissent contradicts itself and joins us in positing that the addition of "minerals" was never intended to work a substantive change, but disagrees merely about what the law provided prior to the 1964 amendments.

Executive Order. In holding that the Executive Order did not deprive the Secretary of this power, this Court held that the Mineral Leasing Act of 1920 conferred the necessary statutory authorization on the Secretary to grant the leases. "The Act excluded from its application certain designated lands, but did not exclude land within wildlife refuge areas." *Id.*, at 4 (footnote omitted).[11] Because § 35 of the Mineral Leasing Act prescribes the distribution formula for revenues received from all leases issued "under the provisions of this chapter," we think it an inescapable deduction from *Tallman* that, prior to 1964, the Act continued to provide the formula for disposition of revenues generated by leases on public lands after the lands were withdrawn for wildlife refuges.

Neither the Mineral Leasing Act of 1920 nor the 1935 Refuge Act authorized the Secretary to issue leases for mineral extraction from refuges created from acquired lands. 40 Op. Atty. Gen. 9 (1941) (Attorney General Jackson); 21 Comp. Gen. 873 (1942). Congress responded by passing the Mineral Leasing Act for Acquired Lands, Act of Aug. 7, 1947, ch. 513, 61 Stat. 913, 30 U. S. C. § 351 *et seq.* See n. 10, *supra.* In addition to conferring authority on the Secretary to issue leases for specified minerals, including oil and gas, it provided that revenues from the leases be "distributed in the same manner as prescribed for other receipts from the lands affected by the lease." 30 U. S. C. § 355. As applied to wildlife refuges created from acquired lands, this provision requires that mineral revenues be distributed according to the formula in the 1935 Refuge Act.

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[11] The Secretary argues that *Tallman*'s construction of the Mineral Leasing Act should not now be binding, because the Court did not need to construe the Act. This is incorrect. The Court was required to determine that the Secretary had statutory authority to issue oil leases on refuges withdrawn from public lands, before it could reach the question whether the Executive Orders withdrawing the refuge lands limited that authority. The Court examined the language of § 1 of the Act and found that it gave the Secretary the requisite authority. See 380 U. S., at 4, n. 3.

Thus, when Congress amended the Wildlife Refuge Revenue Sharing Act in 1964, the disposition of oil and gas revenues was reasonably clear. Such revenues from reserved refuge lands were distributed according to the Mineral Leasing Act of 1920. Revenues from acquired refuge lands were distributed according to the formula in the 1935 Refuge Act, not by its own terms, but by operation of the 1947 Mineral Leasing Act for Acquired Lands.

B

The question presented by these cases is whether Congress intended to alter this program of revenue distribution when it amended the 1935 Refuge Act in 1964. The impetus for proposals leading to the passage of the amendments was the difficulty the Department had experienced in acquiring new refuge lands. See 1964 S. Rep. 5; 1964 H. R. Rep. 2. Localities resisted having land removed from local tax roles. The purpose of the amendments was to "provide a more equitable formula for payments to counties as compensation for loss of taxable properties that have been acquired by the Federal wildlife refuge system." 1964 S. Rep. 2. See 1964 H. R. Rep. 2–3. Public Law 88–523 met this problem by changing the formula for distribution of revenues from refuges consisting of acquired lands. § 401 (c)(1), 78 Stat. 701. The new formula provided that counties within which acquired refuge lands lay could receive, at their option, a payment based on the adjusted cost of the lands rather than on revenues produced.[12] Congress intended the Department to pay more to counties under the new law than it had under the old.

There is no explanation in the legislative history of Pub. L. 88–523 for the insertion of "minerals" in the list of resources

[12] The 1964 payment formula was liberalized further in 1978. Pub. L. 95–469, § 1 (a)(3), 92 Stat. 1319. See n. 5, *supra* (quoting present law).

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subject to the Wildlife Refuge Revenue Sharing Act. Such silence is suggestive, because Congress was concerned that the Department have sufficient funds to make the increased payments mandated by the amendments.[13] See 1964 S. Rep. 12 (statement of Secretary Udall); 1964 H. R. Rep. 11. Congress might be expected to have mentioned a change wrought through the amendments which would increase refuge revenues by amounts exceeding total existing refuge revenues.[14]

During deliberations on the amendments, the Fish and Wildlife Service presented to Senate and House Committees tables showing present payments to counties containing refuges, and payments estimated under the proposed amendments. 1964 S. Rep. 13; 1964 H. R. Rep. 3. The relevant table shows no change in the expected payments to the Borough of Kenai Peninsula. This table assumed that oil and gas revenues were governed by the Mineral Leasing Act of 1920 both before and after the amendments.[15]

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[13] The silence of Congress may provide a treacherous guide to its intent. *Scripps-Howard Radio, Inc.* v. *FCC*, 316 U. S. 4, 11 (1942). Here, however, it is almost inconceivable that Congress knowingly would have changed substantially a longstanding formula for distribution of substantial funds without a word of comment. In 1978, Congress inserted "salmonoid carcass[e]s" into the list of resources governed by § 401 (a) of the Wildlife Refuge Revenue Sharing Act. Pub. L. 95–469, § 1 (a)(1), 92 Stat. 1319. Even for this comparatively trivial addition, Congress explicitly stated, "[s]almonoid carcasses have been included to allow for the sale of salmon used in hatchery operations." H. R. Rep. No. 95–1197, p. 8 (1978).

[14] In 1963, net receipts from the national wildlife system totaled $2,350,000. 1964 H. R. Rep. 11. In 1964, revenues from oil and gas leases in the Kenai Moose Range exceeded $3,800,000. App. to Brief for Federal Petitioners 2a.

[15] The table indicated that 1963 payments to the Kenai Peninsula Borough under the Wildlife Refuge Revenue Sharing Act, amended or unamended, totaled $1,768. 1964 H. R. Rep. 3. This figure cannot include 25% of the revenues from oil and gas leases. See n. 14, *supra*.

The inference seems inescapable that Congress in 1964 did not intend by the insertion of "minerals" in § 401 (a) of the Wildlife Refuge Revenue Sharing Act to subject revenues from oil leases on reserved refuge lands to its distribution formula. The more reasonable explanation for the intended effect of including minerals" is provided by the Department of the Interior. The insertion of "minerals" appears first in 1962 in proposed bills supported by the Department as substitutes for other bills then pending before the House and Senate to increase payments to counties. S. 2138, 87th Cong., 1st Sess. (1961); H. R. 13176, 87th Cong., 2d Sess. (1962). In its report to the Committees, the Department offered no particular explanation for this new term, but the Secretary here concedes that this change was included within the proposal's descriptive category of "various perfecting . . . provisions." See Letter from Frank P. Briggs, Assistant Secretary of the Interior, June 20, 1962, in S. Rep. No. 1919, 87th Cong., 2d Sess., 13 (1962); H. R. Rep. No. 2499, 87th Cong., 2d Sess., 4 (1962).

The insertion of "minerals" in § 401 (a) could both leave the mineral revenues from reserved lands subject to the Mineral Leasing Act of 1920 and "perfect" § 401 (a) by incorporating prior changes. The 1947 Mineral Leasing Act for Acquired Lands subjected mineral revenues from lands acquired for wildlife refuges to the distribution formula in the 1935 Refuge Act. We hold that Congress inserted "minerals" in the amended § 401 (a) to recognize the effect of the 1947 Act and to make clear that the amended distribution formula applied to mineral revenues from acquired lands. This conclusion draws support from the evident fact that Congress was concerned almost exclusively with problems related to acquired refuge lands in adopting the 1964 amendments.

Finally, the Department of the Interior interpreted the amendments when passed, and for 10 years thereafter, as not altering the distribution formula. The Department's con-

temporaneous construction carries persuasive weight. *Udall* v. *Tallman*, 380 U. S., at 16. Such attention to contemporaneous construction is particularly appropriate in these cases, because the Department first proposed the amendment. See *SEC* v. *Sloan*, 436 U. S. 103, 120 (1978). The Department's current interpretation, being in conflict with its initial position, is entitled to considerably less deference. See *General Electric Co.* v. *Gilbert*, 429 U. S. 125, 143 (1976). In these cases, we find it wholly unpersuasive.

IV

In summary, we hold that revenues generated by oil and gas leases on federal wildlife refuges consisting of reserved public lands must be distributed according to the formula provided in § 35 of the Mineral Leasing Act of 1920. Finding no "clearly expressed congressional intention" to repeal this provision by implication, *Morton* v. *Mancari*, 417 U. S., at 551, we conclude that the term "minerals" in § 401 (a) of the Wildlife Refuge Revenue Sharing Act applies only to minerals on acquired refuge lands. Accordingly, the judgment of the Court of Appeals is affirmed.

It is so ordered.

JUSTICE STEVENS, concurring.

My colleagues periodically criticize the way the Court manages its docket. Most frequently, such criticism takes the form of a dissent from the denial of certiorari. See, *e. g.*, *Brown Transport Corp.* v. *Atcon, Inc.*, 439 U. S. 1014 (WHITE, J., dissenting). Although I consider the practice of dissenting from denials of certiorari counterproductive, see *Singleton* v. *Commissioner*, 439 U. S. 940, 942–946 (opinion of STEVENS, J.), in the context of the present cases it may be appropriate to suggest that the Court may misuse its scarce resources not only by occasionally denying certiorari in cases deserving plenary consideration, but also by granting certio-

rari without adequate justification.[1] As long as the Court creates unnecessary work for itself in this manner, its expressions of concern about the overburdened federal judiciary will ring with a hollow echo.

In these cases, the Court of Appeals for the Ninth Circuit should have been permitted to provide the final answer to the unique question of statutory construction presented by the petitions for certiorari. The decision of the Court of Appeals did not conflict with any other judicial decision, and there is no reason to anticipate that a comparable issue will arise in another Circuit in the foreseeable future.[2] I fully agree with the majority's explanation of why the Court of Appeals correctly read these ambiguous statutes, but even if I were persuaded that JUSTICE STEWART had the better of the argument, I still would feel that the public interest would have been better served by allowing this litigation to terminate in the Court of Appeals.

The question of how to divide the revenues from oil and gas leases on public lands in the Kenai Peninsula is clearly a matter for Congress to decide. If Congress is displeased with the decisions of this Court and the Court of Appeals, it may promptly reverse them by revising the relevant statutes. If that is its view, it no doubt would have acted more promptly if we had simply denied certiorari.[3] On the other

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[1] Of course, these two problems are not wholly independent of one another. In light of the ever-increasing number of petitions for certiorari and the severe practical constraints on our ability freely to grant certiorari, it is certainly safe to assume that whenever we grant certiorari in a case not deserving plenary review, we increase the likelihood that certiorari will be denied in other, more deserving, cases.

[2] Neither of the petitions for certiorari filed in these cases suggested that the Court of Appeals' decision conflicted with any other judicial decision. In addition, the Solicitor General, in the petition filed on behalf of the federal parties, observed that the question of statutory construction presented here was unlikely to arise in the foreseeable future in another Circuit. See Pet. for Cert. in No. 79-1890, p. 18.

[3] In fact, Congress declined to clarify its intention with respect to the

hand, if we have correctly perceived the intent of the legislature, nothing has been gained by protracting this litigation. Admittedly, a significant amount of money was at stake, see *ante*, at 263, n. 6, but the offsetting costs associated with holding the funds in escrow pending our review, as well as the costs associated with the expenditure of this Court's material and human resources, are also significant.

The federal judicial system is undergoing profound changes. Among the most significant is the increase in the importance of our Courts of Appeals. Today they are in truth the courts of last resort for almost all federal litigation. Like other courts of last resort—including this one—they occasionally render decisions that will not withstand the test of time. No judicial system is perfect and no appellate structure can entirely eliminate judicial error. Most certainly, this Court does not sit primarily to correct what we perceive to be mistakes committed by other tribunals. Although our work is often accorded special respect because of its finality,[4] we possess no judicial monopoly on either finality or respect. The quality of the work done by the Courts of Appeals merits the esteem of the entire Nation, but, unfortunately, is not nearly as well or as widely recognized as it should be. Indeed, I believe that if we accorded those dedicated appellate judges the deference that their work merits, we would be better able to resist the temptation to grant certiorari for no reason other than a tentative prediction that our review of a case may produce an answer different from theirs. In my opinion, that is not a sufficient reason for granting certiorari.[5]

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distribution of the Kenai oil and gas leasing revenues in part because of the concerns of some of its Members that such legislative action would be inappropriate while these cases were still pending in the federal courts. See *ante*, at 264–265, n. 8; *post*, at 285, n. 10.

[4] Indeed, as Justice Jackson once noted, "[w]e are not final because we are infallible, but we are infallible only because we are final." *Brown* v. *Allen*, 344 U. S. 443, 540 (concurring in result).

[5] The possibility that a lower court may have incorrectly decided a federal question is, of course, a relevant factor when this Court decides

Because no other reason for reviewing this case is apparent, a simple denial of certiorari would have been an appropriate and efficient disposition.

My disagreement in these cases with the Court's management of its docket does not, of course, prevent me from joining JUSTICE POWELL's opinion for the Court on the merits.

JUSTICE STEWART, with whom THE CHIEF JUSTICE and JUSTICE MARSHALL join, dissenting.

Today the Court strains to conclude that Congress did not mean what it said, and judicially repeals a reasonable [1]

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whether to exercise its discretionary certiorari jurisdiction. However, as Rule 17.1 of the Rules of this Court makes plain, our certiorari jurisdiction is designed to serve purposes broader than the correction of error in particular cases:

"A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.

"(a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

"(b) When a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals.

"(c) When a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court."

By its own terms, Rule 17.1 "neither control[s] nor fully measur[es]" the extent of our discretion to grant or to deny certiorari. Nonetheless, it is surely significant that none of the factors identified in the Rule can fairly be said to be present in this case.

[1] There is nothing unreasonable, or even unusual, about a system of revenue sharing that returns a portion to the locality most immediately

and specific legislative provision because the provision announced a change in the law the Court divines to have been unintended.

A

The Wildlife Refuge Revenue Sharing Act, as amended in 1964, expressly provides that "all revenues received by the Secretary of the Interior from the sale or other disposition of . . . minerals . . ." within federal wildlife refuges administered by the Fish and Wildlife Service shall be "reserved in a separate fund for disposition as hereafter prescribed." 16 U. S. C. § 715s (a) (1976 ed., Supp. III). At the end of each fiscal year, a portion of these revenues are to be distributed to the counties in which the refuges are located. In the case of "any reserve area," expressly defined as "land withdrawn from the public domain" for wildlife refuge purposes, § 715s (g)(3), the allocation to the county is 25% of net receipts. § 715s (c)(2). Alternative formulas are specified for refuges created out of "fee areas." § 715s (c)(1). Net receipts remaining after the payments to counties "shall be transferred to the Migratory Bird Conservation Fund for use in the acquisition of suitable areas for migratory bird refuges." § 715s (e). The statute draws no distinction between mineral revenues and receipts from other natural resources or between revenues from "acquired" lands and those from "reserved" lands. The statutory scheme is therefore clear: receipts from mineral leases, like all other revenues generated from wildlife refuges, whether the refuge is comprised of reserved or acquired lands, are to be apportioned between the

affected rather than to the State at large. The payment of 25% of the revenues to the county in which the refuge is situated compensates the county for tax revenue lost because of the public status of the lands and for any local services made necessary because of the refuge, and the payment of 75% to the special fund provided for in 16 U. S. C. § 715s (1976 ed., Supp. III) satisfies the need to provide a source of revenue for refuge management and maintenance.

counties and the federal Migratory Bird Conservation Fund. No receipts are to go to the State itself.

The Court argues that the addition of the word "minerals" to the Wildlife Refuge Revenue Sharing Act must be read to apply only to acquired refuge lands and not to reserved refuge lands. But there is no support, in law or legislative history, for exempting mineral revenues from refuges consisting of reserved public lands from the distribution formula of the Wildlife Refuge Revenue Sharing Act. The District Court concluded that "there is nothing in 16 U. S. C. § 715s which would support a restrictive construction of the word 'minerals,'" and that "a literal approach of statutory construction would dictate an expansive definition including both reserved and acquired lands." 436 F. Supp. 288, 291. Similarly, the Court of Appeals found that "under the plain meaning of minerals and of the other provisions of § 715s, its language fairly brings the Kenai Moose Range oil and gas revenues within it scope." 612 F. 2d 1210, 1213. It was a mistake for either court to proceed further.

The addition of the word "minerals" to the Wildlife Refuge Revenue Sharing Act in 1964 would be meaningless if it reached only leases of acquired lands. And, "[i]n construing a statute we are obliged to give effect, if possible, to every word Congress used." *Reiter* v. *Sonotone Corp.*, 442 U. S. 330, 339. Section 6 of the Mineral Leasing Act for Acquired Lands, 30 U. S. C. § 355, already provided that mineral leases of acquired lands "shall be distributed in the same manner as prescribed for other receipts from the lands affected by the lease." Accordingly, any allocation scheme established for wildlife refuges encompassing acquired lands would automatically apply to mineral revenues, as well as those from the resources specified in the Refuge Act. As there was no ambiguity on that point, there was no useful purpose for Congress to declare once again how mineral revenues from acquired lands within wildlife refuges would be allocated.[2]

[2] But see n. 3, *infra*.

The suggestion, therefore, that the 1964 amendment reached only acquired lands presumes that the design of Congress in adding the word minerals was to accomplish precisely nothing.

B

The Court concludes that the statute does not mean what it says because the Wildlife Refuge Revenue Sharing Act of 1964 is in conflict with the Mineral Leasing Act of 1920,[3]

[3] While it is clear there is a conflict, it is not at all clear that the conflict is even relevant to these cases. The Court assumes that the 1964 amendment, if given its plain meaning, changed the allocation of oil and gas lease revenues to affected counties. Although, as the Court of Appeals correctly noted, "the legislative history of the 1964 amendments to 16 U. S. C. § 715s sheds no direct light on the issue here," 612 F. 2d 1210, 1213, it is arguable that before 1964, oil and gas lease receipts generated from lands in federal wildlife refuges were subject to § 401 of the Wildlife Refuge Act of 1935, ch. 261, 49 Stat. 383, and *not* to the Mineral Leasing Act of 1920, despite the vigorous contentions of today's Court. See *ante*, at 267–268.

Section 401 of the 1935 Act established a distribution scheme for refuge revenues "from the sale or other disposition" of natural resources and receipts "from other privileges." Although oil and gas leases are not mentioned, the provision was intended to give the administering agency broad authority to make "disposition of surplus . . . products on these reservations or refuges upon such terms and conditions as [it] shall determine to be for the best interests of the Government." H. R. Rep. No. 886, 74th Cong., 1st Sess., 3 (1934). In 1946, the Interior Department ruled that oil and gas leases could be granted on wildlife refuge lands under the 1935 Act. Op. Solic. Interior Dept. M. 34516 (Aug. 5, 1946). Under the 1964 amendments to the Wildlife Refuge Revenue Sharing Act, 25% of oil and gas lease revenues are apportioned to the affected counties embracing reserved refuge lands. Accordingly, Congress may have intended that the addition of the word "minerals" in 16 U. S. C. § 715s (1976 ed., Supp. III) was merely a "perfecting provision," S. Rep. No. 1919, 87th Cong., 2d Sess., 2 (1962); H. R. Rep. No. 2499, 87th Cong., 2d Sess., 4 (1962), and not an amendment of existing law at all.

Indeed, Interior Department spokesmen in the 1962, 1963, and 1964 congressional hearings described the existing law for receipts collected from both reserved public lands and acquired lands as generally subject to § 401 of the 1935 Act. See S. Rep. No. 1919, *supra*, at 2, 13;

and because "repeals by implication are not favored." *Ante*, at 267. But that canon of construction has no force in this context. The challenged section in the 1964 Act, far from "repealing" the 1920 Act, merely established a limited and specific exception to one of the provisions in the earlier law. When the text of a new statute, dealing with a discrete subject, is unambiguous, it should be given effect even if it alters a previous law that dealt with the same general subject.

The maxim that "repeals by implication are disfavored" has force when the argument is made that a general statute, wholly occupying a field, eviscerates an earlier and more specific enactment of limited coverage but without an indication of congressional intent to do so. In such a case, it may be reasonable to presume that Congress had not antici-

H. R. Rep. No. 2499, *supra*, at 4; H. R. Rep. No. 1753, 88th Cong., 2d Sess., 14 (1964); S. Rep. No. 1096, 88th Cong., 2d Sess., 25 (1964). The Secretary of the Interior stated that "[*u*]*nder existing law, enacted in 1935*, the counties in which our refuges are located receive 25 percent of the net revenue from operations on national wildlife refuges, such as *oil production*, grazing, timber harvest, and the like." More Equitable Payments To Counties Having Wildlife Refuges: Hearings on S. 179, S. 1363, S. 1720, and S. 2498 before the Senate Committee on Commerce, 88th Cong., 2d Sess., 19 (1964) (emphasis added). Participation By Counties In Refuge Receipts: Hearings on H. R. 1127, H. R. 2393, H. R. 5596, H. R. 9030 and H. R. 11008 before the Subcommittee on Fisheries and Wildlife Conservation of the House Committee on Merchant Marine and Fisheries, 88th Cong., 2d Sess., 34 (1964) (emphasis added).

But it is not important to decide today what the true rule for apportionment of mineral resources from refuge lands was before 1964. And, contrary to the Court's assertion, I do not do so here, and "explai[n] that Congress added 'minerals' . . . to reaffirm" that the 1935 Act already controlled the disposition of oil revenues from reserved refuge lands. *Ante*, at 268, n. 10. In 1964, Congress did not have to resolve the question of what the law had been before; its concern was properly with the future. Ideally, it could have prefaced § 715s with the language "notwithstanding any other provision of law." But it did not. Instead, it introduced an entirely unambiguous prospective rule with the phrase: "Beginning with the next full fiscal year and for each fiscal year thereafter . . . ." At least for me, it needed to do no more.

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pated that its broad pronouncement would have serious implications in a peripheral, or even quite different area, and that had it recognized that a specific earlier law would be rendered meaningless by a new enactment, it would have expressly indicated its intent to repeal or amend.

Thus, in *Morton* v. *Mancari*, 417 U. S. 535, the Court refused to find a repeal where the words of the Equal Employment Opportunity Act of 1972, if taken literally, would have worked a repeal of an Indian preference policy consistently recognized by Congress for almost 40 years. The Court's description of *Mancari* as "a prototypical case where an adjudication of repeal by implication is not appropriate," *id.*, at 550, is instructive: "The preference is a longstanding, important component of the Government's Indian program. The anti-discrimination provision, aimed at alleviating minority discrimination in employment, obviously is designed to deal with an entirely different and, indeed, opposite problem." *Ibid.*; see also *Fussell* v. *Gregg*, 113 U. S. 550. The contrast with this case is obvious. The provision in the more recent enactment deals specifically with the *same* subject—distribution of revenue from leases on federal lands—that had been the object of an earlier, and more general[4] statute.[5] In any case, there is more than enough evidence

[4] While the Mineral Leasing Act of 1920 covers in general terms the distribution of revenue from federal lands, the later Wildlife Refuge Revenue Sharing Act, as amended in 1964, embraced new provisions that apply with particularity to wildlife refuges, without distinction between those reserved or acquired. To that extent, the later Act must constitute a repeal of the former. "[T]he narrowly drawn, specific . . . provision . . . must prevail over the broader . . . provision . . . ." *Radzanower* v. *Touche Ross & Co.*, 426 U. S. 148, 158.

[5] These cases do not involve an apparent limitation on an important and pervasive statute, such as the Sherman Act. See, *e. g.*, *United States* v. *Borden Co.*, 308 U. S. 188. In such a case, as in *Mancari*, implied repeals are not found because it would be unreasonable to assume Congress would alter fundamental policy without an unambiguous expression of its intent to do so. But it is equally unreasonable to expect

to indicate that Congress was aware of what it was doing when the word "minerals" was added to the Wildlife Refuge Revenue Sharing Act.

The legislative history of the 1964 amendments to 16 U. S. C. § 715s (1976 ed., Supp. III) discloses that Congress had before it numerous bills from which to choose to compensate counties in which wildlife refuges were located, some of which omitted any reference to "minerals," S. 2138, 87th Cong., 1st Sess. (1961); S. 2678, 2770, 2927, 3201, 87th Cong., 2d Sess. (1962); H. R. 12144, 12143, 11535, 11525, 10714, 87th Cong., 2d Sess. (1962); S. 1720, 88th Cong., 1st Sess. (1963); and some that did, H. R. 2393, 1004, 1127, 9030, 5996, 88th Cong., 1st Sess. (1963); H. R. 11008, 88th Cong., 2d Sess. (1964); S. 179, 1363, 88th Cong., 1st Sess. (1963); S. 2498, 88th Cong., 2d Sess. (1964). Presumably when Congress adopted a bill containing the term, it was aware of the difference. Moreover, the 1964 amendment was not a "technical" amendment, nor was it a last-minute addition from the floor. See *United States* v. *Batchelder*, 442 U. S. 114, 120. The suggestion that the word "minerals" be added to 16 U. S. C. § 715s (1976 ed., Supp. III) was raised in June 1962 when the Interior Department submitted a substitute bill for those pending in the House and Senate. Report of the Department of the Interior dated June 20, 1962, in S. Rep. No. 1919, 87th Cong., 2d Sess., 13, 15 (1962); Report of the Department of the Interior of June 22, 1962, in Authorize Increased Payments to Counties for Wildlife Refuges: Hearings on H. R. 10714, H. R. 11525, H. R. 11535, H. R. 12143, and H. R. 12144 before the Subcommittee on Fisheries and Wildlife Conservation of the House Committee on Merchant Marine and Fisheries, 87th Cong., 2d Sess., 7, 9 (1962).

Congress to specify, or indeed even to consider, the effect of a new statutory provision on all earlier provisions affecting the same subject that may be swept away by the enactment, particularly if the old provisions are unclear. See n. 3, *supra*.

The amendment was not highlighted, but it is unlikely that it escaped notice.[6] Later the same year, the relevant committees of both the House and the Senate adopted the language, S. Rep. No. 1919, *supra*, at 19; H. R. Rep. No. 2499, 87th Cong., 2d Sess., 9 (1962), and the text was before Congress for the following two years.

It is therefore very difficult to conclude that the addition was inadvertent or unnoticed.[7] But, in any case, nothing in the legislative history demonstrates congressional intent different from that reflected in the words of the statute. " 'The most that can be said for the legislative history is that it is on the whole inconclusive. Certainly, it contains nothing that requires the court to reject the construction which the statu-

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[6] The Court makes much of the fact that a statistical table comparing revenues actually received by counties with those estimated to result from the amendment showed no change in the amounts from the Kenai Range, and if the amendment meant what a plain reading of it indicates, an increase should have been reflected. *Ante*, at 271. That straw of evidence scarcely compels the conclusion that the amendment does not mean what it says. It would hardly be surprising if the legislators overlooked a single disparity in a single entry in a lengthy exhibit. And it is noteworthy that the table the Court refers to appeared in the 1964 Reports only, while the addition of the word "minerals" to § 715s was proposed in 1962, when the comparable statistical table did not include any indication of the anticipated payments to counties from public land areas under the proposed amendment. See S. Rep. No. 1919, 87th Cong., 2d Sess., 11, nn. 1 and 2 (1962).

[7] That Congress explained the addition of "[s]almonoid carcasses," see *ante*, at 271, n. 13, hardly supports the inference that Congress would also have explained the addition of the word "minerals." By the Court's strained logic, premised on the notion that "[t]he silence of Congress may provide a treacherous guide to its intent," *ibid.*, Congress is put on notice that any time it explains one provision of a statute, no matter how trivial, it does so at its peril. For if it fails similarly to explain all provisions, no matter how important, a court would be free to strike those unexplained provisions as unintended. That, in my view, leads to far more "treacherous" results than those feared by today's Court.

tory language clearly requires.'" *Ullman* v. *United States*, 350 U. S. 422, 433.

The Court today is bothered because the literal meaning of a statute altered prevailing law.[3] But usually the very point of new legislation is to alter prevailing law. "Every act is made, either for the purpose of making a change in the law, or for the purpose of better declaring the law; and its operation is not to be impeded by the mere fact that it is inconsistent with some previous enactment." T. Sedgwick, The Interpretation and Construction of Statutory and Constitutional Law 104 (2d ed. 1874). Congress does not have the affirmative obligation to explain to this Court why it deems a particular enactment wise or necessary, or to demonstrate that it is aware of the consequences of its action.[2] See *Harrison* v. *PPG Industries, Inc.*, 446 U. S. 578, 592. And "[i]t

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[3] This is not a case where the plain meaning of statutory language would lead to an absurd or futile result, see, *e. g.*, *Armstrong Paint & Varnish Works* v. *Nu-Enamel Corp.*, 305 U. S. 315, or to an unreasonable result at variance with the policy of the legislation as a whole. See, *e. g.*, *United States* v. *American Trucking Assns., Inc.*, 310 U. S. 534. See also *Shapiro* v. *United States*, 335 U. S. 1, 31.

[2] The Court relies on the fact that the Department of the Interior ignored the 1964 amendment for a decade with respect to oil and gas revenues from the Kenai Range. *Ante*, at 272–273. But administrative errors are not self-validating. See *SEC* v. *Sloan*, 436 U. S. 103, 117–119; *Adamo Wrecking Co.* v. *United States*, 434 U. S. 275, 287–288, n. 5; *Dixon* v. *United States*, 381 U. S. 68, 73. Unauthorized payments from the federal Treasury are not immune from correction, and the United States can retrieve money mistakenly dispersed by its officials. *United States* v. *Wurts*, 303 U. S. 414, 415–416; *Wisconsin Central R. Co.* v. *United States*, 164 U. S. 190, 212. In any case, there is no indication that the administrative practice until 1975 was the result of considered evaluation of the 1964 amendments. Instead it appears that it was the inertial continuation of earlier practice. A much more reliable indication of the administrative construction of the 1964 amendment is the "detailed and comprehensive" re-evaluation by the Department in 1975, confirmed by the Comptroller General. *Andrus* v. *Sierra Club*, 442 U. S. 347, 358. See also *NLRB* v. *Iron Workers*, 434 U. S. 335, 351.

is not a function of this Court to presume that 'Congress was unaware of what it accomplished.'" *Albernaz* v. *United States*, 450 U. S. 333, 342 (quoting *U. S. Railroad Retirement Board* v. *Fritz*, 449 U. S. 166, 179).

Rather than join the Court in its speculative efforts to deal with the doctrine of implied repeal, I would rest decision of this case upon an established rule of statutory construction: *leges posteriores, priores contrarias abrogant.* Sedgwick describes this rule with approval as follows: "'If two inconsistent acts be passed at different times, the last,' said the Master of the Rolls, 'is to be obeyed; and if obedience cannot be observed without derogating from the first, it is the first which must give way.'" Sedgwick, *supra*, at 104. See *District of Columbia* v. *Hutton*, 143 U. S. 18, 26–27; *Henderson's Tobacco*, 11 Wall. 652, 657; *United States* v. *Tynen*, 11 Wall. 88, 92. Observation of this rule also allows the Court to respect the most basic of all canons of statutory construction: that statutes mean what they plainly say.[10] As Chief Justice Marshall said more than a century and a half ago: "[T]he intention of the legislature is to be collected from the words they employ. Where there is no ambiguity in the words there is no room for construction. The case must

[10] Of course, if I am wrong, and Congress did not intend that oil revenues from reserved refuge lands be distributed according to the scheme of the 1964 Act, Congress is always free to revise the statute. It would be far more appropriate, given the constitutional allocation of lawmaking power to Congress and not to the courts, if this Court were to respect the plain meaning of the statute, and leave it to Congress to make any changes it thinks necessary. The Court's readiness to rewrite legislation contributes, I am afraid, to undue congressional willingness to leave it to the courts to do its redrafting. Indeed, the Senate Committee on Environment and Public Works, when confronted with the dispute involved in this case chose to "tak[e] no position as to whether disposition of mineral revenues should be made pursuant to the Mineral Leasing Act or the Refuge Revenue Sharing Act." S. Rep. No. 95–1174, pp. 4, 8 (1978). See also *ante*, at 264–265, n. 3.

be a strong one indeed, which would justify a court in departing from the plain meaning of words . . . in search of an intention which the words themselves did not suggest." *United States* v. *Wiltberger*, 5 Wheat. 76, 95–96.

I respectfully dissent.

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Reports.

MEMORANDUM State of Alaska

TO: To The File

DATE: April 13, 1982

FILE NO:

TELEPHONE NO:

FROM: Wilson L. Condon
Attorney General

SUBJECT: 1969 Opinions of the Attorney General No. 6

From time to time questions arise over whether 1969 Formal Opinion No. 6 was ever issued. This memorandum is written to answer those questions. Opinion No. 6 was a letter dated September 5, 1969, from G. Kent Edwards, the then Attorney General, to The Honorable Wayne N. Aspinall, Chairman of the Committee on Interior and Insular Affairs in the United States House of Representatives. That opinion was supplemented by a letter dated October 3, 1969, which is styled 1969 Opinions of the Attorney General No. 6 Supplemental. Together those documents opine that if the Congress enacted a settlement of the then pending Alaska Native land claims, it would be unconstitutional for such a settlement to require the State to pay a two per cent overriding royalty from mineral production on certain State lands to Alaskan Natives.

When the formal opinions for the period 1963 through 1969 were duplicated and bound sometime after December 1970, John Havelock was the Attorney General. Formal Opinion No. 6 from 1969 was withdrawn from the collection of opinions that were bound. In place of Opinion No. 6 a sheet was inserted which states "Note Opinion Number 6 of 1969 Was Never Issued."

I do not know precisely the date when this Opinion was "withdrawn". I only know that it was withdrawn sometime after John Havelock became the Attorney General. As everyone knows, the Alaska Native Claims Settlement Act which was finally enacted in December of 1971, in fact, imposed a two per cent overriding royalty on mineral production from State selected lands. The constitutionality of that provision was never challenged by the State of Alaska. Had the State of Alaska continued to follow the legal position taken in so-called 1969 Opinions of the Attorney General No. 6, it presumably would have challenged the constitutionality of the Alaska Native Claims Settlement Act.

cc: Case Management

STATE OF ALASKA

KEITH H. MILLER, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL / POUCH K, STATE CAPITOL — JUNEAU 99801

1969 Opinions of the Attorney
General No. 6 Supplemental

October 3, 1969

The Honorable Wayne N. Aspinall, Chairman
Committee on Interior and Insular Affairs
House of Representatives
Washington, D. C. 20510

Dear Congressman Aspinall:

Certain assertions made by counsel for the Alaska Federation of Natives in their memorandum of September 10, 1969, regarding the legality of an overriding royalty for Alaska natives, appear to require further comment by the State of Alaska in order to place the issues in their proper perspective. In furtherance of this end, I have appended hereto excerpts from the State's brief on file in the case of State of Alaska v. Stewart L. Udall, now pending in the United States Court of Appeals for the 9th Circuit. These excerpts, comprising pages 15-21 and 54-58 of our brief, will shed light on certain questions relevant to A.F.N.'s contentions.

The controversy does not center upon whether Alaskan natives may be compensated for taking of their claimed ancestral lands, but whether the United States may compensate them by taking a royalty out of lands already granted in fee to the State of Alaska by enactment of Section 6 of the Statehood Act and, as to federal lands, by reducing the portion of royalty granted to the State in such lands by the Statehood Act.

The A.F.N. asserts that such royalty may be taken from the State in order to compensate Alaskan natives. The basis of this position is not clear, however. At pages 16-17 of its memorandum A.F.N. appears to conclude that the disclaimer provision of Section 4, Statehood Act, prevents the State from selecting land claimed by natives until Congress extinguishes aboriginal title. Of course, this is plainly untenable. Committee hearings leading to passage of the Statehood Act, as well as the interpretation of that Act by the U. S. Supreme Court in Organized Village of Kake v. Egan, 369 U.S. 60 (1962), make it clear

that lands claimed by natives were included in the grant of lands to the State in the Act. This is discussed at pages 15-21 of the attached brief.

Elsewhere, at pages 19 and 22 of its memorandum, A.F.N. seeks to reach this same result by interpreting the disclaimer as a retention by the United States of the absolute power to take back from the State a royalty in native-claimed lands granted to the State and selected under the Act, or even to take back the whole fee title in order to satisfy native claims. A.F.N. contends (at page 39 of its memorandum) that this power exists as to lands already patented to the State as well as to tentatively approved or unapproved but selected lands. This conclusion is fundamentally misconceived. It would virtually destroy the right of the State to select native-claimed land (which includes nearly all the land in Alaska), a result not intended by Congress as already noted.

The ambiguity of A.F.N.'s position springs from its misunderstanding of Section 4 of the Statehood Act which is quoted in pertinent part at pages 15-16 of the attached brief. Under that section the State and its people "forever disclaim all right and title" to native-claimed lands. This was very definitely not intended to prevent the State from selecting land claimed by natives, nor was it intended to reach that result by vesting in Congress the prerogative to act in total or partial derogation of its own grant of such lands to the State. Lands cannot be granted to and selected by the State and at the same time be <u>totally</u> and <u>perpetually</u> disclaimed by the State. Disclaimer of native-claimed land operates only as to such land if it is "not granted or confirmed to the State" by the Act. It logically follows, as Section 4 provides, that as to both federal lands and native-claimed lands not granted to the State, the federal government retains "absolute jurisdiction and control." This preserves the power of Congress to dispose of the lands it has not previously disposed of by grants to the State. It does not empower the federal government to dispose of the same land twice and in inconsistent ways. The power of Congress to determine the manner and extent of compensation for the taking of native-claimed land is likewise preserved in the first proviso of Section 4, that nothing in the Act should affect such claims.

At what point did Congress make such a grant of Alaskan lands that it cannot thereafter convey a royalty

or other interest therein to natives? Such a grant was made to Alaska by the Statehood Act as of its effective date. The State of Alaska maintains that this grant also effects an extinguishment of aboriginal title if such title is found to exist in lands passed by the grant, and that cases relied on by A.F.N. for a contrary conclusion rest on factual elements distinguishable from the present situation (see pages 55-58 of attached brief). There is sound authority, however, for the conclusion that aboriginal title in Alaska was extinguished in 1867 by the treaty which transferred Alaska from Russia to the United States. Miller v. U. S., 159 F.2d 997, 1001-1002 (9th Cir. 1947). Native claims for taking of their lands, however, are specifically left in exact status quo by Section 4 of the Act. Organized Village of Kake v. Egan, supra, states that while aboriginal lands may be subjected to the grant of land to the State, the effect of the Act is to leave unimpaired the natives' right to seek compensation therefor if any were found to be due (see pages 19-20 of attached brief).

But whether or not aboriginal title exists or is extinguished by the grant, the plenary power of Congress to determine the time, manner and terms of such extinguishment does not encompass the power to act in derogation of its own previous grant of the land. Beecher v. Wetherby, 95 U.S. (5 Otto) 517, 24 L.Ed. 441 (1877), wherein Indian title was not extinguished at the time of the grant, holds this very clearly:

> . . . [T]he lands which might be embraced within those sections [granted by the federal government to Wisconsin in its statehood act] were appropriated to the State. They were withdrawn from any other disposition, and set apart from the public domain, so that no subsequent law authorizing a sale of lands in Wisconsin could be construed to embrace them, although they were not specially excepted. All that afterwards remained for the United States to do with respect to them, and all that could be legally done under the compact, was to identify the sections by appropriate surveys; . . . With this

> identification of the section, the title of the State, upon the authority cited, became complete, unless there had been a sale or other disposition of the property by the United States previous to the compact with the State. No subsequent sale or other disposition, as already stated, could defeat the appropriation.

The grant of lands to Alaska under the Statehood Act, Section 6(b), operates in praesenti. Use of the words "is hereby granted" signifies a present grant of lands to be thereafter identified by selection. By virtue of that grant the State became at once vested with the right of property in selected lands. It cannot be thereafter divested of such right. The U. S. Supreme Court has so held. (See page 25 of attached brief, and Noble v. Union River Logging R. R., 147 U.S. 165, 176 [1892].) Thus, it is immaterial whether the land has been tentatively approved or patented. Selection identifies the land as to which a binding grant was already made by enactment of the Statehood Act.

Honor and fairness would impel Congress to impart full effectiveness and validity to its own land grants to the State even if the law did not require it. Thus, Senate Committee hearings leading to passage of the Statehood Act showed the concern of Congress that it should be able to exercise its customary right to extinguish aboriginal title in order

> "to assure a clear title to the State on all land grants . . . . Without some such guaranty of a clear title, the committee feels that the grants of land might be of little value." S.Rep. No. 1028, 83rd Cong., 2d Sess. 4.

It is this same consideration which underlies the question of reducing the State's royalty on federal lands in order to compensate Alaskan natives. And here, also, the law likewise prevents such a solution. Section 6 of the Statehood Act, by its own terms, provides that the Alaska Constitution is amended by the vote of the people of the State, consenting to all provisions of the Act

> "prescribing the terms or conditions of the grants of lands or other property therein made to the State of Alaska. . . ."

Those terms and conditions include the oil royalty granted to Alaska in federal lands (Section 28). Such vote of consent cannot be considered a "veto power" by the State over congressional action, as contended by A.F.N. (p. 37 of A.F.N. memorandum). The Act itself requires the State's consent to its terms in order to be effective. For Congress to unilaterally rewrite those terms would be to dishonor its grant of the royalty and to breach one of the conditions on which Alaska consented to be bound by the Statehood Act. This arrangement cannot be otherwise viewed than as a solemn compact between Alaska and the United States, which is entitled to the same constitutional protection afforded all such obligations.

As noted at the outset, the question herein concerns not whether or to what extent Alaskan natives should be compensated for lands taken, but whether such compensation may be taken out of land and property rights already granted by Congress to the State. A solution supported by legal authority would be one which honors the substantial and binding commitments already made by Congress to the State of Alaska.

Sincerely,

G. Kent Edwards
Attorney General

GKE:jt

STATE OF ALASKA

KEITH H. MILLER, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K, STATE CAPITOL — JUNEAU 99801

1969 Opinions of the
Attorney General No. 6

September 5, 1969

The Honorable Wayne N. Aspinall, Chairman
Committee on Interior and Insular Affairs
House of Representatives
Washington, D. C. 20510

Dear Mr. Aspinall:

This opinion is in response to the request of the Committee during the recent hearings on Alaska Native Land claims for a legal memorandum of the Department of Law of the State of Alaska on certain issues which were raised by the Position Paper of the Alaska Federation of Natives ("A.F.N.").

The A.F.N. proposed "an overriding gross royalty of 2% of all proceeds from any state and federal lands. . ." See A.F.N. Position Paper, p. 10.

Governor Miller stated during his testimony that "the 2 per cent proposal conflicts with the Statehood Act and the province of the Alaska State Legislature. . ." The purpose of this memorandum is to explain the legal basis of the statement of Governor Miller.

The questions to be answered in this memorandum are several. First, does the 2% overriding gross royalty provision conflict with the provisions of the Alaska Statehood Act? Second, if there is such a conflict, would incorporation of such a royalty provision into a settlement enacted into law by Congress conflict with the United States Constitution?

The overriding gross royalty of 2% will be looked at both from the perspective of 2% of the current 12 1/2% of oil royalty and as 2% on top of the current 12 1/2%. The A.F.N. has stated that the memorandum should be presented in that light.

I. STATUTORY CITATIONS

The citations to pertinent provisions of the Alaska Statehood Act and other legislation are the following (the statutes are quoted in Appendix A).

1. The grant to the State of 90% of all money received by the United States pursuant to the mineral leasing laws in Alaska. The Alaska Statehood Act, 72 Stat. 339, Sec. 28(b).

2. The federal legislation which was confirmed and amended by the Statehood Act, Sec. 28(b). It provides that the State receives 90% of all money received by the United States pursuant to the mineral leasing laws in Alaska, 37 1/2% thereof for the construction of public roads or schools and 52 1/2% for the disposition of the State Legislature. 30 U.S.C. 191.

3. The federal legislation applicable to oil and gas leases of the United States provides for a minimum 12 1/2% royalty. 30 U.S.C. 226.

4. The state legislation applicable to oil and gas leases of the State of Alaska provides for a basic minimum 12 1/2% royalty, although, in the case of first discovery, there is a royalty of 5%. AS 38.05.180.

5. The disclaimer clause of the Alaska Statehood Act. 72 Stat. 339, Sec. 4.

II. DEFINITIONS

The logical point to begin the discussion of the question is with a definition of the term "overriding gross royalty." A leading text in the field describes the term in the following way.

> "Perhaps the only safe way to define the term 'overriding royalty' is to say that it is a fractional interest in the gross production of oil and gas, in addition to the usual royalties paid to the lessor. The term my (sic) be used in referring to a nonparticipating royalty interest in perpetuity or for a term of years created by the land or mineral owner

> prior to a lease for oil and gas. Grants by a lessee of a share of per cent of the production from a lease are sometimes called overriding royalties. A prospective lessee may agree to pay an overriding royalty, a certain share of the production, to another person as consideration for his services in procuring a lease on certain lands. Perhaps the most common use of the term is to indicate a share of the oil or gas produced reserved in an assignment, part assignment or sublease of an oil and gas lease, and payable to the assignor by the assignee, over and above the royalty reserved in the lease payable to the lessor." Summers Oil and Gas, Vol. 3, Sec. 554, pp. 624-626.

It is also necessary to note the following distinction between a "royalty" and an "overriding royalty."

> "The question presented here is not who is entitled to a 'royalty' but who is entitled to an 'overriding royalty'. There is a difference. 'Royalty' generally means that fractional interest in the production of oil or gas which was created by the owner of the land either by reservation when the mineral lease was entered into or by direct grant to a third person. An 'overriding royalty' is a given percentage of the gross production payable to some person other than the lessor or persons claiming under him. Such interest develops where an owner of the working interest (as Texaco is here) contracts to deliver a part of the gross production to another, usually his assignor (the Trustee here)." Texaco v. Pigott, 235 F.Supp. 458, 464 (D.C. Miss. 1964).

III. STATE LEASES

The 2% overriding gross royalty cannot apply to a State of Alaska oil and gas lease issued pursuant to AS 38.05.180. This is true whether or not the 2% is a diversion of State revenues from the present 12 1/2% royalty or if the 2% is added to the present 12 1/2% royalty to make it a 14 1/2% royalty.

The real conflict between the 2% overriding gross royalty and the 12 1/2% royalty stated in AS 38.05.180 and included as a provision of state oil and gas leases is readily apparent. This is the case regardless of whether the 2% overriding royalty is retrospective so as to affect leases in existence at the time of the effective date of the settlement legislation or if it is prospective so as to affect only leases issued subsequent to the effective date of the legislation.

It is clear that Congress has no authority under the United States Constitution to amend State legislation and State contracts on matters within the province of State law. It is a fundamental principle of American jurisprudence that the supremacy clause of the United States Constitution is applicable only if the particular act of Congress is within the jurisdiction of Congress.

> "In discussing these questions, the conflicting powers of the general and state governments must be brought into view, and the supremacy of their respective laws, when they are in opposition, must be settled.
>
> If any one proposition could command the universal assent of mankind, we might expect it would be this--that the government of the Union, though limited in its powers, is <u>supreme within its sphere of action</u>. This would seem to result necessarily from its nature. It is the government of all; its powers are delegated by all; it represents all, and acts for all. Though any one state may be willing to control its operations, no state is willing to allow others to control them. The nation, on those subjects on which it can act, must necessarily bind its component parts. But this question is not left to mere reason; the people have, in express terms, decided it by saying, 'this constitution, and the laws of the United States, which shall be made in pursuance thereof,' 'shall be the supreme law of the land,' and by requiring that the members of the state legislatures, and the officers of the executive and judicial departments of the states shall take the oath of fidelity to it.

> The government of the United States, then, though limited in its powers, is supreme; and its laws, when made in pursuance of the constitution, form the supreme law of the land, 'anything in the constitution or laws of any state to the contrary notwithstanding." McCulloch v. The State of Maryland, 4 Wheat. 316, 405-406 (1819). (Emphasis added.)

Conversely, it is equally clear that a State has the authority under the Tenth Amendment to the United States Constitution to regulate those activities which occur within the State if Congress has not been granted such authority by the Constitution.

> "We choose rather to plant ourselves on what we consider impregnable positions. They are these: that a State has the same undeniable and unlimited jurisdiction over all persons and things within its territorial limits, as any foreign nation, where that jurisdiction is not surrendered or restrained by the Constitution of the United States. That, by virtue of that, it is not only the right, but the bounden and solemn duty of a State, to advance the safety, happiness and prosperity of its people, and to provide for its general welfare, by any and every act of legislation which it may deem to be conducive to these ends; where the power over the particular subject, or the manner of its exercise is not surrendered or restrained, in the manner just stated. That all those powers which relate to merely municipal legislation, or what may, perhaps, more properly be called internal police, are not thus surrendered or restrained; and that consequently, in relation to these, the authority of a State is complete, unqualified and exclusive.
>
> We are aware that it is at all times difficult to define any subject with proper precision and accuracy; if this be so in general, it is emphatically so in relation to a subject so diversified and multifarious as the one

> which we are now considering." New York v. Miln, 11 Pet. 102, 138 (1937). (Emphasis added.)

The State of Alaska is entitled to the same rights as other states under the United States Constitution by virtue of the Statehood Act, Section 1, which provides that the State is on an "equal footing with the other states in all respects whatever. . ."

The Alaska State Legislature has properly determined what oil royalty rate should be charged lessees of State lands. The rates specified by the Legislature have been embodied in the respective leases entered into the State and are a necessary condition of the State's contractual commitment. Neither Congress nor the Alaska State Legislature has the power to interfere with or ignore that commitment. Naturally, the Alaska Legislature can increase the royalty rates to be charged in future oil and gas leases, but it does not follow that Congress may do likewise. Congress may only supercede State legislation if it does not violate the Tenth Amendment to the United States Constitution.

There is no question that royalty legislation on State oil and gas leases is a matter within the paramount jurisdiction of the State. The conservation of oil and gas is a matter within the authority of the States.

> "The paramount public interest of the state in the conservation of these natural resources, the right of the Legislature to enact reasonable laws having reasonable relation to that end, and of the Commission under the authority of those laws to make regulations to carry them into effect, have been uniformly recognized and sustained in the numerous litigations that have arisen in state and federal courts, in connection with state enforcement." Griswold v. The President of the United States, 82 F.2d 922, 925 (C.A. 5, 1936).

The royalty provisions of a mineral leasing act are related to conservation of natural resources.

> "The purpose of the Mineral Leasing Act was not to obtain sales for the gas from these reserves on Government land at any price. The Act was intended to promote wise development of these natural resources and to obtain for the public a reasonable financial return on assets that "belong" to the public. The Secretary of the Interior is the statutory guardian of this public interest. He has a responsibility to insure that these resources are not physically wasted and that their extraction accords with prudent principles of conservation. To protect the public's royalty interest he may determine that minerals are being sold at less than reasonable value. Under existing regulations he can restrict a lessee's production to an amount commensurate with market demand, and thus protect the public's royalty interest by preventing depression of the market. He may also establish "reasonable values" for royalty purposes. Of course his duties have another aspect. The public does not benefit from resources that remain undeveloped, and the Secretary must administer the Act so as to provide some incentive for development. He has statutory power to prescribe regulations to effectuate the purposes of the Act." California Company v. Udall, 296 F.2d 384, 388 (C.A.D.C., 1961). (Emphasis added.)

The conservation rationale behind royalty provisions has also been recognized by the State courts.

> "That the operation may be conducted by a lessee required to pay royalties to the State does not destroy its public use character or render it a private enterprise. The end to be served is the conversion of public resources and the avoidance of waste thereof and the leasehold method must be viewed as no more than a means to that end." Opinion of the Justices, 216 A.2d 656, 660 (Me. 1966).

Furthermore, assuming for the purpose of argument that the royalty provision is a tax measure and not a conservation measure, the same principle of state sovereignity is applicable. "The States have a very wide discretion in the laying of their taxes. When dealing with their proper domestic concerns, and not trenching upon the prerogatives of the National Government or violating the guarantees of the Federal Constitution, the States have the attribute of sovereign powers in devising their fiscal systems to insure revenue and foster their local interests." Allied Stores of Ohio v. Bowers, 358 U.S. 522, 526 (1959).

A diversion of revenues which may be due to the State by virtue of State law and State leases is a flagrant violation of the United States Constitution. It not only goes beyond the scope of the supremacy clause of the Constitution, but it also takes the property of the people of the State of Alaska in violation of the due process clause of the Fifth Amendment to the Constitution. A provision of that nature constitutes a serious threat to any state government because it apparently recognizes a right of the federal government to control the finances and treasury of state government.

In accordance with the principle that the paramount interest in conservation or local taxation is with the states, the United States, under the Tenth Amendment to the Constitution of the United States, has no authority to legislate on state royalty provisions and state oil and gas leases.

IV. FEDERAL LEASES

The 2% overriding gross royalty cannot apply to a federal lease on public lands within the State of Alaska. This is true whether or not the royalty is retrospective or prosepective from the effective date of the legislation.

The first case to examine is that of a 2% overriding gross royalty which would be supplementary to the current 12 1/2% federal royalty. This would result in a 14 1/2% royalty on federal oil and gas leases in Alaska, although 30 U.S.C. 226 provides for a minimum 12 1/2% royalty throughout the United States. It is apparent that such legislation would violate not only the "equal footing"

doctrine, but that it would also violate the equal protection and due process clauses of the U. S. Constitution to the extent that a lessee would not be accorded uniform treatment under federal legislation. It is true that federal legislation need not be uniform in its application throughout the United States, but it is equally true that the principle embodied within the legislation should be uniform.

> "So far as uniformity is concerned, there is no question that the act uniformly applies to the conditions which call its provisions into play,--that its provisions apply to all the states,--so that the question really is a complaint as to the want of uniform existence of things to which the act applies, and not to an absence of uniformity in the act itself. But, aside from this, it is obvious that the argument seeks to engraft upon the Constitution a restriction not found in it; that is, that the power to regulate conferred upon Congress obtains subject to the requirement that regulations enacted shall be uniform throughout the United States." James Clark Distilling Co. v. Western Maryland R. Co., 242 U.S. 311, 327, 37 S.Ct. 180, 185, 61 L.Ed. 326 (1917).

Also see St. Mary's Sewer P. Co. v. Director of U. S. Bureau of Mines (C.A.3, 1959), 262 F.2d 378. If there were no requisite that federal legislation be uniform throughout the United States, the result would be a gerrymandering of special legislation on not only minerals but also labor, banking, civil rights, and so forth.

The second case to examine is that of a 2% gross overriding royalty which would constitute a diversion of the current 12 1/2% federal royalty. Pursuant to the Alaska Statehood Act, Sec. 28(b), and 30 U.S.C. 191, the State of Alaska receives 37 1/2% and 52 1/2%, or a total of 90%, of "All money received from . . . royalties . . . of public lands under the provisions of sections . . . 226 . . . of this title . . ." If there were a diversion of 2% of the 12 1/2% royalty before the apportionment of the share of the State, the State would in effect be deprived of its 90% share of the 2% which had been diverted to the Alaska Natives. This is in conflict with the Alaska Statehood Act, and is discussed in the next section of this opinion.

V. THE ALASKA STATEHOOD ACT

The question which is raised by the conflict of the 2% royalty with the Alaska Statehood Act is the following. May the United States unilaterally enact legislation in direct conflict with the Statehood Act?

The answer to this is that the United States may not constitutionally enact effective legislation in direct conflict with compact provisions of the Statehood Act unless there is an amendment to the Constitution of the State of Alaska because a Statehood Act constitutes a compact in the nature of a contract between two sovereign governments.

First, the federal government may not unilaterally amend the Statehood Act. Beecher v. Wetherby (1877), 95 U.S. 440, held that the State of Wisconsin acquired title to lands formerly occupied by Indians by virtue of the grant of these lands to the State in the Statehood Act and that this title could not subsequently be divested by the federal government on the basis of other legislation. The court, at 441, with reference to the provision of the Statehood Act which granted the land to the State, said: "It was, therefore, an unalterable condition of the admission, obligatory upon the United States. . . ." Metlakatla Indian Com., Annette Island Res. v. Egan (Alaska 1961), 362 P.2d 901, reversed by 369 U.S. 45 on other grounds, held the Omnibus Act invalid to the extent it amended the Statehood Act. The court, at 911, stated: "Appellants argue that the amendment is part of the compact and merely clarified the original intent of Congress. We cannot accept this reasoning. It is our view that the amendment forms no part of the compact between Alaska and the United States."

Second, the state government may not unilaterally amend the Statehood Act. State v. Commissioners of the Land Office, (Okl. 1956), 301 P.2d 655, held that Oklahoma could not change by an amendment to its constitution and by statute a provision of the Statehood Act which provided for a trust fund of the proceeds of the sale of lands granted to the State for school purposes. The court, at 659, stated: "We hold the regulations in the Oklahoma Enabling Act . . . may not be modified, restricted or changed by an Act of the Oklahoma legislature or the people of Oklahoma in amendment of the Oklahoma Constitution."

Merrill v. Bishop (Wyoming 1955), 287 P.2d 620, held that the Wyoming Statehood Act legally abridged Indian water rights, and, at 625, said: ". . . the compact between the United States and Wyoming is unalterable and obligatory." Also see Boeing Aircraft Co. v. Reconstruction Finance Corp. (Wash. 1946) 181 P.2d 838, 842 (". . . each government was bound by the provisions of the Enabling Act."), State v. Reynolds, (N.M. 1963) 378 P.2d 622, 627. ("Section 10 of the Statehood Act became a part of our fundamental law to the same extent as if it had been directly incorporated into the Constitution when thus expressly consented to by the State and its people in Article XXI, Section 9 of the Constitution.") Opinion of the Judges (S.D. 1966) 140 N.W.2d 34, 36 ("It cannot be revoked without the consent of the United States.") United States v. 111.2 Acres of Land in Ferry County, Wash., 293 F.Supp. 1042 (1968). ("The consent of the United States has not been manifested by amendment of the Enabling Act or by legislation inconsistent with Section 11 of that Act.")

Third, the only constitutional method by which there can be enacted legislation which is in direct conflict with the Statehood Act is the approval by the people of the State of Alaska of such federal legislation. The Alaska Statehood Act, Sec. 8(b) provided that the people of the State approve the Statehood Act at an election, and stated that an affirmative vote on the question would constitute an amendment to the State Constitution:

> "In the event each of the foregoing propositions is adopted at said election by a majority of the legal votes cast on said submission, the proposed Constitution of the proposed State of Alaska, ratified by the people at the election held on April 24, 1956, shall be deemed amended accordingly."

The Constitution of the State of Alaska, Art. XIII, provides that amendments to the Constitution must be ratified by the people. State v. Paul, 337 P.2d 33 (Wash. 1959), which held that the Washington Enabling Act could be amended by the State Legislature is distinguishable because the court explicitly noted that the Constitution of the State of Washington at the time of the Enabling Act provided for no initiative or referendum.

Fourth, the argument that Congress has the authority to enact Indian legislation in Alaska which will override the Statehood Act because of the "supremacy clause" principle is without merit. An inference of this argument is that the United States may be about to enter into a treaty with the Alaska Natives. The inference is unwarranted. "The use of the treaty lawmaking power to deal with Indians as dependent alien nationalities, and to adjust their problems, as proper matters of international concern, was halted by Congress in 1871." Federal Indian Law, U. S. Department of the Interior, 1958, p. 25. Another inference may be that the "plenary" federal power over Indian affairs places federal Indian law apart from the United States Constitution. Again, the inference is unwarranted.

> "Thus in United States v. Kagama the Supreme Court found that the protection of the Indians constituted a national problem and referred to the practical necessity of protecting the Indians and the withholding of such a power from the States. This is the basis for the so-called "plenary" power of Congress over the Indians, or, more qualifiedly, over "Indian tribes" or "tribal Indians," so frequently used in recent cases. It may seem captious to point out that there is authority for the view that Congress has no constitutional power over Indians except what is specifically conferred by the commerce clause and implied in other clauses of the Constitution. The most famous defender of Federal power over Indians, Chief Justice Marshall, declared:
>
> . . .That instrument [the Constitution] confers on congress the powers of war and peace; of making treaties, and of regulating commerce with foreign nations, and among the several states, and with the Indian tribes. These powers comprehend all that is required for the regulation of our intercourse with the Indians. They are not limited by any restrictions on their free actions; the shackles imposed on this power, in the confederation, are discarded (p. 559).

> Whatever view be taken of the possibility or danger of Federal power arising from "necessity," it is clear that the powers mentioned by Chief Justice Marshall proved to be so extensive that in fact the Federal powers exercised over Indian affairs are as wide as State powers over non-Indians, and therefore one is justified in characterizing such Federal power as "plenary." This does not mean, however, that congressional power over Indians is not subject to express constitutional limitations, such as the Bill of Rights." Federal Indian Law, infra, p. 24. (Emphasis added.)

The "plenary" power doctrine simply means that the United States has extensive power over American Indians in certain circumstances, and it does not mean that the United States has an authority in Indian affairs that is so absolute that it may disregard the United States Constitution. The Congress, pursuant to the United States Constitution, Article IV, Sec. 3, enacted the Alaska Statehood Act, and the State of Alaska is now on an "equal footing" with the other states. The "plenary" Indian power of the United States does not recognize in Congress the authority to abrogate the Statehood Act.

Fifth, the disclaimer clause of the Alaska Statehood Act, Section 4, does not constitute authority in Congress to legislate in derogation of the Statehood Act. That clause simply provides that the State disclaims all right and title to any lands or other property which "may" be held by Alaska Natives. The legal question which arises from that involves the selection by the State of lands claimed by Alaska Natives, and not the question of revenue sharing proposals which properly relate to monetary compensation alone. The legal question of the selection rights of the State of land claimed by Alaska Natives is discussed in Kake Village v. Egan, 369 U.S. 60, at 65-66 (1962).

> "Section 4 must be construed in light of the circumstances of its formulation and enactment. See Alaska Pacific Fisheries v. United States, 248 U.S. 78, 87. Congress was aware that few such rights existed in Alaska. Its concern was to preserve the status quo with

respect to aboriginal and possessory Indian claims, so that statehood would neither extinguish them nor recognize them as compensable. See, e.g., House Hearings, supra, 130, 384 (1955) (Delegate Bartlett); Hearings Before Senate Committee on Interior and Insular Affairs on S. 50, 83rd Cong., 2d Sess. 227 (Senator Jackson), 260-261 (1954). 1/

Discussion during hearings on the 1955 House bill affords further evidence that claims not based on federal law are included. Section 205 of that bill (like sec. 6 of the bill as enacted) authorized Alaska to select large tracts of United States land for transfer to state ownership. It was understood that the disclaimer provision left the State free to choose Indian "property" if it desired, but that such a taking would leave unimpaired the Indians' right to sue the United States for any compensation that might later be established to be due. See House Hearings, supra, 135 (1955) (Delegate Bartlett). Feeling that experience had shown this procedure too slow to give prompt relief to the Indians, Oklahoma's Representative Edmondson proposed to exempt Indian property from the State's selection. Id. at 381. This was rejected as virtually destroying Alaska's right to select lands. For, although Representative Edmondson pointed

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1/ In 1948 a statehood bill requiring disclaimer of "all lands . . . owned or held by any . . . natives, the right or title to which shall have been acquired through or from the United States or any prior sovereignty," was favorably reported with this explanation: "As proposed to be amended, this paragraph would preserve all existing valid native property rights in Alaska, including those derived from use or occupancy, together with all existing authority of the Congress to provide for the determination, perfection or relinquishment of native property rights in Alaska. It would neither add to nor subtract from such rights and such authority, but would simply maintain the status quo." H.R. Rep. No. 1731, 80th Cong., 2d Sess. 15 (1948).

To the same effect, see H.R. Rep. No. 255, 81st Cong., 1st Sess. 13 (1949).

> out that the disclaimer extended only to property owned by Indians or held in trust for them, four representatives clearly stated their belief that the disclaimer included not just the few Alaska reservations, but also the aboriginal or other unproved claims in dispute, which covered most if not all of Alaska. Id., at 383 (Representative Engle Dawson, Metcalf, Westland). (Emphasis added.)

There is, therefore, no merit to the argument that Congress may re-write the Statehood Act because of the Section 4 disclaimer clause. The inclusion of that clause in the Statehood Act did not make that Act an open-ended document which may be unilaterally amended by Congress. A contrary assertion ignores the basic significance of a statehood act. The precise question of the effect of the disclaimer clause has been considered by the U. S. Supreme Court, and that Court has said that the Congress only intended the disclaimer clause to leave unimpaired possible future rights of the Alaskan Natives to compensation from the United States. The method of the compensation, of course, must be within the principles of the United States Constitution.

VI. CONCLUSION.

The State of Alaska, pursuant to the Alaska Statehood Act, does have rights under the United States Constitution. The argument that the supremacy clause of the United States Constitution places rights in Congress over Indians of such an extent that Congress may enact legislation which abrogates the constitutional rights of a State or of any person is clearly erroneous. The ultimate criterion of legitimacy in the American system is not the supremacy clause in itself, but the supremacy clause in the context of the United States Constitution. The clearest and most forceful statement of the applicability of the supremacy clause in the present case is not that Congress may violate the Constitutional rights of a State, but that it might extinguish Indian title without compensation.

> "In 1941 a unanimous Court wrote, concerning Indian title, the following:

> 'Extinguishment of Indian title based on aboriginal possession is of course a different matter. The power of Congress in that regard is supreme. The manner, method and time of such extinguishment raise political, not justiciable, issues.' United States v. Santa Fe Pacific R. Co., 314 U.S. 339, 347, 86 L.ed. 260, 270, 62 S.Ct. 248.
>
> No case in this Court has ever held that taking of Indian title or use by Congress required compensation. The American people have compassion for the descendants of those Indians who were deprived of their homes and hunting grounds by the drive of civilization. They seek to have the Indians share the benefits of our society as citizens of this Nation. Generous provision has been willingly made to allow tribes to recover for wrongs, as a matter of grace, not because of legal liability. 60 Stat. 1050." Tee-Hit-Ton Indians v. United States, 348 U.S. 272, 281 (1955). (Emphasis added.)

The real effect of the Section 4 disclaimer clause was to insure that Congress in no way affected whatever claims Alaska Natives might have against the United States for monetary compensation.

The State of Alaska supports the principle of compensation to Alaskan Natives, but only to the extent that there is no interference with the rights of the State under the Statehood Act. The 2% overriding gross royalty is in conflict with the Statehood Act and principles of constitutional law, and Congress has no authority under the United States Constitution to enact such legislation.

Respectfully,

G. Kent Edwards
Attorney General

GKE:jt

APPENDIX A

1. The grant to the State of 90% of all money received by the United States pursuant to the mineral leasing laws in Alaska. The Alaska Statehood Act. 72 Stat. 339, Sec. 28(b).

> "(b) Section 35 of the Act entitled 'An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain', approved February 25, 1920, as amended (41 Stat. 450), is hereby amended by inserting immediately before the colon preceding the first proviso thereof the following: ", and of those from Alaska 52 1/2 per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof". 72 Stat. 339, Sec. 28(b).

2. The federal legislation which was confirmed and amended by the Statehood Act, Sec. 28(b). It provides that the State receives 90% of all money received by the United States pursuant to the mineral leasing laws in Alaska, 37 1/2% thereof for the construction of public roads or schools and 52 1/2% for the disposition of the State Legislature. 30 U.S.C. 191.

> "All money received from sales, bonuses, <u>royalties</u>, and rentals of public lands under the provisions of sections 181-184, 185-188, 189-192, 193, 194, 201, 202-209, 211-214, 223, 224-226, 226-2, 227-229a, 241, 251, and 261-263 of this title shall be paid into the Treasury of the United States; <u>37 1/2 per centum</u> thereof shall be paid by the Secretary of the Treasury as soon as practicable after December 31 and June 30 of each year <u>to the State or the Territory of Alaska</u> within the boundaries of which the leased lands or deposits are or were located; said moneys to be used by such State, Territory, or subdivision thereof for the construction and maintenance of public roads or for the support of public schools or other public educational institutions, as the legislature of the State or Territory may direct; and, excepting those from Alaska, 52 1/2 per centum thereof shall be paid into, reserved and appropriated, as a part of the reclamation fund created by sections 372, 373, 381, 383, 391, 392, 411, 416, 419, 421, 431, 432, 434, 439, 461, 491, and 498 of Title 43, <u>and of those from Alaska 52 1/2 per centum thereof</u>

shall be paid to the State of Alaska for disposition by the legislature thereof: Provided, That all moneys which may accrue to the United States under the provisions of sections 181-184, 185-188, 189-192, 193, 194, 201, 202-209, 211-214, 223, 224-226, 226-2, 227-229a, 241, 251, and 261-263 of this title not otherwise disposed of by this section shall be credited to miscellaneous receipts. As amended May 27, 1947, c. 83, 61 Stat. 119; Aug. 3, 1950, c. 527, 64 Stat. 402; July 10, 1957, Pub.L. 85-508, Secs. 6(k), 28(b), 72 Stat. 343, 351." 30 U.S.C. 191. (Emphasis added.)

3. The federal legislation applicable to oil and gas leases of the United States provides for a minimum 12 1/2% royalty. 30 U.S.C. 226.

"(a) All lands subject to disposition under sections 181-184, 185-188, 189-192, 193, 194, 201, 202-209, 211-214, 223, 224-226, 226-2, 227-229a, 241, 251, 261-263 of this title which are known or believed to contain oil or gas deposits may be leased by the Secretary.

Lands within known geologic structure of a producing oil or gas field; competitive bidding

(b) If the lands to be leased are within any known geological structure of a producing oil or gas field, they shall be leased to the highest responsible qualified bidder by competitive bidding under general regulations in units of not more than six hundred and forty acres, which shall be as nearly compact in form as possible, upon the payment by the lessee of such bonus as may be accepted by the Secretary and of such royalty as may be fixed in the lease, which shall not be less than 12 1/2 per centum in amount or value of the production removed or sold from the lease.

Lands not within geologic structure of a producing oil or gas field; first qualified applicant

(c) If the lands to be leased are not within any known geological structure of a

producing oil or gas field, the person first making application for the lease who is qualified to hold a lease under sections 181-184, 185-188, 189-192, 193, 194, 201, 202-209, 211-214, 223, 224-226, 226-2, 227-229a, 241, 251, 261-263 of this title shall be entitled to a lease of such lands without competitive bidding. Such leases shall be conditioned upon the payment by the lessee of a royalty of 12 1/2 per centum in amount or value of the production removed or sold from the lease." 30 U.S.C. 226. (Emphasis added.)

4. The state legislation applicable to oil and gas leases of the State of Alaska provides for a basic minimum 12 1/2% royalty, although, in the case of first discovery, there is a royalty of 5%. AS 38.05.180.

"AS 38.05.180. OIL AND GAS. (a) All tide and submerged lands, mental health lands, school lands, and university lands shall be leased by competitive bidding, and whenever oil or gas is discovered in commercial quantities, the commissioner shall determine the extent of the area of lands in addition to tide, submerged, mental health lands, school, or university lands in the same general area of the discovery well which, by reason of the discovery, the commissioner reasonably believes to be capable of producing oil or gas and the additional lands shall be leased to the highest responsible qualified bidder by competitive bidding under general regulations in units of not exceeding 2,560 acres (except that tide and submerged lands shall be leased in units of not exceeding 5,760 acres), which shall be as nearly compact in form as possible, upon the payment by the lessee of such bonus as may be accepted by the commissioner and of such royalty as may be fixed in the lease which shall not be less than 12 1/2 per cent in amount or value of the production removed or sold from the lease. However, the holder of a lease who drills and makes the first discovery of oil or gas in commercial quantities in a geologic structure shall pay a royalty on all production under the lease of five per cent for 10 years following the date of discovery and thereafter the royalty rate shall be not less

than 12 1/2 per cent unless the commissioner specifically provides that such royalty shall be less at the time such lands are offered for lease and in no event shall such royalty be less than five per cent. All lands other than those above provided to be leased by competitive bidding may be leased competitively or noncompetitively as determined by the commissioner to be in the best interests of the state. Noncompetitive leases shall be issued in units of not exceeding 2,560 acres in any one lease. Noncompetitive leases shall be conditioned upon the payment by the lessee of a royalty of 12 1/2 per cent in amount or value of the production removed or sold from the lease. However, the holder of a lease who drills and makes the first discovery of oil or gas in commercial quantities in a geologic structure shall pay a royalty on all production under the lease of five per cent for 10 years following the date of discovery and thereafter the royalty rate is 12 1/2 per cent. Competitive leases issued under this subsection shall be for a primary term of five years and shall continue so long thereafter as oil or gas is produced in paying quantities. If drilling has commenced on the expiration date of the primary term of the lease and is continued with reasonable diligence, such operations to include redrilling, sidetracking or other means necessary to reach the originally proposed bottom hole location, the lease shall continue in effect until 90 days after drilling has ceased and for so long thereafter as oil or gas is produced in paying quantities. If all or part of the lands covered by the lease are lands that have been selected by the state under laws of the United States granting lands to the state and a conditional lease was issued thereon, the term of the lease shall be extended for a period equal to the period during which the lease was conditional."

5. The disclaimer clause of the Alaska Statehood Act. 72 Stat. 339, Sec. 4.

"Sec. 4. As a compact with the United States said State and its people do agree and declare that they forever disclaim all right and title to any lands or other property not granted or confirmed to the State

or its political subdivisions by or under the authority of this Act, the right or title to which is held by the United States or is subject to disposition by the United States, and to any lands or other property (including fishing rights), the right or title to which may be held by any Indians, Eskimos, or Aleuts (hereinafter called natives) or is held by the United States in trust for said natives; that all such lands or other property belonging to the United States or which may belong to said natives, shall be and remain under the absolute jurisdiction and control of the United States until disposed of under its authority, except to such extent as the Congress has prescribed or may hereafter prescribe, and except when held by individual natives in fee without restrictions on alienation: Provided, That nothing contained in this Act shall recognize, deny, enlarge, impair, or otherwise affect any claim against the United States, and any such claim shall be governed by the laws of the United States applicable thereto; and nothing in this Act is intended or shall be construed as a finding, interpretation, or construction by the Congress that any law, applicable thereto authorizes, establishes, recognizes, or confirms the validity or invalidity of any such claim, and the determination of the applicability or effect of any law to any such claim shall be unaffected by anything in this Act: And provided further, That no taxes shall be imposed by said State upon any lands or other property now owned or hereafter acquired by the United States or which, as hereinabove set forth, may belong to said natives, except to such extent as the Congress has prescribed or may hereafter prescribe, and except when held by individual natives in fee without restrictions on alienation." Alaska Statehood Act, 72 Stat. 339, Sec. 4.

NOTE

OPINION NUMBER 6 OF 1969 WAS NEVER ISSUED.

MEMORANDUM State of Alaska

TO: Honorable Bill Sheffield
Governor
State of Alaska

Harold M. Brown
Attorney General

FROM: By: G. Thomas Koester GTK
Assistant Attorney General
Department of Law

DATE: April 28, 1986

FILE NO: 663-86-0339

TELEPHONE NO: 465-3600

SUBJECT: ANWR issues -- federal 90 percent revenue sharing

As part of an overall analysis of potential oil and gas leasing in the Arctic National Wildlife Refuge ("ANWR"), you asked this department to prepare a preliminary analysis of two specific issues: (1) the effect of a possible land trade on the state's 90 percent royalty share of oil and gas production from federal lands in wildlife refuges; and (2) legal arguments which might be raised with respect to possible congressional consideration of a reduction in the state's current 90 percent royalty share.

In brief, we believe (1) a land trade would eliminate the state's 90 percent royalty share of production from the lands traded by the United States to third parties and probably would result in the state receiving no royalty from oil and gas produced on the exchange lands received by the federal government, and (2) there are both legal and policy arguments the state can make against a congressional reduction of the state's royalty share, but we cannot be certain that they would prevail.

I. Background

When the United States issues oil and gas leases for lands within wildlife refuges, distribution of the revenues received by the United States from that leasing depends on whether the refuge lands from which the revenues are derived are acquired lands or reserved public domain lands. "[A]cquired lands are those granted or sold to the United States by a State or citizen and public domain lands were usually never in state or private ownership." Wallis v. Pan American Petroleum Corp., 384 U.S. 63, 65 n.2 (1966).

Oil and gas leasing on acquired lands is governed by the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351 et seq. Under that Act, revenues from oil and gas leases on acquired lands are to be "distributed in the same manner as prescribed for other receipts from the lands affected by the lease." 30 U.S.C. § 355. As applied to wildlife refuges created from acquired lands, this provision requires that oil and gas revenues be distributed according to the formula contained in the Wildlife

Refuge Revenue Sharing Act, 16 U.S.C. § 715s, which provides that 75 percent of the revenues go to the federal government and 25 percent of the revenues go to the county in which the wildlife refuge is located.

Oil and gas leasing on public domain lands reserved for wildlife refuge purposes, on the other hand, is governed by the Mineral Leasing Act of 1920, 30 U.S.C. §§ 191 et seq. Under that Act, the state is entitled to 90 percent of the revenues from such lands in refuges in Alaska and 10 percent is paid into the United States Treasury. */ See generally Watt v. Alaska, 451 U.S. 259 (1981).

Congress extended the Mineral Leasing Act distribution formula for revenues from public domain lands, including reserved public domain lands in wildlife refuges, to Alaska in section 28(b) of the Alaska Statehood Act. Congress considered this one of the "major provisions" of the Act. H.R. Rep. No. 624, 85th Cong., 1st Sess. 3 (June 25, 1957) ("House Report"). Congress did so, in large part, because so much of Alaska was "tied up in the status of Federal reservations and withdrawals for various purposes," stating that this "practice has been carried to extreme lengths in Alaska." House Report at 7. One result of that "unhealthy situation," id. at 8, is that substantial mineral leasing revenues in Alaska are derived from public lands in federal withdrawals and reservations, including wildlife refuges, a situation unique to Alaska. See Watt, 451 U.S. at 261, n.1.

The Mineral Leasing Act, and its revenue distribution formula under which 90 percent of the revenues are dedicated to the state, represented a historic tradeoff in the history of public land law. In enacting it, Congress terminated its historic policy of disposing of the public lands. Instead, it determined

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*/ States other than Alaska receive only 50 percent of public domain land mineral revenues. However, an additional 40 percent of those revenues are paid into the Reclamation Fund established under the Reclamation Act of 1902. Those funds, in turn, are used to fund reclamation projects in those states. Alaska is not covered by the Reclamation Act and receives no benefits under it. Congress considered it only fair that the additional 40 percent share of public domain land revenues be paid to Alaska "in return for Alaska not being covered by the Reclamation Act of 1902." See H.R. Rep. No. 624 (to accompany H.R. 7999), 85th Cong., 1st Sess. 23 (June 25, 1957).

that the federal government should retain those public lands remaining in the states, but should use most of the mineral revenues from those lands for the states' benefit. The 90-10 revenue distribution formula in the Mineral Leasing Act "was to compensate for the states' inability to tax the lands to pay for governmental services." Fairfax and Yale, The Financial Interest of Western States in Non-tax Revenues from the Federal Public Lands 19, published by the Western Legislative Conference, Council of State Governments, and the Lincoln Institute of Land Policy (1985).

In contrast, the Wildlife Refuge Revenue Sharing Act, under which 25 percent of certain wildlife refuge revenues are shared with the counties in which the refuges lie, was intended to reduce local opposition to federal acquisition of land for refuge purposes. The revenue sharing formula was intended to compensate localities for the loss of property tax revenue when the federal government acquired the land and, as a result, it was removed from the local tax roles. As a general proposition, this rationale would not fit federal acquisition of large tracts of either state land or undeveloped Native corporation land, neither of which currently are subject to local property taxes. See Alaska Const. art. IX, § 4; 43 U.S.C. § 1620(d).

Nonetheless, the distinction between acquired land in wildlife refuges and public domain land reserved for refuge purposes is central to resolution of the first question you asked us to discuss. The fact that Congress extended the Mineral Leasing Act to Alaska in the Statehood Act bears directly on your second question.

II. The Effect of a Land Trade on the State's 90 Percent Royalty Share

We understand that the Department of the Interior is contemplating certain land trades under which federal lands in ANWR would be exchanged for privately-owned Native corporation lands constituting inholdings in other federal conservation system units in Alaska. If such exchanges take place, and the exchanged ANWR lands are offered for oil and gas leasing, the Native corporations would be the lessors entitled to receive the revenues. The revenues would not be received by the federal government as result of leasing under the Mineral Leasing Act, and those revenues would not be subject to the Mineral Leasing Act's 90-10 distribution formula. Accordingly, there would be no basis for the state to claim any portion of the revenues derived. In other words, land trades would totally eliminate the state's 90 percent royalty share from such ANWR lands.

In addition, it should be noted that the state would have no right to any federal oil and gas revenues derived from the lands obtained by the United States from the Native corporations. Those lands would be acquired lands, not reserved public domain lands, and the revenue distribution from federal oil and gas leases on those lands would be governed by the Mineral Leasing Act for Acquired Lands. As noted earlier, revenues from oil and gas leasing of acquired lands in wildlife refuges are governed by Wildlife Refuge Revenue Sharing Act, which provides that 25 percent of any such revenues are to go to the county in which the refuge is located and 75 percent to the federal government. None of the revenues go to the state.

The state could argue that this should not be the result. The rationale for the Wildlife Refuge Revenue Sharing Act distribution scheme -- i.e., compensating municipalities for lost property tax receipts -- does not apply to undeveloped Native corporation lands, which are not subject to local property taxes under the Alaska Native Claims Settlement Act (at least until 1991). See 43 U.S.C. § 1620(d). Moreover, the state can argue that the United States cannot eliminate its 90 percent share of revenues from reserved public domain lands by trading them on the ground that doing so would violate the solemn compact memorialized in the Alaska Statehood Act.

However, we believe both arguments probably would be unavailing in court. The first argument appears to be more of a policy argument than a legal argument, more appropriately directed to Congress and not the courts. The second argument would require the court to find that the extension of the Mineral Leasing Act to Alaska also constituted an implied promise not to convey federal lands to third parties, which simply is not supported by the legislative history of section 28(b) of the Statehood Act.

III. Congressional Reduction of the State's 90 Percent Royalty Share

As noted in section I above, Congress extended the Mineral Leasing Act distribution formula for revenues from public domain lands, including reserved public domain lands in wildlife refuges, to Alaska in section 28(b) of the Alaska Statehood Act. Alaska accepted the provisions of the Statehood Act in article XII, section 13, of the Alaska Constitution. Provisions of a Statehood Act become obligatory on the United States upon acceptance of those provisions by the new state. See, e.g., Cooper v. Roberts, 59 U.S. (18 How.) 173 (1856); see generally 1981 Op. Att'y Gen. No. 3, at 3-5 (April 2). Particularly in light of

Congress' characterization of the extension of the Mineral Leasing Act to Alaska as one of the "major provisions" of the Alaska Statehood Act, the state has a very strong argument that continued application of the Mineral Leasing Act's distribution formula to oil and gas leasing revenues from reserved federal public domain lands in ANWR is required as part of Alaska's statehood compact (at least as long as those lands remain federally-owned).

At the same time, we must point out that the United States might successfully argue that Congress has the plenary authority to modify the distribution formula for oil and gas revenues from ANWR. In Watt v. Alaska, Justice Stevens (concurring in the Court's decision that the Mineral Leasing Act's 90-10 distribution formula applied to oil and gas revenues from the Kenai National Moose Range) stated:

> The question of how to divide the revenues from oil and gas leases on public lands in the Kenai Peninsula is clearly a matter for Congress to decide. If Congress is displeased with the decisions of this Court and the Court of Appeals [i.e., the decisions that Alaska is entitled to 90 percent of the revenues], it may promptly reverse them by revising the relevant statutes.

451 U.S. at 274. We did not make a statehood compact argument in that case and it was not before the Court. Nonetheless, Justice Stevens' comment undoubtedly will be cited by the United States in the event Congress changes the current 90-10 distribution formula in the Mineral Leasing Act or establishes a different distribution formula specifically for revenues from ANWR.

We hope this responds to your request. If we can provide additional information, please contact us at your convenience.

GTK:dlm
cc: John Katz
Office of the Governor
Washington, D.C.

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

MEMORANDUM

To: Tom Koester, AGO

From: Rep. Sam Cotten, Co-Chair NF for SC
House Resources Committee

Subject: ANWR revenue entitlements

Date: February 26, 1987

There are several questions the Resources Committee may need addressed before it takes a position on the issue of federal-state revenue sharing of oil and gas revenues derived from prospective oil and gas production on public lands within the Arctic National Wildlife Refuge.

1) If the Congress were to repeal the provision of ANILCA closing the ANWR coastal plain to oil and gas exploration and drilling, without amending the Mineral Leasing Act of 1920 or the Statehood Act, would the State be entitled to 90% of the federal oil and gas revenues derived from Refuge lands? Are there foreseeable circumstances under which federal lands in the coastal plain could be considered other than "public land" subject to the Mineral Leasing Act and the 90/10 federal-state revenue sharing arrangement?

2) Was Pet 4 (the former Naval Petroleum Reserve) "public land" subject to the same 90/10 revenue sharing arrangement as other public land in Alaska? When the NPRA Act passed in 1976, did it reduce or expand the state's revenue entitlement from the affected acreage?

If you have questions please contact my staff. We are having a hearing in House Resources on the issue of ANWR revenue entitlements on Tuesday March 2 and would like to have any comments back from you by Friday or Monday. Many thanks.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

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March 2, 1987

The Honorable Sam Cotten
Co-Chairman
Resources Committee
P.O. Box V
Juneau, AK 99811

Re: 90-10 Revenue distribution for federal lands

Dear Representative Cotten:

In a February 26, 1987 memorandum, you asked a number of questions regarding federal-state sharing of oil and gas revenues in the event of oil and gas leasing in the Arctic National Wildlife Refuge ("ANWR"). You asked:

> 1) If the Congress were to repeal the provisions of ANILCA closing the ANWR coastal plain to oil and gas exploration and drilling, without amending the Mineral Leasing Act of 1920 or the Statehood Act, would the State be entitled to 90 percent of the federal oil and gas revenues derived from Refuge lands? Are there foreseeable circumstances under which federal lands in the coastal plain could be considered other than "public land" subject to the Mineral Leasing Act and the 90-10 federal-state revenue sharing arrangement?
>
> 2) Was PET 4 (the former Naval Petroleum Reserve) "public land" subject to the same 90-10 revenue sharing arrangement as other public land in Alaska? When the NPRA Act passed in 1976, did it reduce or expand the state's revenue entitlement from the affected acreage?

Before answering your specific questions, it may be helpful briefly to review the background of the 90-10 revenue sharing arrangement which currently exists. The distribution of oil and gas revenues from federal lands depends on whether they are "acquired lands" or "public domain lands." In general, "acquired lands are those granted or sold to the United States by a State or citizen and public domain lands were usually never in state or private ownership." Wallis v. Pan American Pet. Corp., 384 U.S. 63, 65 n.2 (1966).

Oil and gas leasing on acquired lands is governed by the Mineral Leasing Act for acquired lands, 30 U.S.C. §§ 351 et seq. Under that Act, revenues from oil and gas leases on acquired lands are to be "distributed in the same manner as prescribed for other receipts from the lands affected by the lease." 30 U.S.C. § 355. As applied to wildlife refuges created from acquired lands, this provision requires that oil and gas revenues be distributed according to the formula contained in the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, which provides that 75 percent of the revenues go to the federal government and 25 percent of the revenues go to the county in which the wildlife refuge is located. The rationale for this distribution formula is that the lands were on local tax roles while in private ownership, and giving some of the receipts from the lands to the local county compensates the county for the loss of those property tax revenues.

Oil and gas leasing on public domain lands is governed by the Mineral Leasing Act of 1920, 30 U.S.C. §§ 181 et seq. Under that Act, 90 percent of the revenues are dedicated to the benefit of the states */ and 10 percent are paid into the United States Treasury.

This 90-10 revenue distribution formula applies to both vacant, unappropriated and unreserved public domain

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*/ For lower 48 states, 50 percent of federal oil and gas revenues from public domain lands are paid directly to the states and 40 percent is deposited into the Reclamation Fund created by the Reclamation Act of 1902. Because Alaska is not covered by the Reclamation Act and receive no benefits from the Reclamation Fund, we receive the full 90 percent of such revenues from federal public domain lands in Alaska.

lands and (with limited exceptions not applicable here) public domain lands withdrawn and reserved for specific purposes, including withdrawals and reservations for wildlife refuges. I represented Alaska in Watt v. Alaska, 451 U.S. 259 (1981), in the United States Supreme Court. The precise issue in that case was whether the 90-10 revenue distribution formula applied to the withdrawn and reserved lands of the Kenai National Moose Range. The Supreme Court, over the United States' objection, held that it did.

Like the lands in the Moose Range, the lands in ANWR were withdrawn and reserved from the public domain for refuge purposes; they are not acquired lands. There is no substantive distinction between the Moose Range lands and the lands in ANWR, and there is no substantive legal basis for concluding that federal oil and gas leasing revenues from ANWR would be distributed differently than those from the Moose Range under existing law.

The revenue distribution formula in the Mineral Leasing Act represented an historic trade-off in the history of public land law. In enacting it, Congress terminated its historic policy of disposing of the public lands. Instead, it determined that the federal government should retain those public lands remaining in the states, but should use most of the mineral revenues from those lands for the state's benefit. See generally, Fairfax and Yale, The Financial Interest of Western States in Non-Tax Revenues From the Federal Public Lands (manuscript copy published by the Western Legislative Conference, Council of State Governments, and the Lincoln Institute of Land Policy in 1985). This historic compromise has governed distribution of mineral revenues from federal lands, particularly in the western states, since 1920, and we can see no foreseeable circumstances under which that fundamental compromise would be changed at this time.

Accordingly, the answers to your first set of questions are: (1) The state would be entitled to 90 percent of the federal oil and gas revenues derived from ANWR lands if Congress repealed the closure of the ANWR coastal plain in ANILCA without amending the Mineral Leasing Act of 1920 or the Statehood Act; and (2) we see no foreseeable circumstances under which the ANWR coastal plain would not be subject to the Mineral Leasing Act.

As noted briefly above, there are a few limited exceptions in the Mineral Leasing Act. One of these is for

"lands within the naval petroleum and oil-shale reserves." 30 U.S.C. § 181. The revenue distribution provisions of the Mineral Leasing Act provide that all monies which may accrue to the United States "from lands within the naval petroleum reserves shall be deposited in the Treasury as 'miscellaneous receipts' ..." 33 U.S.C. § 191.

In other words, at the time of the historic compromise when the United States decided to retain large tracts of lands and share the benefits of mineral development with the states in which those lands were located, it expressly exempted from that sharing any benefits deriving from the naval petroleum and oil-shale reserves. Former Naval Petroleum Reserve No. 4 ("PET 4"), now known as the National Petroleum Reserve in Alaska ("NPRA"), accordingly has never been subject to the Mineral Leasing Act of 1920 and the 90-10 revenue distribution formula had no application to any revenues from NPRA. In section 11 of the Alaska Statehood Act, Congress retained the exclusive legislative authority over PET 4 as long as it remained a naval reserve, so its status as far as federal-state relations has always been somewhat different than other federal lands. When Congress finally opened NPRA to competitive leasing in 1980, it did so independently of the Mineral Leasing Act. It was that separate congressional action in 1980 -- not the Mineral Leasing Act -- which resulted in the state receiving 50 percent of revenues from oil and gas leasing in NPRA. See 42 U.S.C. § 6508. Absent that congressional action, the state would have been entitled to none of the revenues from NPRA.

Summarizing, the answers to your second set of questions are: (1) PET 4 was never subject to the same 90-10 revenue sharing arrangement; instead, it was a specific (and single) exception to the 90-10 revenue sharing formula; and (2) when Congress authorized leasing in NPRA, it provided that the state was to receive 50 percent of the revenues instead of none of those revenues which is what the current law at that time would have provided in the absence of congressional action.

I hope this answers your questions. If we can be of further assistance, please contact us at your convenience.

Sincerely,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By: G. Thomas Koester

G. Thomas Koester
Assistant Attorney General

GTK/dlm
cc: Lieutenant Governor Stephen McAlpine
Commissioner Judy Brady, DNR
Commissioner Don W. Collinsworth, F&G
Commissioner Dennis Kelso, DEC
John Katz, Office of the Governor
Bob Grogan, Office of the Governor
Rod Swope, Office of the Governor

MEMORANDUM

State of Alaska

TO: Rod Swope
Special Assistant
Office of the Governor

DATE: January 27, 1987

FILE NO: 465-3600

TELEPHONE NO:

SUBJECT: 90-10 revenue split on wildlife refuges

THRU: Ronald W. Lorensen
Acting Attorney General

FROM: By: G. Thomas Koester
Assistant Attorney General
Department of Law

Revenues received by the United States from mineral leasing on public lands are distributed under Section 35 of the Mineral Leasing Act of 1920, 30 U.S.C. § 191. For federal lands in Alaska, we receive 90 percent of the revenues and 10 percent are deposited in the United States Treasury. This distribution formula applies to both unreserved public lands and reserved public lands in wildlife refuges, including the Arctic National Wildlife Refuge.

Congress extended the Mineral Leasing Act to Alaska in Section 28(b) of the Alaska Statehood Act, and considered this one of the "major provisions" of that Act. Provisions of a Statehood Act are obligatory on the United States, and any modification of the revenue distribution formula with respect to public lands (including reserved public lands in wildlife refuges) would probably violate the solemn compact between the United States and Alaska which formed the basis for Alaska's admission to the Union.

Congress incorporated this revenue distribution formula in the Statehood Act because so much land in Alaska was owned by the federal government, and almost one-fourth of it had been included in withdrawals and reservations prior to statehood. Modifying the distribution formula only for the reserved lands in the Arctic National Wildlife Refuge would discriminate against Alaska in relation to other states, in effect making Alaska the only state in which public land mineral revenues are not distributed under the Mineral Leasing Act. This would contrast with Congress' traditional practice of treating all states equally.

The Mineral Leasing Act represented a historic trade-off in the history of public land law. In enacting it, Congress terminated the historic policy of disposing of public lands; instead, it determined to retain the public lands in federal ownership but to use the revenues from those lands for the benefit of the states in which the lands were located. Changing

the revenue distribution formula would radically alter this historic compromise on which federal public land administration has been based for decades.

GTK:dlm
Attachment

8-19-83
Kolster
Sent to Katz

MINERAL LEASE REVENUES FROM PUBLIC LANDS IN WILDLIFE REFUGES

Revenues received by the United States from mineral leasing activity on public lands are distributed under Section 35 of the Mineral Leasing Act of 1920, 30 U.S.C. § 191. This includes revenues from both unreserved public lands and from reserved public lands in wildlife refuges. See Watt v. Alaska, 451 U.S. 259 (1981).

Alaska opposes legislation seeking to change that distribution for revenues from reserved public lands in wildlife refuges for three reasons. First, that distribution formula for revenues from public lands in Alaska, including reserved public lands in wildlife refuges, is required by the Alaska Statehood Act, and any modification of that formula would impermissibly violate the Statehood Compact between Alaska and the United States. Second, such a change would discriminate against Alaska because only in Alaska does a major share of such revenues come from reserved public lands in wildlife refuges. Finally, the policies underlying both the Mineral Leasing Act and the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, under which counties share revenues from wildlife refuges within their borders, require that mineral leasing revenues from public lands in wildlife refuges continue to be distributed under the Mineral Leasing Act formula.

I. The Statehood Compact.

Congress extended the Mineral Leasing Act distribution formula for revenues from public lands, including public lands in wildlife refuges, to Alaska in Section 28(b) of the Alaska Statehood Act. Congress considered this one of the "major provisions" of the Act. See H.R. Rep. No. 624 (to accompany H.R. 7999), 85th Cong. 1st Sess. (June 25, 1957) ("House Report") p. 3. Alaska accepted the provisions of the Statehood Act in Article XII, Section 13 of the Alaska Constitution.

Provisions of a Statehood Act become obligatory on the United States upon acceptance of those provisions by the new State. See e.g. Cooper v. Roberts, 59 U.S. (18 How.) 173 (1856). Accordingly, any modification of the Mineral Leasing Act formula with respect to public lands, including reserved public lands in wildlife refuges, would impermissibly violate the solemn compact between the United States and Alaska which formed the basis for Alaska's admission to the Union.

II. Discriminatory Effect.

Congress extended to Alaska the Mineral Leasing Act distribution formula for mineral leasing revenues from public lands, including public lands in federal reservations and

withdrawals, in large part because so much of Alaska was "tied up in the status of Federal reservations and withdrawals for various purposes," a "practice [which] has been carried to extreme lengths in Alaska." House Report, p. 7. One result of that "unhealthy situation," id., p. 8, is that substantial mineral leasing revenues in Alaska are derived from public lands in federal withdrawals and reservations, including wildlife refuges, a situation unique to Alaska.

In fact, the only reserved public lands wildlife refuge producing oil and gas revenues is the Kenai Moose Range in Alaska. See Watt v. Alaska, 451 U.S. at 261 n. 1. As a result, modification of the Mineral Leasing Act formula with respect to reserved public lands in wildlife refuges would affect only Alaska. This would make Alaska the only State in which public land mineral revenues would not be distributed under the Mineral Leasing Act formula.

This would contrast with Congress' traditional practice of treating all States fairly. For example, in this context, the Mineral Leasing Act provides that 40 percent of the mineral revenues from public lands in other States is to be deposited into the reclamation fund under the Reclamation Act of 1902. Alaska is not covered by that Act and receives no benefits under it, and Congress considered it only fair that those revenues be paid to Alaska "in return for Alaska not being covered by the Reclamation Act of 1902." House Report, p. 23.

III. Policy Considerations.

Finally, the Mineral Leasing Act represented a historic tradeoff in the history of public land law. In enacting it, Congress terminated its historic policy of disposing of the public lands. Instead, it determined to retain those public lands remaining in the States, but to use any mineral revenues from those lands for the States' benefit. As a result, the revenue distribution formula in the Mineral Leasing Act was designed to ensure that the public land States would reap the benefits of the resources within their borders, even if the lands containing those resources remained in federal ownership. This rationale is just as applicable to reserved public lands in wildlife refuges as it is to unreserved public lands elsewhere.

In contrast, the Wildlife Refuge Revenue Sharing Act, under which 25 percent of certain wildlife refuge revenues are shared with the counties in which the refuges lie, was intended to reduce local opposition to federal acquisition of land for refuge purposes. The revenue sharing formula was intended to compensate localities for the loss of property tax revenue when the federal government acquired the land and, as a result, it was removed from the local tax rolls. This rationale is wholly inapplicable to public lands which have never been in private

ownership and, therefore, have never been part of the local tax base. Indeed, modifying the formula under which such revenues from reserved public lands in wildlife refuges are distributed under the Mineral Leasing Act would result in an unjustified windfall to local communities at the expense of the States in contradiction of the original Congressional policy underlying the Mineral Leasing Act.

GTK:dlm

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 26, 1987

The Honorable William Horn
Assistant Secretary for
Fish, Wildlife and Parks
U.S. Interior Department
Washington, D. C. 20240

Dear Secretary Horn:

I am writing on behalf of the House Resources Committee of the Alaska Legislature to present a set of questions about the possible Arctic National Wildlife Refuge land exchanges. The Committee appreciated the appearance of Bob Gilmore at our meeting February 13th on ANWR land exchanges. However, several issues remained unresolved at the hearing either because time ran out or because Mr. Gilmore was not prepared to discuss them. The Committee's next meeting on this issue is expected to occur during the week of March 9th; it would be our hope to have your responses in hand before this meeting occurs.

Land Exchange Contracts

With regard to the exchange contracts, we understand that a negotiating session is occurring in Washington this week, and that the documents produced so far are not available for public distribution. We also are led to understand that the contracts will not be made available to the public until after they are completed and perhaps signed. I encourage you to allow the release of current draft documents related to the exchange proposals, as repeatedly requested by representatives of the State of Alaska.

From our review of the state's comments on the draft contracts, and from discussion at the committee meeting last week, there appear to be major unresolved issues that should be considered in the negotiations. These include:

(a) Overriding revenue retention for the State of Alaska. According to Mr. Gilmore the negotiations would have to be redirected, and draft agreements and appraisals would have to be adjusted, to protect the State's existing entitlement to oil and gas revenues from public lands in Alaska. Senator Murkowski has supported the concept of retained revenue for the State. The State should not be expected to agree to land exchanges that could remove the best geologic structures from public ownership unless the State is assured of revenue protection. Has the Interior Department revised the agreements and appraisals to include this provision; if not, why?

(b) We understand that Interior is proceeding with the exchange of ANWR lands claimed by the State of Alaska on grounds of navigability, and that some lands claimed by the State may be included among trade packages offered by Refuge inholders. What consideration is being provided for these claims in the contracts?

(c) The issue of ANCSA 7(i) subsurface revenue sharing has been raised with regard to trade lands already acquired by the Arctic Slope Regional Corporation in ANWR. Will the trade lands within the proposed ANWR coastal plain exchanges be subject to 7(i)? Will any provision be made in these contracts for subsurface revenue sharing? If not, how will disputes be resolved in the future?

(d) The agreement is reported to contain a provision allowing the original inholder to retain a subsistence easement. What are the reasons for including this provision? How does it affect the value of the inholdings? Does it protect other hunting and fishing interests?

(e) Mr. Gilmore was unable to describe a reported contractual provision allowing some corporations to rescind an exchange after exploring ANWR tracts for oil and gas. The inclusion of such a provision seems contradictory, if the purpose of the exchanges is to acquire and hold valuable Refuge inholdings in perpetuity. What is the reason for the rescission clause? How is it structured?

(f) Mr. Gilmore stated that the contract will waive ANILCA Title XI standards for access across ANWR lands. How will access rights and needs be protected, particularly on lands that lie in important transportation corridors?

Public Process

As one legislator stated at the House Resources Committee meeting, there appears to be a stampede underway to accomplish

the proposed land trades, even though basic documentation, planning, and public review are incomplete or unavailable. Proponents of the land exchanges, including representatives of ANCSA corporations and Interior, have said that there are political advantages to moving forward with the land trades now so that they can be put before Congress soon after the 1002(h) study is presented. What public process does Interior intend for the proposed agreements?

Appraisals

The appraisal process for affected lands is very unclear, but information provided to date indicates that the process allows for a large amount of discretion and guesswork in the establishment of both subsurface ANWR values and the value of surface acreage of other Refuge inholdings. Mr. Gilmore stated that the BLM's ANWR subsurface appraisal "needs to go through several levels of approval (at Interior) in Washington" before it will be available. He also said inholdings cannot be appraised by standard procedures alone because these do not allow for consideration of wildlife (i.e. public interest) values, and that "any value over and above (the standard appraised value) will be determined by negotiation between the Department and the Native corporations." Mr. Gilmore said that the Department expects to "know precisely" what the inholdings are worth based on highest and best use and future value, as opposed to present value for ANWR subsurface. Please describe the appraisal process for both surface acreage and subsurface oil and gas values, including the discretion that may be exercised within the Secretary's Office. Will the appraisal process and negotiations be documented? Is there a written appeal process for participants? What considerations and criteria will guide the Department in the negotiations to establish surface values?

Inclusion of National Park Inholdings

Mr. Gilmore stated that the exchanges have proceeded "a long way down the road," but that he doesn't think it is too late to include National Park lands in this exchange proposal. The State of Alaska has been approached by the Park Service numerous times since the passage of ANILCA toward the purpose of eliminating state-owned inholdings in Alaska parks, including Denali and Wrangells-St. Elias. Acquisition of some of these lands by the Interior Department would appear to be in the national interest. Can you explain why the Department's only interest at this time centers on acquisition of Refuge inholdings? Has the Department established a priority list for Refuge and Park inholdings throughout Alaska, ranking them as a single group? Has the Department

reviewed all inholdings in Alaska parks and refuges to be certain that this apparent opportunity to acquire state or private inholdings is best used? Are the planned acquisitions consistent with applicable Refuge management plans?

Tract Selection

Even though tract selection may occur in the next four to six weeks, it seems that the ANWR tracts have not yet been identified. Mr. Gilmore stated that virtually all of the coastal plain would be available for exchange. In the past, we have heard that anywhere from 25,000 to 250,000 acres may be exchanged and we are informed that Senator Stevens has pressed for agreement that no geologic structure will be traded in its entirety. Obviously, the location of the trade tracts will be very important; 250,000 acres would more than encompass the Prudhoe Bay Unit Participating Area, and spread across the coastal plain could segregate the most promising geologic structures. When will the public know which tracts may be traded? Why has the Department chosen to keep the tract identification and selection process secret? How will conflicts be resolved between parties which nominate and seek to obtain the same tract?

State of Alaska Participation

When asked whether he regarded the State of Alaska as a supporter or advocate of the exchanges, Mr. Gilmore stated that it is "my impression from the sincerity of the negotiations and the people involved in the negotiations...that the state is proceeding as an active, interested participant in the exchange." On the other hand, the State has indicated that it is not committed to the exchange process and does not at this time endorse the concept of trading ANWR subsurface to eliminate inholdings in other Refuges. Is Interior fully aware of the State's land trade statute (AS 38.50), which requires legislative approval of any exchange agreement before it can be finalized?

Prior Existing Rights

One committee member raised the question of the State of Alaska's prior existing rights to the ANWR subsurface. As you know, the State regards its entitlement to 90% of oil and gas revenues produced in Alaska refuges as part of the solemn compact between Alaska and the United States leading to Alaska Statehood. This revenue entitlement is very important to the people of the State. Mr. Gilmore stated that he believes that Congress will attempt to reduce this entitlement to 50% on the basis of the NPRA model, and that this would serve as the basis for any retention mechanism preserving the State's

entitlement. Is it the Interior Department's view that this existing right may be traded away without the State of Alaska's concurrence?

Again, we appreciate the willingness of Interior Department officials to respond to the Legislature's questions and concerns. We will contact you when the Committee schedules its next meeting on the proposed ANWR trades.

Sincerely,

Representative Sam Cotten
Co-Chairman, House Resources Committee

cc: Governor Steve Cowper
Senator Frank Murkowski
Senator Ted Stevens
Representative Don Young
Bob Gilmore, USFWS
Boyd Evison, USNPS

Public Law 96-487
96th Congress

An Act

To provide for the designation and conservation of certain public lands in the State of Alaska, including the designation of units of the National Park, National Wildlife Refuge, National Forest, National Wild and Scenic Rivers, and National Wilderness Preservation Systems, and for other purposes.

Dec. 2, 1980
[H.R. 39]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. This Act may be cited as the "Alaska National Interest Lands Conservation Act".

Alaska National Interest Lands Conservation Act.
16 USC 3101 note.

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findings and order of the Secretary shall be set aside by such court if they are not found to be supported by substantial evidence, as provided in section 706(2)(E) of title 5, United States Code.

(3) If any person fails to pay an assessment of a civil penalty against him under paragraph (1) after it has become final, or after the appropriate court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General of the United States, who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(4) The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this subsection unless the matter is pending in court for judicial review or recovery of assessment.

(h) REPORT TO CONGRESS.—Not earlier than five years after the enactment date of this Act and not later than five years and nine months after such date, the Secretary shall prepare and submit to Congress a report containing—

(1) the identification by means other than drilling of exploratory wells of those areas within the coastal plain that have oil and gas production potential and estimate of the volume of the oil and gas concerned;

(2) the description of the fish and wildlife, their habitats, and other resources that are within the areas identified under paragraph (1);

(3) an evaluation of the adverse effects that the carrying out of further exploration for, and the development and production of, oil and gas within such areas will have on the resources referred to in paragraph (2);

(4) a description of how such oil and gas, if produced within such area, may be transported to processing facilities;

(5) an evaluation of how such oil and gas relates to the national need for additional domestic sources of oil and gas; and

(6) the recommendations of the Secretary with respect to whether further exploration for, and the development and production of, oil and gas within the coastal plain should be permitted and, if so, what additional legal authority is necessary to ensure that the adverse effects of such activities on fish and wildlife, their habitats, and other resources are avoided or minimized.

(i) EFFECT OF OTHER LAWS.—Until otherwise provided for in law enacted after the enactment date of this Act, all public lands within the coastal plain are withdrawn from all forms of entry or appropriation under the mining laws, and from operation of the mineral leasing laws, of the United States.

PROHIBITION ON DEVELOPMENT

16 USC 3143.

SEC. 1003. Production of oil and gas from the Arctic National Wildlife Refuge is prohibited and no leasing or other development leading to production of oil and gas from the range shall be undertaken until authorized by an Act of Congress.

WILDERNESS PORTION OF STUDY

Report to President.
16 USC 3144.

SEC. 1004. (a) As part of the study, the Secretary shall review the suitability or nonsuitability for preservation as wilderness of the

43 USC 1611.

12(a) of the Alaska Native Claims Settlement Act by the amount of acreage determined by the Secretary to be conveyed by Kaktovik Inupiat Corporation to the United States pursuant to subsection (g)(1) of this section.

(6) The Secretary shall charge against the entitlement of Kaktovik Inupiat Corporation pursuant to section 12(a) of the Alaska Native Claims Settlement Act the lands conveyed by the Secretary to Kaktovik Inupiat Corporation pursuant to subsection (g) (2) and (3) of this section.

(7) The Secretary shall charge against the entitlement of Ukpeagvik Inupiat Corporation pursuant to section 12(a) of the Alaska Native Claims Settlement Act the lands conveyed by the Secretary to Ukpeagvik Inupiat Corporation pursuant to subsection (i) of this section.

(8) In no event shall the conveyances issued by the Secretary to Arctic Slope Regional Corporation, Kaktovik Inupiat Corporation, and Ukpeagvik Inupiat Corporation pursuant to the Alaska Native Claims Settlement Act and this section exceed the total entitlements of such Corporations under the Alaska Native Claims Settlement Act, except as expressly provided for in subsection (g) of this section.

43 USC 1601 note.

(n) RESERVED LANDS.—(1) Congress finds that it is in the public interest to reserve in public ownership the submerged lands in the bed of the Colville River adjacent to lands selected by Kuupik Corporation and in the beds of the Nechelik Channel, Kupigruak Channel, Elaktoveach Channels, Tamayayak Channel, and Sakoonang Channel from the Colville River to the Arctic Ocean, and (2) notwithstanding any other provision of law, conveyance of the surface estate of lands selected by Kuukpik Corporation pursuant to section 12 (a) and (b) of the Alaska Native Claims Settlement Act and associated conveyance of the subsurface estate to Arctic Slope Regional Corporation pursuant to section 14(f) of such Act shall not include conveyance of the beds of the Colville River and of the channels named in this subsection, and the acreage represented by the beds of such river and of such named channels shall not be charged against the land entitlement of Kuukpik Corporation and Arctic Slope Regional Corporation pursuant to the provisions of the Alaska Native Claims Settlement Act.

43 USC 1613.

(o) FUTURE OPTION TO EXCHANGE, ETC.—(1) Whenever, at any time within forty years after the date of enactment of this Act, public lands in the National Petroleum Reserve—Alaska or in the Arctic National Wildlife Range, within seventy-five miles of lands selected by a Village Corporation pursuant to the provisions of section 12(a)(1) of the Alaska Native Claims Settlement Act, are opened for purposes of commercial development (rather than exploration) of oil or gas, Arctic Slope Regional Corporation shall be entitled, at its option, within five years of the date of such opening, to consolidate lands by exchanging the in-lieu subsurface lands which it selected pursuant to the provisions of section 12(a)(1) of the Act for an equal acreage of the subsurface estate, identified by Arctic Slope Regional Corporation, beneath the lands selected by the Village Corporation. Prior to the exercise of such option, Arctic Slope Regional Corporation shall obtain the concurrence of the affected Village Corporation. The subsurface estate identified for receipt by Arctic Slope Regional Corporation pursuant to this subsection shall be contiguous and in reasonably compact tracts, except as separated by lands which are unavailable for selection, and shall be in whole sections and, wherever feasible, in units of not less than five thousand seven hundred and sixty acres.

43 USC 1611.

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(2) Arctic Slope Regional Corporation shall not be entitled to exchange, pursuant to the provisions of paragraph (1) of this subsection, any in-lieu subsurface estate which the corporation has developed for purposes of commercial extraction of subsurface resources; unless the Secretary determines such an exchange to be in the national interest.

(3) The Secretary shall take such steps as may be necessary to effectuate an exchange sought by Arctic Slope Regional Corporation in accordance with the provisions of paragraph (1).

(4) With regard to subsurface estates acquired by Arctic Slope Regional Corporation pursuant to this subsection, the Secretary may promulgate such regulations as may be necessary to protect the environmental values of the Reserve or Range and consistent with the regulations governing the development of those lands within the Reserve or Range which have been opened for purposes of development, including, but not limited to, regulations issued pursuant to section 22(g) of the Alaska Native Claims Settlement Act. 43 USC 1621.

(p) CONDITIONS.—All lands or interests in lands conveyed by the Secretary in subsections (d), (f)(1), (g)(2), (g)(3), (h), and (i) of this section to Arctic Slope Regional Corporation or a Village Corporation, as the case may be, shall be subject to valid existing rights, and in accordance with, and subject to, the provisions of the Alaska Native Claims Settlement Act, as amended, as though the lands were originally conveyed to such corporation under the provisions of such Act. 43 USC 1601 note.

COOK INLET VILLAGE SETTLEMENT

SEC. 1432. The Secretary is directed to:

(a) Terminate the review of the eligibility of Salamatof Native Association, Incorporated and withdraw any determination that said village corporation is not eligible for benefits under section 14(a) of this Act.

(b) Implement the agreement among the Secretary, Cook Inlet Region, Incorporated and Salamatof Native Association, Incorporated, which agreement dated August 17, 1979, had been filed with the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs in the House of Representatives, the terms of which are hereby authorized.

(c) Remove from the Kenai National Moose Range the surface estate of any land, therein to be conveyed to Salamatof and the subsurface estate of any lands therein conveyed or to be conveyed to Cook Inlet Region, Incorporated, pursuant to the agreement authorized to be implemented under subparagraph (ii) of this paragraph.

(d) Implement an agreement among Cook Inlet Region, Incorporated, the corporation representing the Village of Alexander Creek, the corporation representing the group of Alexander Creek and the United States, if such agreement is filed with the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs of the House of Representatives prior to December 18, 1979, the terms of which are hereby authorized, and upon performance of the conditions precedent set forth in said agreement, certify Alexander Creek, Incorporated, as a group corporation, eligible for land and other benefits under the Alaska Native Claims Settlement Act and this Act.

(e) Treat lands conveyed to Alexander Creek as lands conveyed to Village Corporations for the limited purpose of calculating the acreage to be charged against the entitlement of Cook Inlet Region under section 4 of Public Law 94-456. 43 USC 1611 note.

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 6, 1987

The Honorable Bill Horn
Assistant Secretary for
Fish, Wildlife and Parks
U. S. Interior Department
Washington, D. C. 20240

Dear Secretary Horn:

I am writing with regard to the draft 1002(h) study which presents alternatives for management of the coastal plain of the Arctic National Wildlife Refuge (ANWR).

The interest shared by Alaskans in the decisions about ANWR are fairly clear: we need to maintain a clean, healthy environment and provide jobs and revenue for Alaska's people. These are national interests as well.

Toward achieving these goals, the U. S. Congress should promptly open the coastal plain of the ANWR to oil and gas exploration, production, and transportation under conditions that are in the interest of the nation and the state; reserving the leasing of land in the core caribou calving grounds until a later date. Although, at this time, there is some controversy about the location of the calving ground, we are hopeful that the research data can be put to good use in the near term to define it. Protection of the Porcupine herd is in the interest of American and Canadian citizens. Other environmental issues such as air and water quality, waste management and disposal, and development coordination also need attention.

The Interior Department should desist from discussing land trades that would eliminate the State of Alaska's revenue share from oil and gas activity in the Refuge and that could reduce the ownership influence of the state and federal governments.

Unless the state concurs, the U. S. Congress should not allow measures or actions that reduce the state's entitlement to oil

and gas revenue from the Refuge. The Congress should require the protection of the environmental and subsistence resources of the Refuge, including habitat, air, and water, in the event of oil and gas development on the coastal plain of the Refuge.

In recognition of Alaska's economic situation and the need for long-term economic development in the state, the Congress should require that exploration and development activity in the Refuge be conducted by Alaska work forces.

The Congress also should amend the Export Administration Act to reduce America's trade problem and energy costs by allowing the export of new production from Alaska's North Slope.

Thank you for considering these concerns. I hope that the Interior Department will work toward accomplishing these objectives during the Congressional debate on ANWR.

Sincerely,

Sam Cotten

Representative Sam Cotten
co-Chairman, House Resources Committee
(907) 465-3711/15/99

SC:smc

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

MEMORANDUM October 1, 1980

TO: Representative Sam Cotten

FROM: Jack Kreinheder
Issues Analyst JK

RE: The Transfer of State Gas Leases to the Cook Inlet Regional Corporation
Research Request No. 167

It appears that the State of Alaska has traded land to the Cook Inlet Regional Corporation which includes producing natural gas reserves. You have asked that we determine whether the State can rescind the trade of these producing gas leases, and if so, what action would be necessary to do so. Because of delays in obtaining information from the Division of Minerals and Energy Management and other commitments by the Division of Legal Services, we have not yet been able to reach conclusive answers to your questions. Billy Berrier, the Director of the Legal Services Division and the person most familiar with the Cook Inlet lands trade, is now out of town for a week, so it looks as though it will be another 10 days to two weeks before we can fully respond to your request. However, we have been able to gather some preliminary information which should be of interest to you.

The producing gas leases which were apparently traded to Cook Inlet cover portions of two tracts in the Kenai and Kenai Deep units. These leases are located on the west side of the Kenai Peninsula a few miles southwest of Soldotna and cover most of four sections of land (a section being 640 acres). A map showing the location of the leases is attached. State legislators and officials were aware that some oil and gas leases were included in the lands to be traded to Cook Inlet, but my review of the legislative history of the trade indicates that no one was aware that producing leases were involved. The apparent oversight was discovered when staff from the Division of Minerals and Energy Management (DMEM) were going through the adjudicating process to determine what annual rentals and minimum royalties were due to the Cook Inlet Corporation from the traded non-producing leases. All oil and gas leases generate

these rentals and minimum royalties, but for non-producing leases the amounts involved are very small. During this process, DMEM staff determined that the lands traded to Cook Inlet included parts of the Kenai and Kenai Deep leases. Although it is not clear at this time how much gas is involved in the apparent oversight, Jan Williams of the Department of Law estimated that the traded lands produce $400,000 to $500,000 in annual royalties. The responsibility for the oversight is also not known, but we will attempt to determine just how the mistake occurred.

Although it appears fairly certain from the legislative history and the text of the legislation authorizing the Cook Inlet land trade that the legislature did not intend to trade the producing gas leases to the Cook Inlet Corporation, it is unclear whether the State has sufficient legal grounds to rescind the trade or specific aspects of the agreement. As you know, the Cook Inlet Corporation did receive substantial proven mineral values from the trade in the form of Beluga coal reserves. Section 6(i) of the Alaska Statehood Act prohibits the State from conveying mineral rights to private owners, but this provision was waived by the passage of HR 6644 by the 94th Congress. HR 6644 amended several provisions of the Alaska Native Claims Settlement Act, waived Section 6(i), and set forth the terms and conditions of the Cook Inlet trade. Even though the Section 6(i) waiver was intended to facilitate the trade of the Beluga coal reserves, it appears that the legislation covered all types of minerals, including natural gas reserves. Therefore, it is unlikely that the State could cite the constitutional prohibition against the alienation of mineral rights as grounds for the return of the Kenai gas leases traded to the Cook Inlet Corporation. A copy of the passage waiving 6(i) is attached.

Alaska law also contains a prohibition against the alienation of mineral rights (Sec. 38.05.125). However, this statute was waived by the legislature when it approved the Cook Inlet trade in March, 1976. In addition, the legislation (CSHB 784) stated specifically that "the conveyance shall pass all the state's right, title, and interest in the land, <u>including the mineral subsurface estate notwithstanding any other provisions of law</u>" (emphasis added). As in the federal law, the purpose of this language was to allow the transfer of the Beluga coal lands to Cook Inlet, but the legislation would also seem to give Cook Inlet full rights to any natural gas reserves it received in the trade, even if they were transferred unintentionally. A copy of CSHB 784 is attached.

It also appears doubtful that the legislative history or intent of the legislation approving the trade form a legal basis for the return of the lands in question. Although Mr. Berrier indicated that this issue would require legal research into the background of the Cook Inlet land trade, his initial impression was that it would be difficult for the State to recover the lands containing the producing gas leases on the basis of legislative history or intent. We plan to ask Mr. Berrier to pursue this question in more detail as soon as he returns to Juneau.

One important point which Jan Williams raised is that it may not be necessary for the State to have a strong legal case for the return of the lands containing the producing gas leases. The Cook Inlet Corporation may not be aware that these producing gas leases were included in the lands they received in the trade, and although the corporation would no doubt like to have the producing gas leases in its control, the corporation may consider simply returning or exchanging the lands in question to the State, rather than entering a protracted legal dispute over the ownership of the lands. The Cook Inlet land trade, as you know, was quite controversial at the time it was approved, and Cook Inlet may wish to avoid reopening that controversy if it can be clearly shown that the legislature had no intent to transfer these leases to the Cook Inlet Corporation.

We apologize that we were not able to complete your request as soon as we had anticipated, but we will forward the results of the Legal Services Division's research as soon as possible. We will also provide you with information on the amount of gas involved, projected royalties, and other relevant material as soon as these figures are available. Please contact us if you have any questions in the meantime.

JK/bf
Attachment

cc: Representative Hugh Malone

MARCH 1976 ALASKA

PROPOSED
COOK INLET LAND EXCHANGE
SETTLEMENT

Native*

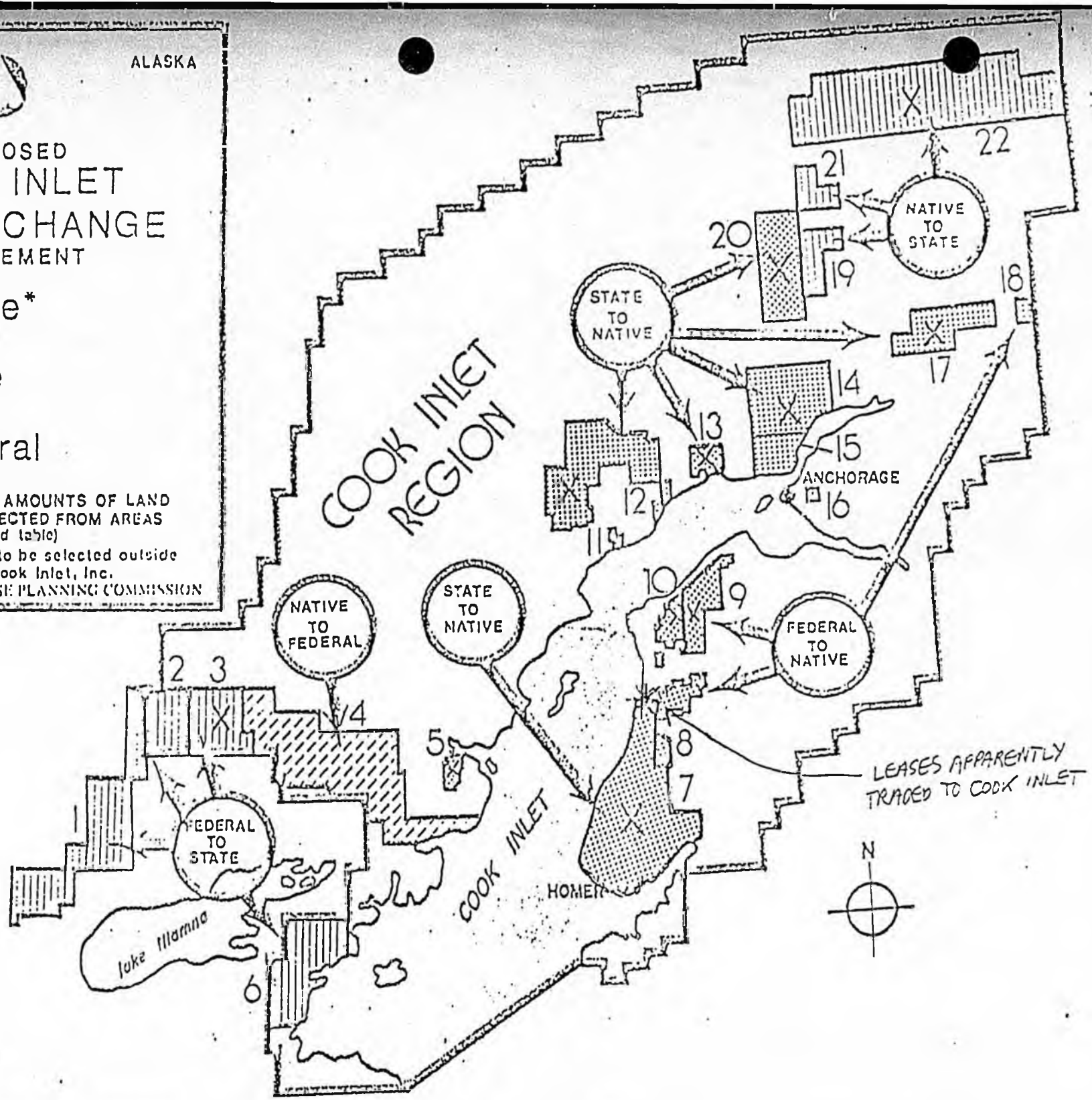
State

Federal

XX SMALLER AMOUNTS OF LAND TO BE SELECTED FROM AREAS (see attached table)

* 29.66 Townships to be selected outside region by Cook Inlet, Inc.

FEDERAL STATE LAND USE PLANNING COMMISSION



SECTION 16

Section 16 is intended to prevent the Village Corporation for the Village of Tatitlek from losing part of its land entitlement as a result of a misunderstanding. Tatitlek relied on a consultant firm's advice and the apparent approval of the Interior Department in selecting two townships of its five township entitlement in an area withdrawn by the Secretary pursuant to section 17(d)(2) of the Settlement Act. Subsequently, however, the Bureau of Land Management disapproved the selection of the two townships. Because Tatitlek assumed that its selection had Departmental approval, it did not over-select other lands to provide alternate lands for selection in case its first selections were not approved. The deadline for village selections has passed and the Department has advised Tatitlek that no administrative remedy exists to allow re-selection of the two townships elsewhere. This amendment provides that Tatitlek can select the remainder of its entitlement—40,000 acres—from within the village deficiency area originally withdrawn for its selection.

SECTION 17

Section 17 amends subsection (f) of section 22 of the Settlement Act which provides certain authorities for land exchanges by Federal agencies with other land owners in Alaska.

In order to facilitate the Cook Inlet Area agreement provided for in section 12, the Department of the Interior advised that additional authorities for land exchanges would be needed.

The existing language of the subsection would not permit direct exchanges of land between the State and with Native corporations.

Secondly, section 6(i) of the Alaska Statehood Act prohibits the State from transferring the mineral interest to third parties in patents of lands selected by it under the Statehood Act.

[page 35]

Finally, the existing language of subsection (f) requires exchanges to be on the basis of equal value.

The amended language will permit direct exchanges of land between the State and Native corporations. It will permit the State or transfer mineral interests, notwithstanding section 6(i) of the Statehood Act, to Federal agencies in such exchanges. Finally, it will permit exchanges under the subsection to be on a basis other than equal value if the parties agree to the exchange and the Secretary deems it to be in the public interest.

SECTION 18

Section 18 is merely a savings clause which provides, that except as specifically provided in this legislation, the provisions of the Settlement Act are fully applicable to this legislation and nothing herein shall be construed to alter or amend those provisions.

TERMS AND CONDITIONS FOR LAND CONSOLIDATION AND MANAGEMENT IN THE COOK INLET AREA

Section 12 of H.R. 6644, as amended by the Committee, implements an agreement reached among the United States, the State of Alaska,

LAWS OF ALASKA

1976

Source

CSHB 784

Chapter No.

19

AN ACT

Relating to the Cook Inlet land exchange; and providing for an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. PURPOSE. The purpose of this Act is to provide for settlement of certain claims and in so doing to consolidate land ownership among the United States, the Cook Inlet Region, Incorporated, and the State of Alaska in order to facilitate land management, to create land ownership patterns which encourage settlement and development in appropriate areas, to facilitate implementation of the Alaska Native Claims Settlement Act by resolving problems created in context of the Act by the concentration of state patented land selected within the Cook Inlet region and to preclude the need for regional selections that would impact important state interests. The legislature finds the Cook Inlet land exchange is a matter of statewide significance, is in the general public interest, will accomplish the purposes set out and will both settle existing litigation and foreclose possible protracted and devisive litigation.

* Sec. 2. APPROVAL OF TRANSFER. The governor is authorized to convey to the United States for exchange with Cook Inlet Region, Incorporated, that land described in Appendix C of the agreement entitled "Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area, December 10, 1975" set out in House of Representatives Report No. 94-729, 94th Congress, First Session in accordance with the conditions of that agreement. The conveyance shall pass all the state's right, title and interest in the land, including the mineral subsurface estate notwithstanding any other provisions of law.

* Sec. 3. WAIVERS. The provisions of AS 38.05.125 and 38.95.060(c) do not apply to a conveyance made under this Act.

* Sec. 4. This Act takes effect immediately in accordance with AS 01.10.070(c).

Approved by governor: March 11, 1976
Actual effective date: [illegible]

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES
RESEARCH AGENCY

Pouch Y, State Capitol
Juneau, Alaska 99811
(907) 465-3991

October 30, 1980

TO: Representative Sam Cotten

FROM: Jack Kreinheder JK

RE: Cook Inlet Land Trade
Research Request No. 167

This is a brief status report on our research concerning the transfer of producing State gas leases on the Kenai Peninsula to the Cook Inlet Regional Corporation (CIRI) as part of the Cook Inlet Land Trade approved in 1976. Although we have not been able to determine a firm answer to your question as to whether the State can recover these leases, we have identified what the State would have to prove to have a legal case for the return of the gas leases. It appears that the State's legal case is weak and that negotiations for the return of the leases are more likely to be successful than legal action. In addition, this memo summarizes the available information on the responsibility for the unintentional conveyance of the producing leases.

The two producing leases which were conveyed to CIRI are ADL #00460, in the Kenai unit, and ADL # 22330, which overlaps the Kenai and Kenai Deep units. All of ADL #00460 which covers one section or 640 acres of land, was deeded to CIRI, with the exception of two small lakes in the lease area. ADL #22330 which produces over 95 percent of the total gas from the two leases, includes four sections, three of which were deeded to CIRI. The combined annual royalties to the State from the leases are slightly under $400,000.

We explained the situation to Billy Berrier, Director of the Division of Legal Services, and asked whether he believed the State had any legal grounds for the return of the producing gas leases. Mr. Berrier emphasized that he could not provide a legal opinion on the matter without essentially preparing all the documentation for a court case, which time did not allow. However, he was able to identify the important questions which pertain to the issue.

According to Mr. Berrier, the legislative history or intent of the legislation does not provide a legal basis for the return of the conveyed gas leases. Although all of the committee testimony and supporting reports that I have found on the Cook Inlet Land Exchange indicate strongly that the legislature did not intend to convey producing gas leases to CIRI, this intent apparently has no legal merit and does not invalidate in any way the transfer of the producing leases.

Mr. Berrier believes that the State's only legal basis for recovering the leases would be to thoroughly document that the conveyance of the producing leases was a result of a "mutual mistake of fact" on the part of both the State and CIRI. Proof would be required that neither the State as a whole nor CIRI were aware that producing leases were contained in the lands being conveyed. An important point is that it is not sufficient to document that the legislature alone lacked knowledge of the producing leases, because the State acted as a single entity in conveying the lands transferred to CIRI. If the Division of Lands, which actually deeded the lands to CIRI, was aware of the producing leases, then no mutual mistake of fact could be demonstrated, regardless of legislative intent or knowledge.

It is unclear at present whether the Division of Lands had knowledge of the producing gas leases. I spoke with Bill Beaty, the principal negotiator for the CIRI conveyances about the leases. He stated that the Division of Lands had circulated all of the CIRI selections among State departments, including the Division of Minerals and Energy Mangement, and at no time had DMEM or other agencies identified the producing leases on the selected lands or recommended against conveyance.

The DMEM staff apparently believe that the selections containing the leases in question were not circulated to DMEM for erview, so there appears to be some disagreement between the two divisions as to which division was responsible for the unintentional conveyance. In any case, a claim of mutal misunderstanding of fact must prove that no State agency was aware that the producing leases were included in the CIRI selections.

The State would also need to demonstrate that CIRI was not aware of the leases, either, which may be a difficult task. Some support for this case might be derived from the fact that the State is still collecting royalties on the leases and CIRI has made no claim for the royalties, even though they have received full title to the land. However, Mary Halloran, special assistant to the Commissioner in the Department of Natural Resources, is fairly sure that CIRI had full knowledge of the producing wells before the selections were made. The failure of CIRI to collect the royalty payments may simply reflect CIRI's desire to keep the issue quite. If CIRI can demonstrate prior knowledge of the producing leases, the State has no case for a mutual mistake of fact.

It therefore appears that the State's legal grounds for the return of the leases are very weak. Mary Halloran indicated that DNR has still not decided how to resolve the issue, but that the department is much more likely to enter into negotiations with CIRI than to pursue legal action. We will inform you of DNR's actions on the recovery of the leases as soon as more information is available. Please contact us if you have any questions.

JK/dp

cc: Hugh Malone

MEMORANDUM State of Alaska

TO: Esther C. Wunnicke
Commissioner
Department of Natural Resources

DATE: November 28, 1986

FILE NO: 661-86-0648

TELEPHONE NO:

FROM: Harold M. Brown
Attorney General

SUBJECT: Implementation of the 1979 MOU
Re: Kachemak Bay State Park

By: Elizabeth J. Barry EJB
M. Francis Neville MFN
Assistant Attorneys General
Natural Resources - Anchorage

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ATTORNEY-CLIENT
PRIVILEGE

You have requested our review of the Memorandum of Understanding between the State of Alaska, Kenai Peninsula Borough (Borough), Seldovia Native Association (Seldovia), and Cook Inlet Region, Inc. (CIRI) dated May 7, 1979 (1979 MOU or Kachemak MOU) to determine if the state is obligated to convey to CIRI land specified in Appendix E which is valuable for oil and gas, including land erroneously conveyed by the Bureau of Land Management (BLM) to the state. [redacted]

I. BACKGROUND

The Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1601, et. seq., was enacted on December 18, 1971. Under §§ 11(a)(1) and 11(a)(2) of ANCSA, federal land and land selected by or tentatively approved (but not yet patented) to the state was withdrawn surrounding each eligible Native village. If this land was insufficient to satisfy village and regional corporation ANCSA entitlements, the Secretary of the Interior was authorized by § 11(a)(3) of ANCSA to make additional withdrawals of unappropriated and unreserved federal land.

1/ Under the T&C and the 1979 MOU, the state has already conveyed valuable oil and gas leases to CIRI, and concurred in federal conveyances of lands subject to oil and gas leases. Section 14(g) of ANCSA has also allowed CIRI to receive oil and gas revenues not contemplated by the parties to the T&C. [redacted]

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Although the provisions of §§ 11(a)(1) and (2) of ANCSA made adequate land available for Native selection in most areas of the state, a combination of factors resulted in severe land availability problems in the Cook Inlet region. Because the Cook Inlet region encompassed the most populous areas of the state, much of the land was unavailable under ANCSA, including land conveyed prior to ANCSA to both the state and private individuals, and land used by federal agencies or withdrawn for national defense purposes. In addition, most of the Native villages in the Cook Inlet region were located along the shores of Cook Inlet and, as a result, much of the area withdrawn by § 11(a)(1) of ANCSA was located in the waters of Cook Inlet. Thus, the statutory ANCSA withdrawals did not make a sufficient amount of land available to satisfy the entitlement of CIRI and its villages, and additional withdrawals under § 11(a)(3) were necessary.

Immediately after ANCSA passed, the state selected 77 million acres of its Statehood Act entitlement, much of it located in the Cook Inlet region. The validity of these selections was questioned in Alaska v. Morton, Civ. No. A-48-72, which was settled in September 1972. The settlement, which recognized the validity of some selections in the Cook Inlet Region, was later challenged by CIRI in a suit against the Secretary.

CIRI also pursued an administrative resolution of its land selection problems. In 1974, the solicitor of the Department of the Interior offered CIRI a settlement of the pending litigation under which CIRI would receive land in the Kenai National Moose Range, including the Swanson River oil field which provided much of the state's revenue. The offer also included valuable tracts in the Anchorage area at Point Woronzof, Point Campbell and a portion of the Campbell Airstrip. CIRI initially rejected the offer and, after the state became aware of its terms, it was withdrawn by Interior.

CIRI began seeking a Congressional resolution of its problems as the deadline for ANCSA selections approached. It became clear that a workable solution required state participation, and members of Congress urged the state to enter into the settlement discussions. The state began serious negotiations with CIRI and Interior in April 1975.

An agreement, the Terms and Conditions for Land Consolidation and Management in the Cook Inlet Area ("T&C"), was signed on December 10, 1975, by representatives of Interior, CIRI, and the state. The agreement required ratification by Congress and the State of Alaska. The major elements of the

complex and controversial trade were: 1) CIRI would receive more than half of its ANCSA entitlement outside of its boundaries; 2) the United States would convey approximately 50 townships to the state in excess of the Statehood Act entitlement as well as key tracts in the Anchorage area in exchange for 20.5 townships in the Cook Inlet area that the state would convey to the United States to be made available under ANCSA; and 3) the United States would convey 10,000 acres in fee and 220,000 acres of subsurface rights in the Kenai National Moose Range to CIRI.

Congress approved the T&C in December 1975 (P.L. 94-204, 89 Stat. 1156). The Alaska legislature approved the trade in March 1976 (Ch. 19, SLA 1976). The T&C was extremely controversial and the Alaska legislature was presented with conflicting testimony concerning the wisdom and likely results of approving the trade. The legislative history indicates that although land known to be valuable for oil and gas might be conveyed to CIRI under the T&C, both CIRI and DNR understood and told the legislature that no revenue producing oil and gas leases would be transferred to CIRI.

As with ANCSA itself, the process for implementing the T&C has taken longer than anticipated. The timeframes set out in the original agreement have been extended several times.

II. THE 1979 KACHEMAK BAY STATE PARK MEMORANDUM OF UNDERSTANDING

The Kachemak MOU was designed to resolve a number of long-standing land entitlement and land management issues. The state's incentive for entering the agreement was to restore land within the Kachemak Bay State Park (KBSP) to state ownership.

KBSP was established by the legislature in 1970. AS 41.21.131. At that time most of the land was selected by or tentatively approved to the state. With the passage of ANCSA in 1971, much of the land within the park was withdrawn for the Native village of Seldovia. As early as 1974, Seldovia Native Association, Inc. (Seldovia) and the state expressed mutual interest in exchanging Seldovia land within the park boundaries for developable state land outside the park.

Of particular interest to Seldovia was a parcel within the village's core township known as Barbara Point. This land was tentatively approved to the state under the Statehood Act and, prior to passage of ANCSA, Barbara Point had been approved by the state for conveyance to the Kenai Peninsula Borough as

part of its municipal entitlement. Legal disputes regarding the status of approved municipal selections of land tentatively approved to the state which were withdrawn for Native selection by Section 11(a)(2) of ANCSA, clouded the Borough's claim to the land at Barbara Point. Seldovia wanted the parcel for a subdivision for its shareholders and made its acquisition the sine qua non of its participation in any land exchange with the state. Negotiations were expanded to include the Borough.

The Borough's goal in the negotiations was acquisition of a port and industrial site for the shipment of liquified natural gas to Pacific Rim countries. The logical sites were at Nikiski and Stariski Creek, and were unavailable due to selections by CIRI. CIRI was brought into the Kachemak trade to acquire those sites for the Borough. 2/ In addition, CIRI's participation was necessary if the state was to acquire the subsurface estate in the park. CIRI's primary goals in the 1979 MOU were to speed up conveyance of land in fulfillment of its entitlement and to replace its subsurface estate in the park with more useable acreage elsewhere. Due to litigation over the legality of the T&C, conveyances from the state to CIRI had been delayed for over two years.

In 1977, and possibly earlier, Seldovia's president, Fred Elvsaas, and state employees from the division of parks (Parks), began serious discussions in an attempt to agree upon a land exchange. The state's negotiating efforts were under the general direction of Michael C. T. Smith, then Assistant Commissioner and Director of the division of lands, although after the first few meetings it appears Smith did not directly participate in the negotiations. Neil Johannsen, then Chief of Planning at Parks, and Ron Swanson from the title administration section of the division of forest, land and water management were the initial negotiating team. Sandy Rabinowitch of Parks later replaced Johannsen. Beginning in 1978, Chip Dennerlein, a special assistant to the Commissioner of Natural Resources, became the primary negotiator for the state, with assistance from Swanson and Rabinowitch. Tom Meacham and later Shelley Higgins of the Department of Law provided legal advice for the state. In addition, Clem Tillion and Hugh Malone, then Kenai Peninsula

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2/ According to Chip Dennerlein, the Borough and CIRI reached their own agreement while the state was still negotiating primarily with Seldovia, and simply presented it to DNR.

state legislators, were periodically advised regarding the negotiations. Borough Mayor Don Gilman negotiated for the Borough with legal assistance from Andrew Sarisky. Fred Elvsaas, and Robert Hahn, attorney for Seldovia, represented the village corporation, and Margie Sagerser, Carl Marrs and George Kriste were the principle participants for CIRI.

The final agreement, embodied in the MOU, appeared at the time to meet the needs of all participants and settled or derailed three legal disputes. 3/ The Kachemak MOU is divided into three articles. In Article I, the Borough relinquisned its Barbara Point selection (paragraph 1) and Seldovia relinquished selections in Sadie Cove and elsewhere in KBSP (paragraphs 4 and 5). The Borough also relinquished its selection of land in Section 9, T.4 N., R.11 W., S.M. (paragraph 8) and the state agreed to notify the Bureau of Land Management that that section was available for conveyance to CIRI (paragraph 9). This land included a producing gas lease with an estimated discounted value in February 1979 of $10,000,000. In return, CIRI relinquished its Nikiski and Stariski selections (paragraph 10) and, in addition, in paragraph 11 CIRI agreed to relinquish one-third of its subsurface estate within the park boundary as identified in Appendix D.

In paragraph 12 of Article I the state agreed "to approve and expedite the conveyance [of]... land...as identified in Appendix E." The acreage conveyed by the state was to be credited to the state's Kenai pool obligation to CIRI under Appendix C of the T&C. The total acreage to be conveyed to CIRI was to be equivalent to the total acreage relinquished by CIRI in paragraph 11.

In Article II of the MOU the parties agreed to settle certain litigation, and Article III obligates the parties to enter future land exchanges to transfer land within the park boundary to the state. Because the MOU itself was not

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3/ The legal disputes were: (1) Seldovia v. U.S., A77-207, U.S. District Court -- Native selection of mental health land; (2) Appeal of State of Alaska, ANCAB VLS Nos. 78-42 and 77-10 -- the prohibition in Section 22(1) of ANCSA of selections within two miles of first class cities; and (3) the question of whether approved borough selections on state tentatively approved lands were valid existing rights under ANCSA.

technically a land exchange (although it provided for future land exchanges under AS 38.50) and it settled litigation, legislative approval was not required.

Appendix E contains land valuable for oil and gas, some of which has already been conveyed to CIRI. Appendix E was a list of land we believe was provided by CIRI which had been previously selected by CIRI under the T&C. 4/ Dennerlein recalls that he initially assumed the land had been previously approved by the state under the T&C, but did not check. 5/

Appendix E lists 9398 acres of surface estate and 9131.12 acres of subsurface estate. 6/ The state has still not received title to all the land in Appendix E. In addition to land already conveyed, Appendix E includes almost 190 acres in or adjacent to the Cannery Loop Unit Initial Participating Area to which the state has now received title. The division of oil and gas has recently estimated the value of these lands at approximately $5,640,000. 7/ The state has recently received title to additional oil and gas land included in Appendix E (1530 acres)

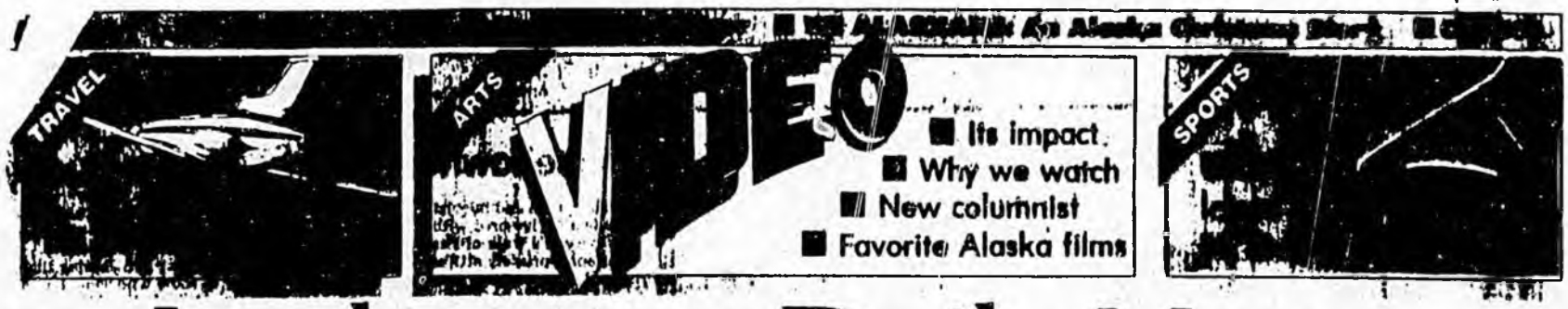
4/ Rabinowitch, Swanson, and Dennerlein all think that the list of state land to be conveyed to CIRI was provided by Margie Sagerser of CIRI.

5/ Bill Beaty, former Chief of DNR's Resources Allocation Section which was responsible for review and approval of lands for conveyances to CIRI under the T&C, stated that he was never asked to review land specifically for conveyance under the Kachemak MOU or identified as Appendix E. He could not say whether the parcels were reviewed earlier for possible inclusion in the Kenai Pool. On May 2, 1979, one day after DNR Commissioner Robert E. LeResche signed the Kachemak MOU, DMEM was asked to evaluate the subsurface estate listed in Appendix E. On May 4, 1979, DMEM replied with a memorandum estimating the value at between $50,000,000 and $120,000,000.

6/ These acreage figures were approximate and subject to revision as the land is surveyed.

7/ Memorandum from Cass Ariey, Petroleum Engineer, to Kay Brown, Director Division of Oil and Gas, dated May 20, 1986.

worth an estimated $51,900,000. 8/ You have requested advice regarding the state's legal obligation to convey this land.



Anchorage Daily News

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State mistakes cost millions

Native corporation got oil, gas worth as much as $500 million

By RONNIE CHAPPELL
Daily News reporter
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Mistakes by state officials executing a land swap 10 years ago have cost the state at least $35 million in oil and gas revenues, an examination by the Daily News reveals.

The cost of these oversights by state resource managers is growing by $5 million or more a year, and one day may exceed $500 million.

In response to inquiries by the Daily News, state officials have begun looking for ways to recover the lost oil and gas land and revenue. They also are drafting new land disposal rules designed to prevent the kind of errors that resulted in:

- The transfer of 11 valuable state-owned leases on the Kenai Peninsula to Cook Inlet Region Inc., the Anchorage-area Native regional corporation.
- The loss to CIRI of nearly half the state's ownership interest in one of the largest gas fields in the United States.
- The conveyance of more than 2,000 acres in the Cannery Loop gas field without knowing that it was worth $50 million to $120 million. Today, because of increases in the price of natural gas, the land could be worth $380 million to $720 million.
- The overlooking of a section of the Alaska Native Claims Settlement Act that allowed CIRI to take a third of state revenue from two known oil and gas fields.

The land CIRI has obtained is among the most valuable in Alaska. Over the past five years, the company has grown into a financial powerhouse that earns millions of dollars a year, and pumps millions more into 11 other Native regional corporations.

The engine of CIRI's success is the oil and gas income unwittingly turned over by the state.

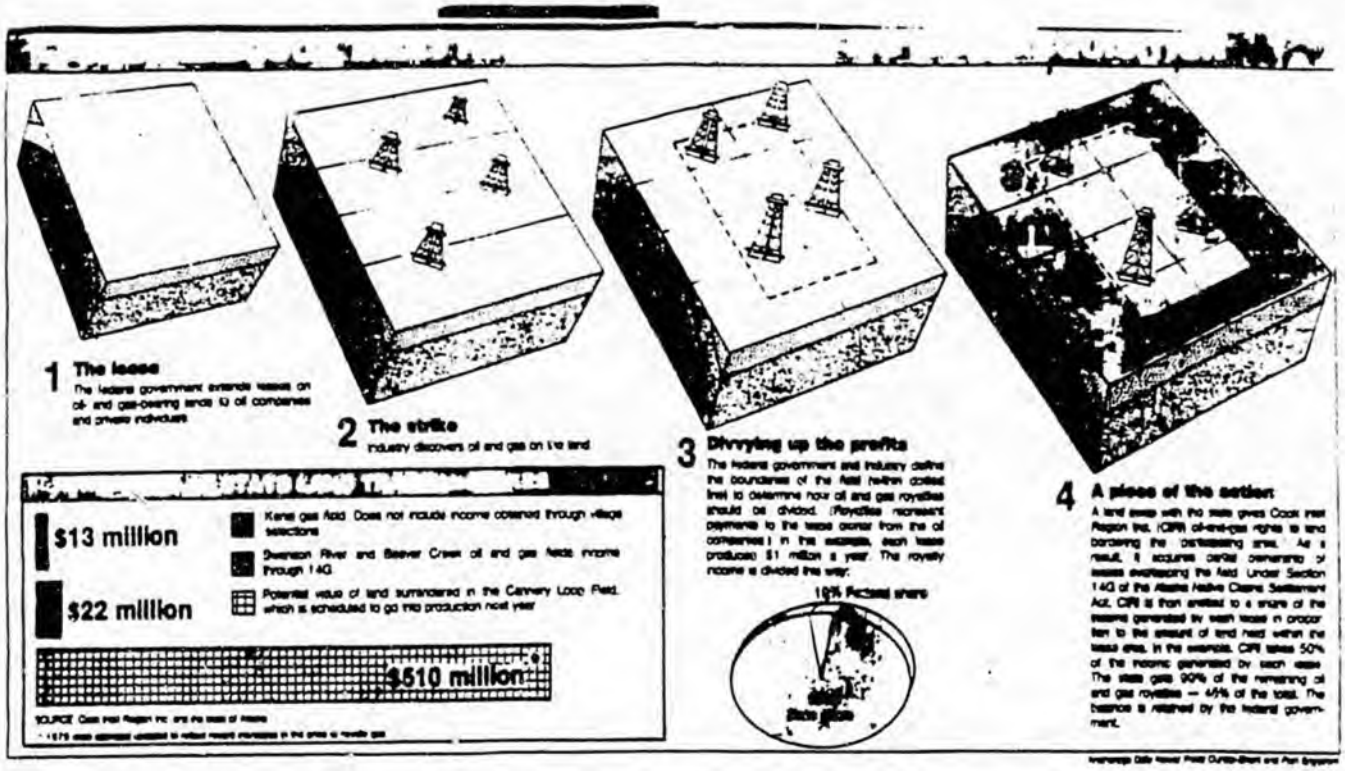
Under federal law, the state receives 90 percent of all oil and gas royalties from federal land in Alaska. Under that system, the state once earned up to $7 million a year from the Swanson River oil field.

CIRI used the land trade to take a 35.1 percent cut of the income from Swanson River. The state's share fell from 90 to 58.4 percent; the federal government gets 6.5 per cent.

The loss to the state was even greater in the Kenai gas field, one of the largest in the country. The field heats most of Anchorage, supplies raw material for a world-class fertilizer plant and fuels the only liquified natural gas export facility in the U.S.

Before 1976, the state collected more than 90 percent of the royalty income from the Kenai field. Through the land trade, CIRI acquired 65 percent, worth more than $10 million a year beginning in 1986, and the state share fell to 31.5 percent, with the balance going to the federal government.

See Page A-14, STATE



Mistakes in land deals with Native corporation cost state millions in oil and gas revenue

Continued from Page A-14

state's a big boy too."

Smith admits he erred in overlooking the implications of 14(g). But, he insists, so did others.

Guy Martin agrees. As state resources commissioner, Martin was Smith's boss when the trade was negotiated and submitted to lawmakers.

"It wasn't just the (Hammond) administration," he said. "There was huge public exposure of this thing." The trade was "the most thoroughly aired transaction the state ever conducted. That thing was turned inside out. I used to tell people that everyone but God had approved it, including the U.S. Supreme Court. To the extent this was missed, a lot of people had a shot at it."

But in reality, state decisions about the land trade were based on the analysis and advice of a small group of resource and legal experts whose understanding of the agreement was flawed.

Land trades, which contain hundreds of legal descriptions defining thousands of pieces of property, are extremely complex pieces of legislation, said former state Sen. John Rader of Anchorage.

In almost all instances, legislators rely on representations, in summary form, of what the bill is and does. You rely on the advice of state commissioners, the attorney general's office and your staff people," he said.

In Alaska, almost all of the information about the land trade came from Smith. He wrote a 42-page analysis that [illegible] publicly reviewed land exchange, certainly in Alaska and perhaps in American history," Smith said. "All of these people, and Dale (Tubbs) is a good example, had an opportunity to voice their concerns."

Tubbs disagrees.

"I give CIRI all the credit in the world for getting what they got," Tubbs said. "But they got it because of Michael C.T. Smith."

One who apparently foresaw the negative effect of the trade on state income was an aide to an assistant secretary of the Interior. Four months before the legislature approved the trade, Ted Bingham, a career employee of the Bureau of Land Management, predicted the state "would likely lose its share of mineral royalties" from the Swanson River oil field.

In his memo, Bingham estimated the loss at $4 million a year. He didn't mention Section 14(g) and today he's unsure how he calculated the loss.

Bingham's memo went to the joint Federal-State Land Use Planning Commission, which reviewed the trade. The warning went unheeded.

Bigger, more costly errors followed as state officials began the actual conveyance of land.

Gallett's lawsuit had delayed the process for three years. CIRI used that time to assess the available state and federal land. When the time came to select, CIRI was prepared to pick only the most valuable.

The delay hurt the state.

By 1979 the land trade was no longer the top priority at the Department of Natural [illegible] state had agreed to make "well located potentially developable land" available to CIRI.

Smith wrote that the state should retain land of public significance, but he didn't define the term. The memo doesn't mention producing oil and gas land, land with proven oil and gas reserves, or land with high oil and gas potential.

"From my standpoint, it was so obvious we weren't going to give up oil and gas fields, that why repeat it," Smith explained recently. "I could have said we shouldn't give them the Governor's Mansion. I could have gone into incredible detail.

"I couldn't believe anybody in their right mind — if the process was working right — would give them producing oil and gas leases.

"If at Roger's level there was a misunderstanding, that's a breakdown somewhere in the system. I can't believe that Bill Beaty, who was really the person responsible for implementing the trade, had any question about that," Smith said.

Beaty, who no longer works for the state, is on an extended tour of the Far East and could not be interviewed for this story.

By any measure, Smith's faith in the review process was badly misplaced.

When CIRI selected land in the Kenai and Sterling gas fields — selections that would transfer royalty income from the state to CIRI — the state conveyed it.

CIRI didn't just make the selections in the hope that an incompetent bureaucracy would stumble them away, never reviewed by the legislature.

Current natural resources employees say it is incredible that the state could transfer so much land so quickly.

Not all of the leases given to CIRI were valuable, but one of them represented more than a third of the state's ownership interest in the huge Kenai gas field. The previous year the lease had provided the state $495,000. Today, it produces more than $2 million a year for CIRI.

"We screwed up, to be quite blunt about it," said Ron Swanson, a land manager with the Division of Land and Water Management.

While one group of state employees was giving away a chunk of the Kenai gas field, a second negotiating team was hard at work on a second costly giveaway. The negotiators wanted CIRI and the Seldovia Native Association to give up land in Kachemak Bay State Park.

Officials with the state Division of Parks feared that CIRI would strip-mine scenic China Poot Bay and begin barging washed rock to gravel-starved Homer. In exchange for its gravel, CIRI wanted another 560 acres in the Kenai gas field.

In effect, the state protected the park by swapping its income from a federal gas lease in the Kenai field for $10 million worth of gravel. The state's interest in the lease was valued at $10 million in 1979. Because of recent gas price increases, it may be worth $50 million today.

The deal was never reviewed by the legislature or addressed at a public hearing.

According to Georgia Krista, CIRI's executive vice president, the corporation wanted quick conveyance of the Cannery Loop land because "we knew (it) would never be conveyed after (Union) started to flare the well."

On May 13, 1979, a 40-foot plume of fire from the well signaled a major strike.

For the state, the discovery came too late.

On May 1, Bob LeResche had given away the state's interest in the field by signing the Seldovia agreement.

On May 2, according to state records, the Division of Lands had asked state oil and gas managers to estimate the value of the state interest in the Cannery Loop field. Within days, they replied with a memo estimating its value at $50 million to $120 million.

According to state petroleum manager Bill Van Dyke, the appraisal was based on a 1979 gas price of 30 cents per thousand cubic feet. Since then, gas prices have increased by more than 600 percent. If the volume of gas is the same as estimated in 1979, Van Dyke said, the land turned over by the state is now worth $300 million to $120 million.

"I didn't know it was worth that much," Dennerlein told a reporter last month. "Amazing as it may seem, the first time in my life I had ever seen (Van Dyke's memo) was when you showed it to me."

It's not clear who is to blame for giving away state oil and gas properties, or why the conveyances continued even after Van Dyke's memo clearly showed that valuable [illegible] Dyke's Cannery Loop appraisal, state officials gave CIRI another 80 acres in the Kenai gas field.

On a separate occasion, the Division of Lands urged the federal government to give CIRI a 160-acre tract that Minerals and Energy Management had told them was part of the Kenai field. The tract was given to CIRI.

Before the 160 acres were transferred to CIRI, the state received 30 percent of the royalty income from the land. State officials could have blocked the transfer and protected the income simply by objecting.

CIRI "shouldn't have got ten any producing or proven reserves," said former Minerals Director Tom Cook. "We recommended against conveyance of oil and gas lands."

"Often our recommendations were not given a whole lot of consideration," he said. "There were some conveyances that were going to be made irrespective of what people responsible for resource management thought."

Michael Smith, who says he was not involved in the day-to-day details of conveying land, said he didn't know about the objections raised by Minerals and Energy Management.

"Nobody said 'boo' to me. I had no way of knowing anybody was even concerned about this. When I found out about this — that the staff had given away (producing tracts) — I just scratched my head and said, 'I can't believe it.'" Smith said.

"How in the hell could they screw up so bad as to give away all oil and gas [illegible]

Anchorage Daily News forum 3/4/1986

Smith responds to Cook Inlet Land Exchange story, editorial

The Daily News has done a public service in bringing to light errors on the part of the state in implementing the Cook Inlet Land Exchange. However, the News, in both the original Dec. 22 article and in its editorial, failed to provide an accurate overall analysis of what the myriad dates, events and complicated legal interpretations meant.

First, the News did not clearly make the important distinction between the process of negotiating and legislating the original agreement, and the subsequent implementation of that agreement during which the majority of mistakes occurred. The exchange agreement itself provided for a fair and equitable exchange for all parties. Its passage was accompanied by intense agency, public, legislative and legal debate. If errors were overlooked during this process, they were missed by many individuals, agencies and institutions.

Second, the News editorial's implication that the alarms raised by some lower echelon officials were ignored is simply wrong. The News' own article stated that the Deputy Director of Lands opposed the exchange in both oral testimony and in writing during the Senate Resources Committee hearings. Several other state officials also actively opposed the exchange. However, in the end both administration and the legislature decided the exchange was in the state's best interest. The Daily News also expressed editorial support for the exchange at the time.

Third, the unexpected benefits derived by Cook Inlet Region, Inc. occurred primarily from unintentional, but certainly preventable, errors made by state agencies during implementation of the exchange, including acquiescence in the application of Section 14(g) of ANCSA in clear contradiction to the original intent of the exchange agreement. It is, therefore, patently unfair for the News to place any blame upon former Commisssioner of Natural Resources Guy Martin as he had left that position more than a year before implementation of the exchange even began.

Lastly, the News article pointed out shortcomings in both the state's review of the initial exchange agreement and in the process of implementing the exchange. Many people were involved in both aspects of the exchange, and contributed to its many successes, and its few failures. My role was certainly pivotal in both aspects, and to that extent I accept part of both any blame, as well as credit. But why the problems occurred is less a matter of personalities, and more the result of the framework within which the land exchange conveyances were made.

The News is wrong in suggesting that the Hammond administration's land management system had virtually collapsed. In fairness to the Department of Natural Resources and other state employees who labored in good faith to convey the large entitlement identified in the agreement, it must be pointed out that the background against which those transfers were made was unique in Alaska's history.

In 1978, two years after the land exchange was formalized and just as implementation was beginning, the legislature became obsessed by land disposals under pressure of the Beirne Homestead Initiative. It mandated a series of duties and deadlines, to be accomplished largely within just 12 months, to remove all impediments to large-scale land disposals for private ownership. These mandates included completing identification of approximately 772,000 acres to fulfill the entitlements of Alaska municipalities; identification and transfer to CIRI of its more then 415,000 acres; and identification of tens-of-thousands of acres of private land disposals — tasks unparalleled in the state's history.

Foisted on an understaffed department, there was no way all those mandates could be met within such unrealistic time frames without significantly increasing the probabilities for serious errors. Expressions of these concerns to the legislature were shouted down in committee hearings as bureaucratic blocking of legislative desires.

This is not meant to blame the legislature for all the land exchange errors. But, the politics of "Now, and damn the obstacles," as exhibited by the 1978 legislature, always has a cost. The full costs for the roads, schools and other services which ultimately will be needed to support the helter-skelter state land disposals of the past seven years may never be tallied. In this instance, however, the Daily News has performed a service in identifying the unintended real dollar costs of the errors caused by having to hastily implement the CIRI exchange. The legislature and the people of Alaska would do well to keep that in mind when making future resource decisions with similar magnitudes and time constraints.

— Michael C.T. Smith

☐ **Michael C.T. Smith is the past Alaska director of state lands.**

State got its share in CIRI land deal

People have a tendency to refer to the Alaska Native Claims Settlement Act as a give-away rather than a settlement of a legitimate claim. But let's look at the facts in the case of the Cook Inlet land trade.

Cook Inlet Region, Inc., is in the most populated part of Alaska and most of the good land around the villages was either homesteaded, built upon by the government or claimed by the state. Mountains and glaciers were left.

We went to court and an Anchorage judge ruled that mountain tops and glaciers were good subsistence hunting and fishing grounds for Natives. I asked, if that was true, why not trade for some Moose Range. I was than told by the Fish and Wildlife Service that a moose couldn't live up there, but a Native could.

CIRI appealed the decision and the Court of Appeals said they had never seen such an atrocious decision and reversed it. The Department of Interior was going to appeal to the Supreme Court so CIRI, of which I was then the president, decided to go to Congress for help.

The Alaska Federation of Natives laughed at us when we asked for support. To them we were not Natives, since we in CIRI were practically all quarter or half-Native.

Our land department prepared folders which consisted of pictures of villages with a little writing under each. There were also pictures of the mountain tops and glaciers we'd been offered by Interior. I spent almost a year going to the congressmen and women who had voted in favor of ANCSA, lobbying to get their support.

The state said they had us over a barrel — that CIRI had to take whatever was offered. But at the last Interior and Insular Affairs Committee meeting that I attended I was pleasantly surprised. I didn't have to testify. After calling the meeting to order, the chairman told everyone that "the Department of the Interior and the State of Alaska are going to make an agreement with CIRI that is satisfactory to CIRI or we are not going to appropriate any money for the department." In a couple of days, the agreement was signed.

Now let's talk about how the state got shafted. They received a "small amount of land" in the Anchorage area that was due to go to CIRI. Included was the Campbell Airstrip, which contained over 20,000 acres of land now worth over $100,000 per acre and 40,000 acres at Point Woronzof, Point Mackenzie, Goose Bay, Elmendorf and Fort Richardson that's worth $50,000 an acre today. Hence, the "small amount" of land the state received is worth at least $5 billion. Now the state is crying because CIRI got $37 million in additional royalties. In addition, the state and the federal government have received over $8.6 billion in fees and royalties between 1959 and 1984. If the state is getting shafted what are the Natives getting?

Without ANCSA, the title to the land each of us owns in Alaska would be no good. How would you, a property owner, feel if a Native came along, said his relatives had lived on your land and that he wanted it back?

I write this letter because I feel that the whole story of the Cook Inlet land trade was not published. The negotiators for the state and for CIRI should not be judged too harshly.

Ralph A. Johnson, president
Salamatof Native Association

Questions on CIRI land gain

Your feature article of Dec. 22, "State mistakes cost millions" is excellent. Reporter Ronnie Chappell has done an accurate job.

As noted, a key to Cook Inlet Region's acquisition of over half of the valuable Kenai gas field is the federal land grant to the village of Salamatof. It was and is unbelievable that Mike Smith, former director of the State's Division of Lands and a longtime staff member of the Federal-State Land Use Planning Commission, did not realize that the land grant to Salamatof would, under section 14(g) convey much of the Kenai gas field to the Cook Inlet Region.

The existence of Salamatof as a Native village was very questionable. Section 3(a) of the Alaska Native Claims Act requires that a Native village, to be eligible for a land grant, had to be named in the act under sections 11 or 16, or be composed of 25 or more Natives. In the Egan administration, a protest was filed on the grounds that Salamatof was not listed in sections 11 or 16 and was not composed of 25 or more Natives. Actually, most of the protests that had been filed were dismissed by the Department of Interior. However, the Egan administration, anticipating rejection of protests, had obtained from the Arctic Slope Regional Corporation a waiver of oil and gas rights on lands granted to the also questionable village of Nuiqsut, located on the Colville River. Everyone in the Division of Lands, at least those employed prior to 1971, knew that a regional Native corporation would acquire mineral rights to lands granted to a Native village.

All that Mike Smith needed to do was to ask the older employees in the Division of Lands, especially Dale Tubbs. All that Guy Martin needed to do was to ask advice within his own commissioner's office from Bill Fackler, formerly Deputy Commissioner. Could Homer Burrell, former Director of the Division of Oil and Gas, be right when he refers to "Teapot Dome?"

Mike Smith told your reporter, "When you're in a situation like that with obviously support and instruction from up the ladder..." Who was on that ladder? Gov. Hammond? Sen. Stevens?

The environmentalists, as noted in the article, pushed for the land trade that gave valuable gas and coal leases to the Cook Inlet Region Inc. The environmentalists were greatly aided by the flood of environmentally oriented "planners" who flooded the Division of Lands early in the Hammond years. Without line responsibilities and, for the most part, historically unconscious, the planners accept preservation and oppose the state's legitimate interest in its subsurface wealth.

Still, there is one bright spot that shines through the dark complex of state errors. Roy Huhndorf, head of the Cook Inlet Region, does a far better job of balancing development and conservation than the state. Now that the damage to state royalty income has been done, I believe that the millions of dollars from gas and future coal royalties will be in the better hands.

— Charles F. Herbert

B[illegible]on Monday, the fog loosened its grip a bit [illegible]gthy departure delays were still the

See [illegible] C-3, TRAVELERS

their shoes off Monday to wait for a [illegible]

Anchorage Daily News 12/24/85

Legal experts may advise state on recovering millions

By RONNIE CHAPPELL
Daily News reporter

The Alaska Department of Law may call in independent legal experts to evaluate the state's chances of recovering millions of dollars in oil and gas revenues lost by mistake during the negotiation and implementation of the Cook Inlet land trade, Attorney General Hal Brown said Monday.

"It might be nice to have the benefit of their thoughts, as well as our own," Brown said. "Then we could sit down, analyze them" and determine what to do.

"We already started looking at some" of the options available to the state, he said. "But we need to do more in-depth analysis before I can say what remedies, if any, are available to us."

In the meantime, Brown said, "my first goal is to make sure that nothing like this can happen now."

According to a months-long examination by the Daily News, losses of state royalty income have been substantial. Past mistakes, including the inadvertant conveyance of producing oil and gas leases to an Anchorage-based Native regional corporation, have cost at least $35 million and the total is increasing by at least $5 million a year.

State officials also gave Cook Inlet Region, Inc. an estimated $300 million to $700 million interest in the Cannery Loop gas field near Kenai. The field, discovered in 1979, is scheduled to go into production next year.

Procedures governing the disposal of state land have been tightened considerably since 1982, according to state officials. For that reason, Gov. Bill Sheffield is "satisfied that the errors (made by the Hammond administration) could not occur again," said Sheffield spokesman John Hilliard.

According to Hilliard, Sheffield is "going to wait for a closer reading on this thing from the attorney-general's office" before deciding whether it makes sense to pursue the lost millions.

House Speaker Ben Grussendorf, D-Sitka, said Monday that he had directed his staff to review the original agreement between CIRI and the Department of Natural Resources.

"I want to know more about it," Grussendorf said. "The story has broken. Now we've got to verify the facts. It's something we'll have to spend some time looking at."

Other House and Senate leaders were not available for comment Monday.

If the state attempts to recover the lost royalty income, state officials have said, the challenge will be based on claims that:

- State land deeded to CIRI was conveyed by state officials who lacked legal authority to execute the transfers.
- State and CIRI officials assured the legislature that state royalty income would not decline as a result of the Cook Inlet land trade.
- The state is still entitled to 90 percent of the royalty income generated by federal oil and gas leases, even when those leases are partly owned by Native corporations.

Vandals play Scrooge, tear down home's spectacular holi

By LARRY CAMPBELL
Daily News reporter

There are some hearts the holiday season [illegible]ently does not soften, as Gary and [illegible]ris Mueller learned Monday evening.

Only last week, the Muellers' East Anchorage home had been a spectacle of lights that caught the eyes of judges and a first-place award in this year's Daily News Christmas Lights Contest. The home was featured in Sunday's Daily News homes section.

Monday evening the lights were out, doused by vandals while the Muellers were out shopping.

"I wondered what was going on when we drove up. I couldn't figure out why the lights were off," Gary Mueller said. "It took me awhile before I took a good look and figured out it was all torn down."

The Mueller home was the brightest spot in their otherwise dark, out-of-the-way neighborhood off Muldoon Road. Even a nearby street light shed less light than the 4,000 to 5,000 lights strung about triangular spires, towers and arches on the Muellers' corner lot.

For eight years, Mueller said, he and his wife have adorned their home with lights for the holidays. This year the spectacle had taken them more than a month to complete, and the newspaper-sponsored contest rewarded them with a $200 dinner.

The Muellers turned down the prize and asked the money be donated to the Salvation Army.

Since the home appeared in Sunday's newspaper, Mueller said, there had been a steady stream of cars loaded with people coming to see his house. Monday evening, however, someone came to do harm.

Sometime between 5 p.m. and 6:30 p.m., vandals knocked down the lighted spires on the roof, smashed a string of lights atop the chain link fence and unplugged rows of other lights along the home's eaves. Lines of electrical wire hung loose and wooden triangle frames were torn from the roof.

Neighbors s[illegible] anything, but corner was dar[illegible]

Standing in [illegible] at the destruc[illegible] shook his hea[illegible] He said he wil[illegible] be able to fire [illegible] strings for Chr[illegible]

"Here there [illegible] and there's no[illegible] about that," h[illegible] it? Just shows [illegible]

"I don't kn[illegible] happens. I gue[illegible] too."

NATION: O'Neill predicts veto of tax bill, Page A-3

NEIGHBOR TO NEIGHBOR

Daughter seeks reunion with father Outside

Metro, Page C-1

Anchorage Daily News

VOL 81, NO 357 78 PAGES — ANCHORAGE ALASKA MONDAY DECEMBER 23 1985 — PRICE 25 CENTS

Leader steers CIRI on a wealthy course

Huhndorf keeps his eye on assets — not limelight

By RONNIE CHAPPELL
Daily News reporter
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Rumpelstiltskin, the dwarf who spun straw into gold, could have taken lessons from Roy Huhndorf, the president of Cook Inlet Region Inc.

Huhndorf took an offer of glaciers and mountaintops and turned it into a river of cash for his company and every Native corporation shareholder in Alaska.

There was no hocus pocus, no sleight of hand.

Huhndorf, 45, used intelligence, toughness, tenacity and stealth to ease the pants off the state in one of the most complicated land trades ever negotiated. As a result, his Anchorage-based Native regional corporation will collect hundreds of millions of dollars in oil and gas revenues the state never intended to give away.

Huhndorf is putting the money to good use. Today, the corporation is among the leanest and most profitable in the state. CIRI employs just 55 people. Expenses account for less than a third of annual revenues.

The company has kept overhead low by teaming out strong partners and investing with them in a number of successful ventures. CIRI owns a substantial interest in an offshore drilling rig, two on-shore drilling rigs, a North Slope construction company, and the ABC TV affiliate in Hartford, New Haven, Conn.

CIRI also is heavily involved in the development of industrial, commercial and residential property in Anchorage, Juneau, Southern California, Hawaii, Virginia and New Orleans.

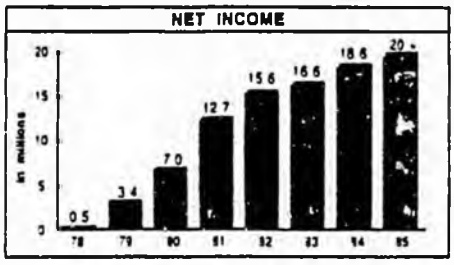
While some other Native corporations are struggling to keep Outside banks at bay, CIRI is collecting interest on more than $50 million in securities.

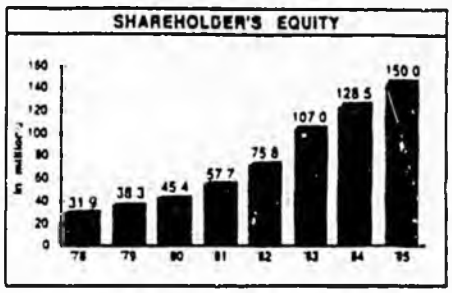
Since 1982, CIRI has funneled more than $48 million to other Native corporations under Section 7(i) of the Alaska Native Claims Settlement Act. Section 7(i) requires regional corporations to share 70 percent of their resource income with the other regional corporations. According to Huhndorf, CIRI's earnings have helped two corporations stay out of bankruptcy court.

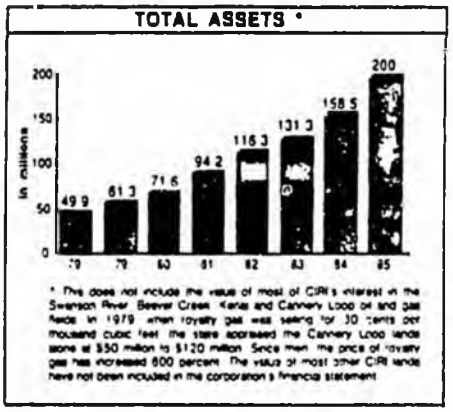
In contrast, CIRI has received less than $1.4 million in 7(i) money from the 11 other regional corporations, some of which are perceived to be more successful than CIRI. Sealaska Corp. in Juneau, for example, has been listed among the country's 1,000 largest indus-

See Back Page HUHNDORF

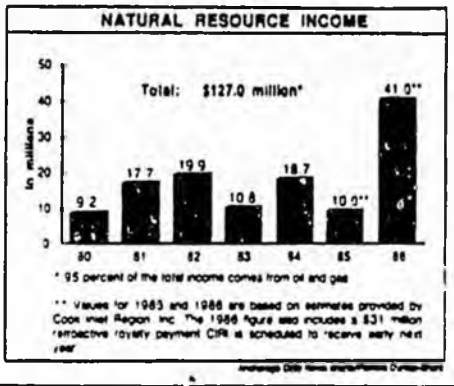
THE FINANCIAL PICTURE FOR COOK INLET REGION INC.







* This does not include the value of most of CIRI's interest in the Swanson River, Beaver Creek, Kenai and Cannery Loop oil and gas fields. In 1979, when royalty gas was selling for 30 cents per thousand cubic feet, the state appraised the Cannery Loop lands alone at $50 million to $120 million. Since then, the price of royalty gas has increased 600 percent. The value of most other CIRI lands have not been included in the corporation's financial statement.



* 95 percent of the total income comes from oil and gas.

** Values for 1985 and 1986 are based on estimates provided by Cook Inlet Region Inc. The 1986 figure also includes a $31 million retroactive royalty payment CIRI is scheduled to receive early next year.

Anchorage Daily News graphic/Patricia Dunlap-Shohl

Officials take steps to learn from state's mistakes

By RONNIE CHAPPELL
Daily News reporter
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Resources Commissioner Esther Wunnicke has asked state attorneys to see if the state can recover millions of dollars in oil and gas revenues it mistakenly gave away in the Cook Inlet land trade.

No decision on whether to pursue the lost millions in court has been made, Wunnicke said. "We're seeking advice from the attorney general to guide us in future actions."

But Cook Inlet Region Inc., the Anchorage-based regional Native corporation that gained from the state mistakes, already is digging in to protect its interests in the Cannery Loop, Swanson River, Beaver Creek and Kenai oil and gas fields.

In a 16-page memo delivered to state officials this month, CIRI attorneys describe a state claim on Native royalty income as "a direct attack upon the integrity of the Alaska Native Claims Settlement Act and a clear threat to the survival of many Alaska Native corporations."

They also warn that any effort "to deprive Alaska Natives of revenues from their lands" could prompt the Congress to reduce the state's "unique and extremely generous 90 percent" share of federal oil and gas royalty income.

In an effort to prevent future mistakes, Wunnicke also will make permanent a land transfer review process established in 1982. Before that, the state lacked a formal procedure for reviewing land selections.

The state also will audit all its past land conveyances under the terms of the Cook Inlet land trade.

"In this time of declining revenue we can ill afford to give away a producing oil and gas lease," said Gary Gustafson, the state's chief land manager. "We have built in mechanisms to keep that from happening. It will not happen again, unless of course, it is intentional."

See Back Page STATE

Huhndorf keeping a stealthy head, steady hands at the helm of CIRI's financial empire

Continued from Page A-1

trial companies

CIRI has never sought that kind of attention. The corporate land [illegible] more than [illegible] million acres of surface and subsurface estate [illegible] never been appraised.

Huhndorf would rather pay his stockholders big dividends – four times the size of other Native corporations – and keep a low profile. He avoids publicity and concentrates on profits. CIRI doesn't have a public relations department, and as a rule doesn't issue press releases.

"We feel that the figures at the end of the year speak for themselves," Huhndorf said.

There are other reasons for doing business quietly. State and federal agencies still owe CIRI more than a million acres under terms of the Cook Inlet land exchange. Publicity generally means controversy and nothing gums up the wheels of government and the process of obtaining land like controversy.

Huhndorf grew up in a log home in Nulato, in Athabascan village on the Yukon River. The family had a large vegetable garden and hunted moose in the fall. His mother, a Native sewed fur garments and his father, a retired serviceman, was one of the few villagers with a cash income.

At 15, Huhndorf left Nulato to attend Anchorage High School.

"There was some prejudice aimed at me personally," he recalled. "If you take it seriously, it can make you have a pretty low opinion of yourself."

While managing CIRI, Huhndorf found time to attend college classes at night. In 1984 he received his diploma from the University of Alaska-Anchorage. At the time he was a student, he was also a university regent. He is now president of the Board of Regents.

As a young man, Huhndorf learned Outsiders lived and had had been hunted and fished by Natives [illegible] for more than [illegible] years.

Even the state participated in the land grab. Entire villages were gobbled up. Huhndorf said despite provisions in the Statehood Act that prohibited state selections in areas subject to aboriginal use.

This simmering conflict came to a head in the mid-1960s when Alaska Natives claimed to own Prudhoe Bay and the corridor needed for the trans-Alaska pipeline. The oil companies fought the claim in court, and lost.

In 1971 the Alaska Native Claims Settlement Act gave the state uncontested title to the Prudhoe Bay oil field, allowed construction of the pipeline and created more than a hundred village and regional Native corporations and settled them with 1942 million and 44 million acres.

"A lot of people tend to ignore the legality of the settlement act," Huhndorf said. "Change always bothers some people. There are always those who resent it."

For CIRI, however, the settlement act was a hollow promise. Most of the developable land within its boundaries had been taken. Millions of acres were tied up in the Chugach National Forest and the Kenai National Wildlife Refuge. The state had selected millions more and homesteaders had gobbled up the rest.

When the Secretary of the Interior tried to satisfy CIRI's entitlement with mountaintops and glaciers, Huhndorf said, he knew there was not going to be a fair settlement.

Roy Huhndorf, Cook Inlet Region Inc. president

We weren't going to stand still for that.

After [illegible] found in court, CIRI went to the U.S. Congress for help. Strong support from Sen. Henry Jackson, D-Wash., and others gave CIRI the power it needed to pry a compromise out of the Department of Interior.

Federal officials offered the corporation more than 230,000 acres in the Kenai National Wildlife Refuge, the Swanson River oil field and several large tracts of federal land in the Anchorage Bowl.

CIRI turned down the deal. The corporation was asked to give up two-thirds of its entitlement and the assets it was receiving weren't valuable enough, Huhndorf said.

The state joined the talks during the spring of 1979 because "it had a variety of interests it wanted to protect," Huhndorf said. Six months later, Congress approved a three-way trade that netted CIRI more than 2 million acres.

The state contributed 115,000 acres on the Kenai Peninsula and 110,000 acres in the Beluga area. The Beluga lands contained more than 100 million tons of known coal reserves.

The Alaska Legislature approved the deal [illegible] and others [illegible] that CIRI had [illegible] its claims to the Swanson River and other oil fields, as the present income of the state of Alaska could be maintained.

Despite Huhndorf's testimony, CIRI later

• Used Section 14(g) of the settlement act to take more than a third of the royalty income generated by the Swanson River and Beaver Creek fields.

• Nominated state and federal lands in the huge Kenai gas field for conveyance to the corporation. It paid the cost of a lawsuit that allowed the Salamatof Native Association to get additional land in the Kenai field.

• Used an agreement designed to protect Kachemak Bay State Park to take over the state's interest in a new gas field near Kenai that could be worth $300 million to $500 million. The field will go into production next year.

Huhndorf insists he and other company officials did not mislead lawmakers. At the time the trade was under consideration by the Legislature, CIRI had not revealed the effect of 14(g) on state revenue from Swanson River, he said.

By nominating tracts in the Kenai gas field, CIRI was only trying to obtain the best and available. Under the agreement approved by the Legislature, the state had to include the right to prune those selections, Huhndorf said.

State officials rarely exercised that power. Instead, they gave away revenue producing leases in existing fields. The one move chosen by the Alaska Department of Natural Resources proved no match for the silver-haired grandmaster and his team at CIRI.

The CIRI strategy was so well conceived and smoothly executed that a decade later the presiding state officials still didn't realize the magnitude of their mistakes.

Almost everyone agrees that CIRI succeeded by knowing the game and the rules better than its opponents. When roadblocks were encountered, CIRI negotiators stuck with it until the troublesome faces or policies changed.

"We've got a healthy respect for CIRI that comes from experience," said Gary Gustafson, chief of land management for the state.

Gustafson wasn't involved in the negotiation of the land trade and had nothing to do with the loss of state land in producing oil and gas fields.

"Of all the Native corporations we deal with, CIRI is the most astute," Gustafson said. "If there's a meeting, he said, CIRI always prepares the agenda. If there's an agreement to be worked out, they always prepare the first draft."

The tactic is effective in complex negotiations, Gustafson said, because "he who controls the script, usually gets what he wants."

Today, the state is still outmatched.

"The Division of Land and Water Management has just had people negotiating and implementing land exchanges. We are stretched to the max on matter how good these people are, it's difficult to keep up," Gustafson said.

Especially when CIRI knows exactly what they're doing and has four people assigned to the task. "We're swamped all the time and they've got a hit team."

CIRI has triumphed and profited over its business counterparts. Unocal Corp., the California oil company that operates the Kenai gas field, will soon pay CIRI more than $30 million in retroactive royalties in natural gas sold to the Unocal Chemical plant in Nikiski. The settlement also triples the price that CIRI, the state and the federal government will get for royalty gas.

Unocal and the other companies with an interest in the Kenai field "like the tax we got those lands," said CIRI Executive Vice President George Kriste.

Agreement has been reached on the value of royalty gas delivered to Enstar Natural Gas Co., a utility that serves more than 40,000 customers in Anchorage, the Matanuska Valley and the Kenai Peninsula.

According to Enstar officials, settlement of that dispute will cost the average residential gas consumer about $50, spread over a period of 20 months.

Huhndorf is proud of CIRI's performance, but he's hesitant to boast about it.

"It's a bit of paranoia," he said in an interview that reporters were not allowed to record. "Anytime a Native corporation does well, people resent that."

State officials examining legal avenues to see if Alaska can recoup lost oil, gas revenues

Continued from Page A-1

Recovering the oil and gas lands that already have been lost could be difficult, Gustafson said. Most of the state's options look like long shots. "They're being considered because we're looking at all possible avenues to recover lost royalty income or lease revenues," Gustafson said.

Losses of royalty income have been substantial. Past mistakes have cost the state at least $35 million and the total is increasing at a minimum of $5 million a year.

Although legislators were told the 2 million acre deal would keep Cook Inlet Region Inc. from tapping state royalty income, the Anchorage-based Native corporation has made more than $70 million in Cook Inlet oil and gas production.

State officials also gave away a $300 million to $700 million interest in the Cannery Loop gas field near Kenai. The field, discovered in 1973, is scheduled to go into production next year.

Pursuing the lost millions will be politically difficult. Since 1982, CIRI has distributed $44 million to other Alaska Native corporations, representing more than 60,000 Native shareholders.

Strong Native support was crucial in 1982 in the election of Gov. Bill Sheffield. Sheffield will need their continued support in 1986 election.

This is a no-win situation for Sheffield, said one former state official. "He's damned if he goes after the money, and he's damned if he doesn't."

If the state decides to challenge the Cook Inlet land transfers, Gustafson said, it will argue that:

• State land deeded to CIRI was conveyed by state officials who lacked legal authority to execute the transfers.

• State and CIRI officials assured the legislature that state royalty income would not decline as a result of the Cook Inlet land trade.

• The state may still be entitled to 90 percent of the royalty income generated by federal oil and gas leases, even though the leases are partly owned by Native corporations.

In a Nov. 4 letter to Martin Richard of the Alaska Department of Revenue, former Assistant Attorney General Tom Meacham argues that the state's 90 percent royalty share is a "valid existing right" under Section 14(g) of the settlement act.

Therefore, Meacham writes, transfer of oil and gas leases to CIRI "could not impair the state's right to receive continued royalties from CIRI's portion of the leases."

If Meacham is correct, the state could recover more than $60 million and prevent the loss of millions more.

CIRI contends that Meacham's analysis contradicts the legislative history and later application of the settlement act.

The state's right to royalty income from federal leases is a derivative right, contingent upon continued federal ownership of the leases, CIRI President Roy Huhndorf said.

As soon as federal ownership ends, the state's rights are extinguished, Huhndorf said.

There are precedents. There have been no court cases that directly resolve whether the state's interest in federal royalty income is a "valid existing right" under Section 14(g) of the settlement act, CIRI attorneys said. If such a claim were asserted, it seems clear that its practical resolution would be a task ultimately left for Congress.

Gustafson agrees with CIRI's interpretation of the law, but has asked for an opinion from the attorney general's office because "it's too important to have any question marks remaining."

Chances also appear slim that the state can reclaim lost revenue on grounds that state officials lacked authority to give away oil and gas leases or that conveyance of the leases violated the intent of the legislature.

Both questions have been reviewed by state attorneys before.

If any doubt now exists as to the legal authority of the persons who executed the state's deeds of title, that doubt would almost certainly be resolved by a court in favor of the innocent third party, Cook Inlet Region Inc., wrote Meacham in September.

In a [illegible] conclusion that these lease tracts "have been irrevocably conveyed to CIRI."

In October 1980, Billy Berner, director of the Division of Legal Services, advised the House Research Agency that "the legislative history or intent of the legislation does not provide a legal basis for return of the leases."

According to Gustafson, the state's best hope for cutting its losses may lie in the erroneous conveyance of several federal oil and gas leases to the state during the early 1940s. The Bureau of Land Management discovered the mistake in March 1985 and asked the state to return leases that include 165 acres in the Kenai and Cannery Loop gas fields.

Returning the leases could work to the state's advantage. Under a 1973 agreement, the state is obligated to convey that land and any related subsurface resources to CIRI.

By returning the mineral rights to the federal government before giving the land to CIRI, the state could continue to collect 90 percent of the royalty income from the leases, Gustafson said.

"In this case, we can keep the situation from getting any worse and we might be able to undo part of what already happened. From the state's perspective, that's important."

Improvements in land conveyance practices should prevent the loss of valuable oil and gas land in the future, Gustafson said.

"In the old days, lands were conveyed quickly, without public hearings or legislative review.

"We couldn't do that today," he said.

Six years ago, the agency didn't always research every piece of state and federal land proposed for conveyance to CIRI. Today, there is a title search on each tract.

"This tells us if the land is even eligible" for conveyance to CIRI, Gustafson said. The review recently turned up several valuable tracts of federal land that didn't belong in the pool from which CIRI selects. Among them was a 150-acre parcel near Klatt Road and Minnesota Drive.

State resource agencies are now notified of proposed conveyances and given 45 days to respond. No action is taken until each has delivered its recommendations, in writing, to the Division of Land and Water Management.

In 1979, it took the Division of Lands just nine months to give away 45,000 acres of land, 48 oil and gas leases and a third of the state's holdings in the Kenai gas field. The transfer was never the subject of public hearings or reviewed by the legislature.

In contrast, it has taken the state six years to complete a much smaller trade aimed at getting the Seldovia Native Association out of Kachemak Bay State Park.

And that deal, because it involves state land valued at more than $3 million, eventually must be approved by the legislature.

"I'm comfortable that the process gives us the information we need to make an informed decision in the best interest of the state," Gustafson said.

State mistakes in land deals with Cook Inlet Region result in losses of up to $500 million

Continued from Page A-1

The string of errors and misunderstandings that proved so costly to the state came about for several reasons:

- Bitter disputes within the Alaska Department of Natural Resources kept it from giving the trade agreement the close scrutiny it required.
- Key state employees were shut out of negotiations.
- Legislators were misled by state and CIRI officials who assured them the trade would not reduce state revenues. The same officials now say they misunderstood the agreement and its effect on state oil and gas income.
- Workers responsible for conveying land to CIRI were never told not to give away producing oil and gas fields.
- The state traded away land before it knew what the land was worth.
- The recommendations of oil and gas managers were ignored by land officials carrying out the trade.

At one point, confusion within the Department of Natural Resources was so complete that officials agreed to sell gas they had mistakenly given away the year before.

Even today, many of the individuals involved in the Cook Inlet trade don't realize what happened.

"Dear God," muttered Bob LeResche, the former commissioner of natural resources, when told recently that he had signed away the state's interest in a major gas field as part of a 1975 agreement to prevent gravel mining in Kachemak Bay.

"It's just outrageous," LeResche said. "Somebody got snookered. I certainly feel as though I did."

LeResche said he trusted subordinates to handle the CIRI land conveyances. In retrospect, he said, that was a mistake. "I was being treated like a mushroom," he said.

The Cook Inlet land trade was the product of a long-simmering conflict between Alaska Natives — who had hunted, fished and occupied most of the state for thousands of years — and a white world that was fast claiming the best Alaska had to offer.

The conflict came to a head in the mid-1960s when Alaska Natives claimed Prudhoe Bay and the land needed to build the trans-Alaska oil pipeline. The oil industry challenged the claim in court and lost.

Congress resolved the dispute in 1971 with the Alaska Native Claims Settlement Act, which cleared the way for the pipeline by creating more than 170 Native regional and village corporations and vesting them with $963 million and 44 million acres. The agreement also gave the state undisputed title to the Prudhoe Bay oil field.

Most Native corporations were able to get the land they were entitled to, but CIRI had problems. Almost all of the developable land within its traditional boundaries had been homesteaded, deeded to the state, or reserved for military bases, national forests or wildlife refuges.

CIRI sued the federal government, arguing that under the settlement act it was entitled to more than just glaciers and mountain tops.

The federal Department of Interior tried to settle the case in the spring of 1975. It offered CIRI 230,000 acres in the Kenai National Wildlife Refuge, mineral rights to another 245,000 acres, the Swanson River oil field and several large tracts of federal land in the Anchorage Bowl.

CIRI turned down the offer.

Fearful that state interests might suffer if Congress came up with a more generous settlement, state officials joined in the trade.

One of the main advocates of state participation in the swap was Michael C.T. Smith, the brilliant and sometimes abrasive director of the Alaska Division of Lands. Smith quickly became the key state player in the trade, negotiating the deal, leading efforts to win legislative approval of it, and running the state agency that carried it out.

In October 1975, after months of talks, Smith announced agreement on a three-way trade involving more than 2 million acres.

Under the agreement, the state received thousands of acres near Willow, then the proposed site of a new state capital, land in the Bristol Bay watershed, the Campbell park strip, and a tract needed for a north-south runway at Anchorage International Airport.

In return, the state gave up surface and subsurface oil, gas and mineral rights to thousands of acres on the Kenai Peninsula, and 310,000 acres containing 500 million tons of coal in the Beluga area on the west side of Cook Inlet.

Although the trade encountered little difficulty in the Congress — where CIRI, the state and all three members of its congressional delegation lobbied for passage — it stirred considerable controversy at home.

Critics questioned the wisdom of "giving away" 500 million tons of coal. Some charged that the deal violated the Alaska Constitution, in particular the prohibition against transferring state resources to private parties. Others complained that the agreement was too vague about which state lands CIRI would get.

"One of the problems we have with this deal is its uncertainty," Anchorage engineer Harold Gillett told a joint meeting of the House and Senate resource committees in February 1976.

"It's a blank check to which you're going to sign your signatures and then Mr. Smith behind me is going to sit down with the Native corporations and decide what he wants to give them of our state lands. You are not going to know the deal. The way it is written does not permit that."

Approve the trade, warned Anchorage lawyer Homer Burrell, and you'll "commit an error which is going to approach Teapot Dome someday."

Gillett sued to keep the state out of the trade. The Alaska Supreme Court ruled against him in a split decision, and the U.S. Supreme Court refused to hear his appeal.

Environmental groups, CIRI, the administration of then-Gov. Jay Hammond and members of the state's congressional delegation pushed hard for the Alaska legislature to approve the trade.

At CIRI's request, U.S. Sen. Ted Stevens wrote House Majority Leader Mike Miller, D-Juneau, to warn that failure to endorse the trade could have "unsettling results for the state."

Stevens told Miller that all "oil-producing federal lands that yield revenue to the state" had been precluded from transfer to CIRI. "Only in that way," Stevens wrote, "could a certain and current income stream for the state be maintained."

Smith and other state officials made similar statements.

A summary by the Department of Natural Resources said "no oil and gas fields" would "be transferred to Native ownership. All revenues currently received by the state will continue."

CIRI President Roy Huhndorf testified before legislative committees and the Federal State Land Use Planning Commission that CIRI had given up its claims to Swanson River and other oil fields "so the present income of the state of Alaska could be maintained."

CIRI publicly assured opponents of the land trade that "all revenues currently received by the state, such as from the Swanson River oil field, will continue."

Legislators, even those critical of the trade, accepted the statements of CIRI and state and federal officials.

"Oil and gas was never a major part of the debate," recalled state Sen. Pat Rodey, D-Anchorage. The potential for significant loss of royalty income was considered so small "it was not discussed."

If lawmakers had known the deal would cost the state tens of millions of dollars, "there would have been a different approach to the oil and gas question," Rodey said.

At the time, the state needed money. The 1900 million paid for the original Prudhoe Bay leases had been spent and the pipeline was still years from completion.

"I can't imagine the 19[illegible] legislature allowing a change by anybody that would lower the amount of money that was flowing into the treasury," Rodey said.

State officials believed they had protected state royalty income by prohibiting CIRI from selecting land in the Swanson River, Beaver Creek, West Fork, Birch Hill, Beluga River and Nicolai Creek oil and gas fields.

The state could also veto CIRI selections of state and federal land in the huge Kenai gas field. Its veto power did not extend to land claimed by the Salamatof Native Association, a village corporation in the Cook Inlet region. Under the settlement act, when a village corporation receives title to land, its regional corporation gets the oil, gas and mineral rights.

More than half of CIRI's interest in the Kenai gas field was acquired indirectly through the Salamatof village selections. That interest now earns CIRI millions that never went to the state.

Smith said it never occurred to him to negotiate the question of CIRI's right to oil and gas through village selections in the Kenai gas field.

CIRI also found a legal backdoor into the Swanson River and Beaver Creek fields.

The key was Section 14(g) of the Native claims settlement act. First, CIRI used the Cook Inlet land trade to get land just outside the oil and gas fields. This allowed them to acquire partial ownership of producing leases that overlapped the boundaries of the fields. Then, CIRI used Section 14(g) of the claims act, which entitles Native corporations to a share of the revenue from leases in which they have an interest, to take a third of the royalties from Swanson River and Beaver Creek — about $22 million so far. Before the trade, 90 percent of that money would have gone to the state.

Legislators were never warned that "14(g)" could be used to tap state royalty income. Smith said he and other state officials simply overlooked it. They first learned about CIRI's claims under 14(g), they said, when questioned by the Daily News last month.

CIRI knew about Section 14(g) before the trade, Huhndorf said, but didn't know how it would apply to the land trade. "We were so caught up in receiving our land entitlement that we never focused on it."

But when Huhndorf learned that 14(g) allowed CIRI to take a major share of Swanson River and Beaver Creek revenues, he didn't let his testimony about the sanctity of state royalty income keep him from going after it.

"I would have breached my fiduciary responsibility to our shareholders by not pursuing the royalties. Besides he said, his board of directors would have forced him to go after the money.

CIRI's reputation for shrewd business dealing makes some people doubt that the 14(g) windfall was as unexpected as Huhndorf says.

"I don't think anything happens by accident," said Rep. Don Young, R-Alaska. He smiled when told that Huhndorf had testified that state royalties would not be reduced.

CIRI shouldn't be criticized for "taking advantage of the state," Young said. "The

See Page A-15, MISTAKES

TEN YEARS LATER, AS THE STATE LOSSES MOUNT

"(It's) just outrageous. Somebody got snookered. I certainly feel as though I did."

— Bob LeResche, former commissioner of natural resources

"To the extent this was missed, a lot of people had a shot at it."

— Guy Martin, former commissioner of natural resources

"It wasn't something we contemplated and deviously tried to take advantage of."

— Roy Huhndorf, CIRI president

"It's disastrous management by the state . . . I really don't see any excuse for it."

— Hugh Malone, former state representative

Official who negotiated land trade is now CIRI consultant

By RONNIE CHAPPELL
Daily News reporter

The state official who negotiated the land trade that enabled Cook Inlet Region Inc. to claim tens of millions of dollars in state oil and gas revenues today is a paid consultant to the corporation.

Michael C.T. Smith, former director of the Division of Lands, went to work for CIRI in 1981, two years after leaving state service.

Smith advises CIRI on land issues and has helped the corporation obtain federal land under terms of the Cook Inlet land trade. He also was involved in negotiations aimed at getting village corporations to give up land selections around Lake Clark.

CIRI is one of his biggest clients, Smith said recently. The company has paid him $105,000 in fees, about 25 percent of his total billings, over the past five years, he said.

Some of the former state officials who worked with Smith on the land trade are critical of his involvement with CIRI. It's improper, they say, for him to have negotiated the land trade and then gone to work for the company that benefitted from it.

But others aren't troubled.

"If commercial incest were a crime in Alaska, almost everyone would be in jail," as Guy Martin, former state commissioner of resources, put it.

Dozens of former state officials, many with access to confidential resource information, have gone to work for Native corporations and oil companies.

"Mike Smith is about the best public servant I ever knew," Martin said. "As a person, he's just thoroughly admirable."

Smith admits that the decision to work for CIRI was a tough one.

"CIRI approached me and they wanted to hire me and I said no," Smith recalled. "I said, 'I don't think that would look all that good and that's something that concerns me.'

Michael C.T. Smith

"I talked to (my wife) Linda and I hemmed and I hawed. I finally decided after kicking it around and talking to some people to call the person who I felt would give me the most objective look."

Smith called Martin and asked whether he thought it would be improper for Smith to work for CIRI.

Smith said Martin told him, "'If this thing had been negotiated out of the backdoor and you handed somebody a deed to what Cook Inlet got, I'd say yes . . . But, this is the most upfront public resource decision that's ever been made.' He said, 'You're out of your tree.'"

According to Smith, his relationship with CIRI has actually worked to the state's advantage.

". . . If I wasn't there," Smith said, "(CIRI) might be able to go to some of these new, inexperienced people" working for the state and get land they aren't entitled to.

"I would turn CIRI around inside. I never came out and said it, but they knew I wasn't going to be part" of an attempt to take unfair advantage of the state.

"A lot of times when CIRI would start to take off, I'd say, you know, that isn't going to fly with the state because that isn't what we negotiated."

Smith's life outside government has been relatively quiet, in marked contrast to the five years he spent as director of lands.

He wielded immense power during a time that the state was preoccupied with land issues, overseeing huge deals that will affect the state for decades to come. He force-fed change to a state agency set in its ways.

His refusal to give in to public demands for free state land moved legislators to try to eliminate his job from the state budget. In May 1979, Resources Commissioner Bob LeResche finally demanded his resignation.

But few of Smith's initiatives stirred more controversy than the Cook Inlet land trade, which he and other Hammond administration policymakers defended as a way to protect important state interests.

Opponents, including some within Smith's agency, called the deal a billion-dollar boondoggle to benefit Cook Inlet Region.

Mistakes in the negotiation and execution of the trade have cost the state millions of dollars and will cost millions more. Smith accepts partial responsibility for the errors, but argues that others — even those who opposed the trade — are also at fault.

Friends and critics alike describe Smith as a thorough, brilliant, self-assured man. He grew up in New York, was selected as a Fullbright scholar, and studied in New Zealand before returning to the U.S. to earn a doctorate in resource management.

"He's such a smart guy that he doesn't suffer fools easily," Martin said. "That got him in trouble a lot of the time." Smith's style was "abrasive to a fault."

Theodore Smith worked for Smith in 1979. He describes his former boss as an intelligent, sometimes arrogant man who is "totally convinced of his own rightness. He's difficult to argue with. He's really smart, but because he is so smart, he's blind to his own mistakes."

"Mike did things his own way or else," said Tom Cook, who served under Smith as director of the Division of Minerals and Energy Management. "There was no willingness to compromise or take into consideration the concerns we had."

Cook and others at Minerals and Energy Management seemed out of step in an administration that bought back oil and gas leases to protect Kachemak Bay and traded coal reserves for park land and moose habitat.

"Smith had his own agenda at that time. What he said went. I personally had a lot of disagreements with Mike over resource management," Cook said.

Smith dismisses Cook's criticism as the grumbling of man whose positions on resource issues weren't articulated as well as his own.

"I'm a person who's got ideas and is not afraid to voice them, although I think I'm a person who listens to reason and can be certainly turned around by a good argument.

"I had as much determination to protect oil and gas fields as anybody else and everything I can see that I did was in that way," Smith said. "Certainly, nobody is able to stand up and say that at any point in time there was any attempt or direction on my part to go easy on oil and gas leases."

1/5/86

Anchorage Daily News

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A state error that will haunt for years

Anyone who still believes the sentimental notion that Alaskans won't make the same mistakes that were made Outside should study the Kenai land trade between the state and Cook Inlet Region Inc. This was a world-class blunder by the Hammond administration. It rivals Congress' giveaway of public land to the railroads a hundred years ago as a land policy error.

As a result of the bungled trade, CIRI inadverently received millions of dollars worth of oil and gas leases. Indeed, the loss eventually may be measured in hundred of millions of dollars.

There is no suggestion of corruption here. The trade was a good idea in concept. A trade should have been made but not one that provided CIRI with such a rich, unexpected windfall at the state's expense.

The evidence suggests the Hammond administration's land management system had virtually collapsed. Responsibility for negotiating the trade and affecting the conveyanace was in the hands of too few people; and they were subject to too little supervision and scrutiny.

There is plenty of blame to go around but clearly Gov. Jay Hammond, his natural resources commissioners, Guy Martin and Bob LeResche, and former director of the Division of Lands Michael C.T. Smith deserve public recognition for their stunning mismanagement of state resources. It's simply not good enough to say, as Mr. Smith did, "things fall through the cracks like this."

Not everyone in the administration missed the boat. Some lower echelon officials in the Department of Natural Resources who recognized the implications of the trade raised the alarm. But they were ignored, demonstrating once again why it is so important for public officials to seek a wide range of opinion when faced with major decisions. To protect the state and themselves, governors and commissioners must be exposed to things they don't want to hear.

The Sheffield administration has taken steps to establish a review process that protects the state's natural resources from now on. Good. Natural resources are as valuable as money. They should be subject to similar security and scrutiny.

Can the state recoup its losses through legal action? It's impossible to say without a thorough, hard-nosed evaluation of the state's case and the legal probabilities.

But on Monday, the fog loosened its grip a bit. Le[illegible]y departure delays were still the

See Page [illegible] TRAVELERS

Gary and Eva Squires and sons, David, 4, and Mathew, [illegible] took their shoes off Monday to wait for a Seattle-bound flig[illegible]

Anchorage Daily News 12/24/85

Legal experts may advise state on recovering millions

By RONNIE CHAPPELL
Daily News reporter

The Alaska Department of Law may call in independent legal experts to evaluate the state's chances of recovering millions of dollars in oil and gas revenues lost by mistake during the negotiation and implementation of the Cook Inlet land trade, Attorney General Hal Brown said Monday.

"It might be nice to have the benefit of their thoughts, as well as our own," Brown said. "Then we could sit down, analyze them" and determine what to do.

"We already started looking at some" of the options available to the state, he said. "But we need to do more in-depth analysis before I can say what remedies, if any, are available to us."

In the meantime, Brown said, "my first goal is to make sure that nothing like this can happen now."

According to a months-long examination by the Daily News, losses of state royalty income have been substantial. Past mistakes, including the inadvertant conveyance of producing oil and gas leases to an Anchorage-based Native regional corporation, have cost at least $35 million and the total is increasing by at least $5 million a year.

State officials also gave Cook Inlet Region, Inc. an estimated $300 million to $700 million interest in the Cannery Loop gas field near Kenai. The field, discovered in 1979, is scheduled to go into production next year.

Procedures governing the disposal of state land have been tightened considerably since 1982, according to state officials. For that reason, Gov. Bill Sheffield is "satisfied that the errors (made by the Hammond administration) could not occur again," said Sheffield spokesman John Hilliard.

According to Hilliard, Sheffield is "going to wait for a closer reading on this thing from the attorney-general's office" before deciding whether it makes sense to pursue the lost millions.

House Speaker Ben Grussendorf, D-Sitka, said Monday that he had directed his staff to review the original agreement between CIRI and the Department of Natural Resources.

"I want to know more about it," Grussendorf said. "The story has broken. Now we've got to verify the facts. It's something we'll have to spend some time looking at."

Other House and Senate leaders were not available for comment Monday.

If the state attempts to recover the lost royalty income, state officials have said, the challenge will be based on claims that:

- State land deeded to CIRI was conveyed by state officials who lacked legal authority to execute the transfers.
- State and CIRI officials assured the legislature that state royalty income would not decline as a result of the Cook Inlet land trade.
- The state is still entitled to 90 percent of the royalty income generated by federal oil and gas leases, even when those leases are partly owned by Native corporations.

Vandals play Scrooge, tear down home's spectacular holi

By LARRY CAMPBELL
Daily News reporter

There are some hearts the holiday season [illegible]ently does not soften, as Gary and [illegible]ris Mueller learned Monday evening.

Only last week, the Muellers' East Anchorage home had been a spectacle of lights that caught the eyes of judges and a first-place award in this year's Daily News Christmas Lights Contest. The home was featured in Sunday's Daily News homes section.

Monday evening the lights were out, doused by vandals while the Muellers were out shopping.

"I wondered what was going on when we drove up. I couldn't figure out why the lights were off," Gary Mueller said. "It took me awhile before I took a good look and figured out it was all torn down."

The Mueller home was the brightest spot in their otherwise dark, out-of-the-way neighborhood off Muldoon Road. Even a nearby street light shed less light than the 4,000 to 5,000 lights strung about triangular spires, towers and arches on the Muellers' corner lot.

For eight years, Mueller said, he and his wife have adorned their home with lights for the holidays. This year the spectacle had taken them more than a month to complete, and the newspaper-sponsored contest rewarded them with a $200 dinner.

The Muellers turned down the prize and asked the money be donated to the Salvation Army.

Since the home appeared in Sunday's newspaper, Mueller said, there had been a steady stream of cars loaded with people coming to see his house. Monday evening, however, someone came to do harm.

Sometime between 5 p.m. and 6:30 p.m., vandals knocked down the lighted spires on the roof, smashed a string of lights atop the chain link fence and unplugged rows of other lights along the home's eaves. Lines of electrical wire hung loose and wooden triangle frames were torn from the roof.

Neighbors s[illegible] anything, but corner was dar[illegible]

Standing in [illegible] at the destruc[illegible] shook his hea[illegible] He said he wil[illegible] be able to fire [illegible] strings for Chr[illegible]

"Here there [illegible] and there's no[illegible] about that," h[illegible] it? Just shows [illegible]

"I don't kn[illegible] happens. I gue[illegible] too."

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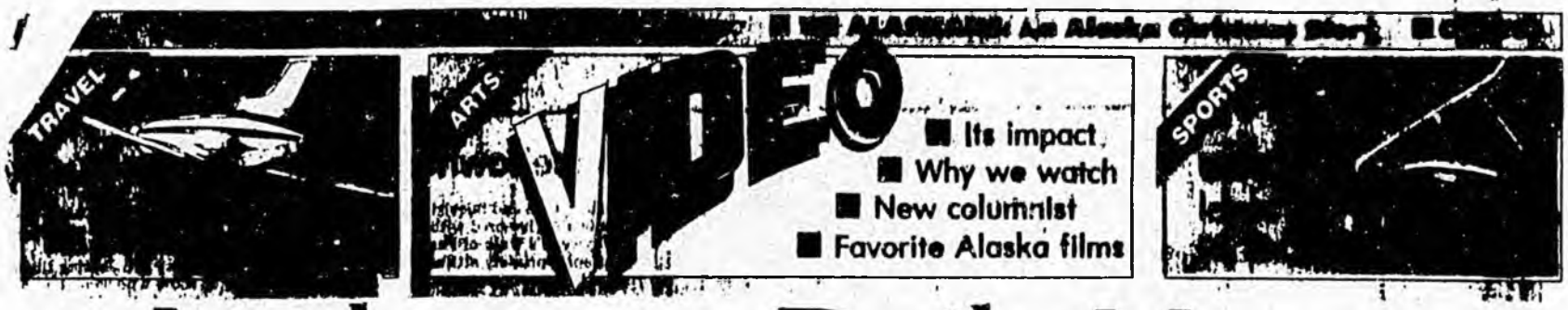

Anchorage Daily News

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State mistakes cost millions

Native corporation got oil, gas worth as much as $500 million

By RONNIE CHAPPELL
Daily News reporter
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Mistakes by state officials executing a land swap 10 years ago have cost the state at least $35 million in oil and gas revenues, an examination by the Daily News reveals.

The cost of these oversights by state resource managers is growing by $5 million or more a year, and one day may exceed $500 million.

In response to inquiries by the Daily News, state officials have begun looking for ways to recover the lost oil and gas land and revenue. They also are drafting new land disposal rules designed to prevent the kind of errors that resulted in:

• The transfer of 11 valuable state-owned leases on the Kenai Peninsula to Cook Inlet Region Inc., the Anchorage-area Native regional corporation.

• The loss to CIRI of nearly half the state's ownership interest in one of the largest gas fields in the United States.

• The conveyance of more than 2,000 acres in the Cannery Loop gas field without knowing that it was worth $50 million to $120 million. Today, because of increases in the price of natural gas, the land could be worth $300 million to $720 million.

• The overlooking of a section of the Alaska Native Claims Settlement Act that allowed CIRI to take a third of state revenue from the Swanson oil and gas fields.

The land CIRI has obtained is among the most valuable in Alaska. Over the past five years, the company has grown into a financial powerhouse that earns millions of dollars a year, and pumps millions more into 11 other Native regional corporations.

The engine of CIRI's success is the oil and gas income unwittingly turned over by the state.

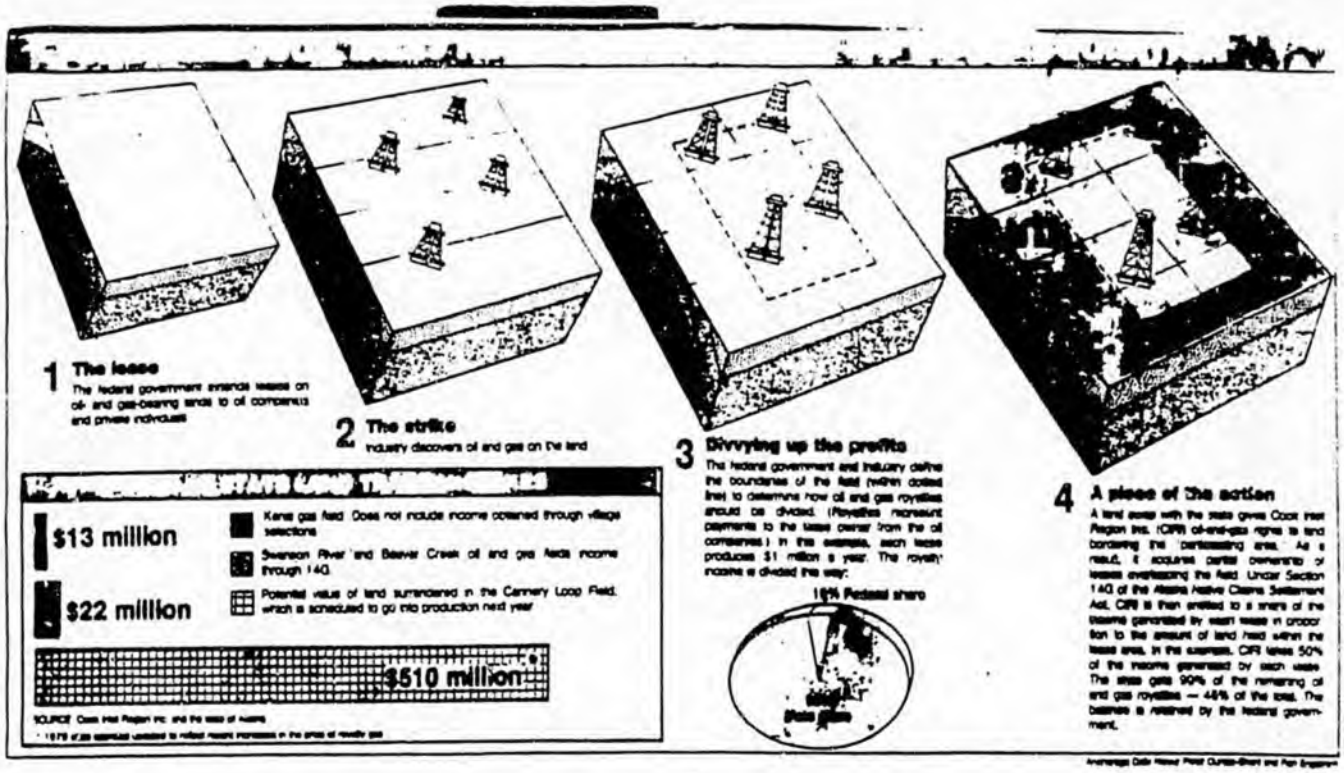
Under federal law, the state receives 90 percent of all oil and gas royalties from federal land in Alaska. Under that system, the state once earned up to $7 million a year from the Swanson River oil field.

CIRI used the land trade to take a 35.1 percent cut of the income from Swanson River. The state's share fell from 90 to 58.4 percent; the federal government gets 6.5 per cent.

The loss to the state was even greater in the Kenai gas field, one of the largest in the country. The field heats most of Anchorage, supplies raw material for a world-class fertilizer plant and fuels the only liquified natural gas export facility in the U.S.

Before 1976, the state collected more than 90 percent of the royalty income from the Kenai field. Through the land trade, CIRI acquired 65 percent, worth more than $10 million a year beginning in 1986, and the state share fell to 31.5 percent, with the balance going to the federal government.

See Page A-14, STATE



Mistakes in land deals with Native corporation cost state millions in oil and gas revenue

Continued from Page A-14

state's a big boy, too."

Smith admits he erred in overlooking the implications of 14(g). But, he insists, so did others.

Guy Martin agrees. As state resources commissioner, Martin was Smith's boss when the trade was negotiated and submitted to lawmakers.

"It wasn't just the (Hammond) administration," he said. "There was huge public exposure of this thing." The trade was "the most thoroughly aired transaction the state ever conducted. That thing was turned inside out. I used to tell people that everyone but God had approved it, including the U.S. Supreme Court. To the extent this was missed, a lot of people had a shot at it."

publicly reviewed land exchange, certainly in Alaska and perhaps in American history," Smith said. "All of these people, and Dale (Tubbs) is a good example, had an opportunity to voice their concerns."

Tubbs disagrees.

"I give CIRI all the credit in the world for getting what they got," Tubbs said. "But they got it because of Michael C.T. Smith."

One who apparently foresaw the negative effect of the trade on state income was an aide to an assistant secretary of the Interior. Four months before the legislature approved the trade, Ted Bingham, a career employee of the Bureau of Land Management, predicted the state "would likely lose its share of mineral royalties" from the Swanson River oil field.

state had agreed to make "well located, potentially developable land" available to CIRI.

Smith wrote that the state should retain land of "public significance," but he didn't define the term. The memo doesn't mention producing oil and gas land, land with proven oil and gas reserves, or land with high oil and gas potential.

"From my standpoint, it was so obvious we weren't going to give up oil and gas fields, that why repeat it," Smith explained recently. "I could have said we shouldn't give them the Governor's Mansion. I could have gone into incredible detail.

"I couldn't believe anybody in their right mind — if the process was working right — would give them produc

never reviewed by the legislature.

Current natural resources employees say it is incredible that the state could transfer so much land so quickly.

Not all of the leases given to CIRI were valuable, but one of them represented more than a third of the state's ownership interest in the huge Kenai gas field. The previous year the lease had provided the state $495,000. Today, it produces more than $2 million a year for CIRI.

"We screwed up, to be quite blunt about it," said Ron Swanson, a land manager with the Division of Land and Water Management.

While one group of state employees was giving away a chunk of the Kenai gas field, a second negotiating team was hard at work on a second

According to George Kriste, CIRI's executive vice president, the corporation wanted quick conveyance of the Cannery Loop land because "we knew (it) would never be conveyed after (Union) started to flare the well."

On May 13, 1979, a 40-foot plume of fire from the well signaled a major strike.

For the state, the discovery came too late.

On May 1, Bob LeResche had given away the state's interest in the field by signing the Seldovia agreement.

On May 2, according to state records, the Division of Lands had asked state oil and gas managers to estimate the value of the state interest in the Cannery Loop field. Within days, they replied with a memo estimating its value at $50 million to $120 million.

Dyke's Cannery Loop ap; raisal, state officials gave CIRI another 80 acres in the Kenai gas field.

On a separate occasion, the Division of Lands urged the federal government to give CIRI a 160-acre tract that Minerals and Energy Management had told them was part of the Kenai field. The tract was given to CIRI.

Before the 160 acres were transferred to CIRI, the state received 90 percent of the royalty income from the land. State officials could have blocked the transfer and protected the income simply by objecting.

CIRI "shouldn't have gotten any producing or proven reserves," said former Minerals Director Tom Cook. "We recommended against convey

Official who negotiated land trade is now CIRI consultant

By RONNIE CHAPPELL
Daily News reporter

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Michael C.T. Smith

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Smith's life outside government has been relatively quiet, in marked contrast to the five years he spent as director of lands.

He wielded immense power during a time that the state was preoccupied with land issues, overseeing huge deals that will affect the state for decades to come. He force fed change to a state agency set in its ways.

His refusal to give in to public demands for free state land moved legislators to try to eliminate his job from the state budget. In May 1979, Resources Commissioner Bob LeResche finally demanded his resignation.

But few of Smith's initiatives stirred more controversy than the Cook Inlet land trade, which he and other Hammond administration policymakers defended as a way to protect important state interests.

Opponents, including some within Smith's agency, called the deal a billion-dollar boondoggle to benefit Cook Inlet Region.

Mistakes in the negotiation and execution of the trade have cost the state millions of dollars and will cost millions more. Smith accepts partial responsibility for the errors, but argues that others — even those who opposed the trade — are also at fault.

Friends and critics alike describe Smith as a thorough, brilliant, self-assured man. He grew up in New York, was selected as a Fullbright scholar, and studied in New Zealand before returning to the U.S. to earn a doctorate in resource management.

"He's such a smart guy that he doesn't suffer fools easily," Martin said. "That got him in trouble a lot of the time." Smith's style was "abrasive to a fault."

Theodore Smith worked for Smith in 1979. He describes his former boss as an intelligent, sometimes arrogant man who is "totally convinced of his own rightness. He's difficult to argue with. He's really smart, but because he is so smart, he's blind to his own mistakes."

"Mike did things his own way or else," said Tom Cook, who served under Smith as director of the Division of Minerals and Energy Management. "There was no willingness to compromise or take into consideration the concerns we had."

Cook and others at Minerals and Energy Management seemed out of step in an administration that bought back oil and gas leases to protect Kachemak Bay and traded coal reserves for park land and moose habitat.

"Smith had his own agenda at that time. What he said went. I personally had a lot of disagreements with Mike over resource management," Cook said.

Smith dismisses Cook's criticism as the grumbling of man whose positions on resource issues weren't articulated as well as his own.

"I'm a person who's got ideas and is not afraid to voice them, although I think I'm a person who listens to reason and can be certainly turned around by a good argument.

"I had as much determination to protect oil and gas fields as anybody else and everything I can see that I did was in that way," Smith said. "Certainly, nobody is able to stand up and say that at any point in time there was any attempt or direction on my part to go easy on oil and gas leases."

Anchorage Daily News forum 5/4/1986

Smith responds to Cook Inlet Land Exchange story, editorial

The Daily News has done a public service in bringing to light errors on the part of the state in implementing the Cook Inlet Land Exchange. However, the News, in both the original Dec. 22 article and in its editorial, failed to provide an accurate overall analysis of what the myriad dates, events and complicated legal interpretations meant.

First, the News did not clearly make the important distinction between the process of negotiating and legislating the original agreement, and the subsequent implementation of that agreement during which the majority of mistakes occurred. The exchange agreement itself provided for a fair and equitable exchange for all parties. Its passage was accompanied by intense agency, public, legislative and legal debate. If errors were overlooked during this process, they were missed by many individuals, agencies and institutions.

Second, the News editorial's implication that the alarms raised by some lower echelon officials were ignored is simply wrong. The News' own article stated that the Deputy Director of Lands opposed the exchange in both oral testimony and in writing during the Senate Resources Committee hearings. Several other state officials also actively opposed the exchange. However, in the end both administration and the legislature decided the exchange was in the state's best interest. The Daily News also expressed editorial support for the exchange at the time.

Third, the unexpected benefits derived by Cook Inlet Region, Inc. occurred primarily from unintentional, but certainly preventable, errors made by state agencies during implementation of the exchange, including acquiescence in the application of Section 14(g) of ANCSA in clear contradiction to the original intent of the exchange agreement. It is, therefore, patently unfair for the News to place any blame upon former Commisssioner of Natural Resources Guy Martin as he had left that position more than a year before implementation of the exchange even began.

Lastly, the News article pointed out shortcomings in both the state's review of the initial exchange agreement and in the process of implementing the exchange. Many people were involved in both aspects of the exchange, and contributed to its many successes, and its few failures. My role was certainly pivotal in both aspects, and to that extent I accept part of both any blame, as well as credit. But why the problems occurred is less a matter of personalities, and more the result of the framework within which the land exchange conveyances were made.

The News is wrong in suggesting that the Hammond administration's land management system had virtually collapsed. In fairness to the Department of Natural Resources and other state employees who labored in good faith to convey the large entitlement identified in the agreement, it must be pointed out that the background against which those transfers were made was unique in Alaska's history.

In 1978, two years after the land exchange was formalized and just as implementation was beginning, the legislature became obsessed by land disposals under pressure of the Beirne Homestead Initiative. It mandated a series of duties and deadlines, to be accomplished largely within just 12 months, to remove all impediments to large-scale land disposals for private ownership. These mandates included completing identification of approximately 772,000 acres to fulfill the entitlements of Alaska municipalities; identification and transfer to CIRI of its more then 415,000 acres; and identification of tens-of-thousands of acres of private land disposals — tasks unparalleled in the state's history.

Foisted on an understaffed department, there was no way all those mandates could be met within such unrealistic time frames without significantly increasing the probabilities for serious errors. Expressions of these concerns to the legislature were shouted down in committee hearings as bureaucratic blocking of legislative desires.

This is not meant to blame the legislature for all the land exchange errors. But, the politics of "Now, and damn the obstacles," as exhibited by the 1978 legislature, always has a cost. The full costs for the roads, schools and other services which ultimately will be needed to support the helter-skelter state land disposals of the past seven years may never be tallied. In this instance, however, the Daily News has performed a service in identifying the unintended real dollar costs of the errors caused by having to hastily implement the CIRI exchange. The legislature and the people of Alaska would do well to keep that in mind when making future resource decisions with similar magnitudes and time constraints.

— Michael C.T. Smith

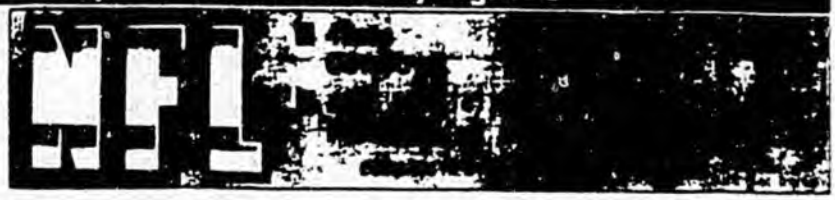
☐ **Michael C.T. Smith is the past Alaska director of state lands.**

NATION: O'Neill predicts veto of tax-bill, Page A-3

NEIGHBOR TO NEIGHBOR

Daughter seeks reunion with father Outside

Metro, Page C-1



Anchorage Daily News

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Leader steers CIRI on a wealthy course

Huhndorf keeps his eye on assets — not limelight

By RONNIE CHAPPELL
Daily News reporter
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Rumpelstiltskin, the dwarf who spun straw into gold, could have taken lessons from Roy Huhndorf, the president of Cook Inlet Region Inc.

Huhndorf took an offer of glaciers and mountaintops and turned it into a river of cash for his company and every Native corporation shareholder in Alaska.

There was no hocus pocus, no sleight of hand.

Huhndorf, 45, used intelligence, toughness, tenacity and stealth to take the pants off the state in one of the most complicated land trades ever negotiated. As a result, his Anchorage-based Native regional corporation will collect hundreds of millions of dollars in oil and gas revenues the state never intended to give away.

Huhndorf is putting the money to good use. Today the corporation is among the leanest and most profitable in the state. CIRI employs just 55 people. Expenses account for less than a third of annual revenues.

The company has kept overhead low by teaming out strong partners and investing with them in a number of successful ventures. CIRI owns a substantial interest in an offshore drilling rig, two onshore drilling rigs, a North Slope construction company, and the ABC TV affiliate in Hartford/New Haven, Conn.

CIRI also is heavily involved in the development of industrial, commercial and residential properties in Anchorage, Juneau, Southern California, Hawaii, Virginia and New Orleans.

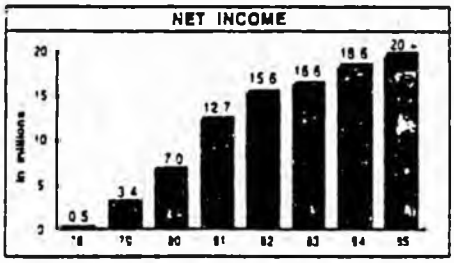
While some other Native corporations are struggling to keep Outside banks at bay, CIRI is collecting interest on more than $50 million in securities.

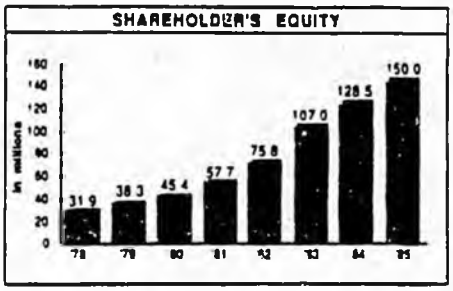
Since 1982, CIRI has funneled more than $48 million to other Native corporations under Section 7(i) of the Alaska Native Claims Settlement Act. Section 7(i) requires regional corporations to share 70 percent of their resource income with the other regional corporations. According to Huhndorf, CIRI's earnings have helped two corporations stay out of bankruptcy court.

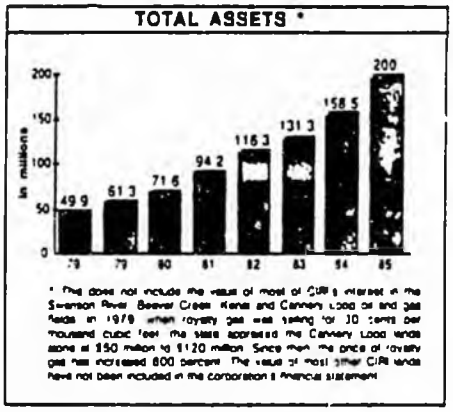
In contrast, CIRI has received less than $1.5 million in 7(i) money from the 11 other regional corporations, some of which are perceived to be more successful than CIRI. Sealaska Corp. in Juneau, for example, has been listed among the country's 1,000 largest indus-

See Back Page HUHNDORF

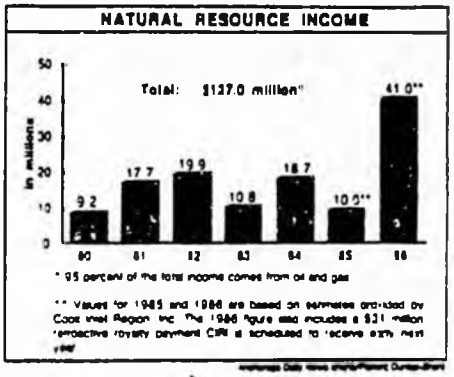
THE FINANCIAL PICTURE FOR COOK INLET REGION INC.







* This does not include the value of most of CIRI's interest in the Swanson River, Beaver Creek, Kenai and Cannery Loop oil and gas fields in 1978, when royalty gas was selling for 30 cents per thousand cubic feet. The state appraised the Cannery Loop lands alone at $50 million to $120 million. Since then, the price of royalty gas has increased 600 percent. The value of most other CIRI lands have not been included in the corporation's financial statement.



* 95 percent of the total income comes from oil and gas.

** Values for 1985 and 1986 are based on estimates provided by Cook Inlet Region Inc. The 1986 figure also includes a $31 million retroactive royalty payment CIRI is scheduled to receive early next year.

Anchorage Daily News graphic/Robert Durbin-Brown

Officials take steps to learn from state's mistakes

By RONNIE CHAPPELL
Daily News reporter
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Resources Commissioner Esther Wunnicke has asked state attorneys to see if the state can recover millions of dollars in oil and gas revenues it mistakenly gave away in the Cook Inlet land trade.

No decision on whether to pursue the lost millions in court has been made, Wunnicke said. "We're seeking advice from the attorney general to guide us in future actions."

But Cook Inlet Region Inc., the Anchorage-based regional Native corporation that gained from the state mistakes, already is digging in to protect its interests in the Cannery Loop, Swanson River, Beaver Creek and Kenai oil and gas fields.

In a 16-page memo delivered to state officials this month, CIRI attorneys describe a state claim on Native royalty income as "a direct attack upon the integrity of the Alaska Native Claims Settlement Act and a clear threat to the survival of many Alaska Native corporations."

They also warn that any effort "to deprive Alaska Natives of revenues from their lands" could prompt the Congress to reduce the state's "unique and extremely generous 90 percent" share of federal oil and gas royalty income.

In an effort to prevent future mistakes, Wunnicke also will make permanent a land transfer review process established in 1982. Before that, the state lacked a formal procedure for reviewing land selections.

The state also will audit all its past land conveyances under the terms of the Cook Inlet land trade.

"In this time of declining revenue we can ill afford to give away a producing oil and gas lease," said Gary Gustafson, the state's chief land manager. "We have built in mechanisms to keep that from happening. It will not happen again, unless of course, it is intentional."

See Back Page STATE

Huhndorf keeping a stealthy head, steady hands at the helm of CIRI's financial empire

Continued from Page A-1

that companies

CIRI has never sought that kind of attention. The corporate land [illegible] more than [illegible] million acres of surface and subsurface estate [illegible] been appraised.

Huhndorf would rather pass his stockholders big dividends – four times the size of other Native corporations – and keep a low profile. He avoids publicity and concentrates on profits. CIRI doesn't have a public relations department, and as a rule doesn't issue press releases.

"We feel that the figures at the end of the year speak for themselves," Huhndorf said.

There are other reasons for doing business quietly. State and federal agencies still owe CIRI more than a million acres under terms of the Cook Inlet land exchange. Publicity generally means controversy and nothing gums up the wheels of government and the process of obtaining land like controversy.

Huhndorf grew up in a log home in Nulato, on Athabascan village on the Yukon River. The family had a large vegetable garden and hunted moose in the fall. His mother, a Native sewed fur garments and his father, a retired serviceman, was one of the few villagers with a cash income.

At 15, Huhndorf left Nulato to attend Anchorage High School.

"There was some prejudice aimed at me personally," he recalled. "If you take it seriously, it can make you have a pretty low opinion of yourself."

While managing CIRI, Huhndorf found time to attend college classes at night. In 1984, he received his diploma from the University of Alaska-Anchorage. At the time he was a student, he was also a university regent. He is now president of the Board of Regents.

As a young man, Huhndorf watched Outsiders stake land that had been hunted and fished by Native Alaskans for more than 10,000 years.

Even the state participated in the land grab. Entire villages were gobbled up, Huhndorf said, despite provisions in the Statehood Act that prohibited state selections in areas subject to aboriginal claim.

This simmering conflict came to a head in the mid-1960s when Alaska Natives claimed the rich Prudhoe Bay and the corridor needed for the trans-Alaska pipeline. The oil companies fought the claim in court, and lost.

In 1971, the Alaska Native Claims Settlement Act gave the state uncontested title to the Prudhoe Bay oil field, allowed construction of the pipeline and created more than a hundred village and regional Native corporations and vested them with 1.962 million and 44 million acres.

"A lot of people tend to ignore the legality of the settlement act," Huhndorf said. "Change always bothers some people. There are always those who resent it."

For CIRI, however, the settlement act was a hollow promise. Most of the desirable land within its boundaries had been taken. Millions of acres were tied up in the Chugach National Forest and the Kenai National Wildlife Refuge. The state had selected millions more and homesteaders had gobbled up the rest.

When the Secretary of the Interior tried to satisfy CIRI's entitlement with mountaintops and glaciers, Huhndorf said, "we knew there was not going to be a fair settlement."

Roy Huhndorf, Cook Inlet Region Inc. president

We weren't going to stand still for that.

After [illegible] in court, CIRI went to the U.S. Congress for help. Strong support from Sen. Henry Jackson, D-Wash., and others gave CIRI the leverage needed to pry a compromise out of the Department of Interior.

Federal officials offered the corporation more than 250,000 acres in the Kenai National Wildlife Refuge, the Swanson River oil field and several large tracts of federal land in the Anchorage Bowl.

CIRI turned down the deal. The corporation was asked to give up two-thirds of its entitlement and the assets it was receiving weren't valuable enough, Huhndorf said.

The state joined the talks during the spring of 1975 because it had a variety of interests it wanted to protect, Huhndorf said. Six months later, Congress approved a three-way trade that netted CIRI more than 2 million acres.

The state contributed 115,000 acres on the Kenai Peninsula and 110,000 acres in the Beluga area. "The Beluga lands contained ... more than 100 million tons of known coal reserves."

The Alaska legislature approved the deal, since it handed over claims to the Swanson River and other oil fields on the present income of the state of Alaska could be maintained.

Despite Huhndorf's testimony, CIRI later

- Used Section 14(g) of the settlement act to take more than a third of the royalty income generated by the Swanson River and Beaver Creek fields.
- Nominated state and federal lands in the huge Kenai gas field for conveyance to the corporation. It paid the cost of a lawsuit that allowed the Salamatof Native Association to get additional land in the Kenai field.
- Filed an agreement designed to protect Kachemak Bay State Park in the takeover the state's interest in a new gas field near Kenai that could be worth $300 million to $500 million. The field will go into production next year.

Huhndorf insists he and other company officials did not mislead lawmakers. At the time the trade was under consideration by the legislature, CIRI had not assessed the effect of 14(g) on state revenue from Swanson River, he said.

By nominating tracts in the Kenai gas field, CIRI was only trying to obtain the best and valuable. Under the agreement approved by the legislature, the state had an unlimited right to block those selections, Huhndorf said.

State officials rarely exercised that power. Instead, they gave away revenue producing leases in existing fields. The one move chosen by the Alaska Department of Natural Resources proved no match for the silver-haired grandmaster and his team at CIRI.

The CIRI strategy was so well conceived and smoothly executed that a decade later the presiding state officials still didn't realize the magnitude of their mistakes.

Almost everyone agrees that CIRI succeeded by knowing the game and the rules better than its opponents. When roadblocks were encountered, CIRI negotiators stuck with it until the troublesome faces or policies changed.

"We've got a healthy respect for CIRI that comes from experience," said Gary Gustafson, the chief of land management for the state.

Gustafson wasn't involved in the negotiation of the land trade and had nothing to do with the loss of state land in producing oil and gas fields.

"Of all the Native corporations we deal with, CIRI is the most astute," Gustafson said. "If there's a meeting, he CIRI always prepares the agenda. If there's an agreement to be worked out, they always prepare the first draft."

The tactic is effective in complex negotiations, Gustafson said, because "he who controls the script usually gets what he wants."

Today, the state is still outmatched.

The Division of Land and Water Management has just two people negotiating and implementing land exchanges. "We are overwhelmed in this day, no matter how good those people are, it's difficult to keep up," Gustafson said.

Especially when CIRI knows exactly what they're doing and has four people assigned to the task. "We're swamped all the time and they've got a pit team."

CIRI has triumphed and profited even in business counterparts. Unocal Corp., the California oil company that operates the Kenai gas field, will soon pay CIRI more than $30 million in retroactive royalties on natural gas sold to the Unocal Chemical plant in Nikiski. The settlement also triples the price that CIRI, the state and the federal government will get for royalty gas.

Unocal and the other companies with an interest in the Kenai field "like the tax we got those lands," said CIRI Executive Vice President George Kriste.

Agreement has been reached on the value of royalty gas delivered to Enstar Natural Gas Co., a utility that serves more than 60,000 customers in Anchorage, the Matanuska Valley and the Kenai Peninsula.

According to Enstar officials, settlement of that dispute will cost the average residential gas consumer about $50, spread over a period of 20 months.

Huhndorf is proud of CIRI's performance, but he's hesitant to boast about it.

"It's a bit of paranoia," he said in an interview that reporters were not allowed to record. "Anytime a Native corporation does well, people resent that."

State officials examining legal avenues to see if Alaska can recoup lost oil, gas revenues

Continued from Page A-1

Recovering the oil and gas lands that already have been lost could be difficult, Gustafson said. Most of the state's options look like long shots. They're being considered because "we're looking at all possible avenues to recover lost royalty income or lease revenues," Gustafson said.

Losses of royalty income have been substantial. Past mistakes have cost the state at least $35 million and the total is increasing at a minimum of $5 million a year.

Although legislators were sold the 2 million acre deal would keep Cook Inlet Region Inc. from tapping state royalty income, the Anchorage-based Native corporation has made more than $70 million in Cook Inlet oil and gas production.

State officials also gave away a $300 million to $700 million interest in the Canoe Loop gas field near Kenai. The field, discovered in 1979, is scheduled to go into production next year.

Pursuing the lost millions will be politically difficult. Since 1982, CIRI has distributed $48 million to other Alaska Native corporations, representing more than 60,000 Native shareholders.

Strong Native support was crucial in 1982 in the election of Gov. Bill Sheffield. Sheffield will need their continued support in 1986 election.

"This is a no-win situation for Sheffield," said one former state official. "He's damned if he goes after the money, and he's damned if he doesn't."

If the state decides to challenge the Cook Inlet land transfers, Gustafson said, it will argue that

- State land deeded to CIRI was conveyed by state officials who lacked legal authority to execute the transfers.
- State and CIRI officials assured the legislature that state royalty income would not decline as a result of the Cook Inlet land trade.
- The state may still be entitled to 90 percent of the royalty income generated by federal oil and gas leases, even though the leases are partly owned by Native corporations.

In a Nov. 4 letter to Martin Richard of the Alaska Department of Revenue, former Assistant Attorney General Tom Meacham argues that the state's 90 percent royalty share is a "valid existing right" under Section 14(g) of the settlement act.

Therefore, Meacham writes, transfer of oil and gas leases to CIRI "could not impair the state's right to receive continued royalties from CIRI's portion of the leases."

If Meacham is correct, the state could recover more than $60 million and prevent the loss of millions more.

CIRI contends that Meacham's analysis contradicts the legislative history and later application of the settlement act.

"The state's right to royalty income from federal leases is a derivative right, contingent upon continued federal ownership of the leases," CIRI President Roy Huhndorf said. "As soon as federal ownership ends, the state's rights to continued royalty payments end."

There apparently have been no court cases that directly analyze whether the state's interest in federal royalty income is a valid existing right under Section 14(g) of the settlement act. CIRI attorneys said. If such a claim were asserted, it seems clear that its practical resolution would be a task ultimately left for Congress."

Gustafson agrees with CIRI's interpretation of the law, but has asked for an opinion from the attorney general's office because "it's too important to have any question marks remaining."

Chances also appear slim that the state can reclaim lost revenue on grounds that state officials acted improperly to give away oil and gas leases, or that conveyance of the leases violated the intent of the legislature.

Both questions have been reviewed by state attorneys before.

If any doubt now exists as to the legal authority of the persons who executed the state's deeds of title, that doubt would almost certainly be resolved by a court in favor of the innocent third party, Cook Inlet Region Inc., wrote Meacham in his memo.

"It is my conclusion that the state tracts have been irrevocably conveyed to CIRI."

In October 1980, Billy Berger, director of the Division of Legal Services, advised the House Research Agency that "the legislative history of intent of the legislation does not provide a legal basis for return of the leases."

According to Gustafson, the state's best hope for curbing its losses may lie in the erroneous conveyance of several federal oil and gas leases to the state during the early 1980s. The Bureau of Land Management discovered the mistake in March 1985 and asked the state to return leases that include 165 acres in the Kenai and Cannery Loop gas fields.

Returning the leases could work to the state's advantage. Under a 1979 agreement, the state is obligated to convey that land and any related subsurface resources to CIRI.

By returning the mineral rights to the federal government before giving the land to CIRI, the state could continue to collect 90 percent of the royalty income from the leases, Gustafson said.

"In that case, we can keep the situation from getting any worse and we might be able to undo part of what's already happened. From the state's perspective, that's important."

Improvements in land conveyance practices should prevent the loss of valuable oil and gas land in the future, Gustafson said.

In the old days, lands were conveyed quickly, without public hearings or legislative review.

"We couldn't do that today," he said.

Six years ago, the agency didn't always research every piece of state and federal land proposed for conveyance to CIRI. Today, there is a title search on each tract.

"This tells us if the land is even eligible" for conveyance to CIRI, Gustafson said. The review recently turned up several valuable tracts of federal land that didn't belong in the pool from which CIRI selects. Among them was a 160-acre parcel near Klatt Road and Minnesota Drive.

State resource agencies are now notified of proposed conveyances and given 45 days to respond. No action is taken until each has delivered its recommendations, in writing, to the Division of Land and Water Management.

In 1979, it took the Division of Lands just nine months to give away 45,000 acres of land, 48 oil and gas leases and a third of the state's holdings in the Kenai gas field. The transfer was never the subject of public hearings or reviewed by the legislature.

In contrast, it has taken the state six years to complete a much smaller trade aimed at getting the Seldovia Native Association out of Kachemak Bay State Park.

And that deal, because it involves state land valued at more than $5 million, eventually must be approved by the legislature.

"I'm comfortable that the process gives us the information we need to make an informed decision in the best interest of the state," Gustafson said.

State mistakes in land deals with Cook Inlet Region result in losses of up to $500 million

Continued from Page A-1

The string of errors and misunderstandings that proved so costly to the state came about, in part, because:

- Bitter disputes within the Alaska Department of Natural Resources kept it from giving the trade agreement the close scrutiny it required.
- Key state employees were shut out of negotiations.
- Legislators were misled by state and CIRI officials who assured them the trade would not reduce state revenues. The same officials now say they misunderstood the agreement and its effect on state oil and gas income.
- Workers responsible for conveying land to CIRI were never told not to give away producing oil and gas fields.
- The state traded away land before it knew what the land was worth.
- The recommendations of oil and gas managers were ignored by land officials carrying out the trade.

At one point, confusion within the Department of Natural Resources was so complete that officials agreed to sell gas they had mistakenly given away the year before.

Even today, many of the individuals involved in the Cook Inlet trade don't realize what happened.

"Dear God," muttered Bob LeResche, the former commissioner of natural resources, when told recently that he had signed away the state's interest in a major gas field as part of a 1979 agreement to prevent gravel mining in Kachemak Bay.

"It's just outrageous," LeResche said. "Somebody got snookered. I certainly feel as though I did."

LeResche said he trusted subordinates to handle the CIRI land conveyances. In retrospect, he said, that was a mistake. "I was being treated like a mushroom," he said.

The Cook Inlet land trade was the product of a long-simmering conflict between Alaska Natives — who had hunted, fished and occupied most of the state for thousands of years — and a white world that was fast claiming the best Alaska had to offer.

The conflict came to a head in the mid-1960s when Alaska Natives claimed Prudhoe Bay and the land needed to build the trans-Alaska oil pipeline. The oil industry challenged the claim in court, and lost.

Congress resolved the dispute in 1971 with the Alaska Native Claims Settlement Act, which cleared the way for the pipeline by creating more than 170 Native regional and village corporations and vesting them with 40.3 million and 44 million acres. The agreement also gave the state undisputed title to the Prudhoe Bay oil field.

Most Native corporations were able to get the land they were entitled to, but CIRI had problems. Almost all of the developable land within its traditional boundaries had been homesteaded, deeded to the state, or reserved for military bases, national forests or wildlife refuges.

CIRI sued the federal government, arguing that under the settlement act it was entitled to more than just "glaciers and mountain tops."

The federal Department of Interior tried to settle the case in the spring of 1975. It offered CIRI 230,000 acres in the Kenai National Wildlife Refuge, mineral rights to another 345,000 acres, the Swanson River oil field and several large tracts of federal land in the Anchorage Bowl.

CIRI turned down the offer.

Fearful that state interests might suffer if Congress came up with a more generous settlement, state officials joined in the trade.

One of the main advocates of state participation in the swap was Michael C.T. Smith, the brilliant and sometimes abrasive director of the Alaska Division of Lands. Smith quickly became the key state player in the trade, negotiating the deal, leading efforts to win legislative approval of it, and running the state agency that carried it out.

In October 1975, after months of talks, Smith announced agreement on a three-way trade involving more than 2 million acres.

Under the agreement, the state received thousands of acres near Willow, then the proposed site of a new state capital, land in the Bristol Bay watershed, the Campbell park strip, and a tract needed for a north-south runway at Anchorage International Airport.

In return, the state gave up surface and subsurface oil, gas and mineral rights to thousands of acres on the Kenai Peninsula, and 310,000 acres containing 500 million tons of coal in the Beluga area on the west side of Cook Inlet.

Although the trade encountered little difficulty in the Congress — where CIRI, the state and all three members of its congressional delegation lobbied for passage — it stirred considerable controversy at home.

Critics questioned the wisdom of "giving away" 500 million tons of coal. Some charged that the deal violated the Alaska Constitution, in particular the prohibition against transferring state resources to private parties. Others complained that the agreement was too vague about which state lands CIRI would get.

"One of the problems we have with this deal is its uncertainty," Anchorage engineer Hamid Galliett told a joint meeting of the House and Senate resource committees in February 1976.

"It's a blank check to which you're going to sign your signatures and then Mr. Smith behind me is going to sit down with the Native corporations and decide what he wants to give them of our state lands. You are not going to know the deal. The way it is written does not permit that."

Approve the trade, warned Anchorage lawyer Homer Burrell, and you'll "commit an error which is going to approach Teapot Dome someday."

Galliett tried to keep the state out of the trade. The Alaska Supreme Court ruled against him in a split decision, and the U.S. Supreme Court refused to hear his appeal.

Environmental groups, CIRI, the administration of then-Gov. Jay Hammond and members of the state's congressional delegation pushed hard for the Alaska legislature to approve the trade.

At CIRI's request, U.S. Sen. Ted Stevens wrote House Majority Leader Mike Miller, D-Juneau, to warn that failure to endorse the trade could have "unsettling results for the state."

Stevens told Miller that all "oil-producing federal lands that yield revenue to the state" had been precluded from transfer to CIRI. "Only in that way," Stevens wrote, "could a certain and current income stream for the state be maintained."

Smith and other state officials made similar statements.

A summary by the Department of Natural Resources said "no oil and gas fields" would "be transferred to Native ownership. All revenues currently received by the state will continue."

CIRI President Roy Huhndorf testified before legislative committees and the Federal-State Land Use Planning Commission that CIRI had given up its claims to Swanson River and other oil fields "so the present income of the state of Alaska could be maintained."

CIRI publicly assured opponents of the land trade that "all revenues currently received by the state, such as from the Swanson River oil field, will continue."

Legislators, even those critical of the trade, accepted the statements of CIRI and state and federal officials.

"Oil and gas was never a major part of the debate," recalled state Sen. Pat Rodey, D-Anchorage. "The potential for significant loss of royalty income was considered to small. It was not discussed."

If lawmakers had known the deal would cost the state tens of millions of dollars, "there would have been a different approach to the oil and gas question," Rodey said.

At the time, the state needed money. The 1900 million paid for the original Prudhoe Bay leases had been spent and the pipeline was still years from completion.

"I can't imagine the '74 legislature allowing a change by anybody that would lower the amount of money that was flowing into the treasury," Rodey said.

State officials believed they had protected state royalty income by prohibiting CIRI from selecting land in the Swanson River, Beaver Creek, West Fork, Birch Hill, Beluga River and Nicolai Creek oil and gas fields.

The state could also veto CIRI selections of state and federal land in the huge Kenai gas field. Its veto power did not extend to lands claimed by the Salamatof Native Association, a village corporation in the Kenai region. Under the settlement act, when a village corporation receives title to land, its regional corporation gets the oil, gas and mineral rights.

More than half of CIRI's interest in the Kenai gas field was acquired indirectly through the Salamatof village selections. That interest now earns CIRI millions that once went to the state.

Smith said it never occurred to him to negotiate the question of CIRI's right to oil and gas through village selections in the Kenai gas field.

CIRI also found a legal backdoor into the Swanson River and Beaver Creek fields.

The key was Section 14(g) of the Native claims settlement act. First, CIRI used the Cook Inlet land trade to get land just outside the oil and gas fields. This allowed them to acquire partial ownership of producing leases that overlapped the boundaries of the fields. Then, CIRI used Section 14(g) of the claims act, which entitles Native corporations to a share of the revenue from leases in which they have an interest, to take a third of the royalties from Swanson River and Beaver Creek — about $22 million so far. Before the trade, 90 percent of that money would have gone to the state.

Legislators were never warned that "14(g)" could be used to tap state royalty income. Smith said he and other state officials simply overlooked it. They first learned about CIRI's claims under 14(g), they said, when questioned by the Daily News last month.

CIRI knew about Section 14(g) before the trade, Huhndorf said, but didn't know how it would apply to the land trade. "We were so caught up in receiving our land entitlement that we never focused on it."

But when Huhndorf learned that 14(g) allowed CIRI to take a major share of Swanson River and Beaver Creek revenues, he didn't let his testimony about the sanctity of state royalty income keep him from going after it.

"I would have breached my fiduciary responsibility to our shareholders by not pursuing the royalties. Besides me," said, his board of directors would have forced him to go after the money.

CIRI's reputation for shrewd business dealing makes some people doubt that the 14(g) windfall was as unexpected as Huhndorf says.

"I don't think anything happens by accident," said Rep. Don Young, R-Alaska. He smiled when told that Huhndorf had testified that state royalties would not be reduced.

CIRI shouldn't be criticized for "taking advantage of the state," Young said. "The

See Page A-15, MISTAKES

TEN YEARS LATER, AS THE STATE LOSSES MOUNT

"(It's) just outrageous. Somebody got snookered. I certainly feel as though I did."

— Bob LeResche, former commissioner of natural resources

"To the extent this was missed, a lot of people had a shot at it."

— Guy Martin, former commissioner of natural resources

"It wasn't something we contemplated and deviously tried to take advantage of."

— Roy Huhndorf, CIRI president

"It's disastrous management by the state . . . I really don't see any excuse for it."

— Hugh Malone, former state representative

State got its share in CIRI land deal

People have a tendency to refer to the Alaska Native Claims Settlement Act as a give-away rather than a settlement of a legitimate claim. But let's look at the facts in the case of the Cook Inlet land trade.

Cook Inlet Region, Inc., is in the most populated part of Alaska and most of the good land around the villages was either homesteaded, built upon by the government or claimed by the state. Mountains and glaciers were left.

We went to court and an Anchorage judge ruled that mountain tops and glaciers were good subsistence hunting and fishing grounds for Natives. I asked, if that was true, why not trade for some Moose Range. I was then told by the Fish and Wildlife Service that a moose couldn't live up there, but a Native could.

CIRI appealed the decision and the Court of Appeals said they had never seen such an atrocious decision and reversed it. The Department of Interior was going to appeal to the Supreme Court so CIRI, of which I was then the president, decided to go to Congress for help.

The Alaska Federation of Natives laughed at us when we asked for support. To them we were not Natives, since we in CIRI were practically all quarter or half-Native.

Our land department prepared folders which consisted of pictures of villages with a little writing under each. There were also pictures of the mountain tops and glaciers we'd been offered by Interior. I spent almost a year going to the congressmen and women who had voted in favor of ANCSA, lobbying to get their support.

The state said they had us over a barrel — that CIRI had to take whatever was offered. But at the last Interior and Insular Affairs Committee meeting that I attended I was pleasantly surprised. I didn't have to testify. After calling the meeting to order, the chairman told everyone that "the Department of the Interior and the State of Alaska are going to make an agreement with CIRI that is satisfactory to CIRI or we are not going to appropriate any money for the department." In a couple of days, the agreement was signed.

Now let's talk about how the state got shafted. They received a "small amount of land" in the Anchorage area that was due to go to CIRI. Included was the Campbell Airstrip, which contained over 20,000 acres of land now worth over $100,000 per acre and 40,000 acres at Point Woronzof, Point Mackenzie, Goose Bay, Elmendorf and Fort Richardson that's worth $50,000 an acre today. Hence, the "small amount" of land the state received is worth at least $5 billion. Now the state is crying because CIRI got $37 million in additional royalties. In addition, the state and the federal government have received over $8.6 billion in fees and royalties between 1959 and 1984. If the state is getting shafted what are the Natives getting?

Without ANCSA, the title to the land each of us owns in Alaska would be no good. How would you, a property owner, feel if a Native came along, said his relatives had lived on your land and that he wanted it back?

I write this letter because I feel that the whole story of the Cook Inlet land trade was not published. The negotiators for the state and for CIRI should not be judged too harshly.

Ralph A. Johns
Salamatof Native

Questions on CIRI land g

Your feature article of Dec
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As noted, a key to Cook In
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employed prior to 1971, knew that a regional Native corporation would acquire mineral rights to lands granted to a Native village.

All that Mike Smith needed to do was to ask the older employees in the Division of Lands, especially Dale Tubbs. All that Guy Martin needed to do was to ask advice within his own commissioner's office from Bill Fackler, formerly Deputy Commissioner. Could Homar Burrell, former Director of the Division of Oil and Gas, be right when he refers to "Teapot Dome?"

Mike Smith told your reporter, "When you're in a situation like that with obviously support and instruction from up the ladder. . ." Who was on that ladder? Gov. Hammond? Sen. Stevens?

The environmentalists, as noted in the article, pushed for the land trade that gave valuable gas and coal leases to the Cook Inlet Region Inc. The environmentalists were greatly aided by the flood of environmentally oriented "planners" who flooded the Division of Lands early in the Hammond years. Without line responsibilities and, for the most part, historically unconscious, the planners accept preservation and oppose the state's legitimate interest in its subsurface wealth.

Still, there is one bright spot that shines through the dark complex of state errors. Roy Huhndorf, head of the Cook Inlet Region, does a far better job of balancing development and conservation than the state. Now that the damage to state royalty income has been done, I believe that the millions of dollars from gas and future coal royalties will be in the better hands.

— Charles F. Herbert