HB
41

THE SEAL OF THE STATE OF ALASKA

Official Business

COMMITTEE: Resources

DATE: Feb 18, 1987

SIGN-IN

Subject of meeting:
HB 41
* HB 111

NAME	ADDRESS	PHONE	REPRESENTING	DO YOU WANT TO TESTIFY ?
JOHN REEDER	STANDARD ALASKA PRODUCTION CO		STANDARD	yes
Stephen Ellis	Delaney Wiles et al		Chevron	yes
Bill VanDyke	Dept. Natural Resources		DNR	observe

LEGISLATIVE TELECONFERENCE NETWORK SIGN-IN SHEET

Date: 1/30/87

Site/Location: JNU / C-124

Sponsor/Subject: H. Resources

Name/Representing	Address	Phone	Here to Testify	Here to Observe
Dan M [illegible] / Exxon	PO 196601 Anchorage	564-3778		✓
Max Nalley / Exxon	316 500, Suite 91 JNU	586-1869		✓
Ray Plummer Chevron	Baranof	586-2660		✓
Jim Arlington Chevron	3001 'C' Street Anchorage Ak.	563-2563	✓	
Jim Palmer	STANDARD Anchorage, AK	564-0483		written testimony
Eric Myers	326 6th Ave	465-4992		✓
Gordon Evans / Shell	318 4th St.	586-3210		✓

5-0305A

Introduced: 1/19/87
Referred: Resources and Finance

1 IN THE HOUSE BY BROWN AND KOPONEN

2 HOUSE BILL NO. 41

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the confidentiality of certain

7 oil and gas information."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 31.05.035(c) is amended to read:

10 (c) The reports and information required in (a) of this section

11 shall be kept confidential for 24 months following the 30-day filing

12 period unless the owner of the well gives written permission to re-

13 lease the reports and information at an earlier date. [IF THE COMMIS-

14 SIONER OF NATURAL RESOURCES FINDS THAT THE REQUIRED REPORTS AND INFOR-

15 MATION CONTAIN SIGNIFICANT INFORMATION RELATING TO THE VALUATION OF

16 UNLEASED LAND IN THE SAME VICINITY, THE COMMISSIONER SHALL KEEP THE

17 REPORTS AND INFORMATION CONFIDENTIAL FOR A REASONABLE TIME AFTER THE

18 DISPOSITION OF ALL AFFECTED UNLEASED LAND, UNLESS THE OWNER OF THE

19 WELL GIVES WRITTEN PERMISSION TO RELEASE THE REPORTS AND INFORMATION

20 AT AN EARLIER DATE.] Well location, depth, status and production data

21 and production reports required by the commission to be filed subse-

22 quent to the 30-day filing period <u>is</u> [SHALL BE CONSIDERED] public

23 information and <u>may</u> [SHALL] not be classified confidential.

24 Production data, as used in this subsection, means volume, gravity,

25 and gas-oil ratio of all production of oil or gas after the well

26 begins regular production.

Alaska State Legislature

House of Representatives

House Judiciary Committee

P. O Box V
State Capitol
Juneau, Alaska 99811
(907) 465-4990

R E V I S E D
AGENDA
February 18 - 20, 1987
(* indicates first public hearing)

HOUSE JUDICIARY	Capitol 120 465-4990	1:30 p.m. - 3:00 p.m. Monday - Friday

Wednesday	*HB 106	An Act relating to the payment of criminal fines and restitution. (Teleconference all sites)
	HB 114	An Act relating to acceptance of surety bonds. (Held over from 2/16)
	*HB 122	An Act relating to the authority to compromise certain misdemeanors.
Thursday	HB 61	An Act relating to the renewal of permits for the use of mental health land of the state; ed. (Held over from 2/16)
	HB 67	An Act relating to the rural housing program of the Department of Community and Regional Affairs; ed.
	HB 86	An Act relating to the definition of veteran for purposes of veterans' employment preference rights; ed.
Friday	HB 28	An Act relating to municipal penalties for prostitution. (Heard and held over from 2/16)
	HB 43	An Act relating to return transportation for workers. (Heard and held over from 2/16)
	HB 52	An Act relating to motor vehicle forfeiture. (Heard and held over from 2/12)
	HB 53	An Act relating to penalties for violation of workplace safety laws. (Heard and held over from 2/11 and 2/12.)

For information contact John Hartle or Peggy Sepulveda c/o Rep. John Sund, Room 120 Capitol, 465-4990.

Chevron

The following are responses to the five Legislative Findings of CS for House Bill No. 41 (Resources), February 17, 1987:

LEGISLATIVE FINDING #1

"The best interests of the state will be served if oil and gas well data and information are not held confidential for periods longer than two years."

Response

The best interests of the state, particularly increased revenue, are better served where additional leasing and drilling of Alaska's oil and gas resources are promoted. Knowing that significant well data and information will be kept confidential until adjacent lands are leased will actually encourage frontier exploration in the state and will encourage the drilling of additional wells because the driller knows that he can drill to test geologic concepts that, until tested, do not economically justify acquiring a large acreage position. Most often, several concepts must be studied and tested by drilling if any are to prove successful. This testing may require a long period of time in the Alaskan environment and requires a substantial economic risk to the driller. Without extended confidentiality, this type of exploration will not occur.

If the two year period proposed in HB #41 is adopted, an operator will not risk drilling a well near open acreage unless he is confident a lease sale will occur in less than two years. If there is any uncertainty, the net effect of a two year period, will be to discourage exploration.

Restricting confidentiality of well information for a two-year period establishes a time limit on confidentiality that is inconsistent with the long lead times required to operate in Alaska, as dictated by remote locations, harsh climate, seasonal drilling restrictions, and changing sale schedules. A two-year confidentiality period will favor short-term operations adjacent to sales scheduled in the immediate future and discourage long-term operations in areas where the sales are scheduled in the distant future or have questionable certainty of occurring.

Following are examples that show how the current policy increases exploratory drilling, increases industry competition, and enhances the state's economic interest:

> At the time of the State-Federal Joint Sale, BF-79, in the Point Thomson area, a gas condensate had been delineated by several wells. Fifteen tracts in the area received bids at the sale. The bidding companies that had all of the confidential well information acquired only two leases at relatively low bonuses. One bidding group that did not have any well information acquired six leases for large bonus bids. Subsequent to the sale, five wells were drilled on those leases acquired by companies that did not have all the confidential information prior to the sale — although nearly all of that well data was released after the sale occurred.

Another example from the same sale was that a combine of two companies that presumably had no well information in the area of Tract BF-76 out-bid the group that had a discovery offsetting tract BF-76 and narrowly missed beating the winning bid by less than 5%.

In State Sale #36, a group drilled a delineation well in the Pt. Thomson field directly offsetting the sale area. At the time of the sale, the winning bid was submitted by a group of companies that had no close-by well data and bid more than $2MM above the group that had drilled the well.

Another example addresses a similar situation in the Cape Halkett area. Chevron with partners drilled a well on private land prior to OCS Sale #71, held in 1982, and State Sale #43, held in 1984. Chevron did not participate in the bidding on nearby tracts, but all the tracts were leased in the area. Subsequently, another exploratory well was drilled in the area by other lease holders. This example also points out that the juxtaposition of private, Federal, and state land is a common occurrence and prospects cannot always be leased in one sale.

Similar bidding patterns occur repeatedly in State and OCS sales throughout the U.S. To argue that the early release of well data serves the best interest of the State is to ignore what really happens in competitive lease sales and in subsequent exploration and development.

The state benefits from the existing provisions of the law because they encourage exploration drilling in the frontier areas of Alaska by rewarding risk takers with protection of their investment in proprietary confidential data and encouraging them to make long-term exploration plans and pursue new ideas and high risk ventures.

LEGISLATIVE FINDING #2

"Increasing the amount of oil and gas well data and information available to citizens of the state and to the state's oil and gas industry, will improve competition and encourage more companies to become involved in oil and gas exploration and production in the state."

Response

Fifty-one percent of all state acres leased since statehood have been leased since the enactment in 1978 of the law providing for extended confidentiality periods of certain wells. It has been alleged that there are other companies not currently operating in Alaska who may be willing to come to Alaska and explore if there is a common data base on which they can build. But in fact, of the hundreds of wells that have been drilled since 1978 only 50 as of

February, 1987, have ever been granted extended confidentiality beyond 24 months. Of these, only 17 are currently in extended confidentiality. Of the 33 wells whose data have now been released, the average time period for the extension of confidentiality was only 2.3 years. A broad common data base already exists.

The companies that are aggressive explorers and have the expertise, capital and commitment to explore Alaska have been here doing so since statehood and are exploring now. Other companies who have not been involved in drilling in Alaska already have a wealth of information available; all but 17 wells are available to them free of cost, courtesy of those who have taken the risks and expended the capital. This bill will not motivate drillers to take exploratory risks. It should be pointed out that the release of over 100 wells drilled on the NPRA has not increased competition and not encouraged any more companies to explore the area other than those who have operated on the North Slope historically.

LEGISLATIVE FINDING #3

"The predictable release of oil and gas well data and information will expedite oil and gas exploration and production and enhance the state's economic interests."

Response

The purpose of granting extended confidentiality is to allow companies to plan exploratory programs that are based on fair and consistent treatment of confidential well information and to allow for changes in the state's leasing schedule. Without assurance of confidentiality, companies will not be encouraged to drill on prospects near or adjacent to unleased land until those prospects are substantially leased. This bill will serve to delay rather than expedite oil and gas exploration.

The top four oil-producing states of Texas, Alaska, Louisiana, and California currently have provisions to extend confidentiality periods beyond two years. Direct comparison, however, to any provisions for confidentiality in the other forty-nine states is not appropriate for Alaska's unique situation of harsh climate, remoteness, and limited drilling seasons. Alaska is a difficult frontier for oil and gas exploration and requires a long lead time for exploration. Wells have been drilled in some areas of the state where even today, almost ten years after the wells were drilled, no sale of adjoining public lands is scheduled. To be meaningful, extended confidentiality provisions, where appropriate, must remain open-ended. A two-year period of confidentiality is inconsistent with the long lead times required for Alaska exploration and sale schedules that unavoidably must change from time to time.

Past experience clearly shows that the Five-Year State Sale Schedule unavoidably changes for a variety of unforeseen reasons. For example, the new 1987 Five-Year Leasing Program has been reduced, by elimination or recombination, to ten scheduled sales from the nineteen sales reflected in last year's program. Sales that have been eliminated are Icy Cape, Holitna, Cook Inlet #62, offshore Icy Cape, Point Franklin, White Hills and Hope Basin. In addition, there are significant delays in the sales that have remained on the schedule. Four of the scheduled sales have been delayed an average of one year and five months. Because there is no guarantee that a sale will be held as scheduled, DNR's option of extending confidentiality for well data that meets the criteria set out in the law and regulations is an efficient means of encouraging exploration and allowing a company to expedite development of an exploration program based on consistent guidelines and regulations.

A prospect, or potential oil or gas field, will not usually be found to lie entirely within the lands offered at a single lease sale. Generally, a prospect will not be economic to produce unless the drilling company has enough of the prospect under lease such that production revenue will return a profit. Therefore, before investing in development costs, the company must try to obtain additional lands in subsequent lease sales or private lease acquisition to cover enough of the prospect to make it economical to produce. It will not benefit an aggressive company to drill a well to delineate the prospect, just to have a competing company use that same well data to win leases on the majority of the remaining lands in the prospect. This is why it is important for well data to remain confidential for extended periods in certain areas; otherwise, an aggressive company's incentive may be lost.

LEGISLATIVE FINDING #4

"Drilling operations will be safer and more efficient if oil and gas well data and information are available from nearby wells."

Response

The Alaska Oil and Gas Conservation Commission (AOGCC) already obtains the drilling data from every well drilled. It is aware if there are known drilling hazards in certain formations and it ensures safe drilling practices, because all drilling operations must be permitted by them. The AOGCC currently reviews and approves all drilling plans prior to the drilling of each well in Alaska, without having to divulge well data to the public. Making all well data public will not make drilling operations any safer or efficient than they already are.

LEGISLATIVE FINDING #5

"A better overall understanding of Alaska's subsurface resources and geology will be promoted if oil and gas well data and information are made available to the public."

Response

Data from hundreds of wells have already been released to the public. To release data from a few particular wells that have been granted extended confidentiality to encourage a private exploration plan would not substantially add to the current pool of geologic knowledge on Alaska and would not outweigh the long-term economic value to the state of encouraging frontier exploration based on novel concepts. This bill would especially discourage exploration of the least understood areas in Alaska where study and successful testing of geologic concepts requires a long period of time in the Alaskan environment. Most often these concepts do not economically justify acquiring a large acreage until proven by several wells. Unless the confidentiality of well data that tests these concepts is protected, this type of high-risk exploration will not be pursued.

We question whether the state has a legitimate interest in releasing to the public proprietary well data, particularly those data obtained from private lands.

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version : HB 41
Publish Date :

REQUEST:

Revision Date: 1/28/87
Title : An act relating to the confidentiality of certain oil & gas information
Sponsor : Brown and Koponen
Requestor :

Agency Affected : Natural Resources
BRU : Petroleum Management

Components :

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

The bill would eliminate a requirement that the Commissioner of Natural Resources extend the period of well confidentiality in certain cases. Passage of the bill would result in a slight decrease in workload, but net savings would be very small and are difficult to project.

Prepared by : Robert C. Butts *Robert C Butts* Phone : 465-2400
Division : Oil and Gas Date : 1/28/87

Approved by Commissioner : *[signature]* Date : 1/28/87
Agency : Natural Resources

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

HB41 file

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF OIL AND GAS

P.O. BOX 7034
ANCHORAGE, ALASKA 99510-7034

February 6, 1987

The Honorable Sam Cotten, Co-Chair
The Honorable Adelheid Herrmann, Co-Chair
House Resources Committee
Alaska State Legis' ture
P.O. Box V
Juneau, AK 99811

Dear Representatives Cotten and Herrmann:

At your request the division is providing further information relating to House Bill 41. HB 41 would eliminate a requirement that the Commissioner of Natural Resources extend the period of confidentiality for oil and gas well data when the data contain significant information relating to the value of unleased land in the same vicinity.

You have asked several questions relating to HB 41 which we will attempt to answer.

1. What requests for extended confidentiality are pending?

Answer: The division currently has no requests pending, although requests to extend confidentiality are anticipated for 15 exploratory wells and 16 development wells within the next two to three years. A list of these wells is attached.

2. In the case of wells for which extended confidentiality was requested, was it ever denied?

Answer: A formal request for extended confidentiality has been denied in only one case of which we are aware. That was the request for Sag Delta Well No. 8. A copy of the denial letter is attached.

Informal requests have also been made. For example, Texaco, in a meeting with the division inquired as to the chances for extended confidentiality for its Prudhoe #1 Well. The distance (approximately 16 miles) from unleased land prompted the division to respond that the chances for extension were relatively slim. The division never received a formal request from Texaco to extend the confidentiality of this well.

Although the decision of whether or not to extend confidentiality has often not been an easy one, no decision has ever resulted in litigation. To our knowledge, the closest we ever came to litigation was in the case of the Chevron Jeanette Island #1 Well. This well is situated about four miles from unleased land, and was plugged and abandoned in 1982. An initial decision by the division to deny extended confidentiality resulted in Chevron's declaration of its intent to litigate the decision. The division eventually issued a decision to extend the confidentiality of the well data until after federal Sale 87 in the Beaufort Sea. The sale was held, and the well data were subsequently released.

3. Should stratigraphic test wells be handled differently from exploratory wells?

Answer: Attached is the list of federal and state stratigraphic test wells drilled to date offshore Alaska. The Code of Federal Regulations (attached) requires the Director of the Minerals Management Service to make available to the public all data from drilling a deep stratigraphic test in federal waters 10 years after the completion of the test or 60 calendar days after the issuance of the first OCS oil and gas lease within 50 miles of the well, whichever is sooner.

These regulations seem to be well-suited to the general OCS situation characterized by large, untested offshore basins where companies are prone to cooperate in drilling a stratigraphic test. In the case of state lands, the offshore lands proposed for a lease sale are long, linear "bands" that would not easily lend themselves to a "distance to first leased land" test as used in the federal regulations. Nor would the patchwork of state leased and unleased lands easily lend themselves to a similar distance requirement. Only in the case of large, untested onshore areas such as in the Minchumina or Holitna basins would the concept of release of stratigraphic test data only after leasing of lands within a certain radius of the well be useful. It is not clear that the state needs to make special provisions for stratigraphic test wells at this time. As can be seen from the attached list, most, but not all of the stratigraphic test wells were drilled within two years of the lease sale.

4. Historically, what has been the effect on drilling strategy and scheduling of the extended confidentiality provision prior to scheduled lease sales?

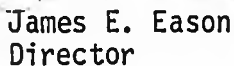
Answer: The major discoveries in Alaska (North Slope and Cook Inlet) were all made prior to passage of the extended confidentiality statute. Much of the exploratory drilling prior to 1978 took place "against" nearby unleased land.

The extended confidentiality provision became effective in 1978. It is difficult for the division to speculate about whether or to what degree an operator's decision to drill was influenced by the extended confidentiality provision. After 1978, operators were aware that the closer their well location was to unleased land, generally the better

were their chances of being granted extended confidentiality. In each case, the possibility of keeping the well data confidential beyond the two-year period and the value of such data in trading for other companies' confidential data were probably considered prior to drilling. However, the value of such confidential data is a relatively minor part of the total expenditure for an exploratory well. Statewide drilling activity prior to passage of the provision for extended confidentiality showed that the prospects of discovery of hydrocarbons with the possibility of eventual production or the incentive to evaluate a lease prior to its expiration are much stronger incentives to drill than is the value of the extended confidentiality.

When well data are released to the public they become available to all operators large and small. The data are then used to refine geological and geophysical concepts and understanding, both in the area of the well and regionally. It is generally accepted that in an area such as Alaska, where relatively little drilling has occurred, enlarging the data base will lead to a better understanding by all interested parties of the factors that control the presence (or absence) of petroleum in a particular area. A better understanding of the geologic picture should lead to better definition of the optimum places to search for hydrocarbons. Releasing the data on a timely basis would result in their being incorporated into the diverse existing and future exploration concepts, rather than limiting their effective use to one or a few companies. Therefore, on balance we think that removing the provision for extension of confidentiality will lead to eventual discovery and development of additional hydrocarbons on state land.

Sincerely,



James E. Eason
Director

cc: Representative Mike Navarre
Representative Lyman Hoffman
Representative Drue Pearce
Representative John Sund
Representative Cliff Davidson
Representative Henry Springer
Representative Dick Schultz
Representative Kay Brown

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WELLS FOR WHICH EXTENDED CONFIDENTIALITY
MAY BE REQUESTED
(release dates in 1987 or 1988)

Exploratory Wells:

	Company	Well	Release Date	Present Est. Distance From Unleased Land
1.	Shell Western E&P Inc.	BF-57 #1	03-12-87	6 miles
2.	ARCO	K.R.U. W. Sak #26	03-29-87	5 miles
3.	ARCO	Brontosaurus #1	04-26-87	2.5 miles
4.	Texaco	Colville Delta #1	05-07-87	6 miles
5.	Texaco	Colville Delta #1-A	05-26-87	6 miles
6.	Shell Western E&P Inc.	OCS Y-180 #1	08-20-87	3 miles
7.	Amerada Hess	Northstar #1	02-14-88	1 mile
8.	Amerada Hess	Colville Delta 25-1	04-03-88	7 miles
9.	Texaco	Colville Delta #2	04-15-88	7 miles
10.	Standard AK. Prod. Co.	Niakuk #6	04-24-88	3 miles
11.	Texaco	Colville Delta #3	04-03-88	8 miles
12.	Amerada Hess	Northstar #2	05-06-88	1 mile
13.	Chevron	KIC #1	05-24-88	1 mile
14.	Chevron	Pretty Ck. U. #224-28	09-22-88	5 miles
15.	CM/Vaughn	Kup. Delta #1	Drilling	10 miles

Development Wells:

	Company	Well	Release Date	Present Est. Distance From Unleased Land
1.	ARCO	Kuparuk "drillsite Q wells" 16 wells permitted, drilling or "holding"		1-2 miles

0385c

May 3, 1983

Marathon Oil Company
P.O. Box 102380
Anchorage, Alaska 99510

Attention: Mr. Fritz G. Nagel
Manager, Anchorage District

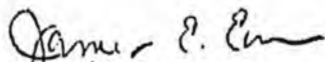
Reference: Request for Extension of Confidentiality
Sag Delta Well No. 8, Beaufort Sea, Alaska

Mr. Nagel:

On April 25, 1983, Marathon requested that the department extend the confidentiality period for the subject well. These data are currently scheduled to be released to the public on May 15, 1983 when the 24 month confidentiality period prescribed by 20 AAC 25.537(d) expires. Upon review of the surrounding land status, I am denying Marathon's request. Alaska Statute 31.05.035 provides that on approval by the Commissioner, well reports and other data which contain significant information relating to the evaluation of unleased lands in the same vicinity shall be kept confidential for a reasonable time after the disposition of all affected unleased land. Using these criteria, it is not possible to approve your request. The subject well is 12 miles from the nearest unleased lands, and data from nearby wells are already public. There are no indications that the data from the Sag Delta No. 8 well would materially affect the evaluation of unleased lands in the vicinity of the well.

By copy of this letter, I am notifying the Alaska Oil and Gas Conservation Commission of my decision to deny your request.

Sincerely,



for Kay Brown
Director, DMEM

cc: Esther C. Wunnicke, Commissioner
Department of Natur[illegible] Resources
C.V. Chatterton, [illegible]
Alaska Oil and Ga[illegible]ervation Commission

KB/SM/skt/1285s

STRATIGRAPHIC TEST WELLS
Drilled on Federal OCS Lands
(Continental Offshore Stratigraphic Test Wells)

Area	Completion Date	Sale Date
Norton Basin		
Norton Sound COST 1	1980	1984
Norton Sound COST 2	1982	
Navarin Basin		
Navarin Basin COST	1983	1984
St. George Basin		
St. George Basin COST 1	1976	1983
St. George Basin COST 2	1982	
North Aleutian Basin		
North Aleutian Basin COST 1	1982	Sched. for 1989
Lower Cook Inlet	1977	1977
Gulf of Alaska	1975	1976

Stratigraphic Test Well
Drilled on State Lands

Area	Completion Date	Sale Date
Beaufort Sea		
Reindeer Island Stratigraphic Test No. 1	1979	1979

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tained from, but not limited to, shallow and deep subbottom profiles, bathymetry, sidescan sonar, gravity and magnetic surveys, and special studies such as refraction and velocity surveys.

[45 FR 6344, Jan. 25, 1980, as amended at 48 FR 46026, Oct. 11, 1983]

§ 251.13 Reimbursement to permittees.

(a) After the delivery to the Director of geological data, analyzed geological information, interpreted geological information, geophysical data, processed geophysical information, reprocessed geophysical information, and interpreted geophysical information selected by the Director in accordance with §§ 251.11 or 251.12, and upon receipt of a request for reimbursement and a determination by the Director that the requested reimbursement is proper, the permittee or third party shall be reimbursed for the reasonable costs of reproducing the selected information and data at the permittee's or third party's lowest rate or at the lowest commercial rate established in the area, whichever is less.

(b) After the delivery to the Director of processed or reprocessed geophysical information selected and retained by the Director in accordance with § 251.12(b), and upon receipt of a request for reimbursement and a determination by the Director that the requested reimbursement is proper, the permittee or third party shall be reimbursed for the reasonable costs attributable to processing and reprocessing such information (as distinguished from the cost of data acquisition) as follows: (1) If the processing or reprocessing was in the form and manner which is used by the permittee in the normal conduct of the business, the Director shall pay the reasonable costs at the lowest rate at which the processed or reprocessed information is made available to any party; or (2) if the processing or reprocessing was in the form and manner of processing other than that used in the normal conduct of the permittee's business at the Director's request, the Director shall pay the reasonable costs of processing and reprocessing such information.

(c) Requests for reimbursement shall identify processing and reprocessing costs separate from acquisition costs.

(d) The permittee or third party shall not be reimbursed for the costs of analyzing geological information or interpreting geological or geophysical information.

[47 FR 25331, June 11, 1982]

§ 251.14 Disclosure of information and data submitted under permits.

§ 251.14-1 Disclosure of information and data to the public.

(a) The Director shall make information and data available in accordance with the requirements and subject to the limitations of the Freedom of Information Act (5 U.S.C. 552) and the implementing regulations (43 CFR Part 2), the requirements of the Act, and the regulations contained in 30 CFR Part 250 (Oil and Gas and Sulphur Operations in the Outer Continental Shelf), this Part, and 30 CFR Part 252 (Outer Continental Shelf Oil and Gas Information Program).

(b) Except as specified in this section or in Parts 250 and 252 of this chapter, no information or data determined by the Director to be exempt from public disclosure under paragraph (a) of this section shall be provided to any affected State or be made available to the executive of any affected local government or to the public unless the permittee and all persons to whom such permittee has sold the information or data under promise of confidentiality agree to such an action.

(c) The Director shall disclose geological data, analyzed geological information, and interpreted geological information submitted under a permit as follows:

(1) The Director shall immediately issue a public announcement when any significant hydrocarbon occurrences are detected or environmental hazards are encountered on unleased lands during drilling operations. In the case of significant hydrocarbon occurrences, the Director will announce such occurrences in a form and manner that will further the national interest without unduly damaging the

RECEIVED
FEB 05 1987
DIVISION OF OIL & GAS

competitive position of the
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be released according to t
provided in paragraphs (c)
this section.
(2) The Director shall
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(3) The Director shall
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after the completion date
or 60 calendar days after t
of the first OCS oil and
within 50 geographic miles
meters) of the site of the
test, whichever is sooner. T
shall make available to th
geological information and
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a permit to drill a deep st
test well at the earlier of th
times: (i) 10 years after co
the test; or (ii) 60 calendar
the issuance of the first C
gas lease within 50 geogr
(92.6 kilometers) of the
completed test.
(d) The Director shall d
physical data, processed
information, reprocessed
information, and interprete
cal information submitte
permit, and retained by th
as follows:
(1) The Director shall
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years after the date of issu
permit under which the
tained.
(2) The Director shall
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cal information, reprocesse
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(3) The Director shall
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(5 U.S.C. 552) and
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Part, and 30 CFR
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52 of this chapter,
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competitive position of those conducting the drilling. Other information and data pertaining to the permit will be released according to the schedule provided in paragraphs (c)(2) or (3) of this section.

(2) The Director shall make available to the public all geological data, analyzed geological information, and interpreted geological information, except geological data, analyzed geological information, and interpreted geological information obtained from the drilling of a deep stratigraphic test, 10 years after the date of issuance of the permit under which the information and data was obtained.

(3) The Director shall make available to the public all geological data and information obtained from drilling a deep stratigraphic test 10 years after the completion date of the test or 60 calendar days after the issuance of the first OCS oil and gas lease within 50 geographic miles (92.6 kilometers) of the site of the completed test, whichever is sooner. The Director shall make available to the public all geological information and data submitted in support of an application for a permit to drill a deep stratigraphic test well at the earlier of the following times: (i) 10 years after completion of the test; or (ii) 60 calendar days after the issuance of the first OCS oil and gas lease within 50 geographic miles (92.6 kilometers) of the site of the completed test.

(d) The Director shall disclose geophysical data, processed geophysical information, reprocessed geophysical information, and interpreted geophysical information submitted under a permit, and retained by the Director, as follows:

(1) The Director shall make available to the public geophysical data 10 years after the date of issuance of the permit under which the data is obtained.

(2) The Director shall make available to the public processed geophysical information, reprocessed geophysical information, and interpreted geophysical information 10 years after the date it is submitted to the Director.

(3) The Director shall make available to the public processed geophysical information, reprocessed geophysical information, and interpreted geophysical information submitted in support of an application for a permit to drill a deep stratigraphic test, or which the permittee is required to obtain in order to conduct the drilling of a deep stratigraphic test, at the earliest of the following times: (i) 10 years after completion of the test; or (ii) 60 calendar days after the issuance of the first OCS oil and gas lease within 50 geographic miles (92.6 kilometers) of the site of the completed test.

§ 251.14-2 Disclosure to independent contractors.

The Director reserves the right to disclose any information or data acquired from a permittee to an independent contractor or agent for the purpose of reproducing, processing, reprocessing, or interpreting such information or data. When practicable, the Director shall notify the permittee who provided the information or data of intent to disclose the information or data to an independent contractor or agent. The Director's notice of intent will afford the permittee a period of not less than 5 working days within which to comment on the intended action. When the Director so notifies a permittee of the intent to disclose information or data to an independent contractor or agent, all other owners of such information or data shall be deemed to have been notified of the Director's intent. Prior to any such disclosure, the contractor or agent shall be required to execute a written commitment not to transfer or to otherwise disclose any information or data to anyone without the express consent of the Director. The contractor or agent shall be liable for any unauthorized use by or disclosure of information or data to third parties.

§ 251.14-3 Sharing of information with affected States.

(a) At the time of soliciting nominations for the leasing of lands within 3 geographic miles of the seaward boundary of any coastal State, the Director, pursuant to the provisions of § 252.7(a)(4) and (b) of this chapter and sections 8(g) and 26(e) of the Act,

SAM → Ned

Kay Brown

Alaska State Legislature
House of Representatives

HB 41

MEMORANDUM

TO: Rep. Sam Cotten, Co-Chair
Rep. Adelheid Hermann, Co-Chair
House Resources Committee

DATE: Jan. 20, 1987

FROM: Representative Kay Brown

SUBJECT: HB 41

HB 41. An Act relating to the confidentiality of certain oil and gas information, has been referred to the Resources Committee for consideration. Attached please find:

1. Sectional analysis; and

2. Backup information prepared by the Division of Oil and Gas, including a list of wells currently qualified for extended confidentiality and a summary of similar provisions in other states.

I believe the public interest would be served by requiring that oil and gas well logs and data become public after two years. More information in the public record would enhance the prospects of subsequent drillers in the search for new oil and gas fields, and generally promote exploration activity. Competition among bidders in lease sales also should be enhanced.

The provision I am proposing to repeal was added to the statute in 1978 to protect the interests of companies that had drilled in anticipation of the first major Beaufort Sea lease sale, which had been postponed several times. However, the solution enacted went far beyond that one situation and has affected data from wells all over the state. Instability in the state leasing schedule was the primary impetus for the 1978 change instituting extended confidentiality. The state leasing schedule is now much more stable.

P. O. Box 20-2661
Anchorage, AK 99520-2661
(907) 272-0207

During Session:
P. O. Box V
Juneau, AK 99811
(907) 465-4998

Two years of confidentiality for oil and gas well data, as proposed in HB 41, appears to be among the longest periods provided by any state.

As the former Director of Oil and Gas for the Department of Natural Resources, it was my job to evaluate wells proposed for extended confidentiality. The staff and I found the present statute providing extended confidentiality difficult to administer, since many of the terms used are quite vague and are not defined. Elimination of the extended confidentiality provision as proposed in HB 41 would streamline administrative functions of the division.

The only drawback I see is that some of the larger oil companies may oppose the bill, arguing that they will be less likely to invest millions to drill wildcat wells in remote areas if their proprietary interest in the information is not protected until adjacent unleased land has been leased. Companies generally do not like to drill adjacent to unleased acreage, because a discovery means that the value of nearby acreage will be increased and will cost them significantly more to acquire. Also, information controlled by a single company will give that company an advantage over their competitors in a competitive lease sale.

From a public interest perspective, the state's economic interest in leasing oil and gas rights should be enhanced if more information about a lease sale area becomes public before the sale. (If the information is negative, the value of that particular acreage will not be enhanced, but when the information is positive the state's interest would be greatly enhanced.)

I would be happy to discuss the bill at your convenience. I request that a hearing in the Resources Committee be scheduled as soon as possible.

cc: Rep. Koponen
Rep. Sell

House Bill 41 Sectional Analysis
Prepared by Rep. Kay Brown
January 20, 1987

Section 1: Repeals a provision requiring the Commissioner of Natural Resources to provide extended confidentiality for oil and gas well logs and data that "contain significant information relating to the valuation of unleased land in the same vicinity."

Under the proposal, all oil and gas well logs and data would become public in two years. HB 41 would return the law to its pre-1978 form. Under present law, oil and gas well logs and data found to "contain significant information relating to the valuation of unleased land in the same vicinity" must be held confidential until the nearby unleased land has been leased.

JAN 20 1987

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF OIL AND GAS

P.O. BOX 7034
ANCHORAGE, ALASKA 99510-7034
(907)762-4241

January 16, 1987

The Honorable Kay Brown
Representative
Alaska Legislature
P.O. Box V
Juneau, AK 99811

Dear ~~Representative~~ Kay Brown:

At your request I am sending background information relating to extended confidentiality for exploration wells in Alaska, as well as a compilation of provisions for the confidentiality of well data in other states.

Enclosed are:

1. A list of 15 wells currently qualified for extended confidentiality.

2. A list of 33 wells that were granted extended confidentiality, but that no longer qualify. The data from these wells have been released.

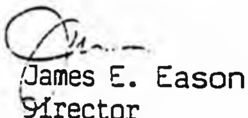
3. The Alaska Oil and Gas Conservation Commission (AOGCC) list of wells that will be released in 1987 and 1988. Based upon a review of these wells, we anticipate receiving approximately 20 new requests for extended confidentiality in the next two years.

4. A list of applicable "Lower 48" statutes and regulations, compiled by Kate Fortney and Pat Jacobs, that apply to well confidentiality. The information was compiled from an Interstate Oil Compact Commission handbook. Although the book indicates that some states provide for extended confidentiality, it fails to indicate that confidentiality may be extended in Alaska. Therefore, this compilation may not be a complete list of provisions for extended confidentiality, nor can I personally vouch for its accuracy.

5. A letter written by Bob LeResche and a memorandum by Tom Cook that demonstrate the vague nature of the existing statute and indicate some of the difficulties arising from applying these provisions.

If you have further questions, please call me or Cass Ariey (762-4285).

Sincerely,



James E. Eason
Director

Enclosures

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EXTENDED CONFIDENTIALITY WELLS

Well Name	Other Well Owners/ Lease Owners	Status	Distance From Unleased Lands	Antic. Date Lease Nearby Lands	BTM Hole Location
					Icy Cape Area:
Chevron Akulik	Mobil, ASRC	P & A	Approx. 2 Miles	ASRC, unscheduled	T5S R49W 14 U.M.
Chevron Eagle Ck.	Mobil, ASRC	P & A	Approx. 2.9 Miles	ASRC, unscheduled	T8S R45W 26 U.M.
Union Tungak Ck.	Amoco, ASRC	P & A	Approx. 1.9 Miles	State, unscheduled	T6N R42W 12 U.M.
					Cen. Brooks Range:
Chevron Killik	ASRC	P & A	Approx. 2.9 Miles	ASRC, unscheduled	T12S R10W 8 U.M.
Chevron Tiglukpuk	ASRC	P & A	Approx. 2.9 Miles	ASRC, unscheduled	T12S R2E 15 U.M.
Texaco Tulugak	Chevron, ASRC	P & A	Approx. 2 Miles	ASRC, unscheduled	T5S R3E 26 U.M.
Chevron Cobblestone	ASRC	P & A	Approx. 1.5 Miles	ASRC, unscheduled	T10S R8E 25 U.M.
					Cape Halkett/Harrison Bay:
Chevron Livehorse	ASRC	P & A	Approx. 1 Mile	NPRA, unscheduled (Teshekpuk Lake Area)	T17N R1W 18 U.M.
					Near ANWR:
Mobil Staines R. State	Phillips	Susp.	Approx. 2 Miles	ANWR, unscheduled	T9N R24E 20 U.M.
Phillips N. Staines R.1	Chevron, Mobil	Susp.	Approx. 2 Miles	ANWR, unscheduled	T9N R24E 25 U.M.
Exxon Alaska State G-2	Sohio, BPAE	P & A	Ap. 1 Mi. Sale 50 Ap. 2 Mi. ANWR Ap. 2.5 Mi. OCS	ANWR, unscheduled	T10N R24E 25 U.M.
Exxon Alaska State J-1		P & A	Ap. 2.7 Mi. ANWR	ANWR, unscheduled	T6N R22E 23 U.M.
Union Leffingwell 1	ARCO	P & A	Ap. 0.5 Mile	State Sale 51, 1/87	T8N R22E 25 U.M.
					Beaufort Sea:
Shell BF 47	Amerada Hess	Discovery	Ap. 2.5 Mi. OCS	OCS Sale 97, 1/88	T13N R13E 2 U.M.
					Tanana Basin:
ARCO Totek Hills 1		P & A	Ap. 0.5 Mile	State, unscheduled	T7S R12W 36 F.

Exploratory Wells Previously Qualified
for Extended Confidentiality

The following are wells that have been granted extended confidentiality, but that no longer qualify. The data from these wells have been released.

Well Name	Date Extended Confidentiality Granted	Date Released
Chevron Jeanette Is. #1	04/12/84	10/31/84
Amoco No Name Is. #1	01/31/84	10/31/84
Chevron Koniag #1	08/04/83	08/01/84
Sohio Nechelik #1	04/12/84	06/12/84
Union Cannery Loop #1	05/06/81	11/18/83
Union Cannery Loop #2	11/16/82	11/18/83
Conoco Gwydyr Bay St. #1	09/14/81	06/27/83
Conoco Gwydyr Bay St. #2A	04/20/83	06/27/83
Conoco Milne Pt. #A-1	04/19/82	06/27/83
Mobil Gwydyr Bay St. #1	05/07/82	06/27/83
Union E. Harrison Bay St. #1	12/05/78	06/27/83
Exxon Pt. Thomson #4	11/23/82	03/11/83
ARCO West Sak 25606 #13	03/23/81	10/25/85
ARCO West Beach St. #3	Approx. 6/78	02/09/83
ARCO W. Mikkelsen Unit #2	07/15/81	02/09/83
Sohio Sag Delta #2	04/06/79	02/09/83
Sohio Sag Delta #2A	01/21/80	02/09/83
Sohio Sag Delta #3	04/06/79	02/09/83
Sohio Sag Delta #4	01/21/80	02/09/83
Sohio Niakuk #2A	04/06/79	02/09/83
Sohio Niakuk #3	04/23/81	02/09/83
Sohio Reindeer Island Strat. Test	01/21/80	02/09/83
Gulf Pt. McIntyre #1	10/22/79	02/09/83
Gulf Pt. McIntyre #2	10/22/79	02/09/83
Exxon Pt. Thomson Unit #1	01/03/80	02/09/83
Exxon Pt. Thomson Unit #2	01/03/80	02/09/83
Exxon Pt. Thomson Unit #3	Approx. 6/79	02/09/83
Exxon Duck Island Unit #1	04/22/81	02/09/83
Exxon Duck Island #2	11/25/81	02/09/83
Union Clam Gulch Unit #1	08/12/80	06/03/82
Chevron Pretty Creek Unit #2	03/23/81	06/03/82
Chevron Stump Lake Unit #41-23	06/11/80	06/03/82
Chevron Soldotna Creek Unit #33-33	02/02/79	06/03/82

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ALASKA OIL AND GAS CONSERVATION COMMISSION

RELEASE DATE OF WELL RECORDS,
BASED ON TWO YEAR CONFIDENTIAL PERIOD

* Ditch samples and/or core chips will be released also.
** Well data to be held for an indefinite period.

Operator	Well Name and Number	Release Date
ARCO Alaska, Inc.	Kuparuk River Unit #2W-9	01-01-87
Amoco Production Company	MGS State 17595 #15RD	01-02-87
ARCO Alaska, Inc.	Kuparuk River Unit #2X-16	01-02-87
ARCO Alaska Inc.	Kuparuk River Unit #2E-13	01-03-87
ARCO Alaska, Inc.	Kuparuk River Unit #2X-13	01-05-87
ARCO Alaska, Inc.	Kuparuk River Unit #2X-10	01-06-87
ARCO Alaska, Inc.	Prudhoe Bay Unit #DS 15-9	01-07-87
ARCO Alaska, Inc.	Kuparuk River Unit #2X-15	01-08-87
ARCO Alaska, Inc.	Kuparuk River Unit #2W-10	01-09-87
ARCO Alaska, Inc.	Kuparuk River Unit #2E-12	01-10-87
ARCO Alaska, Inc.	Kuparuk River Unit #2W-8	01-12-87
Amoco Production Company	MGS 17595 #27	01-14-87
ARCO Alaska, Inc.	Kuparuk River Unit #2W-6	01-15-87
ARCO Alaska, Inc.	* Kuparuk River Unit #2W-7	01-17-87
ARCO Alaska, Inc.	Kuparuk River Unit #2E-11	01-17-87
ARCO Alaska, Inc.	Kuparuk River Unit #2X-9	01-19-87
Standard Alaska Production Company	Prudhoe Bay Unit #R-24	01-19-87
ARCO Alaska, Inc.	Kuparuk River Unit #2W-5	01-21-87
ARCO Alaska, Inc.	Kuparuk River Unit #2C-16	01-22-87
ARCO Alaska, Inc.	Kuparuk River Unit #2W-11	01-22-87
ARCO Alaska, Inc.	Kuparuk River Unit #CPF-1A	01-23-87
Conoco, Inc.	Milne Point Unit #C-5	01-23-87
ARCO Alaska, Inc.	Kuparuk River Unit #2D-14	01-24-87
ARCO Alaska, Inc.	Prudhoe Bay Unit #DS 17-14	01-25-87
ARCO Alaska, Inc.	Kuparuk River Unit #1Q-12	01-26-87
ARCO Alaska, Inc.	Prudhoe Bay Unit #DS 11-12	01-27-87
ARCO Alaska, Inc.	Kuparuk River Unit #2E-10	01-28-87
ARCO Alaska, Inc.	Kuparuk River Unit #2W-12	01-29-87
ARCO Alaska, Inc.	Kuparuk River Unit #2C-15	01-31-87
ARCO Alaska, Inc.	Kuparuk River Unit #2D-13	01-31-87
Union Oil Company of California	Kenai Tyonek Unit #KTU 13-5	02-03-87
ARCO Alaska, Inc.	Kuparuk River Unit #1Q-11	02-04-87
ARCO Alaska, Inc.	Kuparuk River Unit #2X-12	02-07-87
ARCO Alaska, Inc.	Kuparuk River Unit #2W-13	02-07-87
ARCO Alaska, Inc.	Kuparuk River Unit #2U-13	02-11-87
ARCO Alaska, Inc.	* Kuparuk River Unit #2C-14	02-13-87
ARCO Alaska, Inc.	Kuparuk River Unit #2E-9	02-14-87
ARCO Alaska, Inc.	Kuparuk River Unit #2W-14	02-15-87
Chevron U.S.A. Inc.	* Beluga River Unit #224-23	02-16-87
ARCO Alaska, Inc.	Prudhoe Bay Unit #DS 11-15	02-17-87
ARCO Alaska, Inc.	Kuparuk River Unit #2U-14	02-17-87
Amoco Production Company	* Becharof #1	02-18-87
Conoco, Inc.	Milne Point Unit #CFP-2	02-18-87
Conoco, Inc.	Milne Point Unit #C5-A	02-18-87
ARCO Alaska, Inc.	Kuparuk River Unit #2U-15	02-22-87
ARCO Alaska, Inc.	Kuparuk River Unit #2W-15	02-22-87

Operator	Well Name and Number	Release Date
Conoco, Inc.	Milne Point Unit #C-6	02-24-87
ARCO Alaska, Inc.	Kuparuk River Unit #1Q-9	02-26-87
ARCO Alaska, Inc.	Kuparuk River Unit #1Q-10	02-27-87
ARCO Alaska, Inc.	Kuparuk River Unit #2W-16	03-01-87
Conoco, Inc.	Milne Point Unit #CFP-1	03-01-87
ARCO Alaska, Inc.	Kuparuk River Unit #2U-16	03-02-87
ARCO Alaska, Inc.	Kuparuk River Unit #2C-13	03-05-87
ARCO Alaska, Inc.	Kuparuk River Unit #1Q-8	03-07-87
ARCO Alaska, Inc.	Kuparuk River Unit #2U-1	03-08-87
ARCO Alaska, Inc.	* Kuparuk River Unit #2W-1	03-10-87
Shell Western E&P Inc.	* BF-57 #1	03-12-87
ARCO Alaska, Inc.	Kuparuk River Unit #2W-2	03-16-87
ARCO Alaska, Inc.	Kuparuk River Unit #2C-12	03-16-87
ARCO Alaska, Inc.	Kuparuk River Unit #2U-2	03-16-87
ARCO Alaska, Inc.	Kuparuk River Unit #1Q-7	03-17-87
Standard Alaska Production Company	* Niakuk #4	03-19-87
Conoco, Inc.	Milne Point Unit #C-8	03-20-87
ARCO Alaska, Inc.	Kuparuk River Unit #2U-3	03-21-87
Conoco, Inc.	Milne Point Unit #B-6	03-22-87
ARCO Alaska, Inc.	Kuparuk River Unit #2C-11	03-24-87
ARCO Alaska, Inc.	Kuparuk River Unit #2W-3	03-24-87
ARCO Alaska, Inc.	* ARCO/CIRI Wolf Lake #2	03-25-87
ARCO Alaska, Inc.	Kuparuk River Unit #1Q-6	03-27-87
ARCO Alaska, Inc.	Kuparuk River Unit #2U-4	03-28-87
ARCO Alaska, Inc.	* Kuparuk River Unit West Sak #26	03-29-87
Union Oil Company of California	Kenai Beluga Unit #KBU 23X-6	03-30-87
ARCO Alaska, Inc.	Kuparuk River Unit #2W-4	04-01-87
ARCO Alaska, Inc.	Kuparuk River Unit #2C-10	04-02-87
ARCO Alaska, Inc.	Kuparuk River Unit #2U-5	04-05-87
Conoco, Inc.	Milne Point Unit #B-10	04-07-87
ARCO Alaska, Inc.	Kuparuk River Unit #1Q-5	04-08-87
ARCO Alaska, Inc.	Kuparuk River Unit #3B-13	04-10-87
ARCO Alaska, Inc.	* Prudhoe Bay Unit/Lisburne #L2-30	04-10-87
Conoco, Inc.	Milne Point Unit #C-7	04-10-87
Conoco, Inc.	Milne Point Unit #C-10	04-12-87
ARCO Alaska, Inc.	Kuparuk River Unit #2U-6	04-13-87
ARCO Alaska, Inc.	Kuparuk River Unit #2C-9	04-13-87
Alaskan Crude Corporation	Burglin #33-1	04-16-87
ARCO Alaska, Inc.	Kuparuk River Unit #1Q-4	04-18-87
ARCO Alaska, Inc.	Kuparuk River Unit #2U-7	04-19-87
ARCO Alaska, Inc.	Kuparuk River Unit #3B-14	04-22-87
Conoco, Inc.	Milne Point Unit #B-9	04-23-87
ARCO Alaska, Inc.	Kuparuk River Unit #2U-7A	04-23-87
ARCO Alaska, Inc.	Kuparuk River Unit #2V-9	04-24-87
ARCO Alaska, Inc.	* Brontosaurus #1	04-26-87
Shell Western E&P Inc.	* Middle Ground Shoal #A34-11	04-26-87
ARCO Alaska, Inc.	Kuparuk River Unit #2U-8	04-28-87
ARCO Alaska, Inc.	Kuparuk River Unit #3B-15	04-29-87
Conoco, Inc.	Milne Point Unit #B-11	04-30-87
ARCO Alaska, Inc.	Kuparuk River Unit #1Q-3	05-01-87
ARCO Alaska, Inc.	Prudhoe Bay Unit #DS 9-27	05-02-87
ARCO Alaska, Inc.	Kuparuk River Unit #2U-9	05-0[illegible]-87
ARCO Alaska, Inc.	Kuparuk River Unit #2V-10	05-05-87
ARCO Alaska, Inc.	Kuparuk River Unit #3B-16	05-07-87
Texaco Inc.	* Colville Delta #1	05-07-87
Conoco, Inc.	Milne Point Unit #C-9	05-08-87

Operator		Well Name and Number	Release Date
Standard Alaska Production Company	*	Sag Delta #11	05-08-87
ARCO Alaska, Inc.		Kuparuk River Unit #1Q-2	05-11-87
ARCO Alaska, Inc.		Kuparuk River Unit #2U-10	05-12-87
Chevron U.S.A. Inc.		Beluga River Unit #232-26	05-14-87
ARCO Alaska, Inc.		Kuparuk River Unit #3B-1	05-14-87
ARCO Alaska, Inc.		Kuparuk River Unit #2V-11	05-15-87
Conoco, Inc.		Milne Point Unit #B-7	05-17-87
Standard Alaska Production Company	*	Niakuk #5	05-18-87
ARCO Alaska, Inc.		Prudhoe Bay Unit/Lisburne #L1-9	05-18-87
ARCO Alaska, Inc.		Kuparuk River Unit #2U-11	05-19-87
ARCO Alaska, Inc.		Kuparuk River Unit #3B-2	05-21-87
ARCO Alaska, Inc.		Kuparuk River Unit #1Q-1	05-24-87
ARCO Alaska, Inc.		Prudhoe Bay Unit #DS 9-28	05-24-87
ARCO Alaska, Inc.		Kuparuk River Unit #2V-12	05-24-87
ARCO Alaska, Inc.		Kuparuk River Unit #2U-12	05-25-87
Texaco Inc.	*	Colville Delta #1-A	05-26-87
Conoco, Inc.		Milne Point Unit #C-11	05-26-87
ARCO Alaska, Inc.		Prudhoe Bay Unit #DS 4-32	05-27-87
ARCO Alaska, Inc.		Kuparuk River Unit #3B-3	05-28-87
Standard Alaska Production Company		Prudhoe Bay Unit #A-35	05/30/87
Conoco, Inc.		Milne Point Unit #B-8	05-31-87
ARCO Alaska, Inc.		Kuparuk River Unit #1R-5	06-04-87
ARCO Alaska, Inc.		Kuparuk River Unit #3B-4	06-04-87
ARCO Alaska, Inc.		Kuparuk River Unit #1Q-16	06-04-87
Union Oil Company of California		Trading Bay Unit #K-8RD	06-06-87
Conoco, Inc.		Milne Point Unit #C-13	06-07-87
Standard Alaska Production Company		Prudhoe Bay Unit #N-20	06-07-87
ARCO Alaska, Inc.		Kuparuk River Unit #2V-13	06-08-87
ARCO Alaska, Inc.	*	Prudhoe Bay Unit/Lisburne #L2-28	06-12-87
ARCO Alaska, Inc.		Kuparuk River Unit #3B-5	06-12-87
ARCO Alaska, Inc.		Kuparuk River Unit #1Q-15	06-13-87
Conoco, Inc.		Milne Point Unit #B-12	06-14-87
ARCO Alaska, Inc.		Kuparuk River Unit #1R-6	06-14-87
ARCO Alaska, Inc.		Kuparuk River Unit #2V-14	06-16-87
Standard Alaska Production Company		Prudhoe Bay Unit #A-34	06-17-87
ARCO Alaska, Inc.		Prudhoe Bay Unit #DS 4-31	06-19-87
ARCO Alaska, Inc.		Kuparuk River Unit #3B-6	06-19-87
Conoco, Inc.		Milne Point Unit #C-14	06-20-87
ARCO Alaska, Inc.		Kuparuk River Unit #1Q-14	06-21-87
ARCO Alaska, Inc.		Prudhoe Bay Unit/Lisburne #L1-1	06-22-87
Union Oil Company of California		Trading Bay Unit #D-29RD	06-22-87
Standard Alaska Production Company		Prudhoe Bay Unit #N-21	06-25-87
ARCO Alaska, Inc.		Kuparuk River Unit #3B-7	06-26-87
ARCO Alaska, Inc.		Kuparuk River Unit #2V-15	06-26-87
Conoco, Inc.		Milne Point Unit #B-13	06-29-87
Conoco, Inc.		Milne Point Unit #C-15	06-30-87
ARCO Alaska, Inc.		Kuparuk River Unit #1Q-13	07-01-87
ARCO Alaska, Inc.		Kuparuk River Unit #3B-8	07-04-87
Standard Alaska Production Company		Prudhoe Bay Unit #A-34A	07-04-87
ARCO Alaska, Inc.		Kuparuk River Unit #2V-16	07-05-87
ARCO Alaska, Inc.		Kuparuk River Unit #1R-7	07-06-87
ARCO Alaska, Inc.		Prudhoe Bay Unit #DS 4-30	07-09-87
ARCO Alaska, Inc.		Kuparuk River Unit #2Z-16	07-10-87
ARCO Alaska, Inc.		Kuparuk River Unit #3B-9	07-11-87
ARCO Alaska, Inc.		Prudhoe Bay Unit #DS 11-13	07-12-87
Conoco, Inc.		Milne Point Unit #B-14	07-15-87

Operator		Well Name and Number	Release Date
Conoco, Inc.		Milne Point Unit #C-16	07-15-87
ARCO Alaska, Inc.		Kuparuk River Unit #1R-8	07-16-87
ARCO Alaska, Inc.		Kuparuk River Unit #3C-12	07-17-87
Standard Alaska Production Company		Prudhoe Bay Unit #N-22	07-17-87
ARCO Alaska, Inc.		Kuparuk River Unit #3B-10	07-18-87
ARCO Alaska, Inc.	*	Kuparuk River Unit #2Z-15	07-20-87
ARCO Alaska, Inc.	*	Prudhoe Bay Unit/Lisburne #L2-24	07-22-87
ARCO Alaska, Inc.		Kuparuk River Unit #3C-11	07-25-87
ARCO Alaska, Inc.		Prudhoe Bay Unit #DS 11-8	07-27-87
ARCO Alaska, Inc.		Kuparuk River Unit #3B-11	07-27-87
Conoco, Inc.		Milne Point Unit #B-15	07-28-87
ARCO Alaska, Inc.		Kuparuk River Unit #2Z-14	07-29-87
ARCO Alaska, Inc.		Kuparuk River Unit #1R-9	07-30-87
Conoco, Inc.		Milne Point Unit #C-12	07-31-87
ARCO Alaska, Inc.	*	Prudhoe Bay Unit/Lisburne #L1-10	08-01-87
ARCO Alaska, Inc.		Kuparuk River Unit #3C-10	08-02-87
ARCO Alaska, Inc.		Kuparuk River Unit #3B-12	08-03-87
ARCO Alaska, Inc.		Kuparuk River Unit #2Z-13	08-06-87
ARCO Alaska, Inc.		Kuparuk River Unit #1R-10	08-07-87
Conoco, Inc.		Milne Point Unit #B-16	08-08-87
ARCO Alaska, Inc.		Prudhoe Bay Unit #DS 11-11	08-10-87
ARCO Alaska, Inc.		Kuparuk River Unit #3C-9	08-11-87
ARCO Alaska, Inc.		Kuparuk River Unit #1R-11	08-14-87
Standard Alaska Production Company		Prudhoe Bay Unit #A-31	08-18-87
ARCO Alaska, Inc.		Kuparuk River Unit #2A-13	08-19-87
ARCO Alaska, Inc.		Kuparuk River Unit #1R-12	08-20-87
Shell Western E & P, Inc.	*	OCS Y-180 #1	08-20-87
ARCO Alaska, Inc.		Kuparuk River Unit #2Z-12	08-20-87
Conoco, Inc.		Milne Point Unit #B-5A	08-21-87
ARCO Alaska, Inc.		Kuparuk River Unit #3C-8	08-23-87
Standard Alaska Production Company		Prudhoe Bay Unit #N-4A	08-23-87
ARCO Alaska, Inc.		Kuparuk River Unit #1R-13	08-28-87
ARCO Alaska, Inc.		Kuparuk River Unit #2Z-11	08-28-87
ARCO Alaska, Inc.		Kuparuk River Unit #2A-14	08-29-87
ARCO Alaska, Inc.		Kuparuk River Unit #3C-7	09-01-87
ARCO Alaska, Inc.		Kuparuk River Unit #2Z-10	09-04-87
ARCO Alaska, Inc.		Kuparuk River Unit #1R-14	09-06-87
ARCO Alaska, Inc.	*	Prudhoe Bay Unit/Lisburne #L2-20	09-06-87
ARCO Alaska, Inc.		Kuparuk River Unit #2A-15	09-08-87
ARCO Alaska, Inc.		Kuparuk River Unit #2Z-9	09-11-87
ARCO Alaska, Inc.		Kuparuk River Unit #3C-5	09-11-87
ARCO Alaska, Inc.		Kuparuk River Unit #1R-15	09-12-87
ARCO Alaska, Inc.		Prudhoe Bay Unit/Lisburne #L1-14	09-14-87
ARCO Alaska, Inc.		Kuparuk River Unit #1R-16	09-19-87
ARCO Alaska, Inc.		Kuparuk River Unit #2A-16	09-19-87
ARCO Alaska, Inc.		Kuparuk River Unit #WSP-20	09-22-87
ARCO Alaska, Inc.		Prudhoe Bay Unit #DS 11-9	09-22-87
ARCO Alaska, Inc.		Kuparuk River Unit #3J-1	09-23-87
ARCO Alaska, Inc.		Kuparuk River Unit #1R-1	09-26-87
ARCO Alaska, Inc.	*	Kuparuk River Unit #3C-4	09-27-87
ARCO Alaska, Inc.		Kuparuk River Unit #3A-1	10-01-87
ARCO Alaska, Inc.		Kuparuk River Unit #3J-2	10-03-87
Conoco, Inc.		Milne Point Unit #E-2	10-03-87
Standard Alaska Production Company		Prudhoe Bay Unit #A-33	10-04-87
ARCO Alaska, Inc.		Kuparuk River Unit #1R-2	10-05-87
ARCO Alaska, Inc.		Kuparuk River Unit #3C-3	10-07-87

Operator	Well Name and Number	Release Date
ARCO Alaska, Inc.	Kuparuk River Unit #3A-2	10-08-87
ARCO Alaska, Inc.	Kuparuk River Unit #3J-3	10-10-87
ARCO Alaska, Inc.	Prudhoe Bay Unit/Lisburne #L1-2	10-10-87
ARCO Alaska, Inc.	Kuparuk River Unit #1R-3	10-11-87
ARCO Alaska, Inc.	* Prudhoe Bay Unit/Lisburne #L2-26	10-11-87
Conoco, Inc.	Milne Point Unit #B-17	10-15-87
ARCO Alaska, Inc.	Kuparuk River Unit #3A-3	10-16-87
ARCO Alaska, Inc.	Kuparuk River Unit #3C-2	10-16-87
ARCO Alaska, Inc.	Kuparuk River Unit #1R-4	[illegible]-18-87
ARCO Alaska, Inc.	Kuparuk River Unit #3J-4	[illegible]-18-87
Conoco, Inc.	Milne Point Unit #A-2A	10-20-87
ARCO Alaska, Inc.	Kuparuk River Unit #3A-4	10-23-87
ARCO Alaska, Inc.	Kuparuk River Unit #3F-1	10-25-87
ARCO Alaska, Inc.	Kuparuk River Unit #3C-1	10-25-87
ARCO Alaska, Inc.	Kuparuk River Unit #3J-5	10-26-87
ARCO Alaska, Inc.	Kuparuk River Unit #3C-16	10-31-87
ARCO Alaska, Inc.	Kuparuk River Unit #3F-2	11-02-87
Conoco, Inc.	Milne Point Unit #B-18	11-03-87
ARCO Alaska, Inc.	Prudhoe Bay Unit/Lisburne #L3-5	11-05-87
ARCO Alaska, Inc.	Kuparuk River Unit #3C-15	11-08-87
ARCO Alaska, Inc.	Kuparuk River Unit #3F-3	11-08-87
ARCO Alaska, Inc.	Kuparuk River Unit #3A-5	11-12-87
Standard Alaska Production Company	Prudhoe Bay Unit #K-8	11-12-87
ARCO Alaska, Inc.	Kuparuk River Unit #3F-4	11-13-87
ARCO Alaska, Inc.	Kuparuk River Unit #3C-14	11-16-87
ARCO Alaska, Inc.	Kuparuk River Unit #3A-6	11-18-87
Union Oil Company of California	Trading Bay Unit #D-44	11-18-87
Conoco, Inc.	Milne Point Unit #B-19	11-19-87
ARCO Alaska, Inc.	Kuparuk River Unit #3F-5	11-20-87
ARCO Alaska, Inc.	Kuparuk River Unit #3A-7	11-24-87
ARCO Alaska, Inc.	Kuparuk River Unit #3F-6	11-27-87
ARCO Alaska, Inc.	Kuparuk River Unit #3C-13	11-28-87
ARCO Alaska, Inc.	Kuparuk River Unit #2A-8	11-30-87
ARCO Alaska, Inc.	Prudhoe Bay Unit/Lisburne #L3-11	12-01-87
ARCO Alaska, Inc.	Kuparuk River Unit #3A-8	12-01-87
ARCO Alaska, Inc.	Kuparuk River Unit #3F-7	12-04-87
ARCO Alaska, Inc.	Kuparuk River Unit #2H-12	12-10-87
ARCO Alaska, Inc.	Kuparuk River Unit #3A-10	12-10-87
ARCO Alaska, Inc.	Kuparuk River Unit #3F-8	12-11-87
Amoco Production Company	Middle Ground Shoal 17595 #20	12-11-87
ARCO Alaska, Inc.	Kuparuk River Unit #2H-11	12-17-87
ARCO Alaska, Inc.	Kuparuk River Unit #3A-11	12-17-87
Conoco Inc.	Milne Point Unit #C-18	12-17-87
ARCO Alaska, Inc.	Kuparuk River Unit 3F-9	12-18-87
Standard Alaska Production Company	Prudhoe Bay Unit #K-5	12-19-87
Standard Alaska Production Company	Prudhoe Bay Unit #JX-2	12-22-87
ARCO Alaska, Inc.	Kuparuk River Unit #2H-10	12-25-87
ARCO Alaska, Inc.	Kuparuk River Unit #3A-12	12-25-87
Chevron U.S.A. Inc.	Beluga River Unit #232-9	12-25-87
Shell Western E & P Inc.	* Middle Ground Shoal #A 41-11	12-28-87
ARCO Alaska, Inc.	Kuparuk River Unit #3F-10	12-29-87
ARCO Alaska, Inc.	Kuparuk River Unit #3A-13	01-01-88
ARCO Alaska, Inc.	Kuparuk River Unit #2H-9	01-02-88
ARCO Alaska, Inc.	Prudhoe Bay Unit/Lisburne #L3-15	01-04-88
ARCO Alaska, Inc.	Kuparuk River Unit #3F-11	01-05-88

Operator	Well Name and Number	Release Date
Conoco, Inc.	Milne Point Unit #C-17	01-07-88
Shell Western E&P, Inc.	* Middle Ground Shoal #A 22-14	01-08-88
ARCO Alaska, Inc.	Kuparuk River Unit #3A-14	01-10-88
ARCO Alaska, Inc.	Kuparuk River Unit #2H-8	01-11-88
ARCO Alaska, Inc.	Kuparuk River Unit #3F-12	01-11-88
ARCO Alaska, Inc.	Kuparuk River Unit #3A-15	01-17-88
ARCO Alaska, Inc.	Kuparuk River Unit #2H-7	01-19-88
ARCO Alaska, Inc.	Kuparuk River Unit #3F-13	01-19-88
Chevron U.S.A. Inc.	Soldotna Creek Unit #21B-16	01-23-88
ARCO Alaska, Inc.	Kuparuk River Unit #3F-14	01-24-88
ARCO Alaska, Inc.	Kuparuk River Unit #3A-16	01-25-88
Unocal	Trading Bay Unit #D-43	01-25-88
ARCO Alaska, Inc.	Prudhoe Bay Unit/Lisburne #L3-19	01-26-88
Conoco, Inc.	Milne Point Unit #C-19	01-27-88
ARCO Alaska, Inc.	Kuparuk River Unit #2H-6	01-28-88
ARCO Alaska, Inc.	Kuparuk River Unit #3F-15	01-31-88
ARCO Alaska, Inc.	Kuparuk River Unit #2H-5	02-06-88
ARCO Alaska, Inc.	Kuparuk River Unit #3F-16	02-08-88
Amoco Production Company	* Granite Point State 18742 #35	02-13-88
Conoco, Inc.	Milne Point Unit #B-22	02-13-88
Amerada Hess Corporation	Northstar #1	02-14-88
ARCO Alaska, Inc.	Kuparuk River Unit #2A-12	02-18-88
Conoco, Inc.	Milne Point Unit #B-20	02-26-88
ARCO Alaska, Inc.	Kuparuk River Unit #3N-2	02-27-88
ARCO Alaska, Inc.	Kuparuk River Unit #2A-11	03-01-88
Standard Alaska Production Company	Prudhoe Bay Unit #R-26	03-04-88
ARCO Alaska, Inc.	Kuparuk River Unit #2A-10	03-10-88
ARCO Alaska, Inc.	Prudhoe Bay Unit/Lisburne #L3-23	03-12-88
ARCO Alaska, Inc.	Prudhoe Bay Unit/Lisburne #L2-25	03-13-88
Conoco, Inc.	Milne Point Unit #B-21	03-21-88
Union Oil Company of California	Trading Bay Unit #D-43RD	04-02-88
Amerada Hess Corporation	* Colville Delta 25-13-6 #1	04-03-88
ARCO Alaska, Inc.	Kuparuk River Unit Winter Trails #1	04-06-88
Standard Alaska Production Company	Prudhoe Bay Unit #B-30	04-06-88
ARCO Alaska, Inc.	Kuparuk River Unit #3N-8	04-14-88
Texaco, Inc.	Colville Delta #2	04-15-88
Union Oil Company of California	Trading Bay Unit #K-25	04-16-88
Union Oil Company of California	Kenai Beluga Unit #33-7	04-19-88
Amoco Production Company	Granite Point State 18742 #36	04-20-88
Standard Alaska Production Company	Niakuk #6	04-24-88
Texaco, Inc.	Colville Delta #3	04-30-88
ARCO Alaska, Inc.	Prudhoe Bay Unit/Lisburne #L2-3	05-05-88
Chevron U.S.A. Inc.	Beluga River Unit #211-3	05-05-88
Amerada Hess Corporation	Northstar #2	05-06-88
ARCO Alaska, Inc.	Prudhoe Bay Unit #DS 11-10	05-07-88
ARCO Alaska, Inc.	* Prudhoe Bay Unit/Lisburne #L2-13	05-08-88
ARCO Alaska, Inc.	Prudhoe Bay Unit #DS 3-31	05-09-88
ARCO Alaska, Inc.	Prudhoe Bay Unit #DS 3-32	05-12-88
ARCO Alaska, Inc.	Prudhoe Bay Unit #DS 3-34	05-12-88
ARCO Alaska, Inc.	Prudhoe Bay Unit #DS 3-33	05-13-88
ARCO Alaska, Inc.	Kuparuk River Unit 3I-15	05-15-88
ARCO Alaska, Inc.	Prudhoe Bay Unit/Lisburne #L2-21	05-17-88
ARCO Alaska, Inc.	Kuparuk River Unit #3N-1	05-18-88
ARCO Alaska, Inc.	Kuparuk River Unit #2A-9	05-18-88
ARCO Alaska, Inc.	Kuparuk River Unit #3N-2A	05-19-88

Operator	Well Name and Number	Release Date
ARCO Alaska, Inc.	Kuparuk River Unit #3J-6	05-21-88
ARCO Alaska, Inc.	Kuparuk River Unit #3J-7	05-21-88
ARCO Alaska, Inc.	Prudhoe Bay Unit/Lisburne #L2-33	05-21-88
Chevron U.S.A. Inc.	KIC #1	05-24-88
ARCO Alaska, Inc.	Prudhoe Bay Unit/Lisburne #L2-29	05-25-88
Standard Alaska Production Company	Prudhoe Bay Unit #U-10	05-26-88
Standard Alaska Production Company	Prudhoe Bay Unit #Y-21	05-27-88
ARCO Alaska, Inc.	Kuparuk River Unit #3J-15	05-31-88
ARCO Alaska, Inc.	Kuparuk River Unit #3J-13	05-31-88
ARCO Alaska, Inc.	Kuparuk River Unit #3J-16	05-31-88
Amoco Production Company	Middle Ground Shoal 17595 #17	06-01-88
ARCO Alaska, Inc.	Prudhoe Bay Unit/Lisburne #LGI-12	06-01-88
Standard Alaska Production Company	Prudhoe Bay Unit #A-30	06-02-88
ARCO Alaska, Inc.	Prudhoe Bay Unit/Lisburne #L3-31	06-02-88
Standard Alaska Production Company	Prudhoe Bay Unit #F-23	06-05-88
Chevron U.S.A. Inc.	Beluga River Unit #224-34	06-06-88
ARCO Alaska, Inc.	Kuparuk River Unit #3J-11	06-07-88
ARCO Alaska, Inc.	Kuparuk River Unit #3J-12	06-09-88
ARCO Alaska, Inc.	Kuparuk River Unit #3J-14	06-09-88
ARCO Alaska, Inc.	Kuparuk River Unit #3J-10	06-10-88
ARCO Alaska, Inc.	Prudhoe Bay Unit #DS 17-11	06-10-88
ARCO Alaska, Inc.	Prudhoe Bay Unit #DS 17-12	06-10-88
ARCO Alaska, Inc.	Prudhoe Bay Unit #DS 17-13	06-10-88
Union Oil Company of California	Trading Bay State #A-3RD	06-13-88
Standard Alaska Production Company	Prudhoe Bay Unit #U-11	06-15-88
Standard Alaska Production Company	Prudhoe Bay Unit #H-27	06-16-88
ARCO Alaska, Inc.	Kuparuk River Unit #2Z-WS#1	06-17-88
ARCO Alaska, Inc.	Kuparuk River Unit #3I-9	06-24-88
ARCO Alaska, Inc.	Kuparuk River Unit #3N-3	06-26-88
ARCO Alaska, Inc.	Kuparuk River Unit #3N-4	06-26-88
ARCO Alaska, Inc.	Kuparuk River Unit #3I-14	06-27-88
Standard Alaska Production Company	Prudhoe Bay Unit #U-12	06-29-88
Standard Alaska Production Company	Prudhoe Bay Unit #Y-20	06-30-88
ARCO Alaska, Inc.	Prudhoe Bay Unit #DS 9-30	07-07-88
ARCO Alaska, Inc.	Kuparuk River Unit #3N-7	07-07-88
ARCO Alaska, Inc.	Kuparuk River Unit #3N-8A	07-07-88
ARCO Alaska, Inc.	Prudhoe Bay Unit #DS 9-31	07-08-88
ARCO Alaska, Inc.	Prudhoe Bay Unit #DS 9-29	07-08-88
ARCO Alaska, Inc.	Kuparuk River Unit #3N-5	07-09-88
ARCO Alaska, Inc.	Kuparuk River Unit #3N-6	07-09-88
ARCO Alaska, Inc.	Prudhoe Bay Unit #DS 9-35	07-10-88
ARCO Alaska, Inc.	Prudhoe Bay Unit #DS 9-32	07-11-88
ARCO Alaska, Inc.	Prudhoe Bay Unit #DS 9-33	07-11-88
ARCO Alaska, Inc.	Prudhoe Bay Unit #DS 9-34	07-11-88
ARCO Alaska, Inc.	Prudhoe Bay Unit #DS 9-36	07-12-88
Standard Alaska Production Company	Prudhoe Bay Unit #N-11A	07-12-88
ARCO Alaska, Inc.	Prudhoe Bay Unit #DS 9-24	07-14-88
ARCO Alaska, Inc.	Kuparuk River Unit #3J-8	07-15-88
ARCO Alaska, Inc.	Prudhoe Bay Unit #DS 16-17	07-18-88
Standard Alaska Production Company	Prudhoe Bay Unit #A-32	07-20-88
ARCO Alaska, Inc.	Kuparuk River Unit #3I-1	07-21-88
ARCO Alaska, Inc.	Kuparuk River Unit #3I-2	07-21-88
ARCO Alaska, Inc.	Kuparuk River Unit #3I-3	07-22-88
ARCO Alaska, Inc.	Kuparuk River Unit #3I-4	07-22-88
Standard Alaska Production Company	Prudhoe Bay Unit #H-24	07-22-88
Standard Alaska Production Company	Prudhoe Bay Unit #H-25	07-22-88

Operator	Well Name and Number	Release Date
ARCO Alaska, Inc.	Prudhoe Bay Unit #DS 16-15	07-23-88
ARCO Alaska, Inc.	Kuparuk River Unit #3I-5	07-24-88
ARCO Alaska, Inc.	Kuparuk River Unit #3I-7	07-24-88
ARCO Alaska, Inc.	Kuparuk River Unit #3I-8	07-24-88
ARCO Alaska, Inc.	Kuparuk River Unit #3I-12	07-30-88
Standard Alaska Production Company	Duck Island Unit/Endicott #P-18MPI	08-01-88
ARCO Alaska, Inc.	Kuparuk River Unit #2T-12	08-06-88
Standard Alaska Production Company	Duck Island Unit/Endicott #O-20MPI	08-08-88
ARCO Alaska, Inc.	Prudhoe Bay Unit #DS 18-5	08-08-88
Standard Alaska Production Company	Prudhoe Bay Unit #S-12A	08-09-88
Standard Alaska Production Company	Prudhoe Bay Unit #B-29	08-10-88
Chevron U.S.A. Inc.	Beluga River Unit #224-23	08-15-88
Standard Alaska Production Company	Prudhoe Bay Unit #B-27	08-18-88
ARCO Alaska, Inc.	Prudhoe Bay Unit #DS 4-22	08-20-88
ARCO Alaska, Inc.	Prudhoe Bay Unit #DS 4-24	08-20-88
ARCO Alaska, Inc.	Prudhoe Bay Unit #DS 4-27	08-20-88
ARCO Alaska, Inc.	Prudhoe Bay Unit #DS 4-28	08-20-88
ARCO Alaska, Inc.	Prudhoe Bay Unit #DS 4-21	08-20-88
ARCO Alaska, Inc.	Prudhoe Bay Unit #DS 4-18	08-20-88
Chevron U.S.A. Inc.	Beluga River Unit #BRWD-1	08-25-88
Standard Alaska Production Company	Prudhoe Bay Unit #D-25	08-26-88
Standard Alaska Production Company	Prudhoe Bay Unit #D-24	08-27-88
ARCO Alaska, Inc.	Prudhoe Bay Unit #DS 16-7	08-29-88
Standard Alaska Production Company	Prudhoe Bay Unit #D-26	08-29-88
Standard Alaska Production Company	Duck Island Unit/Endicott #M-19MPI	08-30-88
Standard Alaska Production Company	Duck Island Unit/Endicott #Q-35SDI	08-30-88
ARCO Alaska, Inc.	Prudhoe Bay Unit #DS 4-17	09-10-88
Standard Alaska Production Company	Prudhoe Bay Unit #H-21	09-10-88
Standard Alaska Production Company	Prudhoe Bay Unit #H-22	09-11-88
Standard Alaska Production Company	Prudhoe Bay Unit #D-27	09-12-88
Standard Alaska Production Company	Prudhoe Bay Unit #D-29	09-12-88
ARCO Alaska, Inc.	Kuparuk River Unit #3N-9	09-13-88
Standard Alaska Production Company	Prudhoe Bay Unit #C-32	09-13-88
ARCO Alaska, Inc.	Kuparuk River Unit #3N-10	09-14-88
ARCO Alaska, Inc.	Kuparuk River Unit #3N-11	09-14-88
ARCO Alaska, Inc.	Kuparuk River Unit #3N-12	09-14-88
ARCO Alaska, Inc.	Prudhoe Bay Unit #DS 18-9	09-16-88
ARCO Alaska, Inc.	Kuparuk River Unit #3N-13	09-17-88
ARCO Alaska, Inc.	Kuparuk River Unit #3N-14	09-17-88
Standard Alaska Production Company	Duck Island Unit/Endicott #O-29SDI	09-18-88
Standard Alaska Production Company	Prudhoe Bay Unit #C-29	09-18-88
Standard Alaska Production Company	Prudhoe Bay Unit #C-35	09-19-88
ARCO Alaska, Inc.	Kuparuk River Unit #3K-5	09-19-88
Standard Alaska Production Company	Prudhoe Bay Unit #C-38	09-20-88
Chevron U.S.A. Inc.	Pretty Creek Unit #224-28	09-22-88
ARCO Alaska, Inc.	Kuparuk River Unit #3K-4	09-22-88
ARCO Alaska, Inc.	Prudhoe Bay Unit #DS 16-21	09-23-88
Standard Alaska Production Company	Prudhoe Bay Unit #T-1	09-23-88
ARCO Alaska, Inc.	Kuparuk River Unit #3K-1	09-25-88
ARCO Alaska, Inc.	Kuparuk River Unit #3K-2	09-26-88
ARCO Alaska, Inc.	Kuparuk River Unit #3K-4	09-27-88
Standard Alaska Production Company	Prudhoe Bay Unit #G-19	09-28-88
ARCO Alaska, Inc.	Kuparuk River Unit #3N-16	10-01-88
ARCO Alaska, Inc.	Prudhoe Bay Unit #DS 16-21	10-02-88
ARCO Alaska, Inc.	Prudhoe Bay Unit #PWDW LPC-1	10-03-88
ARCO Alaska, Inc.	Kuparuk River Unit #2T-13	10-03-88

Operator	Well Name and Number	Release Date
ARCO Alaska, Inc.	Kuparuk River Unit #3N-15	10-06-88
ARCO Alaska, Inc.	Kuparuk River Unit #3N-17	10-06-88
Standard Alaska Production Company	Prudhoe Bay Unit #Y-22	10-06-88
ARCO Alaska, Inc.	Kuparuk River Unit #3N-18	10-07-88
Standard Alaska Production Company	Prudhoe Bay Unit #M-25	10-07-88
ARCO Alaska, Inc.	Kuparuk River Unit #2T-17	10-07-88
ARCO Alaska, Inc.	Prudhoe Bay Unit #DS 16-24	10-08-88
ARCO Alaska, Inc.	Kuparuk River Unit #3J-9	10-09-88
ARCO Alaska, Inc.	Kuparuk River Unit #2T-10	10-10-88
ARCO Alaska, Inc.	Prudhoe Bay Unit #DS 16-18	10-11-88
ARCO Alaska, Inc.	Kuparuk River Unit #2T-16	10-18-88
ARCO Alaska, Inc.	Prudhoe Bay Unit #DS 4-33	10-26-88
ARCO Alaska, Inc.	Prudhoe Bay Unit #DS 16-19	10-29-88
ARCO Alaska, Inc.	Kuparuk River Unit #2T-12A	10-31-88
ARCO Alaska, Inc.	Prudhoe Bay Unit #DS 4-25	11-01-88
Standard Alaska Production Company	Prudhoe Bay Unit #F-20	11-04-88
ARCO Alaska, Inc.	Kuparuk River Unit #2T-14	11-04-88
Standard Alaska Production Company	Prudhoe Bay Unit #R-27	11-05-88
Standard Alaska Production Company	Prudhoe Bay Unit #R-26A	11-06-88
Standard Alaska Production Company	Prudhoe Bay Unit #Y-23	11-08-88
ARCO Alaska, Inc.	Kuparuk River Unit #2T-15	11-08-88
ARCO Alaska, Inc.	Kuparuk River Unit #2T-11	11-11-88
Standard Alaska Production Company	Prudhoe Bay Unit #B-28	11-12-88
ARCO Alaska, Inc.	Kuparuk River Unit #2T-9	11-12-88
Standard Alaska Production Company	Duck Island Unit/Endicott #T-34SDI	11-12-88
ARCO Alaska, Inc.	Kuparuk River Unit #2T-6	11-14-88
ARCO Alaska, Inc.	Kuparuk River Unit #2T-5	11-15-88
ARCO Alaska, Inc.	Kuparuk River Unit #2T-3	11-16-88
ARCO Alaska, Inc.	Prudhoe Bay Unit/Lisburne #LGI-10	11-17-88
ARCO Alaska, Inc.	Prudhoe Bay Unit/Lisburne #LGI-8	11-22-88
ARCO Alaska, Inc.	Kuparuk River Unit #2T-4	11-22-88
Standard Alaska Production Company	Prudhoe Bay Unit #G-29	11-25-88
Standard Alaska Production Company	Prudhoe Bay Unit #Y-24	11-27-88
ARCO Alaska, Inc.	Prudhoe Bay Unit/Lisburne #LGI-6	11-29-88
ARCO Alaska, Inc.	Kuparuk River Unit #2T-7	11-30-88
ARCO Alaska, Inc.	Prudhoe Bay Unit/Lisburne #L5-24	12-04-88
Standard Alaska Production Company	Prudhoe Bay Unit #G-30	12-13-88
Standard Alaska Production Company	Prudhoe Bay Unit #G-32	12-16-88
Standard Alaska Production Company	Prudhoe Bay Unit #D-28	12-29-88

Statutes and Regulations Regarding Well Confidentiality
for the Other 49 States

State	Summary of Confidential Time Period Regulations
Alabama	S9-17-6(4) Six months from completion of well (must submit reports by that time).
Arizona	Six months. Rule R12-7-121B.
Arkansas	Maximum of 90 days from completion date.
California	If requested. (Section 3234) Not to exceed two years for onshore exploratory wells and not to exceed five years for offshore exploratory wells. Period may be extended for exploratory and offshore wells upon a showing of extenuating circumstances. Development wells may be granted confidential status if the supervisor determines there are extenuating circumstances.
Colorado	S34-60-106 If requested, for six months after drilling.
Connecticut	N/A*.
Delaware	N/A.
Florida	Six months, or 18 months with hardship plea.
Georgia	S43-707(16) Six months or longer.
Hawaii	S182-6 Indefinitely, unless application for a mining lease is not made within 6 months of receipt by Board (which is required upon termination of the exploration permit.)
Idaho	One year upon request of operator.
Illinois	Three months - S5409. One year, if requested.
Indiana	S(13-4-7-17)-1(D) None automatic. For geological or structure test wells and geophysical tests, maximum of two years from date of issue of drilling permit upon written request. For all other records, if requested, one year from date of well completion.
Iowa	S84.4 Six months.
Kansas	One year upon request. May be extended one year.
Kentucky	Upon request, for one year maximum.

*N/A - Update of 12/86 shows no relevant statutes yet in effect.

Louisiana	Upon written request; (Act 4 of the Extraordinary Session of 1973) wells shallower than 15,000 feet--one year with a one-year extension; Act 691 of the Regular Session of 1979--offshore logs, upon written request--two years with a two-year extension.
Maine	S549-B (13) - Annual Report kept confidential indefinitely pursuant to Title 1, Section 408.
Maryland	No automatic time period. Reports required in 30 days. They can be held confidential at the specific request of the operator.
Massachusetts	N/A.
Michigan	S319.6 (d) and R299.1311 provide for 90 days after completion of drilling upon written request.
Minnesota	N/A.
Mississippi	S53-1-33 - Thirty days after completion of well. Other regulations - for six months if so requested. Eighteen months for stratigraphic tests.
Missouri	S259.070 (c) - six months. Other - one year if requested.
Montana	S82-11-123 (2) - Six months following completion for exploratory and wildcat wells; S82-11-125(2) - three years following completion for stratigraphic tests.
Nebraska	S57-905 (3)(i) - for 12 months upon written request.
Nevada	S38.28A, Ch. 522, 522.040(2) - six months for exploratory or "wildcat" wells; other - may be extended for a series of wells.
New Hampshire	N/A.
New Jersey	N/A.
New Mexico	Ninety days if requested.
New York	Logs kept confidential upon request and upon provision of substantiation for confidentiality acceptable to the Department.
North Carolina	For one year upon request of operator. Extensions of this confidentiality are allowed up to a maximum of 1 year at the discretion of the Department.
North Dakota	S38-08-04 (6) - six months if requested.
Ohio	S1509.10 - six months after completion; longer if granted by the Chief of the Division of Oil & Gas in writing.

Oklahoma	Held confidential for one year only if filed within 60 days after completion of log; optional six months' extension.
Oregon	S520.095 (2) - two years after completion. May be extended by State Geologist for time considered reasonable to protect economic interests of lessee.
Pennsylvania	One year for annual reports, which may be extended for four years.
Rhode Island	N/A.
South Carolina	S405. (c)(1)(ii) - twelve months after completion of well except for logs required under "Gas Operations Well - Drilling Petroleum and Coal Mining Act".
South Dakota	Six months, if requested in writing.
Tennessee	Six months from date of drilling to total depth upon written request of permittee (1040-2-10-.05).
Texas	No. On request, one 6-month extension of the time limit for the filing of a log with discovery application may be granted for good cause.
Utah	S40-60-4 (1)(b) - six months on request.
Vermont	S505 (b)(2) - two years on request with an additional year's extension with proof of special circumstances.
Virginia	Rule 15, Sec. 45.1-113. Test wells for one year - maximum of three years; other data for 90 days. S45.1-332 - two years for an exploratory well if certified as such in writing.
Washington	S78.52.260 - twelve months for exploratory well data if requested at time of filing.
West Virginia	One year, additionally to three total years for good cause.
Wisconsin	N/A.
Wyoming	S30-5-104 - for six months if requested.

SOURCES

Interstate Oil Compact Commission. Summary of State Statutes and Regulations for Oil and Gas Production. 1986

Myers, Raymond M. The Law of Pooling and Unitization, Voluntary - Compulsory. Volumes 2 & 3, Rev. December, 1986.

05371

Draft

January 29, 1980

Jeff Haynes — Signed copy must be sent to Hamilton today, otherwise data will be released 8:00 am tomorrow. T Cook

Mr. W. C. Lenz
Division Manager
Land Department
TEXACO, INC.
P. O. Box 3756
Los Angeles, CA 90051

Re: Request for Confidentiality of Well Data Pursuant to AS 31.05.035(c): Tulugak Well #1, Arctic Slope, Alaska

Dear Mr. Lenz:

By letters dated October 31, 1978, and February 7, 1979, Texaco requested that all well data and information submitted to the State of Alaska for the Tulugak Well #1 be held confidential indefinitely pursuant to AS 31.05.035(c) as amended by HB 815.

Texaco's request poses two problems:

1. The request that well data and information be held confidential indefinitely, and

2. The fact that the well was drilled on private (native) land.

In my judgment, the amended statute is intended to apply to wells drilled on state lands. Further, I do not believe that the statute was intended to provide for an indefinite period of confidentiality.

A professional of the staff of the Division of Minerals and Energy Management has examined the well data which was made available by Mr. Don Hartman of Texaco. I am advised that these data, logs, and reports are significant to the valuation of unleased native lands in the vicinity of the Tulugak No. 1 Well.

Since the statute is unclear as to its applicability to private land, I am requesting that the Alaska Oil and Gas Conservation Commission hold the Tulugak No. 1 well data confidential until the law is clarified and regulations adopted to implement AS 31.05.035(c) as amended by HB 815.

Sincerely,

Robert E. LeResche
Commissioner

cc: Hoyle H. Hamilton, Chairman
Alaska Oil and Gas Conservation Commission
Thomas Cook, DMEM
Don Hartman, Texaco

REL/TC/cm

Fred Boness
Deputy Commissioner

November 22, 1978

Tom Cook, Director Minerals and Energy Management

Chevron's Request for Confidentiality Treatment of Well Data Pursuant to AS 31.025(c)

Chevron's request for an indefinite extension of confidentiality of well data pursuant to AS 31.035(c) (as amended by H.B. 815) serves to demonstrate the difficulty in applying the amended language in a reasonable way. I fully concur with Hoyle Hamilton's comments in his memo to you of November 3, 1978.

The language of AS 31.035(c) as amended raises the following questions as noted by Hoyle:

1. What is "significant information"? Virtually any information gained from drilling could be considered "significant" in assessing adjacent acreage.

2. What is included in the category of "unleased land"? A literal interpretation of this phrase would necessarily include any unleased acreage whether state, federal, or private.

3. What is meant by "same vicinity"? This could mean unleased acreage abutting the lease operation in question or it could include unleased lands separated from the lease operation by lands under lease. It could even be argued that unleased lands at quite a distance (several miles) from the lease operation are in the same vicinity.

4. What is intended by the phrase "a reasonable time"? I would take this to mean until after the disposition of "unleased land in the same vicinity", but we will have problems in applying such vague language.

5. Does the phrase "all affected unleased land" literally mean "all"? The problems with this language are obvious. One unleased tract in a sale area could impose a "forever" condition for confidential treatment.

I believe that the problems associated with AS 31.035(c) (as amended) are so great that the section will have to be clarified by legislation. In any case, regulations will have to be carefully written to lend some definition to the meaning of AS 31.035(c). We are undertaking the job of developing regulations to implement AS 31.035(c), but I am not enthusiastic about the task given the present language.

STATE OF ALASKA

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

400 WILLOUGHBY AVE.
JUNEAU, ALASKA 99801
PHONE: (907) 465-2400

January 28, 1987

The Honorable Sam Cotten, Co-Chairman
The Honorable Adelheid Herrman, Co-Chairwoman
House Resources Committee
Alaska State Legislature
Post Office Box V
Juneau, Alaska 99811

Dear Representatives Cotten and Herrman:

Subject: House Bill 41, which would eliminate a requirement that the Commissioner of Natural Resources extend the period of confidentiality for oil and gas well data when the data contain significant information relating to the value of unleased land in the same vicinity.

Response: On balance, the department supports the bill. In our judgement, removing the provision for extended confidentiality would encourage expedited exploration of state lands, and would result in increased competition for oil and gas leases.

Background: The provision being eliminated by this bill was originally adopted in recognition of specific delays contemplated as a result of litigation surrounding the joint Federal/State Beaufort Sea Sale in 1979. Because of these potential lengthy delays, and the fact that numerous operators had drilled exploratory wells adjacent to the sale area in anticipation of the lease sale, the provision was adopted to provide extended confidentiality to the data pending resolution of the litigation and issuance of the leases.

Discussion: The two-year period of confidentiality will still apply. In the department's judgement, the two-year period successfully balances the proprietary interests of the oil companies to keep well data confidential, and the public interest in making available as much information as possible on the state's oil and gas resources.

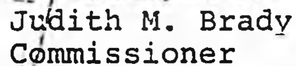
Removing the provision is also more in keeping with the confidentiality provisions of other oil producing states.

From the oil industry's perspective, it appears to

the department that the extended well confidentiality provision works to their advantage in some cases, and to their disadvantage in others. While companies often want to keep their own data confidential, they would like to have their competitor's data released as soon as possible. This sort of conflict is best resolved by repeal of this provision, which will guarantee that all parties have timely access to the well data.

If you would like additional information or have any questions, please contact my office or James Eason, Director of the Division of Oil and Gas (762-4241).

Sincerely,



Judith M. Brady
Commissioner

cc: Committee Members
Commissioner Chat Chatterton
Director James Eason

HOUSE BILL 41

EXTENDED TESTIMONY OF

STEPHEN M. ELLIS

submitted on behalf of

CHEVRON U.S.A. INC.

House Resources Committee Hearing
February 18, 1987

My name is Stephen Ellis. I am an attorney with the Anchorage law firm of Delaney, Wiles, Hayes, Reitman & Brubaker, Inc. I am appearing here today on behalf of Chevron U.S.A. Inc. Our firm has represented Chevron for the past three decades. We have represented the Company legislatively in Juneau for the past thirteen years.

Chevron is proud of its long presence in Alaska. It continues to be the only major oil company performing all facets of the industry's operations in Alaska: exploration, production, manufacturing, distribution and marketing. Chevron has been doing business in Alaska for approximately 100 years.

As the largest oil and gas leaseholder in Alaska, Chevron thanks the Committee for this opportunity to express its concern with HB-41. We believe the current extended confidentiality provisions of Title 31 are in the best interests of both the State of Alaska and the industry. The State benefits because the existing provisions encourage the drilling of exploratory wells in the frontier areas of Alaska. The risk takers of the industry, who are willing to commit and expend their exploration dollars in Alaska, are rewarded because their data remains confidential.

Chevron opposes HB-41 because it would discourage drilling in frontier areas. The drilling of such a well is an

extremely expensive proposition. For example, drawing from Chevron's experience, Chevron and partners have drilled eleven exploratory wells in Alaska in the past ten years at a total cost of $291 million. The incentive to drill these wells is greatly reduced where the company is required to share its confidential well data with all of its competitors --- competitors who have not made any expenditure of their own.

Alaska is a difficult frontier for oil and gas exploration. Direct comparison to any of the other forty-nine states' provisions for confidentiality is thus not appropriate for Alaska's unique situation which requires a five-year sale schedule and a long lead time for exploration. Moreover, past experience demonstrates that it is impossible to schedule state sales with five-year reliability. The new 1987 Five-Year Leasing Plan contains ten sales. This represents a reduction of nine sales from last year's plan. Eliminated sales include: Icy Cape, Holitna, Cook Inlet #62, Offshore Icy Cape, Point Franklin, White Hills, and Hope Basin. There are also significant delays in the new schedule. For example, the Nechelik sale has been delayed one year and three months, the Beaufort Sea #52 - two years and three months, the Alaska Peninsula sale - nine months, and North Slope #57 - one and one-half years. Since there is no guarantee that a sale will be held as scheduled, existing law provides a fair means of encouraging exploration and allows a

company to develop an exploration program based on constant guidelines and regulations.

I believe two examples will demonstrate the advantage of the extended confidentiality provisions of the current law. The first example is from the State-Federal joint sale, BF-79 in the Point Thomson Area. At the time of the sale, Point Thomson was a proven gas-condensate field. Two groups that participated at that sale are of particular interest. One group had <u>all</u> of the confidential well information that was available. It acquired two leases for relatively low bonuses. Another bidding group did not have access to any of the confidential information. That group acquired six leases for large bonus bids. Five wells were ultimately drilled in the sale area by companies who did not possess all of the confidential information. Thus, the extended confidentiality provisions of AS 31.05.035(c) resulted in both higher bonus bids for the State and the drilling of additional exploratory wells.

The second example involved a similar situation in the Cape Halkett Area. Chevron and its partners had drilled a well on private land prior to OCS Sale #71, held in 1982 and State Sale #43, held in 1984. Chevron did not participate in the bidding on nearby tracts in either sale. However, all the tracts were leased. Thereafter, one of the successful bidders did drill another exploratory well in the area. Thus, again the extended

confidentiality provisions of AS 31.05.035(c) resulted in additional bonuses to the State and the drilling of an exploratory well.

We believe a two year confidentiality period is inadequate because of the vastness of Alaska. Chevron has drilled in some areas of the State where even today, almost ten years after the well was drilled, no sale of adjoining public lands is scheduled. Therefore, to be meaningful, extended confidentiality provisions must remain open-ended.

In sum, HB-41 discourages exploration in those situations where a company has an existing right to drill. Drilling is a necessary condition for a discovery of oil or gas. Each exploratory well generates significant employment for approximately 400 individuals.

Accordingly, we believe a number of policy considerations suggest that HB-41 is not in the State's best interest. Chevron recognizes that not everyone may agree with its policy analysis. However, Chevron's opposition to HB-41 has an independent legal basis as well. We believe HB-41, if applied to private lands in the State, would be unlawful. This conclusion is particularly true with respect to a retrospective application. We define a retrospective application as any

application to lands where a company had acquired the oil and gas rights to that land prior to the effective date of HB-41.

One commentator has explained the general aversion to retrospective legislation as follows:

> Perhaps the most fundamental reason why retroactive legislation is suspect stems from the principle that a person should be able to plan his conduct with reasonable certainty of the legal consequences. Thus, The Federalist stressed the desirability of protecting the people from the "fluctuating policy" of the legislature. Closely allied to this factor is man's desire for stability with respect to past transactions. Moreover, to the extent that a statutory law should serve as a guide to individual conduct, this purpose is thwarted by retroactive enactments. Still another reason underlying the hostility to retroactive legislation is that such a statute may be passed with an exact knowledge of who will benefit from it. Finally, there is the strong common-law tradition that although a court's pronouncements may apply to past conduct, a legislature's function is to declare law for the future.

This same commentator concludes that in analyzing retroactive legislation, the courts generally balance three factors in determining whether the legislation is lawful:

1. The nature and strength of the public interest served by the statute. We believe this factor favors a finding of invalidity because in our judgment, disclosure serves no apparent conservation purpose.

2. The extent to which the statute modifies or abrogates the asserted preenactment right. This factor also favors a finding of invalidity. It is well established that

confidential well data such as involved here constitutes a trade secret. Disclosure of that data obviously destroys the confidentiality of the data. As a result, the owner of the data loses a real competitive advantage. Courts have held that type of loss to be compensable.

3. The third factor to be considered is the nature of the right which the State alters. This factor also favors a finding of unlawfulness. A company drilling a well subsequent to 1978 had a reasonable investment-backed expectation that the data would remain confidential. Given this assurance, we believe the Alaska Supreme Court would readily find a retrospective application of HB-41 to be unlawful.

We also believe a prospective application of HB-41, particularly as to private lands, would be unlawful. In discussing this point, it is perhaps helpful to examine the basis of the State's right to require the filing of well data. That right stems from the State's police power which is defined as the State's authority to promulgate reasonable regulations necessary to preserve the public order, health and safety, and to promote the general welfare. However, the courts have set limitations on unlawful exercise of police power. Again, three factors are involved:

1. The public interest must require the regulation. We believe it apparent that conservation principles do not require the disclosure of this type of data.

2. The legislation must be reasonable. We believe disclosure is not reasonable because no valid public purpose is served, particularly when compared with the tremendous economic loss disclosure works on the affected oil companies.

3. The means selected must have a real and substantial relation to the object sought to be obtained. The Alaska Oil and Gas Conservation Commission serves the functions of preventing waste of oil and gas resources, and protecting the rights of oil and gas interest holders. The Department of Natural Resources is the proprietor of the State's mineral interest. DNR has the same standing (no more or less) before the Alaska Oil and Gas Conservation Commission as any other oil company. Thus, the State may not make proprietary use of confidential information acquired under a law purporting to "regulate" the oil and gas industry. That is, the State may not exercise a governmental function for a proprietary purpose.

Moreover, even assuming this compelled disclosure of well data does constitute a valid exercise of the police power, courts have held that a regulation can be so complete as to constitute a taking. Again, three factors are considered:

1. The character of the government action,

2. The economic impact, and

3. The reliance of the affected individuals.

While it is true that the reliance factor would not be involved with respect to a prospective application, we believe

the first two factors would warrant a finding that a taking has occurred. As I have discussed, the character of the government action with respect to disclosure is a proprietary action and not for a governmental purpose. Further, the economic impact of the disclosure works a tremendous disadvantage to the companies as they lose their competitive advantage.

A Wisconsin Supreme Court decision decided in 1983 involving Noranda Exploration, Inc. perhaps best illustrates these points. The State of Wisconsin had adopted mining regulations which provided for the public disclosure of data following a three year confidentiality period. The state argued that since any drilling undertaken subsequent to the effective date of the Wisconsin Act was conducted on a voluntary basis, the resulting data did not constitute a protected property right. However, the Wisconsin Supreme Court disagreed. The court relied upon the fact that the exploration was done on private lands rather than State-owned land. The court found that the right to exclude others was a traditional attribute of property and accordingly found that that right was protectable. The court further found that public disclosure of the data did not bear a reasonable relationship to informed decision-making by the state agencies. Accordingly, the court found that the Wisconsin statute constituted an unconstitutional taking of private property without just compensation. We believe the Alaska

Supreme Court would reach a similar conclusion with respect to a prospective application of HB-41.

Thank you for your consideration of Chevron's comments.

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

March 6, 1987

Mr. Tom Gallagher
Chevron U.S.A. Inc
3001 C Street
Anchorage, AK 99503

Dear Mr. Gallagher:

Thank you for your letter of March 4 offering to bring Dr. Sorenson before the Resources Commitee on the topic of HB 41, the confidentiality of oil and gas data.

As I discussed with Mr. Ray Plummer after the House Resources Committee meeting on Wednesday, March 4, I appreciate the offer by Chevron but would prefer to see the bill move on to the next committee (Finance), where I believe that Dr. Sorenson's presentation would probably be welcome. As you know, the sponsor of the bill, Rep. Brown, sits on the Finance Committee.

Thank you for your letter.

Sincerely,

Sam Cotten

Rep. Sam Cotten
Co-Chair
House Resources Committee

cc: Rep. Brown
Rep. Adams
Committee members

Chevron U.S.A. Inc.
3001 C Street, Anchorage, AK 99503 • Phone (907) 563-2556

T. P. Gallagher
Public Affairs Manager

March 4, 1986

Representative Sam Cotten, Co-Chair
Representative Adelheid Herrmann, Co-Chair
House Resources Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

RE: House Bill 41

Dear Representatives:

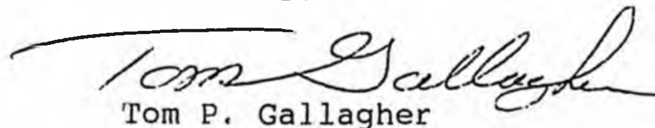
This will serve to confirm a request made on behalf of Chevron U.S.A., Inc., by Ray Plummer, to the House Resource Committee staff on March 3, 1987.

Chevron has requested the House Resource Committee hear testimony from Dr. Phil Sorenson, Professor of Economics from University of California-Santa Barbara. Dr. Sorenson has an extensive published background on oil and gas economics and has been called upon by both private and public entities. Dr. Sorenson has performed original research on the subject of the economic impact of confidentiality of well data, upon leasing, drilling and the oil and gas industry in general.

Chevron would greatly appreciate the opportunity for Dr. Sorenson to address the Committee on the merits of House Bill 41 as the Committee was the original committee of reference.

Chevron, of course, will bear the expenses of Dr. Sorenson's visit to Alaska and testimony before your committee.

Sincerely,



Tom P. Gallagher

TPG:ph

cc: Representative Kay Brown
House Resource Committee Members

EXXON COMPANY U.S.A. Comments
HOUSE BILL 41 - Well Data Confidentiality
House Resources Committee
February 18, 1987

Exxon appreciates the opportunity to present comments in opposition to HB-41. We believe that passage of this bill would slow oil and gas leasing and exploration activity in Alaska by significantly reducing the value of any well data obtained. Exploration budgets are already sharply reduced throughout the industry as companies work to cope with today's crude market. Since HB-41 would make it even more difficult for oil and gas operators to justify taking on the high cost and high risk of exploration in Alaska, we oppose the bill and ask you to carefully weigh our arguments.

In comparison to opportunities elsewhere, Alaska is characterized by harsh climate, remoteness and unexplored geologic prospects. Such high cost/high risk environments are significantly more attractive to explore with extended well confidentiality. For example, an operator may have a geologic concept for an area, but that concept, until tested by drilling, does not economically justify acquiring a large acreage position. Most often, several concepts must be studied and tested over a long period of time if any are to prove successful. If operators know they will have to give up all well data after only two years, often with limited drilling seasons, they will be less likely to pursue novel concepts in new areas.

For those leases that have already been acquired, operators will be encouraged to delay exploration drilling to plan around the confidentiality limitation. If a subsequent lease sale is not scheduled in the next two years, there would be a significant incentive for a lessee to defer drilling so that he does not lose a competitive advantage. If a lessee knew that a nearby leaseholder was about to drill, he would naturally be tempted to wait until that data became available before taking the risk himself. In other words, drilling decisions would be made based partly on the need to ensure confidentiality rather than on the most effective schedule.

This bill would be especially discouraging towards exploration of the least understood areas such as Interior geologic basins. The currently reduced rate of wildcat drilling in Alaska testifies to the cost/risk barriers being faced today. If well confidentiality could not be maintained, many such basins would likely continue to remain unexplored.

As these examples illustrate, we are convinced that lost well confidentiality would serve to slow oil and gas exploration in Alaska. Certainly, there are wells drilled by others with confidential data of great interest to Exxon. But the long-term downside impact on future exploration in Alaska strongly outweighs the short-term gain of such data access.

JDH/3295:dag
2/17/87
?

Standard Alaska
Production Company
900 East Benson Boulevard
P.O. Box 196612
Anchorage, Alaska 99519-6612
(907) 561-5111

STANDARD
ALASKA PRODUCTION

TESTIMONY OF STANDARD ALASKA PRODUCTION COMPANY ON H.B. 41, CONFIDENTIALITY OF EXPLORATORY WELL INFORMATION.

Standard Alaska Production Company vigorously opposes the amendments to the existing section 31.05.035(c). The extended confidentiality provisions of this section are an important incentive to continued exploration in Alaska. Premature disclosure of exploratory drilling results, in the advance of any lease sale, would effectively deprive an aggressive exploring oil company of valuable proprietary information without any corresponding benefit to the State of Alaska. The amendment would allow companies who have not made any investment in exploration to unfairly reap the benefits of that exploration by premature disclosure of the information. the statute as proposed would deny any discretion in the Commissioner of Natural Resources to continue to hold information confidential and would explicitly require all information submitted to the Oil and Gas Conservation Commission be considered public information.

The proposed legislation would allow only a 25 month confidentiality period (thirty days between completion of the well and filing of the data and the 24 month confidentiality period). The revised time frame would be much to short to protect an exploratory company's proprietary information given the necessity to operate during winter drilling seasons. The present statute is permissive in that it allows the Commissioner of Natural Resources to extend the confidentiality period only when the information is significant to the valuation of unleased lands. The State of Alaska benefits from this confidentiality

to the extent that negative information does not prematurely depress lease prices in an area. The operator benefits from this provision in that this information which he has invested large amounts of money to acquire is protected from unfair disclosure while the State retains access to the data. The only possible beneficiary of the proposed legislation will be those companies who have not made an investment in the development of natural resources in Alaska.

As section 31.05.027 gives the Commission the authority to require reports from wells located on all land in the state lawfully subject to the Commission's police powers, there are wells which have already been drilled, in reliance upon the confidentiality provisions, whose reports would now be made public. Such an amendment to the law could constitute an "ex post facto" law and represent an unlawful conversion of a company's proprietary information. In addition, for wells drilling on private lands the disclosure of that information, we believe, would be a "taking" of private property by the government.

For the reasons stated, Standard Alaska Production Company opposes the adoption of HB 41.

TESTIMONY OF CHEVRON U.S.A. INC.

RE: HB 41

STATE OF ALASKA

FIFTEENTH LEGISLATURE-FIRST SESSION

HOUSE RESOURCE COMMITTEE HEARING

JANUARY 30, 1987

Chevron U.S.A., Inc. (Chevron) appreciates the opportunity to provide this committee with its comments and concerns regarding HB 41, "An Act relating to the confidentiality of certain oil and gas information." My name is Jim Arlington and I am a Land Representative for Chevron, located in Anchorage, involved with administration of Chevron's land and lease interests in Alaska.

There has been concern among industry and the Department of Natural Resources over how AS 31.05.035(c) (as amended by HB 815) should be applied. These concerns involved questions such as, When does the Commissioner make her findings?; What is "significant information"?; What is "unleased land in the same vicinity"?; What is "a reasonable time"?; What is "disposition of all affected lands"? The Department has since adopted regulations which in large measure implement the provisions of AS 31.05.035(c) in a fair and understandable way.

Chevron's position is that HB 41 in its present form is not in the best interest of Alaska. I would like to point out six reasons why this is the case.

1. HB 41 will penalize those companies willing to undertake exploratory drilling.

   The data that are released from an exploratory well are much more valuable and have a greater impact on geologic interpretations than do data from a production well. Further, companies have relied on extended confidentiality periods in drilling exploratory wells since 1978 to establish and maintain a competitive position regarding lease sales. The elimination of the extended confidentiality provision will diminish any advantage to drilling for exploratory well data if the there is a substantial probability such data must be made public prior to a sale covering that area.

2. HB 41 would reward companies for not drilling.

   If companies can obtain for themselves another company's

valuable well and geologic data simply by waiting 24 months themselves they may well do so.

3. The state should actively encourage exploration rather than instituting disincentives such as removal of the extended confidentiality period for well data.

   Because of the short drilling seasons, there are significantly long lead times in Alaska in permitting and drilling an exploratory well.

   The decline in oil prices has caused companies to drastically reduce exploration programs.

4. HB 41 will discourage drilling on leases adjacent to unleased lands, especially state lands on which scheduled lease sales may be delayed.

   The current provisions of AS 31.05.035, are fair and protect a company that has relied upon a leasing schedule and drilled an expensive well to improve its competitive position. Companies should not be penalized if the sale is subsequently delayed beyond the 24 month perioid required for data confidentiality by having its data made available to its competitors.

5. <u>HB 41 will allow well data from dry holes to be made public which may substantially diminish the lease value of adjacent unleased land.</u>

   Since the large majority of wells that are drilled are non-productive, data from dry wells may diminish the value of adjacent lands.

6. <u>HB 41 will discourage drilling in frontier areas.</u>

   Most of the frontier oil and gas areas yet to be explored are in Alaska. There are significant environmental considerations that delay drilling in Alaska that are not present in other states. These considerations were taken into account when the 10th Legislature provided for an extended confidentiality period, still present in the current law.

<u>Conclusion</u>

Most of this country's frontier oil and gas areas yet to be explored are in Alaska. We believe it is unwise to significantly alter statutory provisions that have recently been rewritten as recently as 1978. This is especially true where the state's major industry has made enormous capital expenditures in reliance upon those provisions. The potential application of HB 41 to data currently held by the Oil and Gas Conservation Commission is of grave concern to Chevron. Our attorneys have advised us that

a retrospective application of this legislation would be unlawful under the Alaska Constitution.

We believe the current law providing for extended confidentiality, where appropriate, has been a successful policy providing incentive to industry and revenue to the people and to the State of Alaska, and should be continued.

Thank you for your attention and consideration of Chevron's concerns.

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STANDARD
ALASKA PRODUCTION

TESTIMONY OF STANDARD ALASKA PRODUCTION COMPANY ON HB 41, CONFIDENTIALITY OF EXPLORATORY WELL INFORMATION - FEBRUARY 18, 1987

My name is John A. Reeder and I am employed as Senior Counsel for Standard Alaska Production Company in Anchorage. I have been employed in this capacity by Standard or its affiliate, BP Alaska, Inc., since 1974 and served in the Department of Law as an Assistant Attorney General from 1971 to 1974. During this time, I have been almost exclusively involved in natural resource law in Alaska. My purpose in testifying today is to discuss the constitutional limitations in making public data from wells drilled on private or native land. Previously, Standard has indicated to this Committee that it does not favor HB 41 on policy grounds.

HB 41 seeks to repeal provisions of AS 31.05.035(c) which were adopted in 1978, and which now permit the Commissioner, Department of Natural Resources (DNR) to determine if information from oil and gas wells drilled in Alaska should be held by the Alaska Oil and Gas Conservation Commission (AOGCC) on a confidential basis, rather than released to the public after two years as would otherwise be provided under that section.

In the process of reviewing HB 41, I have come to the conclusion that the present structure of AS 31.05.035(c) may have significant constitutional flaws as it would be required to be applied to private (Native) lands regardless of the policy questions presented by HB 41. Removal of the

Commissioner's discretion would almost certainly cause the provision to be administered contrary to constitutional limitations.

While the AOGCC, in the exercise of its statutory oil and gas conservation responsibilities, clearly has authority to require the submission of data from wells drilled on private lands, the public release of economically valuable data from private lands (which some authorities have called the "speculative value" of land) is difficult to support as a valid exercise of the State's police power, and this is particularly true in the context of Alaska's difficult and time-consuming exploration environment. Premature release of such data destroys its commercial value to the landowner, and may subject the State to liability for an unpermitted "taking" of that value without compensation. Retroactive application of HB 41 also destroys the priority value of data from wells drilled on private lands.

Private ownership of the mineral estate in Alaska was virtually unknown prior to the implementation of the Alaska Native Claims Settlement Act and the acquisition by Regional Corporations of mineral rights in the subsurface of Native lands. The lack of private lands is one of the unique aspects of land management in Alaska.

As originally enacted in 1960, the confidentiality provision provided an automatic two-year period of confidentiality for data submitted from wells drilled in Alaska. This section was amended in 1970 to establish a separate section, AS 31.05.035, and provided that certain information be made immediately available to the public. In 1978, the section was again amended to its present form to provide a means of holding data confidential beyond the 24-month automatic period where the value of unleased lands might be affected by the information.

While this was a recognition of the commercial value of confidential data obtained by the State's oil and gas lessees, it is important to understand that, as applied to State lands, no real constitutional issue was or is presented by the prospective application of the submittal requirements. As applied to State lands, the issue of the duration of a confidentiality requirement, and the conditions under which it can be extended, is a policy matter to be decided by the legislature. As previously stated to this Committee, Standard feels a mechanism to extend the period of confidentiality on State lands is vital to the continued drilling of exploration wells in frontier areas, and should be retained as a matter of policy.

The issue is quite different with respect to private lands. As I will discuss later, the issue with respect to private lands concerns the exercise of the State's police power in the context of applicable constitutional limitations. The issue has rarely been raised in Alaska due to the manner in which the 1978 amendments to Section 35 have been implemented. Apparently the Commissioner, DNR, has made a determination with respect to private lands as well as State lands. In fact, of the 13 wells now assigned extended confidentiality status, eight are on Native lands.

Previously, this Committee has received a copy of a letter from former Commissioner Robert E. LeResche to Texaco, Inc. concerning a well drilled on Native lands in which he raised the issue of the applicability of the 1978 amendment to Section 35 to private lands. Commissioner LeResche decided to hold the data from the well confidential pending clarification of the law. No regulations were adopted concerning the applicability of Section 35(c) to private lands, and the DNR continued to deal with both private and State lands in the same manner.

Thus, to date the issue of a possible taking of the speculative value of private lands under these circumstances has been avoided.

The right of a landowner to keep information concerning his mineral estate confidential has been recognized in the United States for some time. Attached to my statement is a listing of material your staff may find useful which discusses this right. The property right has most often been examined in connection with a trespass committed by a third party in which geologic information affecting the value of the land was made public without the permission of the landowner. The trespass is said to have destroyed the speculative value of the land, the right of the landowner to hold such information confidential in the expectation of obtaining valuable consideration from others wishing to explore on his land.

Almost all oil-producing states recognize this right in requiring landowners to file information on oil and gas wells with conservation agencies, as almost all make some provisions for the landowner to automatically, or by application, protect the right of confidentiality.

At least one reported case involved the assertion by a lessee that the requirement to file such data was a taking of property without compensation, where, in the judgment of the lessee, an inadequate period was allowed in which the data was to be kept confidential. In this case, a copy of which is attached to my statement, the Kansas Corporation Commission (the equivalent of the AOGCC) had refused to grant an exemption to a two-year confidentiality provision on the grounds that the existing regulations adequately protected the speculative value of the lands held by the oil and gas lessee. The court upheld the Commission's decision. The importance of the case is the clear

recognition by both the Commission and the court of the existence of the speculative value of the lessee's lands. The Commission merely decided that in this instance a two-year period was adequate.

In Alaska, I believe the automatic two-year period of confidentiality which would remain in AS 31.05.035(c) if HB 41 is passed is not adequate to protect the speculative value of well data from private lands. The long development times, difficult environmental conditions and extreme distance from markets which impede oil and gas development in Alaska are well known to the Committee and need not be repeated here, but these obstructions to development usually result in geologic information retaining its commercial value for much longer times than in the rest of the United States. In practice, geologic data from wells drilled on private lands may remain valuable for commercial purposes for many years, and some mechanism needs to be included in AS 31.05.035(c) to extend the period of confidentiality to protect the speculative value of such lands. In this respect, Alaska has distinctly different requirements from other oil-producing states.

On the other hand, there seems to be little need to include development wells, wells drilled in producing reservoirs, (either on private or State land) in any system intended to protect the speculative value of private or State lands. Elimination of this requirement would ease a significant administrative burden on the AOGCC.

In conclusion, Standard, as previously stated to the Committee, feels the present provisions of AS 31.05.035(c) should be retained, both as a sound policy to encourage the drilling of exploration wells on State land and to protect the speculative value of private lands as required by Alaska's Constitution.

Authorities Discussing Description of Speculative Value

For general background see:

1. 1 H. Williams & C. Meyers, Oil and Gas Law §§ 229-230 (1986).

2. 1 W. Summers, The Law of Oil and Gas §§ 21-40 (2d ed. 1954 & Supp. 1986).

Concerning constitutional limitations see:

1. Retroactive application of HB 41. Norton v. Alcoholic Beverage Control Board, 695 P.2d 1090 (Alaska 1985).

2. Unconstitutional taking of private property. Ruckelhaus v. Monsanto Co., 104 S. Ct. 2862 (1984); State v. Hammer, 550 P.2d 820 (Alaska 1976).

SUBSTANTIVE LAW CASES

HARTMAN v. STATE CORPORATION COMMISSION et al.

Kansas Supreme Court
December 7, 1974—No. 47420
529 P.2d 134

Government Regulation: Orders of Commissions—Filing of Drilling Information and Samples.

The Kansas State Corporation Commission duly promulgated Rule 82-2-125 which requires that certain information and samples obtained in drilling oil and gas wells be filed with the state geological survey. Provision was made for the granting of exceptions to the rule based upon a finding by the Commission that compliance would create an economic hardship, the information is not necessary for the specific area, or the length of confidential custody of the information is not sufficient to satisfy the needs of the developing operator. Appellant sought an exemption from the rule of some 4,600 acres in the Damme Pool area. The Commission denied Appellant's application generally on the grounds that he had not proven the need for an exception and that the provision for exceptions was not intended to allow mass exceptions. Upon judicial review, the district court adopted the facts and conclusions of law of the Commission, and it further held that the Commission had not exceeded its statutory power and the Commission's denial was not arbitrary, capricious, or unlawful. On appeal, held: Affirmed. The issuance of Rule 82-2-125 after conducting hearings does not preclude judicial review of the validity of the order, and it may be collaterally attacked upon an appeal from its application. In view of the broad authority and direction to the Corporation Commission to prevent waste and conserve natural resources, it appears that the power to enact the rule in question is necessarily implied and that the information required by the rule is reasonably related to the purposes of conservation statutes. Appellant failed to carry his burden of proof for an exception, and he sought no more than a blanket exemption from application of the rule. With regard to the assertion of the taking of

property without due compensation, the rule in question is a proper exercise of the state's police power and it is not an exercise of the power of eminent domain. Fatzer and Schroeder, dissenting.

SYLLABUS BY THE COURT

1. Rules and regulations made by an administrative agency are not res judicata.

2. In order to be valid, administrative regulations must be within the authority conferred by the legislature. An administrative regulation which goes beyond or conflicts with legislative authorization is void.

3. The responsibility for proper administration of the laws relating to the production and conservation of oil and gas rests primarily with the state corporation commission. The factors to be considered and their proper evaluation are matters exclusively within the commission's discretion and are not subject to judicial review so long as they bear a reasonable relation to the subject matter of the order.

4. In a proceeding wherein a driller sought exemption from filing certain material pursuant to a rule of the corporation commission (KAR 82-2-125) the record is examined and it is *held:* (1) The commission had statutory authority to adopt the rule; (2) the rule is reasonably related to the prevention of waste in the production of gas and oil and to the protection of usable water as it may be affected by such production; (3) the burden of proving entitlement to such exemption was on the applicant; (4) applicant failed to sustain this burden and the commission's order of denial was supported by substantial evidence and was not arbitrary or unreasonable; and (5) neither the rule nor the denial order violates the due process clause of the federal constitution.

Appeal from Finney district court; L. L. Morgan, judge assigned. Affirmed.

HARMAN, Commissioner.

The state corporation commission promulgated a regulation requiring certain information and samples obtained in drilling oil and gas wells to be filed with the state geological survey. Certain exceptions were provided. Applicant W. L. Hartman's request for exception from the provisions of the regulation was denied by the commission. Upon review the district court of Finney county upheld the commission's denial order and the matter is now here on applicant's appeal.

Following publication of notice and after holding hearings in which several oil producers, drillers and royalty owners or their representatives appeared, the corporation commission on August 19, 1971, promulgated a new regulation designated as rule 82-2-125, which became effective January 1, 1972. Applicant Hartman was present at the hearing and protested adoption of the regulation. KAR 82-2-125 provides:

> "*Preservation of well samples and logs.* Every person, firm, association, or corporation drilling or responsible for drilling holes for the purpose of discovery or production of oil or gas (excluding seismic 'shotholes' and 'coreholes') shall preserve and have delivered at his expense (prepaid), the following samples and information to the Kansas geological survey, 4150 Monroe street, Wichita, Kansas 67209.
>
> "(A) Formation samples (drill cuttings) normally saved in drilling operations shall be retained by the operator; and upon request of the Kansas geological survey, such samples shall be washed, cut into splits (sets) and one set placed in sample envelopes ready for repository when delivered to the above address. Notification to the operator that samples are required shall be made either by notice appended to or on a copy of the notice of intention to drill returned to the operator by the conservation division of the Kansas corporation commission. Delivery of the processed samples shall be made within 90 days of the com-

pletion of drilling operations. The survey may, on some bore holes, request shallow samples from portions of the hole that may not normally be saved in drilling operations. In this event, the saving, processing and delivery of such additional requested samples shall be a voluntary act on the part of the operator. The repository (sample library) shall accept all washed and cut samples whether or not requested.

"(B) A copy of electric logs, radioactivity logs, and similar wireline logs or surveys run by the operator on all boreholes (excluding seismic, 'coreholes,' and logs run for the purpose of obtaining geo-physical data) shall be delivered to the above address within 90 days following the running of such logs or surveys.

"(C) Copies of driller's logs prepared on a form prescribed by the Kansas corporation commission shall be completed and filed with the Kansas geological survey within 90 days after completion of the well.

"(D) Upon receipt of a written request at the address listed herein, said request to be submitted either prior to or simultaneously with, any or all samples or information filed as required in items (A), (B) and (C) hereof shall be held in confidential custody by the survey for an initial period of one year from the date of receipt thereof, unless release of said samples or information is approved in writing prior to the expiration of the one year period:

Provided, however, The period of confidential custody may be extended for one additional year by written notice to the survey, such notice to be received at least 30 days prior to the expiration of the initial one year period.

"(E) In a like manner, samples, logs or surveys of wells completed prior to the effective date of this order may be submitted to the survey and will be maintained in confidential custody if requested in writing to do so.

"(F) It shall be the duty of each company performing

logging services within the state of Kansas to furnish each month, to the state geological survey at the address listed herein, a list of all holes logged.

"Exceptions to the provisions of this rule may be granted whenever the commission shall find that the granting of such exception is justified because of one of the following:

"(1) Compliance with this order will create an economic hardship.

"(2) Submitting the requested samples, logs and information is not necessary for a local or prescribed area.

"(3) The length of the period of confidential custody is not sufficient to satisfy the needs of the developing operator.

"Exceptions may be requested by affidavit setting forth supporting facts. In the event the requested exception is not fully supported, the commission may set the matter for hearing after giving notice thereof."

Applicant Hartman is an independent oil and gas operator with extensive lease holdings in the Damme field in Finney county, Kansas. In 1951 he discovered the Damme pool and has since drilled approximately fifty oil and gas wells in or near that area. Geological information is collected in connection with each well drilled. Electric logs are kept and seismographs are also utilized on the wells. The information acquired is helpful in determining what land to lease and where to drill. Upon occasion applicant had in the past entered into dry hole support agreements whereby in exchange for formation samples, electric log, drilling times and other information supplied by him to other operators holding leases in the field, the latter contribute money toward the drilling of a well (or acreage), to the mutual benefit of the parties.

On January 19, 1972, Hartman filed an application seeking exception from the provisions of rule 82-2-125. He

alleged he was the owner of leases covering twenty-one tracts aggregating about 4,600 acres in the Damme pool and he sought exemption from the rule of all of his acreage "and/or the Damme Pool generally". The application alleged the information required to be filed had substantial economic value and public disclosure would create an economic burden in that no dry hole support contributions would be available; further that the two year maximum period of confidentiality was insufficient in that the pool was still being developed and in any event the arrangements of the state geological survey for safeguarding the filed information were inadequate. Applicant also alleged compliance with the rule would result in confiscation of his property.

Hearing on Hartman's application was had before the corporation commission March 23, 1972. Four major oil producers also appeared at the hearing in opposition to the application. Applicant's evidence consisted of exhibits and the testimony of Robert L. Schmidlapp, his geologist, engineer and production manager. Schmidlapp testified he had supervised the drilling of each of Hartman's wells in the Damme field; the information collected during drilling is important to the leasing of acreage and to the drilling and completion of other wells; the average cost per well over the years spent by applicant in the running of electric logs had been $2,500 but is now around $3,400; applicant has thus spent about $125,000 for the fifty wells drilled by him in the field; he has spent about $200,000 in seismographs; he received contributions toward drilling expense in exchange for electric log information in the discovery well drilled in 1951 and from two others drilled in 1953; applicant has declined on occasions to enter into this type of arrangement because he did not want to disclose the information obtained in drilling; he has undeveloped acreage and leases adjacent to the present boundaries of the pool; other operators have leases around the perimeter of the pool; there is competition when these leases expire; the geological information obtained in drilling applicant's fifty wells is of

benefit to the general area and has been used by applicant in acquiring new leases; all types of information secured from drilling are used to evaluate seismograph data; the information obtained by applicant in drilling was paid for by him, it belongs to him, he expects to use it and does not want to give it to competitors in the area; to do so would be an economic disadvantage; applicant is not drilling any well at the present time but has drilled and completed two wells since the rule was adopted; no samples or logs from these two have been filed; the cost of filing is nominal; three presently contemplated locations remain to be drilled; applicant has drilled more wells in the Damme pool than any other operator. The witness also testified that in his opinion the two year period of confidentiality was not long enough to protect applicant's interest; he had examined the storage facilities of the state geological survey and did not believe they were adequate. He feared applicant's competitors might obtain the information. This same witness has also testified for applicant in opposition to the rule at the hearing held on its adoption.

The state geologist, Dr. William M. Hambleton, who is also director of the state geological survey, testified. Preliminarily, he stated rule 82-2-125 had been adopted after extensive hearings in order that significant and important information would not be lost; after considering all the testimony presented the rule adopted was an expression of the corporation commission's sensitivity to the testimony of all interested parties and an excellent compromise which satisfied the state's need for information and yet did not unduly add to the cost of doing business. More stringent rules have been established in other states where there is less confidence in the petroleum industry. Absence of adequate rules and regulations elsewhere, coupled with wilful practices, have caused agencies of the federal government to become interested in environmental protection as related to the petroleum industry. Some congressional action has already been taken, which if completed, would probably result

in more stringent measures than required by the rule under consideration. In carrying out the provisions of the rule the state geological survey has been careful not to request unneeded samples and information and has developed procedures adequate to safeguard the confidentiality of the information. A burglar and fire resistant file has been requisitioned for such purpose. The witness further testified granting Hartman's application under the circumstances would set a precedent which would emasculate the rule since his leases are little different from leases held elsewhere in the state; anyone who drills a well to extract minerals not only gains mineral resources and information, he also produces a hole which under certain circumstances can be detrimental to the public health and safety; blowouts related to the oil and gas industry have occurred in recent years in Kansas; information from holes in the particular areas was inadequate to determine the source of the problems or the solutions; at least seven major surface collapses have occurred which resulted from corrosion of casing caused by underlying salt solutions; where information is inadequate new holes have to be drilled in the area to secure adequate knowledge; such information is necessary for the protection of fresh water resources and for correction of and protection from blowouts and surface collapses; electric logs are used with other geological data to acquire knowledge of rock pathology and changes in fluids, which is essential in the study of blowouts.

Robert Dilts, manager of the Wichita well sample library of the state geological survey, testified requests for samples are generally limited to "wildcats" (wells drilled one mile or more away from production), wells drilled deeper than those nearby, wells that are one-half mile away from those from which samples are presently held, and wells wherein the survey has a special interest; logs are requested from each well; information in an area such as the Damme field where so many holes have been drilled is necessary; the survey is interested in the setting of surface pipe in the area to pro-

tect fresh water strata; electric logs would reveal information as to areas above the producing formation.

Other oil operators made statements at the hearing. Champlin Petroleum Company, which owns producing wells and has interests in about 3,200 acres of land in the area, stated that in the past in order to encourage cooperative testing by drilling, it had contributed acreage to applicant, reserving a minimum overriding royalty thereon. Its position was that for rule 82-2-125 to be of fruitful effect, it must be universally applied and the exception should be denied.

Mobil Oil Corporation objected to the granting of the application, its position being that its grant would be a serious deterrent to further drilling and development in the area. Mobil believed it will not be able to secure approval for drilling proposals unless and until the rule is complied with.

The position of Texaco, Inc., was the applicant is no different from anyone else in the Damme field and doesn't deserve the exception and granting it for the whole Damme pool would set a very bad precedent.

Cities Service Oil Company also opposed the granting of the application; to grant it would do away with the effectiveness of the rule. Cities also stated applicant's evidence was insufficient to bring him within any of the three exceptions to the rule.

In an order filed May 31, 1972, the corporation commission denied the application. After reviewing the evidence and making certain findings the order of denial contained these recitals:

> "6. The Commission finds on the basis of evidence presented that the granting of the application for an exception is not justified under any of the three grounds for exceptions set out in Rule 82-2-125 (F). The Commission finds that the evidence presented by the Applicant relating to economic hardship, is based on their apprehension of the possibility of unauthorized disclosure of the

information filed and is speculative and conjectural in nature. It is noted by the Commission that evidence presented by the Applicant as to the quantity and value of geological data accumulated from the Damme Pool relates almost entirely to data which is not required to be filed with the Kansas Geological Survey as it was obtained before the effective date of Rule 82-2-125.

"7. The Commission finds that the Kansas Geological Survey has taken adequate and reasonable security precautions and has adopted reasonable procedures to protect geological data filed or to be filed with the Survey.

"8. The Commission, having considered the history, present stage of development and other factors and characteristics relating to the Damme Pool, finds that the two year confidential period provided under Rule 82-2-125 (D) is adequate and reasonable to protect operators in the said Pool.

"9. The Commission finds that the granting of the application for an exception would damage the effectiveness and purpose of the rule; that the information required to be filed is necessary in order to provide for prudent conservation practices and procedure including the protection of fresh water resources and the health, safety and well-being of Kansas citizens.

"10. The Commission finds that the purpose of providing for exceptions to the provisions of this rule was to provide for specific or special cases involving extraordinary circumstances, and not to allow mass exceptions of substantial portions of or entire pools from the rule."

Thereafter the corporation commission denied an amended application for rehearing filed by applicant. Hartman then petitioned the district court of Finney county for review of the order. That court adopted the corporation commission's findings of fact and conclusions of law but withheld judgment by reason of two further issues raised by the parties

in that court: Applicant's contention that the commission exceeded its statutory power in promulgation of the rule in question and the commission's contention that applicant could not collaterally attack the rule in his petition for judicial review. After receiving additional briefs on these two issues the trial court denied relief, holding that the commission's order of denial was not arbitrary, capricious or unlawful; it further held the rule in question was subject to attack by applicant upon his petition for judicial review but that the corporation commission did not exceed its statutory authority in promulgating the rule. The court noted the legislature had empowered the commission to promulgate rules for the exploration, drilling, production and conservation of oil and natural gas and that K.S.A. Chapter 55 sets out guidelines for such rules in the protection of the public interest, including the following:

> Prevention of economic, underground and surface waste; protection of correlative rights; disposal of salt water; issuing of drilling permits; re-pressuring—by the injection of air, gas, water and other fluids; plugging of wells; and protection of fresh water.

Applicant Hartman now appeals.

We should first consider the corporation commission's renewed assertion that appellant Hartman may not now collaterally attack the validity of the rule. This contention is premised upon the fact appellant was present and participated in the hearing held by the commission to determine whether the rule should be adopted, appellant objected to its adoption but did not appeal from the order of promulgation. A number of oil producers appeared in opposition at the hearing but apparently none sought district court review of the order. Appellee's argument is that appellant may not now challenge the rule's validity, that matter has become res judicata, and appellee includes for good measure appellant is now estopped by laches and by the doctrine of election of remedies to assert his present position. In these

latter two contentions appellee seeks refuge in broad general statements of law not applicable here and which need not be further discussed. Essentially appellee says appellant should not have a second opportunity to contest the rule. The proceeding was not an adversary one in the judicial sense and the doctrine of res judicata, in any of its aspects, does not bar appellant.

In 2 Davis, Administrative Law, § 18:08, it is stated:

> "In name and tradition 'res judicata' means thing adjudicated. Only what is adjudicated can be res judicata. Administrative action other than adjudication cannot be res judicata. Even if an exercise of the rule-making powers depends on a finding of facts, neither the rule nor the finding is regarded as res judicata." (p. 597.)

We have held the doctrine of res judicata does not ordinarily apply to the decisions of administrative tribunals (Warburton v. Warkentin, 185 Kan. 468, 345 P. 2d 992) and in Aylward Production Corp. v. Corporation Commission, 162 Kan. 428, 176 P. 2d 861, a proceeding in which the target was a commission order establishing a minimum allowable for oil for wells in prorated pools, this court said:

> "Force is given this argument by the fact that rules and regulations of the commission are never res judicata. Should bad consequences follow from such an order being made the commission might change it to meet conditions as they exist." (p. 440.)

The rule appears clearly to be that regulations made by an administrative agency are not res judicata.

Appellant contends the appellee commission had no statutory authority to promulgate rule 82-2-125 and its act in doing so was an arbitrary and capricious exercise of power. He argues the regulation does not carry out any statutory objective. He asserts, and correctly so, that to be valid, administrative regulations must be within the authority con-

ferred, and further that an administrative regulation which goes beyond or conflicts with legislative authorization is void, citing Amoco Production Co. v. Armold, Director of Taxation, 213 Kan. 636, 518 P. 2d 453. He argues our statutes give appellee only the authority to prevent waste in the *current production* of oil and gas and the rule in question has no reasonable relation to that end—its only purpose is to try to secure information helpful in knowing where to explore for *future* oil and gas wells. He points out that legislatures in many other oil producing states have expressly conferred upon their regulatory agencies authority to require the furnishing by drillers of the material encompassed here by the rule in question and argues this tends to show that without specific enabling authority a commission empowered only to prevent "waste" is not authorized to speculate on future discovery by requiring the filing of electric logs.

In 1 Summers, Oil and Gas, § 82, it is stated:

> "There is a considerable variance in the extent of the control which the different oil and gas producing states exercise over the location, drilling, equipping and operating of oil and gas wells for the prevention of waste and the protection of correlative rights. . . . [pp. 269-270]
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> . . . . . .
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> "Statutes or regulations commonly require that the operator keep at each well, while drilling, an accurate drilling record or log, showing all formations drilled through, method of casing, and other detailed information that may be required, and upon completion or abandonment of the well, require that copies of such record be filed with the conservation agency or other state or county officer." (pp. 274-275.)

Let us examine our own statutes pertaining to the corporation commission's powers and duties. K.S.A. 1973 Supp. 55-128 provides that anyone responsible for drilling seismic, core or exploratory holes for the purpose of ex-

ploration, discovery or production of oil and gas shall first give prior notice to the state corporation commission of intent to drill, such notice to include certain information pertaining to the proposed drilling; further that:

> "The corporation commission shall determine the amount of pipe necessary to protect all usable water, and shall so notify the person, firm, association or corporation submitting the notice of intent to drill before said drilling is commenced.
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> . . . . . .
>
> "No person, firm, association, or corporation shall set pipe at any seismic, core or exploratory hole except with the approval of state corporation commission and in conformance with the rules and regulations of the corporation commission, except that additional pipe beyond the requirements of the corporation commission may be set by the driller. Before any such hole is abandoned, it shall be the duty of the party responsible for drilling such hole to plug the same in such manner as to properly protect all water-bearing formations and in conformance with the rules and regulations adopted by the corporation commission;
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> . . . . . .
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> "It shall be the duty of the owner or operator of any well which is now drilling or drilled or that may hereafter be drilled for the purpose of discovery of oil and gas, before abandoning same, to shut off and exclude all water from entering oil-bearing or gas-bearing sand, strata or formation encountered in the well and to use every effort and endeavor to protect any usable underground or surface water from infiltration or addition of any detrimental substances, in accordance with methods, rules and regulations of the state corporation commission and under its direction. Before any work is commenced to abandon any well, the owner or operator thereof shall give written notice

to the state corporation commission or the agent of the commission as hereinafter designated, of his intention to abandon such well; the date upon which the work of abandonment shall begin, and that he will plug the well in accordance with the rules and regulations as prescribed by the commision. . . .

"Whenever operations shall cease for a period of ninety (90) days on any well which is now drilled, is being drilled or may hereafter be drilled in the future for the purpose of exploration, discovery or production of oil, gas or other minerals, the owner or operator of such well shall give notice thereof to the commission and, if the commission shall deem it necessary to prevent the pollution of any fresh water strata or supply, shall cause such well to be temporarily plugged in accordance with the rules and regulations of the commission and under its direction. . . .

"The state corporation commission is hereby authorized and directed to adopt rules and regulations necessary to carry out the provisions of this section. Prior to adopting any such rules and regulations, the commission shall take into consideration any recommendations of the state board of health, state geological survey and state water resources board with respect thereto. . . ."

K.S.A. 55-130 directs the commission to adopt such reasonable rules as may be necessary to provide the method by which oil and gas wells or holes may be plugged and abandoned. K.S.A. 55-601 prohibits and declares unlawful the production of crude oil or petroleum in such manner and under such conditions as to constitute waste. K.S.A. 55-602 provides:

"That the term 'waste' as used herein, in addition to its ordinary meaning, shall include economic waste, underground waste, surface waste, waste of reservoir energy, and the production of crude oil or petroleum in excess of transportation or marketing facilities or reasonable market demands. The state corporation commission shall have

authority to make rules and regulations for the prevention of such waste and for the protection of all fresh-water strata, and oil- and gas-bearing strata encountered in any well drilled for, or producing, oil. . . ."

K.S.A. 1973 Supp. 55-604 provides:

"(A) The commission shall have and is hereby given jurisdiction and authority over all matters involving the application and enforcement of the act [act regulating production of petroleum oil, etc.], and shall have authority to make and enforce rules, regulations and orders for the prevention of waste as herein defined and for carrying out and enforcing each and all of the provisions of this act. . . ."

K.S.A. 55-704, relating to the production and conservation of natural gas, states:

"The commission shall promulgate such rules and regulations as may be necessary for the prevention of waste as defined by this act, the protection of all water, oil or gas-bearing strata encountered in any well drilled in such common source of supply . . . as the commission may find necessary and proper to carry out the spirit and the purpose of this act. . . ."

The foregoing statutes provide broad authority and direction to the corporation commission to prevent waste, including economic waste, in the production of oil and gas, to conserve these natural resources and to protect usable water as it may be affected by drilling for oil and gas. It has specific duties with respect to drilling, placement of pipe and abandonment and plugging of wells. To discharge all these responsibilities effectively the legislature must have been aware the commission would need certain information as to the holes drilled. Rule-making power was given the commission in carrying out its functions. Appellee asserts rule 82-2-125 was adopted to help prevent loss of ultimate re-

covery of this state's oil and gas reserves. Historically, powers granted to regulatory bodies under conservation statutes have been liberally construed by the courts. In Aylward Production Corp. the corporation commission took a restricted view of its own rule-making power with respect to fixing minimum allowables. In broadening the commission's narrow interpretation this court conceded that looking at the provisions of only one statute the commission's construction would be proper, then observed:

> "But these provisions must be construed in connection with the whole purpose of the act and with the broad provisions with reference to the commission's power, all of which have been heretofore set out." (p. 441.)

In Kansas-Nebraska Natural Gas Co. v. State Corporation Commission, 169 Kan. 722, 222 P. 2d 704, the court was concerned with the corporation commission's authority to fix a minimum wellhead price for natural gas. These observations were made:

> "The dominant purpose of this statute [55-704] is to prohibit waste of natural gas in Kansas, not only in the manner and under the conditions of its production, but for such purposes as would constitute waste. In order that the term 'waste' should not be narrowly construed the statute makes it clear that it is to include economic, underground and surface waste, and the term 'economic waste' is defined. These provisions were for the purpose, if necessary, of expanding the meaning of the term 'waste' and not for the purpose of limiting such meaning. The statute also deals with the rights of owners of property under which there is a common source of supply of natural gas. We think the statute is broad enough to authorize the commission to make any rule or order to prohibit waste of natural gas, upon proper application made to it. . . . It is true the statute did not specifically authorize the commission to fix a wellhead minimum price to be paid for gas produced. It did not forbid the commission to do so

if and when the evidence disclosed the fixing of such price would tend to prevent waste and the inequitable and unfair taking of gas from a common source of supply. Hence, the legal question presented by appellants, that the statute did not authorize the commission to make the interim order complained of, is not well taken." (p. 732.)

The court further held:

"In this state the production and distribution of natural gas for light, fuel and power is a business of a public nature, the control of which belongs to the state.

"The dominant purpose of our statutes pertaining to the production and conservation of natural gas [55-701, et seq.] is to prohibit waste of natural gas in Kansas, not only in the manner and under the conditions of its production, but for such purposes as would constitute waste." (Syl. ¶¶ 2 & 3.)

Appellant also contends the information required by the regulation bears no reasonable relation to the prevention of waste. We are aware of no case in any jurisdiction having either a rule or statute similar to 82-2-125 where such a challenge has been made. The evidence here on this point is somewhat vague due to the fact appellant raised the point collaterally before the district court on the hearing of its petition for review. The hearing before the corporation commission was to determine whether appellant should be granted an exception to the regulation. However, the record before us reveals that when the regulation was adopted the commission made the following findings:

"3. The evidence presented supporting the adoption of the proposed rule consisted of four (4) witnesses including members of the Kansas Geological Survey, the President and past President of the Kansas Geological Society, the Geologists active in the oil and gas industry. The substance of their testimony and evidence presented was that the present voluntary system, which relies on voluntary

contributions of samples and logs to the survey, is no longer adequate as evidenced by the marked decline in their receipt of such data in recent years. Additional testimony indicated that much information vital to future exploration for oil and gas in Kansas had been irretrievably lost.

"4. Additional evidence indicated that for the period from July 5, 1970, to December 31, 1970, samples were received from only 44% of the wells drilled in that period and that the receipt of samples from wildcat wells also showed a substantial decline. The evidence indicated that the conservation of well samples and log information and *the continued loss of such information could result in economic and physical waste.*" (Our emphasis.)

Appellee asserts that without reliable geological data such as that revealed by electric logs its conservation division cannot develop the expertise to require proper use of reservoir energy and achieve maximum recovery in the reserves; further that availability of logs can prevent unnecesary drilling. Upon the hearing of appellant's application for exception there was evidence blowouts can affect fresh water, that electric logs provide information relative to blowouts and that the information called for is also necessary for the design of appropriate practices in the interest of public health and safety.

We need not labor the matter. The legislature has authorized the commission to adopt regulations for the prevention of waste and for the protection of all fresh water strata and oil and gas-bearing strata encountered in any well drilled for oil. We think the power to enact the rule in question is necessarily implied within those broad grants and the information required by the rule is reasonably related to the prevention of waste in the production of oil and gas and to the protection of usable water as it may be affected by such production.

Appellant further contends his application for an exception to compliance with 82-2-125 was improperly denied because the findings upon which the denial order was based are unreasonable, arbitrary, capricious and not supported by substantial evidence. He says he should have had an exception under subsection 1 of the rule (economic hardship) and 3 (insufficient period of confidential custody) because he produced evidence of past sales of the information now required to be furnished by the rule and also his expert believed the two year period of confidentiality was insufficient due to appellant's unique position in the Damme field by reason of the large number of wells he already had with his mass of information on them, plus his undeveloped acreage.

It should be noted appellant was not seeking exception for one particular well nor one limited area—rather he sought exemption for all his acreage in the Damme pool and/or the Damme pool generally. Appellant's evidence respecting economic hardship did show that when the field was new he had received contributions under dry hole agreements and that he had a valuable mass of information accumulated from his drilling the fifty wells in the pool, which he says he would have to disgorge without recompense. But all this occurred prior to the adoption of the rule. Section (E) of the rule states that sample logs or surveys of wells completed prior to the effective date of the rule *may* be submitted to the survey for confidential custody. Such submission is not required but is wholly voluntary. Thus the material upon which appellant largely bases his contention of economic hardship is not required to be filed.

The burden of proof in bringing himself within the exceptions provided in the rule was, of course, on appellant. The commission specifically found that on the basis of the evidence presented the grant of an exception was not justified. Appellant presented no evidence with respect to problems encountered or likely to occur in any specific well or area. The request was simply for blanket exemption of appellant's entire holdings and/or the entire field. There was

no testimony concerning conditions or positions of the two wells completed after the adoption of the rule with relation to acreage owned by others or of the contemplated three locations or as to how they would be affected by the rule. There was no indication dry hole support money was sought and was unavailable. There was no testimony the rule would in fact deter future contributions. Other than the bare assertion of opinion by his expert, appellant made no showing that the one year period of confidentiality or the two year period (actually two years plus ninety days) would not be sufficient "to satisfy the needs of the developing operator". In denying the application the commission was aware the Damme field was then entering its twenty-second year of development. Except for the size of his holdings and number of wells appellant was not shown to be in any position different from others in the field. No evidence was offered respecting any "step-out" or other location proposed for exemption or what would happen under the rule. All the appellant offered must be regarded as merely conjecture. Conceivably he might make a factual case justifying exemption from the rule but he did not do so. The commission's finding that the geological survey had adopted reasonable procedures to safeguard the information filed with it is amply supported by the evidence. In arguing insufficiency of evidence appellant largely ignores that offered by the commission which indicates a need for the information required by the rule. As was said in Railroad Commission v. Humble Oil & Refining Co., 193 S. W. 2d 824, (Tex. Civ. App.):

> "The responsibility for the proper administration of the conservation laws rests primarily with the Commission. What factors shall be considered, and their proper evaluation are matters exclusively within the Commission's discretion and not subject to judicial review, so long as they bear a reasonable relation to the subject matter of the order." (p. 833.)

In sum the commission's order of denial was supported

by substantial evidence and was not arbitrary or unreasonable.

Finally, appellant contends 82-2-125 and the order of denial entered pursuant to it amount to a taking of property without due process of law in violation of the fourteenth amendment to the federal constitution. Appellant acknowledges th[illegible] the state may, in the exercise of its police power, legislate to prevent the waste or exploitation of natural resources. On the other hand, he asserts, the means used to secure the legislative ends must not be unreasonable, arbitrary or capricious, and must have a real and substantial relation to the objective sought to be attained. We treat first with the denial order. Appellant says it takes his private property for public use without just compensation. This contention is postulated on the same claim of economic burden which we have already considered and held to be not supported by the evidence offered. Appellant had a fair hearing. He has not shown his position to be any different from others affected by the rule. He has not demonstrated any financial loss nor has he shown how he would be adversely affected in the future by the denial of his application for exemption.

Appellant asserts the substantial cost incident to the acquisition of the information warrants the regulation being declared unconstitutional as a taking of property without just compensation. His testimony was that the average cost of obtaining a portion of the information was currently about $3,400 per well. However, this figure is misleading because it appears that the information is routinely obtained during the drilling of a well as a matter of standard operating procedure. The costs of filing the information were shown to be only nominal. The pecuniary injury of filing would not alone warrant declaring the regulation unconstitutional (see 16 Am. Jur. 2d, Constitutional Law, § 294).

In 16 Am. Jur. 2d, Constitutional Law, § 363, it is stated:

"The constitutionally protected right of property is not

an absolute right. The right is subject to such reasonable restraints and regulations established by law as the legislature, under governing and controlling power vested in it by the constitution, may think necessary and expedient. Thus, it is subject to limitation by reason and by means of legitimate exercises of the state's police power." (pp. 691-692.)

Appellant cites eminent domain cases to support his proposition of unconstitutionality of the regulation. The distinction between the exercise of the right of eminent domain and the police power has been articulated in 29A C.J.S., Eminent Domain, § 6, thus:

"Eminent domain takes property because it is useful to the public, while the police power regulates the use of, or impairs rights in, property to prevent detriment to public interest; in the exercise of eminent domain private property is taken for public use and the owner is compensated, while the police power regulates an owner's use and enjoyment of property, or deprives him of it, by destruction, for the public welfare, without compensation other than the sharing of the resulting general benefits." (p. 178.)

In Smith v. State Highway Commission, 185 Kan. 445, 346 P. 2d 259, this court stated:

"The police power is the power of government to act in furtherance of the public good, either through legislation or by the exercise of any other legitimate means, in the promotion of the public health, safety, morals and general welfare, *without incurring liability* for the resulting injury to private individuals. [Citations] Eminent domain, on the other hand, is the power of the sovereign to take or damage private property for a public purpose *on payment of just compensation. . . .*

". . . Determination of whether damages are compensable under eminent domain or noncompensable under the

police power depends on the relative importance of the interests affected. The court must weigh the relative interests of the public and that of the individual, so as to arrive at a just balance in order that government will not be unduly restricted in the proper exercise of its functions for the public good, while at the same time giving due effect to the policy in the eminent domain clause of insuring the individual against an *unreasonable loss* occasioned by the exercise of governmental power." (pp. 453-454.)

Much of that which has already been said is applicable here. The regulation is designed to prevent waste in the production of oil and gas and to protect usable water as it may be affected by such production. Assuming that filing the information could impair the filer's use of it, a period of two years confidentiality is allowed for such use and upon a proper showing of economic hardship or that the period of confidentiality is too short, under the exception in the regulation no filing need be made at all. These are adequate safeguards for the protection of private rights as against those of the public. Neither 82-2-125 nor the denial order violates the due process clause of the federal constitution.

The judgment is affirmed.

Approved by the Court.

DISSENTING OPINION

FATZER, Chief Justice.

I respectfully dissent from that part of the holding of the court contained in Syllabus Paragraph No. 4, and the corresponding portions of the opinion that the State Corporation Commission has statutory authority to adopt the rule in question; that the rule is reasonably related to the prevention of waste in the production of oil and gas, and to the protection of usable water as it may be affected by such production; that the applicant failed to sustain his burden in proving an exemption; that the State Corporation Commis-

sion's order of denial was supported by substantial evidence and not arbitrary or unreasonable, and that the Commission's rule and denial order did not violate the due process clause of the federal Constitution.

The State Corporation Commission possesses no powers not granted it by statute. (Bennett v. Corporation Commission, 157 Kan. 589, 596, 142 P.2d 810.) Allegedly, under the authority granted by K.S.A. 1973 Supp. 55-604, and K.S.A. 55-704, the Commission promulgated K.A.R. 82-2-125. Rules and regulations of an administrative agency are void when they bear no reasonable relation to the purpose for which they are authorized to be made. I fail to see how the Commission's rule K.A.R. 82-2-125 accomplishes the purposes set forth in the relevant statutes.

SCHROEDER, J., joins in the foregoing dissenting opinion.

DISCUSSION NOTES

Government Regulation: Orders of Commissions—Filing of Drilling Information and Samples.

The basic thrust of the appellant's concern is that he is compelled to file valuable drilling information with the geological survey that may not be securely retained as confidential, in which case he may lose economically advantageous drilling agreements or attractive leasing possibilities. The requirements of the rule do appear to drastically reduce the value to the independent driller of a wildcat venture. As indicated in the opinion, the final provisions of the rule represent a compromise of various interests, private and public, which has resulted in a new definition of the kind of "property right" future drillers will acquire incident to their effort.

J. R. G.

NASH v. WHITTEN

Louisiana Court of Appeal
Second Circuit
April 30, 1975—No. 12590
312 So.2d 679
(Overruled, 52 O&GR 499)

Pipelines: Pipeline Servitude—Creation of Servitude by Acquisitive Prescription.

Plaintiff brought an action to compel removal from his land of a natural gas pipeline transversing plaintiff's land connecting a producing gas well located east of plaintiff's property to defendant's residence located west of plaintiff's property. Plaintiff alleged the line was laid across his property without authorization or muniment of title. Defendant maintained the gas line constituted a continuous and apparent servitude which could be established by acquisitive prescription through possession for a period of ten years. Plaintiff, on the other hand, contended that the gas line would be a discontinuous servitude which can be established only by title. The trial court concluded that the pipeline was a continuous and apparent servitude, title to which had been acquired by defendant by prescription of more than ten years. Plaintiff appealed. Held: Affirmed. Louisiana Civil Code article 727 provides that continuous servitudes are those whose use is or may be continual without the act of man. It is therefore evident that if an act of man is necessary to exercise the servitude, it is not continuous but discontinuous. However, it is necessary for the act of man to be performed on the servient estate. Since there was no evidence presented that defendant or his agents performed any act whatsoever on plaintiff's land in order to exercise the use of the servitude, such a gas pipeline should be considered a continuous servitude. There is no question the gas line is perceivable by exterior works and therefore is an apparent servitude as contemplated by Louisiana Civil Code article 728. That being the case, the presence of the pipeline in excess of ten years on plaintiff's property created by acquisitive prescription a continuous and apparent servitude. (Overruled, 52 O&GR 499.)

Appeal from the Eleventh Judicial District Court for the Parish of DeSoto, Louisiana. John S. Pickett, Jr., Judge.

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Value to private land owners of confid. data
Ability to sell above value?

STANDARD
ALASKA PRODUCTION

TESTIMONY OF STANDARD ALASKA PRODUCTION COMPANY
ON HB 41, CONFIDENTIALITY OF
EXPLORATORY WELL INFORMATION - FEBRUARY 18, 1987

My name is John A. Reeder and I am employed as Senior Counsel for Standard Alaska Production Company in Anchorage. I have been employed in this capacity by Standard or its affiliate, BP Alaska, Inc., since 1974 and served in the Department of Law as an Assistant Attorney General from 1971 to 1974. During this time, I have been almost exclusively involved in natural resource law in Alaska. My purpose in testifying today is to discuss the constitutional limitations in making public data from wells drilled on private or native land. Previously, Standard has indicated to this Committee that it does not favor HB 41 on policy grounds.

HB 41 seeks to repeal provisions of AS 31.05.035(c) which were adopted in 1978, and which now permit the Commissioner, Department of Natural Resources (DNR) to determine if information from oil and gas wells drilled in Alaska should be held by the Alaska Oil and Gas Conservation Commission (AOGCC) on a confidential basis, rather than released to the public after two years as would otherwise be provided under that section.

In the process of reviewing HB 41, I have come to the conclusion that the present structure of AS 31.05.035(c) may have significant constitutional flaws as it would be required to be applied to private (Native) lands regardless of the policy questions presented by HB 41. Removal of the

A unit of the original Standard Oil Company
Founded in Cleveland, Ohio, in 1870

Commissioner's discretion would almost certainly cause the provision to be administered contrary to constitutional limitations.

While the AOGCC, in the exercise of its statutory oil and gas conservation responsibilities, clearly has authority to require the submission of data from wells drilled on private lands, the public release of economically valuable data from private lands (which some authorities have called the "speculative value" of land) is difficult to support as a valid exercise of the State's police power, and this is particularly true in the context of Alaska's difficult and time-consuming exploration environment. Premature release of such data destroys its commercial value to the landowner, and may subject the State to liability for an unpermitted "taking" of that value without compensation. Retroactive application of HB 41 also destroys the priority value of data from wells drilled on private lands.//

Private ownership of the mineral estate in Alaska was virtually unknown prior to the implementation of the Alaska Native Claims Settlement Act and the acquisition by Regional Corporations of mineral rights in the subsurface of Native lands. The lack of private lands is one of the unique aspects of land management in Alaska.//

As originally enacted in 1960, the confidentiality provision provided an automatic two-year period of confidentiality for data submitted from wells drilled in Alaska. This section was amended in 1970 to establish a separate section, AS 31.05.035, and provided that certain information be made immediately available to the public. In 1978, the section was again amended to its present form to provide a means of holding data confidential beyond the 24-month automatic period where the value of unleased lands might be affected by the information.

While this was a recognition of the commercial value of confidential data obtained by the State's oil and gas lessees, it is important to understand that, as applied to State lands, no real constitutional issue was or is presented by the prospective application of the submittal requirements. As applied to State lands, the issue of the duration of a confidentiality requirement, and the conditions under which it can be extended, is a policy matter to be decided by the legislature. As previously stated to this Committee, Standard feels a mechanism to extend the period of confidentiality on State lands is vital to the continued drilling of exploration wells in frontier areas, and should be retained as a matter of policy.

The issue is quite different with respect to private lands. As I will discuss later, the issue with respect to private lands concerns the exercise of the State's police power in the context of applicable constitutional limitations.// The issue has rarely been raised in Alaska due to the manner in which the 1978 amendments to Section 35 have been implemented. Apparently the Commissioner, DNR, has made a determination with respect to private lands as well as State lands. In fact, of the 13 wells now assigned extended confidentiality status, eight are on Native lands.//

Previously, this Committee has received a copy of a letter from former Commissioner Robert E. LeResche to Texaco, Inc. concerning a well drilled on Native lands in which he raised the issue of the applicability of the 1978 amendment to Section 35 to private lands. Commissioner LeResche decided to hold the data from the well confidential pending clarification of the law. No regulations were adopted concerning the applicability of Section 35(c) to private lands, and the DNR continued to deal with both private and State lands in the same manner.//

Thus, to date the issue of a possible taking of the speculative value of private lands under these circumstances has been avoided.//

The right of a landowner to keep information concerning his mineral estate confidential has been recognized in the United States for some time. Attached to my statement is a listing of material your staff may find useful which discusses this right. The property right has most often been examined in connection with a trespass committed by a third party in which geologic information affecting the value of the land was made public without the permission of the landowner.// The trespass is said to have destroyed the speculative value of the land, the right of the landowner to hold such information confidential in the expectation of obtaining valuable consideration from others wishing to explore on his land.//

Almost all oil-producing states recognize this right in requiring landowners to file information on oil and gas wells with conservation agencies, as almost all make some provisions for the landowner to automatically, or by application, protect the right of confidentiality.//

At least one reported case involved the assertion by a lessee that the requirement to file such data was a taking of property without compensation, where, in the judgment of the lessee, an inadequate period was allowed in which the data was to be kept confidential. In this case, a copy of which is attached to my statement, the Kansas Corporation Commission (the equivalent of the AOGCC) had refused to grant an exemption to a two-year confidentiality provision on the grounds that the existing regulations adequately protected the speculative value of the lands held by the oil and gas lessee. The court upheld the Commission's decision. The importance of the case is the clear

recognition by both the Commission and the court of the existence of the speculative value of the lessee's lands. The Commission merely decided that in this instance a two-year period was adequate.

In Alaska, I believe the automatic two-year period of confidentiality which would remain in AS 31.05.035(c) if HB 41 is passed is not adequate to protect the speculative value of well data from private lands. The long development times, difficult environmental conditions and extreme distance from markets which impede oil and gas development in Alaska are well known to the Committee and need not be repeated here, but these obstructions to development usually result in geologic information retaining its commercial value for much longer times than in the rest of the United States. In practice, geologic data from wells drilled on private lands may remain valuable for commercial purposes for many years, and some mechanism needs to be included in AS 31.05.035(c) to extend the period of confidentiality to protect the speculative value of such lands. // In this respect, Alaska has distinctly different requirements from other oil-producing states. //

On the other hand, there seems to be little need to include development wells, wells drilled in producing reservoirs, (either on private or State land) in any system intended to protect the speculative value of private or State lands. Elimination of this requirement would ease a significant administrative burden on the AOGCC.

In conclusion, Standard, as previously stated to the Committee, feels the present provisions of AS 31.05.035(c) should be retained, both as a sound policy to encourage the drilling of exploration wells on State land and to protect the speculative value of private lands as required by Alaska's Constitution.

Authorities Discussing Description of Speculative Value

For general background see:

1. 1 H. Williams & C. Meyers, Oil and Gas Law §§ 229-230 (1986).

2. 1 W. Summers, The Law of Oil and Gas §§ 21-40 (2d ed. 1954 & Supp. 1986).

Concerning constitutional limitations see:

1. Retroactive application of HB 41. Norton v. Alcoholic Beverage Control Board, 695 P.2d 1090 (Alaska 1985).

2. Unconstitutional taking of private property. Ruckelhaus v. Monsanto Co., 104 S. Ct. 2862 (1984); State v. Hammer, 550 P.2d 820 (Alaska 1976).

SUBSTANTIVE LAW CASES

HARTMAN v. STATE CORPORATION COMMISSION et al.

Kansas Supreme Court
December 7, 1974—No. 47420
529 P.2d 134

Government Regulation: Orders of Commissions—Filing of Drilling Information and Samples.

The Kansas State Corporation Commission duly promulgated Rule 82-2-125 which requires that certain information and samples obtained in drilling oil and gas wells be filed with the state geological survey. Provision was made for the granting of exceptions to the rule based upon a finding by the Commission that compliance would create an economic hardship, the information is not necessary for the specific area, or the length of confidential custody of the information is not sufficient to satisfy the needs of the developing operator. Appellant sought an exemption from the rule of some 4,600 acres in the Damme Pool area. The Commission denied Appellant's application generally on the grounds that he had not proven the need for an exception and that the provision for exceptions was not intended to allow mass exceptions. Upon judicial review, the district court adopted the facts and conclusions of law of the Commission, and it further held that the Commission had not exceeded its statutory power and the Commission's denial was not arbitrary, capricious, or unlawful. On appeal, held: Affirmed. The issuance of Rule 82-2-125 after conducting hearings does not preclude judicial review of the validity of the order, and it may be collaterally attacked upon an appeal from its application. In view of the broad authority and direction to the Corporation Commission to prevent waste and conserve natural resources, it appears that the power to enact the rule in question is necessarily implied and that the information required by the rule is reasonably related to the purposes of conservation statutes. Appellant failed to carry his burden of proof for an exception, and he sought no more than a blanket exemption from application of the rule. With regard to the assertion of the taking of

property without due compensation, the rule in question is a proper exercise of the state's police power and it is not an exercise of the power of eminent domain. Fatzer and Schroeder, dissenting.

SYLLABUS BY THE COURT

1. Rules and regulations made by an administrative agency are not res judicata.

2. In order to be valid, administrative regulations must be within the authority conferred by the legislature. An administrative regulation which goes beyond or conflicts with legislative authorization is void.

3. The responsibility for proper administration of the laws relating to the production and conservation of oil and gas rests primarily with the state corporation commission. The factors to be considered and their proper evaluation are matters exclusively within the commission's discretion and are not subject to judicial review so long as they bear a reasonable relation to the subject matter of the order.

4. In a proceeding wherein a driller sought exemption from filing certain material pursuant to a rule of the corporation commission (KAR 82-2-125) the record is examined and it is *held:* (1) The commission had statutory authority to adopt the rule; (2) the rule is reasonably related to the prevention of waste in the production of gas and oil and to the protection of usable water as it may be affected by such production; (3) the burden of proving entitlement to such exemption was on the applicant; (4) applicant failed to sustain this burden and the commission's order of denial was supported by substantial evidence and was not arbitrary or unreasonable; and (5) neither the rule nor the denial order violates the due process clause of the federal constitution.

Appeal from Finney district court; L. L. Morgan, judge assigned. Affirmed.

HARMAN, Commissioner.

The state corporation commission promulgated a regulation requiring certain information and samples obtained in drilling oil and gas wells to be filed with the state geological survey. Certain exceptions were provided. Applicant W. L. Hartman's request for exception from the provisions of the regulation was denied by the commission. Upon review the district court of Finney county upheld the commission's denial order and the matter is now here on applicant's appeal.

Following publication of notice and after holding hearings in which several oil producers, drillers and royalty owners or their representatives appeared, the corporation commission on August 19, 1971, promulgated a new regulation designated as rule 82-2-125, which became effective January 1, 1972. Applicant Hartman was present at the hearing and protested adoption of the regulation. KAR 82-2-125 provides:

"*Preservation of well samples and logs.* Every person, firm, association, or corporation drilling or responsible for drilling holes for the purpose of discovery or production of oil or gas (excluding seismic 'shotholes' and 'coreholes') shall preserve and have delivered at his expense (prepaid), the following samples and information to the Kansas geological survey, 4150 Monroe street, Wichita, Kansas 67209.

"(A) Formation samples (drill cuttings) normally saved in drilling operations shall be retained by the operator; and upon request of the Kansas geological survey, such samples shall be washed, cut into splits (sets) and one set placed in sample envelopes ready for repository when delivered to the above address. Notification to the operator that samples are required shall be made either by notice appended to or on a copy of the notice of intention to drill returned to the operator by the conservation division of the Kansas corporation commission. Delivery of the processed samples shall be made within 90 days of the com-

pletion of drilling operations. The survey may, on some bore holes, request shallow samples from portions of the hole that may not normally be saved in drilling operations. In this event, the saving, processing and delivery of such additional requested samples shall be a voluntary act on the part of the operator. The repository (sample library) shall accept all washed and cut samples whether or not requested.

"(B) A copy of electric logs, radioactivity logs, and similar wireline logs or surveys run by the operator on all boreholes (excluding seismic, 'coreholes,' and logs run for the purpose of obtaining geo-physical data) shall be delivered to the above address within 90 days following the running of such logs or surveys.

"(C) Copies of driller's logs prepared on a form prescribed by the Kansas corporation commission shall be completed and filed with the Kansas geological survey within 90 days after completion of the well.

"(D) Upon receipt of a written request at the address listed herein, said request to be submitted either prior to or simultaneously with, any or all samples or information filed as required in items (A), (B) and (C) hereof shall be held in confidential custody by the survey for an initial period of one year from the date of receipt thereof, unless release of said samples or information is approved in writing prior to the expiration of the one year period:

Provided, however, The period of confidential custody may be extended for one additional year by written notice to the survey, such notice to be received at least 30 days prior to the expiration of the initial one year period.

"(E) In a like manner, samples, logs or surveys of wells completed prior to the effective date of this order may be submitted to the survey and will be maintained in confidential custody if requested in writing to do so.

"(F) It shall be the duty of each company performing

logging services within the state of Kansas to furnish each month, to the state geological survey at the address listed herein, a list of all holes logged.

"Exceptions to the provisions of this rule may be granted whenever the commission shall find that the granting of such exception is justified because of one of the following:

"(1) Compliance with this order will create an economic hardship.

"(2) Submitting the requested samples, logs and information is not necessary for a local or prescribed area.

"(3) The length of the period of confidential custody is not sufficient to satisfy the needs of the developing operator.

"Exceptions may be requested by affidavit setting forth supporting facts. In the event the requested exception is not fully supported, the commission may set the matter for hearing after giving notice thereof."

Applicant Hartman is an independent oil and gas operator with extensive lease holdings in the Damme field in Finney county, Kansas. In 1951 he discovered the Damme pool and has since drilled approximately fifty oil and gas wells in or near that area. Geological information is collected in connection with each well drilled. Electric logs are kept and seismographs are also utilized on the wells. The information acquired is helpful in determining what land to lease and where to drill. Upon occasion applicant had in the past entered into dry hole support agreements whereby in exchange for formation samples, electric log, drilling times and other information supplied by him to other operators holding leases in the field, the latter contribute money toward the drilling of a well (or acreage), to the mutual benefit of the parties.

On January 19, 1972, Hartman filed an application seeking exception from the provisions of rule 82-2-125. He

alleged he was the owner of leases covering twenty-one tracts aggregating about 4,600 acres in the Damme pool and he sought exemption from the rule of all of his acreage "and/or the Damme Pool generally". The application alleged the information required to be filed had substantial economic value and public disclosure would create an economic burden in that no dry hole support contributions would be available; further that the two year maximum period of confidentiality was insufficient in that the pool was still being developed and in any event the arrangements of the state geological survey for safeguarding the filed information were inadequate. Applicant also alleged compliance with the rule would result in confiscation of his property.

Hearing on Hartman's application was had before the corporation commission March 23, 1972. Four major oil producers also appeared at the hearing in opposition to the application. Applicant's evidence consisted of exhibits and the testimony of Robert L. Schmidlapp, his geologist, engineer and production manager. Schmidlapp testified he had supervised the drilling of each of Hartman's wells in the Damme field; the information collected during drilling is important to the leasing of acreage and to the drilling and completion of other wells; the average cost per well over the years spent by applicant in the running of electric logs had been $2,500 but is now around $3,400; applicant has thus spent about $125,000 for the fifty wells drilled by him in the field; he has spent about $200,000 in seismographs; he received contributions toward drilling expense in exchange for electric log information in the discovery well drilled in 1951 and from two others drilled in 1953; applicant has declined on occasions to enter into this type of arrangement because he did not want to disclose the information obtained in drilling; he has undeveloped acreage and leases adjacent to the present boundaries of the pool; other operators have leases around the perimeter of the pool; there is competition when these leases expire; the geological information obtained in drilling applicant's fifty wells is of

benefit to the general area and has been used by applicant in acquiring new leases; all types of information secured from drilling are used to evaluate seismograph data; the information obtained by applicant in drilling was paid for by him, it belongs to him, he expects to use it and does not want to give it to competitors in the area; to do so would be an economic disadvantage; applicant is not drilling any well at the present time but has drilled and completed two wells since the rule was adopted; no samples or logs from these two have been filed; the cost of filing is nominal; three presently contemplated locations remain to be drilled; applicant has drilled more wells in the Damme pool than any other operator. The witness also testified that in his opinion the two year period of confidentiality was not long enough to protect applicant's interest; he had examined the storage facilities of the state geological survey and did not believe they were adequate. He feared applicant's competitors might obtain the information. This same witness has also testified for applicant in opposition to the rule at the hearing held on its adoption.

The state geologist, Dr. William M. Hambleton, who is also director of the state geological survey, testified. Preliminarily, he stated rule 82-2-125 had been adopted after extensive hearings in order that significant and important information would not be lost; after considering all the testimony presented the rule adopted was an expression of the corporation commission's sensitivity to the testimony of all interested parties and an excellent compromise which satisfied the state's need for information and yet did not unduly add to the cost of doing business. More stringent rules have been established in other states where there is less confidence in the petroleum industry. Absence of adequate rules and regulations elsewhere, coupled with wilful practices, have caused agencies of the federal government to become interested in environmental protection as related to the petroleum industry. Some congressional action has already been taken, which if completed, would probably result

in more stringent measures than required by the rule under consideration. In carrying out the provisions of the rule the state geological survey has been careful not to request unneeded samples and information and has developed procedures adequate to safeguard the confidentiality of the information. A burglar and fire resistant file has been requisitioned for such purpose. The witness further testified granting Hartman's application under the circumstances would set a precedent which would emasculate the rule since his leases are little different from leases held elsewhere in the state; anyone who drills a well to extract minerals not only gains mineral resources and information, he also produces a hole which under certain circumstances can be detrimental to the public health and safety; blowouts related to the oil and gas industry have occurred in recent years in Kansas; information from holes in the particular areas was inadequate to determine the source of the problems or the solutions; at least seven major surface collapses have occurred which resulted from corrosion of casing caused by underlying salt solutions; where information is inadequate new holes have to be drilled in the area to secure adequate knowledge; such information is necessary for the protection of fresh water resources and for correction of and protection from blowouts and surface collapses; electric logs are used with other geological data to acquire knowledge of rock pathology and changes in fluids, which is essential in the study of blowouts.

Robert Dilts, manager of the Wichita well sample library of the state geological survey, testified requests for samples are generally limited to "wildcats" (wells drilled one mile or more away from production), wells drilled deeper than those nearby, wells that are one-half mile away from those from which samples are presently held, and wells wherein the survey has a special interest; logs are requested from each well; information in an area such as the Damme field where so many holes have been drilled is necessary; the survey is interested in the setting of surface pipe in the area to pro-

tect fresh water strata; electric logs would reveal information as to areas above the producing formation.

Other oil operators made statements at the hearing. Champlin Petroleum Company, which owns producing wells and has interests in about 3,200 acres of land in the area, stated that in the past in order to encourage cooperative testing by drilling, it had contributed acreage to applicant, reserving a minimum overriding royalty thereon. Its position was that for rule 82-2-125 to be of fruitful effect, it must be universally applied and the exception should be denied.

Mobil Oil Corporation objected to the granting of the application, its position being that its grant would be a serious deterrent to further drilling and development in the area. Mobil believed it will not be able to secure approval for drilling proposals unless and until the rule is complied with.

The position of Texaco, Inc., was the applicant is no different from anyone else in the Damme field and doesn't deserve the exception and granting it for the whole Damme pool would set a very bad precedent.

Cities Service Oil Company also opposed the granting of the application; to grant it would do away with the effectiveness of the rule. Cities also stated applicant's evidence was insufficient to bring him within any of the three exceptions to the rule.

In an order filed May 31, 1972, the corporation commission denied the application. After reviewing the evidence and making certain findings the order of denial contained these recitals:

"6. The Commission finds on the basis of evidence presented that the granting of the application for an exception is not justified under any of the three grounds for exceptions set out in Rule 82-2-125 (F). The Commission finds that the evidence presented by the Applicant relating to economic hardship, is based on their apprehension of the possibility of unauthorized disclosure of the

information filed and is speculative and conjectural in nature. It is noted by the Commission that evidence presented by the Applicant as to the quantity and value of geological data accumulated from the Damme Pool relates almost entirely to data which is not required to be filed with the Kansas Geological Survey as it was obtained before the effective date of Rule 82-2-125.

"7. The Commission finds that the Kansas Geological Survey has taken adequate and reasonable security precautions and has adopted reasonable procedures to protect geological data filed or to be filed with the Survey.

"8. The Commission, having considered the history, present stage of development and other factors and characteristics relating to the Damme Pool, finds that the two year confidential period provided under Rule 82-2-125 (D) is adequate and reasonable to protect operators in the said Pool.

"9. The Commission finds that the granting of the application for an exception would damage the effectiveness and purpose of the rule; that the information required to be filed is necessary in order to provide for prudent conservation practices and procedure including the protection of fresh water resources and the health, safety and well-being of Kansas citizens.

"10. The Commission finds that the purpose of providing for exceptions to the provisions of this rule was to provide for specific or special cases involving extraordinary circumstances, and not to allow mass exceptions of substantial portions of or entire pools from the rule."

Thereafter the corporation commission denied an amended application for rehearing filed by applicant. Hartman then petitioned the district court of Finney county for review of the order. That court adopted the corporation commission's findings of fact and conclusions of law but withheld judgment by reason of two further issues raised by the parties

in that court: Applicant's contention that the commission exceeded its statutory power in promulgation of the rule in question and the commission's contention that applicant could not collaterally attack the rule in his petition for judicial review. After receiving additional briefs on these two issues the trial court denied relief, holding that the commission's order of denial was not arbitrary, capricious or unlawful; it further held the rule in question was subject to attack by applicant upon his petition for judicial review but that the corporation commission did not exceed its statutory authority in promulgating the rule. The court noted the legislature had empowered the commission to promulgate rules for the exploration, drilling, production and conservation of oil and natural gas and that K.S.A. Chapter 55 sets out guidelines for such rules in the protection of the public interest, including the following:

> Prevention of economic, underground and surface waste; protection of correlative rights; disposal of salt water; issuing of drilling permits; re-pressuring—by the injection of air, gas, water and other fluids; plugging of wells; and protection of fresh water.

Applicant Hartman now appeals.

We should first consider the corporation commission's renewed assertion that appellant Hartman may not now collaterally attack the validity of the rule. This contention is premised upon the fact appellant was present and participated in the hearing held by the commission to determine whether the rule should be adopted, appellant objected to its adoption but did not appeal from the order of promulgation. A number of oil producers appeared in opposition at the hearing but apparently none sought district court review of the order. Appellee's argument is that appellant may not now challenge the rule's validity, that matter has become res judicata, and appellee includes for good measure appellant is now estopped by laches and by the doctrine of election of remedies to assert his present position. In these

latter two contentions appellee seeks refuge in broad general statements of law not applicable here and which need not be further discussed. Essentially appellee says appellant should not have a second opportunity to contest the rule. The proceeding was not an adversary one in the judicial sense and the doctrine of res judicata, in any of its aspects, does not bar appellant.

In 2 Davis, Administrative Law, § 18:08, it is stated:

> "In name and tradition 'res judicata' means thing adjudicated. Only what is adjudicated can be res judicata. Administrative action other than adjudication cannot be res judicata. Even if an exercise of the rule-making powers depends on a finding of facts, neither the rule nor the finding is regarded as res judicata." (p. 597.)

We have held the doctrine of res judicata does not ordinarily apply to the decisions of administrative tribunals (Warburton v. Warkentin, 185 Kan. 468, 345 P. 2d 992) and in Aylward Production Corp. v. Corporation Commission, 162 Kan. 428, 176 P. 2d 861, a proceeding in which the target was a commission order establishing a minimum allowable for oil for wells in prorated pools, this court said:

> "Force is given this argument by the fact that rules and regulations of the commission are never res judicata. Should bad consequences follow from such an order being made the commission might change it to meet conditions as they exist." (p. 440.)

The rule appears clearly to be that regulations made by an administrative agency are not res judicata.

Appellant contends the appellee commission had no statutory authority to promulgate rule 82-2-125 and its act in doing so was an arbitrary and capricious exercise of power. He argues the regulation does not carry out any statutory objective. He asserts, and correctly so, that to be valid, administrative regulations must be within the authority con-

ferred, and further that an administrative regulation which goes beyond or conflicts with legislative authorization is void, citing Amoco Production Co. v. Armold, Director of Taxation, 213 Kan. 636, 518 P. 2d 453. He argues our statutes give appellee only the authority to prevent waste in the *current production* of oil and gas and the rule in question has no reasonable relation to that end—its only purpose is to try to secure information helpful in knowing where to explore for *future* oil and gas wells. He points out that legislatures in many other oil producing states have expressly conferred upon their regulatory agencies authority to require the furnishing by drillers of the material encompassed here by the rule in question and argues this tends to show that without specific enabling authority a commission empowered only to prevent "waste" is not authorized to speculate on future discovery by requiring the filing of electric logs.

In 1 Summers, Oil and Gas, § 82, it is stated:

"There is a considerable variance in the extent of the control which the different oil and gas producing states exercise over the location, drilling, equipping and operating of oil and gas wells for the prevention of waste and the protection of correlative rights. . . . [pp. 269-270]

. . . .

"Statutes or regulations commonly require that the operator keep at each well, while drilling, an accurate drilling record or log, showing all formations drilled through, method of casing, and other detailed information that may be required, and upon completion or abandonment of the well, require that copies of such record be filed with the conservation agency or other state or county officer." (pp. 274-275.)

Let us examine our own statutes pertaining to the corporation commission's powers and duties. K.S.A. 1973 Supp. 55-128 provides that anyone responsible for drilling seismic, core or exploratory holes for the purpose of ex-

ploration, discovery or production of oil and gas shall first give prior notice to the state corporation commission of intent to drill, such notice to include certain information pertaining to the proposed drilling; further that:

"The corporation commission shall determine the amount of pipe necessary to protect all usable water, and shall so notify the person, firm, association or corporation submitting the notice of intent to drill before said drilling is commenced.

. . . . . .

"No person, firm, association, or corporation shall set pipe at any seismic, core or exploratory hole except with the approval of state corporation commission and in conformance with the rules and regulations of the corporation commission, except that additional pipe beyond the requirements of the corporation commission may be set by the driller. Before any such hole is abandoned, it shall be the duty of the party responsible for drilling such hole to plug the same in such manner as to properly protect all water-bearing formations and in conformance with the rules and regulations adopted by the corporation commission;

. . . . . .

"It shall be the duty of the owner or operator of any well which is now drilling or drilled or that may hereafter be drilled for the purpose of discovery of oil and gas, before abandoning same, to shut off and exclude all water from entering oil-bearing or gas-bearing sand, strata or formation encountered in the well and to use every effort and endeavor to protect any usable underground or surface water from infiltration or addition of any detrimental substances, in accordance with methods, rules and regulations of the state corporation commission and under its direction. Before any work is commenced to abandon any well, the owner or operator thereof shall give written notice

to the state corporation commission or the agent of the commission as hereinafter designated, of his intention to abandon such well; the date upon which the work of abandonment shall begin, and that he will plug the well in accordance with the rules and regulations as prescribed by the commision. . . .

"Whenever operations shall cease for a period of ninety (90) days on any well which is now drilled, is being drilled or may hereafter be drilled in the future for the purpose of exploration, discovery or production of oil, gas or other minerals, the owner or operator of such well shall give notice thereof to the commission and, if the commission shall deem it necessary to prevent the pollution of any fresh water strata or supply, shall cause such well to be temporarily plugged in accordance with the rules and regulations of the commission and under its direction. . . .

"The state corporation commission is hereby authorized and directed to adopt rules and regulations necessary to carry out the provisions of this section. Prior to adopting any such rules and regulations, the commission shall take into consideration any recommendations of the state board of health, state geological survey and state water resources board with respect thereto. . . ."

K.S.A. 55-130 directs the commission to adopt such reasonable rules as may be necessary to provide the method by which oil and gas wells or holes may be plugged and abandoned. K.S.A. 55-601 prohibits and declares unlawful the production of crude oil or petroleum in such manner and under such conditions as to constitute waste. K.S.A. 55-602 provides:

"That the term 'waste' as used herein, in addition to its ordinary meaning, shall include economic waste, underground waste, surface waste, waste of reservoir energy, and the production of crude oil or petroleum in excess of transportation or marketing facilities or reasonable market demands. The state corporation commission shall have

authority to make rules and regulations for the prev... .on of such waste and for the protection of all fresh-water strata, and oil- and gas-bearing strata encountered in any well drilled for, or producing, oil. . . ."

K.S.A. 1973 Supp. 55-604 provides:

"(A) The commission shall have and is hereby given jurisdiction and authority over all matters involvi... e application and enforcement of the act [act regulating production of petroleum oil, etc.], and shall have authority to make and enforce rules, regulations and orders for the prevention of waste as herein defined and for carrying out and enforcing each and all of the provisions of this act. . . ."

K.S.A. 55-704, relating to the production and conservation of natural gas, states:

"The commission shall promulgate such rules and regulations as may be necessary for the prevention of waste as defined by this act, the protection of all water, oil or gas-bearing strata encountered in any well drilled in such common source of supply . . . as the commission may find necessary and proper to carry out the spirit and the purpose of this act. . . ."

The foregoing statutes provide broad authority and direction to the corporation commission to prevent waste, including economic waste, in the production of oil and gas, to conserve these natural resources and to protect usable water as it may be affected by drilling for oil and gas. It has specific duties with respect to drilling, placement of pipe and abandonment and plugging of wells. To discharge all these responsibilities effectively the legislature must have been aware the commission would need certain information as to the holes drilled. Rule-making power was given the commission in carrying out its functions. Appellee asserts rule 82-2-125 was adopted to help prevent loss of ultimate re-

covery of this state's oil and gas reserves. Historically, powers granted to regulatory bodies under conservation statutes have been liberally construed by the courts. In Aylward Production Corp. the corporation commission took a restricted view of its own rule-making power with respect to fixing minimum allowables. In broadening the commission's narrow interpretation this court conceded that looking at the provisions of only one statute the commission's construction would be proper, then observed:

"But these provisions must be construed in connection with the whole purpose of the act and with the broad provisions with reference to the commission's power, all of which have been heretofore set out." (p. 441.)

In Kansas-Nebraska Natural Gas Co. v. State Corporation Commission, 169 Kan. 722, 222 P. 2d 704, the court was concerned with the corporation commission's authority to fix a minimum wellhead price for natural gas. These observations were made:

"The dominant purpose of this statute [55-704] is to prohibit waste of natural gas in Kansas, not only in the manner and under the conditions of its production, but for such purposes as would constitute waste. In order that the term 'waste' should not be narrowly construed the statute makes it clear that it is to include economic, underground and surface waste, and the term 'economic waste' is defined. These provisions were for the purpose, if necessary, of expanding the meaning of the term 'waste' and not for the purpose of limiting such meaning. The statute also deals with the rights of owners of property under which there is a common source of supply of natural gas. We think the statute is broad enough to authorize the commission to make any rule or order to prohibit waste of natural gas, upon proper application made to it. . . . It is true the statute did not specifically authorize the commission to fix a wellhead minimum price to be paid for gas produced. It did not forbid the commission to do so

if and when the evidence disclosed the fixing of such price would tend to prevent waste and the inequitable and unfair taking of gas from a common source of supply. Hence, the legal question presented by appellants, that the statute did not authorize the commission to make the interim order complained of, is not well taken." (p. 732.)

The court further held:

"In this state the production and distribution of natural gas for light, fuel and power is a business of a public nature, the control of which belongs to the state.

"The dominant purpose of our statutes pertaining to the production and conservation of natural gas [55-701, et seq.] is to prohibit waste of natural gas in Kansas, not only in the manner and under the conditions of its production, but for such purposes as would constitute waste." (Syl. ¶¶ 2 & 3.)

Appellant also contends the information required by the regulation bears no reasonable relation to the prevention of waste. We are aware of no case in any jurisdiction having either a rule or statute similar to 82-2-125 where such a challenge has been made. The evidence here on this point is somewhat vague due to the fact appellant raised the point collaterally before the district court on the hearing of its petition for review. The hearing before the corporation commission was to determine whether appellant should be granted an exception to the regulation. However, the record before us reveals that when the regulation was adopted the commission made the following findings:

"3. The evidence presented supporting the adoption of the proposed rule consisted of four (4) witnesses including members of the Kansas Geological Survey, the President and past President of the Kansas Geological Society, the Geologists active in the oil and gas industry. The substance o. their testimony and evidence presented was that the present voluntary system, which relies on voluntary

contributions of samples and logs to the survey, is no longer adequate as evidenced by the marked decline in their receipt of such data in recent years. Additional testimony indicated that much information vital to future exploration for oil and gas in Kansas had been irretrievably lost.

"4. Additional evidence indicated that for the period from July 5, 1970, to December 31, 1970, samples were received from only 44% of the wells drilled in that period and that the receipt of samples from wildcat wells also showed a substantial decline. The evidence indicated that the conservation of well samples and log information and *the continued loss of such information could result in economic and physical waste.*" (Our emphasis.)

Appellee asserts that without reliable geological data such as that revealed by electric logs its conservation division cannot develop the expertise to require proper use of reservoir energy and achieve maximum recovery in the reserves; further that availability of logs can prevent unnecesary drilling. Upon the hearing of appellant's application for exception there was evidence blowouts can affect fresh water, that electric logs provide information relative to blowouts and that the information called for is also necessary for the design of appropriate practices in the interest of public health and safety.

We need not labor the matter. The legislature has authorized the commission to adopt regulations for the prevention of waste and for the protection of all fresh water strata and oil and gas-bearing strata encountered in any well drilled for oil. We think the power to enact the rule in question is necessarily implied within those broad grants and the information required by the rule is reasonably related to the prevention of waste in the production of oil and gas and to the protection of usable water as it may be affected by such production.

Appellant further contends his application for an exception to compliance with 82-2-125 was improperly denied because the findings upon which the denial order was based are unreasonable, arbitrary, capricious and not supported by substantial evidence. He says he should have had an exception under subsection 1 of the rule (economic hardship) and 3 (insufficient period of confidential custody) because he produced evidence of past sales of the information now required to be furnished by the rule and also his expert believed the two year period of confidentiality was insufficient due to appellant's unique position in the Damme field by reason of the large number of wells he already had with his mass of information on them, plus his undeveloped acreage.

It should be noted appellant was not seeking exception for one particular well nor one limited area—rather he sought exemption for all his acreage in the Damme pool and/or the Damme pool generally. Appellant's evidence respecting economic hardship did show that when the field was new he had received contributions under dry hole agreements and that he had a valuable mass of information accumulated from his drilling the fifty wells in the pool, which he says he would have to disgorge without recompense. But all this occurred prior to the adoption of the rule. Section (E) of the rule states that sample logs or surveys of wells completed prior to the effective date of the rule *may* be submitted to the survey for confidential custody. Such submission is not required but is wholly voluntary. Thus the material upon which appellant largely bases his contention of economic hardship is not required to be filed.

The burden of proof in bringing himself within the exceptions provided in the rule was, of course, on appellant. The commission specifically found that on the basis of the evidence presented the grant of an exception was not justified. Appellant presented no evidence with respect to problems encountered or likely to occur in any specific well or area. The request was simply for blanket exemption of appellant's entire holdings and/or the entire field. There was

no testimony concerning conditions or positions of the two wells completed after the adoption of the rule with relation to acreage owned by others or of the contemplated three locations or as to how they would be affected by the rule. There was no indication dry hole support money was sought and was unavailable. There was no testimony the rule would in fact deter future contributions. Other than the bare assertion of opinion by his expert, appellant made no showing that the one year period of confidentiality or the two year period (actually two years plus ninety days) would not be sufficient "to satisfy the needs of the developing operator". In denying the application the commission was aware the Damme field was then entering its twenty-second year of development. Except for the size of his holdings and number of wells appellant was not shown to be in any position different from others in the field. No evidence was offered respecting any "step-out" or other location proposed for exemption or what would happen under the rule. All the appellant offered must be regarded as merely conjecture. Conceivably he might make a factual case justifying exemption from the rule but he did not do so. The commission's finding that the geological survey had adopted reasonable procedures to safeguard the information filed with it is amply supported by the evidence. In arguing insufficiency of evidence appellant largely ignores that offered by the commission which indicates a need for the information required by the rule. As was said in Railroad Commission v. Humble Oil & Refining Co., 193 S. W. 2d 824, (Tex. Civ. App.):

> "The responsibility for the proper administration of the conservation laws rests primarily with the Commission. What factors shall be considered, and their proper evaluation are matters exclusively within the Commission's discretion and not subject to judicial review, so long as they bear a reasonable relation to the subject matter of the order." (p. 833.)

In sum the commission's order of denial was supported

by substantial evidence and was not arbitrary or unreasonable.

Finally, appellant contends 82-2-125 and the order of denial entered pursuant to it amount to a taking of property without due process of law in violation of the fourteenth amendment to the federal constitution. Appellant acknowledges that the state may, in the exercise of its police power, legislate to prevent the waste or exploitation of natural resources. On the other hand, he asserts, the means used to secure the legislative ends must not be unreasonable, arbitrary or capricious, and must have a real and substantial relation to the objective sought to be attained. We treat first with the denial order. Appellant says it takes his private property for public use without just compensation. This contention is postulated on the same claim of economic burden which we have already considered and held to be not supported by the evidence offered. Appellant had a fair hearing. He has not shown his position to be any different from others affected by the rule. He has not demonstrated any financial loss nor has he shown how he would be adversely affected in the future by the denial of his application for exemption.

Appellant asserts the substantial cost incident to the acquisition of the information warrants the regulation being declared unconstitutional as a taking of property without just compensation. His testimony was that the average cost of obtaining a portion of the information was currently about $3,400 per well. However, this figure is misleading because it appears that the information is routinely obtained during the drilling of a well as a matter of standard operating procedure. The costs of filing the information were shown to be only nominal. The pecuniary injury of filing would not alone warrant declaring the regulation unconstitutional (see 16 Am. Jur. 2d, Constitutional Law, § 294).

In 16 Am. Jur. 2d, Constitutional Law, § 363, it is stated:

"The constitutionally protected right of property is not

an absolute right. The right is subject to such reasonable restraints and regulations established by law as the legislature, under governing and controlling power vested in it by the constitution, may think necessary and expedient. Thus, it is subject to limitation by reason and by means of legitimate exercises of the state's police power." (pp. 691-692.)

Appellant cites eminent domain cases to support his proposition of unconstitutionality of the regulation. The distinction between the exercise of the right of eminent domain and the police power has been articulated in 29A C.J.S., Eminent Domain, § 6, thus:

"Eminent domain takes property because it is useful to the public, while the police power regulates the use of, or impairs rights in, property to prevent detriment to public interest; in the exercise of eminent domain private property is taken for public use and the owner is compensated, while the police power regulates an owner's use and enjoyment of property, or deprives him of it, by destruction, for the public welfare, without compensation other than the sharing of the resulting general benefits." (p. 178.)

In Smith v. State Highway Commission, 185 Kan. 445, 346 P. 2d 259, this court stated:

"The police power is the power of government to act in furtherance of the public good, either through legislation or by the exercise of any other legitimate means, in the promotion of the public health, safety, morals and general welfare, *without incurring liability* for the resulting injury to private individuals. [Citations] Eminent domain, on the other hand, is the power of the sovereign to take or damage private property for a public purpose *on payment of just compensation*. . . .

". . . Determination of whether damages are compensable under eminent domain or noncompensable under the

police power depends on the relative importance of the interests affected. The court must weigh the relative interests of the public and that of the individual, so as to arrive at a just balance in order that government will not be unduly restricted in the proper exercise of its functions for the public good, while at the same time giving due effect to the policy in the eminent domain clause of insuring the individual against an *unreasonable loss* occasioned by the exercise of governmental power." (pp. 453-454.)

Much of that which has already been said is applicable here. The regulation is designed to prevent waste in the production of oil and gas and to protect usable water as it may be affected by such production. Assuming that filing the information could impair the filer's use of it, a period of two years confidentiality is allowed for such use and upon a proper showing of economic hardship or that the period of confidentiality is too short, under the exception in the regulation no filing need be made at all. These are adequate safeguards for the protection of private rights as against those of the public. Neither 82-2-125 nor the denial order violates the due process clause of the federal constitution.

The judgment is affirmed.

Approved by the Court.

DISSENTING OPINION

FATZER, Chief Justice.

I respectfully dissent from that part of the holding of the court contained in Syllabus Paragraph No. 4, and the corresponding portions of the opinion that the State Corporation Commission has statutory authority to adopt the rule in question; that the rule is reasonably related to the prevention of waste in the production of oil and gas, and to the protection of usable water as it may be affected by such production; that the applicant failed to sustain his burden in proving an exemption; that the State Corporation Commis-

sion's order of denial was supported by substantial evidence and not arbitrary or unreasonable, and that the Commission's rule and denial order did not violate the due process clause of the federal Constitution.

The State Corporation Commission possesses no powers not granted it by statute. (Bennett v. Corporation Commission, 157 Kan. 589, 596, 142 P.2d 810.) Allegedly, under the authority granted by K.S.A. 1973 Supp. 55-604, and K.S.A. 55-704, the Commission promulgated K.A.R. 82-2-125. Rules and regulations of an administrative agency are void when they bear no reasonable relation to the purpose for which they are authorized to be made. I fail to see how the Commission's rule K.A.R. 82-2-125 accomplishes the purposes set forth in the relevant statutes.

SCHROEDER, J., joins in the foregoing dissenting opinion.

DISCUSSION NOTES

Government Regulation: Orders of Commissions—Filing of Drilling Information and Samples.

The basic thrust of the appellant's concern is that he is compelled to file valuable drilling information with the geological survey that may not be securely retained as confidential, in which case he may lose economically advantageous drilling agreements or attractive leasing possibilities. The requirements of the rule do appear to drastically reduce the value to the independent driller of a wildcat venture. As indicated in the opinion, the final provisions of the rule represent a compromise of various interests, private and public, which has resulted in a new definition of the kind of "property right" future drillers will acquire incident to their effort.

J. R. G.

NASH v. WHITTEN

Louisiana Court of Appeal
Second Circuit
April 30, 1975—No. 12590
312 So.2d 679
(Overruled, 52 O&GR 499)

Pipelines: Pipeline Servitude—Creation of Servitude by Acquisitive Prescription.

Plaintiff brought an action to compel removal from his land of a natural gas pipeline transversing plaintiff's land connecting a producing gas well located east of plaintiff's property to defendant's residence located west of plaintiff's property. Plaintiff alleged the line was laid across his property without authorization or muniment of title. Defendant maintained the gas line constituted a continuous and apparent servitude which could be established by acquisitive prescription through possession for a period of ten years. Plaintiff, on the other hand, contended that the gas line would be a discontinuous servitude which can be established only by title. The trial court concluded that the pipeline was a continuous and apparent servitude, title to which had been acquired by defendant by prescription of more than ten years. Plaintiff appealed. Held: Affirmed. Louisiana Civil Code article 727 provides that continuous servitudes are those whose use is or may be continual without the act of man. It is therefore evident that if an act of man is necessary to exercise the servitude, it is not continuous but discontinuous. However, it is necessary for the act of man to be performed on the servient estate. Since there was no evidence presented that defendant or his agents performed any act whatsoever on plaintiff's land in order to exercise the use of the servitude, such a gas pipeline should be considered a continuous servitude. There is no question the gas line is perceivable by exterior works and therefore is an apparent servitude as contemplated by Louisiana Civil Code article 728. That being the case, the presence of the pipeline in excess of ten years on plaintiff's property created by acquisitive prescription a continuous and apparent servitude. (Overruled, 52 O&GR 499.)

Appeal from the Eleventh Judicial District Court for the Parish of DeSoto, Louisiana. John S. Pickett, Jr., Judge.

5-0305B
Bannister
2/17/87

Original sponsors: Brown, Koponen and Goll

1 IN THE HOUSE BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO. 41 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the confidentiality of certain
7 oil and gas information; and providing for an effec-
8 tive date."

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

10 * Section 1. LEGISLATIVE FINDINGS. (a) The legislature finds that

11 (1) the best interests of the state will be served if oil and
12 gas well data and information are not held confidential for periods longer
13 than two years;

14 (2) increasing the amount of oil and gas well data and informa-
15 tion available to citizens of the state and to the state's oil and gas
16 industry will improve competition and encourage more companies to become
17 involved in oil and gas exploration and production in the state;

18 (3) the predictable release of oil and gas well data and infor-
19 mation will expedite oil and gas exploration and production and enhance the
20 state's economic interests;

21 (4) drilling operations will be safer and more efficient if oil
22 and gas well data and information are available from nearby wells; and

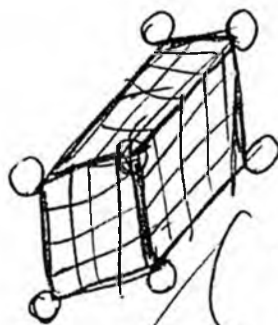
23 (5) a better overall understanding of Alaska's subsurface
24 resources and geology will be promoted if oil and gas well data and infor-
25 mation are made available to the public.

26 * Sec. 2. AS 31.05.035(c) is amended to read:

27 (c) The reports and information required in (a) of this section
28 shall be kept confidential for 24 months following the 30-day filing
29 period unless the owner of the well gives written permission to

release the reports and information at an earlier date. If the commissioner of natural resources finds that the required reports and information filed under (b) of this section before July 1, 1987, contain significant information relating to the valuation of unleased land in the same vicinity, the commissioner shall keep the reports and information confidential for a reasonable time after the disposition of all affected unleased land, unless the owner of the well gives written permission to release the reports and information at an earlier date. Well location, depth, status and production data and production reports required by the commission to be filed subsequent to the 30-day filing period is [SHALL BE CONSIDERED] public information and may [SHALL] not be classified confidential. Production data, as used in this subsection, means volume, gravity, and gas-oil ratio of all production of oil or gas after the well begins regular production.

* Sec. 3. This Act takes effect July 1, 1987.



THE FOLLOWING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.

HB 4i

WELL DATA CONFIDENTIALITY

ARGUMENTS AGAINST CSHB 41 (FINANCE), "AN ACT RELATING TO THE CONFIDENTIALITY OF CERTAIN OIL AND GAS INFORMATION."

1. CSHB 41 WILL PENALIZE THOSE COMPANIES WILLING TO UNDERTAKE EXPLORATORY DRILLING.

2. CSHB 41 WOULD REWARD THOSE COMPANIES NOT DRILLING.

3. BECAUSE ALASKA HAS HAD FEW EXPLORATORY WELLS DRILLED COMPARED TO OTHER STATES, THE STATE SHOULD ACTIVELY ENCOURAGE EXPLORATION RATHER THAN INSTITUTE DISINCENTIVES SUCH AS REMOVAL AFTER 1991 OF THE EXTENDED CONFIDENTIALITY OF WELL DATA AS PROVIDED IN CSHB 41.

4. CSHB 41 WILL DISCOURAGE DRILLING ON LEASES ADJACENT TO UNLEASED LANDS, ESPECIALLY STATE LANDS ON WHICH SCHEDULED LEASE SALES MAY BE DELAYED.

5. CSHB 41 WILL ALLOW WELL DATA FROM DRY HOLES TO BE MADE PUBLIC WHICH MAY SUBSTANTIALLY DIMINISH THE LEASE VALUE OF ADJACENT UNLEASED LAND.

6. CSHB 41 WILL DISCOURAGE DRILLING IN FRONTIER AREAS.

7. GIVEN THE LONG TIME PERIOD AND HIGH COST TO DRILL AN EXPLORATORY WELL, TWO YEARS IS NOT AN ADEQUATE PERIOD OF TIME TO PROTECT REQUIRED WELL DATA.

8. CSHB 41 WILL REDUCE THE NUMBER OF FIRMS PARTICIPATING IN LEASING AND LEASE DEVELOPMENT IN ALASKA.

9. CSHB 41 COULD REDUCE THE FUTURE LEVEL OF OIL PRODUCTION IN ALASKA TOGETHER WITH THE ECONOMIC BENEFITS INCLUDING STATE REVENUES, EMPLOYMENT, AND DEVELOPMENT OF CRITICALLY NEEDED INFRASTRUCTURE FACILITIES.

10. CSHB 41 WOULD ALLOW THE STATE TO ACQUIRE VALUABLE COMMERCIAL DATA FROM PRIVATE LANDS UNDER THE GUISE OF DISCHARGING STATUTORY DUTIES TO DEVELOP LANDS BELONGING TO IT. THIS IS A "TAKING" OF PRIVATE PROPERTY WITHOUT COMPENSATION.

11. CSHB 41 HAS SIGNIFICANT CONSTITUTIONAL FLAWS AS APPLIED TO PRIVATE LANDS. PREMATURE RELEASE OF WELL DATA FROM PRIVATE LANDS DESTROYS THE COMMERCIAL VALUE OF THE DATA TO THE LANDOWNER.

12. CSHB 41 OFFERS NO INCENTIVE TO DRILL A SECOND WELL IN SEQUENCE SINCE DATA FROM THE FIRST WELL WILL LIKELY BE PUBLIC PRIOR TO THE ACQUISITION OF PERMITS AND COMPLETION OF A SECOND WELL.

April 30, 1987

TESTIMONY OFFERED ON APRIL 28, 1987 BEFORE THE ALASKA HOUSE OF REPRESENTATIVES FINANCE COMMITTEE REGARDING BY 41 AND HB COMMITTEE SUBSTITUTE 41

Thank you, Mr. Chairman. My name is John Carson. I am the Chief Geologist for Chevron U.S.A.'s Western Region. I have been a petroleum geologist for 31 years and have spent nearly two-thirds of that time involved with Alaska's exploration problems. I speak today on behalf of Chevron. Chevron appreciates the opportunity to testify on this matter of importance to both the State and the petroleum industry. My remarks will be brief and I will be glad to answer any questions you may have.

Chevron opposes HB Committee Substitute 41 because we feel that the State and the industry's best interests are served under the existing law. The State's best economic interests are solved when increased leasing and exploratory drilling are promoted. Given the multiple lessors, harsh climate, long lead times, and uncertain economic conditions, a prudent operator will not drill an exploratory well next to open acreage unless he has some certainty that the open acreage will be sold prior to his well data being released.

Therefore, Chevron contends that exploratory drilling will decline if HB 41 is enacted. Previous testimony has generated much discussion on this topic and, I must admit, it is not an easily proven point from either side. However, I plan to present evidence that I hope will show why we contend that drilling will decrease.

First, historically there is a strong correlation between impending lease sales and exploratory drilling. In the eighteen months prior to

the State of Alaska Prudhoe Bay Sale in September 1959, a total of 17 exploratory wells were drilled on leased parcels adjacent to unleased parcels scheduled for the 1969 sale. Although these operators were hoping to find oil, they were obviously attempting to gain information that would allow them to construct realistic bids on the adjoining parcels.

From 1974 through 1979, no State lease sales were held due to various factors including complications of the Alaska Native Claims Settlement Act. From 1974 through 1978, very few exploratory wells were drilled. In 1976, in anticipation of the joint State-Federal Beaufort Sea Sale scheduled for 1978, exploratory activity picked up. In 1978, when it became apparent that this sale would have to be delayed, the State enacted the current law which allowed operators to apply for extended confidentiality on wells drilled in the vicinity of unleased lands.

The message here, I believe, is clear. Operators are looking beyond the drilling of an exploratory well in an attempt to gain information near unleased parcels.

This leads to my second line of evidence which is a personal one. I have been involved in numerous lease sales in my career, and in every one a major strategic element was the consideration of drilling a well or wells at a location that would gain information for an upcoming sale. In previous discussions on HB 41, there have been statements made to the effect that operators only drill wells to find oil and gas. That is true up to a point. We do not normally drill these offsetting wells without an economically feasible venture, but the strategy involves finding the combination of the est prospect located in the optimum position to gain information on adjacent unleased lands. It is a standard part of our lease sale preparation as I'm

certain it is of any aggressive exploratory company. The aggressive explorer must look to the future. The early release of well data punishes the aggressive explorer.

A second item that I feel needs clarification is the contention that the current law stifles competition by denying a broad common data base to any company that may want to explore in Alaska. Of the more than 100 exploratory wells drilled in Alaska since the enactment of the extended confidentiality in 1978, only 50 have received extensions of confidentiality beyond the normal two-year period. Currently, only 17 wells are in extended confidentiality. Of those 33 wells removed from the list, the average period of extended confidentiality was 2.3 years. A broad common data base does indeed exist.

The companies that are aggressive explorers and have the expertise, capital and commitment to explore Alaska have been here doing so since statehood and are exploring now. Other companies who have not been involved in drilling in Alaska already have a wealth of information available; all but 17 wells are available to them free of cost, courtesy of those who have taken the risks and expended the capital. This bill will not motivate drillers to take exploratory risks. It should be pointed out that the release of over 100 wells drilled on the NPRA has not increased competition and not encouraged any more companies to explore the area other than those who have operated on the North Slope historically.

A third point that I would like to speak to concerns a suggestion that firms which drill exploratory wells in frontier areas do not actually provide free information to other firms, even under a two-disclosure rule, because the firm doing the drilling is able to recoup most of its costs from other firms through the process of cost equalization.

But cost equalization will occur only if the lease owned by the exploratory firm is later included with other leases in a potential producing unit. In the period since 1978, 77 percent (or 11) of the 144 exploratory wells drilled in Alaska have not been included in a potential producing unit. Furthermore, of the eight potential producing areas where the other 33 wells are located, most have not yet been developed and, as a result, these wells may never have their costs shared. What is most important to note in this regard is that if an exploratory well is incapable of production--and this is true of most exploratory wells--there is generally no cost equalization.

Another contention of HB 41 proponents is that the release of well data to the public will allow a safer and more efficient drilling practices. The Alaska Oil and Gas Conservation Commission (AOGCC) already obtains the drilling data from every well drilled. It is aware if there are known drilling hazards in certain formations and it ensures safe drilling practices, because all drilling operations must be permitted by them. The AOGCC currently reviews and approves all drilling plans prior to the drilling of each well in Alaska, without having to divulge well data to the public. Making all well data public will not make drilling operations any safer or more efficient than they already are.

Now I would like to discuss two of the provisions of Committee Substitute for HB 41. First is the provision that the AOGCC shall provide access to all of the confidential well data to the Department of Natural Resources. Chevron strongly objects to this provision. We are, frankly, concerned with security. There are large turnovers within DNR which industry has no control over. Often these former employees end up in industry. We believe this to be an unacceptable

risk. Within our own company, we operate on a need-to-know basis. There are wells which Chevron has drilled in Western Region that I am not privy to because I don't need to know in order to perform my function as Chief Geologist. As previously mentioned, the AOGCC is charged with insuring safe and efficient drilling practices. They need to know, DNR does not. We are particularly concerned about the release of this data from wells on private lands.

A second provision of the Committee Substitute involves continuing the present law as status quo until July 1991. Chevron's reaction to this is that this is an arbitrary date and, like any arbitrary data or time period, overlooks the fact that critical exploratory wells will continue to be drilled in Alaska as long as there is open acreage and a probability that this open acreage will be sold. For your consideration, I present the scenario that few or no critical wells requiring confidentiality may be drilled until after 1991. Although I hope this is not the case, I believe anyone who follows the oil industry in general, and Alaska oil in particular, could consider this possibility.

Chevron hopes that the committee will not change the current law and leave open the possibility that all critical offsetting wells to be drilled in Alaska may receive extended confidentiality.

Thank you. I will be happy to answer any questions.

TESTIMONY OF
JOHN CARSON
April 28, 1987

CARSON: Thank you, Mr. Chairman. My name is John Carson. I'm currently the Chief Geologist for Chevron U.S.A. for their Western Region which includes all of Alaska and the West Coast. I'm speaking today on behalf of Chevron. I've spent roughly 31 years in the, and some of it's been quite rough, in the petroleum industry and exploration and about two-thirds of that has been involved with the State of Alaska's exploration problem. Chevron wishes to thank the Committee for this opportunity to speak again. Because of the fact that we, as a company, have presented some testimony before, both written and because of Dr. Sorenson's comments, I will keep my comments brief, but I'll be glad to answer any questions that you may have.

Chevron opposes Committee Substitute 41 because we feel the best interests of the State of Alaska and the petroleum industry are served by continuing the present legislation. A prudent operator won't drill, given the harsh climate, the long lead time, multiple landowners, the uncertain sales schedule on a block of land if the adjacent block is unleased and they don't know for certain when it's going to be sold. This is a hard statement to prove on either side and I know that you've had a great deal of discussion on it in some of the committees. But I would like to cite a couple of examples and the question we're trying to get at here is, "does the

current legislation restrict or encourage exploratory drilling?"

I'd like to cite first of all that prior to the 1969 Prudhoe Bay sale, 17 wells were drilled within two years of that sale. They were all drilled by operators on lands that they held the mineral rights to and they were all adjacent to parcels that were to be sold in the 1969 sale and the same came off on time.

From about 1974 to 1979, due to various problems, the Alaska Native Claims Settlement, etc., there were no sales from '74 to '79, but in about 1976, companies started drilling on the North Slope in anticipation of a sale to be held, joint Federal and State, in the near-shore and submerged waters off of Prudhoe Bay and open sea. When it became obvious that that sale was not going to take place as scheduled, then the current legislation was enacted, and that was in 1978, to allow for extended confidentiality to those operators who had drilled a well adjacent to unleased lands.

I believe that you can go back through and you can chart when leases were coming and lease sales were coming and you can plot the frequency of exploratory drilling and you will see a correlation.

I have heard it mentioned that oil companies drill only to find oil. That's a truism up to a point. I'd like to cite up my own personal experience along those lines. Quite obviously we cannot sell to our management a well just for the whimsy of a well, trying to get some information, and so

we are definitely looking for oil, there's no question about that, oil and gas. But a part of our strategy has been, and hopefully will continue to be, what else can we get out of drilling this well? What will it do for us in upcoming lease sales? What information can we get from this well that will give us the opportunity to construct a meaningful and realistic bid on offsetting acreage. I have been involved in state sales in Alaska in Cook Inlet, on the North Slope. I've been involved in OCS sales in both California and in Alaska and in every sale that I've been involved in that has become a part of the strategy. It is in our shop and I believe it is in the other major companies. As I say, it's a fairly difficult thing to prove, but I will guarantee you that it does take place. We are looking for information to help us with these other lease sales. Agressive companies are doing this and they're looking to the future and the companies that are not doing this may not see the future.

A second item that I would like to discuss has to do with the supposition, perhaps, that an unrestricted confidentiality might stifle, or might help, competition in that some kind of extended confidentiality will help us, will keep other companies from getting into Alaskan oil problems, oil exploration. Essentially the assumption that making the data public would spark competition because they would all have a broad data base. Since 1978, of all the exploration wells drilled in Alaska, only 50 have been given this special

extended confidentiality. Of those, only 17 still have that, still enjoy that privilege. In the average extended confidentiality of those wells that have since lost that has been roughly 2.3 years. All of the other several hundred wells are available. A broad data base does indeed exist.

The companies that are aggressive explorers and have the expertise, capital and commitment to explore Alaska have been here doing so since statehood and are exploring now. Other companies who have not been involved in drilling in Alaska already have a wealth of information available; all but 17 wells are available to them free of cost, courtesy of those who have taken the risks and expended the capital. This bill would not motivate drillers to take exploratory risks. It should further be pointed out the release of over 100 wells drilled on the NPRA has not increased competition and not encouraged any more companies to explore the area than those who have operated on the North Slope historically.

A third item that I would like to address has to do with unitization. It has been suggested that firms drill exploratory wells in frontier areas do not actually provide free information to other firms even under a two-year disclosure rule because the firm doing the drilling is able to recoup most of its cost from other firms through the process of cost equalization. But cost equalization occurs only if a lease owned by the exploratory firm is later included with other leases in a potential producing unit. In the period since 1978, 77 percent (or 111) of the exploratory wells

drilled in Alaska have not been included in a potential producing unit. Furthermore of the eight potential producing areas where the other 33 are located, other 33 wells, most have not yet been developed, and as a result, these wells may never have their costs shared. What is important to note in this regard is that if an exploratory well is incapable of production -- and this is true of most exploratory wells -- there is generally no cost equalization. Quickly moving on then to a, to a fourth point, it has been suggested that releasing all materials will allow for safer, safe practices. The Alaska Oil and Gas Conservation Commission already obtains the drilling data from every well drilled. It is aware if there are known drilling hazards in certain formations and it ensures safe drilling practices, because all drilling operations must be permitted by them. The AOGCC currently reviews and approves all drilling plans prior to the drilling of each well in Alaska, without having to divulge well data to the public. Making all well data public will not make drilling operations any safer or more efficient than they already are.

And now I'd like to speak to two of the provisions in the Committee Substitute. The first, the provision that all well information be released to the Department of Natural Resources and they will hold confidential. Chevron objects to this, largely on the basis of security. Within our own shop, we, on our highly confidential wells, we allow those people who need to know only access to those wells. As

Chief Geologist of our Western Region, there are wells that we have drilled that I do not know what we have found in them. Why? Because I don't need to know to perform my function. Those people who do need to know as part of their function, they know about them. We are concerned of the numbers of people that would have access to this data and the numbers of people who would be turned over possibly to job rotations, back to the industry, and so forth. As stated before, the Conservation Commission, from a safety point, needs to know; the Department of Natural Resources doesn't from a safety point.

And then the second item that I would like to speak to on the Substitute provides that the current status of allowing extended confidentiality be continued until 1991. This, like any other arbitrary date or time supposes that we know when the largest number of critical exploratory wells will be drilled. I would like to present for the, for the Committee's consideration a scenario that says there will be no more critical exploratory wells until after 1991. I can make a case for that. Given the current economic conditions, given the current problems of opening of ANWR, it could very easily be 1991 before, if you'll pardon it, Secretary Hodel's long gas lines start again and things break out all over. I don't think we know when the most critical wells will be drilled. I submit that any exploratory well that is drilled next to adjacent lands is a critical exploratory well and

that can happen five years, ten years, certainly I hope it would be happening after 1991.

I believe I've covered the five or six points that I wanted to. I'll be happy to try to answer any questions this Committee has.

Chairman: Are there questions of Mr. Carson? Representative [indiscernible]. [END OF TAPE 1, SIDE 2]

TAPE 2, SIDE 1

Representative: I've forgot all the secrets you had on this [indiscernible]. The question I would have would be in your, in this testimony here, Mr. Carson, you talked about the fact that, Texas, I believe, they have a confidentiality of, they can extend, some place in here it talks about a three-year statute of limitations on confidentiality, but I could be wrong.

Carson: In the materials that have been handed to you, those are some comments that Dr. Sorenson had put together after his, you may also have his original testimony there, you probably do and he had determined from the Texas Railroad Commission, I believe, that they can extend on-shore to three years and on submerged lands to five. I think probably trying to compare any of those other states, California, Louisiana and Texas, to Alaska is kind of futile because of the problems that are here that they don't have -- multiple land ownership and so forth -- but I know there's been a lot of discussion whether you can really go two or three in Texas. I think we're satisfied now it's three but on-shore, it's five off-shore.

Representative: I guess my [indiscernible] the other frontier areas [indiscernible] not, not sure what the California statutes are, they are [indiscernible] years?

Carson: Yes, they are. But you can apply for some extended confidentiality. There are several of the questions here, Mr. Chairman, which have some economic ramifications which is outside of my expertise. We have been in touch with Dr. Sorenson and if it would be of any benefit to the Committee, he has been, he has assured us that he would have the opportunity and could be here on short notice if you wanted to talk to him and I would offer that to you at this time.

Chairman: Further questions. If not, thank you very much, Sir.

AN ECONOMIC ANALYSIS OF H.B. 41
Relating To
EXTENDED CONFIDENTIALITY OF OIL AND GAS WELL INFORMATION

Testimony Before the House Finance Committee
Alaska State Legislature
March 19, 1987

by

Dr. Philip E. Sorensen
Professor of Economics
Florida State University

Over the past decade I've had the pleasure of visiting Alaska many times. On each of these visits, I've come away with a deeper appreciation for the unique character of the people and environment of Alaska. I'm very happy to be here again, and I thank the members of this Committee for their courtesy in allowing me to present my views on this most important question.

The proponents of H.B. 41 assert that its passage will expedite oil and gas exploration and production and enhance competition for leases. But in my opinion the bill will have no beneficial effects. In fact, there is strong evidence, derived both from economic theory and from the results of several recent studies of oil and gas leasing and lease development which I have co-authored,[1] that erosion of the current protection given to well drilling data in Alaska, as proposed in H.B. 41, will:

1. Reduce the number and size of bonus bids for leases in frontier areas in Alaska on both state and private lands;

2. Reduce the number of wells drilled in frontier areas where nearby acreage remains unleased;

3. Reduce the number of firms participating in leasing and lease development in Alaska; and

4. Reduce the future level of oil production in Alaska together with all associated economic benefits including state revenues, employment, and development of critically needed infrastructure facilities.

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[1] These studies are summarized in Mead, et al., "Competitive Bidding Under Asymmetrical Information," The Review of Economics and Statistics, August 1984; and Offshore Lands: Oil and Gas Leasing and Conservation on the Outer Continental Shelf, Pacific Institute for Public Policy Research, 1985.

In the sections which follow, I will summarize the evidence which has led me to reach the conclusions stated above.

I. EXTERNAL ECONOMIES IN OIL AND GAS EXPLORATION

When an inventor develops a new idea or technique which reduces the cost or improves the quality of a good and service sold in a market, he profits from his effort or investment only to the degree that he is able to keep outsiders from freely copying (or "free-riding") on his investment. If the benefits of inventive efforts are allowed to spill over to individuals or firms who pay nothing for them, an "external economy" is created which has the effect of greatly reducing inventive efforts. In recognition of the cost to society of discouraging the creation of new and original ideas and information, laws creating property rights in information and ideas (such as patents, trademarks, and copywrite protection) have been an essential part of U.S. law from the beginning of our Republic.

The extended confidentiality provisions of AS 31.05.035(c) are founded on the same principles as the laws protecting patents and trade secrets. To encourage maximum levels of investment in exploratory drilling in frontier areas in Alaska, firms accepting the risks associated with these investments have been protected by state law from having the information they obtain spill over to "free riders"--other firms which have not invested in these drilling activities.

The proponents of H.B. 41 have argued that the people of Alaska would benefit by way of higher bonus bids on neighboring acreage if the information now maintained as confidential under AS 31.05.035(c) were suddenly to be released and made available to the public. But a deeper analysis will show that these benefits would occur (if at all) only once. In the long-run the erosion of these confidentiality provisions would seriously impair, if not destroy, the motive for any firm to engage in exploratory activity in frontier areas in Alaska.

To make this point more clear, consider the likely effects of a repeal of the patent laws which presently protect drug manufacturers in the U.S. Certainly this would lower some drug prices as competitors would be permitted to copy all existing drug formulas. But is there any question that society would be greatly harmed in the long-run by this action? Who would invest in research on new drugs if the benefits from such research could not be captured by inventing firms? And by similar reasoning, who would invest in exploratory drilling in frontier areas of Alaska if the benefits of such investments could not be captured by the firms doing the investing?

In fact, a considerable portion of the benefits produced by exploratory drilling already spill over to other firms as a result of an informal network of information provided by oil scouts, members of the drilling team, and others. One study has estimated the fraction of benefits which spill over as a result of this informal network to be about 25 percent.[2] This means that even under the protection of confidentiality statutes (such as the one in Alaska), a firm investing in exploratory drilling will always provide a large information subsidy to non-drilling firms. This discourages exploration in frontier areas since it rewards firms that wait for free information while it penalizes those who carry out pioneering exploratory ventures. And if the remaining portion of information benefits which can still be kept proprietary by exploratory drillers in Alaska were to be reduced (or eliminated) by repeal of AS 31.05.035(c), what incentive would remain for these firms to take the tremendous risks they do when they invest in frontier drilling?

II. COMPARISON OF RATES OF RETURN EARNED IN LEASING AND LEASE DEVELOPMENT

Our recently reported studies of rates of return earned by firms who were winning bidders for leases issued by the federal government in the Gulf of Mexico over the first 16 years of Outer Continental Shelf (OCS) lease sales, cited above, show that firms leasing wildcat tracts earned an average after-tax rate of return on investment of 10.04 percent, while firms who were winning bidders for leases located in areas near to proven wildcat tracts (referred to as "drainage tracts") earned higher rates of return on average: 14.59 percent.

The overall rate of return to firms on all OCS tracts leased was 10.74 percent. This was lower than the rate of return earned by all U.S. manufacturing corporations over this same period of years: 11.7 percent.[3]

The proponents of H.B. 41 suggest that he level of competition in drainage-type lease sales is reduced by the fact that some bidders have information advantages over other bidders. But our study shows that the number of bids cast for each lease sold in drainage lease sales (2.9) was only slightly lower than the average number of bids for wildcat leases (3.2).

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[2] See F.M. Peterson, "Two Externalities in Petroleum Exploration," in G. Brannon (ed.), Studies in Energy Tax Policy, Cambridge: Ballinger, 1975, p. 102.

[3] See Offshore Lands, Table 3.1, p. 53; and Table 3.2, p. 55.

Furthermore, those firms which had "no information" from prior wildcat drilling were able to win 43 percent of the leases sold in these sales, and these "no information" firms were able to earn a 25 percent higher rate of return on these drainage leases, or average, than was earned on wildcat leases in the same OCS areas over this same time period.

These facts lend support to the conclusion that a great deal of information is available to "no information" bidders in lease sales of acreage located near wildcat tracts which have previously been drilled on, and this information is used to the advantage of such bidders in these sales.

To summarize our findings regarding rates of return, it might appear that winners of drainage leases on the OCS earn higher than normal rates of return on these leases. But this appearance is deceptive. In fact, bidders in wildcat lease sales expect to earn lower-than-normal rates of return on these leases in the prospect of being able to recover part or all of their investment from the information they obtain through exploratory drilling. Overall, for wildcat and drainage leases combined, they earn a normal, competitive rate of return.

A major conclusion of our study is that bidders in wildcat lease sales determine the levels of their bonus bids on the basis of <u>two</u> variables: the expected net production value of the wildcat lease itself, and the expected value of the information they will be able to gain as a result of drilling on the wildcat lease. This means that if lessees of wildcat tracts are denied the opportunity to capture the information they obtain through exploratory drilling on these tracts, <u>they will lower their bonus bids by an amount equal to the value of the information they can no longer capture</u>.

Relating this conclusion to the situation in Alaska, if the confidentiality of well drilling information is eroded, as would happen through passage of H.B. 41, the value of wildcat (or frontier) acreage in Alaska will be greatly reduced. As a result, bidders will reduce the size of any bonus bids offered for such acreage. And in many cases, since the value of wildcat leases in frontier areas in Alaska is based almost entirely on the potential to obtain information of possible value in later lease sales, H.B. 41 will have the perverse result that <u>no bids at all will be offered for many leases in frontier areas and no investments in well drilling will be made in these areas</u>.

Since the impact of H.B. 41 will be felt not only in respect to state lands but also by the owners of private lands in Alaska (mainly Native Corporations or Villages), the proposed statute will seriously damage the prospects for leasing and developing such lands.

This point deserves emphasis: H.B. 41 will have the same negative impact on private landowners as it will have on state lands, reducing or eliminating bonus bids for leases in frontier areas and greatly lowering the chances that such lands will ever be developed.

III. ALTERNATIVE POLICIES FOR DEALING WITH EXTERNAL ECONOMIES IN EXPLORATORY DRILLING

Economists now recognize the fact that information spillovers (or external economies) in exploratory drilling have the effect of reducing the level of exploratory drilling below that which is optimal for society. To deal with this problem, they have recommended a number of policies, any of which might be considered by the State of Alaska for its frontier lands:[4]

1. Tax breaks for exploratory drilling.
2. Government subsidies for exploratory drilling.
3. Leasing in frontier areas using huge lease blocks.
4. Drilling in frontier areas by the government.
5. Forcing buyers of leases in drainage-type lease sales to share in the costs of prior exploratory drilling done by other firms on nearby wildcat acreage.

As can be seen, all of these proposed policies would be far more costly to the state and involve a much greater bureaucratic involvement in leasing and lease development than the present system of protecting the investments made by exploratory drillers in Alaska through extended confidentiality of well drilling data.

IV. THE UNIQUENESS OF ALASKA

It has been argued that Alaska should reduce the time period permitted for maintaining the confidentiality of well drilling data for the reason that other states have shorter time periods during which such confidentiality is maintained. It should be noted, however, that all four of the top oil producing states in the U.S. (Texas, Alaska, Louisiana, and California) have provisions in law for extending the protection of confidentiality beyond two years.

More important, it is not really appropriate to compare the situation in Alaska with the situation in Alabama, Michigan, or North Dakota. The average cost per foot of onshore wells drilled in Alaska in 1985 was more than four times as great as for the U.S. as a whole. And for wells in the category between 15,000

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[4]See Peterson, op. cit., p. 107; and J. Stiglitz, "The Efficiency of Market Prices in Long-Run Allocations in the Oil Industry," also in Brannon, op. cit., pp. 55-99.

and 17,500 feet, the cost in Alaska was over 13 times as great as the average for the U.S.[5]

Furthermore, Alaska's harsh climate, the remoteness of its location, the lack of developed systems for transporting drilling gear and materials into interior areas and production to markets, and the delays and uncertainty which have surrounded leasing schedules in the state--all these factors make Alaska a unique leasing and drilling environment. The average cost of obtaining exploratory well information in Alaska far exceeds that of any other producing state. And because of the long lead times involved, the value of that information remains high for many years following the drilling of an exploratory well. For these reasons, the impact of H.B. 41 would be devastating in Alaska even though similar statutes might have little impact in other states.

H.B. 41 is an exercise in wishful thinking. It assumes that information is a free good, and that future wildcat exploration and drilling will not be affected by changes in the time period during which the confidentiality of well drilling data from frontier areas is maintained. As a result, it proposes to release such data at an earlier time in the hope of increasing the bid values of leases sold in subsequent sales in the same area. But the essential issue for Alaska should be to enhance the prospects for wildcat leasing and lease development in the state. If frontier acreage in Alaska is not leased and not explored, there will be no subsequent lease sales, no subsequent bonus revenues, no subsequent production.

Given the current economic climate for the oil industry in the U.S. (and the even more grave problems facing future oil exploration in Alaska), it would be a dangerous error for the state to further impair the economic rationale for exploratory drilling in frontier areas. I am convinced that H.B. 41 would be a serious mistake for Alaska. I urge that it not be adopted.

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[5] American Petroleum Institute, 1985 Joint Association Survey on Drilling Costs, Tables 2, 4, 6, and 7.

Additional Comments on H.B. 41
Relating to
Extended Confidentiality of Oil and Gas Well Data

by

Dr. Philip E. Sorensen
April 22, 1987

At the time of my testimony before the House Finance Committee on March 19, 1987, several important issues were raised which required additional research. The sections which follow provide additional information concerning these questions.

1. In my testimony, I stated that "...all four of the top oil producing states in the U.S. (Texas, Alaska, Louisiana, and California) have provisions in law for extending the protection of confidentiality (of well data) beyond two years." A member of the Committee questioned the conclusion that Texas presently permits a period of confidentiality in excess of two years. In clarification of this question, I have attached copies of Texas Railroad Commission Rule 16 (Log and Completion Report) and Sections 91.551 - 91.556 of the Texas Natural Resources Code. These regulations indicate that Texas permits well logs to be kept confidential for periods of three years for onshore wells and five years for wells drilled on submerged state lands.

2. I previously testified that H.B. 41 would reduce the incentive of firms to drill exploratory wells in frontier areas because it would greatly reduce the information advantage these firms might have in subsequent bidding for unleased lands in nearby areas. I would like to explain this point further.

Records of the AOGCC indicate that at least 17 exploratory wells were drilled in Alaska on the North Slope just prior to the 1969 Prudhoe Bay sale. All of these wells were located near unleased acreage which was scheduled for sale within a year or so.

During the period from late 1974 until July 1979, no competitive oil and gas lease sales were held by the state because of various lawsuits and the uncertainty created by the Alaska Native Claims Settlement Act. Exploratory drilling adjacent to open lands in Alaska essentially stopped from 1974 through 1976, most likely because firms planning such drilling could not be sure they would be able to gain any advantage from the drilling information they might obtain within the two year period then provided for confidentiality of well data.

Five exploratory wells were drilled on the North Slope in 1977 in anticipation of the planned joint federal/state Beaufort Sea lease sale. When this sale was delayed, Alaska enacted legislation in 1978 to permit extended confidentiality for these and future wells. Subsequently, at least 21 exploratory wells were drilled on the North Slope adjacent to unleased acreage. Of these 21 wells, 13 were drilled near acreage where no sale was scheduled or where a sale was scheduled to take place at a time more than two years in the future. It is reasonable to assume that most, if not all, of these 13 wells would not have been drilled at that time in the absence of Alaska's extended confidentiality statute.

3. It has been suggested that firms which drill exploratory wells in frontier areas do not actually provide free information to other firms, even under a two-year disclosure rule, because the firm doing the drilling is able to recoup most of its costs from other firms through the process of cost equalization. But cost equalization will occur only if the lease owned by the exploratory firm is later included with other leases in a potential producing unit. In the period since 1978, 77 percent (or 111) of the 144 exploratory wells drilled in Alaska have not been included in a potential producing unit. Furthermore, of the eight potential producing areas where the other 33 wells are located, most have not yet been developed and, as a result, these wells may never have their costs shared. What is most important to note in this regard is that if an exploratory well is incapable of production — and this is true of most exploratory wells — there is generally no cost equalization.

4. A statute providing for a five-year or a ten-year time period for confidentiality of well data would do less damage to exploratory drilling in Alaska than a two-year time period, as proposed in H.B. 41. But it should be recognized that even a ten-year period of confidentiality would conflict with the extremely long lead times involved in leasing frontier areas in Alaska. Therefore, some exploratory wells that would be drilled under the present statute will not be drilled.

It is critically important to the future of Alaska that additional frontier areas in the state be explored and opened up for production. Exploratory drilling in Alaska requires large investments of capital and the assumption of tremendous risks. Those firms willing to make such investments and assume such risks should be accorded maximum protection of the information they obtain from drilling, as is true under the present Alaska statute providing for extended confidentiality of well data.

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STANDARD
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TESTIMONY OF STANDARD ALASKA PRODUCTION COMPANY ON HB 41, CONFIDENTIALITY OF EXPLORATORY WELL INFORMATION - FEBRUARY 18, 1987

My name is John A. Reader and I am employed as Senior Counsel for Standard Alaska Production Company in Anchorage. I have been employed in this capacity by Standard or its affiliate, BP Alaska, Inc., since 1974 and served in the Department of Law as an Assistant Attorney General from 1971 to 1974. During this time, I have been almost exclusively involved in natural resource law in Alaska. My purpose in testifying today is to discuss the constitutional limitations in making public data from wells drilled on private or native land. Previously, Standard has indicated to this Committee that it does not favor HB 41 on policy grounds.

HB 41 seeks to repeal provisions of AS 31.05.035(c) which were adopted in 1978, and which now permit the Commissioner, Department of Natural Resources (DNR) to determine if information from oil and gas wells drilled in Alaska should be held by the Alaska Oil and Gas Conservation Commission (AOGCC) on a confidential basis, rather than released to the public after two years as would otherwise be provided under that section.

In the process of reviewing HB 41, I have come to the conclusion that the present structure of AS 31.05.035(c) may have significant constitutional flaws as it would be required to be applied to private (Native) lands regardless of the policy questions presented by HB 41. Removal of the

Commissioner's discretion would almost certainly cause the provision to be administered contrary to constitutional limitations.

While the AOGCC, in the exercise of its statutory oil and gas conservation responsibilities, clearly has authority to require the submission of data from wells drilled on private lands, the public release of economically valuable data from private lands (which some authorities have called the "speculative value" of land) is difficult to support as a valid exercise of the State's police power, and this is particularly true in the context of Alaska's difficult and time-consuming exploration environment. Premature release of such data destroys its commercial value to the landowner, and may subject the State to liability for an unpermitted "taking" of that value without compensation. Retroactive application of HB 41 also destroys the priority value of data from wells drilled on private lands.

Private ownership of the mineral estate in Alaska was virtually unknown prior to the implementation of the Alaska Native Claims Settlement Act and the acquisition by Regional Corporations of mineral rights in the subsurface of Native lands. The lack of private lands is one of the unique aspects of land management in Alaska.

As originally enacted in 1960, the confidentiality provision provided an automatic two-year period of confidentiality for data submitted from wells drilled in Alaska. This section was amended in 1970 to establish a separate section, AS 31.05.035, and provided that certain information be made immediately available to the public. In 1978, the section was again amended to its present form to provide a means of holding data confidential beyond the 24-month automatic period where the value of unleased lands might be affected by the information.

While this was a recognition of the commercial value of confidential data obtained by the State's oil and gas lessees, it is important to understand that, as applied to State lands, no real constitutional issue was or is presented by the prospective application of the submittal requirements. As applied to State lands, the issue of the duration of a confidentiality requirement, and the conditions under which it can be extended, is a policy matter to be decided by the legislature. As previously stated to this Committee, Standard feels a mechanism to extend the period of confidentiality on State lands is vital to the continued drilling of exploration wells in frontier areas, and should be retained as a matter of policy.

The issue is quite different with respect to private lands. As I will discuss later, the issue with respect to private lands concerns the exercise of the State's police power in the context of applicable constitutional limitations. The issue has rarely been raised in Alaska due to the manner in which the 1978 amendments to Section 35 have been implemented. Apparently the Commissioner, DNR, has made a determination with respect to private lands as well as State lands. In fact, of the 13 wells now assigned extended confidentiality status, eight are on Native lands.

Previously, this Committee has received a copy of a letter from former Commissioner Robert E. LeResche to Texaco, Inc. concerning a well drilled on Native lands in which he raised the issue of the applicability of the 1978 amendment to Section 35 to private lands. Commissioner LeResche decided to hold the data from the well confidential pending clarification of the law. No regulations were adopted concerning the applicability of Section 35(c) to private lands, and the DNR continued to deal with both private and State lands in the same manner.

Thus, to date the issue of a possible taking of the speculative value of private lands under these circumstances has been avoided.

The right of a landowner to keep information concerning his mineral estate confidential has been recognized in the United States for some time. Attached to my statement is a listing of material your staff may find useful which discusses this right. The property right has most often been examined in connection with a trespass committed by a third party in which geologic information affecting the value of the land was made public without the permission of the landowner. The trespass is said to have destroyed the speculative value of the land, the right of the landowner to hold such information confidential in the expectation of obtaining valuable consideration from others wishing to explore on his land.

Almost all oil-producing states recognize this right in requiring landowners to file information on oil and gas wells with conservation agencies, as almost all make some provisions for the landowner to automatically, or by application, protect the right of confidentiality.

At least one reported case involved the assertion by a lessee that the requirement to file such data was a taking of property without compensation, where, in the judgment of the lessee, an inadequate period was allowed in which the data was to be kept confidential. In this case, a copy of which is attached to my statement, the Kansas Corporation Commission (the equivalent of the AOGCC) had refused to grant an exemption to a two-year confidentiality provision on the grounds that the existing regulations adequately protected the speculative value of the lands held by the oil and gas lessee. The court upheld the Commission's decision. The importance of the case is the clear

recognition by both the Commission and the court of the existence of the speculative value of the lessee's lands. The Commission merely decided that in this instance a two-year period was adequate.

In Alaska, I believe the automatic two-year period of confidentiality which would remain in AS 31.05.035(c) if HB 41 is passed is not adequate to protect the speculative value of well data from private lands. The long development times, difficult environmental conditions and extreme distance from markets which impede oil and gas development in Alaska are well known to the Committee and need not be repeated here, but these obstructions to development usually result in geologic information retaining its commercial value for much longer times than in the rest of the United States. In practice, geologic data from wells drilled on private lands may remain valuable for commercial purposes for many years, and some mechanism needs to be included in AS 31.05.035(c) to extend the period of confidentiality to protect the speculative value of such lands. In this respect, Alaska has distinctly different requirements from other oil-producing states.

On the other hand, there seems to be little need to include development wells, wells drilled in producing reservoirs, (either on private or State land) in any system intended to protect the speculative value of private or State lands. Elimination of this requirement would ease a significant administrative burden on the AOGCC.

In conclusion, Standard, as previously stated to the Committee, feels the present provisions of AS 31.05.035(c) should be retained, both as a sound policy to encourage the drilling of exploration wells on State land and to protect the speculative value of private lands as required by Alaska's Constitution.

Authorities Discussing Description of Speculative Value

For general background see:

1. 1 H. Williams & C. Meyers, Oil and Gas Law §§ 229-230 (1986).

2. 1 W. Summers, The Law of Oil and Gas §§ 21-40 (2d ed. 1954 & Supp. 1986).

Concerning constitutional limitations see:

1. Retroactive application of HB 41. Norton v. Alcoholic Beverage Control Board, 695 P.2d 1090 (Alaska 1985).

2. Unconstitutional taking of private property. Ruckelhaus v. Monsanto Co., 104 S. Ct. 2862 (1984); State v. Hammer, 550 P.2d 820 (Alaska 1976).

STATEMENT OF STANDARD ALASKA PRODUCTION COMPANY

CS FOR HOUSE BILL NO. 41 (FINANCE)

THE MOST RECENT VERSION OF HB 41 ALLOWS THE DEPARTMENT OF NATURAL RESOURCES ACCESS TO DATA FROM WELLS HELD CONFIDENTIAL BY THE ALASKA OIL AND GAS CONSERVATION COMMISSION, WITHOUT DISTINGUISHING BETWEEN PRIVATE OR STATE LANDS. WHILE STANDARD DOES NOT OBJECT TO THIS PROVISION WITH RESPECT TO WELLS DRILLED ON LANDS BELONGING TO THE STATE, STANDARD BELIEVES THERE IS NO LEGITIMATE BASIS FOR ALLOWING THE DEPARTMENT OF NATURAL RESOURCES ACCESS TO DATA FROM PRIVATE LANDS.

THE STATE AND PRIVATE LANDOWNERS ARE COMPETITORS IN SELLING OIL AND GAS LEASES. THE STATE SHOULD NOT BE ALLOWED TO ACQUIRE VALUABLE COMMERCIAL DATA FROM PRIVATE LANDS UNDER THE GUISE OF DISCHARGING STATUTORY DUTIES TO DEVELOP LANDS BELONGING TO IT. STANDARD BELIEVES THAT SUCH ACTION WOULD BE TAKING OF PRIVATE PROPERTY AND NOT SUPPORTABLE UNDER THE DUTIES ASSIGNED TO THE DEPARTMENT OF NATURAL RESOURCES BY STATUTE.

STANDARD ALSO QUESTIONS THE LANGUAGE IN THE NEW DRAFT OF HB 41 WHICH ALLOWS INFORMATION FROM EXPLORATORY OR STRATEGRAPHIC TEST WELLS TO BECOME PUBLIC AFTER 1991. WE HAVE TESTIFIED PREVIOUSLY THAT ALLOWING THIS TYPE OF INFORMATION TO BECOME AVAILABLE TO COMPETITORS WILL MOST ASSUREDLY DAMPEN INTEREST IN EXPLORATORY DRILLING. THERE WILL BE FEWER EXPLORATORY WELLS DRILLED AFTER 1991 IF THIS PROVISION IS ENACTED INTO LAW.

THE PRECEDING PAGES WERE TREATED AS
A UNIT IN THE ORIGINAL FILE.