HJR

21

State of Alaska

Committees

CO-CHAIR, HOUSE JUDICIARY
E-CHAIR, HOUSE LABOR AND COMMERCE
HOUSE HEALTH, EDUCATION AND SOCIAL SERVICES

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Representative Max F. Gruenberg, Jr.
District 11
Spenard, Upper Midtown Anchorage

MEMORANDUM

TO: Representative Bill Hudson
Chair, House Special Committee on Oil and Gas

FROM: Representative Max Gruenberg MaX

DATE: February 11, 1991

RE: Scheduling HJR 21, "Endorsing in principle, legislation to authorize oil and gas leasing on the coastal plain within the Arctic National Wildlife Refuge, but opposing provision of that legislation that would decrease the state's royalty share from that development."

I would very much appreciate it if you would schedule HJR 21, the ANWR resolution, for a hearing as soon as it is possible.

This resolution encourages development of ANWR while retaining Alaska's full 90 percent royalty. This resolution is very similar to the resolution that was introduced two year ago. It is sponsored by 31 members of the House.

If you have any questions, please contact me or my Legislative Assistant, Mark Handley at ext. 4968.

Thank you.

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO: HJR 21

Revision Date:
Department Affected: None
Title: Endorsing... legislation authorizing oil & gas leasing... within Arctic National Wildlife Refuge...
BRU:
Sponsor: Representative Gruenberg
Component:
Requestor: Representative Gruenberg
COMPONENT SERIAL NO:

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
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)

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

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary)

Zero fiscal impact.

Prepared By: Pamela A. Stoops, Director — Phone: 465-3850
Division: Administrative Services — Date: 2/20/91

Approved By: Warren W. Endicott, Executive Director
Agency: Legislative Affairs Agency — Date: 2/20/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

FRANK H. MURKOWSKI
ALASKA

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January 18, 1991

Dear Colleague:

On January 14, 1991 we introduced S. 109, The Arctic Coastal Plain Public Lands Leasing Act of 1991. This bill would authorize the Secretary of the Interior to lease the public lands of the Coastal Plain of the Arctic National Wildlife Refuge (ANWR) in Alaska for oil and gas exploration, development, and production.

We believe passage of this bill is vitally important to the people of the United States. Our nation now imports nearly 50% of the oil it consumes. This transfusion of foreign oil is dangerously high -- fully one-half of this nation's trade deficit can be attributed to the importation of foreign oil. Our continuing dependence on other countries to meet our energy needs dictates that American consumers and the U.S. economy will remain hostage to volatile energy prices and unstable suppliers. For example, homeowners in the Northeast don't need to be reminded about the perils of purchasing heating oils during these turbulent times.

The current situation in the Persian Gulf also serves as a painful reminder of the dangers of excessive dependence on imported oil. This nation has long recognized the importance of this oil rich region of the world and has been forced to defend foreign oil reserves while we have not even fully explored our own domestic production capabilities. And now we have the new dimension of 420,000 U.S. troops in the Persian Gulf. These troops have been put in harms way to combat naked aggression and keep oil flowing to the West. Each of my colleagues must reflect on what actions this body will take to meet our responsibility to the people of the United States to establish energy independence.

Without continued exploration and development of promising domestic areas, the situation will only get worse. **Every major oil field in the United States is declining.** Energy conservation, energy efficiency, and development of alternative energy sources are all important, but are not by themselves sufficient to solve the energy problems we face today or over the next twenty to thirty years.

We must have continued domestic oil production. **The Coastal Plain of ANWR is the single most promising onshore area for the**

discovery of significant oil reserves in the United States. Experts believe it could be the third largest American oil field ever discovered. But we'll never know unless we look.

In addition to domestic energy security, economic benefits and employment opportunities would flow to every State from opening ANWR. Net economic benefit has been estimated by the Department of the Interior to be $78 billion.

We do not have to choose between arctic oil development and environmental protection. Production technology has proven that Arctic oil development can be conducted in an environmentally sound manner with minimal impact on fish and wildlife resources of the Coastal Plain. As each new Alaska field has gone into production the "footprint" of development has gotten smaller. Alaska's Endicott field, for example, currently the sixth largest domestic oil field, occupies a mere 55 acres of surface territory and produces 110,000 barrels per day.

We all share a concern that we not leave too large a "footprint" in pursuing domestic energy production. But as the Wall Street Journal recently noted, "opening up a small sliver of Alaska's tundra for oil exploration simply recognizes that the welfare of human beings should also be a factor in environmental policy." Opening up ANWR would impact just such a "sliver" of Alaska's Coastal Plain. ANWR constitutes a total of 19 million acres, roughly the size of the State of South Carolina. It already contains 8 million acres of designated wilderness, an area larger than the State of Massachusetts. Of the remaining 11 million acres of ANWR, over 9.4 million acres are in non-wilderness normal refuge management. **The Coastal Plain which we seek to open to oil and gas leasing makes up only 8% of the total refuge and under current development projections, less than 1% of the refuge would actually be impacted by oil development. This is an area smaller than Dulles International Airport (approximately 12,500 acres).**

Those who oppose opening the Coastal Plain to oil leasing contend that ANWR oil reserves would only provide a 200 day supply of oil for our nation. This statement does not reflect reality. Oil does not simply spring from the ground all at one time; it takes years to extract and produce oil from major fields. Under similar theoretical assumptions Prudhoe Bay, the largest domestic oil field, which has been producing for twenty years, would only provide a 600 day supply of oil. The fact is the potential oil reserves of the ANWR Coastal Plain could be the third largest American oil field **ever** and supply needed domestic oil for the next twenty years.

We have enclosed for your information a copy of S.109 as well as a Fortune article entitled "Let's Hunt for Oil," a Wall Street Journal editorial entitled "Oil and Caribou Can Mix," and a Washington Post column entitled "Wildlife or Oil." Each of these articles supports the reasonable exploration and development of ANWR and we believe will foster informed debate on the ANWR issue.

We urge your support of The Arctic Coastal Plain Public Lands Leasing Act of 1991 and would be pleased to add you as a cosponsor of this important legislation. Your staff can contact Alan Steinbeck in my office at 4-3923, or we would be pleased to brief you personally to provide additional information.

Sincerely,

Ted Stevens
United States Senator

Frank H. Murkowski
United States Senator

(3)

Date: 1/14/91

••• STATEMENT •••

SENATOR FRANK H. MURKOWSKI

ARCTIC COASTAL PLAIN PUBLIC LANDS LEASING ACT OF 1991

102ND CONGRESS

Mr. President, I rise today on behalf of the senior Senator from Alaska and myself to introduce the Arctic Coastal Plain Public Lands Leasing Act of 1991. This bill would amend the Minerals Leasing Act of 1920 to authorize the Secretary of the Interior to lease the public lands of the Coastal Plain of the Arctic National Wildlife Refuge (ANWR) on the North Slope of Alaska for oil and gas exploration, development, and production.

At the same time, this bill would require that all oil and gas exploration, development, production, and transportation activities would be conducted in an environmentally sound manner.

I believe the passage of this act is vitally important to the people of the United States.

•••

I ask my colleagues to reflect for a moment and consider the United States as a body, a living human body. Visualize for a moment different sectors of our nation as different parts of the body. Agriculture, fishing, mining, and forestry are the foods the body consumes. Industry and manufacturing turn those foods into powerful muscles. Air, land, and sea transportation are the bones that support the body. Education, creative

FHM/ACS: 1/14/91

agencies, and government are the mind. Mr. President, in America today, oil is the blood.

Oil moves the food that we eat and the clothes that we wear.
Oil powers our mills and factories.
Oil heats our offices and homes.
Oil moves us to our work and to our play.
Can you imagine our nation without oil?
Without oil, we would cease to function.

Let me now state an indisputable and disconcerting fact—United States oil production is in deep decline. Every major oil field in the United States is declining. In my own state of Alaska, the Prudhoe Bay Field, which supplies 24% of our nation's oil production is declining at a rate of 10% per year. Department of Energy projections state that a decline of 10% per year will result in a shut down of the Trans Alaska Pipeline System within ten years.

Because of declining domestic oil production and continued high oil demand, nearly one-half of our nation's oil supply must be imported. This transfusion of foreign oil is excessive and we have become overly dependant on other countries to solve our energy problems. Imported oil accounts for nearly one-half of our annual trade deficit, and imports from Japan accounts for most of the remaining half.

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I do not need to dwell on the dangers of excessive imports of foreign oil and dependence on other countries.

Last week, the fervent chant "No blood for oil!" echoed off the walls of this chamber. I understand the concern behind the sentiment. However, the best way to address the dangers of a war over oil is not through disruptive protest, but through increased domestic oil production and other domestic energy saving measures to reduce our chronic dependence on foreign oil.

The Alaska delegation has advocated opening the ANWR Coastal Plain for more than a decade now—it didn't take the aggression of Saddam Hussein and the threat to the world oil supply for us to recognize that our country is overly dependent on foreign oil.

Congress' failure in the past to act on ANWR exploration leaves the United States in a position of not knowing the extent of the oil reserves of the Coastal Plain. We have soldiers in the Persian Gulf defending foreign oil reserves when we don't even know the extent of our own oil reserves.

Mr. President, don't we have a responsibility to those soldiers and their families to do all that we can to explore and develop our own country's oil potential and reduce our country's dependence in the Persian Gulf?

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Alaska is not alone in the view that this is the time to open the Coastal Plain. There is a growing national awareness that the time is right to allow oil and gas exploration, development, and production in the Coastal Plain.

In 1987 Charles Krauthammer wrote in the Washington Post,

"There may soon be dead Americans in the Persian Gulf. And in the final analysis, when Americans die there, they die for oil. Domestic American oil production is declining. The Prudhoe reserves will be gone within 10 to 20 years. The Arctic National Wildlife Refuge holds the promise of replacing that flow."

On January 9, 1991, Wall Street Journal editorial titled "Oil and Caribou Can Mix" states,

"...opening up a small sliver of Alaska's tundra for oil exploration simply recognizes that the welfare of human beings should also be a factor in environmental policy."

The cover article of the January 28, 1991 issue of Fortune magazine is entitled "It's Time to Drill Alaska's Refuge." The cover article states,

"America needs more domestic energy. The risks of exploring the Arctic wildlife preserve are far fewer—and the potential rewards vastly greater—than most people realize...Eskimo leader Jacob Adams says, 'There's enough refuge.'"

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[Mr. President, I ask unanimous consent to have these three articles entered into the record in their entirety.]

Mr. President, my colleagues may ask, "How much refuge is there?". ANWR is 19 million acres, the size of the State of South Carolina. It already contains 8 million acres of designated wilderness. This is larger than the State of Massachusetts. Over 9.4 million acres of the refuge are in non-wilderness normal refuge management. The Coastal Plain which we seek to open to oil and gas leasing makes up only 8% of the total refuge and under current development projections, less than 1% of the refuge would actually be impacted by oil development. This is an area smaller than Dulles International Airport!

I also agree that the risks of exploring in ANWR are fewer and the potential rewards are greater than people realize. I am concerned that this is true even within the Senate. Therefore, I will soon be speaking every week in morning business on this topic. I will present "The ANWR Series." This will be a series of floor statements about the refuge, its environment, its people, the oil and gas potential, the extent and impact of possible development.

If large reserves of oil are found in the Coastal Plain, it would have a dramatic effect on the economy of the United States. We spent some $50 billion on imported oil last year. Consider the boost to the American economy if we could reduce that by half and invest it in American energy production. It could create thousands of jobs and stimulate many sectors of our economy.

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Those who oppose opening the Coastal Plain to oil leasing contend that ANWR oil reserves would only supply a 200 day supply of oil for our nation. This statement does not reflect the real world situation. Oil doesn't just spring from the ground, it takes years to extract and produce oil from major fields. Under similar theoretical assumptions Prudhoe Bay, the largest domestic oil field, which has been producing for twenty years, would only supply a 600 day supply of oil. The fact is the potential oil reserves of the ANWR Coastal Plain could be the third largest American oil field ever and supply needed domestic oil for the next twenty years.

Exploration, development, and production of the potential oil reserves of the ANWR Coastal Plain alone will not solve our nation's energy problems. We must strive for more energy conservation. We must increase our energy efficiency. We must continue to develop alternative energy sources.

But conservation, efficiency, and alternative sources are not yet sufficient to solve the problems we face today or over the next twenty to thirty years.

These are important actions and worthy goals for the future. They are fundamental steps of a long-term process to prepare for the day when we have no more oil.

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America needs continuing domestic production of oil and gas. The Coastal Plain of ANWR is the single most promising onshore area for the discovery of significant oil reserves in the United States.

Mr. President, the environmentally sound oil and gas leasing of the Coastal Plain of ANWR has the support of the entire Alaska delegation, the Governor and people of Alaska, and the President of the United States.

Hard working families from one end of this country to the other support it.

It is time for the Congress to act.

Mr. President, I am pleased to submit the Arctic Coastal Plain Public Lands Leasing Act of 1991.

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102nd CONGRESS

1st Session

S. 109

To amend the Mineral Lands Leasing Act of 1920 to authorize the Secretary of the Interior to lease, in an expeditious and environmentally sound manner, the public lands within the Coastal Plain of the North Slope of Alaska for oil and gas exploration, development, and production.

IN THE SENATE OF THE UNITED STATES

Mr. Murkowski (for himself and Mr. Stevens) introduces the following bill;

A BILL

To amend the Mineral Lands Leasing Act of 1920 to authorize the Secretary of the Interior to lease, in an expeditious and environmentally sound manner, the public lands within the

1/14/91

Coastal Plain of the North Slope of Alaska for oil and gas exploration, development, and production.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That this Act may be cited as the "Arctic Coastal Plain Public Lands Leasing Act of 1991".

CONGRESSIONAL FINDINGS

Sec. 2. As the basis for the declaration of policy and authorizations set forth in subsequent provisions of this Act, the Congress finds that--

(a) the United States' domestic crude oil production is in substantial decline and dependence upon unreliable foreign sources of oil has grown to an excessive and unacceptable level;

(b) the ability of the United States to compete effectively in an international economy is jeopardized by an excessive dependence on foreign oil;

(c) excessive dependence on foreign oil threatens national security, imposes severe risks to the lives of United States service men and women, and creates unacceptable costs to the national defense;

(d) production from the Prudhoe Bay oil fields on Alaska's North Slope, which now constitutes 24 per centum of the

Nation's total domestic crude oil production, has begun to decline at approximately 10 per centum per year;

(e) Without additional significant crude oil input to the Trans Alaska Pipeline System, pipeline shutdown will occur within ten years and will result in lost oil reserves of at least 1.0 billion barrels of crude oil;

(f) in 1980, Congress directed the Secretary of the Interior to study the oil and gas potential and the fish and wildlife resources of the 1.5 million acres of public land in the Coastal Plain;

(g) reports prepared by the Department of the Interior and other Federal, State, and private groups clearly indicate that the lands within the Coastal Plain constitute the most outstanding onshore oil and gas prospect in the United States with potential reserves in place estimated to be from 4.8 to 29.4 billion barrels of crude oil;

(h) the results of twenty years of operations at Prudhoe Bay provide compelling evidence that carefully planned and executed oil and gas exploration, development, production, and transportation on the public lands is compatible with the North Slope's fish and wildlife resources and the needs of subsistence users of those resources; and

(i) the long, ten or more years, lead time required for development of one or more major new North Slope oil fields requires a prompt decision by Congress on the future use of the public lands within the Coastal Plain.

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DECLARATION OF POLICY

Sec. 3. (a) The Congress declares that it is in the national interest of the United States to:

(1) permit exploration, development, production, and transportation of the oil and gas resources within the public lands of the Coastal Plain, which is—

(A) located to the east of Prudhoe Bay, an area where intensive oil exploration, development and production has been conducted in an environmentally sound manner, and

(B) served by an existing crude oil pipeline and tanker transportation system;

(2) authorize an exploration and development program for the oil and gas resources of the public lands of the Coastal Plain which has the support of the State of Alaska, the North Slope Borough, the Village of Kaktovik, and other local governments in Alaska, and the Inupiat Eskimo people of the North Slope, and which will serve the vital interests of the Nation, including—

(A) national security, by providing dependable new sources of domestic oil production outside of the control and influence of the Organization of Petroleum Exporting Countries or other countries subject to internal or regional political in tabilities;

(B) the interests of American consumers, by expanding domestic sources of reasonably priced gasoline,

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diesel, jet fuel, heating oil, and other crude oil products; and

(C) the national economy, by improving the balance of trade through reductions in foreign oil imports, by generating new economic activity, by creating new jobs, and by reducing the Federal deficit through increased tax, competitive bonus bid and royalty revenues.

(b) The Congress hereby declares that it is the policy of the United States that--

(1) exploration, development, production, and transportation of the oil and gas resources of the public lands within the Coastal Plain, the Nation's foremost prospect for the discovery of new giant and super-giant oil fields, should be authorized and should proceed with dispatch; and

(2) such activities should be conducted in a manner consistent with the protection of the fish and wildlife resources and environment and the needs of the area's subsistence users which utilize the public lands of the Coastal Plain.

COASTAL PLAIN

Sec. 4. The Mineral Lands Leasing Act of 1920, 41 Stat. 437, as amended, is further amended by adding a new subchapter X at the end of chapter 3A--Leases and Prospecting Permits (30 U.S.C. 181) to read as follows:

"SUBCHAPTER X--COASTAL PLAIN LEASING

"AUTHORIZATION FOR LEASING OF THE COASTAL PLAIN

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(15)

"Sec. 288. (a)(1) The Congress hereby authorizes and directs the Secretary of the Interior, through whatever agency of the Department he deems appropriate, to take such actions as are necessary to establish and promptly implement a competitive oil and gas leasing program that will assure the expeditious exploration, development, production, and transportation of the oil and gas resources of the public lands of the Coastal Plain.

"(2) This authorization includes, incorporates, and supplements the provisions of the Mineral Leasing Act of 1920 and other existing Federal laws on oil and gas leasing, exploration, development, and transportation on public lands, and grants such new legislative authority as is necessary to enable the Secretary to authorize and permit all such activities as are required to achieve the expeditious exploration, development, production, and transportation of the oil and gas resources within the public lands of the Coastal Plain. These authorizations include all activities associated with and required in the exploration, development, production, and transportation of the oil and gas resources of the public lands within the Coastal Plain, and include, but are not limited to, the authorization and granting of rights-of-way, permits, leases, use permits and such other authorizations as are necessary to facilitate exploration, development, production and transportation of oil and gas resources on the public lands within the Coastal Plain.

"(3) The Coastal Plain leasing program required by subsection (a) shall include the following elements:

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"(A) The first lease sale shall be conducted within twelve months of the date of enactment of this Act.

"(B) The Secretary is authorized to grant to the highest responsible qualified bidder or bidders by competitive bidding, under regulations promulgated in advance, oil and gas leases on unleased public lands within the Coastal Plain. Such regulations may provide for the deposit of cash bids in an interest-bearing account until the Secretary announces his decision on whether to accept the bids, with the interest earned thereon to be paid to the Treasury as to bids that are accepted and to the unsuccessful bidders as to bids that are rejected. The bidding shall be conducted as determined by the Secretary pursuant to bidding systems included in section 205(A)(1) (A) through (H) of the Outer Continental Shelf Lands Act, as amended, of 1978 (43 U.S.C. 1331).

"(C) An oil and gas lease issued pursuant to this Act for public lands within the Coastal Plain shall be for a lease tract consisting of a compact area and not exceeding more than two thousand five hundred and sixty acres, as the Secretary may in his discretion determine.

"(D) Each lease shall be issued for an initial period of up to ten years and shall be extended for so long thereafter as oil and gas is produced in paying quantities from the lease or unit area to which the lease is committed or as drilling or reworking operations as approved by the Secretary are conducted thereon.

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"(E) In the conduct of competitive lease sales under the authority provided by this Act, the Secretary shall seek to maximize the revenue paid to the Treasury, but in doing so shall make reasonable efforts to conduct lease sales in a manner which will enable independent oil and gas producers, acting alone or in combination with other independent producers, to have a competitive opportunity to successfully bid on leases granted under the authority of this Act.

"(4) This Act shall be considered the primary land management authorization for all activities associated with exploration, development, and production of oil and gas on public lands within the Coastal Plain. No land management review shall be required except as specifically authorized by this Act.

"(5) Activities undertaken pursuant to this section shall include or provide for such conditions, restrictions, and prohibitions as the Secretary deems necessary or appropriate to mitigate reasonably foreseeable significant adverse effects on fish and wildlife and their habitat pursuant to subsection 288(b) of this Act.

"(6) The Secretary is authorized to permit, subject to reasonable rules and regulations, on public lands within the Coastal Plain all activities described in subsection 288(a) which are conducted by the owners of private lands within and/or adjacent to the public lands within the Coastal Plain.

"(7) All receipts from sales, rentals, bonuses, and royalties on leases issued pursuant to this Act shall be deposited into the Treasury and allocated in accordance with applicable law.

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"OTHER LEASING PROVISIONS AND CONSIDERATIONS

"(b)(1) Prior to conducting a competitive oil and gas lease sale pursuant to section 288(a), the Secretary shall promulgate such stipulations, rules, and regulations as he determines are necessary and appropriate to ensure that oil and gas exploration, development, production, and transportation activities undertaken in the public lands within the Coastal Plain are conducted in a manner to achieve the reasonable protection of the fish and wildlife resources, environment, and subsistence users which utilize the public lands within the Coastal Plain.

"(2) The "Coastal Plain Resource Assessment" (April 1987) prepared by the Secretary pursuant to section 1002(h) of the Alaska National Interest Lands Conservation Act of 1980 (Public Law 96-487) and the legislative environmental impact statement incorporated into the Coastal Plain Resource Assessment pursuant to the National Environmental Policy Act of 1969 (Public Law 91-190) shall satisfy all legal requirements under those laws with respect to any action taken to develop rules and regulations and procedures for a competitive oil and gas leasing program or to conduct particular lease sales on the public lands within the Coastal Plain. No further studies, reports, or assessments shall be required before the Secretary or other appropriate Federal officials may take such action.

"(3) Nothing in this Act shall be construed to affect the applicability of the National Environmental Protection Act of 1969 to phases of oil and gas development, production, and transportation conducted subsequent to initial leasing and exploration. Consistent

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(19)

with the general authority of the Secretary as described in subsection 288(a) of this Act, all Federal and State environmental laws of general applicability to oil and gas operations and permitting shall continue to be applied.

"IMPACT AID

"(c) The Secretary, after consulting with the Governor of Alaska and the North Slope Borough Assembly and Mayor, is authorized and directed to provide such impact aid, planning advice, and other appropriate assistance to communities on the North Slope and elsewhere in Alaska as is required to ensure the availability of public services needed to accommodate oil and gas exploration, development, production, and transportation on the public land within the Coastal Plain.

"DEFINITIONS

"(e) For purposes of this Section--

"(1) The term 'Secretary' means the Secretary of the Interior; and

"(2) The term 'Coastal Plain' means those public lands identified in section 1002(b)(1) of the Alaska National Interest Lands Conservation Act of 1980 (Public Law 96-487).".

NEWS

U.S. SENATOR
FRANK MURKOWSKI
OF ALASKA

For Immediate Release
February 21, 1991

Contact: Bill Woolf
(202) 224-3619

Energy Secretary: "ANWR Most Important Element" Of Strategy

WASHINGTON, D.C. -- Energy Secretary Admiral James Watkins told Senator Frank Murkowski (R-Alaska) Thursday that opening Alaska's Arctic National Wildlife Refuge (ANWR) to oil and gas leasing is "the most important element" in funding alternative fuel and other conservation-oriented programs in the national energy strategy announced Wednesday by President Bush.

Watkins' comments came in testimony before the Senate Energy Committee while responding to questions from Murkowski, who is the ranking Republican member of the Committee's Public Lands subcommittee.

Murkowski also questioned Watkins on how the federal government plans to deal with revenue-sharing from ANWR development. Watkins indicated the document released Wednesday assumes there will be no revenue-sharing with Alaska, but, he said, "I can tell you also that I believe this is the area where we will have to work with you and the Congress."

Murkowski, along with other Alaskan members of Congress and Governor Wally Hickel, has strenuously opposed changing the current revenue-sharing law, which would give the State of Alaska 90 percent of all revenues. A bill introduced by senators Bennett Johnston (D-Louisiana) and Malcolm Wallop (R-Wyoming) would reduce the Alaska share to 50 percent, and the federal Office of Management and Budget has argued that the federal government should keep 100 percent of the money. Watkins appeared to be hinting that the Administration is still considering some accomodation.

(more)

ANWR Most Important
2-2-2

February 21, 1991

Watkins said he expected the legislative language his Department plans to release soon will be consistent with the strategy document, then told Murkowski: "This legislative package does not mean the end of the world. We want to reach a harmonious agreement."

In a clear reference to a meeting between Murkowski and President George Bush on Tuesday of this week, Watkins continued, "I cannot predict how influential you've been with this legislation. If you are not satisfied with the final package, we will have a lot of work to do."

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NEWS

DON YOUNG CONGRESSMAN FOR ALL ALASKA

For Immediate Release

February 19, 1991
Contact: Steve Hansen (202) 225-5765
Press Secretary

Congressman Young Receives White House Briefing On National Energy Policy

Washington, D.C. - Alaska Congressman Don Young today met with President George Bush and members of the Administration for a White House briefing on the new national energy policy.

Attending the meeting were Bush, White House Chief-of-Staff John Sununu, Secretary of the Interior Manuel Lujan, Secretary of Energy James Watkins, Director of the Office of Management and Budget Richard Darman, Senators Frank Murkowski (R-Alaska), Malcolm Wallop (R-Wyoming), Bennett Johnston (D-Louisiana) and Young (R-Alaska).

Senator Ted Stevens (R-Alaska), who is traveling in the Persian Gulf, asked Young to relay his concerns directly to the President.

"Overall, it was a good meeting and I think the President has come up with a good proposal," Young said after the 45-minute meeting. "I've been calling for a national energy plan for many years and I think the Bush Administration has a good start toward striking a balance between resource development and energy conservation programs."

However, Young expressed concern about a revenue-sharing provision in the plan which would give the federal government a 100 percent share of revenues from oil development in the Arctic National Wildlife Refuge (ANWR).

"I expressed my strong opposition to the ANWR revenue-sharing provisions and the reasons why I want Alaska to receive a 90-10 revenue split," Young said. "Alaskans have known about the potential problems with the

revenue split for some time. This is nothing new as everyone has seen ANWR as a major revenue producer and we know we must fight hard to protect our stake.

"Despite our differences at this time, I'm confident that President Bush will work with Alaskans to see that we're treated fairly."

Young has introduced legislation in the U.S. House of Representatives calling for a 90-10 revenue split for Alaska from ANWR development. Young, the Ranking Republican on the House Interior Committee, has more than 100 co-sponsors of his bill.

"I'm pleased that this Administration has come forward with a national energy plan and a proposal to open ANWR to oil and gas development," Young said. "And even though we're far apart in terms of how the ANWR revenues should be allocated, I strongly feel that we should start moving forward with legislation to open ANWR and take care of the details as we move along.

"The Administration's position is that the nation needs the revenues to fight the deficit problem. I explained that we have a statehood compact with the federal government and we want a 90-10 split for Alaska."

Young also expressed his concerns about the national wetland policy, which he said must be created in a fashion that recognizes the unique needs and circumstances of Alaska.

(Alaska Congressman Don Young is the Ranking Republican on the U.S. House Committee on Interior Affairs and a senior member of the Merchant Marine and Fisheries and Post Office and Civil Service committees. He is now serving his 10th term as Alaska's lone member in the U.S. House of Representatives.)

# # #

MEDIA MEMO

OFFICE OF SENATOR FRANK MURKOWSKI
709 Hart Senate Office Building
Washington, D.C. 20510

CONTACT: Bill Woolf
(202) 224-9311

February 19, 1991

Murkowski and Bush meet on ANWR

Senator Frank Murkowski and Congressman Don Young met with President Bush and his top energy advisors for approximately 1 1/2 hours Tuesday afternoon, to discuss the Administration's proposed national energy strategy. The Administration plan, to be revealed later this week, calls for leasing the coastal plain of the Arctic National Widlife Refuge (ANWR), but recommends that the Federal government receive 100% of the revenues from the leasing fees and from oil and gas royalties if petroleum is found there. Murkowski said he and Young took the opportunity to brief the President personally on why Alaska feels that the Administration revenue plan violates the Alaska Statehood Act.

Murkowski issued the following comment:

"I'm very disappointed in the Administration proposal. It's yet another example of an old story, where the Office of Management and Budget counts 100% of the anticipated ANWR revenues when it prepares budget documents, then uses those figures to drive policy.

"I spent about an hour and half with the President, and I think he now has a much clearer understanding of why Alaska has problems with OMB'S approach. It's just not acceptable. Alaska has a compact with the Federal government that calls for 90% of the revenues to go to Alaska, and any change to that is a violation of our contract. The President was receptive, and indicated he would try to find a way to achieve something more acceptable to Alaskans.

"ANWR itself remains the cornerstone of a realistic energy policy for this country, and anyone interested in a truly comprehensive policy knows it."

"We have to remember there is still a long way to go before any bill becomes final, and the Senate will be examining several proposals including my own bill calling for 90 % of the revenues to go to the State. My position is unchanged. Alaska should continue pushing for all that it is entitled to, it should be willing to bargain hard if that is needed, and it should be prepared to take the issue to court if necessary."

Those attending the meeting in the Oval Office included the President, Senator Murkowski, Congressman Young, White House chief of staff John Sununu, Interior Secretary Manuel Lujan, Energy Secretary James Watkins, OMB Director Richard Darman, Senate Energy Committee Chairman Bennett Johnston (D-LA), and the ranking minority member of the Senate Energy Committee, Senator Malcolm Wallop (R-WY).

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MEDIA MEMO

OFFICE OF SENATOR FRANK MURKOWSKI
709 Hart Senate Office Building
Washington, D.C. 20510

CONTACT: Bill Woolf
(202) 224-9311

February 5, 1991

MURKOWSKI SAYS ENERGY BILL "BLACKMAILS" ALASKA

Senator Frank Murkowski of Alaska said today that oil leasing provisions for the Arctic National Wildlife Refuge (ANWR) backed by the chairman and ranking member of the Senate Energy and Natural Resources Committee "blackmail" Alaska. The provisions are in a comprehensive energy-policy bill introduced today by senators Bennett Johnston (D-Louisiana) and Malcolm Wallop (R-Wyoming). Although Murkowski noted the bill has many good points, he vowed to fight a clause that would drop ANWR leasing if the State of Alaska sued the government for a larger share of ANWR revenues. Current law is for 90% to go to Alaska, but the new bill would create a 50-50 split.

Murkowski comments...

"The Johnston-Wallop measure is a step toward a badly needed comprehensive energy policy, and environmentally sound exploration and development of ANWR is its cornerstone.

"ANWR is the key to initiatives that environmentalists have demanded for years; things like alternative energy and new conservation measures. But the environmental community needs to understand that stripping ANWR out of this bill would make the entire package collapse. If that occurs, they will bear the responsibility for killing the national energy strategy.

"ANWR must be a part of the package, but I cannot support the present language on ANWR. It violates Alaska's compact with the federal government by calling for a 50-50 revenue split instead of the 90-10 division now in effect, but even worse, it has a blackmail clause that would totally strike the ANWR authorization if Alaska seeks a judicial review of the revenue split.

"It's an unconscionable attack on Alaska's rights as a state. It is an affront to all Alaskans and in my opinion it is probably unconstitutional.

"It's like Alice's adventures in Wonderland, where the Red Queen said, 'Sentence first--verdict afterward.' This is saying, 'If you win, you lose!'

"I remain dedicated to seeing ANWR become a part of the nation's strategy, but I will vigorously fight against the blackmail clause and for Alaska to receive its full share of ANWR revenues."

3 of 3

Energy Bill "Blackmails" Alaska 2-2-2
February 5, 1991

Background...

- Leasing ANWR could generate up to $3.3 billion over the next 5 years, according to the Office of Management and Budget.
- Government believes ANWR could be the United States' third-largest onshore oil field ever. Development could yield up to 1.5 million barrels of oil per day for 20-30 years. The net overall national economic benefit could reach almost $80 billion, with a net benefit to the Alaska state economy of $7- to $10 billion.
- Dept. of Energy estimates there is a 46% chance of finding significant oil and gas deposits.
- Oil from ANWR would both reduce dependence on foreign oil and the outstanding trade deficit. Currently, the U.S. imports approximately 50% of its oil needs. At a 1989 cost of $45 billion, imported oil accounts for 40% of the total U.S. trade deficit.
- Production from all current U.S. fields is dropping, and now stands at 7.3 million barrels per day, the lowest in 26 years. Alaska's Prudhoe Bay field currently provides 24% of the total U.S. production, but is declining at 10% per year.
- ANWR is 19 million acres overall, of which 8 million acres, or 42%, is designated wilderness. Slightly over 1.5 million non-wilderness acres would be subject to exploration. The total expected "footprint" of any developed oil fields would be only 12,500 acres, or just .07% of the total acreage in the refuge.

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Stevens may fight ANWR bill

By DAVID WHITNEY
Daily News reporter

FEB - 5 1991

WASHINGTON — Sen. Ted Stevens on Monday said he will oppose federal legislation to allow oil drilling in the Arctic National Wildlife Refuge if the state and federal governments cannot settle a multimillion-dollar argument over how to share revenues from the refuge.

"I am not in a rush to get legislation passed at any price," Stevens said. "I see no reason to be part of a national energy rush that doesn't care about Alaska."

Under current law, the state would get 90 percent of revenues from the refuge and the federal government 10 percent, but Congress and the Bush administration want the state share reduced to 50 percent.

Refuge development bills approved by House and Senate committees in earlier congressional sessions called for a 50-50 split and contained "blackmail" provisions that, if the state challenged the distribution in court and won, would automatically withdraw the authorization to drill the refuge's coastal plain. Merely filing a suit would halt all leasing activity in the refuge until a final court decision was reached, presumably by the U.S. Supreme Court.

Stevens' concern is that if Congress has to reconsider a leasing bill after the state won a lawsuit on the revenue split, new features would be added to a successor bill penalizing the state.

"I don't intend to support an ANWR bill if it is going to be reviewed by the courts," Stevens said Monday.

The difference between a 90

Please see Back Page, STEVENS

STEVENS: ANWR bill not certain

Continued from Page A-1

percent share and a 50 percent share is a fortune.

President Bush's new budget forecasts refuge lease-sale revenues of $1.9 billion in 1993 and $1.2 billion in 1995. If Alaska were to get 90 percent of the revenue as the statehood act specifies, the two sales would deliver about $2.8 billion to Juneau. At 50 percent, the state's share would be only about $1.5 billion.

Stevens' comments Monday were the first in which he said he would act to kill a development bill unless the state and the federal government reached an understanding on how the money would be divided. Because of Senate rules allowing a single senator to put a hold on a bill headed for the floor, Stevens' threat is one he may be able to carry out.

The hard line and willingness to wait represent a change in position for Stevens. He considered an immediate push for Senate action on a refuge development bill after Iraq's Aug. 2 invasion of Kuwait because he felt there would be "gas lines by Christmas." But he didn't try for a bill, because informal polling of Senate offices showed he would probably lose.

But Monday, Stevens said he is willing to hold out for the best deal the state can cut with the federal government — and that will take some time.

"I think we are in for a long battle," said Stevens, who was re-elected in November. "I am pleased I have six more years to contemplate it."

By claiming all the refuge lease money for itself, the Bush budget made clear that the administration is in no mood to turn over more than a billion dollars in leasing income to Alaska. And, after a meeting Monday morning between Alaska Gov. Walter Hickel and Interior Secretary Manuel Lujan, the state and federal governments appeared no closer to agreement on the split.

Lujan, at a press conference releasing the budget, conceded the administration won't get 100 percent of the money. But he said the administration would settle for half.

Hickel, who has maintained that Alaska is entitled to 90 percent, said he is willing to accept less money if the state gets federal land or something else of equal value in trade. But he said he wouldn't even go along with that unless it were put to a vote in Alaska and the state gave its consent to less than 90 percent.

"Congress cannot break the statehood compact without the people agreeing," Hickel said.

Lujan called Hickel's offer to trade land or other values for refuge revenues "a fairly new concept to the department."

"We have an open mind," Lujan said after his morning meeting with Hickel. But later in the day he said again that the Interior Department wanted a 50-50 split.

Stevens said he has told Alaska Rep. Don Young and Sen. Frank Murkowski that he will oppose refuge development legislation unacceptable to the state even if it comes out of committees on which they sit.

In prior congressional sessions, Young and Murkowski lost the revenue-sharing fight before the House Merchant Marine and Fisheries Committee and the Senate Energy and Natural Resources Committee but went on to vote for the committee bills anyway.

"My senators each have their own battle plan," Young said Monday night. "We're all working for the same thing — 90-10. We'll see what happens."

Murkowski couldn't be reached for comment on Stevens' position.

NEWS

DON YOUNG CONGRESSMAN FOR ALL ALASKA

For Immediate Release

January 30, 1991
Contact: Steve Hansen (202) 225-5765
Press Secretary

Congressman Young Introduces Legislation To Open ANWR To Oil And Gas Development

Washington, D.C. - Alaska Congressman Don Young today introduced legislation to open the Arctic National Wildlife Refuge (ANWR) for environmentally sound oil and gas leasing, exploration and development.

Young said that his legislation, entitled the "Arctic Coastal Plain Domestic Energy Leasing Act of 1991", is designed to "create thousands of new jobs and play a key role in the stabilization of our national energy security."

"This legislation will accomplish what an overwhelming majority of Alaskans have wanted for the past several years - authorization for the Secretary of Interior to expeditiously lease a small portion of ANWR for the environmentally-sound leasing, exploration and development of oil and gas," said Young, the Ranking Republican on the House Interior Committee.

"As Congress and the Bush Administration moves to reduce America's growing dependence on foreign oil supplies, we must seek increased domestic production. Without a doubt, the most promising oil and gas province in North America lies in the ANWR area."

Young said that he has more than 100 co-sponsors of his legislation and "I fully expect to get more in the coming weeks."

Young noted that in the 100th Congress, ANWR legislation he supported was approved by a key subcommittee and the full Merchant Marine and Fisheries before being delayed in the Interior Committee. Young re-introduced an ANWR

bill in the 101st Congress, but the Prince William Sound oil spill put the legislation on hold.

"Now that we've approved a comprehensive national oil spill bill that addresses many of the problems of oil transportation, the time is right to move forward with an ANWR development bill," Young said.

"If we take a prudent and deliberate course now, we will be able to undertake oil and gas development in ANWR in the most environmentally-sound manner possible.

"Alaskans have proven that the Arctic area of our nation can be developed in conjunction with environmental protection. An overwhelming number of Alaskans support opening ANWR, as does the Hickel Administration, the Alaska Congressional Delegation and the Bush Administration. Now is the time to move forward - both for Alaska's economic future and America's energy security."

(Alaska Congressman Don Young is the Ranking Republican on the U.S. House Committee on Interior Affairs and a senior member of the Merchant Marine and Fisheries Committee. He is now serving his 10th term as Alaska's lone member in the U.S. House of Representatives.)

# # #

MEDIA MEMO

OFFICE OF SENATOR FRANK MURKOWSKI
709 Hart Senate Office Building
Washington, D.C. 20510

CONTACT: Bill Woolf
(202) 224-9311

January 14, 1991

MURKOWSKI INTRODUCES ANWR BILL

U.S. Senator Frank Murkowski today introduced a bill to authorize environmentally sound oil and gas leasing in the coastal plain of the Arctic National Wildlife Refuge (ANWR) in Alaska. Under the Murkowski bill, existing law requiring a 90%-10% split of revenues between the State of Alaska and the Federal government would be maintained. The first lease sale would have to be offered by the Department of the Interior within one year after the bill passed. Ten-year leases would be offered on tracts ranging in size up to 2,560 acres. The bill also directs the Department to ensure that a "competitive opportunity" is available to smaller, independent oil and gas producers. Senator Ted Stevens of Alaska cosponsored the bill.

Murkowski comments...

"The passage of this bill is vitally important to the people of the United States. If the United States were a living organism, oil would be its lifeblood. Nearly half of our oil supply now comes from transfusions from other countries.

"The Alaska delegation has advocated opening the ANWR coastal plain for more than a decade... it didn't take the aggression of Saddam Hussein to know that our country is overly dependent on foreign oil.

"Congress' past failure to act on ANWR exploration leaves the United States in a position of having soldiers in the Persian Gulf defending foreign oil reserves when we don't even know the extent of our own reserves.

"ANWR alone will not solve our nation's energy problems; we must strive for energy conservation, we must increase energy efficiency, and we must develop alternative energy sources. However, conservation, efficiency and alternatives are not enough to solve the problems we face today or over the next 20 to 30 years.

"The risks of exploring ANWR are fewer and the potential rewards greater than people realize. To fully express these facts, I intend to begin a weekly series of statements about the refuge, its environment, its people, its oil and gas potential, and the extent and impact of possible development.

"I believe we have a responsibility – to ourselves, to our children, and to those who now stand ready in the Persian Gulf – to put aside both preservationist and pro-development rhetoric, and make a balanced, realistic decision based on the facts. I'm confident the facts support the exploration of this small, non-wilderness portion of the Arctic Wildlife Refuge."

-more-

Senator Stevens comments...

"Today, we import more than one-half of our energy needs, with a large portion of that supply coming from the volatile Middle East. That leaves the U.S. precariously tied to the fate of that region.

"Unless we take dramatic steps now to reverse our dependence on the Middle East and other outside powers, we are inviting an economic Pearl Harbor. There is only one answer – ANWR.

"Interior Department estimates project an oil reserve of three to nine billion barrels in ANWR's coastal plain. That's enough oil to replace every drop of oil we imported from Kuwait and Iraq for as long as 27 years."

Background...

Bids for oil and gas leases in ANWR could generate up to $3.3 billion over the next 5 years, according to the Office of Management and Budget.

Interior Department experts believe ANWR could turn out to be the United States' third-largest onshore oil field ever. They estimate oil development in ANWR could yield up to 1.5 million barrels of oil per day for 20-30 years. The net overall national economic benefit could reach almost $80 billion, with a net benefit to the Alaska state economy of $7- to $10 billion.

If significant oil and gas deposits are found in ANWR, the U.S. could both reduce its dependence on foreign oil and its outstanding trade deficit. Currently, the U.S. imports approximately 50% of its oil needs. At a 1989 cost of $45 billion, imported oil accounts for 40% of the total U.S. trade deficit. Meanwhile, production from all current U.S. fields is dropping, and now stands at 7.3 million barrels per day, the lowest in 26 years. Alaska's Prudhoe Bay field currently provides 24% of the total U.S. production, but is declining at 10% per year.

ANWR encompasses a total of 19 million acres, of which 8 million acres, or 42%, is designated wilderness. Slightly over 1.5 million non-wilderness acres would be subject to exploration. The total expected "footprint" of any developed oil fields would be only 12,500 acres, or just .07% of the total acreage in the refuge.

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February 20, 1991

To: Mark Handley, via Representative Gruenberg, House Majority Leader

Fr: Dan Kish, Minority Staff Director, House Interior & Insular Affairs Comm.
U.S. Rep. Don Young

Re: Oil & Gas Committee Meeting

I have reviewed your faxed copy of the proposed resolution HJR #21, concerning the disposition of revenue from an ANWR leasing scenario.

If I might suggest, a couple of points. In addition to conveying the resolution to Chairman Udall, I would suggest it also be sent to Vice Chairman George Miller. In Mr. Udall's absence due to rehabilitation from a serious fall earlier this year, Mr. Miller has been granted all the powers and duties of the Chairman pending his return.

Furthermore, I would suggest that any such resolution address the so called "blackmail" clause", in which under expedited judicial review, if the state was successful in pursuing in court its claim under the statehood act to the 90-10 split, that the authorization for leasing is revoked. This is a particularly heinous example of congressional meddling, for two reasons. First of all, it reduces the entire issue of ANWR to a financial one, ignoring the all too stark implications of a growing U.S. dependence on foreign energy upon our security and our balance of trade. This is clearly primarily a federal interest, although the state is (and should be) interested in this as well. Furthermore, it significantly affects the equal footing of the state and federal governments in that if the state pursues its rights in court successfully, it voids the statute authorizing leasing.

In essence, we have rights, but if we pursue them and succeed in the courts in establishing them, we get the shaft, and the national interest implications of ANWR are denied the U.S. public.

Suggested language: page 2, line 11, continued.
"And furthermore, the Alaska State Legislature considers current efforts to diminish the legal rights inherent to the State of Alaska in the U.S. Congressional debate over the authorization of leasing of ANWR to be a serious affront to federal-state relations and by extension, to diminish the rights of all States of the Union."

Something along those lines, and then ask that it be sent to all the state legislatures nationwide – maybe the home folks can help us with the effort, especially if they view this development as precedential to their own states' rights.

Good luck.

ANCHORAGE TIMES, FEBRUARY 13, 1991

Royalty hikes could lower bids, Stevens says

By JAY CROFT
TIMES WRITER

Any gain the state might see from raising oil companies' royalties to the state from the Arctic National Wildlife Refuge might be canceled by resulting lower exploration bids, U.S. Sen. Ted Stevens, R-Alaska, cautioned Tuesday.

Gov. Walter J. Hickel and U.S. Rep. Don Young said Monday that Alaska may be willing to share ANWR revenues evenly with the federal government if oil companies pay more in royalties.

That idea's success would depend on oil companies' willingness to increase their exploration bids, Stevens said in Anchorage.

"The amount of money the industry will pay for the right to look is fairly high," Stevens said. "But if the industry has to pay a higher royalty, they'll be willing to pay less for exploration."

Sen. Frank Murkowski, the third member of Alaska's all-Republican congressional delegation, could not be reached Tuesday for his reaction to the

See Royalties, page B8

Royalties

Continued from page B1

royalty proposal.

Oil industry representatives preferred not to comment on the governor's proposals for changing the royalty requirements.

"The governor obviously is trying to do the best he can for Alaska, but at this point we cannot comment," said Tom Cook, Chevron USA Inc.'s exploration representative for Alaska.

"As I understand it, the (ANWR) royalty would be increased by some percentage," said Jim Palmer, a spokesman for BP Exploration (Alaska) Inc. "By doing so, this would change the economics of the bidding process. It's a fact of life that this has to be factored into the equation."

"We've seen no numbers; so we can't comment," said Dave Parrish, a spokesman for Exxon Co. USA.

Stevens, Young, Hickel and Murkowski met recently in Washington, D.C., to discuss ANWR development.

"We're trying to work on the same wavelength," Stevens said, adding that Hickel and Young's newest idea was one of many to be considered.

Hickel and the congressional members want Alaska to receive 90 percent of the royalties from federal leases and oil development, with the federal government getting 10 percent. They say Alaska is guaranteed the advantage in its statehood compact.

But Stevens said last week neither Congress nor President Bush supports that. And the chairman of the Senate Energy Committee, Sen. Bennett Johnston, D-La., has introduced a bill that would open ANWR with the state and federal government evenly splitting revenues.

Congress is divided on opening ANWR at all because it could prove politically unpopular with constituents who are fearful of harming the environment, Stevens said. And no one in either the Senate or the House supports Alaska's effort to get the higher share.

The federal government needs the extra money because the Energy Department's budget is in trouble, Stevens said.

"The only place where there's a massive increase in revenue stream is ANWR," Stevens said after a press conference. "Therefore, reluctantly, they're going to give us the votes."

The ANWR measure is now part of an overall Senate energy bill, which few will oppose and is on the "fast track" toward a vote, Stevens said.

Americans are realizing they need a strong national energy policy, he said.

Environmentalists fear ANWR exploration would disturb caribou and the arctic shoreline.

A vote on the energy bill could come by the end of summer, depending on the war's progress, Stevens said.

Times writer Bert Tarrant contributed to this report.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

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March 2, 1987

The Honorable Sam Cotten
Co-Chairman
Resources Committee
P.O. Box V
Juneau, AK 99811

Re: 90-10 Revenue distribution
for federal lands

Dear Representative Cotten:

In a February 26, 1987 memorandum, you asked a number of questions regarding federal-state sharing of oil and gas revenues in the event of oil and gas leasing in the Arctic National Wildlife Refuge ("ANWR"). You asked:

> 1) If the Congress were to repeal the provisions of ANILCA closing the ANWR coastal plain to oil and gas exploration and drilling, without amending the Mineral Leasing Act of 1920 or the Statehood Act, would the State be entitled to 90 percent of the federal oil and gas revenues derived from Refuge lands? Are there foreseeable circumstances under which federal lands in the coastal plain could be considered other than "public land" subject to the Mineral Leasing Act and the 90-10 federal-state revenue sharing arrangement?
>
> 2) Was PET 4 (the former Naval Petroleum Reserve) "public land" subject to the same 90-10 revenue sharing arrangement as other public land in Alaska? When the NPRA Act passed in 1976, did it reduce or expand the state's revenue entitlement from the affected acreage?

Before answering your specific questions, it may be helpful briefly to review the background of the 90-10 revenue sharing arrangement which currently exists. The distribution of oil and gas revenues from federal lands depends on whether they are "acquired lands" or "public domain lands." In general, "acquired lands are those granted or sold to the United States by a State or citizen and public domain lands were usually never in state or private ownership." Wallis v. Pan American Pet. Corp., 384 U.S. 63, 65 n.2 (1966).

Oil and gas leasing on acquired lands is governed by the Mineral Leasing Act for acquired lands, 30 U.S.C. §§ 351 et seq. Under that Act, revenues from oil and gas leases on acquired lands are to be "distributed in the same manner as prescribed for other receipts from the lands affected by the lease." 30 U.S.C. § 355. As applied to wildlife refuges created from acquired lands, this provision requires that oil and gas revenues be distributed according to the formula contained in the Wildlife Refuge Revenue Sharing Act, 16 U.S.C. § 715s, which provides that 75 percent of the revenues go to the federal government and 25 percent of the revenues go to the county in which the wildlife refuge is located. The rationale for this distribution formula is that the lands were on local tax roles while in private ownership, and giving some of the receipts from the lands to the local county compensates the county for the loss of those property tax revenues.

Oil and gas leasing on public domain lands is governed by the Mineral Leasing Act of 1920, 30 U.S.C. §§ 181 et seq. Under that Act, 90 percent of the revenues are dedicated to the benefit of the states */ and 10 percent are paid into the United States Treasury.

This 90-10 revenue distribution formula applies to both vacant, unappropriated and unreserved public domain

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*/ For lower 48 states, 50 percent of federal oil and gas revenues from public domain lands are paid directly to the states and 40 percent is deposited into the Reclamation Fund created by the Reclamation Act of 1902. Because Alaska is not covered by the Reclamation Act and receive no benefits from the Reclamation Fund, we receive the full 90 percent of such revenues from federal public domain lands in Alaska.

lands and (with limited exceptions not applicable here) public domain lands withdrawn and reserved for specific purposes, including withdrawals and reservations for wildlife refuges. I represented Alaska in Watt v. Alaska, 451 U.S. 259 (1981), in the United States Supreme Court. The precise issue in that case was whether the 90-10 revenue distribution formula applied to the withdrawn and reserved lands of the Kenai National Moose Range. The Supreme Court, over the United States' objection, held that it did.

Like the lands in the Moose Range, the lands in ANWR were withdrawn and reserved from the public domain for refuge purposes; they are not acquired lands. There is no substantive distinction between the Moose Range lands and the lands in ANWR, and there is no substantive legal basis for concluding that federal oil and gas leasing revenues from ANWR would be distributed differently than those from the Moose Range under existing law.

The revenue distribution formula in the Mineral Leasing Act represented an historic trade-off in the history of public land law. In enacting it, Congress terminated its historic policy of disposing of the public lands. Instead, it determined that the federal government should retain those public lands remaining in the states, but should use most of the mineral revenues from those lands for the state's benefit. See generally, Fairfax and Yale, The Financial Interest of Western States in Non-Tax Revenues From the Federal Public Lands (manuscript copy published by the Western Legislative Conference, Council of State Governments, and the Lincoln Institute of Land Policy in 1985). This historic compromise has governed distribution of mineral revenues from federal lands, particularly in the western states, since 1920, and we can see no foreseeable circumstances under which that fundamental compromise would be changed at this time.

Accordingly, the answers to your first set of questions are: (1) The state would be entitled to 90 percent of the federal oil and gas revenues derived from ANWR lands if Congress repealed the closure of the ANWR coastal plain in ANILCA without amending the Mineral Leasing Act of 1920 or the Statehood Act; and (2) we see no foreseeable circumstances under which the ANWR coastal plain would not be subject to the Mineral Leasing Act.

As noted briefly above, there are a few limited exceptions in the Mineral Leasing Act. One of these is for

"lands within the naval petroleum and oil-shale reserves." 30 U.S.C. § 181. The revenue distribution provisions of the Mineral Leasing Act provide that all monies which may accrue to the United States "from lands within the naval petroleum reserves shall be deposited in the Treasury as 'miscellaneous receipts' ..." 33 U.S.C. § 191.

In other words, at the time of the historic compromise when the United States decided to retain large tracts of lands and share the benefits of mineral development with the states in which those lands were located, it expressly exempted from that sharing any benefits deriving from the naval petroleum and oil-shale reserves. Former Naval Petroleum Reserve No. 4 ("PET 4"), now known as the National Petroleum Reserve in Alaska ("NPRA"), accordingly has never been subject to the Mineral Leasing Act of 1920 and the 90-10 revenue distribution formula had no application to any revenues from NPRA. In section 11 of the Alaska Statehood Act, Congress retained the exclusive legislative authority over PET 4 as long as it remained a naval reserve, so its status as far as federal-state relations has always been somewhat different than other federal lands. When Congress finally opened NPRA to competitive leasing in 1980, it did so independently of the Mineral Leasing Act. It was that separate congressional action in 1980 -- not the Mineral Leasing Act -- which resulted in the state receiving 50 percent of revenues from oil and gas leasing in NPRA. See 42 U.S.C. § 6508. Absent that congressional action, the state would have been entitled to none of the revenues from NPRA.

Summarizing, the answers to your second set of questions are: (1) PET 4 was never subject to the same 90-10 revenue sharing arrangement; instead, it was a specific (and single) exception to the 90-10 revenue sharing formula; and (2) when Congress authorized leasing in NPRA, it provided that the state was to receive 50 percent of the revenues instead of none of those revenues which is what the current law at that time would have provided in the absence of congressional action.

I hope this answers your questions. If we can be of further assistance, please contact us at your convenience.

Sincerely,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By: G. Thomas Koester

G. Thomas Koester
Assistant Attorney General

GTK/dlm
cc: Lieutenant Governor Stephen McAlpine
Commissioner Judy Brady, DNR
Commissioner Don W. Collinsworth, F&G
Commissioner Dennis Kelso, DEC
John Katz, Office of the Governor
Bob Grogan, Office of the Governor
Rod Swope, Office of the Governor

TESTIMONY OF G. THOMAS KOESTER ON S. 735
BEFORE THE SENATE SUBCOMMITTEE ON PUBLIC LANDS
July 14, 1987

Thank you, Mr. Chairman.

My name is G. Thomas Koester. I am an Assistant Attorney General for the State of Alaska.

The State of Alaska opposes S. 735 on both legal and policy grounds. As a legal matter, we view S. 735 as an impermissible attempt to amend a major component of the statehood compact under which Alaska was admitted to the Union. As a matter of policy, S. 735 would abrogate the historic compromise in public land law under which the United States changed its policy of disposing of federally owned lands to one of retaining title but dedicating the proceeds of those lands to the states in which the lands are located.

Section 35 of the Mineral Leasing Act of 1920, 30 U.S.C. § 191, currently governs the distribution of revenues from oil and gas leasing of federal public domain lands. Under that statute, 90 percent of those revenues are dedicated to the benefit of the states in which the lands are located. In the lower 48 states, this dedication takes the form of a direct grant of 50 percent of the revenues and deposit of an additional 40 percent in the Reclamation Fund, established under the Reclamation Act of 1902, 43 U.S.C. §§ 372 et seq. Because Alaska is not covered by the Reclamation Act, Alaska receives the full 90 percent under the statute.

This dedication of federal oil and gas revenues to the states represented a historic compromise in the history of public

land law. Around the turn of the century, there was a major change in federal land policy. The traditional practice of federal land disposal to encourage development and western migration was abandoned, and a new policy of federal land retention was instituted. To compensate the states for this continued federal ownership, which in many cases precludes economic development and in all cases precludes state and local taxation, Congress dedicated 90 percent of the mineral leasing revenues from those lands to the states.

During Congressional consideration of statehood for Alaska, considerable attention was given to the distribution of mineral leasing revenues from federal lands in Alaska. The result of those lengthy deliberations was that the revenue distribution provisions of the Mineral Leasing Act of 1920 were expressly incorporated into the Alaska Statehood Act.

The provisions of a statehood act admitting a new state to the Union constitute a compact -- a legally enforceable contract -- between the citizens of the new state and the United States. Such a compact does not impose obligations only on one of the parties; instead, obligations are imposed on both the new state and the United States. The specific terms of such a compact are obligatory and subsequently cannot be unilaterally amended by either party. As the United States Supreme Court once noted with respect to the Act admitting Wisconsin to the Union, a statehood act provision is "an unalterable condition of the admission, obligatory upon the United States." Beecher v. Wetherby, 95 U.S. (5 Otto) 517, ___ (1877).

Congress incorporated the Mineral Leasing Act of 1920 into the compact under which Alaska was admitted to the Union in section 28(b) of the Alaska Statehood Act. In part, this undoubtedly was no more than Congressional recognition of the long-standing policy, applicable to virtually all of the western states, of dedicating 90 percent of the proceeds of public lands to the states in which the lands are located -- i.e., the historic compromise adopted in 1920.

At the same time, however, the legislative history of the Alaska Statehood Act makes clear that Congressional incorporation of the Mineral Leasing Act in the statehood compact also was Congress' way of partially compensating Alaska for the substantial amount of federal land which had been withdrawn and reserved by the federal government for various purposes, and the attendant loss of economic productivity caused by those withdrawals and reservation. Ironically, a number of those withdrawals and reservations were for wildlife refuges, the specific federal lands for which S. 735 seeks to change the revenue distribution formula.

To fully appreciate Congress' incorporation of the Mineral Leasing Act's 90 percent entitlement for Alaska in the statehood compact under which Alaska was admitted, one must look at the facts confronted by Congress at that time. A significant concern during the deliberations on Alaska statehood was whether the Alaska economy was sufficient to support a new state and the essential government services which the new state would have to provide. Much of that concern was a result of the fact that more

than 99 percent of all the land in Alaska was owned by the federal government. Little or no development had taken place because of federal land management practices, and federal land therefore was not contributing to the economic development of the territory. In addition, because it was federally owned, it would be exempt from any taxes which might be levied by a new state government.

To ensure that the new State of Alaska would have sufficient economic resources to meet the necessary expenses of state government, Congress included a substantial land grant in the Alaska Statehood Act. In doing so, however, Congress discovered that more than one-fourth of the land in Alaska -- more than 95 million acres -- was included in federal withdrawals and reservations, several of which were wildlife refuges. Those withdrawn and reserved lands appeared to include most of the valuable resources in Alaska.

As a partial remedy to this situation, which one committee report characterized as "the problem of federal reservations," Congress consciously granted Alaska 90 percent of the oil and gas leasing revenues from federal lands in Alaska. Characterizing this as one of the "major provisions" of the Alaska Statehood Act, Congress concluded that this would minimize the adverse impact of federal withdrawals on the new state's economic viability and would ensure that the new state would benefit from any development of the substantial resources which might be found within those federal withdrawals.

Attached to the printed text of my testimony are a number of excerpts from the legislative history of the Alaska Statehood Act which demonstrate that both supporters and opponents of Alaska Statehood were well aware that Congress was including, as part of Alaska's statehood compact, an entitlement to 90 percent of all oil and gas lease revenues from federal lands in Alaska in perpetuity. While it would serve no purpose to go over all of them in detail, a few examples illustrate the broader Congressional understanding.

Senator Barrett of Wyoming, a supporter of statehood for Alaska, authored the language of what became section 28(b) of the Alaska Statehood Act, the section that incorporates the Mineral Leasing Act into the statehood compact. During a Senate hearing on statehood for Alaska, he remarked: "So I think it would be eminently fair and just and right and proper, when we write this bill up, that we . . . let the Federal Government retain the title to the minerals except such public lands as are granted to you, but give the Territory now and the State of Alaska-to-be ninety percent of the income from the minerals under the Leasing Act royalties that come in from now on out." Later in the hearing, he introduced the language that now appears as section 28(b) of the Alaska Statehood Act with the words: "I propose to insert a new section 21 on the last page of the bill and provide in here that 90 percent of the income from coal and 90 percent of the income from the leasing act minerals shall go to the new State of Alaska." He noted that the Secretary of

Interior had suggested such a provision be included in the statehood bill.

Representative Dawson of Utah, also a supporter of statehood for Alaska, commented on the House floor that "[t]hese [revenue sharing] provisions are the foundation upon which Alaska can and will build to the enormous benefit of the national economy shared by her sister States."

Senator Talmadge of Georgia, an opponent of statehood, noted during the Senate floor debate that the Statehood Act land grant and the various revenue sharing measures, specifically including the entitlement to 90 percent of oil and gas leasing revenues, "have been referred to variously as a 'dowry' and 'the greatest giveaway of natural resources in the history of this country.'"

Finally, and perhaps most significantly, Senator Butler of Maryland, a statehood opponent, reminded his Senate colleagues that grants made in statehood legislation are irrevocable and cannot be changed by a subsequent Congress:

> A bill which grants statehood is not some minor piece of legislation, but is a major function of the national legislature. We cannot undertake to perform that function without reminding ourselves that we are asked to make a grant which cannot be revoked. We cannot, therefore, consider these bills as we would ordinary legislation in the sense that ordinary legislation may be amended or changed in subsequent years as experience dictates.

When placed in its proper historical perspective, it is not surprising that Congress included an entitlement to 90 percent of the proceeds from federal oil and gas leasing in the

Alaska Statehood Act. The Mineral Leasing Act, and its revenue distribution formula under which 90 percent of the revenues from federal lands are dedicated to the states in which the lands are located, represents a historic trade-off in the development of public land law. In enacting it, Congress terminated its traditional policy of disposing of the public lands. Instead, it determined that the federal government should retain those public lands, but should dedicate most of the mineral revenues from those lands to the benefit of the states in which the lands are located.

Virtually all of the public land states were admitted to the Union prior to the enactment of the Mineral Leasing Act, and its dedication of 90 percent of public land revenues to the states, in 1920. As a result, the statehood acts admitting those states do not include a provision similar to the one incorporated in the Alaska Statehood Act. However, incorporation of the Mineral Leasing Act in the Alaska Statehood Act simply reflects the Congressional understanding that the Mineral Leasing Act indeed was a historic compromise and, as a result of that compromise, the public land states are to receive the benefit of 90 percent of the revenues from federal lands within their borders in return for the continued federal ownership and management of those lands.

Passage of this bill would significantly alter one of the carefully considered terms and conditions under which Alaska was admitted to the Union. It would be an impermissible unilateral attempt to amend the solemn compact between the national

government and the citizens of Alaska. Alaska has not agreed to this modification of the compact between Alaska and the United States and, without such agreement, it would have no force or effect.

It also would signal a marked departure from the historic compromise, under which Congress dedicated 90 percent of the proceeds of the public lands to the states in return for continued federal ownership, which has guided federal public land policy throughout the United States for more than six decades.

Alaska supports the goals of the Land and Water Conservation Fund. At the same time, the state is concerned that such a laudable goals not be accomplished at the cost of a fundamental change in the provisions of the solemn compact under which Alaska entered the Union and the historic compromise which has guided federal public land policy for more than two generations.

Thank you very much for the opportunity to testify on this bill. We hope that we can work constructively with this subcommittee and the Congress to improve the effectiveness of the Land and Water Conservation Fund without sacrificing Alaska's statehood birthright and more than sixty years of federal public land policy. Again, thank you very much.

ALASKA STATEHOOD ACT LEGISLATIVE HISTORY:
CONGRESSIONAL INCORPORATION OF MINERAL LEASING
ACT 90% REVENUE SHARING FORMULA IN
ALASKA STATEHOOD COMPACT

1. During Senate hearings on Alaska Statehood, one senator explained that he thought the new State of Alaska should get all of the lands within its boundaries but, because that probably was not possible, the Statehood Act should include a grant of 90 percent of Mineral Leasing Act revenues "from now on out."

> Senator BARRETT. . . .
>
> . . .
>
> So I think it would be eminently fair and jus and right and proper, when we write this bill up, that we provide here that the [Mineral] Leasing Act of 1920, as amended, and let them retain title to the lands up there, except that which is granted -- personally I hate to see that done, but to be realistic we probably have to do that -- let the Federal Government retain the title to the minerals except such public lands as are granted to you, but give the Territory now and the State of Alaska-to-be ninety percent of the income from the minerals under the Leasing Act royalties that come in from now on out.

Hearings on S. 49 and S. 35 before the Senate Committee on Interior and Insular Affairs, 85th Cong., 1st Sess. 30-31 (1957).

2. Later in those hearings, the same senator offered an amendment to the proposed statehood legislation under consideration which would provide that "90 percent of the income from the leasing act minerals shall go to the new State of Alaska," noting that the Secretary of Interior supported a bill under consideration in the House of Representatives which would do precisely that but "suggested that the statehood bill was the proper place to insert such a provision." The language of the proposed amendment is identical to the language of what ultimately was enacted as section 28(b) of the Alaska Statehood Act. Both the author of the proposed amendment and one of his colleagues hoped that giving Alaska a 90 percent entitlement might ultimately result in their states getting the same thing. Whether that would result or not, however, they agreed that Alaska should receive such an entitlement as part of its statehood act.

> Senator ANDERSON. . . . As far as I am concerned, I hope you [Alaska's non-voting Delgate Bartlett] would agree with me that what we tried to do was to make it possible for Alaska to come

in as a State and live self-respectingly among the States.

We did not strip her of every dollar she could get, but tried to give her all the money to make Alaska a good and fine progressive State. I believe the bill does that.

. . .

Senator BARRETT. . . . I am offering an amendment here for the consideration of the committee. I think this is probably as good a time as any to do it.

I discussed this amendment this morning when you were absent, Senator Anderson. I propose to insert a new section 21 on the last page of the bill and provide in here that 90 percent of the income from coal and 90 percent of the income from the leasing act minerals shall go to the new State of Alaska.

When I mentioned that this morning, Delegate Bartlett told me that the House committee had considered a bill doing precisely that and had reported it out favorably. Since then I have looked up the record and I find that the Secretary of the Interior has filed a favorable report on the bill and agreed that it should be enacted into law but suggested that the statehood bill was the proper place to insert such a provision.

Maybe it would be well to have in these hearings a copy of the report that the Secretary of the Interior made on the House bill.

Senator JACKSON. Without objection, the report and the amendment of the Senator from Wyoming will be included in the record at this point, if that is agreeable. The report and the amendment should go together.

(The documents referred to are as follows:)

BARRETT AMENDMENT TO S. 49

Sec. 22. . . .

(b) Section 35 of the Act entitled "An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain," approved February 25, 1920, as amended (30 U.S.C. 191) is hereby amended by inserting immediately before the colon preceding the first proviso thereof the following: ",and of those from Alaska 52 1/2 per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof".

[Secretary of Interior's Report]

DEAR MR. ENGLE [Chairman of the House Committee on Interior and Insular Affairs]: This is in reply to your request for the views of this Department on H. R. 3477, a bill relating to moneys received from mineral lands in Alaska.

We recommend that H. R. 3477 be enacted. We believe, however, that the subject matter of the bill would be more appropriately covered in statehood legislation.

. . .

Senator ANDERSON. Do you not think Senator Barrett, that supplements the statement I made, that whatever makes it possible for the State to exist is a good bill?

I think Senator Barrett should be commended for that proposal. I thing there are some other States that the proposal could be applicable to but we may get our rights some time if Alaska does.

Senator JACKSON. That may be a good precedent for the other 11 Western States.

Senator ANDERSON. It happens that Wyoming and New Mexico are the 2 principal contributors to the Federal Treasury on this particular section, $100 million in Wyoming and $130 million or $140 million in New Mexico which we could have used very nicely in our State.

Senator JACKSON. We may have some problems with the other 37 States on this issue.

Senator BARRETT. I do not think so, particularly. I think we would be remiss a bit if we did not include it here, particularly since the Bureau of the Budget and the Secretary of the Interior and everyone interested has approved this.

Hearings on S. 49 and S. 35 before the Senate Interior and Insular Affairs Committee, 85th Cong., 1st Sess. 66-67 (1957).

3. A House committee report, in a section entitled "The Problem of Federal Reservations," noted that a partial solution to the depressing effect of federal withdrawals on the economic viability of a new Alaska state government would be to specify that the act of admission would grant Alaska 52 1/2 percent of Mineral Leasing Act revenues. This would be in addition to the 37 1/2 percent that all other public land states receive because, while those states were covered by the Reclamation Act, Alaska would not be.

As previously noted, tremendous acreages of land in Alaska have been tied up in the status of Federal reservations and withdrawals for various purposes. The committee feels strongly that this practice has been carried to extreme lengths in Alaska, to a point which has hampered the development of such resources for the benefit of mankind. As a result, a long list of potential basic industries in the territory, including the forest industry, hydroelectric power, oil and gas, coal, various other minerals, and the tourist industry, can exist in Alaska only as tenants of the Federal Government, and on the sufferance of the various Federal agencies. The committee considers that to be an unhealthy situation.

The failure of these industries to grow under such a restrictive policy is a proof of its unwisdom. The committee feels that this policy must be changed if statehood for Alaska is to be a success.

In its approach to the statehood issue, the committee has attempted to make a start toward such a change by various specific provisions in the bill. . . .

A second provision in section 28 amends the Mineral Leasing Act of 1920, as amended, by granting 52 1/2 percent per annum of the net proceeds realized from coal, phosphates, oil, oil shale, and sodium on the public domain in Alaska shall be paid to the State of Alaska for disposition by the legislature thereof.

The payment of these proceeds is recommended in return for Alaska not being covered by the Reclamation Act of 1902, as amended. The Reclamation Act provides that in the 17 Western States 52 1/2 percent of the oil- and gas-lease revenues goes into the reclamation fund; 37 1/2 percent is returned to the respective States, and the remaining 10 percent is retained by the Federal Government for administration purposes.

H.R. Rep. No. 624, 85th Cong., 1st Sess. 7-8 (1957).

4. The same point is reiterated in the sectional analysis.

Subsection [28](b) amends the act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain approved February 25, 1920, by providing that 52 1/2 percent of the proceeds received therefrom shall be covered into the State treasury for disposition by the State legislature.

The payment of these proceeds is recommended in return for Alaska not being covered by the Reclamation Act of 1902, as amended. The Reclamation Act provides that 52 1/2 percent of the oil and gas revenues goes into the reclamation fund; 37 1/2 percent is returned to the respective States and the remaining 10 percent is retained by the Federal Government for administration purposes.

Id. at 23.

5. A Senate Report made Alaska's entitlement to 90 percent of federal oil and gas leasing revenues even clearer.

Some of the additional costs connected with statehood will be met by granting the State a reasonable return from Federal exploitation of

resources within the new State. In the past the United States has controlled the lion[']s share of such resources and, in some instances, retained the lion's share of the proceeds. This situation, though it has not proved conducive to development of the Alaskan economy, may have been proper at times when the United States paid a large part of the expense of governing the Territory. However, the committee deems it only fair that when the State relieves the United States of most of its expense burden, the State should receive a realistic portion of the proceeds from resources within its borders. The divisions of proceeds established in the bill are determined by comparisons with other States and consideration of the geographic facts which apply to Alaska.

. . .

Section 22 of the bill extends to the State the provisions of Public Law 88, 85th Congress, which was approved July 10 of this year. Under this new law the Territory receives a total of 90 percent of the profits from government coal mines and 90 percent of the profits from operations under the Mineral Leasing Act. Prior to the 1957 law, Alaska received none of the proceeds from government coal mines and 37 1/2 percent of the proceeds from mineral leasing operations. Without section 22 in the bill, the new State would not be within the purview of the 1957 act.

S. Rep. 1163, 85th Cong., 1st Sess. 3 (1957).

6. During the floor debate on Alaska statehood in the House of Representatives, one congressman outlined the relationship between the extensive federal withdrawals and the entitlement to 90 percent of all mineral leasing revenues which, in addition to the land grant, would form the "foundation" of Alaska's entry into the Union.

Mr. DAWSON of Utah. . . .

Further, over 92-million acres -- both in and out of the defense area -- already have been withdrawn by the Federal Government, and these include much of the most valuable resources. They include, for example, nearly 21-million acres of the

best forest lands and nearly 49-million acres of oil and gas reserves.

. . .

As to that lion's share of lands which would remain under Federal control, Alaska would receive -- for the support of its public schools -- 5 percent of the net proceeds from the sale of any land by the Federal Government.

Additionally, Alaska would receive 90 percent of the proceeds from the operation of Government coal mines and from the production of coal, phosphates, oil, oil shale, and sodium from the public domain. Reflecting Alaska's exclusion from the Reclamatioin Act of 1902, these are the same provisions which this Congress approved -- by consent -- for the Territory of Alaska last year in Public Law 85-88.

. . .

These provisions are the foundation upon which Alaska can and will build to the enormous benefit of the national economy shared by her sister States. We cannot make Alaska a "full and equal" State in name and then deny her the wherewithal to realize that status in fact.

85 Cong. Rec. 9360-9361 (1958).

7. During the floor debate in the Senate, an opponent of statehood for Alaska argued that the sharing of mineral revenues with the new State of Alaska, as a means to "alleviate" the adverse effect of continued federal control of significant acreage and resources, would result in Alaska being too dependent on those federal revenues.

Mr. ROBERTSON. . . .

The uniqueness of the Alaska land situation is further emphasized in the committee report, which points out that on the occasion of admission of existing States land grants amounted to a maximum of 6 to 11 percent of the total land area, and much acreage already had passed into private taxpaying ownership, whereas in Alaska, even after

a grant of unprecedented propotions to the proposed State, the Federal Government would continue to control more than two-thirds of the total acreage and an even larger percentage of the resources.

To alleviate this situation to some extent, the bill proposes to share with the State profits from Government coal mines, mineral leases, and the fur monopoly, which, of course, would make the State government a pensioner dependent on the Central Government to a much greater extent than the existing States which already, in my opinion, have jeopardized their constitutional rights by too ready acceptance of Federal handouts for a variety of public works and welfare programs.

85 Cong. Rec. 12020 (1958).

8. A supporter of Alaska statehood introduced a Department of Interior memorandum outlining the "new sources of revenue available to Alaska," one of which was listed as "oil and gas leases (90 percent to the State)." Another supporter then pointed out that oil had just been discovered in Alaska, and that discovery "will have a tremendous impact on the ability of the new State to provide the essential resources to support itself."

Mr. CHURCH. . . .

Mr. President, I wonder if the Senator from Florida will permit me to offer at this point in his address a memorandum which I have received from the Department of the Interior, which is directed to the very subject on which the Senator is now elaborating, namely, the capacity of Alaska to support statehood.

We have heard in the course of this debate many exaggerated statements about how statehood would impose an impossible burden upon the undeveloped economy of Alaska. If one were to listen uncritically to such statements, one might be led to conclude that statehood would drive the Alaskan economy into insolvency and bring ruin upon the people there.

I think this memorandum effectively gives a rebuttal to that argument, in that it shows

precisely what the additional costs for statehood would be, and what the additional income to the newly formed State government would be, by virtue of the provisions contained in the pending bill.

. . .

The PRESIDING OFFICER. Without objection, the memorandum referred to by the Senator from Idaho will be printed in the Record.

The memorandum is as follows:

. . .

New Revenues Available to Alaska

Oil and gas leases (90 percent to the State).....$3,000,000

. . .

Mr. JACKSON. . . .

I should like to point out one further consideration in connection with the financial ability of the proposed new State to take care of its responsibilities. Just 11 months ago we witnessed the first oil strike of any substance in Alaska. A little more than a year ago about 5 million acres were under lease, or applications were pending with respect thereto. The most recent check, in May, showed 32 million acres covered by oil leases or lease applications.

The program involves all the major oil companies and numerous independent oil companies. We have been advised in the Committee on Interior and Insular Affairs, where some of the legislation on this subject is handled, that the signs are most hopeful for a tremendous oil development in the area which will become a State.

I add that one point because it will have a tremendous impact on the ability of the new State to provide the essential resources to support itself. This is a factor not indicated in the

Secretary's analysis of the ability of the new State to do the job.

85 Cong. Rec. 12207-12208 (1958).

9. An opponent of statehood again pointed to the 90 percent entitlement in the statehood bill as evidence of the "prevailing doubt" regarding the ability of the new state to support itself.

Mr. TALMADGE. . . .

The prevailing doubt of Alaska's ability to support itself is evidenced by the generous special considerations which are made for it in this statehood act.

. . .

In addition [to a large land grant], it would be granted:

. . .

Ninety percent of the profits from Government coal mines and operations under the Mineral Leasing Act, of which 37 1/2 percent of the latter would be earmarked for roads and schools.

. . .

These considerations have been referred to variously as a "dowry" and "the greatest giveway of natural resources in the history of this country."

85 Cong. Rec. 12297 (1957).

10. Finally, the permanent and irrevocable nature of the granting of statehood was described.

Mr. BUTLER. . . .

Despite all its complex features, the primary purpose of the bill is to grant statehood. A bill which grants statehood is not some minor piece of legislation, but is a major function of the national legislature. We cannot undertake to

perform that function without reminding ourselves that we are asked to make a grant which may not be revoked. We cannot, therefore, consider these bills as we would ordinary legislation in the sense that ordinary legislation may be amended or changed in subsequent years as experience dictates. . . .

. . .

My research has also developed that there is contained in the bill provisions which have the effect of giving away more revenue and more property than has ever been given to any State in its enabling act.

85 Cong. Rec. 12316-12317 (1958).

MEMORANDUM State of Alaska

TO: Honorable Bill Sheffield
Governor
State of Alaska

Harold M. Brown
Attorney General

FROM: By: G. Thomas Koester GTK
Assistant Attorney General
Department of Law

DATE: April 28, 1986

FILE NO: 663-86-0339

TELEPHONE NO: 465-3600

SUBJECT: ANWR issues -- federal 90 percent revenue sharing

As part of an overall analysis of potential oil and gas leasing in the Arctic National Wildlife Refuge ("ANWR"), you asked this department to prepare a preliminary analysis of two specific issues: (1) the effect of a possible land trade on the state's 90 percent royalty share of oil and gas production from federal lands in wildlife refuges; and (2) legal arguments which might be raised with respect to possible congressional consideration of a reduction in the state's current 90 percent royalty share.

In brief, we believe (1) a land trade would eliminate the state's 90 percent royalty share of production from the lands traded by the United States to third parties and probably would result in the state receiving no royalty from oil and gas produced on the exchange lands received by the federal government, and (2) there are both legal and policy arguments the state can make against a congressional reduction of the state's royalty share, but we cannot be certain that they would prevail.

I. Background

When the United States issues oil and gas leases for lands within wildlife refuges, distribution of the revenues received by the United States from that leasing depends on whether the refuge lands from which the revenues are derived are acquired lands or reserved public domain lands. "[A]cquired lands are those granted or sold to the United States by a State or citizen and public domain lands were usually never in state or private ownership." Wallis v. Pan American Petroleum Corp., 384 U.S. 63, 65 n.2 (1966).

Oil and gas leasing on acquired lands is governed by the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351 et seq. Under that Act, revenues from oil and gas leases on acquired lands are to be "distributed in the same manner as prescribed for other receipts from the lands affected by the lease." 30 U.S.C. § 355. As applied to wildlife refuges created from acquired lands, this provision requires that oil and gas revenues be distributed according to the formula contained in the Wildlife

Refuge Revenue Sharing Act, 16 U.S.C. § 715s, which provides that 75 percent of the revenues go to the federal government and 25 percent of the revenues go to the county in which the wildlife refuge is located.

Oil and gas leasing on public domain lands reserved for wildlife refuge purposes, on the other hand, is governed by the Mineral Leasing Act of 1920, 30 U.S.C. §§ 191 et seq. Under that Act, the state is entitled to 90 percent of the revenues from such lands in refuges in Alaska and 10 percent is paid into the United States Treasury. */ See generally Watt v. Alaska, 451 U.S. 259 (1981).

Congress extended the Mineral Leasing Act distribution formula for revenues from public domain lands, including reserved public domain lands in wildlife refuges, to Alaska in section 28(b) of the Alaska Statehood Act. Congress considered this one of the "major provisions" of the Act. H.R. Rep. No. 624, 85th Cong., 1st Sess. 3 (June 25, 1957) ("House Report"). Congress did so, in large part, because so much of Alaska was "tied up in the status of Federal reservations and withdrawals for various purposes," stating that this "practice has been carried to extreme lengths in Alaska." House Report at 7. One result of that "unhealthy situation," id. at 8, is that substantial mineral leasing revenues in Alaska are derived from public lands in federal withdrawals and reservations, including wildlife refuges, a situation unique to Alaska. See Watt, 451 U.S. at 261, n.1.

The Mineral Leasing Act, and its revenue distribution formula under which 90 percent of the revenues are dedicated to the state, represented a historic tradeoff in the history of public land law. In enacting it, Congress terminated its historic policy of disposing of the public lands. Instead, it determined

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*/ States other than Alaska receive only 50 percent of public domain land mineral revenues. However, an additional 40 percent of those revenues are paid into the Reclamation Fund established under the Reclamation Act of 1902. Those funds, in turn, are used to fund reclamation projects in those states. Alaska is not covered by the Reclamation Act and receives no benefits under it. Congress considered it only fair that the additional 40 percent share of public domain land revenues be paid to Alaska "in return for Alaska not being covered by the Reclamation Act of 1902." See H.R. Rep. No. 624 (to accompany H.R. 7999), 85th Cong., 1st Sess. 23 (June 25, 1957).

that the federal government should retain those public lands remaining in the states, but should use most of the mineral revenues from those lands for the states' benefit. The 90-10 revenue distribution formula in the Mineral Leasing Act "was to compensate for the states' inability to tax the lands to pay for governmental services." Fairfax and Yale, The Financial Interest of Western States in Non-tax Revenues from the Federal Public Lands 19, published by the Western Legislative Conference, Council of State Governments, and the Lincoln Institute of Land Policy (1985).

In contrast, the Wildlife Refuge Revenue Sharing Act, under which 25 percent of certain wildlife refuge revenues are shared with the counties in which the refuges lie, was intended to reduce local opposition to federal acquisition of land for refuge purposes. The revenue sharing formula was intended to compensate localities for the loss of property tax revenue when the federal government acquired the land and, as a result, it was removed from the local tax roles. As a general proposition, this rationale would not fit federal acquisition of large tracts of either state land or undeveloped Native corporation land, neither of which currently are subject to local property taxes. See Alaska Const. art. IX, § 4; 43 U.S.C. § 1620(d).

Nonetheless, the distinction between acquired land in wildlife refuges and public domain land reserved for refuge purposes is central to resolution of the first question you asked us to discuss. The fact that Congress extended the Mineral Leasing Act to Alaska in the Statehood Act bears directly on your second question.

II. The Effect of a Land Trade on the State's 90 Percent Royalty Share

We understand that the Department of the Interior is contemplating certain land trades under which federal lands in ANWR would be exchanged for privately-owned Native corporation lands constituting inholdings in other federal conservation system units in Alaska. If such exchanges take place, and the exchanged ANWR lands are offered for oil and gas leasing, the Native corporations would be the lessors entitled to receive the revenues. The revenues would not be received by the federal government as result of leasing under the Mineral Leasing Act, and those revenues would not be subject to the Mineral Leasing Act's 90-10 distribution formula. Accordingly, there would be no basis for the state to claim any portion of the revenues derived. In other words, land trades would totally eliminate the state's 90 percent royalty share from such ANWR lands.

In addition, it should be noted that the state would have no right to any federal oil and gas revenues derived from the lands obtained by the United States from the Native corporations. Those lands would be acquired lands, not reserved public domain lands, and the revenue distribution from federal oil and gas leases on those lands would be governed by the Mineral Leasing Act for Acquired Lands. As noted earlier, revenues from oil and gas leasing of acquired lands in wildlife refuges are governed by Wildlife Refuge Revenue Sharing Act, which provides that 25 percent of any such revenues are to go to the county in which the refuge is located and 75 percent to the federal government. None of the revenues go to the state.

The state could argue that this should not be the result. The rationale for the Wildlife Refuge Revenue Sharing Act distribution scheme -- i.e., compensating municipalities for lost property tax receipts -- does not apply to undeveloped Native corporation lands, which are not subject to local property taxes under the Alaska Native Claims Settlement Act (at least until 1991). See 43 U.S.C. § 1620(d). Moreover, the state can argue that the United States cannot eliminate its 90 percent share of revenues from reserved public domain lands by trading them on the ground that doing so would violate the solemn compact memorialized in the Alaska Statehood Act.

However, we believe both arguments probably would be unavailing in court. The first argument appears to be more of a policy argument than a legal argument, more appropriately directed to Congress and not the courts. The second argument would require the court to find that the extension of the Mineral Leasing Act to Alaska also constituted an implied promise not to convey federal lands to third parties, which simply is not supported by the legislative history of section 28(b) of the Statehood Act.

III. Congressional Reduction of the State's 90 Percent Royalty Share

As noted in section I above, Congress extended the Mineral Leasing Act distribution formula for revenues from public domain lands, including reserved public domain lands in wildlife refuges, to Alaska in section 28(b) of the Alaska Statehood Act. Alaska accepted the provisions of the Statehood Act in article XII, section 13, of the Alaska Constitution. Provisions of a Statehood Act become obligatory on the United States upon acceptance of those provisions by the new state. See, e.g., Cooper v. Roberts, 59 U.S. (18 How.) 173 (1856); see generally 1981 Op. Att'y Gen. No. 3, at 3-5 (April 2). Particularly in light of

Congress' characterization of the extension of the Mineral Leasing Act to Alaska as one of the "major provisions" of the Alaska Statehood Act, the state has a very strong argument that continued application of the Mineral Leasing Act's distribution formula to oil and gas leasing revenues from reserved federal public domain lands in ANWR is required as part of Alaska's statehood compact (at least as long as those lands remain federally-owned).

At the same time, we must point out that the United States might successfully argue that Congress has the plenary authority to modify the distribution formula for oil and gas revenues from ANWR. In Watt v. Alaska, Justice Stevens (concurring in the Court's decision that the Mineral Leasing Act's 90-10 distribution formula applied to oil and gas revenues from the Kenai National Moose Range) stated:

> The question of how to divide the revenues from oil and gas leases on public lands in the Kenai Peninsula is clearly a matter for Congress to decide. If Congress is displeased with the decisions of this Court and the Court of Appeals [i.e., the decisions that Alaska is entitled to 90 percent of the revenues], it may promptly reverse them by revising the relevant statutes.

451 U.S. at 274. We did not make a statehood compact argument in that case and it was not before the Court. Nonetheless, Justice Stevens' comment undoubtedly will be cited by the United States in the event Congress changes the current 90-10 distribution formula in the Mineral Leasing Act or establishes a different distribution formula specifically for revenues from ANWR.

We hope this responds to your request. If we can provide additional information, please contact us at your convenience.

GTK:dlm
cc: John Katz
Office of the Governor
Washington, D.C.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

JAY S. HAMMOND, GOVERNOR

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April 2, 1981

The Honorable Hugh Malone
House of Representatives
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Re: Legality of unilateral changes to Statehood Act by United States Congress. Our file J-66-556-81

Dear Representative Malone:

On February 24, 1981, you requested that we review subsections 906(f)(3) and 906(p) of the Alaska National Interest Lands Conservation Act (hereafter "ANILCA"), Public Law 96-487, 94 Stat. 2371. Those two subsections, as well as subsection 906(a), amend certain provisions in Section 6 of the Alaska Statehood Act, 48 U.S.C. note preceding Section 21. Subsection 906(f)(3) of ANILCA amends Section 6(g) of the Statehood Act to give the Secretary of the Interior discretionary authority to waive the minimum tract selection size set out therein where such a waiver "would be in the national interest and would result in a better land ownership pattern." Subsection 906(p) removes the requirement of Presidential approval of selections north and west of the so-called "PYK line" described in Section 10 of the Statehood Act for lands conveyed to the state by the terms of subsections 906(c), (d) and (g) of ANILCA. Subsection 906(a) extends the time within which the state may

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make selections under Sections 6(a) and 6(b) from 25 to 35 years.

Your inquiry is whether there are legal grounds for the United States unilaterally to amend the provisions of the Statehood Act. There is no clear legal answer where, as here, the amendments enacted by Congress do not defeat or materially diminish rights conferred on the state by the act of admission but, instead, actually benefit the state (see pp. 6-7, infra). What is clear is that the United States cannot unilaterally amend the Statehood Act to the state's detriment without the state's consent or acquiescence. 1/

The state's position has always been that the United States cannot unilaterally amend the Statehood Act. However, the state has avoided a confrontation over the issue by working with Congress to ensure that any post-statehood amendments to the Statehood Act are beneficial to the state and not inimical to its interests.

At the same time, there are indications in decisions of the United States Supreme Court that the United States may

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1/ At least two provisions of the Alaska Native Claims Settlement Act -- the Section 9 2% override on royalties due the state and the Section 11(a) withdrawal of state-selected lands for Native village conveyance -- were unilateral amendments to the Statehood Act, albeit by implication, which were detrimental to the state's interest. To ensure prompt resolution of pending Native claims, Governor Egan, on behalf of the state, consented to those amendments and the state did not litigate the issue within the time specified by Section 10 of ANCSA.

unilaterally amend certain provisions in a statehood act. However, such amendments would be effective only if they did not defeat or materially diminish rights conferred on the state by the act of admission.

Summarizing, it is not clear as a matter of law whether the United States may unilaterally amend the Statehood Act or whether some parallel state action is also required. Under either approach, however, the practical effect is that the state's rights under the Statehood Act cannot be diminished without the state's consent.

There can be no question that an act of Congress admitting a new state to the Union constitutes a compact, a legally enforceable contract, between the citizens of the new state and the United States. See Stearns v. Minnesota ex rel. Marr, 179 U.S. 223, 244-245 (1900). Such compacts do not impose obligations only on one of the parties; rather, the obligations are imposed on both the new state and the United States. See the Public Land Law Review Commission's Report to Congress, One-Third of the Nations's Land (1971), at 244. The terms of such compacts constitute the conditions of admission of the new state, obligatory on both the state and the United States 2/, and subsequently

2/ This assumes, of course, that the conditions are constitutional. Provisions which purport to limit or qualify the political rights and obligations -- i.e., the sovereignty -- of a state are unconstitutional because enforcing them would result in the state being admitted on a less-than-equal footing than other states. Cf. Coyle v. Smith, 221 U.S. 559 (1911) (a provision in the act admitting Oklahoma to the Union providing that the capital of Oklahoma could not be moved held unenforceable because such decisions, after a state is admitted, are the exclusive province of the state)

"an unalterable condition of the compact, obligatory upon the United States"

cannot be unilaterally amended by either party without the consent or acquiescence of the other. Beecher v. Wetherby, 95 U.S. (5 Otto) 517 (1877). 24 L.Ed. 490, 491

Provisions regarding grants of federal land generally are considered terms and conditions of a statehood compact and are enforceable both against the state and the United States. For example, in Stearns v. Minnesota ex rel. Marr, supra, the Court held that Congress can convey land to states in trust, and states accepting that land are bound by the terms of the trust, even where this may contravene the state constitution. In Cooper v. Roberts, 59 U.S. (18 How.) 173 (1856), the Court held that a statehood act grant of unspecified lands is binding on the United States and depends only on subsequent identification by survey of the lands granted. The Court also indicated that post-statehood acts of Congress should be construed as recognizing that a compact existed as of the date of statehood, and not as creating subsequent legal impediments to fulfillment of that prior agreement. In Beecher v. Wetherby, supra, the Court held that no post-statehood act of Congress could defeat an appropriation of land made earlier by Congress in a statehood act. The lands at issue in that case were subject to a reservation for the benefit of Indians at the time Wisconsin was admitted to the Union. The Court concluded that a statehood act conveyance from the United States to Wisconsin

was effective as to the fee interest in those lands, although Wisconsin took the lands subject to the Indians' existing right of occupancy as long as that occupancy continued. However, the Court held that a post-statehood Congressional act authorizing the sale of lands occupied by Indians could not affect the title to the lands previously granted to the state. Accordingly, a subsequent United States patent to those lands conveyed no title because title already had vested in the state.

The general rule, then, is that provisions in statehood acts conferring rights on the state are valid and enforceable against the United States, and may not be unilaterally amended by post-statehood federal legislation.

However, this may not mean that no provision in a statehood act may ever be unilaterally amended by Congress. Where such amendments merely amend the procedures which must be followed to transfer title from the United States to the state, and do not materially diminish the rights granted to the state as conditions of its admission, it may be permissible for Congress to amend those provisions unilaterally. In Pollard's Lessee v. Hagar., 44 U.S. (3 How.) 211 (1845), the Court stated that Congress can reserve power over federal public lands in an act admitting a new state, although it need not do so because it possesses that power even in the

absence of such a provision. 3/ Therefore, Congress' exercise of power over federal public lands in a state after admission, standing alone, may not violate the statehood compact unless it defeats or materially diminishes rights conferred on the new state by the act of admission.

The provisions of the Alaska Statehood Act amended by ANILCA all deal with the terms and conditions under which title to lands owned by the United States will pass to the state. Moreover, those amendments benefit the state rather than defeating or materially diminishing any rights the state possessess under the Statehood Act. Section 906(a) extends the time within which the state may make selections under Sections 6(a) and 6(b) of the Statehood Act from 25 years to 35 years. Section 906(f)(3) gives the Secretary of the Interior discretion to waive the minimum tract selection size previously imposed by the Statehood Act. Absent such authority, the state would be required to file selections no smaller than the minimum size specified; under the amendment, if the state decides it wishes to file

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3/ The Pollard case is more generally cited for the proposition that Congress cannot reserve power over the lands underlying navigable waters within a new state because, under the equal footing doctrine, new states are vested with title to those lands to the same extent that the original 13 states possessed such a title, and the original 13 states never relinquished such title to the United States.

smaller selections, the Secretary of the Interior is given discretionary authority to accept those selections. Finally, Section 906(p) removes the proviso in Section 6(b) of the Statehood Act regarding presidential approval of state selections north and west of the so-called "PYK line" for prior state selections which now are confirmed to the state under subsections (c), (d) and (g) of Section 906; absent this provision, such approval would be required for all those prior selections.

Although these amendments, on their face, appear to be unilateral action by Congress since no state consent (either through the legislature or the executive) is required, they comprise one of the "seven consensus points" which the state desired in any Alaska lands legislation ultimately passed by Congress. They were initially suggested and drafted by the state, and were actively supported by the state throughout the Congressional deliberations on the bill. Accordingly, the state has maintained that they are bilateral amendments to the Statehood Act and have been concurred in by the state.

Alternatively, the Statehood Act amendments could be viewed as a permissible exercise of Congress' plenary power over the administration of federal lands. Had Congress attempted to diminish any of the State's rights under the Statehood Act, we believe it would have been acting outside

the scope of its authority. However, where, as here, Congress has made amendments to the Statehood Act which benefit the state and concern only the procedures for conveyance of land to the state rather than the quantity or availability of granted lands, Congress has not intruded on any state interest and is merely exercising its constitutional authority over federal lands within the binding framework of the existing statehood compact.

Under either approach, we believe the result is that the amendments to the Statehood Act which are part of ANILCA are effective and enforceable by the state. If you have further questions, please contact us at your convenience. We will be happy to meet with you or any member of your staff to discuss this opinion in greater detail.

Sincerely,

WILSON L. CONDON
ATTORNEY GENERAL

By: G. Thomas Koester
G. Thomas Koester
Assistant Attorney General

GTK:dlm