

HCR

24



# Alaska State Legislature



Speaker of the House of Representatives

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Official Business

## SPONSOR STATEMENT

### HCR 24

HCR 24 supports the Governor's decision to authorize a suit against the United States government for violating the Alaska Statehood Act. When the Alaska Statehood Act was crafted, Congress guaranteed all attributes of sovereignty that were granted to all other states under the U.S. Constitution. However, over the past few years, the terms of the Alaska Statehood Act have been violated by the Congress. These violations include withdrawal from development of nearly 80% of the federal land from which Alaska was to derive mineral royalties. Alaska is also the only state not allowed to sell her oil resources abroad.

Alaska is a sovereign state and we must not let our sovereignty be violated. The Statehood Act was an agreement between Congress and the People of Alaska and it cannot unilaterally be changed. We must stand up for our rights now and in the future.

SPONSOR STATEMENT

Alaska v. United States, United States Court of Federal Claims (Bruggnik), 90-454-L Civ.

On July 22, 1993, the State of Alaska filed a 29 billion dollar<sup>1</sup> lawsuit in the U.S. Court of Federal Claims against the United States government for violations of the Alaska Statehood Compact. The bases for this litigation are: breach of contract, breach of covenant of good faith and fair dealing, and fraudulent inducement. The suit requests compensation of \$29,000,000,000 for a "taking" under the Fifth Amendment. The federal government filed an answer in the Federal Claims Court on November 12, 1993 and asserted several defenses, including statute of limitations. The state is preparing a comprehensive motion for summary judgment.

According to court decisions, compacts are legally enforceable contracts which cannot be unilaterally changed by either party. This suit seeks to enforce one term vital to the offer and acceptance of statehood - the so-called "90-10" split-Alaska receiving 90% of the revenues derived from mineral development under the Mineral Leasing Act on vacant and unappropriated federal lands. In the Statehood Act, Congress offered Alaska's citizens an unprecedented land base of 103,350,000 acres, the permanent ownership of all state mineral resources, and in essence, 90 percent beneficial interest in the mineral resources on federal lands unreserved or withdrawn at statehood.<sup>2</sup> Since Statehood, Congress has withdrawn more land area than that encompassed by the entire New England area (consisting of the states of Maine, Massachusetts, Delaware, Rhode Island, Connecticut, New Jersey and New Hampshire) from mineral development.

State v. Brown, United States District Court (Sedwick), A92-364 Civ.; State v. United States, United States Court of Federal Claims. ("Oil Export Ban").

In May 1992, the State filed two lawsuits against the United States to challenge the Congressional ban on the export of North Slope crude oil. The State filed one case in the United States District Court in Alaska, alleging that the ban violates the Tenth Amendment to the United States Constitution, and one case in United States Court of Federal Claims in Washington, D.C., seeking \$2.5 billion for compensation for a fifth amendment taking. The State is represented by Birch, Horton, Bittner, and Cherot.

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<sup>1</sup> This figure is calculated based on the Department of Interior's current estimate of mineral reserves on withdrawn lands and the impacts created by a failure to allow development of those reserves. It is a minimum figure.

<sup>2</sup> The 10 percent retained by the federal government was to reimburse the federal government for its administrative costs. For the past several years the federal government has been first deducting its administrative costs and then applying the 90 percent to the remainder. This lawsuit also challenges this action which has resulted in a loss to the State of more than \$1.7 million.



DONT TREAD ON ME

*Defending  
Alaska's  
Statehood  
Compact*



### A PROMISE BROKEN

*At statehood, Congress promised that revenues from 218 million federal acres in Alaska would help generate the mineral royalties the new state would need to be economically viable. Today, nearly 80 percent of that acreage, equal to the size of Texas, has been locked up by Congress.*

*(on the cover) The rattlesnake symbol with the motto "Don't Tread On Me" was used on several colonial flags and was flown in early 1776 as the rank flag of the Commander in Chief of the Fleet, Commodore Esek Hopkins. It has been combined here with eight stars of gold from the Alaska state flag, suggesting that we value our liberty and rights as much as our founding fathers.*

*The Statehood Compact:  
A Promise Made*

*by Governor Walter J. Hickel*

*Alaskans must protect our Statehood Compact. It is the key to our ability to create a solid foundation for our economy and a quality of life we are proud to pass on to our children. To grasp the importance of the Compact requires a brief look at history.*

*The question of how to add states to the Union arose even before the United States Constitution was framed. As a result of the revolutionary war, the Northwest Territory was added to the original 13 colonies. In 1785 and 1787, at the urging of Thomas Jefferson, the Continental Congress adopted the Northwest Ordinances, comprehensive acts providing for governance of such lands.*

*There are several noteworthy provisions of these ordinances which are important today. They affect Alaska's relationship with the federal government.*

\* *A new state was to be admitted "on an equal footing with the original states in all respects whatever."*

\* *The ordinances were considered "as articles of compact, between the original states and the people and states in the said territory, and forever remain unalterable, unless by common consent." (emphasis added)*

*These principles have been honored throughout U.S. history. The Supreme Court has held that the authority of Congress to admit new states into the Union is limited to admission on an equal footing with all other states.*

*A statehood compact is recognized as more than a law that can be changed at the whim of Congress. It is an agreement between the United States of America and the people of a state. In our case, Congress even required Alaska's voters to go to the polls and approve the terms as spelled out in the Alaska Statehood Act. Like any contract, once approved, it cannot be altered by one party without the agreement of the other.*

*In crafting the Alaska Statehood Act, Congress not only guaranteed that we would acquire all the attributes of sovereignty granted to all states under the U.S. Constitution, it ensured that we would be able to live up to our responsibilities in practical economic terms. It did this by "making the new State master in fact of most of the natural resources within its boundaries..." according to a congressional report at the time.*

*The terms of the Compact included the grant to Alaska of:*

*103 million acres of land and the subsurface riches beneath those acres.*

- *Ninety percent of the mineral royalties derived from federal lands in Alaska.*
- *The ability to manage Alaska's fish and game.*

*Today, those rights have been violated and remain under attack. Actions by both the U.S. Congress and federal agencies have unilaterally violated the terms of Alaska's Compact.*

*Shortly after statehood, Congress began locking up large areas in Alaska that could produce promised royalties recognized as essential to Alaska's economic survival. For example, in 1980 the Alaska National Interest Lands Conservation Act was enacted, establishing vast national park and refuge holdings throughout the state. This act was not foreseen at statehood. Other withdrawals have since been legislated year after year.*

*Today, nearly 80 percent of the federal land from which the state was entitled to receive mineral royalties has been withdrawn from mineral development. Currently, Alaska has the following federal land acreage within its borders where mineral extraction of one kind or another is prohibited, where special land designations make development inordinately expensive, or where an Act of Congress is required before even exploration may take place:*

<i>National Wildlife Refuges</i>	<i>75 million acres</i>
<i>National Parks</i>	<i>54 million acres</i>

<i>BLM restricted areas</i>	<i>26 million acres</i>
<i>National Forest conservation units *</i>	<i>14 million acres</i>
<i><u>U.S. Dept. of Defense lands</u></i>	<i><u>2 million acres</u></i>
<i>Total restricted lands</i>	<i>171 million acres</i>

*To put the true dimensions of these withdrawals into perspective, 171 million acres is the same size as the entire State of Texas. To remove such a large potential revenue source without compensation to Alaska is a breach of the Compact, and the State of Alaska is seeking redress and damages.*

*To remedy these violations, I have directed Attorney General Charlie Cole to prepare a series of landmark lawsuits. A special team has been created within the Department of Law to prepare and prosecute these cases.*

*The most important suit defends the Compact itself. Other litigation will ensure access to Alaskan lands. As far back as English common law, it is a truism that land cannot be conveyed without access. But many of the Congressional withdrawals are so situated that access to state lands is blocked. This, in effect, makes the state land of little or no value.*

*In addition, the State of Alaska will challenge all other congressional and federal agency actions that violate the state's sovereignty or the Compact. The federal ban which*

*\* About half of this USFS acreage is technically open to entry, but restrictions make mineral development so expensive, it is thought to be cost prohibitive.*

*forbids export of North Slope crude oil is a notorious example. It singles out Alaska, bleeding us of the benefits of our natural resources, our pioneering, and our strong environmental record. No other state is exclusively prohibited from selling its resources in the world marketplace.*

*The state has filed two additional suits; one to confirm Alaska's title to submerged lands beneath our navigable waters, and the other to ensure our ability to manage fish and game within our state.*

*Since the early 1970's, Congress has pandered to those who would lock up Alaska. This was and is considered a "cheap environmental vote." Evidence of a double standard lies in the fact that the other 49 states contain just over 30 percent of the nation's wilderness. The rest is in Alaska.*

*This is ironic because no state has a better environmental record. Including all of the oil activities on the North Slope, we have developed less than one-half of one percent of Alaska. In our lifetimes, we won't develop even another half of one percent of Alaska. All that we do is done carefully, obeying strict federal and state guidelines. Alaskans don't want it any other way.*

*Remember, neither the U.S. Congress nor the federal agencies can change our Statehood Compact without the approval of the Alaskan people.*

*As Alaskans, we must stand up for our rights, and each generation to follow must do the same.*



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