HB 115

<TARGET><BILL>HB 115</BILL><SUBJECT>HB 115</SUBJECT><COMM>SRES29</COMM></TARGET>

SENATE COMMITTEE REPORT

DATE: 4/7/15

FURTHER: (Judiciary) Finance

DATE TURNED IN TO OFFICE: 2/4/16

Resources Committee considered CS FOR HOUSE BILL NO. 115(FIN)

HB 115-AK SOVEREIGNTY;US TRANSFER LAND TO ALASKA

"An Act relating to the sovereignty of the state and the state's right to a credit or setoff for amounts or injuries inequitably or unlawfully caused or claimed by the federal government; requiring the United States to lift certain land orders and federal withdrawals; relating to the transfer of public land or interests in public land from the federal government to the state and to the disposal of that land or any interest in land; and providing for an effective date."

and recommends:

[✓] be **replaced** with **SCS** HB115 (RLS) [✓] *Same Title* [ ] *Technical Title Change* [ ] *New Title/SCR No.*_____

[ ] adopt **previous SCS** _____ (_____) [ ] *Same Title* [ ] *Technical Title Change* [ ] *New Title/SCR No.*_____

[ ] attached amendment(s)

[ ] adopt _____Letter of Intent

[ ] further referral to _____Committee

Dept Abbr.	
ADM	LWF
CED	LAW
COR	LEG
EED	MVA
DEC	DNR
DFG	DPS
GOV	REV
DHS	DOT
AJS	UA

NEW FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #
DNR		✓		3

PREVIOUS FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #

[ ] **APPROPRIATION - no fiscal note**

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	COSTELLO	✓			
	Wielechowski		✓		
	Coghill			✓	
	Micciche			✓	
	Stedman			✓	
	Stoltze	✓			
CHAIR:	GIESSEL	✓			

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REPRESENTATIVE MIKE CHENAULT
SPEAKER OF THE ALASKA STATE HOUSE

SPONSOR STATEMENT

Committee Substitute for House Bill 115 (FIN): *"An Act relating to sovereignty of the state and the state's right to a credit for amounts or injuries inequitably or unlawfully caused or claimed by the federal government; requiring the United States to lift certain land orders and federal withdrawals; relating to the transfer of public land or interests in public land from the federal government to the state and the disposal of that land or any interest in land; and providing for an effective date."*

Committee Substitute for House Bill 115 (FIN) enacts the Alaska Sovereignty and Transfer of Federal Public Lands to Alaska Act. The bill requires that the United States to transfer title to public lands to Alaska on or before January 1, 2017. The bill also affirms Alaska's state sovereignty under the Ninth and Tenth Amendments to the U.S. Constitution.

Although there are a number of state and federal constitutional issues regarding the provisions contained within the bill, this bill was introduced since the 35-year deadline from the time Alaska was admitted into the Union as provided within the Statehood Act, PL 85-508, is long past. I believe there is a breach of good faith since the state is still entitled to and awaiting the transfer of the remaining 5.5 million acres. Thus far the state has received patent to about 99.5 million acres.

Currently, the state has 10.9 million acres of selections from which to receive its 5.5 million acres of entitlement as well as 10.2 million acres of top-filings that may eventually become selections should applicable withdrawals be lifted. These withdrawals come in numerous varieties of federal action and processes. Two common executive branch actions that create withdrawals are Public Land Orders (PLOs, issued by the Department of the Interior) and Executive Orders issued by the President.

The Committee Substitute for House Bill 115 (FIN) requires the federal government to turn over all lands held by the federal government to the state subject to acceptance by the state with the exception of lands used for military purposes including military reservations and national park lands.

At this time according to the Department of Natural Resources, there are approximately 222 million acres within Alaska under federal ownership.

This bill is modeled after Utah legislation, HB 148.

Rep.Mike.Chenault@akleg.gov

LEGAL SERVICES

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MEMORANDUM February 25, 2015

SUBJECT: Constitutionality of CSHB 115( ) and drafting changes (CSHB 115( ); Work Order No. 29-LS0587\W)

TO: Representative Mike Chenault
Speaker of the House
Attn: Don Bullock and Tom Wright

FROM: Alpheus Bullard
Legislative Counsel

This memorandum accompanies the bill described above.

As I discussed with Don on the phone I have serious reservations about the constitutionality of new secs. 2(b) and 4.

Drafting notes
You requested that the bill include a section that reads:

> (b) The affirmation, reservation, and assertion in (a) of this section include a right and claim of setoff by the state for any amount that the state claims to have been inequitably or unlawfully caused or imposed by the federal government.

It was not clear to me what this means.[1] I changed it to read:

> (b) The affirmation, reservation, and assertion in (a) of this section include the right to a setoff for any amount inequitably or unlawfully deprived to the state by the federal government.

Please advise if my change is inconsistent with your intent.

ALB:lem
15-117.lem

Enclosure

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[1] A "setoff" is defined as "[a] defendant's counterdemand against the plaintiff, arising out of a transaction independent of the plaintiff's claim[,]" or "[a] debtor's right to reduce the amount of a debt by any sum the creditor owes the debtor; the counterbalancing sum owed the creditor." *Black's Law Dictionary* 1404 (8th ed. 2004).

29-LS0587\I.3
Bullard
4/7/15

AMENDMENT

OFFERED IN THE SENATE

TO: CSHB 115(FIN)

Page 2, line 30, following the first occurrence of "state":

Insert ", except for land that is used for military or naval purposes including a military reservation,"

Page 3, line 3:

Delete "43 U.S.C. 1635(f) (sec. 906(f)"

Insert "43 U.S.C. 1635(f)(1) (sec. 906(f)(1)"

Fiscal Note

State of Alaska
2016 Legislative Session

Bill Version: HB 115
Fiscal Note Number:
() Publish Date:

Identifier: HB115CS(FIN)-DNR-MLW-01-29-16
Title: AK SOVEREIGNTY;US TRANSFER LAND TO ALASKA
Sponsor: CHENAULT
Requester: House Finance Committee

Department: Department of Natural Resources
Appropriation: Fire Suppression, Land & Water Resources
Allocation: Mining, Land & Water
OMB Component Number: 3002

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2017 Appropriation Requested	Included in Governor's FY2017 Request	Out-Year Cost Estimates				
OPERATING EXPENDITURES	**FY 2017**	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**FY 2022**
Personal Services	***	***	***	***	***	***	***
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	***	***	***	***	***	***	***
Fund Source (Operating Only)							
None							
Total	***	***	***	***	***	***	***
Positions							
Full-time							
Part-time							
Temporary							
Change in Revenues							

Estimated SUPPLEMENTAL (FY2016) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2017) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed? N/A

Why this fiscal note differs from previous version:

This modifies the 2015 CS version to H FIN to reflect the 2016 Legislative Session.

Prepared By: Brent Goodrum, Director — Phone: (907)269-8625
Division: Mining, Land and Water — Date: 01/29/2016 12:00 AM
Approved By: Mark Myers, Commissioner — Date: 01/29/16
Agency: Department of Natural Resources

STATE OF ALASKA
2016 LEGISLATIVE SESSION

BILL NO. CSHB 115(FIN)

Analysis

The fiscal impact of this legislation cannot be accurately determined at this time.

This analysis assumes that the bill would be successful at least in part in getting the federal government to convey public lands to the state as stated in Section 3. If successful, this bill could more than double state ownership of assets (currently about 100 million acres) and, depending on the kinds of federal lands included in the transfer, potentially increase state acreage even more than that. Receiving the Bureau of Land Management, US Fish and Wildlife Service, and US Forest Service managed federal lands, without considering the submerged land, would increase land owned or managed by the state by approximately 166 million acres.

Once title has been accepted, the state and not the federal government would assume the costs for managing the conveyed lands. These costs are unknown and could be significant. Considering the existing staff and cost it takes to manage the existing state lands, and to evaluate them prior to conveyance, this exponential increase of land ownership could require a correspondingly significant increase of staff and expense to manage the new lands. However, these costs could be more than offset by potential revenues from these lands.

LEGISLATIVE RESEARCH SERVICES

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Research Brief

TO: Representative Mike Chenault
FROM: Chuck Burnham, Legislative Analyst
DATE: February 19, 2015
RE: Federal Lands in Alaska and Land Transfers under the Statehood Act
LRS Report 15.257

You asked how much federal land exists within Alaska that is not part of a national park, monument, or historic site, military installation, or municipality. You also wished to know how much land the State was granted for selection under the Alaska Statehood Act, how much of that land has been transferred by the federal government, and how the land claims of Alaska Natives impact State land selections.[1]

According to the Alaska Department of Natural Resources (DNR), Division of Mining, Land, and Water, there are currently approximately 222 million acres of land within Alaska under federal ownership as follows:

Bureau of Land Management	74.7 million acres
Wildlife Refuges	69.4 million acres
National Parks	53.8 million acres
National Forest	21.9 million acres
Department of Defense	2.2 million acres

To answer the first part of your question directly, based on the above categories of land, there appear to be roughly **96.6 million acres of federal land** in Alaska outside of national wildlife refuges, parks, historic sites, and military facilities.[2] These acres represent the land currently under the control of the Bureau of Land Management (BLM) and within national forests.

Under the Alaska Statehood Act (P.L. 85-508), the federal government granted to Alaska 28 percent of total land area within its borders, with additional land grants for schools, universities, and the Mental Health Trust. All land grants combined provided the new state the authority to select approximately 105 million acres. According to DNR, the state has received patent to about 99.5 million acres of that total amount and awaits transfer of the remaining 5.5 million acres.[3]

Should the BLM and national forest land referenced above become available, the question of how Native land claims would impact land conveyance to the state is a complicated one. Presumably, the federal legislation that would convey the land would include provisions to clarify that question.[4] According to DNR and our reading of existing federal law, valid Native claims are generally given priority over those of the state. For a legal opinion on this issue, and the various other legal intricacies that are likely to be posed by further federal land transfers, we recommend you contact Legislative Legal Services.

We hope this is helpful. If you have questions or need additional information, please let us know.

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[1] In the interest of brevity, we answer your questions with little background or detail on the complexities of land ownership in Alaska. Historical information on the Alaska Statehood Act, the Native Claims Settlement Act, and associated legislation is available by searching our public archives at *http://w3.legis.state.ak.us/laa/research/public.cgi*.

[2] Personal communication from Courtney Sanborn, Special Assistant to the Commissioner II, DNR, 907-269-8431.

[3] "Land Ownership in Alaska," DNR Fact Sheet (*http://dnr.alaska.gov/mlw/factsht/land_fs/land_own.pdf*), as partially updated in personal communication with Ms. Sanborn. To put all of these figures into the broader context, the Fact Sheet indicates Alaska is comprised of approximately 375 million acres in total.

[4] For example, 43 USC § 1635(e) appears to indicate that future state selections of federal lands that were not available at the time of implementation of the Statehood Act are subject to "Native selection rights under the Alaska Native Claims Settlement Act."

THE STATE
of ALASKA
GOVERNOR BILL WALKER

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January 21, 2016

The Honorable Mike Connor
Deputy Secretary
U.S. Department of the Interior
1849 C Street NW
Washington, DC 20240

SUBJECT: Revocation of Public Land Order (PLO) Withdrawals[1]

Dear Deputy Secretary Connor:

Thank you very much for arranging the meeting between your Assistant Secretary for Land and Minerals Management, Janice Schneider, and our staff during her recent trip to Alaska. We appreciated the opportunity to discuss a variety of topics, including PLOs, that are important to the State of Alaska and the Department of Interior and we were impressed by Assistant Secretary Schneider's focus and receptiveness to our comments and concerns.

The purpose of this letter is to outline one of the issues that Governor Walker, Lieutenant Governor Mallott, and I discussed with you and Secretary Jewell on October 7, 2015 regarding the opportunity to lift priority PLOs in Alaska in order for the State to advance efforts for receiving its remaining land entitlements. At that meeting I very much appreciated your willingness to receive a priority list of these PLOs, which I committed to provide to you and is included in this letter.

These PLOs are impeding our best efforts to prioritize and receive our remaining land entitlements. This letter will provide the background of these PLOs that were put into place as a result of the 1971 Alaska Native Claims Settlement Act (ANCSA); how those PLOs impede the State's ability to prioritize our remaining land entitlements under the 1959 Alaska Statehood Act; and respectfully request that The Honorable Sally Jewell, U.S. Secretary of the Interior lift or revoke those withdrawals in 2016.

History of State Selections and ANCSA PLOs

By virtue of the 1959 Alaska Statehood Act the federal government agreed to grant, and to allow Alaska to select, a total of 103,350,000 acres from the public domain in order to provide for the development and self-sufficient economic base for the State. The promise to Alaska under the

[1] A "withdrawal" encompasses a variety of federal administrative actions and process that remove land from the public domain. Two common administrative actions that create withdrawals are Public Land Orders (PLOs) issued by the Department of the Interior (DOI) and Executive Orders (EOs) issued by the President. This letter is only focusing on PLOs.

Statehood Act allowed Alaskans to select "vacant, unappropriated, and unreserved" federal lands. Shortly after the passage of the Statehood Act, Alaska's ability and priority position to select many of the valuable federal lands was restricted in a number of ways, including by federal administrative land withdrawals and the land claims of the State's Alaska Native residents.

Ensuing federal legislation expanded, modified, and limited the State's land entitlement and resulted in the total land entitlement being established at approximately 105.9 million acres, including:

- ANCSA, and a series of PLOs issued under the authority of ANCSA;
- The Cook Inlet Region, Inc. (CIRI) Land Exchange in 1979;
- The Alaska National Interest Lands Conservation Act (ANILCA) of December 2, 1980; and
- The Alaska Land Transfer Acceleration Act (ALTAA) enacted in 2004.

Prior to the enactment of ANCSA in 1971 there were competing land claims between the State and Alaska Natives. While the passage of ANCSA was designed to help settle these competing claims by granting Alaska Native regional and village corporations priority selection rights, it created additional provisions that are still impacting the State's receipt of its land entitlements, particularly Section 17(d)(1) of ANCSA. Pursuant to ANCSA, the Department of the Interior created a large list of thirteen administrative land withdrawals under the authority of Sections 11, 12, 14, 16, and 17(d) of ANCSA that delay the State's selection process by withdrawing and reserving lands for Village and Regional Corporation selections, as well as for study and classification.

These PLOs are preventing some of the State's high priority top-filings from attaching, and are problematic because they prohibit Alaska from making final entitlement decisions. With these PLOs[2] in place, State cannot accurately prioritize, and thereby effectively request for transfer, lands based upon the sound science and the potential for future economic development of the resources contained in those lands. In addition to PLO 5150, first published on December 31, 1971 which withdrew lands for the Trans-Alaska Pipeline System Corridor, the next top five PLOs[3] which are preventing Alaska from accurately receiving and ranking our remaining selections for conveyance include:

- PLO 5174 of March 16, 1972 as amended, which withdrew lands for Selections by Village Corporations and Regional Corporations in Cook Inlet and for classification for lands in withdrawals;

[2] This bulleted list is in numerical order and lifting all of these PLOs are important to Alaska. Reference to PLO 5150 and the top five PLOs include all of the subsequent amendments or modifications thereto.

[3] There are additional PLOs that affect the State's selection process and the list is not intended to be a comprehensive list, only those PLOs that have the greatest impact on the State's land entitlement prioritization process.

- PLO 5180 of March 16, 1972 as amended, which withdrew lands for classification and for protection of public interest in lands;

- PLO 5181 of March 16, 1972 as amended, which withdrew lands for classification and study as possible additions to the National Wildlife Refuge system;

- PLO 5184 of March 16, 1972 as amended, which withdrew lands for classification or reclassification of lands withdrawn under Section 11 of ANCSA, specifically those lands in paragraph 2 of the PLO that deal with withdrawal of lands in the Yukon/Kuskokwin Delta area; and

- PLO 5187 of March 16, 1972 as amended, which withdrew lands for classification and protection of the public interest in lands in Military Reservations.

Current Status of the State's Land Entitlements

As of the end of 2015, the majority of the State's land entitlements have been transferred into State "control." Of the 105.9 million acre total entitlement, the State has received "control" to approximately 100.5 million acres, which consists of 64.5 million acres with final survey and patent and a remaining 36 million acres that are tentatively approved while awaiting surveying and subsequent patents.

The remaining 5.4 million acres of the State's land entitlement is awaiting fulfillment by the federal government and awaiting the resolution of a several factors, including "top-filings."[4] The State currently has approximately 10.4 million acres of land selected in which to receive the remaining land entitlements and approximately 10.5 million acres[5] of top-filings that may eventually become selections in the future should the applicable withdrawals be lifted. While the total acreage identified by the State significantly exceeds the remaining entitlement, only a small portion of the currently selected lands (excluding top-filings) meets the standard of advancing the State's self-sufficient economic base.

Prioritization of and Impediments to State Entitlement Selections

The State ranks its selections based upon information that is known about current resource values and future potential in order to support Alaska's best economic interests. There is a wide variety

[4] Section 906(e) of ANILCA gave the State the right to make "top-filings" for its land entitlement selections subject to valid existing rights and Native selection rights under ANSCA. Native selection rights could include individual Native Allottees' as well as Village and Regional Corporations. A top-filing makes the State's claim to land, "fourth in line" as a contingent selection. A valid existing right would also include any federal administrative withdrawals, such as the ANSCA PLOs being discussed herein. "Top-filings" prevent the land's adjudication as a "first in line" entitlement selection since they are a future interest and not counted towards the State's total land entitlements. However, once Native selection rights under ANSCA are finalized or the withdrawal is lifted, the State's selection would automatically attach to the land as a selection and be ready for adjudication.

[5] It is conceivable that all of these top-filings could convert to state selections, which would mean that the total amount of lands the State would need to prioritize for ownership includes the remaining acres validly selected and "top-filings," for a total in excess of 20 million acres.

of criteria from multiple perspectives that go into this analysis to help ultimately determine the ranking of the remaining land entitlements. These rankings are based on three primary objectives for the purpose of resources, settlement and recreation as follows:

- High priority lands that typically include oil, gas, mineral, or rare earth potential, or lands with a variety of potential uses;
- Medium priority lands that typically include one or more discernable economic uses (such as potential sale or lease to the public, road or infrastructure corridors, etc.) but that would not be expected to provide long-term returns to the State; and
- Low priority lands are those that little long-term economic use has been identified after review.

These primary objectives have been in place since prior to the Statehood Act. In fact, the House Committee reports submitted along with the Alaska Statehood Act indicate that the large federal grant of public domain lands to Alaskans was specifically designed to provide the new state with the necessary economic resources required to generate sufficient revenues to self-govern apart from reliance on federal expenditures. The committee report acknowledged that if the resources from the land are withheld from the State's right of selection, such selections of land would be of little economic value to the newly proposed state and would seemingly confine the State to selecting millions of acres of barren and frozen tundra.

Given the fact that the State is down to its remaining 5% of land entitlements, proper evaluation and prioritization of the remaining lands selected becomes highly critical to meet this mandate. This requires that the State has every opportunity available to conduct exploration so that we can accurately evaluate the high, medium and low priorities to identify those lands that fulfill the intent of the State's land entitlement.

A huge impediment to this re-evaluation is the restriction of exploration on potential high priority lands that the State has "top-filed" until such time as the prior selections under ANCSA are relinquished, settled, and the relevant withdrawals are revoked or lifted. To protect the best economic interests of the State going forward, we must safeguard that we have adequate land entitlement remaining when key top-filings become selections when the withdrawals have been revoked, and/or the Native Claims are finally settled or relinquished.

As previously indicated, ANCSA-related PLOs were put into place during the 1970's to help facilitate settlement of all of the Native Alaskan claims from prior to the Statehood Act. ANCSA established the framework for the settlement of all Native claims by providing that the Regional Corporations, as well as the Village Corporations, receive their federal land entitlements in the vicinity of their Native communities by removing or withdrawing large areas of land from the public domain and thus from state selection while these corporations make their "first in line" selections under ANCSA.[6]

[6] Proximity to high density communities and existing infrastructure are why such a large portion of the State's top-filed lands are ranked as high priority lands. ANCSA also provided a mechanism for these corporations to select alternative lands in the event that there was a "deficiency" in lands available near their original communities, which continues to cause further delays the ultimate settlement of Native claims under ANCSA.

While it is true that most of the ANCSA corporations have completed their selection determinations and final adjudication and receipt of their entitlement from the Bureau of Land Management (BLM)[7] is on-going, the federal government has not yet lifted the ANSCA PLOs.[8] This is despite the fact that the original reasons for the imposition of these PLOs, including protection of the resources and prevention of the encumbrances that might interfere with the Native entitlements, have been satisfied. Lifting theses ANCSA PLOs, primarily the Section 17(d)(1) withdrawals, will allow the State to properly evaluate their selections and allow exploration on the lands identified as high priority[9] with subsequent adjudication and transfer of these high priority areas to Alaska for the State's overall economic well-being.

Therefore, on behalf of the State, I am respectfully requesting the revocation or lifting of these identified PLOs is a crucial step that will allow the State to conduct necessary exploration, prioritize remaining selections, and move forward on the final transfer of the State's land entitlement as promised by the 1959 Statehood Act.

Very Respectfully,

Mark D Myers

Mark D. Myers
Commissioner
Alaska Department of Natural Resources

cc: Janice Schneider, Assistant Interior Secretary, Land and Minerals Management
Bill Walker, Governor
Brent Goodrum, Director, Division of Mining, Land and Water

[7] BLM still has statutory surveying obligations to the ANCSA corporations before these transfers are entirely complete, but federal budget submissions seem to indicate that ANCSA transfers are supposed to be completed within the next five years.

[8] BLM's planning process was to be the mechanism for lifting these PLOs, but lifiting by the Department of the Interior has yet to happen as a consequence of the four plans that have approved Records of Decision.

[9] Currently these PLOs are preventing top-filed lands from being converted to "selected" status, including approximately 1.5 million acres that have been assigned a high priority for transfer by the State and approximately 2.8 million acres where not enough is yet known about the land's resource value to assign it a definite priority.

$14 million price tag for public lands lawsuit gives governor pause

By Lisa Riley Roche, Deseret News

Published: Thursday, Jan. 28 2016 7:00 p.m. MST

Updated: Thursday, Jan. 28 2016 11:06 p.m. MST

Gov. Gary Herbert said Thursday he's still reviewing whether he supports going forward with a proposed lawsuit against the federal government over its control of public lands, given the high price tag.

Deseret News

Summary
Gov. Gary Herbert said Thursday he's still reviewing whether he supports going forward with a proposed lawsuit against the federal government over its control of public lands, given the high price tag.

SALT LAKE CITY — Gov. Gary Herbert said Thursday he's still reviewing whether he supports going forward with a proposed lawsuit against the federal government over its control of public lands, given the high price tag.

"I think the thing that gives us all pause is the cost," the governor told reporters during his first media availability of the 2016 Legislature. "You kind of have to handicap (it). We're going to spend $14 million and our chances of success are what?"

At the same time, members of the House GOP caucus were listening to legal arguments for Utah asserting control over public lands made by attorneys brought together by the Legislature's Commission for Stewardship of Public Lands.

House Speaker Greg Hughes, R-Draper, told the caucus it's time for the state to make a decision.

"I think we're coming together, finally, in a way we can accelerate the pace in terms of this argument," he said. "Frankly, if we're not going to do it, if we're not going to move the needle on this, we've got to quit talking. We've got to do something."

No position was taken by the caucus, but no one spoke against legal action. Members of the Republican-controlled commission voted in December to pursue a lawsuit after hearing that recommendation from the team of lawyers they'd hired.

The commission's House chairman, Rep. Keven Stratton, R-Orem, said the issue is "politically charged" and should be decided based on factual information. "This is an all-hands-on-deck issue."

Another member of the commission, Rep. Mel Brown, R-Coalville, said the price tag isn't a consideration.

"The cost in my mind shouldn't even be a discussion. It's trivial," Brown said. "How can you put price on self-determination and freedom?"

But the governor noted there's no guarantee the state would win in court. He said he'd prefer to see Congress resolve the long-standing issue of having more than 66 percent of the state's lands under federal control.

The public lands initiative recently unveiled by Utah GOP Reps. Rob Bishop and Jason Chaffetz is a "better, more sure way of getting it done," Herbert said. Still, he said the initiative doesn't exclude a lawsuit.

What would boost his enthusiasm for a court case, Herbert said, is for other Western states to join Utah in a lawsuit. Less than 5 percent of the land in states east of Colorado is under federal control compared with more than 50 percent in the West.

"I think there is discussion along that very line," the governor said. "Having other states of like mind joining together gives us a stronger voice and helps share the costs. If that was to be the case, I would certainly welcome that."

It will be up to Attorney General Sean Reyes' office whether the state files suit, but lawmakers would have to approve the funds. Hughes said later that the $14 million price tag is an estimate that initially gave lawmakers pause.

"I think it did before, but when you put it in its context, I don't think it's as big an issue," the speaker said. "What we're talking about, we really need to get to a point where we need to move forward and make a strong case for this ... or not."

The speaker said a decision might not be made by the end of the session.

"I think if there's a legislative will and we can have these conversations with our federal delegations as well as the governor, I would hope that by the end of 45 days we know more than we know right now," Hughes said.

Contributing: Dennis Romboy

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Utah Legislators Vote To Pursue Lawsuit To Seize Federal Lands

ByBRADY McCOMBSPublishedDecember 10, 2015, 12:11 PM EST
2879 views

SALT LAKE CITY (AP) — The federal government controls two-thirds of the land in Utah and the state says it's prepared fight to get it back.

A Republican-dominated commission of Utah legislators voted Wednesday to move forward with a lawsuit challenging the U.S. government's control of federal lands — the latest salvo in a long-running feud.

The commission made the decision after a consulting team it hired said its research concluded the Constitution does not give the U.S. government power to control federal lands within state borders.

The team of hired lawyers recommended the commission urge the governor and attorney general to take on the lawsuit, even while warning it could cost up to $14 million, take years to play out in the courts and saying it would be far from a sure victory.

"It's a solid argument but the court has never thought about it before," said Ronald Rotunda, a constitutional law expert part of the team of lawyers. "That's what makes it a very dramatic case."

The only votes against moving forward came from two Democrats, who objected to the costs and

questioned the objectively of the consulting team.

The decision marks the latest indication that Utah's conservative leadership remains committed to moving forward with what many consider a longshot attempt to assert state powers.

Utah passed a law in 2012 demanding the federal government hand over the lands by the end of 2014. When that deadline quietly passed, Utah legislators began weighing a possible lawsuit. Supporters of the plan argue that the state would be a better managers of the land and that local control would a allow Utah to make money from taxes and development rights on those acres.

Lawmakers backing the proposal hit on those topics Wednesday in explaining their votes.

Rep. Keven Stratton, R-Orem, chair of a commission for the stewardship of public lands, said the decision was made after years of careful consideration and countless stories from residents in rural counties about how federal management makes living and doing business on federal lands cumbersome and unpleasant.

"We want things that we treasure cared for not only for our day, but for the generations to come," Stratton said. "We have a record in this state that shows that we can manage and care for the treasures we all value."

The office of Utah Attorney General Sean Reyes will make a final decision on the lawsuit. His chief of staff, Parker Douglas, said they will review the consultant's voluminous report and do their own analysis before making any decision.

"There's arguably a case," Douglas said, adding the attorney general's office "is not a rubber stamp. . . . We will look at it and we will consider it."

The state has paid the consultants $502,000 so far, and is authorized to pay up $2 million to prepare a legal strategy and sway public opinion in the state's favor.

Department of Interior Secretary Sally Jewell considers Utah's push a misguided effort that doesn't take into account benefits or costs of managing public lands, agency spokeswoman Jessica Kershaw in a statement. "The Secretary has been clear on this issue -- she's happy to have thoughtful discussion about achieving balanced managements - but she's not open to selling off public lands to the highest bidder," the statement reads.

Sen. Jim Dabakis, D-Salt Lake City, voiced his lingering skepticism about the objectivity of the firm's research and questioned why the state is spending money for what he said most legal scholars consider a legal Hail Mary at best. He said the hired lawyers have the same ideological bent as Utah's GOP-dominated legislature.

"It's a little bit like asking a barber, 'Do I need a haircut?'" Dabakis said.

Rep. Joel Briscoe, D-Salt Lake City, said he opposed the plan because he needs more time to assess whether the lawsuit is worth $14 million of taxpayer money, a cost estimate he called stunning.

The two Democrats are joined by a long list of environmental groups in opposing the plan. The Center for Western Priorities said in a statement that Utah is wasting money to have hired guns give them the answers they want to hear.

The consulting team and the commission defended the work, saying they researched and analyzed counter points.

"I asked: If there are warts, we want to see them," Stratton said. "If there's a pile of horsepucky, if we're barking up the wrong tree, we want to see that."

The history and law behind Utah's bid to gain federal public lands

The history and law behind Utah's bid to gain federal public lands

By BRIAN MAFFLY | The Salt Lake Tribune

CONNECT

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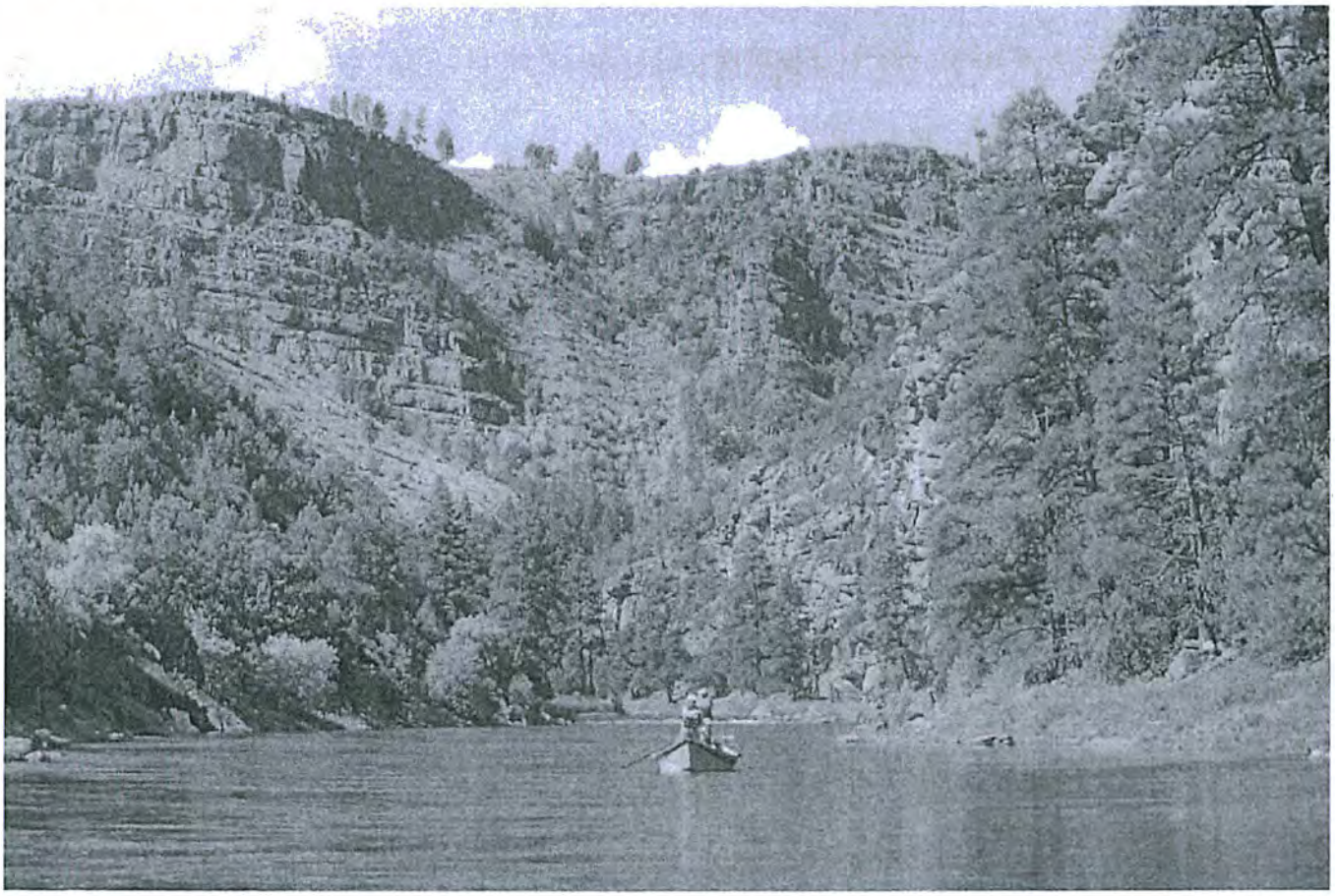

(Brett Prettyman | Tribune file photo) A drift boat floats the upper section of Utah's Green River below Flaming Gorge Reservoir in Daggett County. Utah is contemplating a lawsuit, expected to cost $14 million, to force the federal government to hand over title to this landscape and 31 million acres of other public lands. Critics say such a move would undue the region's conservation legacy and lead to the privatization of the land, while backers say the state can do a better job managing these lands.

Legal case » Consultants hired by the state say the feds can't retain the lands indefinitely, but other experts disagree.

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ARTICLE PHOTO GALLERY (1)

In the 1780s, Maryland was worried about its neighbors as America's newly independent states pondered how to bind 13 former British colonies into a single nation.

Virginia and Pennsylvania envisioned their borders extending far into "unoccupied" land to the west, and Maryland feared that its influence would wane should those states gain large empires. It insisted these lands be reserved for future states and sold to pay down a massive war debt and fund ongoing government operations.

The historic compromise to resolve this impasse led to the principles Utah is now invoking as it builds a legal case to demand that the federal government hand over title to 31 million acres of public lands.

To persuade Maryland's leaders to sign the Articles of Confederation, other states agreed that all future states would join the union on "equal footing" with the original 13, making the young nation a federal republic of sovereigns, according to the legal analysis recently unveiled by consultants hired by the Utah Commission for the Stewardship of Public Lands.

However, by retaining much of the land in Utah and other Western states, the consultants argue, the federal government has denied these newcomers to the union full benefits of true statehood.

"On the questions of whether the federal government has the constitutional power to near permanently retain over 66 percent of land within the borders of the state of Utah, it is our conclusion that power does not exist," George Wentz, a partner with the New Orleans law firm Davillier Group, told the commission last month.

Wentz and his team of constitutional scholars recommended Utah file suit with the U.S. Supreme Court aimed at fulfilling the goals of HB148, the 2012 law ordering the federal government to hand over most of the Utah land administered by the Bureau of Land Management and U.S. Forest Service.

But according to other legal minds, Wentz's case, outlined in a 146-page report, is full of holes that will likely cause hemorrhages in the estimated $14 million cost of bringing such a case.

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Acquiring the arid West • University of Utah law professors John Ruple and Bob Keiter conclude the state's legal consultants ignore the historical context of western expansion and decades of legal precedents.

"The Supreme Court has made clear that the Property Clause [of the U.S. Constitution] grants Congress an 'absolute right' to decide upon the disposition of federal land and no 'State legislation can interfere with this right or embarrass its exercise,'" Keiter and Ruple wrote in an October 2014 white paper. In upholding the National Forest System, the court concluded "the federal government could retain public lands for broad national benefits, and that it could do so indefinitely."

The territory won following the 1848 war with Mexico — much of New Mexico, Arizona, California, Utah, Nevada and Colorado — was not amenable to agriculture, unlike the rolling self-watered plains east of the 104th Meridian.

Land "didn't belong to the states first, because there were no states," Ruple said. "This notion that Utah is the same as Maryland and Connecticut is historically suspect."

Settlement out West required massive federal subsidies in the form of land giveaways, roads and rail, irrigation and, later, fire suppression. In 1905, four decades after passage of the Homestead Act, 418 million acres remained open for homesteading in 11 western states because it was too difficult to settle and develop.

"Outside of valleys with reliable snowmelt fed rivers, consistent year-around water sources were often unavailable, and even where rivers and streams existed, rugged topography and the cost of developing reservoirs and irrigation systems limited agricultural opportunities," the scholars wrote.

"The Homestead Act didn't work in Utah and Nevada, because you couldn't homestead without water. We didn't have good groundwater pumping until the 1930s," Ruple said.

Congress drafted legislation in 1932 to convey public lands to the states, but the bill died in the absence of Western support. These states feared losing mineral revenue and other funds shared by the federal government, while getting saddled with huge administrative costs should they acquire this public domain, according to Keiter and Ruple.

Given this history, they say, no Western state can credibly argue it has been denied equal footing simply because federal ownership of its public land has persisted.

In the 19th century, the federal government was already setting aside big tracts for national parks and

forest reserves, so a policy retaining land was in motion before Utah joined the union in 1895.

And while Wentz's report challenges the legality of provisions in the 1976 Federal Lands Policy and Management Act, which codified land retention policies, Ruple noted that the federal government has continued to dispose of land since its passage. Between 1990 and 2010, 24 million federal acres have been transferred to state and private hands, according to Ruple.

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Debating the benefits of victory • Wentz's team, after convincing the public lands commission last month to hire it for additional services, is drafting a complaint and a confidential memo to Utah Attorney General Sean Reyes. The decision to pursue the case would be left to Reyes, although Republican lawmakers have made it clear they want to litigate and HB148 authorizes such a lawsuit.

No other Western state has enacted a land transfer demand, although Utah is urging others to join its legal crusade and established an "interstate compact" for them to join.

Wentz pegged Utah's legal tab at $13.8 million and has been careful to emphasize the outcome is anything but certain. He notes many groups will seek intervenor status and the government will devote extensive resources fighting back.

The sum includes a seven-member legal team working full time for six months at $1,750 an hour, plus retaining an attorney specializing in Supreme Court practice. Expert witnesses paid $300 an hour for testimony would cost $720,000, plus another $480,000 for consulting experts.

Transfer critics in the Legislature regard such spending an utter waste, noting Utah has an unhappy history of spending heavily on outside lawyers to wage dubious legal battles.

And Keiter and Ruple contend a legal victory for Utah could be a disaster for its citizens since it is unlikely the state would also get the rights to oil, gas and valuable minerals on the transferred lands. Without mineral revenues to cover the cost of administering the land, Utah would be forced to sell much of it, they argue.

The government did convey vast tracts to latecoming states in the 19th century. Utah was given 7.5 million acres — 13.8 percent of the land within its borders — in checkerboard-like sections to be managed to support schools. But leaders spent most of this endowment before reforms created the School and Institutional Trust Lands Administration in 1994 and stopped the bleeding.

For transfer critics, this history raises doubts about the state's ability to manage the public domain in the public interest.

But others see the $14 million legal bill as a worthwhile investment considering the stakes and potential rewards should Utah prevail. Wentz's team says federal land retention has prevented Utah from growing

its population and developing economically to its full potential.

Two of the nation's fast growing states, Utah and Nevada, happen to be those with the highest percentages of their land under federal ownership. This growth, however, is largely occurring in established urban areas; many rural areas are contracting and local leaders allege federal land management thwarts economic development.

The U. scholars have so far released three white papers contesting the wisdom and legal reasoning behind land transfer. Their next paper will explore solutions to rural Westerners' unhappiness with federal oversight of so much of the land surrounding their communities.

Empire Editorial: HB 115 a political stunt and nothing more

Posted: April 8, 2015 - 11:03pm

It's tough to get a straight answer from a lawyer. In February, the Alaska Legislature managed it.

"The bill is unconstitutional," wrote Alpheus Bullard, legislative counsel for the state.

On Monday, the Alaska House of Representatives passed House Bill 115 anyway.

HB 115, written by House Speaker Mike Chenault, R-Nikiski, would require the federal government to hand over more than 100 million acres of land to the state — basically everything but military bases and national parks.

The bill exists because a handful of state lawmakers throughout the West are unhappy with the way the federal government is managing its land in their states. The idea is that by taking control of more land, states can open it to development and reap the economic benefits. Utah was the first to act, passing a similar bill in 2012 and signing it into law.

Arizona's legislature did the same thing that year, but when the bill reached the desk of Gov. Jan Brewer, she did a funny thing — she vetoed it. Brewer, a conservative on most topics, said the state couldn't afford to fight the federal government on the issue.

Bullard and Brewer both understood something Chenault and 26 other members of the Alaska House do not: This is a dead issue. For Alaska in particular, it's especially dead.

Article XII, section 12 of the Alaska Constitution specifically states: "The State of Alaska and its people forever disclaim all right and title in or to any property belonging to the United States ..."

At statehood, Alaska gave up its claims to federal land beyond what was called for in the Alaska Statehood Act. That hasn't kept the state from trying. In 1982, Alaska voters went to the polls on Ballot Measure 5, which asked if the state should claim "ownership of all federal land in Alaska except Mount McKinley National Park, national monuments established before 1977, Native corporation selections, the Annette Island Reserve, and land controlled by the Department of Defense or the Alaska Power Administration."

By an overwhelming 137,633 to 50,791 vote, Alaskans said yes, the state should make such a claim.

Of course, declaring something and actually doing it are two different things.

The following year, the Alaska Attorney General issued an opinion stating that regardless of the vote, it was still unconstitutional. The administration of Gov. Bill Sheffield declined to press the issue.

Now, Alaskans are being asked the same question, and the answer is still the same. It's unconstitutional.

In October, then-candidate Bill Walker was asked whether the state should consider continuing a legal fight to ban same-sex marriage. He issued a statement that said in part: "with the state's dire financial crisis, pursuing expensive litigation that has little chance of victory is an unwise use of our dwindling resources."

We agree.

HB 115 has now been referred to the Senate Resources Committee, and if the Legislature has any sense, this bill will not receive another hearing before the legislative session concludes April 19.

The Alaska Legislature has yet to finalize rules on marijuana — something voters demanded last fall. It has yet to pass Erin's Law, which the Legislature deemed worthy of passage last year before running out of time.

HB 115 is nothing but a political stunt, and the straight answer is that this stunt has real potential to harm Alaska.

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Federal lands bill ill-considered: State House ignores legal advice in passing provocative, unconstitutional bill

Fairbanks Daily News-Miner editorial
Apr 8, 2015

News-Miner opinion: Suspicion of the federal government and its motives is commonplace among Alaskans. There's a reason for that: The U.S. has never been keen to give over control of resources, hunting and fishing rights and even land promised to the state. The attitude of the federal government has led many to question its attitude toward Alaska — whether presidential administrations and members of other states' congressional delegations view the Last Frontier as equal to others in the Lower 48 or as a far-flung colony still subject to greater federal control.

But while suspicion of the federal government is likely a healthy impulse and one that helps ensure the state's rights aren't trampled by Outsiders, there is such a thing as going overboard.

The most recent instance of the impulse to push back against federal control being taken too far comes by way of House Speaker Mike Chenault, R-Nikiski, and his House Bill 115, which would require the federal government to give more than 100 million acres of its land in Alaska to the state. The bill, were it passed and the U.S. government complied, would leave only military bases and national parks under federal control.

It goes without saying that even if HB 115 passes, the federal government will pay it almost no mind. Except for about 5 million acres of land promised to the state that has yet to be conveyed under the Alaska National Interest Land Claims Act, Alaska has no claim to federal lands.

What's more, this is a gambit that has been tried before and failed. The "Tundra Rebellion" of 1982 led to an Alaska voter initiative insisting the federal government had

no right to land in Alaska and directing the state to begin managing all lands under federal control. Though the initiative passed, the state's attorney general found it to be unconstitutional and directed state agencies not to enforce it.

This time around, the advice given to members of the House was the same: "The bill is unconstitutional," legislative legal staff reported. The House passed it anyway.

Rep. Steve Thompson, R-Fairbanks, suggested that his real motivation for supporting the bill isn't that he believes it to be constitutional but rather that it may prompt the federal government to relay the final lands due to the state in a manner more favorable to Alaska's interests. That would be a more sensible — and less provocative — outcome. But if the goal really is the hand-over of those lands, why not target them specifically? If your next-door neighbor owes you an appliance he borrowed, you are not legally entitled to seize his entire house when it takes him longer to give the appliance back than it should. Trying to take away the vast majority of federal lands in Alaska can only serve to widen the gulf in perspective between the state and the federal government, and not in a way that makes the state's position seem reasonable.

HB 115 would be inflammatory and ill-advised at any time, but it is especially so given the extent of the budget situation facing Alaska. Legislators are foolish to spend time debating such a bill in the face of a $3.5 billion deficit, especially as it could worsen that gap if it leads to legal action between the state and federal government. The only potential benefit the bill has for its supporters is as a piece of red meat with which to satisfy constituents upset over the conduct of the U.S. government on largely unrelated issues. To waste valuable time discussing it as the legislative session winds to a close would be a betrayal of constituents counting on legislators to do their job addressing the deficit.

It's too late to recoup the time squandered addressing a bill that the state's own legal professionals have flat-out declared unconstitutional. The best that can be done about HB 115 at this point is for the Senate to not waste further time by considering it.

Source: http://www.newsminer.com/opinion/editorials/federal-lands-bill-ill-considered-state-house-ignores-legal-advice/article_94ec614e-dda6-11e4-a2c3-974e8c7c0ab9.html

Alaska Dispatch News

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Dermot Cole [1]
April 6, 2015

Rejecting the advice of its legal staff, the Alaska House of Representatives approved a bill Monday ordering the federal government to hand over most federal land in Alaska to the state by Dec. 31, 2016.

House lawmakers said the federal government would be allowed to keep national parks, such as Denali, but not national monuments, preserves and areas such as the Arctic National Wildlife Refuge and the Izembek National Wildlife Refuge.

Democratic critics said the plan introduced by House Speaker Mike Chenault, a Nikiski Republican, was a waste of time and a guaranteed loser in court.

"We don't have the money to litigate a bill that is 100 percent unconstitutional," said Anchorage Democratic Rep. Les Gara.

Fellow Anchorage Democratic Rep. Andy Josephson said he would be violating his oath of office if he backed the bill.

"The Constitution says it's illegal. The Supreme Court reading the Constitution says it's illegal. The lawyers we pay in the Terry Miller Building say it's illegal. And our past attorney general says it's illegal," he said. "So there's not much left here."

Legislative lawyers also told Chenault it was unconstitutional but he said in February it was justified because the federal government has yet to transfer about 5 million acres of the land promised Alaska under the Alaska Statehood Act in 1958. The federal government has transferred about 100 million acres to the state, which is a land grant about the size of California.

"I believe there is a breach of contract as well as a breach of good faith," Chenault said in a statement about the 5 million acres that remains to be transferred.

The state Department of Natural Resources has said that one reason the transfers have yet to be finished is that the state has slowed it down because it wants the federal government to make more lands available for selection. A section of Chenault's bill orders the federal government to lift the public land orders that have given state officials heartburn.

The bill does not order the transfer of the remaining statehood entitlement. But it lays claim to about 166 million acres, according to a DNR estimate, an area that exceeds the combined territory of Montana and Idaho. The measure, House Bill 115, was approved on a 27-11 vote, drawing support from members of the ruling majority led by Chenault.

Responding to the vote, Lois Epstein, a program director for the Wilderness Society in Anchorage, said, "I'm shocked that the House ignored the U.S. Constitution and its legal advisers by passing this bill."

To a large degree, the bill mimics an existing 33-year-old state law that has never been enforced because of a legal consensus that it is unconstitutional.

That law, approved by the so-called 1982 Tundra Rebellion voters' initiative, says the state owns most federal property in Alaska, down to post offices and federal buildings. The old law also makes it a felony for federal officials to enforce federal land laws in Alaska and it gives the state the power to sell federal land but these provisions were never put into practice.

In 1983, in an opinion that has never been reversed, the state attorney general said the law is "clearly unconstitutional" and that Alaskans should ignore it. Attorney General Norman Gorsuch said that "no good faith argument could be made to support" the claim that the state owned almost all the federal land within its borders. Katmai, Glacier Bay and part of what is now Denali National Park are among the exceptions not claimed under the law.

At the time, Rep. Don Young was among those who introduced bills to transfer lands to the states.

"There have been hearings on these bills, but it is not expected that Congress will act favorably on them or similar measures," Gorsuch wrote in 1983.

Legislative lawyers told Chenault in February that his bill is unconstitutional and mentioned the 1983 legal review.

In the debate Monday, some lawmakers said if enough Western states would claim federal land within their borders, they think the federal government would succumb to the pressure.

Anchorage Republican Rep. Gabrielle LeDoux compared it to the marijuana initiative approved by voters last fall and similar actions in Colorado and elsewhere: "Guess what? The federal government blinks. If enough states do it, if enough states say what they want and say we're going to take it, we just might get what we want."

Chenault has said he wants to follow the example of Utah, which demanded that all federal land be handed over by the end of 2014, though that has not happened.

Other Alaska legislators said broken promises by Washington are a justification for taking land, though they did not say how much it might cost the state or allocate funds for legal expenses. Allies of Chenault said that they didn't want to get too hung up on the legal questions but that the bill has plenty of political merit.

Rep. Kurt Olson, R-Kenai, said he has heard about a half dozen times in the past that bills he backed were illegal.

"That has not stopped me, and I would like to add that we never saw any suits out of any of the previous legislation that was unconstitutional," he said.

It would take a state action, however, not a federal lawsuit, to try to get the federal government to turn over its land and comply with the House order.

Rep. Steve Thompson, R-Fairbanks, linked it to a non-binding amendment in the U.S. Senate by Sens. Lisa Murkowski and Dan Sullivan. That amendment, approved March 26 on a 51-49 vote, puts the Senate on record as favoring the sale or transfer of federal land to the states for economic development.

But the federal measure differs in a key way from the state claim that federal lands have to be handed over to Alaska by the end of 2016.

"Nothing in the language that we have included in this amendment actually sells, transfers or exchanges a specifically identified piece of property," Murkowski told the Senate on March 26

about her amendment.

But, she added, "this language would provide balance by enabling the types of exchanges, sales or transfers with states or local governments that are often used to craft balanced, comprehensive land policies."

The Murkowski-Sullivan plan would exclude transferring national parks, monuments or preserves to states, while allowing all other types of land to be disposed.

Sen. Martin Heinrich, a New Mexico Democrat, said the Murkowski-Sullivan plan would damage the legacy of public lands in the U.S. and lead to more locked gates and "no trespassing" signs.

"This amendment would make it easier to turn our public lands over to state land commissioners and eventually to sell them outright," he said.

A spokesman for Murkowski said there was no connection between her amendment and the Chenault bill.

The original version of the Chenault plan said that the federal government would get half of the money from lands that would be sold by the state. But that was removed from the bill in committee, with all of the money going to Alaska.

Rep. Craig Johnson, an Anchorage Republican, said bureaucrats in Washington "steal our gold" and "steal our oil."

"When are we going to start fighting back?" he said.

Wasilla Republican Rep. Wes Keller said national parks are one example of a legitimate federal interest but other lands should be given to the state.

"We have a lot of federal, national interest in our lands and we acknowledge that in our national parks, that's a given," he said. "But the point is there's a lot of land up here and the state has an undefined right to a lot of that land and I wouldn't give a number."

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Representative Mike Chenault
Speaker of the Alaska State House

Ninth Amendment

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

Tenth Amendment

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Representative_Mike_Chenault@legis.state.ak.us

Alaska Statehood Act

(72 Stat. 339) Public Law 85–508, 85th Congress, H. R. 7999, July 7, 1958

AN ACT To provide for the admission of the State of Alaska into the Union.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, subject to the provisions of this Act, and upon issuance of the proclamation required by section 8(c) of this Act, the State of Alaska is hereby declared to be a State of the United States of America, is declared admitted into the Union on an equal footing with the other States in all respects whatever, and the constitution formed pursuant to the provisions of the Act of the Territorial Legislature of Alaska entitled, "An Act to provide for the holding of a constitutional convention to prepare a constitution for the State of Alaska; to submit the constitution to the people for adoption or rejection; to prepare for the admission of Alaska as a State; to make an appropriation; and setting an effective date", approved March 19, 1955 (Chapter 46, Session Laws of Alaska, 1955), and adopted by a vote of the people of Alaska in the election held on April 24, 1956, is hereby found to be republican in form and in conformity with the Constitution of the United States and the principles of the Declaration of Independence, and is hereby accepted, ratified, and confirmed.

Territory

SEC. 2. The State of Alaska shall consist of all the territory, together with the territorial waters appurtenant thereto, now included in the Territory of Alaska.

Constitution

SEC. 3. The constitution of the State of Alaska shall always be republican in form and shall not be repugnant to the Constitution of the United States and the principles of the Declaration of Independence.

Compact with U.S.

SEC. 4. As a compact with the United States said State and its people do agree and declare that they forever disclaim all right and title to any lands or other property not granted or confirmed to the State or its political subdivisions by or under the authority of this Act, the right or title to which is held by the United States or is subject to disposition by the United States, and to any lands or other property (including fishing rights), the right or title to which may by held by any Indians, Eskimos, or Aleuts (hereinafter called natives) or is held by the United States in trust for said natives; that all such lands or other property (including fishing rights), the right or title to which may be held by said natives or is held by the United States in trust for said natives, shall be and remain under the absolute jurisdiction and control of the United States until disposed of under its authority, except to such extent as the Congress has prescribed or may hereafter prescribe, and except when held by individual natives in fee without restrictions on alienation: *Provided,* That nothing contained in this Act shall recognize, deny, enlarge, impair, or otherwise affect any claim against the

United States, and any such claim shall be governed by the laws of the United States applicable thereto; and nothing in this Act is intended or shall be construed as a finding, interpretation, or construction by the Congress that any law applicable thereto authorizes, establishes, recognizes, or confirms the validity or invalidity of any such claim, and the determination of the applicability or effect of any law to any such claim shall be unaffected by anything in this Act: *And provided further,* That no taxes shall be imposed by said State upon any lands or other property now owned or hereafter acquired by the United States or which, as hereinabove set forth, may belong to said natives, except to such extent as the Congress has prescribed or may hereafter prescribe, and except when held by individual natives in fee without restrictions on alienation. (Amended June 25, 1959, P.L. 86-70, § 2(a), 73 Stat. 141).

Title to property

SEC. 5. The State of Alaska and its political subdivisions, respectively, shall have and retain title to all property, real and personal, title to which is in the Territory of Alaska or any of the subdivisions. Except as provided in section 6 hereof, the United States shall retain title to all property, real and personal, to which it has title, including public lands.

Selection from public lands

SEC. 6. (a) For the purposes of furthering the development of and expansion of communities, the State of Alaska is hereby granted and shall be entitled to select, within thirty-five years after the date of the admission of the State of Alaska into the Union, from lands within national forests in Alaska which are vacant and unappropriated at the time of their selection not to exceed four hundred thousand acres of land, and from the other public lands of the United States in Alaska which are vacant, unappropriated, and unreserved at the time of their selection not to exceed another four hundred thousand acres of land, all of which shall be adjacent to established communities or suitable for prospective community centers and recreational areas. Such lands shall be selected by the State of Alaska with the approval of the Secretary of Agriculture as to national forest lands and with the approval of the Secretary of the Interior as to other public lands: *Provided,* That nothing herein contained shall affect any valid existing claim, location, or entry under the laws of the United States, whether for homestead, mineral, right-of-way, or other purpose whatsoever, or shall affect the rights of any such owner, claimant, locator, or entryman to the full use and enjoyment of the land so occupied: *Provided further,* That for the purposes of this section the term "public lands of the United States in Alaska which are vacant, unappropriated, and unreserved" shall include, without limiting the use thereof, the retained or reserved interest of the United States in lands which have been disposed of with a reservation to the United States of all minerals or any specified mineral or minerals.

(b) The State of Alaska, in addition to any other grants made in this section, is hereby granted and shall be entitled to select, within thirty-five years after the admission of Alaska into the Union, not to exceed one hundred and two million five hundred and fifty thousand acres from the public lands of the United States

in Alaska which are vacant, unappropriated, and unreserved at the time of their selection: *Provided,* That nothing herein contained shall affect any valid existing claim, location, or entry under the laws of the United States, whether for homestead, mineral, right-of-way, or other purpose whatsoever, or shall affect the rights of any such owner, claimant, locator, or entryman to the full use and enjoyment of the lands so occupied: *And provided further,* That no selection hereunder shall be made in the area north and west of the line described in section 10 without approval of the President or his designated representative.

(c) Block 32, and the structures and improvements thereon, in the city of Juneau are granted to the State of Alaska for any or all of the following purposes or a combination thereof: A residence for the Governor, a State museum, or park and recreational use.

(d) Block 19, and the structures and improvements thereon, and the interests of the United States in blocks C and 7, and the structures and improvements thereon, in the city of Juneau, are hereby granted to the State of Alaska.

Fish and wildlife resources

(e) All real and personal property of the United States situated in the Territory of Alaska which is specifically used for the sole purpose of conservation and protection of the fisheries and wildlife of Alaska, under the provisions of the Alaska game law of July 1, 1943 (57 Stat. 301; 48 U.S.C., secs. 192 – 211), as amended, and under the provisions of the Alaska commercial fisheries laws of June 26, 1906 (34 Stat. 478; 48 U.S.C., secs. 230 – 239 and 241 – 242), and June 6, 1924 (43 Stat. 465; 48 U.S.C., secs. 221 – 228), as supplemented and amended, shall be transferred and conveyed to the State of Alaska by the appropriate Federal agency: *Provided,* That the administration and management of the fish and wildlife resources of Alaska shall be retained by the Federal Government under existing laws until the first day of the first calendar year following the expiration of ninety calendar days after the Secretary of the Interior certifies to the Congress that the Alaska State Legislature has made adequate provision for the administration, management, and conservation of said resources in the broad national interest: *Provided,* That such transfer shall not include lands withdrawn or otherwise set apart as refuges or reservations for the protection of wildlife nor facilities utilized in connection therewith, or in connection with general research activities relating to fisheries or wildlife. Sums of money that are available for apportionment or which the Secretary of the Interior shall have apportioned, as of the date the State of Alaska shall be deemed to be admitted into the Union, for wildlife restoration in the Territory of Alaska, pursuant to section (8)(a) of the Act of September 2, 1937, as amended (16 U.S.C., sec. 669g–1), and for fish restoration and management in the Territory of Alaska, pursuant to section 12 of the Act of August 9, 1950 (16 U.S.C., sec. 777k), shall continue to be available for the period, and under the terms and conditions in effect at the time, the apportionments are made. Commencing with the year during which Alaska is admitted into the Union, the Secretary of the Treasury, at the close of each fiscal year, shall pay to the State of Alaska 70 per centum of the net proceeds, as determined by the Secretary of

the Interior, derived during such fiscal year from all sales of sealskins or sea-otter skins made in accordance with the provisions of the Fur Seal Act of 1966. In arriving at the net proceeds, there shall be deducted from the receipts from all sales all costs to the United States in carrying out the provisions of the Fur Seal Act of 1966, including, but not limited to, the costs of handling and dressing the skins, the costs of making the sales, and all expenses incurred in the administration of the Pribilof Islands, and the payments made to any municipal corporation established pursuant to section 206 of the Fur Seal Act of 1966 and to the civil service retirement and disability fund pursuant to section 208 of the Fur Seal Act of 1966. In administering the Pribilof Islands fund established by section 407 of the Fur Seal Act of 1966, the Secretary shall consult with the State of Alaska annually. Nothing in this Act shall be construed as affecting the rights of the United States under the provisions of the Fur Seal Act of 1966 and the Northern Pacific Halibut Act of 1937 (16 U.S.C. 772 – 772i).

Public school support

(f) Five per centum of the proceeds of sale of public lands lying within said State which shall be sold by the United States subsequent to the admission of said State into the Union, after deducting all the expenses incident to such sales, shall be paid to said State to be used for the support of the public schools within said State.

(g) Except as provided in subsection (a), all lands granted in quantity to and authorized to be selected by the State of Alaska by this Act shall be selected in such manner as the laws of the State may provide, and in conformity with such regulations as the Secretary of the Interior may prescribe. All selections shall be made in reasonably compact tracts, taking into account the situation and potential uses of the lands involved, and each tract selected shall contain at least five thousand seven hundred and sixty acres unless isolated from other tracts open to selection or, in the case of selections under subsection (a) of this section, one hundred and sixty acres. The authority to make selections shall never be alienated or bargained away, in whole or in part, by the State. Upon the revocation of any order of withdrawal in Alaska, the order of revocation shall provide for a period of not less than ninety days before the date on which it otherwise becomes effective, if subsequent to the admission of Alaska into the Union, during which period the State of Alaska shall have a preferred right of selection, subject to the requirements of this Act, except as against prior existing valid rights or as against equitable claims subject to allowance and confirmation. Such preferred right of selection shall have precedence over the preferred right of application created by section 4 of the Act of September 27, 1944 (58 Stat. 748; 43 U.S.C., sec. 282), as now or hereafter amended, but not over other preference rights now conferred by law. Where any lands desired by the State are unsurveyed at the time of their selection, the Secretary of the Interior shall survey the exterior boundaries of the area requested without any interior subdivision thereof and shall issue a patent for such selected area in terms of the exterior boundary survey; where any lands desired by the State are surveyed at the time of their selection, the boundaries of the area requested

shall conform to the public land subdivisions established by the approval of the survey. All lands duly selected by the State of Alaska pursuant to this Act shall be patented to the State by the Secretary of the Interior. Following the selection of lands by the State and the tentative approval of such selection by the Secretary of the Interior or his designee, but prior to the issuance of final patent, the State is hereby authorized to execute conditional leases and to make conditional sales of such selected lands. As used in this subsection, the words "equitable claims subject to allowance and confirmation" include, without limitation, claims of holders of permits issued by the Department of Agriculture on lands eliminated from national forests, whose permits have been terminated only because of such elimination and who own valuable improvements on such lands. As to all selections made by the State after January 1, 1979, pursuant to section 6(b) of this Act, the Secretary of the Interior, in his discretion, may waive the minimum tract selection size where he determines that such a reduced selection size would be in the national interest and would result in a better land ownership pattern.

Mineral leases, permits, etc.

(h) Any lease, permit, license, or contract issued under the Mineral Leasing Act of February 25, 1920 (41 Stat. 437; 30 U.S.C. 181 and the following), as amended, or under the Alaska Coal Leasing Act of October 20, 1914 (38 Stat. 741; 30 U.S.C. 432 and the following), as amended, shall have the effect of withdrawing the lands subject thereto from selection by the State of Alaska under this Act, unless an application to select such lands is filed with the Secretary of the Interior within a period of ten years after the date of the admission of Alaska into the Union. Such selections shall be made only from lands that are otherwise open to selection under this Act. When all of the lands subject to a lease, permit, license, or contract are selected, the patent for the lands so selected shall vest in the State of Alaska all the right, title, and interest of the United States in and to that lease, permit, license, or contract that remains outstanding on the effective date of the patent, including the right to all the rentals, royalties, and other payments accruing after that date under that lease, permit, license, or contract, and including any authority that may have been retained by the United States to modify the terms and conditions of that lease, permit, license, or contract: *Provided*, That nothing herein contained shall affect the continued validity of any such lease, permit, license, or contract or any rights arising thereunder. Where only a portion of the lands subject to a lease, permit, license, or contract are selected, there shall be reserved to the United States the mineral or minerals subject to that lease, permit, license, or contract, together with such further rights as may be necessary to the full and complete enjoyment of all rights, privileges, and benefits under or with respect to that lease, permit, license, or contract; upon the termination of the lease, permit, license, or contract, title to the minerals so reserved to the United States shall pass to the State of Alaska.

Mineral land grants

(i) All grants made or confirmed under this Act shall include mineral deposits. The grants of mineral lands to the State of Alaska under subsections (a) and (b) of this section are made upon the express conditions that all sales, grants, deeds, or patents for any of the mineral lands so granted shall be subject to and contain a reservation to the State of all of the minerals in the lands so sold, granted, deeded, or patented, together with the right to prospect for, mine, and remove the same. Mineral deposits in such lands shall be subject to lease by the State as the State legislature may direct: *Provided*, That any lands or minerals hereafter disposed of contrary to the provisions of this section shall be forfeited to the United States by appropriate proceedings instituted by the Attorney General for that purpose in the United States District Court for the District of Alaska.

Schools and colleges

(j) The schools and colleges provided for in this Act shall forever remain under the exclusive control of the State, or its governmental subdivisions, and no part of the proceeds arising from the sale or disposal of any lands granted herein for educational purposes shall be used for the support of any sectarian or denominational school, college, or university.

Confirmation of grants

(k) Grants previously made to the Territory of Alaska are hereby confirmed and transferred to the State of Alaska upon its admission. Effective upon the admission of the State of Alaska into the Union, section 1 of the Act of March 4, 1915 (38 Stat. 1214; 48 U.S.C., sec. 353), as amended, and the last sentence of section 35 of the Act of February 25, 1920 (41 Stat. 450; 30 U.S.C., sec. 191), as amended, are repealed and all lands therein reserved under the provisions of section 1 as of the date of this Act shall, upon the admission of said State into the Union, be granted to said State for the purposes for which they were reserved; but such repeal shall not affect any outstanding lease, permit, license, or contract issued under said section 1, as amended, or any rights or powers with respect to such lease, permit, license, or contract, and shall not affect the disposition of the proceeds or income derived prior to such repeal from any lands reserved under said section 1, as amended, or derived thereafter from any disposition of the reserved lands or an interest therein made prior to such repeal.

Internal improvements

(*l*) The grants provided for in this Act shall be in lieu of the grant of land for purposes of internal improvements made to new States by section 8 of the Act of September 4, 1841 (5 Stat. 455), and sections 2378 and 2379 of the Revised Statutes (43 U.S.C., sec. 857), and in lieu of the swampland grant made by the Act of September 28, 1850 (9 Stat. 520), and section 2479 of the Revised Statutes (43 U.S.C., sec. 982), and in lieu of the grant of thirty thousand acres for each Senator and Representative in Congress made by the Act of July 2, 1862, as amended (12 Stat. 503; 7 U.S.C., secs. 301 – 308), which grants are hereby declared not to extend to the State of Alaska.

Submerged lands

(m) The Submerged Lands Act of 1953 (Public Law 31, Eighty-third Congress, first session; 67 Stat. 29) shall be applicable to the State of Alaska and the said State shall have the same rights as do existing States thereunder.

(n) The minimum tract selection size is waived with respect to a selection made by the State of Alaska under subsection (a) for the following selections:

National Forest Community Grant Application Number	Area Name	Est. Acres
209	Yakutat Airport Addition	111
264	Bear Valley (Portage)	120
284	Hyder-Fish Creek	61
310	Elfin Cove	37
384	Edna Bay Admin Site	37
390	Point Hilda	29

(*o*)(1) The State of Alaska may elect to convert a selection filed under subsection (b) to a selection under subsection (a) by notifying the Secretary of the Interior in writing.

(2) If the State of Alaska makes an election under paragraph (1), the entire selection shall be converted to a selection under subsection (a).

(3) The Secretary of the Interior shall not convey a total of more than 400,000 acres of public domain land selected under subsection (a) or converted under paragraph (1) to a public domain selection under subsection (a).

(4) Conversion of a selection under paragraph (1) shall not increase the survey obligation of the United States with respect to the land converted.

(p) All selection applications of the State of Alaska that are on file with the Secretary of the Interior under the public domain provisions of subsection (a) on the date of enactment of this subsection and any selection applications that are converted to a subsection (a) selection under subsection (*o*)(1) are approved as suitable for community or recreational purposes.

(Amended by P.L. 86-70, § 2(a), 73 Stat. 141, June 25, 1959; P.L. 86-173, 73 Stat. 395, Aug. 18, 1959; P.L. 86-786, § 4, 74 Stat. 1024, Sept. 14, 1960; P.L. 88-135, 77 Stat. 223, Oct. 8, 1963; P.L. 88-289, 78 Stat. 168, March 25, 1964; P.L. 89-702, Title IV, § 408(b), 80 Stat. 1098, Nov. 2, 1966; P.L. 96-487, Title IX, § 906(a), (f)(3), 94 Stat. 2437, Dec. 2, 1980; P.L. 108-452, Title I, § 101, 118 Stat. 3575, Dec. 2, 2004.)

Certification by President

SEC. 7. Upon enactment of this Act, it shall be the duty of the President of the United States, not later than July 3, 1958, to certify such fact to the Governor of Alaska. Thereupon the Governor, on or after July 3, 1958, and not later than August 1, 1958, shall issue his proclamation for the elections, as hereinafter provided, for officers of all elective offices and in the manner provided for by the constitution of the proposed State of Alaska, but the officers

so elected shall in any event include two Senators and one Representative in Congress.

Election of officers; date, etc.

SEC. 8. (a) The proclamation of the Governor of Alaska required by section 7 shall provide for holding of a primary election and a general election on dates to be fixed by the Governor of Alaska: *Provided,* That the general election shall not be held later than December 1, 1958, and at such elections the officers required to be elected as provided in section 7 shall be, and officers for other elective offices provided for in the constitution of the proposed State of Alaska may be, chosen by the people. Such elections shall be held, and the qualifications of voters thereat shall be, as prescribed by the constitution of the proposed State of Alaska for the election of members of the proposed State legislature. The returns thereof shall be made and certified in such manner as the constitution of the proposed State of Alaska may prescribe. The Governor of Alaska shall certify the results of said elections to the President of the United States.

(b) At an election designated by proclamation of the Governor of Alaska, which may be the general election held pursuant to subsection (a) of this section, or a Territorial general election, or a special election, there shall be submitted to the electors qualified to vote in said election, for adoption or rejection, by separate ballot on each, the following propositions:

"(1) Shall Alaska immediately be admitted into the Union as a State?

"(2) The boundaries of the State of Alaska shall be as prescribed in the Act of Congress approved .....
(date of approval of this Act)
and all claims of this State to any areas of land or sea outside the boundaries so prescribed are hereby irrevocably relinquished to the United States.

"(3) All provisions of the Act of Congress approved .....
(date of approval of this Act)
..... reserving rights or powers to the United States, as well as those prescribing the terms or conditions of the grants of lands or other property therein made to the State of Alaska, are consented to fully by said State and its people."

In the event each of the foregoing propositions is adopted at said election by a majority of the legal votes cast on said submission, the proposed constitution of the proposed State of Alaska, ratified by the people at the election held on April 24, 1956, shall be deemed amended accordingly. In the event any one of the foregoing propositions is not adopted at said election by a majority of the legal votes cast on said submission, the provisions of this Act shall thereupon cease to be effective.

Certification of voting results by Governor

The Governor of Alaska is hereby authorized and directed to take such action as may be necessary or appropriate to insure the submission of said propositions to the people. The return of the votes cast on said proposition shall be made by the election officers directly to the Secretary of Alaska, who shall

certify the results of the submission to the Governor. The Governor shall certify the results of said submission, as so ascertained, to the President of the United States.

Proclamation by President

(c) If the President shall find that the propositions set forth in the preceding subsection have been duly adopted by the people of Alaska, the President, upon certification of the returns of the election of the officers required to be elected as provided in section 7 of this Act, shall thereupon issue his proclamation announcing the results of said election as so ascertained. Upon the issuance of said proclamation by the President, the State of Alaska shall be deemed admitted into the Union as provided in section 1 of this Act.

Until the said State is so admitted into the Union, all of the officers of said Territory, including the Delegate in Congress from said Territory, shall continue to discharge the duties of their respective offices. Upon the issuance of said proclamation by the President of the United States and the admission of the State of Alaska into the Union, the officers elected at said election, and qualified under the provisions of the constitution and laws of said State, shall proceed to exercise all the functions pertaining to their offices in or under or by authority of the government of said State, and officers not required to be elected at said initial election shall be selected or continued in office as provided by the constitution and laws of said State. The Governor of said State shall certify the election of the Senators and Representative in the manner required by law, and the said Senators and Representative shall be entitled to be admitted to seats in Congress and to all the rights and privileges of Senators and Representatives of other States in the Congress of the United States.

Laws in effect

(d) Upon admission of the State of Alaska into the Union as herein provided, all of the Territorial laws then in force in the Territory of Alaska shall be and continue in full force and effect throughout said State except as modified or changed by this Act, or by the constitution of the State, or as thereafter modified or changed by the legislature of the State. All of the laws of the United States shall have the same force and effect within said State as elsewhere within the United States. As used in this paragraph, the term "Territorial laws" includes (in addition to laws enacted by the Territorial Legislature of Alaska) all laws or parts thereof enacted by the Congress the validity of which is dependent solely upon the authority of the Congress to provide for the government of Alaska prior to the admission of the State of Alaska into the Union, and the term "laws of the United States" includes all laws or parts thereof enacted by the Congress that (1) apply to or within Alaska at the time of the admission of the State of Alaska into the Union, (2) are not "Territorial laws" as defined in this paragraph, and (3) are not in conflict with any other provisions of this Act.

House of Representatives Membership

SEC. 9. The State of Alaska upon its admission into the Union shall be entitled to one Representative until the taking effect of the next reapportionment, and such representative shall be in addition to the membership of the House of Representatives as now prescribed by law: *Provided,* That such temporary increase in the membership shall not operate to either increase or decrease the permanent membership of the House of Representatives as prescribed in the Act of August 8, 1911 (37 Stat. 13) nor shall such temporary increase affect the basis of apportionment established by the Act of November 15, 1941 (55 Stat. 761; 2 U.S.C., sec. 2a), for the Eighty-third Congress and each Congress thereafter.

National Defense Withdrawals

SEC. 10. (a) The President of the United States is hereby authorized to establish, by Executive order or proclamation, one or more special national defense withdrawals within the exterior boundaries of Alaska, which withdrawal or withdrawals may thereafter be terminated in whole or in part by the President.

(b) Special national defense withdrawals established under subsection (a) of this section shall be confined to those portions of Alaska that are situated to the north or west of the following line: Beginning at the point where the Porcupine River crosses the international boundary between Alaska and Canada; thence along a line parallel to, and five miles from, the right bank of the main channel of the Porcupine River to its confluence with the Yukon River; thence along a line parallel to, and five miles from, the right bank of the main channel of the Yukon River to its most southerly point of intersection with the meridian of longitude 160 degrees west of Greenwich; thence south to the intersection of said meridian with the Kuskokwim River; thence along a line parallel to, and five miles from the right bank of the Kuskokwim River to the mouth of said river; thence along the shoreline of Kuskokwim Bay to its intersection with the meridian of longitude 162 degrees 30 minutes west of Greenwich; thence south to the intersection of said meridian with the parallel of latitude 57 degrees 30 minutes north; thence east to the intersection of said parallel with the meridian of longitude 156 degrees west of Greenwich; thence south to the intersection of said meridian with the parallel of latitude 50 degrees north.

Jurisdiction

(c) Effective upon the issuance of such Executive order or proclamation, exclusive jurisdiction over all special national defense withdrawals established under this section is hereby reserved to the United States, which shall have sole legislative, judicial, and executive power within such withdrawals, except as provided hereinafter. The exclusive jurisdiction so established shall extend to all lands within the exterior boundaries of each such withdrawal, and shall remain in effect with respect to any particular tract or parcel of land only so long as such tract or parcel remains within the exterior boundaries of such a withdrawal. The laws of the State of Alaska shall not apply to areas within any special national defense withdrawal established under this section while such areas remain subject to the exclusive jurisdiction hereby authorized: *Provided,*

however, That such exclusive jurisdiction shall not prevent the execution of any process, civil or criminal, of the State of Alaska, upon any person found within said withdrawals: *And provided further,* That such exclusive jurisdiction shall not prohibit the State of Alaska from enacting and enforcing all laws necessary to establish voting districts, and the qualification and procedures for voting in all elections.

(d) During the continuance in effect of any special national defense withdrawal established under this section, or until the Congress otherwise provides, such exclusive jurisdiction shall be exercised within each such withdrawal in accordance with the following provisions of law:

(1) All laws enacted by the Congress that are of general application to areas under the exclusive jurisdiction of the United States, including, but without limiting the generality of the foregoing, those provisions of title 18, United States Code, that are applicable within the special maritime and territorial jurisdiction of the United States as defined in section 7 of said title, shall apply to all areas within such withdrawals.

(2) In addition, any areas within the withdrawals that are reserved by Act of Congress or by Executive action for a particular military or civilian use of the United States shall be subject to all laws enacted by the Congress that have application to lands withdrawn for that particular use, and any other areas within the withdrawals shall be subject to all laws enacted by the Congress that are of general application to lands withdrawn for defense purposes of the United States.

(3) To the extent consistent with the laws described in paragraphs (1) and (2) of this subsection and with regulations made or other actions taken under their authority, all laws in force within such withdrawals immediately prior to the creation thereof by Executive order or proclamation shall apply within the withdrawals and, for this purpose, are adopted as laws of the United States: *Provided,* however, That the laws of the State or Territory relating to the organization or powers of municipalities or local political subdivisions, and the laws or ordinances of such municipalities or political subdivisions shall not be adopted as laws of the United States.

(4) All functions vested in the United States commissioners by the laws described in this subsection shall continue to be performed within the withdrawals by such commissioners.

(5) All functions vested in any municipal corporation, school district, or other local political subdivision by the laws described in this subsection shall continue to be performed within the withdrawals by such corporation, district, or other subdivision, and the laws of the state or the laws or ordinances of such municipalities or local political subdivision shall remain in full force and effect notwithstanding any withdrawal made under this section.

(6) All other functions vested in the government of Alaska or in any officer or agency thereof, except judicial functions over which the United States District Court for the District of Alaska is given jurisdiction by this Act or other provisions of law, shall be performed within the withdrawals by such

civilian individuals or civilian agencies and in such manner as the President shall from time to time, by Executive order, direct or authorize.

(7) The United States District Court for the District of Alaska shall have original jurisdiction, without regard to the sum or value of any matter in controversy, over all civil actions arising within such withdrawals under the laws made applicable thereto by this subsection, as well as over all offenses committed within the withdrawals.

(e) Nothing contained in subsection (d) of this section shall be construed as limiting the exclusive jurisdiction established in the United States by subsection (c) of this section or the authority of the Congress to implement such exclusive jurisdiction by appropriate legislation, or as denying to persons now or hereafter residing within any portion of the areas described in subsection (b) of this section the right to vote at all elections held within the political subdivisions as prescribed by the State of Alaska where they respectively reside, or as limiting the jurisdiction conferred on the United States District Court for the District of Alaska by any other provision of law, or as continuing in effect laws relating to the Legislature of the Territory of Alaska. Nothing contained in this section shall be construed as limiting any authority otherwise vested in the Congress or the President.

Mount McKinley National Park

SEC. 11. (a) Nothing in this Act shall affect the establishment, or the right, ownership, and authority of the United States in Mount McKinley National Park, as now or hereafter constituted; but exclusive jurisdiction, in all cases, shall be exercised by the United States for the national park, as now or hereafter constituted; saving, however, to the State of Alaska the right to serve civil or criminal process within the limits of the aforesaid park in suits or prosecutions for or on account of rights acquired, obligations incurred, or crimes committed in said State, but outside of said park; and saving further to the said State the right to tax persons and corporations, their franchises and property on the lands included in said park; and saving also to the persons residing now or hereafter in such area the right to vote at all elections held within the respective political subdivisions of their residence in which the park is situated.

Military, naval, etc., lands; civil and criminal jurisdiction

(b) Notwithstanding the admission of the State of Alaska into the Union, authority is reserved in the United States, subject to the proviso hereinafter set forth, for the exercise by the Congress of the United States of the power of exclusive legislation, as provided by article I, section 8, clause 17, of the Constitution of the United States, in all cases whatsoever over such tracts or parcels or land as, immediately prior to the admission of said State, are owned by the United States and held for military, naval, Air Force, or Coast Guard purposes, including naval petroleum reserve numbered 4, whether such lands were acquired by cession and transfer to the United States by Russia and set aside by Act of Congress or by Executive order or proclamation of the President or the Governor of Alaska for the use of the United States, or were acquired by

the United States by purchase, condemnation, donation, exchange, or otherwise: *Provided*, (i) That the State of Alaska shall always have the right to serve civil or criminal process within the said tracts or parcels of land in suits or prosecutions for or on account of rights acquired, obligations incurred, or crimes committed within the said State but outside of the said tracts or parcels of land; (ii) that the reservation of authority in the United States for the exercise by the Congress of the United States of the power of exclusive legislation over the lands aforesaid shall not operate to prevent such lands from being a part of the State of Alaska, or to prevent the said State from exercising over or upon such lands, concurrently with the United States, any jurisdiction whatsoever which it would have in the absence of such reservation of authority and which is consistent with the laws hereafter enacted by the Congress pursuant to such reservation of authority; and (iii) that such power of exclusive legislation shall rest and remain in the United States only so long as the particular tract or parcel of land involved is owned by the United States and used for military, naval, Air Force, or Coast Guard purposes. The provisions of this subsection shall not apply to lands within such special national defense withdrawal or withdrawals as may be established pursuant to section 10 of this Act until such lands cease to be subject to the exclusive jurisdiction reserved to the United States by that section.

Judicial and Criminal Provisions

SEC. 12. Effective upon the admission of Alaska into the Union—

(a) The analysis of chapter 5 of title 28, United States Code, immediately preceding section 81 of such title, is amended by inserting immediately after and underneath item 81 of such analysis, a new item to be designated as item 81A and to read as follows: "81A. Alaska";

(b) Title 28, United States Code, is amended by inserting immediately after section 81 thereof a new section, to be designated as section 81A, and to read as follows:

"§ 81A. Alaska

"Alaska constitutes one judicial district.

"Court shall be held at Anchorage, Fairbanks, Juneau, and Nome.";

(c) Section 133 of title 28, United States Code, is amended by inserting in the table of districts and judges in such section immediately above the item: "Arizona * * * 2", a new item as follows: "Alaska * * * 1";

(d) The first paragraph of section 373 of title 28, United States Code, as heretofore amended, is further amended by striking out the words: "the District Court for the Territory of Alaska,": *Provided*, That the amendment made by this subsection shall not affect the rights of any judge who may have retired before it takes effect;

(e) The words "the District Court for the Territory of Alaska," are stricken out wherever they appear in sections 333, 460, 610, 753, 1252, 1291, 1292, and 1346 of title 28, United States Code;

(f) The first paragraph of section 1252 of title 28, United States Code, is further amended by striking out the word "Alaska," from the clause relating to courts of record;

(g) Subsection (2) of section 1294 of title 28, United States Code, is repealed and the later subsections of such section are renumbered accordingly;

(h) Subsection (a) of section 2410 of title 28, United States Code, is amended by striking out the words: "including the District Court for the Territory of Alaska,";

(i) Section 3241 of title 18, United States Code, is amended by striking out the words: "District Court for the Territory of Alaska, the";

(j) Subsection (e) of section 3401 of title 18, United States Code, is amended by striking out the words: "for Alaska or";

(k) Section 3771 of title 18, United States Code, as heretofore amended, is further amended by striking out from the first paragraph of such section the words: "the Territory of Alaska,";

(*l*) Section 3772 of title 18, United States Code, as heretofore amended, is further amended by striking out from the first paragraph of such section the words: "the Territory of Alaska,";

(m) Section 2072 of title 28, United States Code, as heretofore amended, is further amended by striking out from the first paragraph of such section the words: "and of the District Court for the Territory of Alaska";

(n) Subsection (q) of section 376 of title 28, United States Code, is amended by striking out the words: "the District Court for the Territory of Alaska,": *Provided,* That the amendment made by this subsection shall not affect the rights under such section 376 of any present or former judge of the District Court for the Territory of Alaska or his survivors;

(*o*) The last paragraph of section 1963 of title 28, United States Code, is repealed;

(p) Section 2201 of title 28, United States Code, is amended by striking out the words: "and the District Court for the Territory of Alaska"; and

(q) Section 4 of the Act of July 28, 1950 (64 Stat. 380; 5 U.S.C., sec. 341b) is amended by striking out the word: "Alaska".

Continuation of suits

SEC. 13. No writ, action, indictment, cause, or proceeding pending in the District Court for the Territory of Alaska on the date when said Territory shall become a State, and no case pending in an appellate court upon appeal from the District Court for the Territory of Alaska at the time said Territory shall become a State, shall abate by the admission of the State of Alaska into the Union, but the same shall be transferred and proceeded with as hereinafter provided.

All civil causes of action and all criminal offenses which shall have arisen or been committed prior to the admission of said State, but as to which no suit,

action, or prosecution shall be pending at the date of such admission, shall be subject to prosecution in the appropriate State courts or in the United States District Court for the District of Alaska in like manner, to the same extent, and with like right of appellate review, as if said State had been created and said courts had been established prior to the accrual of said causes of action or the commission of such offenses; and such of said criminal offenses as shall have been committed against the laws of the Territory shall be tried and punished by the appropriate courts of said State, and such as shall have been committed against the laws of the United States shall be tried and punished in the United States District Court for the District of Alaska.

Appeals

SEC. 14. Appeals. All appeals taken from the District Court for the Territory of Alaska to the Supreme Court of the United States or the United States Court of Appeals for the Ninth Circuit, previous to the admission of Alaska as a State, shall be prosecuted to final determination as though this Act had not been passed. All cases in which final judgment has been rendered in such district court, and in which appeals might be had except for the admission of such State, may still be sued out, taken, and prosecuted to the Supreme Court of the United States or the United States Court of Appeals for the Ninth Circuit under the provisions of then existing law, and there held and determined in like manner; and in either case, the Supreme Court of the United States, or the United States Court of Appeals, in the event of reversal, shall remand the said cause to either the State supreme court or other final appellate court of said State, or the United States district court for said district, as the case may require: *Provided,* That the time allowed by existing law for appeals from the district court for said Territory shall not be enlarged thereby.

Transfer of cases

SEC. 15. All causes pending or determined in the District Court for the Territory of Alaska at the time of the admission of Alaska as a State which are of such nature as to be within the jurisdiction of a district court of the United States shall be transferred to the United States District Court for the District of Alaska for final disposition and enforcement in the same manner as is now provided by law with reference to the judgments and decree in existing United States district courts. All other causes pending or determined in the District Court for the Territory of Alaska at the time of the admission of Alaska as a State shall be transferred to the appropriate State court of Alaska. All final judgments and decrees rendered upon such transferred cases in the United States District Court for the District of Alaska may be reviewed by the Supreme Court of the United States or by the United States Court of Appeals for the Ninth Circuit in the same manner as is now provided by law with reference to the judgments and decrees in existing United States district courts.

Succession of courts

SEC. 16. Jurisdiction of all cases pending or determined in the District Court for the Territory of Alaska not transferred to the United States District Court for

the District of Alaska shall devolve upon and be exercised by the courts of original jurisdiction created by said State, which shall be deemed to be the successor of the District Court for the Territory of Alaska with respect to cases not so transferred and, as such, shall take and retain custody of all records, dockets, journals, and files of such court pertaining to such cases. The files and papers in all cases so transferred to the United States district court, together with a transcript of all book entries to complete the record in such particular cases so transferred, shall be in like manner transferred to said district court.

SEC. 17. All cases pending in the District Court for the Territory of Alaska at the time said Territory becomes a State not transferred to the United States District Court for the District of Alaska shall be proceeded with and determined by the courts created by said State with the right to prosecute appeals to the appellate courts created by said State, and also with the same right to prosecute appeals or writs of certiorari from the final determination in said causes made by the court of last resort created by such State to the Supreme Court of the United States, as now provided by law for appeals and writs of certiorari from the court of last resort of a State to the Supreme Court of the United States.

Jurisdiction of District Court; Termination date

SEC. 18. The provisions of the preceding sections with respect to the termination of the jurisdiction of the District Court for the Territory of Alaska, the continuation of suits, the succession of courts, and the satisfaction of rights of litigants in suits before such courts, shall not be effective until three years after the effective date of this Act, unless the President, by Executive order, shall sooner proclaim that the United States District Court for the District of Alaska, established in accordance with the provisions of this Act, is prepared to assume the functions imposed upon it. During such period of three years or until such Executive order is issued, the United States District Court for the Territory of Alaska shall continue to function as heretofore. The tenure of the judges, the United States attorneys, marshals, and other officers of the United States District Court for the Territory of Alaska shall terminate at such time as that court shall cease to function as provided in this section.

Federal Reserve System

SEC. 19. The first paragraph of section 2 of the Federal Reserve Act (38 Stat. 251) is amended by striking out the last sentence thereof and in inserting in lieu of such sentence the following: "When the State of Alaska is hereafter admitted to the Union the Federal Reserve districts shall be readjusted by the Board of Governors of the Federal Reserve System in such manner as to include such State. Every national bank in any State shall, upon commencing business or within ninety days after admission into the Union of the State in which it is located, become a member bank of the Federal Reserve System by subscribing and paying for stock in the Federal Reserve bank of its district in accordance with the provisions of this Act and shall thereupon be an insured bank under the Federal Deposit Insurance Act, and failure to do so shall subject such bank to the penalty provided by the sixth paragraph of this section."

Repeal

SEC. 20. Section 2 of the Act of October 20, 1914 (38 Stat. 742; 48 U.S.C., sec. 433), is hereby repealed.

SEC. 21. Immigration and nationality. Nothing contained in this Act shall operate to confer United States nationality, nor to terminate nationality heretofore lawfully acquired, nor restore nationality heretofore lost under any law of the United States or under any treaty to which the United States may have been a party.

SEC. 22. Section 101(a)(36) of the Immigration and Nationality Act (66 Stat. 170, 8 U.S.C., sec. 1101(a)(36)) is amended by deleting the word "Alaska,".

SEC. 23. The first sentence of section 212(d)(7) of the Immigration and Nationality Act (66 Stat. 188, 8 U.S.C., sec. 1182(d)(7)) is amended by deleting the word "Alaska,".

SEC. 24. Nothing contained in this Act shall be held to repeal, amend, or modify the provisions of section 304 of the Immigration and Nationality Act (66 Stat. 237, 8 U.S.C., sec. 1404).

SEC. 25. The first sentence of section 310(a) of the Immigration and Nationality Act (66 Stat. 239, 8 U.S.C., sec. 1421(a)) is amended by deleting the words "District Courts of the United States for the Territories of Hawaii and Alaska" and substituting therefor the words "District Court of the United States for the Territory of Hawaii".

SEC. 26. Section 344(d) of the Immigration and Nationality Act (66 Stat. 265, 8 U.S.C., sec. 1455(d)) is amended by deleting the words "in Alaska and".

Transportation by Water

SEC. 27. (a) The third proviso in section 27 of the Merchant Marine Act, 1920, as amended (46 U.S.C., sec. 883), is further amended by striking out the word "excluding" and inserting in lieu thereof the word "including".

(b) Nothing contained in this or any other Act shall be construed as depriving the Federal Maritime Board of the exclusive jurisdiction heretofore conferred on it over common carriers engaged in transportation by water between any port in the State of Alaska and other ports in the United States, its Territories or possessions, or as conferring upon the Interstate Commerce Commission jurisdiction over transportation by water between any such ports.

Mines and Mining

SEC. 28. (a) The last sentence of section 9 of the Act entitled "An Act to provide for the leasing of coal lands in the Territory of Alaska, and for other purposes", approved October 20, 1914 (48 U.S.C. 439), is hereby amended to read as follows: "All net profits from operation of Government mines, and all bonuses, royalties, and rentals under leases as herein provided and all other payments received under this Act shall be distributed as follows as soon as practicable after December 31 and June 30 of each year: (1) 90 per centum thereof shall be paid by the Secretary of the Treasury to the State of Alaska for

disposition by the legislature thereof; and (2) 10 per centum shall be deposited in the Treasury of the United States to the credit of miscellaneous receipts."

(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 52½ per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof".

Separability Clause

SEC. 29. If any provision of this Act, or any section, subsection, sentence, clause, phrase, or individual word, or the application thereof to any person or circumstance is held invalid, the validity of the remainder of the Act and of the application of any such provision, section, subsection, sentence, clause, phrase, or individual word to other persons and circumstances shall not be affected thereby.

Repeals

SEC. 30. All Acts or parts of Acts in conflict with the provisions of this Act, whether passed by the legislature of said Territory or by Congress, are hereby repealed.

Notes of Decisions

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1. Purposes

Purpose of Alaska Statehood Act was to insure that the new state would be economically viable. Alaska Statehood Act, § 1 et seq., 48 U.S.C.A. preceding section 21. U.S. v. Atlantic Richfield Co., 435 F.Supp. 1009. D.Alaska,1977. States ⇦ 8.1

2. Sovereign immunity

Alaska did not waive its Eleventh Amendment immunity to being sued in federal court when it agreed to terms and conditions of section of the Alaska Statehood Act, whereby state disclaimed all rights and title to lands or other property held by any Indians, Eskimos, or Aleuts or held by the United States in trust for said Natives. Harrison v. Hickel, C.A.9 (Alaska) 1993, 6 F.3d 1347. Federal Courts 266.1 Federal Courts ⇦ 266.1

By adopting section of Alaska Statehood Act, 48 U.S.C.A. prec. § 21, which recognized paramount interest in certain lands in Alaska natives through control of United States as trustee and paramount interest in other lands in United States for itself, Alaska did not waive bar of this amendment in disputes over land selected for allotment by Alaska natives, even if complaint sufficiently alleged acts which would have overcome common-law doctrine of sovereign immunity and even though United States, as trustee for Alaska natives, or tribe of Alaska natives could have brought suit against state. Aquilar v. Kleppe, D.C.Alaska 1976, 424 F.Supp. 433. Federal Courts 319 Federal Courts ⇦ 319

3. Selection of lands—In general

Native village corporation created under Alaska Native Claims Settlement Act was entitled to select for ownership lands that the state of Alaska had selected earlier pursuant to the Alaska Mental Health Enabling Act, as land "selected by, or tentatively approved to, but not yet patented to, the state under the Alaska Statehood Act"; because Alaska was authorized to make its initial selection of the disputed lands only because the Statehood Act confirmed that power, the lands were selected by the state under the Statehood Act. Tyonek Native Corp. v. Secretary of Interior, C.A.9 (Alaska) 1988, 836 F.2d 1237. Indians 13(2) Indians ⇦ 171

Forest Service's interpretation of Alaska Statehood Act section authorizing state to select up to 400,000 acres of land from national forests, with approval of Secretary of Agriculture, as requiring that land granted be within 25 nautical miles of existing communities or land suitable for prospective community centers was reasonable. Alaska Statehood Act, § 6(a), 48 U.S.C.A. note prec. § 21. State of Alaska v. Lyng, 797 F.2d 1479. C.A.9.Alaska,1986. Public Lands ⇦ 62

Possibility that the State of Alaska at some later time might, under the Alaska Statehood Act, seek to have land patented to it that would otherwise be claimed by villages under the Alaska Native Claims Settlement Act was sufficient to confer standing on the state as party aggrieved to appeal to the Secretary of Interior from determinations of the Bureau of Indian Affairs that such villages were eligible for selection of land under the latter Act, and the Secretary's permitting the state to appeal in such cases was not a plainly erroneous interpretation of the applicable regulations. Alaska Native Claims Settlement Act, § 2 et seq., 43 U.S.C.A. § 1601 et seq.; Alaska Statehood Act, §§ 1 et seq., 6(a, b), 48 U.S.C.A. preceding section 21. Koniag, Inc., Village of Uyak v. Andrus, 580 F.2d 601. C.A.D.C.,1978. United States ⇦ 113

Though disclaimer in the Alaska Statehood Act of all rights to lands held by natives or by the United States in trust for natives barred state from challenging the Alaska Native Claims Settlement Act, it did not bar state from attempting to show that a given village did not meet the threshold requirements for selection of land under the latter Act. Alaska Native Claims Settlement Act, § 2 et seq., 43 U.S.C.A. § 1601 et seq.; Alaska Statehood Act, §§ 1 et seq., 6(a, b), 48 U.S.C.A. preceding section 21. Koniag, Inc., Village of Uyak v. Andrus, 580 F.2d 601. C.A.D.C.,1978. United States ⇦ 105

Genuine issues of material fact existed as to whether lands selected by state pursuant to Statehood Act were vacant, unappropriated and unreserved lands, precluding summary judgment. Fed.Rules Civ.Proc. rule 56(c), 28 U.S.C.A.; Alaska Statehood Act, § 6(b), 48 U.S.C.A. preceding section 21. U.S. v. State of Alaska, 423 F.2d 764. C.A.9.Alaska,1970.

Indian trapping, hunting and camping on lands selected by state of Alaska pursuant to Statehood Act could constitute a condition which would deprive the selected lands of the status of being "vacant, unappropriated, and unreserved." Alaska Statehood Act, § 6(b), 48 U.S.C.A. preceding section 21; 28 U.S.C.A. § 1361. State of Alaska v. Udall, 420 F.2d 938. C.A.9.Alaska,1969.

Where Alaska filed application for selection of land as part of its allotment pursuant to Alaska Statehood Act but at time of filing land had been withdrawn from appropriation, and, subsequently, withdrawal order was revoked, and during preference period and after expiration of preference period Alaska filed request that its original application be amended to include additional lands, amendments amounted to reap-

plication and claims subsequently filed by individuals to land covered by original application were properly rejected. Alaska Statehood Act, § 6(b, g), 48 U.S.C.A. following § 3. Udall v. Kalerak, 396 F.2d 746. C.A.9.Alaska,1968. Public Lands ⇐ 29; Public Lands ⇐ 62

Where individual claimants had notice of Alaska's claim to lands which individual sought to claim, Secretary of Interior did not abuse his discretion in accepting Alaska's request to amend original application as a timely reassertion of original application which had been filed at time lands had been withdrawn. Alaska Statehood Act, § 6(b, g), 48 U.S.C.A. following § 3. Udall v. Kalerak, 396 F.2d 746. C.A.9.Alaska,1968. Public Lands ⇐ 62

Where selection of government land was made in name of state and in so far as record showed it was not subject to any contract, conveyance or other transaction, there was no showing of a violation of prohibition against state's alienation of selected land. Alaska Statehood Act, § 6(g), 48 U.S.C.A. following § 3. Udall v. Kalerak, 396 F.2d 746. C.A.9.Alaska,1968. Public Lands ⇐ 66

Native village corporations created under Alaska Native Claims Settlement Act [43 U.S.C.A. §§ 1601-1629a] were not entitled to select for ownership lands that state of Alaska had previously selected under authority of Mental Health Enabling Act [70 Stat. 709], but which, although "tentatively proved" had not yet been patented to the state. Alaska Native Claims Settlement Act, §§ 2-35, 3(e), (e)(2), 11(a), (a)(1, 2), 12(a), (a)(1), as amended, 43 U.S.C.A. §§ 1601-1629a, 1602(e), (e)(2), 1610(a), (a)(1, 2), 1611(a), (a)(1); Alaska Mental Health Enabling Act, §§ 101 et seq., 202, 70 Stat. 709; Alaska Statehood Act, §§ 1 et seq., 6(a, b, k), 48 U.S.C.A. note prec. § 48. Tyonek Native Corp. v. Secretary of Interior of U.S., 629 F.Supp. 554. D.Alaska,1986. Indians ⇐ 171

Provision of Alaska Native Claims Settlement Act that prior conveyances of public land pursuant to federal law as well as tentative approvals pursuant to Statehood Act are to be regarded as an extinguishment of any aboriginal title thereto retroactively extinguished aboriginal title as of date of prior conveyances or tentative approval of state land selections under Statehood Act and did not merely validate prior federal conveyances and tentative land selection approvals as of effective date of Settlement Act; also, Act extinguished all remaining aboriginal title and native claims as of its effective date. Alaska Native Claims Settlement Act, §§ 2 et seq., 4(a, b), 43 U.S.C.A. §§ 1601 et seq., 1603(a, b); Alaska Statehood Act, § 1 et seq., 48 U.S.C.A. preceding section 21. U.S. v. Atlantic Richfield Co., 435 F.Supp. 1009. D.Alaska,1977. Public Lands ⇐ 3

Provision of Alaska Native Claims Settlement Act extinguishing all claims against the Government and others that are based on claims of aboriginal title extinguishes trespass claims based on aboriginal title and is not limited to claims for compensation for taking of Indian land; hence, provision extinguished native claims against State of Alaska and private parties for trespass on aboriginal title lands prior to passage of Settlement Act, specifically, alleged trespass as to lands tentatively approved to the state pursuant to Statehood Act or conveyed pursuant to federal law and, encompassed leases of North Slope oil lands which the state had tentatively selected under the Statehood Act. Alaska Native Claims Settlement Act, § 4(a, c), 43 U.S.C.A. § 1603(a, c); Alaska Statehood Act, § 6, 48 U.S.C.A. preceding section 21. U.S. v. Atlantic Richfield Co., 435 F.Supp. 1009. D.Alaska,1977. Indians ⇐ 171; Indians ⇐ 199

Shore Space Restoration Order of 1935 waiving, as regards land "situated on the Gastineau Channel and described as United States Survey No. 2136," the statutory prohibition on any homestead extending more than 160 rods along a navigable body of water was insufficient to establish that homestead covered by subject survey was located on shoreline, so as to entitle homesteader to accreted land, in view of contrary evidence that survey line paralleling the channel was a true, rather than the meander line; hence, the State of Alaska was entitled to select the accreted lands pursuant to the Alaska Statehood Act. Alaska Statehood Act, § 1 et seq., 48 U.S.C.A. preceding section 21. File v. State, 593 P.2d 268. Alaska,1979. Public Lands ⇐ 142.2

43 U.S.C.A. §§ 851 and 852 do not grant the state any rights to make in-lieu selections beyond those confirmed in Section 6(k) of the Statehood Act. Alaska Op.Atty.Gen. 663-89-0225, (July 22, 1992) 1992 WL 564939.

4. —— Purposes for selection of lands provisions

Forest Service's interpretation of Alaska Statehood Act section authorizing Alaska to select up to 400,000 acres of land from national forests, with approval of Secretary of Agriculture, as having community nexus was reasonable given stated purpose that land grants were for purpose of furthering development of and expansion of communities. Alaska Statehood Act, § 6(a), 48 U.S.C.A. note prec. § 21. State of Alaska v. Lyng, 797 F.2d 1479. C.A.9.Alaska,1986. Public Lands ⇐ 62

Specific purpose of Alaska Statehood Act section authorizing state to select up to 400,000 acres of land from national forests, with approval of Secretary of Agriculture, under which land grants were for purpose of furthering development of and expansion of communities overrides general purposes of Act of developing Alaska's economy and decreasing amount of federally owned land. Alaska Statehood Act, § 6(a), 48 U.S.C.A. note prec. § 21. State of Alaska v. Lyng, 797 F.2d 1479. C.A.9.Alaska,1986. Public Lands ⇐ 62

It was not unreasonable to require Alaska to show some expectancy that land would be used for community development and expansion for purposes of Alaska Statehood Act section authorizing Alaska to select up to 400,000 acres of land from national forests, with approval of Secretary of Agriculture. Alaska Statehood Act, § 6(a), 48 U.S.C.A. note prec. § 21. State of Alaska v. Lyng, 797 F.2d 1479. C.A.9.Alaska,1986. Public Lands ⇐ 62

Purpose of land grants under Alaska Statehood Act, 48 U.S.C.A. § 21 note, is to serve Alaska's overall economic and social well-being and Alaska's selection of land to be used to protect domestic water supply of most populous area of state did not deprive individuals who also sought such land of equal protection of the laws. Udall v. Kalerak, C.A.9 (Alaska) 1968, 396 F.2d 746, certiorari denied 89 S.Ct. 990, 393 U.S. 1118, 22 L.Ed.2d 123. Constitutional Law 213(2); Public Lands 62 Constitutional Law ⇐ 3020; Public Lands ⇐ 62

Primary purpose of grant of right to Alaska to select 103,350,000 acres of land from United States under Alaska Statehood Act was to ensure economic and social well-being of new State. Alaska Statehood Act, § 6(a, b), 48 U.S.C.A. prec. § 21. Trustees for Alaska v. State, 736 P.2d 324. Alaska,1987. Public Lands ⇐ 62

5. School lands

Under grant of lands under Alaska Statehood Act and consent by people of Alaska to terms and conditions of the federal act, there was created a trust of school lands. Act July 7, 1958, § 6(k), 72 Stat. 343; Const. art. 12, § 13. Wessells v. State Dept. of Highways, 562 P.2d 1042. Alaska,1977. Public Lands ⇐ 142.2

6. Elections

That the people of Alaska voted in favor of proposition requiring consent by State and its people to provisions of Alaska Statehood Act reserving rights or powers to United States, as well as those prescribing terms or conditions of grants of lands or property therein made to State of Alaska, did not mean that Alaska Constitution was thereby amended to include terms or conditions of grants of land set forth in Alaska Statehood Act inasmuch as there was no state legislature in existence at time of passage of Act, and territorial legislature not only failed to approve an amendment incorporating restriction of Act into Constitution, but no constitutional convention was ever called to act on matter. Alaska Statehood Act, §§ 6(i), 8(b), 48 U.S.C.A. preceding section 21. State v. Lewis, 559 P.2d 630. Alaska,1977. Constitutional Law ⇐ 540

That provision of Constitution specifying means of amendment remained inoperative until Alaska was admitted into Union did not mean that favorable vote, prior to admittance, on proposition requiring consent by State in its default to provisions of Alaska Statehood Act reserving rights or powers to United States, as well as those prescribing terms or conditions of grants of lands or other property therein made to State of Alaska, operated to amend Constitution to include terms or conditions of grants of land set forth in Alaska Statehood Act. Const. art. 13, §§ 1, 4; Alaska Statehood Act, §§ 6(i), 8(b), 48 U.S.C.A. preceding section 21. State v. Lewis, 559 P.2d 630. Alaska,1977. Constitutional Law ⇐ 540

7. Roads and highways

Where defendant construction company contracted with state of Alaska for construction of pioneer road and portion of road crossed land held by plaintiff lessee under grazing lease from United States, and lease provided that "Nothing herein shall restrict the acquisition, granting, or use of permits or rights-of-way under applicable law," construction of road without consent of lessee was authorized and construction company was not liable to lessee for entry in absence of showing of negligence in construction of road or damages to lessee therefrom. AS 19.30.010-19.30.100, 19.30.020, 19.30.040; Alaska Statehood Act, § 6(a), 48 U.S.C.A. preceding section 21; 43 U.S.C.A. § 932; Act Cong., Mar. 4, 1927, §§ 3(a), 16, 44 Stat. 1452; Taylor Grazing Act § 1 as amended 43 U.S.C.A. § 315. Mercer v. Yutan Const. Co., 420 P.2d 323. Alaska,1966. Public Lands ⇐ 17

Evidence that construction company which contracted with state of Alaska to build pioneer road across land held by plaintiff under grazing lease from United States used standard and approved road building methods for construction of pioneer roads supported finding that road construction was not negligent and that construction was not cause of flooding of lessee's hay meadow. AS 19.30.010-19.30.100, 19.30.020, 19.30.040; Alaska Statehood Act, § 6(a), 48 U.S.C.A. preceding section 21; 43 U.S.C.A. § 932; Act Cong., Mar. 4, 1927, §§ 3(a), 16, 44 Stat. 1452; Taylor Grazing Act, § 1 as amended 43 U.S.C.A. § 315; Rules of Civil Procedure, rule 52(a). Mercer v. Yutan Const. Co., 420 P.2d 323. Alaska,1966. Public Lands ⇐ 17

8. Federal enactments and regulatory powers

Where no reading of words of statute, no part of legislative history and no contemplation of

possible objective led with absolute certainty to clear answer, Interior Secretary's interpretation of powers conferred upon him by Congress, while not binding on court, was nevertheless entitled to considerable weight. Alaska Statehood Act, § 6(e), 48 U.S.C.A. preceding section 21. Ketchikan Packing Co. v. Seaton, 267 F.2d 660. C.A.D.C.,1959. Statutes ⇐ 219(5)

In view of variety of federal interests and comprehensive scheme of regulation established by Congress, any ambiguity on question of survival of state regulation inconsistent with substantive federal plan was to be resolved against state's assertion of authority. Marine Mammal Protection Act of 1972, §§ 2 et seq., 101, 101(a)(1, 2), (b), 103(b)(5), 109, 109(a)(1, 2), (c), 16 U.S.C.A. §§ 1361 et seq., 1371, 1371(a)(1, 2), (b), 1373(b)(5), 1379, 1379(a)(1, 2), (c); U.S.C.A.Const. art. 6, cl. 2; Endangered Species Act of 1973, §§ 2 et seq., 10(e)(1), 16 U.S.C.A. §§ 1531 et seq. 1539(e)(1); Alaska Statehood Act, § 6, 48 U.S.C.A. preceding section 21; 48 U.S.C.A. § 248 et seq. People of Togiak v. U.S., 470 F.Supp. 423. D.D.C.,1979. States ⇐ 18.5

Marine Mammal Protection Act was designed to substitute for diverse state marine mammal hunting laws a comprehensive federal system, and Native exemption section preempted field, invalidating regulations of Department of Interior purporting to transfer to State of Alaska power to regulate such hunting. Marine Mammal Protection Act of 1972, §§ 2 et seq., 101, 101(a)(1, 2), (b), 103(b)(5), 109, 109(a)(1, 2), (c), 16 U.S.C.A. §§ 1361 et seq., 1371, 1371(a)(1, 2), (b), 1373(b)(5), 1379, 1379(a)(1, 2), (c); U.S.C.A.Const. art. 6, cl. 2; Endangered Species Act of 1973, §§ 2 et seq., 10(e)(1), 16 U.S.C.A. §§ 1531 et seq. 1539(e)(1); Alaska Statehood Act, § 6, 48 U.S.C.A. preceding section 21; 48 U.S.C.A. § 248 et seq. People of Togiak v. U.S., 470 F.Supp. 423. D.D.C.,1979. States ⇐ 18.57

Federal Aviation Act provision to effect that no air carrier shall engage in any transportation unless there is in force a certificate issued by Civil Aeronautics Board authorizing carrier to do so, was a "territorial law," within Alaska Statehood Act provision defining such laws as acts of Congress the validity of which is dependent solely upon authority of Congress to provide for government of Alaska prior to its admission, and within provision of such Act, and of Alaska Constitution, to effect that such laws would continue in full force and effect throughout state until such time as state might act through its Legislature or through constitutional enactment. Federal Aviation Act of 1958, § 401(a), 49 U.S.C.A. § 1371(a); Alaska Statehood Act, § 8(d), 48 U.S.C.A. preceding section 23; Alaska Omnibus Act, § 3, 48 U.S.C.A. preceding section 23; Const. art. 15, § 1. Interior Airways, Inc. v. Wien Alaska Airlines, Inc., 188 F.Supp. 107. D.Alaska,1960. States ⇐ 9

People of state of Alaska, in permitting Civil Aeronautics Board to regulate state's intrastate air commerce during period of transition from territory to state, by an arrangement which could be terminated by Alaska at any time it chose to act, surrendered no sovereignty, and statutory provisions permitting Board so to act were not unconstitutional. Alaska Statehood Act, § 8(d), 48 U.S.C.A. preceding section 23; Alaska Omnibus Act, § 3, 48 U.S.C.A. preceding section 23. Interior Airways, Inc. v. Wien Alaska Airlines, Inc., 188 F.Supp. 107. D.Alaska,1960. States ⇐ 4.16(3); States ⇐ 9

Text of Alaska Statehood Act makes it clear that federal legislative enactments were to be carried over unless overruled by State Constitution or state legislature, but Act did not automatically incorporate and maintain federal case law, or administrative law, unless and until changed by legislature. Alaska Statehood Act, § 8(d), 48 U.S.C.A. prec. § 21. Dresser Industries, Inc. v. Alaska Dept. of Labor, 633 P.2d 998. Alaska,1981. States ⇐ 9

Alaska Statehood Act did not automatically incorporate federal case law or administrative law unless and until changed by legislature, provision of Wage and Hour Act which manifests intent to safeguard existing minimum wage and overtime standards is not prohibition of change, and direction to court to apply federal regulatory definitions "where applicable" means that such definitions are applicable only when Director of Wage and Hour Division and Commissioner of Labor have refrained from defining terms of state regulations; thus, Director was authorized to promulgate regulation which prohibited flexible work week. Alaska Statehood Act, § 8(d), 48 U.S.C.A. prec. § 21; AS 23.10.050, 23.10.085(b), 23.10.095, 23.10.145. Dresser Industries, Inc. v. Alaska Dept. of Labor, 633 P.2d 998. Alaska,1981. Labor And Employment ⇐ 2217(1); States ⇐ 9

9. Lawyers

Provision in Alaska Statehood Act that territorial laws should continue in force does not limit Supreme Court's inherent power to discipline Alaska lawyers either directly or by continuing in force a provision in the Territorial Integrated Bar Act of 1955 claimed to have that effect. A.C.L.A.Supp. §§ 35-2-77a to 35-2-77o as amended by Laws 1960, c. 178, § 6, now AS 08.08.010 to 08.08.250. Alaska Statehood Act, § 8(d), 48 U.S.C.A. Preceding section 21. In re MacKay, 416 P.2d 823. Alaska,1964. States ⇐ 9

10. Mining and mineral rights—In general

Enforcement of fishing and wildlife regulations under various federal statutes and executive order during period of United States sovereignty over Territory of Alaska was not

sufficient to establish historic title to lower Cook Inlet as inland water, especially since it appeared that the geographic scope of such enforcement efforts were determined primarily, if not exclusively, by the needs of effective management of the fish and game population involved, rather than as an intended assertion of territorial sovereignty to exclude all foreign vessels and navigation. Submerged Lands Act, §§ 2-8, 43 U.S.C.A. §§ 1301-1315; Alaska Statehood Act, § 6(m), 48 U.S.C.A. preceding section 21; Act July 27, 1868, 15 Stat. 241; Act June 14, 1906, 34 Stat. 263; Act June 6, 1924, 43 Stat. 464. U.S. v. Alaska, 95 S.Ct. 2240. U.S.Alaska,1975. Navigable Waters ⇐ 4

Plaintiffs, who claimed that three-way exchange of land between State of Alaska, United States government, and regional corporation organized under this section would result in losses to state treasury and taxpayers of vast sums of money, who sought to protect mineral resources in land originally selected from federal government under Alaska Statehood Act, set out as a not prec. section 21 of Title 48, and who as citizens and taxpayers were in a better position than governor and Attorney General to complain of exchange, had a sufficient personal stake in outcome of controversy to guarantee "the adverseness which is fundamental to judicial proceedings" and had standing to bring suit challenging constitutionality of exchange. State v. Lewis, Alaska 1977, 559 P.2d 630, appeal dismissed, certiorari denied 97 S.Ct. 2943, 432 U.S. 901, 53 L.Ed.2d 1073. Constitutional Law 42.3(2) Constitutional Law ⇐ 725

There is no provision in Constitution against alienation of mineral rights that operates to preclude a land exchange pursuant to an agreement whereby the state will relinquish certain lands, including the subsurface minerals therein, to the United States in order to augment the federal holdings from which regional native corporations will obtain their aboriginal entitlements and, hence, legislative approval of exchange is sufficient once Congress consents to lifting restrictions imposed against alienation of mineral rights. Laws 1976, c. 19; AS 38.05.125, 38.95.060. Alaska Statehood Act, §§ 6(i), 8(b), 48 U.S.C.A. preceding section 21; Alaska Native Claims Settlement Act, § 22(f), 43 U.S.C.A. § 1621(f). State v. Lewis, 559 P.2d 630. Alaska,1977. Mines And Minerals ⇐ 4

Statute authorizing a land exchange pursuant to an agreement whereby the state is to relinquish certain lands, including the subsurface minerals therein, to the United States in order to augment the federal holdings from which regional native corporations are to obtain their aboriginal entitlements is designed to facilitate statewide land use management and to resolve a host of pressing legal issues arising in context of Alaska Native Claims Settlement Act and, as such, is not violative of constitutional prohibition on local and special legislation. Laws 1976, c. 19; AS 38.05.125, 38.95.060; Const. art. 2, § 19; Alaska Statehood Act, § 6(i), 48 U.S.C.A. preceding section 21; Alaska Native Claims Settlement Act, § 22(f), 43 U.S.C.A. § 1621(f). State v. Lewis, 559 P.2d 630. Alaska,1977. Statutes ⇐ 82

Incorporation of North Slope Borough met the geography standard notwithstanding inclusion of naval petroleum reserve No. 4 in view of showing of the reserve's importance to the subsistence life style of area residents. AS 07.10.030(2); Alaska Statehood Act, 48 U.S.C.A. preceding section 21. Mobil Oil Corp. v. Local Boundary Commission, 518 P.2d 92. Alaska,1974. Municipal Corporations ⇐ 7

Where plaintiff and State of Alaska were parties to litigation in federal court which determined validity of state's selection of public lands under Alaska Statehood Act, action in state court presenting identical issue was barred by principles of res judicata. Alaska Statehood Act, §6(b), 48 U.S.C.A. note preceding § 21. McCubbins v. Keenan, 475 P.2d 696. Alaska,1970. Judgment ⇐ 829(1)

11. —— Reservation of rights, mining and mineral rights

Minerals contained in gold mine tailings which were disposed on tidal and submerged lands became real property, even though tailings had not been abandoned and, therefore, title to tailings passed to state upon statehood, and were reserved by state in patent granting property to mine operator. Alaska Statehood Act, §§ 1 et seq., 6(m), 48 U.S.C.A. note prec. § 21; AS 38.05.320 (now AS 38.05.820). Hayes v. Alaska Juneau Forest Industries, Inc., 748 P.2d 332. Alaska,1988. Navigable Waters ⇐ 36(1); Navigable Waters ⇐ 36(3); Navigable Waters ⇐ 37(4)

Title to minerals contained in mine tailings, which had been disposed of on tidal and submerged lands, passed to state upon statehood and were reserved by state in land patent which reserved minerals of every name, kind, or description in or upon land. Alaska Statehood Act, §§ 1 et seq., 6(m), 48 U.S.C.A. note prec. § 21; AS 38.05.320 (now AS 38.05.820). Hayes v. Alaska Juneau Forest Industries, Inc., 748 P.2d 332. Alaska,1988. Mines And Minerals ⇐ 3; Mines And Minerals ⇐ 4

A compact arose as a result of the adoption of the constitutional provisions agreeing that all sales or grants of lands be subject to such reservations as Congress shall require and the federal imposition of restrictions on alienation of mineral rights subsequently set forth in the Alaska Statehood Act, and in order for the compact to be altered, it was only necessary that

Congress give its consent to a change in its terms, not that there be a state constitutional amendment. Const. art. 8, § 9; art. § 2, §13; Alaska Statehood Act, § 8(b), 42 U.S.C.A. preceding section 21. State v. Lewis, 559 P.2d 630. Alaska,1977. Mines And Minerals ⇐ 4; States ⇐ 4.19

12. —— Mineral leases, generally, mining and mineral rights

Effect of statute governing distribution to Territory of Alaska of proceeds of federal mineral leases and section of Alaska Statehood Act governing same was to make terms of Mineral Leasing Act of 1920 (MLA) applicable to Alaska on same terms as to other states; straightforward reading of Statehood Act was a device to put Alaska in same position as other states with respect to distribution of such proceeds, neither Act nor MLA specifically required federal government to lease mineral deposits, Act did not specifically promise that royalties due to state would always be calculated in same way, Congress retained power to amend MLA to change distribution formula applicable to all states, comments of Secretary of Interior had not been meant as literal promises or statutory construction, and Secretary of Interior was not specially delegated by Congress either to negotiate or to interpret what Congress had done. State of Alaska v. U.S., Fed.Cl.1996, 35 Fed.Cl. 685, affirmed 119 F.3d 16, certiorari denied 118 S.Ct. 1035, 522 U.S. 1108, 140 L.Ed.2d 102. Mines And Minerals 5.1(8) Mines And Minerals ⇐ 5.1(8)

Section of Alaska Statehood Act governing distribution to state of proceeds of federal mineral leases carried with it no promise on part of United States to make federal mineral lands productive of royalty revenues for state; section at issue contained no express substantive obligation to which implied obligation of good faith and fair dealing might attach, and did not create non-participating royalty interest on part of state, federal liability under Tucker Act required more than contested claim that executive or legislative branches of government exercised poor judgment in managing federal resource, no judicially manageable standards applied to federal decision making in question, continuing duty to manage federal lands for financial benefit of state could arise only in context of fiduciary relationship, and federal government's discretion in management of its own lands has historically been virtually unfettered. Alaska Statehood Act, § 28(b), 48 U.S.C.A. prec. § 21. State of Alaska v. U.S., 35 Fed.Cl. 685. Fed. Cl.,1996. Mines And Minerals ⇐ 5.1(8)

Section of Alaska Statehood Act governing distribution to state of proceeds of federal mineral leases did not create promise on part of federal government to pay Alaska, in perpetuity, 90 percent of gross mineral leasing revenues from federal mineral leases in Alaska; section of Statehood Act at issue merely introduced Alaska into pre-existing legislative scheme for distribution of proceeds from federal mineral leases, which scheme was subject to legislative amendment, section of Act using term "net" referred to separate federal statute governing other types of leases which employed such term, and nothing in legislative record indicated intent to give Alaska privileged position with respect to other states in calculating its share of revenues from federal lands. 30 U.S.C.A. § 191; Alaska Statehood Act, § 28(a, b), 48 U.S.C.A. prec. § 21; 48 U.S.C.(1952 Ed.) § 439. State of Alaska v. U.S., 35 Fed.Cl. 685. Fed.Cl.,1996. Mines And Minerals ⇐ 5.1(8)

Taxpayer-citizens could maintain declaratory judgment action for interpretation of mineral lease section of Alaska Statehood Act. Alaska Statehood Act, § 6(i), 48 U.S.C.A. prec. § 21. Trustees for Alaska v. State, 736 P.2d 324. Alaska,1987. Declaratory Judgment ⇐ 296

Mineral leasing restriction in Alaska Statehood Act was intended to further goal of State revenue production. Alaska Statehood Act, § 6(i), 48 U.S.C.A. prec. § 21. Trustees for Alaska v. State, 736 P.2d 324. Alaska,1987. Mines And Minerals ⇐ 5.2(1)

Mineral leasing requirement in Alaska Statehood Act, considered in context of School Lands Act and Mineral Leasing Act, other statehood mineral grants, and mineral leasing systems in other states, mandates system under which State must receive rent or royalties for its mining leases. 43 U.S.C.A. § 870(b); Alaska Statehood Act, § 6(i), 48 U.S.C.A. prec. § 21; Mineral Lands Leasing Act, §§ 1-25, 30 U.S.C.A. §§ 181-263. Trustees for Alaska v. State, 736 P.2d 324. Alaska,1987. Mines And Minerals ⇐ 5.2(1)

Because Alaska's mineral leases do not require rents or royalties, in that value of required annual labor may be credited against rental, State hard rock mineral leasing laws do not meet mineral leasing requirement of Alaska Statehood Act. Alaska Statehood Act, § 6(i), 48 U.S.C.A. prec. § 21; AS 38.05.185, 38.05.205, 38.05.205(b), 38.05.210. Trustees for Alaska v. State, 736 P.2d 324. Alaska,1987. Mines And Minerals ⇐ 5.2(1)

Grant language in first sentence of section of mineral leasing requirement of Alaska Statehood Act was intended to convey only mineral deposits in selected lands whose mineral character was known at time of selection. Alaska Statehood Act, § 6(i), 48 U.S.C.A. prec. § 21. Trustees for Alaska v. State, 736 P.2d 324. Alaska,1987. Mines And Minerals ⇐ 5.2(1)

Coalition of environmental, Native, and fishing groups had standing as taxpayer-citizens to maintain action for declaratory judgment that

State's mineral leasing system violates Alaska Statehood Act because it does not require payment of rent or royalties on mining leases, and that State incorrectly construed lease restrictions in Act to apply only to those lands known to have been mineral in character at time of State selection; case was one of public significance in that, if plaintiffs prevailed, State would have to change its method of making State land available for mining, and plaintiffs were appropriate parties to bring suit. Alaska Statehood Act, § 6(a, b, i), 48 U.S.C.A. prec. § 21. Trustees for Alaska v. State, 736 P.2d 324. Alaska,1987. Declaratory Judgment ⇐ 294

Congress did not intend to preclude all litigation concerning meaning of mineral lease section of Alaska Statehood Act by enacting forfeiture proviso applicable when lands or minerals are disposed of contrary to provisions section; Congress intended only that United States Attorney General could bring forfeiture proceedings and that such proceedings could be brought only in United States District Court for the District of Alaska. Alaska Statehood Act, § 6(a, b, i), 48 U.S.C.A. prec. § 21. Alaska Statehood Act, § 6(a, b, i), 48 U.S.C.A. prec. § 21. Trustees for Alaska v. State, 736 P.2d 324. Alaska,1987. Mines And Minerals ⇐ 5.2(1)

13. —— Oil and gas leases, mining and mineral rights

Alaska's ownership of oil and gas that were subject matter of "Alaska Hire" law did not constitute sufficient justification for law's discrimination against nonresidents where reach of law included employers who had no connection with state's oil and gas, performed no work on state land, and had no contractual relationship with state and received no payment from state and coverage of law was not limited to activities connected with extraction of Alaska's oil and gas. AS 38.40.010-38.40.090, 38.40.050(a); U.S.C.A.Const. art. 4, § 2, cl. 1; Alaska Statehood Act, §§ 1 et seq., 6, 6(i), 48 U.S.C.A. preceding section 21. Hicklin v. Orbeck, 98 S.Ct. 2482, U.S.Alaska,1978. Constitutional Law ⇐ 2953; Labor And Employment ⇐ 3

Application for oil and gas lease on public land which was pending at time state took land pursuant to Alaska Statehood Act was not an existing claim in land within meaning of statutory provision that such taking shall not affect any valid existing claim under laws of United States. Mineral Lands Leasing Act, § 1 et seq., 30 U.S.C.A. § 181 et seq.; Act July 7, 1958, § 6(b), 72 Stat. 339. Schraier v. Hickel, 419 F.2d 663. C.A.D.C.,1969. Mines And Minerals ⇐ 5.1(1)

Expenses incurred by applicant in support or defense of his application for oil and gas lease on public land did not establish existing valid right or equitable claim subject to allowance and confirmation under the Alaska Statehood Act. Act July 7, 1958, § 6(g), 72 Stat. 339. Schraier v. Hickel, 419 F.2d 663. C.A.D.C.,1969. Mines And Minerals ⇐ 5.2(1)

Action of Secretary of Interior in making "deficiency withdrawals" of Alaska North Slope public lands, and denying applications for federal oil and gas leases as to lands affected by such withdrawals, allocating such lands instead to Arctic Slope Regional Corporation pursuant to Alaska Native Claims Settlement Act of 1971, was not arbitrary, capricious or abuse of Secretary's discretion. Mineral Lands Leasing Act, § 1 et seq., 30 U.S.C.A. § 181 et seq.; Alaska Native Claims Settlement Act, §§ 2 et seq., 11(a), (a)(1, 3), (a)(3)(A, B), 12, 12(a)(1), 14, 17(a)(1), (d)(1, 2), 22(e), 43 U.S.C.A. §§ 1601 et seq., 1610(a), (a)(1, 3), (a)(3)(A, B), 1611, 1611(a)(1), 1613, 1616(a)(1), (d)(1, 2), 1621(e); Alaska Statehood Act, § 10 as amended 48 U.S.C.A. preceding section 21. Rowe v. U.S., 464 F.Supp. 1060. D.Alaska,1979. Mines And Minerals ⇐ 5.1(3); United States ⇐ 105

Power vested in Congress to change law respecting granting of extensions of oil and gas leases with respect to lands in Alaska reserved for support of schools became vested in state of Alaska when lands subject to lease were granted to state. 48 U.S.C.A. § 353; Alaska Statehood Act, § 6(k), 48 U.S.C.A. preceding § 23. Kirkpatrick v. Commissioner, Dept. of Natural Resources, 391 P.2d 7. Alaska,1964. Mines And Minerals ⇐ 5.1(7)

Where at time federal oil and gas lease of Alaska land reserved for support of schools had been accepted renewal right to five year extension had been subject to being changed by law at any time prior to expiration of initial term, lessee's assignee after expiration of initial term and after power to change law respecting extension became vested in state of Alaska was entitled only to extension as provided by state regulations. 48 U.S.C.A. § 353; Alaska Statehood Act, § 6(k), 48 U.S.C.A. preceding § 23; Mineral Lands Leasing Act, § 17 as amended 30 U.S.C.A. § 226. Kirkpatrick v. Commissioner, Dept. of Natural Resources, 391 P.2d 7. Alaska,1964. Mines And Minerals ⇐ 5.1(7)

14. Waters and watercourses—Internal waters

Where, at time of admission of Alaska into union, United States maintained position that, with exception of historic bays, waters within bay, coasts of which belonged to single state, were considered internal waters if distance between low water marks of natural entrance points did not exceed ten miles, limits of internal waters of Alaska in nonhistoric bay extended only to line drawn across bay at most seaward point where distance between low water marks did not exceed ten miles. Alaska State-

hood Act, §§ 2, 6(m), 8(b), 48 U.S.C.A. note preceding § 21; Submerged Lands Act, §§ 2(c), 3, 4, 9, 43 U.S.C.A. §§ 1301(c), 1311, 1312, 1302; Outer Continental Shelf Lands Act, § 3, 43 U.S.C.A. § 1332. U.S. v. State of Alaska, 236 F.Supp. 388. D.Alaska,1964.

In absence of congressional change of limits of internal waters of Alaska, internal waters of that state remained what they were upon passage by Congress of Alaska Statehood Act. Alaska Statehood Act, §§ 2, 6(m), 8(b), 48 U.S.C.A. note preceding § 21. U.S. v. State of Alaska, 236 F.Supp. 388. D.Alaska,1964.

In absence of specific congressional action to contrary, internal waters of state of Alaska were those waters which on date of its admission into union were recognized by executive branch of government in its dealings with foreign nations to be internal waters of United States and territory of Alaska. Alaska Statehood Act, §§ 2, 6(m), 8(b), 48 U.S.C.A. note preceding § 21; Submerged Lands Act, §§ 2(c), 3, 4, 9, 43 U.S.C.A. §§ 1301(c), 1302, 1311, 1312; Outer Continental Shelf Lands Act, § 3, 43 U.S.C.A. § 1332. U.S. v. State of Alaska, 236 F.Supp. 388. D.Alaska,1964.

15. —— Riverbeds, waters and watercourses

Title to riverbed lying beneath navigable waters in Alaska did not pass from federal government to state of Alaska at time it became a state, as riverbed was previously withdrawn by United States for military purposes, and power of exclusive legislation over riverbed was reserved to United States under Alaska Statehood Act, despite claim that land was no longer used for military purposes at time of statehood, that reservation referred only to minerals, and that military purpose ended when lands were opened to private mineral exploration and leasing. Engle Act, § 6, 43 U.S.C.A. § 158; Submerged Lands Act, § 5(a), 43 U.S.C.A. § 1313(a); 43 U.S.C.A. § 158; Alaska Statehood Act, § 1, 48 U.S.C.A. prec. § 21. Alaska v. U.S., 213 F.3d 1092. C.A.9.Alaska,2000. Navigable Waters ⇐ 36(1)

Federal government's revocation of public land order that had withdrawn land in Alaska encompassing riverbed lying beneath navigable waters, after Alaska obtained statehood, did not cause title to riverbed to pass from federal government to state, even if, under Alaska Statehood Act, federal government thereby lost exclusive legislative jurisdiction over lands because they were no longer being used for military purposes. Submerged Lands Act, § 5(a), 43 U.S.C.A. § 1313(a); Alaska Statehood Act, § 1, 48 U.S.C.A. prec. § 21. Alaska v. U.S., 213 F.3d 1092. C.A.9.Alaska,2000. Navigable Waters ⇐ 36(1)

Title to beds of navigable inland waterbodies in Alaska passed from the United States to Alaska when Alaska entered the Union; therefore, beds of navigable waterbodies in Alaska were not available for selection or chargeable to either the Alaska Native Claims Settlement Act or the Alaska Statehood Act entitlements. State of Alaska v. U.S., D.Alaska 1987, 662 F.Supp. 455, affirmed 891 F.2d 1401, certiorari denied 110 S.Ct. 1949, 495 U.S. 919, 109 L.Ed.2d 312. Navigable Waters 36(1) Navigable Waters ⇐ 36(1)

16. Submerged lands—In general

United States did not transfer to Alaska offshore submerged lands within Arctic National Wildlife Range at statehood; pre-statehood application by Bureau of Sport Fisheries and Wildlife for withdrawal of lands included submerged lands, and United States retained Range under Alaska Statehood Act. Alaska Statehood Act, § 6(e), 48 U.S.C.A. prec. § 21; 43 C.F.R. § 295.11 (1958). U.S. v. Alaska, 117 S.Ct. 1888. U.S.,1997. Navigable Waters ⇐ 36(1)

By passing Alaska Statehood Act, Congress ratified inclusion of submerged lands within National Petroleum Reserve-Alaska, whether or not Congress had intended President's reservation authority under Pickett Act to extend to such lands. Alaska Statehood Act, § 11(b), 48 U.S.C.A. prec. § 21; Pickett Act, § 1, 36 Stat. 847. U.S. v. Alaska, 117 S.Ct. 1888. U.S.,1997. Navigable Waters ⇐ 36(1)

In absence of some evidence that Russian fur trader, who about 1786 fired a cannon at an English vessel attempting to enter Cook Inlet in vicinity of Port Graham, was acting with government authority, such incident was entitled to little legal significance in determining whether Russia exercised sufficient authority over the lower inlet so as to constitute it a historic bay; in any event, under the then common Cannon Shot Rule, firing of a cannon from shore was wholly consistent with present position of the United States that the inland waters of Alaska near Port Graham are to be measured by the three-mile limit. Submerged Lands Act, §§ 2-8, 43 U.S.C.A. §§ 1301-1315; U.S.C.A.Const. art. 3, § 2, cl. 2; Alaska Statehood Act, § 6(m), 48 U.S.C.A. preceding section 21. U.S. v. Alaska, 95 S.Ct. 2240. U.S.Alaska,1975. Navigable Waters ⇐ 36(1)

Since distance between natural entrance points to Cook Inlet is in excess of 24 miles, State of Alaska, in order successfully to claim sovereignty over lower waters of the inlet and land beneath those waters, was required to demonstrate that the inlet was a historic bay. Submerged Lands Act, §§ 2(b, c), 3(a), 43 U.S.C.A. §§ 1301(b, c), 1311(a); Alaska Statehood Act, §§ 2, 6(m), 48 U.S.C.A. preceding section 21. U.S. v. Alaska, 95 S.Ct. 2240. U.S.Alaska,1975. Navigable Waters ⇐ 36(7)

Even if boundary selected for purposes of enforcing fish and wildlife regulations coincided with an intended assertion of territorial sovereignty over Cook Inlet as inland waters, historic title to the lower bay was not established in the period of United States sovereignty, notwithstanding failure of foreign nations to protest; routine enforcement of domestic game and fishing regulations in the inlet in the territorial period did not sufficiently inform foreign governments of any claim of dominion so as to require objection and, hence, failure of foreign government to protest was inadequate proof of their acquiescence in claimed territorial sovereignty essential to historic title. Submerged Lands Act, §§ 2-8, 43 U.S.C.A. §§ 1301-1315; Alaska Statehood Act, § 6(m), 48 U.S.C.A. preceding section 21. U.S. v. Alaska, 95 S.Ct. 2240. U.S.Alaska,1975. United States ⇐ 2

Suit by the United States against the State of Alaska to quiet title to lower part of Cook Inlet and to enjoin Alaska from offering oil and gas leases for sale in the area could have been brought as an original action in the Supreme Court. Submerged Lands Act, §§ 2-8, 43 U.S.C.A. §§ 1301-1315; U.S.C.A.Const. art. 3, § 2, cl. 2; Alaska Statehood Act, § 6(m), 48 U.S.C.A. preceding section 21. U.S. v. Alaska, 95 S.Ct. 2240. U.S.Alaska,1975. Federal Courts ⇐ 442.1

For Alaska to establish historic title to Cook Inlet as inland waters, the exercise of the claimed sovereignty must have been, historically, an assertion of power to exclude all foreign vessels and navigation. Submerged Lands Act, §§ 2-8, 43 U.S.C.A. §§ 1301-1315; Alaska Statehood Act, § 6(m), 48 U.S.C.A. preceding section 21. U.S. v. Alaska, 95 S.Ct. 2240. U.S.Alaska,1975. Navigable Waters ⇐ 4

Since general enforcement of fishing regulations in Cook Inlet or the United States during its sovereignty over Territory of Alaska was insufficient to demonstrate sovereignty over the inlet as inland waters, Alaska's following the same basic pattern of enforcement was insufficient to give rise to historic title to the inlet as inland waters. Submerged Lands Act, §§ 2-8, 43 U.S.C.A. §§ 1301-1315; Alaska Statehood Act, § 6(m), 48 U.S.C.A. preceding section 21. U.S. v. Alaska, 95 S.Ct. 2240. U.S.Alaska,1975. Navigable Waters ⇐ 4

Alaska's arrest of two Japanese fishing vessels in Shelikof Strait in 1962 was inadequate to establish historic title to Cook Inlet as inland waters since incident was an exercise of sovereignty, if at all, only over waters of the Strait and, even if considered an assertion of authority over waters of the Inlet, it was not sufficiently unambiguous to serve as a basis of historic title in that although Alaska, as against Japan, claimed the waters as inland waters the United States neither supported nor disavowed the State's position; regardless of how the incident was viewed, it could not be concluded that Alaska's exercise of sovereignty was acquiesced in by Japan, which immediately protested and never acceded to Alaska's position. Submerged Lands Act, §§ 2-8, 43 U.S.C.A. §§ 1301-1315; Alaska Statehood Act, § 6(m), 48 U.S.C.A. preceding section 21. U.S. v. Alaska, 95 S.Ct. 2240. U.S.Alaska,1975. Navigable Waters ⇐ 4

Issuance by Tsar Alexander I in 1821 of a ukase that purported to exclude all foreign vessels from waters within 100 miles of the Alaska Coast was inadequate as a demonstration of Russian authority over waters of Cook Inlet, for purpose of determining its establishment as a historic bay, where shortly after it had been issued the ukase was unequivocally withdrawn in face of vigorous protests from the United States and England. Submerged Lands Act, §§ 2-8, 43 U.S.C.A. §§ 1301-1315; U.S.C.A.Const. art. 3, § 2, cl. 2; Alaska Statehood Act, § 6(m), 48 U.S.C.A. preceding section 21. U.S. v. Alaska, 95 S.Ct. 2240. U.S.Alaska,1975. Navigable Waters ⇐ 36(1)

In absence of any actual enforcement or official announcement of intentions to enforce Alien Fishing Act of 1906 in lower Cook Inlet, the private intentions of former wildlife officials that they would have taken affirmative action against foreign vessels if they had seen any in the inlet was largely irrelevant in determining establishment of lower portion of the inlet as a historic bay. Submerged Lands Act, §§ 2-8, 43 U.S.C.A. §§ 1301-1315; Alaska Statehood Act, § 6(m), 48 U.S.C.A. preceding section 21. U.S. v. Alaska, 95 S.Ct. 2240. U.S.Alaska,1975. Navigable Waters ⇐ 36(1)

Submerged Lands Act had no application to grant to state of Alaska public lands withdrawn prior to statehood for establishment of Moose Range. Submerged Lands Act, §§ 1 et seq., 5, 43 U.S.C.A. §§ 1301 et seq., 1313; Alaska Statehood Act, § 6(e), 48 U.S.C.A. preceding § 21. U.S. v. State of Alaska, 423 F.2d 764. C.A.9.Alaska,1970. Navigable Waters ⇐ 36(1)

17. —— Rivers and navigable waters, submerged lands

United States retained ownership of submerged lands within National Petroleum Reserve-Alaska at Alaska's statehood; Executive Order creating Reserve reflected clear intent to include submerged lands, and Alaska Statehood Act reflected clear congressional statement that United States owned and would continue to own submerged lands. U.S. v. Alaska, U.S.1997, 117 S.Ct. 1888, 521 U.S. 1, 138 L.Ed.2d 231, rehearing denied 118 S.Ct. 19, 521 U.S. 1144, 138 L.Ed.2d 1051. Navigable Waters 36(1) Navigable Waters ⇐ 36(1)

River was navigable at time of Alaska's statehood, and title to submerged lands passed to

Alaska at that time, if river was susceptible to use as highway for commerce, regardless of actual use of river; such use did not have to be without difficulty, extensive, or long and continuous, and it was not essential that use involve transportation of water-borne freight by carrier whose purpose was to make money from transportation. Submerged Lands Act, § 3(a), 43 U.S.C.A. § 1311(a); Alaska Statehood Act, § 6(m), 48 U.S.C.A. prec. § 21. State of Alaska v. Ahtna, Inc., 891 F.2d 1401. C.A.9.Alaska,1989. Navigable Waters ⇐ 1(3); Navigable Waters ⇐ 36(1)

Present commercial use of Gulkana River in Alaska provided conclusive evidence of river's susceptibility for commercial use at time of statehood and, therefore, title to submerged lands passed to Alaska at statehood absent some reservation of title, notwithstanding recreational nature of uses of river, given present fishing and sightseeing industry conducted on river and parties' stipulation that river's physical characteristics had remained unchanged since statehood. Submerged Lands Act, § 3(a), 43 U.S.C.A. § 1311(a); Alaska Statehood Act, § 6(m), 48 U.S.C.A. prec. § 21. State of Alaska v. Ahtna, Inc., 891 F.2d 1401. C.A.9.Alaska,1989. Navigable Waters ⇐ 1(6); Navigable Waters ⇐ 36(1)

Claim that title to submerged lands beneath river did not pass to Alaska at statehood because of reservation of title by Congress would be considered on appeal, though it was raised for first time on appeal, because issue was purely legal and facts were fully developed. Alaska Statehood Act, § 4, 48 U.S.C.A. prec. § 21. State of Alaska v. Ahtna, Inc., 891 F.2d 1401. C.A.9.Alaska,1989. Federal Courts ⇐ 612.1

Party seeking to defeat State's interest in submerged lands beneath navigable water must show that Congress clearly intended to include land under navigable waters within federal reservation and that Congress affirmatively intended to defeat future State's title to such land. Alaska Statehood Act, § 4, 48 U.S.C.A. prec. § 21. State of Alaska v. Ahtna, Inc., 891 F.2d 1401. C.A.9.Alaska,1989. Navigable Waters ⇐ 36(1)

18. Transportation by water

Under terms of Shipping Act of 1916, Intercoastal Shipping Act of 1933 and Alaska Statehood Act, jurisdiction over water common carriers engaged in interstate commerce in Alaska trade was reposed in Federal Maritime Commission. Shipping Act, 1916, § 18, 46 U.S.C.A. § 817; Intercoastal Shipping Act, § 1 et seq., 46 U.S.C.A. § 843 et seq.; 48 U.S.C.A. §§ 1 et seq., 27(b). Sea-Land Service, Inc. v. Federal Maritime Commission, 404 F.2d 824. C.A.D.C.,1968. Shipping ⇐ 103

Arrangement between common carrier by water and motor carriers whereby motor carrier picked up cargo at shipper's premises and delivered it to pier for loading and shipment to various ports and motor carrier issued through bills of lading in its name covering entire journey up to final delivery and charged for full journey was "through route" and "joint rate" arrangement and rates were subject to Interstate Commerce Commission jurisdiction. Shipping Act, 1916, §§ 1-44, 46 U.S.C.A. §§ 801-842; Intercoastal Shipping Act, 1933, §§ 1-8, 2, 46 U.S.C.A. §§ 843-848, 844; Interstate Commerce Act, §§ 1-323, 216(c), 305(b), 49 U.S.C.A. §§ 901-923, 316(c), 905(b); Alaska Statehood Act, § 27(b), 48 U.S.C.A. preceding § 21. Alaska S.S. Co. v. Federal Maritime Commission, 399 F.2d 623. C.A.9.Wash.,1968. Commerce ⇐ 85.18

19. Hunting and fishing, generally

Court of Appeals would exercise judicial discretion and dismiss suit by unincorporated association of commercial fishermen to have declared invalid a revocable special land use permit issued by the Department of Agriculture for construction and operation of an oil tank farm and terminal facility within Chugach National Forest, Alaska, without a determination on the merits, despite the existence of jurisdiction, where no further construction would take place until Congress resolved certain problems and legality of the permit might become a moot point if the State of Alaska could validly acquire the land under Alaska Statehood Act. 16 U.S.C.A. §§ 497, 497a, 551; Act July 7, 1958, 72 Stat. 339. Wilderness Soc. v. Morton, 479 F.2d 842. C.A.D.C.,1973. Declaratory Judgment ⇐ 395

In effect, Westland proviso made Secretary of Interior a "trustee" for both federal government and new state of Alaska in the broad national interest during transition of administration from federal to state authorities and, in that unique capacity, Secretary could not reasonably disregard valid law of Alaska which was "existing" on effective date of Alaska Statehood Act, which defined his powers over wildlife resources for interim period commencing on that date; and Secretary reasonably read words "under existing laws" in Westland proviso as including ordinances which became effective simultaneously with Statehood Act, and he properly concluded that Statehood Act, which "accepted, ratified and confirmed" Alaska Constitution and ordinances, amended White Act by prohibiting use of fish traps in Alaskan waters as set forth in ordinance. 48 U.S.C.A. §§ 221, 226; Alaska Statehood Act, § 6(e), 48 U.S.C.A. preceding section 21. Ketchikan Packing Co. v. Seaton, 267 F.2d 660. C.A.D.C.,1959. Fish ⇐ 9; States ⇐ 9

Under the "BLM Organic Act" the Secretary of the Interior has power to halt wolf hunt program by the State of Alaska on federally controlled land, as "administration" which statute lists as one of the purposes for which the Secretary may designate areas where no hunting will be permitted includes wildlife management, and the provision of the Alaska Statehood Act which gives the State right to control wildlife does not alter this result. Federal Land Policy and Management Act of 1976, §§ 102 et seq., 103(c), 302(a, b), 43 U.S.C.A. §§ 1701 et seq., 1702(c), 1732(a, b); Alaska Statehood Act, § 6(e), 48 U.S.C.A. preceding section 21. State of Alaska v. Andrus, 429 F.Supp. 958. D.Alaska,1977. Game ⇐ 6

20. National parks

Congress was not required to act pursuant to enumerated powers in creating national park on lands retained under federal authority in Alaska Statehood Act; Congress had power to retain federal land for public purposes under property clause. U.S. v. Vogler, C.A.9 (Alaska) 1988, 859 F.2d 638, certiorari denied 109 S.Ct. 787, 488 U.S. 1006, 102 L.Ed.2d 779. United States 57 United States ⇐ 57

21. Fixtures and improvements

While Alaska law concerning fixtures might have been helpful as a guide in determining what was a permanent improvement, the issue of whether houses and other improvements on restricted lands was exempt from taxation under Alaska Native Townsite Act and Alaska Native Allotment Act were matters of federal law; state could not remove tax immunity by applying a narrow definition of fixtures or reclassifying the improvements as personal property. 43 U.S.C. (1970 Ed.) §§ 270-1, 733; Alaska Native Claims Settlement Act, §§ 2-31, 43 U.S.C.A. §§ 1601-1628; Alaska Statehood Act, § 4, 48 U.S.C.A. preceding section 21. People of South Naknek v. Bristol Bay Borough, 466 F.Supp. 870. D.Alaska,1979. Taxation ⇐ 2063

22. Aboriginal rights—In general

Various responsibilities impose fiduciary duties upon United States with respect to Indians, including duties so to regulate as to protect subsistence resources of Indian communities and to preserve such communities as distinct cultural entities against interference by the states. Marine Mammal Protection Act of 1972, §§ 2 et seq., 101, 101(a)(1, 2), (b), 103(b)(5), 109, 109(a)(1, 2), (c), 16 U.S.C.A. §§ 1361 et seq., 1371, 1371(a)(1, 2), (b), 1373(b)(5), 1379, 1379(a)(1, 2), (c); U.S.C.A.Const. art. 6, cl. 2; Endangered Species Act of 1973, §§ 2 et seq., 10(e)(1), 16 U.S.C.A. §§ 1531 et seq. 1539(e)(1); Alaska Statehood Act, § 6, 48 U.S.C.A. preceding section 21; 48 U.S.C.A. § 248 et seq. People of Togiak v. U.S., 470 F.Supp. 423. D.D.C.,1979. Indians ⇐ 144; Indians ⇐ 351

Aboriginal title, as opposed to Indian title recognized by treaty or reservation, is legally extinguishable when the United States makes an otherwise lawful conveyance of land pursuant to federal statute. Alaska Native Claims Settlement Act, § 2 et seq., 43 U.S.C.A. § 1601 et seq.; Alaska Statehood Act, § 1 et seq., 48 U.S.C.A. preceding section 21. U.S. v. Atlantic Richfield Co., 435 F.Supp. 1009. D.Alaska,1977. Public Lands ⇐ 3

Intent of Congress in enacting Alaska Native Claims Settlement Act was to settle claims of Alaska natives and compensate them without deciding difficult question of existence and extent of aboriginal title to Alaska lands; hence, since Treaty of Cession and Congressional legislation, including Statehood Act, preceding the Settlement Act incidentally affected but did not purport to resolve issues relating to native land claims, it was appropriate to look directly to Settlement Act to discern congressional intent with respect to settlement and extinguishment of claims based on aboriginal title. Alaska Native Claims Settlement Act, § 2 et seq., 43 U.S.C.A. § 1601 et seq.; Alaska Statehood Act, § 1 et seq., 48 U.S.C.A. preceding section 21; Treaty of Cession, 15 Stat. 539. U.S. v. Atlantic Richfield Co., 435 F.Supp. 1009. D.Alaska,1977. United States ⇐ 105

Rights held and reserved for Indians under Alaska Statehood Act are rights preserved by Act proclaiming that Indians should not be disturbed in possession of lands actually occupied. Act May 17, 1884, § 8, 23 Stat. 26; Alaska Statehood Act, § 4, 48 U.S.C.A. preceding section 21. U.S. v. State of Alaska, 197 F.Supp. 834. D.Alaska,1961. Indians ⇐ 151

23. —— Aboriginal lands, generally, aboriginal rights

Purpose of provision of Alaska Native Claims Settlement Act that all conveyances pursuant to the Act are subject to valid existing rights and that patents issued under the Act are subject to preexisting rights, such as leases issued under Statehood Act, was to protect rights and expectations of persons who previously received an interest in the land pursuant to federal law; to hold such prior lessees, permittees or grantees liable for trespass for entries made prior to effective date of Settlement Act would contravene the express legislative purpose fully protecting rights of those who entered the North Slope in reliance on federal authorization. Alaska Native Claims Settlement Act, §§ 4(a), 14(g), 43 U.S.C.A. §§ 1603(a), 1613(g); Alaska Statehood Act, § 6(g), 48 U.S.C.A. preceding section 21. U.S. v. Atlantic Richfield Co., 435 F.Supp. 1009. D.Alaska,1977. United States ⇐ 105

Alaska Native Claims Settlement Act eliminated any basis for native claims relating to pre-Settlement Act entries on land tentatively approved to the state under the Statehood Act or previously conveyed to private parties; hence, Settlement Act required dismissal of claims for entries under state leases pursuant to the Statehood Act or entries pursuant to valid federal leases or conveyances. Alaska Native Claims Settlement Act, § 4(a, c), 43 U.S.C.A. § 1603(a, c); Alaska Statehood Act, § 6(g), 48 U.S.C.A. preceding section 21. U.S. v. Atlantic Richfield Co., 435 F.Supp. 1009. D.Alaska,1977. United States ⇐ 105

The State of Alaska did not have standing as an aggrieved party to appeal determinations made by the area director of the Alaska Bureau of Indian Affairs in respect to aboriginal land claims of native villages under the Alaska Native Claims Settlement Act where the State's only interest was the speculative possibility that at some later time for some undisclosed reason it might, under the Alaska Statehood Act, seek to have land patented to it that would be claimed by villages. Alaska Statehood Act, 48 U.S.C.A. preceding section 21; Alaska Native Claims Settlement Act, § 3(e), 43 U.S.C.A. § 1602(e). Koniag, Inc. v. Kleppe, 405 F.Supp. 1360. D.D.C.,1975. United States ⇐ 105

Intruders upon land claimed by Alaskan natives on basis of use and occupancy cannot escape liability for trespass by asserting that officers of the United States gave them permission, so long as those officers lacked necessary statutory authority. Alaska Native Claims Settlement Act, § 4(a, c), 43 U.S.C.A. § 1603(a, c); Alaska Statehood Act, §§ 4, 6 as amended 48 U.S.C.A. preceding section 21; U.S.C.A.Const. Amend. 5. Edwardsen v. Morton, 369 F.Supp. 1359. D.D.C.,1973. Indians ⇐ 199; Indians ⇐ 171

Characterization by United States Supreme Court of rights of Alaskan natives in lands claimed on basis of use and occupancy as being those of "mere possession" as opposed to "ownership" should not preclude Natives from maintaining an ordinary tort action for trespass to land and suing for recovery of, inter alia, value of any resources actually extracted from lands by trespassing third parties. Alaska Native Claims Settlement Act, 4(a, c), 43 U.S.C.A. § 1603(a, c); Alaska Statehood Act, §§ 4, 6 as amended 48 U.S.C.A. preceding section 21; U.S.C.A.Const. Amend. 5. Edwardsen v. Morton, 369 F.Supp. 1359. D.D.C.,1973. Indians ⇐ 199; Indians ⇐ 171

Although rights of Alaskan natives to use and occupancy of aboriginal lands, safeguarded from intrusion by third parties, are vulnerable to uncompensated extinction, only the Congress may extinguish such rights, and until Congress acts, rights remain intact as an encumbrance on the fee, and until an authorized transfer of title takes place, fee remains in the United States. Alaska Native Claims Settlement Act, § 4(a, c), 43 U.S.C.A. § 1603(a, c); Alaska Statehood Act, §§ 4, 6 as amended 48 U.S.C.A. preceding section 21; U.S.C.A.Const. Amend. 5. Edwardsen v. Morton, 369 F.Supp. 1359. D.D.C.,1973. Indians ⇐ 171

A fiduciary duty has been placed upon federal government and its agents to protect interests of Alaskan natives in lands claimed on basis of use and occupancy. Alaska Native Claims Settlement Act, § 4(a, c), 43 U.S.C.A. § 1603(a, c); Alaska Statehood Act, §§ 4, 6 as amended 48 U.S.C.A. preceding section 21; U.S.C.A.Const. Amend. 5. Edwardsen v. Morton, 369 F.Supp. 1359. D.D.C.,1973. Indians ⇐ 171

Possessory rights of Alaskan natives in aboriginal lands on basis of use and occupancy guarantee occupants protection from intrusions rather than a share in vendable interests in lands. Alaska Native Claims Settlement Act, § 4(a, c), 43 U.S.C.A. § 1603(a, c); Alaska Statehood Act, §§ 4, 6 as amended 48 U.S.C.A. preceding section 21; U.S.C.A.Const. Amend. 5. Edwardsen v. Morton, 369 F.Supp. 1359. D.D.C.,1973. Indians ⇐ 171

Congress did not intend by its enactment of Statehood Act to either enlarge or diminish possessory rights of Alaskan natives in aboriginal lands existing at time Act was passed. Alaska Statehood Act, §§ 4, 6(a, b, g) as amended 48 U.S.C.A. preceding section 21. Edwardsen v. Morton, 369 F.Supp. 1359. D.D.C.,1973. Indians ⇐ 151; Indians ⇐ 153

Lands which Alaskan natives possess on basis of aboriginal use and occupancy cannot be "vacant, unappropriated, and unreserved" so as to make them available for state selection under Statehood Act. Alaska Statehood Act, §§ 4, 6(a, b, g) as amended 48 U.S.C.A. preceding section 21. Edwardsen v. Morton, 369 F.Supp. 1359. D.D.C.,1973. Indians ⇐ 153

Statehood Act must be construed as barring approval of state selections by the Secretary of Interior which would result in transferring out of "the absolute jurisdiction and control of the United States" any lands "the right or title to which" was held by Alaskan natives or held by the United States for such natives. Alaska Statehood Act, §§ 4, 6(a, b, g) as amended 48 U.S.C.A. preceding section 21. Edwardsen v. Morton, 369 F.Supp. 1359. D.D.C.,1973. Indians ⇐ 153

State of Alaska was not authorized by the Statehood Act to select lands in which Alaskan Natives could prove aboriginal rights based on use and occupancy, and tentative approval by the Secretary of Interior of land selections in which such rights could be proven were void at time they were granted, though such rights were in no way expanded or given formal recognition in Act and, though guaranteeing natives protection from intrusions, did not give them an alienable interest in lands. Alaska Statehood Act, §§ 4, 6(a, b, g) as amended 48 U.S.C.A. preceding section 21. Edwardsen v. Morton, 369 F.Supp. 1359. D.D.C.,1973. Indians ⇐ 151; Indians ⇐ 173

Federal officers are obligated to protect lands in which Alaskan natives have aboriginal possessory rights against intrusion by third parties until such time as Congress acts to extinguish such rights, and transferring such lands out of federal jurisdiction and control would not be consistent with carrying out such duty. Alaska Statehood Act, §§ 4, 6(a, b, g) as amended 48 U.S.C.A. preceding section 21. Edwardsen v. Morton, 369 F.Supp. 1359. D.D.C.,1973. Indians ⇐ 151; Indians ⇐ 153

The Statehood Act, read as a whole and in light of legislative history, shows an intent on part of Congress to avoid any prejudice to possessory rights of Alaskan natives in aboriginal lands until such time as Congress determines how to deal with them. Alaska Statehood Act, §§ 4, 6(a, b, g) as amended 48 U.S.C.A. preceding section 21. Edwardsen v. Morton, 369 F.Supp. 1359. D.D.C.,1973. Indians ⇐ 151

Alaskan natives, holding land on basis of aboriginal use and occupancy, have no alienable interest in such land and, thus, cannot themselves sell interest in land or its resources to third parties and cannot have any legal interest in money received for sale of property rights such as mineral leases. Alaska Native Claims Settlement Act, § 4(a, c), 43 U.S.C.A. § 1603(a, c); Alaska Statehood Act, §§ 4, 6 as amended 48 U.S.C.A. preceding section 21; U.S.C.A.Const. Amend. 5. Edwardsen v. Morton, 369 F.Supp. 1359. D.D.C.,1973. Indians ⇐ 173

Until Congress has acted to extinguish rights of Alaskan natives in lands claimed on basis of use and occupancy, any third parties coming onto land without consent of those rightfully in possession are mere trespassers; and such status is unaffected by any mistaken belief on part of intruders that they are entitled to enter land, so long as such belief is not induced by those in possession of land. Alaska Native Claims Settlement Act, § 4(a, c), 43 U.S.C.A. § 1603(a, c); Alaska Statehood Act, §§ 4, 6 as amended 48 U.S.C.A. preceding section 21; U.S.C.A.Const. Amend. 5. Edwardsen v. Morton, 369 F.Supp. 1359. D.D.C.,1973. Indians ⇐ 199; Indians ⇐ 171

Provision of Alaska Statehood Act that all native land or other property would remain under absolute jurisdiction and control of United States did not preclude state from enforcing its hunting regulations against Alaska natives. Const. Art. 12, § 12; Alaska Statehood Act, § 4, 48 U.S.C.A. prec. § 21. Jones v. State, 936 P.2d 1263. Alaska.App.,1997. Indians ⇐ 353

24. —— Submerged lands, aboriginal rights

Provision of Alaska Statehood Act disclaiming all right and title to property which "may be held" by any natives, or held by the United States in trust for natives, was too general to give rise to inference of intent by Congress to defeat Alaska's equal footing entitlement to ownership of lands submerged beneath navigable waters. State of Alaska v. Ahtna, Inc., C.A.9 (Alaska) 1989, 891 F.2d 1401, certiorari denied 110 S.Ct. 1949, 495 U.S. 919, 109 L.Ed.2d 312. Navigable Waters 36(1) Navigable Waters ⇐ 36(1)

Injury, sufficient to support standing of environmental groups challenging Bureau of Land Management policy excluding submerged lands from amount of acreage charged against Alaska's entitlement, and Alaskan natives' entitlement, could occur before total number of acres conveyed exceeded statutorily granted limit; overselection and prioritization scheme significantly affected future of natural resources the group sought to conserve for their recreational use. Alaska Statehood Act, § 1 et seq., 48 U.S.C.A. prec. § 21; Alaska National Interest Lands Conservation Act, § 906(*o*), 43 U.S.C.A. § 1635(*o*). Wilderness Soc. v. Griles, 824 F.2d 4. C.A.D.C.,1987. Administrative Law And Procedure ⇐ 668; United States ⇐ 113

Environmental groups lacked standing to bring action challenging policy of Bureau of Land Management to exclude submerged lands from amount of acreage charged against state's or natives' statutory land grants, since groups failed to name specific lands that its members intended to visit and either had been or would be shifted from federal to state or native ownership, notwithstanding group's assertion that policy would result in fewer public lands, that its members used and enjoyed various public lands throughout state and therefore that members were threatened with injury. Alaska Statehood Act, § 1 et seq., 48 U.S.C.A. prec. § 21; Alaska Native Claims Settlement Act, § 2 et seq., 43 U.S.C.A. § 1601 et seq.; 5 U.S.C.A. § 702. Wilderness Soc. v. Griles, 824 F.2d 4. C.A.D.C.,1987. Administrative Law And Procedure ⇐ 668; United States ⇐ 113

Question of whether state or native ownership of land was more likely to injure environmental groups than federal ownership was factor to be considered as to whether groups had made sufficient showing of threatened "personal injury" to challenge Bureau of Land Management policy, rather than as a factor in the "causation" inquiry as to whether injury resulting to groups was traceable to Bureau's policy of excluding submerged lands from acreage charged against state or native land grants, and whether order binding Bureau would likely cure groups' harm. Alaska Statehood Act, § 1 et seq., 48 U.S.C.A. prec. § 21; Alaska Native Claims Settlement

Act, § 2 et seq., 43 U.S.C.A. § 1601 et seq.; 5 U.S.C.A. § 702. Wilderness Soc. v. Griles, 824 F.2d 4. C.A.D.C.,1987. Administrative Law And Procedure ⇐ 668; United States ⇐ 113

Any injury from impaired use and enjoyment of land transferred from federal government to state or natives under statutory land grant would be fairly traceable to policy triggering such transfer, and court order reinstating previous Bureau of Land Management policy charging submerged lands against state's or natives' grants would be likely to redress injury to environmental groups, thus satisfying "causation" requirement with regard to groups' standing to contest change in Bureau policy which did not change selected submerged lands against the grants. Alaska Statehood Act, § 1 et seq., 48 U.S.C.A. prec. § 21; Alaska Native Claims Settlement Act, § 2 et seq., 43 U.S.C.A. § 1601 et seq.; 5 U.S.C.A. § 702. Wilderness Soc. v. Griles, 824 F.2d 4. C.A.D.C.,1987. Administrative Law And Procedure ⇐ 668; United States ⇐ 113

Environmental groups, contesting Bureau of Land Management policy excluding submerged lands from amount of acreage chargeable against statutory land grants to state and native groups and seeking to protect their interests in enjoying "natural, scenic, historic [and other] values" of Alaskan wilderness, were within "zone of interests" to be protected by statutes governing such grants, for standing purposes. Alaska Statehood Act, § 1 et seq., 48 U.S.C.A. prec. § 21; Alaska National Interest Lands Conservation Act, § 906(f), 43 U.S.C.A. § 1635(f); Alaska Native Claims Settlement Act, § 2 et seq., 43 U.S.C.A. § 1601 et seq. Wilderness Soc. v. Griles, 824 F.2d 4. C.A.D.C.,1987. Administrative Law And Procedure ⇐ 668; United States ⇐ 113

Court took judicial notice that Alaska lies westward of ninety-eighth meridian. Alaska Native Claims Settlement Act, § 17(b), 43 U.S.C.A. § 1616(b); Submerged Lands Act, §§ 2 et seq., 3(a)(1), (e), 43 U.S.C.A. §§ 1301 et seq., 1311(a)(1), (e); Alaska Statehood Act, §§ 1 et seq., 6(m), 48 U.S.C.A. preceding section 21; Federal Rules of Evidence, rule 201(b)(2), 28 U.S.C.A.; AS 44.03.020. Alaska Public Easement Defense Fund v. Andrus, 435 F.Supp. 664. D.Alaska,1977. Evidence ⇐ 10(4)

Under federal law, ownership and control of land under navigable waters in Alaska is confirmed in the state. Alaska Native Claims Settlement Act, § 17(b), 43 U.S.C.A. § 1616(b); Submerged Lands Act, §§ 2 et seq., 3(a)(1), (e), 43 U.S.C.A. §§ 1301 et seq., 1311(a)(1), (e); Alaska Statehood Act, §§ 1 et seq., 6(m), 48 U.S.C.A. preceding section 21; Federal Rules of Evidence, rule 201(b)(2), 28 U.S.C.A.; AS 44.03.020. Alaska Public Easement Defense Fund v. Andrus, 435 F.Supp. 664. D.Alaska,1977. Navigable Waters ⇐ 36(1)

25. —— Hunting and fishing, aboriginal rights

Word "absolute" in section of Alaska Statehood Act by which Alaska disclaimed all right and title to and United States retained absolute jurisdiction and control over any lands or other property, including fishing rights, held by any Indians, Eskimos, or Aleuts or held by United States in trust for such natives means undiminished and not exclusive. Alaska Statehood Act, § 4, 48 U.S.C.A., preceding section 21. Organized Village of Kake v. Egan, 82 S.Ct. 562. U.S.Alaska,1962. Indians ⇐ 363; Indians ⇐ 360

Alaska Statehood Act retaining absolute jurisdiction and control of Indian property, including fishing rights, in United States, did not authorize Secretary of Interior to issue regulations authorizing certain Indian communities to operate fish-traps in Alaska waters in violation of Alaska Anti-Fish-Trap Conservation Law. Wheeler-Howard Act, §§ 16, 18, 25 U.S.C.A. §§ 476, 477; 25 U.S.C.A. § 473a; Alaska Statehood Act, § 1 et seq., 48 U.S.C.A. preceding section 21; Laws Alaska 1959, c. 17 as amended by c. 95. Organized Village of Kake v. Egan, 82 S.Ct. 562. U.S.Alaska,1962. Indians ⇐ 365

Section of Alaska Statehood Act by which Alaska disclaimed all rights and title to and United States retained absolute jurisdiction and control over any lands or other property, including fishing rights, held by any Indians or held by United States in trust for them does not authorize Indian communities to use fish-traps in Alaska waters in violation of Alaska Anti-Fish-Trap Conservation Law. Alaska Statehood Act, § 4, 48 U.S.C.A. preceding section 21; Laws Alaska 1959, c. 17 as amended by c. 95. Organized Village of Kake v. Egan, 82 S.Ct. 562. U.S.Alaska,1962. Indians ⇐ 365

Alaska Statehood Act retaining absolute jurisdiction and control of Indian property, including fishing rights, in United States, did not authorize Secretary of Interior to issue regulations authorizing Metlakatla Indian Community to operate fish-traps in Alaska waters surrounding Annette Islands which Congress had set apart as reservation. Alaska Statehood Act, § 4 et seq., 48 U.S.C.A. preceding § 21; 48 U.S.C.A. § 358. Metlakatla Indian Community, Annette Islands Reserve v. Egan, 82 S.Ct. 552. U.S.Alaska,1962. Indians ⇐ 365

Section of Alaska Statehood Act requiring Alaska to disclaim all right and title to any United States property not granted Alaska by statute, and also any lands or other property including fishing rights, which may be held by any Indians, Eskimos, or Aleuts, or is held by United States in trust for natives protects not

only recognized Indian rights, taking of which would be compensable by United States, but broader class of rights, including, in case of land, mere possession or occupancy. Alaska Statehood Act, § 4 as amended 48 U.S.C.A. preceding § 21. Metlakatla Indian Community, Annette Islands Reserve v. Egan, 82 S.Ct. 552. U.S.Alaska,1962. Indians ⇐ 363

Section of Alaska Statehood Act requiring Alaska to disclaim all right and title to any United States property not granted Alaska by statute, and also any lands or other property, including fishing rights, which may be held by any Indians, Eskimos, or Aleuts, or is held by United States in trust for natives preserved federal authority over reservation on Annette Islands of southeastern Alaska for Metlakatla Indians. Alaska Statehood Act, § 4 as amended 48 U.S.C.A. preceding § 21. Metlakatla Indian Community, Annette Islands Reserve v. Egan, 82 S.Ct. 552. U.S.Alaska,1962. Indians ⇐ 157; Indians ⇐ 363

Section of Alaska Statehood Act providing for conveyance of United States properties used for sole purpose of conservation and protection of fisheries and wildlife of Alaska contemplated transfer to Alaska of same measure of administration and jurisdiction over fisheries and wildlife as possessed by other states. Alaska Statehood Act, § 6(e), 48 U.S.C.A. preceding § 21. Metlakatla Indian Community, Annette Islands Reserve v. Egan, 82 S.Ct. 552. U.S.Alaska,1962. Fish ⇐ 8; Game ⇐ 3.5

Section of Alaska Statehood Act providing for conveyance of United States properties used for sole purpose of conservation and protection of fisheries and wildlife of Alaska contemplated transfer to Alaska of same measure of administration and jurisdiction over fisheries and wildlife as possessed by other states. Alaska Statehood Act, § 6(e), 48 U.S.C.A. preceding § 21. Metlakatla Indian Community, Annette Islands Reserve v. Egan, 82 S.Ct. 552. U.S.Alaska,1962. Fish ⇐ 8; Game ⇐ 3.5

Where Secretary of Interior, in promulgating regulations according Metlakatla Indian Community right to erect and operate salmon traps in waters surrounding Annette Islands, acted under White Act and Alaska Statehood Act, neither of which authorized his action, instead of under 1891 statute which did, United States Supreme Court would vacate judgment of Alaska Supreme Court adverse to Metlakatla Indian Community and remand case to give ample opportunity for Secretary of Interior with all reasonable expedition to determine prior to 1963 salmon fishing season, what, if any, authority he should choose to exercise. 48 U.S.C.A. § 358; Alaska Statehood Act, § 4 et seq., 48 U.S.C.A. preceding § 21; White Act, 48 U.S.C.A. §§ 221-228. Metlakatla Indian Community, Annette Islands Reserve v. Egan, 82 S.Ct. 552. U.S.Alaska,1962. Federal Courts ⇐ 513

The Secretary of the Interior is without authority to except fish traps of plaintiff Indian Communities from an order prohibiting the use of fish traps in Alaskan waters and the State of Alaska had authority to prohibit all fish traps in Alaskan waters, including those of the plaintiffs. White Act, § 1 as amended 48 U.S.C.A. § 221; Alaska Statehood Act, § 6(e), 48 U.S.C.A. preceding section 23. Organized Village of Kake v. Egan, 80 S.Ct. 33. U.S.Alaska,1959.

Where Alaska enacted statute making it a crime to erect or maintain fish traps and Secretary of Interior subsequently made a regulation permitting trap fishing in certain areas by Indian villages, whose economic viability was solely dependent on fishing and canning operations, and District Court for District of Alaska denied villages an injunction prohibiting enforcement of a statute against them and villages intended to seek review of that judgment by Supreme Court, and almost one-third of fishing season had expired, and irreparable injury affecting Indian communities would be sustained if they were not permitted to engage in trap fishing, equity supported application for an order restraining state and its Governor and agents of both pending final determination of action by Supreme Court, from interfering with villages' attempts to erect, maintain and operate fish traps and to restrain enforcement of statute against them, and questions proposed to be presented to Supreme Court for review were of such significance and difficulty that there was a substantial prospect that they would command four votes for review. 48 U.S.C.A. §§ 221, 222; Alaska Statehood Act, §§ 1 et seq., 6(e), 48 U.S.C.A. note preceding section 21; c. 17, S.L.A. 1959; Const.Alaska, art. 12, § 12. Organized Village of Kake v. Egan, 80 S.Ct. 33. U.S.Alaska,1959. Injunction ⇐ 138.48; Federal Courts ⇐ 446

Alaska Statehood Act allows state to regulate off-reservation hunting and fishing unless Congress enacts statute to limit state's authority. Alaska Statehood Act, § 4, 48 U.S.C.A. prec. § 21. Jones v. State, 936 P.2d 1263. Alaska.App.,1997. Indians ⇐ 353; Indians ⇐ 363

Provision of Alaska Omnibus Act dealing with Indian fishing rights and amending provision of Alaska Statehood Act formed no part of compact between Alaska and United States, where provision of Alaska Omnibus Act was not enacted until 10 months after voters of Alaska ratified compact and 6 months after Alaska attained statehood. Alaska Statehood Act, § 4 as amended by Alaska Omnibus Act, § 2(a), 48 U.S.C.A. preceding section 21; Const. art. 12, § 12. Metlakatla Indian Community, Annette Island Reserve v. Egan, 362 P.2d 901. Alaska,1961. States ⇐ 4.1(2)

No compact as to fishing rights of Alaska Indians was formed between State of Alaska and United States by Alaska Constitution and Alaska Statehood Act, and therefore Indians were not excepted from Alaska law prohibiting use of fish traps. Alaska Statehood Act, § 4, 48 U.S.C.A. preceding section 21; Laws 1959, c. 17; Ordinance No. 3, Laws 1959, p. 54; Const. art. 12, § 12. Metlakatla Indian Community, Annette Island Reserve v. Egan, 362 P.2d 901. Alaska,1961. Indians ⇐ 365; States ⇐ 4.19

No act of Congress had established any right or title in fishing rights for Alaska Indians at time compact between United States and Alaska for admission of Alaska to statehood was made, and hence Alaska law prohibiting operation of fish traps was applicable to Indians. Alaska Statehood Act, §§ 1, 4, 6(e), 8(c), 48 U.S.C.A. preceding section 21; Laws 1959, c. 17; Ordinance No. 3, Laws 1959, p. 54; Const. art. 8, § 15. Metlakatla Indian Community, Annette Island Reserve v. Egan, 362 P.2d 901. Alaska,1961. Indians ⇐ 365

Congress intended that control by Secretary of the Interior over fish in Alaska should be transferred to State of Alaska as soon as it was prepared to assume responsibility, and therefore Alaska Indians were not excepted from operation of Alaska law prohibiting use of fish traps because use of fish traps by Indians had been authorized by Secretary of the Interior. Alaska Statehood Act, §§ 1, 4, 6(e), 8(c), 48 U.S.C.A. preceding section 21; Laws 1959, c. 17; Ordinance No. 3, Laws 1959, p. 54; Const. art. 8, § 15. Metlakatla Indian Community, Annette Island Reserve v. Egan, 362 P.2d 901. Alaska,1961. Fish ⇐ 8; Indians ⇐ 365

Alaska territorial game laws and acts regulating commercial fisheries continued in force on admission of Alaska as a state, but were modified by Alaska law prohibiting use of fish traps for taking of salmon for commercial purposes and by section of Constitution providing that no exclusive right or special privilege of fisheries shall be created or authorized in natural waters of State. Alaska Statehood Act, §§ 6(e), 8(d), 48 U.S.C.A. preceding section 21; Const. art. 8, § 15; Ordinance No. 3, Laws 1959, p. 54. Metlakatla Indian Community, Annette Island Reserve v. Egan, 362 P.2d 901. Alaska,1961. Fish ⇐ 9

26. —— Taxation, aboriginal rights

Land held in trust under either the Alaska Native Townsite Act or Alaska Native Allotment Act is exempt from local and state taxation; beneficial interest of the natives in land within a restricted native townsite lot or a native allotment cannot be taxed by the state or local government. 43 U.S.C. (1970 Ed.) §§ 270-1, 733; Alaska Native Claims Settlement Act, §§ 2-31, 43 U.S.C.A. §§ 1601-1628; Alaska Statehood Act, § 4, 48 U.S.C.A. preceding section 21. People of South Naknek v. Bristol Bay Borough, 466 F.Supp. 870. D.Alaska,1979. Municipal Corporations ⇐ 967(1); Taxation ⇐ 2063

Not only may land held in trust for Alaskan natives under either the Native Townsite Act or Native Allotment Act not be taxed by state or local government, the exemption extends as well to houses and other improvements affixed to such land. 43 U.S.C. (1970 Ed.) §§ 270-1, 733; Alaska Native Claims Settlement Act, §§ 2-31, 43 U.S.C.A. §§ 1601-1628; Alaska Statehood Act, § 4, 48 U.S.C.A. preceding section 21. People of South Naknek v. Bristol Bay Borough, 466 F.Supp. 870. D.Alaska,1979. Municipal Corporations ⇐ 967(1); Taxation ⇐ 2063

Bristol Bay Borough, Alaska, was preempted from taxing the land, homes, or other permanent improvements on restricted land held in trust by United States for use and benefit of Alaskan natives in the village of South Naknek, Alaska. 43 U.S.C. (1970 Ed.) §§ 270-1, 733; Alaska Native Claims Settlement Act, §§ 2-31, 43 U.S.C.A. §§ 1601-1628; Alaska Statehood Act, § 4, 48 U.S.C.A. preceding section 21. People of South Naknek v. Bristol Bay Borough, 466 F.Supp. 870. D.Alaska,1979. Municipal Corporations ⇐ 956(1)

Neither Alaska Native Allotment Act nor Alaska Native Townsite Act preempt an Alaskan borough's taxation of personal property associated with restricted lands held in trust under those Acts. 43 U.S.C. (1970 Ed.) §§ 270-1, 733; Alaska Native Claims Settlement Act, §§ 2-31, 43 U.S.C.A. §§ 1601-1628; Alaska Statehood Act, § 4, 48 U.S.C.A. preceding section 21. People of South Naknek v. Bristol Bay Borough, 466 F.Supp. 870. D.Alaska,1979. Municipal Corporations ⇐ 956(1)

Provision of Alaska Statehood Act that native property held in trust by United States "shall be and remain under the absolute jurisdiction and control of the United States" does not mean exclusive jurisdiction and, hence, such provision is not a prohibition on state and local taxation of personal property associated with either an Alaskan native allotment or an Alaskan native townsite. 43 U.S.C. (1970 Ed.) §§ 270-1, 733; Alaska Native Claims Settlement Act, §§ 2-31, 43 U.S.C.A. §§ 1601-1628; Alaska Statehood Act, § 4, 48 U.S.C.A. preceding section 21. People of South Naknek v. Bristol Bay Borough, 466 F.Supp. 870. D.Alaska,1979. Municipal Corporations ⇐ 956(1); Taxation ⇐ 2063

Borough of Bristol Bay, Alaska, was not prohibited from taxing personal property associated with either an Alaskan native allotment or an Alaskan native townsite. 43 U.S.C. (1970 Ed.) §§ 270-1, 733; Alaska Native Claims Settlement Act, §§ 2-31, 43 U.S.C.A. §§ 1601-1628; Alaska

Statehood Act, § 4, 48 U.S.C.A. preceding section 21. People of South Naknek v. Bristol Bay Borough, 466 F.Supp. 870. D.Alaska,1979. Municipal Corporations ⇐ 956(1)

27. Courts and judiciary—Continuation of actions

United States District Court for District of Alaska, in which defendant previously indicted in interim court was reindicted, tried and convicted, had jurisdiction over defendant in prosecution for robbery of national bank, whether it had an existence at time of commission of robbery. Alaska Statehood Act, § 1 et seq., 48 U.S.C.A. note preceding § 21; 18 U.S.C.A. § 2113(a). Woodring v. U.S., 337 F.2d 235. C.A.9 Alaska,1964. Criminal Law ⇐ 92

28. —— Judicial jurisdiction, courts and judiciary

The Alaska Statehood Act (ASA) expressed Congressional intent to retain submerged lands underlying the waters of Glacier Bay in Alaska as part of a federal reservation, rebutting the presumption, under the equal footing doctrine and the Submerged Lands Act (SLA), that Alaska held title to those submerged lands; ASA clause directed transfer to Alaska of any United States property used for sole purpose of conservation and protection of Alaska's fisheries and wildlife as identified under three particular federal wildlife laws, but proviso after clause expressly stated that the transfer did not apply to lands withdrawn or otherwise set apart as refuges or wildlife reservations, and the submerged lands under Glacier Bay were set apart by the proclamations that created the Glacier Bay National Monument, which later became national park, which was created to preserve the nature and wildlife therein. Alaska v. U.S., U.S.2005, 125 S.Ct. 2137, 545 U.S. 75, 162 L.Ed.2d 57, entered 126 S.Ct. 1014, 163 L.Ed.2d 995. Navigable Waters 36(1) Navigable Waters ⇐ 36(1)

Congress under section 11 of Alaska Statehood Act [set out as a note prec. § 21 of Title 48] granted to state of Alaska concurrent jurisdiction with the United States over lands embraced within Naval Petroleum Reserve No. 4, for all purposes, with exception of those contained in executive order and this section, until Congress enacts legislation to contrary. Petition of Long, D.C.Alaska 1961, 200 F.Supp. 313. Criminal Law ⇐ 97(4)

By legislation providing system of Supreme and Superior Courts, state legislature of Alaska declared its intent to accept present courts and vest them with jurisdiction until state courts were established; and in face of such declaration, it could not be successfully contended that Congress had "imposed" judicial system upon state. Alaska Statehood Act, § 18, 48 U.S.C.A. preceding section 21; Laws Alaska 1959, c. 50, §§ 31, 32; U.S.C.A.Const. art. 3, § 1. U.S. v. Egelak, 173 F.Supp. 206. D.Alaska.Terr.2.Div.,1959. Courts ⇐ 42(1); States ⇐ 9

Section 1 of Article III of the federal Constitution relates only to federal courts; and there was no merit to contention that Congress could not create courts within state other than in conformity therewith. Alaska Statehood Act, § 18, 48 U.S.C.A. preceding section 21; Laws Alaska 1959, c. 50, §§ 31, 32; U.S.C.A.Const. art. 3, § 1. U.S. v. Egelak, 173 F.Supp. 206. D.Alaska.Terr.2.Div.,1959. Courts ⇐ 42(1)

Provision of Alaska Statehood Bill specifying that sections respecting termination of jurisdiction of District Court for Territory of Alaska shall not be effective until three years after effective date of Statehood Act unless President, by executive order, shall sooner proclaim that United States District Court for District of Alaska is prepared to assume functions imposed on it, and during such three-year transitional period District Court for Territory of Alaska shall continue to function as heretofore, is not unconstitutional on ground that it violates constitutional provision giving federal judges right to hold office during good behavior, that it violates privileges and immunities clause of federal Constitution, or that it constitutes a denial of process of law. U.S.C.A.Const. art. 3, § 1, art. 4, § 2; Amend. 5; Alaska Statehood Act, § 18, 48 U.S.C.A. note preceding section 23. U.S. v. Starling, 171 F.Supp. 47. D.Alaska.Terr.3.Div.,1959. Constitutional Law ⇐ 2950; Constitutional Law ⇐ 4559; Judges ⇐ 7; Federal Courts ⇐ 1023

Functioning courts in Alaska after proclamation of statehood are legislative in character. 48 U.S.C.A. §§ 101, 112; U.S.C.A.Const. art. 3, § 1; art. 4, § 3; Alaska Statehood Act, § 18, 48 U.S.C.A. note preceding section 23. U.S. v. Starling, 171 F.Supp. 47. D.Alaska.Terr.3.Div.,1959. Federal Courts ⇐ 1023

State has been granted concurrent jurisdiction over naval petroleum reserve No. 4 until Congress enacts legislation to the contrary. AS 07.10.030(2); Alaska Statehood Act, 48 U.S.C.A. preceding section 21. Mobil Oil Corp. v. Local Boundary Commission, 518 P.2d 92. Alaska,1974. United States ⇐ 3

In prosecution for violation of state law, instituted and concluded after Alaska became a state but prior to organization of constitutional state court system, it was proper, under state constitution and under statehood act, that United States be named as plaintiff in indictment and that prosecution be by the United States attorney. Const.Alaska, art. 15, § 17; Alaska Statehood Act, § 18, 48 U.S.C.A. preceding section 21; Laws Alaska 1959, c. 50, § 31(2) as amended by c. 151, § 2; A.C.L.A.1949, § 66-1-4; 48

U.S.C.A. § 109. Oxenberg v. State, 362 P.2d 893. Alaska,1961. States ⇐ 9

Congress did not reject Alaska's proposal to use federal courts until its own were organized by requiring that such courts were to remain in use for three years unless President sooner proclaimed that United States District Court for District of Alaska was prepared to assume its functions. Alaska Statehood Act, § 18, 48 U.S.C.A. preceding § 21; A.C.L.A.Supp. § 52A-1-31. Hobbs v. State, 359 P.2d 956. Alaska,1961. Courts ⇐ 42(1)

No arbitrary reservation by Congress to President of power of determining when newly organized state courts could assume jurisdiction was involved in provision that interim courts should remain in use for three years unless President sooner proclaimed that United States District Court for District of Alaska was prepared to assume its functions. Alaska Statehood Act, § 18, 48 U.S.C.A. preceding § 21; A.C.L.A.Supp. § 52A-1-31. Hobbs v. State, 359 P.2d 956. Alaska,1961. Constitutional Law ⇐ 2623; Courts ⇐ 42(1)

29. —— Territorial courts, courts and judiciary

Segregation of judicial territorial court records did not occur in the manner provided for in the Alaska Statehood Act, and while the Alaska Archives and Records and the National Archives and Records Administration are in agreement that it would be impractical to do so at this time, some type of agreement should be pursued to determine permanent disposition. Alaska Op.Atty.Gen. 663-93-0507, (March 10, 1994) 1994 WL 106740.

30. —— Transition, courts and judiciary

Alaska Enabling Act contemplated, for period of three years or less, that old territorial court would perform as before, handling state cases as well as federal. Alaska Statehood Act, § 1 et seq., 48 U.S.C.A. preceding section 21. Mahlum v. Carlson, 304 F.2d 285. C.A.9.Alaska,1962. Federal Courts ⇐ 146

Provision in Alaska Enabling Act that territorial court was to continue on for three years or less to adjudicate pending federal cases was constitutional as to all federal cases other than criminal cases pending on date Alaska became a state. Alaska Statehood Act, § 1 et seq., 48 U.S.C.A. preceding section 21. Mahlum v. Carlson, 304 F.2d 285. C.A.9.Alaska,1962. Federal Courts ⇐ 146

United States District Courts for Territory of Alaska having continuing federal jurisdiction over criminal and civil matters arising under laws of United States during three-year transitional period when Alaska advances from territorial to full state status or until President by executive order shall proclaim that the United States District Court for the District of Alaska is prepared to assume functions imposed on it. Alaska Statehood Act, §§ 17, 18, 48 U.S.C.A. note preceding section 23. U.S. v. Starling, 171 F.Supp. 47. D.Alaska.Terr.3.Div.,1959. Federal Courts ⇐ 1023

31. —— Interim courts, courts and judiciary

Interim Alaska District Court was not intended by Statehood Act to be the newly created United States District Court for the District of Alaska. Alaska Statehood Act §§ 12-18, 48 U.S.C.A. preceding section 23; 28 U.S.C.A. § 81A. Metlakatla Indian Com. Annette Island R. v. Egan, 80 S.Ct. 1321. U.S.Alaska,1960. Federal Courts ⇐ 146

Where Alaskan Legislature vested state judicial power in interim District Court for time being, and district judge deemed himself to be exercising such power, and did so with consent of United States, interim District Court sat as a "court of a State", for purpose of statute determining appellate jurisdiction of federal Supreme Court. 28 U.S.C.A. § 1257(2); Alaska Statehood Act, §§ 12-18, 48 U.S.C.A. preceding section 23; Laws Alaska 1959, c. 50, §§ 31(2), 32(4) as amended by Laws Alaska 1959, c. 151; Const.Alaska, art. 4, §§ 1, 2; art. 15, §§ 17, 25. Metlakatla Indian Com. Annette Island R. v. Egan, 80 S.Ct. 1321. U.S.Alaska,1960. Federal Courts ⇐ 501

To insure timely appeal on constitutional question, where date for full organization of Alaskan courts was 21/2 years in future, interim District Court was considered the highest court of Alaska, for purpose of appellate jurisdiction of federal Supreme Court, even though, before action was commenced, contingency had occurred conferring appellate jurisdiction on Alaska Supreme Court, and thereafter judges had been appointed and rules adopted. 28 U.S.C.A. § 1257(2); Alaska Statehood Act, §§ 12-18, 48 U.S.C.A. preceding section 23; Laws Alaska, 1959, c. 50, §§ 31(2), 32(4) as amended by Laws Alaska 1959, c. 151, § 1; c. 50, § 32(3); Const.Alaska, art. 4, §§ 1, 2; art. 15, §§ 17, 25. Metlakatla Indian Com. Annette Island R. v. Egan, 80 S.Ct. 1321. U.S.Alaska,1960. Federal Courts ⇐ 501

Libelant who procured, in territorial court which was continued on as interim court under Alaska Enabling Act, decree in admiralty relating to sale of fishing boat, had no ground for having portion of effect of decree undone when sale proceeds were exceeded by items in cost bill. Alaska Statehood Act, §§ 1 et seq., 15, 48 U.S.C.A. preceding section 21. Mahlum v. Carlson, 304 F.2d 285. C.A.9.Alaska,1962. Admiralty ⇐ 25

Court of Appeals would take judicial notice that, on date Alaska's statehood became effective, there was much concern throughout Alaska

about status of jurisdiction of the interim court, which was the old territorial court. Alaska Statehood Act, § 1 et seq., 48 U.S.C.A. preceding section 21. Mahlum v. Carlson, 304 F.2d 285. C.A.9.Alaska,1962. Evidence ⇐ 40

Where instructions were reduced to writing and sent to jury room and jury's copy was made part of record, and where it was not suggested that instructions read to jury differed in any respect from instructions sent to jury, defendant was not prejudiced by any error trial court committed in failing to record and transcribe reading of jury instructions at his 1959 trial before federal territorial court sitting as interim state court. Alaska Statehood Act, § 1 et seq., 48 U.S.C.A. prec. § 21; 28 U.S.C.A. § 753(b); Rules App.Proc., Rule 210(k). Marrone v. State, 653 P.2d 672. Alaska.App.,1982. Criminal Law ⇐ 1172.1(5)

Neither state courts nor federal court for district of Alaska having been organized when post-statehood action on pre-statehood judgment was commenced, action was properly commenced in interim district court, and even though case was determined by judgment entered on day before newly created federal court for district of Alaska assumed its exclusively federal jurisdiction, case was still "pending" then (because time for appropriate motions and appeal had not yet expired), and no petition for removal having been filed, appeal was properly taken to Alaska Supreme Court, notwithstanding fact that action was one within original jurisdiction of federal court. Const. art. 4, § 2; Alaska Statehood Act, § 16, 48 U.S.C.A. preceding section 21; 28 U.S.C.A. § 1446; Laws 1959, c. 50, § 1. Theodore v. Zurich General Acc. & Liability Ins. Co., 364 P.2d 51. Alaska,1961. Courts ⇐ 42(1)

United States Court for District (Territory) of Alaska, acting as interim transition court for period between admission of Alaska into Union and organization of its constitutional courts, had jurisdiction to try defendant for state offense of larceny in a building. Act May 17, 1884, 23 Stat. 24; Act June 6, 1900, 31 Stat. 443; 28 U.S.C.A. § 1291; Alaska Statehood Act, §§ 12-18, 48 U.S.C.A. preceding § 21; A.C.L.A.Supp. §§ 53A-1-31(2), 52A-1-32(4). Hobbs v. State, 359 P.2d 956. Alaska,1961. Criminal Law ⇐ 89

Appellate jurisdiction for interim courts was eliminated by inadvertence and Congress did not thereby reject Alaska's offer or proposal to use federal judicial system, and only disadvantage resulting was to State of Alaska, in being required to organize immediately a court it had intended to establish at greater convenience; and defendant, who was tried by United States District Court for District (Territory) of Alaska, acting as interim transition court, was not denied equal protection or due process, even though it was necessary for him to appeal to Supreme Court of Alaska rather than to Court of Appeals for Ninth Circuit, acting as interim transition court. Alaska Statehood Act, §§ 12(e), 13-18, 48 U.S.C.A. preceding § 21; A.C.L.A.Supp. § 52A-1-31. Hobbs v. State, 359 P.2d 956. Alaska,1961. Constitutional Law ⇐ 3816; Constitutional Law ⇐ 4765; Courts ⇐ 42(1)

32. —— Federal courts and jurisdiction, courts and judiciary

Alaskan Statehood Enabling Act provisions transferring to federal district court for Alaska all federal cases "pending" in territorial court at time of statehood, but continuing the territorial court until District Court was prepared to function, did not authorize transfer to District Court of prosecution begun by indictment in territorial court after statehood, and hence District Court had no jurisdiction to continue prosecution after termination of territorial court, and better practice would have been to reindict defendant. Alaska Statehood Act, §§ 1 et seq., 15, 18, 48 U.S.C.A. preceding section 21. Woodring v. U.S., 304 F.2d 308. C.A.9.Alaska,1962. Criminal Law ⇐ 101(1)

Effect of Alaska Enabling Act is to generally restrict jurisdiction of United States Court of Appeals for the Ninth Circuit, on decisions or judgments rendered in Alaska after January 3, 1959, to those coming up from the newly created United States District Court for the District of Alaska and Court of Appeals did not have jurisdiction of proceeding for writ of prohibition or writ of mandamus to stop proceeding in third division of United States District Court for territory of Alaska wherein defendant, who had been indicted in October 1958, was charged with theft of United States Government property. Proclamation Jan. 6, 1959, 48 U.S.C.A. preceding section 21; Alaska Statehood Act, §§ 12-18, 48 U.S.C.A. preceding section 21; 48 U.S.C.A. § 101. Parker v. McCarrey, 268 F.2d 907. C.A.9.Alaska,1959.

Federal jurisdiction is not exclusive, and state courts also have jurisdiction over cases between parties having diverse citizenship. Alaska Statehood Act, §§ 15, 16, 48 U.S.C.A. preceding section 21; 28 U.S.C.A. § 1332. Theodore v. Zurich General Acc. & Liability Ins. Co., 364 P.2d 51. Alaska,1961. Courts ⇐ 489(1)

33. —— Appeals, courts and judiciary

Under Alaska Statehood Act, which provided that appeals taken before statehood was achieved should be prosecuted "to final determination" as though Act had not been passed, cases in which judgments of United States District Court for the Territory of Alaska had been appealed to the United States Court of Appeals prior to statehood, could be remanded, in prop-

Note 33

er cases, to Supreme Court of Alaska. Laws 1949, c. 97, § 1 as amended by Laws 1951, c. 116, § 1; Alaska Statehood Act, § 14, 48 U.S.C.A. preceding section 21; 28 U.S.C.A. §§ 1331, 1332. Arctic Maid v. Territory of Alaska, 297 F.2d 28. C.A.9.Alaska,1961. Federal Courts ⇐ 146

Under Alaska Statehood Act, which provided for remand of federal cases which had been appealed prior to statehood or in which final judgment had been rendered, to either federal or state court "as the case may require", remand should be to court where case should have been commenced, had state and federal judicial systems, existing after statehood, been in effect when suits were instituted. Alaska Statehood Act, § 14, 48 U.S.C.A. preceding section 21. Arctic Maid v. Territory of Alaska, 297 F.2d 28. C.A.9.Alaska,1961. Federal Courts ⇐ 146

Where actions for territorial taxes had been instituted by Territory of Alaska in United States District Court for the Territory of Alaska prior to Alaska statehood, and where, following appeal to United States Court of Appeals and during progress of cases through Court of Appeals and United States Supreme Court, Alaska became a state, jurisdiction on remand for further proceeding lay in Supreme Court of Alaska in view of fact that neither federal question nor diversity of citizenship was involved. Laws 1949, c. 97, § 1 as amended by Laws 1951, c. 116, § 1; Alaska Statehood Act, § 14, 48 U.S.C.A. preceding section 21; 28 U.S.C.A. §§ 1331, 1332. Arctic Maid v. Territory of Alaska, 297 F.2d 28. C.A.9.Alaska,1961. Federal Courts ⇐ 146

Where housing authority instituted condemnation proceedings, using declaration of taking, owner challenged right to use such by motion to strike declaration of taking and by motions attacking summons and sufficiency of complaint, Supreme Court in review of proceedings determined that authority had no right to use declaration and issued mandate directing trial court to take proceedings in conformity with opinion, trial court declined to dismiss action and owner petitioned for review, but property had been taken and buildings located thereon removed, so that any decision on balance of owner's motions would be fruitless, Supreme Court would direct dismissal of action. Alaska Statehood Act, § 16, 48 U.S.C.A. preceding section 23. Bridges v. Alaska Housing Authority, 352 P.2d 1118. Alaska,1960. Eminent Domain ⇐ 263

Under the Alaska Statehood Act provisions by which appeal from District Court for Territory of Alaska in murder case was directed to Court of Appeals for Ninth Circuit and under which, in event of reversal, case would be remanded to state Supreme Court, it was intended that United States and state have concurrent interest and responsibility in such cases, and Alaska state court had jurisdiction to issue writ of habeas corpus. Alaska Statehood Act, §§ 14, 15, 16, 48 U.S.C.A. preceding section 23. Application of House, 352 P.2d 131. Alaska,1960. Habeas Corpus ⇐ 612.1

Under provisions of the Alaska Statehood Act, Superior Court for State of Alaska had jurisdiction to revoke bail pending appeal from District Court for Territory of Alaska, in murder case, to United States Court of Appeals for Ninth Circuit, and executive order terminating jurisdiction of District Court for Territory of Alaska did not vest sole jurisdiction to revoke bail in Court of Appeals for Ninth Circuit. Alaska Statehood Act, §§ 14, 15, 16, 48 U.S.C.A. preceding section 23; Executive Order, U.S.Code Congressional and Administrative News 1960, p. 333, No. 10867. Application of House, 352 P.2d 131. Alaska,1960. Bail ⇐ 77(1)

Proclamation 3269

Admission of the State of Alaska into the Union

By the President of the United States of America
A Proclamation

WHEREAS the Congress of the United States by the act approved on July 7, 1958 (72 Stat. 339), accepted, ratified, and confirmed the constitution adopted by a vote of the people of Alaska in an election held on April 24, 1956, and provided for the admission of the State of Alaska into the Union on an equal footing with the other States of the Union upon compliance with certain procedural requirements specified in that act; and

WHEREAS it appears from information before me that a majority of the legal votes cast at an election held on August 26, 1958, were in favor of each of the propositions required to be submitted to the people of Alaska by section 8 (b) of the act of July 7, 1958; and

WHEREAS it further appears from information before me that a general election was held on November 25, 1958, and that the returns of the general election were made and certified as provided in the act of July 7, 1958; and

WHEREAS the Acting Governor of Alaska has certified to me the results of the submission to the people of Alaska of the three propositions set forth in section 8 (b) of the act of July 7, 1958, and the results of the general election; and

WHEREAS I find and announce that the people of Alaska have duly adopted the propositions required to be submitted to them by the act of July 7, 1958, and have duly elected the officers required to be elected by that act:

NOW, THEREFORE, I, DWIGHT D. EISENHOWER, President of the United States of America, do hereby declare and proclaim that the procedural requirements imposed by the Congress on the State of Alaska to entitle that State to admission into the Union have been complied with in all respects and that admission of the State of Alaska into the Union on an equal footing with the other States of the Union is now accomplished.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

DONE at the City of Washington at one minute past noon on this third day of January in the year of our Lord nineteen hundred and fifty-nine, and of the Independence of the United States of America the one hundred and eighty-third.

Dwight D. Eisenhower

[Seal]

By the President:

Christian A. Herter,
Acting Secretary of State.

West's
ALASKA STATUTES ANNOTATED

Treaty of Cession of 1867

reaty of Cession of 1867

Notes of Decisions

In general

When Russia ceded the territory of Alaska to the United States in 1867, the United States thereby acquired whatever dominion Russia had possessed over that territory. Alaska v. U.S. (2005) U.S., 125 S.Ct. 2137, 545 U.S. 75, 162 L.Ed.2d 57, entered 126 S.Ct. 1014, 546 U.S. 413, 163 L.Ed.2d 995. Water Law ⇐ 2647

Alaska Statehood Act

Alaska Statehood Act

Notes of Decisions

16. Submerged lands—In general

United States did not transfer to Alaska offshore submerged lands within Arctic National Wildlife Range at statehood; pre-statehood application by Bureau of Sport Fisheries and Wildlife for withdrawal of lands included submerged lands, and United States retained Range under Alaska Statehood Act. Alaska Statehood Act, § 6(e), 48 U.S.C.A. prec. § 21; 43 C.F.R. § 295.11 (1958). U.S. v. Alaska (1997) U.S., 117 S.Ct. 1888, 521 U.S. 1, 138 L.Ed.2d 231, rehearing denied 118 S.Ct. 19, 521 U.S. 1144, 138 L.Ed.2d 1051. Water Law ⇐ 2649

17. —— Rivers and navigable waters, submerged lands

United States retained ownership of submerged lands within National Petroleum Reserve-Alaska at Alaska's statehood; Executive Order creating Reserve reflected clear intent to include submerged lands, and Alaska Statehood Act reflected clear congressional statement that United States owned and would continue to own submerged lands. U.S. v. Alaska (1997) U.S., 117 S.Ct. 1888, 521 U.S. 1, 138 L.Ed.2d 231, rehearing denied 118 S.Ct. 19, 521 U.S. 1144, 138 L.Ed.2d 1051 Water Law ⇐ 2649

28. —— Judicial jurisdiction, courts and judiciary

The Alaska Statehood Act (ASA) expressed Congressional intent to retain submerged lands underlying the waters of Glacier Bay in Alaska as part of a federal reservation, rebutting the presumption, under the equal footing doctrine and the Submerged Lands Act (SLA), that Alaska held title to those submerged lands; ASA clause directed transfer to Alaska of any United States property used for sole purpose of conservation and protection of Alaska's fisheries and wildlife as identified under three particular federal wildlife laws, but proviso after clause expressly stated that the transfer did not apply to lands withdrawn or otherwise set apart as refuges or wildlife reservations, and the submerged lands under Glacier Bay were set apart by the proclamations that created the Glacier Bay National Monument, which later became national park, which was created to preserve the nature and wildlife therein. Alaska v. U.S. (2005) U.S., 125 S.Ct. 2137, 545 U.S. 75, 162 L.Ed.2d 57, entered 126 S.Ct. 1014, 546 U.S. 413, 163 L.Ed.2d 995 Water Law ⇐ 2650

Shock Study: Feds Are LOSING Money Managing Public Lands

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The federal government loses 27 cents on average for every taxpayer dollar spent managing hundreds of millions of acres of public lands, according to a new study.

States land trusts, on the other hand, actually earn a huge return managing public lands: about $14.51 on average for every dollar spent, according to a study by the free-market Property and Environment Research Center. In contrast, PERC found that federal lands only get a return of 73 cents on average for every dollar spent. The study concludes that transferring federal lands to the states would be a win for taxpayers.

"By nearly all accounts, our federal lands are in trouble, both in terms of fiscal performance and environmental stewardship," write PERC public lands experts Holly Fretwell and Shawn Regan. "On average, states generate more revenue per dollar spent than the federal government on a variety of land management activities, including timber, grazing, minerals, and recreation."

PERC's study compared U.S. Forest Service and Bureau of Land Management stewardship to state land trusts in Montana, Idaho, New Mexico and Arizona. What they found is that restrictive federal laws and poor incentives for bureaucrats costed taxpayers $2 billion from 2009 to 2013.

In that time, BLM and the Forest Service spent $7.2 billion managing lands, but only earned about $5.3 billion in revenues — a net loss of nearly $2 billion. All the while, four western states spent just $16.5 million on management and earned $240 million in revenues.

"The Forest Service generated just 10 cents in revenue for every dollar it spent from 2009 to 2013," according to PERC's study. "The Bureau of Land Management, however, earned a financial return of $3.11 for every dollar spent, primarily from mineral leases."

But even though the BLM is earning a return on every dollar spent due to mineral leases, it still pales in comparison to state land trusts. New Mexico generated $41 for every dollar spent on management, mainly due to mineral leases.

PERC also breaks down how much revenue federal agencies are making by managing grazing, timber and recreation.

For example, PERC found that when it comes to timber "Montana and Idaho earned $2.51 for every dollar spent on timber management from 2009 to 2013" and both states "earned an average of $114.60 per thousand board feet (mbf) sold." In contrast, "the Forest Service lost $148.90 per mbf sold and the BLM lost $197.71 per mbf sold."

"'Analysis paralysis,' 'gridlock,' and the 'Gordian knot' are all terms used by former Forest Service chiefs to describe the lengthy planning process that hampers the ability of forest managers to actively manage federal forests," PERC notes.

When it comes to grazing, minerals and recreation, however, federal agencies are generating a return, but it's still well below what state land trusts are able to deliver. For example, PERC found that "mineral production from federal lands earned taxpayers $19.76 for every dollar spent" while state land trusts earned $138.08 for every dollar spent on mineral management.

"There is, however, plenty of evidence that federal minerals management is not generating a fair return for U.S. taxpayers," PERC noted.

In the past few years, there has been a growing movement among western states to take control of federal lands, which they say are being mismanaged. The Reno Gazette-Journal reports that some 11 states have introduced bills this year asserting more state control over public lands.

The federal government owns about one-third of the land in the U.S. and most of these holdings are in western states. In states like Utah and Nevada the federal government owns 66 percent and 88 percent of the state, respectively. So it's easy to see why they'd want to take back lands that could generate revenues.

But is federal land management actually costing taxpayers? The Interior Department says it's activities generate $360 billion in economic activity and provide more than 2 million jobs. The Department also claims the government earns $4 for every dollar invested in the Land and Water Conservation Fund.

The Interior Department's figures, however, are based on "economic contributions" and not the net economic benefits its activities deliver. The Department notes that "economic contributions analysis should not be equated to an analysis that measures net economic benefits" because net economic benefits "are a measure of the extent to which society is better (or worse) off because of a given policy, program or event."

"Economic contributions analysis estimates the total output, value added, and jobs supported by a flow of expenditures through the economy," the Department said.

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DIVIDED LANDS

STATE VS. FEDERAL MANAGEMENT IN THE WEST

BY HOLLY FRETWELL AND SHAWN REGAN

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SUMMARY

Nearly half of the western United States is owned by the federal government. In recent years, several western states have considered resolutions demanding that the federal government transfer much of this land to state ownership. These efforts are motivated by concerns over federal land management, including restrictions on natural resource development, poor land stewardship, limitations on access, and low financial returns.

This study compares state and federal land management in the West. It examines the revenues and expenditures associated with federal land management and compares them with state trust land management in four western states: Montana, Idaho, New Mexico, and Arizona. The report explains why revenues and expenditures differ between state and federal land agencies and discusses several possible implications of transferring federal lands to the states.

KEY POINTS:

- The federal government loses money managing valuable natural resources on federal lands, while states generate significant financial returns from state trust lands.
- The states examined in this study earn an average of $14.51 for every dollar spent on state trust land management. The U.S. Forest Service and Bureau of Land Management generate only 73 cents in return for every dollar spent on federal land management.
- On average, states generate more revenue per dollar spent than the federal government on a variety of land management activities, including timber, grazing, minerals, and recreation.
- These outcomes are the result of the different statutory, regulatory, and administrative frameworks that govern state and federal lands. States have a fiduciary responsibility to generate revenues from state trust lands, while federal land agencies face overlapping and conflicting regulations and often lack a clear mandate.
- If federal lands were transferred, states could likely earn much greater revenues than the federal government. However, transfer proponents must consider how land management would have to change in order to generate those revenues under state control.

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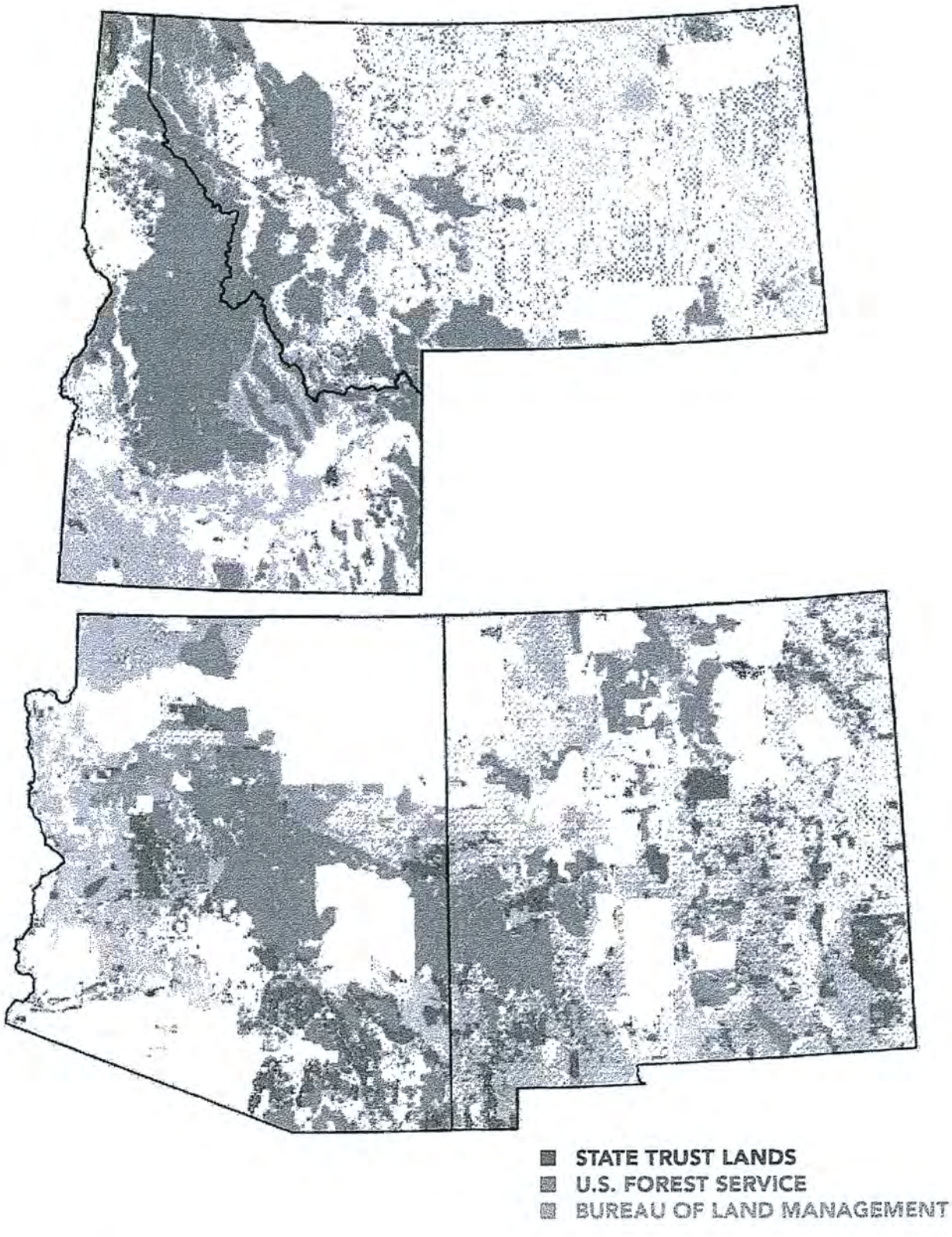

STATE TRUST LANDS
U.S. FOREST SERVICE
BUREAU OF LAND MANAGEMENT

INTRODUCTION

There is a great divide in the United States. Land in the East is mostly privately owned, while nearly half of the land in the West is owned by the federal government. In recent years, several western states have passed, introduced, or considered resolutions demanding that the federal government transfer much of this land to state ownership.[1] These efforts are motivated by local concerns over federal land management, including restrictions on natural resource development, poor land stewardship, limitations on access, and low financial returns.

The resolutions reflect a sentiment in many western states that state control will result in better public land management. To date, however, there has been little research comparing the costs of state and federal land management. Most existing studies assume that the costs of federal land management would be the same under state management and do not consider the different management goals, regulatory requirements, and incentive structures that govern state and federal lands.

The purpose of this report is to compare state and federal land management in the West. In particular, we examine the revenues and expenditures associated with federal land management and compare them with state trust land management in four western states: Montana, Idaho, New Mexico, and Arizona. These states, which encompass a wide range of landscapes, natural resources, and land management agencies, allow for a robust comparison. Our analysis will help explain why revenues and expenditures may differ between state and federal land agencies and explore some of the implications of transferring federal lands to the states.

We find that state trust agencies produce far greater financial returns from land management than federal land agencies. In fact, the federal government often loses money managing valuable natural resources. States, on the other hand, consistently generate significant amounts of revenue from state trust lands. On average, states earn more revenue per dollar spent than the federal government for each of the natural resources we examined, including timber, grazing, minerals, and recreation.

WHY IT MATTERS

There are several reasons why a comparison between state and federal land management is important:

- In order to understand the possible implications of transferring federal lands, we must first assess how state and federal lands are currently managed. This allows us to address the primary concerns over the proposed transfer, namely how much it might cost for states to manage the lands and how public land management might change under state control. Comparing state and federal land agencies is a critical first step to answering both of these questions.

- State trust lands, the most common form of state-owned land in the West, are not well understood. Yet these lands play an important role in many western communities, and they could play an even larger role if federal lands were transferred to state control. As such, the management practices and fiscal performance of state trust lands should be closely examined.

- By nearly all accounts, our federal lands are in trouble, both in terms of fiscal performance and environmental stewardship. Understanding how alternate management models work can provide useful insights into how federal land management might improve. State trust land agencies have implemented several resource management techniques that are worth careful consideration, regardless of one's position on the proposed transfer of public lands.

It is important to note that the existing proposals do not aim to transfer all federal lands. National parks, national monuments, and designated wilderness areas are excluded and would remain under federal ownership. The proposals focus primarily on federal multiple-use lands, which include most of the lands managed by the U.S. Forest Service and the Bureau of Land Management. As a result, our analysis focuses on these multiple-use lands, as well as state trust lands that are managed for similar purposes.

By nearly all accounts, our federal lands are in trouble, both in terms of fiscal performance and environmental stewardship.

OVERVIEW OF STATE AND FEDERAL LANDS

Public lands are a defining feature of the western landscape. The vast majority of the public lands in the West are controlled by the Forest Service and the Bureau of Land Management. Together, these two agencies control nearly 90 percent of all federal lands in the West, totaling more than 300 million acres. This portion of the federal estate is managed for multiple uses, including timber harvesting, livestock grazing, energy development, and outdoor recreation.

These federal multiple-use lands have enormous potential to generate revenues for the public good. Yet federal land agencies lose taxpayers nearly $2 billion per year, on average (see Table 1).

By comparison, states are controlling costs and generating substantial revenues from state trust lands. Like federal multiple-use agencies, state agencies lease land for timber, grazing, and mineral development, as well as manage for recreation, on 40 million acres of state trust lands in the West. Unlike federal agencies, however, states earn a profit. From 2009 to 2013, the four states we examined—Montana, Idaho, New Mexico, and Arizona—earned a combined average of $14.51 for every dollar spent managing state trust lands. During that same period, the federal land agencies lost money, generating only 73 cents for every dollar they spent managing federal lands.

Not only do federal land agencies earn far less than state agencies, they outspend states by a wide margin on a per-acre basis. Federal land expenditures are more than six times higher per acre than state expenditures (see Figure 1). Moreover, state trust lands generate ten times more revenue per full-time employee than federal land agencies.[2]

Table 1

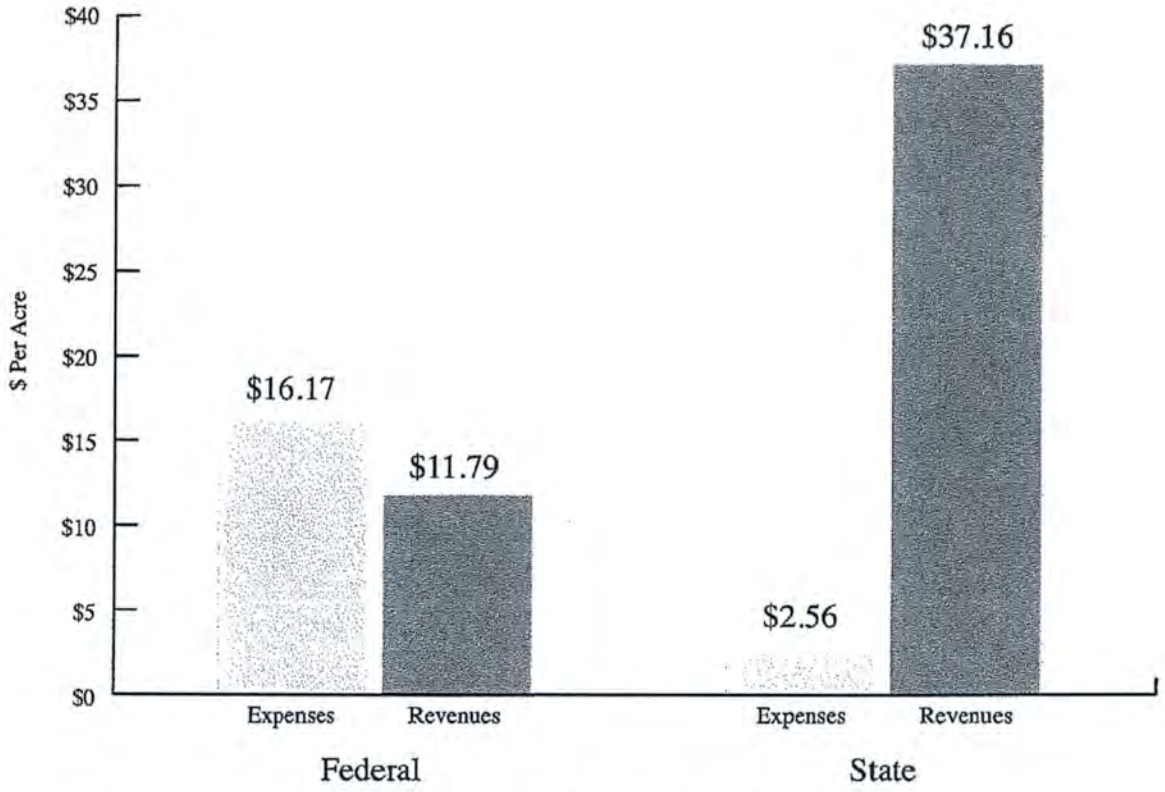
The Cost of Land Management: Federal vs. State

	Revenue	Expenses	Revenue per $ Spent	Net Revenue
Federal Multiple-Use Lands	$5,261,863,132	$7,216,610,309	$0.73	-$1,954,747,177
State Trust Lands	$239,921,512	$16,540,387	$14.51	$223,281,126

Note: Data are 5-year annual averages from 2009-2013, adjusted to 2013 dollars. Federal multiple-use lands include lands managed by the U.S. Forest Service and the Bureau of Land Management. BLM data includes Office of Natural Resource Revenues (ONRR) revenues. State trust land data includes Montana, Idaho, New Mexico, and Arizona.

Figure 1

Federal vs. State Land Management: Revenues and Expenses per Acre



Note: 5-year annual averages from 2009-2013, adjusted to 2013 dollars. Federal data includes U.S. Forest Service and Bureau of Land Management. State data includes Montana, Idaho, New Mexico, and Arizona state trust lands.

These results suggest that as states consider the possibility of transferring federal lands, they must carefully consider how the lands would be managed if the transfer were to occur. Would the lands be managed more like state trust lands or federal multiple-use lands? A direct transfer of lands to the states under similar rules and regulations as federal lands is unlikely to result in lower costs or higher revenues. On the other hand, if the transferred lands are managed like state trust lands, their fiscal performance may improve, but land management practices and existing rights could be affected in important ways.

Think of it this way: Imagine you are the CEO of an organization considering whether to acquire another company. What facts would you want to consider? You would study the company's financial statements to understand its revenues and expenditures. You would need to know what regulations apply and what potential liabilities exist. You might also consider whether the company aligns with your organization's goals and mission. All of this information would be important to determine the viability of a takeover. Likewise, a close comparison of the costs and revenues associated with federal and state land management, as well as the different management practices and policy objectives, can provide important insights into the implications of transferring federal lands under different scenarios.

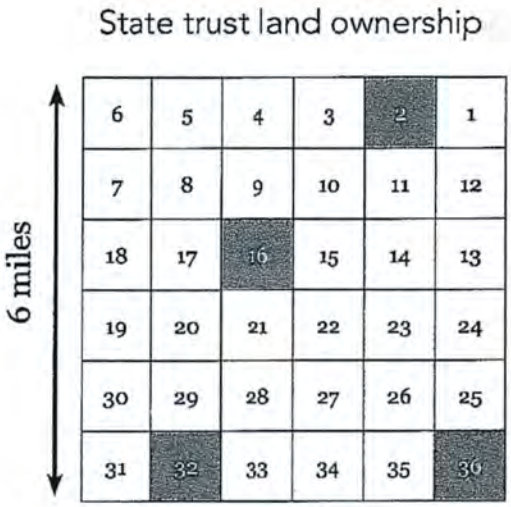
The rest of our analysis provides a more detailed summary of the financial performance of federal and state land agencies and provides several explanations for the disparities between them. But first, we begin by examining state and federal land agencies in greater detail.

STATE TRUST LANDS

State trust lands are the most common form of state-owned land in the West. Trust lands are the result of land grants made by the federal government to western states, mostly at the time of statehood, for the purpose of generating revenue to support schools and other public institutions.[3] The land grants usually consisted of several one-square-mile sections in each township, creating a checkerboard pattern of state trust lands throughout the West.[4] Although some states initially sold off many of these lands to provide much-needed revenue for schools, nearly 40 million acres of state trust lands remain scattered across western states today.

Similar to a fiduciary trust, state trust lands operate under a legal requirement that the land must be managed for the long-term financial benefit of a specific beneficiary. Public schools are the designated beneficiary for most state trust lands, but some trust lands also support universities, hospitals, and other public institutions. As such, parents, teachers, school administrators, and other representatives of the beneficiaries can hold the state agencies responsible to ensure that trust lands are used to generate long-term financial returns.

State trust lands earn revenues from a variety of activities, including timber harvesting, grazing, mineral extraction, commercial development, recreation, and conservation. In general, the revenues generated from trust lands are distributed to the trust beneficiaries, with a small portion used to cover the state trust agency's expenditures.[5] The agencies are required to generate revenues into perpetuity, which ensures long-term management for sustainable production. Land sales are also authorized under certain conditions. However, the revenue from land sales must be deposited into a permanent fund along with the proceeds from nonrenewable resources such as oil, gas, and minerals. The permanent fund generates interest payments that are then distributed to the beneficiaries, ensuring that land sales and nonrenewable resource extraction continue to generate financial returns for the trust in perpetuity.



At statehood, Montana and Idaho were granted sections 16 and 36. New Mexico and Arizona were granted sections 2, 16, 32, and 36. State trust lands have occasionally been sold or exchanged, but remnants of this checkerboard pattern remain across much of the West today.

The trust mandate to generate a financial return creates a close connection between expenditures and revenues. State trust lands have beneficiaries, similar to shareholders, who have a claim on "profits." This direct connection between earnings and beneficiaries is an important feature of state trust land management, and one that distinguishes state trust lands from federal lands.

FEDERAL MULTIPLE-USE LANDS

The Forest Service and the Bureau of Land Management control more than 300 million acres in the western United States. The vast majority of these lands are open to multiple-use management, which requires the agencies to manage for a combination of resource uses that best meet the needs of the American people.[6]

The federal multiple-use mandate differs considerably from the trust mandate that governs state trust lands. Federal land management is based on legislative rule, budget appropriations, and a public input process. Unlike state trust agencies, federal land agencies are not required to generate revenues sufficient to cover their costs. Instead, Congress appropriates the bulk of federal land budgets. Federal land managers often have little or no incentive to generate more revenues or control their costs because the proceeds generally cannot be retained by the agency. As a result, the connection between revenues, beneficiaries, and long-term stewardship is unclear or missing on federal lands.

A portion of revenues from federal lands are shared with states, counties, and local governments. Payments are also made in lieu of state or local property taxes, which are not collected from federal lands. However, such revenue-sharing disbursements have become less reliable in recent years as resource production declines on many federal lands, and Congress has not provided consistent funding for payments in lieu of taxes.

A CLOSER COMPARISON

By examining the total revenues and expenses from each land agency, we find that states consistently generate revenues that exceed their costs. On average, the states we examined earned $14.51 for every dollar they spent on state trust land management from 2009 to 2013. Although the amounts that states generated varied significantly—Idaho earned $2.80 for every dollar spent, while New Mexico earned $41—each state produced a financial return from its state trust lands (see Table 2).

The federal government, on the other hand, often loses money on federal lands. The Forest Service generated just 10 cents in revenue for every dollar it spent from 2009 to 2013. The Bureau of Land Management, however, earned a financial return of $3.11 for every dollar spent, primarily from mineral leases.

Federal land expenditures are often considerably larger when compared to state trust land expenditures. There are several explanations for this:

- Federal budgets are typically allocated on a use-it-or-lose-it basis. Congress appropriates funds by various expenditure divisions. Money that is not used in each fiscal year is often deemed unnecessary and may not be reappropriated in subsequent budgets. This encourages agency personnel to fully spend budgeted resources.

- Federal land managers have little incentive to cut costs or increase revenues because they are not required to generate revenues in excess of expenditures. Furthermore, many of the revenues generated are deposited in the U.S. Treasury and are not available for agency expenditure.

- Overlapping regulations require excessive planning for many activities on federal lands. Each federal law requires additional administrative procedures which now include processes such as comprehensive planning, public input, and environmental impact analysis.

Of course, each state and federal land agency is different. New Mexico obtains the majority of its revenue from mineral leases, while Idaho generates most of its revenue from timber sales. The Forest Service generates more revenue from timber than any other resource, while more than 90 percent of BLM revenues are derived from mineral development. Moreover, some revenue-generating activities that occur on state lands do not exist on federal lands. Arizona, for example, earns most of its revenue from land sales and commercial leases. In the following sections, we make more direct comparisons between federal and state land management by examining how each agency manages specific resources.

Table 2

The Cost of Land Management: Federal vs. State

	Revenue	Expenses	Revenue per $ Spent
U.S. Forest Service	$571,781,109	$5,708,126,237	$0.10
Bureau of Land Management	$4,690,082,024	$1,508,484,072	$3.11
Montana	$107,610,838	$12,443,132	$8.65
Idaho	$66,033,347	$23,572,154	$2.80
New Mexico	$554,218,262	$13,516,608	$41.00
Arizona	$231,823,603	$16,629,652	$13.94

Note: 5-year annual averages from 2009-2013, adjusted to 2013 dollars. BLM data includes Office of Natural Resource Revenues (ONRR) onshore mineral revenues.

States consistently generate revenues that exceed their costs. On average, the states we examined earned $14.51 for every dollar they spent on state trust land management.

TIMBER

The Forest Service and BLM manage more than 100 million acres of timberland in the United States, yet both agencies lose money on their vast timber resources. Simply put, these losses are the result of high management costs and low revenues. From 2009 to 2013, the Forest Service generated 32 cents for every dollar it spent on timber management, while the BLM received 38 cents per dollar spent (see Table 3).

These high costs and low revenues are especially striking when compared with timber management on state trust lands. Taken together, Montana and Idaho earned $2.51 for every dollar spent on timber management from 2009 to 2013. During that same period, the states earned an average of $114.60 per thousand board feet (mbf) sold, while the Forest Service lost $148.90 per mbf sold and the BLM lost $197.71 per mbf sold.

Table 3

The Cost of Timber Management: Federal vs. State

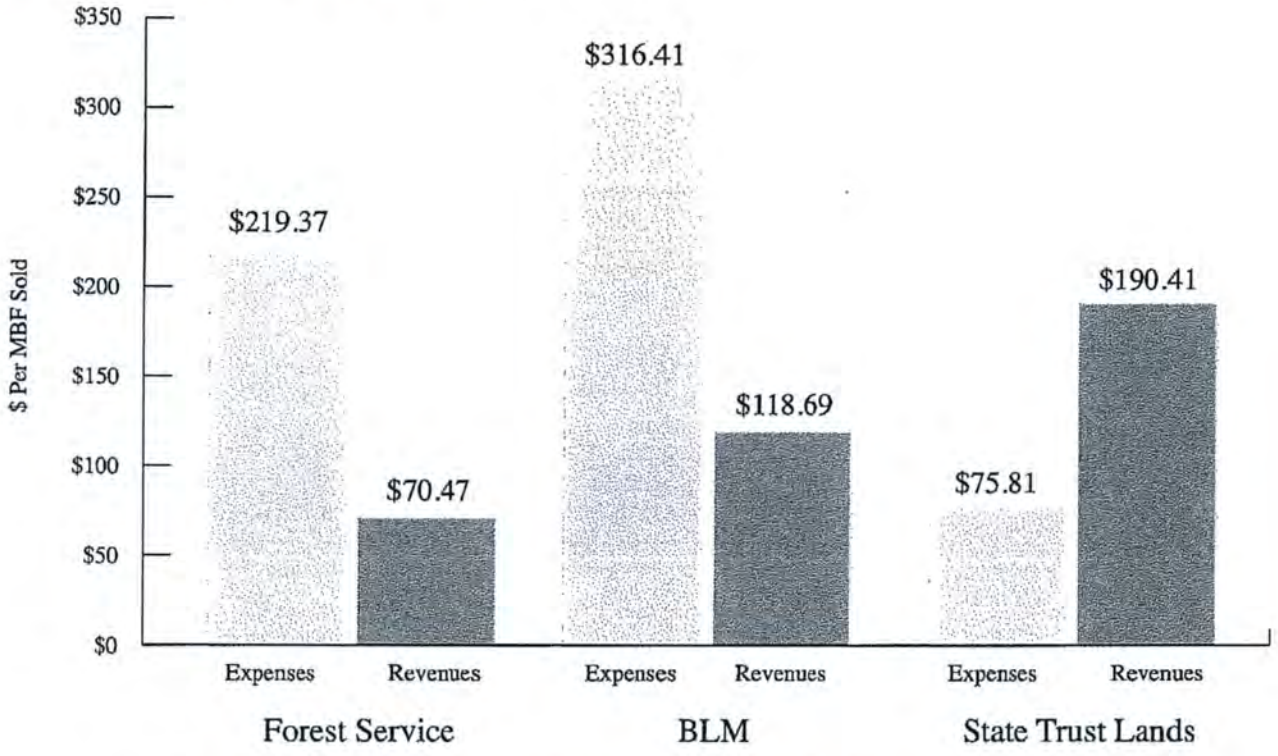
	Revenue	Expenses	Revenue per $ Spent	Net Revenue per mbf Sold*
U.S. Forest Service	$181,719,687	$565,664,914	$0.32	-$148.90
Bureau of Land Management	$28,239,188	$75,278,587	$0.38	-$197.71
Montana	$9,479,033	$6,013,601	$1.58	$60.80
Idaho	$52,022,745	$18,473,180	$2.82	$126.13
State Trust Lands (averaged)	$30,750,889	$12,243,391	$2.51	$114.60

** mbf = thousand board feet*

Note: 5-year annual averages from 2009-2013, adjusted to 2013 dollars. State trust lands are the annual averages from Montana and Idaho. There is no commercial timber harvesting on state trust lands in New Mexico or Arizona.

Figure 2

Timber Management: States Show Profit



Note: 5-year annual averages from 2009-2013, adjusted to 2013 dollars. State trust lands data is averaged from Montana and Idaho.

The high costs of federal timber management are largely the result of multiple laws and regulations that require several layers of planning. The National Forest Management Act requires each national forest to prepare comprehensive, long-term management plans.[7] The National Environmental Policy Act requires federal agencies to analyze and predict any potential environmental impacts from proposed management actions on federal lands.[8] When threatened or endangered species protected by the Endangered Species Act are present, federal agencies must ensure that management actions such as timber harvesting do not harm protected species or their habitat.

Public input is also part of the timber planning and evaluation process. Parties that submit project comments gain standing to object to or litigate agency decisions. If resource conditions change during the lengthy time period between appeals and decisions, as they often do, the process begins again, inviting ample opportunities to postpone management actions.

"Analysis paralysis," "gridlock," and the "Gordian knot" are all terms used by former Forest Service chiefs to describe the lengthy planning process that hampers the ability of forest managers to actively manage federal forests.[9] "The Process Predicament," a 2002 Forest Service report, describes how these obstacles can prevent effective forest management:

> The Forest Service is so busy meeting procedural requirements, such as preparing voluminous plans,

> studies, and associated documentation, that it has trouble fulfilling its historic mission: to sustain the health, diversity, and productivity of the nation's forests and grasslands to meet the needs of present and future generations.[10]

The process predicament is one reason the Forest Service often conducts below-cost timber sales, which generate less revenue than it costs the agency to sell the timber. Although such federal laws are intended to inform decision makers and engage various stakeholders, they often stall necessary agency actions and increase the cost of managing federal timberlands.

Like the federal government, states also carry out environmental assessments, create timber plans, and allow for public input. However, our data suggest that state trust agencies are able to do so at much lower cost than the federal government—and with far less conflict.

The guiding documents for state forest plans tend to be less voluminous, less prescriptive, and harder to appeal than their federal counterparts.[11] Despite this fact, there is no evidence that state forest management results in greater impacts to forest health, water quality, or other environmental factors than federal timber management.[12]

Federal forests are not only managed for timber, but also for other purposes such as fish and wildlife habitat and watershed protection. Nonetheless, timber management is often necessary to maintain healthy forests. In 2011, the amount of dead and dying timber on Forest Service lands was about eight times higher than harvest levels. That figure is closer to a one-to-one ratio on other public and private lands.[13] Increased forest density and mortality raises the risk of insect infestation, disease, and large wildfires, which can further increase the costs of federal forest management.

The Forest Service is so busy meeting procedural requirements that it has trouble fulfilling its historic mission: to sustain the health, diversity, and productivity of the nation's forests and grasslands to meet the needs of present and future generations.

GRAZING

When it comes to grazing, the story is much the same. Federal expenses are high and revenues are low compared to the states. From 2009 to 2013, the Forest Service generated 10 cents for every dollar spent on rangeland management, while the BLM generated 14 cents for every dollar spent.[14] State trust lands, by contrast, earned an average of $4.89 per dollar spent on rangeland management (see Table 4).

During that time, the Forest Service and BLM spent an average of $9.55 per animal unit month (AUM), while the states spent $2.30 per AUM.[15] At the same time, the average federal return per AUM is only $1.22 compared to the state average of $7.79 per AUM (see Figure 3).

One explanation for this disparity is that the states charge higher prices for grazing than the federal government.

Table 4

The Cost of Grazing: Federal vs. State

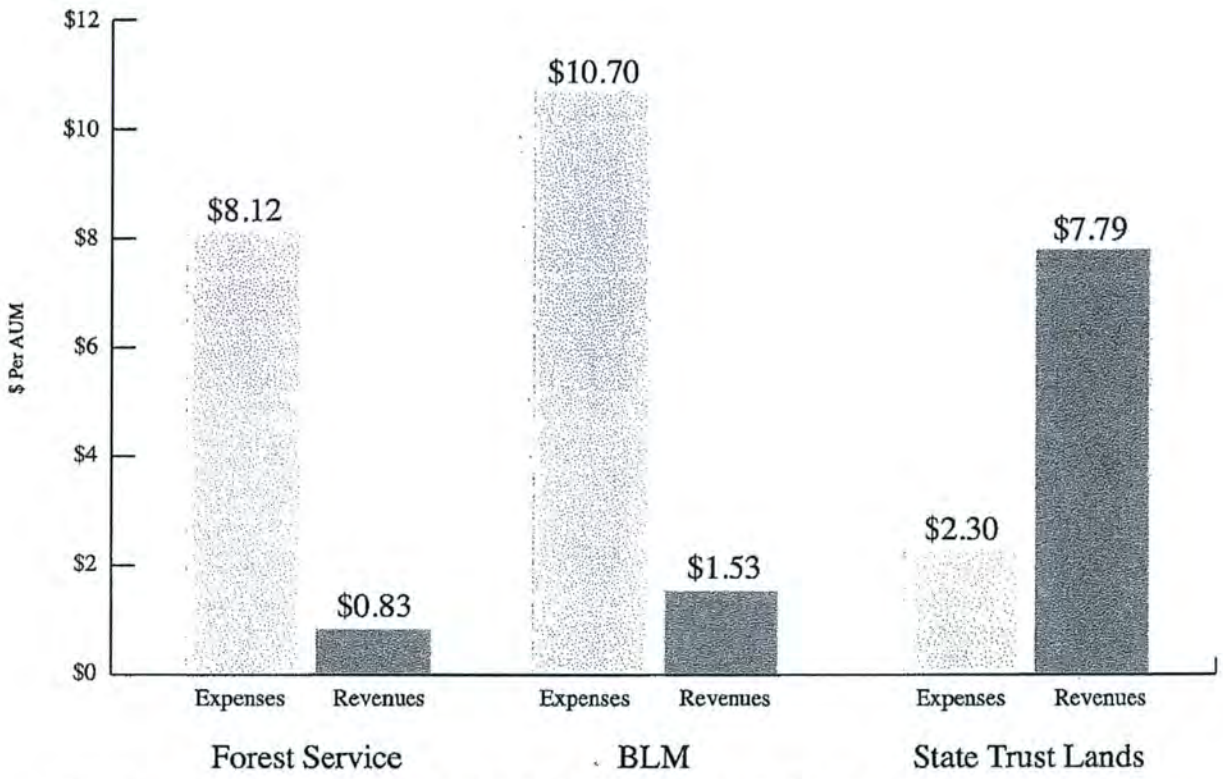
	Revenue	Expenses	Revenue per $ Spent	Revenue per Acre of Rangeland
U.S. Forest Service	$5,738,466	$55,808,212	$0.10	$0.06
Bureau of Land Management	$13,039,887	$91,249,453	$0.14	$0.08
Montana	$7,990,322	$1,596,173	$5.01	$1.94
Idaho	$1,715,411	$1,264,582	$1.36	$0.95
New Mexico	$6,204,218	$485,484	$12.78	$0.72
Arizona	$2,601,249	$439,921	$5.91	$0.31
State Trust Lands (averaged)	$4,627,800	$946,540	$4.89	$1.63

Note: 5-year annual averages from 2009-2013, adjusted to 2013 dollars. The expense data for Montana and Arizona includes expenses associated with agriculture as well as grazing on state trust lands.

The federal grazing fee in 2014 was $1.35 per AUM, the minimum amount the government is allowed to charge by law.[16] For several decades, the federal grazing fee has remained at or near this minimum level. The minimum grazing fees on state trust lands range from $2.78 per AUM in Arizona to as high as $11.41 per AUM in Montana, depending on location and forage quality (see Figure 4). Lease rates on state trust lands can often be higher than these minimum fee levels, however, because states are generally required to award grazing leases on a competitive basis to the highest bidder.[17] States also do not require grazing permit holders to own "base properties," which are used in the federal grazing system to determine grazing privileges without competitive bidding.[18]

Figure 3

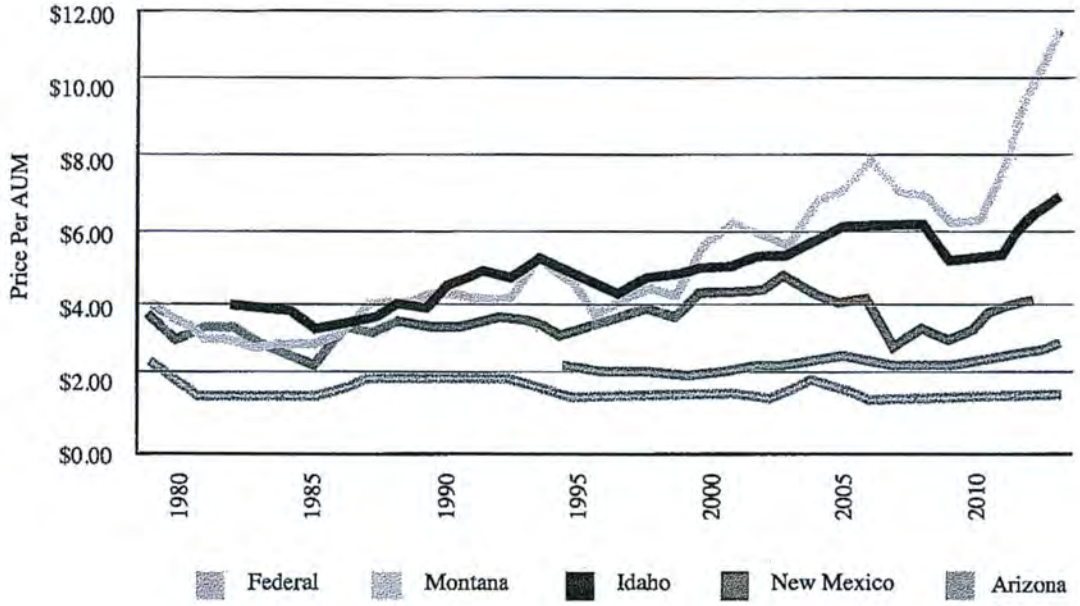
The Cost of Grazing: Federal Expenses High, Revenue Low



Note: 5-year annual averages from 2009-2013, adjusted to 2013 dollars. State trust lands data is from Montana, Idaho, New Mexico, and Arizona.

Figure 4

Federal vs. State Grazing Fees



To enhance revenues, states also capitalize on alternative uses of grazing leases such as conservation. In 1996, New Mexico awarded a grazing lease to Forest Guardians, an environmental group that outbid a rancher for a 644-acre grazing parcel. But the group did not use the lease for grazing. Instead, they removed the livestock and restored a riparian area to provide wildlife habitat. Several other states, including Montana, Idaho, and Arizona, now allow conservation leasing of trust lands.[19] On the federal side, however, current laws and regulations prohibit the Forest Service and BLM from leasing federal rangelands for non-grazing uses such as conservation.[20]

Beyond costs and revenues, there is an indication that the federal grazing system may be resulting in poor rangeland conditions. According to the BLM, more than 21 percent of BLM grazing allotments are not meeting or making significant progress toward meeting the agency's own standards for land health.[21] Although no similar land health data are available for state trust lands, this data suggests that, by its own measures, the federal grazing system may be achieving neither financial nor environmental success.

MINERALS

Minerals are the only resource that generates a positive financial return under federal management.[22] From 2009 to 2013, mineral production from federal lands earned taxpayers $19.76 for every dollar spent (see Table 5).

While this amount may appear substantial when compared to federal timber or grazing revenues, it is significantly less than what states earn on average from mineral leases. During the same period, the return from mineral production on state trust lands was $138.08 per dollar spent. There is, however, significant variation in mineral returns by state. For instance, New Mexico generated $205.80 for every dollar spent, while Idaho earned $6.94 per dollar spent.

New Mexico generates the vast majority of its revenues from mineral resources on state trust lands.

Table 5

Minerals Management: Federal vs. State

	Revenue	Expenses	Revenue per $ Spent
All Federal Lands	$4,413,338,743	$223,367,859	$19.76
Montana	$59,988,493	$957,347	$62.66
Idaho	$3,479,576	$501,570	$6.94
New Mexico	$533,447,123	$2,592,115	$205.80
Arizona	$25,852,473	$459,012	$56.32
State Trust Lands (averaged)	$155,691,916	$1,127,511	$138.08

Note: 5-year annual averages from 2009-2013, adjusted to 2013 dollars. Federal land revenue data include all onshore federal mineral receipts reported by the Office of Natural Resource Revenues, Forest Service, and BLM. Federal land expenditure data includes all Forest Service and BLM mineral expenses.

In 2013, the state earned more than $554 million in mineral revenue, primarily from oil and gas leases. This revenue provides significant support for public schools, universities, and hospitals.

Revenues from mineral development on state trust lands are generally deposited into each state's permanent fund, which is held in perpetuity with interest payments distributed annually to trust beneficiaries. This ensures that nonrenewable resource development on state trust lands continues to generate long-term financial returns to trust beneficiaries. For states with significant mineral resources, such as New Mexico, the balance of the permanent fund exceeds $1 billion.

It is important to note that comparing state and federal minerals management is complicated. On the federal side, the BLM is the agency that oversees the federal mineral estate. The Office of Natural Resources Revenue, however, collects and redistributes most federal mineral revenues to various state and federal accounts. On the state side, some trust land agencies manage all aspects of mineral development, while others assign responsibilities such as enforcement of environmental regulations, bond requirements, and on-site inspection to other state offices. Tabulating the full costs of mineral management, therefore, requires additional analysis to provide a robust state-federal comparison.

There is, however, plenty of evidence that federal minerals management is not generating a fair return for U.S. taxpayers. In 2007, the Government Accountability Office found that the U.S. government receives one of the lowest shares of revenue from oil and gas production in the world.[23] The GAO also compared the federal government's financial returns to states such as Colorado, Wyoming, California, and Texas and found that each state received a higher share of the value from oil and gas production on state lands than the federal government receives from oil and gas production on federal lands.

One reason for these lower returns is that the federal government does less to encourage development of its oil and gas leases than states do.[24] Many states require lessees to pay escalating rental rates on nonproducing leases throughout the term of the lease. This encourages faster development of oil and gas resources, which generates revenue from royalty payments, as well as increases revenue from nonproducing leases. Federal onshore lease rental rates currently increase from $1.50 per acre for the first five years to $2 per acre for the last five years. States, however, typically increase rental rates to a much greater extent. New Mexico, for instance, doubles its rental fee for the second half of its 10-year leases if the leases have not begun producing.

Many states also structure leases to reflect the likelihood of oil and gas production, which encourages faster development and produces greater financial returns. Montana and New Mexico, for instance, issue shorter leases and require higher royalty payments for leases that are in or near known oil and gas deposits, while offering longer leases and lower royalty payments in areas that are more speculative. Federal leases are limited to a 10-year primary lease term and a fixed royalty rate of 12.5 percent, regardless of the likelihood of development. Royalty rates on state trust lands are often higher, ranging from 16.67 percent in Montana to 18.75 percent in New Mexico.[25] The GAO estimates that the federal government could generate an additional $1.7 billion in revenue over ten years if it increased onshore royalty rates and rental rates on nonproducing leases.[26]

While state trust agencies have clear beneficiaries to hold state land managers accountable, the federal government does not have established procedures for periodically assessing the performance of its oil and gas leasing system.[27] In fact, the federal government cannot provide reasonable assurance that the public is collecting its legal share of revenue from federal oil and gas resources. As a result, in 2011 the GAO listed federal oil and gas management as an area at high risk of fraud, waste, abuse, and mismanagement.[28]

RECREATION

Recreation is an increasingly popular activity on federal lands, but it is still a money loser for the federal government. From 2009 to 2013, annual earnings from recreation totaled 28 cents for every dollar spent by the Forest Service and 20 cents for every dollar spent by the BLM (see Table 6). These low earnings suggest that recreationists are not paying their way on federal lands.

The potential to generate revenue from recreation on federal lands remains largely untapped. Prior to 2004, most user fees collected from recreation activities on federal lands were deposited into the U.S. Treasury. This provided little incentive for agencies to develop fee collection sites or invest in fee collection services.

However, federal land agencies are now allowed to retain a majority of their recreation fees to be used at the site where they are collected.[29] This provides agencies with better incentives to collect recreation fees, which can be used for resource improvements and other management activities on federal lands without relying entirely on congressional appropriations.

Nonetheless, despite its ability to generate and retain user fees, the federal government still loses money on recreation. The Forest Service spends $2.81 per recreation visitor and earns just 78 cents in return (see Figure 5). In the case of the BLM, costs are $1.49 per recreation visitor, but agency earnings amount to only 31 cents per recreation visitor.[30]

Table 6

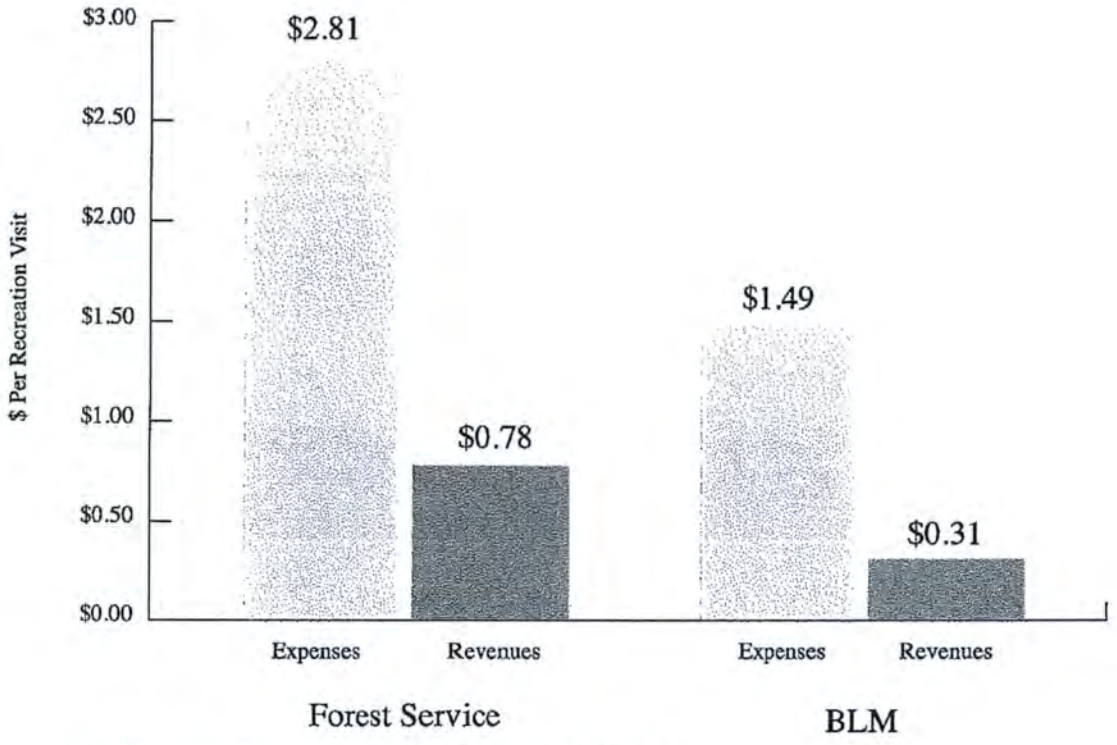
Recreation: Federal vs. State

	Revenue	Expenses	Revenue per $ Spent
U.S. Forest Service	$130,086,271	$465,984,985	$0.28
Bureau of Land Management	$17,900,454	$87,370,266	$0.20
Montana	$1,119,052	$177,294	$6.31
Idaho	$348,006	$36,584	$9.51
State Trust Lands (averaged)	$733,529	$106,939	$6.86

Note: 5-year annual averages from 2009-2013, adjusted to 2013 dollars. Recreation revenue and expenditure data are not available from New Mexico and Arizona.

Figure 5

Federal Recreation: Cost and Revenue per Recreation Visit



Note: 5-year annual averages from 2009-2013, adjusted to 2013 dollars.

In contrast, a growing number of states are capitalizing on increased demands for recreational access to state trust lands. States generally allow public access for recreation on state trust lands and charge modest fees for recreation permits. Montana, for example, charges an annual fee of $10 per person or $20 per family for a permit to recreate on its trust lands (see Table 7). New Mexico and Arizona also charge similar recreation fees, earning additional revenue for trust beneficiaries while allowing access for recreation activities such as hiking, hunting, fishing, and camping.

Table 7

Recreation on State Trust Lands

State	Public Access for Recreation	Recreation Permit or License Required	Camping Allowed	Hunting Allowed
Montana	Yes, but not on lands leased for agriculture, residential, or commercial use	Yes ($10/person, $20/family)	Yes, but additional license needed if camping more than two days on leased lands	Yes ($8/resident, $10/nonresident)
Idaho	Yes, unless it conflicts with other revenue-generating activities	No	Yes	Yes
New Mexico	Yes	Yes ($25/family)	Yes, with permission of surface lessee	Yes
Arizona	Yes, but not on lands leased for agriculture, mining, or commercial use	Yes ($15/person, $25/family)	Yes	Yes

Source: Derived from applicable state trust agency websites.

Historically, states relied on natural resource development to generate revenues from state trust lands. Today, increased demands for recreation access on state trust lands are creating new opportunities to provide additional revenue streams for state trust agencies. From 2009 to 2013, Montana earned an average of $6.31 for every dollar spent on recreation management, adding more than $5 million to its budget. While recreation may not generate as much total revenue as other traditional land uses, it allows trust managers to diversify trust revenues and accommodate new demands placed on trust assets.

Remarkably, states are able to generate financial returns from recreation despite the scattered, checkerboard patterns of state trust landownership in the West. Even though federal landownership is generally more consolidated—and therefore better suited to capitalize on dispersed recreational activities such as hiking, biking, and camping—federal multiple-use agencies consistently lose money on recreation. The revenue-generating potential of recreation on state trust lands would likely increase if state trust landholdings were to become more consolidated.

OTHER LAND USES

State trust land agencies allow several other revenue-generating land uses that are uncommon or nonexistent on federal lands. For instance, state trust lands can be leased for agricultural development, commercial development, and can even be sold under certain conditions.[31]

In some states, these other land uses make up a substantial portion of total state trust revenues. Arizona receives roughly half of its revenue from land sales and commercial development. More than one million acres of Arizona's trust lands are located near or within urban areas, making these forms of revenue generation particularly lucrative for state trust beneficiaries. In other states such as Montana, trust land sales seldom occur and make up a trivial amount of total state trust revenues. Although the BLM is also authorized to sell federal lands, such sales are relatively rare in recent history.[32]

Despite the perception that state trust lands are managed solely for resource extraction, conservation leasing of state trust lands is becoming increasingly common. In Montana, Idaho, Arizona, and New Mexico, state trust agencies can lease land to individuals and environmental groups for conservation purposes. Courts have repeatedly held that states' obligation to maximize revenues cannot preclude environmental groups from bidding on state trust lands.[33] Indeed, several environmental groups have won grazing leases for non-grazing conservation purposes. These lands are managed for resource preservation, viewshed protection, wildlife management, and other conservation uses without sacrificing lease revenue for trust beneficiaries.

The emergence of conservation leasing on state trust lands represents an important difference between state and federal land management. Unlike state trust lands, federal lands generally cannot be leased for conservation purposes. Instead, conservation on federal lands is accomplished primarily through regulatory restrictions or congressional designations such as parks or wilderness areas. In other words, conflicting demands on the federal estate are resolved through a political process rather than a market-like process of competitive bidding on state trust lands. This competitive bidding process on state trust lands forces groups to bear the costs of alternate land uses that must be foregone, regardless of whether the land is leased for resource extraction or viewshed protection.

Conservation leasing demonstrates an element of flexibility that is inherent in the trust management model. The "best interest of the trust" does not require trust managers to blindly maximize revenues from extractive industries or ignore new demands on trust resources. Trust managers must accommodate a variety of ever-changing resource demands, including environmental demands, that may be consistent with their fiduciary responsibilities for long-term resource stewardship.

As a result of this flexibility, state trust land agencies have largely avoided the same degree of interest-group domination that the Forest Service and BLM have historically experienced with extractive industries. Even today, these interest groups work to ensure that most federal lease rates are low and uncompetitive. Unlike state trust agencies, federal land agencies have repeatedly avoided changes that would introduce more competition in the federal leasing process, allow for alternative land uses, or ensure a fair return for U.S. taxpayers.

REVENUE SHARING

Another way to assess state and federal management is to compare the direct payments that states and local communities receive from the revenues generated on state and federal lands. State trust land revenues are shared directly with clearly defined beneficiaries such as schools, universities, and hospitals. Unlike state lands, federal lands are not managed for a defined set of beneficiaries, but a portion of federal land revenues are shared directly with the states and counties in which they are generated. Federal programs such as Payments in Lieu of Taxes (PILT), Secure Rural Schools, and the Mineral Leasing Act are designed to compensate local communities for property tax losses due to federal land ownership and to share revenues from natural resource extraction on nearby federal lands.

These federal revenue-sharing programs often contribute significant amounts of revenue to state and local budgets. But when these revenues are compared to the amount that state trust lands generate for their beneficiaries, it becomes clear that the direct payments from federal land management are far less when measured on a per-acre basis.

The low financial returns on federal lands translate into relatively low amounts of revenue sharing with states and counties. In Montana, for instance, federal revenue-sharing programs distributed an average of $109.6 million to the state and counties each year from 2009 to 2013. The state trust land agency in Montana distributed more than $107 million on average to trust beneficiaries during the same period—but the state did so on just one-fifth as many acres as the federal government owns in Montana. To put that into perspective, state trust lands in Montana generated $20.99 per acre for trust beneficiaries, while federal revenue-sharing programs generated only $4.07 per acre of federal land in Montana for the state and local communities. The story is much the same for Idaho, New Mexico, and Arizona.

Although federal revenue-sharing programs may generate revenues for different purposes than state trust beneficiaries, the comparison provides insights into how readily each form of land ownership translates into financial benefits to certain beneficiaries. State trust agencies consistently generate financial returns to trust beneficiaries, and many maintain sizable permanent funds that assure such benefits will continue into the future. Federal revenue-sharing programs such as Secure Rural Schools and PILT are often underfunded or even cut from the federal budget. None of the federal programs provide funding that is as consistent—or as significant on a per-acre basis—as state trust revenues.

Notes for pages 27 and 28: All data are adjusted to 2013 dollars. FY2009-FY2013 annual average reported. Federal land payment data is from Headwaters Economics, Economic Profile System, and includes revenues generated from Payments in Lieu of Taxes (PILT), Forest Service payments (including Secure Rural Schools, and the 25% Fund), BLM payments, U.S. Fish and Wildlife Service National Wildlife Refuge payments, and federal mineral royalty payments. Data on annual distributions to state trust beneficiaries were derived from the respective state trust agency annual reports.

MONTANA

FEDERAL

26,921,861
acres owned by the federal government

28.9%
of state owned by federal government

$109,627,941
in direct federal-land payments made to Montana

$4.07
in revenue to state and local communities per acre of federal land in Montana

STATE

5,100,000
acres of state trust land in Montana

5.5%
of state held in state trust management

$107,062,945
in annual distributions to state trust beneficiaries

$20.99
in revenue to state trust beneficiaries per acre of state trust land

IDAHO

FEDERAL

32,635,835
acres owned by the federal government

61.7%
of state owned by federal government

$68,046,153
in direct federal-land payments made to Idaho

$2.09
in revenue to state and local communities per acre of federal land in Idaho

STATE

2,446,651
acres of state trust land in Idaho

4.6%
of state held in state trust management

$51,676,270
in annual distributions to state trust beneficiaries

$21.12
in revenue to state trust beneficiaries per acre of state trust land

NEW MEXICO

FEDERAL	STATE
27,001,583 acres owned by the federal government	**8,940,000** acres of state trust land in New Mexico
34.7% of state owned by federal government	**11.5%** of state held in state trust management
$527,817,950 in direct federal-land payments made to New Mexico	**$624,465,062** in annual distributions to state trust beneficiaries
$19.55 in revenue to state and local communities per acre of federal land in New Mexico	**$69.85** in revenue to state trust beneficiaries per acre of state trust land

ARIZONA

FEDERAL	STATE
30,741,287 acres owned by the federal government	**9,339,037** acres of state trust land in Arizona
42.3% of state owned by federal government	**12.8%** of state held in state trust management
$49,944,304 in direct federal-land payments made to Arizona	**$106,439,812** in annual distributions to state trust beneficiaries
$1.62 in revenue to state and local communities per acre of federal land in Arizona	**$11.40** in revenue to state trust beneficiaries per acre of state trust land

CONCLUSION

Federal land agencies lose billions of dollars each year managing valuable resources on federal lands. The current federal land system fails to foster fiscal responsibility and, in some cases, also fails to produce environmental stewardship. Managing these lands should provide a rich source of revenues to benefit the public, but it is instead coming at a high cost to taxpayers.

This report examines the costs of managing specific resources on federal lands and concludes that we can do better. State trust lands, which are governed by a different set of laws, demonstrate that land management agencies can be fiscally responsible. Unlike the federal government, states consistently produce generous financial returns while managing similar resources. For every resource that we examined—from timber and grazing to minerals and recreation—states generated, on average, more revenue per dollar spent than the federal government.

These results are the product of the different statutory, regulatory, and administrative frameworks that govern state and federal lands. State trust agencies have a fiduciary responsibility to generate revenues for trust beneficiaries. This provides trust managers with clarity, accountability, and the responsibility to manage for long-term resource stewardship. State trust management has demonstrated its ability to resist excessive political influence, respond to market signals, and accommodate new resource demands over time.

On the federal side, public land managers lack a clear purpose or sense of direction. Overlapping and conflicting regulations create what one Forest Service chief called "analysis paralysis," which increases costs and hinders the agency's ability to respond to resource needs or resolve conflicting resource demands. Federal land management is also, by its nature, political land management. Politics become entangled in many aspects of federal land management and often prevent agencies from evolving in ways that state trust agencies have—by adjusting lease rates, encouraging competitive bidding, or allowing conservation leasing.

KEY QUESTIONS AND LESSONS LEARNED

It is important to note that state control alone will not necessarily solve the problems that exist on the federal estate. As we have shown, there are important differences between state and federal land management. For states to produce the type of results we describe in this report, the transferred lands would have to be managed as state trust lands are today. This could have significant effects on current land management practices and existing public land users, including higher lease rates, increased leasing competition, and modest fees for recreation access. Moreover, we do not directly address the cost of managing and suppressing wildfires, which presents a significant financial and environmental challenge on federal lands. Whether states could absorb or defray

these costs, or whether other collaborative management alternatives might exist, is a question for future research.

States have clearly demonstrated their ability to generate greater returns from land management than the federal government—a fact that is even more remarkable considering how scattered state trust lands are across the West. But states are not guaranteed to become better land stewards than the federal government if they are burdened by similar regulations and restrictions as federal land agencies. We suggest that the central question in the debate over the transfer of public lands is how the lands would be managed under state control.

There is nothing inherently national in scope about many federal land management responsibilities. Timber harvesting, livestock grazing, and energy development are carried out responsibly and profitably on state trust lands. Our results provide further evidence to question whether these activities should remain federal responsibilities. States could likely earn much greater revenues managing these activities, but transfer proponents must consider how management practices would have to change in order to generate those revenues under state control.

Nonetheless, there are many lessons the federal government could learn from the state trust land model. It is clear that higher revenues could be generated on federal lands, and at much lower costs. A variety of state trust land management practices, such as escalating mineral lease rates and conservation leasing, could be adopted by federal land managers to increase revenues and resolve conflicting resource demands. Setting aside the proposals to transfer federal lands, public land advocates should carefully examine trust land management and consider how trust land principles might improve federal land management.

State trust lands offer compelling evidence that our federal lands are in need of reform. Regardless of whether federal lands remain in federal ownership or are transferred to the states, we can do better.

APPENDIX: DATA SOURCES

In this report, the data on federal land management came from the following sources, unless otherwise noted in the text:

- BLM revenue and expenditure data are from the Department of Interior, Bureau of Land Management *Budget Justifications*, various years, (available at http://www.doi.gov/budget/index.cfm).
- Forest Service revenue and expenditure data are from Forest Service, *Budget Justification* and *Budget Overview*, various years, enacted (available at http://www.fs.fed.us/about-agency/budget-performance). The only line items excluded from the total revenues and expenditure data is the "State and Private Forestry" and "Forest and Range Research," which are not directly related to federal land management. Wildfire costs are included in total expenditures for both the Forest Service and BLM.
- BLM timber revenue data and commodity outputs (timber offered for sale, AUMs authorized, recreation visits) are from *Public Land Statistics*, various years, (available at http://www.blm.gov/public_land_statistics/).
- Forest Service grazing data are from Forest Service, *Grazing Statistical Summary Reports*, various years (available at http://www.fs.fed.us/rangelands/reports/).
- Federal grazing fee information came from Carol Hardy Vincent. *Grazing Fees: Overview and Issues*. Congressional Research Service. RS21232. (June 19, 2012) https://www.fas.org/sgp/crs/misc/RS21232.pdf.
- BLM onshore minerals revenues are from the Office of Natural Resources Revenue, *Statistical Information* (available at http://statistics.onrr.gov/).
- Federal land payment data is from Headwaters Economics, Economic Profile System (available at http://headwaterseconomics.org/tools/eps-hdt).

The data on state trust land management came from the following sources, unless otherwise noted in the text:

- State trust revenue and expenditure data are from applicable state trust land agency annual reports (FY2009-FY2013), except as follows: Montana expenditure data are from various *Return on Assets* reports. Arizona expenditure data are from personal communication with Jennifer Simmons, Arizona State Land Department, December 30, 2014. New Mexico revenue and expenditure data for grazing and minerals are from personal communication with Margaret Sena, New Mexico State Land Office, January 2, 2015.
- State trust agency employment data are from applicable state trust land agency annual reports, except as follows: Montana employment data is from personal communication with Connie Daruk, Montana Department Natural Resources and Conservation Trust Lands Admin. Officer, November 12, 2014. Idaho employment data is from personal communication with Emily Callihan, Idaho Department of Lands, November 13, 2014.
- State trust grazing fee information are from applicable state trust land agency annual reports, except as follows: New Mexico grazing fee data are from personal communication with Lucille Martinez, New Mexico State Land Office, January 20, 2015. Idaho grazing data are from personal communication with Emily Callihan, Idaho Department of Lands, November 15, 2014. Arizona grazing data are from personal communication with Willie Sommers, Arizona State Land Department, November 13, 2014.

NOTES

1. Efforts to transfer federal lands to state control are underway in ten western states: Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

2. From 2009 to 2013, our data indicate that the federal multiple-use land agencies (the U.S. Forest Service and the Bureau of Land Management) generated $120,428 in revenue per full-time equivalent (FTE). The four state trust land agencies we examined (Montana, Idaho, New Mexico, and Arizona) generated $1,269,308 per FTE.

3. For a detailed discussion of state trust land management, see Jon A. Souder, and Sally K. Fairfax. *State Trust Lands: History, Management, and Sustainable Use*. Lawrence, KA: University Press of Kansas (1996); Peter W. Culp, Diane B. Conradi, and Cynthia C. Tuell. *Trust Lands in the American West: A Legal Overview and Policy Assessment*. Lincoln Institute/Sonoran Institute (2005).

4. A township consists of 36 one-square-mile sections. Most western states were granted sections 16 and 36. Arizona and New Mexico were granted sections 2, 16, 32, and 36. In states where these sections were already reserved in national forests, states were allowed to select "in lieu" lands from the public domain, which created larger blocks of state lands. See Peter W. Culp, Diane B. Conradi, and Cynthia C. Tuell (2005).

5. Arizona is unique in that its state trust agency expenses are appropriated out of the state general fund rather than paid out of revenues generated from trust land management.

6. The multiple-use mandate originated with the Multiple Use and Sustained Yield Act in 1960 for the Forest Service and the Federal Land and Policy Management Act of 1976 for the BLM.

7. For more information on the National Forest Management Act (NFMA) planning, see http://www.fs.fed.us/emc/nfma/index.htm.

8. For more on the National Environmental Policy Act (NEPA), see http://www.epa.gov/compliance/nepa/submiteis/index.html.

9. U.S. House of Representatives. Committee on Resources. Hearing on Conflicting Laws and Regulations: Gridlock on the National Forests. Dec. 1, 2004. 107th Cong. 1st Session. Washington: GPO, 2003 (statement of Dale Bosworth, Forest Service Chief). http://www.gpo.gov/fdsys/pkg/CHRG-107hhrg76448/html/CHRG-107hhrg76448.htm; Jack Ward Thomas and Alex Sienkiewicz, "The Relationship Between Science and Democracy: Public Land Policies, Regulation and Management," *Public Land and Resources Law Review 26* (2005).

10. U.S. Forest Service. "The Process Predicament: How Statutory, Regulatory, and Administrative Factors Affect National Forest Management." (2002). http://www.fs.fed.us/projects/documents/Process-Predicament.pdf.

11. Personal Communication with Bob Harrington, Missoula Forestry Division Administrator, Montana Department of Natural Resources and Conservation. (January 20, 2015).

12. See, for example, Montana Department of Natural Resources & Conservation. 2012 Forestry Best Management Practices Monitoring: 2012 Forestry BMP Field Review Report. (2012) http://dnrc.mt.gov/Forestry/Assistance/Practices/Documents/2012BMPLongRpt.pdf.

13. USDA Forest Service Forest Inventory and Analysis Program. 2012 RPA Resource Tables. (Jan. 21, 2015). http://www.fia.fs.fed.us/program-features/rpa/.

14. Our findings are largely consistent with previous reports by the U.S. Government Accountability Office. See U.S. Government Accountability Office, *Livestock Grazing: Federal Expenditures and Receipts Vary, Depending on the Agency and the Purpose of the Fee Charged*, GAO-05-869 (Washington, DC: September 2005), which found that the federal government spent about $132.5 million on grazing management in FY2004 while collecting only $17.5 million in grazing receipts.

15. An AUM is a standard grazing metric equal to the amount of forage needed for one animal unit (one cow and calf, one horse, or five sheep or goats) for one month.

16. Carol Hardy Vincent. *Grazing Fees: Overview and Issues*. Congressional Research Service. RS21232. (June 19, 2012) https://www.fas.org/sgp/crs/misc/RS21232.pdf.

17. Idaho, for instance, cannot award a lease to a current lessee without competition. See Peter W. Culp, Diane B. Conradi, and Cynthia C. Tuell (2005).

18. Federal grazing permits can only be issued to lessees that own or control certain "base properties." Ownership of a base property establishes a grazing preference for the use of particular grazing allotments. See "Fact Sheet on the BLM's Management of Livestock Grazing," http://www.blm.gov/wo/st/en/prog/grazing.html.

19. See Peter W. Culp, Diane B. Conradi, and Cynthia C. Tuell (2005); See also Erin Pounds. "State Trust Lands: Static Management and Shifting Value Perspectives." *Environmental Law.* Vol. 41:1333-1362. (2011).

20. For further discussion of the obstacles to buying federal grazing leases for conservation purposes, see Shawn Regan, "Raiding and Trading in the American West." *The American Conservative.* (May 23, 2014) http://www.theamericanconservative.com/articles/raiding-and-trading-in-the-american-west/.

21. Bureau of Land Management. *Rangeland Inventory, Monitoring, and Evaluation Report.* Fiscal Year 2012. http://www.blm.gov/style/medialib/blm/wo/Planning_and_Renewable_Resources/rangeland.Par.30896.File.dat/Rangeland2012.pdf. A recent assessment of BLM grazing practices by Public Employees for Environmental Responsibility (PEER) found that 29 percent of the agency's allotted lands (16 percent of allotments) have failed to meet BLM's standards for rangeland health due to livestock impacts. See http://www.peer.org/campaigns/public-lands/public-lands-grazing-reform/.

22. The Bureau of Land Management manages the entire federal mineral estate, covering nearly 700 million subsurface acres. Some mineral revenues are collected by each agency, but the bulk is paid to the Office of Natural Resources Revenues (ONRR) which redistributes revenues to various state and federal accounts. All onshore mineral revenues collected by the BLM, Forest Service, and ONRR are included in this analysis.

23. U.S. Government Accountability Office. "Oil and Gas Royalties: A Comparison of the Share of Revenue Received from Oil and Gas Production by the Federal Government and Other Resource Owners." GAO-07-676R (2007). http://www.gao.gov/products/GAO-07-676R. The GAO report compares a measure known as the "government take," the total revenue as a percentage of the value of the oil and natural gas produced received by government resource owners such as state and federal governments. The GAO found that the United States consistently ranks low in government take compared to states and other national governments.

24. U.S. Government Accountability Office. "Oil and Gas Leasing: Interior Could Do More to Encourage Diligent Development." GAO-09-74 (2008). http://www.gao.gov/products/GAO-09-74.

25. See Montana Rule: 36.25.210, http://www.mtrules.org/gateway/RuleNo.asp?RN=36%2E25%2E210; New Mexico State Land Office. *Oil and Gas Manual.* (2013). http://www.nmstatelands.org/uploads/files/Minerals%20Division/Oil_%26_Gas_Manual_MAY2013.pdf.

26. U.S. Government Accountability Office. "Government Operations: Opportunities to Reduce Potential Duplication in Government Programs, Save Tax Dollars, and Enhance Revenue." GAO-11-318SP (2011) http://www.gao.gov/products/GAO-11-318SP.

27. U.S. Government Accountability Office. "Oil and Gas Resources: Actions Needed for Interior to Better Ensure a Fair Return." GAO-14-50 (2013). http://gao.gov/products/GAO-14-50.

28. U.S. Government Accountability Office. "High Risk Series: An Update." GAO-13-283 (2013). http://www.gao.gov/assets/660/652133.pdf.

29. The Federal Lands Recreation Enhancement Act, passed in 2004, extended the 1996 Recreational Fee Demonstration Program that authorized federal land agencies to collect fees at federal recreational lands and waters. A minimum of 80 percent of the revenue must be retained and used at the site where it was generated. See Carol Hardy Vincent. *CRS Report for Congress: Federal Lands Recreation Enhancement Act.* Congressional Research Service. RL33730. (March 9, 2007). http://new.nationalaglawcenter.org/wp-content/uploads/assets/crs/RL33730.pdf.

30. State trust agencies do not track recreation visits, so no comparison could be made on a per-recreation-visit basis with federal lands.

31. States generally have strict requirements on trust land sales. In Arizona, public auctions and competitive bidding are required for any sale of state trust lands, and lands must be sold to the highest bidder. Sales cannot be made for less than the true value of the land as determined by appraisal. See Peter W. Culp, Diane B. Conradi, and Cynthia C. Tuell (2005).

32. See Federal Land Transaction Facilitation Act of 2000 (FLTFA). The BLM has disposed of nearly 30,000 acres since 2000 under FLTFA authority; United States. Cong. Senate. Committee on Energy and Natural Resources. Report on Federal Land Transaction Facilitation Act Reauthorization. Jun. 27, 2013. 113th Cong. 1st Session. http://www.gpo.gov/fdsys/pkg/CRPT-113srpt61/html/CRPT-113srpt61.htm.

33. Erin Pounds. "State Trust Lands: Static Management and Shifting Value Perspectives." *Environmental Law.* Vol. 41:1333-1362. (2011).

"This study clearly shows that state-owned lands in the West achieve much better fiscal results than federally owned lands that have similar multiple-use characteristics and objectives. As western states search for new institutional arrangements to replace the failing public land system, this study is required reading."

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"Fretwell and Regan took on an ambitious project on a controversial topic – and the result is a job well done. We can expect a lot of interest in this report on Capitol Hill and in state legislatures across the West."

— Ed Shepard, former Bureau of Land Management state director for Oregon and Washington

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Sec. 38.05.125. Reservation.

(a) Each contract for the sale, lease, or grant of state land, and each deed to state land, properties, or interest in state land, made under AS 38.05.045 - 38.05.120, 38.05.321, 38.05.810 - 38.05.825, AS 38.08, or AS 38.50 except as provided in AS 38.50.050 is subject to the following reservations: "The party of the first part, Alaska, hereby expressly saves, excepts and reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, all oils, gases, coal, ores, minerals, fissionable materials, geothermal resources, and fossils of every name, kind or description, and which may be in or upon said land above described, or any part thereof, and the right to explore the same for such oils, gases, coal, ores, minerals, fissionable materials, geothermal resources, and fossils, and it also hereby expressly saves and reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, the right to enter by itself, its or their agents, attorneys, and servants upon said land, or any part or parts thereof, at any and all times for the purpose of opening, developing, drilling, and working mines or wells on these or other land and taking out and removing therefrom all such oils, gases, coal, ores, minerals, fissionable materials, geothermal resources, and fossils, and to that end it further expressly reserves out of the grant hereby made, unto itself, its lessees, successors, and assigns forever, the right by its or their agents, servants and attorneys at any and all times to erect, construct, maintain, and use all such buildings, machinery, roads, pipelines, powerlines, and railroads, sink such shafts, drill such wells, remove such soil, and to remain on said land or any part thereof for the foregoing purposes and to occupy as much of said land as may be necessary or convenient for such purposes hereby expressly reserving to itself, its lessees, successors, and assigns, as aforesaid, generally all rights and power in, to, and over said land, whether herein expressed or not, reasonably necessary or convenient to render beneficial and efficient the complete enjoyment of the property and rights hereby expressly reserved."

(b) The provisions of (a) of this section do not apply to a quitclaim of land or a transfer of an interest in land made under AS 38.05.035(b)(9).

(c) Notwithstanding (a) of this section, the transfer of ownership and management of University of Alaska trust land from the Department of Natural Resources to the Board of Regents of the University of Alaska under ch. 22, SLA 1983 includes the mineral estate of the state in the land.

History -

(Sec. 1 art VII ch 169 SLA 1959; am Sec. 14 ch 61 SLA 1960; am Sec. 1 ch 42 SLA 1966; am Sec. 3 ch 240 SLA 1976; am Sec. 2 ch 175 SLA 1980; am Sec. 36 ch 152 SLA 1984; am Sec. 1 ch 95 SLA 1995)

Decisions -

Chapter 19, SLA 1977 held not invalid. - Chapter 19, SLA 1976, authorizing a three-way exchange of land between the state of Alaska, the United States government and a regional corporation of Alaska Natives, was not invalid on the ground that it waived the provisions of this section restricting the state's right to alienate minerals and former AS 38.95.060 authorizing exchanges of land with native corporations on the basis of equal value. State v. Lewis, 559 P.2d 630 (Alaska 1977), appeal dismissed and cert. denied, 432 U.S. 901, 97 S. Ct. 2943, 53 L. Ed. 2d 1073 (1976).

Staking of claims. - Staking of claims is covered by this section and the activity is subject to the requirements of AS 38.05.130. Hayes v. A.J. Assocs., 960 P.2d 556 (Alaska 1998).

Surface interest conveyed to third party. - The state's mineral interest in lands on which the surface estate has been conveyed to a third party is "state land" subject to the location of state mining claims in the same manner as on lands owned entirely by the state. Hayes v. A.J. Assocs., 960 P.2d 556 (Alaska 1998).

STATEHOOD ENTITLEMENT

COMPREHENSIVE OVERVIEW AND OUTLOOK BRIEFING – 2/19/2015

Purpose

In the context of the Statehood land entitlement, to provide a summary of the State of Alaska's land entitlement history, processes, and remaining entitlement.

Background – History and Process

Under the 1959 Alaska Statehood Act, the federal government provided Alaska with an approximately 100 million acre land entitlement – lands that would be taken into state ownership to provide a self-sufficient economic base for the State.

The Statehood Act's entitlement provisions were amended through several pieces of subsequent federal legislation that extended, expanded, modified, limited, or otherwise affected the State's entitlement, including:

- The 1971 Alaska Native Claims Settlement Act (ANCSA);
- The 1979 Cook Inlet Region, Inc. (CIRI) Land Exchange;
- The 1980 Alaska National Interest Lands Conservation Act (ANILCA);
- The 2004 Alaska Land Transfer Acceleration Act (ALTAA).

Under these laws, the State's entitlement was finalized at **105.9 million acres** and the State was given until January 3, 1994, to submit their final list of "selected" lands to the U.S. Department of Interior (DOI)'s Bureau of Land Management (BLM).

Lands that are selected may, at the State's request, be adjudicated by BLM for tentative approval for transfer and then patenting to the State or directly patented to the State. Once BLM provides tentative approval, management authority vests in the State, but the land still has to be surveyed pursuant to the Statehood Act prior to the issuance of the final patent.[1] While there is cost and administrative work association with the adjudication, the primary federal expense associated with resolution of the State's entitlement going forward is expected surveying costs.

ANILCA also gave the State the right to make "top-filings" on certain parcels. A top-filing is effectively a contingent selection – where the underlying land is subject to a federal restriction or withdrawal[2] that prevents the land's adjudication as an entitlement selection – but, in the event the restriction is lifted, a state selection automatically attaches to the land. It is thus a future interest in a selection for the State, but not considered an actual selection until the relevant withdrawal is lifted. The State's ability to make "top-filings" has also closed.[3]

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[1] There are several technical issues raised by these steps – one is that a formally surveyed set of patented parcels typically includes less land than the amount estimated at the tentatively approved stage – because meanderable waters, inholdings, and other small pieces are accounted for and "surveyed out" when preparing the patent. Typically this variation is around 5% - where 100 acres of tentatively approved lands, when surveyed, is found to be 95 acres for purposes of issuing the patents and debiting the State's entitlement. While a very imprecise number, the State could potentially see 1.8 million acres of surveyed-out acreage from the 36 million acres that are currently tentatively approved – 1.8 million acres that will be available to request adjudication of additional selections.

[2] There is an immense variety of federal actions and process that may create what is termed a "withdrawal." Two common executive branch actions that create withdrawals are Public Land Orders (PLOs) issued by the Department of the Interior (DOI) and Executive Orders (EOs) issued by the President.

[3] No additional lands may be added to those selected or top-filed. The existing claims may only be adjudicated and transferred to the State, or relinquished by the State.

Background – Current Status

As of January of 2015, the vast majority of the State's entitlement has been transferred into State control. Of the 105.9 million acre total entitlement, the State has received ~ 100.5 million acres (with ~35.6 million acres tentatively approved and ~64.9 million acres finally surveyed and patented). This leaves **~5.4 million** acres of remaining entitlement that has not yet been fulfilled by the federal government.

The State currently has ~10.9 million acres of selections from which to receive these ~5.4 million acres of entitlement, as well as ~10.2 million acres of top-filings that may eventually become selections in the future should the applicable withdrawals be lifted.

Theoretically all of these top-filings can convert to state selections and be eligible for transfer. Thus the total scope of lands the State is evaluating for potential adjudication and transfer include both the ~10.9 million acres that currently are under a valid state selection and the ~10.2 million acres subject to the "top-filings," for a total of ~21.1 million acres. [4]

[4] Subject to the possible increases from survey acreage changes as detailed in note 1. While a very imprecise number, the State could potentially see 1.8 million acres of surveyed-out acreage from the 36 million acres that are currently tentatively approved – 1.8 million acres that will be available to request adjudication of additional selections.

STATE OF ALASKA LAND SELECTIONS

FEBRUARY 11, 2016

PURPOSE

Provide **Senator Costello** with a summary of the State of Alaska's land selection history, process, and current status, and to provide an update on Native allotment entitlements.

BACKGROUND

Under the 1959 Alaska Statehood Act, the federal government provided Alaska with a 104,450,000-acre land entitlement—an amount that was deemed to be sufficient for the newly formed state to become economically self supporting.

The Statehood Act gave the state 25 years to select lands for entitlement. That original time period was amended through several pieces of legislation that lengthened the amount of time for the state to select lands. Federal Legislations including the:

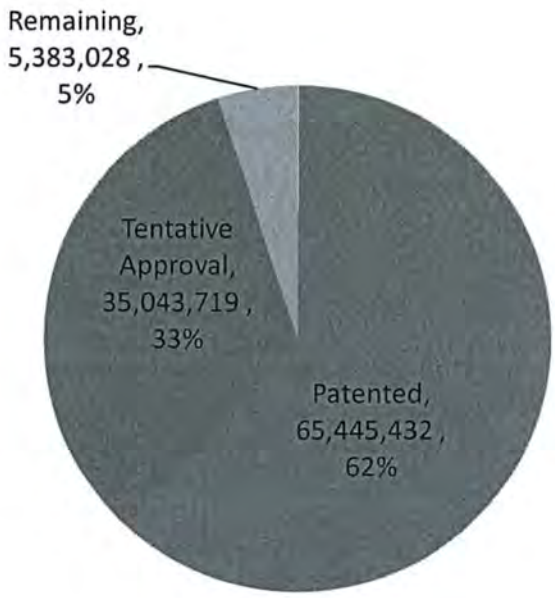
- 1906 Native Allotment Act;
- 1959 Statehood Act;
- 1971 ANCSA; 1980 ANILCA;
- 2004 Alaska Land Transfer Acceleration Act.

The state entitlement was finalized at approximately 105.9 million acres and the state was given until January 3, 1994, to submit their final list of nominated lands to the U.S. Department of Interior. The state provided its selection list in December of 1993.

CURRENT STATUS

The State of Alaska has approximately 5.4 million acres remaining for its entitlement.

Total Entitlement:	105.9 million acres
Total Conveyed:	100.5 million acres
(Tentatively Approved:	*35 million acres)*
Remaining Entitlement:	~5.4 million acres



The State of Alaska has identified the following acreages to complete entitlement:

- Selected (1st Position) 13.9 million acres[1]
- Top Filed (2nd Position) 6.8 million acres

  (No additional lands may be added to those selected; only relinquished)

NEXT STEPS

1. Receive only those acres that fill immediate need for resource or energy development.
2. Continue to press the Department of Interior to lift long-standing Public Land Orders that prevent the state from properly assessing and receiving high valued lands in fulfillment of our final land entitlement.
3. Continue to gather information on remaining selected and top filed land.
   - This process will provide needed information to ensure or increase the probability that the state receives those lands that will best provide for our economic future.
4. As Native Corporations near the completion of receiving their land entitlements and their over selections are rejected or closed out land previously top filed by the state becomes available for conveyance.
5. Continue to assess emerging land ownership patterns.